

# PANOPLY JOURNAL

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### Letter from the Journal Director

Welcome to our fourth annual Panoply Journal, published here at the Center for International Relations and International Security (CIRIS). Every year when it's close to the time of publication here at CIRIS, it's often a feeling of reflection for me on the series of events that have transpired since last year. For myself, my focus has been on the complication of credible information coming from Eurasia on the war between Ukraine and Russia. Now, as of November 5, 2023, the strain in diplomatic ties between Türkiye and Israel, despite building long-standing economic rapport, is in a realm of true jeopardy as we observe the war between Israel and Hamas unfolding in real time.

Other events in 2023 affected international diplomacy and security, such as Iran's entrance into the Shanghai Cooperation Organisation's Heads of Council, Croatia converting to the use of the Euro despite being part of the European Union for nearly 10 years, the crowning of King Charles III, the long-term effects of Covid-19 on the United Nation's Sustainable Development Goals (SDGs), and Saudi Arabia and Iran's commitment to the re-establishment of bilateral diplomacy.

Thank you to our Board of Directors for your support and drive as our think tank continues to grow; thank you to our new member of the Leadership Team, our contributors to this year's journal and all who have submitted articles to be published on our website. Thank you also to our supporters, members, and their families.

As we drive forward into 2024, let our hearts be filled with an optimistic foresight toward peace in war-torn areas and for those affected. In our daily lives, as we observe and experience such troubling times, know that peace starts with self; and with this peace accompanies good deeds, in which those good deeds are often infectious.

Respectfully,

Dominique R. Batiste

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### **Letter from the Board of Directors**

This year we made a lot of technical changes to our journal. We moved our journal to the Open Journal Systems from the Public Knowledge Project. An Open-Source platform aimed at making research a global public good.

As always, our aim is to lower the threshold so everybody can not only access, but also publish their work. All papers undergo a peer-review process, and this year was different as we started to use the new Open Journal Systems software. We have had many submissions and after careful deliberation choose from the following authors to publish their work.

We would like to thank our journal staff and director for their hard work in getting this edition published. A special thanks goes out to the authors as well for submitting their work. With everything new there is a learning curve, and as we now publish this year's edition we can look back and learn so we can improve on the whole process.

2023 was a year with many events, at the time we started to copyedit this edition the horrific terrorist attack took place in Israel by Hamas. The subsequent events showed a polarization worldwide, making international relations and international security an increasingly relevant topic. Despite the seemingly intractability of certain conflicts we do hope that parties may find the resilience to come to peaceful solutions.

Sincerely,

Sergei Oudman

Travis Hackney

Marleen Julien

Lindsay Ryan



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## **Piracy and robbery at sea, a threat to international security?**

**by Raffaele Petroni**

Acts of piracy and robbery at sea are often subjects of debate within the international community in the terms of how to contrast the phenomenon and prosecute the suspects. This is a phenomenon that so far has concerned mainly, but not exclusively, the offshore areas of the African Horn, Indonesia, Malaysia, the Philippines, Peru, Colombia, and Brazil (as per data released by the division of Commercial Crime Services of the International Chamber of Commerce).

### **Piracy: an international crime?**

The elements that determine piracy and operations against it are set by the United Nations Convention on the Law of the Sea (UNCLOS), articles 101-105. It is generally accepted that these elements reflect customary law. The main aspects concern acts of violence, in any sort of form and shape, for private ends, from one vessel to another (Guilfoyle and McLaughlin, 2019). On these grounds, therefore, acts of hijacking of a vessel from one of its crew members or passengers is not considered piracy, as in the Achille Lauro case. Based on *Re Piracy Jure Gentium* by the Privy Council, a robbery itself is not a *sine qua non* element to define piracy: the attempt itself is enough to consider an operation an act of piracy. Another characteristic of piracy is that the element of *animus furandi*, intention to rob, is not required in itself as private ends may refer also to non-financial objectives. Another key element is that it has to be committed on the high seas. However, this element has been addressed differently, in an *ad hoc* manner, for the case of Somalia: the United Nations Security Council Resolutions (UNSCRs) 1864, 1851, 2383 allowed, for a restricted and renewable period of time, the seizing of pirates in the territorial waters of Somalia, should the need require it (Fink and Galvin, 2009).

Piracy cannot be considered an international crime, as the only similarity between the two concepts and type of crimes is that they are both subjects to universal jurisdiction. Any other elements are different. The former international judge Cassese (2013) clarifies that piracy is not an international crime as it does not possess the quality of shocking the conscience of mankind. The repression of this crime concerns the protection of trade and free navigation, not basic values of the international community.

Following these aspects, universal jurisdiction does not exist for piracy in terms of international crimes, but in terms of customary law and because it occurs on the high seas, away from state territorial jurisdiction. Since the legal prohibition of piracy appeared before contemporary international law developed, with its rights and duties, it did so because national law allowed its prosecution in domestic courts (as the alternative would have been lack of punishment for lack of jurisdiction), it is argued that it is national law that prohibits piracy, not international law.

Since international criminal tribunals prosecute crimes based on what their treaties and governing instruments prescribe, piracy is not prosecuted in an international tribunal as it has not been inserted in any international tribunal treaty.

### **The legal status of pirates**

One of the issues the fight of piracy is confronted with is the status of pirates, considered by some as halfway between military combatants (in terms of civilians taking up arms to send away vessels that in their opinion destroy the country's assets and resources) and civilians. If this view is accepted, then the Third Geneva Convention (GCIII) would apply. Some commentators hold the opinion that the status of Prisoner of War (POW) should be granted, while others deny



it. Whatever is the choice, modern international law requires a certain standard of rights to be granted to the suspects, both in terms of detention and fair trial.

Faced with these issues on the high seas, the task becomes difficult to deal with, which often leads states to prefer a less difficult measure to implement by issuing policies where pirates are released after seizing the boat (Kontorovich, 2010). For what concerns detention, in many cases it may be longer than what is regularly accepted for ordinary proceedings due to the application of the principle of non-refoulement and for difficulties for ordinary legal courts to try cases as results of military operations.

Other controversies may concern the approach in judging the legality of target killings of pirates, in the case they are considered hostile civilians. Kontorovich (2010) developed an analysis and comparison between war on terror and anti-piracy operations. He concludes that, differently from the war on terror, anti-piracy operations have not undergone an intense political and legal debate within and among countries; also, differently from terror groups, pirates do not feel attached to an extremist ideology.

### **Piracy: prosecution and universal jurisdiction**

The prosecution of piracy related incidents and crimes finds many challenges and difficulties on its way. Some of these challenges concern prosecuting the suspects in due time, prosecution by the flag state of the vessel that has been attacked (option very unpopular), irregular use of universal jurisdiction, the financial aspects of anti-piracy missions and prosecution, fear of European states of asylum requests by the suspects, the application of the principle of non-refoulement, and the regulations set by the European Convention on Human Rights (ECHR), the often choice made by the states to release the pirates after seizing the goods and the boats used for the misdeed (Guilfoyle, 2010). Alternatively, for incidents taking place in

the region of the African Horn, many states have signed agreements with Kenya to prosecute these suspects. The signing of this agreement, however, implies a substantial financial contribution to Kenya, but also the aspect that this type of solution is to be understood as temporary. The temporary nature of this measure has repeatedly been expressed by the government of Kenya as it retains the right to assess the situation regularly and decide to stop this practice should it evaluate it in its best interest.

The principles that govern universal jurisdiction allow the prosecution of crimes which have taken place out of the territory of the state that launch the prosecution procedure. The prosecution of misdeeds under this legal institution is always accompanied by problems related to collecting evidence, along with challenges related to the enactment of domestic laws and statutes that govern universal jurisdiction and international related offences. These issues apply to piracy as well.

International law has considered pirates as *hostis humani generis*, enemy of mankind, based on the fact that they do not differentiate targets on the grounds of nationality, as such they feel free to hit any vessels they consider viable, thus jeopardising the commercial exchanges between all countries.

The prosecution of piracy under the principles of universal jurisdiction undergoes the same issues that prosecution of international crimes faces. To this extent, taken aside its peculiarities, it does not represent a case completely different from the ones that concern the prosecution of international crimes under universal jurisdiction.

For what concerns the situation in the Gulf of Aden, the United Nations Security Council (UNSC) authorised the use of force against pirates even in sovereign Somali territory. The legal commentator Kontorivich (2010) reports that the political debate about how to confront piracy

has been vast and extensive, to the point that Condoleeza Rice, former US Secretary of State, during a session of the UNSC in 2008, denounced that the problem was not the rules or lack of, but political willingness to act accordingly.

In conclusion, the legal tools to combat piracy are universal jurisdiction, the UNCLOS (art 105), which, however, states the lawful possibility of acting against pirates, but it does not set compulsory clauses to follow. A careful reading of art 105 also raises questions about the permissibility of universal jurisdiction in cases covered by the article as the legal history of the conventions leads to the conclusion that proceedings by third parties are precluded. Eventually, the principles of universal jurisdiction by third parties are covered by custom and state practice.

The ambiguity of this article leads to some comparisons with other cases where universal jurisdiction has been applied. In these terms, we are confronted with cases similar to the Habre case for crimes against torture: Belgium requested Senegal to extradite Mr Habre, former president of Chad, who had found refuge in Senegal. Senegal refused to grant extradition, and on the principle of *aut dedere, aut judicare*, it should have started a proceeding against Mr Habre. This did not happen, the International Court of Justice (ICJ) found Senegal contravening the convention. Eventually, an agreement was found between the African Union (AU) and Senegal, where the AU assisted the country in the establishment of a way to put Mr Habre to trial, who was then eventually convicted in 2016.

This case though raised the question that if states could escape their treaty obligations almost without real effects and consequences, do these obligations really work any better than the principle of universal jurisdiction? Eventually, the statement made by Ms Rice proved to be true: what lacks is the political willingness to act.

### **Suppression convention: a solution better than universal jurisdiction?**

A suppression convention does not create obligations by itself: a state will have to implement its principles in domestic law in order to respond to the requests of the convention itself. The path to follow requires the creation of the crime in domestic law; establishment of the jurisdiction for the state to prosecute the offence, which in most cases will apply principle of territorial and nationality jurisdiction (mainly active, but sometimes also passive); set up of rule and guideline framework concerning cooperation and extradition, but also to establish the punishment. Some conventions may also insert the principle of *aut dedere aut judicare*, if felt necessary.

Other elements of treaty law are that they do not define in detail the principles and elements of *mens rea* and *actus rei*, but leave to the national legislator to decide on them. This brings the problem of uniformity of rules among the countries that signed the convention. In most cases, the disparity of elements applied to the offences may create problems in the way states can cooperate between them.

In terms of suppression convention, a tool available is the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention), which covers acts both on the high seas and in the territorial waters. This convention also makes the jurisdiction mandatory: refusing to arrest pirates, but releasing them after seizing the boat, is considered a contravention of the convention. While states have been keen on recognising universal jurisdiction for international crimes, they have been slow on acting on the same principle against piracy. It therefore follows the question that if states are unable to prosecute cases of piracy, considered as robbery at sea, a crime deemed to be easier to prosecute than international crimes, what is the real future of universal jurisdiction? This comes especially in

light of the fact that those who commit international crimes are most likely to be protected by state officials, making the use of universal jurisdiction even more difficult.

### **International tribunals and courts: a viable option to prosecute acts of piracy?**

The debate on how to prosecute suspects of committing the acts of piracy and the best judicial location to do this has often focused on whether instituting an international piracy court or not. The debate is born out of the fact that different challenges exist for the present system, currently based on trials in the state that has arrested the suspects or in the temporary role played by Kenya in assisting in the prosecution of pirates (as expressed above).

The advantages of instituting an international court are a higher willingness to bring to justice suspects; uniformity and a single set of rules applicable to all countries, and eventually conformity with international human rights law: the way this happens would depend on the form that is chosen, whether through a UNSCR based on chapter VII of the UN Charter, or treaty based. In the case of a court set by the UNSC, the court might have the advantage of being granted primary jurisdiction, which would mean applicable to all UN member states, with the mandatory requirement to cooperate with the court in the provision of evidence and witnesses.

In the case of a treaty-based solution, instead, the court would enjoy the powers that the signatories of the treaty would be ready to grant them - an example of this could be the direction towards the signatories (not non-member states, unless these states clearly affirm the willingness to subdue its jurisdiction on the matter to those of the court) to provide evidence and witnesses. However, in realistic terms, a court established under Chapter VII of the UN Charter is an option unlikely to be considered as piracy is hardly to be considered an attempt to the peace and security of the international community. On top of these considerations, the option is not really popular among the international political fora.

Since piracy is often regarded as robbery at sea and hostage taking, a question arise: are these situations serious enough to trigger the creation of an international court? The answers to this question are not likely to be affirmative.

When evaluating the option of an international court for piracy, the issues to address would be the definition and the geographic limits of the jurisdiction - being piracy a crime subject to universal jurisdiction, states should negotiate the amount of state powers (linked to universal jurisdiction over piracy) to be conferred to the court.

In the case of a treaty-based solution, the court might end up with limited powers, in the sense that it would work only on cases that involve member states, either in terms of nationals or vessels. On these terms, its action would be curbed and could even become ineffective as the chances that it would have far fewer incidents to prosecute than expected at the moment of setting up the convention cannot be discarded.

Other questions to be asked would concern the real willingness of states to contribute financially to an institution that prosecutes pirates: most likely, many of the world's states would not be willing to contribute. Historically, international courts prove to be expensive, and, from an exterior perspective, they do not always deliver as expected: on these grounds, based on past experiences, the political willingness to invest on such a project would be far less than expected.

Summing up the above, the disadvantages of an international court against piracy are the financial aspects it involves, which should rely on the regular payments by each member state. This concern is part of the debate that has surrounded the financial aspects of other international tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and ultimately the International Criminal Court (ICC). Other sources of discontent of this option would be the postponement of cases

while the court is set or as consequences of appeals; doubts about its ability to enhance domestic judicial systems (as expected in the cases of hybrid or internationalised courts and tribunals, as it will be expressed below); reliance on the cooperation of states as the convicted should still be imprisoned somewhere, therefore the difficulties in finding states willing to host these convicted individuals would represent a great effort.

Other options to explore would concern the institution of mixed or hybrid courts, with an international character that would include a mix of national and international judges, prosecutors, and defence attorneys. In order to work, these types of options should rely on international fundings, but also deliver results in terms of support to domestic endeavors, assistance in the development of a better national strategy in prosecuting these crimes, and development of local expertise.

Advantages of this option, however, would include easier access to evidence and witnesses, less expensive trials, as opposed to setting up a new court from scratch. At the same time though, disadvantages would still include the political will to contribute financially and difficulties, in case of convictions, in finding states willing to host pirates for the expiation of the sentence. It has been suggested that these courts could be empowered with an international prison, but still political willingness to set it up and provide prison management personnel would be required.

In conclusion, an international tribunal would not be the best solution available. The option of international support to domestic proceedings would work better (Cryer et al., 2019), despite the challenges that could be faced. In these efforts, the support set by the international community is a key aspect. This support would help to overcome the difficulties mentioned above. The states would then have the options to set special courts to deal with piracy or to

prosecute through regular channels, a general set of rules that should be absorbed and implemented by national judicial systems, rules that would also appease the needs and fears of the ECHR member states, procedural guidelines to solve the problems of collective evidence that would allow a judge to jump to informed conclusions about a piracy case. Whether states would prefer the route of special courts or ordinary courts, the issue of expertise would represent a main one to be addressed and solved, with the support of the international community becoming particularly important.



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## **The Roles of NGOs Amid Neoliberal Agendas**

Mursel Sabir

### **Introduction**

NGOs perform influential roles in facilitating development and aid within civil societies. As many scholars have discussed and debated, the functions and purposes of NGOs can vary. According to the United Nations Department of Public Information, an NGO is defined as a “voluntary citizen’s group that is organized on a local, national or international level to address issues in support of the public good. Task-oriented and made up of people with a common interest, NGOs perform a variety of services and humanitarian functions, bring citizen’s concerns to governments, monitor policy and program implementation, and encourage participation of civil society stakeholders at the community level” (Leverty). Drawing from an inter-governmental body that has created and partnered with prominent international NGOs, this definition provides enough of a clear basis for the purpose of this paper.

Following the fall of the Soviet Union, and the dismantling of the Eastern Block and Iron Curtain, the early 1990’s became a major turning point for the impact NGOs would have in civil society. This is evident through the proliferation of registered NGOs during the time period. The number of international NGOs grew from 6,000 in 1990 to over 26,000 in 1999 (Ben-Ari). In addition to the effects of the nationalization of Eastern Europe, world-system theorists attribute the increase in INGO activity with the “expansion of the Western capitalist system into [the] former colonies, with INGOs replacing Western employment and the power that was used to govern [the] colonies”, referring to the sovereignty of former colonial nations in the African continent. Framing the conditions for which NGOs have become prevalent will be addressed

through the analysis of the proliferation of funding for NGOs as a result of the shift in the conceptual framework defining the role of NGOs in advancing state interests.

### **Funding**

As the number of NGOs have increased since the 1990's, so has the funding for these organizations. Comprehensive data for the total aggregate amount of global NGO funding is difficult to obtain. However, available datasets from intergovernmental organizations, and federal governments, provide a glimpse of the increase in international funding for NGOs since the 1990's. For example, of the 3000 NGOs registered with the Organization for Economic Cooperation and Development (OECD), expenditure for the registered NGOs grew from \$2.8 billion to \$5.7 billion between 1980 and 1993 (Lewis 2). In the review essay, "NGOs and Western Hegemony: Causes for Concern and Ideas for Change", author Glen Wright also provides a general background for changes to NGO funding, with acknowledgements to the limitations in understanding the inclusiveness of these numbers. In 2007, the OECD's Development Assistance Committee published figures on NGO funding stating that among the 24 OECD countries, \$103.5 billion of aid was disbursed, 6.5% of which was dispersed through NGOs. This data excludes the amount of aid that the USA directly provides to INGOs or the amount that is provided to multilateral agencies to disperse to NGOs, which for the year 2007 totaled \$35 billion. With consideration of these limitations to the funding data, the author claims that 15-20% of total development aid is channeled through NGOs (Wright, 125). With a background understanding of the increase in financial support that has enabled the proliferation of NGOs since the 1990's, scholars must ask the question: how has the increase in funding from government entities impacted the functions of NGOs? To answer this question, one must dissect the impacts of increasing state and private donorship for NGOs in order to understand the effects

of the implementation of the New Policy Agenda, and the impacts of funding on the functions of NGOs, since the 1990s. Changes in the sourcing of donorship for NGOs has drastically changed the purpose of NGOs, and the adoption of liberal principles has shifted the agendas for development NGOs in order to adhere to the hegemonic interests of governments, rather than to pursue independent, public interests of their recipients. This assertion is dependent on the examination of the relations between donor countries and NGOs, and recipient countries and NGOs, by examining how the neoliberal concept of the “New Policy Agenda” has influenced the monetary relations between NGOs and donors.

### **The New Policy Agenda**

Coined in 1993 by Mark Robinson, the New Policy Agenda has been attributed to the increase in support for NGOs, and the heightened attention promoted for the capacity for NGOs to perform certain functions in lieu of government-directed initiatives in the international arena. It emphasizes the “development of good governance, democracy, and civil society, and the provision of services“ (Wright 125). In turn, funding for NGOs has increased, with the assumption that NGOs are capable of meeting the agenda’s goals. In Wright’s argument of this policy, the author asserts the agenda reflects the increasing domination of neoliberal ideologies in socio-economic development, headed by Western states. Furthermore, the New Policy Agenda, from now on known as the NPA, centers around Western donor states “emphasising the role of NGOs in democratization and service provisions" (Wright 124-125). The NPA combines “neo-liberal economic policy prescriptions with a stated commitment to ‘good governance [which] has projected development NGOs as efficient and responsive to alternatives to the state” (Lewis 1). In the post Cold War context, the rise of neoliberal policies, that favored economic reform and democratization, shifted the role of the state in building democracies, in favor of civil

society organizations. These organizations however, would become de facto agents of democracies, and subject to state regulations of neoliberal agendas. These authors reaffirm the shift in the role that development NGOs have in relation to the interested parties willing to fund these NGOs- particularly democratic and capitalistic nations. The NPA is a crucial component to understanding how neoliberalism impacts the functionalities of NGOs, through government donorship for these organizations.

### **Legitimacy and Autonomy**

For the purpose of this analysis, the concepts of legitimacy and autonomy will be viewed as closely related concepts that can define the identity, functionality, and mission of NGOs. While legitimacy is a socially constructed term that has been discussed intensively in the social sciences, this analysis defines legitimacy as “the particular status with which an organization is imbued and perceived at any given time that enables it to operate with the general consent of peoples, governments, companies, and non-state groups around the world” (Slim). For NGOs, legitimacy is crucial to their advocacy efforts and projects, the relations they build with donor and recipient states, their target populations, and the international community. NGOs must retain legitimacy in order to continue operating under their broad mission: to facilitate development in civil societies. In similar respects, autonomy requires a capacity for NGOs to remain “non-governmental” and essentially independent of state influence. However, the relationship between donor states and NGOs under the NPA , poses a challenge to both legitimacy and autonomy of NGOs. By promoting the subjects of the New Policy Agenda, and in turn relying on the donations from Western governments, NGOs in the post 1990’s risk weakening their legitimacy in exchange for increasing government dependency.

Increased reliance on funding from Western governments weakens an NGO's legitimacy. Government dependency inhibits the capacity for NGOs to attract popular support, local participation, and volunteerism, if the NGO is perceived as less genuine because of its financial ties to a particular state that has particular political interests contradicting state interests of the recipient country (Wright 125). With the financial upper hand, Western governments and political interest groups can steer NGOs as a falsely displayed independent front. This form of exploitation harms an NGO's legitimacy while touting Western hegemonic principles supported by the NPA, and shows how donorship reliance can inhibit functionality. Dependency on government finance leads to challenges in building strong connections to constituents. Financial dependency creates a perception that an NGO is an extension of the donor state, because the NGO tries to conform to the expectations and demands of the financier in order to retain donor support (Kaloudis 106). Conformity to the state hinders the autonomous role NGOs must seek to promote.

On the issue of legitimacy, and the requirement for NGOs to conform to the agendas of donors, consider the following case. In Bosnia-Herzegovina, Muslim women's NGOs were not able to successfully resonate with and appeal to Western donors, in efforts to support the nation following the end of the conflict in 1995. Western donors entirely neglected religious NGOs, considering them to be exclusive and against the ideas of a multiethnic state in Bosnia-Herzegovina. Muslim women-run NGOs were forced to seek support from Islamic donors, who also had their own agendas regarding the allocation of the funds (Kaloudis 106). This caused a major issue both to the legitimacy of the organization, by threatening its capacity to carry out its own mission for the benefit of their target population, and its ability to remain autonomous in the face of state pressure to use funding in a specific manner, not conducive to the NGO's mission.

Alternative discourse, in the face of neoliberal domination of ideas, points to the NPA's influence on donorship behavior, in relation to NGOs, as hindrances to autonomy. Through the adoption of neoliberal principles, such as the capital market and private enterprises, "donors (consciously or unconsciously) promote a neoliberal discourse that undermines the autonomy of nonprofit organizations". This discourse includes support for the idea that "capitalist growth drives development", and seeks to influence poverty alleviation efforts by addressing socio-economic complexities with market-driven solutions, rather than redistribution and structural change. The author affirms that field-level engagement, and local participation with target recipients are crucial to addressing poverty, and yet these efforts can be jeopardized by neoliberal views of donor practices (Duval). Leaving little space for independent thought, NGOs face the challenge of implementing alternative solutions to issues they seek to address.

### **Accountability**

NGOs are entities that must be accountable to the people they serve, yet a lack of local accountability fails to address the public interests of civil society in the recipient countries. The New Policy Agenda distorts this accountability as funds given by governments must be accounted for. Shifting away from their accountability to the local people, NGOs also change their practices to adhere to the bureaucratic standards of donor states.

NGOs must be primarily accountable to their beneficiaries. However, in the decades after the utilization of the NPA, accountability efforts have shifted from a focus on the beneficiaries, to major donors. NGOs must meet the demands of donors, who would like to see the results of their generous contributions. By adhering to Western standards of oversight and management, two practices that are not inherently bad, NGOs are forced to limit their functionality potential when it comes to implementing projects. This is the case primarily because the "Western standard

emphasizes numbers, statistics, and efficiency over the qualitative aspects of development” (Wright 126). The New Policy Agenda puts additional strains on the efficacy of NGOs, especially in certain areas of service where this agenda approach is not sustainable. Without a proper accountability structure that seeks to perform impact assessments for the benefit of the recipient state, rather than the donor state, NGOs fail to utilize tools that will support impactful implementation of their projects, services, and advocacy efforts. For example, in Central Asian countries such as Kazakhstan, international NGOs fail to effectively implement projects and services because their Western-style programs are viewed by the recipients as culturally incompetent and divergent to Kazakh society (Kaloudis 108).

While some scholars seek to legitimize the role of accountability, others in the field are quick to claim that accountability from NGOs is not possible, warning of the inherent dangers of relying on non-government institutions to replace the responsibilities of the state. Increasing accountability pressure from the donor state takes away from the ability of the recipient state to work with the NGOs operating, in order to assure their practices adhere to the recipient country’s standards. Cooperation with the recipient state is crucial to the viability of an NGO’s functions. In the early 2000’s, the Haitian government struggled to manage the number of international NGOs operating in the country. Nearly all of the development in Haiti occurred through NGOs, not the Haitian government, causing issues with the government who sought to regulate NGO activity in the country. Haitian leaders and government workers outlined these issues, including a former Haitian Minister of Social Affairs who argued that international funding directly to NGOs “makes it hard for the government to establish priorities and ultimately undermines the ability of the state to govern” (Schuller 99). Schuller points out the importance of participation, a method displaying an NGOs accountability to serve its beneficiaries, as an issue that Haitians and the



Haitian government have emphasized. In his qualitative research, Schuller found that participation was perceived differently between NGOs, and their beneficiaries. Whereas NGO directors believed that target populations participated in stages of the project such as defining the problem, and planning the project, local community members responded that they were only participating in the execution of the project (Schuller 111). This disconnect provides evidence that NGO accountability to the local communities and to the recipient state, are more unequal than NGO accountability to donor states.

### **Alternative Discourse**

NGOs are mostly a force for good and provide valuable resources and skills for the betterment of civil society (Kaloudis 108). There still is a great need for NGOs and grassroots organizations in order to help provide solutions to global inequities in sectors such as migration, health, education, and more. Yet, the viability of the long term impacts of NGOs requires a reckoning with the current practices implemented by NGOs, mainly in part of their relationship with funding. Scholars have provided various solutions and inquisitions into possible alternative methods to the performance of NGOs.

Some Western NGOs (NNGOs) have transitioned from implementation approaches to active partnerships with local NGOs (SNGOs) in the form of “ongoing processes of negotiations, debate, occasional conflict and learning through trial and error. Risks are taken and although roles and purposes are clear they may change according to need and circumstance” (Lewis 4). Active partnership promotes positive practices lacking in current methods to NGO operations. Through active engagement with local populations, partnerships can address the kinds of challenges posed in countries such as Haiti, which was previously mentioned as having issues related to local participation in NNGOs. Similarly, accountability can be remedied when NNGOs

are in active communication with SNGOs, and therefore are more accountable to the impacts of their projects and services for the benefit of the target population rather than their donor pool. Ultimately, alternative solutions are needed to respond to the domination of neoliberal views on the works of NGOs, in order to ensure the longevity, functionality, and success of these organizations that work hard to support civil society.

### **Conclusion**

Since the 1990's, the proliferation of NGOs has had a significant impact in the sector of aid and development. From providing necessary humanitarian aid and relief during times of disaster, to facilitating advancements and developments in civil society for the protection of universal rights, NGOs play prominent roles in the international community. Coinciding with the proliferation of NGOs as a result of new developments in the international arena beginning in the 1990's, Western countries have helped to embolden the purpose and capacity of NGOs to address global issues, by increasing funding. However, with an increase in funding from donor states, the expectations imposed on NGOs has posed many challenges to the integrity, legitimacy, autonomy, and accountability of these NGOs, as they seek to empower communities through their missions and projects. These challenges jeopardize the functionalities and efficacy of NGOs to continue operating in the manner they wish to operate, and to provide the kinds of assistance necessary for the development of target populations. Financial dependency gives way to conformity with norms that may not be viable in a changing world, and new alternatives are required to address the gaps in the functions of NGOs.

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## **The Evolution of Therapists: Transitioning to Combat Supporters – Treating Victims of Terrorism**

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### **Abstract**

This article discusses the treatment of victims of terrorism, including witnesses, wounded individuals, and bereaved individuals. It acknowledges the existence of various affected populations, such as soldiers in combat, special units of the Israel Defense Force, and personnel involved in disaster victim identification. The article emphasizes the need for professionals like psychologists and social workers to play non-traditional roles in providing support and therapy to these victims. It addresses the stages of intervention, with a focus on immediate and post-exposure care for civilians and combatants. Key issues include the shared traumatic reality for therapists and patients, the complexities of post-trauma adaptation, and the specific demands on professionals treating individuals in risky situations. Additionally, it discusses the timing of treatment and how combatants and civilians respond to therapy during active combat.

**Keywords:** Terrorism, Israel, War, Trauma, Social Work, Iron Sword, IDF

## Introduction

This article was written amidst the 'Iron Swords' war that engulfed the state of Israel. This was initiated by the Israel Defense Force (IDF) in response to a coordinated and brutal attack by HAMAS on October 7th, 2023, primarily targeting the southern regions of Israel, including civilian and military sites, Jewish settlements, and innocent citizens. HAMAS attack resulted in the tragic loss of over 1400 lives and the abduction of more than 240 children, women, men, and the elderly, presenting a profound challenge to the entire nation of Israel. The aim of this article is to discuss ways of treating victims of terrorism: witnesses, wounded, and bereaved. This includes injured non-uniform-wearing soldiers, soldiers exposed to terror in direct combat against the enemy, special units of the Israel Defense Force (IDF), ZAKA (Disaster Victim Identification Organization) personnel, and the Forensic Identification Department personnel dealing with the alarming consequences of terrorism. The existence of various affected populations, as mentioned above, necessitates professionals—psychologists, social workers, as well as parents and families in constant contact with the victims who are exposed to complex content — and therefore acknowledge and specialize in multiple roles that are not conventional for them. For instance, when therapists are required to support and provide therapeutic care for soldiers in the midst of combat.

This article will address the stages of intervention for victims of terrorism, emphasizing the attempt to provide tangible tools for therapist and professional personnel in immediate contact with victims, civilians, and soldiers in combat or war zones. The focus will be on those accompanying victims in the initial stages and, subsequently, post-exposure to a terrorist event. Additionally, there will be consideration for civilian and combat witnesses, officials, wounded, and individuals who experienced loss and bereavement. The individuals mentioned above are:

civilians, soldiers, ZAKA personnel, etc., in this article, will be referred to as witnesses and combatants due to their involvement in risky situations and combat.

Key issues to be discussed in the article will include witnessing terror event(s) and the shared traumatic reality for therapists and patients, the complexities of post-trauma adaptation in therapy, specific demands on professionals treating combatants and civilians under terrorist attack, and the appropriate timing for their treatment. Furthermore, the discussion will include how combatants and civilians respond within the treatment space, as well as addressing recovery time during active combat.

### **Witnessing Terror: Shared Trauma of Therapists and Patients**

Before delving deeply into the aforementioned issues, it's important to remember that therapists, in particular, in the modern era where all information is exposed in the media, are themselves witnesses to the horrors that have occurred. They too are liable to suffer from trauma. This amplifies when their very role directs them to hear the difficult testimonies during the therapeutic process. One of the concepts I discussed in my previous research, "The Unseen Suffering of Terrorism - Miracle or Disaster" (Chouraqui-Elfassi, 2006), is 'terror witnessing'. Under this title, I included people who witnessed severe terrorist events but were not directly affected; people who witnessed events unfold or heard about these harsh events through the media. It is, of course, evident to acknowledge witnesses who were present during these severe incidents as they were exposed and affected in one way or another. Given this perspective, I sought to highlight the importance of addressing a broader community which impacted by terror in which including therapists, who, in the modern era, watch horrifying scenes unfold from the comfort of their living rooms, for example such as during the collapse of

the Twin Towers when millions of people witnessed victims jumping out of windows to their deaths and other horrifying scenes. Thus, in this situation, the public becomes witnesses to terror (Nader, 2001).

As a result of the described situation, therapists find themselves in a situation where they need to be attentive to their patients yet simultaneously attempt to avoid potential fears that threaten them as well. The anxiety that pervades these situations can be so intense that it inhibits the therapist from engaging with their own emotions. This might adversely affect the therapy and prevent the patient from encountering the darkest chambers they need to face for healing (Herman, 1992). Additionally, besides the difficulty in facing the horror, therapists are fearful of overexposure and, therefore, potential breakdown, which might be caused to themselves or their patients simply by dealing with the horror (Cohen et al., 2014). Therefore, this could lead to empathetic failures on the part of the therapists, such as incomplete absences and attentiveness, or a conscious or unconscious attempt to move away from subjects that invoke anxiety and fear within the therapist. These failures might impact the treatment and commonly lead to a decrease in the therapists' self-worth (Somer et al., 2004; (2012, Tosone et al.).

Boulanger (Boulanger, G. 2013) illustrates symbolically how, after Hurricane Katrina in New Orleans, therapists and patients had to climb over the rubble of buildings to reach the clinic. This situation symbolized and emphasized the fact that the patient and the therapist both dealt with the very same complex reality. Boulanger highlights the difficulty for therapists in providing a safe space for processing severe experiences when they themselves are exposed to the same horror. Furthermore, he describes that due to the nature of their profession, the public's expectation for therapists to excel beyond their own capabilities and take care of others despite the challenges they face in their roles, creates a situation of extreme isolation for therapists.



Another challenge that arises in situations of shared trauma witnessing is the blurring of boundaries between therapist and patient. In cases of shared trauma, both parties face difficulty and exposure to fear. This, which is evident to the patient, does not often occur in ordinary times when the therapist can hide their personal pressures. As a result, the patient may, for instance, show more interest in the well-being of the therapist, and the therapist may, on their part, share thoughts or feelings that, under normal circumstances, they wouldn't share to keep the focus on the patient and prevent external influences on the treatment. This can sometimes lead to a negative diffusion between personal and professional lives (e.g., "I was also very afraid yesterday when the alarm went off"). On the other hand, such sharing of emotions by the therapist may significantly strengthen the patient and dispel their sense of loneliness, as argued by certain critical and feminist approaches to therapy today (Weiss, 2003). Therefore, it is crucial to reassess the appropriateness and the extent of sharing with a particular patient. An additional difficulty that therapists face in such situations is the need to be with their families and take care of them as well. This dilemma, the conflict between treating patients in need of assistance and the therapist's own family needs, can create a crisis in the therapist's life. This can contribute to a sense of entrapment, hindering therapists from engaging in their usual treatment practices with their patients (Baum, 2012).

