UNRECOGNIZED STATES:
NEUTRALIZING OBSTACLES TO
HUMANITARIAN AID, DIGITALLY

SONA SULAKIAN

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* 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
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  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.” ARTSAKH HANRAPETUTYAN SAHMANADRUTYUN
  [Constitution], pmbl. (Republic of Artsakh).
I. INTRODUCTION

A. BACKGROUND

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

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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. However, independence has varied greatly between these states. Chechnya became the first de facto state to dissolve, while Kosovo attained international recognition to an extent. Abkhazia and South Ossetia have gained limited recognition by Russia and its allies. Artsakh managed to survive the outbreak of a second war during the coronavirus pandemic despite losing most of its territory, a war that left thousands of displaced Armenians homeless and without tangible access to foreign aid.

In many cases, the unrecognized state’s survival depends on the strength of the patron state, as in the case of South Ossetia and Transnistria. Conversely, survival also hinges on the weakness of the unrecognized state’s adversary, such as Moldova for Transnistria and Georgia for Abkhazia. 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. 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.” The name “Artsakh” is the historic Armenian name of the region, dating back to ancient times. Id. Beacháin et al., supra note 1, at 441, 452.

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. In government, the term describes entities that exist in reality but are not recognized by the law. Id.

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

Id. at 451–52.


Id. at 448–49.

Id. at 441.

Id. at 440.
state-centric theories of sovereignty as globalization and economic interdependence eroded archaic paradigms. Nevertheless, political cartography remains largely unquestioned despite omitting unrecognized states that effectively function as separate entities. Academics initially ignored these states as transient occurrences, recalling short-lived Katanga, Biafra, Serbian Krajina, and Chechnya. 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. Yet, others perceived these states as inaccessible conflict zones. 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.

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

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

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.
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.” 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.

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”), the World Bank, the World Health Organization (“WHO”), and the humanitarian branches of the United Nations. In contrast, hostile neighbors and a lack of international recognition block similar aid to unrecognized countries. For example, the United States has excluded any humanitarian aid to Abkhazia and South Ossetia since 2017, 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, and neighboring South Ossetia depends even more heavily on Russia. Similarly, Artsakh

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29 Countries, WORLD HEALTH ORG., https://www.who.int/countries [https://perma.cc/34FN-DHG8].
31 Field, supra note 26.
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, as in Somaliland.

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. 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. The definition also excludes formally supported self-governing territories, such as Puerto Rico or American Samoa, and states that associate with other countries for certain functions like security, such as the Republic of the Marshall Islands. 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.

Section III defines humanitarian aid, which


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).


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. 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

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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).

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").

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. 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.

The globalization and professionalization of nonprofits has given these once neutral actors enhanced global reach and political power. 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.

https://corescholar.libraries.wright.edu/cgi/viewcontent.cgi?article=3345&context=etd_all

44 Id. at 3.
45 HANGANAK NGO, hanganak.org [https://perma.cc/J34J-CZWY].
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. COMMC’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.
NGOs may also undermine state sovereignty by circumventing diplomatic positions.\textsuperscript{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;\textsuperscript{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.\textsuperscript{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,\textsuperscript{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

\textsuperscript{49} \textsc{Ramesh Thakur}, \textit{The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect} 98–99 (2d ed. 2006).
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

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 xvii (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 Hovhannisyan co-authored a letter to Moscow detailing Azerbaijan’s discriminatory directives over the previous five years. Davit Abaghyan, First Attempts of Reuniting Artsakh with Armenia in 1965 as 1988 Artsakh Movement Basis, ARAVOT (Jan. 12, 2018, 4:34 PM), https://www.aravot.am/2018/01/12/206121/ [https://perma.cc/COKD-7AUD]. 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 Hovhannisyan, 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-ml-8811-story.html [https://perma.cc/4TQ5-S32K]. 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. 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. 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.

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. International NGOs have successfully pressured states and multinational organizations to tackle a variety of social issues, including


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).


59 Id.

60 Id.
increased governmental transparency, landmine removal, and violence against women. 

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. 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. 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.

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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.

The classic view of sovereignty as absolute territorial autonomy is trending towards a shared principle that relies upon agreements with international actors. 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. Ironically, these traditional concerns include respecting the territorial integrity of neighboring states although the secessionist state itself defies territorial sovereignty.

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

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68 Id. at 389.


