



Gaza Under Attack: Israel's Non-Compliance with International Humanitarian Law

- Sana Kulkarni (III B.A.LL.B.)

International humanitarian law (IHL) is based on the principle of distinction between civilians and combatants. The Additional Protocols provide better protection for combatants and civilians in all armed conflict and expand the definition of combatant by opening it up to direct participation in hostilities i.e. participants of resistance or liberation movements. They provide that civilians lose "civilian protection" for the duration of each specific act amounting to direct participation in hostilities, including preparation or geographical deployments/withdrawals, constituting an integral part of a specific hostile act. They regain full protection when they cease to directly participate in hostilities.

The ongoing conflict between Israel and Palestine turned deadly when Hamas launched a surprise attack on southern Israel, killing at least 1,400 people according to Israeli authorities. Since October

7th, Israel has not only bombed the Gaza Strip relentlessly, killing more than five thousand people, but also cut off supplies of water, food, fuel and electricity to its residents, an act the UN has called a form of collective punishment. More than one million natives have been displaced, but Israeli air raids have continued throughout the territory. This is a war crime as it violates the principles of necessity and proportionality enshrined in the Geneva Conventions. So is willfully blocking humanitarian relief from reaching civilians in need.

The UN, despite having procedures in place, has not historically always proven to be effective in terms of action. This is visible in its response to the Bosnian genocide wherein UN peacekeeping officials paid no attention to the requests for support from their own forces stationed within the enclave, thus allowing Bosnian Serb forces to easily overrun it and carry out systematic, mass executions of hundreds, possibly thousands, of civilian men and boys and to terrorize, execute, and otherwise abuse civilians being deported from the area. So far, the UN has issued multiple statements and the UNGA has called for an "immediate humanitarian

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Three Palestinian human rights groups filed a lawsuit with the International Criminal Court (ICC) asking for an investigation into alleged war crimes by Israel. The submission, which was made under Article 15 of the Rome Statute, accuses Israel of genocide and war crimes, pointing to their airstrikes and bombing of the Gaza Strip. For more information, see here.

The European Union Court of Justice ruled that a 2021 Austrian law regulating communications platforms cannot be binding on companies based in a different country. The act attempted to regulate practices of all "domestic and foreign service providers which provide communication platforms with the intention of making a profit," with exceptions based on low national usership and low profit. Google, Meta and TikTok, all of which have subsidiaries established in Ireland, challenged the law in Austrian courts in June 2022. For more information, see here.



ceasefire.” In October 2023, a UNSC resolution calling for humanitarian access, safe evacuation of civilians, and release of hostages was proposed by Russia; however, it was unsuccessful. Brazil then proposed a UNSC resolution calling for a ceasefire to facilitate humanitarian aid deliveries and including an explicit condemnation of Hamas actions against Israel, but it was vetoed. The U.S. delegation argued that since the resolution did not "mention Israel's right of self-defense," the U.S. was vetoing it.

IHL binds States, including Israel, as well as non-State armed groups that are involved in conflict, such as Hamas, even though they cannot formally ratify the treaties. It is essential that the laws of war are non-reciprocal. Violations - such as deliberately targeting civilians or imposing collective punishment - can never be justified by claiming that another party has committed violations, or that there are power imbalances or other injustices. This body of law also governs occupation when a State has effective control of a territory over which it has no sovereign title, such as the Israeli occupation of Palestinian territory.

the humane treatment of the population and provide for their basic needs, including food and medical care. The UN and States must work together to defuse tensions, encourage improvements on the ground, and advance political negotiations toward a two-State solution to the Israeli-Palestinian conflict.

How IBSA Reformed the TRIPS Agreement

- Arya Mitkari (II B.A.LL.B.)

