

UNRECOGNIZED STATES: NEUTRALIZING OBSTACLES TO HUMANITARIAN AID, DIGITALLY

SONA SULAKIAN*

TABLE OF CONTENTS

I. INTRODUCTION.....	136
A. BACKGROUND.....	136
B. OVERVIEW	140
II. TO WHAT EXTENT ARE NGOS BECOMING INTERNATIONAL PERSONALITIES?.....	141
A. THE INCREASING INFLUENCE OF NGOS THAT ARE FULFILLING STATE FUNCTIONS IN UNRECOGNIZED STATES.....	142
B. THE LEGITIMACY OF INTERNATIONAL NGOS UNDER INTERNATIONAL LAW.....	145
C. NGOS HERALDING THE DOCTRINE OF CONDITIONAL STATE SOVEREIGNTY	146
III. THE RIGHT TO RECEIVE AND THE DUTY TO PROVIDE HUMANITARIAN AID UNDER INTERNATIONAL LAW	150
A. THE RIGHT TO RECEIVE HUMANITARIAN AID	150
B. THE RIGHT AND DUTY TO PROVIDE HUMANITARIAN AID....	152
C. THE RIGHT TO HUMANITARIAN ACCESS.....	154

* Managing Editor, *Southern California Review of Law & Social Justice*, Volume 31; J.D. Candidate 2022, University of Southern California, Gould School of Law; B.S. Biology and B.A. Classics 2016, Stanford University. This Note was written with direction from Marcela Prieto Rudolph, Assistant Professor of Law. The author dedicates this Note to her grandfather Maxim Hovhannisyan and those like him who have fought for and remain “faithful to the dream of their ancestors to freely live and create in their homeland, and keeping the memory of the perished in the struggle for freedom alive.” ARTSAKHI HANRAPETUTYAN SAHMANADRUTYUN [Constitution], pmb. (Republic of Artsakh).

D. THE PROVISION OF HUMANITARIAN RELIEF IN OCCUPIED TERRITORIES.....	157
E. HUMANITARIAN ACCESS IS STILL A NOMINAL VICTORY	158
IV. WHAT QUALIFIES AS HUMANITARIAN AID?.....	160
A. IEEPA AS A POLITICAL TOOL RESTRICTING HUMANITARIAN AID.....	161
B. NGOS FULFILL FUNCTIONS THAT THE UNITED STATES IS UNWILLING OR UNABLE TO PROVIDE	162
V. HUMANITARIAN AID SHOULD BE DIVORCED FROM POLITICS.....	164
A. HUMANITARIAN AID AS A POLITICAL PLOY: CONFLICTING U.S. POLICY	164
B. A CASE STUDY OF U.S. INFLUENCE IN KOSOVO.....	166
VI. CRYPTOCURRENCY AS THE FUTURE OF HUMANITARIAN AID: A VIOLATION OF SOVEREIGNTY?.....	168
A. THE SEPARATION OF MONETARY SOVEREIGNTY FROM TERRITORIAL SOVEREIGNTY	168
B. SANCTIONS AND THE ERODING APPEAL OF A DOLLAR-DENOMINATED ECONOMY.....	170
C. LEGALIZING CRYPTO: THE NATIONALIZATION OF A STATELESS CURRENCY.....	173
D. MONETIZING RESOURCES BY TRADING FOR HUMANITARIAN AID.....	175
VII. CONCLUSION.....	178

I. INTRODUCTION

A. BACKGROUND

The collapse of the Soviet Union engendered a multitude of states unrecognized by the international community.¹ Many unrecognized states—Abkhazia, Artsakh,² South Ossetia, Transnistria, Chechnya,

¹ Donnacha Ó Beacháin, Giorgio Comai & Ann Tsurtsumia-Zurabashvili, *The Secret Lives of Unrecognised States: Internal Dynamics, External Relations, and Counter-recognition Strategies*, 27 *SMALL WARS & INSURGENCIES* 440, 441 (2016).

² In February 2017, the region previously known as the Nagorno-Karabakh Republic adopted a new constitution that changed the republic's name to the "Republic of Artsakh." *All About Nagorno-Karabakh's 2017 Name Change*, POL. GEOGRAPHY NOW (Jan. 30, 2018), <https://www.polgeonow.com/2018/01/artsakh-name-change-nagorno-karabakh.html> [<https://perma.cc/2924-CNS7>]. The term "Nagorno-Karabakh" is the Soviet name for the

Kosovo—emerged in the struggle for independence as Soviet political borders often defied ethnic realities.³ However, independence has varied greatly between these states. Chechnya became the first de facto state to dissolve,⁴ while Kosovo attained international recognition to an extent.⁵ Abkhazia and South Ossetia have gained limited recognition by Russia and its allies.⁶ Artsakh managed to survive the outbreak of a second war during the coronavirus pandemic despite losing most of its territory,⁷ a war that left thousands of displaced Armenians homeless and without tangible access to foreign aid.⁸

In many cases, the unrecognized state's survival depends on the strength of the patron state,⁹ as in the case of South Ossetia and Transnistria.¹⁰ Conversely, survival also hinges on the weakness of the unrecognized state's adversary, such as Moldova for Transnistria and Georgia for Abkhazia.¹¹ Artsakh recently suffered from the worst of both—a weak patron state and a strong adversary.

Internationally recognized states dominate international relations, even though many of these states have only appeared in the past century.¹² In the 1970s and 1980s, liberal interdependence theorists attacked the

region, a combination of “nagorny,” meaning “upper” in Russian, and “karabakh,” an Azerbaijani term for “Black Garden.” *Id.* The name “Artsakh” is the historic Armenian name of the region, dating back to ancient times. *Id.*

³ Beacháin et al., *supra* note 1, at 441, 452.

⁴ *Id.* at 441. Often compared with de jure, de facto is Latin for “of fact” or “in reality.” *See, e.g., De Facto*, VOCABULARY.COM, <https://www.vocabulary.com/dictionary/de%20facto> [<https://perma.cc/9EWK-QSVF>]. In government, the term describes entities that exist in reality but are not recognized by the law. *Id.*

⁵ Beacháin et al., *supra* note 1, at 452.

⁶ *Id.* at 451–52.

⁷ *See* HUM. RTS. WATCH, WORLD REPORT 2021 47–48 (2021), https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf [<https://perma.cc/7LZZ-N9CJ>].

⁸ Note that the term “displaced Armenians” is used intentionally as the status of displaced Armenians from the 2020 Artsakh War remains legally ambiguous. Lillian Avedian, *Displaced Armenians of Artsakh Receive Aid, but No Status*, ARMENIAN WKLY. (Jan. 27, 2021), <https://armenianweekly.com/2021/01/27/displaced-armenians-of-artsakh-receive-aid-but-no-status/> [<https://perma.cc/7SFT-5TLW>]. The displaced civilians are not protected as refugees under international law since the Republic of Artsakh is not an internationally recognized state. *Id.* Neither do they qualify for “internally displaced persons” (“IDP”) status because they are “considered citizens of Artsakh upon entering Armenia.” *Id.*

⁹ Beacháin et al., *supra* note 1, at 447–48.

¹⁰ *Id.* at 448–49.

¹¹ *Id.* at 441.

¹² *Id.* at 440.

state-centric theories of sovereignty as globalization and economic interdependence eroded archaic paradigms.¹³ Nevertheless, political cartography remains largely unquestioned despite omitting unrecognized states that effectively function as separate entities.¹⁴ Academics initially ignored these states as transient occurrences,¹⁵ recalling short-lived Katanga,¹⁶ Biafra,¹⁷ Serbian Krajina,¹⁸ and Chechnya.¹⁹ Other academics viewed these states as puppet regimes with no independent agency, a stance bolstered by the strong connection between unrecognized nations and their respective patron states, such as Artsakh and Armenia, or South Ossetia and Russia.²⁰ Yet, others perceived these states as inaccessible conflict zones.²¹ Sanctioned and sequestered away from the international eye, these regions have been termed “information[] black holes,” a name that has become a self-reinforcing epithet.²²

The international community has generally viewed unrecognized nations as disputed territories that set a dangerous precedent of territorial integrity violations.²³ As a result, larger neighbors ensure that their sub-states remain political pariahs, isolated from the international community and excluded from international legal frameworks.²⁴

Unrecognized states consequently suffer from political and economic isolation as they remain stalled in international limbo, “neither a full part

¹³ Janice E. Thomson, *State Sovereignty in International Relations: Bridging the Gap Between Theory and Empirical Research*, 39 INT’L STUD. Q. 213, 215 (1995).

¹⁴ Beacháin et al., *supra* note 1, at 440–41.

¹⁵ *Id.* at 440.

¹⁶ See generally M. Rafiqul Islam, *Secessionist Self-Determination: Some Lessons from Katanga, Biafra and Bangladesh*, 22 J. PEACE RSCH. 211 (1985) (examining three major separatist attempts and developing common criteria which the world community may recognize in responding to future secessionist claims).

¹⁷ See generally *id.*

¹⁸ See generally Pål Kolstø & Davor Paukovic, *The Short and Brutish Life of Republika Srpska Krajina: Failure of a De Facto State*, 13 ETHNOPOLITICS 309 (2014) (using the Republic of Krajina as a case study on factors necessary for de facto state survival).

¹⁹ Beacháin et al., *supra* note 1, at 441.

²⁰ *Id.* at 441–42.

²¹ *Id.* at 441.

²² Charles King, *The Benefits of Ethnic War: Understanding Eurasia’s Unrecognized States*, 53 WORLD POL. 524, 550 (2001).

²³ Beacháin et al., *supra* note 1, at 441.

²⁴ *Id.* See also Muktar Adan A. (Koshin), *Overcoming Challenges in an Unrecognized Economy: Experience from Somaliland*, 7 AM. INT’L J. CONTEMP. RSCH. 79, 83 (2017) (political isolation increases the difficulty in luring foreign investors).

of the international system, nor an ungoverned space.”²⁵ Without recognition, these states lack the legitimacy to overcome the chronic symptoms of poverty: endemic corruption, insufficient public services, poor infrastructure, economic instability, high unemployment, and limited travel and trade rights.²⁶

Restricted access to foreign aid arguably perpetuates the widespread privation most exponentially. Recognized states regularly receive foreign aid from allies and international organizations, including the International Monetary Fund (“IMF”),²⁷ the World Bank,²⁸ the World Health Organization (“WHO”),²⁹ and the humanitarian branches of the United Nations.³⁰ In contrast, hostile neighbors and a lack of international recognition block similar aid to unrecognized countries.³¹ For example, the United States has excluded any humanitarian aid to Abkhazia and South Ossetia since 2017,³² despite the desperate need for humanitarian aid in these regions.

Hence, unrecognized states often rely on the patronage of more powerful neighbors to service their citizens. Abkhazia receives over forty percent of its state budget from Russian loans,³³ and neighboring South Ossetia depends even more heavily on Russia.³⁴ Similarly, Artsakh

²⁵ Thomas Frear, *The Foreign Policy Options of a Small Unrecognised State: The Case of Abkhazia*, *Caucasus Survey*, 1 CAUCASUS SURV. 83, 83 (2014).

²⁶ Koshin, *supra* note 24, at 83–85; Marissa Field, *Obstacles to Reducing Poverty in Unrecognized States*, *BORGEN MAG.* (Apr. 4, 2019), <https://www.borgenmagazine.com/poverty-in-unrecognized-states/> [<https://perma.cc/7V8V-AF63>].

²⁷ *IMF Members' Financial Data by Country*, INT'L MONETARY FUND, <https://www.imf.org/external/np/fin/tad/exfin1.aspx> [<https://perma.cc/LG3W-X3VS>] (listing IMF loans to member countries among other financial data).

²⁸ *What We Do*, WORLD BANK, <https://www.worldbank.org/en/what-we-do> [<https://perma.cc/Q67Y-S8NW>] (detailing the World Bank's projects by country).

²⁹ *Countries*, WORLD HEALTH ORG., <https://www.who.int/countries> [<https://perma.cc/34FN-DHG8>].

³⁰ *Humanitarian Financing*, UNITED NATIONS OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS., <https://www.unocha.org/our-work/humanitarian-financing> [<https://perma.cc/6SFT-UKEG>].

³¹ Field, *supra* note 26.

³² Further Consolidated Appropriations Act, Pub. L. No. 116-94, § 7047(c), 133 Stat. 2909 (2020).

³³ Jacob Resneck, *Looking to the Future in Abkhazia*, *DEUTSCHE WELLE* (Mar. 17, 2014), <https://www.dw.com/en/looking-to-the-future-in-abkhazia/a-17502207> [<https://perma.cc/8ETN-DNAP>].

³⁴ For instance, the 2009 deals between the finance ministries of the respective countries “provide[d] for Abkhazia to receive 2.36 billion rubles (\$68 million) from the Russian federal

receives annual loans from Armenia, although these inter-state loans have been declining over time; most of the economic growth in Artsakh has rather been driven by diaspora,³⁵ as in Somaliland.³⁶

B. OVERVIEW

Although a host of terms have been used to identify unrecognized entities, this article defines unrecognized states as those that fulfill the criteria under the widely accepted Montevideo Convention: a permanent population, a defined territory, a government, and the capacity to enter into relations with other states.³⁷ For the purposes of this paper, the preceding definition excludes micronations, such as the small, self-proclaimed Free Republic of Liberland with its own cryptocurrency and even coat of arms.³⁸ The definition also excludes formally supported self-governing territories, such as Puerto Rico or American Samoa,³⁹ and states that associate with other countries for certain functions like security, such as the Republic of the Marshall Islands.⁴⁰ The term “parent state” refers to the state with international recognition over the territory, for example, Georgia for Abkhazia or Azerbaijan for Artsakh. The term “patron states” refers to the state that financially and politically supports the internationally unrecognized state, for example, Russia for Abkhazia or Armenia for Artsakh.⁴¹ Section III defines humanitarian aid, which

budget and South Ossetia 2.8 billion rubles (\$81 million).” *Russia Signs Financial Aid Deals with Abkhazia, South Ossetia-2*, SPUTNIK (Mar. 17, 2009, 11:12 AM), <https://sputniknews.com/20090317/120599992.html> [<https://perma.cc/LL9C-WVPZ>].

³⁵ Helge Blakkisrud & Pål Kolstø, *Dynamics of De Facto Statehood: The South Caucasian De Facto States Between Secession and Sovereignty*, 12 SE. EUR. & BLACK SEA STUD. 281, 291 (2012).

³⁶ Kassahun Berhanu, *Implications of Diaspora Investment for Statebuilding and Regional Integration*, in THE POLITICAL ECONOMY OF DIASPORA REMITTANCES IN THE ETHIOPIAN SOMALI REGION 29, 29–33 (Danish Inst. for Int’l Stud., Working Paper No. 9, 2019), <https://www.jstor.org/stable/resrep21441.11> [<https://perma.cc/SRX5-C3B5>].

