

Bangor University

DOCTOR OF PHILOSOPHY

THE PALERMO PROTOCOL AND THE CHILDRENS' RIGHTS CONVENTION AS
CONDUITS TO A REVISED LEGAL FRAMEWORK ENCOMPASSING: LEGAL
EMPOWERMENT – ACCESS TO JUSTICE, EFFECTS OF DETERRENCE, AND REDRESS
**A Critical-Case, Socio-Legal Research Investigating State Responsibility for the
Prevention and Protection of Force Displaced Stateless Children (Children Displaced
Across Borders) Vulnerable to Human Trafficking and Exploitation in South Asia
(Bangladesh) and Southeast Asia (Myanmar) Regions**

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in South Asia (Bangladesh) and Southeast Asia (Myanmar) Regions

Thesis for the partial fulfilment of the Doctor of Philosophy in Law
International Criminal Law and International Human Rights

By:

Dr. Tanya F.P. Herring

DECLARATION

'Yr wyf drwy hyn yn datgan mai canlyniad fy ymchwil fy hun yw'r thesis hwn, ac eithrio lle nodir yn wahanol. Caiff ffynonellau eraill eu cydnabod gan droednodiadau yn rhoi cyfeiriadau eglur. Nid yw sylwedd y gwaith hwn wedi cael ei dderbyn o'r blaen ar gyfer unrhyw radd, ac nid yw'n cael ei gyflwyno ar yr un pryd mewn ymgeisiaeth am unrhyw radd oni bai ei fod, fel y cytunwyd gan y Brifysgol, am gymwysterau deuol cymeradwy.'

Rwy'n cadarnhau fy mod yn cyflwyno'r gwaith gyda chytundeb fy Ngrichwyliwr (Goruchwylywr)'

'I hereby declare that this thesis is the results of my own investigations, except where otherwise stated. All other sources are acknowledged by bibliographic references. This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree unless, as agreed by the University, for approved dual awards.'

I confirm that I am submitting the work with the agreement of my Supervisor(s)'

Tanya Fferring (electronic Signature), 6 September 2021

A handwritten signature in black ink, appearing to be 'Tanya Fferring', written in a cursive style.

Dedication and Acknowledgement

To the countless children who are without a voice and due justice for their suffering at the hands of exploiting perpetrators, I dedicate this research to you...

Though these children may never live to see justice come to fruition,
My hope is that this academic research will one day make a difference in the lives of at least one child but hopefully positively impact innumerable
Positively influence at least one decision-maker at the highest levels.

For those decision-makers, making a difference...

I salute Special Rapporteur Tomás Ojea Quintana
For his candid assessment on behalf of the stateless Rohingya population,
the focus group of this study...

‘[T]he patterns of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court (...)

[E]xtrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State (...)

[T]he deprivation of healthcare is deliberately targeting the Rohingya population, and (...) the increasingly permanent segregation of this population is taking place. Furthermore (...) these human rights violations are connected to discriminatory and persecutory policies against the Rohingya Muslim population, which also include ongoing official and unofficial practices from both local and central authorities restricting rights to nationality, movement, marriage, family, health, and privacy’.

by

Tomás Ojea Quintana, Special Rapporteur about human rights in Myanmar, Human Rights Council, 25th Session, 2 April 2014, A/HRC/25/64, Para 51

I render a special thank you for your unwavering support of
this Ph.D. research/project to the end:

Professor Martina Feilzer

Dean of College / Professor in Criminology & Criminal Justice
Bangor University, School of History, Law, and Social Sciences

Table of Contents

Abstract	1
Dedication	ii
Contents	iii
Abbreviations	xiii
Primary References	xv
a) Table of Cases, Legislation, and other Primary Legal Sources	xvi
b) Tables of Legislation by Jurisdiction	xxvi
c) Other Tables: International Treaties and Conventions	xxviii
d) UN and UN Agency Documents	xxxvi
e) Official Papers and Policy Documents	xlii
List of Appendices	x
Index of Figures.....	x
Index of Research Tables	xi

Chapter 1 Formulating a legal framework to investigate a three-strand research of child human trafficking: access-to-justice, deterrence, and redress

Yin's Case Study Protocol – Stages 1 and 2

Research Strand 1: Central RQ, sub-RQ 1, 2 & 3

Part I.

1. Study Context and Scope:	
a) Gaps in prevention, protection, and mitigation of child trafficking.....	2
b) Research Focus: The Rohingya-crisis of 2017	3
c) Geographical focus	3
i. Bangladesh	3
ii. The Republic of the Union of Myanmar	3
d) Analysis of international instruments	4
i. Research Anchor, 2001 codified ILC Responsibility of States for Internationally Wrongful Acts	5
ii. Articles 1-13, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Trafficking Protocol), supplemented by the UN Convention against Transnational Organized Crime (UNTOC, or the Palermo Convention)	6
iii. Articles 1-4, 7-8, 11, 21, 32, 34-36 of the UN Convention on the Rights of the Child (CRC, or UNCRC), Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (OPSC), Optional Protocol to the Convention on a communications procedure (OPIC), and the authoritative role of the CRC Committee General comments (GC)	6
e) Replicability and transferable investigative research	7
f) Interface with UN 2030 Sustainability Goals	7
i. Sustainability Goal 8, Target 8.7	7

ii. Sustainability Goal 16, Target 16.2	7
g) Complex Research Hypothesis	8
2. Aims and Four Research Strands	9
a) Strand 1 , Legal Empowerment, deterrence, redress or the ‘what’ of this socio-legal study, Chapters 1, 2, 5, and 6	9
b) Strand 2 , Children, the focal population of stateless, refugee/non-refugee, Rohingya, Chapters 1, 2, 4, and 5; Appendix 1, 2, and 3	10
c) Strand 3 , Treaty compliance and implementation – root cause, Chapters 3, 4, 6; Link to UN 2030 Sustainability Goal 8, Target 8.7; Goal 16, Target 16.2, Appendix 4	12
d) Strand 4 , Proffered evidence-based, generalizable, conjoined criminal, and human rights framework; Aligns with UN 2030 Sustainability Goal 8, Target 8.7 Goal 16, Target 16.2, Chapters 3, 4, 5 and 6, Appendix 3 and 4	14
3. Central Research Question and Sub-Research Questions.....	16
a) Sub-research Question 1	17
b) Sub-research Question 2	17
c) Sub-research Question 3	17
4. Research Objectives and Study Blueprint	18
a) Research Objective #1 – State Responsibility, Sustainability Development Goal #8, Target 8.7 and Goal #16, Target 16.2	19
b) Research Objective #2 – Proffered Legal Framework (Legal Empowerment, Deterrence, Redress)	19
c) Research Objective #3 – Make an Original Contribution to Body of Knowledge	20
d) Research Structure and Mapping	22
5. Legal Analysis Overview	24
a) State Responsibility	24
b) The Syllogism and Conflict Theory Discussion	27
c) CRC Committee General Comments	29
6. Research Foundational Background	30
7. The socio-legal context of the critical-case study	34
a) Dahrendorf’s Social Conflict Theory explains the ‘why’	34
b) Target Population (Rohingya, the Critical Case) and Geographic Region	41
c) Historical Reflection and Overview.....	44
d) The effects of Forced Migration	53
e) Geographical Research Areas: Bangladesh and Myanmar	59
f) Source, Transit, and the Destination States – Refugee and Stateless Convention	65

8. Need for the study.....	73
----------------------------	----

Part II, Research and Design, Appendix 1

1. Empirical Legal Research – Methodology	76
a) Design and Method	76
b) Qualitative Survey and Analysis	77
a. Participant questionnaire	78
b. Practitioner action research	79
c) Doctrinal Approach	81
d) Toulmin’s Model of Analysis	81
e) Tobin Criteria of interpretation	85
2. Study Limitations	88

CHAPTER 2

Stages 3-4 of Yin’s Case Study Protocol, Data Collection & Analysis Research Strand: 1 & 2; Central RQ, sub-RQ 1-3

Part I – The Review of Literature (The Rapid Evidence Assessment - REA), Appendix 2

1. REA Introduction, Overview	95
2. REA Layout and Structure	97
3. Review of the Literature, Synthesis	99
4. Definition of human trafficking and variants	102
5. Victim needs go unaddressed	105
6. REA Conclusions and Future Implications	109
7. Contributions to the Body of Knowledge	111

Part II. Review and background of the international instruments and UN Reports:

1. The international instruments	116
a) Treaty Foundation	116
b) Treaty Hierarchy	118
c) Compliance: Instruments - The Universal Periodic Review (UPR) of the UN Human Rights Council – by Country (Mechanisms of the UN Human Rights Council [HRC])	119
2. The Articles on Responsibility of Wrongful Acts: Theory and Overview of the Doctrine	122
3. The UN Office on Drugs and Crime (UNODC)	126
a) The UN Convention against Transnational Organized Crime (UNTOC)	127

b) The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (Palermo Trafficking Protocol), supplemented by the UN Convention against Transnational Organized Crime (UNTOC)	129
c) The Convention on the Rights of the Child (CRC), Background Overview	133
i. The CRC Conflicts	135
ii. Optional Protocol to the Convention on the Sale of Children, Child Prostitution, and Child Pornography (OPSC)	138
iii. Optional Protocol on a Communications Procedure (OPIC)	143

Part III. Connecting Research Theories and principles to child human trafficking

1. Taxonomy of Vulnerability - A Position of Vulnerability (APOV)	145
2. CRC, Children in Vulnerable Situations	151
3. Legal empowerment, access to justice, deterrence, and redress	155
4. Social Conflict Theory	160
5. Deterrence Strategies (Kennedy's Deterrence as an exemplar)	168

Chapter 3 Responsibility of States for Internationally Wrongful Act – Part One **Research Strands: 3 & 4; Central RQ, sub-RQs 1-3**

1. State Responsibility	
a) Introduction to State Responsibility	176
b) The evidence (the warrant)	179
c) The Argument	181
d) The Claim's Research Evidence Matrix	184
e) The Research Claim, Rebuttal/Counter-argument Evidence	194
f) In-Force State Treaty Obligation Matrix	198
g) In-Force State Treaty Obligation Matrix, Positive Obligation	201
h) Issues and Rules Under Analysis Coupled with Research-based Research Conclusions (IRAC)	206
i) The Palermo Trafficking Protocol – Rule Overview	208
j) The Convention on the Rights of the Child – Rule Overview	212
k) Research Target State Ratification and Accessions	217
l) Targeted State Reservations	218
m) UNCRC Reservations	222
n) Legal Interest	223
2. General Principles:	
a) Article 1. Responsibilities of a state for its internationally wrongful Acts	230
i. Case analysis - Permanent Court of International Justice	231
ii. Analysis – ASEAN	234
b) Article 2(a)(b). Elements of an internationally wrongful act of a State	237

c) Article 3. Characterization of an act of a State as internationally Wrongful	240
3. Argument #1: Examining the Obligation under State Responsibility Articles, arts 1, 2(a)(b), and 3	
a) Analysis	242
b) The dichotomy of the obligation	245
c) Absolute/ Best Endeavours to the Obligation	247
d) Best Reasonable Endeavours/all Reasonable Endeavours/ Reasonable Endeavours to the Obligation	248
e) 'I'll try' to 'Nothing' Obligation	250
f) The due diligence obligation standard	253
g) An international law obligation and <i>The Corfu Channel Case</i>	261
h) Obligation to international law and in-force treaties – <i>Factory at Chorzow Merits</i> , PCIJ	266
4. Argument #2: How does a wrongful omission by a State impact a State's obligation to the Prevention and Protection of stateless children from trafficking and exploitation	
a) Action or Omission	268
b) Based upon the stated evidence, did a breach of State Responsibility occur?	270
c) Does the breach by one state impact a breach by another state? <i>Barcelona Traction, Light & Power Co. 'Belgium v Spain'</i> – does the breach by one state impact a breach by another state?	273
d) An examination of the ICJ's Barcelona Traction Case: <i>The ICJ's Barcelona Case</i>	274
5. Argument #3: What are the jurisdictional requirements for preventing and protecting children from the transnational crime of human trafficking and exploitation for Bangladesh and Myanmar?	
a) Transnational crimes and jurisdictional requirements	285
b) Jurisdictional Analysis	287

Chapter 4 The Obligation to an in-force treaty

Research Strand: 3; Central RQ, sub-RQs 1 & 3

Part I.

The United Nations Convention against Transnational Organized Crime and the protocols thereto, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

1. Article 37 of the UN Convention against Transnational Organized Crime Convention (UNTOC) - in Relation with Protocols	293
---	-----

a) Interpretation of the Convention	295
b) Substantive Criminal Law	297
c) Minimum State Standards	298
i. Art 5.....	300
ii. Art 11	301
2. Argument #4, Was the in-force Treaty Obligations met for the Palermo Trafficking Protocol, as prescribed in arts 1, 2(a)(b), 3 – State Responsibility Article,	
a) 3 Ps	302
i. Prevent, arts 6, 7, 8, and 11; and art 27 (UNTOC).....	302
ii. Protect, arts 5, 6, 8, and 2, 2b, 3(1)(b), and 9(5) (UNTOC)	302
iii. Promote arts 18-19, arts 9-11 (UNTOC)	303
b) Analysis	303
3. Articles 1, 2(a),(b), 3 – State Responsibility Articles, did a breach occur with an In-force treaty obligation?	310
a) Palermo Trafficking Protocol, Article 1, the Preamble, 3Ps, and States under review/analysis.....	310
b) Palermo Trafficking Protocol, Article 2, 3Ps and States under review/analysis	317
c) Palermo Trafficking Protocol, Article 3, 3Ps and States under review/analysis	320
d) Palermo Trafficking Protocol, Article 5, 3Ps and States under review/analysis	327
e) Palermo Trafficking Protocol, Articles 6-8, 3Ps and States under review/analysis	335
f) Palermo Trafficking Protocol, Articles 9-13, 3Ps and States under review/analysis	339

Part II State Responsibility, Bilateral and Multilateral Treaties

1. Argument #5: ASEAN, Bilateral and Multilateral Treaties – Was there a Breach?	346
a) Treaty of Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries.....	347
b) States Under Review	348

Part III State Responsibility, CRC, 3Ps, arts 1-4, 7-8, 11, 21, 32, 34-36, OPSC, arts 1-11, Positive Obligation

1. Argument #6, Article 1, 2(a)(b), 3, State Responsibility Articles: The Positive Obligation	
a) The analysis of <i>Rantsev v Cyprus and Russia</i> as it cites <i>Prosecutor v Kunarac, Kovac & Vukovic</i> , Case (no 25965/04)	350
b) The Path to the <i>Rantsev v Cyprus and Russia</i> case	353
2. Acts and Omissions	359
3. The Legal Reports	360
4. Analysis – Was there a breach	363
5. Argument #7, Is there an obligation to in-force treaties – Convention on the Rights of the Child; Optional Protocol for the Sale of Children, Child Prostitution and Child Pornography; Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure	371
a) The CRC Thematic Clusters	373
b) The 3Ps, CRC	377
c) OPSC and the OPIC	380
d) CRC	
i. Provision, art 1	383
ii. Provision, art 2, non-discrimination	383
iii. Provision, Protection, Participation, art 4	384
iv. Protection, arts 7-8, 32, 34-36	387
v. Provision, Protection, Participation, art 3-4, arts Arts 32, 34-36	388
e) States under review	389
6. ASEAN and the vulnerable migrants	390
7. ASEAN Charter Relevant Rules	392
8. States under review	396
9. Case Analysis: Bangladesh	399
10. State under review: Greater Mekong Subregion	415
11. Legal Framework, Myanmar	418

Chapter 5, The Embedded Laws Formulating the Revised Legal Framework Research Strands 1- 4; Central RQ, sub-RQs 1-3

Part I. The Embedded laws formulating the Revised Legal Framework

1. Framework Basis	423
2. The Obligation	425
3. Legal Empowerment links to Social Conflict Theory	428
4. CRC	431
a) CRC, the force of law	432
b) Justiciability	433
5. The Kennedy Model	435
6. Social Conflict Theory	437

Part II: Conjoined: Deterrence Strategies

7. Conjoined: Deterrence Strategies (Kennedy's Deterrence Strategies) and Legal Empowerment (access to justice), and Redress (combining criminal law and human rights)	442
--	-----

Chapter 6 Capstone, Study Findings; Stage 6, Yin Case Study Protocol Research Strands 1-4, Central RQ, Sub-research RQs 1-3

1. Critical Case Study Conclusion, Stage 6, Share	450
a) Summary Overview	450
b) Summary Discussion - The Socio-legal Study	453
c) The Obligation	455
2. Summary of the Findings, Part I: State Responsibility	457
3. Summary of the Findings, Part II: State Positive Obligation	463
4. Proffered Legal Framework	467
a) Specific deterrence	468
b) General deterrence	468
c) Proffered Legal Framework	472
5. Research future implications	473

APPENDICES

Appendix 1: Case Study Protocol and Methodology, planned validity.....	475
▪ Case Study Protocol	
▪ Methodology	
▪ Focal areas:	
- Construct Validity	
- Internal Validity	
- External Validity	
- Independent variables	
- Confounding/intervening variables	
- Dependent variables	
- Positionality	
Appendix 2: Rapid Evidence Assessment.....	499
▪ PRISMA Flow Diagram, First Search String	
▪ Table 1, Search Resource Type	
▪ Table 2, Search Resource by Discipline	
▪ PRISMA Flow Diagram, Second Search String	
▪ Qualitative Analysis, Weight of Evidence (WoE)	
Appendix 3: Ethics Process	540
▪ Ethics Applications	
▪ Ethics Approval	
▪ Qualitative Survey/Questionnaire designed to Sub-research questions	
▪ Participant Responses	
Appendix 4: <i>2Prevent&Protect</i> , Proffered Legal Framework	605
▪ Proffered Legal Framework	
▪ Children’s prevention, protection, and mitigation against trafficking and exploitation (Practitioner/ Advocate Guide)	
▪ Copyrighted and licensed e-app, <i>2Prevent&Protect</i>	
Appendix 5: Glossary of Technical Terms, Phrases, and Applications.....	626

Index of Figures

Figure 1. UNHCR Rohingya-crisis, ‘100-days of Horror and Hell’	22
Figure 2. Geographic mapping of the legal research under investigation.....	23
Figure 3. Timelines: Historical Reflection and Escalating Rohingya-crisis	46
Figure 4. Timelines: Historical Reflection and Escalating Rohingya-crisis	47
Figure 5. Maps of the Rohingya disbursed inside and outside of Myanmar	55
as of October 2017; 2012-2015 (Spread of Rohingya inside and outside Myanmar)	
Figure 6. Rohingya children and women begging for food at Cox’s Bazaar, UNHCR	57
Figure 7. The plight of hundreds of thousands of Rohingya people	57
Figure 8. Map 1, 2, and 3. Detailed geographical map	62
Figure 9. Toulmin’s Argument Model	84
Figure 10. Factors influencing and determining vulnerability	154
Figure 11. Research Analysis Matrix, Triangulation of Datasets	159
Figure 12. Positive Obligation Spectrum of Reasonable Endeavours	252
Figure 13. Research States Plotted to the Shall Endeavour Spectrum	370

Index of Tables

Table 1. UN High Commissioner for Refugees Rohingya-crisis, ‘100-Days of Horror and Hope’ Snapshot	58
Table 2. Research Evidence Matrix	184
Table 3. Counterargument Evidence Matrix	194
Table 4. In-force State Treaty Obligation Matrix: UNTOC, Palermo Trafficking Protocol	198
Table 5. In-Force State Treaty Obligation Matrix: CRC, Optional Protocol to the Convention on the sale of children and Optional Protocol to the Convention on a Communications Procedure – Positive Obligation	201
Table 6. Research Target State Ratifications and Accessions	220
Table 7. Minimum State Standards. Article 5, UNTOC	300
Table 8. Minimum State Standards. Article 11, UNTOC	301
Table 9. Proffered Legal Framework	472

ABBREVIATIONS

ACHR	American Convention on Human Rights
ACHR	African Charter on Human and Peoples' Rights
ASEAN	Association of Southeast Asian Nations
BIA	Best Interest Assessment
BID	Best Interest Determination
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CED	International Convention for the Protection of All Persons From Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRIN	Child Rights International Network
CST	Child Sex Trafficking
ECHR or ECtHR	European Court of Human Rights
ECtHR	European Commission of Human Rights
EU	European Union
FGM	Female genital mutilation
ICSID	International Centre for Settlement of Investment Disputes
ICSID CONVENTION	Convention on the Settlement of Investment Disputes between States and Nationals of other States
ILC	International Law Commission
ILO	International Labour Organization
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ITLOS	International Tribunal for the Law of the Sea
MDGs	Millennium Development Goals
OHCHR	Office of the UN High Commissioner for Human Rights
OPAC	Optional Protocol to the Convention on the Involvement of Children in Armed Conflict
OPIC	Optional Protocol to the Convention on a Communications Procedure
OPSC	Optional Protocol on the Convention on the Sale of Children, Child Prostitution and Child Pornography
Organized Crime Convention	UN Convention against Transnational Organized Crime
PCA	Permanent Court of Arbitration
SDGs	Sustainability Development Goals

SRSG	Special Representative of the Secretary-General
TiP	Trafficking in Persons (Human Trafficking and Trafficking In Human Beings are also used)
TRAFFICKING	Trafficking in Persons
UNCITRAL	UN Commission on International Trade Law
UN	United Nations
UN.GIFT	UN Global Initiative to Fight Human Trafficking
UNHRC	UN Human Rights Council
UNICEF	UN' Children's Fund
UNODC	UN Office on Drugs and Crime
UNTOC	UN Convention against Transnational Organized Crime
UPR	Universal Periodic Review
US, or USA	United States, United States of America
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organization
WTO	World Trade Organization

Primary Sources:

Table of Cases, Legislation, and other Primary Legal Sources

Table of Cases, Legislations, and other Primary Legal Sources	Page
European Court of Human Rights (ECHR)	
<i>Anchugov and Gladkov v Russia</i> App no 1157/04 (ECtHR, 4 July 2013), para 37	315
<i>Chowdury and others v Greece</i> App no 21884/15 (ECtHR, 30 March 2017)	326
<i>C N v UK</i> App no 4239/08 (ECtHR, 13 November 2012)	28
<i>C N and V France</i> App no 67724/09 (ECtHR, 11 October 2012)	28
<i>Finucane v UK</i> App no 29178/95 (ECHR, 1 July 2003) paras 68–71	257
<i>Four Companies v Austria</i> App no 7427/76 (ECtHR, 28 Sept 1976)	217
<i>Golder v UK</i> App no 7427/76 (EctHR, 27 Sept 1976)	212
<i>Graziani-Weiss v Austria</i> App no 31950/06 (ECtHR, 18 October 2011)	355
<i>Larissis et al v Greece</i> App nos 140/1996/759/958, 960 (ECtHR, 24 February 1998)	253
<i>Liseytseva and Maslov v Russia</i> App nos 39483/05 and 40527/10 (ECtHR, 9 October 2014)	124

Table of Cases	Page
<i>Likvidējamā P/S Selga and Lūcija Vasilevska v Latvia</i> App nos 39483/05 and 40527/10 (ECtHR, 9 October 2014)	176
<i>Loizidou v Turkey</i> App no 40/1993/435/514 (ECtHR, 23 February 1995)	117
<i>L E v Greece</i> App nos 71545/12 and 61838/14 (ECtHR, 12 January 2016)	362
<i>M G C v Romania</i> App no 61495/11 (ECtHR, 15 March 2016)	362
<i>Marckx v Belgium</i> App no 6833/74 (ECtHR, 13 June 1979)	268
<i>O'keefe v Ireland</i> App no 35810/09 (ECtHR, 28 Jan 2014)	362
<i>Rantsev v Cyprus and Russia</i> App no 25965/04 (ECtHR, 7 Jan 2010)	204
<i>Siliadin v France</i> App no 73316/01 (ECtHR, 26 July 2005)	182
<i>Samsonov v Russia</i> App no 2880/10 (ECtHR, 16 September 2014), para 45	125
<i>Stummer v Austria</i> [GC] App no 37452/02 (ECtHR, 7 July 2011)	354
<i>Tibet Menteş and others v Turkey</i> App nos 57818/10 and four others (ECtHR, 24 October 2017)	357
<i>Van der Mussele v Belgium</i> App no 8919/80 (ECtHR, 23 Nov 1983)	354
<i>X and Y v Netherlands</i> App no 8978/80 (ECtHR, 26 March 1985)	362

Table of Cases	Page
European Commission of Human Rights	
<i>Hendricks v Netherlands</i> (1982) 29 DR	12
<i>The Commission of European Communities v The Italian Republic</i> , Case C-388/01, Case C-224/97 Ciola [1999] ECR I-2517, para 14 Case C-281/98 Angonese [2000] ECR I-4139, para 41 Case C-3/88 Commission v Italy [1989] ECR 4035 Case C-224/97 Ciola [1999] ECR I-2517 Case C-281/98 Angonese [2000] ECR I-4139	81
International Arbitral Tribunal (Under the ICSID Convention)	
<i>Bernhard von Pezold and others v Republic of Zimbabwe</i> , ICSID Case no ARB/10/15	239
<i>ConocoPhillips Petrozuata B.V. and others v Bolivarian Republic of Venezuela</i> , ICSID Case no AR/07/30	26
<i>Gold Reserve Inc. v Bolivarian Republic of Venezuela</i> ICSID Case no ARB (AF)/09/1	26
<i>Quiborax S.A., Non-Metallic Minerals S.A. and Allan Fosk Kaplún v Plurinational State of Bolivia</i> ICSD Case no ARB/06/2	176
<i>Suez, Sociedad General de Aguas de Barcelona S.A. and Vivendi Perenco Ecuador Ltd v The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)</i> ICSID Case no ARB/08/6	233
<i>Universal S.A. v The Argentine Republic</i> ICSID Case no ARB/97/3	233
<i>Rompetrol Group N.V. v Romania</i> ICSID Case no ARB/06/3	27
<i>Tulip Real Estate and Development Netherlands B.V. v Republic of Turkey</i> ICSID Case no ARB/11/28	459
<i>Vigotop Limited v Hungary</i> ICSID Case no ARB/11/22	25