### **'Under Fire' – Treating patients during combat**

In my role as a specialized therapist aiding victims of terror, IDF soldiers, and their families, I've observed a clear distinction between two scenarios: the condition of war, involving conflict between Israel and foreign armies, and the state of terror incidents carried out by terrorists targeting random civilians. This discussion pertains to an intermediate situation, a

unique state of combat under a terror event, exemplified by the harsh and horrifying incidents that occurred in Gaza-border communities on October 7th (2023) events. In such events, soldiers and civilians grapple with a terror event characterized by a unique complexity—a combination of two aspects together: war and terror. Another distinctive feature of such a terror event is the actions carried out in the area by military and civilian units whose role is to handle the immediate consequences of terror. For example: searching for missing persons, collecting, and treating bodies, scanning the area, and collecting materials from the scene. A terror event with these characteristics demands tailored treatment and engagement from therapists and personnel involved in the treatment. Throughout the current war, I have had sessions with combatants engaged in various missions and families supporting their sons and daughters who are in the combat zone.

In my current role as a therapist during the 'Iron Swords' war I conversed with soldiers and civilians who were in the war zone in various ways. Some spoke to me amidst the destruction using stifled voices over the phone, while others left me voice messages, hoping I would listen and respond. In these messages, they mostly described horrific plastic descriptions or non-plastic stories but narrated difficult and painful events. For instance, scenes of an abandoned stroller, signs of cell phone drag marks on the dirt indicating a person being dragged, and exposure of fighters to highly intimate situations of people affected and during their daily lives (given that the terror event suddenly disrupts their lives). Such combat against an enemy while dealing with a terror event and its ramifications necessitates various forms of therapeutic approaches by the therapist different from ordinary times, which will be detailed in this article.

During our conversations, soldiers described their experiences even during their short breaks at home. One of the soldiers described how he found himself constantly organizing things

obsessively: dismantling the "sukkah" (temporary hut or shelter traditionally constructed for the Jewish holiday of Sukkot), mowing the lawn, cleaning the house so that if 'something' bad were to happen suddenly, everything would be in order and not as exposed, with a sense of shattered intimacy. The soldier further described how, as he stood observing his home and its pastoral scenery, the actual scene that unfolded before his eyes was drenched in blood and harsh sights. One of the difficult feelings that the witnessing soldiers shared was linked to a sharp dissonance between what is normal and what is not. In other words, the scenes of normal life— a half-drunk bottle, a TV program continuing in the background— all of these coexisted in a jumble with the 'abnormal': splashes of blood, broken items, and 'missing signs' of interrupted actions.

The soldiers in the field experienced an additional emotion upon encountering the distressing scenes: a feeling of betrayal and anger toward the government, sensing abandonment by the state. They described the expectation that they have from the state to lead a strong and tough response, which is believed to bring a little comfort and relief, addressing the inherent weaknesses and breakdown they experience. This phenomenon is also described in literature by Mazur, E. & Robine, N. G., 2013 and Clemente, S., 2022. This feeling of wanting to regain power and address the overwhelming feelings of helplessness is coupled with a deep commitment to continue the combat actions. This strong desire is tied to the hope of giving an "end" to the story. For example, it could mean finding answers for a family with a missing relative or locating terrorists in hide. Because of this, any departure from combat to rest, in many ways, could also present difficulties for them (Smith, M., Robinson, L., & Segal, J., 2023; Rotenberg, 1994).

## Debriefing

In conversations with soldiers in active combat the field, many expressed a desire to share what they saw specifically with those exposed to the same or similar horrors they faced in the combat zone/terrorized territory. The reason behind this was that they felt that "outsiders wouldn't understand." Conversely, they described that in the field, there are people they called "shielding individuals" - soldiers who are not professionals attempting to provide some form of emotional support to the soldiers in the field. The soldiers mostly described that they did not feel safe confiding in the "shielding individuals" with what they were going through and did not trust them. In their own words, they describe they are "not going to take the risk of a breakdown when no one will be there to pick them up". They preferred to talk to professional therapists. Which means that there is a paradox created in the field during combat: on the one hand, they sought people who were there, but on the other hand, they only wanted professionals. What ultimately determined their preference was the desire for professionals who understand that a stranger won't comprehend this.

One of the most central tools in treatment is debriefing, often cited (Kinchin, D. 2007) as an effective tool in the context of trauma. The meaning of this concept is to engage in conversations with people who have experienced trauma, aimed at processing the difficult experience and alleviating it, in an attempt to reduce post-traumatic symptoms. There are various types of debriefing methods: individual, or group structured (CIPR), aiming to assist participants in creating a cognitive narrative, an opportunity for ventilation, and raising awareness of their coping mechanisms. The training and theories instruct treatment personnel in the principles of debriefing: the structure of the conversation, questions to ask, and more (Raphael, B. & Wilson, J. P., 2000). The prevailing belief among treatment personnel is that debriefing is the most basic

and perhaps most significant tool in therapeutic intervention, especially when dealing with exposure to trauma. This belief is based on the perception that the more one helps a survivor become aware of what they experienced physically and emotionally, the better they can contain the event and place it in a more 'organized' internal space. Therefore, the hope is that they can lead a more normal life. Just as among professionals, this perception is seen as the most appropriate way to assist survivors in the broader public, and the recommendation is often, "talk about it" (Mitchell, S. A., Block, M. G., & Berger, M., 2006). Professional literature raises a question: does debriefing help or harm people suffering from trauma? According to professional literature, it is found that in many situations, debriefing itself revives the traumatic situation and exacerbates the victim's distress (Hochberg, 1986, 2009; Perry, P., 2014; Cyrulink, B., 2018). In such a situation of reviving the traumatic event, the actual event may not take place, but all the emotions that enveloped the person during the trauma are very real, creating a kind of additional traumatic condition. Therefore, when therapists come to aid victims, they must be aware of this fact and remember that the restoration of traumatic feelings sometimes causes re-traumatization, suffering, and possibly psychological repercussions (Barron, C., 2005).

Furthermore, an individual dealing with trauma undergoes an internal breakdown, where their typical defense mechanisms prove ineffective, leaving the core self-vulnerable to fragmentation. During this phase, the priority is to assist the individual through the initial stages of inner struggle. Subsequently, in the later treatment phases, once the core self has strengthened and is no longer fragile, it becomes advisable to proceed with debriefing."

Hochberg, in his article on journalists, a population frequently exposed to the most severe sights, discusses the mental damage caused to them as well as refers to soldiers who returned

from Vietnam. He argues that debriefing sometimes can be a real harm to trauma victims who need a place of gathering and not for further psychological breakdown (Hochberg, 1986, 2009).

### **Therapists transforming to combat supporters**

An important additional unique aspect to consider is providing psychological assistance during combat and coping with continuous terror events and their consequences. The provision of therapeutic assistance during combat entails specific general principles. In common practice treatment settings, the primary goal in the therapy room is to alleviate the suffering and the post-traumatic symptoms of the combatant. However, from my experience, an additional goal during active combat situations is to prevent the mental breakdown of the combatant. Consequently, it's discouraged in combat situations to open up emotional content that often accompanies 'the text'. In other words, asking deep questions or linking descriptions to emotions is not suitable. In such cases, therapists should mainly focus on the order of events and superficially listen to the detailed descriptions.

When emotional content arises, it is recommended to address it with precision. The objective of the therapy is not to expand or delve deeper but to focus on consolidation and 'soul gathering'. Nevertheless, should a breakdown exhibit itself, it should not be overlooked but without the intention of healing. Following this principle, it is advised not to ask questions like "How did you feel when you saw those things?" or "What moved/ upset you?" More suitable questions in these situations are those focused on the concrete narrative, such as "What did you see?" or "What did you do?" The aspiration is to adhere to the combatant's order and course of actions. Moreover, if the patient is a returning/current patient in active combat; it's advisable to bring up from prior knowledge their known strengths in order to empower them. An additional reference is related to the spiritual dimension. Words of inspiration (not necessarily in a religious

context) and a vision serve as an extremely significant strengthening element in the treatment of soldiers in the field and are part of the actual treatment. The recommendations outlined above help the combatants to collect (vs. break apart) their core being as well as embrace them with the strength to continue functioning when facing challenging events, they are exposed to following terrorism.

One of the crucial aims in providing therapeutic support to combatants/civilians in the field is to serve as a "vessel" for the terror and horror content they cannot contain. Winnicott, in his article 'Transitional Objects and Transitional Phenomena,' explains the healing importance of the therapist's ability to hold the patient's emotions when they cannot (Winnicott, 1953). Often, these are topics the victims can't even share with their partners or their families, carrying them on their own. Such a container greatly alleviates the deep loneliness the combatants feel. Moreover, the very knowledge that another person can bear their horrors and terrors and can carry it with them is profoundly significant, conveying the message that somehow it is possible to continue living—a message that is not self-evident to someone who has been exposed to 'the end of the world.'

In a later stage of the treatment, after the core stabilizes, one statement that could aid the patient is the explanation and comprehension that, if permitted in therapy, to confront and touch a deep experience of depression and death, precisely from there, new powers will arise to be reborn. (Matsliach-Hanoch S', 2009). Additionally, in the advanced stages of therapy, it is important to search for a new meaning arising from the encounter with pain and suffering (Frankl, 1963). This will provide us with the strength needed to 'choose life' and survive the internal darkness and horror.

Another strong message conveyed in such a situation to the combatant is that someone is willing to listen to content they could not bear to carry on their own, meaning someone is right there to bear this horror for them. This strongly connects with the Kohutian theory that emphasizes the therapeutic importance of 'self-objects', which stresses the importance of one willingness to bear complex mental content for another. This process allows the combatant to gradually adopt and accept the therapist's bearing ability, eventually bearing it for themselves—a step toward healing (Kolka, R. 2005).

An additional important aspect of such treatment is to monitor the ever-changing mental states of the combatants and to encourage them. This involves closely observing their mental state and that of their friends in the field throughout the activity. Points to consider include whether an individual acts robotically without any moments of breakdown. Usually, after the clearance of bodies and areas where terror events occur, people operate robotically due to the required role. However, over time, situations arise where "the soul rests and stops", and moments of breakdown and connection occur. In cases where someone feels they 'no longer feel' or, conversely, feels at the 'edge of emotional collapse,' meaning they can't absorb anything further—no task, no comments from others, etc., encouraging them (if possible) to request a few hours or a day of rest is advisable.

### **The Warrior's Rest**

Does physical rest necessarily allow for mental relaxation? In many instances, a soldier's rest during combat does not equate to a state of calmness or relaxation for the mind. Typically, a warrior's rest during combat is not restful. Exposure to trauma grips the soul from within, resembling an ongoing film that continues to play, never pausing. Consequently, therapists need to guide warriors on how to cope with rest, which is sometimes harder than the combat itself.



Difficulties that arise during rest can include visions emerging into consciousness that the warrior didn't perceive earlier. According to literature, everything a person is exposed to during their lifetime is logged in the mind; even the things that weren't remembered at the time they were seen (van der Kolk, 2022). However, in extreme moments when gathering and action require, a survival mechanism is activated to allow performance under combat conditions, pushing these elements into the subconscious (Freud, 1987). Another challenge during rest relates to memories and emotions to unexpectedly surface, which were previously suppressed due to the action mode the subject was in, causing mental suffering. This event of 'Surfacing' occurs less during the action mode. Moreover, the variety of emotions that may overwhelm the combatant is extensive, ranging from guilt and anger to despair and anxiety for their family.

### **Coincidentally: reality and imagination, the good and the bad**

Based on numerous sessions held with soldiers, a recurring challenge they confront is the intermingling of imagination and reality, posing complexities in their experiences during service. This fusion often blurs the lines between memory, present circumstances, and imaginative perceptions, affecting their responses and overall encounters. For example, a soldier witnessing a child's body in the field may imagine their own child lying there, or, conversely, a soldier on leave hugging their child and seeing (imaginary) blood on their neck. It's not only the visual elements but also sounds and even words that cause confusion and chaos in the witnesses' internal experience. For instance, the use of the word 'party,' after the 'party' in a 'Reim' settlement where a mass massacre occurred, might evoke a mixture of emotions among the witnesses.

### **Preparation for Rest**

From my experience in clinical interventions and research with both civilian victims and combat personnel, it is advisable to instruct and guide them to make plans prior to their official time off in order for them to be active during the recovery time from combat. For instance, one of the soldiers described to me how, during 1.5 days of leave and before returning to the field, he chose to hike in a spring with his family. Furthermore, it is pointed to inform combatants before going on a "recovery time" from combat is that they might struggle to rest or carry out basic activities like eating or sleeping. Amongst combatants exposed to horrors at times, an internal voice of guilt might raise and to make it difficult and hinder maintaining the daily routines. Therefore, it is crucial to encourage combatants to stick to their daily routines as much as possible. From my experience, therapists play a significant role in these situations; they represent the 'external voice' that combatants need to hear and are unable to articulate themselves: the voice that affirms the continuation of life itself.

### **Treatment in Times of Recovery - Therapist and Patient Together on a Sinking Ship**

As described above, even in combat and in situations dealing with terror events, opportunities arise for therapists to treat civilians and soldiers during 'recovery time'. These therapy sessions are characterized by giving support to individuals exposed to extreme horrifying scenes. In these sessions, there might be highly acute situations, such as a 'breakdown' occurring during the therapy session itself. In such situations, the patient's anxiety significantly rises, possibly resulting in outbursts or some form of physical eruption not directed at anyone. The therapist should remember that in such a situation, the patient might feel misunderstood, isolated, and fear being considered 'crazy' or deviating from what is considered 'normal' by the public. In these situations, indeed, the environment often responds to the patient's anxiety, as if they

exhibit, they a form of psychosis: a terrifying state in which a person is in a state of distorted reality. This further complicates matters for the patient who is already confused themselves, and often fears whether they will ever be able to free themselves from the situation they are trapped in. In these cases, the therapist must strive to remain calm facing the patient's distress. This means that therapists must remain in the room during the patient's distress. For instance, not leaving to offer water to the patient or calling for additional assistance (which sometimes serves as a type of refuge for the therapist during a difficult moment). Additionally, it's advisable to refrain from comments such as "Please calm down" or "Maybe you should sit." Conduct such as leaving the room, calling for help, or attempting to calm the 'turmoil' only heightens the patient's anxiety and reinforces their belief that the situation they are in cannot be contained. The ability of the therapist to contain things not in apathy, but with understanding and the ability to "let the genie out of the bottle" is comforting and reassuring.

In order for a therapist to adhere to these recommendations, it is important to remember that an outburst is essentially a form of re-experiencing the horror and the story of trauma, not necessarily in words, and that, usually, it does not involve a dangerous deterioration. This understanding might influence and assist the therapist in containing this difficult situation. In such difficult situations, many therapists tend to use the 'mirroring' technique, which involves reflecting or mirroring the patient's words or behavior in order to mirror their state (Bramer, L.M. 1994). It's important to note that the mirroring technique should be participatory, emphasizing less on describing and reflecting the situation. Mirroring that describes the situation gives the patient a feeling that the therapist remains on the outside. For example: "I see your anger. I hear that you're sad." This implies that the patient is the one who is sad and angry, being observed and receiving reflections on their condition. This situation reinforces the patient's sense

of isolation and the feeling that they are not being seen as normal. Additionally, this situation also amplifies anxiety, as the patient might feel they cannot return to the realm of healthy individuals. On the other hand, participatory mirroring creates a sense that both therapist and patient are in the same boat, rather than the therapist observing from outside as the patient's boat sinks. Recommended responses for this scenario by the therapist would involve, for instance: "This is unbearable," "This is very difficult," and "My heart aches." Through such a gradual process, the outbursts will diminish. Furthermore, it is important to sustain a dialogue, and through this very act, convey to the patient that they have not lost their sanity but are dealing with a situation that is not 'Sane'. The aspiration is that, gradually, the therapist's perception will become the patient's self-perception. Further reducing the barriers between the therapist and the patient in these situations could also be achieved by offering personal acknowledgment such as: "I feel deeply for you," "I sense your pain," and "I pray for you." This personal acknowledgment sharpens the partnership and minimizes the gap between the therapist and the patient, eliminating the distinction between 'normal' and 'abnormal.' In addition to these, it is advisable to avoid assertive statements aimed at expressing understanding, such as, for example: "I understand what you went through." Because a person who did not witness the horrors must acknowledge the disheartening feeling of the patient, as "no one could understand what you saw," and that there is no cognitive or emotional ability to "understand" horrors.

### **When to treat**

The first step in treating those affected by terror events under combat conditions involves examining the unique characteristics of the situation brought up earlier. What is the appropriate timing for initial treatment? Is it best to initiate such therapy when combatants return from active

combat or war zone, a month after surviving the terror event? Or once they've returned home post-events?

Based on my extensive experience working with individuals who have been involved in terror events under combat conditions, generally, during the initial stages, are not ready for treatment but require a reorganization of their lives. Reorganization refers to various aspects such as caring for meals, organizing how to explain to children what happened, contemplating and deciding about the ability to return to work, and finding solid emotional and physical ground to hold. The reason why combatants don't immediately start treatment is that it's not feasible to reopen the trauma before establishing a newly stable structure. Regaining a certain level of stability is a process that demands time (Chouraqui-Elfassi, 2006). For example, a patient sought treatment from me four years after an incident in which some of her family members were murdered while she herself was also targeted for murder. She came for treatment four years after the attack. Only then was she capable of speaking about and addressing ('touch') the trauma. I witnessed this phenomenon repeatedly for many years when I treated terror victims and held a managerial role in AVNT - the first association in Israel for terror victims. For months, and sometimes even in the first few years following the attack, people required going through the phase of organization and the construction of emotional and physical ground for themselves until they could talk about what happened to them.

Previously, prior to my professional career, I initiated meetings with terror victims across the country, which drew a large audience. Due to the overwhelming response, I invited clinical psychologists to guide the meeting. Surprisingly, no one showed up for the next meeting. However, in a subsequent informal gathering without therapeutic guidance, the entire audience returned. Over time, I realized that the difficulty in speaking and the time required before

witnesses could face the trauma 'face to face' manifested itself in various ways over the years. In this context, it's important to remember that the process of discussing the trauma in therapy doesn't occur under pressure but naturally, much like the development of human growth. While it's possible to encourage a baby's cognitive understanding, it's impossible to accelerate their maturity and intellectual comprehension. The same applies to the maturation within the therapeutic process. Attempting to hasten a patient's healing is not only ineffective but also carries a negative and harmful cost on the healing process (Chouraqui-Elfassi, 2006).

### **Summary**

Terrorism affects various types of victims: Both soldiers and civilians are exposed to extreme and horrifying situations. Through these testimonies, therapists encounter stories of horror, complex behaviors, and outbursts, which they must manage while working in the clinic.

Additionally, the work of therapists during war and under terrorism is characterized by two main unique features: firstly, their role as witnesses exposed to horror and its effects, and secondly, the added objective of providing support to citizens and soldiers dealing with exposure to terror events and horror, who are situated in the field. This task requires the therapist to keep a particular balance between opening a channel for emotional discussion that leads to relief and preventing the psychological breakdown of citizens and soldiers who are likely to continue in combat. Therefore, the recommendation for therapists is to focus more on verbal content and assistance in self-collection and resilience and to use fewer methods of expansion and interpretation (Chouraqui-Elfassi, 2006). It is also recommended to delicately and accurately apply debriefing and mirroring techniques at the correct times as detailed above, and to be aware of the pitfalls of these techniques. This article further details challenging situations.

Moreover, this article describes difficult situations in treatment, situations of blurring between reality and imagination, and conflicting good and bad aspects at times. These situations are likely to arouse fear and distress among both the patients and the therapists themselves. Therefore, the article presents suggestions for interventions and strategies that may assist therapists in dealing with these difficulties. One recommendation is for therapist to keep in mind and understand that these severe outbursts of terror victims in treatment are essentially their way of narrating their trauma in a non-verbal manner and do not constitute a dangerous breakdown. This understanding might reduce agitation in the therapist and, consequently, in the patient. This process resembles the "mirror-phase" in a child's development, seeking to see and reflect themselves in their mother's eyes. The hope is that the child will receive approval to be 'whole and sound,' thus enabling them to continue living a complete life. In therapy, a state of correction like this can occur, where the therapist becomes the supporting arm for the patient, reflecting a calming rather than a disturbed image, conveying deep understanding and vitality. This way, the patient can confront these issues through a transformation from the external to the internal (Kohut, 2005).

The horrifying and disturbing events that occurred on October 7th bring us back to terrible times of pogroms and scenes of sadism seen during the darkest days in the history of the Jewish people. These scenes evoke a sense of "end of the world" in many ways. In these difficult days, a special national task of support, encouragement, and affirmation for the continuation of life is placed on the shoulders of the therapists.

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**China and The West: What Explains China's Divergent Bilateral Relationships?  
The Case of Australia and New Zealand**

Namie Yazaki

**Abstract**

China's rapid and continuous growth in the 21st century sets it on a trajectory to surpass regional hegemons politically, militarily, and economically. As China bolsters its global influence, some western nations are not easily influenced and charmed by China's while other western partners are. Why is it that China's relationship with certain western powers are considered strategic partners while others are considered strategic competitors? While the United States and their allies such as Australia create new policies countering China's global influence, nations such as New Zealand have been showing growing support for the Chinese communist Party (CCP). As an example, when China introduces new economic policies in the region, New Zealand is typically the first western power to legitimize these policies by becoming a partner. Because of New Zealand's positive relationship with China, the CCP has called New Zealand a model for western countries. In contrast, New Zealand's neighbor and strongest ally, Australia, has a relationship that is on course to being as competitive with China to the degree in which the US and China share. This paper will examine the reasons behind China's growing governmental ties with New Zealand instead of Australia by using an economic approach. My finding is that China's foreign interference activities don't have much effect on their diplomatic relationship, but rather the economy is a major factor that contributes to New Zealand's diplomatic relations with China.

**Key Words:** China, New Zealand, Australia, Diplomatic Relationships, Western Countries

## Introduction

Since the turn of the century, China has been climbing the global ladder from transitioning from a developing nation to being the world's second largest economy. Through this bolstering of capabilities, China has been able to focus a majority of those efforts on enhancing their soft and hard power. Today, it is expected that China's GDP will surpass the US around 2035 (McCurry & Kollwe, 2011 ; Nye, 2023 ; Saul, 2022). China's defense budget has become five times higher in the past two decades (CSIS, 2015). China's growing presence within international organizations is showing a destabilizing factor to the west. Cheng (2021), points out that Western countries consider China as a "threat," as the national security concerns have increased. Bandow (2021), says China's expanded capabilities, ambitions, opportunities, and threats urged Washington and Western capitals to create a new policy for China. In the US, for example, the demand for working on China is growing and this brought more opportunities in think tanks (Berris et al. 2021).

Currently, New Zealand has grown to become one of China's closest western allies. Brady (2017), says New Zealand has "strived to always be the first western country to sign up to China's new external economic policies." As an example, New Zealand is the first country in the Organization for Economic Cooperation and Development (OECD) to sign a Free Trade Agreement with China in 2008 (Suenaga, 2017). Another example is back in 2017, when New Zealand became the first western developed nation to sign onto the CCP's Belt and Road Initiatives (BRI). New Zealand also signed a "memorandum of arrangement" with Chinese premier Li Keqiang regarding China's BRI in March 2017, which was a proposal for working on the BRI together. (Sachdeva, 2022 ; Suenaga, 2017). This BRI is controversial in western countries, and they have stayed away from it. While western states share this sentiment towards

the BRI, New Zealand instead doubled down and extended their agreement for five more years (Sachdeva, 2022). In contrast, Australia, which is a close ally of New Zealand, has an opposite situation with China. While New Zealand shares its strong partnership with China, Australia, on the other hand, is currently enroute to deepen political tensions with China. Since the two nations established diplomatic relations in 1972, it is assessed that their relationship is at their worst. (Okano, 2021). The relationship between the countries started to worsen around 2017, when security and political concerns toward China's political interference in Australia was increasing. Their relations became even more strained in 2020, when the Australian government declared an individual investigation to find out the origin on Covid-19 (Yoshida, 2022).

This paper will examine why New Zealand has a good relationship with China even though China is a threat for the west. In this analysis, Australia will be used to compare and contrast the reason for regional neighbors with an abundance of similarities and close allies to choose different sides when partnering with China. This paper assesses that CCP's political influence activities aren't the main factor of why New Zealand has strong relations with China, but rather economic factors have a great impact on the countries' diplomatic ties. My argument will focus on the countries' economic relations with China, with added emphasis on New Zealand due to their positive relationship with China compared to Australia's relationship.

## **Literature Review**

### **China's Incentives for Political Influence Activities**

China's political influence activities might be a possible reason that can explain the gap between Australia and New Zealand's diplomatic relations with China. China has spent enormous effort on both countries to influence their politics. Searight (2020) describes the

Chinese government's effort to penetrate and influence Australia's politics and society as "unusual degree." She also points out that China has been "playing long game" in Australia to cultivate positive images of China, and also been "consistent, patient, and strategic" to build networks of influence. The CCP's extraordinary effort is because of a security reason, which makes Australia an attractive target for the government: The Chinese government sees Australia to have "strategic value," since the country is an ally with the US, a nation with significant influence in the Indo-Pacific region where increased territorial disputes exist (Newlin et al.). Newlin et al. (2020) also says Beijing's ultimate goal for its political influence activities is not only to eliminate Australia from the US alliance, but also to neutralize Australia on some major disputes such as the South China Sea.

It can also be argued that the economy is another incentive for China. It was mentioned before that Australia sees China as a vital trade partner, but China also considered Australia in the same way. Australia is not China's one of the major trade partners, but China needs Australia due to its rich natural resources, such as Liquefied Natural Gas (LNG), steel, and iron ore. China's demand for commodities has increased due to the rapid urbanization within the nation, and today, China relies heavily on Australia's mining industries (Roberts et al., 2016). Indeed, the majority of iron ore in China comes from Australia, and it occupies almost 60% of the total goods (Yosihda, 2022). China also signed a long-term contract with Australia to secure LNG, since Beijing was seeking an alternative energy which is renewable and emits low-carbon. However, the import of LNG shrunk in 2015 since the growth of industrial production became slow (Roberts et al., 2016). From these reasons, it can be concluded that the economy, especially maintaining commodity trade with Australia, is another motivation for the CCP to conduct active political influence activities in the country.

In contrast, Beijing's incentives for its political influence activities in New Zealand are more broad compared to Australia. Since New Zealand is a member of the Five Eyes, the CCP expects that it might be possible to convince New Zealand to stop spying on China for the intelligence alliance. Moreover, there are three territories under New Zealand's jurisdiction (i.e. providing control of defense and foreign affairs) in the South Pacific region; Cook Islands, Niue, and Tokelau. This possibly means that China can get four votes at international organizations (Brady, 2017). Furthermore, China has been growing more presence in the Pacific region, where New Zealand has some influence. Iati (2021), points out that even though New Zealand has little influence in international relations, it has and operates "considerable influence" in the Pacific region. This implies politically influencing New Zealand can allow China to grow presence even further in the Pacific.

There are some other reasons for the CCP to target New Zealand for influencing politically, such as for China's scientific research. Since 2005, Beijing has drastically increased its scientific activities in Antarctica and spending on Antarctic affairs. As the CCP is not happy with the current order, the government is planning to take a more leadership role in the affairs (Brady, 2010). China also has a long-term strategic plan on the continent, which will need Antarctic states' cooperation. Hence, China wants to influence New Zealand since the nation is the claimant of Antarctica, and what is more, where New Zealand is located is one of the closest to the continent (Brady, 2017). Moreover, she also states it is important for the People's Liberation Army (PLA) to conduct near-space research for expanding its long range precision missiles, and New Zealand is useful for China. China sees New Zealand as an essential country due to where it is located. In other words, New Zealand's geography is good and important for the CCP for its scientific research.

## **China's Political Influence Activities in Australia**

There are two major tactics used by the CCP for its political influence activities in Australia: One is “buying” political influence, and the other is controlling Chinese diasporas in Australia. The Chinese government has used wealthy businessmen in Australia who are of Chinese descent with strong connections with the CCP to influence political parties and also Australia's policies with China (Newlin et al., 2020).

However, China's political influence in Australia can't be described as successful. The Australian government was aware of China's growing influence within the country, however, Australia managed to handle it. Australia was extremely concerned about China's accelerated influence activities, and a new law to ban foreign interference was built (Brady, 2017 ; Searight, 2020).

### **Political Donations in Australia**

It doesn't mean the CCP directly buys political influence, but rather provides money to the Australian parties and important politicians as a donation. About one third of countries legally accept foreign donations in the world, and Australia and New Zealand used to be one of them until recently. Both countries had very active political donations, however, the countries later implemented laws to ban the donations. In contrast, political donations are banned in the US, the UK, and some countries in Europe (Westbrook, 2017). Both Newlin et al. (2020) and Searight (2020) describe China's buying political influence by using “political donation.” Searight (2020) also uses “CPP-linked money flowing” to refer to Beijing's buying political influence. On the other hand, Galloway (2022) describes the political donation as “bribery.” Hence, the CCP's strategy of buying political influence means providing political donations from



wealthy businessmen who have Chinese descent and close ties with the government. The donations not only go to politicians and the parties, but also Australian academies and universities (Newlin et al., 2020).

According to Searight (2020), there are two major donors who are property developers and billionaires in Australia: Huang Xiangmo and Chau Chak Wing, both have provided millions of dollars as political donations to both the Labor and Liberal Parties in Australia. In other words, China's buying political influence was supported largely by the two developers. Chau is an Australian citizen who is well connected to both Liberal Party and Labor Party, which are the major parties in the country. He was born in China, but became an Australian citizen in the late 1990s. He is also known as a person who often gives generous donations (Galloway, 2022 ; Searight, 2020). He provided AU 2.9M to the Liberal Party and AU1.7M to the Labor Party. He also donated more than AU 35M to a couple universities in Australia. Over the years, he has built strong networks with powerful politicians in Australia, including some former prime ministers. Chau is well connected to Beijing, and he helped several huge deals with Beijing and Australian business, including natural gas export which is worth AU 25B liquified natural gas in 2002 (Searight, 2020). Chau also donated more than \$45 million to Australian universities, and because of the amount of donations, he is now one of the most prominent donors in Australian history (Galloway, 2022).

However, Chau's donations have been controversial in Australia. There have been a number of serious accusations against Chau in the Federal Parliament. Kimberley Kitching, who is the senator of the Labor Party describes him as "puppeteer behind foreign inference plot (Galloway, 2022)." Moreover, there were some suspicious events which were related to Chau. One example can be seen back to 2021, when Nine and Australian Broadcasting Corporation

(ABC), which are both Australian media companies, were ordered to pay \$590,000 to Chau to compensate the damage for a joint investigation with TV programs that were released in 2017. The media outlets were about Chau's political donations, saying it was a "bribe." Moreover, it also said that he carried out the work of the UFWD. The media defended by saying it was a public interest, however it was rejected. After this case, there have been barely any articles about Chau from the media. There are more cases that are similar to the case of Nine and ABC that ended in severe financial loss for media companies (Galloway, 2022).

In contrast, Huang is relatively a newcomer compared to Chau. He arrived in Australia in 2011, with "mysterious" circumstances and Huang soon got permanent residency and political clout, and he also founded a real estate company (McGuirk, 2019 ; Searight, 2020). His legal name is Huang Changran, and he is a resident of Hong Kong. He is also a member of the election committee in Hong Kong, which is an elite group of 1,500 people. The election committee has a right to select the Chief Executive of the city and almost half of the legislature (Needham & Pomfret, 2022). He was a major political donor to both the Labor and Liberal Parties, donating more than AU\$1 million to each party between 2012 and 2015. He also donated to a university in Australia to build a new research center. Huang was also chair of the Australian Council for the Promotion of Peaceful Reunification of China (ACPPRC), which is the UFWD's central organ of the Australian branch, or known as the CPPRC. The CPPRC is known as an independent civic organization, however, the section of leaders and its activities are directed by the Chinese embassy in Canberra (Searight, 2020).

Huang became a controversial figure in Australia, and it forced the Australian government to implement measures. In 2017, scandal of Huang's relation with a former senator Sam Datsayarai was revealed. This involved not only political donations, but also Australia's

political view. In 2016, Sam held a press conference for the pre-election which was organized by Huang. This press conference, however, was only for Chinese-language media. When a question regarding the South China Sea was asked to Sam at the conference, he gave an answer which showed support for China's viewpoint on the territorial dispute (McGuirk, 2019 ; Searight, 2020). However, what Sam said during the conference contradicted the Labor party's policy. Sam later denied what he said during the conference, however, an audio was released in 2017 which confirmed his speech during the interview. Sam was forced to resign his role in 2017, after Huang was warned that his phone calls are monitored by the Australian and the US intelligence agencies (Needham & Pomfret, 2022 ; McGuirk, 2019 ; Searight, 2020). In 2018, Huang's Australian citizenship application was rejected by the Australian government because of security concerns. The government also revoked his permanent residency when he was traveling overseas, which successfully prevented him from reentry (Needham & Pomfret, 2022 ; Searigh, 2020).

In 2022, another one of Huang's scandals was revealed: Huang made an illegal political donation back in 2015. An Australian corruption investigation found out that Huang had allegedly given secret and illegal political donations to a New South Wales state election, which was \$100,000. In 2015, Huang used a plastic shopping bag to deliver the money to the New South Wales (NSW) Labor Party's general secretary (Needham & Pomfret, 2022). In April 2022, the NSW Independent Commission Against Corruption (ICAC), confirmed that Huang was the true donor of \$100,000 to the head office of the NSW Labor (ICAC, 2022).

The situation of political donation in Australia changed in 2017. As concerns of rising Chinese influence within Australia, a new law was introduced in 2017 to ban foreign political donations (Westbrook, 2017 ; Seairght, 2020). In 2019, this law was officially in place, and this

law not only bans foreign donations, but also election advertising, campaign phone calls, and election leaflets (Special Minister of States, 2019). It can be said that political donations were very active in Australia, and somehow had impacts which made the government implement a new law. However, the Australian government was resistant to China's political influence activities. Hence, I conclude China's political influence by making political donations didn't have prominent impacts on Australia.