³⁷ Montevideo Convention on the Rights and Duties of States art. 1, *opened for signature* Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19 (entered into force Dec. 26, 1934).

³⁸ See FREE REPUBLIC OF LIBERLAND, liberland.org [<https://perma.cc/DGV9-52WW>] (last visited Nov. 8, 2021).

³⁹ See *Introduction*, 130 HARV. L. REV. 1617, 1617 (2017) (discussing self-governing U.S. territories).

⁴⁰ Bureau of East Asian and Pacific Affairs, *U.S. Relations with Marshall Islands*, U.S. DEP’T STATE (Dec. 9, 2021), <https://www.state.gov/u-s-relations-with-marshall-islands/> [<https://perma.cc/G8JJ-9FBZ>].

⁴¹ See Beacháin et al., *supra* note 1, at 441.

includes aid provided by recognized States, intergovernmental organizations, and nongovernmental organizations (“NGOs”).

Using unrecognized states as a lens, this paper first argues that NGOs do not violate the sovereignty of the internationally recognized governing state by providing unauthorized humanitarian aid. The paper then explores a solution consistent with the goals of international law and international human rights laws. Section II examines NGOs’ evolution into international personalities, a status they use to influence international relations and impose conditions on state sovereignty.⁴² Section III explores how these conditions have been codified in international law, fortifying international recognition of the right to receive and duty to provide humanitarian aid. Recognizing the still-evolving definition of humanitarian aid, Section IV discerns how countries often wield political concerns to restrict the provision of humanitarian aid and thus leave NGOs to fill the resultant need gap. Section V follows with a most prominent example of U.S. policy that both restricts aid to secessionist states and conflicts with historical U.S. support for insurgents. To avoid the clash between international humanitarian law and politically driven state policy, Section V argues that separating the provision of humanitarian aid from politics would further the international mandate of neutrality of humanitarian aid. Section VI suggests that a cryptocurrency regime allowing for humanitarian e-commerce may provide the best solution for impartial humanitarian aid. The likely birthplaces of this new regime are unrecognized states as well as recognized states similarly suffering from international sanctions. Unable to attain international recognition, these states may leverage cryptocurrency for monetary sovereignty that would facilitate the flow of international aid.

II. TO WHAT EXTENT ARE NGOS BECOMING INTERNATIONAL PERSONALITIES?

Alongside sovereign and recognized states, the number of non-state actors in international systems has mushroomed in recent decades.⁴³

⁴² “An entity with an international personality is a ‘subject of international law so as itself to enjoy rights, duties or powers established in international law, and, generally, the capacity to act on the international plane either directly, or indirectly through another State.’” CLAUDIE BARRAT, *THE LEGAL PERSONALITY OF NGOS IN INTERNATIONAL HUMANITARIAN LAW: IS THAT THE QUESTION?* 181 (2014).

⁴³ See Wais Mehrabi, *Politics of International Recognition: The Case of Aspirant States 2* (Dec. 5, 2018) (M.A. thesis, Wright State University),

These entities include NGOs, multinational corporations (“MNCs”), and intergovernmental organizations (“IGOs”) created by treaties, such as the United Nations (“U.N.”) and the European Union (“EU”).⁴⁴

A. THE INCREASING INFLUENCE OF NGOS THAT ARE FULFILLING STATE FUNCTIONS IN UNRECOGNIZED STATES

In unrecognized states, many nonprofits have assumed traditional state functions, such as the provision of healthcare and infrastructure development. For instance, Hanganak NGO in Artsakh provides social and medical care to the elderly living alone in the region.⁴⁵ The EU similarly donated approximately \$40 million between 2008 and 2016 to NGOs in Abkhazia providing healthcare and education, repairing public facilities, and rebuilding homes.⁴⁶

The globalization and professionalization of nonprofits has given these once neutral actors enhanced global reach and political power.⁴⁷ Yet, large-scale NGOs clash against state sovereignty when they step in to fulfill state functions. These non-state actors arguably erode the relationship between a state and its citizens, thus undermining the state’s sovereignty.⁴⁸

https://corescholar.libraries.wright.edu/cgi/viewcontent.cgi?article=3345&context=etd_all
[<https://perma.cc/DF4D-EM9M>].

⁴⁴ *Id.* at 3.

⁴⁵ HANGANAK NGO, [hanganak.org](https://perma.cc/J34J-CZWY) [<https://perma.cc/J34J-CZWY>].

⁴⁶ THOMAS DE WAAL, UNCERTAIN GROUND: ENGAGING WITH EUROPE’S DE FACTO STATES AND BREAKAWAY TERRITORIES 26 (2018), https://carnegieendowment.org/files/deWaal_UncertainGround_final.pdf [<https://perma.cc/VMV4-DTE7>].

⁴⁷ On the role of non-state actors such as NGOs in global governance, *see generally* Elke Krahmann, *Legitimizing Private Actors in Global Governance: From Performance to Performativity*, 5 POL. & GOVERNANCE 54 (2017) (arguing that the “immaterial, socially constructed and inherently contested nature” of certain public goods creates obstacles for objectively assessing performance). U.S. regulations mandated that nonprofit organizations maintain fiscal responsibility, which led to the creation of a class of professional managers with the requisite expertise. Sarah Dempsey, *Nonprofits as Political Actors*, 26 MGMT. COMM’N Q. 147, 148 (2012). Nonprofits thus became professionalized: “The rise in nonprofit standards of behavior, a body of professional literature on nonprofit management, and the establishment of training programs each reflect a particular type of increased professionalization and formalization.” *Id.*

⁴⁸ Roger C. Riddell, *Does Foreign Aid Really Work? An Updated Assessment* 24, 36 (Australian Nat’l Univ. Dev. Pol’y Ctr., Discussion Paper No. 33, 2014), <https://ssrn.com/abstract=2409847> [<https://perma.cc/7WK3-Y8XC>].

NGOs may also undermine state sovereignty by circumventing diplomatic positions.⁴⁹ For example, if the government institutes economic sanctions on a particular state, NGOs may nevertheless raise funds directly from people around the world and use that capital with complete discretion. Recently, Armenia Fund raised over \$150 million from the diaspora to provide humanitarian aid to Armenia and Artsakh in the wake of the recent war in the region;⁵⁰ the nonprofit exercised discretion in using the funds as deemed necessary by a board of thirteen stakeholders from various Armenian-American churches or organizations.⁵¹ This aid proved crucial given other nations' governmental inaction. Thus, by remaining separate from the state, nonprofits like Armenia Fund can challenge the state powers of collecting and distributing funds.

Some academics posit that the provision of such services may prove ultimately detrimental to state power and accountability as states become ever more reliant on NGOs to provide crucial services,⁵² leaving the population especially vulnerable to any sudden cuts in funding. As a solution, academics argue for sustainable development centered on a strong, "territorially defined" state actor—"the only actor able to extract the vast resources from society that make possible significant distributive and redistributive policies and the only actor capable of providing public

⁴⁹ RAMESH THAKUR, *THE UNITED NATIONS, PEACE AND SECURITY: FROM COLLECTIVE SECURITY TO THE RESPONSIBILITY TO PROTECT* 98–99 (2d ed. 2006).

⁵⁰ Sargis Harutyunyan, *Armenians Donate Over \$150 Million to Karabakh*, AZATUTYUN RADIOKAYAN (Oct. 28, 2020), <https://www.azatutyun.am/a/30917654.html> [<https://perma.cc/KZ6W-9WUA>]. The recent war refers to the forty-four-day-long conflict between Armenia and Azerbaijan in 2020 over the territory of the unrecognized Republic of Artsakh, a region also known as Nagorno-Karabakh. Thomas De Waal, *Unfinished Business in the Armenia-Azerbaijan Conflict*, CARNEGIE EUR. (Feb. 14, 2021), <https://carnegieeurope.eu/2021/02/11/unfinished-business-in-armenia-azerbaijan-conflict-pub-83844> [<https://perma.cc/Z7HA-D7WG>]. Russia mediated a ceasefire agreement that ended the war on November 10, 2020. *Id.*

⁵¹ Aram Arkun, *Armenia Fund Set New Fundraising Records During Karabakh War, Report of Allocations Delayed*, ARMENIAN MIRROR SPECTATOR (Jan. 14, 2021), <https://mirrorspectator.com/2021/01/14/armenia-fund-set-new-fundraising-records-during-karabakh-war-report-of-allocations-delayed/> [<https://perma.cc/UF8L-4KTU>].

⁵² Ashraf Ghani, Clare Lockhart & Michael Carnahan, *Closing the Sovereignty Gap: An Approach to State-Building* 11 (Overseas Dev. Inst., Working Paper No. 253, 2005), <http://effectivestates.org/wp-content/uploads/2015/09/Closing-the-Sovereignty-Gap-an-Approach-to-State-Building1.pdf> [<https://perma.cc/AUG6-55QD>].

goods on a significant scale. . . . and maintain order domestically.”⁵³ Yet, how can an unrecognized state establish true political strength when in international eyes the state does not exist?

Although some view the enhanced role of international NGOs as an interference with state sovereignty in domestic and foreign affairs,⁵⁴ the role of these NGOs in unrecognized states remains tenuous at best. Politics often overrides human rights concerns in these countries, where the law often deems these rights nonexistent.⁵⁵ Despite persistent calls by a myriad of Armenian NGOs on the human rights violations in Artsakh during the recent war, international governments remained silent, afraid to upset the strategic ally Turkey.⁵⁶ The continued human rights violations in

⁵³ Peter P. Houtzager, *Introduction: From Polycentrism to the Polity*, in *CHANGING PATHS: INTERNATIONAL DEVELOPMENT AND THE NEW POLITICS OF INCLUSION* 4 (Peter P. Houtzager & Mick Moore eds., 2003).

⁵⁴ Kenneth Anderson, *The Limits of Pragmatism in American Foreign Policy: Unsolicited Advice to the Bush Administration on Relations with International Nongovernmental Organizations*, 2 *CHI. J. INT’L L.* 371, 377, 381–83 (2001).

⁵⁵ In a case that involved Greek artwork, the court held that because the executive branch does not recognize North Cyprus as an independent nation, the North Cyprian courts have no authority over the case. *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278, 292–94 (7th Cir. 1990).

⁵⁶ Artsakh, a region also known as Nagorno-Karabakh, is an ethnically Armenian Autonomous Oblast within the international borders of Azerbaijan. HUM. RTS. WATCH, *AZERBAIJAN: SEVEN YEARS OF CONFLICT IN NAGORNO-KARABAKH*, at xviii (1994), <https://www.hrw.org/sites/default/files/reports/AZER%20Conflict%20in%20N-K%20Dec94.pdf> [<https://perma.cc/CA98-DUJB>]. After the Russian Revolution, the Bolsheviks gifted the region to Azerbaijan “in a decision hotly contested by Armenians.” *Id.* at xix. According to a 1989 census, Artsakh was 75% Armenian and 25% Azeri. *Id.* at xx. The collapse of the Soviet Union led to a war in 1988 as the Armenians fought for independence from Azerbaijan, calling for reunification with Armenia and citing the widespread discrimination against ethnic Armenians. *Id.* In fact, the calls against endemic discrimination against Armenians reach back to 1965, when writer and publicist Maxim Hovhannisyán co-authored a letter to Moscow detailing Azerbaijan’s discriminatory directives over the previous five years. Davit Abaghyán, *First Attempts of Reuniting Artsakh with Armenia in 1965 as 1988 Artsakh Movement Basis*, ARAVOT (Jan. 12, 2018, 4:34 PM), <https://www.aravot-en.am/2018/01/12/206121/> [<https://perma.cc/C8KD-TAUD>]. Following the letter, Azerbaijan began persecuting Armenians despite promising Moscow to correct “all shortcomings and omissions,” and the signers of the letter “were subjected to party sanctions, dismissals.” *Id.* In the words of Maxim Hovhannisyán, this letter thus “became the basis for evolving an irreversible fight in 1988 and [a] national awakening.” *Id.* The war eventually ended in a ceasefire that saw the region fall under Armenian control. Sonni Efron, *Armenia, Azerbaijan Agree to a Cease-Fire: Caucasus: Moscow Brokers Truce in Former Soviet Union’s Longest-Running Conflict. But Fighting Continues.*, L.A. TIMES (May 17, 1994, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1994-05-17-mn-58811-story.html> [<https://perma.cc/4TQ5-S3ZK>]. More recently, while the rest of the world was occupied fighting the coronavirus pandemic, Azerbaijan waged a war against Artsakh in late 2020, a bloody war that left thousands homeless and many more as refugees as

these unrecognized states underscore the need to divorce the provision of humanitarian aid from political agendas.

B. THE LEGITIMACY OF INTERNATIONAL NGOS UNDER INTERNATIONAL LAW

While multinational organizations, such as the World Trade Organization and the U.N., are created by and between states, international NGOs pull support from multiple countries and provide services across national borders.⁵⁷ As international entities, these NGOs claim legitimacy under international humanitarian law. For example, Amnesty International justifies its international activities on the general principles of the Universal Declaration of Human Rights and other human rights conventions.⁵⁸ International approval generally endows these documents and international human rights law with a legitimacy that allows NGOs like Amnesty International to pressure states into adherence.⁵⁹

International NGOs also leverage their reputations for objectivity and their expertise in regional economic and social conditions to command the international community's attention, such as when an organization like Amnesty International exposes a state's violation of international human rights laws.⁶⁰ International NGOs have successfully pressured states and multinational organizations to tackle a variety of social issues, including

Azerbaijan committed numerous human rights violations with impunity, including chemical warfare reminiscent of the use of napalm in the Vietnam War. *Azerbaijan: Unlawful Strikes in Nagorno-Karabakh*, HUM. RTS. WATCH (Dec. 11, 2020, 3:00 AM), <https://www.hrw.org/news/2020/12/11/azerbaijan-unlawful-strikes-nagorno-karabakh> [<https://perma.cc/U57D-S8X7>]; *Use of White Phosphorous Bombs by Azerbaijan Confirmed*, ASBAREZ (Oct. 30, 2020), <https://asbarez.com/198143/use-of-white-phosphorous-bombs-by-azerbaijan-confirmed/> [<https://perma.cc/EU7Q-LFRX>].

⁵⁷ For example, World Vision International operates in over a hundred countries and has received funding from "Australia, Canada (CIDA), United Kingdom (DFID), United States (USAID), Germany (German Humanitarian Assistance), and the European Union." *World Vision, NGO MONITOR* (July 9, 2018), https://www.ngo-monitor.org/ngos/world_vision_international/ [<https://perma.cc/C2L9-KBYC>]. Other similar international NGOs include Oxfam International, Save the Children International, Plan International, Médecins Sans Frontières, CARE International, CARITAS International, and ActionAid International. Bill Morton, *An Overview of International NGOs in Development Cooperation*, in *WORKING WITH CIVIL SOCIETY IN FOREIGN AID: POSSIBILITIES FOR SOUTH-SOUTH COOPERATION?* 325, 325 (2013).