Table of Cases	Page
Inter-American Court of Human Rights	
IACtHR <i>Ituango Massacres v Columbia</i> (21 May 2013) para 27	24
IACtHR <i>Ramfrez Escobar and others v Guatemala</i> (20 June 2005)	138
IACtHR <i>Velásquez Rodríguez v Honduras</i> (29 July 1988) para 147	255
International Court of Justice	
<i>Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)</i> 23 January 2020	51
<i>Application of the Convention on the Prevention and Punishment of the Crime of Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)</i> (Merits) 27 June 1986	118
<i>Barcelona Traction, Light and Power Company (Belgium v Spain)</i> New App [1970] ICJ Rep 4	177
<i>Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)</i> (Merits) [2012] (July 20)	224
<i>Border and Transborder Armed Actions (Nicaragua v Honduras)</i> Jurisdiction and Admissibility [1988] ICJ Rep 396	118
<i>Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)</i> Preliminary Objections [2004] ICJ Rep 1996 (July 1)	273

Table of Cases	Page
<i>Corfu Channel Case (United Kingdom v Albania)</i> (Merits) [1949] ICJ Rep 4	182
<i>Croatia v Serbia</i> (Application of the Convention on the prevention and Punishment of the Crime of Genocide) [2015] ICJ Rep 3	24
<i>Factory at Chorzów</i> (Merits) [1928] PCIJ Series A No 17	266
<i>Hungary v Slovakia</i> (Gabcikovo-Nagymaros Project: Judgment [1997] ICJ Rep 25	273
<i>Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt, Advisory Opinion</i> [1980] ICJ Rep 73	393
<i>Military and Paramilitary Activities in and against Nicaragua case, Jurisdiction and Admissibility</i> [1984] ICJ Rep 392	220
<i>Minority Schools in Albania case</i> (1935) PCIJ Series A/B No 64	117
<i>Nicaragua v The United States of America</i> ICJ Rep 1997	118
<i>North Sea Continental Shelf cases</i> [1969] ICJ Rep 3	117
<i>Nuclear Tests cases</i> [1974] ICJ Rep 253	117
<i>Phosphates in Morocco (Italy v France)</i> (1938) PCIJ Rep Series A/B No 74	231
<i>Treatment of Polish Nationals case</i> (1932) PCIJ Series A/B No 44	117
<i>WHO/Egypt Agreement Advisory Opinion</i> [1980] ICJ Rep 73	117
<i>United Kingdom v Albania</i> (Merits) ICJ GL No 1; [1949] ICJ Reports 4; ICGJ 199 (ICJ 1949) 9 April 1949	182

Table of Cases	Page
International Criminal Court	
<i>Prosecutor v Thomas Lubanga Dyilo</i> , Case No ICC-01/04-01/06 (Dec 14)	431
Pre-Trial Chamber I, <i>Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”</i> , Case No ICC-RoC46(3)-01/18 (6 Sep. 2018)	165
International Criminal Tribunal for the former Yugoslavia	
<i>Prosecutor v Kunarac, Kovac & Vukovic</i> (Judgment) Case Nos IT-96-23 and IT-96-23/1-A (12 Jun 2002)	180
International Tribunal for the Law of the Sea	
<i>Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion of 2 April 2015</i> ITLOS Reports 2015, 144	
<i>M/V ‘Virginia G’ Case (Panama v Guinea-Bissau)</i> , Judgment of 14 April 2014, ITLOS Reports 2014, 429	114
Permanent Court of Arbitration (Under UNCITRAL Rules)	
PCA Case no AA 226 (18 July 2014)	240

Table of Cases	Page
Iran-US Claims Tribunal Cases	
<i>Tippets, Abbett, McCarthy, Stratton v TAMS-AFFA Consulting Engineers of Iran (Iran-US Claims Tribunal Cases) Case No 7</i>	273
<i>Mohsen Asgari Nazari v Iran, 24 August 1994</i>	273
<i>Short v Iran</i> (1987) 16 Iran-USCTR 76, 83	274
Permanent Court of Arbitration (Under UNCITRAL Rules)	
<i>AWG Group LTD v The Argentine R Hulley Enterprises Limited (Cyprus) v The Russian Federation</i> UNCITRAL (30 July 2010)	236
<i>Hulley Enterprises Limited (Cyprus) v The Russian Federation</i> UNCITRAL PCA Case No 2005-03/AA226 (18 July 2014)	409
<i>Island of Palmas Case</i> (Scott, Hague Court Reports 2d 83) (1932) (Perm Ct Arb 1928) 2 UN Rep Intl Arb Awards 829	278
<i>Luigiterzo Bosca v Lithuania</i> UNCITRAL PCA Case no 2011-05 (17 May 2013)	244
UN Secretary-General	
<i>Zhen Zheng v Netherlands</i> (17 February 2009) CEDAW/C/42/D/15/2007	264
Committee on the Elimination of Discrimination Against Women	
<i>Goekce v Austria, Sahide Goekce (deceased) v Austria</i> Communication no 5/2005 UN Doc A/62/38, at 432 (2007)	264
<i>Yildirim v Austria</i> UN Doc CEDAW/C/39/D/6/2005, (Communication no 6/2005)	265
World Trade Organization (WTO)	
<i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> (12 October 1998) WT/DS58/AB/R [12]	319

Table of Cases	Page
State Court Cases	
Australia	
<i>XYZ v Commonwealth of Australia</i> [2006] HCA 25; (2006) 227 ALR 495; (2006) 80 ALJR 1036 (13 June 2006); ILDC 528 (AU 2006)	439
Bangladesh High Court	
<i>AG v Secretary Ministry of Foreign Affairs, Govt of Bangladesh, and Another</i> 17 BLD (1997) HCD 560	439
<i>(BSEHR) and others v Government of Bangladesh and others</i> 53DLR (2001)	438
<i>BNWLA v Government of Bangladesh and others</i> , 14 BLC (2009) 703	438
<i>Ershad v Bangladesh and others</i> , Appeal, 21 BLD (AD 2001) 69; ILDC 476 (BD 2000) (16 August 2000)	438
Honduras	
<i>Minors in Detention v Honduras</i> Case 11.491 Inter-Am CHR Report no 41/99 OEA/Ser L/V/II.106 Doc 6 Rev (1999)	440

Table of Cases	Page
India	
<i>D K Basu v State of West Bengal</i> (1997) (1) SCC 416	269
<i>Khatrri (II) v State of Bihar</i> (1981) (1) SCC 627	269
<i>Peninsular and Oriental Steam Navigation Company v Secretary of State for India</i> (1861) 5B HCR App I	268
<i>Rudal Shah v State of Bihar</i> (1983) (4) SCC 141	269
<i>P & O Steam Navigation Co v Secretary of State</i> (1861) 5B HCR App p 1	268
<i>Rudul Shah v State of Bihar</i> (1983) (4) SCC 141	269
<i>State of Andhra Pradesh v Challa Ramkrishna Reddy</i> (2000) (5) SCC 712	269
Philippine Court	
<i>People v Esugon</i> GR no 195244 (2015)	634
South Africa	
<i>State v Netcare Kwa-Zulu Limited</i> MLR (2011) 19(1)	334
United Kingdom	
<i>Astor Management AG and others v Atalaya Mining PLC and others</i> [2017] EWCA Civ 2407, [2019] 1 All ER (Comm) 885	258
<i>Dhanani v Crasnianski</i> [2011] EWHC 425, 926, [2011] 2 All ER (Comm) 799	252
<i>EDI Central Ltd v National Car Parks Ltd</i> SCS [2010] CSOH 141, [2011] SLT 75	252
<i>IBM United Kingdom Ltd v Rockware Glass Ltd</i> (1980) FSR 335	252
<i>Phillips Petroleum Co UK Ltd v Enron Europe Limited</i> [1997] CLC 329 (CA)	250

Table of Cases	Page
<i>Overseas Buyers v Granadex</i> [1980] 2 Lloyd's Rep 608	252
<i>R and D Construction Group Ltd v Hallam Land Management Ltd SCS</i> [2010] CSIH 96 , [2011] SC 286	252
<i>R v Jones</i> [2006] UKHL 16, [2007] 1 AC 136	252
<i>Rhodia International Holdings Ltd. Rhodia UK Ltd v Huntsman International LLC</i> [2007] EWHC 292, [2007] All ER (Comm) 577	252

Tables of Legislation by Jurisdiction

Bangladesh Legislation	Page
Bangladesh Labor Code, 2006	324
Children Act, 1974	324
Constitution of the People's Republic of Bangladesh [Bangladesh], 4 November 1972	324
arts 11, 31, and 32	324
Child Marriage Restraint Act, 1929	324
Dowry Prohibition Act, 1980	324
Emigration Ordinance, 1982	324
Extradition Act, 1974	324
Forced Labor (Section 374)	324
Human Trafficking Deterrence and Suppression Act, 2012	324
Kidnapping and abduction (Sections 360-369)	324
Law on Human Organ Transplant, 1999	334
Mock or invalid marriage (Sections 493, 496)	324
Nari o shishu Nirjaton Damon Ain (Act xviii of 1995)	403
Passport Order, 1973	418
Passport (Offense) Act, 1952	418
Penal Code, 1860	418
The Bangladesh Prevention and Suppression of Human Trafficking Act (PSHTA), 2012	418
Procurement of female minors (Sections 366A, 366B)	324
Rape (Sections 375-376)	324
Sale or purchase of minors for immoral purpose (Sections 372, 373)	324
Slavery (Sections 370, 371)	331
Suppression of Immoral Traffic Act, 1933 (Section 4)	324
Vagrancy Act, 1950	417
Women and Children Repression Prevention Act, 2000 (amended 2003)	418
Section 5 (punishment for trafficking in women)	
Section 6 (punishment of trafficking in children, up to and including age 16)	
Section 7 (punishment for the abduction of women and children)	
Other relevant sections include 9 (rape), 10 (sexual harassment), 18 (investigation of offense), and 20 (trial procedure).	
Wrongful confinement and wrongful restraint (Sections 342-346)	324

Tables of Legislation by Jurisdiction	Page
Dutch Criminal Code	
Article 273f, defines trafficking	149
Egypt	
Law no 64, 2012, Combatting Human Trafficking, Article 2	149
United States of America	
Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003	203
Trafficking Victims Protection Act (TVPA) of 2000, 22 U.S.C. §7101-10, <i>amended by</i> TVPRA of 2003, 22 U.S.C. §§7101-7110 (supp III 2005), <i>amended by</i> TVPRA of 2005, 22 U.S.C. §§7101-10 (supp IV 2007), <i>amended by</i> William Wilberforce TVPRA of 2008, 22 U.S.C. §§7101-02 (supp III 2010), <i>amended by</i> TVPRA of 2013, Pub. L. no 113-4, 127 Stat. 54	511

Other Tables
International Treaties and Conventions, UN Documents,
Official Papers and Policy Documents

Table of International Treaties and Conventions

African Charter on Human Rights and Peoples' Rights (adopted 27 June 1981, entered into force on 21 October 1986) (1982) 21 ILM 58 (African Charter)

African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) (1990) CAB/LEG/24.9/49 (Organization of African Unity)

American Convention on Human Rights (adopted 22 November 1969, entered into force on 18 July 1978) (1969) OAS ('Pact of San Jose', Costa Rica)

Association of Southeast Asian Nations (ASEAN) (adopted 20 November 2007, entered into force on 15 December 2008) (Charter of the Association of Southeast Asian Nations)

Association of Southeast Asian Nations (ASEAN) Declaration on Trafficking in Persons Particularly Women and Children (adopted 29 November 2004, entered into force 21 November 2015)

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force on 21 October 1950) 75 UNTS (Geneva Convention II)

Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) (Convention against Torture)

Convention Concerning Forced or Compulsory Labour (adopted 28 June 1930, entered into force 1 May 1932) (CO29)

Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (adopted 24 June 1975, entered into force on 9 December 1978) (C143)

Convention Concerning the Abolition of Forced Labour (adopted 25 June 1957, entered into force 17 Jan 1959) (C105)

Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (adopted 17 June 1999, entered into force on 19 November 2000) (C182)

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted December 1949, entered into force on 25 July 1951)

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (adopted 8 November 1990, entered into force on 1 September 1993) ETS 141 (Convention on Confiscation of Proceeds of Crime)

Convention on Mutual Legal Assistance between Like-Minded ASEAN Countries (adopted and signed November 2004) (ASEAN MLAT)

Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 (entered into force on 1 December 2005) (SAARC Convention)

Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) UN Doc A/34/46, art 6

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) arts 1-4, 7-9, 11, 21, 32, 34-36

Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force on 22 April 1954) 189 UNTS 137 (Refugee Convention)

Council of Europe Convention on Action against Trafficking in Human Beings (entered into force on 1 February 2008) (2005) CETS 197 (European Trafficking Convention)

European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (entered into force on 3 September 1953), as amended by Protocol no 11 (entered into force on 1 November 1998) (European Convention on Human Rights)

European Convention on Extradition (entered into force on 18 April 1960) (1957) ETS 24

European Social Charter, 1961 (entered into force on 26 February 1965), amendment (entered into force on 7 January 1999) (European Social Charter)

First Optional Protocol to the International Covenant on Civil and Political Rights, 1966 (entered into force on 23 March 1976)

Fourth Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force on 2 May 1968) (1963) ETS 46 (Fourth Additional Protocol to ECHR)

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949 (entered into force on 21 October 1950) (Geneva Convention I)

Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949 (entered into force on 21 October 1950) (Geneva Convention III)

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949 (entered into force on 21 October 1950) (Geneva Convention IV)

Hague Convention #33 on Protection of Children and Cooperation in respect of Intercountry Adoption (1993)

ILO Convention 138 (C138) on the Minimum Age for Starting Work (adopted 26 June 1973, entered into force on 19 June 1976) (1973)

Inter-American Convention on International Traffic in Minors, 1994 (entered into force 15 August 1997)

International Agreement for the Suppression of the “White Slave Traffic” (adopted 18 May 1904, entered into force on 18 July 1905) 1 LNTS 83

International Maritime Organization (IMO), International Convention on Maritime Search and Rescue, 27 April 1979, 1403 UNTS

International Convention for the Suppression of the Traffic in Women and Children, 1921 (opened for signature on 30 September 1921)

International Convention for the Suppression of the Traffic in Women of Full Age, 1933 (entered into force on 24 August 1934)

International Convention for the Suppression of the White Slave Traffic, 1910 (opened for signature on 4 May 1910)

International Convention on the Elimination of All Forms of Racial Discrimination, 1966 (entered into force on 4 January 1969)

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, UNGA Res 45/158, Annex, UN GAOR Supp No 49A, at 262, UN Doc A/45/49 (1990) (entered into force on 1 July 2003)

International Covenant on Civil and Political Rights, 1966 (entered into force on 23 March 1976), UNGA Res 2200A (XXI) [esp. see art 8]

International Covenant on Economic, Social and Cultural Rights, 1966, UNGA Res 2200A (XXI) [esp. see art 7]

League of Nations, Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253, Registered no 1414
Migration for Employment Convention (Revised) (entered into force on 22 January 1952) ILO 97, 1049 (ILO Migration for Employment Convention – [Revised])

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (entered into force 22 June 2006)

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999 (entered into force on 22 December 2000)

Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2006 (entered into force on 3 May 2008)

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, UNGA Res 54/263, Annex II, UN GAOR Supp No 49, at 6, UN Doc A/54/49, vol III (2000)

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2008 (opened for signature on 24 September 2009)

Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (entered into force on 7 December 1978) (Additional Protocol II)

Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the UN Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force on 28 January 2004) (annex III, Protocol on the Smuggling of Migrants)

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their parts, and Components, and Ammunition, supplementing the UN Convention against Transnational Organized Crime (adopted 31 May 2021, entered into force 3 July 2005)

Protocol amending the International Agreement for the Suppression of the White Slave Traffic and amending the International Convention for the Suppression of the White Slave Traffic (adopted 18 May 1904, entered into force on 4 May 1949) (Protocol amending the 1904 and 1910 Agreements)

Protocol relating to the Status of Refugees (adopted 28 July 1951, entered into force on 4 October 1967) 606 UNTS 267 (Protocol) art 2

Protocol to amend the International Convention for the Suppression of the Traffic in Women and Children and the International Convention for the Suppression of the Traffic in Women of Full Age (adopted 30 September 1921, entered into force on 12 November 1947) (Protocol amending the 1921 and 1933 Agreements)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime (adopted 15 November 2000, entered into force on 25 December 2003)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 1 July 2003, entered into force 25 November 2005) (Protocol on the Rights of Women in Africa)

Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) (ICC) arts 5, 6, 7, 79

SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (adopted 5 January 2002, entered into force 15 November 2005) (SAARC Convention on Child Welfare)

Seventh Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 22 November 1984, entered into force 1 November 1988) ETS 117 (Seventh Additional Protocol to ECHR)

Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 7 March 1927) (Slavery Convention of 1926)

Statute of the International Court of Justice (adopted 17 December 1963, entered into force 31 August 1965) 156 UNTS 77, art 38(1)

Statute of the International Criminal Tribunal for Rwanda (adopted 8 November 1994, amended 14 August 2002) (ICTR)

Statute of the International Criminal Tribunal for the former Yugoslavia (adopted 25 May 1993) UNSC 827 (ICTY)

Statute of the Special Court for Sierra Leone (established 16 January 2002) UNSC 1315 (2000)

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force on 30 April 1957) (ECOSOC)

UN Action for Cooperation against Trafficking in Persons (UN-ACT) and Mahidol University in Bangkok co-organized the International Seminar on Mixed Migration in Southeast and East Asia (adopted 21-22 June 2017) (COMMIT Process)

UN, Charter of the UN (adopted 24 October 1945, entered into force on 24 October 1945)
1 UNTS XVI

UNGA, the 2030 Agenda for Sustainable Development (adopted 4 December 2014 by all UN Member States), 2015 A/69/700

UNGA, Law of the Sea (adopted 14 December 1990 by the General Assembly),
A/RES/45/145

UNGA, UN Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”) (adopted 14 December 1990 by the General Assembly), A/RES/45/112 (Beijing Rules)

UN Convention against Corruption (adopted October 2003, entered into force on 14 December 2005) (UNCAC)

UN Convention Against Transnational Organized Crime, UNGA Res 25, Annex I, UN GAOR 55th Session Supp No 49, at 44, UN Doc A/45/49 (vol I) (2001)

UN Convention on the Law of the Sea (adopted 10 December 1982, entered into force on 1 November 1994) 1933 UNTS 397 (also referred to as the Law of the Sea Convention or the Law of the Sea Treaty)

Article 98 of UNCLOS, entered into force on 16 November 1994; Chapter V, Regulation 33 1-1 of the 1974, International Convention for the Safety of Life at Sea (SOLAS), entered into force on 25 May 1980, as amended; Chapter 2.1.10 of the 1979 International Convention on Maritime Search and Rescue (SAR), entered into force on 25 March 1980, as amended

UN, Principles, and Guidelines for International Negotiations (adopted 8 December 1998 by the General Assembly), Res 53/101, para 2(a)

The United States of America, Victims of Trafficking and Violence Protection Act of 2000 [United States of America], Public Law 106-386 [HR 3244], 28 October 2000

Vienna Convention on the Law of Treaties, 1969 (entered into force on 27 January 1980)
[esp. see Article 31]

UN and UN Agency Documents

UN Development Programmes (UNDP), 'Code of ethics' (UNDP, 2017) <www.undp.org/content/dam/undp/library/corporate/ethics/UND> accessed 28 November 2018

UN Economic and Social Council, E/2019/68, Session 26 July 2018–24 July 2019, Agenda Items 5 (a) and 6 (2019) <<https://undocs.org/E/2019/68>> accessed 22 July 2019

UNGA, 'The 2030 Agenda for Sustainable Development', adopted by all UN Member States in 2015A/69/700 (4 December 2014) <www.un.org/ga/search/view_doc.asp?symbol=A/69/700&Lang=E> accessed 28 September 2019

UNGA, 'Responsibility of States for internationally wrongful acts', Res adopted by the General Assembly, A/RES/62/61 (8 January 2008); resolution 56/83 of 12 December 2001

UNGA, 'UN Global Plan of Action to Combat Trafficking in Persons', 64th Session, Agenda Item 104, Res adopted by the General Assembly, 64/293 (12 August 2010) <www.unodc.org/documents/commission/CCPJ/Crime_Resolutions/2000-2009/2009/General_Assembly/A-RES-64-293.pdf> accessed 22 February 2018

UNGA, 'The UN Millennium', 55th Session, 18 September 2000, Agenda Item 60 (b), A/RES/55/2

UN High Commissioner for Refugees (UNHCR), 'Safe & Sound: What States can do to ensure respect for the best interests of unaccompanied and separated children in Europe' (UNHCR, October 2014) <www.refworld.org/docid/5423da264.html> accessed 12 February 2019

UN IOM, 'UN migration agency warns of trafficking, labour exploitation, sexual abuse of Rohingya refugees' (UN IOM, 2019) <www.iom.int/news/un-migration-agency-warns-trafficking-labour-exploitation-sexual-abuse-rohingya-refugees> accessed 20 July 2018

UN Secretariat, 'Section 1. Definition', Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse, ST/SGB/2003/13 (9 October 2003)

UN Sustainability Goals, 'Marginalized Populations: Treatment of People' (*Charter for Compassion*, 2018) <<https://charterforcompassion.org/charter-tool-box-a-framework->

for-getting-started/marginalized-populations-treatment-of-people> accessed 12 January 2018

UN GIFT, 'Global initiative to fight human trafficking' (UN GIFT, February 2019) <www.unodc.org/documents/Global_Report_on_TIP.pdf> accessed 22 February 2020)

UNCHR, 'Detained and Dehumanized: Report on Human Rights Abuses Against Migrants' (UNHCR, 13 December 2016) <www.ohchr.org/documents/countries/LY/DetainedandDehumanised_en.pdf> accessed 9 November 2018

UNHCR, 'Taking on traffickers at the world's largest refugee site' (UNHCR, 2 December 2019) <www.unhcr.org/uk/news/stories/2019/12/5ddbafa04/taking-traffickers-worlds-largest-refugee-site.html> accessed 30 December 2019

UNHCR, 'Recommended Principles and Guidelines on Human Rights at International Borders', A/HRC/31/35 (OCHR, 2014), para 8 <www.ohchr.org/Documents/Publications/Traffickingen.pdf> accessed 23 December 2017

UNICEF, 'A future stolen: Young and Out-of-School' (UNICEF, September 2018) <www.unicef.org/eapsites/unicef.org.eap/files/2018-09/young_and_out-of-school.pdf> accessed 9 November 2018

UN, 'Action for Cooperation against Trafficking in Persons (UN-ACT) and Mahidol University in Bangkok co-organized the International Seminar on Mixed Migration in Southeast and East Asia', 21-22 June 2017

UN, 'Global Plan of Action to Combat Trafficking in Persons', UN Doc A/RES/64/293 (12 August 2010), preambular para 3

UN Office for Disaster Relief Reduction (UNISDR), 'The Asia-Pacific Disaster Report: Reducing Vulnerability and Exposure to Disaster' (UNISDR, 2012) <www.unisdr.org/archive/29286> accessed 29 January 2019

Universal Declaration of Human Rights, UNGA Res 217A (III) UN Doc A/810 [esp. see art 4]

UN Fact-Finding Mission, 'Report of the Detailed Findings' (2018), translation of the speech by General Ne Win provided in The Working People's Daily (*Online Burma/Myanmar Library*, 9 October 1982), para 476 <www.burmalibrary.org/docs6/Ne_Win%27s_speech_Oct-1982-Citizenship_Law.pdf> accessed 21 July 2019

UNHCR, '100-days of Horror and Hope: A timeline of the Rohingya Crisis' (UNHCR, 5 December 2017) <<https://reliefweb.int/report/Bangladesh/100-days-horror-and-hope-timeline-rohingya-crisis>> accessed 31 December 2017

UNHCR, 'Burma Citizenship Law 1982' (UNHCR, 2010) <www.reworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=3ae6b4f71b> accessed 10 September 2018

UNHCR, 'Human Trafficking' (UNHCR, 2010) <www.unhcr.org/4c9770ee6.pdf> accessed 28 June 2018

UNHCR, 'UN Refugee Agency Lauds US Assistance to Rohingya' (UNHCR, March 2018) <www.unhcr.org/en-us/news/press/2018/4/5ade57194/un-refugee-agency-lauds-us-assistance-to-rohingya.html?query=Rohingya%20history> accessed 3 June 2018

UNHCR, 'Myanmar Rohingya' <<https://unhcr.org>> accessed 31 December 2018

UNICEF Bangladesh Country Office, 'Situation Assessment: Protection Cluster of Rights' (UNICEF, 2012) <www.unicefinemergencies.com/downloads/eresource/docs/Rights%20based%20equity%20focused%20Situation%20Analysis%20guidance.pdf> accessed 29 June 2019

UNICEF, 'The State of the World's Children' (UNICEF, 2006) <www.unicef.org/sowc/archive/ENGLISH/The%20State%20of%20the%20World%27s%20Children%202006.pdf> accessed 23 September 2019

UN, 'Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court', Annex, Res E (1998) UN Doc A/CONF.183 (vol I) at 71-2

UN Independent International Fact-Finding Mission on Myanmar, HRC resolution 34/22 (22 October 2019) <https://reliefweb.int/sites/reliefweb.int/files/resources/FFM-GA%20statement.rev_.2%20%28002%29_0.pdf> accessed 7 November 2019

UN, 'Report of the World Summit for Social Development' (Copenhagen, 6-12 March 1995), paras 25(i), 66 <www.un.org/documents/ga/conf166/aconf166-9.htm> accessed 21 November 2017

UN, 'General rules for the interpretation and application of treaties are set out in articles 31 to 33 of the Vienna Convention on the Law of Treaties', Vienna Convention on the Law of Treaties (UNTS, vol 1155, no 18232)

UN Department of Economic and Social Affairs, Population Division, 'International Migration 2019: Report', ST/ESA/SER.A/438 (2019)
<www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/InternationalMigration2019_Report.pdf> accessed 2 August 2019

UNODC, '2010 Signatories to the UN Convention against Transnational Crime and its Protocols' <www.unodc.org> accessed 9 January 2018

UNODC, '2012-2014 Global Report on Trafficking in Persons' (UNODC, 2012-2014)
<www.unodc.org/documents/data-and-analysis/glotip/2012-2014_Global_Report_on_Trafficking_in_Persons.pdf> accessed 29 December 2017

UNODC, 'The 2018 UNODC Global Report on Trafficking in Persons' (UNODC, 2018)
<www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf> accessed 27 September 2019

UNODC, 'DOHA Declaration: Promoting a Culture of Lawfulness – Hidden in Plain Sight' (UNODC, 2012)
<www.unodc.org/e4j/data/_university_uni_/hidden_in_plain_sight_a_general_overview_of_the_human_trafficking_issue.html?lng=en> accessed 22 December 2017