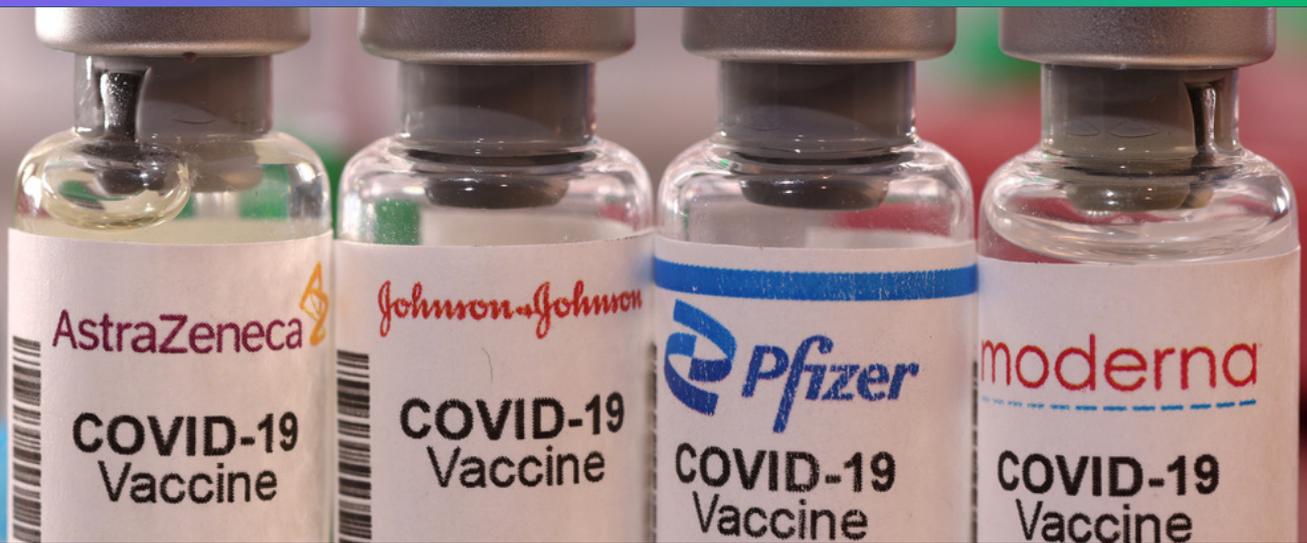
India, Brazil, and South Africa (IBSA) is a unique forum which promotes international cooperation among the three nations. The group as a whole is also the biggest voice of the global South and promotes South - South cooperation.

IBSA has achieved success in securing a waiver from the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) for developing countries and least developed countries (LDCs) at the Doha Round of the negotiations. The proposal sought waiver of implementation, application, and enforcements of sections 1, 4, 5, 7 of part II of TRIPS. Section 1 deals with

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NATO countries froze their participation in the Conventional Armed Forces in Europe (CFE) Treaty following Russia's withdrawal, signaling a continued break-down of the status quo in global security. Russia and 22 other countries signed the treaty in 1990, shortly after the fall of the Berlin Wall. The treaty sets limits on military arsenals, like the quantity of tanks and artillery each state party is permitted to have. For more information, see [here](#).

The International Criminal Court's (ICC) Appeals Chamber heard arguments over whether the court may resume its investigation into human rights abuses in Venezuela. The referring states alleged the Maduro government committed crimes against humanity, performed arbitrary arrests and enforced disappearances for political rivals. In June 2023, the ICC reauthorized its investigation, finding that Venezuela had not looked into the matter sufficiently. For more information, see [here](#).



copyright and related rights, while Section 4 addresses industrial designs. Section 5 pertains to patents, and Section 7 involves the protection of undisclosed information. This waiver allows LDCs to produce and export patented versions of medicines, primarily talking about the COVID-19 vaccine. The joint proposal falls within the international legal framework, both, on trade and human rights. Article IX of the Marrakesh Agreement, establishing the WTO, provides that a waiver on IPRs is possible in emergencies, like the COVID-19 pandemic. The European Union (EU) submitted a Draft General Council Declaration on the TRIPS Agreement and Public Health in the Circumstances of a Pandemic, recognizing that the pandemic was “a national emergency or other circumstances of extreme urgency” within the meaning of Article 31(b) of the TRIPS Agreement.

The original TRIPS waiver was discussed several times both, formally and informally, where most EU countries, US, and UK denied the role of IP being a barrier in the access to medical products during the pandemic and argued that the existing TRIPS flexibilities

were sufficient to address the COVID-19 pandemic. Subsequently, India and South Africa had multiple bilateral consultations on their proposal with smaller groups of members for most of 2021.

The alliance’s action was two-fold: first, engagements in the regional and international platforms; and second, mending its policies and programmes to provide medicines and vaccines to the world. In doing so, India co-sponsored a UN resolution that called for fair and equitable access to essential medical supplies and future vaccines to COVID-19.

The outcome was bittersweet as the ‘QUAD’ group of EU, India, South Africa, and USA reached a “compromise” on the waiver. The resolution text referred to Article 28.1, Article 31, and Article 39.3 of the TRIPS Agreement. Here, the countries would not be guaranteed the know-how of the manufacturing of vaccines but LDCs with less than 10% of vaccine export would be able to authorize the use of patented vaccines. The solution was much broader than compulsory licensing and would allow countries to ramp up vaccine production. The positives here were that the deadlock which was

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The UN special rapporteur on extreme poverty and human rights stated that the poverty levels in the UK are “simply not acceptable” and that the UK government is violating international law. The UK has obligations under international law to provide social protections, including an adequate standard of living. However, this duty is being broken as welfare payments in the UK lag behind the rising cost of living. For more information, see [here](#).