### **Controlling Chinese Diaspora**

According to Searight (2020), Chinese diaspora in Australia is a natural target for the UFD, since there are a large number of communities of ethnic Chinese-Australians in the country. For the CCP, Chinese diasporas are important for some elections in Australia. Only 5% of Chinese-Australian citizens make up the total population of Australia, however, potentially higher numbers of them live in cities and suburbs of Melbourne and Sydney, which have some important battleground electoral districts. This means the voting weight becomes higher in the areas, and indeed, 16% of the voting base is represented by Chinese-Australians in the regions. The CCP and the UFD have worked for decades to build ties between Chinese-Australian communities and Beijing, and this effort recently has shown some good results for China (Searight, 2020).

Searight (2020) says the CCP has greatly succeeded in controlling opinions through local Chinese-language media in Australia. This was achieved by acquiring independent media, commercial pressure, and giving rewards. Individuals who are close to the CCP bought many formerly independent newspapers. By acquiring the newspapers, the individuals can have a right to edit, meaning they can reduce articles which talk about negative perspectives about Beijing. At the same time, however, they also found out that their advertisers, usually Chinese-

owned firms or Australian companies, which depend on doing business in China, are pressured by consulate officials to remove their advertisements so they will starve revenue. Furthermore, the CCP also restricts investors or owners of independent media: if they report or publish sensitive topics that are not the CCP's narrative, they will be excluded from official Chinese government events and media conferences. In contrast, media companies that are friendly to the CCP will be rewarded with income from Chinese state-owned publications. Due to these strategies, there are only a few media channels that are independent in Australia (Searight, 2020).

On the other hand, there are different statements regarding the CCP's media strategies. Yang (2021) analyzed more than 500 articles from three Chinese-media outlets, and also conducted interviews with senior media professionals. Yang concluded that Chinese language media outlets in Australia do soften or remove critics of China and the CCP, however, the outlets are "more likely to support Australian government policy than Chinese government policy when reporting on tensions in the Australia–China relationship." This is because most of the Chinese articles are translated predominantly by the same media organizations. Moreover, instead of publishing original contents, these organizations source news articles from Australian outlets. The reason to publish Chinese language contents is not for putting positive images of the CCP, but rather supporting Chinese migrants to engage into Australian society.

However, both Searight (2020) and Yang (2021) point out that due to the heavy censorship by the CCP, self-censorship is necessary for Chinese people in Australia. Searight (2020) says individuals pay extra attention to possible censorships when they use WeChat and Weibo, which are Chinese social media. In addition, politicians are also likely to do self-censorship when they use these platforms. Yang (2021), on the other hand, claims that Chinese media professionals in Australia also do self-censorship when they translate news, since they are

worried about possible penalties by Beijing on their employees, their families, and also their media outlets' revenues. From the arguments from Searight and Yang, it can be said that the heavy censorship and the distortion cultivated fears of penalties to individuals, which enabled the CCP to succeed in controlling opinions. This means the CCP succeeded in controlling diasporas by intense censorship, however, it is not clear if the CCP succeeded in influencing individuals opinions. Moreover, there is little study or statistics about real opinions about the CCP from Chinese in Australia, or how these individuals think about the CCP. Hence further study might be needed.

### **China's Political Influence Activities in New Zealand**

For the CCP, the political influence activity in New Zealand is considered as "successful." Brady (2017) points out that the Chinese government sees the relationship with New Zealand as an "exemplar," which other countries should follow. In 2013, China's New Zealand ambassador said the two countries' relationship is "a model to the Western countries." Moreover, in 2017, after Premier Li Keqiang visited New Zealand a Chinese diplomat favorably mentioned the relation with the country by comparing the level of closeness that China had with Albania in the early 1960s (Brady, 2017). The beginning of China's growing power in New Zealand can be seen back in the 2010s. The New Zealand government in the years allowed the Chinese government to slowly but surely gain power to shape New Zealand policymaking, by greatly using sharp power (Kurlantzick, 2023).

### **Political Donations in New Zealand**

It can be said one of China's main political influence activities in New Zealand is also political donation - or can be said as buying political influence - like Australia. China has

expanded its power by “informant and financial support, and other types of supervision... (Kurlantzick, 2023).” Since 2007, the New Zealand Electoral has made a yearly report about political donations over \$1,500, which went to either parties or candidates. However, fundraisers deemed “charity,” such as dinners and auctions, are not included in the scrutiny (Brady, 2017). This implies there can be more financial support which was not considered as political donations but charity. In the 2010s, the links between New Zealand politicians with Chinese donors and Chinese firms have grown. Consequently, by influence of these links, “parroted China’s view of its domestic and foreign policies to domestic and foreign media (Kurlantzick, 2023).” The financial support includes not only political donations, but also the CCP’s investment into companies in New Zealand. Moreover, financial support to overseas political parties is one of the major policies of Xi’s administration for political influence activities. The Xi government encourages overseas Chinese to be more active in politics, mainly by making political donations (Brady, 2017).

Like Huang Xiangmo and Chau Chak Wing, there are also prominent political donors in New Zealand. However, it can be said that the situation of political donation in New Zealand is a little different from Australia. This is because each donor gives a much smaller amount of donations at a time than the donors in Australia. Instead, there are many more donors in New Zealand. In the report by Brady (2017), she listed 10 donors who have either a strong connection with the CCP, or are members of united front-related organizations. This list was only partial, meaning there are more major donors. Steven Wong, for example, who is also known as a head of the Peaceful Reunification of China Association of New Zealand, donated to the Labour Party two times in 2007, the amount of \$19,000 and \$23,000. On the other hand, Karl Ye who runs GMP Dairy Ltd, donated NZ \$25,338 to the New Zealand National Party (Brady, 2017).

Moreover, political donations in New Zealand are also greatly supported by individuals. Xi's encouragement resulted in raising a huge amount of political donations in New Zealand. A report says during 2007-2017, \$8.7 million was donated to the National party from anonymous donors, which was 83% of the total amount of donation. Meanwhile, \$2.8 million was donated to the Labour party from anonymous donors, which occupies 80% of the total donation.

It seems that the National party happened to receive a significant amount of donation, however, there is a tactic behind this. Brady (2017) says the possible reason why the National party received much more donations than the other party is that the party was in the government from 2008. Moreover, when the party was not in power or looked to be less likely to win an election, Auckland mayoral election in 2016, for example, donation shifted to the Labour party. From these activities, it can be said that the CCP's strategy for political donation in New Zealand is based on likelihood to win the election: the donors - or the CCP - deliberately chooses a party which is more likely to win the election to donate.

New Zealand also responded to political donations from overseas by building a new law, but the effectiveness is limited. In other words, the new law can't prevent China from making political donations. In 2019, New Zealand moved to ban foreign donations due to concerns of growing foreign interference and risks of it in the general election which would be held in 2020 (Roy, 2019). The law banned foreign donations, but still allows the donation only if the amount is less than NZ \$50 in cash (Brugen, 2019).

However, some experts point out that the new law doesn't have much impact to combat existing donations within the country. Geddis (2019), who is a professor in the Faculty of Law at the University of Otago, says it is still possible to make large donations even under the new law. He says "Unlimited donations to a party or candidate from a New Zealand company or an



unincorporated body based in New Zealand are still allowed, even if that company is owned by an overseas person or the body has overseas members.” On the other hand, Edgeler, who is an expert in public law, says “The main concern has recently been the types of donations that do not count as foreign donations (Roy, 2019).” For example, there was a \$150,000 donation from Inner Mongolia Rider Horse Industry (NZ) Ltd to the National party. The owner of the company is restricted to donating only \$50 to the party directly, however, the donation as a company will remain completely legal (Geddis, 2019). The former prime minister Jacinda Arden criticized the donation as “against the spirit,” but people can still find an easy loophole to provide money (Braare, 2019).

These statements imply the CCP can still buy political influence in New Zealand by donations. It can also be said that New Zealand’s new law against foreign donation is trivial. Dr Simon Chapple, from Victoria university’s school of government pointed out the new law can’t prevent China from influencing New Zealand politics, but the CCP can still legitimately keep making donations. The CCP does this by using money connected to the Party to influence politics by infiltrating New Zealand through individuals who are residents or citizens of New Zealand as well as through domiciled companies in the state. This creates a situation where money is flowing non-transparently into New Zealand with little oversight of where the money is originating from (Roy,2019). Therefore, these arguments by Geddis and Edgeler imply that New Zealand’s new law to ban political donation doesn’t have any impact on the CCP.

### **Controlling Diasporas through Media**

The CCP also uses media outlets to control Chinese diasporas in New Zealand, and the strategy by the UFWD in New Zealand is similar to Australia’s. Today, Chinese-language media in New Zealand is an outlet of “China’s official messaging.” However, it used to be an

independent, and localized medium. This pattern of change is common, and other foreign countries' Chinese-language media also followed the pattern (Brady, 2017).

Local Chinese-language media in New Zealand now have China-related news contents from Xinhua News Service, since they have content corporation agreements Xinhua. Xinhua is China's official news agency, and Walters (2019) says Xinhua provides free content to overseas Chinese-language media to keep “pro-CCP” articles. Brady calls this the “Xinhua Line (Walters, 2019).” Moreover, some media outlets also hired senior staff members who have close ties to the CCP. Since integrating domestic Chinese media and overseas media is a part of Xi’s effort, Chinese media organizations in New Zealand are under the “guidance” of CCP propaganda officials.

For example, *the Chinese New Zealand Herald*, which is a leading Chinese language paper in Auckland, partners closely with the All-China Federation of Overseas China (Brady, 2017). Chinese New Zealand Herald is a joint venture of New Zealand Media and Entertainment (NZME), which owns Chinese New Zealand Herald, and *The Chinese Herald*, which is a long-running Chinese publication (Cooke & Walters, 2019). The Chinese Herald used to be completely independent, however, it has been “harmonizing” with the Chinese media control agency (Brady, 2017). Some editors point out that there is a lack of independence in Chinese-language media in New Zealand, because there is a spectrum that ranges CCP-friendly and Xinhua line, to dissident publications. There are some media outlets in New Zealand, which freely criticize the CCP, such as the Epoch Times and Beijing Spring. However, these platforms suffer from securing advertising money. Beijing Spring was also forced to shut down since it strayed from Xinhua line (Walters, 2019).

The CCP also tries to spread more pro-CCP content by distorting or removing some articles which are against the CCP. It was reported that the Chinese New Zealand Herald had articles which were translated from the New Zealand Herald, but they were edited to be more China-friendly. It also removed entire articles that talk about negative aspects of the CCP. In addition to this, it was also discovered that most of the stories which concern China-New Zealand relationship are not even translated (Cooke & Walters, 2019). Moreover, in 2019, Chinese-language media's executives and editors joined a state-sponsored conference in China. At the conference, they were told to get overseas media to promote the CCP's policies including BRI.

Like Australia, the CCP's strategy to control individual Chinese people is to censor and distort some information which is not good for the CCP. However, I couldn't find much study about this area, and how effective it is. Hence, it is difficult to say if this strategy is successful or not. On the other hand, the New Zealand Media Council, which is an independent forum for solving complaints such as media contents, is aware and concerned of China's censorship (Walters, 2019 ; New Zealand Media Council, n.d.). It is not clear whether China's censorship or media controlling in New Zealand has been an effective strategy, but it has some influence which grows concerns within the country.

### **Conclusion of Political Influence Activities**

The CCP - or the UFWD - actively conducted its political influence activities in Australia and New Zealand. The strategies are similar, however, the effort didn't pay off well for both countries. However, Australia and New Zealand showed different responses against China's growing influence. Australia's response was more aggressive, and it can be seen from the country's new law, and also the country's decision to reject one of the major political donors'

citizenship. In contrast, New Zealand also responded to China's political influence activities, but it was superficial. Moreover, New Zealand introduced a new policy in 2018 called Pacific Reset, and shifted both financial and diplomatic policy. This was introduced after former United States secretary of state Hillary Clinton visited New Zealand and warned of "China's soft power push in the Pacific." It is obvious that this reset is meant to be for China's growing influence, however, New Zealand insisted this is not for China's activities in the region (Iati, 2021). It seems New Zealand is also concerned about China's growing influence, however, the nation still seems to accept China's influence. In other words, New Zealand was just pretending to show that the country is against China's growing political influence. Today, the Australia - China relation has become the worst ever in their diplomatic history (Okano, 2021), but New Zealand has a different approach. Hollingsworth (2021) says New Zealand desperately wants to keep China to save its economy. Moreover, due to the country's desperate attitude, Australian TV show "60 Minutes" called out New Zealand as New "Xi" land (Hollingsworth, 2021). There should be other facts that can explain this gap of why Australia and New Zealand have completely opposite diplomatic relations with China. In other words, what made New Zealand so desperate to be close to China?

I believe this gap can be explained by the economy. As it was mentioned before, both New Zealand and Australia have heavily relied on China for trade, and at the same time, China is the largest partner today in both export and import. However, Australia and New Zealand have different trade situations with China.

### **Main Argument**

For this research, I will use comparative analysis, since New Zealand and Australia share some common points as I listed above. To show how New Zealand and Australia's relationships

with China are, I will use some political events that can demonstrate both the positive and negative outcomes of their relationship over time. I will prove my statement by collecting some cases of both New Zealand and Australia's economic situations with China, mainly focusing on trade.

Australia signed the FTA with China in 2015 (Yoshida, 2022). In 2001, Australia's biggest export partner was Japan, and China was the fourth-biggest partner. Today, however, China has become the biggest and the most important export and import partner for Australia. In 2020, more than 40% of Australia's export was occupied by China (Yoshida, 2020). However, this situation changed drastically due to an event that happened in the same year. In March 2020, Prime Minister Scott Morrison declared an individual investigation to prove the origin of the Covid-19 pandemic was from China. Due to this event, the diplomatic relationship with China worsened, and Okano (2021) says the Australia - China relation is now "one of the worst," since the establishment of diplomatic relations in 1972. After this declaration, China retaliated against Australia by economic means (Okano, 2021 ; Yoshida, 2022): the major retaliation was to impose trade sanctions, in May 2020. These sanctions were on a wide range of goods, such as coal, copper ore, beef, barley, wine, and lumber (Okano, 2021 ; Yoshida, 2022). This led to Australia's economy declining after the sanction, since Australia had greatly relied only on China: Australia's trade surplus in August 2020 was the smallest in the past 5 months due to the tension with China (Trading Economics, 2020).

China's sanction seems to ruin Australia's economy, however, the impact of the sanction was not significant. There are two main reasons: 1. Australia succeeded in easing economic dependence on China. 2. China's continuously strong demand for Australia's iron ore even after the sanction. Australia could find other countries as alternative trade partners. For example,

China was one of the major destinations to export coal, and vice versa, Australia was one of the major countries of coal resources: 40% of China's coal imports were from Australia. The export value of coal went down right after the sanction, however, thanks to the strong global demand for coal, the nation could find other countries to export the goods to. Thanks to the increased global demand, Australia's export value of coal increased drastically after May, 2021. This also allowed Australia to get back almost the same amount of export value of coal as pre-pandemic. The same trade situation has happened to barley: since 2021, the export value of barley went back to almost the same as the pre-pandemic, thanks to Saudi Arabia's high demand for the good. In other words, Saudi Arabia's strong demand for goods supported these industries. Furthermore, the sanction on wine is also limited even though Australia couldn't find other countries to export, since the country's drink, alcohol, and vinegar only occupy 0.8% of its total export to China (Yoshida, 2022). Hence, it can be said that China's trade sanctions against Australia don't have much impact on the Australian economy, but are limited.

It can be said that iron ore is a key commodity for Australia in terms of trade with China. For China, Australia is the biggest import partner in energy and mining fields, and these fields play a huge role in Australia-China relations. The demand for raw materials has increased dramatically since the late 2000s, due to the rapid urbanization in China. China's import of iron ore became three times higher in 2015, compared to 2007 (Roberts et. al., 2016). This trend caused a "mining boom" in Australia, which created jobs and allowed an increase in wages (Schmitz, 2018). Schmitz (2018) states that China's rise has brought about "profound impact" on the country. However, China's strong dependence on iron ore would eventually limit the impact of the trade sanctions on Australia. This strong demand for raw materials, especially iron ore,

would later protect Australia's economy. This was due to China not sanctioning Australia's iron ore (Okano, 2021 ; Yoshida 2022).

China didn't sanction iron ore, since it is difficult to find other countries from which to import iron ore. For coal, China increased imports from other countries such as Indonesia and Russia to replace Australia. However, it is almost impossible for China to replace Australia when it comes to iron ore. Australia is the biggest iron ore resource for China, and Yoshida (2022) points out that iron ore is a pivotal import, which helps to maintain the relations between both countries. In other words, because of iron ore, both countries keep their relations. About 60% of China's iron ore's import is from Australia, and now, it is difficult for China to look for other countries to meet the strong demand for iron ore. This is due to the current international affairs: Brazil was one of the possible alternative countries, but there was a mining accident which made it difficult for China to import the commodity. China's biggest mining company was on a project of mine development in Guinea, but this was also prevented due to a coup d'etat in 2021. Therefore, China can't stop relying on Australia's export on iron ore immediately (Yoshida, 2022). Furthermore, the price of iron ore increased after the sanction, which resulted in increasing 10% of exports with China (Nishioka, 2021).

China's trade sanctions toward Australia brought an opposite result, which made Australia keep showing rivalry to China. Australia's export value after the sanction has become stronger despite the sanctions. One of the reasons is that China is dependent on Australia's exports of iron ore, wool, and natural gas (Fields, 2022). Australia's loss of trade due to the sanction was AUS \$54 billion, however, the country also gained AUS \$44 billion by making new trade partners from other countries. There is still AUS \$10 billion of loss, however, Nishioka (2021) points out that the amount of money is only 0.25% of Australia's export value.

Australia's continuous progress in its economy despite China's sanction showed that Australia seizes the initiative in the trade. It can also be argued that China's trade sanctions against Australia were not successful, but rather brought benefits to Australia. According to Nishioka (2021), there is an argument in Australia saying China's sanctions "completely" failed. Michael Wesley, who is a deputy vice-chancellor international at the University of Melbourne, said the sanctions didn't work, but ironically, Australia's economy remained "buoyant" thanks to China's demand (Fildes, 2022). Nishioka (2021) also points out that Australia seems to have even more rivalry against China after the strong recovery from the sanction.

From these arguments, it can be said that Australia is more advantageous than China in the Australia - China trades. In other words, Australia has more control in this trade situation with China. This is because Australia has abundant iron ore, which China desperately wants and could not afford to sanction. Moreover, replacing China by having new trade partners allowed Australia to ease its heavy economic dependency from China. Therefore, as long as China's strong demand for iron ore continues, Australia will be more advantageous in this trade.

In contrast, New Zealand's situation is different from Australia. It is difficult for New Zealand to stop relying on China's economy. New Zealand has historically relied on China for its economy: Since the mid-1980s China has been a solution for the successive New Zealand governments to compensate for the loss of access to the UK market (Brady, 2017). For New Zealand, China has been an important destination for its economy for about a decade. According to Suenaga (2017), China has significantly contributed to New Zealand's economy. It can be said that the turning point of New Zealand's economy was in 2008, which was considered with the turning point of New Zealand - China relations. New Zealand had attempted to build a close relationship with China for a while, and in 2008, Prime Minister John Key at the time signed a



FTA with China as the first country from OECD. Since then, New Zealand has kept relying more on China economically. After the agreement and thanks to the Chinese economy, New Zealand's economy improved dramatically, and the country realized a budget surplus for the first time in seven years (Suenaga, 2017). The FTA with China also allowed New Zealand to mark significant improvements in the country's economic relation (Australia-China Relations Institutes, hereafter ACRI, 2015). In addition to this, due to these positive consequences that Key brought, Key won sweeping victories at the presidential election in 2011 and 2014 (Suenaga, 2017). In other words, the significant improvements in economy under Key administration allowed Key to win the next following elections.

However, this heavy economic dependence would eventually trap New Zealand: making it difficult for New Zealand to stay away from China both economically and diplomatically. Hollingsworth (2021), points out that trade is a major reason why New Zealand wants to keep China as a close partner. Today, New Zealand's major export products are dairy, meat, food, fruits, and fish. Since the population is small, most of them will be exported. Especially the amount of dairy exports, which occupies almost 30% of the total exports. Since China's economy has improved, the country's lifestyle has been more westernized. Hence, people in China started to consume more dairy products. China is one of the greatest trade partners, and compared to 10 years ago, the export has become 10 times more. In 2013, New Zealand's export to China became No.1 and surpassed Australia. New Zealand's dairy products contributed a lot to the country's economic growth, mostly from the support from China. However, the demand for dairy products decreased about 50% due to the low economic growth since 2014. This caused a great deficit to the farmers in New Zealand. To recover from this economic situation, farmers changed their career in order to work in tourism. For New Zealand, it is important to make profits from

tourism since the country doesn't have an abundance of resources. This is why New Zealand signed the agreement with China to support the BRI, so the country can expect to get infrastructure and huge investment. New Zealand also introduced a special tourist visa for Chinese citizens (Suenaga, 2017).

Therefore, it can be said that New Zealand is afraid of exacerbating its relationship with China, since it can significantly damage the country's economy. This can be seen when the Five Eyes members condemned China's human rights abuse in Xinjiang and Hong Kong, saying what China is doing is equivalent to "genocide." The criticism was meant to be from the Five Eyes member states, however, New Zealand avoided using the term "genocide" when mentioning China's human rights abuses. After this event, Australia's exports to China have faced difficulties, and China's total investments to Australia fell greatly by 62% (Hollingsworth, 2021). Hollingsworth (2021) says that "rather than follow Australia's lead, New Zealand is attempting a different kind of relationship." New Zealand is put into a difficult situation: the country wants to keep and protect their stable economy, but at the same time, needs to stand for its allies. Gillespie, who is an expert of international law at the University of Waikato, says "It's the largest conundrum of our time – how can you protect your economy, yet at the same time make a stand for human rights and the rule of law? Because the things right now are in conflict (Hollingsworth, 2021)." New Zealand's response to China's political donation might be because the country didn't want to exacerbate the relationship with China. Actually, all the Five Eyes members showed concern about foreign interference in politics (Roy, 2019). It can be argued that New Zealand had to do something to show support to the member states, but at the same time, didn't want to make China hostile.

For New Zealand, it can be argued that the country chose to prioritize its economic interests whereas Australia values security over its economy. In other words, New Zealand has relied too much on China for its economy to be China's enemy, or New Zealand is in a situation that the country "has to " be politically close to China to protect its economy. In contrast, Australia has more control in its trade relations with China compared to New Zealand. Australia happened to find out that the country doesn't need to depend on China for its economy, but this was a very important discovery for the country: This allowed the country to get out of the heavy dependence on China, and also show more hostility towards China.

The economy can explain why New Zealand has been close to China. New Zealand has tried not to be too hostile against China, so the country can keep China as a main trade partner. On the other hand, Australia has kept its hostility towards China, since the level of Australia's economic dependence is low, and knowing that China depends heavily on the import of iron ore from Australia.

### **Discussion: Policy & Academic Implications of the Study**

Australia could successfully reduce its dependence on China to maintain the economy, however, the country still needs to pay attention to China's economy. This is because Australia's iron ore industry is huge, and it occupies 26% of Australia's export value. About 80% of total iron ore now goes to China. This means it will be difficult for Australia to find other countries to export large amounts of iron ore. If China's demand for iron ore suddenly decreases in the future, Australia's economy will heavily be impacted. It is also possible that China will find new partners and stop importing iron ore from Australia. Even though China's strong demand for the commodity still exists now and there are less concerns for a short term, Australia needs to build some plans to protect its economy.

China's demand for iron ore will decrease in the long term. Yoshida (2022), says it is expected that China will gradually reduce import of iron ore in the future, since the country is planning to transfer from a smokestack industry to the high technology industry. China also tries to pass a peak of CO<sub>2</sub> emission by 2030, which is also another incentive that China will consume less iron ore in the future. Yoshida (2022) points out that Australia might not be able to find alternative countries to export iron ore like the country did with barley or coal. This is because the demand for iron ore might be lower in the future since the structure of the industry is changing, and people are taking measures against climate change.

In contrast, New Zealand needs to find a good balance between protecting the economy and protecting the country's security, or find other countries to rely on the economy like Australia did. It is obvious that New Zealand's great progress in its economy is thanks to China, but New Zealand also needs to pay more attention to China's growing presence within the country. Suenaga (2017) says that New Zealand has relied too much on China's economy for immediate profit, and now the country faces some serious problems. One example is gentrification in the capital city, Auckland: Since New Zealand's economy is good, a number of Chinese citizens invested into the country. However, this has led to significant gentrification in the city. The average housing price in Auckland used to be 30% lower than Sydney, which is the biggest city in Oceania, however, now it has become much higher than in Sydney. There is a concern that the majority of young people in Auckland might not be able to purchase houses in the city due to the gentrification. Suenaga (2017) also says that relying on China's economy indicates that New Zealand's future will be at the mercy of China.

### **Limitations of the Study**

There are some possible limitations of my study. For this research, I adapted qualitative research and therefore, I didn't use data. My study focus was more on state and international level, so I didn't focus on impacts of the CCP's political influence activities on individuals. It is important to understand how the political influence activities impact on individuals in Australia and New Zealand. Therefore, quantitative research which focuses more on people's opinions toward China will be needed for future research. Furthermore, there is little data about how people think about China, so more data will be needed. Due to the in depth nature of government investigation, it will take more time for the Australian government to uncover the CCP's attempts to influence the Australian government. In the case of Huang, it took the government 5 years to uncover the financial bribes. It will take time for the government to unearth more foreign activities and to publish articles regarding these activities.

### **Conclusion**

China's close relationship with New Zealand over Australia might be able to be explained by the CCP's political influence activities. However, the real reasons are different economic situations, or different levels of economic dependence on China. China is the most vital country for both Australia and New Zealand, but New Zealand is more dependent on China in terms of economy. New Zealand has been attracted by China's growing economy, which has made the country heavily reliant on it. This allowed New Zealand to keep improving its economy, but at the same time, it is now difficult for New Zealand to maintain diplomatic distance from China. In other words, China has significantly supported New Zealand's economy so now it faces a situation that has to keep close diplomatic relations with China to protect its economy, regardless of the growing concerns of China's influence in New Zealand. Australia, in

contrast, has more control in its economy. The country succeeded in reducing dependence on China's economy, which allows the country to be more aggressive to China. Australia also has abundant iron ore, which China desperately needs and can't stop importing from Australia, which leads to more advantageous trades with China. These different levels of economic dependence on China caused the gaps in their diplomatic relations with China.

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## Why North Korea will Likely Never Denuclearize

Christopher Gettel

In 2006, North Korea detonated its first nuclear device. This nuclear weapons program was the product of decades of research, illegal proliferation, and sanctions evasion. North Korea would go on to detonate six more nuclear weapons, with the latest being in 2017. An intercontinental ballistic missile (ICBM) was developed to deliver this warhead. Capable of ranges up to 8,000 miles, the Hwasong-15 is North Korea's best chance at a delivery system. The world was quick to condemn these actions after each new test, heavily sanctioning North Korea's economy and applying political pressure on Kim Jong Un. However, all attempts at denuclearization have so far failed. This is because denuclearizing will have negative effects on Kim's grip on power, a byproduct the dictator will never allow. Kim Jong Un's grip on power is maintained by the belief of his constituents that only he is capable of defending them from invasion with the threat of nuclear war and that denuclearization would be viewed as capitulating to a hostile foreign power. Denuclearizing would also leave North Korea's decrepit conventional military vulnerable to attack. The situations of Muammar Ghaddafi and Saddam Hussein are examples of what Kim views of nations hostile to the West abandoning their unconventional deterrent. Therefore, North Korea is unlikely to denuclearize because doing so would present existential domestic and international threats to the Kim regime's grip on power.

Seeing the rapid expansion of South Korea in the 1980's, particularly in the aspects of diplomacy, military power, and economics, North Korea knew that its socialist system would soon lag behind. Therefore, the isolated nation began to develop an unconventional deterrent to protect itself from all threats, internal and external, real and imagined. North Korea has attempted to seek outside help in the field of nuclear weapons since the 1950's, first from the

Soviet Union, and then from China, but was only provided with a peaceful energy reactor and expertise on how to run it. However, after a famine in the early 1990's, North Korea realized it needed a firmer grip on its power in order to dissuade internal dissent and deter outside pressure. North Korea left all prior nonproliferation agreements with various international bodies and detonated its first nuclear device in 2006. Although the yield was small, North Korea joined a small group of nations with nuclear arms. Indigenous delivery systems came next with North Korea eventually designing and producing the Hwasong-15 ICBM, a road mobile launcher capable of launching strikes on the US mainland. Increased hostile rhetoric came next, and with the passing of Kim Jong-Il in 2011, his son took power. Kim Jong Un ushered in a new era of North Korean ambitions. Shifting slightly toward diplomacy and policy, Kim sought to use nuclear weapons as a bargaining chip while assuring his citizens that he alone could protect them from encroaching capitalist invaders. His stance on internal and external power projections are vital to understanding why North Korea is unlikely to ever abandon its nuclear weapons program, even if sanctions and diplomatic pressure are crippling his nation.

If the North Korean leadership and people do not believe that invasion is likely, then they will begin to question whether or not a nuclear weapons program is a better use of money than economic investment and food production. When this realization comes to fruition, Kim may lose the grip on power he inherited from his father in 2011. This would represent an intolerable position for Kim Jong Un. Therefore, certain domestic criteria must be maintained. The Korean people and military must devoutly believe that he, and only he, can deter an invasion by providing a strong nuclear deterrent. This can only be done with regular testing of missiles, the occasional nuclear detonation, and a heavy dose of propaganda to repeatedly reinforce all actions. Although no nation is likely to invade North Korea, the deconstruction of Kim's prized



nuclear weapons will be viewed by his people as capitulation to a sworn enemy who wishes to destroy their livelihoods. This shown weakness will erode his carefully constructed support and possibly lead to his removal from power. Regime survival is at the heart of Kim's domestic agenda, and the main driver of all internal and international policies. In order to maintain his leadership role, the North Korean people must be convinced that a powerful nuclear deterrent is the only thing preventing invasion, and that only Kim can successfully provide the policy to make sure this happens.

While Kim has domestic politics to satisfy, his nuclear program also aims to convince foreign adversaries of his capabilities in order to maintain his grip on power. Due to successful propaganda Kim is more likely to be removed from power by foreign forces than domestic enemies. His attacks during the past years have heightened tensions between North Korea and South Korea, Japan, and America. In 2010, a North Korean submarine sank a South Korean naval vessel, killing 46. During the same year, both sides exchanged artillery fire, leading to the deaths of four South Koreans. A North Korean landmine planted on South Korean soil wounded two South Korean soldiers in 2015. These attacks have all been attributed to Kim Jong Un demonstrating a hard line approach to military action. ICBMs have been flown over Japan with no warning, leading to widespread panic at the notion of a North Korean surprise attack with nuclear weapons. Kim's rhetoric has increased in correlation to each successful missile or nuclear test, with a speech in 2022 in which Kim claimed that "(o)ur armed forces are completely prepared to respond to any crisis, and our country's nuclear war deterrent is also ready to mobilize its absolute power dutifully, exactly and swiftly in accordance with its mission,"(Indian Express, 2022). This signals a strong international messaging campaign that demonstrates North Korea's commitment to military action should tensions escalate. While this

threat was reinforced with conventional action, nuclear capable ICBMs are tested every few months. This is because North Korea's conventional military lacks the means to deter regime change and Kim Jong Un uses the situations in Iraq and Libya as examples of leaders who have been hostile to the West, abandoned weapons of mass destruction, and still were removed from power.

Kim Jong Un is very well aware of what may happen to him if his nation is invaded. In recent years, both Saddam Hussein of Iraq and Muammar Ghaddafi of Libya were removed from power by a western led coalition. Both leaders were captured and executed after having their inferior conventional militaries overwhelmed by advanced western forces in a matter of days. Iraq and Libya both sought weapons of mass destruction at one point, but were both dissuaded from acquiring them under heavy diplomatic pressure and economic sanctions. However, this did not save them in the long run, as future wars saw them both meet their demise. The then Deputy Secretary of State, Anthony Blinken, told the New York Times that he “heard directly from the Chinese that the Libyan model did not inspire confidence in Pyongyang.” (New York Times, 2018). This reinforces the belief likely held by Kim that even if he does denuclearize, he is still not guaranteed security. In “2011, North Korea’s official news agency carried comments by a Foreign Ministry official calling the earlier nuclear bargain with Libya “an invasion tactic to disarm the country,” in effect a bait-and-switch. “The Libyan crisis is teaching the international community a grave lesson,” the ministry official said.” (New York Times, 2018). Further negotiations with Iran over its burgeoning nuclear program resulted in a short term agreement under then President Obama that allowed inspections in exchange for the lifting of sanctions. This agreement was withdrawn from by America after then President Trump assumed office. Kim Jong Un knows that nuclear weapons are the only implement that can

almost guarantee his grip on power, regardless of the intentions of outside powers. He also knows that Ghaddafi and Saddam gave up their weapons of mass destruction programs and were violently removed, primarily by external forces. Kim likely believes that the West cannot be trusted to keep agreements, as in the case of then President Trump's withdrawal from an Iranian denuclearization treaty carefully negotiated under then President Obama in exchange for the lifting of sanctions. This is yet another situation in which Kim is influenced by external factors over the role that nuclear weapons play in ensuring the survival of the Kim dynasty.

A nuclear armed North Korea has presented a unique and difficult challenge for the international community. North Korea has fought a war of aggression during the 1950s, and has kept up its hostile rhetoric and aggressive actions since. Small scale military attacks against South Korean and American interests have taken place dozens of times, leading to casualties and damage, further driving the nations away from peaceful reconciliation and towards conflict. The nuclear weapons program developed by the Kim dynasty has advanced despite the best efforts of the international community. Sanctions and diplomatic efforts have not halted the progress made toward ICBMs and nuclear weapons. Kim is unlikely to give up his nuclear program due to domestic agendas required to satisfy those who provide him with power, his constituents and top military officials. To do this, he must continue to maintain the façade that only he can prevent war with nuclear arms, and that denuclearizing would be capitulating to a foreign power, delegitimizing his role as supreme leader, and threatening his regime. Foreign influences also embolden his weapons of mass destruction program. His conventional military would be decisively defeated in combat, leading to his death or imprisonment. Kim knows what has happened to other dictators who act in defiance of international norms and laws, and does not want to end up dead, like Ghaddafi and Saddam. These two gave up their weapons of mass

destruction policy, but were still invaded, overthrown, captured, and killed. This sets a dangerous precedence for rogue nations who operate outside established norms and international law, that acquiring nuclear weapons ensures the survival of their regime and state. North Korea's nuclear weapons program has confounded security experts around the world and will likely keep doing so, as there is no indication that Kim Jong Un will ever denuclearize in the future.