UNODC, 'Evidential issues in trafficking in person cases, Case Digest' (UNODC, 2017) <https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf> accessed 3 January 2018

UNODC, 'Global Report on Trafficking in Persons 2012' (UN publication, Sales no E.13.IV.1) <www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf?source=post_page-> accessed 18 August 2019

UNODC, 'Global Report on Trafficking in Persons 2014' (UN publication, Sales no E.14.V.10)

UNODC, 'Global Report on Trafficking in Persons 2016' (UN Publication, Sales no E.16.IV.6) <www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf> accessed 28 June 2018

UNODC, 'Legislative guide: UN Convention against Transnational Organized Crime' (UNODC, 2016)
<www.unodc.org/documents/treaties/Legislative_Guide_2017/Legislative_Guide_E.pdf> accessed 26 December 2019

UNODC, 'Monitoring Target 16.2 of the UN Sustainable Development Goals, A multiple systems estimation of the numbers of presumed human trafficking victims in the Netherlands in 2010-2015 by year, age, gender, the form of exploitation and nationality – Research Brief' (National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children)

UNODC, 'Multiple systems estimations for estimating the number of victims of human trafficking across the world' (UNODC, 2016) <www.unodc.org/documents/data-and-analysis/tip/TiPMSE.pdf>

UNODC, 'Promoting Cooperation among Source, Transit and Destination Countries in Response to Human Trafficking' (UNODC, 2019)
<www.unodc.org/centralasia/en/news/promoting-cooperation-among-source-transit-and-destination-countries-in-response-to-human-trafficking.html> accessed 20 October 2019

UNODC, 'Protecting the future: Improving the response to child sex offending in Southeast Asia' (UNODC, 2014)
<www.unodc.org/documents/southeastasiaandpacific/Publications/2015/childhood/2014.08.28.Protecting_the_Future-Responding_to_CSO.pdf> accessed 29 September 2019

UNODC Southeast Asia and Pacific, 'UN human trafficking report hails East Asia for strengthening legislation and increasing convictions – But concerns remain that many offenders still act with impunity' (UNODC, 2019)
<www.unodc.org/southeastasiaandpacific/en/2009/02/global-report-on-trafficking-in-persons/story.html> accessed 30 December 2019

UNODC, 'Travaux Préparatoires of the Negotiations for the Elaboration of the UN Convention against Transnational Organized Crime and the Protocols Thereto' (UNODC, 2006) <www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html> accessed 31 December 2017; (hereinafter, Travaux Préparatoires for the Organized Crime Convention and Protocols, p 343, note 22)

UNODC, 'UNODC Research and Trends Analysis Branch', E/CN.3/2016/2/Rev 1 (UNODC, 2016) <www.unodc.org/unodc/en/firearms-protocol/research-and-analysis.html> accessed 30 December 2017

UNODC, (UN publication, Sales no E.19.IV.2) <www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf> accessed 18 August 2019

UNODC, 'Monitoring Goal 16.2 – UN Sustainability Goals' (UNODC, 2017)

UNODC, 'Multiple systems estimations for estimating the number of victims of human trafficking across the world' (UNODC, 2016)

UNTOC, 'Research Brief', Article 34(1)

<www.unodc.org/documents/research/UNODC_DNR_research_brief_web.pdf> accessed 2 October 2019

UN Refugee Agency (UNHCR), 'Operational Update' (UNHCR, 1-15 August 2018)

<http://reporting.unhcr.org/sites/default/files/UNHCR%20Bangladesh%20Operational%20Update%20-%2015AUG18.pdf#_ga=2.63143724.2077047854.1579290660-1653085541.1554326498> accessed 28 September 2018

UN, 69th Session, Agenda Items 13 (a) and 115, Res adopted by the General Assembly, A/RES/70/1, (25 September 2015)

<www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf> accessed 15 September 2019

UN, 'The 2030 Agenda for Sustainable Development', Res adopted by the General Assembly, A/RES/70/1 (25 September 2015)

<www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 29 September 2019

UN, 'The Rule of Law' (UN, 2019) <www.un.org/ruleoflaw/what-is-the-rule-of-law> accessed 12 November 2019

UN Doc 1/HRC/39/64, 2 August 2018, UNHRC Policy Doc

UNSC, 'The rule of law and transnational justice in conflict and post-conflict societies: Report of the Secretary-General, S/2004/616' (UNSC, 2004)

<www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general> accessed 3 November 2019

UN Sustainability Goals, 'Marginalized Populations: Treatment of People' (*Charter for Compassion*, 2018) <<https://charterforcompassion.org/charter-tool-box-a-framework-for-getting-started/marginalized-populations-treatment-of-people>> accessed 12 January 2018

Official Papers and Policy Documents

Official Papers and Policy Documents

Committee on the Elimination of Discrimination against Women, 64th Session, 4-22 July 2016, Item 4, Policy Document

CRC Committee, general comments (GC):

GC 4: Adolescent health and development in the context of the Convention on the Rights of the Child (2003) arts 5.13, 32.03

GC 5: General measures of implementation of the Convention on the Rights of the Child (2003) arts 4.02, 4.07, 6.13, 11.03, 42.02

GC 6: Treatment of unaccompanied and separated children outside their country of origin (2005) arts 10.10, 22.03, 22.07

GC 8: Right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006) arts 19.14-19.15

GC 9: Rights of children with disabilities (2007) art 23.03

GC 10: Children's rights in juvenile justice (2007) arts 37.10, 40.20, 40.23

GC 11: Indigenous children and their rights under the Convention (2009) arts 5.10, 30.08, 30.13

GC 12: Right of the child to be heard (2009) arts 3.29, 5.11, 5.14, 12.02, 12.17, 12.24, 12.28, 15.15

GC 13: Right of the child to freedom from all forms of violence (2011) arts 5.05, 39.04

GC 14: Right of the child to have his or her best interests taken as a primary consideration (2013), arts 3.01, 3.06-3.07, 3.09-3.10, 3.12, 3.29-3.30, 9.03, 9.09, 22.03

GC 15: Right of the child to the enjoyment of the highest attainable standard of health (2013) arts 24.02, 24.04, 24.05, 24.11, 24.13, 24.20, 24.42, I.24, I.76

GC 17: Right of the child to rest, leisure, play, recreational activities, cultural life and the arts (2013) arts 31.04-31.07, 31.15

GC 18: Eradicating harmful practices on women and girls (in collaboration with the UN Committee on the Elimination of Discrimination against Women)

GC 21: Children in street situations (2017) arts 5.06, 16.07, 20.16, 33.05

GC 22: Human rights of children in the context of international migration (2017) arts 22.08, 22.10

GC 23: Human rights of children in the context of international migration in countries of origin, transit, destination, and return (2017) arts 22.08, 22.09

CRC Committee, 'Rules of Procedure' (18 March 2015) CRC/C/4/Rev 4
<<https://archive.crin.org/en/library/publications/crc-general-comments.html>>
accessed 27 August 2017

Dhaka Law Report, Mumbai Law Report, Bangladesh Legal Decisions, and Bangladesh Legal Chronicles; Judgements of the Supreme Court of Bangladesh (Appellate Division Judgements of the Supreme Court of Bangladesh)
<www.supremecourt.gov.bd/web/?page=judgments.php&menu=00&div_id=>
accessed 22 August 2019

IOM, 'Global Compact for safe, orderly, and regular migration', Res adopted by the General Assembly, A/RES/73/195 20 (19 December 2018), para 15
<www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195> accessed 22 March 2019

Issue Paper, UNODC <www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf> accessed 21 December 2018

Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region, Yangon (29 October 2004)
<www.ilo.org/asia/info/WCMS_160937/lang--en/index.htm> accessed 22 December 2017

Report of the Conference of Parties to the UN Convention on Transnational Organized Crime on its first session, held in Vienna from 28 June to 8 July 2004, UN Doc CTOC/COP/2004/6 (23 September 2004), Decision 1/5, reproduced in Conference of Parties to the UN Convention on Transnational Organized Crime

Report on the Investigation of the Discovery of Wang Kelian Mass-Graves, Wang Kelian, Perlis State, internal report, 2017, on file with the Commission and Fortify Rights

Report by Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 5 and 12, 2016

'Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse', adopted by the Interagency Working Group in Luxembourg (28 January 2016) <<http://luxembourgguidelines.org/english-version>> accessed 14 March 2017

ABSTRACT

This socio-legal study formulates a practitioners' bridge to shift the prevention and protection approach against the predation of children for trafficking-in-persons and exploitation to a more effective *modus operandi*. The research proffers a child human trafficking and exploitation conjoined legal framework structure, or strategic litigation, of international and transnational criminal law, and human rights as more effective than a singularly human rights approach in the conflict post-conflict societies of targeted South Asia (Bangladesh), Southeast Asia (Myanmar), and similarly-situated geographies. Employing structured argument models and Yin's critical-case study protocol, the mixed-methods transferable and replicable investigation conducts a research-focused yet a practice-oriented examination of the Palermo Trafficking Protocol, the Convention against Transnational Organized Crime; and the positive obligations of the Convention on the Rights of the Child, Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, Optional Protocol to the Convention on a communications procedure, and the CRC Committee General Comments to analyze the Responsibility of a State for International Wrongful Acts and its treaty obligations to the Rohingya-crisis and similarly-situated children. The study probes evidence-based thinking through field research and practitioner qualitative inquiries, Dahrendorf's Social Conflict Theory to examine international and domestic case law, government and scholarly literature, and posits a cogent argument that the modified paradigm triggers embedded legal empowerment tools that provide: access to justice, deterrence, and redress to force displaced, refugee, and stateless children. The study's research outcomes have the propensity to have real-world implications that can impact the 2030 UN Sustainability Goals to combat trafficking and exploitation of children using a manual template or an e-app framework focused on prosecutorial and advocacy support schemes.

Keywords: adverse childhood experiences (ACE), child exploitation, child trafficking, Convention on the Rights of the Child (CRC), CRC Committee General comments, Convention against Transnational Organized Crime, critical-case study, forced displaced, human trafficking, Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (OPSC), and Optional Protocol to the Convention on a communications procedure (OPIC), Palermo Trafficking Protocol, refugee, Responsibility of a State for International Wrongful Acts, Rohingya-crisis, stateless children, strategic litigation, and trafficking-in-persons.

CHAPTER 1

Part I.

1.0 Study Context and Scope

a) Gaps in prevention, protection, and mitigation of child trafficking

Children displaced across borders are repetitively subjected to trafficking, multiple forms of exploitation,¹ and horrific violence by vile criminal offenders with nefarious intent. Growing research lends to the inescapable credibility these offenders too often appear to operate with impunity and elude justice.² This thesis investigates the gaps in the prevention, protection, and mitigation of child trafficking to proffer a generalizable child trafficking and exploitation legal framework. Art 1 of the Children Rights Convention (adopted, 20 November 1989) identifies a child as ‘every human being below the age of eighteen years under the law to the child, majority is attained earlier.’ The study outcomes proffer a legal framework or strategic litigation³ that has the propensity to provide the vulnerable child legal empowerment, access to justice, the effects of

¹Article 3, para (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons; (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.

² UNODC Southeast Asia and Pacific, ‘UN human trafficking report hails East Asia for strengthening legislation and increasing convictions – But concerns remain that many offenders still act with impunity’ (UNODC 2019)

<<https://www.unodc.org/southeastasiaandpacific/en/2009/02/global-report-on-trafficking-in-persons/story.html>> accessed 30 December 2019; Mely Caballero-Anthony, ‘Finance and development’ (2018) 58[3] Finance and Development 3

<<https://www.imf.org/external/pubs/ft/fandd/2018/09/pdf/human-trafficking-in-southeast-asia-caballero.pdf>> accessed 30 December 2019.

³³ Child Rights International Network (CRIN) refers to strategic litigation as the use of the legal system to correct law, clarify law, or bring policy into line with the law < What is strategic litigation? | CRIN> accessed 21 December 2019; CRIN, ‘Using the law for children’s rights: An introductory guide’ (CRIN 2017)

<https://archive.crin.org/sites/default/files/guide_download/legal_advocacy_guide_0.pdf> accessed 31 Dec 2019; Refer to Appendix 5, Glossary.

deterrence, and redress. As a result, the proffered research outcomes can enhance victim support and prosecutorial effectiveness for this study's targeted Southeast Asia (Myanmar) and South Asia (Bangladesh) states and generalizability for similar geographies.

b) Research Focus: The Rohingya-crisis of 2017

The study converges on the Rohingya-crisis of 2017. The research encompasses the historical scenarios preceding and following the 2017 escalation and implosion of events captured in legal and United Nations agency reports. The study investigates the 2017-Rohingya-crisis as a critical-case study exemplar. As a socio-legal study, the enquiry explores the historical background of the targeted region and links the etiology of Darendorf's *Social Conflict Theory* as a cause and effect mechanism. Darendorf's theory is used to explain and address societal behaviors that drive violence toward marginalized children.⁴ The research employs and unpacks international criminal and human rights legal instruments to center the population examination on the Rohingya forced displaced, stateless children, and similarly situated children.

c) Geographical focus

The focal geographic area is the conflict and post-conflict States of Bangladesh and the Republic of the Union of Myanmar (also known as Burma, hereinafter referred to as Myanmar). In addition, the study's research probes the Southeast Asia (Myanmar) and South Asia (Bangladesh) regions and their generalizability to other similar-situated

⁴ Ralf Dahrendorf, *Class and class conflict in industrial society* (Stanford University Press).

geographical gaps in children's prevention, protection against child human trafficking, and exploitation.

d) Analysis of international instruments

i. Research Anchor. The investigation is anchored by the 2001 codified ILC Responsibility of States for Internationally Wrongful Acts (ARSIWA or State Responsibility Articles), Part One, Chapter 1, General Principles, arts 1, 2(a)(b), and 3.⁵ The examination hinges on State Responsibility to specific targeted ratified treaty obligations to prevent, protect, and mitigate child human trafficking. However, the research argument excludes ARSIWA Part One, Chapters 2-5, and Parts Two through Four of the instrument.

The thesis expounds upon the history of treaty formation and recognizes a treaty as a binding international norm. However, the examination is constrained to the studies' designated treaties that are bound solely through treaty ratification or accession as the consent action by the sovereign States. The designated research treaties are contrasted and juxtaposed to legal reports, evidential issues in trafficking in person cases, globally and in the region, to formulate a legal framework to address access-to-justice, the effects of deterrence, and redress.

The research explores an argument that the interpretation and implementation of the States' treaty obligations are root cause factors to gaps in the prevention and protection of children dislocated across borders. Consequently, children are highly likely to be

⁵ UNGA, *Responsibility of states for internationally wrongful acts: Res / adopted by the General Assembly*, 8 January 2008, A/RES/62/61; Res 56/83 of 12 December 2001, emphasizing the continuing importance of the codification and progressive development of international law, as referred to in art 13, para 1(a) of the Charter of the UN; the research excludes Part I, Chapters 2-5 and the entirety of Parts 2-4.

subjected to human trafficking and exploitation. The researcher also posits that to achieve optimum prevention, protection, and mitigation for children vulnerable to human trafficking and exploitation, a State should be held responsible for its internationally wrongful acts and omissions to its ratified treaty obligations.

The child trafficking investigation coincides with social protection issues that position the research to contribute to policy formulation globally concerning the legal impact of child protection.

The study uses a broader lens to investigate and assert distinctive articles of two primary international instruments, their respective protocols, and supplement. Conjoined, an assertion is that the legal framework has the capacity to surpass barriers of poverty and citizenship to serve as conduits to legal empowerment's access to justice, effects of deterrence, and redress for children dislocated across borders:

ii. Articles 1-13 of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons.

Employing the criminal and transnational criminal arts 1-13, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Trafficking Protocol),⁶ supplemented by the UN Convention against Transnational Organized Crime (UNTOC, or the Palermo Convention),⁷ and

⁶ The provisions of the Convention apply, mutatis mutandis, to the Protocol (art 1, para 2 of the Protocol); Offences established in accordance with the Protocol shall also be regarded as offences established in accordance with the Convention (art 1, para 3 of the Protocol).

⁷ No State can be a party to any of the Protocols unless it is also a party to the Convention (art 37, para 2 of the Convention). Simultaneous ratification or accession is permitted, but it is not possible for a State to be subject to an obligation of any of the Protocols unless it is also subject to the obligations of the Convention.

iii. Articles 1-4, 7-8, 11, 21, 32, 34-36 of the UN Convention on the Rights of the Child (CRC, or UNCRC)

The positive obligations enshrined in arts 1-4, 7-8, 11, 21, 32, 34-36 of the UN Convention on the Rights of the Child (CRC, or UNCRC),⁸ Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (OPSC), Optional Protocol to the Convention on a communications procedure (OPIC), and the authoritative role of the CRC Committee General comments (GC).⁹

e) Replicability and transferable investigative research.

The study's cogent argumentation models are used to exercise research method protocols that posture evidence to prove or disprove the investigative hypothesis. To conduct a replicable and transferable investigative research of the rancid child abuse, trafficking, and exploitation in Southeast Asia, the study is aided by following the six stages of Yin's Case Study Protocol¹⁰ (graphic flow diagram depicted in Appendix 1, Figure 1, Table 1). Employing guidelines from Leeuw and Schmeets's Empirical Legal Research¹¹ approach, the study proffers a revised interventional legal framework to close the gaps in prevention, protection, and mitigation of child-specific human trafficking (refer to

⁸ UNGA, *Convention on the Rights of the Child*, 20 November 1989, UN, Treaty Series, vol 1577, p 3, The Convention on the Rights of the Child (a/k/a CRC or UNCRC abbreviations commonly used in other texts within this research) was adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force on 2 September 1990, in accordance with art 49; The Committee on the Rights of the Child (the Committee) has identified art 3, para 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child, and applies it as a dynamic concept that requires an assessment appropriate to the specific context.

⁹ UNCRC; *Optional Protocol to the Convention on the sale of children, child prostitution and child pornography*, 2171 UNTS 227, done 25 May 2000, entered into force 18 January 2002, art 2(a).

¹⁰ NK Denzin and YS Lincoln, *The SAGE handbook of qualitative research* (SAGE Publications 2011); R K Yin, *Case study research: Design and methods* (SAGE Publications 2009).

¹¹ Frans L Leeuw with Hans Schmeets, *Empirical legal research a guidance book for lawyers, legislators, and regulators*, (Edward Elgar Publishing 2016) 6; Empirical Legal Research describes how to investigate the roles of legislation, regulation, legal policies, and other legal arrangements at play in society.

Chapter six, Table 9 of the thesis).¹² The broader qualitative methodology includes a qualitative questionnaire of practitioners. The socio-legal feedback allows the investigator to extrapolate data responses in investigating child human trafficking and exploitation that may have been unobtainable by using a singular, doctrinal 'or' other social science research method.¹³

f) Interface with UN 2030 Sustainability Goals

Subsequently, the study is organised into four inter-related research strands of analysis: legal empowerment, general deterrence, specific deterrence, and redress. Each research strand aligns with the human trafficking eradication goals of the United Nations' 2030:

i. Sustainability Goal #8, Target 8.7, and

ii. Sustainability Goal #16, 16.2, 16.3, and 16.10.¹⁴

The study's research is used to assess the effect of interventions on multiple outcomes. The research serves to predict the relationship between two or more independent variables (the cause) and two or more dependent variables (the effect).

¹² Refer to Appendix 1 and chapter six; RK Yin, *Case study research: Design and methods* (SAGE Publications 2009) 84, 86; S Baškarada, 'Qualitative case study guidelines' (2014) 19[40] *The Qualitative Report* 1, 18 <<http://www.nova.edu/ssss/QR/QR19/baskarada24.pdf>> accessed 22 June 2018; The six-stage case study protocol has been adapted, and modified for this research, but contains a replication of the procedures and principles outlined in Yin's (2014) text as a prescriptive methodological process; Yin's Protocol used for educational purposes only.

¹³ Frank Laczko, 'Human trafficking: The need for better data' (Migration Policy Institute 2002) <<https://www.migrationpolicy.org/article/human-trafficking-need-better-data/>> accessed 22 December 2019.

¹⁴ Target 8.7. Child labour. Forced labour; Goal 16 targets. Significantly reduce all forms of violence and related death rates everywhere. End abuse, exploitation, trafficking, and all forms of violence against and torture of children. Promote the rule of law at the national and international levels and ensure equal access to justice for all.

g) Complex Research Hypothesis

Wherein, the research hypothesis establishes causal relationships between the variables for this socio-legal critical-case study and sets forth the following complex research hypothesis:

- Legal empowerment is a compelling legal rights tool to access justice. Targeted Southeast Asia (Myanmar) and South Asia (Bangladesh) states have ratified the Convention on the Rights of the Child,¹⁵ the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, the Optional Protocol to the Convention on a communications procedure,¹⁶ and the Palermo Trafficking Protocol, supplemented by the UN Convention against Transnational Organized Crime;¹⁷ yet, forced displaced stateless Rohingya children, and similar-situated children, lack legal empowerment,¹⁸ the effect of deterrence strategies, and redress in societies likened to *Social Conflict Theory* and have an increased vulnerability to being victims of human trafficking and its multiple forms of exploitation.

¹⁵ UNGA, *Convention on the Rights of the Child*, 20 November 1989, UN, Treaty Series, vol. 1577, p 3, adopted and opened for signature, ratification, and accession by General Assembly resolution 44/24, 20 November 1989, entered into force on 2 September 1990.

¹⁶ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification, and accession by General assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002; Optional Protocol to the Convention on the Rights of the Child on a communications procedure, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/66/138 of 19 December 2011.

¹⁷ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 25 December 2003, 2225, UNTS 209, entered into force 29 September 2003, supplemented by the UN Convention against Transnational Organized Crime.

¹⁸ General Assembly, the UN Millennium, fifty-fifth session, 18 September 2000, agenda item 60 (b), A/RES/55/2.

2. Aims and Four Research Strands

This research aims to investigate and proffer a legal framework, strategic litigation,¹⁹ that heightens legal empowerment, access to justice, the effects of deterrence, and redress for all children, regardless of citizenship.

a) Strand 1. The first strand of the research aim, legal empowerment or the ‘what’ of this socio-legal²⁰ study, investigates whether Bangladesh and Myanmar have upheld their respective State obliged treaty responsibilities. Following Chapter one’s introduction and Chapter two’s literature review, Chapter three scrutinizes the background and general conditions for State responsibility to arise. This research segment dissects the State obligations into relative components and propounds to the specific treaty articles under investigation. Finally, chapter four examines whether the States have met their obligations to combat multiple forms²¹ of child exploitation²² by criminalizing human trafficking,²³ preventing, and protecting children from violence, as ascribed in:

¹⁹ CRIN identifies strategic litigation is focused on changing policies and broader patterns of behavior; strategic litigation is also called impact litigations involves selecting and bringing a case to the courtroom with the goal of creating broader changes in society. Refer to glossary.

²⁰ M Adler, ‘Recognising the problem: Socio-Legal Research training in the UK’ (Edinburgh: School of Social and Political Sciences, Edinburgh University 2007)

<http://www.ucl.ac.uk/laws/sociolegal/empirical/docs/Adler_REPORT.pdf> accessed 21 July 2017; D Feenan, ‘Foreword: Socio-legal studies and the humanities’ (2009) 5[3] International Journal of Law in Context 235-242 <<https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/foreword-sociolegal-studies-and-the-humanities/2D98015165E246CC9D4D9C4175000349>> accessed 28 July 2017.

²¹ UNODC, Travaux Préparatoires of the Negotiations for the Elaboration of the UN Convention against Transnational Organized Crime and the Protocols Thereto (2006) (hereinafter, Travaux Préparatoires for the Organized Crime Convention and Protocols), p 343, note 22.

²² CRC, art 32, prohibiting economic exploitation; CRC art 34, protection from sexual exploitation and abuse; CRC art 36, protection against all other forms of exploitation; OPSC art 1 and art 3; UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (TIP) as, adopted by General Assembly Res 217 A(III) of 10 December 1948, article 3; E Williamson, ‘Human trafficking’ (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, Training and Technical Assistance Center 2012).

²³ Article 3, para (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of

- a. The distinct criminal and transnational crime prevention and protection components of articles 1-13 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Trafficking Protocol), supplemented by the UN Convention against Transnational Organized Crime (UNTOC, or the Palermo Convention), and
- b. The human rights' prevention and protection elements of articles 1-4, 7-8, 11, 21, 32, 34-36 of the UN Convention on the Rights of the Child (CRC, or UNCRC), Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), Optional Protocol to the Convention on a Communications Procedure (OPIC), and the highly authoritative interpretations of individual human rights or of the legal nature of human rights obligations enshrined in the Convention as derived from the CRC Committee General (GC) Comments.²⁴

b) Strand 2. The second strand addresses the 'who' or the focal population of the study, stateless children vulnerable to child trafficking and exploitation. The research background captures the 2017 Rohingya-crisis, the historical timeline of the Rohingya, the region, and the events leading up to the conflict and post-conflict societal challenges with the rule of law. The analysis of State responsibility argues prevention and protection apply to every child. Each child has a right to access to justice, deterrence, and redress from the CRC, its Optional Protocols to the Convention on the sale of children, Optional Protocol to the Convention on the Rights of the Child on a communications procedure, and the Palermo Trafficking Protocol, supplemented by the Palermo Convention.

The thesis sets out that the Member States must adhere to other provisions of treaty obligations, without constraint to a child's nationality, culture, or other demographics per art 2, Convention on the Rights of the Child, whereby,

force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation..

²⁴ UNHCR, 'Human rights treaty bodies - General comments' (UNHCR 2020)

<<https://www.ohchr.org/EN/HRBodies/Pages/TBGeneralComments.aspx>> accessed 31 December 2020.

the 'obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind' is inclusive of States actively recognizing and realizing those rights and special measures of individual children and groups of children.²⁵

A fundamental component of the redress process and central element of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure pushes forward the essential elements for the prevention and protection of children:

- a. First and most prominent, art 5, individual communications, where 'The Committee can hear complaints individually from children, groups of children or their representatives against *any* State that has ratified the CRC and its Protocols', and
- b. Next, art 12, inter-state communications, where 'The Committee is also able to launch investigations into a grave or systematic violations of children's rights and States are able to bring complaints against each other, if the procedure has been accepted'.²⁶

To that end, a probe of the Rohingya and similarly-situated children²⁷ are juxtaposed against the constituent elements of the Children Rights Convention Member States' obligations to vulnerable populations under art 3.1, the best interest principles.²⁸ Article 3.1 refers to *all* actions affecting children generally and balanced with the interest of individual and multiple children. Among other CRC caselaw scrutiny, the ruling in

²⁵ CRC, art 2, the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination; CRC Committee General comment no 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5.