⁵⁸ Daniel C. Thomas, *International NGOs, State Sovereignty, and Democratic Values*, 2 *CHI. J. INT'L L.* 389, 390 (2001).

⁵⁹ *Id.*

⁶⁰ *Id.*

increased governmental transparency,⁶¹ landmine removal,⁶² and violence against women.⁶³

C. NGOS HERALDING THE DOCTRINE OF CONDITIONAL STATE SOVEREIGNTY

NGOs have chipped away at the doctrine of unconditional state sovereignty, which had been the norm since the peace of Westphalia in 1648.⁶⁴ This doctrine holds that a state should have complete authority over its territory so that the state remains accountable to its citizens, who would otherwise turn to foreign powers.⁶⁵ However, NGOs have in recent years pressed a new norm of state sovereignty conditional upon compliance with international human rights law. For instance, the NGOs of the transnational “Helsinki network” shaped relations during the Cold War by urging Western governments to ensure the Soviet Union’s adherence to Principle 7 of the Helsinki Final Act.⁶⁶

⁶¹ Following investigations by Amnesty International and the release of a revealing report, the U.S. Africa Command (“AFRICOM”) began publishing quarterly reports on the claims of civilian casualties from U.S. air strikes, which led to the United States’ first admission of civilian casualties. *See Civilian Casualty Report and Allegations*, U.S. AFR. COMMAND (Apr. 22, 2020), <https://www.africom.mil/image/32712/> [<https://perma.cc/T3LY-9C5H>]; *see also* AMNESTY INT’L, THE HIDDEN US WAR IN SOMALIA: CIVILIAN CASUALTIES FROM AIR STRIKES IN LOWER SHABELLE 27–33 (2019), <https://www.amnesty.org/download/Documents/AFR5299522019ENGLISH.PDF> [<https://perma.cc/V6AT-L3J9>].

⁶² *See generally* Richard Price, *Reversing the Gun Sights: Transnational Civil Society Targets Land Mines*, 52 INT’L ORG. 613 (1998) (detailing how NGOs advocated to remove and ban landmines).

⁶³ *See Europe: Spain to Become Tenth Country in Europe to Define Rape as Sex Without Consent*, AMNESTY INT’L (Mar. 3, 2020, 5:51 PM), <https://www.amnesty.org/en/latest/news/2020/03/europe-spain-yes-means-yes/> [<https://perma.cc/K4CL-TCRM>] (announcing that Spain now defines rape as sex without consent in light of Amnesty’s campaigns across European countries).

⁶⁴ Thomas, *supra* note 58, at 392. According to some historians, the origins of sovereignty stem from the budding sovereign states system at the congress of Westphalia, brokered in 1648 as an end to the Thirty Years War. Derek Croxton, *The Peace of Westphalia of 1648 and the Origins of Sovereignty*, 21 INT’L HIST. REV. 569, 569–70 (1999). The peace of Westphalia marked the start of sovereign states recognizing both their own and neighboring nations’ territorial power, reinforcing each others’ legitimacy. *Id.* at 571. The peace of Westphalia also removed the religious basis of state power, portending the end of papal authority in European states. *Id.* at 571–72.

⁶⁵ *See* Croxton, *supra* note 64, at 570.

⁶⁶ Conf. on Sec. & Coop. in Eur. [CSCE], *Helsinki Final Act* (Aug. 1, 1975), 73 DEP’T ST. BULL. 323, 323–50 (1975), *reprinted in* 70 AM. J. INT’L L. 417, 419–20 (1976) (Principle 7 addresses respect for human rights and fundamental freedoms); SARAH B. SNYDER, HUMAN

The classic view of sovereignty as absolute territorial autonomy is trending towards a shared principle that relies upon agreements with international actors.⁶⁷ Although not settled international law yet, one result of this phenomenon has been the development of the conditional sovereignty principle under which a state can establish sovereignty by satisfying certain criteria, such as protecting human rights, developing democracy, respecting the rule of law, and supporting regional stability.⁶⁸ Ironically, these traditional concerns include respecting the territorial integrity of neighboring states although the secessionist state itself defies territorial sovereignty.⁶⁹

Kosovo represents the most prominent application of the doctrine of conditional sovereignty.⁷⁰ Established to research and provide independent, objective analysis of the Kosovo War,⁷¹ the Independent International Commission on Kosovo (“IIC”) asserts Kosovo’s entitlement to conditional independence.⁷² The commission predicated its legal argument justifying Kosovar independence on a history of systematic

RIGHTS ACTIVISM AND THE END OF THE COLD WAR: A TRANSNATIONAL HISTORY OF THE HELSINKI NETWORK 15 (2011).

⁶⁷ Paul R. Williams, *Earned Sovereignty: The Road to Resolving the Conflict Over Kosovo’s Final Status*, 31 DENV. J. INT’L L. & POL’Y 387, 387 (2003).

⁶⁸ *Id.* at 389.

⁶⁹ See INDEP. INT’L COMM’N ON KOSOVO, THE KOSOVO REPORT: CONFLICT, INTERNATIONAL RESPONSE, LESSONS LEARNED 278 (2000) [hereinafter THE KOSOVO REPORT], <https://doi.org/10.1093/0199243093.001.0001> [<https://perma.cc/8ZQT-FA7X>] (“The Commission is seeking to devise a strategy for supervised independence which instead of granting immediate international legal personality to secessionist peoples makes such independence conditional on minority rights protection and respect for the territorial integrity of neighboring states.”).

⁷⁰ In the wake of the crumbling Soviet Union, Yugoslavia began to fragment as well. Matt Rosenberg, *Kosovo Independence*, THOUGHTCO, <https://www.thoughtco.com/kosovo-independence-overview-1435550> [<https://perma.cc/K6Q3-KSHE>] (last updated July 22, 2018). Serbia’s Slobodan Milosevic held onto the Federal Republic of Yugoslavia for a while as he tried to maintain control of the various neighboring regions. *Id.* While nearby Bosnia, Herzegovina, and Montenegro achieved independence, Kosovo remained under Serbian control. *Id.* A war eventually erupted in 1998 as the Kosovo Liberation Army fought for independence against Serbian forces. *Id.* The war ended in 1999 with a resolution passed by the U.N. Security Council, a peace ensured by a NATO peacekeeping unit in Kosovo. *Id.* Under the theory of conditional sovereignty, Kosovo’s independence was contingent on meeting certain benchmarks, allowing the newly formed state to earn its sovereignty over time. Milena Sterio, *The Kosovar Declaration of Independence: “Botching the Balkans” or Respecting International Law?*, 37 GA. J. INT’L & COMP. L. 267, 292–93 (2009).

⁷¹ THE KOSOVO REPORT, *supra* note 69, at 21.

⁷² Williams, *supra* note 67, at 418–19.

human rights abuses.⁷³ This argument also reduced the likelihood that other secessionist-minded states like Montenegro could justify sovereignty.⁷⁴ Under this doctrine, sovereignty fundamentally links to human rights. While a sub-state entity usually works with the parent state to achieve conditional sovereignty, Kosovo's establishment demonstrates that the international community can override a state's territorial sovereignty in certain cases to push through the phases of conditional sovereignty, regardless of the parent state's disapproval.

Especially in Kosovo, the presence of U.N. Mission in Kosovo and the widespread international coverage likely pressured the International Court of Justice ("ICJ") to seriously consider Kosovo's unilateral declaration of independence.⁷⁵ Indeed, the ICJ only once evaluated the lawfulness of secession in submitting an advisory opinion respecting the unilateral declaration of independence of Kosovo from Serbia.⁷⁶ The ICJ vaguely stated that Kosovo's claims did not violate international law, but the court failed to establish any standards for evaluating the validity of a claim of independence.⁷⁷ For context, consider the Canadian Supreme Court's holding on Quebec's attempt to unilaterally secede: the court

⁷³ THE KOSOVO REPORT, *supra* note 69, at 271–73.

⁷⁴ *See id.* at 269.

⁷⁵ *See* Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, 407–09 (July 22, 2010) [hereinafter ICJ Advisory Opinion on Kosovo], <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf> [<https://perma.cc/325U-8FEN>].

⁷⁶ Frederick V. Perry & Scheherazade Rehman, *Secession, The Rule of Law and the European Union*, 31 CONN. J. INT'L L. 61, 71–72 (2015). After World War II, self-determination became a legal principle; the Charter of the United Nations recognizes this legal right in Article 1(2), Article 73, and Chapter XII. *Id.* at 70. The U.N. General Assembly affirmed, "All peoples have the right of self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." G.A. Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, U.N. Doc. A/RES/1514(XV), at 67 (Dec. 14, 1960). The U.N. General Assembly also declared that:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

G.A. Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, U.N. GAOR, 25th Sess., Supp. No. 28 at 123, U.N. Doc. A/8028 (Oct. 24, 1970).

⁷⁷ Perry & Rehman, *supra* note 76, at 71–72.

recognized the right to secession only in a colonial setting or for a group of people with no effective democratic representation who are facing discrimination distinct from that experienced by the rest of the population.⁷⁸

Ethiopia presents an ongoing example of how the international community infringes on a state's sovereignty when the state violates its humanitarian duties.⁷⁹ Beginning with the famines of the 1970s, international NGOs delivered aid—provided mainly by other governments—to millions of starving Ethiopians in spite of the government's objections, a feat that intergovernmental organizations could not achieve.⁸⁰ These NGOs directly undermined the sovereignty of the Ethiopian government, which actively worked to prevent such access. While Ethiopian regimes strived to assert control over the international NGOs, these entities continued to answer to their Western donors.⁸¹ The tension between the Ethiopian government and these humanitarian agencies continues today amid “reports of violence against humanitarian staff and infrastructures . . . , some physically assaulted and harassed, several NGO compound[s] looted, and three ambulances attacked.”⁸²

⁷⁸ See Ved P. Nanda, *Self-Determination and Secession Under International Law*, 29 DENV. J. INT'L L. & POL'Y 305, 306–07 (2001) (analyzing a court holding that Quebec lacked the right to unilateral secession because “under the international law principle of self-determination of peoples, a right to secede arises only where ‘a people’ is governed in a colonial setting, where ‘a people’ is subject to alien subjugation, domination or exploitation, and possibly where ‘a people’ is denied within the state of which it forms a part a meaningful exercise of its right to self-determination.”).

⁷⁹ See *Ethiopia*, USAID, <https://www.usaid.gov/humanitarian-assistance/ethiopia> [https://perma.cc/DGL3-P7UM]; see also Press Statement, Michael R. Pompeo, Sec'y of State, The United States' Humanitarian Assistance Response to Conflict in Ethiopia's Tigray Region (Dec. 23, 2020), <https://reliefweb.int/report/ethiopia/united-states-humanitarian-assistance-response-conflict-ethiopia-s-tigray-region> [https://perma.cc/TX28-9WHZ].

⁸⁰ Kurt Mills, *Sovereignty Eclipsed?: The Legitimacy of Humanitarian Access and Intervention*, J. HUMANITARIAN ASSISTANCE (July 4, 1997), <https://sites.tufts.edu/jha/archives/111> [https://perma.cc/N9CW-LGF2].

⁸¹ Sue Lautze, Angela Raven-Roberts & Teshome Erkinch, *Humanitarian Governance in the New Millennium: An Ethiopian Case Study* 7–8 (Feb. 1, 2009) (working paper), <https://odi.org/en/publications/humanitarian-governance-in-the-new-millennium-an-ethiopian-case-study/> [https://perma.cc/V4LJ-7NMK].

⁸² *Ethiopia: Access Snapshot—Tigray Region*, U.N. OFF. FOR THE COORDINATION OF HUMANITARIAN AFFS. (OCHA) (Dec. 15, 2020), https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ethiopia_access_snapshot_tigray_dec_2020.pdf [https://perma.cc/B66S-4EBG].

III. THE RIGHT TO RECEIVE AND THE DUTY TO PROVIDE HUMANITARIAN AID UNDER INTERNATIONAL LAW

This section argues that international law should not demand the state's consent when providing non-political humanitarian aid to the civilian population. While not widely accepted international law yet, this idea coheres with the trend of international law, which progressively advances the right to receive and the duty to provide humanitarian aid.

As defined by the U.N., though still lacking a legal definition, humanitarian assistance serves as:

Aid that seeks, to save lives and alleviate suffering of a crisis-affected population. Humanitarian assistance must be provided in accordance with the basic humanitarian principles of humanity, impartiality and neutrality, as stated in General Assembly Resolution 46/182. In addition, the [U.N.] seeks to provide humanitarian assistance with full respect for the sovereignty of States.⁸³

The U.N. General Assembly's Resolution emphatically maintains that humanitarian assistance must proceed within the bounds of state sovereignty: "The sovereignty, territorial integrity and national unity of States must be fully respected."⁸⁴ The Resolution continues, "[H]umanitarian assistance should be provided with the consent of the affected country."⁸⁵ Thus, humanitarian assistance remains closely bound by the international recognition of sovereignty, which creates ambiguity in whether humanitarian assistance classifies as a fundamental right or rather as a privilege reserved for regions on good terms with their internationally recognized sovereigns.

A. THE RIGHT TO RECEIVE HUMANITARIAN AID

The right to receive humanitarian aid has gained traction among the international community, rendering moot any alleged violation of

⁸³ *Glossary of Humanitarian Terms*, RELIEFWEB 29 (Aug. 1, 2008), <https://reliefweb.int/report/world/reliefweb-glossary-humanitarian-terms-enko> [<https://perma.cc/75K6-HLPG>].

⁸⁴ G.A. Res. 46/182, annex, Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations, ¶ 3, U.N. Doc. No. A/RES/46/182 (Dec. 19, 1991).

⁸⁵ *Id.*

sovereignty by NGOs working in unrecognized states.⁸⁶ The most widely recognized international laws regarding humanitarian assistance include the 1949 Geneva Conventions and the two Additional Protocols of 1977, negotiated after World War II.⁸⁷ International law considers the Geneva Conventions and most of the Additional Protocols customary and so binding all States to these documents, regardless of ratification.⁸⁸ In the context of armed conflicts, these documents outline the rights and duties of states but do not directly endow relief providers with rights or duties. Most importantly, the Geneva Conventions and their Additional Protocols protect individuals uninvolved in the hostilities, including health and aid workers, civilians, prisoners of war, and wounded and sick soldiers.⁸⁹ Nevertheless, these provisions create standards informing humanitarian agencies on how to secure humanitarian access and cooperation from states.

Customary international law generally recognizes civilians' right to humanitarian aid as essential for survival.⁹⁰ The Fourth Geneva Convention ("GCIV"), the two Additional Protocols ("API" and "APII"), and Common Article 3 detail the provision of relief to civilians, including food, medical supplies, and clothing;⁹¹ materials for educational, recreational, or religious purposes;⁹² and measures to protect and help civilians to "recover from the immediate effects, of hostilities or disasters

⁸⁶ Mills, *supra* note 80.