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## **A study of climate refugees in Asia within special reference to Pakistan & Mongolia**

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### **Abstract**

In this paper, we dissected the impact of environmentally relevant factors on climate refugees in Pakistan and Mongolia. The research methodology is analytical in nature, where mainly secondary data has been collected from secondary sources. Case studies are conducted from multiple data sources to understand the situation and challenges faced by climate refugees in different regions. The case studies use more than one form of data from different paradigms within the research paradigm. Still, we will explore the situation of climate refugees primarily through big data content. The analyses included the impact of climate factors, which demonstrates the effects of temperature, water issues, and demographic factors on climate refugees in Pakistan and Mongolia, leading them to migrate. The Pakistan and Mongolia regions face higher migration due to the negative effects of temperature, water issues, and demographic factors.

**Key Words:** Climate, Climate Change, Climate Refugees, Mongolia, Pakistan & Refugees.

## Introduction

Human beings are the most beautiful and intelligent creatures on Earth. They are capable enough to reach Mars. The technological advancement achieved by humans has led to a magical world where we can perform any activity with less effort and more efficiency. We have created electricity, dams, engines, buildings, and many other things. As everything has its two sides, positive and negative, likewise, the marvelous level of achievements attained by humans has become the bone of contention for their fellow human beings. In fact, the world of human beings is changing fast due to multi-faceted factors. On the one hand, we have delicious food for some, whereas on the other hand, some are forced to sleep on an empty stomach.

The environment is also affected by the development of humans. As the pattern of rain has changed, floods can be easily witnessed in desert areas, and the pattern of summer & winter has also changed. All these conditions have adversely impacted our climate. The climatic conditions have changed all over the world. Has anyone wondered about the impact of these climatic changes on human beings and their humanity? Through this paper, the authors aim to study the climatic refugees who are forced to leave their place due to climatic factors. Is it not sad that human beings have lost their humanity towards each other when it comes to advancement? We only care for our growth, but what about those refugees who are suffering due to climate?

The well-defined definition of climate refugees is still not found. The task of defining climate refugees in simple words is quite complex in itself. Many experts are unclear whether there is any difference between environmental refugees and climate refugees. Or both are the same terms. For instance, Environmental refugees are defined as "those people who have been forced to leave their traditional habitat, temporarily or permanently, because of marked

environmental disruption (natural and triggered by people) that jeopardized their existence and/or seriously affected the quality of their life" (Essam-El-Hinnawi,1985). In many places, this definition is also used for climate refugees. But is it correct to consider the environmental refugees and climate refugees as the same? Well, no, it is not correct, as both are different terms and deal with different matters. The term environmental refugees mainly focuses on the environment, whereas the term climate refugees talks about climate. Although the word refugees is common among both, this does not mean that these two terms are the same.

The number of climate refugees is increasing with every passing year. What could be the possible reasons for such an increment? Have we wondered upon this from the depth of our hearts? On the one hand, we kept blaming industrialization for all these climate changes, but on the other, we blamed each other for our greed, which has led to this worse situation where, like animals, human are forced to leave their homeland in search of new living places. Is nature returning us the things that we have provided to other living beings on the planet Earth? Well, the answer to this question is quite tricky to find as we cannot hold anyone responsible for our own faults. Nobody has instructed or directed us to make so much advancement that the lives of our fellow human beings will become difficult. Instead, it is our own benefits that guide us to the present environment where clean air has become a dream to achieve.

The worst side effect of climate change is the increased number of climate refugees. These refugees are living in a pathetic situation due to the worse climate in their own region. In fact, as per the Internal Displacement Monitoring Centre (A Geneva-based research organization), almost 30.7 million people became climate refugees in the year 2020 due to a growing number of natural disasters. This data is three times more than the number of people affected by armed conflict and violence. ("Climate Refugees: The World's Silent Crisis" 2022).



People who are relaxing in their air-conditioner rooms and offices cannot imagine the pain & suffering of these climate refugees who do not have access to safe climatic conditions. For the sake of humanity, it is high time that human beings should try to understand the conditions of these climate refugees, especially in Asian countries where some citizens are facing a double burden, including poverty and climate change. These citizens, when moved to another place as climate refugees, are not welcomed in a humble manner. Instead, many times, they need to struggle for their existence. The theory of the Survival of the Fittest becomes a true example in their case.

In this paper, the climate refugees in Pakistan and Mongolia are discussed by the authors as in contemporary times, many people in these two nations are turning into climate refugees and realizing the significance of the topic from the humanitarian perspective; this topic has been selected herewith. If we gaze upon the literature available on this chosen topic, then, unfortunately, not much significant literature is available on the same. From these dimensions, the present research paper becomes crucial to understanding the situation of climate refugees in Pakistan and Mongolia. This surely widened the scope of the present paper for future researchers.

### **Methodology**

The research methodology is analytical in nature, mainly collecting secondary data from secondary sources. Due to regional restrictions, it is difficult for us to go to the local area to conduct interviews and data collection, so we use the method of second-hand information collection to understand the data. Using case studies can help us understand the situation of climate refugees in different regions and help people compare the challenges faced by climate

refugees in different regions. In addition, we also collected primary data from the National Statistics Office of Mongolia to ensure the accuracy of the data.

Conduct case studies from multiple data sources to understand the situation and challenges faced by climate refugees in different regions. Case studies use more than one form of data from different paradigms within the research paradigm. Nevertheless, we will explore the situation of climate refugees mainly through the content of big data. We'll learn why climate refugees leave their home countries, what happens when they stay in their home countries, and what the impact of climate change-induced conflict is.

### **Analysis**

The analysis section is divided into two parts. The first is an analysis of climate refugees in Pakistan, followed by the analysis of climate refugees in Mongolia:

- Climate Refugees in Pakistan

The situation of climate refugees in Pakistan can be understood from the following points.

#### a. High-Temperature Factor

There are lots of climate challenges that Pakistan climate refugees are facing. First of all, the high temperature is making Pakistanis have a hard life in the places where they are living. For example, Karachi, the most populous city in Pakistan and the seventh most populous city in the world has a higher frequency of fatal heat stroke compared to the past. ("Climate Change Induced Conflicts in Pakistan: From National to Individual Level" 2018) Climate change is affecting global warming, and as a result, people will face the challenge of high temperatures. Zaman (2009) claims that temperatures in Karachi are expected to reach new extremes in 2019 and will continue to rise annually throughout the century. ("Climate Change Induced Conflicts in Pakistan: From National to Individual Level" 2018) Climate change is increasing the temperature

in Pakistan, which threatens the people living in the land. Heat waves in Pakistan are a major cause of mortality. The frequency of heat waves has increased exponentially in the previous years and is expected to increase in the future. (Zaman et al., 2009) ("Climate Change Induced Conflicts in Pakistan: From National to Individual Level" 2018) Rising temperatures are one of the challenges that people face with climate change. People cannot tolerate extremely high-temperature environments. At the same time, the highest temperatures will also have an impact on agriculture. For example, when the temperature increases, the food grown will not have the normal growing environment and thus will not be able to produce enough food. Therefore, the high-temperature environment cannot provide food for people to live and thus affects the lives of Pakistanis. When people's lives are threatened, solutions will be thought of, and relocation is one of them. Population increase is directly related to resource depletion and environmental degradation and triggers migration. (Birdsall 1992) ("Climate Change Induced Conflicts in Pakistan: From National to Individual Level" 2018) When people are unable to change the huge negative impact of climate change, they are forced to migrate and move to an acceptable living environment. Climate change is causing natural disasters, desertification, and resource scarcity, forcing communities to migrate to another area in order to survive or make a living. ("Climate Change Induced Conflicts in Pakistan: From National to Individual Level" 2018) As Pakistanis face the challenges of climate change, population displacement continues to occur. The migration of environmental refugees to urban areas has been observed around the world. ("Climate Change Induced Conflicts in Pakistan: From National to Individual Level" 2018) Although environmental refugees cannot be broadly described as "refugees", they are forced to relocate and move due to natural environmental conditions.

b. Water Issues

Water issues caused conflict in Pakistan, trying to take action to face the climate change challenge. The water issue in Pakistan influenced Pakistani people's lives. Therefore, tons of people who originally live in the Pakistan area keep moving away from where they originally lived. The terrible part is that they are not able to live in their homeland peacefully due to water issues. A growing number of people are migrating because of the problems caused by climate change. Pakistan is a clear example of climate-induced migration, with Neha Nisar claiming that by 2022, some 2 million Pakistanis will become climate migrants due to climate hazards by 2050. The problem of water scarcity is one of the factors affecting human livelihoods due to climate conditions. Drought and water scarcity are other reasons for climate-induced migration, especially in Balochistan and Sindh. ("Climate-Induced Migration in Pakistan" 2022) In addition, water issues have influenced other factors that negatively affect the local population in Pakistan. It has increased food insecurity to starving and dying levels. ("Climate-Induced Migration in Pakistan" 2022) This leads to seasonal migration to other cities for livelihood. ("Climate-Induced Migration in Pakistan" 2022) More and more people are migrating due to poor local living conditions, leading to a decline in local population. By 2018, 33,000 inhabitants of Noshki village were displaced by severe drought and lack of water. However, this is not what the locals want to do, and most have to migrate as a last resort. ("Climate-Induced Migration in Pakistan" 2022) However, this is not what the local people who live in Pakistan want to do, and most of them have to migrate as a last resort. Pakistan is one of 23 nations that have experienced drought emergencies in the previous two years, according to the United Nations Convention to Combat Desertification (UNCCD), as of 2022. Unsustainable land management practices that have led to desertification and land degradation are to blame for the condition's deterioration.

("Climate-Induced Migration in Pakistan" 2022) Non-sustainable conservation methods of land and water resources have not resulted in efficient improvement and enhancement of water scarcity. However, water issues are often sometimes overlooked and marginalized. Therefore, we should pay more attention to the problem of water scarcity and the subsequent problems that it creates.

c. Water Conflict

In addition, water scarcity stress is prone to conflict. This opens up a range of possibilities for international disputes (i.e., Baglihar Dam) and inter-provincial conflicts with neighboring countries, similar to the Sindh Punjab dispute (1940). ("Climate Change Induced Conflicts in Pakistan: From National to Individual Level" 2018) The conflict has created additional negative impacts. Pakistan is facing water scarcity due to climate change. The water issue has a huge impact on people's lives because people need water every day in their daily lives: drinking water, domestic water, domestic wastewater, etc. Without water, it means that people's lives are not stable, and people have to search for water every day to live smoothly. There is no doubt that this has a negative impact on the lives of Pakistanis. Climate change may also pose a threat to internal and external security as resources are lost and diminished. ("The Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016) Increased competition for scarce water, food, and energy resources may breed internal and external conflict. ("The Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016) Water issues are most acute in Pakistan. Conflicts over water issues can cause people to panic. In the absence of a successful solution to the water problem, there is also the danger of conflict. Internally, the problem of water distribution among Pakistan's provinces appears to have been resolved through the 1991 Indus Water Agreement

(GoP 1991). ("The Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016) Climate change has created water competition issues within Pakistan, as well as implications for negotiations between Pakistan and other countries on water issues. The lack of trust between provinces, especially between Punjab and Sindh, is at the heart of Pakistan's water problems. ("The Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016) Sindh (in this case, the lower river bank) questions the abstraction of water from the upstream canal and believes that Punjab is depriving or will deprive it of its share of water resources. ("The Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016) Pakistan believes that India is depriving itself of water resources. It is difficult for both sides to form a consensus and win-win negotiation. If both sides do not trust each other, it will be difficult to reach a consensus. Complex water issues have led to a complex upstream and downstream water relationship between Pakistan and outside countries. Pakistan views any new projects or schemes in the water sector with great skepticism ("The Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016). It believes that its skepticism is justified due to historical events (PILDT 2003). ("The Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016) The Punjab government is also faced with the issue of the Indus River System Authority drawing water for Punjab from the Tarbela Dam. ("The Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016) This problem will become more complex in the coming years as the water shortage increases and is expected to reach 30% by 2030. ("The Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016) The need to build more dams to meet the growing demand is another point of contention among the provinces. ("The

Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016) For example, while Punjab supports the construction of the Kalabagh Dam, both Khyber Pakhtunkhwa and Sindh oppose it because of the environmental impacts they would endure from the project. ("The Challenge of Climate Change and Policy Response in Pakistan - Environmental Earth Sciences" 2016) The shortage of water resources and the problems caused by the construction of dams need more discussion to solve, for example, whether the environmental impact of dam construction can be improved by increasing technological construction. Since the lives of people living near dam construction are affected differently by the construction of dams, it is more important for upstream and downstream countries to work together and negotiate for the benefit of both sides of the process to achieve a win-win outcome.

- Climate Refugees in Mongolia

The analysis of climate refugees in Mongolia is presented below:

- a. Climate Change Affection

The special nomadic style of life faces different climatic challenges than other regions. Mongolia, with its nomadic tradition, has been negatively affected by the warming climate in terms of agriculture, livestock breeding, and human life. The migration pattern has been going on in Mongolia for two decades due to a variety of factors, but climate change is intensifying dramatically. ("Mongolia, Climate Change, and Ih Nuudel (Big Migration)" 2022) 2.24°C, making it "one of the strongest warming signals on the planet." ("Mongolia, Climate Change, and Ih Nuudel (Big Migration)" 2022). Another report shows that Mongolia is warming at three times the rate of any other place on Earth. ("Mongolia, Climate Change, and Ih Nuudel (Big Migration)" 2022) This is catastrophic for a country known for its deep ties to the land. ("Mongolia, Climate Change, and Ih Nuudel (Big Migration)" 2022)

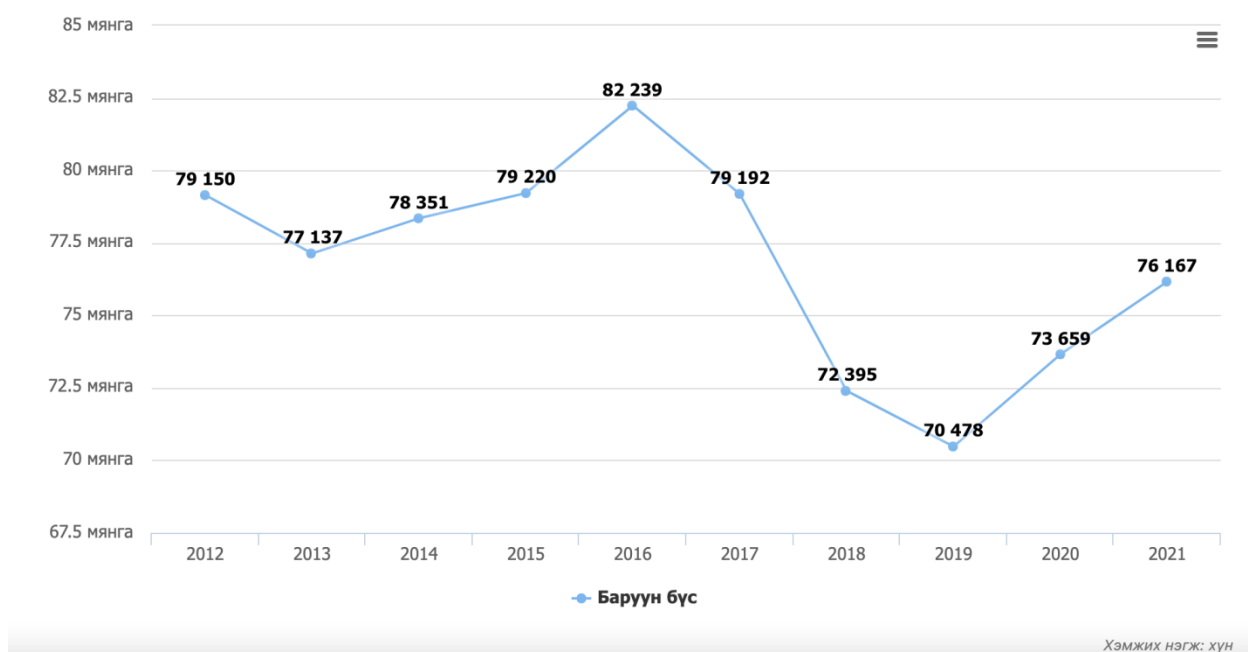
The rapid growth of the population is also affected by climate change. From 1991 to 2020, the population of Ulaanbaatar will almost triple. The new inhabitants brought their traditions and yurts (traditional felt yurts) with them, resulting in a large group of yurts forming around the city. ("Climate Change and Pastoral Nomads: Feedback Loops in Ulaanbaatar, Mongolia" 2022) Batmunkh states that today, more than half of the city's residents live in the Yurt District. ("Climate Change and Pastoral Nomads: Feedback Loops in Ulaanbaatar, Mongolia" 2022) 85% of Yurt-District residents have no other centrally powered heating facilities, so they rely on burning raw coal and wood for cooking and heating, which greatly contributes to Ulaanbaatar's already high levels of air pollution ("Climate Change and Pastoral Nomads: Feedback Loops in Ulaanbaatar, Mongolia" 2022) As population increases, it brings energy pollution, which accelerates the negative effects of climate change. The heating season in Mongolia typically lasts about seven months, during which air pollution levels in Ulaanbaatar soar to almost six times the threshold recommended by the World Health Organization's global air quality guidelines for protecting human health ("Climate Change and Pastoral Nomads: Feedback Loops in Ulaanbaatar, Mongolia" 2022) This seems to be a cycle. As climate change has an impact on people's lives, people's lives accelerate the negative impacts of climate change. It's like a Möbius loop that people are caught in. Without a good solution, people will get worse and worse from the effects of climate change.

b. Population Influences

In Mongolia, there are many people who live in rural areas, because their careers and living environment were negatively affected by climate change, they moved to the urban area to get new jobs. Climate change is making it impossible for plants to flourish in agriculture. Summers are facing increasing drought conditions due to high temperatures and water shortages.



Batmunkh states that nomadic life is often confronted with a high-quality requirement, especially during the local weather phenomenon known as dzud, where summer droughts make it hard to harvest sufficient forage, which reduces the quality and quantity of available fodder. ("Climate Change and Pastoral Nomads: Feedback Loops in Ulaanbaatar, Mongolia" 2022) The terrible weather conditions not only make the residents face many challenges in their daily lives but also face the challenges of their nomadic work on animals and in the agriculture field. After cold winters, livestock face a significant risk of death due to a lack of forage. ("Climate Change and Pastoral Nomads: Feedback Loops in Ulaanbaatar, Mongolia" 2022) It is difficult to feed the livestock making it difficult for livestock to live during the winter. The data from the National Statistics Office of Mongolia shows that the population of Mongolia changed by the migration from rural areas to urban areas. Mongolia faces both agricultural and livestock challenges in summer and winter.



МАЛЧДЫН ТОО, улс, бүс, аймаг, нийслэл, сум, дүүрэг, баг, хороогоор, жилээр

(The number of herds in Western region from 2012-2021, Line graph)

Source: National Statistics Office of Mongolia

### c. Immigration

Many people living in Mongolia are trying to change the negative effects of climate change by migrating. People are trying to migrate to change their lives. These are the homes of some 600,000 former herders who, like Altansukh, have migrated to Mongolia's capital over the past 30 years (Kingsley 2017). However, migration is rapidly increasing the urban population, and the population density is also increasing. Patrick Kingsley states that the scale of the migration is extraordinary: about 20 percent of the country's population has moved to Ulaanbaatar, doubling the city's population and significantly increasing its physical footprint (Kingsley 2017). For the most part, the rural population is moving to the cities to cope with the effects of climate change on people's lives, especially in agriculture and animal husbandry, which is why most of the people who are moving are living in rural areas. *Ihnuudel*, which means "great migration" in Mongolian, was coined by locals who moved a record number of rural people to the capital, Ulaanbaatar. ("Mongolia, Climate Change, and *Ih Nuudel* (Big Migration)" 2022)

Although people move from rural to urban areas, often their lives are not greatly improved after the move. When people who previously lived in rural areas move to urban areas, they often face additional challenges to their lives, including but not limited to not being accustomed to urban culture and facing a lack of financial support and job search opportunities.

Raulerson claims that migration can be a form of adaptation to climate change ("Mongolia, Climate Change, and Ih Nuudel (Big Migration)" 2022). While this is absolutely plausible, the case of Mongolia also shows that factors ranging from poverty and economic underdevelopment to climate change drive rural to urban centers, the latter exacerbating survival. ("Mongolia, Climate Change, and Ih Nuudel (Big Migration)" 2022) This has not improved the lives of rural-urban migrants to any great extent, but this is all due to climate change. Once pushed to urban centers, migrants may find some improvement in economic opportunities and access to public services, but the lack of residency rights faced by rural Mongolians negatively affects all aspects of their lives and highlights the inherent vulnerability faced by migrants to the point when they are forced to move in search of better opportunities. ("Mongolia, Climate Change, and Ih Nuudel (Big Migration)" 2022) They often flee rural areas in the hope of obtaining a better living environment without realizing that they are actually facing different levels of challenges.

d. Water issues

The water problem is also one of the reasons why Mongolia is facing climate change, which leads to the continuous migration of climate refugees. Declining water resources have affected nomadic livelihoods, but for the third year in a row, streams have slowed to a trickle, and hills that were once vibrant and healthy are now barren and dead. ("In Mongolia, Climate Crisis Threatens Herding Traditions" 2022) Climate change is having an overall negative impact on nomadic life. The problem of water resources affects the normal growth of grass in the pastures. As a result, nomadic livestock, such as cattle, sheep, and horses, do not have enough food supplies. This was a great blow to the nomads who lived on the land. Grasslands without grass and livestock without enough food are like a direct loss of work for nomads. The water problem had a series of effects on the lives of nomads. Octonbaatar claims that "We don't have

green summers anymore, and there is less water here than last year." ("In Mongolia, Climate Crisis Threatens Herding Traditions" 2022) The loss of water resources has made their lives fraught with hardship.

### **Discussion**

Human beings are suffering due to climate change. If we try to look at the reasons behind these sufferings, then, due to the negative effects of rising temperatures on the local population, the inhabitants are unable to live normally in their original habitat. As a result, these people are migrating and thus becoming climate refugees. After becoming such refugees, the life of such people is not easy. They actually struggle every single minute for their safety and security. The most unfortunate fact in all these is that these negative impacts on their lives were not intended or caused by them. In fact, they are facing the sins done by others towards climate.

When the real-life situations of refugees are analyzed, it is noticed that they do not receive enough help and support as climate refugees. In both Pakistan and Mongolia, there are concerns about the impact of temperature on the lives of local people, resulting in a large number of climate refugees in both Pakistan and Mongolia migrating and leaving due to the impact of temperature on their lives. Can we imagine the life of these people before and after becoming refugees? When other human beings around the world are living in safe places and worrying about their job and fanciful things, these refugees are worrying about their daily bread, health, and their family's survival. The divide among human beings can be dangerous for humanity as it could lead to anarchy and other similar situations where humans will become the enemy of other humans in terms of their existence.

If we compared the impact of the water crisis in Pakistan and Mongolia, then the outcomes indicated that the negative impacts of water issues in both Pakistan and Mongolia are

similar and different on some parameters. For example, both Pakistan and Mongolia are suffering from some water scarcity problems. The water problem in Mongolia has a direct impact on the livelihood of nomads. In Pakistan, water scarcity in water areas also affects the lives of local people. In addition, water quality and water boundary issues, especially water trust between Punjab and Sindh, are also faced in Pakistan compared to Mongolia. Through the survey of this paper, the demographic factor is a more mentioned factor about the environment in Mongolia than in Pakistan. People who used to live in rural areas in Mongolia have migrated to urban areas in large numbers due to climate change. This migration has actually impacted their life; these people found it difficult to adjust to urban life.

### **Conclusion**

In this paper, we dissected the impact of environmentally relevant factors on climate refugees in Pakistan and Mongolia. The impact of climate factors demonstrates the effects of temperature, water issues, and demographic factors on climate refugees in Pakistan and Mongolia, leading them to migrate. The Pakistan and Mongolia regions face higher migration due to the negative effects of temperature, water issues, and demographic factors. In Pakistan and Mongolia, there are two main characteristics of the study: 1) Mongolian nomads are affected by the environment, while Pakistan nomadic Kochis/Kuchis are gradually disappearing and decreasing. 2) Pakistan's water issues are affected by the border.

People should give more support to environmental refugees because environmental refugees are not protected by international law. Environmental refugees face greater political risks, and sometimes, they are sent back to their devastated homes or forced into refugee camps. Due to this situation, precautionary measures must be taken to protect climate refugees in

Pakistan and Mongolia, including the proper allocation of livelihood resources and financial support for environmental refugees and those in climate-affected situations.

Environmental refugees explain the situation of people in developing countries who are affected by climate but do not explain why world organizations and developed countries do not provide support and help for these situations. By comparing the impact of environmental factors on climate refugees in Pakistan and Mongolia, structural factors incorporate temperature, water issues, and demographic factors in developing countries into the impact on the lives of local people.

In this study, we outline the impact of environment-related factors on climate refugees in Pakistan and Mongolia. Environmental impact is an action that makes it difficult to produce dramatic changes in a short period of time or to see improvements in a short period of time. Although people should take all measures to protect the environment from now on, we cannot control the fact that environmental refugees are increasing/expanding. This is because the negative environmental impacts on environmental refugees may be the result of social factors that occurred more than a decade ago. When evaluating prevention and recovery measures, policymakers and public health officials should consider pre-existing environmental disparities, as well as their living conditions. Government departments should ensure as much as possible that these environmental refugees can have a good living environment. Every human deserves a better chance to have a clean environment and safe climate, and by realizing this, human beings should try to spread awareness about climate change. In addition, further research should investigate the lasting effects of other social factors, such as environmental factors, on these groups.

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**The Concentric Circle of Conflict in the Lake Chad Region: Between Youth,  
Exclusion and Grievance**

Tope Shola Akinyetun

**Abstract**

This article presents an overview of armed conflict in the Lake Chad region of Nigeria, Chad, Niger, and Cameroon, particularly in relation to youth exclusion and grievances. The study aims to identify the drivers of youth exclusion and grievance, including marginalization, unemployment, poverty, state weakness, and relative deprivation. This study focuses on the specific case of the Lake Chad region and the role of exclusion and grievance in driving youth complicity in violence. The study adopts a qualitative and descriptive approach, analyzing previous research and reports to provide an overview of the current state of knowledge on youth, exclusion, and conflict in the Lake Chad region. The study finds that exclusion and grievance are major drivers of youth complicity in conflicts in the Lake Chad region, with factors such as poor economy, weak state presence, poverty and unemployment and poor governance exacerbating youth susceptibility to violence.

**Keywords:** exclusion, grievance, insecurity, rebellion, state weakness, youth.

## Introduction

One of the factors driving insecurity in Africa is the burgeoning youth population (Ismail and Olonisakin 2021). It is projected that by 2100, Africa will have a predominantly youthful population and will be home to approximately a third of the world's population. Without proper planning, this demography increases the incidence of civil and security challenges (Carter & Schwartz, 2022). The involvement of youth in insecurity in the Lake Chad Basin (LCB) is fueled by myriad factors, including a rising population, unemployment, poor governance, underdevelopment, and a weak state presence (Mahmood and Ani, 2018a). As alluded to by the United Nations (UN, 2022), prolonged years of underinvestment in education and health, coupled with governance and political issues, have created an environment fraught with significant security challenges and youth vulnerability. Alozie and Aniekwe (2022) add that conflicts in the LCB are compounded by climate change, poverty, marginalization, socioeconomic underdevelopment, and poor infrastructure.

Youth involvement in conflicts is also driven by exclusion. Political activity in the LCB is largely dominated by the elderly, thus, neglecting young people. This systemic exclusion from governance and decision-making increases youth grievances and vulnerability to conflicts. While young people engage in violence, they are also disproportionately affected by it, thus making them victims and actors of conflict (Plan International 2022). Grievance is driven by inequality and relative deprivation, particularly in those reinforced by social identity (Pizzolo, 2020). Moreover, the discontent induced by deprivation spurs people to take action to a proportionate degree. In other words, the intensity of discontent corresponds to the level of violence.

Conflict in the Lake Chad region has seen a surge in the number of children used for suicide attacks, especially among girls. Between 2014 and 2017, over 117 children were used to

carrying out bomb attacks in public places across Nigeria, Chad, Niger, and Cameroon (United Nations Children's Fund [UNICEF], 2017). The effects of conflict in the region include wanton death, displacement, deaths, and humanitarian crises (Alozie & Aniekwe, 2022). According to the United Nations [UN] 2022). Insecurity has a debilitating effect, and severely affects young people. Since 2009, terrorist groups such as Boko Haram and the Islamic State-West Africa Province (ISWAP) have caused over 40,000 deaths, with children being among the most affected. Over 8,000 boys and girls have been recruited and exploited by these groups, with girls being subjected to the most severe forms of sexual violence and deployed on suicide missions.

This article provides an overview of the insecurity caused by the Boko Haram and the Islamic State-West Africa Province (ISWAP) in Nigeria, Chad, Niger and Cameroon, particularly in the Lake Chad region. This article aims to show that violence and armed conflict in Africa are caused by exclusion, exploitation, inequality, marginalization, and deprivation. Additionally, this article examines the drivers of exclusion-grievance among youths, including marginalization, unemployment, poverty, state weakness, and relative deprivation. This study focuses on the specific case of the Lake Chad region and the role of exclusion and grievance in driving youth complicity in violence. This article aims to contribute to the understanding of the factors responsible for the surge in violence and challenges faced by young people in the region. To achieve these objectives, this study adopts a qualitative and descriptive approach that analyzes previous research and reports to provide an overview of the current state of knowledge on youth, exclusion, and conflict in Africa. This article cites multiple sources to support its argument, including academic articles, reports, and news articles.

Following this introduction is the section on theoretical perspectives, which argues that exclusion-grievance among youth drives youth complicity in conflicts in the region. This is

followed by an overview of the youth in Africa. This section examines young people as an excluded generation, and how these fuels conflict. In the succeeding section, the Lake Chad Basin is presented as an area devoid of peace, while specific actors promote insecurity in the region, such as Boko Haram and the Islamic State of the Greater Sahara are immediately discussed. The sixth section appraises factors such as population growth, poor economy, weak state presence, poverty and unemployment, and poor governance that drive youth involvement in conflict in the region. The final section presents the conclusions of the article and relevant recommendations.

### **Theoretical perspectives**

Grievance arising from exclusion is a major cause of rebellion in Africa. People engage in acts of rebellion as a mechanism for coping with exclusion-induced grievance (Collier and Hoeffler, 2000), referred to in this paper as exclusion-grievance. Exploitation arising from ethnic-superiority contestation or repression forces a population to engage in conflict in no small measure than how economic inequality and marginalization from the political process engenders conflict (Collier and Hoeffler, 2000). In this regard, states inundated by exploitation, inequality, marginalization and deprivation are prone to conflict (Pizzolo, 2020). This explains the prevalence of violence and armed conflict in Africa. The decade-long underinvestment, exclusion and marginalization prevalent in Africa fuels grievances and a cyclic incidence of violence; including insurgency, resulting in a surge in hunger (i.e. 7 million people), displacement (i.e. 2.1 million people) and famine (i.e. hundreds of thousands) in the region (Cooperazione Internazionale, 2022). This is succinctly captured by Tayimlong (2021) that:

The feeling of relative deprivation induces people to think that there is need for social change, and this motivates them to join movements to bring about the desired change...violence

occurs when people's collective expectations in terms of the satisfaction of their wants is disproportionate to their environment's capabilities to provide that desired level of satisfaction (Kendall, 2008, p.210).

The above encourages the rise and spread of rebels. Rebel leaders thrive on the promise of finding solutions to the exclusion-grievance among an aggrieved population by claiming the possession of superior information when in fact (in some cases), the recruiter may not be sincere in addressing the grievance but merely using it as a manipulation for mobilization (Thaler, 2022). By serving to fulfil two major objectives, rebels are convinced of their capacity to bridge the gap of inequality and the ability to use rebellion to correct the imbalances created by the prevailing exploitative system created by the political elite.

Thus, the struggle for access to assets deprived and the fight to overcome such injustice is the driving force of armed groups. If we agree with Rummel that relative deprivation creates the "potential for collective violence" (Rummel, n.d:2) it is, therefore, true that "where widespread grievances are ignored, a peace agreement may simply paper over deep fissures in a society, sowing the seeds for future conflict" (Keen, 2012:771). Herein lies the challenge of African states where exclusion-grievances grow unaddressed giving opportunities for rebellion to foster and proliferate. This view is also held by Taydas et al. (2011:2630) that the grievance model utilizes the opportunities presented in an aggrieved situation to further the mobilization and organization of rebel movements. Regan and Norton (2005) offer support to this submission adding that inequality on its own is insufficient to engender rebellion, but opportunities to mobilize as influenced by rebel leadership, incentives and domestic structure.

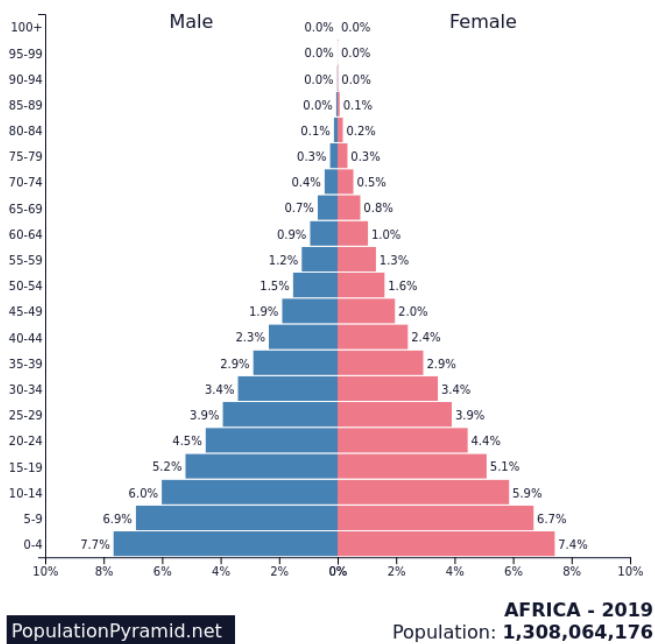
The above explains why youth are particularly vulnerable to recruitment by rebel groups. Collier and Hoeffler (2000) opine that in a context of relative deprivation, the selection and

indoctrination of young people by rebel groups help to generate grievance in the selected group. For a region with a large share of youth population as in the LCB, armed groups may find it easy to recruit aggrieved young people. Beber & Blattman (2013) lend credence to this view that overpopulation makes young people a “cheap, limitless, and renewable resource”...“given the disproportionate number of young people in poor countries, we should not be surprised to find a disproportionate number in armed groups” (p. 9). This is more disturbing in context of countries (i.e. in the LCB) with burgeoning populations that face the risk of making public choices and providing equitable public goods which when not delivered increases the chances of grievance and conflict.