The families of nine civilian victims of Hamas’s October 7 attacks on Israel filed a complaint with the International Criminal Court (ICC). The complaint asks the ICC to prosecute Hamas leaders for genocide and war crimes and to issue an international arrest warrant for Hamas leadership. The complaint included charges of war crimes and genocide. The Hamas attack killed over 1,400 people, mostly civilians, and resulted in over 200 people being taken hostage in Gaza. For more information, see [here](#).



leading to continuous damage to the low-income countries had ended, while giving them the necessary flexibilities which were all credited to IBSA. The solution however was only restricted to vaccines and did not deal with the treatment part of the waiver. The major criticism of the document was that the West, by not giving complete IP access, was trying to protect their manufacturers from domestic competition. In the past, the West has provided such flexibility but as soon as the countries tried to avail it, they were faced with a lawsuit.

The success of the TRIPS waiver has also helped IBSA individually by boosting them as a diplomatic soft power, increasing their reputation as a regional leader, and countering Chinese vaccine diplomacy. The bittersweet success could see the alliance opting for a more aggressive stance in the future especially with agriculture and manufacturing, similar to the achievements of the Doha round.

The Evidentiary Standard for Attribution of Cyber Attacks

- Soumik Ghosh (III B.A.LL.B.)

Cyberspace by definition is a virtual domain with multiple information systems operating in sync for the facilitation of global networks for various purposes including communication. Cyberspace is well established to be in a State's regulatory paradigm.

Despite a significant rise in the number of "significant cyber incidents," no specific legislation or treaties in the international arena govern cyberspace except the Budapest Convention and the African Union Convention on Cyber Security and Personal Data Protection.

When information is so freely dispensed, consequences are difficult to predict due to the inherent nature of the internet, even a single attribution of a cyber-attack can be met with sanctions which is the recent approach taken by the EU or it can be met with extensive disinformation schemes by the alleged perpetrator States to avoid accountability.

One of the ways for these

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US President announced that he will expel Gabon, Niger, Uganda and the Central African Republic (CAR) from the African Growth and Opportunity Act (AGOA) trade program due to their records on human rights and the rule of law. For more information, see here.

The European Data Protection Board (EDPB), the EU's data regulator, announced it adopted an urgent binding decision banning Meta, the parent company of Facebook and Instagram, from processing user personal data for behavioral advertising across the European Economic Area (EEA) until further notice. For more information, see here.



"attributions" made by States to have a legal effect in the international realm is by adopting an evidentiary standard for the same. Essentially, any attributions made should be accompanied by at least a minimum standard of evidence. The Tallinn Manual 2.0 has tried to address this however, being only an expression of opinion by two panels of experts, it is not binding.

The Tallinn Manual's stance on this issue is that, any governmental institution in the State which is under the effective control of the State, the definition of effective control being derived from the Nicaragua Judgement given by the ICJ, is attributable to that State. Thus, holding the State which is in effective control of these institutions liable for the same. However the manual goes on to enumerate upon various other judgements stemming from various sources such as the ICTY and the Genocide case. It also speaks about the attribution standards regarding State agents who may be indirectly involved with the State or acting at the State's behest, and finally the due diligence principle, essentially showcasing the State's responsibility for actors within its

jurisdiction as enumerated upon in the Corfu Channel case which states that no State shall allow its territory to be used for acts contrary to the rights of other States.

This signifies a lack of a minimum standard. This is quite problematic as the moment a cyber-attack is attributed to a particular State, and amounts to an armed attack, the affected State gains the right to defend itself under Article 51 of the UN Charter. States may use this right on the basis of casual evidence or wild political inferences which can lead to a myriad of negative implications, especially since whether or not all types of cyber attacks amount to a use of force under the UN Charter is unclear.

The cyber attack which raised the entire question of attribution in the international arena was the Tallinn cyber attack of 2007, inflicted by Russian hackers on the entirety of Estonia's digital infrastructure. This was done as a response to the Estonians' removal of the Bronze Soldier Soviet war memorial in central Tallinn. However this attack was never directly attributable to the Kremlin due to the lack of clear evidence. However, it has been

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The UN Human Rights Committee (UNHRC) concluded its 139th session after reviewing reports from Iran, Kuwait, Republic of Korea, Trinidad and Tobago, the US and Venezuela. It said there were positive developments in all countries, but identified concerns and proposed recommendations. Notably, the UNHRC criticized the US immigration policy, saying the US may be at risk of violating treaty obligations by failing to protect the rights and safety of individuals, including children. For more information, see [here](#).