⁸⁷ See *The Geneva Conventions of 1949 and Their Additional Protocols*, INT'L COMM. OF THE RED CROSS (Jan. 1, 2014), <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols> [<https://perma.cc/CZV2-LD4H>].

⁸⁸ *The Practical Guide to Humanitarian Law*, MÉDECINS SANS FRONTIÈRES, <https://guide-humanitarian-law.org/content/article/3/customary-international-law/> [<https://perma.cc/8TKW-P6GD>].

⁸⁹ *Id.*

⁹⁰ HUMA HAIDER, INTERNATIONAL LEGAL FRAMEWORKS FOR HUMANITARIAN ACTION: TOPIC GUIDE 28 (2013), <https://gsdrc.org/topic-guides/international-legal-frameworks-for-humanitarian-action/> [<https://perma.cc/GT99-8RQJ>]; see also Emilie E. Kuijt, *Legal Challenges in the Provision of Humanitarian Assistance: The Case of Non-International Armed Conflicts*, 17 Y.B. INT'L HUMANITARIAN L. 145, 159 (2016) ("International law on the contrary formulates a *duty* for the affected authorities to embrace international aid. This duty can be read in Article 2(1) ICESCR concerning international assistance, as well as the formulation in AP II that an offer of assistance may not be 'arbitrarily' refused.").

⁹¹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 59, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention].

⁹² *Id.* art. 108.

and also to provide conditions necessary for [their] survival.”⁹³ Article 59 of the GCIV affords civilians the right to receive humanitarian assistance during conflict.⁹⁴

B. THE RIGHT AND DUTY TO PROVIDE HUMANITARIAN AID

International documents recognize the authority of international NGOs. The International Committee of the Red Cross (“ICRC”) and other humanitarian organizations can provide humanitarian assistance during conflict under Article 9 of the First,⁹⁵ Second,⁹⁶ and Third Geneva Conventions,⁹⁷ Article 3 of the four Geneva Conventions,⁹⁸ and Article 81 of API.⁹⁹ The GCIV further states that the ICRC and similar relief societies “shall be able to pursue their activities,” subject to security concerns.¹⁰⁰ The Additional Protocols also support the right to receive relief by specifying that relief actions “shall be undertaken” to alleviate harm to civilians in need.¹⁰¹

Article 18 of APII expands protection for relief actions targeting civilian populations “suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies.”¹⁰² Notably, the Protocol limits aid to that “of an exclusively

⁹³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 61, June 8, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1391 [hereinafter Additional Protocol I]; HAIDER, *supra* note 90, at 26.

⁹⁴ Mills, *supra* note 80.

⁹⁵ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 9, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter First Geneva Convention].

⁹⁶ Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea art. 9, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 [hereinafter Second Geneva Convention].

⁹⁷ Geneva Convention Relative to the Treatment of Prisoners of War art. 9, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Third Geneva Convention].

⁹⁸ First Geneva Convention, *supra* note 95, art. 3; Second Geneva Convention, *supra* note 96, art. 3; Third Geneva Convention, *supra* note 97, art. 3; Fourth Geneva Convention, *supra* note 91, art. 3.

⁹⁹ Additional Protocol I, *supra* note 93, art. 81.

¹⁰⁰ Fourth Geneva Convention, *supra* note 91, art. 63(a).

¹⁰¹ *Rule 55. Access for Humanitarian Relief to Civilians in Need*, IHL DATABASE, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55 [<https://perma.cc/N54J-JDB2>].

¹⁰² Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 18(2), June 8, 1977, 1125 U.N.T.S. 609, 26 I.L.M. 568 [hereinafter Additional Protocol II].

humanitarian and impartial nature.”¹⁰³ In addition, GCIV Article 30 grants civilians the right to appeal for aid provisioned by the protecting powers, the ICRC, or any other organization.¹⁰⁴ The ICRC proposes requiring that all parties involved in a conflict ensure access to basic necessities for their civilians and provide a means to appeal for international assistance when needed.¹⁰⁵

The Conventions and Protocols implicitly require that humanitarian organizations maintain neutrality.¹⁰⁶ Article 70 of API states that humanitarian assistance made impartially does not threaten state sovereignty.¹⁰⁷ These documents emphasize the importance of impartiality and the equal treatment of peoples. Article 23 of the GCIV requires a party to allow humanitarian access for civilians of the opposing party, subject to security concerns.¹⁰⁸ API further provides for “rapid and unimpeded passage of all relief consignments, equipment and personnel.”¹⁰⁹ Some academics equate impartiality with needs-based provision of assistance.¹¹⁰ For example, the International Court of Justice affirmed the right to humanitarian assistance under international law, but deemed U.S. assistance to the Contras in Nicaragua not humanitarian aid.¹¹¹ There, the Court characterized American aid as discriminatory and not targeted to “prevent and alleviate human suffering.”¹¹²

¹⁰³ *Id.*

¹⁰⁴ Fourth Geneva Convention, *supra* note 91, art. 30.

¹⁰⁵ *See Rule 55, supra* note 101.

¹⁰⁶ *See HAIDER, supra* note 90, at 20, 25.

¹⁰⁷ Additional Protocol I, *supra* note 93, art. 70(1); *see Mills, supra* note 80.

¹⁰⁸ Fourth Geneva Convention, *supra* note 91, art. 23.

¹⁰⁹ Additional Protocol I, *supra* note 93, art. 70(2).

¹¹⁰ *See, e.g., Jean Pictet, The Fundamental Principles of the Red Cross: Commentary*, INT’L COMM. RED CROSS § II (Jan. 1, 1979), <https://www.icrc.org/en/doc/resources/documents/misc/fundamental-principles-commentary-010179.htm> [<https://perma.cc/JE3J-6C35>]; *see also* JEAN PICTET, THE GENEVA CONVENTIONS OF 12 AUGUST 1949: COMMENTARY 34 (1958), https://www.loc.gov/frd/Military_Law/pdf/GC_1949-IV.pdf [<https://perma.cc/WPB3-SES4>] (explaining that Article 3 of all four Geneva Conventions “provides a legal basis for charitable interventions by the International Committee of the Red Cross or any other impartial humanitarian organization—interventions which in the past were all too often refused on the ground that they represented unfriendly interference in the internal affairs of a State”).

¹¹¹ HAIDER, *supra* note 90, at 25.

¹¹² *Id.*

C. THE RIGHT TO HUMANITARIAN ACCESS

Military manuals, official statements, and reported practice endorse an obligation to facilitate humanitarian access to civilians in need.¹¹³ The U.N. has also been vocal in this area; the U.N. Security Council called for free access for humanitarian aid in Iraq¹¹⁴ and to affected areas in the conflict between Armenia and Azerbaijan.¹¹⁵ Furthermore, the Council has adopted multiple resolutions highlighting “the importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict.”¹¹⁶

Multiple international laws have recognized the denial of critical humanitarian aid as a crime, which may give rise to a violation even without criminal conduct or individual responsibility. The Convention on the Prevention and Punishment of the Crime of Genocide codifies the obligation to prevent the crime of genocide, and because the ICJ considers this treaty as customary international law, all States must comply with its rules.¹¹⁷ While not an internationally binding definition, the International Criminal Court (“ICC”) defines extermination—which constitutes a crime against humanity as part of a calculated and widespread or systematic attack against any civilian group¹¹⁸—as including “the intentional infliction of conditions of life, *inter alia*[,] the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.”¹¹⁹ The Rome Statute of the ICC also criminalizes “[i]ntentionally using starvation of civilians as a method of warfare by depriving [civilians] of objects indispensable to their survival, including

¹¹³ See *Rule 55*, *supra* note 101.

¹¹⁴ See, e.g., S.C. Res. 688 (Apr. 5, 1991), <https://digitallibrary.un.org/record/110659> [<https://perma.cc/VFS2-N6HT>]; see also S.C. Res. 706 (Aug. 15, 1991), <https://digitallibrary.un.org/record/125534> [<https://perma.cc/6B4P-S2E6>].

¹¹⁵ See, e.g., S.C. Res. 874 (Oct. 14, 1993), <https://digitallibrary.un.org/record/110659> [<https://perma.cc/WHF7-X6E4>]; see also S.C. Res. 884 (Nov. 12, 1993), <https://digitallibrary.un.org/record/176731> [<https://perma.cc/WA5K-F6N7>].

¹¹⁶ S.C. Res. 1265, 3 (Sept. 17, 1999), <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Civilians%20SRES1265.pdf> [<https://perma.cc/7QQA-XW32>].

¹¹⁷ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 278; Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. Rep. 15, at 12 (May 28).

¹¹⁸ *Rule 55*, *supra* note 101.

¹¹⁹ Rome Statute of the International Criminal Court art. 7(2)(b), July 17, 1998, 2187 U.N.T.S. 38544.

wilfully [sic] impeding relief supplies as provided for under the Geneva Conventions.”¹²⁰ Many States have enacted similar legislation.¹²¹ For instance, the ongoing civil war between the Houthi rebels and the Yemeni government has involved military attacks on food production and distribution, blockades of ports and airports, and disruption of the central banking system.¹²² These targeted attacks on civilian infrastructure and the resultant dire humanitarian conditions have led Genocide Watch to deem the region to be in the extermination stage.¹²³ A recent U.N. report urged the U.N. Security Council to refer these actions by the Houthi rebels and Saudi Arabia to the ICC for war crimes prosecution.¹²⁴

Adopted by the 27th International Conference of the Red Cross and Red Crescent to protect victims of armed conflicts, the 2000–2003 Plan of Action stipulates that all parties to a conflict must guarantee that “rapid and unimpeded access to the civilian population is given to impartial humanitarian organi[z]ations in accordance with international humanitarian law in order that they can provide assistance and protection to the population.”¹²⁵ But humanitarian agencies must acquire the relevant parties’ consent to distribute relief under both Additional Protocols I and II, although practice does not always reflect this requirement.¹²⁶ A party may not, however, refuse consent for arbitrary reasons. In fact, the Protocols mandate consent where a civilian population faces starvation that a humanitarian organization can relieve on impartial and non-

¹²⁰ *Id.* art. 8(2)(b)(xxv).

¹²¹ See, e.g., *Criminal Code Act 1995*, ch 8 div 268 sub-div C s 9 (Austl.) (current through 2018); see also *Practice Relating to Rule 53. Starvation as a Method of Warfare*, IHL DATABASE, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule53 [<https://perma.cc/W7VR-5RCR>] (listing worldwide national legislation that criminalizes intentional starvation of civilians as a method of warfare).

¹²² MARTHA MUNDY, *THE STRATEGIES OF THE COALITION IN THE YEMEN WAR: AERIAL BOMBARDMENT AND FOOD WAR* 6–7 (World Peace Found. 2018), <https://sites.tufts.edu/wpf/files/2018/10/Strategies-of-Coalition-in-Yemen-War-Final-20181005-1.pdf> [<https://perma.cc/5NFA-FXE3>].

¹²³ *Yemen*, GENOCIDE WATCH, <https://www.genocidewatch.com/country-pages/yemen> [<https://perma.cc/99TM-MM3D>] (last updated Sept. 18, 2021).

¹²⁴ U.N. High Commissioner for Human Rights, *Situation of Human Rights in Yemen, Including Violations and Abuses Since September 2014*, ¶ 99, U.N. Doc. A/HRC/45/6 (Sept. 28, 2020).

¹²⁵ Int’l Comm. of the Red Cross, *Plan of Action for the Years 2000–2003*, Res. 1, annex 2, § 1.1(1)(g), No. 836 (Dec. 31, 1999), <https://www.icrc.org/en/doc/resources/documents/article/other/57jq8k.htm> [<https://perma.cc/HTX5-JACE>].

¹²⁶ Additional Protocol I, *supra* note 93, art. 70(1); Additional Protocol II, *supra* note 103, art. 18(2).

discriminatory grounds.¹²⁷ As such, the Protocols indicate that the state must grant permission even with the precondition of their consent. Despite the rather muddled logic, international law essentially recognizes an international duty to ensure humanitarian access.

French humanitarian organizations have often taken a progressive stance in arguing for the right of humanitarian access.¹²⁸ One such organization, Médecins du Monde,¹²⁹ has conducted unauthorized humanitarian campaigns in Afghanistan, El Salvador, South Africa, and Ethiopia.¹³⁰ The French humanitarian movement has continuously argued for humanitarian aid as both a right and a duty. In the wake of the recent human rights violations in Artsakh, the French Senate became the first international federal body to recognize Artsakh's independence,¹³¹ and France was among the first countries to send humanitarian assistance.¹³²

The right to humanitarian access separates the provision of humanitarian aid “from larger political and military considerations, including threats to sovereignty, focusing on civilian victims instead.”¹³³ A 2005 study by the ICRC confirmed that international law requires states to permit humanitarian assistance that prevents starvation and death.¹³⁴ Moreover, if such aid serves as an act of sovereignty,¹³⁵ then the definition of sovereignty should expand to impose additional duties regarding humanitarian issues. In either case, the ICRC and similar organizations

¹²⁷ *Rule 55, supra* note 101.

¹²⁸ *Id.*

¹²⁹ *Our Countries*, MÉDECINS DU MONDE, <https://www.medecinsdumonde.org/en/countries> [<https://perma.cc/Z4JA-KY3Y>]. Another French medical group, Médecins sans Frontières, has conducted similar activities. *Who We Are*, MÉDECINS SANS FRONTIÈRES, <https://www.msf.org/who-we-are> [<https://perma.cc/AHB2-QEWK>].

¹³⁰ See Bernard Kouchner, *Morals of Urgent Need*, in *ASSISTING THE VICTIMS OF ARMED CONFLICT AND OTHER DISASTERS* 56–57 (Kalshoven ed. 1988).

¹³¹ *ANCA Welcomes French Senate Recognition of Artsakh Independence*, ARMENIAN WKLY. (Nov. 26, 2020, 10:14 AM), <https://armenianweekly.com/2020/11/26/anca-welcomes-french-senate-recognition-of-artsakh-independence/> [<https://perma.cc/VR5G-XW3L>].

¹³² Alison Hird, *France Sends Emergency Aid to Armenian Community in Nagorno-Karabakh*, RFI (Nov. 23, 2020, 8:43 AM), <https://www.rfi.fr/en/international/20201123-france-sends-aid-to-armenia-community-in-nagorno-karabakh-azerbaijan-ceasefire-war-russia-turkey-macron> [<https://perma.cc/N4MR-W426>].

¹³³ Mills, *supra* note 80.

¹³⁴ Rebecca Barber, *Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law*, 91 INT'L REV. RED CROSS 371, 387–88 (2009), <https://www.icrc.org/en/doc/assets/files/other/irrc-874-barber.pdf> [<https://perma.cc/64SN-QVKL>].

¹³⁵ See Mills, *supra* note 80.

can likely act unilaterally in providing humanitarian aid, regardless of state consent.