²⁶ UN Human Rights Council, Optional Protocol to the Convention on the Rights of the Child on a communications Procedure: Resolution/adopted by the Human Rights Council, 14 July 2011, A/HRC/RES/17/18, without a vote; arts 5, 12.

²⁷ Legal Information Institute (2019) <https://www.law.cornell.edu/wex/similarly_situated> accessed 31 December 2019.

²⁸ CRC, art 3.1, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

*Henricks v Netherlands*²⁹ brings into line the authoritative guidance from the Children's Rights Committee General comment 5³⁰ on implementation, General comment 14's³¹ best interest. The ruling also brings into focus other non-authoritative resources. For example, UNICEF and the UN High Commissioner for Refugees (UNHCR) 'Safe and Sound' guide the protection of separated and unaccompanied children.³²

c) Strand 3. The third strand, in Chapter four, probes whether the implementation of international trafficking instruments at the national legislation level in Bangladesh and Myanmar are the root cause of gaps in prevention or protection. To draw an evidence-based legal conclusion, the study explores how monist systems ratify international instruments, such as the Palermo Trafficking Protocol, and incorporate the provisions directly into domestic law by official publication.³³ In comparison, dualist systems require implementing legislation. Regardless of the state's implementation modality, the research sets out to affirm whether the obligatory focus fails to trigger legal empowerment.³⁴ Access to justice provisions of the law, deterrence strategies, and redress for victims are embedded within the focal instruments of this study.

²⁹ *Hendricks v Netherlands* (1982) 29 DR; CRC Committee General comment no 14 (2013): On the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1, para 5).

³⁰ UN Committee on the Rights of the Child (CRC), General comment no 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5.

³¹ UN Committee on the Rights of the Child (CRC), General comment 14 (2013): On the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1) (29 May 2013) CRC/#C/GC/14.

³² UN High Commissioner for Refugees (UNHCR), *Safe & sound: What states can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, October 2014, <<https://www.refworld.org/docid/5423da264.html>> accessed 12 February 2019.

³³ *ibid.*

³⁴ The Commission on Legal Empowerment of the Poor, *Making the law work for everyone* (UNDP 2008); Report of the UN High Commissioner for Human Rights, 'Access to justice for children', A/HRC/25/35 16th December 2013, 6 para 13 <https://www.ohchr.org/Documents/Issues/Children/ReportAccessToJustice_Dec2013.pdf> access 19 December 2020.

The study investigates whether the child human trafficking treaties are too narrowly implemented. If so, does this narrow implementation reflect the limited scope of child human trafficking international law found in literature and situ across the regions of examination? To address the study's central and sub-research questions, the examination encompasses a determination as to whether the State adheres to the prevention and criminal protection provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Trafficking Protocol), arts 1-13. In addition, the research scrutinizes and digs deeper into literature, regional, and global cases to determine if the transnational criminal elements brought forth by the supplemental UN Office on Transnational Organized Crime (Palermo Convention) instrument are neglected altogether. As member States to the Palermo Convention, State parties are obligated to criminalize the serious crimes noted in arts 5, 6, 8, and 23.

Additionally, the Palermo Convention's arts 1-31 obligates States to adhere to jurisdiction extraditions, international cooperation, enforce the liability of legal persons, exercise confiscation and seizure while providing victim assistance, protection, and prevention. In contrast, the analysis dissects the implementation³⁵ of the Convention on the Rights of the Child's (CRC) and its Optional Protocols' in national legislation, explicitly addressing its lack of representation in Southeast Asia's case law. Finally, the examination includes

³⁵ Article 45, CRC, implementation, and international cooperation.

the region's widely publicised marginal success toward enforcement against trafficking, exploitation, prevention, and prosecution.

Subsequently, queries arise as to whether the Palermo Trafficking Protocol and the domestic laws adhering to the Convention on the Rights of the Child are minimally exercised due to the lack of knowledge, reflect gaps in a feasible implementation plan, or are entirely overlooked.³⁶ The qualitative questionnaire of practitioners and practitioner's action research aid in guiding the legal framework. Utilizing the questionnaire and practitioner-research evidence guides determinations whether legal empowerment is absent in the totality of children's rights case law in the region, throughout the global human rights system, and whether it is unlevel in its reach. The study examines how and why some applications of children's rights and the law are prominent while others appear nonexistent. Notwithstanding, the thesis argues the variation in monist and dualist systems does not forgo the States' obligation.³⁷

d) Strand 4. In turn, the fourth strand of the study's aim, Chapters five and six, proffers an evidence-based, generalizable, conjoined criminal and human rights framework. The researcher avers the framework provides the capacity to improve the prevention

³⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

³⁷ How that obligation is implemented, especially in relation to the CRC has contingencies that are reliant upon the force of law in monist systems and justiciability, where courts can enforce CRC provisions without a corresponding domestic law.

measures sought, engage protection through criminal adjudication³⁸ of offenders, and mitigate child exploitation in the region by optimizing focused-deterrence strategies.³⁹ Succinctly, the proffered framework triggers the study's socio-legal arm of legal empowerment that provides all children access to justice through embedded laws from this study's specific ratified treaty obligations. The research concludes by opining legal empowerment, prevention, the effects of focused-deterrence measures, and redress to formulate a legal framework for the adaptation of child exploitation, victim-centered, prevention, protection, prosecutorial protocol in Chapter six and Appendix 4.

³⁸ Benjamin Levin, 'Values and assumptions in criminal adjudication' (2015-2016) 129 Harvard Law Review 385 <<https://scholar.law.colorado.edu/articles/627/>> accessed 3 Dec 2019; 'systematic facts about criminal adjudication might be contingent on a range of facts about criminal courts themselves...'

³⁹ A Braga, 'Focused deterrence strategies' (2017) Oxford Research Encyclopedia of Criminology <[doi: 1.0.1093/acrefore/9780190264079.013.11](https://doi.org/10.1093/acrefore/9780190264079.013.11)> accessed 22 October 2018; D Kennedy, *Deterrence and crime prevention* (New York 2008); D Kennedy, 'Old wine in new bottles: Policing and the lessons of pulling levers' in D Weisburd & A Braga (eds), *Police innovation* (Cambridge University Press 2019) 156-157.

3. Central Research Question and Sub-Research Questions

Central Research Question. The phenomenon of the hypothesis is examined first under the structure of the central research question,⁴⁰ which describes the broad exploration of the concept.⁴¹ The Bryman and Bell⁴² 2011 works suggest that the research question's formulation guides the literature search, research design, collected data, and identified sources (refer to the study's REA).⁴³ Also, guidance from Shavelson and Towne⁴⁴ aver case studies are 'pertinent' when the research questions, as in this study, address the explanatory (the 'How'). The descriptive (the 'What') questions of a general problem align with the study's aims and objectives.⁴⁵

The study's central research question asks:

- How can State responsibilities of targeted Southeast Asia (Myanmar) and South Asia (Bangladesh) countries under the treaty obligations of the Convention on the Rights of the Child and its Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, child prostitution and child pornography, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, the Palermo Trafficking Protocol supplemented by the UN Convention against Transnational Organized Crime, and related domestic ASEAN bilateral and multilateral treaties, prevent, protect, and mitigate against the human trafficking and exploitation of forced displaced stateless children, while linking to legal empowerment, the effects of deterrence, and redress in Social Conflict theoretical societies?

⁴⁰A Tashakkori and J W Creswell. 'Editorial: Exploring the Nature of Research Questions in Mixed Methods Research' (2007) 1[3] Journal of Mixed Methods Research. doi:10.1177/1558689807302814

⁴¹ Refer to Appendix 1, Yin's Protocol Stages and Graphic Representation.

⁴² A Bryman and E Bell, *Business research methods* (Oxford University Press 2015).

⁴³ *ibid*; A Bryman, *Triangulation* in MS Lewisbeck, A Bryman, and L Futing, *Encyclopedia of social science research methods* (Sage 2004).

⁴⁴ RJ Shavelson and others, 'On the science of education design studies' (2003) 32[1] Educational Researcher 25-28 <<http://www.jstor.org/stable/3699932>> accessed 19 August 2017.

⁴⁵ RJ Shavelson and L Towne, *Scientific research in education* (National Academy Press 2002) 99, 106.

Sub-research Questions. Three sub-questions follow the central research question and narrow the focus but make a continual contribution to the study's ongoing inquiry:⁴⁶

- a. *Sub-Question 1:* What **State responsibilities**, under the treaties of the UN Convention on the Rights of the Child, arts 1-4, 7-8, 32, 34-36, and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, and the Palermo Trafficking Protocol, arts 1-13, supplemented by the UN Convention against Transnational Organized Crime, and related domestic ASEAN bilateral and multilateral treaties trigger a States' obligation to mitigation, prevention, and protection measures and mechanisms against human trafficking and exploitation of forced displaced stateless children?
- b. *Sub-Question 2:* How do **legal empowerment, the effects of deterrence, and redress** as a prevention measure reduce and mitigate stateless children's vulnerability to human trafficking?
- c. *Sub-Question 3:* How can **State Responsibilities** to the embedded legal empowerment, deterrence, and redress laws of the UN Convention on the Rights of the Child, and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, the Palermo Trafficking Protocol, supplemented by the UN Convention against Transnational Organized Crime, and the domestic implementation of ASEAN bilateral and multilateral treaties in Bangladesh and Myanmar, promote access to justice for forced displaced stateless, refugee and non-refugee, children in Social Conflict Theory construct societies?

⁴⁶ JW Creswell, *Research design: Qualitative, quantitative, and mixed methods approach* (Sage Publication 2013); N Denzin and Y Lincoln (eds). *The Sage handbook of qualitative research* (Sage Publication 2005).

4. Research Objectives and Study Blueprint

Yin's Protocol Stages 1-3, Plan, Design, and Prepare, guides the socio-legal investigation's tiered research objective or the 'how' to address the study's aim and research scope. The thesis chapters capture the study's proffered legal frameworks through its research strands.

Chapter one renders the study's blueprint, including the introductory elements, research aim, the inquiry – central and sub-research questions, and transitions to Chapter two, a Rapid Evidence Assessment⁴⁷ (REA) of the literature. Methodically, the REA examines empirical and grey text to aver the study's originality and distinction amongst existing literature and representative of Yin's Stage 4, data collection, of the protocol. The REA critically juxtaposes the posture of this socio-legal research in contrast to the trends of human trafficking scholarship. Trafficking literature problematizes the crime. However, the literature slights child-focused anti-trafficking frameworks as an intervention. Gaps exist in central understandings surrounding the foundational societal behaviors that prompt violence against children and the criminology theories upon which they are based.

Each chapter, three to seven, accentuates the proffered legal framework's four strands and align Yin's Protocol, Stages 3-5 (the Purpose, Data Collection, and Analysis) with the following three research objectives:⁴⁸

⁴⁷ CEBMA, 'Center for evidence-based management and research' (CEBMA 2019) <<https://www.cebma.org/faq/what-is-an-rea/>> accessed 31 December 2017; 'A Rapid Evidence Assessments (REAs) is another type of evidence summary that can inform practice. REA applies the same methodology as a Systematic Review'.

⁴⁸ Refer to Figure 1 for Appendix 1, Protocol graphic and outlay in Table 1.

- a) **Research Objective #1 - State Responsibility.** To examine the phenomenon of child human trafficking under Bangladesh and Myanmar's State responsibility to its international treaty obligations while expanding upon the treaty, its interpretation, and the respective State domestic order of law. In addition, the research challenges whether a breach by the targeted States has occurred:⁴⁹ Chapters three to four focuses on a States' requirement to uphold human trafficking, exploitation laws treaty obligations. Research Objective 1 aligns with the 2030 UN:
- a. Sustainability Development Goal #8, Target 8.7, where it calls on states to: 'Take immediate and effective measures to eradicate forced labour, end modern slavery,⁵⁰ human trafficking, secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms'⁵¹ – Chapters three to four;
 - b. Sustainability Development Goal# 16, Target 16.2 – 'End abuse, exploitation, trafficking and all forms of violence against and torture of children'⁵² – Chapters three to four;
- b) **Research Objective #2 – Proffered Legal Framework (Legal Empowerment, Deterrence, Redress).** To underpin the UN Office on Drugs and Crime's (UNODC)⁵³ goal to 'prevent, protect, and *reduce* the human trafficking of victims' as it is charged to work with member States and the academic community:
- a. The study examines the applicability of *Social Conflict Theory etiology* to the region and, if affirmed, the impact of *Social Conflict Theory* within preventing child human trafficking in Southeast Asia (Myanmar) and South Asia (Bangladesh) region. The study proffers a conjoined criminal and human rights legal framework. As a result, the researcher can provide a

⁴⁹ JR Crawford, *State responsibility* (Oxford University Press 2015); JI Charney, 'Third state remedies in international law' (1989) 10 Michigan Journal of International Law 57-101
<<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1713&context=mjil>> accessed 20 December 2017; K Sachariew, 'State responsibility for multilateral treaty violations: identifying the 'injured state' and its legal status' (1988) 35 NILR 273-89 < DOI: <https://doi.org/10.1017/S0165070X00008019>> accessed 21 December 2017.

⁵⁰ The Trafficking Victims Protection Act of 2000 (Pub. L. 106-386), as amended.

⁵¹ UN Economic and Social Council, E/2019/68, 2019 session 26 July 2018-24 July 2019 Agenda items 5 (a) and 6
<<https://undocs.org/E/2019/68>> accessed 22 July 2019; The 2030 Agenda for Sustainable Development, UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1
<https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 29 September 2019.

⁵² The 2030 Agenda for Sustainable Development, UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1 <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 29 September 2019; Sustainable Development Solutions Network (SDSN) <<https://indicators.report/targets/8-7/>> accessed 30 September 2019.

⁵³ The UN organization that has been identified as the custodian international agency responsible for the global reporting trafficking's data.

structured deterrence against perpetrators and mitigate child exploitation, regardless of the child's citizenry (a local law obstacle to protection).

- b. Research Objective #2 is a buttress to Sustainability Development Goal #8, Target 8.7 and Sustainability Development Goal# 16, Target 16.2, focusing on 'ending abuse, exploitation and all forms of violence, torture'⁵⁴ of children'⁵⁵, Chapters 3-5.
- c) **Research Objective #3 – Make an Original Contribution.** To make an original contribution to transnational criminal law, children's rights, and the law disciplines 'body of knowledge'⁵⁶ (BOK), where the socio-legal research seeks to identify and suggest embedded laws exist within the Palermo Trafficking Protocol, supplemented by the Convention against Transnational Organized Crime (the Palermo Convention), the Convention on the Rights of the Child, the Optional Protocol to the Convention for the Sale of Children, and Optional Protocol to the Convention on a Communications Procedure that can promote legal empowerment, encapsulating the effects of deterrence, and redress, in alignment with the 2030 UN Sustainability Goal #16, Targets #16.3 and #16.10⁵⁷ – 'Promote the rule of law'⁵⁸ at the national and international levels and ensure equal access to justice for *all*'.⁵⁹ The battle against child exploitation is a worldwide effort at all levels of the justice system, with initiatives and consortiums by over 137 countries joining the efforts.⁶⁰ This research examines the targeted states to assess the presence of *Social Conflict Theory*, where legal empowerment and access to justice would be vital within communities meeting Dahrendorf's theoretical

⁵⁴ Article 1.1 of the UN Convention against Torture; UNGA, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, UN, Treaty Series, vol 1465, p 85,

⁵⁵ The 2030 Agenda for Sustainable Development, UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1 <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 29 September 2019; Sustainable Development Solutions Network (SDSN) <<https://indicators.report/targets/8-7/>> accessed 30 September 2019.

⁵⁶ The Body of Knowledge (BOK) consists of three related components: 1) Not enough written about the topic, 2) No Good or Highly Contested Explanations and/or Inadequate Evidence to Decide Which One(s) are Valid, and 3) theoretical development; M Petre and G Rugg, *The unwritten rules of PhD research* (2nd edn Maidenhead: Open University Press 2010); According to Petre and Rugg (2010) 'Making a significant contribution means adding to knowledge or contributing to the discourse – that is, providing evidence to substantiate a conclusion that's worth making'.

⁵⁷ Transforming our world: The 2030 Agenda for Sustainable Development, UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1.

<https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 29 September 2019.

⁵⁸ UN, 'The Rule of Law' (UN 2019) <<https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>> accessed 12 November 2019.

⁵⁹ *ibid*; The 2030 Agenda for Sustainable Development, UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1 <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 29 September 2019.

⁶⁰ 'World Congress III' (25-28 November 2008)

<[https://www.unicef.org/protection/World_Congress_III_against_Sexual_Exploitation_of_Children_and_Adolesnnts_\(1\).pdf](https://www.unicef.org/protection/World_Congress_III_against_Sexual_Exploitation_of_Children_and_Adolesnnts_(1).pdf)> accessed 2 Nov 2019.

descriptors.⁶¹ As such, employing evidence-based, generalizable research practices, the study investigates the public's access to information and the protection of fundamental freedoms against child exploitation, according to national legislation and international agreements included with the critical analysis and discourse of Chapters five to six.

Throughout the study, the investigation engages the analytic *mitigation*⁶² and *focused deterrence strategies* modeling of Kennedy's criminal law framework weaved into Chapters three-to-five and summarized in Chapter six.⁶³ As a model, Kennedy's framework is employed to argue compliance with a State's prevention obligation and proffer a protocol inclusive of the deterrence strategies. Finally, the study posits implications for future global policy and practice. The research is projected to impact child human trafficking (trafficking-in-persons), violence against children, child welfare during forced migration⁶⁴ (regardless of national status), the domestic implications of ratified international instruments on legal empowerment, and the stateless child.

⁶¹ Ralf Dahrendorf, *The modern social conflict: The politics of liberty* (Transaction Publishers 2007); XF Ma, 'Durkheim and Weber: The comparison of sociological research method' (2008) 3[22] *The Studies of Sociology*, 15-18 <<https://www.acarindex.com/dosyalar/makale/acarindex-1423867208.pdf>> accessed 21 December 2017; Bert N Adams and R A Sydie, *Sociological theory* (Thousand Oaks 2001); Otomar J Bartos and Paul Wehr, *Using conflict theory* (Cambridge University Press 2002); G B Vold, *Theoretical criminology* (Oxford University Press 1998).

⁶² DB Cornish and RVG Clarke, 'Opportunities, precipitators, and criminal decisions: A reply to Wortley's critique of situational crime prevention' in MJ Smith & DB Cornish (eds), *Theory for practice in situational crime mitigation* (Criminal Justice Press 2003).

⁶³ A Braga, 'Focused deterrence strategies' (Oxford Research Encyclopedia of Criminology 2017) 3 <[doi: 10.1093/acrefore/9780190264079.013.11](https://doi.org/10.1093/acrefore/9780190264079.013.11)> accessed 22 October 2018; Anthony Braga and others, 'Focused deterrence strategies and crime control: An updated systematic review and meta-analysis of the empirical evidence.' (2018) 17[1] *Criminology & Public Policy* 202, 50.

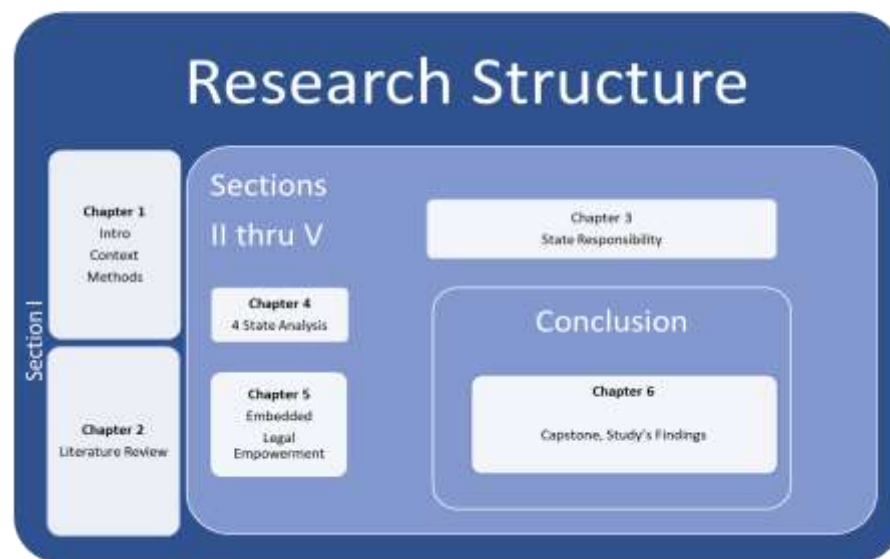
<<http://campbellcollaboration.org/lib/project/96/>> accessed 21 December 2019.

⁶⁴ A Oliver-Smith, 'Disasters and forced migration in the 21st Century' (2016) <<http://understandingkatrina.ssrc.org>> accessed 22 June 2018.

d) Research Structure and Mapping

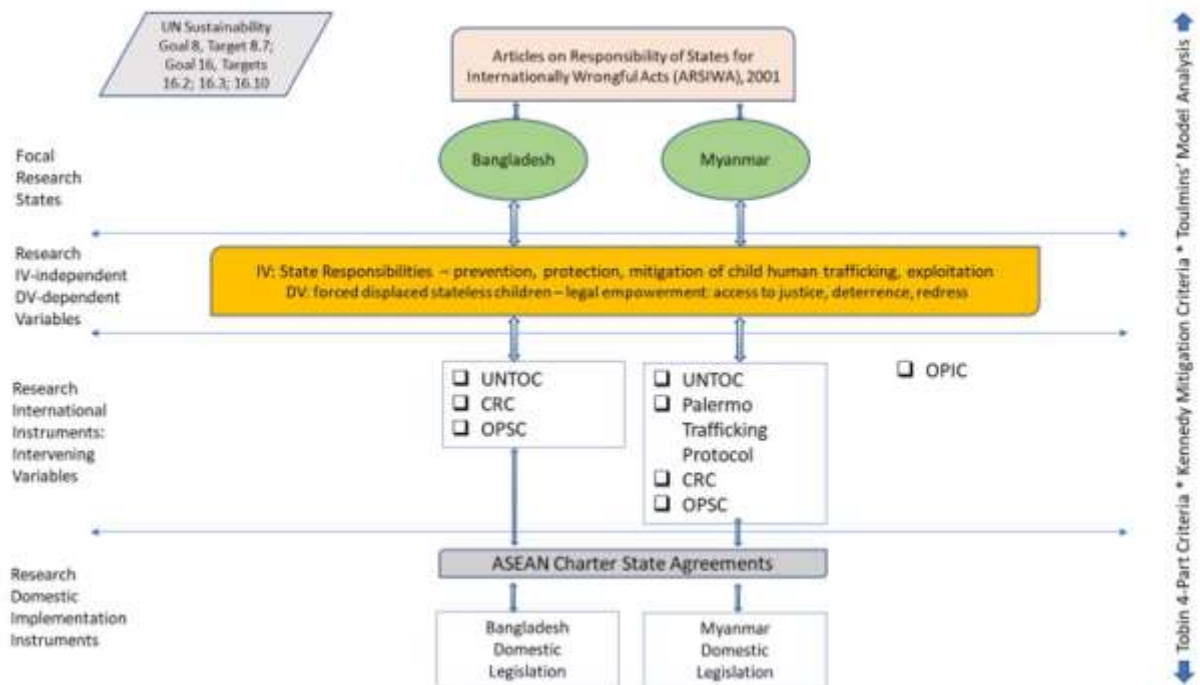
Figures 1 and 2 reflect the research structure and mapping of the legal instrument investigation. Figure 1 charts the research flow from the introduction to the analysis of the international instruments and the respective domestic implementation in South Asia, Bangladesh, and ASEAN's Myanmar, noted in Figure 2. Intertwined throughout the study is the discourse on *Social Conflict Theory*. The thesis explains how the theoretical concepts may explain the voluminous instances of violence against children, trafficking, the exploitation that plagues the region, prosecutorial gaps used to reach the study's findings in Chapter six.

Figure 1. Research structure and chapter outlines.



Note, Figure 1, original graphic representation by thesis author representing research structure, T. Herring; drawn using privately licensed MS Office Suite® software.

Figure 2. Geographic mapping of the legal research under investigation



Note, Figure 2. The legal research mapping aligns with the research scope, objectives, central research question, and sub-research questions with structural and content linkage to Yin's Protocol Stages 3-5, the Purpose, Data Collection, and Analysis (Appendix 1). The abbreviations represent UN Convention on Transnational Organized Crime (UNTOC), Children's Rights Convention (CRC), and Optional Protocol to the Convention on the Sale of Children (OPSC), and Optional Protocol to the Convention on a Communications Procedures (OPIC); Association of Southeast Asian Nations (ASEAN). The diagonal description identifies analysis tools detailed in the methods section of the research: the Tobin 4-Part Criteria, Kennedy Deterrence (Mitigation) Criteria, and the Toulmin's Model Argumentation are utilized throughout the research. The information generated from each level of research generates data sets for analysis of the study's phenomena. (Diagram design, content, and graphic presentation by Tanya Herring using privately licensed MS Office Suite® and Paint 3D® software.)

5. Legal Analysis Overview

a) State Responsibility. State responsibility is scrutinized within the research context to assert and affirm whether an international obligation exists to the treaties under examination and whether a breach has occurred. The International Court of Justice promulgates general international law on the responsibility of States for internationally wrongful acts and its provisions under article 13, international obligations in force for a State. Article 3 of the codified ILC Articles on Responsibility of States for International Wrongful Acts (ARSIWA or State Responsibility Articles), 2001⁶⁵ states,

‘the characterization of an act of a State as internationally wrongful is governed by international law’, referring to *In Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*.⁶⁶

Regardless of the local law concerning the prevention, protection of children from violence, trafficking, and exploitation, the Inter-American Court of Human Rights, in the *Case of the Ituango Massacres v Columbia* noted in Article 3, State Responsibility Articles, and the court cites Article 27 of the Vienna Convention on the Law of Treaties, where the reference states,

‘A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.’⁶⁷

Accordingly, when a State ratifies its international treaties, it has an obligation to implement those rights. State Responsibility Articles outline obligations to in-force

⁶⁵ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, supplement no 10 (A/56/10), chpIV.E.1, Adopted by the International Law Commission at its fifty-third session (2001). Extract from the Report of the International Law Commission on the work of its Fifty-third session.

⁶⁶ International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, Judgment of 3 February 2015, para 128.