An expert with the UN Refugee Agency (UNHCR) described the worsening situation in Sudan as a "significant humanitarian crisis." Fighting has been particularly violent in the Darfur region of Sudan, with reports of "assassinations, grave violations [and] massacres of civilians, following RSF takeover of" an area in West Darfur. For more information, see [here](#).



inferred from various factors like the lack of mitigating response by Russia, lack of cooperation with Estonian authorities, and trade sanctions following the attack that Russia was responsible.

At this point in time, we need a global forum to deliberate upon a binding set of rules governing cyberspace, with clear evidentiary requirements adding legitimacy to any claims of infringement and clearly justifying retaliations and which situations can give rise to the right of self-defense. Deliberations amongst member States at the UN have been going on since 2020 for the implementation of a global cybercrime treaty; however, whether it addresses the regulation of cyberspace within its scope remains to be seen.

Internet Access: A Right or a Privilege?

- Shreya Basu (III B.A.LL.B.)

A purposeful interference in the internet and the services provided by it – usually by the government of a State - is termed an 'internet shutdown' in international law. It is usually implemented to censor media, surveil people, restrict the

flow of information, and control people's behaviour within a specified area.

The internet is especially essential in the growth of democracy since democracy bases itself on the representation of the people. It, thus, not only upholds the right to the effective flow of information but also the people's right to freedom of speech and expression, protected under Article 19 of the UDHR and the ICCPR. By virtue of UN Resolution 47/16, internet access has been declared a human right.

However, Article 19 (3) of the ICCPR prescribes that the right to freedom of speech and expression may be curbed to protect others' rights/reputation or national interests (public order). The determination of these circumstances remains ambiguous. In India, the government imposed a total communications shutdown in Jammu and Kashmir in 2019, which continued till 2021 to prevent protests from erupting in the region. The shutdown curtailed citizens' rights to access health, education, movement, and livelihood. However, in the Foundation for Media Professionals

Upcoming Activities

Call for Papers: International Conference on Militant Democracy and Constitutionalism

Do procedural aspects of democracy affect its substance? This conference will be organized by the School of Law, University of Nicosia and the Themistocles and Dimitris Tsatsos Foundation – Centre for European Constitutional Law (CECL). The conference will be held on 3-4 June 2024. For more information, see [here](#).

Call for Submissions: NLIU-International Trade Law Journal

The NLIU-International Trade Law Journal is inviting submissions for the third volume of the Journal from academicians, practitioners, research scholars, students, and experts from within the legal community for manuscripts that assert and defend a well-reasoned position relating to international economic laws. The submission deadline for full papers is 31 December 2023. For more information, see [here](#).



v. The Union Territory of Jammu and Kashmir, the Supreme Court held that due to prevailing circumstances of cross-border terrorism, the blanket shutdown was constitutional. It was observed that such a shutdown would not be permissible in ordinary circumstances.

In February 2021, the military coup in Myanmar imposed a nationwide internet shutdown. This stance could be defended by the judgement in the Case of Communications Shutdown and Internet Shutdown during the 2011 Egyptian Revolution, wherein it was decided that the shutdown was due to legitimate reasons. However, it proved crippling to the minorities escaping indiscriminate prosecution and others navigating the economic and humanitarian crisis prevalent in the country.

'Legitimate reasons' are defined under General Comment 34. Necessity and proportionality are the main elements that are used to determine whether a restriction is for "legitimate reasons." However, there is immense discretion left to the State. The HRC usually does not overturn a domestic judicial body's decision regarding imposition of restrictions. Most

international courts and tribunals grant a certain deference to the State since it is in the best position to understand its people's needs and circumstances and impose restrictions necessary for their protection. It assumes that democratic legitimacy, common practice of States, and expertise exist for the domestically-implemented measures, as also mentioned in General Comment 31. There were 187 recorded internet disruptions in 35 countries in 2022 alone. Thus, what qualifies as a threat to the rights of others, and how State interests gain precedence over their citizens' individual rights remains broad and may be subject to arbitrary imposition.

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Upcoming Activities

Ljubljana/The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes Discussion

On 15 November 12-1:30pm, the Cardozo Law School Institute on Holocaust and Human Rights and the American Branch of the International Law Association's IHL Committee will host a Zoom panel discussion. For more information, see [here](#).