D. THE PROVISION OF HUMANITARIAN RELIEF IN OCCUPIED TERRITORIES

With respect to occupied territories, Article 3 in the four Conventions recognizes that international law governs occupied or rebel-held territories.¹³⁶ Thus, the government that represents the state internationally has no authority to prevent the ICRC or other humanitarian organizations from entering occupied territories.¹³⁷ Consequently, humanitarian organizations providing relief only require the consent of the occupying power to provide aid, as exemplified by the Eritrea and Tigre provinces in Ethiopia during the 1970s famine and civil war.¹³⁸

Furthermore, in situations of occupation, Articles 55 and 56 of the GCIV require that the rebel authorities ensure food and medical supplies for their people.¹³⁹ API broadened this obligation to include bedding, shelter, and other essential goods.¹⁴⁰ Article 59 of the GCIV provides that if a part of the occupied territory remains “inadequately supplied,” the occupying power must permit the provision of relief to the affected populations by other states or by impartial humanitarian organizations, such as the ICRC.¹⁴¹ Article 62 further notes that “protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.”¹⁴² Amid the coronavirus pandemic, Human Rights Watch argued that Israel should provide Covid-19 vaccines to the

¹³⁶ First Geneva Convention, *supra* note 95, art. 3; Second Geneva Convention, *supra* note 96, art. 3; Third Geneva Convention, *supra* note 97, art. 3; Fourth Geneva Convention, *supra* note 91, art. 3; *see also* Mills, *supra* note 80.

¹³⁷ Maurice Torrelli, *From Humanitarian Assistance to “Intervention on Humanitarian Grounds”?*, 32 INT’L REV. RED CROSS 228, 234 (1992), doi.org/10.1017/S0020860400070492 [https://perma.cc/W36G-GTHC].

¹³⁸ *See* Mills, *supra* note 80; *see also* June Rock, *Relief and Rehabilitation in Eritrea: Lessons and Issues*, 20 THIRD WORLD Q. 129, 130–31 (1999).

¹³⁹ Fourth Geneva Convention, *supra* note 91, art. 55, 56; *see* HAIDER, *supra* note 90, at 26.

¹⁴⁰ Additional Protocol I, *supra* note 93, art. 69.

¹⁴¹ Fourth Geneva Convention, *supra* note 91, art. 59.

¹⁴² *Id.* art. 62.

Palestinians in the occupied West Bank and Gaza Strip, according to Israel's duties under the GCIV to provide medical supplies.¹⁴³

E. HUMANITARIAN ACCESS IS STILL A NOMINAL VICTORY

Humanitarian access remains a nominal victory because NGOs often hesitate to forcibly provide aid when a state physically blocks access. In Bosnia, the U.N. Human Rights Council (“UNHCR”) failed to access the affected civilians despite the UNHCR portraying their activities as purely humanitarian and neutral.¹⁴⁴ In early 2020, Yemen's Houthi rebels blocked U.N. humanitarian aid to over 2 million beneficiaries, demanding numerous conditions before permitting access.¹⁴⁵ The Human Rights Watch identified multiple issues with the U.N.-led response to aid obstacles, including “a failure to engage more proactively with national security and military officials.”¹⁴⁶

In fact, foreign governments often exacerbate local issues by adding legal obstacles to the provision of humanitarian aid. The lack of recognition even on the governmental level can significantly burden the provision of humanitarian aid. Because foreign nations frequently impose sanctions against these states, an understanding of the sanctions framework helps explain the political and economic forces at play in the provision of humanitarian aid. Most recently, England unsuccessfully

¹⁴³ *Israel: Provide Vaccines to Occupied Palestinians*, HUM. RTS. WATCH (Jan. 17, 2021, 12:00 AM), <https://www.hrw.org/news/2021/01/17/israel-provide-vaccines-occupied-palestinians> [<https://perma.cc/W46W-6Q2E>].

¹⁴⁴ Yugoslavia was a federation of six republics, which began to fragment after the Soviet Union collapsed. *Balkans War: A Brief Guide*, BBC NEWS (Mar. 18, 2016), <https://www.bbc.com/news/world-europe-17632399> [<https://perma.cc/A9TP-CN76>]. In 1992, the Bosnian war began between after the Bosnian Muslims and Croats voted for independence, a vote that the Serbs boycotted. *Id.* Through ethnic cleansings, over a million Bosnians were driven from their homeland, becoming refugees in dire need of humanitarian assistance. *Id.* The failure of the UNHCR in negotiating with the warring parties might have been due to humanitarian personnel who were “poorly informed, trained and equipped.” Mark Cutts, *The Humanitarian Operation in Bosnia, 1992-95: Dilemmas of Negotiating Humanitarian Access* 25 (Pol’y Rsch. Unit, UNHCR Working Paper No. 8, 1999), <https://www.unhcr.org/3ae6a0c58.pdf> [<https://perma.cc/TYP8-43N4>]. In fact, much of the humanitarian aid was diverted for military purposes. *Id.*

¹⁴⁵ Associated Press, *Houthi Rebels Block UN Humanitarian Aid in Yemen*, DAILY SABAH (Feb. 19, 2020, 12:45 PM), <https://www.dailysabah.com/mideast/2020/02/19/houthi-rebels-block-un-humanitarian-aid-in-yemen> [<https://perma.cc/MMN9-V6YQ>].

¹⁴⁶ Gerry Simpson, *Deadly Consequences: Obstruction of Aid in Yemen During Covid-19*, HUM. RTS. WATCH (Sept. 14, 2020), <https://www.hrw.org/report/2020/09/14/deadly-consequences/obstruction-aid-yemen-during-covid-19> [<https://perma.cc/D4HC-BV9G>].

attempted to play both political sides and block the Maduro regime from accessing Venezuela's gold reserves, despite President Nicolás Maduro's purported use of the gold as humanitarian relief.¹⁴⁷ Maduro had demanded \$1 billion in gold from the Bank of England to provide food and medical equipment as his country fought the COVID-19 pandemic.¹⁴⁸ A British court's ruling initially blocked Maduro's appeal, claiming that the Bank could not release the cash to the socialist leader because the U.K. did not recognize his authority as the rightful President.¹⁴⁹ The U.K., however, maintained diplomatic relations with Maduro's government, which led an appeals court to overturn the decision.¹⁵⁰

Across the pond, the United States similarly reinforced obstacles to the provision of humanitarian aid. When President Maduro blocked humanitarian aid convoys to Venezuela,¹⁵¹ the United States retaliated with sanctions, which further deterred the provision of humanitarian aid.¹⁵² Humanitarian aid organizations had to acquire licenses from the Office of Foreign Assets Control of the U.S. Department of Treasury ("OFAC").¹⁵³ While OFAC encouraged organizations to disclose any obstacles created by the barriers, a report by the Washington Office on Latin America found that the sanctions directly "contributed to [the Venezuelan economy's] deep decline, and to the further deterioration of the quality of life of

¹⁴⁷ Associated Press, *Venezuela's Nicolás Maduro is Denied Control of Gold in London Bank*, NBC NEWS (July 2, 2020, 8:17 AM), <https://www.nbcnews.com/news/latino/venezuela-s-nicolas-maduro-denied-control-gold-london-bank-n1232759> [<https://perma.cc/69XL-CVKW>].

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Michael Stott, *Venezuela's Maduro Wins Appeal Over \$1bn of Gold at Bank of England*, FIN. TIMES (Oct. 5, 2020), <https://www.ft.com/content/d5e91ab8-f44f-437a-887e-7a5aa402976d> [<https://perma.cc/9LAG-XKQH>].

¹⁵¹ Matthew Lee, *US Hits Venezuela Officials with Sanctions for Blocking Aid*, AP NEWS (Mar. 1, 2019), <https://apnews.com/article/north-america-ap-top-news-venezuela-south-america-international-news-6748571907d04cbfa2b9c3185f49d78b> [<https://perma.cc/58FB-2YWH>].

¹⁵² *Venezuela-Related Sanctions*, U.S. DEP'T TREASURY, <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/venezuela-related-sanctions> [<https://perma.cc/C4AM-EYEH>].

¹⁵³ *Venezuela-Related Sanctions*, U.S. DEP'T TREASURY, <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/venezuela-related-sanctions> [<https://perma.cc/YV3R-WC98>] (see Venezuela General License 3H).

Venezuelans.”¹⁵⁴ The sanctions also increased costs and created logistical problems for travel to Venezuela.¹⁵⁵

Further aggravating the economic situation, risk aversion in the financial sector has caused banks and similar institutions to over-comply with the sanctions.¹⁵⁶ As a result, human rights and humanitarian organizations have had their bank accounts closed and legitimate transactions denied or frozen.¹⁵⁷ Related negative effects include delays and obstacles in transferring funds and receiving donations.¹⁵⁸

Despite sanctions that hinder aid provisions and contribute to a bevy of issues impeding economic recovery, including the informalization of the economy and the proliferation of illegal actors,¹⁵⁹ Western nations still elect to impose sanctions as a disciplinary measure against unfriendly foreign governments.

IV. WHAT QUALIFIES AS HUMANITARIAN AID?

Despite the recognized international principles of neutrality and independence, humanitarian assistance in practice frequently falls short of these ideals. For example, the provision of U.S. humanitarian aid often supplements political motives, rather than serving independent purposes. The U.S. government frequently restricts aid to secessionist states, a policy that contrasts with historical U.S. support for insurgents as in Kosovo. Because of the United States’ importance in the international system, this section focuses on the United States as a case study; many NGOs also find their headquarters in the United States,¹⁶⁰ such as Direct

¹⁵⁴ LUIS OLIVEROS, THE IMPACT OF FINANCIAL AND OIL SANCTIONS ON THE VENEZUELAN ECONOMY 15 (2020), <https://www.wola.org/wp-content/uploads/2020/10/Oliveros-report-summary-ENG.pdf> [<https://perma.cc/M8KK-NBB7>].

¹⁵⁵ *Id.* at 9–10.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 9.

¹⁵⁸ *Id.*

¹⁵⁹ Benedicte Bull & Antulio Rosales, *Into the Shadows: Sanctions, Rentierism, and Economic Informalization in Venezuela*, 109 EUR. REV. LATIN AM. & CARIBBEAN STUD. 107, 107 (2020) (arguing that “sanctions and counter-strategies employed by the state have produced multiple transformations, such as the informalization and criminalization of the economy, which undercut the recovery of Venezuelan economic development and democracy”).

¹⁶⁰ “Approximately 1.5 million NGOs operate in the United States.” Bureau of Democracy, Human Rights, and Labor, *Non-Governmental Organizations (NGOs) in the United States*, U.S. DEP’T STATE (Jan. 20, 2021), <https://www.state.gov/non-governmental-organizations-ngos-in-the-united-states/> [<https://perma.cc/99SM-ARMM>].

Relief, Americares, the U.S. Fund for UNICEF, and the American Red Cross.

A. IEEPA AS A POLITICAL TOOL RESTRICTING HUMANITARIAN AID

The International Emergency Economic Powers Act (“IEEPA”) authorizes the President of the United States to regulate international commerce after declaring a national emergency due to any international unusual and extraordinary threat to the United States.¹⁶¹ The Act’s humanitarian aid exemption prohibits any restrictions on donations to a foreign country where the aid intends and objectively expects only to relieve human suffering.¹⁶² However, the President may bar humanitarian aid deemed to “seriously impair [the President’s] ability to deal with any national emergency,” harm military security, or constitute a result of coercion.¹⁶³ Furthermore, humanitarian aid excludes monetary contributions; OFAC has been held to exceed its statutory authority for preventing humanitarian donations of physical goods, such as food, clothing, and medicine, but not for financial contributions.¹⁶⁴

President George W. Bush relied on these exceptions to enforce Executive Order 13,224,¹⁶⁵ an emergency declaration in response to the 9/11 attacks that cancelled the IEEPA’s humanitarian exemption with no explanation or path for reinstatement.¹⁶⁶ Indeed, this “emergency” measure still actively stands nineteen years later.¹⁶⁷ President Bush’s measure set a dangerous precedent that has hamstrung the humanitarian exemption as subsequent Executive Orders have similarly restricted

¹⁶¹ 50 U.S.C. § 1702(b)(2).

¹⁶² *Veterans Peace Convoy, Inc. v. Schultz*, 722 F. Supp. 1425, 1432 (S.D. Tex. 1988).

¹⁶³ § 1702(b)(2).

¹⁶⁴ *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57, 68–69 (D.D.C. 2002), *aff’d*, 333 F.3d 156 (D.C. Cir. 2003).

¹⁶⁵ Kay Guinane, *19 Years Later EO 13224 Continues to Block Humanitarian Aid. It’s Time for an Update*, CHARITY & SEC. NETWORK (Sept. 24, 2020), <https://charityandsecurity.org/blog/19-years-later-EO-13224-continues-to-block-humanitarian-aid-its-time-for-an-update/> [<https://perma.cc/7V5N-ZYQ8>].

¹⁶⁶ *See id.*; Exec. Order No. 13,224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (creating a list of Specially Designated Global Terrorists, freezing their assets, and prohibiting transactions with them).

¹⁶⁷ Guinane, *supra* note 165.

assistance to humanitarian crises around the world, including Yemen, Syria, and Somalia.¹⁶⁸

Humanitarian aid organizations now face legal hurdles in providing humanitarian assistance, which inevitably involves transactions with Specially Designated Global Terrorists (“SDGT”) groups under the Executive Order—including activities as routine as a road toll.¹⁶⁹ The Executive Order further hinders communication with an entity since designation as an SDGT shuts down the entity in the United States by freezing all the designee’s property and transactions, including “the making or receiving of any contribution of funds, goods, or services to or for the benefit of those [persons].”¹⁷⁰ Although international humanitarian law addresses these situations, the termination of the IEEPA’s humanitarian exemption effectively blocks the use of those standards.

B. NGOs FULFILL FUNCTIONS THAT THE UNITED STATES IS UNWILLING OR UNABLE TO PROVIDE

NGOs fill an important gap forged by unwilling or unable multinational organizations. Years ago, Former Ambassador Richard Williamson testified to the House Foreign Affairs Committee, “Ultimately, the fact that democracies and non-democracies have equal status and the fact that oppressors, as well as those who respect human rights, have common status creates fundamental weaknesses in the United Nation’s ability to address some of these serious [human rights] concerns.”¹⁷¹ The U.N. Human Rights Council houses multiple human

¹⁶⁸ CHARITY & SEC. NETWORK, PROPOSALS FOR NEW CONGRESS AND BIDEN-HARRIS ADMINISTRATION TO SUPPORT AND FACILITATE HUMANITARIAN AND PEACEBUILDING OPERATIONS THROUGH NONGOVERNMENTAL ORGANIZATIONS 8 (2021), https://charityandsecurity.org/wp-content/uploads/2021/03/CSN-Transition-Memo_V4.pdf [<https://perma.cc/8LTC-4C97>]; see, e.g., Exec. Order No. 13,536, 84 Fed. Reg. 14843 (Apr. 10, 2019) (concerning Somalia).