⁶⁷ Inter-American Court of Human Rights, Order, 21 May 2013, para 405.

treaties that are proffered as the context of this study's legal empowerment, general and specific deterrence, and redress mechanisms. The research infers that despite the extenuating variables impacting the strength of legal structures in Southeast Asia, sociological challenges, and the mounting political unrest, including other innate economic and extraneous factors, States remain obliged to the treaty obligations. The study contends that the 'how' inquiry response is rooted in breaches of Bangladesh and Myanmar's State responsibility and non-adherence to in-force treaty obligations outlined in States Responsibility Articles.

The research looks to several legal reports, including guidance from the International Arbitral Tribunal (under the ICSID Convention) *Vigotop Limited v Hungary*, where the treaty was regardless of any provisions in Hungarian (domestic) law breached. Concurrently, there are provisions within the UN Treaty Series that denote treaties are binding and mandate Bangladesh and Myanmar's good-faith:⁶⁸

'Section I. Observance of Treaties, Article 26. "*pacta sunt servanda*" 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith'.

'Article 27. Internal Law and Observance of Treaties. 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46'.⁶⁹

The argument steps into the international tribunal decisions where States have been held responsible for their internationally wrongful acts, not just individuals or other non-state

⁶⁸ UN Treaty Series, Part I. Observance, Application and Interpretation of Treaties, p 339.

⁶⁹ *ibid.*

actors, *Gold Reserve Inc. v Bolivarian Republic of Venezuela*⁷⁰ and *The M/V “Virginia G” Case (Panama/Guinea-Bissau)*,⁷¹ art 1,

‘every international wrongful act of a State entails the international responsibility of that State’.⁷²

The study presents *a fortiori* inference that the ‘why’ and ‘how’ basis for child trafficking and exploitation pervasiveness in Bangladesh and Myanmar. The States have not upheld their treaty obligations to *all* children. The existing child protection legal framework for Bangladesh and Myanmar has proven inadequate in what appears to be a pervasive Social Conflict society. Keeping the societal elements in mind, this study proffers a different approach. Bangladesh and Myanmar are held responsible for obliged treaty breaches, and a more prosecutorial/victim-centered framework is applied.

In *ConocoPhillips Petrozuata B V and others v Bolivarian Republic of Venezuela*, State responsibility articles ‘have been regularly referred to in subsequent decisions, including the International Centre for Settlement of Investment Disputes (ICSID) awards and decisions, as codifying or declaring customary international law’.⁷³ Therefore, the study surmises that strictly holding the research states ‘responsible’ for their breaches in child violence, trafficking, and exploitation is a formidable solution.⁷⁴ Using a conjoined international criminal law and international human rights framework is more effective to mitigate and eventually eradicate the problem by the 2030 Sustainability Goal.

⁷⁰ ICSID Case no ARB(AF)/09/1, Award, 22 September 2014, para 679.

⁷¹ ITLOS, *Seabed Disputes Chamber*, Advisory Opinion, 1 February 2011, para 194.

⁷² State Responsibility Articles, art 1.

⁷³ ICSID Case no ARB/07/30, Decision on Jurisdiction and Merits, September 2013, para 339.

⁷⁴ Report of the Independent Expert for the United Nations Study on Violence against Children (RIE, 2006), UNGA A/61/299 29 August 2006 <http://www.crin.org/docs/UN_SG_Vio_Rev.pdf> accessed 30 December 2019.

b) The Syllogism and Conflict Theory Discussion. The research syllogism avers that a conjoined international criminal and human rights law envelops more substantial prevention and protection obligation than the previously presented human rights⁷⁵ legal framework. The study further opines that embedded legal empowerment resources in the law can be triggered due to a dual or conjoined framework. The author posits that the triggering occurs regardless of a victims' nationality or other demographics in a *Social Conflict Theory* society. The underpinning basis of the syllogism is that States' are held responsible for fulfilling ratified treaty obligations.

Where, under art 1, a State is responsible for its internationally wrongful acts; art 2(a)(b), elements of an internationally wrongful act of a State are 'unlike under domestic law, the authors' guilt or intentions are required, nor is it necessary to identify, individually, the agent to which the violations are attributed'.⁷⁶ Thirdly, art 3, characterization of an act of a State as internally wrongful, is reiterated, wherein local law requirements cannot be advanced for non-compliance with an international obligation.⁷⁷ Instead, it is sufficient that the State is obliged to comply with its treaty obligations.⁷⁸ In its totality, the study's premise/claim avers that the current child trafficking phenomena in Southeast Asia, and similarly situated geographic areas, are being addressed in an ad hoc manner.

⁷⁵ UNODC, *The commentary to the recommended principles and guidelines on human rights and human trafficking* (UNODC) 49-50.

⁷⁶ In *Gutierrez and Family v Argentina*, the Inter-American Court of Human Rights, Judgment, 25 November 2013, para 78, note 163.

⁷⁷ Article 3, State Responsibility Articles; *The Rompetrol Group N.V. v Romania*, ICSID Case no ARB/06/3, Award, 6 May 2013, para 174, note 299.

⁷⁸ State Responsibility Articles, art 3; *The Rompetrol Group N.V. v Romania*, ICSID Case no ARB/06/3, Award, 6 May 2013, para 174, note 299.

At the crux of the research, under purview, is whether there are actions and omissions by the targeted countries. Myanmar and Bangladesh are compared with some regional and global comparisons to other countries' judicial practices (Malaysia and Thailand are included solely for connection with Myanmar, Bangladesh, and the target population). The thesis examines states' international law obligations to prevent and protect all forcibly displaced and stateless children from exploitation. In recent years, advances in international law and the enforcement of state obligations have increased. An interpretation of the relevant cases can be understood that an obligation of international law is that states must refrain from any action or act contrary to their treaty obligation and be subjected to a remedy when there is a breach.⁷⁹ The premise of the claim is that without being compelled to comply with treaty obligations, the countries with *Conflict Theory* construct characteristics will be non-compliant. The international legal framework of Bangladesh and Myanmar's State obligations are derived from multiple interrelated bodies of international law. The laws include the obligations set forth under the laws outlined in Chapter 1, Table 6, guiding trafficking in persons examined in this study.⁸⁰ By ratifying⁸¹ treaties, the States are obliged, under international law, to comply with the treaty's provisions in good faith, art 27, the Vienna Convention.⁸² Under the provisions of the ICJ, art 38(1), customary international law (CIL), also referred to as 'the law of

⁷⁹ In ECtHR, *Siliadin v France*, App no 73316/01, Judgment 26 July 2005; *C N v United Kingdom* App no 4239/08, Judgment 13 November 2012; *C N and V France* App no 67724/09, Judgment 11 October 2012.

⁸⁰ Refer to chart of treaty ratification and/or accession in Chapter 1, Table 6.

⁸¹ Ratification of a treaty notifies the state's intent to be bound by the terms of the treaty and gives legal effect to the objective and purpose of the treaty.

⁸² Vienna Convention on the Law of Treaties, art 26, Jan. 27, 1980, 1155 U.N.T.S. 331; Inter-American Court of Human Rights, Order, 21 May 2013, para 27, note 20 (quoting article 27 of the Vienna Convention on the Law of Treaties).

nations', becomes a binding obligation that arises from the 'general practices accepted as law'.⁸³ This area of law includes the laws of State Responsibility. It is critical concerning most Southeast Asia where a limited number of international treaties have been ratified. As such, interpretation of the provisions of customary international law provides that those treaties still bind a state party that has not signed a specific convention under customary international law.⁸⁴ However, this research limits itself to specific treaties bound by ratification or accession.

c) CRC Committee General Comments. The CRC Committee's General Comments are integral in this study and its role in implementation. The General comments provide an interpretation and analysis for specific articles of the CRC and serve as an *authoritative interpretation* of States' parties' expectations as they implement their respective positive obligations under art 45(d).⁸⁵ The study avers that the State responsibility proffered legal framework increases the probability⁸⁶ of mitigating adverse childhood experiences (ACE)⁸⁷ and the harm of multiple forms of child trafficking and exploitation. The

⁸³ Statute of the International Court of Justice, art 38(1), June 26, 1945, 156 U.N.T.S. 77.

⁸⁴ Jean-Marie Henckaerts and Louise Doswald Beck, *Customary international humanitarian law* (International Committee of the Red Cross 2005); The ICRC maintains a regularly updated database which updates the study; ICRC, 'Customary IHL database' <<http://www.icrc.org/customaryihl/eng/docs/home>> accessed 2 October 2019.

⁸⁵ Article 45(d) of the CRC provides the Committee the power to make suggestions and general recommendations; CRC Committee, *Rules of procedure* (18 March 2015 CRC) CRC/C/4/Rev4 <<https://archive.crin.org/en/library/publications/crc-general-comments.html>> accessed 27 August 2017.

⁸⁶ MO Finkelstein, *Basic concepts of probability and statistics in the law* (Springer Science and Business Media 2009) doi10.1007/b105519 1.

⁸⁷ R Jeremiah and others, 'Exposing the culture of silence: Inhibiting factors in the prevention, treatment, and mitigation of sexual abuse in the Eastern Caribbean' (2017) 66 Child Abuse & Neglect 53–63 <<https://pubmed.ncbi.nlm.nih.gov/28242101/>> accessed 2 Dec 2017; National Working Group for Sexually Exploited Children and Young People 'How is child sexual exploitation defined?' (2008) <<http://www.nwgnetwork.org/who-we-are/what-is-child-sexual-exploitation>> accessed 28 Sept 2017.

Convention on the Rights of the Child and the Palermo Trafficking Protocol is the primary international instrument and the designated protocols and supplement.

6. Research Foundational Background

In 2017, broadcast worldwide, visions of Southeast Asia (Myanmar) and South Asia (Bangladesh) Rohingya children escaping violence, waddling through stagnant filthy monsoon water, emaciated, and partially clothed was accompanied by voluminous reports of child exploitation.⁸⁸ These reports raised international awareness of the level of human suffering.⁸⁹ For years, the escalating global trafficking problem, persecution, and the use of violence against children, exemplified by the Rohingya, have been compelling. Internationally, there has been a call to action. As a result, the UN General Assembly is leading a myriad of intervention initiatives, among other actions. The initiatives intend to disrupt and condemn trafficking in persons⁹⁰ under the *UN Global Plan of Action to Combat Trafficking in Persons*.⁹¹ Launched in 2010 and constantly evolving, the Global Plan has established tentacles in initiatives within the UN Sustainability Development Goals – a considerable undertaking.⁹²

⁸⁸ The prohibition against exploitation of children is a general prohibition under human rights law: The 1989 UN Convention on the Rights of the Child, 1577 UNTS 3, arts 34–37(a); the 2000 UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR supp (no 49) at 6, U.N. Doc. A/54/49, vol III (2000), arts 3(1)(b) and (2).

⁸⁹ UN IOM, 'UN migration agency warns of trafficking, labour exploitation, sexual abuse of Rohingya refugees' (UN IOM 2019) <<https://www.iom.int/news/un-migration-agency-warns-trafficking-labour-exploitation-sexual-abuse-rohingya-refugees>> accessed 20 July 2018; UNCRC, General comment 13 (2011), Right of the child to free from all forms of violence.

⁹⁰ Palermo Protocol art 3(a).

⁹¹ UNGA, sixty-fourth session, agenda item 104, Res adopted by the General Assembly, 64/293. UN Global Plan of Action to Combat Trafficking in Persons, 12 August 2010.

<https://www.unodc.org/documents/commission/CCPJ/Crime_Resolutions/2000-2009/2009/General_Assembly/A-RES-64-293.pdf> accessed 22 February 2018.

⁹² President of the General Assembly, Implementation of the UN Plan of Action to Combat Trafficking in Persons, 27–28 September 2017.

This socio-legal study's scope grasps the critical initiatives of the *UN 2030 Sustainability Goals* that call upon States to provide victims access to justice, eradicate the ubiquitous violence against children, their exploitation, and impunity of the perpetrators.⁹³ The UN Office on Drugs and Crime⁹⁴ (UNODC), overseer of the UN Transnational Organized Crime instrument, underpins the United Nations 2030 Sustainability Goals and serves as a significant driver in transnational crime's declaration:

'The need for improved international response to human trafficking and commitment to its eradication is illustrated by its prominent inclusion in the targets of the UN Sustainable Development Goals (SDGs) and the Global Compact for Safe, Orderly, and Regular Migration (GCM)...'⁹⁵

To carry out this declaration, State parties are reminded of art 32(1) of the UN Convention against Transnational Organized Crime's commitment:

'to improve the capacity of States to combat transnational organized crime and to promote and review the implementation of [the] Convention.'⁹⁶

The Conference of the Parties (COP) mandate initially applied only to the Organized Crime Convention. However, in July 2004, the COP altered the practice and comprehensive monitoring, information exchange, cooperation, and other functions. The

⁹³ UN Economic and Social Council, E/2019/68, 2019 session 26 July 2018–24 July 2019 Agenda items 5 (a) and 6 <<https://undocs.org/E/2019/68>> accessed 22 July 2019; The 2030 UN Sustainability Development Goals <<https://sustainabledevelopment.un.org/?menu=1300>> accessed 12 September 2019; UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1.

⁹⁴ UNODC, 'Multiple systems estimations for estimating the number of victims of human trafficking across the world' (UNODC 2016) <<https://www.unodc.org/documents/data-and-analysis/tip/TiPMSE.pdf>> accessed 2 October 2019.

⁹⁵ UNODC, 'Monitoring Target 16.2 of the UN Sustainable Development Goals a multiple systems estimation of the numbers of presumed human trafficking victims in the Netherlands in 2010-2015 by year, age, gender, form of exploitation and nationality' – Research Brief' (National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children) <https://www.unodc.org/documents/research/UNODC-DNR_research_brief.pdf> accessed 22 December 2019; UNICEF, 'The State of the World's Children' (UNICEF 2006) 53. <<https://www.unicef.org/sowc/archive/ENGLISH/The%20State%20of%20the%20World%27s%20Children%202006.pdf>> accessed 23 September 2019.

⁹⁶ UN Convention Against Transnational Organized Crime, 2225 UNTS 209, done Nov 15, 2000, entered into force Sept. 29, 2003 (Organized Crime Convention), at art 32(1).

practices were made applicable to the three Protocols attached to the Organized Crime Convention, inclusive of the Trafficking in Persons Protocol.⁹⁷ As a result, a continuum of working groups has been established to address vital concepts that were not clearly understood and consistently implemented further to support the UN Sustainability Goals and other initiatives.⁹⁸ In keeping with the UNODC's intent to collect data to monitor different components of Targets 8.7 and 5.2, the outcomes of this study are reportable with the intent to produce, curate, and disseminate research.⁹⁹ Unquestionably, a consensus among stakeholders is that meeting the 2030 Sustainability Goal targets of eradicating child trafficking, violence, and exploitation, requires solution-driven responses to many fundamental inquiries enabling the capacity to address the larger picture.¹⁰⁰

Trafficking in persons is a complex phenomenon. This socio-legal research methodology, design, and structure meet the challenge needed to unravel the multiple contributing elements of the crime. The study formulates into a mixed-methods qualitative study of doctrinal and social-science child human trafficking research. The thesis' research model

⁹⁷ Conference of Parties to the UN Convention on Transnational Organized Crime, Decision 1/5, 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime,' reproduced in Conference of Parties to the UN Convention on Transnational Organized Crime, 'Report of the Conference of Parties to the UN Convention on Transnational Organized Crime on its first session, held in Vienna from 28 June to 8 July 2004,' UN Doc CTOC/COP/2004/6, Sept. 23, 2004, at 5.

⁹⁸ Report on the meeting of the Working Group on Trafficking in Persons held in Vienna from 27 to 29 January 2010, UN Doc CTOC/COP/WG.4/2010/6 (17 February 2010), para 31(b).

⁹⁹ UNODC, 'Monitoring Target 16.2 of the UN Sustainable Development Goals a multiple systems estimation of the numbers of presumed human trafficking victims in the Netherlands in 2010-2015 by year, age, gender, form of exploitation and nationality' - Research Brief' (National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children) < https://www.unodc.org/documents/research/UNODC-DNR_research_brief.pdf > accessed 22 December 2019.

¹⁰⁰ A Aronowitz, *Human trafficking: A reference book* (ABC-CILO, Santa Barbara, CA 2017); Taylor and Francis, *Journal of human trafficking, Indexed: Vols. 1-5 (2015-2019)* (Philadelphia, PA: Routledge, Taylor, and Francis Group 2015).

follows the Oxford Centre for socio-legal theoretically informed studies of law in action. Subsequently, the research has drawn on qualitative surveys, action research, the analysis of statistical data, focus groups, and participant observation.

7. The Socio-legal context of the critical-case study

a) Dahrendorf's Social Conflict Theory explains the 'why'. The study investigates why child trafficking and exploitation happens to such an extreme in the Southeast Asia (Myanmar) and South Asia (Bangladesh) States of Bangladesh and Myanmar. Secondly, 'how' can it be mitigated¹⁰¹ and eradicated? This study's discourse examines both the 'why' and 'how'. In response to the 'why', the study examines macro-sociological¹⁰² research of Marx's Social Conflict Theory,¹⁰³ from Dahrendorf's viewpoint, to analyze the societal posture that ferments escalating conflict, violence, and prurience against children.¹⁰⁴

The application of Social Conflict Theory in the study suggests a growing body of evidence suggests that the etiology of violence, commercial labour, sexual exploitation,¹⁰⁵ and abuse of a child are manifestations of underlying and unaddressed degraded views of a child's role in society.¹⁰⁶ A stark example of the societal views is when a children are

¹⁰¹ The Palermo Protocol expresses a relatively unspecific obligation to reduce the market or demand, while requiring that states do take measures.

¹⁰² BN Adams and RA Sydie, *Sociological Theory* (Sage Publication 2001).

¹⁰³ Adams and Sydie (n 112); Otomar J Bartos and Paul Wehr, *Using conflict theory* (Cambridge University Press 2002); G B Vold, *Theoretical Criminology* (Oxford: Oxford University Press 1998).

¹⁰⁴ M Valentine, *Developing a critical theory of child abuse: A discussion of the nature of child abuse as a manifestation of the social order* (University of Warwick 1989).

¹⁰⁵ E Williamson, 'Human Trafficking' (Washington, D.C.: US Department of Justice, Office of Justice Programs, Office for Victims of Crime, Training and Technical Assistance Center 2012) 31, 41

<<http://www.nationalacademies.org/hmd/~media/Files/Resources/SexTrafficking/guideforlegalsector.pdf>> accessed 3 October 2017; National Center for Homeless Education, 'Trafficking and the commercial sexual exploitation of children (CSEC)' (NCHE 2019) <<https://nche.ed.gov/csec/>> accessed 30 September 2019.

¹⁰⁶ Valentine (n 106); Eli Newbery, 'Child abuse: The current theory base and future research needs' (1983) 22[3] *Journal of the American Academy of Child Psychiatry* 262, 268 <<http://www.elinewberger.com/child-abuse-the-current-theory-base-and-future-research-needs/>> accessed 22 December 2019; IOM (Institute of Medicine) and NRC (National Research Council), 'Confronting commercial sexual exploitation and sex trafficking of minors in the United States' (Washington, DC: The National Academies Press 2013)

<<https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/243838.pdf>> accessed 1 October 2019.

harmed during conflict.¹⁰⁷ Focusing on Myanmar and Bangladesh, the neighboring state of Thailand's Narathiwat, Pattani, Yalla, and southern areas of Songkla have experienced civil war stemming from an insurgency in 2004. As a result, the noted states have been encased in various forms of political and faith-based conflict.¹⁰⁸

Literature on *Social Conflict Theory* and its connection to international criminal law, international human rights law, and child exploitation are relatively non-existent with proffering legal frameworks adapted to conflict-based societal behaviors. This study opines that there is a connection. An investigation into the international, national, and regional laws, in context to the social problems in Southeast Asia using Dahrendorf's Social Conflict Theory, provides a temporal explanation for the cause and effect of the phenomenon. The breach of human rights is an example of both the cause and consequence (effect) of trafficking in persons. In conflict and post-conflict societies, the protection of human rights must remain the nucleus of any measures by States to prevent and protect against trafficking. All persons have human rights, mainly the highly vulnerable — migrants, displaced persons, refugees, and the stateless.

The thesis application of Social Conflict Theory fulfills the 'why' analysis. The explanation gains credence from the United Nation's Security Councils' 2004 report. The report underpins critical issues and the prominence of human rights violations in conflict

¹⁰⁷ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 'The six grave violations against children during armed conflict: The legal foundation' (The legal Foundation, 2009 updated November 2013) <<http://childrenandarmedconflict.un.org>> accessed 30 November 2021.

¹⁰⁸ Pooja Poduga, 'Thailand's civil wars' (Harvard Political Review, March 2013) <<https://harvardpolitics.com/world/thailands-civil-war/>> accessed 23 June 2019.

and post-conflict societies.¹⁰⁹ This research takes the exploration of these factors beyond the United Nations Security Council's surface discussion to encapsulate what happens in conflict and post-conflict societies' legal structures, such as those in the targeted research states of Southeast Asia. From this juncture, the research examines the national laws that impact child trafficking and exploitation. It links the respective international treaty obligations and formulates an adaptable legal framework that has the societal likelihood¹¹⁰ to provide optimal legal empowerment, the affects of deterrence, and redress for victims.

Subsequently, the research avers that it advances a general theory of law and justice. The research expands the application of the Palermo Trafficking Protocol,¹¹¹ the CRC, its OPSC, and OPIC Protocols in correlation to sociology. Those applications include the connection of *Social Conflict Theory* to the United Nation's Security Council's position to transitional justice and the legal structure challenges of social conflict societies.¹¹² The Security Council resolution speaks to a country's level of willingness to seek initiatives, remove impunity, and sustain political balance.¹¹³ In these societies, the UN Security Council (UNSC) reiterates delicate political government situations, which may be

¹⁰⁹ UNSC, 'The rule of law and transnational justice in conflict and post-conflict societies: Report of the Secretary-General, S/2004/616' (2004) <<https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/>> accessed 3 November 2019.

¹¹⁰ R Petty and P Briñol. 'The elaboration likelihood model' in PA Van Lange, AW Kruglanski, & ET Higgins, *Handbook of theories of social psychology* (London, SAGE Publications Ltd 2012) 222-245.

¹¹¹ UNGA, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, adopted in Palermo, 12-15 December 2000.

¹¹² UNSC, 'The rule of law and transnational justice in conflict and post-conflict societies: Report of the Secretary-General, S/2004/616' (2004) <<https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/>> accessed 3 November 2019.

¹¹³ *ibid.*

unwilling to pursue wide-ranging initiatives or unable to do so without putting its stability at risk.¹¹⁴ The UN Security Council's position reports appear to conclude that the basic approaches to transitional justice¹¹⁵ include overcoming societies that promote impunity through criminal prosecutions, using truth commissions to address, seek reparations, and redress for victims.¹¹⁶

The socio-legal study postures a premise: The research States, Bangladesh and Myanmar, align with Dahrendorf's fostered belief that Social Conflict Theory exists when there is an unequal distribution of authority and power within a social organization and the propensity for violence exists.¹¹⁷ Dahrendorf's theory suggests that the result is a division of two opposite quasi-groups in social structure: 'the ruler and the ruled'.¹¹⁸ Subsequently, the study avers that the theory describes current scenarios in the Southeast Asia (Myanmar) and South Asia (Bangladesh) region where a government's violence against a group is necessary. The reasons are couched in justifications that are likely marred in discrimination and oppression.¹¹⁹

¹¹⁴ World Bank Group and UN, 'Pathways for peace: Inclusive approaches to preventing violent conflict (2018 International Bank for Reconstruction and Development/The World Bank) <<https://openknowledge.worldbank.org/handle/10986/28337>> accessed 27 March 2018.

¹¹⁵ J Couso, 'Trying democracy in the shadow of authoritarian legality: Chile's transition to democracy and Pinochet's constitution of 1980' (2012) 29(2) Wisconsin International Law Journal 393 <<http://connection.ebscohost.com/c/articles/85839710/trying-democracy-shadow-authoritarian-legality-chiles-transition-democracy-pinochets-constitution-1980>> assessed 22 November 2019.

¹¹⁶ UNSC, 'The rule of law and transnational justice in conflict and post-conflict societies: Report of the Secretary-General, S/2004/616' (2004) <<https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transnational-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/>> accessed 3 November 2019.

¹¹⁷ R Dahrendorf, *The modern social conflict: The politics of liberty* (Transaction Publishers 2007).

¹¹⁸ *ibid*; R Wilson, 'The relationship between school and society: Part II - Conflict Theory' in *The Building Blocks of Social Foundation*, 6(1) <<http://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1006&context=colleagues>> accessed 27 March 2019.

¹¹⁹ *ibid*.

As a result, the study presents evidence that the targeted research states a child is rendered what the Children's Rights Committee describes as 'children in vulnerable situations' or 'children prone to marginalization'.¹²⁰ To concur or non concur with the constructs of *Social Conflict Theory*,¹²¹ the research examines a range of legal reports¹²² and studies by human rights groups to serve as argument qualifiers. The qualifiers suggest that the targeted research States are ripe with pervasive poverty, a myriad of migration issues grounded in widespread inequality, and a host of geopolitical situations. Furthermore, the social class conflicts have appeared to diminish views of a child's protection from violence, trafficking, and exploitation, with indicators surfacing through the constrained prosecutorial responses to holding offenders responsible and accountable.

The research also investigates the socio-legal linkage of *Social Conflict Theory* in response to the phenomena inquiry. The region has a non-member State status of the target countries, Bangladesh and Myanmar, to the 1951 Convention Relating to the Status of Refugees¹²³ (hereinafter, Refugee Convention), its 1967 Protocol Relating to the Status of Refugees,¹²⁴ the 1954 Convention Relating to the Status of Stateless Persons¹²⁵

¹²⁰ K Sandberg, 'The Convention on the Rights of the Child and the vulnerability of children' (2015) 84 Nordic Journal of International Law 221, 47, 229 <<https://doi.org/10.1163/15718107-08402004>> accessed 21 December 2019.

¹²¹ R Dahrendorf, *The modern social conflict: The politics of liberty* (Transaction Publishers 2007).

¹²² Legal Report Sources: The EctHR's HUDOC database of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarized through the keywords).

¹²³ UNGA, Convention Relating to the Status of Refugees, 28 July 1951, UN, Treaty Series, vol 189, p 137, adopted by the General Assembly of the UN on 14 Dec 1950, entry into force 22 April 1954; UNGA Protocol Relating to the Status of Refugees.

¹²⁴ UNGA, Protocol Relating to the Status of Refugees, 31 January 1967, UN, Treaty Series, vol 606, p 267, entry into force 4 October 1967.