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. This argument also reduced the likelihood that other secessionist-minded states like Montenegro could justify sovereignty. 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. 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. 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. For context, consider the Canadian Supreme Court’s holding on Quebec’s attempt to unilaterally secede: the court

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73 The Kosovo Report, supra note 69, at 271–73.
74 See id. at 269.

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.

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 DENY. 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.”).
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

85 Id.
sovereignty by NGOs working in unrecognized states. 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. International law considers the Geneva Conventions and most of the Additional Protocols customary and so binding all States to these documents, regardless of ratification. 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. 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. 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; materials for educational, recreational, or religious purposes; and measures to protect and help civilians to "recover from the immediate effects, of hostilities or disasters"

86 Mills, supra note 80.
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.").
92 Id. art. 108.
and also to provide conditions necessary for [their] survival.”

Article 59 of the GCIV affords civilians the right to receive humanitarian assistance during conflict.

**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,

Second,

and Third Geneva Conventions.

The GCIV further states that the ICRC and similar relief societies “shall be able to pursue their activities,” subject to security concerns.

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.

Article 18 of APIII 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.”

Notably, the Protocol limits aid to that “of an exclusively

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94 Mills, supra note 80.
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).
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).
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.\(^\text{113}\) The U.N. has also been vocal in this area; the U.N. Security Council called for free access for humanitarian aid in Iraq\(^\text{114}\) and to affected areas in the conflict between Armenia and Azerbaijan.\(^\text{115}\) Furthermore, the Council has adopted multiple resolutions highlighting “the importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict.”\(^\text{116}\)

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.\(^\text{117}\) 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 group\(^\text{118}\)—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.”\(^\text{119}\) 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.


\(^{116}\) S.C. Res. 1265, 3 (Sept. 17, 1999), https://www.securitycouncilreport.org/atf/cf/%7B7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96F9%7D/Civilians%20SRES1265.pdf [https://perma.cc/7QQA-XW32].


\(^{118}\) Rule 55, supra note 101.

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 organizations 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).
¹²⁶ Additional Protocol I, supra note 93, art. 70(1); Additional Protocol II, supra note 103, art. 18(2).
discriminatory grounds.\textsuperscript{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.\textsuperscript{128} One such organization, Médecins du Monde,\textsuperscript{129} has conducted unauthorized humanitarian campaigns in Afghanistan, El Salvador, South Africa, and Ethiopia.\textsuperscript{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,\textsuperscript{131} and France was among the first countries to send humanitarian assistance.\textsuperscript{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.”\textsuperscript{133} A 2005 study by the ICRC confirmed that international law requires states to permit humanitarian assistance that prevents starvation and death.\textsuperscript{134} Moreover, if such aid serves as an act of sovereignty,\textsuperscript{135} then the definition of sovereignty should expand to impose additional duties regarding humanitarian issues. In either case, the ICRC and similar organizations

\textsuperscript{127} Rule 55, supra note 101.

\textsuperscript{128} Id.

\textsuperscript{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 FRONTIÈRS, https://www.msf.org/who-we-are [https://perma.cc/AHB2-QEWK].

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


\textsuperscript{133} Mills, supra note 80.


\textsuperscript{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

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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.
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

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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/3ae6a0e058.pdf [https://perma.cc/TYP8-43N4]. In fact, much of the humanitarian aid was diverted for military purposes. Id.


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

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148 Id.
149 Id.
The sanctions also increased costs and created logistical problems for travel to Venezuela. Further aggravating the economic situation, risk aversion in the financial sector has caused banks and similar institutions to over-comply with the sanctions. As a result, human rights and humanitarian organizations have had their bank accounts closed and legitimate transactions denied or frozen. Related negative effects include delays and obstacles in transferring funds and receiving donations.

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, 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, such as Direct...
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. 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. 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. 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.

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

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163 § 1702(b)(2).
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.\textsuperscript{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.\textsuperscript{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].”\textsuperscript{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.”\textsuperscript{171} The U.N. Human Rights Council houses multiple human


\textsuperscript{169} Guinane, supra note 165.


rights violators, including China, Cuba, and Venezuela;\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{176} The report encouraged the United States and international donors to aid Georgian authorities in developing some form of policy regarding access.\textsuperscript{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.


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

\textsuperscript{176} Id.

\textsuperscript{177} Id. at 8–10.
Yet since 2017, the United States has prohibited foreign aid to governments that recognize the independence of Abkhazia or South Ossetia. Alongside Russia, these governments include Nicaragua, Venezuela, Nauru, and Syria—all of which suffer a dire need for humanitarian aid.