¹⁶⁹ Guinane, *supra* note 165.

¹⁷⁰ Exec. Order No. 13,224, 66 Fed. Reg. 49079, §§ 1–2 (emphasis omitted); see also *Kindhearts for Charitable Humanitarian Dev. v. Geithner*, 647 F. Supp. 2d 857, 866 (N.D. Ohio 2009).

¹⁷¹ *The U.N. Commission on Human Rights: Protector or Accomplice?: Hearing and Briefing Before the Subcomm. on Afr., Global Human Rts. & Int’l Operations of the Comm. on Int’l Rels. H.R.*, 109th Cong. 39 (2005); see also REPUBLICAN STUDY COMM., THE RSC NATIONAL SECURITY STRATEGY: STRENGTHENING AMERICA & COUNTERING GLOBAL THREATS 63 (2020), <https://rsc-johnson.house.gov/sites/republicanstudycommittee.house.gov/files/%5BFINAL%5D%20NSTF%20Report.pdf> [<https://perma.cc/BNJ4-WLXY>].

rights violators, including China, Cuba, and Venezuela;¹⁷² in the U.N. Security Council (“UNSC”), many countries like Russia and China frequently wield their veto in support of authoritarian regimes and even to prevent humanitarian aid.¹⁷³ Even some U.N. groups have violated international humanitarian standards; for example, the U.N. Development Program (“UNDP”) funded terrorist organizations like Hamas and the Assad regime in Syria.¹⁷⁴

U.S. Policy Reports to the Senate Committee of Foreign Relations have consistently detailed the difficulty for humanitarian organizations and NGOs to enter Abkhazia and, even more troubling, to access landlocked South Ossetia.¹⁷⁵ South Ossetia’s government requires entry through Russia, which would harm the United States’ political relationship with Georgia. According to a 2009 report, “[i]nternational donors, NGO representatives, and U.S. assistance officials noted that Tbilisi is still struggling to formulate policies towards the breakaway enclaves with regard to access of multinational and humanitarian organizations.”¹⁷⁶ The report encouraged the United States and international donors to aid Georgian authorities in developing some form of policy regarding access.¹⁷⁷ The recommended route would prove time intensive with likely little benefit compared to supplying civilian aid immediately through Northern access routes already available through Russia.

¹⁷² *Current Membership of the Human Rights Council for the 15th Cycle, 1 January—31 December 2021*, UNITED NATIONS HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx> [<https://perma.cc/T8GZ-5W32>].

¹⁷³ Michelle Nichols, *Russia, Backed by China, Casts 14th U.N. Veto on Syria to Block Cross-Border Aid*, REUTERS (Dec. 20, 2019, 10:02 AM), <https://www.reuters.com/article/us-syria-security-un/russia-backed-by-china-casts-14th-u-n-veto-on-syria-to-block-cross-border-aid-idUSKBN1YO23V> [<https://perma.cc/CW5D-UZNH>].

¹⁷⁴ Elliott Abrams, *Foreign Aid for Hamas*, COUNCIL ON FOREIGN RELATIONS: PRESSURE POINTS (Aug. 10, 2016, 8:51 AM), <https://www.cfr.org/blog/foreign-aid-hamas> [<https://perma.cc/7KP7-PQA6>]; see U.S. DEP’T STATE, 2010 HUMAN RIGHTS REPORT (2011), <https://2009-2017.state.gov/documents/organization/160478.pdf> [<https://perma.cc/V639-RXDQ>] (detailing the limited success of UNDP funding efforts in Syria).

¹⁷⁵ STRIKING THE BALANCE: U.S. POLICY AND STABILITY IN GEORGIA, S. REP. NO. 111-37, at 7 (1st Sess. 2009).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 8–10.

Yet since 2017,¹⁷⁸ the United States has prohibited foreign aid to governments that recognize the independence of Abkhazia or South Ossetia.¹⁷⁹ Alongside Russia, these governments include Nicaragua, Venezuela, Nauru, and Syria—all of which suffer a dire need for humanitarian aid.¹⁸⁰

V. HUMANITARIAN AID SHOULD BE DIVORCED FROM POLITICS

A. HUMANITARIAN AID AS A POLITICAL PLOY: CONFLICTING U.S. POLICY

Continuing with the United States as a case study, this section further explores the political dynamics of humanitarian aid. The U.S. refusal to provide humanitarian aid to conflict zones contrasts against the historical U.S. support of insurgents. Congress has consistently refused to allow aid to non-recognized countries. The most recent bill amending the Foreign Assistance Act explicitly states,

None of the funds appropriated by this Act may be made available for assistance for a government of an Independent State of the former Soviet Union if such government directs any action in violation of the territorial integrity or national sovereignty of any other Independent State of the former Soviet Union.¹⁸¹

Specifically, the Act restricted U.S. aid to Abkhazia and South Ossetia as well as any other country that recognizes their independence or

¹⁷⁸ CONG. RSCH. SERV., GEORGIA: BACKGROUND AND U.S. POLICY 15–16 (2020), <https://fas.org/sgp/crs/row/R45307.pdf> [<https://perma.cc/3UQF-L2DK>] (last updated June 10, 2021).

¹⁷⁹ Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, § 7047(c), 133 Stat. 2534, 2908–09 (2019); *see also* Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, § 7047(c), 133 Stat. 359, 360.

¹⁸⁰ *See* Giorgi Lomsadze, *World's Smallest Island-Nation May Lose US Aid Over Georgia's Breakaways*, EURASIANET (May 13, 2017), <https://eurasianet.org/worlds-smallest-island-nation-may-lose-us-aid-over-georgias-breakaways> [<https://perma.cc/9WQP-ZHGY>]; *Map: Which Countries Recognized Abkhazia and South Ossetia in 2018?*, POL. GEOGRAPHY NOW (Dec. 30, 2018), <https://www.polgeonow.com/2018/12/map-who-recognizes-abkhazia-and-south-ossetia.html> [<https://perma.cc/HST3-2L74>]; *Countries That Recognized South Ossetia's and Abkhazia's Independence*, TASS (May 29, 2018, 6:59 AM), <https://tass.com/world/1007058> [<https://perma.cc/8EVR-AMCN>].

¹⁸¹ Pub. L. No. 116-94, § 7046(b); *see also* H.R. REP. NO. 166-78, at 125–26 (2019).

establishes diplomatic relations with them on account of Russian patronage of the regions.¹⁸² The Act consistently refers to these regions as Georgian territories, for example, “the Russian Federation occupied Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia.”¹⁸³ The Act continues to imbue the U.S. Secretary of the Treasury with the duty to “instruct the United States executive directors of each international financial institution to vote against any assistance by such institution . . . for any program that violates the sovereignty and territorial integrity of Georgia.”¹⁸⁴

The judicial branch remains powerless to enforce international humanitarian concerns. With respect to foreign relations, the judicial branch defers to the executive branch and U.S. recognition of sovereignty,¹⁸⁵ and multiple cases reject Soviet decrees by citing the lack of national recognition.¹⁸⁶

Most recently, the U.S. Congress’s Anti-Terrorism Clarification Act (“ATCA”) granted U.S. citizens standing to sue foreign aid recipients in U.S. courts for alleged complicity in an “act of war.”¹⁸⁷ In response to this legislation, the United States Agency for International Development (“USAID”) has halted all aid to Palestinians in the occupied West Bank and Gaza.¹⁸⁸

¹⁸² H.R. REP. NO. 166-78, at 125–26. Abkhazia and South Ossetia are breakaway territories from Georgia in a disputed independence movement that led to two wars, most recently in 2008. *2008 Georgia Russia Conflict Fast Facts*, CNN (Mar. 25, 2021, 9:41 AM), <https://www.cnn.com/2014/03/13/world/europe/2008-georgia-russia-conflict/index.html> [<https://perma.cc/LX5S-3GPM>]. Although internationally unrecognized, these de facto states have established autonomy under Russia’s patronage, which includes both military and financial support. *See Abkhazia Profile*, BBC NEWS (Jan. 13, 2020), <https://www.bbc.com/news/world-europe-18175030> [<https://perma.cc/L545-4WK8>]; *see also South Ossetia Profile*, BBC NEWS (Apr. 21, 2016), <https://www.bbc.com/news/world-europe-18269210> [<https://perma.cc/RV6J-BSXA>].

¹⁸³ Pub. L. No. 116-94, § 7047(c)(1).

¹⁸⁴ Pub. L. No. 116-6, § 7047(c)(3).

¹⁸⁵ *See, e.g., Autocephalous*, 917 F.2d at 292–94.

¹⁸⁶ *See, e.g., Estonian State Cargo & Passenger S.S. Line v. United States*, 116 F. Supp. 447, 450–51 (1953).

¹⁸⁷ *See Anti-Terrorism Clarification Act of 2018*, Pub. L. No. 115-253, 132 Stat. 3183, 3184 (provides federal courts with personal jurisdiction over foreign recipients of U.S. aid).

¹⁸⁸ *USAID Ceases Assistance in West Bank and Gaza: US Official*, AL JAZEERA (Feb. 1, 2019), <https://www.aljazeera.com/news/2019/2/1/usaid-ceases-assistance-in-west-bank-and-gaza-us-official> [<https://perma.cc/ZPH2-CNFA>].

B. A CASE STUDY OF U.S. INFLUENCE IN KOSOVO

Contradictory to the other actions by the United States, the U.S. government recognized Kosovo and sent aid to the region even though the majority of U.N. members still do not recognize its status.¹⁸⁹ Furthermore, largely due to U.S. support, the IMF opened an office in Kosovo.¹⁹⁰ An applicant for the IMF must be a “country” under the IMF’s Articles of Agreement, which sets out obscure legalese allowing membership “at such times and in accordance with such terms as may be prescribed by the Fund.”¹⁹¹ In essence, the IMF reserves significant discretion to dole out membership when deemed politically expedient.

Indeed, joining the IMF presents an important step to gaining international recognition.¹⁹² For example, a spokesman for the Kosovar government confirmed Kosovo’s expectation to soon join the World Bank.¹⁹³ Conversely, countries without American support have struggled to join this exclusive international club. In 1980, the IMF removed Taiwan, not recognized by the United States and other major nations, upon China’s admission to the organization.¹⁹⁴ In contrast to international groups like the U.N. and the World Trade Organization, the IMF’s weighted-majority voting rules allowed Kosovo to join despite objections from Serbia, Russia, and other countries that did not recognize Kosovo’s independence and despite only 58 of the 192 U.N. member states recognizing Kosovo’s independence.¹⁹⁵

Unrecognized countries will struggle to service their ailing populations without any clear international standards governing the membership criteria for strategic international groups, organizations that allegedly prioritize humanitarian relief above larger political

¹⁸⁹ *Kosovo and U.S. Policy: Background to Independence*, EVERYCRSREPORT.COM (June 20, 2008), <https://www.everycrsreport.com/reports/RL31053.html> [<https://perma.cc/Q2VM-M5T8>].

¹⁹⁰ See Press Release, International Monetary Fund, Kosovo Becomes the International Monetary Fund’s 186th Member, Press Release No. 09/240 (June 29, 2009); see also *Republic of Kosovo*, INT’L MONETARY FUND, <https://www.imf.org/en/Countries/KOS> [<https://perma.cc/6P68-Q6D5>].

¹⁹¹ Articles of Agreement of the IMF, Art. 2, § 2, 60 Stat. 1401, 2 U.N.T.S. 39.

¹⁹² Nick Andrews & Bob Davis, *Kosovo Wins Acceptance to IMF*, WALL ST. J. (May 7, 2009, 12:01 AM), <https://www.wsj.com/articles/SB124154560907188151> [<https://perma.cc/GVV6-V87G>].

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

considerations. As a result, human rights violations will continue to occur. Most recently, the world turned a blind eye to the beheading of civilians and to the destruction of cultural sites in Artsakh,¹⁹⁶ as world leaders sought to appease their strategic allies—Turkey and Azerbaijan.¹⁹⁷ Equally troubling, Somaliland remains among the poorest countries in the world,¹⁹⁸ unable to apply for World Bank or IMF loans or to enter into bilateral aid agreements. Rather than support an impoverished nation, the international community supports Somalia's nominal claims to the territory due to the country's strategic location in the Gulf of Aden. Both Somaliland and Artsakh have thus relied on their diaspora to build infrastructure and provide aid.

Despite supporting the insurgents in Kosovo, the United States refuses to send aid to affected civilians, opting instead to channel money through recognized counterparts. The United States sent money to Georgia,¹⁹⁹ not Abkhazia, after the war in the region and sent money to Armenia, not Artsakh, after the recent war.²⁰⁰ Yet, these larger nations only allocate a fraction of their aid to the unrecognized governments within their borders. For instance, in 2018, Somalia only allocated \$105 million of \$2 billion in aid to Somaliland.²⁰¹

¹⁹⁶ See Andrew Roth, *Two Men Beheaded in Videos from Nagorno-Karabakh War Identified*, GUARDIAN (Dec. 15, 2020, 12:00 AM), <https://www.theguardian.com/world/2020/dec/15/two-men-beheaded-in-videos-from-nagorno-karabakh-war-identified> [<https://perma.cc/JPH7-MQED>]; Lillian Avedian, *Cultural Cleansing in Occupied Artsakh*, ARMENIAN WKLY. (Mar. 31, 2021), <https://armenianweekly.com/2021/03/31/cultural-cleansing-in-occupied-artsakh/> [<https://perma.cc/N4QD-FZ78>].

¹⁹⁷ Marshall D. Moushigian, *As the World Appeases Turkey, Attacks on Armenians in Mountain State Will Continue*, FRESNO BEE (Oct. 9, 2020, 4:11 PM), <https://www.fresnobee.com/opinion/readers-opinion/article246325045.html> [<https://perma.cc/7H4T-EYNB>].

¹⁹⁸ INST. FOR STRATEGIC INITIATIVES & RSCH., SOMALILAND BUDGET BRIEF 2020 2 (2019), <http://somalilandstandard.com/wp-content/uploads/2019/12/Budget-brief-2020-final.pdf> [<https://perma.cc/JG6X-QL9C>].

¹⁹⁹ Press Release, International Monetary Fund, IMF Approves Three-Year Loan for the Republic of Georgia Under the ESAF, Press Release No. 96/7 (Feb. 28, 1996).

²⁰⁰ Siranush Ghazanchyan, *IMF Executive Board Approves \$36.9 Million Disbursement for Armenia*, PUB. RADIO ARMENIA (Dec. 14, 2020, 11:31 AM), <https://en.armradio.am/2020/12/14/imf-executive-board-approves-36-9-million-disbursement-for-armenia/> [<https://perma.cc/UZG5-FMXY>].

²⁰¹ FED. GOV'T OF SOM., AID FLOWS IN SOMALIA 1, 23 (2019), <https://reliefweb.int/sites/reliefweb.int/files/resources/Aid-Flows-in-Somalia-2019-ENGLISH.pdf> [<https://perma.cc/Y2G2-TDWG>].