¹²⁵ UNGA, Convention Relating to the Status of Stateless Persons, 28 September 1954, UN, Treaty Series, vol 360, p 117, adopted on 28 September 1954, entry into force 6 June 1960.

(hereinafter, Stateless Convention), and the 1961 Convention on the Reduction of Statelessness.¹²⁶ The region is recognized by the Office of the UN High Commissioner for Refugees (UNHCR) and the International Office of Migration (IOM) as a high frequency of forced migration and displacement.¹²⁷ UNHCR 2018 Trends report reflects staggering approximate refugee figures in the geographical areas impacted by the Rohingya-crisis with 943,200 in Bangladesh, compared to 106,400 in Malaysia, 1.2 million in Myanmar, and 97,400 in Thailand.¹²⁸ The study argues that these factors contribute to Bangladesh and Myanmar state rankings as ‘high risk’ for child exploitation.¹²⁹ Hence, a different approach to addressing the problem is warranted and proffered in this study. After gathering the evidence, the study opines that these factors have eroded Bangladesh

¹²⁶ UNGA, Convention on the Reduction of Statelessness, 30 August 1961, UN, Treaty Series, vol 989, p 175, adopted on 30 August 1961 by a conference of plenipotentiaries which met in 1959 and reconvened in 1961 in pursuance of General Assembly resolution 896 (IX) of 4 December 1954. Entry into force 13 December 1975, in accordance with article 18.

¹²⁷ UN, Department of Economic and Social Affairs, Population Division (2019). International Migration 2019: Report (ST/ESA/SER.A/438)

<https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/InternationalMigration2019_Report.pdf> accessed 2 August 2019; UN International Office of Migration (IOM), ‘IOM Key Migration Figures 2017-2019’ (IOM 2019) <<https://migrationdataportal.org/sites/default/files/2019-10/key-global-migration-figures.pdf>> 2 July 2019; Gil Loescher, *The Oxford handbook of refugee and forced migration* (Political Science, International Relations, Comparative Politics, online publication 2014)

<<http://10.1093/oxfordhb/9780199652433.013.0003>> accessed 21 February 2018.

¹²⁸ UNHCR, Mid-Year Trends 2018 (UNHCR 2018) <<http://www.unhcr.org/statistics>> accessed 3 July 2019.

¹²⁹ UNODC, ‘Protecting the future: Improving the response to child sex offending in Southeast Asia’ (UNODC 2014) <https://www.unodc.org/documents/southeastasiaandpacific/Publications/2015/childhood/2014.08.28.Protecting_the_Future-Responding_to_CSO.pdf> accessed 29 September 2019; UNODC, ‘The 2018 UNODC Global Report on Trafficking in Persons’ (UNODC 2018) <https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf> accessed 27 September 2019; Shanjida Isratn Jahan Efat and Sheikh Anisuzzaman, ‘Human Trafficking in South Asia: Application of anti-trafficking laws and the state duty to protect human rights of the victims’ (2015) 7[4] International Journal of Business, Economics and Law 53-59 <<<https://www.ijbel.com/.../september-2015/vol-7-august-2015-issue-4-law>> accessed 29 July 2018; National Research Council, *Understanding child abuse and neglect* (Commission on Behavioral and Social Sciences and Education, National Academy Press 1983) <<https://doi.org/10.17226/2117>> accessed 22 December 2020.

and Myanmar's adherence to treaty obligations to prevent and protect children from violence, trafficking, and exploitation.¹³⁰

¹³⁰ Under the 1969 Vienna Convention on the Law of Treaties (VCLT), 1155 UNTS 331, states are to interpret and perform or implement their obligations in good faith (arts 26 and 31).

b) Targeted Population (The ‘Critical-Case’) and Geographic Region

Rohingya, the critical-case. The study’s population comprises of children meeting the provisions of Part I, art 1, Convention on the Rights of the Child, specifies,

‘For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier’.¹³¹

Article 1 makes no delineation as to gender, ethnicity, or any other demographic characteristic or nationality.¹³² Therefore, the study examines the prevention, protection, and mitigation of trafficking and exploitation of children, stateless,¹³³ refugee¹³⁴ , and non-refugee, as defined under the 1954 Convention Relating to the Status of Stateless Persons.¹³⁵ In situ of Southeast Asia (Myanmar) and South Asia (Bangladesh) States: Bangladesh and Myanmar,¹³⁶ based on the international laws, the definition of a refugee child is explained by combining the definition of a child¹³⁷ in art 1 of the Convention on the Rights of the Child (CRC), an individual below the age of 18,¹³⁸ with the definition of a refugee in the 1951 Refugee Convention:

¹³¹ Article 1, CRC establishes the upper age limit for being considered a child under the Convention in principles as the age of 18.

¹³² The upper age limit, however, is further qualified by a reference to national legislation which may provide for a lower age of majority.

¹³³ According to art 1 of the 1954 UN Convention relating to the status of stateless persons, ‘a person who is not considered as a national by any State under the operation of its law’ is described as a stateless person.

¹³⁴ The term ‘refugee’ is used according to its application in art 1A(2) of the 1951 Refugee Convention.

¹³⁵ UNGA, Convention Relating to the Status of Stateless Persons, 28 September 1954, UN, Treaty Series, vol. 360, p 117, adopted on 28 September 1954, entry into force 6 June 1960; the UN Convention on the Reduction of Statelessness, 989 UNTS 175 (adopted 30 August 1961, entered into force 13 December 1975).

¹³⁶ The country known in English as both Myanmar and Burma has undergone changes in both its official and popular names worldwide. The choice of names stems from the existence of two different names for the country in Burmese, which are used in different contexts.

¹³⁷ Luxembourg Principles: ‘Terminology guidelines for the protection of children from sexual exploitation and sexual abuse’.

¹³⁸ Article 1, UNCRC.

‘A refugee is someone who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to or owing to such fear, is unwilling to avail himself of the protection of that country.’¹³⁹

Case analysis of similarly situated children in the Southeast Asia (Myanmar) and South Asia (Bangladesh) region includes displaced or forced displaced children,¹⁴⁰ who may also be stateless, refugee or non-refugee. These children have also experienced exploitation due to gaps in prevention, protection brought on by discrimination due to demographics or other societal factors.

Amongst the multiple categories of vulnerability or what the Convention on the Rights of the Child refers to as ‘children in vulnerable situations’¹⁴¹ and the Palermo Trafficking Protocol refers to as ‘a position of vulnerability’ (APOV),¹⁴² the Rohingya children are slated as the study’s critical-case. Though there is a variation in how the vulnerability is referenced in the two primary international instruments, literature confers a bridging narrative of childhood as a ‘period of relative vulnerability’.¹⁴³ For example, Lansdown’s readings link the period before the child reaches majority or the upper limit age of 18 as ‘their lack of power and status with which to exercise their rights and challenge abuses

¹³⁹ UNHCR, ‘Convention and Protocol Relating to the Status of Refugees’ <www.unhcr.org/3b66c2aa10.pdf> accessed 22 April 2018.

¹⁴⁰ The Hague Process on Refugees and Migration, ‘People on the move: Handbook of selected terms and concepts’ (The Hague/Paris: UNESCO Section on International Migration and Multicultural Policies 2008), 29 <<https://www.scribd.com/document/335385588/UNESCO-People-on-the-Move-Handbook-Terms-for-Migration>> accessed 17 July 2017; described further in follow-on text.

¹⁴¹ CRC, art 22.

¹⁴² Palermo Trafficking Protocol, art 3, art 9(4); CRC Committee, GC 13 (2011), The right of the child to freedom from all forms of violence, CRC/C/GC/13 para 53.

¹⁴³ CRC, General comment 14 adds further clarity to member States as it explains that a child in a specific situation of vulnerability.

as opposed to any inherent lack of capacity'.¹⁴⁴ The International Organization for Migration (IOM) weighs in on the Rohingya children's vulnerability and support a State Responsibility research,

'Children are particularly vulnerable to multiple forms of abuse and exploitation... and therefore need specific protection and assistance', the Rohingya are a prime research population to examine state responsibility.¹⁴⁵

Within the scope of the *Global Compact for Safe, Orderly, and Regular Migration*¹⁴⁶, there is a promotion of child sensitivity with international legal obligations for children, accompanied and unaccompanied. The Global Compact refocuses States to their obligations under art 3, best interest obligations under the UN Convention on the Rights of the Child in all matters relating to the safe and orderly migration process. The study looks to social-science research principles to operationalize and validate the critical-case selection. Patton, renowned for extensive work on case studies,¹⁴⁷ describes the process of identifying a small number, or a specific critical-case in research, as having the probability likelihood to 'yield the most information and have the greatest impact on the development of knowledge'.¹⁴⁸ Generalizability and transferability¹⁴⁹ are essential components of the study. The concepts represent an opportunity to contribute toward

¹⁴⁴ Gerison Lansdown, 'The evolving capacities of the child' (UNICEF Innocenti Research Centre 2005) 31 <<https://www.unicef-irc.org/publications/pdf/evolving-eng.pdf>> accessed 22 February 2017.

¹⁴⁵ IOM, 'UN migration agency warns of trafficking, labour exploitation, sexual abuse of Rohingya refugees' (IOM 14 November 2017) <<https://reliefweb.int/report/bangladesh/un-migration-agency-warns-trafficking-labour-exploitation-sexual-abuse-rohingya>> accessed 5 Jan 2018.

¹⁴⁶ IOM, 'Global compact for safe, orderly and regular migration' (Res adopted by the General Assembly on 19 December 2018) <https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195> accessed 28 January 2019.

¹⁴⁷ M Patton, *Qualitative research, and evaluation methods* (Sage Publication 2002).

¹⁴⁸ *ibid*; B. Flyvbjerg, *Rationalitet og Makt* (Rationality and Power 1991).

¹⁴⁹ K F Rothman and others. *Modern Epidemiology* (Wolters Kluwer Health/Lippincott Williams & Wilkins 2008; William Firestone, 'Alternative arguments for generalizing from data as applied to qualitative research' (1993) 22[4] Educational Researcher 16-22 <<https://doi.org/10.3102/0013189X022004016>> accessed 20 Dec 2019.

Children's rights and the law significantly, transnational criminal law, criminology, and human trafficking, among others, in communities where the populations mirror those of the targeted States: Bangladesh and Myanmar. As the study's critical-case, the Rohingya children are described by the UN High Commissioner for Refugees (UNHCR) as Southeast Asia's most marginalized¹⁵⁰ and vulnerable indigenous¹⁵¹ group of displaced children.¹⁵² The Rohingya¹⁵³ were identified as the critical-case for this study as their situation applies to several integral dimensions—the research variables to render the 'greatest impact' in child trafficking, exploitation, children's rights, and the law. Cohen and Crabtree's qualitative research principles suggest that a critical-case should be utilized in minimal funding to improve efficiency and develop rich evidence for logical generalizations.¹⁵⁴ This study is likely to be utilized to refocus future legal investigations or redirected to understand child exploitation better. However, from a place of positionality, it should be noted that the researcher is a US citizen completing her thesis in a UK University. Whilst she has visited some of the region in focus here, she has not lived or experienced the social and cultural context of the region at length. Her

¹⁵⁰ UN Sustainability Goals, 'Marginalized populations: Treatment of people' (Charter for Compassion 2018) <<https://charterforcompassion.org/charter-tool-box-a-framework-for-getting-started/marginalized-populations-treatment-of-people>> accessed 12 January 2018.

¹⁵¹ ILO, 'The rights of indigenous peoples in Asia' (ILO March 2017) <https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf> accessed 25 August 2018.

¹⁵² The Hague Process on Refugees and Migration, *People on the move: Handbook of selected terms and concepts* (The Hague/Paris: UNESCO Section on International Migration and Multicultural Policies 2008), 29 <<https://www.scribd.com/document/335385588/UNESCO-People-on-the-Move-Handbook-Terms-for-Migration>> accessed 17 July 2017; described further in follow-on text.

¹⁵³ A Ibrahim, *The Rohingyas: Inside Myanmar's hidden genocide* (C Hurst & Co 2016); UNHCR, 'UN refugee agency lauds US assistance to Rohingya' (UNHCR March 2018) <<http://www.unhcr.org/en-us/news/press/2018/4/5ade57194/un-refugee-agency-lauds-us-assistance-to-rohingya.html?query=Rohingya%20history>> accessed 3 June 2018.

¹⁵⁴ D Cohen and B Crabtree, 'Qualitative research guidelines project' (July 2006) <<http://www.qualres.org/HomeCrit-3805.html>> accessed 20 August 2017.

perspective and socio-legal analysis is by necessity influenced by her experiences. A more in-depth discussion of positionality has been included in Appendix 1.

c) Historical reflection and overview

As shown in Figures 3 and 4, historically, the Rohingya have suffered many years of discrimination and persecution, which has resulted in repetitive and historical forced displacement migrations followed by a massive loss of life and human rights violations.¹⁵⁵ A critical and very relevant factor in the group's designation as a critical-case in the study is that the UN has reported the Rohingya to suffer human trafficking at an alarming rate.¹⁵⁶ The Rohingya primarily occupy the research target region of Southeast Asia, Figure 5, where the study's targeted States have ratified neither the Refugee nor Stateless Conventions.

The Rohingya people are a Muslim group that lives in a primarily Buddhist-led region.¹⁵⁷ The indigenous group has ties to the early communities of Southeast Asia,¹⁵⁸ where Myanmar archaeological evidence suggests settlement dates as far back as 11,000 B.C.¹⁵⁹ The Rohingya occupation dated to Arakan (known now as Myanmar's Rakhine State)¹⁶⁰ or the Burmese Kingdom in 1826 when the region was conquered by the British.

¹⁵⁵ Ibrahim (n 153).

¹⁵⁶ UNHCR, 'UN refugee agency lauds US assistance to Rohingya' (UNHCR, March 2018) <<http://www.unhcr.org/en-us/news/press/2018/4/5ade57194/un-refugee-agency-lauds-us-assistance-to-rohingya.html?query=Rohingya%20history>> accessed 3 June 2018.

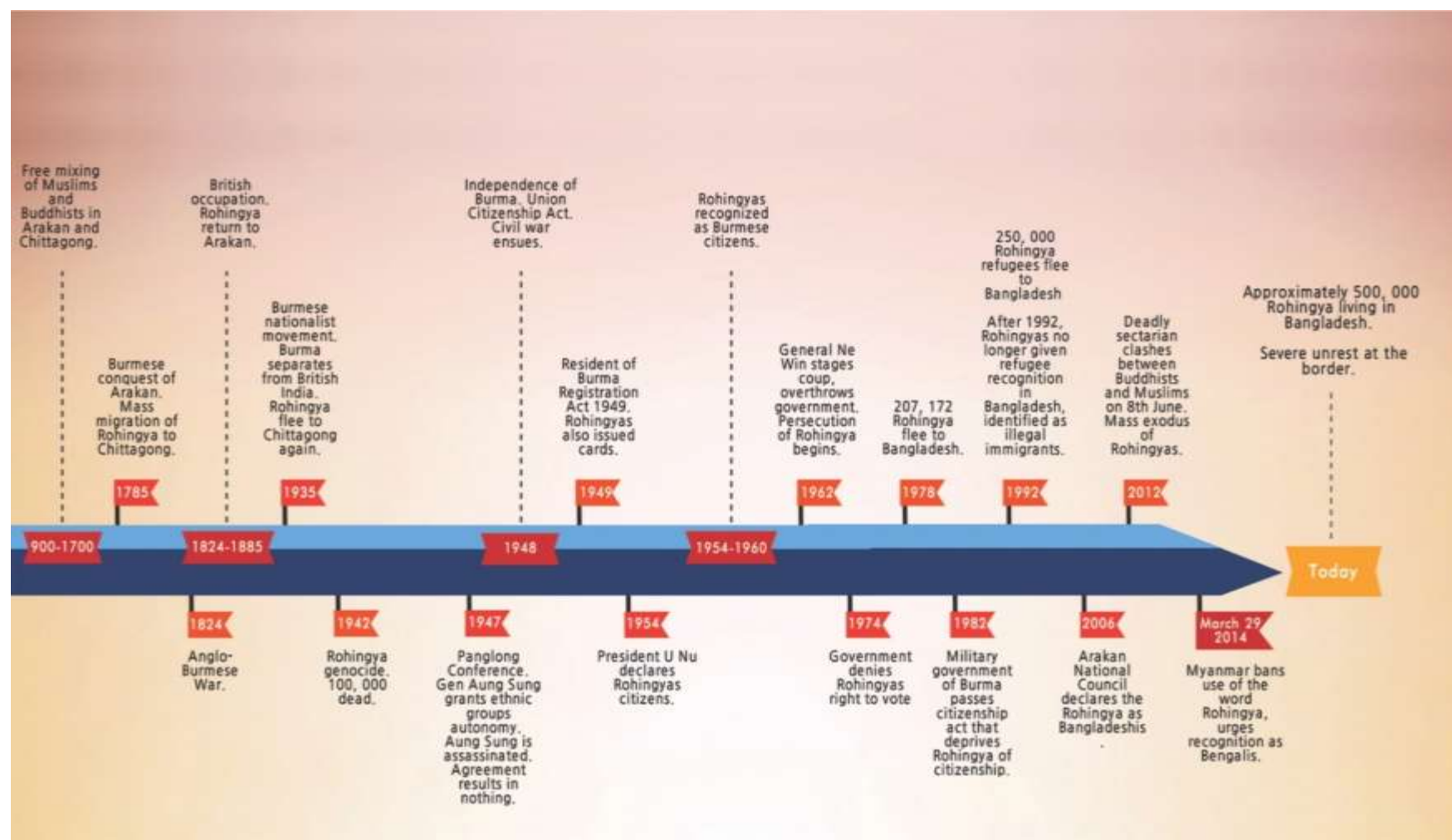
¹⁵⁷ A reflection back at Figure 3 assists with following the historical narrative.

¹⁵⁸ GH Luce, *Phases of pre-Pagan Burma* (Oxford University Press 1986).

¹⁵⁹ *ibid.*

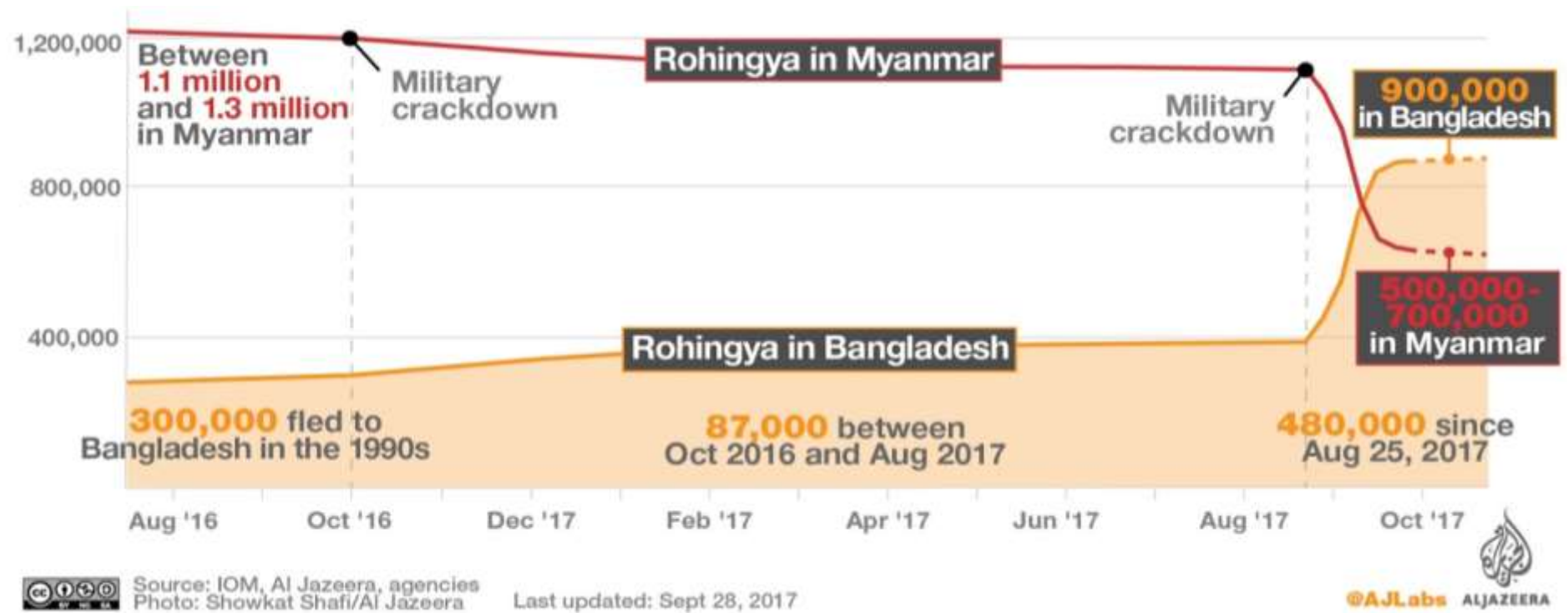
¹⁶⁰ Arakan is a historic coastal region in Southeast Asia. It borders faced the Bay of Bengal to its west, the Indian subcontinent to its north and Burma proper to its east. The Arakan Mountains isolated the region and made it accessible only by sea. The region now forms the Rakhine State in Myanmar.

Figure 3. Timelines: Historical Reflection and Escalating Rohingya-crisis



Note, Figure 3, IOM graphic, Creative Commons License, used within license provisions, credit cited, within fair-use guidelines, for educational purposes only; graphic adapted and modified by T Herring.

Figure 4. Timelines: Historical Reflection and Escalating Rohingya-crisis



Note, Figure 4, IOM, Creative Commons License, used within license provisions, credit cited, within fair-use guidelines, for educational purposes only; graphic modified and adapted by T. Herring.

The timeline in Figures 3 and 4 present a series of conflict escalation points of the Rohingya persecution after what has been described as the sexual violence of a Rohingya woman, June 2012, by three Muslim men.¹⁶¹ The events in 2012 appear to have propelled a climax of high racial tensions, violence, and forced displacement, with thousands being placed in camps to what is later described as the 2012-2014 massacre.¹⁶² The United Nations High Commissioner for Refugees descriptor applied to Rohingya events as the 'Rohingya-Crisis', depicted in a '100-days of Horror and Hope' timeline dating from 25 August 2017 through 24 November 2017, noted in Table 1.¹⁶³ Broadcast worldwide, the Rohingya-crisis reflects intense violence and the aftermath unfolding in Bangladesh and Myanmar, the primary State actors in the 'Rohingya-crisis'.¹⁶⁴

The refugee crisis saw over 100,000 forced to internal refugee camps in Myanmar, with approximately 13,000 fleeing to Malaysia, 6,000 in Thailand, thousands thought to have perished at sea escaping with human traffickers, and a similar human trafficking distribution into migrant labour pools in neighboring countries.¹⁶⁵ Referring to Figure 5,¹⁶⁶ the approximate numbers of displaced Rohingya inevitably rose, and current estimates put the figures into the hundreds and thousands of men, women, and children.

¹⁶¹ Human Rights Watch, 'All you can do is pray: Crimes against humanity and ethnic cleansing of Rohingya Muslims in Burma's Arakan State' (2013).

¹⁶² *ibid.*

¹⁶³ UNHCR, '100-days of horror and hope: A timeline of the Rohingya-crisis' (UNHCR 5 Dec 2017) <<https://reliefweb.int/report/Bangladesh/100-days-horror-and-hope-timeline-rohingya-crisis>> accessed 31 December 2017; a verbatim adaptation of public domain information in its entirety for educational purposes only is provided in Table 1.

¹⁶⁴ *Ibid.*

¹⁶⁵ Human Rights Watch, 'Burma: Communal violence undercuts rights gains' (2014) <<https://www.hrw.org/news/2014/01/21/burma-communal-violence-undercuts-rights-gains>> accessed 28 January 2018.

¹⁶⁶ Using Toulmin's Argumentation Model, Figure 5 serves as research evidence backing with the inclusion of statistical data, formal report numbers to substantiate the warranty.

Dahrendorf theorizes that violence refers to how conflict is manifested, which is reflective of the intensity of hostility.

After migration flows in the Tibet area, religious unrest between the Buddhist and Muslim communities formulated around the ninth and tenth century A.D. The unrest continues through the 20th century.¹⁶⁷ This era was considered the Genesis of Muslims fleeing the Arakan region in 1784 with escalating violence and the First Anglo-Burmese War, leading to Britain's annexation of Arakan in 1826.¹⁶⁸

Following two more wars, Britain ruled all Arakan in 1886 and established it as an entire British colony in 1937.¹⁶⁹ The series of events, combined with controversial 1824-border matters, have formulated the ongoing and evolving basis for Burmese nationalist, Buddhist extremist, and ethnic unrest to culminate into citizenry exclusion for the Rohingya.¹⁷⁰ In Table 3, Counterargument Evidence, Myanmar's government's defense argument before the International Court of Justice on 12 December 2019 rests heavily upon these historical facts and incidents as a foundational justification for its actions. However, the Myanmar government contends that the wrongful claims against the country are not viewed from a holistic and historical perspective but isolated without regard to provocations and the basis for Myanmar's government actions.¹⁷¹

¹⁶⁷ P Gutman, *Burma's lost kingdom: Splendors of Arkan* (Weatherhill 2001).

¹⁶⁸ *ibid.*

¹⁶⁹ M Aung Thwin, 'Burma before Pagan: The status of archeology today?' (1985) 25[2] *Asian Perspectives* 1, 22 <www.jstor.org/stable/42928082> accessed 7 June 2021; M Aung Thwin, *Pagan: The origins of modern Burma* (University Press 1985).

¹⁷⁰ UNHCR, 'Burma citizenship law 1982' (UNHCR 2010) <<http://www.reworld.org/cgi-binn/texis/vtx/rwmain?page=printdoc&docid=3ae6b4f71b>> accessed 10 September 2018.

¹⁷¹ Table 3, Counterargument Evidence Matrix, Evidence #2, Chapter 3.

Many historians point to Charles Paton's British 1826 census as the primary source to a province population of approximately 100,000 indigenous groups categorized by religious ethnicity: a sizeable Muslim group in the north (the Rohingya), Afghan-descendent mercenaries (the Kamans), and another small Muslim community (the Moulmen).¹⁷² Similarly, another British census of Arakan, conducted in 1911, accounted for 210,000, consisting of 155,000 Muslims and the balance representing the Buddhists of Arakan.¹⁷³ Fast-forward beyond the end of British rule in Burma on 4 January 1948,¹⁷⁴ the military coups of 1962, Aung San Suu Kyi's assassination as an opposing leader brought forward the 1974 Emergency Immigration Act and the military rule from 1962-1988.