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.

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

establishes diplomatic relations with them on account of Russian patronage of the regions. 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.”

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.”

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, and multiple cases reject Soviet decrees by citing the lack of national recognition.

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.” 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.

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184 Pub. L. No. 116-6, § 7047(c)(3).

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


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

Contrary 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. Furthermore, largely due to U.S. support, the IMF opened an office in Kosovo. 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.” 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. For example, a spokesman for the Kosovar government confirmed Kosovo’s expectation to soon join the World Bank. 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. 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.

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

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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].


193 Id.

194 Id.

195 Id.
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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, as world leaders sought to appease their strategic allies—Turkey and Azerbaijan. Equally troubling, Somaliland remains among the poorest countries in the world, 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, not Abkhazia, after the war in the region and sent money to Armenia, not Artsakh, after the recent war. 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.

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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.

203 Id. at 2.
204 Id.
Some scholars claim that “[m]oney is a form of sovereignty and as such it cannot be understood without reference to an authority.” 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, an action the ICJ does not prohibit under international law, 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. Without these codes, organizations used intermediary banks that increased transaction costs and imposed additional administrative hurdles. 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. 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.

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


211 Choi, supra note 210.


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, making the dollar the “de facto” global currency and, by extension, the United States “the gatekeeper to the global banking system.” The U.S. Treasury’s power to grant and revoke banking licenses 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. These countries resultanty 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. 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,

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).


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. 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.” Russia has already begun to stockpile cryptocurrencies through intense mining using the country’s gas reserves.

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. This qualification mirrors requirements of traditional banks and represents the most significant global attempt to regulate cryptocurrencies. The United States has yet to pass legislation addressing the crypto threat, although a few states have passed blockchain laws.

220 Id.
221 Id.
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].
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. The once booming tourism industry lies dormant, as companies have directed travel away from the region. But Russian President Vladimir Putin plans to create a “Crimean Digital Valley,” complete with a new technical university and a cryptocurrency investment fund. 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.” 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. 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, 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.


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.

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

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. 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. Innovative ventures have already sprung up in Belarus: Fabby professionally edits photos and videos, LungPass helps examine lung conditions, and GiniMachine improves lending with AI. Belarus also became the first to legalize smart contracts. Because foreign exchange regulations generally do not apply to cryptocurrency transactions, crypto-platform operators provide

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232 See supra Section III(E).


235 Smith, supra note 215.

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

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

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


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. 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. 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. 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.”

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. In June 2019, Abkhazia proposed a bill that would pave the way to legalized and regulated mining. Similarly, the

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243 See id.

244 Id.


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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{249} Abkhazia and Transnistria can capitalize on this tactic to monetize the surplus 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,\textsuperscript{250} while Transnistria houses the Kuchurgan power station, which uses just a fraction of its potential output.\textsuperscript{251} Transnistria can use this measure to internalize its energy usage, most of which its hostile neighbor, Moldova, currently purchases.\textsuperscript{252} In fact, Transnistria has followed Belarus’ example to adopt a liberal cryptocurrency law, which grants mining activities a tax-exempt status.\textsuperscript{253} The country also

\begin{itemize}
\item \textsuperscript{249} Smith, supra note 215.
\item \textsuperscript{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].
\item \textsuperscript{251} See Smith, supra note 215.
\item \textsuperscript{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].
\item \textsuperscript{253} Transnistria Invites Crypto Miners; Wants to Expand the Industry, COINWIRE, https://www.coinvolve.com/transnistria-invites-crypto-miners-wants-to-expand-the-industry [https://perma.cc/7MQ7-HRZZ].
\end{itemize}
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.” 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. 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. 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.

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. Beneficiaries use a monthly stipend to purchase needed products. This novel means of accepting aid


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

256 Id. at 16.


259 Id.
restores dignity and reduces waste. Moreover, the associated app records transactions and allows the government to collect taxable income. 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.

The 2020 war between Armenia and Azerbaijan ended abruptly as the Armenian side lost significant territories. The hostilities uprooted thousands of Armenian civilians from their homes and forced others to return to destroyed homes. 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. Both sides have reinforced positions along the new front line, 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. The difficulty of reaching the region now means a struggling economy as prices of goods rise and job opportunities dwindle. A digital economy may become one of the only means for civilians to sustain a living.

260 Id.
261 Id.
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.
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.