VI. CRYPTOCURRENCY AS THE FUTURE OF HUMANITARIAN AID: A VIOLATION OF SOVEREIGNTY?

A. THE SEPARATION OF MONETARY SOVEREIGNTY FROM TERRITORIAL SOVEREIGNTY

International law deems sovereignty as power over territory and people, available to all sovereign states.²⁰² In contrast, only states that issue their own currencies and thus maintain control over their monetary policies can also claim monetary sovereignty.²⁰³ By this reasoning, countries that adopt a foreign currency or join with other states to create a common currency, like the euro, surrender some sovereignty as well as their ability to address financial crises incidental to a credit economy.²⁰⁴

Just as nations seceded some financial power to adopt the euro, nation states may eventually succumb to public pressure and adopt nation-backed and private digital currencies. Widespread national adoption of an internationally-accepted digital currency would further erode national monetary sovereignty as well as threaten the U.S. dollar's dominance in international trade,²⁰⁵ a key source of the United States' international political leverage. The EU most recently staunchly opposed Facebook's proposed Libra stablecoin, which French and German officials described as a threat to international "monetary sovereignty."²⁰⁶ For instance, if citizens price goods in Libras instead of euros, the European Central Bank ("ECB") would effectively lose control of French monetary policy as the Libra consortium would set the consumer price level.

²⁰² Katharina Pistor, *From Territorial to Monetary Sovereignty* 1 (Columbia L. Sch. Ctr. For L. & Econ. Stud. Working Paper No. 591, 2017), https://scholarship.law.columbia.edu/faculty_scholarship/2279 [<https://perma.cc/4K69-U65G>].

²⁰³ *Id.* at 2.

²⁰⁴ *Id.*

²⁰⁵ Phillip Inman, *Mark Carney: Dollar Is Too Dominant and Could Be Replaced by Digital Currency*, *GUARDIAN* (Aug. 23, 2019, 3:01 PM), <https://www.theguardian.com/business/2019/aug/23/mark-carney-dollar-dominant-replaced-digital-currency> [<https://perma.cc/4B4W-H52S>].

²⁰⁶ J.P. Koning, *Does Libra Threaten Monetary Sovereignty?*, *AM. INST. FOR ECON. RSCH.* (Sept. 29, 2019), <https://www.aier.org/article/does-libra-threaten-monetary-sovereignty/> [<https://perma.cc/4TFC-AEJP>]; *Germany's Scholz: We Cannot Accept Parallel Currencies Such as Facebook's Libra*, *REUTERS* (Sept. 17, 2019, 8:17 AM), <https://www.reuters.com/article/us-germany-blockchain/germanys-scholz-we-cannot-accept-parallel-currencies-such-as-facebooks-libra-idUSKBN1W21TR> [<https://perma.cc/A768-EEPY>].

Some scholars claim that “[m]oney is a form of sovereignty and as such it cannot be understood without reference to an authority.”²⁰⁷ By this logic, the creation of a national bank strengthens claims of sovereignty. The Abkhaz National Bank and the Central Bank of Somaliland thereby testify to their respective country’s independence just by the virtue of their existence.

Kosovo typifies the economic cost of the lack of international recognition. Despite its 2008 unilateral declaration of independence,²⁰⁸ an action the ICJ does not prohibit under international law,²⁰⁹ the country still needs to secure recognition from other countries (bilateral recognition) and attain U.N. membership (multilateral recognition). Money transfers in Kosovo had been particularly difficult because the Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) assigned Kosovar banks a code for international transactions only recently in 2013.²¹⁰ Without these codes, organizations used intermediary banks that increased transaction costs and imposed additional administrative hurdles.²¹¹ The SWIFT codes also provided the Kosovar financial system with a sense of security. Banks not only use the SWIFT network to communicate with one another and transfer money electronically, but they also continuously monitor currency flows on this network, blocking suspicious transactions.²¹² Money transfers outside of this system occur only in physical cash, and even then, sellers must alert the authorities of any transactions over a few thousand dollars.²¹³

²⁰⁷ Geoffrey Ingham, *The Nature of Money*, 5 ECON. SOCIO.: EUR. ELEC. NEWSL. 18, 25 (2004), <https://www.econstor.eu/bitstream/10419/155831/1/vol05-no02-a2.pdf> [<https://perma.cc/G2T7-N9M5>].

²⁰⁸ *Full Text: Kosovo Declaration*, BBC NEWS (Feb. 17, 2008, 4:58 PM), <http://news.bbc.co.uk/2/hi/europe/7249677.stm> [<https://perma.cc/U9LV-ZSU6>].

²⁰⁹ ICJ Advisory Opinion on Kosovo, *supra* note 75, at 405–06, 452.

²¹⁰ EUR. COMM., KOSOVO PROGRESS REPORT 32 (2014), https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf [<https://perma.cc/PY83-DVWB>]; Jieun Choi, *The Costs of Not Being Recognized as a Country: The Case of Kosovo*, BROOKINGS (Nov. 16, 2017), <https://www.brookings.edu/blog/future-development/2017/11/16/the-costs-of-not-being-recognized-as-a-country-the-case-of-kosovo/> [<https://perma.cc/8BF5-L6VR>].

²¹¹ Choi, *supra* note 210.

²¹² *How Do Banks Fight Fraud?*, SWIFT (Nov. 30, 2018), <https://www.swift.com/news-events/news/how-do-banks-fight-fraud> [<https://perma.cc/MVS7-V29Q>].

²¹³ *Form 8300 and Reporting Cash Payments of Over \$10,000*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/form-8300-and-reporting-cash-payments-of-over-10000> [<https://perma.cc/3YMX-XQSP>] (organizations conducting business in

In addition to the SWIFT network, other legal agreements govern the access to essential business services like money transfers and thus restrict these services only to states officially recognized by the U.N. Accordingly, organizations in Kosovo and other nations without international recognition suffer connectivity deficits that result in increased transaction time and cost, thereby impairing trade and humanitarian agencies' ability to conduct activities.

B. SANCTIONS AND THE ERODING APPEAL OF A DOLLAR-DENOMINATED ECONOMY

The power and nearly universal use of the dollar provides the U.S. Treasury with immense international regulatory reach. According to the IMF, the U.S. dollar comprised over sixty percent of central bank foreign exchange reserves in 2019,²¹⁴ making the dollar the “de facto” global currency and, by extension, the United States “the gatekeeper to the global banking system.”²¹⁵ The U.S. Treasury’s power to grant and revoke banking licenses²¹⁶ allows it to control national and foreign financial institutions. Under President Trump, the U.S. Treasury liberally applied sanctions to countries around the world—Iran, North Korea, Venezuela, Syria, and Russia.²¹⁷ These countries resultantly have ever more incentive to develop their own banking systems, making cryptocurrencies very attractive as an alternative that eliminates the need for a bank altogether and creates a network free from U.S.-controlled intermediaries.

In the wake of U.S. sanctions, the Turkish government recently announced plans to develop a national blockchain currency.²¹⁸ As the sanctions continue to escalate, the prospect of an alternative to the dollar-dominated system looks ever more appealing. Many countries have tried to form their own cryptocurrencies, such as the Venezuelan petro,²¹⁹ to

the United States must report cash payments over \$10,000 to the federal government by filing IRS/FinCEN Form 8300) (last updated Aug. 19, 2021).

²¹⁴ Kimberly Amadeo, *Why the US Dollar Is the Global Currency*, BALANCE (July 23, 2020), <https://www.thebalance.com/world-currency-3305931> [https://perma.cc/G99A-3R9Q].

²¹⁵ Hannah Lucinda Smith, *The Shady Cryptocurrency Boom on the Post-Soviet Frontier*, WIRED (Oct. 29, 2019, 7:00 AM), <https://www.wired.com/story/cryptocurrency-boom-post-soviet-frontier/> [https://perma.cc/3NQ9-FK68].

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

sidestep U.S. sanctions. Indeed, success of one such currency impends as countries learn from each other's mistakes.

In this regard, Russia and its allies could create an alternative financial system based on the blockchain that allows them to trade freely, regardless of international sanctions.²²⁰ Russia, the parent country of multiple secessionist states in the eastern bloc, has extensive energy reserves and untapped potential in a vast network of power plants—"the cryptocurrency equivalent of a blank check."²²¹ Russia has already begun to stockpile cryptocurrencies through intense mining using the country's gas reserves.²²²

Because daily transactions require traditional currency instead of their digital counterparts, regulation primarily targets crypto exchanges. The Financial Action Task Force ("FATF"), an inter-governmental policy and standard-setting body combating money laundering and the financing of terrorism, adopted rules for digital currencies that include a requirement for exchanges to conduct background checks on their customers and to share information for transaction monitoring.²²³ This qualification mirrors requirements of traditional banks and represents the most significant global attempt to regulate cryptocurrencies.²²⁴ The United States has yet to pass legislation addressing the crypto threat, although a few states have passed blockchain laws.²²⁵

²²⁰ *Id.*

²²¹ *Id.*

²²² Anna Baydakova, *Russian Oil Drilling Giant Opens a Crypto Mining Farm Run on Gas Energy*, YAHOO! FIN. (Dec. 30, 2020), <https://finance.yahoo.com/news/russian-oil-drilling-giant-opens-131234188.html> [<https://perma.cc/3R55-MRFH>].

²²³ FIN. ACTION TASK FORCE, GUIDANCE FOR A RISK-BASED APPROACH: VIRTUAL CURRENCIES 12–13 (2015), <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf> [<https://perma.cc/2697-GY83>]; *The Financial Action Task Force*, FIN. CRIMES ENF'T NETWORK, <https://www.fincen.gov/resources/international/financial-action-task-force> [<https://perma.cc/U3WN-7JQV>].

²²⁴ A recent report by the FATF reveals that 35 of 54 reporting jurisdictions adopted the latest FATF Standards and that new technological solutions are being developed to implement the travel rule, which requires that Virtual Asset Service Providers "obtain, hold and exchange information about the originators and beneficiaries of virtual asset transfers." FIN. ACTION TASK FORCE, 12-MONTH REVIEW OF THE REVISED FATF STANDARDS ON VIRTUAL ASSETS AND VIRTUAL ASSET SERVICE PROVIDERS 2 & n.1 (2020), <https://www.fatf-gafi.org/media/fatf/documents/recommendations/12-Month-Review-Revised-FATF-Standards-Virtual-Assets-VASPS.pdf> [<https://perma.cc/N2F2-XU4K>].

²²⁵ *See, e.g.*, H.B. 1926, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021) ("[c]larif[ing] control of virtual currency under the Uniform Commercial Code"); S.B. 188, 122nd Gen. Assemb., Reg. Sess. (Ind. 2021) (revising the unclaimed property act and including virtual currency); H.B. 2544, 55th Leg., Reg. Sess. (Ariz. 2021) (creating a blockchain and cryptocurrency study

Crimea's transition towards a digital economy underscores how a region may seek alternatives to the dollar economy. Since the region's annexation into Russia, Western companies can no longer transact with Crimea without risking fines for embargo violations.²²⁶ The once booming tourism industry lies dormant, as companies have directed travel away from the region.²²⁷ But Russian President Vladimir Putin plans to create a "Crimean Digital Valley," complete with a new technical university and a cryptocurrency investment fund.²²⁸ According to Putin's representative Georgiy Muradov, a Crimean cryptocurrency would avoid international sanctions on businesses in Crimea and thus "solve the urgent problem for Crimean projects of avoiding the dollar and existing banking restrictions."²²⁹ Crimea also has a cryptocurrency law underway that mirrors the Belarusian counterpart but allows for the circumvention of sanctions and discards the anti-money laundering protections to allow for an influx of foreign money.²³⁰ Presumably, these laws *do* take the teeth away from a major form of international law enforcement—sanctions. While foreign policy may use sanctions to discipline governments committing humanitarian violations, such as the Apartheid in South Africa,²³¹ these sanctions often hurt civilian populations more than governments or political leaders, who can turn to other sources for support, as previously discussed in the context of the Venezuelan

committee). For the latest legislative actions, see Heather Morton, *Cryptocurrency 2021 Legislation*, NAT'L CONF. OF STATE LEGISLATURES (May 14, 2021), <https://www.ncsl.org/research/financial-services-and-commerce/cryptocurrency-2021-legislation.aspx> [<https://perma.cc/W3YC-QVWD>].

²²⁶ Smith, *supra* note 215.

²²⁷ See Steven Pifer, *Crimea: Six Years After Illegal Annexation*, BROOKINGS (Mar. 17, 2020), <https://www.brookings.edu/blog/order-from-chaos/2020/03/17/crimea-six-years-after-illegal-annexation/> [<https://perma.cc/38RT-LXWQ>].

²²⁸ Smith, *supra* note 215; see also *Russia to Launch Crimean 'Silicon Valley' by 2020*, RT (Apr. 18, 2015 11:09 PM), <https://on.rt.com/2h52cv> [<https://perma.cc/7V7T-M84P>].

²²⁹ Smith, *supra* note 215.

²³⁰ *See id.*

²³¹ Comprehensive Anti-Apartheid Act of 1986, Pub. L. No. 99-440, 100 Stat. 1086 (1986). In fact, scholars suggest that sanctions had limited, perhaps even negative, impact on ending apartheid regimes. Thomas W. Hazlett, *Apartheid*, ECONLIB, <https://www.econlib.org/library/Enc/Apartheid.html> [<https://perma.cc/C3CY-SD43>] ("Not only did sanctions fail to lower South African trade flows from their previous levels, but GNP growth actually accelerated after the European Community and the United States imposed sanctions (in September and October 1986, respectively). Perversely, South African businesses reaped at least \$5 billion to \$10 billion in windfalls as Western firms divested at fire sale prices between 1984 and 1989.").

economy in Section III.²³² Furthermore, the security and transactional transparency provided by a blockchain-based digital currency would likely mitigate the security risks raised by looser regulations.²³³

C. LEGALIZING CRYPTO: THE NATIONALIZATION OF A STATELESS CURRENCY

In December 2017, Belarus passed a decree legalizing the mining, sale, and exchange of cryptocurrencies to legal entities operating in an economic zone termed the High Technologies Park.²³⁴ Belarus thus became the first jurisdiction to create a legislative framework for the crypto sector and a trailblazer whose legislation has been closely watched by other former Soviet-bloc nations looking to vitalize their crypto industries, according to Belarusian officials.²³⁵ Innovative ventures have already sprung up in Belarus: Fabby professionally edits photos and videos,²³⁶ LungPass helps examine lung conditions,²³⁷ and GiniMachine improves lending with AI.²³⁸ Belarus also became the first to legalize smart contracts.²³⁹ Because foreign exchange regulations generally do not apply to cryptocurrency transactions,²⁴⁰ crypto-platform operators provide

²³² See *supra* Section III(E).