The outcome resulted in the Rohingya only being eligible for Foreign Registration Cards and escalating oppression.¹⁷⁵ In addition, a natural disaster left a horrific economic and geographic impact on Cyclone Nargis in 2008. The event catapulted pressure for the government and military to allow refreshed elections for establishing joint aid efforts with ASEAN.¹⁷⁶ This brief synopsis provides a backdrop to Burma's relationship with

¹⁷² C Paton, 'A short report on Arakan' (London: Colonial Office 1826) <<https://www.scribd.com/document/143190474/Charles-Paton-s-aShort-Report-on-Arakan>> accessed 21 October 2018.

¹⁷³ Colonial Office, 'Census of India: Burma' (Rangoon 1911) <http://www.burmalibrary.org/docs22/1911_census_of_India-Vol-09-Burma-01-tpo.pdf> accessed 22 September 2018; Thant Myint-U, *The river of lost footsteps – histories of Burma*, (Farrar, Straus and Giroux New York) 63.

¹⁷⁴ MW Charney, *A history of modern Burma* (Cambridge: Cambridge, University Press 2009); .

¹⁷⁵ NS Lwin, 'Making Rohingya stateless' <<https://www.newmandala.org/making-rohingya-statelessness/>> accessed 28 September 2018; AP Macdonald, 'Time to engage Myanmar's military' (14 February 2015 Asia Times) <http://www.atimes.com/atimes.com/Southeast_Asia/SEA-01-040215.html> accessed 29 September 2018.

¹⁷⁶ DM Seekins, 'The social, political, and humanitarian impact of Burma's Cyclone Nargis' (2008) 6[5] *The Asia-Pacific Journal* <<https://apjpf.org/-Donald-M--Seekins/2763/article.pdf>> accessed 2 October 2018.

China, Tibet, and India. In the Southeast Asia region, other neighboring countries that focus on this study are Bangladesh and Myanmar.

The escalated Rohingya situation has led to an international outcry, where there are varied accountability responses. The international outcome aligns with Dahrendorf's posture as the violence of a conflict may influence how quickly changes occur. In the region, there was no response. However, in this instance, the UN Independent International Fact-Finding Mission on Myanmar, under HRC resolution 34/22, outlined the scope of responsive investigations by the Office of the Prosecutor of the International Criminal Court and included projected plans by The Gambia in support of the Organization for Islamic Cooperation.¹⁷⁷

According to the HRC resolution, both the Prosecutor and The Gambia, *Republic of the Gambia v Republic of the Union of Myanmar*,¹⁷⁸ are pursuing a case against Myanmar before the International Court of Justice¹⁷⁹ for the breach of States' responsibility to obligations of the 1948 Genocide Convention.¹⁸⁰ Despite both Myanmar and Bangladesh being member-States of the Convention on the Rights of the Child, Figures 6 and 7 are critical

¹⁷⁷ The UN independent international fact-finding mission on Myanmar, HRC resolution 34/22, 22 October 2019 <https://reliefweb.int/sites/reliefweb.int/files/resources/FFM-GA%20statement.rev._2%20%28002%29_0.pdf> accessed 7 November 2019.

¹⁷⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v Myanmar*); On 11 November 2019, the Republic of The Gambia ('The Gambia') filed in the Registry of the Court an Application instituting proceedings against the Republic of the Union of Myanmar ('Myanmar') concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention' or 'Convention'). In its Application, The Gambia argues that Myanmar has committed and continues to commit genocidal acts against members of the Rohingya group, which it describes as a 'distinct ethnic, racial and religious group that resides primarily in Myanmar's Rakhine State'. The Application contained a Request for the indication of provisional measures, seeking to preserve, pending the Court's final decision in the case, the rights of the Rohingya group in Myanmar, of its members and of The Gambia under the Genocide Convention.

¹⁷⁹ The International Court of Justice (ICJ) is the principal judicial organ of the UN.

¹⁸⁰ The UN independent international fact-finding mission on Myanmar, HRC resolution 34/22, 22 October 2019 <https://reliefweb.int/sites/reliefweb.int/files/resources/FFM-GA%20statement.rev._2%20%28002%29_0.pdf> accessed 7 November 2019.

evidentiary photographs. The portraits illustrate a pictorial narrative of the horrific situations of children in Bangladesh escaping from Myanmar, emaciated, desperate for sustenance, and their high level of vulnerability¹⁸¹ and suffering. Risking loss of life by sea or on land, the UNHCR reported nearly 700,000 Rohingya had fled their homes and persecution in Myanmar for neighboring Bangladesh since August 2017.¹⁸² Despite the dismissive and disassociated posture with the regions' migratory situation that has been fostered by many of the ASEAN States, the global attention that has beset on the Rohingya-crisis¹⁸³ and the accompanying parallel forced migration has created situations impossible to ignore or diminish in magnitude.

Official government reports suggest that the migratory categories are blurred with refugees looking for relief from anyone, including smugglers, who may at some point be refugees themselves. Interchangeably, to their parents and other adults caught in the migratory flows, a child is also an irregular migrant worker. Contingent upon their dilemma, the child may meet the international definition of a stateless refugee, accompanied or unaccompanied by a parent or legal guardian. As a result of the unstable and vulnerable situation, much research supports the premise that the child is highly likely to be trafficked and exploited.¹⁸⁴

¹⁸¹ CRC, General comment 14 adds further clarity to member States as it explains that a child in a specific situation of vulnerability.

¹⁸² The UN Refugee Agency (UNHCR), 'Operational update' (UNHCR, 1-15 August 2018) <http://reporting.unhcr.org/sites/default/files/UNHCR%20Bangladesh%20Operational%20Update%20-%2015AUG18.pdf#_ga=2.63143724.2077047854.1579290660-1653085541.1554326498> accessed 28 September 2018.

¹⁸³ Rohingya-crisis.

¹⁸⁴ The UN action for cooperation against trafficking in persons (UN-ACT) and Mahidol University in Bangkok co-organized the international seminar on mixed migration in Southeast and East Asia, 21-22 June 2017.

Human rights concerns for the Rohingya and similarly situated indigenous populations have been brought before the ASEAN Intergovernmental Commission on Human Rights (AICHR).¹⁸⁵ The AICHR Charter, art 1, para 8, represents a forward movement in promoting and protecting human rights. Thus, the ASEAN member States' alliance for their participation in the 2009 establishment of the AICHR represents a step towards protecting and promoting human rights. Moreover, the AICHR's role was structured to serve as an emblem of collaborative efforts and a support system among member States. Thus, the AICHR purports unified prevention and protection among member States and serves as a fundamental resource for joint regional initiatives. Hence, ASEAN's inclusion in this study. Yet, the ASEAN ICHR has been rebuked for omitting an explicit mandate to perform a protection duty and its reluctance to intervene with formidable measures or mechanisms to address statelessness, forced migration, and a host of migrant humanitarian concerns.¹⁸⁶

d) The effects of Forced Migration

To gain a better understanding of forced migration and displacement, the Hague Process on Refugees and Migration Foundation Handbook¹⁸⁷ explains the term 'forced migration' as the movement of people 'in which an element of coercion predominates', which explains, in detail, the salient elements the Rohingya experienced during their forced migration saga,

¹⁸⁵ UNCRC, General comment 11 (2009), indigenous children and their rights under the Convention.

¹⁸⁶ ASEAN Intergovernmental Commission on Human Rights, 'Terms of reference', 4.5 <<http://aichr.org/documents/>> accessed 7 February 2019.

¹⁸⁷ The Hague Process on Refugees, 'The Hague process on refugees and migration' (2019) <http://thpmerit.unu.edu/migration_policy/> accessed 2 January 2019.

'[f]orced migration can be conflict-induced, caused by persecution, torture or other human rights violations, poverty, natural or manmade disasters (non-exhaustive listing). As repeatedly stated by UNHCR, the distinction between voluntary and forced migration continues to be of relevance. There remains a distinguishing element between that of an asylum and immigration policy and the persons they concern. Migration as a general phenomenon relates to a variety of situations engaging forced and voluntary decisions. Elements of choice and coercion can be overlapping, but in the case of refugees and other displaced¹⁸⁸ persons, compelling factors are decisive...'¹⁸⁹

Key components of the forced migration definition, such as conflict-induced migration, coercion, and 'persons they respectively concern', indicate Dahrendorfs' *Social Conflict Theory's* presence. The escalation of violence refers to what Dahrendorf outlines as 'conflict intensity'. In contrast, the cost of conflict can be quantified in loss of life, economies, and infrastructure within the power struggle of the have and have nots.¹⁹⁰ People escaping from fighting, persecution, armed conflicts (and religious conflicts) are social conflict indicators. However, the intensity and high degree of violence in the targeted Southeast Asia (Myanmar) and South Asia (Bangladesh) countries exemplify the constructs of *Social Conflict Theory*. Force migration and related conflict with the Rohingya groups has been a longstanding practice, 1784 through 2019 – refer to Figures 3 and 4.¹⁹¹ The history of this group, plus the aftermath of the UNHCR 2017 Rohingya-crisis, envelops the Rohingya as an ideal critical-case for the proffered legal framework of this study.

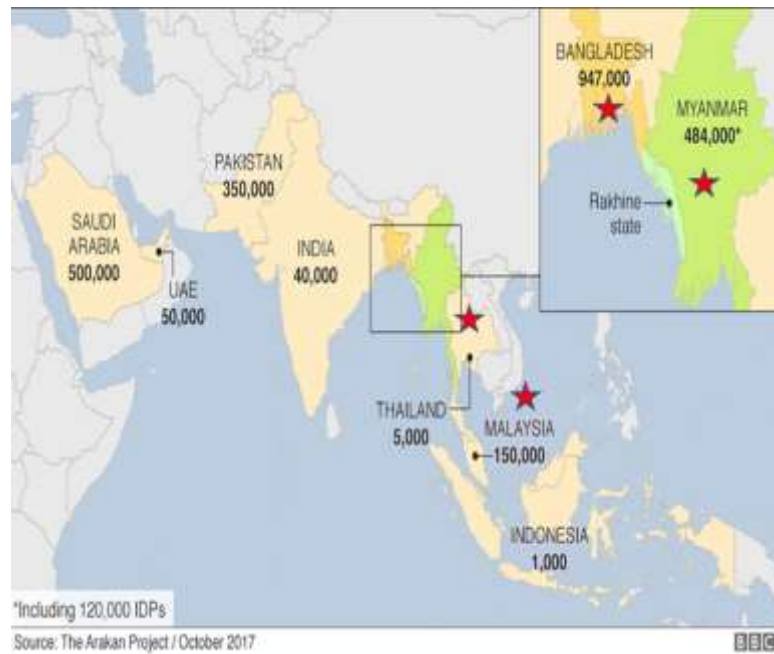
¹⁸⁸ *The New York Times*, 'Editorial, the tsunamis and child trafficking' (January 13, 2005).

¹⁸⁹ The Hague Process on Refugees and Migration, *People on the move: Handbook of selected terms and concepts* (The Hague/Paris: UNESCO Section on International Migration and Multicultural Policies 2008) 29.

¹⁹⁰ L Coser and others, 'Conflict and critical theories' in *The British Journal of Sociology* (Sept 1957) 197-207 <http://www.corwin.com/upm-data/13636_Chapter7.pdf> accessed 27 March 2019.

¹⁹¹ UNCRC, General comment 23, human rights of children in the context of international migration in countries of origin, transit, destination, and return (2017).

Figure 5. Maps of the Rohingya disbursed inside and outside of Myanmar as of October 2017; 2012-2015 (Spread of Rohingya inside and outside Myanmar)



HUMAN TRAFFICKING ROUTE FROM MYANMAR AND BANGLADESH TO THAILAND AND MALAYSIA, 2012-2015



Note, Figure 5: An estimated one million Rohingya are residing beyond Myanmar. Red stars represent the research targeted states, Bangladesh, and Myanmar. Statistically, the Rohingya are residing in the area as migrants or refugees with no legal status. The Rohingya have settled primarily in South and Southeast Asia and the Middle East region. Over the years, there was a mass exodus from Myanmar, India, Thailand, Southeast Asia (Myanmar), and South Asia (Bangladesh) region. From 1978, 1992, 2012-2013, and the primary exodus in 2017, the Rohingya were not protected as refugees in neighboring Bangladesh and Saudi Arabia, with substantive volumes in Malaysia, Thailand, India, and other locations. In addition to the steady flow of Rohingya refugees over several decades, several mass exoduses from Myanmar into Bangladesh have been brought. Beyond, including in 1978, 1992, and recently 2012-2013, and the 2017 Rohingya-crisis, many live-in poverties, often working illegally with no documentation, are vulnerable to discrimination, violence, arbitrary treatment, and exploitation. The research map source is the BBC, with a Creative Common License, used for educational purposes only, modified by T. Herring, using personal subscription of Microsoft Office PowerPoint Draw® and Paint 3D Software®.

Figure 6. Rohingya children and women begging for food at Cox's Bazaar, UNHCR



Figure 7. The plight of Rohingya people is described as the world's fastest-growing refugee crisis, UNHCR



Note, Figures 6 and 7. UNICEF/UN0213967/Sokol, Pictured here, Rohingya refugee children wade through flood waters surrounding their families' shelters following an intense pre-monsoon storm in Shamlapur makeshift settlement in Cox's Bazar district, Bangladesh, conditions violate, CRC Art 3, 6, 16, 22, and 24.¹⁹²

¹⁹² UN High Commissioner of Refugees, 'Myanmar Rohingya' <<https://unhcr.org>> accessed 31 Dec 2018; (UNHCR photographs, Creative Commons License, used within license provisions, credit cited, within fair-use guidelines, for educational purposes only).

Table 1. UN High Commissioner for Refugees Rohingya-crisis, '100-Days of Horror and Hope' Snapshot

2017 Dates	
25 August	Myanmar state media reports that 12 security officers have been killed by Rohingya insurgents. An Army crackdown in Rakhine state triggers an exodus of the stateless Muslim minority. Over the next four days, the number of refugees reaching Bangladesh on foot and by boat soars to several thousand.
29 August	UNHCR, the UN Refugee Agency, which has been working in Bangladesh for decades, pledges support and urges Dhaka to open borders as the numbers increase rapidly. UNHCR's existing aid operation for tens of thousands of refugees in camps in Cox's Bazar braces itself for a new massive influx.
5 September	UNHCR calls for "life-saving assistance" as the numbers reaching Bangladesh approach 125,000.
8 September	UNHCR warns that limited capacity at two existing refugee camps is exhausted as numbers reach 270,000. Bangladeshis and an earlier wave of refugees are at the forefront of the aid response, feeding, clothing and sheltering new arrivals as makeshift shelters mushroom on roadsides and available land.
12 September	As the first UNHCR emergency airlift lands, the number of new arrivals tops 370,000. After enduring persecution and extreme poverty in Myanmar, many are already malnourished before setting out on a week-long trek through the jungle under the monsoon rains. The old and sick are among the most vulnerable. Many are carried by relatives.
19 September	More than 415,000 refugees have trekked to southern Bangladesh, many struggling with rains and flooding along the way. The same day, UNHCR declares Bangladesh a major emergency to scale up its response, deploy more staff and resources. Amid fears of disease outbreaks in the sprawling informal settlements, it steps up the vaccine, clean water, and sanitation drives.
24 September	During a three-day visit to Bangladesh, UN Refugee chief Filippo Grandi calls for aid efforts to be "accelerated and sustained" to avert disaster.
24 - 28 September	At least 14 refugees, among them nine children, drown when a packed boat flips in the Bay of Bengal, as the number of new arrivals in Bangladesh tops half a million. In New York, UN Secretary-General António Guterres tells the Security Council the Rohingya refugee crisis is a "human rights nightmare."; Thousands of Rohingya have fled violence in Myanmar
9 October	As the outflow continues, UNHCR rushes relief supplies to the border areas amid reports on October 9 that an estimated 10,000 Rohingya refugees crossed into Bangladesh in just one day. Days later a "family count" gets underway in the informal settlements, to collect data on the size, particular needs, and location of the newly arrived. It aims to help flag those with special protection needs, such as single mothers with small infants, people with disabilities, or lone children and elderly refugees.
17 October	As the outflow continues, UNHCR rushes relief supplies to the border areas amid reports on October 9 that an estimated 10,000 Rohingya refugees crossed into Bangladesh in just one day. Days later a "family count" gets underway in the informal settlements, to collect data on the size, particular needs, and location of the newly arrived. It aims to help flag those with special protection needs, such as single mothers with small infants, people with disabilities, or lone children and elderly refugees.
24 October	UNHCR rushes relief supplies to the border areas amid reports on October 9 that an estimated 10,000 Rohingya refugees crossed into Bangladesh in just one day. Days later a "family count" gets underway in the informal settlements, to collect data on the size, particular needs, and location of the newly arrived. It aims to help flag those with special protection needs, such as single mothers with small infants, people with disabilities, or lone children and elderly refugees.
Early November	Thousands of Rohingya are stranded in Myanmar waiting to cross the Naf River to Bangladesh. Unable to pay for the crossing, a flotilla of 30 improvised rafts - made from bamboo poles and Jerry cans lashed together with rope - cross the river estuary to Bangladesh
17 November	As refugee numbers top 620,000, UNHCR welcomes reports of talks between Bangladesh and Myanmar
24 November	UN insists any returns "must be voluntary, and take place in safe and dignified conditions that ... meet international standards." During the week of the announcement, an average of 100 families – some 430 individuals – per day entered Bangladesh as the tragic crisis, unprecedented in the region in decades, continues
100 th day	In the 100 days to date, UNHCR has provided emergency aid including 93,000 tarpaulins for shelters, 178,000 blankets and 36,000 sets of kitchen utensils to refugees. It has provided access to water and latrines to over 100,000 people, and medical attention and counseling to nearly 60,000. Its family count has so far gathered data on 173,356 families, to better identify their vulnerabilities and meet their immediate needs going forward



Note, Table 1. The UNHCR, '100 days of horror and hope: A timeline of the Rohingya-crisis' (UNHCR, 5 Dec 2017)

<<https://reliefweb.int/report/bangladesh/100-days-horror-and-hope-timeline-rohingya-crisis>> accessed 31 December 2017; (Creative Commons license, a verbatim adaptation of public domain information reproduced in its entirety, cited, and used for educational purposes only, fair-use guidelines.)

e) Geographical Research Area: Bangladesh and Myanmar. International instruments underpinning prevention measures and protection mechanisms against child exploitation are not contingent upon nationality or legal status.¹⁹³ The Asia-Pacific Region stands singular across the globe in not having a regional human rights treaty or a regional human rights court, which is very different from other regions globally, such as the European, African, and Inter-American systems. Nonetheless, in many countries, unapologetic truthful situations exist where prevention measures and protection mechanisms hinge on nationality or legal status. States have received guidance from the Inter-American Court of Human Rights advisory opinion on the ‘Rights and guarantees of children in the context of immigration and/or in need of international protection, under the scope of States Responsibility Articles, citing article 3 where a States’ mandate...

‘consists, essentially, in the interpretation and application of the American Convention or other treaties for which it has jurisdiction, in order to determine... the international responsibility of the State under international law’.¹⁹⁴

This study examines the State obliged prevention measures and protection mechanisms against exploitation for children displaced across borders, regardless of nationality, in a region that has not ratified the Refugee or Stateless Conventions. The study opines that the states under examination still have an obligation to prevent and protect migrating children under other treaty obligations and international law. Centering on Bangladesh and Myanmar, located in South Asia and Southeast Asia, the Office of the High

¹⁹³ CRC, art 2, the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind.

¹⁹⁴ Inter-American Court of Human Rights, 19 August 2014, Advisory Opinion OC-21/14.

Commissioner for Refugees (UNHCR) operationally outlines the region of the globe as countries consisting of Bangladesh, Brunei, Burma, Cambodia, East Timor, Indonesia, Laos, Malaysia, Mongolia, Philippines, Singapore, Thailand, and Viet Nam as high trafficking areas depicted in Figure 8.¹⁹⁵ Ten countries in the Southeast Asian region, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam, formulate the Association of Southeast Asian Nations' ¹⁹⁶ (ASEAN) Charter.

The geographical positioning, proximity to international waters, and the alliance of these States with the ASEAN Charter's human trafficking guidance are critical to this research. An example can be found with the ASEAN Intergovernmental Commission on Human Rights (AICHR), wherein in 2009, the organization intervened and attempted a forward movement toward promoting human rights and protections.¹⁹⁷ Regardless of the AICHR's purpose and structure, the AICHR initially had no measures to hear human rights violations but relented to forming measures to address complaints via email, through an online portal, or in person. In each instance where the AICHR has been referenced, there is a direct referral to individual States' rights to non-conformity. Subsequently, the literature implies, and the reports appear to substantiate that the AICHR is a nominal structure. Further discourse on ASEAN and South Asia areas are

¹⁹⁵ UNHCR reference on definition of Southeast Asian region; Thant Myint-U, *The river of lost footsteps – histories of Burma*, (Farrar, Straus, and Giroux New York) 63.

¹⁹⁶ The Association of Southeast Asian Nations, or ASEAN, was established on 8 August 1967 <<http://www.asean.org/asean/about-asean>> accessed 14 October 2018.

¹⁹⁷ *ibid.*

noted in the Review of Literature, Chapter Two, and Chapter Three and four's analysis of State responsibility.

However, a brief overview of ASEAN entails explaining that the ASEAN charter was entered into force on 15 December 2008 and represented a legal and binding agreement with a host of norms, rules, and values for the ASEAN Community. The ASEAN Charter has a significant impact upon legal frameworks in the region, including the prevention measures and protection mechanisms against exploitation and safety of children displaced across borders. Each reviewed jurisdiction is comparatively examined for compliance.

Figure 8. Southeast Asia, South Asia, and Oceania Detailed Geographical and UNODC Trafficking Migration Maps, 1-3¹⁹⁸



Note, Figure 8, Map, 1. A detailed geographical map depicting surrounding bodies of water and the study's focus countries states Bangladesh (South Asia) and Myanmar (Southeast Asia).

¹⁹⁸ The Southeast Asia Maps 1, 2, and 3 are referenced throughout this research; Permission is granted to copy, distribute and/or modify this document under the terms of the GNU Free Documentation License and used for academic purposes only
https://upload.wikimedia.org/wikipedia/commons/thumb/f/fc/Southeast_asia.svg/406px-Southeast_asia.svg.png accessed 20 January 2019: Map of Southeast Asia, Copyright © 2019, UN Office on Drugs and Crime (UNODC). This publication may be reproduced in whole or in part and in any form for educational or non-profit purposes without special permission from the copyright holder, provided acknowledgement of the source is made. UNODC would appreciate receiving a copy of any publication that uses this publication as a source; UNODC has been notified of the publication and map picture used for educational purposes only.

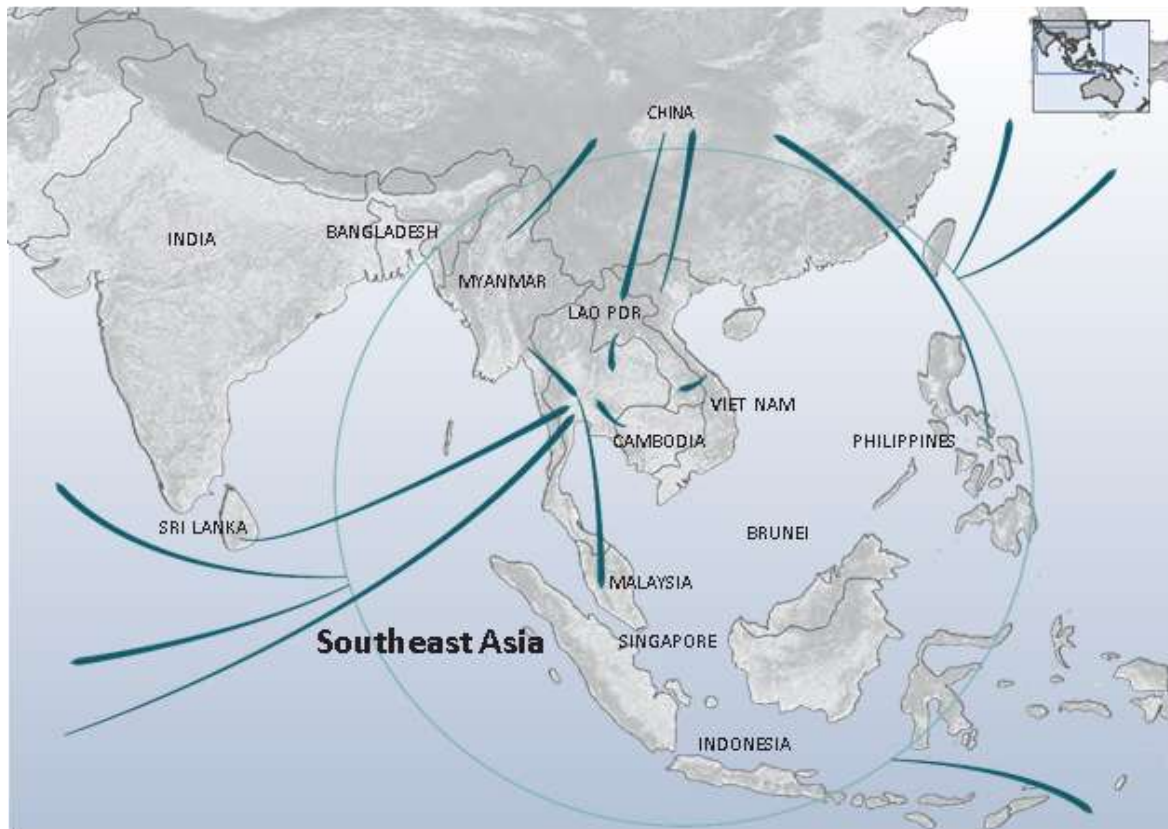


Figure 8, Map 2, Primary flows of trafficking in persons for sexual exploitation affecting Southeast Asia (areas circled in green). Flow arrows represent the general direction of trafficking and do not coincide with authentic sources, are not actual routes, or weighted for significance to scale; Map 2 of Southeast Asia, Copyright © 2019, UN Office on Drugs and Crime (UNODC). According to the UNODC, ‘This publication may be reproduced in whole or in part, and any form for educational or non-profit purposes without special permission from the copyright holder provided acknowledgment of the source is made. UNODC would appreciate receiving a copy of any publication that uses this publication as a source’; UNODC has been notified of the publication and map picture used for educational purposes only. In addition, the researcher conducted field research in LAO and Malaysia to obtain feedback from practitioners and advocates supporting children and their families in Australia, Viet Nam, Cambodia, Malaysia, Singapore, Indonesia, Thailand, and the Philippines attending a LawASIA conference 2019.