### **Youth in Africa**

Africa – with a population of 1.3 billion people – is a youthful population that consists of 19.2% youths by World Bank (2005), the United Nations (2009) and UNICEF (2017) definition; 33.8% by UN-Habitat standards; and 39.6% by the African Youth Charter guidelines (see figure 1).

Figure 1: Population Pyramid of Africa



Source: Population Pyramid (2020)

However, despite the overwhelming population and accounting for 40% of the workforce, a majority (i.e. 60%) of youth are unemployed. They are challenged by limited access to education and rapid urbanization growth which threatens political stability (Commins, 2018). Observably, human settlement in Africa is higher in arable and riverine areas such as Nigeria, Chad and Niger. This is driven by the availability of water for agriculture and arable land for pastoral activities (USAID, 2015). Meanwhile, as Africa continues to record a significant share of the global population due to its high fertility rates and the number of young people, there are growing concerns about the security implications of such growth and how it increases the chances of violence.

Youths are not necessarily perpetrators of violence but are constricted by prevailing economic and political conditions that promote conflict. Of course, a growing youth population



connotes a large workforce; yet when not managed, it becomes a recipe for disaster and an increased crime rate, especially in the face of poverty (Akinyetun, 2020a). As Gratius et al (2012) submit:

“There is a significant resemblance between the causes for violent mobilisation of youth in both the contexts of war and urban violence: unemployment, the search for security and/or power, belief in a cause, vengeance and a sense of injustice are the most quoted causes in both scenarios” (p. 6-7).

Africa is home to the worlds’ underdeveloped, fragile and conflict-ridden states and the prevalence of inadequate essential services provides grounds for conflict (Sakor, 2021). Indeed, the interplay of youth bulge and scarcity of natural resources also increases the risk of violence. A growing youth population with the scarcity of renewable freshwater and arable cropland will engender competition and increase the chances of the outbreak of violence. More so, the coincidence of resource scarcity alongside impending poor service delivery, low mortality rate and a high birth rate also exacerbates youths’ susceptibility to violence (Ismail and Olonisakin, 2021). Whereas, the need to forge an identity and deal with the challenges of inequality and unemployment often pushes young men to join extremist groups and form criminal networks (Commins, 2011). This played out in Egypt in 2011 where a youth bulge contributed to the violence in the state. For instance, the various social movements in the country such as Football-Ultras, the 2011 revolution and the resistance to the Muslim brother government (Black Bloc) were driven by youths (Alfy, 2016).

## **An excluded generation**

The socially excluded are often denied access to resources that should otherwise be available for their consumption. Meanwhile, the most vulnerable groups; girls, women, minorities and youths, are often excluded from these benefits thus subjecting them to multidimensional deprivation (Akinyetun et al, 2021). Despite that youths are instrumental in the achievement of the Agenda 2030 which seeks to engender a sustainable, inclusive and peaceful society, they are challenged by poverty, migration, gender inequality, limited access to education and conflicts. Despite these obvious difficulties, youths are also victims of systemic exclusion through restricted engagement and limited participation in decision making (United Nations, 2021).

The lack of investment in youths impairs productivity and increases risks and vulnerabilities with attendant economic, social and political costs. More so, the inability to engage youths productively or give them a chance to participate in governance and decision making as agents of positive change makes it difficult to break the intergenerational cycle of poverty (World Bank, 2005). The prevalence of economic uncertainty and reduced opportunities leads to youth economic marginalization and their vulnerability to social and political unrest. Most young people are ‘marginalized from governance and are helpless about their continued exclusion’ (Sanderson, 2020:113).

## **The Lake Chad Basin**

### **An Area devoid of peace**

Insecurity in the LCB has led to an unprecedented humanitarian crisis with over 10 million people lacking access to assistance and the displaced lacking access to food, sanitation

and potable water in Diffa settlement, Niger. Meanwhile, in the Far North region of Cameroon, Lac region of Chad, and Borno region of Nigeria, there has been an increase in suicide bombing, attacks and displacement; thus affecting the peace of the area (Medecins Sans Frontieres [MSF], 2020). Evidence shows that sub-Saharan Africa is a less peaceful region compared to the global average. A total of 22 countries in the region deteriorated on the peace index while Burkina Faso recorded the largest deterioration in the continent (Institute for Economics & Peace [IEP], 2021). As shown in table 1, concerning the countries in the Lake Chad Basin, Algeria ranked 120 among 165 countries with a 2.31 score on the peace index. Meanwhile, Libya is the least peaceful country in the region with a 3.166 score and ranks 156 in the world. This is evidence that the most peaceful country in the area; Algeria, lags significantly behind in the league of peaceful states.

Table 1: Peace Index in the Lake Chad Basin

Location	Peace Index	
	Score	Rank
Algeria	2.31	120
Chad	2.489	132
Niger	2.589	137
Cameroon	2.7	145
Nigeria	2.712	146
Sudan	2.936	153
Central African Republic	3.131	155
Libya	3.166	156

Source: IEP (2021:10)

Insecurity has a devastating effect on the economy by amplifying the incidence of food insecurity, poverty, hunger, malnutrition and diseases (MSF, 2020). The economic cost of violence continues to increase while internal security expenditure decreases. Armed conflict has increased exponentially from 2007 to 2020 while the economic impact of violence has worsened

within the same period amounting to \$448.1 billion. This includes damage by terrorists, militias and other armed non-state actors. The Central African Republic and Libya are Lake Chad Basin countries and among the ten countries with the highest economic loss to violence at 37% and 22.0% GDP loss respectively. Other countries in the study area are Sudan (18%), Nigeria (11%), Algeria (11%), Cameroon (9%), Chad (8%) and Niger (7%). Meanwhile, the countries with the highest economic loss in Africa are South Sudan (42.1%) and Somalia (34.9%) (IEP, 2021).

### **Insecurity in the Lake Chad Basin: Specific actors**

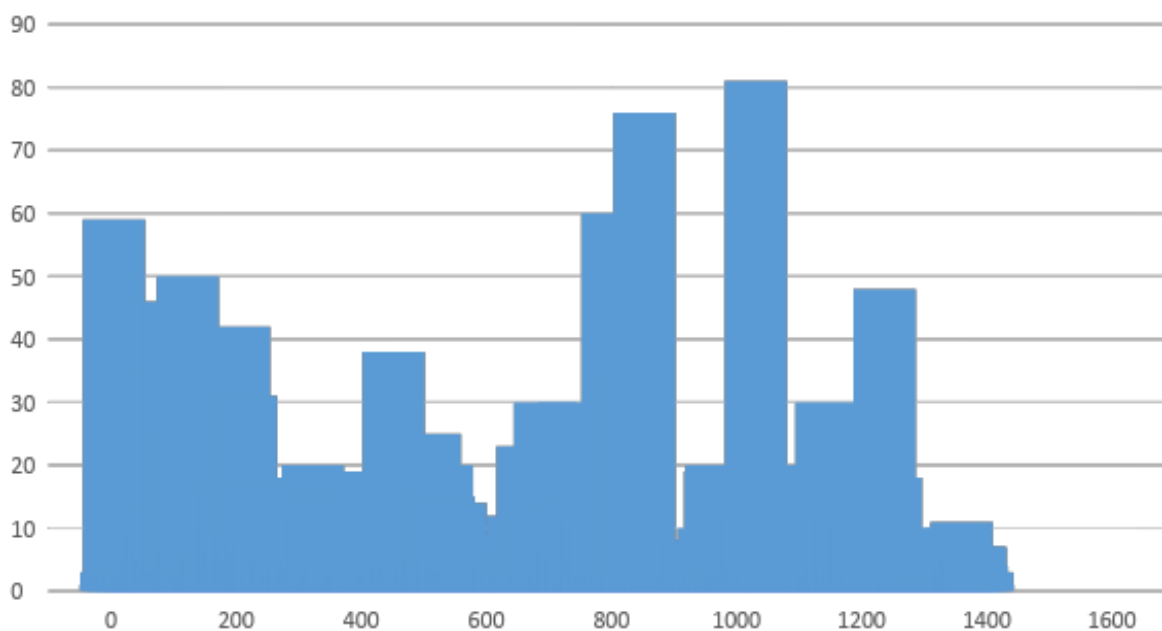
#### **The Boko Haram sect**

Boko Haram was formed by Mohammed Yusuf in his youthful days in 2002 in Maiduguri, Borno State, Nigeria. Yusuf, an Islamic scholar and a Salafist, was extreme in his views against Western education which he tagged haram – forbidden. As Pieri and Zenn (2016:72) observe, “Yusuf was deeply concerned with the level of corruption and poor governance in Nigeria and set about to create a society organized according to the sharia” and as a result seeks an Islamic society devoid of corruption. The group grew and started attacking government facilities and killing hundreds of people. Yusuf was arrested in 2009 and an attempt to break him out led to his death and the taking over of Abubakar Shekau who further radicalized the group. The radicalization has been attributed to religious extremism, marginalization, and unemployment (Akinyetun and Ambrose, 2021).

Other drivers include illiteracy, climate change, corruption, and state weakness (Tayimlong, 2021). A prominent motivation mentioned in the literature is relative deprivation (Akinyetun, 2020b). It is believed that prevalent underdevelopment and poor infrastructure in Nigeria and the neighbouring countries in the LCB allowed for the expansion of the Boko Haram

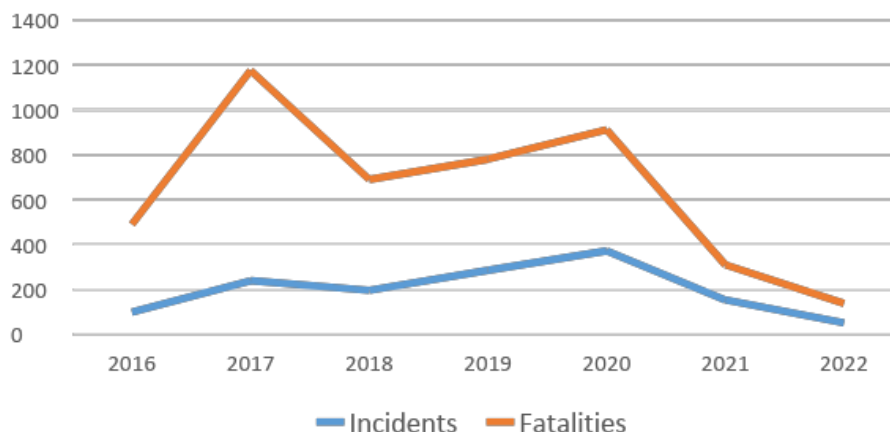
sect. For one, these countries suffer from poor educational infrastructure, illiteracy, youth unemployment and poverty. Thus, the deprivation of these infrastructures in the region was a major deficiency that the sect exploited to promote its territorial expansionist agenda (Tayimlong, 2021). The group has been responsible for dastardly attacks in the LCB. According to the Armed Conflict Location and Event Data Project (ACLED), there were 1396 attacks between 2016 and 2022 by Boko Haram in the LCB resulting in 4494 fatalities; with the highest fatalities and attacks recorded in 2017 and 2020 respectively (see figures 2 and 3).

Figure 2: Attacks in the Lake Chad Basin: 2016-2022



Source: Clionadh et al. (2010) | Author's computation

Figure 3: Attacks in the Lake Chad Basin: 2016-2022 (breakdown)



Source: Clionadh et al. (2010) | Author's computation

The group has been responsible for the death of thousands of people and the destruction of properties. Its modus include bombing, abduction, sporadic shooting and hostage-taking leading to huge economic costs and fragility.

### **Islamic State of the Greater Sahara**

The Islamic State of the Greater Sahara (ISGS) was formed by Abu Walid al-Saharawi in 2014. The sect became known as ISGS in 2016 after pledging allegiance to the Islamic State in 2015 and carrying out several attacks in Tillabery, Liptako-Gourma, Chingodiar, west Niger, north-east Mali and northern Burkina Faso, killing several people including soldiers and American troopers (Raineri, 2022). Usman (2015) argues that the mobilization of this group was a result of grievance driven by deprivation. Also, grievances arising from demographic pressure, and the exploitation of pasturelands by the Fulani enabled the group.

This is in addition to the competition for scarce natural resources between farmers and pastoralists and the boundary dispute between Niger and Mali – the fallout of which has been suffered most by the Fulani without state intervention. Fueled by this grievance, “few tens of Fulani youth from north Tillabery coalesced with the ambition to protect their fellow herders from the abuses of the rival communities, and created a self-defence Fulani militia in the early 2000s”. However due to hostility from the government “many Fulani youth from north Tillabery then resolved to take the bush” in 2012 and reach out to other groups under the leadership of Abu Walid al-Saharawi leading to the formation of the ISGS (Raineri, 2022).

### **Youth and Insecurity: Necessitating Factors**

#### **Population growth**

That Africa is presently experiencing a population boom requires little emphasis. It is however important to point out that such population growth may lead to a demographic pressure occasioned by infrastructure deficit, lack of skills, unemployment and marginalization which has the potential of increasing the risk of social instability (Bello-Schünemann, 2017). States in the LCB (except Algeria and Libya) are at the risk of a demographic pressure whereby, despite having a high percentage of young people, a majority of them are not in education, employment or training. This is particularly precarious in Chad with a 9.6 score out of 10 followed by Nigeria (9.3), Sudan (9.1), Central African Republic (8.9) and Niger (8.8). This is particularly challenging as it increases the chances of exclusion of the young population and their vulnerability to recruitment for violent activities (Tayimlong, 2021).

One of the reasons for the population explosion in Africa is a high fertility rate. As shown in table 2, the average number of births per woman in the selected states is higher than the world

average. The trend shows that Africa has recorded a steadily increasing population change since 1950 and is projected to continue till 2100 (especially in Chad) compared to the rest of the world (see figures 4, 5, 6 and 7).

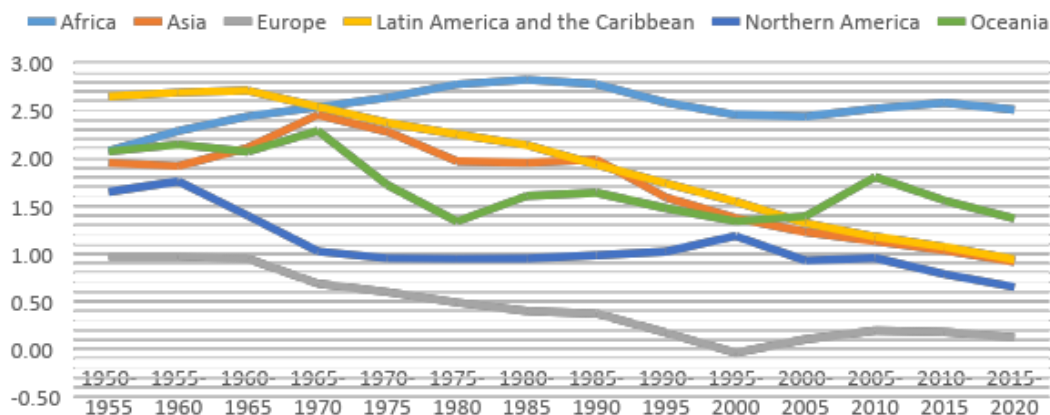
**Table 2:** Demography of Lake Chad Basin Countries (2020)

<b>Location</b>	<b>Value (Thousands)</b>	<b>Fertility rate (births per woman)</b>	<b>Population 0-14 years (% of total population)</b>	<b>Youth not in education, employment or training  (% of total youth population)</b>
World	7,761,620.15	2.41	25.48	-
Nigeria	206,139.59	5.25	43.49	28.13
Algeria	43,851.04	2.94	30.78	20.95
Sudan	43,849.27	4.29	39.80	32.81
Cameroon	26,545.86	4.44	42.06	17.01
Niger	24,206.64	6.74	49.67	68.56
Chad	16,425.86	5.55	46.49	37.05
Libya	6,871.29	2.17	27.78	-
Central African Republic	4,829.76	4.57	43.54	-

**Source:** World Bank (2022) | Author's computation

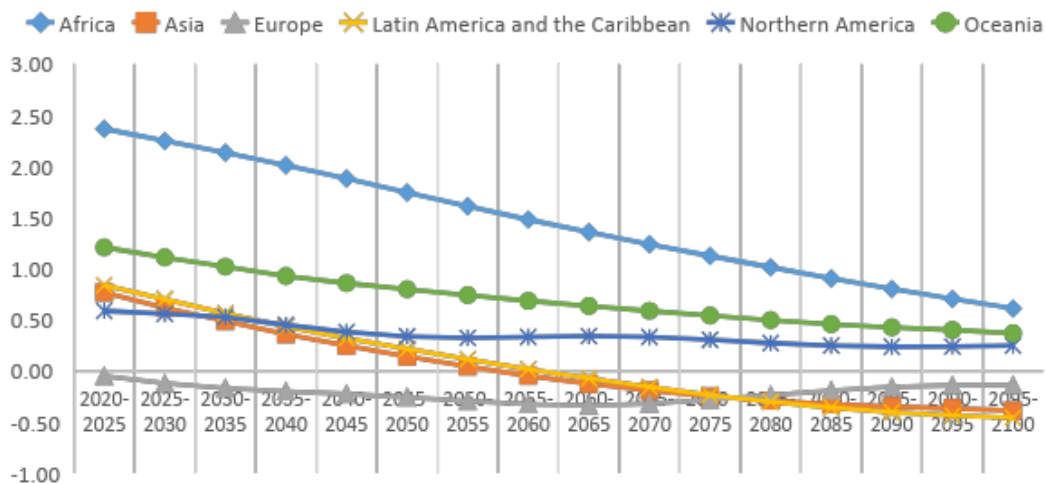


**Figure 4: Annual population change in the world: 1950 – 2020**



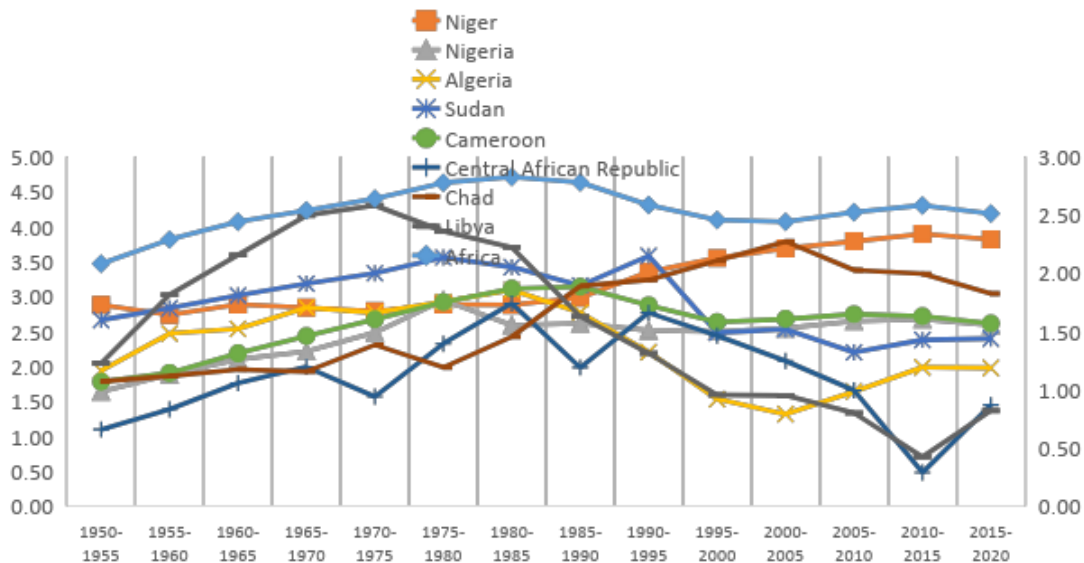
*Source:* United Nations (2019) | Author’s computation

**Figure 5: Average annual rate of population change in the world: 2020-2100**



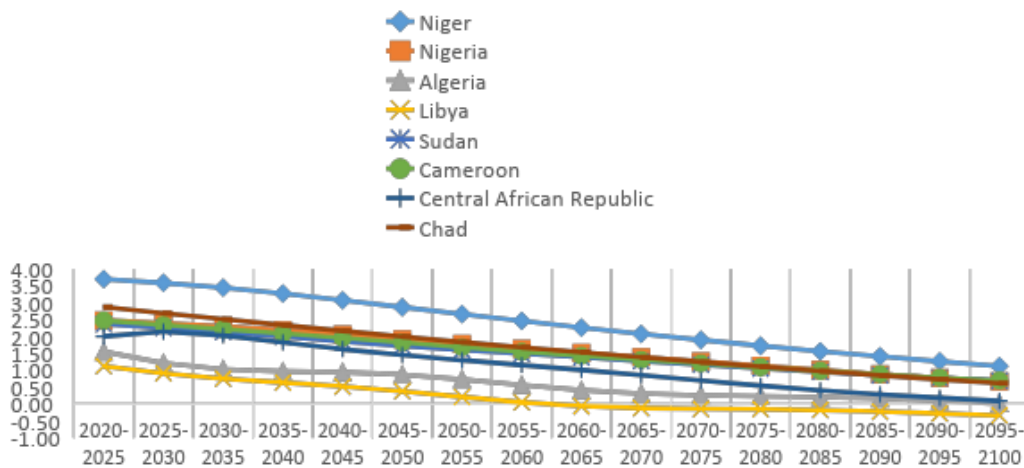
*Source:* United Nations (2019) | Author’s computation

**Figure 6: Annual population change in the Lake Chad Basin: 1950 – 2020**



*Source:* United Nations (2019) | Author’s computation

**Figure 7: Average annual rate of population change in the Lake Chad Basin: 2020-2100**



*Source:* United Nations (2019) | Author’s computation

### Poor economy

Despite having a high urbanization rate, Africa also records low economic growth which increases the competition for resources and violence. Characterized by underinvestment in human capital, population growth has not significantly improved the economy or the well-being of the people compared to other parts of the world. Rather, what is discernable is the inability of available resources to keep pace with the rising population thus increasing the chances of exclusion and grievances (Commins, 2011). Areas with fast-growing populations such as Sub-Saharan Africa, Latin America and South Asia are experiencing violence epidemics which more often translates into insecurity. This is so as these areas are usually afflicted with glaring socioeconomic trials such as low development and widespread unemployment evoking violent contestation among armed non-state groups and sometime between state and non-state groups (Gratius et al, 2012). Economic fragility is well pronounced in the LCB. When compared to the rest of the world, the data presented in table 3 shows that the annual GDP growth of the states in the region recorded negative growth in 2020 and increased the number of the poor by as high as 62% (Central African Republic). There is no gainsaying that the prevalence of poverty allows for insecurity to thrive (Akinyetun, 2020b).

**Table 3:** Economy of Lake Chad Basin Countries (2020)

<b>Location</b>	<b>GDP (US\$ - Millions)</b>	<b>GDP growth (annual %)</b>	<b>Poverty (% of population)</b>
World	84,746,979.12	-	-
Nigeria	432,293.78	-1.79	40.10
Algeria	145,009.18	-5.10	5.50
Sudan	21,329.11	-3.63	46.50
Cameroon	40,804.45	0.49	37.50
Niger	13,741.38	3.58	40.80
Chad	10,829.08	-0.95	42.30

Libya	25,418.92	-31.30	-
Central African Republic	2,380.09	0.83	62.00

**Source:** World Bank (2022) | Author's computation

### **Weak state presence**

Limited state presence and a weak state legitimacy also enable the spread of insecurity and the recruitment of youths. Poor state presence in the vast forests of the countries in the Lake Chad Basin allows insurgents to operate undeterred. These areas with limited governance thus become haven and sanctuary for transnational organized crime, banditry, smuggling, trafficking, kidnapping, drugs, arms dealing, illegal mining and insurgency. Meanwhile, where the state is present, its activities have been limited by corruption and economic mismanagement (Mahmood and Ani, 2018a). More so, the absence of state presence in the vast ungoverned spaces in the area also encourages the spread of insecurity. An ungoverned space – characterized by limited government authority – is an enclave for banditry, insurgency and organized crime. It has become an operational base for insurgents to recruit youths, promote an informal economy and perpetrate crime. An example of such a space is the Sambisa forest, Borno state. The forest, which stretches across Borno, Yobe, Jigawa, Gombe, Bauchi and Chad Basin park, is the primary operation centre of the Boko Haram sect (Akinyetun, 2022). Such a vast space with limited state power no doubt presents an opportunity for crime.

Furthermore, the absence of a capable guardian and weak security apparatus is taken advantage of by Boko Haram which has been accused of forcibly recruiting teenage boys and girls. This has been on since the abduction of over 250 school girls on 14 April 2014 in Chibok, Borno and the subsequent abduction of about 40 girls in Wagga, Adamawa on 20 October 2014.

These girls alongside several unreported abductees are forcibly conscripted into the group for operations while the boys are used to acquire information and carry out attacks (Zenn, 2014).

### **Poverty and Unemployment**

Another factor that promotes grievance in youth and gives rise to their involvement in insecurity is poverty. Among the major factors that drive youths to violence are inequality, marginalization, illegal economy, unemployment, poverty, social exclusion, lack of opportunities and frustration – which are prevalent in Africa. Youths are often pushed to violence as a way of coping with the prevailing economic and social crises of society. That is criminality is informed by a sense of survival in an economically volatile society (Zenn, 2014).

Described as the poverty capital of the world, Nigeria is a classic example of a country with economic growth and endemic poverty (Akinyetun et al., 2021). The country is plagued with multidimensional poverty; the scourge of poverty beyond income that includes health, education, living standards and employment dimensions. For instance, illiteracy, unemployment, lack of electricity, unconventional toilet facilities, open defecation, open refuse and poor drainage are observable in the country's most economically developed state; Lagos.

This was rightly captured by Mahmood and Ani (2018a) thus:

Non-state actors have been able to take advantage of such dynamics by offering material rewards – either through the provision of payments or other aspects – as in the case of Boko Haram and its offer of an easier path to marriage – as a means of sustaining recruitment, aspects which prey upon the relative deprivation of local populations (p. 7).

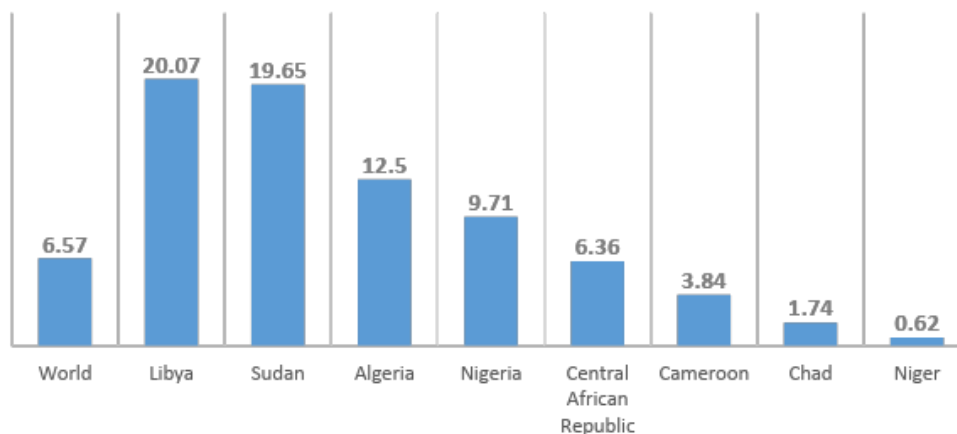
In another telling revelation, Mahmood and Ani (2018b) report that:

...interviewees remarked that ISIS-WA presents themselves as protectors against the abuses of local chiefs, the gendarmerie, and custom agents. They often cite the extortion, fines and arbitrary arrests by gendarmerie brigade commanders. Their message tends to resonate with those who have experienced social injustice, inequalities and selective impunity. Some interviewees say the group also offers money at times to young people who join them. Such patterns attempt to exploit local grievances, while driving a wedge between the government and populace, which ISIS-WA can then take advantage of (p. 27).

Meanwhile the poverty rate in Borno state – the epicentre of Boko Haram insurgence – has been documented in the literature (Akinyetun, 2020). Moreover, poverty is influenced by and increases the chances of unemployment, which is also a recipe for insecurity. Mahmood and Ani (2018b) observe this in Chad that:

In this sense, while the Boudouma have frequently been associated with Boko Haram, religion is less important than the individual choices of vulnerable, uneducated and unemployed youth – a profile that covers many in the region, Boudouma and non-Boudouma alike (p. 29).

Youth unemployment is a predominant social challenge in the LCB. As presented in figure 8, the ratio of unemployment as a percentage of the total labour force is higher than the world average in four LCB countries (Libya, Sudan, Algeria and Nigeria)

**Figure 8:** Youth unemployment in the Lake Chad Basin (2020)

*Source:* World Bank (2022) | Author's computation

### Poor governance

This is another factor that heralds insecurity in Africa. Data from the Ibrahim Index of African Governance (2020) shows that countries in the LCB recorded a decline in poor governance in the last decade. With regards to a foundation for economic opportunity, the report (presented in Table 4) reveal that in 2019, countries in the LCB (except Algeria, Cameroon and Nigeria) performed poorly. The worst cases were recorded in Central African Republic (which ranked 50 out of 54 countries), Chad (47), Libya (46) and Sudan (41). This goes further to prove that the area is challenged by poor governance, particularly in the areas of security, rule of law, human development and economic opportunity which further makes youth vulnerable to joining violent groups to benefit from the dividends of informal governance they promise (Akinyetun, 2022).

Table 4: Foundation for economic opportunity in the LCB

<b>Foundation for economic opportunity</b>	
<b>Location</b>	<b>Rank (2019)</b>
Algeria	16
Cameroon	29
Central African Republic	50
Chad	47
Libya	46
Niger	36
Nigeria	28
Sudan	41

Source: IIAG (2020)

### **Conclusion**

The exponential growth of insecurity in the Lake Chad region, specifically in Nigeria, Chad, Niger, and Cameroon, has been attributed to the activities of the Boko Haram sect and Islamic State-West Africa Province (ISWAP). These two factions control different areas, with Boko Haram controlling the south of Borno state and ISWAP having a stronghold in Lake Chad, Niger border, Yobe, and parts of Borno. The prevalence of violence and armed conflict in Africa can be attributed to the underinvestment, exclusion, and marginalization prevalent in the region, which fuels grievances among youth, leading to a cyclic incidence of violence, including insurgency. Socially excluded individuals often denied access to resources, and the most vulnerable groups, such as girls, women, minorities, and youth, are often excluded from these benefits, thus subjecting them to multidimensional deprivation. The radicalization of the Boko Haram sect has been attributed to religious extremism, marginalization, and unemployment, while the Islamic State in the Greater Sahara (ISGS) was formed by a combination of several factors, including poverty, droughts, and underdevelopment. The proliferation of these terrorist



groups in the region can be curtailed by addressing the root causes of exclusion, inequality, and marginalization; improving governance, infrastructure, and social services; empowering vulnerable groups, including youth and women; and promoting education and employment opportunities.

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## **How have the PTI Government's taxation policies affected Pakistan's economic growth?**

Dr. Syeda Sehrish Shakir Rizvi

### **Abstract**

This research investigates Pakistan's taxation system, focusing on its legal framework, policy structure, and the challenges it faces. It also assesses recent tax policy efforts by the government. The study utilizes data from various sources spanning 2008 to 2021, including the Federal Board of Revenue, IMF, Federal Tax Ombudsman, and State Bank of Pakistan. It finds that Pakistan's economy has long encountered significant challenges, but there was improved political stability in the first year of Imran Khan's government. Using an interpretive approach and qualitative methodology, the study suggests that reducing tax rates may expand the tax base, benefiting lower-income populations and potentially increasing net revenue. Overall, this research provides insights into Pakistan's taxation system and its implications.

**Keywords:** Pakistan Tax problem, Taxation Policy, Economic Development, taxation issues, Pakistan economy.

## Introduction

In many developing countries, including Pakistan, finding significant additional revenue streams can be a challenge (Amjad, 2021). This study aims to analyze the effects of the taxation policies of the PTI government on the economic development of Pakistan, using a concept that offers a broad perspective on policy and examining the effects not only on revenue but also on households in various conditions and on output. The primary objective of tax legislation is to generate revenue for public services while ensuring that the tax burden is distributed fairly among residents using real-world indicators (Wolf, 2021). Pakistan's tax structure, which relies heavily on indirect taxes that are inherently regressive, has sparked passionate discussions about the extent to which the tax burden falls on the poor (Chohan & Akhter, 2021). The federal excise duty, sales tax, income tax, and customs fees are Pakistan's four main sources of tax revenue. However, the goal of tax policy has shifted to simply raising more money to meet unattainable targets for the tax-to-GDP ratio and to reduce the budget deficit. Increasing the tax-to-GDP ratio has become a policy principle, even if it goes against fundamental principles of fairness, transparency, efficiency, and simplicity in taxation (Nasir et al., 2020).

### **Pakistan experiences an economic shock**

The national economy of Pakistan, led by Prime Minister Imran Khan and his Tehreek-e-Insaaf party, is facing numerous challenges such as a growing fiscal deficit, increasing inter-corporate debt in the electricity market, inflation pressures, diminishing exports, and a widening imbalance in current-accounting accounts (Anjum et al., 2021). To stabilize the external sector in the short term, the government has received financial aid from the Gulf and China and is now implementing policies to help the country reach its industrial potential (Ahmed, 2019). The government aims to boost consumer confidence, revive economic growth, and promote



sustainable growth taxation policies by enacting supply-side, business- and development-friendly policies, including administrative and tax adjustments for the agricultural and manufacturing sectors (Abd Hakim, 2020). This report provides unique insights into historical trends and offers practical solutions for current research, with a focus on examining the economic impact of PTI's taxation policy.