²³³ See generally Kazuhiro Gomi, *Is Blockchain's Transparency the Missing Link to Improving Data Security?*, FORBES (Aug. 17, 2020, 8:40 AM), <https://www.forbes.com/sites/forbestechcouncil/2020/08/17/is-blockchains-transparency-the-missing-link-to-improving-data-security/?sh=5330b8024f81> [https://perma.cc/MC3H-AXZQ] (arguing that the transparency of blockchain enables privacy and security).

²³⁴ *Decree of the President of the Republic of Belarus No. 8*, NAT'L LEGAL INTERNET PORTAL OF THE REPUBLIC OF BELAR. (Dec. 21, 2017) [hereinafter Decree No. 8], <http://pravo.by/document/?guid=12551&p0=Pd1700008&p1=1&p5=0> [https://perma.cc/7PJ7-YEKA] (in Russian), available in English at <http://law.by/document/?guid=3871&p0=Pd1700008e> [https://perma.cc/V7UZ-TYM8]; see also Пресс-служба, Президента Республики Беларусь, Комментарий к Декрету № 8 от 21 декабря 2017 г. (Dec. 22, 2017), http://president.gov.by/ru/news_ru/view/kommentarij-k-dekretu-8-ot-21-dekabrja-2017-g-17715/ [https://perma.cc/A7B7-WJBS] (in Russian).

²³⁵ Smith, *supra* note 215.

²³⁶ FABBY, fab.by [https://perma.cc/RM2C-FPX3].

²³⁷ LUNGPASS, lungpass.com [https://perma.cc/Y8KD-ADT9].

²³⁸ GINIMACHINE, ginimachine.com [https://perma.cc/ZD4T-38AN].

²³⁹ *Revolution In IT: What Changes Decree on Digital Economy Development*, NAT'L AGENCY OF INV. & PRIVATIZATION (Dec. 22, 2017), <https://investinbelarus.by/en/press/news/revolution-in-it-what-changes-decree-on-digital-economy-development/> [https://perma.cc/JDZ2-L5TE].

²⁴⁰ Decree No. 8, *supra* note 234, § 3.2.

alternatives to foreign trading platforms for transactions in foreign currencies.

Multiple unrecognized nations have turned to cryptocurrency as a potential solution to circumvent sovereignty issues and financial restrictions.²⁴¹ These states often receive electricity from their patron countries (Russia for Abkhazia; Armenia for Artsakh), who provide abundant supplies of cheap power. Combined with little oversight as afforded by their contested sovereignty, these regions form the perfect opportunities for crypto-mining. Abkhazia and Transnistria currently profit from a tech boom, the result of a glut of cheap electricity and minimal regulation.²⁴² Yet, this trend raises questions about territorial and monetary sovereignty as well as statehood.

Currencies have until now been the domain of established nations, but recent decentralized currencies mined out of secessionist states challenge that authority.²⁴³ These unrecognized states base their statehood on their strong sense of political and ethnic nationalism, a philosophy that contrasts against global cryptocurrencies that belong to a supranational economy not controlled by monetary policy or central banks. Thus, these digital currencies “bypass[] the normative politics of national recognition by generating cash and relying on international (especially Russian) ties through a legally dubious market operating outside of the globally recognized system of national currencies and foreign exchange.”²⁴⁴

Some states aim to nationalize the cryptocurrency movement. In 2017, Abkhazia proposed a national cryptocurrency called the Abkhazia Republic Coin, open to the international community regardless of international sanctions.²⁴⁵ In June 2019, Abkhazia proposed a bill that would pave the way to legalized and regulated mining.²⁴⁶ Similarly, the

²⁴¹ See, e.g., Elizabeth Owen, *Abkhazia: Counting on a Cryptocurrency*, EURASIANET (Dec. 5, 2017), <https://eurasianet.org/abkhazia-counting-on-a-cryptocurrency> [<https://perma.cc/L6SZ-QG88>].

²⁴² Natalie Fredman, *Cryptomining, Post-Soviet Nationalism, and Monetary Sovereignty in Abkhazi and Transnistria*, BROWN POL. REV. (Mar. 2, 2020), <https://brownpoliticalreview.org/2020/03/post-soviet-cyrptomining/> [<https://perma.cc/U7NY-4QV8>].

²⁴³ See *id.*

²⁴⁴ *Id.*

²⁴⁵ Luke Parker, *Abkhazia Announces ICO to Fund First State-Run Cryptocurrency*, BRAVE NEW COIN (Oct. 19, 2017, 8:14 AM), <https://bravenewcoin.com/insights/abkhazia-announces-ico-to-fund-first-state-run-cryptocurrency> [<https://perma.cc/H53S-LTQR>].

²⁴⁶ Бадри Есиава [Badri Yesiava], *Проект Закона о Майнинге Криптовалют Разработан в Абхазии* [*The Draft Law on Cryptocurrency Mining Was Developed in Abkhazia*], SPUTNIK

Republic of the Marshall Islands recently issued the Marshallese sovereign (“SOV”) currency based on a blockchain.²⁴⁷ The Republic, a small and remote nation, created the currency to amend its persistent connectivity issue that often caused major banks to discontinue banking relationships and impose transfer fees upward of ten percent, a familiar tune to unrecognized states.²⁴⁸ At best, the financial resources amassed from a booming economy founded on cryptocurrency may eventually empower unrecognized states to acquire international recognition. At a minimum, the economies would attain a means to break through the shackles of poverty.

D. MONETIZING RESOURCES BY TRADING FOR HUMANITARIAN AID

Along with the centralization of the crypto sector in Belarus, Belarusian entities must purchase their electricity from official sources.²⁴⁹ Abkhazia and Transnistria can capitalize on this tactic to monetize the surfeit of cheap electricity and reduce capital risk by creating a system free of the United States’ regulatory reach. Abkhazia has access to the Enguri hydropower plant,²⁵⁰ while Transnistria houses the Kuchurgan power station, which uses just a fraction of its potential output.²⁵¹ Transnistria can use this measure to internalize its energy usage, most of which its hostile neighbor, Moldova, currently purchases.²⁵² In fact, Transnistria has followed Belarus’ example to adopt a liberal cryptocurrency law, which grants mining activities a tax-exempt status.²⁵³ The country also

(June 24, 2019, 4:21 PM), <https://sputnik-abkhazia.ru/Abkhazia/20190624/1027719484/Proekt-zakona-o-mayninge-kriptovalyut-razrabotan-v-Abkhazii.html> [<https://perma.cc/7KCR-VKMC>].

²⁴⁷ See Declaration and Issuance of the Sovereign Currency Act 2018, 125ND2 P.L. 2018-53, 39th Const. Reg. Sess. (2018), <https://sov.foundation/law.pdf> [<https://perma.cc/MF5V-UX9L>].

²⁴⁸ SOV DEVELOPMENT FOUNDATION, THE MARSHALLESE SOVEREIGN (SOV): FAIR, SUSTAINABLE MONEY 7 (2019), <https://docsend.com/view/nvi59vw> [<https://perma.cc/55Q6-FE49>].

²⁴⁹ Smith, *supra* note 215.

²⁵⁰ Marianna Kotova, *Abkhazia Moves to Shut Down Cryptomining as Blackouts Escalate*, OC MEDIA (Feb. 5, 2021), <https://oc-media.org/features/abkhazia-moves-to-shut-down-cryptomining-as-blackouts-escalate/> [<https://perma.cc/6JRK-RFDP>].

²⁵¹ See Smith, *supra* note 215.

²⁵² *Moldova Will Buy Energy from One Supplier, Kuchurgan Power Station from the Breakaway Transnistria Region*, ZIARUL DE GARDĂ (June 29, 2020, 9:08 AM), <https://www.zdg.md/en/?p=3737> [<https://perma.cc/9MQW-6M7D>].

²⁵³ *Transnistria Invites Crypto Miners; Wants to Expand the Industry*, COINWIRE, <https://www.coinwire.com/transnistria-invites-crypto-miners-wants-to-expand-the-industry> [<https://perma.cc/7MQ7-HRZZ>].

supports mining projects by offering “the lowest in Europe electricity cost,” project support, simplified licensing procedures, land plots adjacent to the Kuchurgan station, and government-guaranteed “maximum assistance in energy supply.”²⁵⁴ Legitimizing the crypto sector also supplies income to the country’s budget, which can service vital state functions.

Regarding the humanitarian crisis in Venezuela, economist Francisco Rodríguez has proposed a program to exchange oil for essential goods.²⁵⁵ By converting natural resources into a currency to acquire desperately needed resources, other countries can apply this tactic to capitalize on their natural resources. Rodríguez proposes monitoring trade with an intermediary accepted by both the Maduro government and the opposition to guarantee transparency in a shift from distributing food to handing out cash.²⁵⁶ A form of cryptocurrency may act as the intermediary, allowing Venezuela to monetize its energy reserves in a similar fashion to Russia. In particular, an international reserve asset like the IMF’s Special Drawing Rights (“SDRs”) may back the cryptocurrency while more broadly applying to non-member countries as well.²⁵⁷

A form of humanitarian e-commerce, developed by the World Food Programme (“WFP”), already thrives in Somalia amid the pandemic through electronic vouchers on an app.²⁵⁸ Beneficiaries use a monthly stipend to purchase needed products.²⁵⁹ This novel means of accepting aid

²⁵⁴ *Free Economic Zone for Blockchain and Mining in Transnistria*, TRANSNISTRIA BLOCKCHAIN AGENCY, <http://transnistria-blockchain.com/> [<https://web.archive.org/web/20210119122458/http://transnistria-blockchain.com/>].

²⁵⁵ OLIVEROS, *supra* note 154, at 15–16.

²⁵⁶ *Id.* at 16.

²⁵⁷ The IMF created Special Drawing Rights (“SDRs”) as an international form of reserve currency that is calculated based on a weighted basket of global currencies, including the U.S. dollar, euro, Chinese yuan, Japanese yen, and British pound sterling. *Special Drawing Rights (SDRs)*, INT’L MONETARY FUND, <https://www.imf.org/en/Topics/special-drawing-right> [<https://perma.cc/6JYU-353S>]. In 2017, IMF Director Christine Lagarde mentioned the possibility of a digital version of IMF’s SDRs. Christine Lagarde, Managing Director, Int’l Monetary Fund, Central Banking and Fintech—A Brave New World?, Speech at Bank of England Conference (Sept. 29, 2017), <https://www.imf.org/en/News/Articles/2017/09/28/sp092917-central-banking-and-fintech-a-brave-new-world> [<https://perma.cc/5XJL-R8M8>].

²⁵⁸ Abdi Sheikh, ‘Humanitarian E-commerce’ Thrives in Somalia Amid Pandemic, REUTERS (Nov. 12, 2020, 2:03 AM), <https://www.reuters.com/article/us-health-coronavirus-somalia-aid/humanitarian-e-commerce-thrives-in-somalia-amid-pandemic-idUSKBN27S1B9> [<https://perma.cc/L8MY-3974>].

²⁵⁹ *Id.*

restores dignity and reduces waste. Moreover, the associated app records transactions and allows the government to collect taxable income.²⁶⁰ WFP previously used electronic vouchers to distribute cash aid to Syrian refugees, but Somalia has become the organization's first testimonial to app use and a home delivery system.²⁶¹

The 2020 war between Armenia and Azerbaijan ended abruptly as the Armenian side lost significant territories.²⁶² The hostilities uprooted thousands of Armenian civilians from their homes and forced others to return to destroyed homes.²⁶³ Armenian civilians who now live in the remaining territory of the unrecognized Republic of Artsakh must navigate numerous Azeri posts before entering or exiting the enclosed region.²⁶⁴ Both sides have reinforced positions along the new front line,²⁶⁵ and Azeri forces continue to encroach on the remaining territory, tightening the noose around the small republic. Access to humanitarian aid in the region remains critical, a sentiment confirmed by the co-chairs of the OSCE Minsk Group.²⁶⁶ The difficulty of reaching the region now means a struggling economy as prices of goods rise and job opportunities dwindle.²⁶⁷ A digital economy may become one of the only means for civilians to sustain a living.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Post-War Prospects for Nagorno-Karabakh*, INT'L CRISIS GRP. (June 9, 2021), <https://www.crisisgroup.org/europe-central-asia/caucasus/nagorno-karabakh-conflict/264-post-war-prospects-nagorno-karabakh> [<https://perma.cc/E68Q-53E5>].

²⁶³ Andrew Connelly, *The Humanitarian Fallout of the Nagorno-Karabakh Conflict*, NEW HUMANITARIAN (Nov. 5, 2020), <https://www.thenewhumanitarian.org/news-feature/2020/11/5/nagorno-karabakh-armenia-azerbaijan-conflict-humanitarian-impact> [<https://perma.cc/ZPG4-AVTG>] (“[M]ore than 90,000 people from Nagorno-Karabakh (60 percent of the population) have been displaced since the outset of the war.”).

²⁶⁴ See *Post-War Prospects for Nagorno-Karabakh*, *supra* note 262.

²⁶⁵ *Id.*

²⁶⁶ *Statement by the Co-Chairs of the OSCE Minsk Group*, ORG. FOR SEC. & COOP. IN EUR. (Apr. 13, 2021), <https://www.osce.org/minsk-group/483416> [<https://perma.cc/8AHU-W585>].

²⁶⁷ See Ani Mejlumyan, *Food Prices in Armenia Hit Generational High*, EURASIANET (Aug. 15, 2021), <https://eurasianet.org/food-prices-in-armenia-hit-generational-high> [<https://perma.cc/824W-E97Y>]; *What Is the Reason for the Inflation of Some Products in Artsakh?*, AZAT ARTSAKH (June 11, 2021), <https://artsakhtert.com/eng/index.php/economy/item/8092-what-is-the-reason-for-the-inflation-of-some-products-in-artsakh> [<https://perma.cc/Y86A-HUJP>].

VII. CONCLUSION

In sum, a digital solution consistent with the goals of international law and international humanitarian law may mitigate the legal and political hurdles for the provision of humanitarian aid to unrecognized states.

Even without authorization, NGOs do not violate the sovereignty of the internationally recognized governing state by providing humanitarian aid to unrecognized states; rather, NGOs may influence the foreign policies that mandate specific humanitarian conditions on that state's sovereignty.

To facilitate humanitarian NGO activity, international law should not require the state's consent to the provision of non-political humanitarian aid to civilian populations. While not widely accepted by international law yet, this idea conforms to the trend of international law, which gradually upholds the right to receive and the duty to provide humanitarian aid. These two humanitarian rights coalesce towards the right to humanitarian access, a right that has been acknowledged in state and international documents. As a corollary, the denial of humanitarian access has been criminalized on a state and international level, although enforcement levels have varied.

Yet, humanitarian access remains a nominal victory as organizations often struggle to deliver humanitarian aid to civilian populations in need; accordingly, this paper explores a digital solution in line with these themes. Until international law can more adequately protect civilian rights to humanitarian aid, the creation of a digital currency for unrecognized nations and civilians in conflict zones would enable a system free of political pressure, expedite international transactions, and more effectively serve the goals of humanitarian agencies around the world.