The COVID-19 outbreak has significantly impacted Pakistan, with a little over 2.1% of individuals who contracted the illness being unwell but not yet dead (Ashfaq & Bashir, 2020). To curb the spread of the disease, the PTI government ordered a total lock-out on March 24, 2020, allowing only essential companies and organizations to operate (Shahryar, 2021). Despite the pandemic leading to a global economic contraction, offshore remittances, which are a vital source of income, grew in Pakistan, even though foreign employees were also laid off in the Gulf and other regions (Shaheen et al., 2020). However, the tourism and hospitality industry has been severely impacted by the pandemic (Wang & Le, 2022).

It is anticipated that the global limiting of economic activity due to COVID-19 will cause a brief increase in global greenhouse gas emission levels once economic activity resumes in the post-COVID-19 period (Deng et al., 2022). This epidemic has significantly impacted economies worldwide and brought about a swift and significant change in people's lives (Janzen & Radulescu, 2022).

### **Era of PTI Government 2018–2021**

The research discusses the political background and achievements of the Pakistani Tehreek-e-Insaf (PTI) party led by Imran Khan (Shaikh & Chen, 2021). The PTI secured a majority of seats in the National Assembly in 2018, and Imran Khan was elected as the 22nd Prime Minister of Pakistan (Raja, 2020). The PTI positioned itself as a "third force" in Pakistan's

two-party system. Prime Minister Imran Khan's statements about stabilizing the economy and proclaiming 2020 as the year of growth and wealth creation (Adnan et al., 2021). The Ministry of Finance highlighted several successes in the first five months of FY 2020, including a decrease in the current account deficit, a positive fiscal balance, improved credit scores, and an increase in the country's score on the ease of doing Business Index (Sareen, 2020). The PTI government is credited with increasing exports and reducing the trade imbalance. However, the PTI leadership is being investigated by the National Accountability Bureau over corruption charges. The united opposition has called for accountability, contrasting the PTI's claims of progress in reducing corruption. It is important to note that research reflects a specific perspective and may not encompass all aspects of the PTI government's performance or the political situation in Pakistan (Shaikh & Chen, 2021).

### **Literature review**

Taxation is a crucial component of plans for economic growth. It is also connected to other policy topics. In order to formalize the economy and promote growth, taxes provide effective government. Taxation gives the government the money it needs to build its infrastructure and creates a favorable climate for business and international commerce (Saqib et al., 2014).

A tax is when a state or a nation's utilitarian equivalent imposes a financial or other charge on a person and makes it illegal for them to refuse to pay. In addition, several subnational entities impose taxes (Hogsden, 2018).

Taxes can be paid in cash or in the work equivalent and can be either direct or indirect. A tax is a "financial burden imposed on individuals or property owners to fund the government." a fee imposed by a legislative body. A tax is defined as "any commitment forced by the

government" and "is not an optional payment or donation, but an implemented commitment, demanded pursuant to legislative authority" (Gaertner & Hoopes, 2020).

Taxes are a necessary cost of living in a civilized society and are essential for managing and advancing the economy. Tax is also a fee that the government upholds and imposes on goods, businesses, individuals, and communities. However, because people seldom appreciate taking on this kind of public duty, the characteristic of mandatory levies is often unstable (Ebiringa&Yadirichukwu, 2012).

### **System of taxation**

Indirect taxes, along with surcharges, made up a larger portion of federal and provincial revenue compared to direct taxes. However, relying on indirect taxes often leads to inefficient allocation of resources and puts undue strain on the economy. Direct taxes accounted for 25% of total income in 1949-1950, 33% in 1959-1960, and only 14-17% in the 1970s (Ahmed et al., 2018). Nevertheless, recent attempts have been made to address this issue (Khalid & Nasir, 2020). In the 1990s, fiscal policies aimed to increase direct tax revenues, but only achieved limited success in raising the overall tax-to-GDP ratio. Direct taxes made up 32% of total taxes in the fiscal year 2019-20, but 70% of these taxes were not collected (Rind et al., 2020).

### **Pakistan's Legislative Tax Structure**

The impact of various taxing systems on economic indicators varies. There are normally two sorts of taxes in the taxation system: direct taxes and indirect taxes. Indirect taxes, including goods and services taxes, have contributed far more than direct taxes like income and company taxes (Abd Hakim, 2020). Over the previous ten years, the annual increase in direct and indirect taxes has not been constant and has varied (Kaka & Ado, 2020).

### **Direct taxes**

A person pays direct taxes, such as income tax, transfer tax, property tax, and capital gains tax, directly or indirectly to the government. These direct taxes are dependent on the ability of the person to pay, therefore the more their capacity to pay, the higher the tax (Khalid & Nasir, 2020). For the fiscal year 2020–2021, 36.5 percent of total tax income came from direct taxes. The net collection increased from Rs. 1,523.4 billion in the prior fiscal year to Rs. 1,726 billion, a 13.3% increase. Refunds to claimants were Rs. 91.3 billion in FY 2020–21 as opposed to Rs. 68.6 billion in FY 2019–20 (Khan & Ullah, 2021).

### **Indirect taxes**

The majority of the time, the government imposes and uses indirect taxes to collect taxes. They are essentially taxes that are assessed to taxpayers on an equal basis, regardless of their income (Abomaye-Nimenibo et al., 2018).

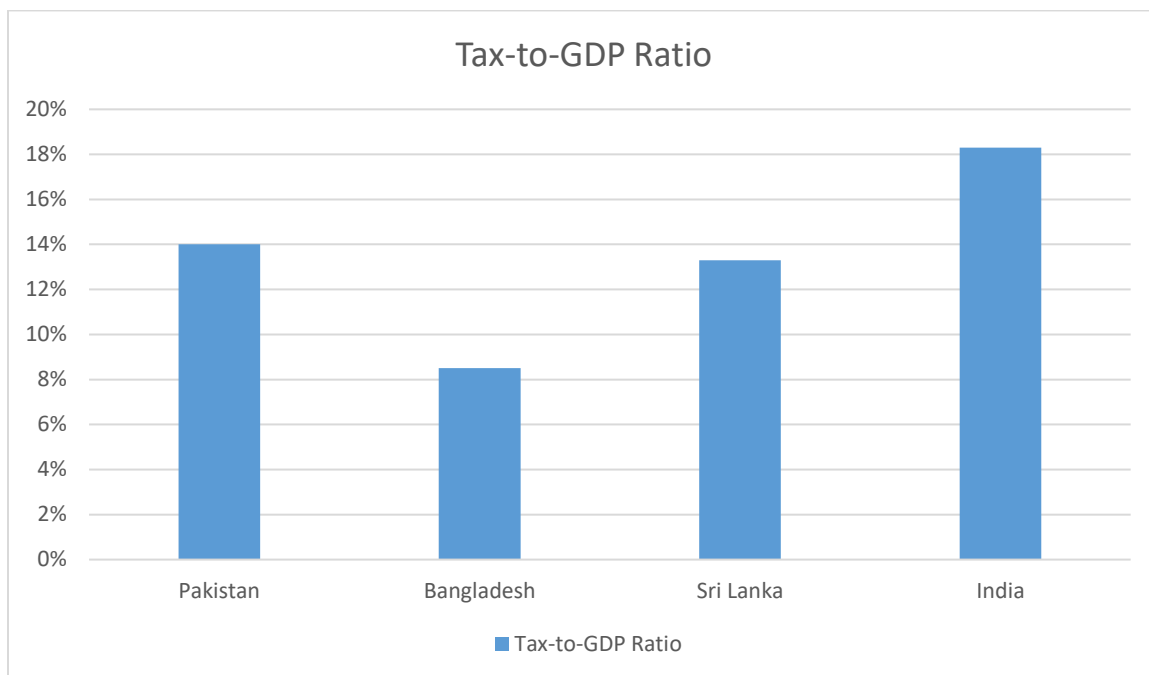
Because sales tax also applies to the delivery of goods and services, indirect taxes are well-known. They are indirect taxes if they are assessed as value-added taxes, or VATs, along with the manufacturing process (Abd Hakim, 2020).

### **Tax-to-GDP Ratio**

In recent times, it has become increasingly evident that raising the tax-to-GDP ratio is a prudent and sensible policy. However, it is worth noting that there is a dearth of comprehensive research on whether public bond sales have the potential to destabilize the debt-to-GDP ratio and the real interest rate. This issue has assumed greater significance in light of the ongoing public financing crisis triggered by the COVID-19 pandemic (Italo et al., 2022). The government and donors argue that Pakistan's tax-to-GDP ratio is lower compared to other nations. According to research conducted by the International Monetary Fund (IMF), Pakistan's tax-to-GDP ratio of

14% is comparable to that of neighboring countries in the region. For instance, Bangladesh has a ratio of 8.5%, Sri Lanka stands at 13.3%, and India has a ratio of 18.3% (Zia et al., 2021).

### Tax-to-GDP Ratio 2020



### Structure of Complex Taxation

Pakistan was ranked 161st out of 190 economies in the 2020 Doing Business Report for "paying taxes." This indicator performs poorly due to the complicated tax system and high tax compliance costs. According to the PIDE Report 2020, the number of complaints received by the FTO (Federal Tax Ombudsman) has been increasing over time (Jalil, 2020).

Out of the total cases determined in 2019, 66% of all complaints were accepted. FBR's legislation and rules are included in 34 documents (15 Acts, 11 Ordinances, and 8 Rules), in addition to explanations and notices. Only one document, the Income Tax Ordinance 2001 Amended to December 31, 2019, has 634 pages entirely composed of legalese. This leads

companies to retain costly and time-consuming tax accountants and attorneys, which can lead to duplicate accounting and drawn-out rights claim procedures (Haque & Ullah, 2020) return claims are not frequently utilized in Pakistan because of the low return payback ratio and the possibility of being audited if one is submitted. 50–70% of all VAT refund cases are audited, according to the World Bank's Doing Business report for Pakistan (Khalid & Nasir, 2020).

#### Number of Tax Complaints 2019

Category	Income tax	Sales tax	FED	Custom duty tax	Total
<b>Refund related complaints</b>	1172	381	1	27	1681
<b>Maladministration</b>	225	210	6	52	493
<b>Unnecessary notices</b>	58	18	3	46	125
<b>Others</b>	125	30	4	52	211
<b>Total no. of complaints</b>	1580	639	14	277	2510

#### Pakistan's economy

The Pakistani economy is currently experiencing a period of recovery after a restrictive investment environment and a period of debt-financed "consumption-led" development. In 2018, the intake as a percentage of GDP reached 94.5 percent, which is significantly higher than India's 30% and Bangladesh's 1% (Sarwar et al., 2020). However, the gross total expenditure, including public investment, only accounted for 16.4% of GDP in FY 18. This is considerably lower than the regional average, indicating that Pakistan needs to increase its spending on health and education, which currently stands at 0.7 percent of GDP (Shah & Bukhari, 2019). The government's efforts to meet its goals for human growth and poverty reduction are not surprising given these circumstances. The fiscal budget for this year set by the Pakistan Tehrik-e-Insaf (PTI) government was Rs 7.02 trillion, with a target revenue collection of Rs 5.5 trillion, a 25%

increase from the previous year. However, the increase in taxes, particularly the 17% tax on sugar, will primarily burden consumers. Consequently, citizens will face high inflation while their income levels remain relatively stable, leading to a decrease in Pakistan's economic development and a decline in the standard of living for its citizens (Ashfaq & Bashir, 2020). Tax revenues are further reduced by exemptions and preferential treatment granted to executives, which are not disclosed to the public. These exemptions disproportionately affect the cattle, industrial, and utility industries, with producers paying less than 1% of total taxes despite contributing 21% to GDP. In contrast, the development sector, accounting for 13% of GDP, bears 52% of all taxes, while the service sector, representing 58% of GDP, contributes only 37% of tax receipts (Seelkopf & Lierse, 2020). Efforts to improve spending control have resulted in a decrease in the fiscal deficit from 6.6% to 4.6% of GDP in FY 2016. The country is currently undergoing a rebuilding effort, indicating positive signs of development. Policymakers may consider aiming for a significant budget deficit to stimulate the economy while maintaining economic stability, as lower corporate deficits are associated with better economic growth (Shah et al., 2021).

### **Research methodology**

The research strategy chosen for this subjective study is an observational research design that specifically focuses on uncovering the gaps in the Pakistani tax system and ensuring improvements. The study aims to combine applied research, which is widely known to the general public, with practical applications already in place in society to generate original ideas and innovations in the development process. To gain a deeper understanding of the issue, this exploratory research utilizes a qualitative method and interpretative data. The research includes an analysis of recent reports and literature on taxation in Pakistan, such as financial reports from

the State Bank of Pakistan, IMF Reports on Taxation Measures in Developing Countries, World Bank reports, and resources from the Federal Board of Revenue (FBR). The study also examines biannual reviews spanning the last ten years of the PPP and PMLN governments, as well as the years of the PTI government. Tabulation and graphical tools are employed in the research to support assertions and clarify ideas. The main objective of this research on tax policy is to understand the legal framework in which policy decisions are made, as well as the motivations behind them in order to achieve specific goals or understand why they may have failed. The development, application, and interpretation of tax laws are of particular interest in the field of legal studies. By considering recent tax adjustments, this study's methodology aims to identify the most effective solutions to the problems within the taxation system.

### **Result and discussions about Economic factors**

#### **Agriculture sector**

The agriculture industry holds a paramount position in the lives of the majority of individuals, as it serves as a vital source of livelihood for many, both directly and indirectly. Among the various crops cultivated, namely wheat, sugarcane, cotton, and rice, the latter four contribute significantly, accounting for more than 75% of the overall value of agricultural output (Sajid & Rahman, 2021). Pakistan boasts one of the largest irrigation systems globally, enabling the cultivation of approximately one-fourth of its total geographical area. The performance of the agriculture industry in the fiscal year 2020–21 has been generally favorable, with a growth rate of 2.77 percent, slightly below the desired target of 2.8 percent. Notably, both rice and sugarcane production surpassed previous records, with yields of 83.3 and 7.5 million tons, respectively. The Pakistan Bureau of Statistics estimates the value of this sector to be around Rs. 11,542,998 million for the year 2021 (Yaqoob et al., 2021).



### **Industrial sector**

The industrial sector in Pakistan plays a crucial role in the country's economy, accounting for a substantial 19.12% of the GDP. Recognizing the importance of this sector, the government has embarked on a path of privatization, aiming to transfer ownership of large-scale industrial facilities to the private sector. This strategic move is driven by the government's desire to support export-oriented sectors and foster diversification within the nation's industrial base, as highlighted by a few researchers in their research findings (Tanveer et al., 2021). Moreover, it is worth noting that small and medium enterprises (SMEs) in Pakistan also make a significant contribution to the overall GDP, with a remarkable 40% yearly share, as reported by researchers in their study, which draws on data from SMEDA (Small and Medium Enterprises Development Authority) and the Economic Survey. This underscores the vital role that SMEs play in bolstering the economic landscape of the country (Abbasi et al., 2021).

### **Service sector**

Pakistan's service sector plays a crucial role in the country's economy, accounting for approximately 61.7% of its GDP. Within this sector, a significant portion, about 24%, is attributed to transportation, storage, communications, finance, and insurance, highlighting their importance in facilitating economic activities. Additionally, wholesale and retail commerce make up around 30% of the service sector, further emphasizing the significance of trade and distribution networks in Pakistan's economic landscape. Recognizing the potential for growth in the information sector and other contemporary service businesses, Pakistan has implemented various incentives, such as long-term tax breaks, to stimulate their development and contribute to overall economic expansion. By fostering an environment conducive to the growth of these

sectors, Pakistan aims to enhance its competitiveness in the global market and promote sustainable economic development (Azam et al., 2021).

### **The PTI Government's economic efforts**

During the tenure of the PTI-led administration, the performance in terms of Gross National Product (GNP) has been commendable, as it successfully transformed the current account deficit (CAD) into a surplus and attracted a higher influx of remittances from abroad (Nawaz et al., 2021). However, the outbreak of the COVID-19 pandemic had a significant impact on the GDP, causing it to decline from its peak of \$313 billion in 2017-18 to \$263 billion in 2019-20 under the PTI administration. Nevertheless, there was a notable rebound in GDP growth during the third year of the PTI government, with the GDP reaching \$296 billion in 2020-21 (Lakhan et al., 2021). Notably, the domestic tax collection witnessed a remarkable increase compared to the import tax, with sales tax registering a growth of 8.1%, while import FED, WHT, and customs duty experienced negative growth rates (Shafiq et al., 2021). Furthermore, in December 2020, Pakistan's primary export markets, particularly China, witnessed an upswing in their cyclical role, albeit to a lesser extent in other market regions (Munir et al., 2021).

### **Analysis of the PTI government's performance in comparison of PMLN and PPP**

Table 4.1 Comparative analysis

<b>no</b>	<b>Sr.</b>	<b>PTI (2018-continue)</b>	<b>PML-N (2013-2018)</b>	<b>PPP (2008-2013)</b>
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1.	The agriculture sector increased by 3.81 percent in the year 2020 under the PTI government (Yilmaz & Shakil, 2021).	A 3.5 percent increase in the agriculture sector in the previous year increased by 2.07 percent in 2017 (Waseem, 2020).	Agriculture increased at a 3.3 percent annual rate and decreased at the rate of 3.5 percent the previous year 2012 (Burki, 2019).
2.	PTI government has also reduced the interest rates from 12 percent to 7 percent in two years, however, the pressure is mounting to raise them once again to return to the positive real interest rate (B Sarwar et al., 2020)	PMLN government also did a good job of lowering the interest rate, which was reduced to 6 percent from 9.5 percent in their five years of government (Shah et al., 2021).	The PPP had the worst performance in their era; the government had reduced the interest rate from 15 percent to 10 percent in five years of their government (Mehar, 2020).
3.	According to the Economic Survey 2020-21, the PTI-led government had a per capita income is 1,775 dollars at the end of the fiscal year (Shaikh & Chen, 2021).	In the fiscal year 2017-18, when PMLN was in power, per capita income was \$1651.9 in dollar terms. Per capita, income grew to \$1651.9, up from \$1629 in the previous fiscal year (Farrukh& Masroor, 2021).	In 2012-13, the PPP government's per capita income increased by just 4.3 percent. The value of the economy has dropped by Rs600 billion, bringing it to \$1,380 (Nasir, 2020).
4.	The COVID-19 pandemic, which began in early 2020, has had a significant economic impact on the world. In 2020, the global growth was 3.3 percent (Shafiq et al., 2021).	The global production has increased by 3.8 percent in 2017-18, according to the International Monetary Fund's April 2018 World Economic Outlook report (Sadiq et al., 2021).	According to the International Monetary Fund's prediction, global economic growth was only 3.3 percent in 2013 and 4.0 percent in the year of 2014 under the PMLN-led government (Shah & Bukhari, 2019).
6.	By the end of 2019-20, the country's GDP per	By the end of 2017-18, the country's GDP per	By the end of 2012-13, the country's GDP per capita

	capita was \$1,194 and the annual growth rate decreased by 7.08 percent (Corsi, 2020).	capita was \$1,482 and the annual growth rate increased by 1.18 percent (Mughal & Schneider, 2018).	was \$1,209 and the annual growth rate increased by 0.90 percent (Bashir & Amir, 2019).
7.	By the fiscal year 2020, Pakistan's GDP had grown at the rate of 3.94 percent (Khan & Ahmed, 2020).	The real GDP of Pakistan stood at 5.53 percent in the year of 2018 under the PMLN government (Abbasi et al., 2021).	In the fiscal year of 2013, the real GDP was 4.99 percent (Abbasi et al., 2021).
8.	In FY 2021, the Industrial sector grew by 3.6 percent (Younis et al., 2021).	The average industrial sector growth was 5.13 percent in the five years of the PMLN government (Noman et al., 2021).	During the tenure of the PPP government, the annual industrial sector growth was 1.2 percent (Shair et al., 2021).
9.	The Services sector grew by 4.4 percent in FY2021 (Asma et al., 2021).	The average rate of growth in the service sector grew by 5.9 percent during the PML-N-led government (Sadiq et al., 2021).	The average rate of growth in the service sector grew by 3.6 percent under the PPP (Ullah et al., 2021).
10.	The budget deficit was reduced to 3.5 percent of the GDP in FY2021, compared to 4.1 percent the previous year (Cheema & Baloch, 2021).	The fiscal sector performed well in the first half of the current fiscal year, with robust income growth relative to the expenditures helping to keep the fiscal deficit to 2.3 percent of GDP, down from 2.5 percent at the same time last year 2017 (Rais et al., 2021).	The fiscal deficit in the first nine months of 2012-13 was 4.6 percent of the GDP, compared to 6.4 percent of the GDP (Munir & Perveen, 2021).

## Discussion

Table No. 3 shows that the Pakistan People's Party's (PPP) performance was below average. However, the claim that the situation was so dire that drastic measures were necessary is based on exaggerated and biased data. Some people believe that the PPP hurt Pakistan's economy (Burki, 2019).

As the Pakistan Muslim League-Nawaz (PML-N) government's term comes to an end, its overall record paints a somewhat negative picture despite high hopes for an economic turnaround in Pakistan (Shah et al., 2021).

The Pakistan Tehreek-e-Insaf (PTI) government's three-year term has also come to a close. Discussions on the country's economic success are heavily influenced by politics and the selective use of evidence. If you ask about inflation, most people will say that it has been on the rise. However, if you're curious about the government's management of the current account, the answer is that it has been quite successful (Khan & Ahmed, 2020).

## Finding

According to research, indirect charges make up a significant portion of government and civil tax policies, making it difficult to eliminate them, particularly when the government is grappling with a serious debt and balance of payments problem. To improve economic efficiency in the long run, it is important to continuously reduce the proportion of indirect charges as the tax base is expanded. The tax system inherited by the current government was complicated by administrative issues and loopholes. As part of its campaign strategy, the administration appropriately introduced and implemented tax reforms. From July to March of FY2020, the administration successfully reduced the budget deficit from 5.1 percent of GDP the previous year

to 4.0 percent of GDP. The primary balance also showed a surplus of Rs 194 billion between July and March of FY2020, as opposed to a deficit of Rs 463 billion. However, the COVID-19 outbreak has changed the near-term situation. The government is now considering several new measures to lessen the financial impact of COVID-19, in addition to increasing public health spending and improving social safety net programs. Consequently, the budget will deviate from its primary objective in the short term. It will be difficult to meet revenue estimates in both the tax and non-tax sectors due to the disruption in economic activity. Thus, it is expected that the budget deficit will exceed the target for FY2020.

### **Conclusion**

The study's findings demonstrate that taxes have a less-than-optimal distributional effect since there is more regressive taxation than is ideal in our current circumstances. The primary goal of the PTI administration should be to rebalance the present tax structure in a way that minimizes the financial burden on the average man while also boosting the social welfare component. As a result, contrary to popular belief, the findings are consistent with the idea that higher tax rates reduce revenue collection. The results show that Pakistan's tax system is intrinsically unbalanced because of its complex levies, making optimal collection impossible. These changes compelled the judicial system to work harder and more effectively to collect taxes. Compared to previous administrations led by the Pakistan Peoples' Party (PPP) and the Pakistan Muslim League-Nawaz (PML-N), the Pakistan Tehreek-e-Insaf (PTI) administration has done significantly better. The country's economy has improved and been reinforced as a result of the present administration's sensible economic measures. The economic numbers indicated that although the coronavirus pandemic had a substantial impact on the country's economy, things were now improving. The PTI administration has actively worked to help

farmers by bolstering the agriculture industry, especially by providing fertilizer and seed subsidies.

### **Recommendation**

For the government, things were challenging because of a worsening trade imbalance, diminishing foreign reserves, and rising unemployment. Short-term and long-term economic measures are necessary to strengthen the business climate. To achieve this, national vocational and technical training facilities should be established to improve worker skill levels. Additionally, the economy should pursue foreign direct investments that are motivated by efficiency to advance the industrialization process.

According to the research, tax changes are worth 42.5 percent less than PTI commitments. How well the PTI administration can increase its income base will be key. They have set high standards for themselves and have enlisted the help of a private sector tax specialist to help them achieve them. The only way to increase income in the short term is to reduce the size of the present tax base. The Federal Board of Revenue Chairman Shabbar Zaidi's tax revisions will determine the government's medium-term economic prospects.

Before the publication of the next budget, we should prepare for an economic slowdown that will result in greater inflation and a tighter job market. Reduced income taxes would be able to stem part of this inflation, but Pakistan needs to increase tax collections as quickly as possible, so that is not the case. Meeting the high-income predictions may be difficult with less than 1% of the 208 million individuals filling out applications.

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**Power Grab:****Why States Cede Sovereignty to International Law**

Reggie Reyes

**Abstract**

Sovereignty and the rule of law are the cornerstones of modern-day statehood. Yet, in the aftermath of armed conflict since the end of the Second World War, various states have set up courts in order to prosecute war crimes, crimes against humanity, genocide, and aggression, prompting these states to surrender sovereignty in their legal processes. These states have experienced armed conflict and subsequently utilized various mechanisms of international criminal law to provide redress for heinous violations of human rights committed within their territories. This article explores why some states voluntarily cede sovereignty to international law in the pursuit of prosecuting these crimes within their own borders and why they do so to varying degrees.

**Key Words:** Crimes against humanity, genocide, internationalized criminal courts, international relations theory, sociological legitimacy

## **Main Argument**

Why do states voluntarily cede sovereignty to international law – and why do they do so to varying degrees? This can be explained by political actors seeking to exercise power by attempting to show the public that the state is unbiased and accountable. Doing this garners them broad public support, which legitimizes the judicial system and other state governing institutions. These political leaders are thus acting in their own interest to sustain their own power. Establishing broad public support for state institutions– in a process known as sociological legitimacy – aids states in transitioning from *de facto*<sup>i</sup> sovereignty to *de jure*<sup>ii</sup> sovereignty, domestically and within the international community. In essence, states and their leaders cede sovereignty (in the short term) to gain sovereignty (in the long term).

## **Policy Implications**

- There is an ongoing debate about the efficacy of international criminal law, specifically in the realms of *Lex Lata* (law as it is) and *Lex Ferenda* (law as it ought to be). In a globalizing world, international criminal law is constantly changing. Over the last 25 years, the international community has intervened in states where ethnic conflict or civil war has caused serious violations of human rights. Even heads of state are now culpable of being prosecuted for these crimes and no longer receive the protection of sovereign immunity. Knowing why states voluntarily cede sovereignty in their legal processes to prosecute war crimes and crimes against humanity can aid international adjudicators in delivering effective methods of redress and relief to victims who have suffered injustice.



- Understanding state behavior in the aftermath of conflict can aid the international community in developing solid foundations, methods, and procedures for reconciliation in post-conflict states. Due to globalization, sovereign states collectively make and enforce laws that are binding within the international system. This affects the relationships states have between themselves. Post-conflict reconciliation can be complicated, and understanding the behavior of states in this period can be used to predict which specific aspects of international criminal law will contribute or fail in the procedures of a tribunal or hybrid court. Solving this puzzle can aid international adjudicators in understanding the nuances involved in prosecuting war crimes, crimes against humanity, and genocide.
- Both international relations and international law are intertwined. Utilizing international relations theory within the context of internationalized criminal courts to predict state behavior can generate solutions for inclusive and unbiased procedural, substantive and judicial protocols that can aid in the reconciliation process of states emerging out of conflict.

### **Introduction**

As a young United States Marine in the late 1990s, a NATO peacekeeper in Bosnia and Herzegovina, a combatant during the Kosovo War and the U.S. invasion of Iraq in 2003, I was afforded the unique firsthand experience of witnessing the atrocities of the ethnic cleansing and the resulting international intervention that followed. Seeing events unfolding in real time gave me a distinct perspective of war. It was no longer safely through the television screen, nor could the words in a newspaper fully encompass the actual situation. Instead, it was real and became personal. While patrolling the streets amidst the rubble of a ravaged Sarajevo, I interacted with

multiple survivors of the conflict, saw, and felt the anguish of those who lost loved ones, and listened to accounts from women who had been brutalized, raped, and tortured. These same accounts became more amplified in Kosovo combined with my first combat experiences.

One instance during this time that has been ingrained and scarred into memory: I will never forget the sorrow of a surviving mother present at the mass grave site, who wept with such grief after the bodies of her family were carried away to be properly buried. I felt her pain was representative of all those who have suffered in this decade-long ethnic conflict, which not only yielded an estimated 140,000 deaths but extracted the highest toll of mental and emotional damage on its victims, which will last a lifetime. While both on the ground and for years removed from the war, I've often reflected on these experiences, prompting me to research the various methods that international adjudicators utilize to prosecute war crimes, genocide, and crimes against humanity.

The article will first provide a background on the mechanisms of international law, explaining the nuances of international criminal law within the context of international criminal tribunals and hybrid courts. This will include a basic understanding of how various international criminal tribunals and hybrid tribunals are established, their legality, and how they function. I will be utilizing primary source documents such as statutes of multiple tribunals and courts, United Nations documents, and literature which contains customary international, procedural and substantive law.

Next, the article operationalizes key variables and terms, including “ceding sovereignty.” While there is an ongoing debate on the modern-day conception of sovereignty, I highlight a specific definition that will be utilized in my research. I am using a combination of academic

journals, published books, law reviews, and articles on sovereignty, from the works of international law and international relations scholars.

The article will then identify and explain some common misconceptions about why states cede sovereignty in their legal processes to prosecute war crimes, crimes against humanity, genocide, and aggression.

An investigation of sociological legitimacy is conducted by utilizing various scholarly articles and books combined with the international relations theories of realism and liberalism to explain the criteria of sociological legitimacy and why these are the factors that lead states to cede sovereignty within their legal processes to prosecute war crimes, crimes against humanity, genocide, and aggression. This will also answer the subsidiary question of why states do this in varying degrees.

The article will highlight the impact of international tribunals or hybrid courts in terms of the legal system and governance in Sierra Leone, Cambodia, Kosovo, and Bosnia and Herzegovina. This context consists of research into the nature of conflict in the afflicted state, the type of government the state had before and after the conflict, judicial systems, the style of government, political stability post-conflict, election transparency, other human rights abuses, and civic engagement. Evidence drawn from these sources will provide data on public acceptance of the tribunal or court and other state governing institutions. This empirical evidence will indicate that the necessary elements meet the criteria of sociological legitimacy in each case country, The final case study of Bosnia and Herzegovina will be conducted in a semi-IRAC (Issue, Rule, Analysis, Conclusion) format to show how a particular case, *Mrs. A v. Bosnia and Herzegovina*, displays indicators of sociological legitimacy and state motivations for ceding sovereignty to international law.

This method employs data in the form of empirical evidence and applies it to the theory of why states cede sovereignty. Data and evidence were collected and analyzed from various primary sources such as Freedom House, Human Rights Watch, Amnesty International, Fragile State Index, BTI Transformation Index, and U.S. State Department reports, as well as tribunal and court websites.

The article will conclude by summarizing the main argument, state this study's limitations, and discuss the successes and criticisms of both international criminal tribunals and hybrid courts. It will also discuss the contributions of such bodies of law.

**Background & Context: The Mechanisms of International Criminal Law, Internationalized Criminal Courts, and the Legality of International Intervention.**

*This section will provide a background on the mechanisms of international law, explaining the nuances of international criminal law within the context of international criminal tribunals and hybrid courts. It introduces the primary sources of international criminal law, explains the differences between international criminal tribunals and hybrid or special courts, then explains the legal principles in which both are established in post-conflict states.*

**International Criminal Law**

In 52 BC, Marcus Tullius Cicero penned the Latin maxim *Pro Milone*. This speech contained the phrase, “*Silent enim lēgēs inter arma,*” which translates to “For, among arms, the laws are silent” or, more recently and widely interpreted as “In times of war, law falls silent.” Cicero used this phrase at a time when politically motivated mob violence was a daily occurrence on the streets of Rome. Armed gangs led by partisan leaders ruled and were elected to high offices. Both interpretations of this phrase can describe modern-day ethnic wars, civil

wars, and wars of independence. With *jus in bello*<sup>iii</sup> abrogated, serious violations of human rights, commonly known as crimes against humanity, war crimes, genocide, and aggression often compose the *actus reus*<sup>iv</sup> of the belligerents, which falls within the purview of international criminal law.

International criminal law is a subset of international law that emerged after the Second World War following the Nuremberg and Tokyo Military Tribunals. Modern-day international law typically concerns inter-state relations, and international criminal law concerns individuals. In particular, international criminal law places responsibility on individual persons, not states or organizations. It proscribes and punishes acts that are defined as crimes by international law.<sup>v</sup> International criminal law is neither universal nor uniform. Although each tribunal and hybrid court have the same mandate of adjudicating war crimes, crimes against humanity, genocide, and aggression through prosecuting those most responsible, they have different mechanisms of procedural law. Its jurisprudence systematically analyzes the crimes, individual criminal responsibility<sup>vi</sup>, and defenses for the most heinous violations of international law. Considered “crimes that shock the conscience of humanity,” the modern-day global community of states is bound to act under the principles of *opinio juris* or customary international law such as the Geneva Conventions, Genocide Convention, and the Universal Declaration of Human Rights. International criminal law draws from 5 distinct sources<sup>vii</sup>

1. Treaty law (Genocide convention / Rome statute of the International Criminal Court)
2. Customary international law (custom and customary law) Geneva Convention and Genocide Convention are both treaty law but have entered the realm of customary international law
3. General principles of law (legal norms existing among the majority of nations).

4. Judicial decisions (subsidiary) in various cases from Nuremberg, Tokyo, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda to develop principles and jurisprudential interpretations of other sources of international law - for example, the Genocide Convention specifically is interpreted with international criminal tribunals. Jurisprudence may not be internationally binding but point to precedence that is set and principles that are established.
5. Writings of scholars (subsidiary)

These sources of law are an intricate part of establishing internationalized criminal courts and their various apparatuses.

### **Internationalized Criminal Courts**

In the aftermath of armed conflict involving war crimes, crimes against humanity, genocide, and aggression, international intervention takes form via agreements between the state and international institutions such as the United Nations or regional organizations, sanctions to compel, or even military intervention. International criminal tribunals or hybrid criminal courts are then established with the consent of the belligerents who initially possess *de facto*<sup>viii</sup> control over the territory post-conflict. Historically, an international criminal tribunal or a hybrid court was established to adjudicate these crimes.

An international criminal tribunal or *Ad Hoc*<sup>ix</sup> such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) was established in response to severe offenses such as ethnic cleansing, sexual crimes, and genocide and reaffirmed that all parties in conflict comply with international humanitarian law. The tribunals focused on individuals who bore the most responsibility for the crimes committed during the conflict. These international criminal tribunals followed the principle of

judicial primacy, meaning that international law prevailed over national courts, and states were obliged to bring crimes, witnesses, suspects, and evidence before the tribunals and not to try and prosecute cases themselves.<sup>x</sup> The chambers and the apparatuses of both the ICTY and ICTR consisted of judges and staff of an international nature; not one justice was from any Republic of the former Yugoslavia or Rwanda. Additionally, proceedings were held away from the conflict nations or in the Hague, Netherlands. Both the ICTY and ICTR, with their respective cases, developments in substantive and procedural law were influential in laying the bedrock for the International Criminal Court (ICC).<sup>xi</sup>

A hybrid or special court differs from an international criminal tribunal in that it amalgamates domestic actors and norms while providing deference to international *jus cogens*<sup>xii</sup>. The harmonization of international law and domestic jurisprudence is conducted at varying levels. Hybrid courts sometimes follow the principle of complementarity in which states have the primary competence and authority to investigate and prosecute international crimes, and the ICC has secondary jurisdiction. Given that complementarity is assessed on a case-by-case basis, the ICC and states must together ensure that all atrocities in each situation are addressed.<sup>xiii</sup> If a state is not a party to the Rome Statute of the ICC, it harmonizes international law within its domestic constitution utilizing both to adjudicate cases brought before the court. The judges and staff are a mix of international and local personnel, with judicial authority shared between international and domestic judges. This also varies in each hybrid criminal court as some had international judges holding full judicial authority, interpreting international law and domestic jurisprudence. In contrast, other hybrids had domestic judges exercise judicial authority with international judges present to act in an advisory capacity.

## The Legality of International Intervention

The legality of international intervention by the global community of states presented with cases of war crimes, crimes against humanity, genocide, and aggression can be drawn from several sources. The first is the principle of universal jurisdiction or universality. This principle holds that the domestic judicial systems of a state can investigate and prosecute certain crimes, even if they were not committed on its territory, by one of its nationals, or against one of its nationals. Because of the heinous nature of these crimes, states are obligated to intervene and restore peace and stability to the global world order.<sup>xiv</sup> Legality of international intervention also rests within the United Nations Security Council and its Chapter VII powers. Article 39 stipulates that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security. Article 41 holds that the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.<sup>xv</sup> These provisions are valid with states that are members and recognized by the United Nations and states that are not. International intervention also derives its legality through customary international law, binding to all states regardless of status. Many of the provisions contained within the Geneva Conventions and their protocols are considered part of customary international law and applicable in armed conflict.<sup>xvi</sup>



## **Operationalizing and Measuring Key Terms**

*This section will operationalize “ceding sovereignty.” It first describes the ongoing debate within international relations and legal scholarship on what sovereignty encompasses in the modern globalized community of states. It then moves to select an accepted definition of sovereignty and explains the levels of how sovereignty is ceded within a state's legal process.*

### **Sovereignty defined**

Sovereignty is defined as the right to exercise supreme and exclusive authority within a state’s territory.<sup>xvii</sup> Throughout legal and international relations scholarship, there has been an ongoing debate encompassing the understanding of sovereignty and how it has evolved in the modern-day international law system. This tension originates in the acknowledgment of a globalized community of states.

Some hold that because of globalization, sovereignty is no longer necessary or as defined as it used to be. Such a sacrosanct conception of sovereign authority has come into serious question, buffeted by the frequent and insistent effects of globalization, the world market, cyberspace, and the human rights movement.<sup>xviii</sup> Modern-day states within the international system compromise their sovereignty when they become a party to various conventions, agreements, and treaties ranging from human rights to trade. Because of the impact of these various international conventions and treaties, state behavior is thus transformed as they act interdependently within the international system of states.

The argument on the reverse side of this coin is that sovereignty has had more meaning and influence since the end of the Second World War. International relations and legal scholars that support this argument posit that sovereignty is the state's ultimate authority, giving it control

over all persons and acts that transpire within its territory. With that comes the ability to interact with other states in the international system. States continue to be the creators and enforcers of international law, and it is clear that in recent decades, international law has grown enormously in volume, content, and importance.<sup>xix</sup> This holds true with the proliferation of various treaties and conventions within modern-day international law. Sovereignty is critical as each state has equal responsibilities and duties within the international system.

For the purposes of my research in this article, I am utilizing the latter definition of sovereignty. This definition suggests that the state is not subject to any external influence or authority without its explicit voluntary consent. The state has moral authority, the power to consent, to enter into relations, to conclude agreements, and to form associations.<sup>xx</sup> With the ability to consent to external authority or influence, states become the creators and enforcers of international criminal law and thus create norms and institutions to govern international relations. Thus, for the purpose of this article, ceding sovereignty is defined as a state voluntarily authorizing any encroachment of international law on its domestic jurisprudence, legal process, constitutions, or courts.

Encroachment of international law into a state's domestic jurisprudence, legal process, constitutions, or courts occurs at differing levels of procedural law, the selection of judges and court personnel, and the amount of domestic state involvement in the investigation of witnesses and gathering of evidence. Within the Military Tribunals at Nuremberg and Tokyo and the International Criminal Tribunal of the Former Yugoslavia, and the International Criminal Tribunal for Rwanda, or *Ad Hoc* tribunals, full legal sovereignty was ceded to international law. International criminal law was utilized as the primary legal authority in which cases within these tribunals were adjudicated, prosecuted, and decided. Judicial authority was given to judges who

were familiar with local customs and laws but were international and not from the state in which the conflict took place. These judges applied strict scrutiny tests with deference to international law when making procedural, substantive, or judicial assessments and decisions.

Encroachment of international law into a state's domestic jurisprudence in a hybrid or special court differs from that of an *Ad Hoc* tribunal. Only partial legal sovereignty is ceded by the state. National law and international law are harmonized within domestic constitutions and courts, with interpretations of procedural law and substantive law drawing inferences from each. Deference leans towards domestic jurisprudence, and international law is applied where domestic law does not provide mechanism. Additionally, the selection of staff and judges are mixed between international and domestic personnel. Judicial authority tended to be given to domestic judges as international judges augmented the chambers in an advisory role. Because international law is not uniform or universal, judicial authority in some hybrid or special courts can also be given to an international judge, with domestic judges acting in an advisory capacity.

**Literature Review: Common Misconceptions of Why States Cede Sovereignty to International Law in the Pursuit of Prosecuting War Crimes, Crimes, Against Humanity, Genocide, and Aggression.**

*This section identifies and explains some common misconceptions about why states cede sovereignty in their legal processes to prosecute war crimes, crimes against humanity, genocide, and aggression. It also provides justifications for why these common explanations are insufficient or do not support why states cede legal sovereignty.*

### **Ceding Sovereignty because of Ineffective or Nonexistent Legal Systems**

A common misconception of why states cede sovereignty within their legal processes in pursuit of prosecuting serious violations of human rights laws is because the state has an ineffective or nonexistent legal system. In 1994, United Nations Security Council Resolution 955 established an international tribunal to prosecute persons responsible for genocide and other serious violations of international law committed in the territory of Rwanda and Rwandese citizens responsible for genocide and other such violations committed in neighboring States.<sup>xxi</sup> In the aftermath of armed conflict, legal systems in afflicted countries are often ineffective or nonexistent. The sheer scope and scale of the Rwandan genocide could have easily enveloped and overwhelmed any stable justice system. In Rwanda, effective jurisprudence was even harder to attain since many judges, lawyers, and judicial staff were killed during the genocide, and much of the country's infrastructure was destroyed. Additionally, in many other countries and conflicts in which either hybrid courts or international criminal tribunals were established, the legal systems were insufficient to adjudicate violations of international humanitarian and human rights law. This holds with the declaration of independence of the six former republics of what was known as Yugoslavia, subsequent wars of independence, and the establishment of the International Criminal Tribunal for the Former Yugoslavia. When the first judges arrived at the Tribunal in November 1993, there were no rules of procedure, no cases, and no prosecutor. Professional and qualified staff had to be recruited quickly, and their often quite different experiences and methods of work from national systems needed to be merged into a functioning international criminal prosecution system. Both the Tribunal's opponents and its well-wishers were uncertain of its success.<sup>xxii</sup> With no domestic judiciary in place, the establishment of the tribunal was necessary to pursue the prosecution of these crimes. The establishment of hybrid or

special courts and chambers in lieu of domestic courts is similar with respect to that of international criminal tribunals set up because of ineffective and non-existent legal systems. The question remains whether states such as Sierra Leone, which has just recently emerged out of a decade-long conflict, or states such as Cambodia, which is a divided society, can provide the necessary rule of law. In both countries, legal institutions were under institutionalized before the outbreak of conflict. Especially in the case of Cambodia, the legal system itself came under attack and was virtually destroyed.<sup>xxiii</sup> While it is preferable to adjudicate these crimes in domestic courts because of deference to the sovereignty of the state, these courts are necessary to facilitate adjudication. Ineffectiveness or nonexistent legal systems may answer why international or hybrid tribunals are established in lieu of national criminal courts. However, more is needed to answer why states voluntarily cede sovereignty in their legal processes or what states gain in allowing this encroachment. What is missing from this explanation are the motivations and goals of the state in enabling a full or partial encroachment of international law in domestic jurisprudence and why, if a state has the ultimate jurisdiction over its inhabitants, it will let an international entity prosecute individuals under that jurisdiction. Common knowledge suggests this is contrary to the principle of territorial jurisdiction. The motivations and goals of states are indicators of state behavior. Simply conceding that states cede legal sovereignty because of ineffective or non-existent legal systems is lacking and does not explain such behavior.

### **Ceding Sovereignty because of the Legality of Tribunal or Court.**

The next misconception about why states cede sovereignty to prosecute war crimes, crimes against humanity, genocide, and aggression is because an international criminal tribunal or hybrid court is legal in fact. As a relatively new and emerging form of international

jurisprudence, international criminal law draws from 5 sources: treaty law, customary international law, general principles of law, judicial decisions, and the writings of scholars. Questions on the binding and legal nature of international criminal law are often referred back to these sources. Because of the nature of crimes against humanity, war crimes, genocide, and aggression, as crimes that shock the conscience of humanity, the international community is bound to respond in accordance with both customary international law and the principle of universal jurisdiction. Articles 39 and 41 of the United Nations Security Council's Chapter VII powers confirm the legality of international tribunals or hybrid courts.<sup>xxiv</sup> The legal existence of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, as well as the International Criminal Court, are predicated upon these sources of law.

Moving forward, the establishment of the International Criminal Court drew from these sources to establish legality. Once a state becomes a party to the Rome Statute, its obligations to cede sovereignty within its legal processes become binding. However, in 2013 the Kenyan Parliament passed a motion to withdraw Kenya from the International Criminal Court. The decision came about days before Vice President Samoei Ruto faced trial at The Hague following his indictment for committing crimes against humanity in the bloody 2007 election violence.<sup>xxv</sup> Prior to its withdrawal from the International Criminal Court, the state refused to comply with the requirements and responsibilities of being a party to the Rome Statute. Under international law, states have a responsibility to investigate and appropriately prosecute (or extradite for prosecution) suspected perpetrators of genocide, war crimes, crimes against humanity, and other international crimes. The ICC does not shift this responsibility. It is a court of last resort. Under what is known as the "principle of complementarity," the ICC may only exercise its jurisdiction

when a country is either unwilling or genuinely unable to investigate and prosecute these grave crimes.<sup>xxvi</sup> Kenya ratified the Rome Statute on 15 March 2005. The ICC, therefore, may exercise its jurisdiction over crimes listed in the Rome Statute committed on the territory of Kenya or by its nationals from 1 June 2005 onwards.<sup>xxvii</sup> Although states are legally bound to comply, and legality is essential in administering a tribunal or court, states such as Kenya have simply withdrawn from the proceedings and refused to cede sovereignty in their legal processes. Legality, by itself, is not a sufficient condition for why states cede sovereignty in their legal processes.

### **Suspension of Sovereignty**

An additional misconception of why states cede sovereignty in their legal processes in the pursuit of prosecuting war crimes, crimes against humanity, genocide, and aggression is that the sovereignty of the state emerging from conflict is suspended. Over the last 25 years, international humanitarian law and international human rights law has grown in procedure and substance. This is evident with the proliferation of numerous international conventions and treaties within the international community. An emphasis on human rights was the paramount concern prompting the emergence of modern international criminal law and placing the protection of human rights as *erga omnes*.<sup>xxviii</sup> Human rights violations are no longer merely a moral matter but also reflect a legal breach. The two converge, thus allowing for the suspension of certain parameters of sovereignty that were previously monopolized by the nation-state. The inauguration of the International Criminal Court in 2003 is but one example of this trend.<sup>xxix</sup> A contentious debate now exists about the functions of sovereignty within a globalized international system.

On one side of this argument rests the premise that adherence to globalization and the liberal democratic institutions of the post-Second World War modifies sovereignty because

human rights place checks on what sovereign states can and can not do. Thus, any violation of human rights suspends sovereignty as the international community is bound to act in response. Accepting this position as valid repudiates the need for states to cede sovereignty in their legal processes because of the modifications on sovereignty that human rights bring to bear. This is problematic for two reasons: the first is consent, and the second is the concept of *de facto*<sup>xxx</sup> possession. State consent implies a notion of sovereignty and not that sovereignty is suspended. If sovereignty were suspended, the need for the state to consent to have international criminal law supersede or complement a state's legal processes would not be required. State consent can also be linked to *de facto* possession or control. At the cessation of hostilities, a belligerent party, in fact, possesses control of a territory by right or not, and these parties render consent to international institutions for establishing tribunals or special courts. Therefore, the suspension of sovereignty is insufficient to answer why states cede sovereignty in their legal processes to prosecute war crimes, crimes against humanity, and genocide.

### **Ceding Sovereignty because of the Principle of Universal Jurisdiction (UN-based).**

Universal jurisdiction is the ability of the domestic judicial systems of a state to investigate and prosecute certain crimes, even if they were not committed on its territory, by one of its nationals, or against one of its nationals.<sup>xxxi</sup> Universal jurisdiction has recently become a more popular and accepted mechanism aiding with the legality in seeking adjudication of war crimes, crimes against humanity, genocide, and aggression. Many states, particularly in Africa, claim that the universality principle is being used by Western countries and, in particular, by some European countries, as a subtle and pernicious way of interfering in the sovereignty of those African countries in which the defendants live. African countries also insist on the emergence of a double standard in international criminal justice: in their view, Western countries



or other great powers whose state officials engage in war crimes or crimes against humanity, in fact, eschew any effective prosecution because those countries have remained outside the ICC and, in addition, fail to prosecute their own nationals.<sup>xxxii</sup> In the hybrid tribunal of the Extraordinary African Chambers, the government of Senegal opted to enter into an agreement with the African Union rather than the United Nations because of conceptions surrounding western bias toward African defendants. While universal jurisdiction may also be used to answer why international tribunals and courts are established, they do not answer why states voluntarily cede sovereignty in their legal processes. What is missing here is also the factors, reasons, and motivations behind why states allow international criminal law to infringe on domestic legal systems.

### **Argument & Discussion: Why States Cede Sovereignty to International Law**

*This section presents the main argument of the article. It identifies the juncture of when sovereignty is ceded to international law, investigates the concept of sociological legitimacy, changing public perceptions on what factors affect sociological legitimacy, its impact on the courts, and its implications on the main argument. It then utilizes the international relations theories of realism and liberalism to analyze state behavior in post-conflict states.*

### **Main Argument**

Why do states voluntarily cede sovereignty to international law – and why do they do so to varying degrees? This can be explained by political actors seeking to exercise power by attempting to show the public that the state is unbiased and accountable. Doing this garners them broad public support, which legitimizes the judicial system and other state governing institutions. These political leaders are thus acting in their own interest to sustain their own power.

Establishing broad public support for state institutions– in a process known as sociological legitimacy – aids states in transitioning from *de facto*<sup>xxxiii</sup> sovereignty to *de jure*<sup>xxxiv</sup> sovereignty, domestically and within the international community. In essence, states and their leaders cede sovereignty (in the short term) to gain sovereignty (in the long term).

### **The Juncture of when Sovereignty is Ceded**

United Nations Resolutions are enacted to establish peacekeeping missions in conflict states to assess the situation on the ground. These peacekeeping missions help countries navigate the difficult path from conflict to peace. They possess unique strengths, burden sharing, and an ability to deploy troops and police from around the world, integrating them with civilian peacekeepers to address a range of mandates set by the United Nations Security Council and General Assembly.<sup>xxxv</sup> An additional function of these peacekeeping missions is to establish the protocol for the adjudication of heinous violations of human rights. In every instance where a tribunal or hybrid court has been established, an agreement between the state and an international body such as the United Nations, European Union, or African Union is present in the founding documents of the tribunal or court.<sup>xxxvi</sup> With the consent of the belligerents, who possess *de facto* control, tribunals or hybrid courts are established. The agreements to which the state allows these missions to proceed and consent to establish and maintain an international tribunal or hybrid court displays the juncture at which the “ceding of sovereignty” occurs in the state's legal process.

### **Sociological Legitimacy**

When legitimacy is measured in sociological terms, a constitutional regime, governmental institution, or official decision possesses legitimacy in a strong sense insofar as the

relevant public regards it as justified, appropriate, or otherwise deserving of support for reasons beyond fear of sanctions or mere hope for personal reward.<sup>xxxvii</sup> Sociological legitimacy's end game is public acceptance and widespread public support, which leads to state legitimacy. Dissent may be present, but the overall decision or authority remains intact. In turn, other state governing institutions and functions become sociologically legitimate, re-establishing the rule of law and domestic social contract, which was nullified during the conflict.

Widespread public support or sociological legitimacy of the tribunal or court is an essential first step towards reconciliation and reconstruction in post-conflict states. Both international criminal tribunals and hybrid courts present unbiased judicial adjudication. By ceding sovereignty within its legal processes, the state is attempting to display to the public, which consists of belligerents from all sides, that it is willing to be held accountable and to hold accountable those that possessed the most responsibility for committing war crimes, crimes against humanity, genocide, and aggression. It has been observed that victims tend to prioritize diverse measures to address the consequences of large-scale violence. Among those measures, we find: the acknowledgment of their injury, the reparation of harms (material and non-material), and the emergence of the truth about what happened.<sup>xxxviii</sup> Displaying truth, unbiasedness, and accountability acknowledges that the state is committed to reconciliation and the reconstruction of social and political fabrics. This infers public trust, confidence, and acceptance. Additionally, it displays that the law is applied evenly, reestablishing the rule of law. Unbiasedness and accountability lessen the animosity between the belligerents as both redress and relief are afforded to victims of such heinous crimes regardless of which side they identify with.

Public acceptance and discourse have changed the nature of selection between an international criminal tribunal or hybrid court. The first international criminal tribunals arose at

the end of the Second World War at both Nuremberg and Tokyo. Allied Powers claiming *de facto* control over territories asserted judicial primacy, which spurred what is controversially known as “victor’s justice,” as German and Japanese war crimes were punished with little to no account given to Allied war crimes. Additionally, There is far less compensation for victims of international crimes as a result of *ad hoc* tribunals because of the separation of justice from the crime. These removal mechanisms, which cause the significant deficiencies enumerated above, result from the *ad hoc* tribunal’s failure to respect state sovereignty.<sup>xxxix</sup> These tribunals were too international in nature, with little to no involvement in adjudication from domestic states. Perpetrators were removed from the cultural and legal expectations of the state where they performed the crime and were scrutinized under foreign standards. Victims could not participate in the trial nor be present for the punishment. Hybrid courts emerged as a solution to domestic criticisms of international criminal tribunals. Hybrid tribunals allow for such flexibility in interpreting universal standards into specific national laws rather than intrusively supplanting domestic law with international standards.<sup>xl</sup> Hybrid courts keep the perpetrator and crime local instead of removing them to a foreign venue. While there are certain *jus cogens* norms that are held to both international standards which possess universal acceptance, perpetrators who are most responsible are prosecuted with deference to the domestic laws and not solely under international jurisprudence that represents the international community’s view on norms that may conflict with that of the state in which these crimes transpired. If domestic law does not possess the substantive or procedural law to prosecute these crimes, international law augments domestic courts to provide redress and relief. Public perception and acceptance through sociological legitimacy are thus attained because of the respect that the hybrid court has for local laws and customs while still having the ability to resort to international criminal law if redress or

relief is not attained at the domestic level. The varying degrees to which states cede sovereignty is dependent on what the public will accept in terms of international judicial primacy or complementarity and the status of the legal system within the conflict state.

The legitimacy of law or legal institutions may make a significant difference to what agents have a moral reason to do. Legal rights and obligations are frequently treated as conclusive reasons for action in both private deliberation and public justification or criticism.<sup>xli</sup> When broad public acceptance of the court or tribunal is present, even with dissent, the legal system within the state is legitimized, establishing the first instances of the rule of law. In the eyes of the public, the law is now just within the conflict state. The law is clear, publicized, stable, and applied evenly. It ensures human rights, property, contract, and procedural rights.<sup>xlii</sup> Heinous violations of international law are checked, and reconciliation is initiated.

Legality combined with sociological legitimacy is jointly sufficient in understanding why states cede sovereignty in their legal processes. The principle of legality stipulates that no defendant may be punished arbitrarily or retroactively by the state. Additionally, it holds that no person is to be superior to the law. The nature of international criminal law in which tribunals and hybrid courts function primarily is rooted in individual criminal responsibility. States that cede sovereignty in their legal processes to prosecute these crimes display to the public that it is willing to be held accountable and hold accountable those most responsible which is legal. This indicates an unbiased justice system which in turn receives sociological legitimacy from the public. Sociological legitimacy combined with legality enables the state to transition from *de facto* sovereignty to *de jure* sovereignty. With the state in *de jure* control, the government and its various apparatuses are considered legal and legitimate within their territory and by other states.

## International Relations Theory: Realism, Liberalism, and State Behavior

### Realism

The international relations theory of realism postulates that international politics are anarchic and that sovereign states are the principal actors in international politics. Its main tenets suggest that states are rational unitary actors motivated by their national interests, with the state's primary goals being national security and survival.<sup>xliii</sup> Additionally, realists consider power to be an end in itself. Realism is in general conflict with international law. Realism focuses on competition and the balance of power, whereas international law is rooted in international cooperation and interdependence. International law is enshrined in conventions, treaties, and standards which are indicators of international cooperation. Realists hold that international law is a factor in inter-state relations, but the defining characteristic of the international system is anarchy with no higher authority to enforce violations of international law, and the most important empirical reality is national power.<sup>xliv</sup> International rules will often prove ineffective in restraining the struggle for power. States will interpret them to their own advantage, and so international law will be obeyed or ignored according to the interests of the states affected.<sup>xlv</sup> It seems unlikely that realism can explain state behavior with respect to international law. However, the main argument asserts that states cede sovereignty to gain sovereignty. Political actors within the state seek sociological legitimacy to exercise *de jure* sovereignty which grants the state exclusive power to exercise exclusive jurisdiction within its territories. This is a unique example of how realism is not in conflict with international law. Realism explains the *raison d'état*<sup>xlvi</sup> of why a state cedes legal sovereignty to attain sociological legitimacy. By ceding sovereignty in their legal systems and attaining sociological legitimacy, states and political leaders are acting in their own interests by using international law to sustain their own power and

institutions, making the state's primary goals its own national security and survival. States act in their own national interests to achieve stability and exert authority over their territories, which their populations accept as both legal and legitimate. Realism also tells us sovereign states are principal actors in international politics. The state's goals are to attain the status of statehood under the provisions of the Montevideo Convention<sup>xlvii</sup>, which cements the state's position as an international legal personality under customary international law. This designation gives states the capacity and authority to interact with other states on the international stage by creating contractual relationships and legally binding rules for themselves. Additionally, states afflicted by these ethnic conflicts and wars of independence are usually smaller states and differ in their goals from that of great or medium power states. With greater protections afforded to smaller states under international law from aggressors, states can maintain the balance of power, ensuring state survival.

### **Liberalism**

The international relations theory of liberalism posits that interdependence and peaceful growth create stronger connections within the international community. Liberals focus primarily on state-society relations, which is why the emphasis on human rights is critical to this theory.<sup>xlviii</sup> States work in coordination for mutual benefit to prevent conflict through diplomacy and strengthening political and economic relationships within the international system. Liberal institutions support the global international order, and international law governs state conduct and behavior. In describing why states cede sovereignty in their legal processes through the lens of liberalism, because there is no mode of enforcement of international criminal law outside of national judiciaries, cooperation and trust are essential for international criminal law.<sup>xlix</sup> Cooperation and trust by the state in adjudicating these war crimes display a state's willingness

to safeguard and uphold human rights. By ceding legal sovereignty, the state is adhering to human rights principles protected by international law, a cornerstone of liberal principles and ideals. The state is holding itself up to the international norms projected by liberalism. An international social contract between the state and the international community is formed. *De jure* Sovereignty enables the state to participate on the global stage through coordination and cooperation as it has the authority to enter into conventions and treaties with other states through human rights, economic growth building, and trade. These states also contribute to the changing nature of international criminal law. Following the shared values and cooperation that liberalism projects, decisions made in these courts or tribunals, both procedural and substantive in nature, set precedence and contribute to the sources of international criminal law, which are then shared and utilized by future tribunals and hybrid courts.

Realism and liberalism permit us to understand and try to make sense of the state behavior that affects the world around us. Each of them represents a different theoretical perspective of state behavior through various lenses. While they are opposing theories, each explains state behavior with respect to using international law. Both realism and liberalism converge in answering why states cede sovereignty to international law to prosecute war crimes, crimes against humanity, genocide, and aggression. Realism explains the behavior of post-conflict states acting in self-interest to consolidate, sustain and exercise power domestically. Liberalism explains state behavior once power is attained and how states exercise this power through cooperation and coordination within the global community.



### **Case Studies: Sierra Leone, Cambodia, Kosovo, Bosnia and Herzegovina.**

*This section discusses the indicators of sociological legitimacy and factors that indicate state power both domestically and within the international system. It applies empirical evidence to the main argument within the cases of Sierra Leone, Cambodia, and Kosovo. The last case, Bosnia and Herzegovina, will be analyzed through a semi-IRAC (issue, rule, analysis, and conclusion) format.*

#### **The Indicators of Sociological Legitimacy**

Sierra Leone, Cambodia, Kosovo, and Bosnia and Herzegovina have all experienced an armed conflict that resulted in war crimes, crimes against humanity, genocide, or aggression, prompting international intervention. In the cessation of hostilities between belligerents and following United Nations Security Council Resolutions, various international missions were created to establish special *ad hoc* tribunals or hybrid courts to investigate and prosecute these crimes. By ceding legal sovereignty political leaders are attempting to secure sociological legitimacy to sustain and exercise power. The indicators of sociological legitimacy considers the representativeness and openness of the state and its relationship with its citizenry.<sup>1</sup> It considers the openness and fairness of the political process in terms of political rights existing for competing entities in government and the makeup of government that is representative of the people. Indicators of sociological legitimacy take into account free and fair elections, both in terms of perception and monitoring.<sup>li</sup> It also considers the ability of the state to exercise basic functions that infer a population's confidence, trust and acceptance in its government and institutions, such as the ability to collect taxes or render judicial decisions by the courts.<sup>lii</sup> The presence of the rule of law<sup>liiii</sup> is also an indicator of sociological legitimacy because it does not depend simply on the formal rules and procedures of states, but also on the actual and the

perceived functioning of those rules and procedures.<sup>liv</sup> These indicators will be utilized throughout each case study.

### **Sierra Leone**

After an 11-year civil war between the Revolutionary United Front (RUF) and Liberian forces of Charles Taylor's National Patriotic Front attempting to overthrow the sitting government of Joseph Momoh came to an end, an estimated 50,000 people were killed as a result of various war crimes and crimes against humanity. In 2002 the government of Sierra Leone requested help from the United Nations to establish a special court to address the seriousness of international crimes committed against civilians and United Nations peacekeepers.<sup>lv</sup> This resulted in a ceding of Sierra Leone's sovereignty within its legal processes and the creation of the Special Court for Sierra Leone (SCSL). Mandated to prosecute those "bearing the greatest responsibility," it was the first hybrid international tribunal incorporating domestic law with international criminal law.<sup>lvi</sup> The Special Court For Sierra Leone was composed of mixed domestic and international staff. The court is unique in nature as it was the first to prosecute a sitting head of state and investigate the use of child soldiers.

The court received wide public support in its proceedings as an interrelationship between the SCSL and the establishment of the Truth and Reconciliation Commission provided a forum for victims and perpetrators of human rights violations to tell their stories to both initiate and facilitate reconciliation. Within the same year of the installation of the SCSL and Truth and Reconciliation Commission, President Alhaji Ahmad Tejan Kabbah and the Sierra Leone People's Party (SLPP) established a Constitutional Republic through a fair and free election. Kabbah declared the civil war officially over in early 2002. Tens of thousands of Sierra Leoneans across the country took to the streets to celebrate the end of the war. Kabbah went on

to easily win his final five-year term in office in the presidential election later that year, defeating his main opponent Ernest Bai Koroma of the main opposition All People's Congress (APC), with 70.1% of the vote, the largest margin of victory for a free election in the country's history.

International observers declared the election free and fair.<sup>lvii</sup> Free and fair elections combined with the widespread support of the Truth and Reconciliation Commission and the Special Court for Sierra Leone are indicators of sociological legitimacy. In displaying truth, unbiasedness, and accountability, the Truth and Reconciliation Commission and the Special Court for Sierra Leone acknowledged that the state was committed to reconciliation and the reconstruction of the social and political fabric. Victims in the general public prioritized diverse measures to address the consequences of large-scale violence. Among those measures is the acknowledgment of their injury, the reparation of harms, and the emergence of the truth about what happened. The Court also displayed to the general public that the law was applied evenly, as redress and relief were provided to victims from all sides of the conflict inferring trust, confidence and acceptance, legitimizing the judicial system within Sierra Leone. Analyzing this through the lens of realism, with sociological legitimacy attained in Sierra Leone, President Kabbah and the SLPP acted in the state's own interests by using international law to sustain and consolidate power to ensure Sierra Leone's survival. This granted them the *de jure* right of sovereignty to govern Sierra Leone. Additionally, free and fair elections in Sierra Leone are indicators of sociological legitimacy because they display the representativeness and openness of the state and its relationship with its citizenry, as well as displaying that political rights were present for competing entities within the state.

The Special Court for Sierra Leone made its final major decision on 26 September 2013 when its Appeals Chamber upheld the 50-year sentence handed down to former Liberian

President Charles Taylor. The court ruling in April 2012 found Mr. Taylor guilty of five counts of crimes against humanity, five counts of war crimes, and one count of other serious violations of international humanitarian law perpetrated by Sierra Leone's Revolutionary United Front (RUF) rebels, who he supported.<sup>lviii</sup> Since the end of the mandate of the SCSL, the Residual Special Court for Sierra Leone was established to carry on the legal responsibilities of the SCSL. This residual court was established between the United Nations and the Government of Sierra Leone, signifying that Sierra Leone's transition from *de facto* sovereignty at the end of the civil war to *de jure* sovereignty has given it the status of an international legal personality, effectively giving the state the power to engage in entering and ratifying agreements and treaties within the international community. Sierra Leone has become a signatory or party to various bilateral and multilateral human rights and economic treaties.<sup>lix</sup> When viewed through the lens of liberalism, Sierra Leone is both cooperating and contributing to the shared values of the international community by continuing its practice to ensure the protection of human rights law. Today the government of Sierra Leone has retained sociological legitimacy and its ability to exercise power as it possesses a functioning government as freely elected national legislative representatives determine the government's policies. Ethnic and religious minorities typically enjoy full political rights and electoral opportunities.<sup>lx</sup> By ceding sovereignty in its legal process short term, Sierra Leone has gained sovereignty in the long term.

## **Cambodia**

In 1997, the Cambodian government requested that the United Nations assist in establishing a tribunal or court to prosecute members of the Khmer Rouge that violently seized power in 1975 and was subsequently overthrown in 1979. In the period when the Khmer Rouge was in control of Cambodia, an estimated 1.7 million people were killed from starvation, torture,

execution, and forced labor. In 1991 following the Paris Peace Accords, the United Nations Transitional Authority in Cambodia (UNTAC) provided the path for national elections. The result was an uneasy political relationship between the Cambodian People's Party (CPP) and the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC). Emerging as the more powerful of the two parties, the CPP attained government control, maintaining a constitutional monarchy. The CPP won the national election by a large margin, capturing 74 of 123 seats, reflecting a change in Cambodian views on what constitutes a legitimate government or a strong leader. While it is true to say that some voters supported the CPP because they were grateful for what it had done for them and the country in the past, other factors were also at play.<sup>lxi</sup> In 2001, the Cambodian National Assembly passed a law to create a court to prosecute the perpetrators most responsible for genocide. The Extraordinary Chambers in the Courts of Cambodia (ECCC) were established. This hybrid court was created by the Cambodian government and the United Nations; it is independent of both of them, applying international criminal law standards to individual cases.<sup>lxii</sup> The government of Cambodia requested that for transparency and the benefit of the people,

members of the court should consist of Cambodian judges but mixed with international judges and staff due to the international nature of the crimes. With deference to local laws and customs, a hybrid tribunal was selected for the purposes of adjudication.

By requesting a special hybrid court for transparency and for the benefit of the people, the CPP displayed unbiasedness and accountability to attain widespread public support. The rights provided to the victims regarding the ECCC are stated in the Cambodian Law under the Internal Rules of the ECCC. Victims have the opportunity to actively participate in judicial proceedings through complaints and civil parties, and they can seek collective and moral

reparation.<sup>lxiii</sup> Cambodian victims prioritized diverse measures to address the consequences of large-scale violence. Among those measures were the acknowledgment of their injury, the reparation of harms, and the emergence of the truth about what happened. In displaying truth, unbiasedness, and accountability, the CPP acknowledged that it was committed to reconciliation and the reconstruction of social and political fabrics. Additionally, victims are a subset of the general public. By giving the opportunity of victims to participate in judicial proceedings and providing relief in the form of moral reparations, the rule of law is present as all persons are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, making it an indicator of sociological legitimacy. As a result, the ECCC has received broad public support. With extensive outreach initiatives, more than 353,000 people have observed or participated in the court's proceedings. In Case 001, 36,493 people observed the trial and appeal hearings. In Case 002, the first trial involving multiple Khmer Rouge leaders, 98,670 people attended the 212-day trial hearings. In addition, nearly 67,000 people from rural areas in Cambodia have attended ECCC community video screenings.<sup>lxiv</sup> Widespread interest and participation in the judicial proceedings signify indicators of sociological legitimacy as it focuses on the public's confidence in state governing institutions. Participation in judicial proceedings by members of the public displays confidence in the Court and legitimizes the judicial system.

Starting in the early 2000s, the national economy began growing at an astounding rate of around 10 percent annually, substantially improving the living conditions for millions of Cambodians. Farmers could now find markets for their products. A new generation of entrepreneurs sprung up in search of opportunities from the economic boom, all due to policies set out by the CPP.<sup>lxv</sup> These are indicators of sociological legitimacy because they demonstrate

confidence in the decision-making abilities of the CPP. Indicators of sociological legitimacy focus on the population's level of confidence in state institutions and processes.<sup>lxvi</sup> Through implementing these policies the CPP was able to garner additional public support.

The motivations of the CPP in ceding legal sovereignty to international law can be assessed through the lens of realism. The CPP acted in its own interest to sustain its power. When assessed through the lens of liberalism, on the international level, Cambodia, under the control of the CPP, has utilized *de jure* sovereignty to enter into multiple economic treaties with the United States, South Korea, and ASEAN, cementing its place on the international stage as an international legal personality. Cambodia was seen to both cooperate and contribute to the shared values of the international community because of its practice of ensuring the protection of human rights law by utilizing the Court to prosecute serious violations of human rights. While this was true directly after the establishment of the ECCC, things have taken a turn for the worse.

While Cambodia experienced some reconciliation and stabilization after establishing the ECCC, the CPP has failed to prosecute certain members of the Khmer Rouge for war crimes and crimes against humanity due to them switching alliances during and after the conflict. Khieu Samphan, the former head of state of the Khmer Rouge, appeared before the Extraordinary Chambers in the Courts of Cambodia in August to appeal his 2018 conviction for genocide. In December, the tribunal dropped charges against Meas Muth, a lower-level official in the Khmer Rouge, citing insufficient evidence and the “absence of a definitive and enforceable indictment.”<sup>lxvii</sup> Additionally, significant protests have been initiated against the CPP and its hold on power. In 2015, Cambodia passed two new election laws that permit security forces to participate in campaigns, punish parties that boycott parliament, and mandate a shorter campaign period of 21 days.<sup>lxviii</sup> The CPP also controls nine of nine seats in the National Election

Committee, and rampant corruption is present. This renders electoral laws and frameworks unfair and ineffective. The rule of law, which had a chance to flourish amid ECCC proceedings, has been diminished by corruption within the state.

### **Kosovo**

In 1999, NATO intervention led to a cessation of hostilities between Serbian forces and the Kosovo Liberation Army (KLA) in the embattled region of Kosovo. The war caused the displacement of millions of Ethnic Albanians, Serbs, and Romani, in addition to tens of thousands killed by both Serbian Forces and the Kosovo Liberation Army. As a newly founded independent state, crimes against humanity and war crimes were tried under the International Criminal Tribunal for the former Yugoslavia (ICTY). With a declaration of independence in 2008, the Kosovar government ceded sovereignty in their legal processes to establish the Kosovo Specialist Chambers and Special Prosecutor's Office. This was put into legal effect pursuant to an international agreement that the Kosovo Assembly ratified.<sup>lxix</sup> Its mandate and jurisdiction are over war crimes and crimes against humanity committed in Kosovo from 1998-2000. The Chambers are located in the Hague and consist of an entire international staff with no judges coming from Kosovo. The Kosovo Specialist Chambers and Special Prosecutor's Office is the most recent hybrid tribunal to be created. Kosovo is not a signatory member of the Rome Statute, which established the International Criminal Court, nor does it have full membership in the United Nations, making international law litigation difficult. However, Kosovo entered into a contractual obligation with the European Union through the Stabilization and Association Agreement. Once entered into force, Kosovo will be required to cooperate with the ICC and the ICTY (Article 3) but is also required to abide by the Rome Statute of the International Criminal Court and, in this respect, take the necessary steps for its implementation at domestic level<sup>lxx</sup>



Kosovo's implantation of this at the domestic level comes via ratified amendments in its constitution. In the process of internationalizing its criminal justice system, Kosovo's constitutional changes through ratification by the Kosovo Assembly are similar to a principle in American Legal Doctrine known as the Charming Betsy Canon, which posits that congressional statutes should be construed in harmony with international law.<sup>lxxi</sup> By absorbing and harmonizing international law into its domestic constitution, Kosovo's resolve to prosecute violations of human rights is strengthened. It has more teeth to enforce a violation of an international *jus cogens*. Kosovo has entered into and ratified various bilateral and multilateral human rights and trade treaties.<sup>lxxii</sup> These are all indicators that the state is indeed exercising *de jure* sovereignty as it is regarded as a legitimate international legal personality despite not being recognized by the United Nations. When viewing this through the lens of liberalism, Kosovo, as an international legal personality, is acting with liberal principles by upholding and safeguarding human rights. Secondly, its ability to engage with other states within the international system signifies cooperation and coordination.

On the domestic level, criticisms of the ICTY were twofold, the first being that it did not go far enough to prosecute those most responsible, and it was biased in that it prosecuted members of Serbian ethnicity and not those of Albanian Ethnicity. As a form of a residual court of the ICTY, the Kosovo Specialist Chambers and Special Prosecutor's Office now focuses on members of the Kosovo Liberation Army (KLA) who have committed crimes against the Kosovar Serbian minority and suspected conspirators who aided the Serbian regime. Some members of the Kosovo Liberation Army who committed heinous violations of international law integrated into influential members of society, making the sociological legitimacy of The Kosovo Specialist Chambers and Special Prosecutor's Office and other state governing

institutions difficult to attain. Ethnic Albanians form the majority in Kosovo, with over 93% of the total population; significant minorities include Bosniaks 1.6%, and Serbs 1.5%.<sup>lxxiii</sup> Because Kosovar Albanians consider Serbians as the aggressors in the conflict, and the vast majority of human rights violations were committed on Kosovar Albanians by Serbians, the public feel that it is wrong to prosecute former members of the KLA who were viewed as their protectors.<sup>lxxiv</sup> Nevertheless, indicators of sociological legitimacy are present. Kosovo is a Parliamentary Republic, and the current head of the government and other chief national authority figures are elected through free and fair elections.<sup>lxxv</sup> Free and fair elections in Kosovo are indicators of sociological legitimacy because they display the representativeness and openness of the state and its relationship with its citizenry, as well as displaying that political rights are present for competing entities within the state. Political pluralism and participation are also indicators of sociological legitimacy. Citizens have the right to organize in different political parties of their choice, providing a realistic opportunity for the opposition to support or gain power.<sup>lxxvi</sup> These are indicators of sociological legitimacy because it affirms the trust and acceptance of the government through civic participation. Parties in dissent have the opportunity to contest the government in an election displaying political pluralism and participation. There is a realistic opportunity for the opposition to increase its support or gain power through elections. In analyzing these factors through the lens of realism, establishing that sociological legitimacy was essential in establishing *de jure* sovereignty to sustain state power. Though there is dissent within the population, the authority of the government and the Kosovo Specialist Chambers and Special Prosecutor's Office remains intact. Additionally, By exercising its *de jure* sovereignty to ensure state survival and entering into agreements with the European Union to establish the Kosovo Specialist Chambers and Special Prosecutor's Office, the state is also ensuring a balance of

power with Serbia. Kosovo is a smaller state and differs in its goals from that of medium power states. Since its declaration of independence from Serbia and the constant threats that Serbia may attempt to reclaim the country, Kosovo is receiving greater protections under the cooperation and coordination of international law.

### **Bosnia and Herzegovina**

Bosnia and Herzegovina was a republic that declared its independence after the fall of Yugoslavia. With no effective legal system to prosecute war crimes, crimes against humanity, genocide, and aggression, criminal cases from within the state were adjudicated in the International Criminal Tribunal for the Former Yugoslavia (ICTY). After the end of the mandate of the ICTY, the War Crimes Chamber in the Court of Bosnia and Herzegovina resumed its authority as a hybrid tribunal. Like the ICTY, the War Crimes Chamber in Bosnia and Herzegovina is responsible for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. When it was initially established, it was responsible for trying the cases of lower to mid-level perpetrators referred to it by the ICTY.<sup>lxxvii</sup> Bosnia and Herzegovina have also ratified several human rights treaties as a condition of recognition by the United Nations. Of these treaties is the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. The Committee against Torture (CAT) is the body of ten independent experts that enforce the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It holds state parties accountable for human rights violations, systematically investigating reports of torture to stop and prevent this crime.<sup>lxxviii</sup>

A landmark case that the CAT decided and has significant meaning in international law where adjudicators have used various approaches to punish perpetrators and deliver justice to

victims is *Mrs. A v. Bosnia and Herzegovina*. Two issues are relevant. First, is Mrs. A entitled to fair and adequate compensation, including free medical and physiological care from the state of Bosnia and Herzegovina, and second, is rape considered a form of torture? The applicable rules are Article 14 in conjunction with Article 1 of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

In 1992 the complainant (Mrs. A) lived in Semizovac, an area controlled by the forces of Republika Srpska during the armed conflict in Bosnia and Herzegovina. In 1993 Mr. Slavko Savic, a member of Republike Srpske, forcefully entered her home armed with a firearm, brutalized her, and forcefully put her into his car. He took the complainant to a bus station and repeatedly raped her. Subsequently, Mrs. A became pregnant and had to terminate the pregnancy, leaving her with severe psychiatric conditions, including permanent personality disorder and chronic post-traumatic stress disorder, which degraded her quality of life. Mrs. A remained in the same region where the Vojska Republike Srpske controlled civil functions and lived in a constant state of fear due to widespread threats and violence at the hands of state officials. She did not report the rape as she feared retribution.

In June 2015, the Court of Bosnia and Herzegovina found Slavko Savic responsible for the rape and guilty of war crimes, sentencing him to 8 years in prison and ordering him to pay compensation to the complainant. Claiming he had no assets to pay, Mr. Savic defaulted on payments. Mrs. A never received compensation from him as an individual or from the State. The complainant then filed suit to receive compensation, but her case was dismissed in the domestic court, which ruled that such civil claims are subject to a statute of limitations of three to five years, leaving Mrs. A with no redress. After exhausting all domestic remedies to attain redress, the case was brought to the CAT.<sup>lxxix</sup>

Under Article 1 of the CAT, torture consists of 3 elements, (1) intentional infliction, (2) severe pain and suffering, both physical and mental (3) the act was committed by or at the acquiescence of the government. In applying fact to law, Mrs. A meets the criteria of a torture victim. The intentional infliction being rape and the severe physical and mental pain is the psychiatric condition that she still suffers. The act was committed by Mr. Savic, a member of the Republike Srpske, which is a part of the government. Under Article 14 of the CAT, victims of torture are entitled to compensation and rehabilitation.

The CAT's decision found that rape is a form of torture and directed Bosnia and Herzegovina to pay compensation and to ensure that she receives free and immediate medical and psychological care. Bosnia and Herzegovina was required to make an official apology to Mrs. A. Additionally, the state is required to implement an "effective reparations scheme" at a national level to provide all forms of redress to victims of war crimes, including sexual violence.<sup>lxxx</sup>

The indicators of sociological legitimacy:

1. The rule of law is present. Mr. Savic is held accountable for publicly promulgated laws, equally enforced and independently adjudicated. Additionally, his conviction is consistent with human rights principles. Sociological legitimacy is achieved as formal rules and procedures, as well as the actual and perceived functioning of the law, is attained.
2. The Court, which is an apparatus of state, rendered a decision. This is an indicator of sociological legitimacy as the state can exercise its basic functions and infers a population's confidence in government and institutions.

3. Allowing for the plaintiff's participation is an indicator of sociological legitimacy because it displays the representativeness and openness of the government vis-a-vis the courts and its relationship with its citizenry.
4. With Mrs. A unable to achieve redress and relief by the Court and to exhaust all domestic remedies, suit was brought to the CAT inferring the presence of a legitimate judicial system.

Bosnia and Herzegovina has been a party to the convention since October 1993, giving CAT jurisdiction over such legal matters. Additionally, the subjective territorial principle, in which a state may exercise jurisdiction concerning all persons or things within its territory, enabled the Constitutional Court of Bosnia and Herzegovina to prosecute and convict Mr. Savic of war crimes and compelled him to pay compensation to the complainant.

This indicates that the state possesses *de jure* sovereignty both domestically and internationally:

1. Domestically, the court, which is an apparatus of the state, applied jurisdiction over Mr. Savic and the crimes committed within its territory. It exercised its power by simply adjudicating the case and rendering a decision.
2. Internationally, the ability of Bosnia and Herzegovina to become a party to the CAT indicates that the state holds the designation as the international legal personality.

Mr. Slavic's lack of assets combined with the state's lack of funds to compensate Mrs. A prompted the Constitutional Court of Bosnia and Herzegovina to dismiss her civil claims on the grounds of statute of limitations. With all domestic remedies exhausted, and the unlikelihood of relief from the state, the CAT concluded that rape and other forms of sexual violence are

considered torture and that a statute of limitations prevents the right of compensation to torture victims, making the complaints rights to compensation enforceable. Domestically, the Constitutional Court of Bosnia and Herzegovina was able to provide a conviction, punishing the crime of rape, but failed to provide redress. The CAT was able to provide not only redress but, most significantly, specify that rape and other forms of sexual violence are considered forms of torture, which also set the stage of precedence for ensuring the right to fair and adequate compensation for future victims of rape or sexual violence. The elements of liberalism are present in interpreting the behavior of Bosnia and Herzegovina. *De jure* sovereignty was exercised by harmonizing international law into Bosnia and Herzegovina's domestic constitution. This displays Bosnia and Herzegovina's support and protection of human rights. Cooperation by the state with the international community is also displayed. The ability of Mrs. A to bring suit to the CAT displays coordination between Bosnia and Herzegovina and the international community. This coordination and cooperation have led to a contribution by both Bosnia and Herzegovina and the CAT to international law by setting the precedence that rape and sexual violence indeed constitute torture, future victims of these crimes can receive legal remedy and binding justice.

## **Conclusion**

*The conclusion will summarize the main argument and discuss the limitations of this study. It will then discuss the successes and criticisms of internationalized criminal courts and closes by discussing the contributions of international criminal tribunals and hybrid courts to international law.*

## Summary

Conventional wisdom suggests that sovereignty is inalienable. It grants a state supreme authority within its own territory and allows it to interact with other states within the international community. War crimes, crimes against humanity, genocide, and aggression are serious violations of human rights that prompt the international community to intervene under principles of customary international law. This study proposes that if sovereignty is indeed sacrosanct, then why would a state concede to an international body to prosecute individuals they have authority over? The main argument asserts that political leaders and states cede sovereignty in the short term to gain sovereignty in the long term. When they do so, it is through explicit consent within the legal processes of its domestic judicial system. Within this study, it is determined that political leaders within the state attain sociological legitimacy through unbiasedness and accountability, which garners them widespread public support, legitimizing the domestic judicial system and other state governing institutions. Additionally, the varying ways states cede sovereignty in their legal processes is explained by the capacity or lack thereof of the existing domestic judicial system and public acceptance of a complete or partial concession to international law. Both realism and liberalism converge in answering why states cede sovereignty to international law to prosecute war crimes, crimes against humanity, genocide, and aggression. Realism explains the behavior of post-conflict states acting in self-interest to consolidate, sustain and exercise power domestically. Liberalism explains state behavior once power is attained and how states exercise this power within the global community with cooperation and coordination. Establishing sociological legitimacy aids states in transitioning from *de facto* sovereignty to *de jure* sovereignty nationally and within the international community.



## Limitations

One of the limitations of this study is that it explores the impact of four hybrid courts within their respective conflict states. There are more cases to consider in applying the theoretical model defined by this study.<sup>lxxxii</sup> Additional research is required to take a deeper look at all of them which can potentially yield more evidence. A second limitation of this study is; because of the abundance of scholarship in both international law and international relations about internationalized criminal courts, sovereignty, legitimacy, etc., there are many areas of contention. Some scholars may agree with one definition or analysis but disagree with others. For example, there are definitions and criteria of what legitimacy entails in both international law and international relations scholarships. Many of these definitions and analysis have conflicts and intersections that are used to determine if something is legitimate, including what indicators make it such. This study focuses on sociological legitimacy, state legitimacy, and its indicators within the context of internationalized criminal courts and post-conflict states.

Another limitation of this study is that only two international relations theories were utilized in conjunction with the main argument. While liberalism and realism provide solid answers as to why states cede sovereignty to international law to prosecute war crimes, crimes against humanity, genocide, and aggression, other theories of international relations can provide additional answers. For example, Constructivism asserts that significant aspects of international relations are shaped by ideational factors (historically and socially constructed), not simply material factors.<sup>lxxxiii</sup> It can be useful in ascertaining its ramifications on state behavior in the context of human rights and international criminal law. Additionally, a deeper analysis of the

subsets of realism and liberalism, like structural realism or neoliberalism, can also provide additional explanations.

### **Successes and Criticisms**

The success of internationalized criminal courts is not measured by a state's political stability or strength in its democratic processes. Nor is it measured in terms of the number of cases it adjudicates or renders decisions on. Many states that have endured ethnic conflict, wars of independence, and civil wars and have undergone international intervention with internationalized adjudication processes range from politically stable to politically volatile. Some are even considered failed states or are still in the reconciliation and reconstruction process. A criticism of internationalized criminal courts is that they teeter on the border of legality. Both in procedural and substantive law. But specifically in that, international criminal law can be viewed as *ex post facto* law, or law that retroactively changes the legal consequences of actions that were committed. Another criticism of internationalized criminal courts is that they do not go far enough to prosecute lower-ranking members of organizations that initiated these crimes.

Success is measured by the ability of the tribunal or hybrid courts ability to fulfill its mandate to prosecute those most responsible for war crimes, crimes against humanity, genocide, and aggression. The overall success of international intervention and international adjudication is that they both cause a cessation of mass killings. International law and its subset international criminal law is not uniform nor universal, and the ability of its practitioners to adapt to the various nuances reflects the complexity of the conflict and domestic laws, customs, and traditions. Since both Nuremberg and Tokyo to the most recent hybrid tribunal active today, procedural and substantive law has been amended and built upon, creating multiple avenues for

which both international adjudicators and scholars can utilize to not only punish those most responsible but provide relief to victims.

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## Endnotes

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<sup>i</sup> in fact, or in effect, whether by right or not,

<sup>ii</sup> A de jure government is the legal, legitimate government of a state and is so recognized by other states. In contrast, a de facto government is in actual possession of authority and control of the state.

<sup>iii</sup> the law that governs the way in which warfare is conducted. IHL is purely humanitarian, seeking to limit the suffering caused. It is independent from questions about the justification or reasons for war, or its prevention. “Jus in Bello - Jus Ad Bellum.” International Committee of the Red Cross, November 30, 2017.

<sup>iv</sup> actions or conduct which is a constituent element of a crime, as opposed to the mental state of the accused.

<sup>v</sup> [https://www.law.cornell.edu/wex/international\\_criminal\\_law](https://www.law.cornell.edu/wex/international_criminal_law)

<sup>vi</sup> Individual Criminal Responsibility - the basic principle of criminal law that individual criminal responsibility for a crime includes attempting to commit such crime, as well as assisting in, facilitating, aiding, or abetting, the commission of a crime. It also includes planning or instigating the commission of a crime. [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule102](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule102)

<sup>vii</sup> “Sources of International Law” <https://libguides.uchastings.edu/international-law/sources>

<sup>viii</sup> in fact, or in effect, whether by right or not.

<sup>ix</sup> created or done for a particular purpose as necessary. Temporary

<sup>x</sup> Brown, Bartram. “Primacy or Complementarity: Reconciling the Jurisdiction of National Courts and International Criminal Tribunals.” Yale Law School Legal Scholarship Repository, <https://openyls.law.yale.edu/handle/20.500.13051/6385>.

<sup>xi</sup> “Impact of the Yugoslav and Rwanda Tribunals: Lessons for the International Criminal Court.” Impact of the Yugoslav and Rwanda Tribunals: Lessons for the International Criminal Court | International Center for Transitional Justice. <https://www.ictj.org/news/impact-yugoslav-and-rwanda-tribunals-lessons-international-criminal-court-0>.

<sup>xii</sup> certain fundamental, overriding principles of international law.

<sup>xiii</sup> “Complementarity,” Legal Information Institute (Legal Information Institute) <https://www.law.cornell.edu/wex/complementarity>.

<sup>xiv</sup> “Basic Facts on Universal Jurisdiction.” Human Rights Watch, October 28, 2020. <https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction>.

<sup>xv</sup> “Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression (Articles 39-51).” United Nations. United Nations. Accessed November 21, 2022. <https://www.un.org/en/about-us/un-charter/chapter-7>.

<sup>xvi</sup> “International Standards.” OHCHR. <https://www.ohchr.org/en/protecting-human-rights-conflict-situations/international-standards>

<sup>xvii</sup> “Sovereignty.” Legal Information Institute. Legal Information Institute.  
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<sup>xviii</sup> Damrosch, Lori Fisler. “Dynamic Change in International Law .” Essay. In *International Law: Cases and Materials*, 35–36. St. Paul, MN: West, 2009.

<sup>xix</sup> “The Authority of Law .” Essay. In *State, Sovereignty, and International Governance*, 22–23. Oxford: Oxford University Press, 2002.

<sup>xx</sup> Damrosch, Lori Fisler. “Dynamic Change in International Law .” Essay. In *International Law: Cases and Materials*, 37. St. Paul, MN: West, 2009.

<sup>xxi</sup> “Resolution 955 (1994) /.” United Nations. United Nations.  
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<sup>xxii</sup> “History.” History | International Criminal Tribunal for the former Yugoslavia..  
<https://www.icty.org/en/about/office-of-the-prosecutor/history>.

<sup>xxiii</sup> Barria, Lilian A., and Steven D. Roper. “Providing Justice and Reconciliation: The Criminal Tribunals for Sierra Leone and Cambodia.” *Human Rights Review* 7, no. 1 (2005): 5–26. <https://doi.org/10.1007/s12142-005-1000-5>.

<sup>xxiv</sup> Article 39 UN Charter - The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security. Article 41 - The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations

<sup>xxv</sup> “Kenya's Withdrawal from the International Criminal Court and Why It Matters.” Amnesty International USA, September 27, 2013.

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<sup>xxvi</sup> “Q&A: The International Criminal Court and the United States.” Human Rights Watch, February 8, 2022. <https://www.hrw.org/news/2020/09/02/qa-international-criminal-court-and-united-states#:~:text=Under%20international%20law%2C%20states%20have,a%20court%20of%20last%20resort>.

<sup>xxvii</sup> “Kenya.” International Criminal Court. <https://www.icc-cpi.int/situations/kenya>.

<sup>xxviii</sup> obligations that are owed towards all

<sup>xxix</sup> Levy, Daniel, and Natan Sznaider. “Sovereignty Transformed: A Sociology of Human Rights.” *The British Journal of Sociology* 57, no. 4 (2006): 657–76. <https://doi.org/10.1111/j.1468-4446.2006.00130.x>.

<sup>xxx</sup> in fact, or in effect, whether by right or not.

<sup>xxxi</sup> “Basic Facts on Universal Jurisdiction.” Human Rights Watch,  
<https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction>.

<sup>xxxii</sup> CASSESE, ANTONIO. “The Legitimacy of International Criminal Tribunals and the Current Prospects of International Criminal Justice.” *Leiden Journal of International Law* 25, no. 2 (2012): 491–501. <https://doi.org/10.1017/s0922156512000167>.

<sup>xxxiii</sup> in fact, or in effect, whether by right or not,

<sup>xxxiv</sup> A de jure government is the legal, legitimate government of a state and is so recognized by other states. In contrast, a de facto government is in actual possession of authority and control of the state.

<sup>xxxv</sup> “United Nations Peacekeeping,” United Nations (United Nations), <https://peacekeeping.un.org/en>.

<sup>xxxvi</sup> On August 22, 2012, the Establishment of the Extraordinary African Chambers within the Senegalese court's agreement was signed between the African Union and the Government of the Republic of Senegal. The Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea (ECCC Agreement) was promulgated on October 27, 2004. On April 23, 2014, the Law on ratification of the international agreement (“The Exchange of Letters”) was adopted between the Republic of Kosovo and the European Union. The agreement was based on the European Union Rule of Law Mission in Kosovo. On August 9, 2000, the UN Permanent Representative of Sierra Leone sent a letter on behalf of President Alhaji Ahmad Tejan Kabbah to the United Nations Security Council, requesting assistance in the establishment of a special court for Sierra Leone to address serious crimes against civilians and peacekeepers during the civil war. On August 7, 2014, the transitional government of the CAR and the UN Multidimensional Integrated Stabilization Mission the CAR (MINUSCA) signed a MoU requiring the government to establish a “Special Criminal Court”. In 2007, the Lebanese government signed an agreement for the Special Tribunal for Lebanon, but the Prime Minister said that the Speaker refused to convene parliament and the agreement could not be ratified. UN Security Council Resolutions 1503 (2003) and 1534 (2004) requested domestic courts make efforts to assist with War Crimes prosecutions in Bosnia and Herzegovina, Serbia and Montenegro, Republika Srpska, and Croatia..

<sup>xxxvii</sup> Hobbs, Harry (2016) "Hybrid Tribunals and the Composition of the Court: In Search of Sociological Legitimacy," *Chicago Journal of International Law*: Vol. 16: No. 2, Article 5.

<sup>xxxviii</sup> Geneviève Parent, “Reconciliation and Justice after Genocide: A Theoretical Exploration,” *Genocide Studies and Prevention* 5, no. 3 (2010): pp. 277-292, <https://doi.org/10.3138/gsp.5.3.277>.

<sup>xxxix</sup> Carroll, Caitlin E., "Hybrid Tribunals are the Most Effective Structure for Adjudicating International Crimes Occurring Within a Domestic State" (2013). Law School Student Scholarship. 90

<sup>xl</sup> Carroll, Caitlin E., "Hybrid Tribunals are the Most Effective Structure for Adjudicating International Crimes Occurring Within a

Domestic State" (2013). Law School Student Scholarship. 90

<sup>xli</sup> Lefkowitz, David. “The Legitimacy of International Law.” Essay. In *Philosophy and International Law: A Critical Introduction*, 100. Cambridge ; New York, NY ; Port Melbourne ; New Delhi ; Singapore: Cambridge University Press, 2020.

<sup>xlii</sup> “What Is the Rule of Law?,” World Justice Project, <https://worldjusticeproject.org/about-us/overview/what-rule-law>.



<sup>xliii</sup> Marketing Communications: Web // University of Notre Dame. “An Introduction to Realism in International Relations // ND International Security Center // University of Notre Dame.” ND International Security Center. <https://ndisc.nd.edu/news-events/news/an-introduction-to-realism-in-international-relations/>.

<sup>xliv</sup> “Realist Views of International Law - JSTOR,” <https://www.jstor.org/stable/25659786>.

<sup>xlv</sup> Korab-Karpowicz, W. Julian. “Political Realism in International Relations.” Stanford Encyclopedia of Philosophy. Stanford University, May 24, 2017. <https://plato.stanford.edu/entries/realism-intl-relations/>.

<sup>xlvi</sup> purely political reason for action on the part of a ruler or government

<sup>xlvii</sup> “Montevideo Convention on the Rights and Duties of States,” The Faculty of Law, <http://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml>.

<sup>xlviii</sup> Slaughter, Anne-Marie. “International Law in a World of Liberal States.” *European Journal of International Law* 6, no. 3 (1995): 503–38. <https://doi.org/10.1093/oxfordjournals.ejil.a035934>.

<sup>xlix</sup> Schwarzschild, Maimon. University of San Diego School of Law. Lecture, Public International Law Fall 2021

<sup>i</sup> “P1: State Legitimacy.” Fragile States Index. <https://fragilestatesindex.org/indicators/p1/>.

<sup>ii</sup> *ibid*

<sup>iii</sup> *ibid*

<sup>iiii</sup> Rule of law is a principle under which all persons, institutions, and entities are accountable to laws that are: Publicly promulgated. Equally enforced. Independently adjudicated. And consistent with international human rights principles.

<sup>liv</sup> Wojciech Sadurski, Michael Sevel, and Kevin Walton, “The Rule of Law and State Legitimacy,” in *Legitimacy %the% State and Beyond* (Oxford: Oxford University Press, 2019).

<sup>lv</sup> The Special Court for Sierra Leone, the Residual Special Court for Sierra Leone. <http://www.rscsl.org/>.

<sup>lvi</sup> *ibid*

<sup>lvii</sup> “The Sierra Leone Web.” Sierra Leone Web - Presidential Election Results, 2002. <http://www.sierra-leone.org/election2002.html>.

<sup>lviii</sup> “The Special Court for Sierra Leone Rests – for Good | Africa Renewal.” United Nations. United Nations. <https://www.un.org/africarenewal/magazine/april-2014/special-court-sierra-leone-rests-%E2%80%93-good>.

<sup>lix</sup> ECOWAS Common Investment Code (ECOWIC) (2019), Sierra Leone - United Kingdom BIT (2000), ECOWAS Energy Protocol (2003), China - Sierra Leone BIT (2001). To name a few

<sup>lx</sup> “Sierra Leone: Freedom in the World 2021 Country Report.” Freedom House.. <https://freedomhouse.org/country/sierra-leone/freedom-world/2021>.

<sup>lxi</sup> “Losing the People: Government Legitimacy Stumbles in Cambodia.” Global Asia.  
[https://www.globalasia.org/v9no1/feature/losing-the-people-government-legitimacy-stumbles-in-cambodia\\_phoak-kun](https://www.globalasia.org/v9no1/feature/losing-the-people-government-legitimacy-stumbles-in-cambodia_phoak-kun).

<sup>lxii</sup> Cambodia Tribunal Monitor, <https://cambodiatribunal.org/>.

<sup>lxiii</sup> “ECCC.” Drupal. <https://www.eccc.gov.kh/en/introduction-eccc>.

<sup>lxiv</sup> Thayer, Carlyle A. “Cambodia: The Cambodian People's Party Consolidates Power.” *Southeast Asian Affairs* 2009, no. 1 (2009): 85–101. <https://doi.org/10.1355/seaa09f>.

<sup>lxv</sup> “Losing the People: Government Legitimacy Stumbles in Cambodia.” Global Asia.  
[https://www.globalasia.org/v9no1/feature/losing-the-people-government-legitimacy-stumbles-in-cambodia\\_phoak-kun](https://www.globalasia.org/v9no1/feature/losing-the-people-government-legitimacy-stumbles-in-cambodia_phoak-kun)

<sup>lxvi</sup> “P1: State Legitimacy.” *Fragile States Index*. <https://fragilestatesindex.org/indicators/p1/>.

<sup>lxvii</sup> “Cambodia: Freedom in the World 2022 Country Report.” Freedom House..  
<https://freedomhouse.org/country/cambodia/freedom-world/2022>.

<sup>lxviii</sup> *ibid*

<sup>lxix</sup> Kosovo Specialist Chambers & Specialist Prosecutor's Office, May 20, 2016, <https://www.scp-ks.org/en>.

<sup>lxx</sup> July 2014 and the Council of the EU agreed to its signature on 22 October 2015 - The SAA focuses on respect for key democratic principles and core elements that are at the heart of the EU's single market. The SAA will establish an area that allows for free trade and the application of European standards in other areas such as competition, state aid and intellectual property in Kosovo.

<sup>lxxi</sup> The Charming Betsy Canon, Separation of Powers, *Harvard Law Review*.  
[https://harvardlawreview.org/wp-content/uploads/pdfs/customary\\_international\\_law.pdf](https://harvardlawreview.org/wp-content/uploads/pdfs/customary_international_law.pdf). PP. 1

<sup>lxxii</sup> Brussels Agreement (2013)

Central European Free Trade Agreement

Treaty establishing the Energy Community

Hague Conventions of 1899 and 1907

Articles of Agreement of the International Bank for Reconstruction and Development

Articles of Agreement of the International Development Association

Articles of Agreement of the International Finance Corporation

Articles of Agreement of the International Monetary Fund

Convention establishing the Multilateral Investment Guarantee Agency

Convention on the Settlement of Investment Disputes between States and Nationals of Other States

<sup>lxxiii</sup> “Demographics of Kosovo .” Kosovo demographics profile.[https://www.indexmundi.com/kosovo/demographics\\_profile.html](https://www.indexmundi.com/kosovo/demographics_profile.html).

<sup>lxxiv</sup> Maria Stefania Cataleta and Chiara Loiero, “The Kosovo Specialist Chambers the Last Resort for Justice in Kosovo?,” *The Kosovo Specialist Chambers The last resort for justice in Kosovo?* / 978-620-3-46295-1 / 9786203462951 / 6203462950 (LAP Lambert Academic Publishing, February 23, 2021), <https://www.lap-publishing.com/catalog/details/store/gb/book/978-620-3-46295-1/the-kosovo-specialist-chambers-the-last-resort-for-justice-in-kosovo>.

<sup>lxxv</sup> “Kosovo: Freedom in the World 2022 Country Report.” Freedom House. <https://freedomhouse.org/country/kosovo/freedom-world/2022>.

<sup>lxxvi</sup> “Kosovo: Freedom in the World 2022 Country Report.” Freedom House. <https://freedomhouse.org/country/kosovo/freedom-world/2022>.

<sup>lxxvii</sup> “Hybrid Justice.” Hybrid Justice. <https://hybridjustice.com/>.

<sup>lxxviii</sup> “Committee against Torture.” OHCHR, <https://www.ohchr.org/en/treaty-bodies/cat>

<sup>lxxix</sup> “Home Page - Trial International.” <https://trialinternational.org/wp-content/uploads/2019/08/Decision-CAT-A-BIH-2August2019.pdf>.

<sup>lxxx</sup> “Bosnia: Landmark Decision for a Survivor of Sexual Violence.” *TRIAL International*, 7 Dec. 2020, <https://trialinternational.org/latest-post/bosnia-landmark-decision-for-a-survivor-of-sexual-violence/>

<sup>lxxxii</sup> There are two Military Tribunals, Nuremberg and Tokyo. two International Criminal Tribunals, the International Criminal Tribunals of the Former Yugoslavia and Rwanda. Nine Hybrid or Special Courts: Extraordinary African Chambers, Extraordinary Chambers of the Court of Cambodia, Iraqi High Tribunal. Kosovo Specialist Chambers and Specialist Prosecutor’s Office, Special Court for Sierra Leone, Special Criminal Court in Central African Republic, Special Panels of the Dili District Court, Special Tribunal for Lebanon, The War Crimes Chamber in Bosnia and Herzegovina.

<sup>lxxxii</sup> Alexandra Gheciu and William Curti Wohlforth, “Constructivism,” in *The Oxford Handbook of International Security* (Oxford, UK: Oxford University Press, 2020), p. 17.