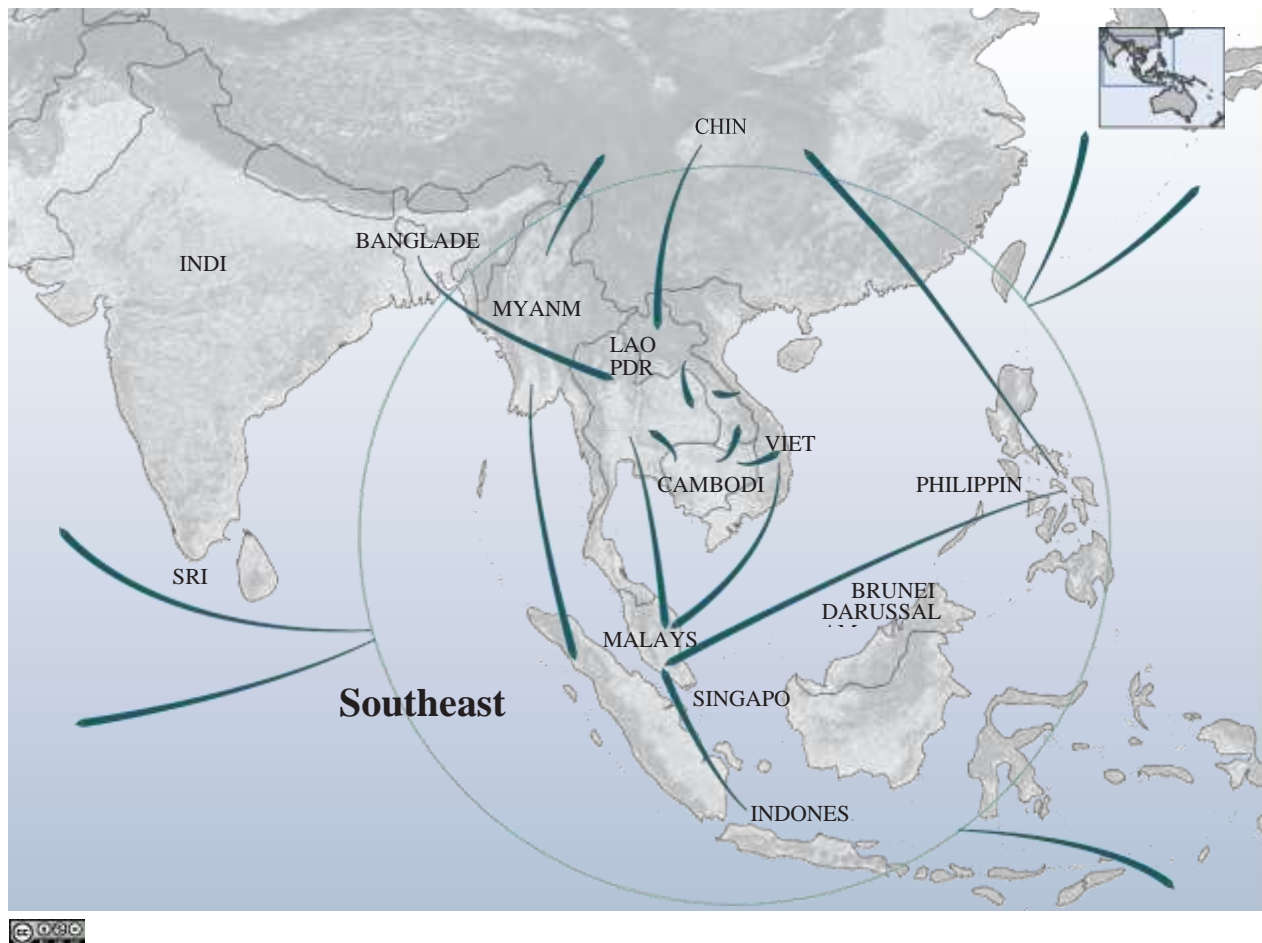


Figure 8, Map 3, Primary flows of trafficking in persons for forced labour affecting Southeast Asia (circled green area). The arrows represent the general direction of trafficking. The UNODC has reflected the arrow's probable routes for forced labour exploitation and does not coincide with authentic sources that are not actual routes. Therefore, the routes are not weighted for significance/scale. (Map of Southeast Asia, Copyright © 2019, UN Office on Drugs and Crime (UNODC)). 'This publication may be reproduced in whole or in part, and any form for educational or non-profit purposes without special permission from the copyright holder provided acknowledgment of the source is made. UNODC would appreciate receiving a copy of any publication that uses this publication as a source'; UNODC has been notified of the publication and map picture used for educational purposes only. In addition, the researcher conducted field research in LAO and Malaysia to obtain feedback from practitioners and advocates supporting children and their families in Australia, Viet Nam, Cambodia, Malaysia, Singapore, Indonesia, Thailand, the Philippines attending a LawAsia Conference.

f) Source, Transit, and the Destination States concerning the Refugee Convention and Stateless Conventions. Countries in the targeted regions have undergone continuous global scrutiny on their human rights practices. Multiple countries in the region are categorized as either a source, transit, destination State,¹⁹⁹ or a combination of all three for human trafficking.²⁰⁰ The State analysis includes factors that include the permeability of borders, push and pull factors of a source, transit, and destination State, and the outstanding legal obligations of transit countries.²⁰¹ Complex factors for child sex trafficking (CSF) include these unique ‘push’ and ‘pull’ factors that wrap around poverty, gender, and gender inequality, unemployment, and forced migration that hinder effective policy and advocacy responses. Despite the fluid movement (source, transit, and destination states) of the displaced and the regionally high-risk designation for human trafficking, neither Bangladesh nor Myanmar have ratified or acceded as a member state to the Refugee Convention or the Stateless Convention. However, discussed further within the text, each member-state to the UN Convention for the Rights of the Child has an obligation under art 3, the best-interest principle has an independent source of international protection.

¹⁹⁹ Palermo Trafficking Protocol, Preamble.

²⁰⁰ UNODC, ‘Promoting Cooperation among Source, Transit and Destination Countries in Response to Human Trafficking’ (UNODC 2019) <<https://www.unodc.org/centralasia/en/news/promoting-cooperation-among-source-transit-and-destination-countries-in-response-to-human-trafficking.html>> accessed 30 October 2019; John Mordeson, and others, ‘Human trafficking: Source, transit, destination designations’ (2019) 13[03] *New Mathematics and Natural Computations*’ <<https://doi.org/10.1142/S1793005717400063>> accessed 24 December 2019.

²⁰¹ Benjamin Perrin, ‘Just Passing Through? International Legal Obligations and Policies of Transit Countries in Combating Trafficking in Persons’, (2010) 7(1) *European Journal of Criminology*, 11–27 <[doi: 10.1177/1477370809347946](https://doi.org/10.1177/1477370809347946)> accessed 2 February 2019.

Therefore, the world looks to understand better and address displacement and the accompaniment of increased vulnerability to exploitation. A step forward to clarity is gained from defining the term 'refugee', which according to art 1A (2) of the 1951 Refugee Convention,

'shall apply to any person who: ... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country...' ²⁰²

The text continues by stating, '... and requires international protection as a substitute for the protection of his or her country of origin.' ²⁰³ A discourse amongst commentators is that the 1951 definition is an inept legal framework for the 21st century. Critical legal scholars suggest that the modern-day context of massive irregular migration, natural and manmade disasters, armed and unarmed conflicts, and political environment render the Convention incompatible with the era it was drafted.

The 2015 Institute of Human Rights and Peace Studies in Thailand's ²⁰⁴ research on the ASEAN context indicates a divisive and highly contentious point that appears to revolve around issues of protection and responsibility, among others. In the interim, Southeast Asia remains under heavy critical scrutiny by world leaders, who cite that only Cambodia, East Timor, and the Philippines have ratified or acceded to the 1951 Refugee

²⁰² Article 1A (2), Convention Relating to the Status of Refugees, 28 July 1951, UN, Treaty Series, vol. 189, p 137, adopted by the General Assembly of the UN on 14 Dec 1950, entry into force 22 April 1954.

²⁰³ *ibid.*

²⁰⁴ S Petchaaramesree, 'ASEAN and its approach to forced migration issues' (2016) 20[2] The International Journal of Human Rights 173, 190 <<https://doi.org/10.1080/13642987.2015.1079021>> accessed 14 October 2018.

Convention.²⁰⁵ Despite the viewpoints on the 1951 Convention's limitations or attributes, a look back to art 31(1), 32 of the Vienna Convention on the Law of Treaties cannot be ignored. The Vienna Convention asks for a '**good faith**' interpretation of the Convention according to the '**ordinary meaning**.'²⁰⁶ Consequently, the ordinary meaning can be viewed as providing extensive latitude for applicability that can transcend periods.

Conversely, since the 1951 Refugee Convention was drafted in the aftermath of World War II, current issues surrounding political, religious, and ethnic instability have such a high degree of variance. As a result, many countries in South Asia and Southeast Asia research corridor remain non-members.²⁰⁷ A similar stance can be derived about the 1954 Stateless Convention being equally archaic. The contention points hinge on key elements that render it not fit for purpose. The lack of ratifications indicates a vote of no-confidence by many Southeast Asia (Myanmar) and South Asia (Bangladesh) countries. Noteworthy, art 1(1) of the 1954 Stateless Convention serves as the authoritative definition for a stateless person stating, '... the "stateless person" means 'a person who is not considered a national by *any* State under the operation of its law'.²⁰⁸ Thus, the Convention constrains a States' ability to establish reservations to art 1(1), creating a binding definition.

²⁰⁵ B Dewansyah and I Handayani, 'Law and policy related to refugee in Indonesia, Malaysia and Thailand' (CEJISS 12.4 2018), 473-485

<https://www.academia.edu/38056443/Reconciling_Refugee_Protection_and_Sovereignty_in_ASEAN_Member_States_Law_and_Policy_Related_to_Refugee_in_Indonesia_Malaysia_and_Thailand> 20 February 2019.

²⁰⁶ UN, *Vienna Convention on the Law of Treaties*, 23 May 1969, UN, Treaty Series, vol 1155, p 331.

²⁰⁷ C Berg, 'The UN 1951 Convention Relating to the Status of Refugees is not fit for purpose' (ABC News 18 Oct 2011) <<https://abc.net.au/news/2011-10-19/berg-why-are-we-clinging-to-an-outdated-refugee-convention/3577538>> accessed 15 October 2018.

²⁰⁸ Article 1(1), 1954 Stateless Convention.

In Southeast Asia, the Philippines has been the sole ratifying country to the 1954 Stateless Convention. From a legal perspective, the researcher has surmised that a line of reasoning could be made that **art 1(1) is the persuasive point of contention** for non-ratification from Bangladesh, Myanmar, and each of the other Southeast Asian and South Asia non-member states except for the Philippines. Notwithstanding any absence of clarity of whether a stateless person is a refugee or non-refugee, the 1954 Convention relating to the Status of Stateless Persons provides definitive oversight by stating in the Preface,

‘The Office of the UN High Commissioner for Refugees holds a mandate to assist stateless refugees was established on 1 January 1951. Since the 1954 Convention and the 1961 Convention on the Reduction of Statelessness entered into force, a series of General Assembly Resolutions and Conclusions adopted by the Executive Committee of the High Commissioner’s Programme have given UNHCR a leadership role in assisting non-refugee stateless persons as a distinct population of concern...’²⁰⁹

The above section appears to define the oversight of protections clearly. However, the next follow-on section of the text can be further construed to identify limitations, boundaries and be construed as ambiguous to those protections...

‘... Considering that only those stateless persons who are also refugees are covered by the Convention Relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention.’

Prominent stateless scholar Peter van Krieken attempts to add clarity to the issue of protections in his writings for the UN High Commissioner for Refugees by explaining,

‘There are refugees and stateless persons. Some stateless persons are refugees, and some refugees are stateless. They all lack proper protection. Often, stateless persons can be considered as refugees, as they might have “a well-founded ‘fear

²⁰⁹ 1954 Convention relating to the Status of Stateless Persons, para 2, pg 4.

of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and are unwilling or unable to avail themselves of the protection of... the country of habitual residence".²¹⁰

In the absence of a universal definition, refugee, asylum seeker, trafficked person, and smuggled migrant are often confused. In other categories, the OHCHR defines an 'international migrant' as

'any person outside a State of which he or she is a citizen or national, or in the case of a stateless person, his or her State of birth or habitual resident'.²¹¹

Regardless of the umbrella term, children displaced across borders in Bangladesh and Myanmar are not recognized as stateless people or refugees under international definitions.

However, an alternative argument to the regions' rejection of the Stateless and Refugee Conventions, presented in this study, is grounded in *Social Conflict Theory*. The study avers the regional challenges are the epitome of *Social Conflict Theory's* definition, whereas social conflict has a strong basis in power and the unequal distribution of scarce resources.²¹² Weber identified those resources as class, status, and power.²¹³ In Bangladesh and Myanmar, regional reports support the concept that influences originate with the different structures of inequality, power, and restriction of freedoms.²¹⁴ Across

²¹⁰ P Van Krieken, 'The High Commissioner for Refugees and Stateless Persons' (1979) 26 Netherlands International Law Review 24-36 <<https://doi.org/10.1017/S0165070X00017666>> accessed 12 October 2018.

²¹¹ Office of the United States Nations High Commissioner for Human Rights, A/HRC/31/35, para 8; OCHR, 'Recommended Principles and Guidelines on Human Rights at International Borders' (2014) 4; see Situations of migrants in transit.

²¹² L Coser and others, 'Conflict and critical theories' in *Theory Cumulation and Schools of Thought*, 1st ed. [online] <http://www.corwin.com/upm-data/13636_Chapter7.pdf> accessed 27 March 2019.

²¹³ *ibid.*

²¹⁴ S Cook and J Pincus, 'Poverty, inequality and social protection in Southeast Asia' (2014) 31[1] Journal of Southeast Asian Economies, 1, 17 <[http://www.unrisd.org/80256B42004CCC77/\(httpInfoFiles\)/DEE34124C03E9646C1257CC9002CD47A/\\$file/Journal%20SEAE%20SC%20JP.pdf](http://www.unrisd.org/80256B42004CCC77/(httpInfoFiles)/DEE34124C03E9646C1257CC9002CD47A/$file/Journal%20SEAE%20SC%20JP.pdf)> accessed 2 December 2019.

each State, the Rohingya are marginalized as an inferior race with violence and trafficking at sea in Thailand and Malaysia, forced to live in the shanty, dilapidated shelters with no to limited sanitary conditions in Bangladesh.²¹⁵ Dahrendorf's theoretical claim indicates that capitalism has shifted dramatically since Marx initially developed his perspective on class conflict. Instead, Dahrendorf now describes capitalism as a diverse and intense class structure with multiple systems of power relations that have the propensity to erupt into violence forming – 'the command class versus the obey class'.²¹⁶

Inevitably, the question arises as to who are these children? According to the UN High Commissioner for Refugees, these displaced children are primarily from marginalized²¹⁷ and disadvantaged groups.²¹⁸ These children are enthralled in forced migration, over land and sea, refugee encampments, detention centers, and struggling for survival under dire inhumane living conditions.²¹⁹ The 1979 International Convention on Maritime Search and Rescue²²⁰ mandates that state parties 'assist distressed persons at sea,

²¹⁵ Human Rights Council of the UN, 42nd session, 9-27 September 2019, agenda item 4, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, accessed 2 November 2019; Equal rights trust in partnership with the Institute of Human Rights and Peace Studies, Mahidol University, 'Equal in name only: The human rights of stateless Rohingya in Thailand' (London 2014) <www.equalrightstrust.org> accessed 3 January 2019.

²¹⁶ J Tittenbrun, 'Ralph Dahrendorf's conflict theory of social differentiation and elite theory' (2013) 6[3] Innovative Issues and Approaches in Social Sciences 122 <https://www.researchgate.net/publication/270621430_ralph_dahrendorf_s_conflict_theory_of_social_differentiation_and_elite_theory> accessed 25 February 2019.

²¹⁷ UN Sustainability Goals, 'Marginalized populations: Treatment of people' (Charter for Compassion 2018) <<https://charterforcompassion.org/charter-tool-box-a-framework-for-getting-started/marginalized-populations-treatment-of-people>> accessed 12 January 2018.

²¹⁸ Audrey Chapman and Benjamin Carbonetti, 'Human rights protections for vulnerable and disadvantaged groups: The contributions of the UN Covenant of Economic Social and Cultural Rights' (2011) 33[3] Human Rights Quarterly 682, 732 <<https://www.jstor.org/stable/23015998>> accessed 23 December 2017; UN, 'Report of the world summit for social development' (Copenhagen, 6-12 March 1995) para 25(i), 66 <<http://www.un.org/documents/ga/conf166/aconf166-9.htm>> accessed 21 November 2017.

²¹⁹ UNCHR, 'Detained and dehumanized' Report on human rights abuses against migrants' (UNHCR 13 December 2016) <http://www.ohchr.org/documents/countries/LY/DetainedandDehumanised_en.pdf> accessed 9 November 2018.

²²⁰ International Maritime Organization (IMO), International Convention on Maritime Search and Rescue, 27 April 1979, 1403, UNTS.

regardless of nationality, legal status, circumstances, and provide medical attention and delivery to a safe location’.

On the contrary, in May 2015, appeals from the UN High Commissioner went unheeded for Indonesia and Thailand to provide refuge to men, women, and children abandoned by traffickers in the Malacca Strait with little food or water.²²¹ The report indicates that a boat filled with almost a thousand Rohingya migrants drifted between Thailand and Malaysia. Officials also noted the vessels were adrift in waters off the coast of Thailand, in the Andaman Sea, the Bay of Bengal, and the Strait of Malacca along the mainland of Indonesia and Malaysia. The report acknowledged that 1,600 were rescued, but approximately 6,000 were left stranded at sea (see Table 1).²²²

Land and sea scenarios place children displaced across borders in high vulnerability²²³ status to multiple forms²²⁴ of exploitation. Primarily, sexual abuse is referenced as the *commercial sexual exploitation of children (CSEC)*²²⁵ (refer to Figures 6 and 7). A 2017 UN report reflects that a child displaced across borders, especially infants, toddlers, and

²²¹ J Queally, ‘Refugee crisis mounts in Southeast Asia as ‘Stateless’ people turned back to sea’ (Common Dreams 14 May 2015) <<http://www.commondreams.org/news/2015/05/14/refugee-crisis-mounts-south-east-asia-stateless-people-turned-back-at-sea>> accessed 28 October 2018.

²²² K Schuetze, ‘Southeast Asia: Immediately step up to rescue thousands at grave risk at sea’ (Amnesty International 13 May 2015) <<https://www.amnesty.org/en/press-releases/2015/05/south-east-asia-immediately-step-up-efforts-to-rescue-thousands-at-grave-risk-at-sea-1/>> accessed 29 October 2017.

²²³ CRC General comment 14; adds further clarity to member States as it explains that a child in a specific situation of vulnerability.

²²⁴ Noted under the multiple forms of exploitation that is often inherent with displaced families.

²²⁵ CSEC is not legally defined by USA federal statute or case law. However, several USA federal criminal provisions can be applied to conduct that falls within this definition of CSEC, including 18 U.S.C. §§ 1591, 2251, and 2423(c).

adolescents, both girls and boys, are key trafficking targets for child sexual abuse (CSA),²²⁶ where exploitation leaves grave life-long outcomes.²²⁷

²²⁶ WHO, 'Guidelines for medico legal care for victims of sexual violence' (Geneva: World Health Organization 2004) <<http://whqlibdoc.who.int/publications/2004/924154628x.pdf>> accessed 9 November 2018.

²²⁷ UNICEF, 'A future stolen: Young and out-of-school' (UNICEF September 2018) <http://www.unicef.org/eapsites/unicef.org.eap/files/2018-09/young_and_out-of-school.pdf> accessed 9 November 2018.

8. Need for the Study

The criminal act of human trafficking is difficult to detect. It is often referred to as the 'plain sight' crime.²²⁸ One of the most substantive challenges in developing targeted counter-trafficking responses is the multiple variations in perpetrating the crime. The need for an enhanced, improved international reply to ongoing human trafficking and the eradication commitment is indicated by the inclusion prominently within the targets of the 'UN Sustainable Development Goals (SDGs), the Global Compact for Safe, Orderly, and Regular Migration (GCM),'²²⁹ and the ever-increasing human trafficking statistics.²²⁹

The vast majority of exploitation literature approaches the human trafficking phenomenon either from a criminal law 'or' a human rights framework with dialog focusing on statistics, social implications, or the restatement of situational events.

The principal researcher's examination of the literature for this study is outlined in the Review of the Literature in the Rapid Evidence Assessment (REA) format²³⁰ in Chapter two of this study. Notwithstanding, the summative literature assessment is an exhaustive review of resources covering over two decades of peer-reviewed studies, journal articles, government technical texts, and books. The abundance of works encompasses non-remarkable strategies and reiterates the international or domestic laws

²²⁸ UNODC, 'DOHA declaration: Promoting a culture of lawfulness' – Hidden in Plain Sight (UNODC 2012) <https://www.unodc.org/e4j/data/_university_uni_/hidden_in_plain_sight_a_general_overview_of_the_human_trafficking_issue.html?lng=en> accessed 22 December 2017.

²²⁹ UNODC, 'UNODC Research and Trends Analysis Branch' (UNODC 2016); Multiple Systems Estimation for estimating the number of victims of human trafficking across the world. Research Brief; Sustainable Development Indicator 16.2.2: 'Number of victims of human Trafficking per 100,000 population, by sex, age group and form of exploitation' (E/CN.3/2016/2/Rev1); UNODC, 'Monitoring Goal 16.2 – UN Sustainability Goals...' (UNODC 2017) <http://www.unodc.org/documents/research/UNODC-DNR_research_brief_web.pdf> accessed 2 October 2019.

²³⁰ REA, refer to Chapter 2 and Appendix 2.

on child human trafficking and exploitation. The section also includes the background of the international research instruments. Inclusive is the study's theories and principles that further differentiate this study's aim from the current body of literature.

The REA outcomes reflect the repetition of international law requirements. Still, omission of the vital role of the UN Transnational Convention against Organized Crime in addressing trafficking impacts prevention, protection, and mitigation. Aside from the international law requirements reiterations, the REA outcomes indicate that each literature examined lacked generalizable or formidable approaches to addressing child human trafficking prevention measures and protection mechanisms as an intervention. Comparably, there is minimal exploitation literature that includes a non-descriptive but critical analysis of State responsibility for targeted groups of vulnerable populations, such as children displaced across borders or the stateless — refugee and non-refugee. Hence, there were limited notations of the variation in punishment of perpetrators for child trafficking. For instance, according to the UN Office on Drugs and Crime's reports for the disparity in punishment, globally, there are other examples provided:

's5 of the Prevention of Trafficking in Persons Act 2009, Uganda, in which the maximal punishment is death; article 388(3) of the Serbian Criminal Law which prescribes a minimal sentence of 5 years for trafficking in minors, whereas the sentence for trafficking adults is between 3 and 12 years; section 377A(b) of the Israeli Criminal Law which prescribes a maximal sentence of 20 years for trafficking in minors compared to 16 years for trafficking adults'.²³¹

The study investigates if the same type of disproportion in punishment may exist in the targeted research states and the respective regions of South Asia and Southeast Asia; and,

²³¹ UNODC, Case Digest (UNODC 2017) 80 < https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf > accessed 21 December 2018.

if so, why? The REA examination affirms the study's position affirms that there is no peer-reviewed literature promoting the **implementation of legal empowerment tools embedded within the law. Also, there is no existing modified legal framework for the prevention, protection, and mitigation of stateless children within the existing body of child human trafficking literature.** Whereas embedded legal empowerment, within the law, is situated within the law-related civic activities in the structure or form of 'legal literacy initiatives, community legal services, and community legal education'.²³² An excerpt from **Wintersteiger's description of Public Legal Education** touches on the critical wholistic role of legal education and its preventative nature in society as a —

'preventive focus and seeks to avoid unnecessary legal disputes or escalating conflicts...' and 'traditional legal and advice services fail to reach the vast majority of people who have legal problems'.²³³

In contrast to the existing body of child human trafficking, exploitation, and State responsibility literature, **this study shifts to fill the void with intervention and solution-focused socio-legal scholarship responding to the unique needs of children displaced across borders.** The study unfolds in segments that respond to the research aim and 3-tier objectives identified in the study context.

²³² Sharon Collard and others, *Public legal education framework* (University of Bristol 2011); Sharon Collard and others, 'Public Legal Education Evaluation Framework' 2011 University of Bristol Personal Finance Resource Centre, Bristol <<http://www.bristol.ac.uk/media-library/sites/geography/migrated/documents/pfrc1201.pdf>> accessed 23 March 2019.

²³³ L Wintersteiger, *Legal needs, legal capability, and the role of public legal education* (The Foundation for Public Legal Education 2016) 6, 32; Solicitor General's Committee on Public Legal Education, 'A ten-year vision for public legal education' (LawWorks, 31 October 2018), <<https://www.lawworks.org.uk/sites/default/files/files/10YearVisionForPLE-web.pdf>> accessed 30 October 2018.

Part II. Research and Design (also, refer to Appendix I)

1. Empirical Legal Research - Methodology

a) Design and Method. Works by Henn clarify the distinction between ‘method’ and ‘methodology’.²³⁴ Consequently, this section outlines the methodology applied to the research strategy as a whole, including diagrams, charts, and explanatory narratives in Appendix 2, Methodology, and qualitative questionnaire in Appendix 3. The doctrinal analysis of research is a dominant legal method in the common law. The traditional framework has been tracing legal precedent and legislative interpretation. However, socio-legal research combines ‘law’ and ‘society’ as an academic discipline. As in this study, the researcher sought evidence-based solutions through research from both the law and society.

Webley, Cane, and Kritzer opine that Empirical Legal Research²³⁵ (ELR) covers all major fields of law, including the socio-legal, international, and domestic laws of this study.²³⁶ According to the Socio-Legal Studies Association (SLSA), socio-legal research encompasses many different methods. Its interdisciplinary process analyzes the law, the legal phenomenon, and societal relationships to form a mixed-methods design.²³⁷

²³⁴ M Henn and others, *A critical introduction to social research* (Sage Publication 2006) 10.

²³⁵ L Webley, ‘Qualitative approaches to empirical legal research’ in Peter Cane and Herbert M Kritzer (eds), *The Oxford handbook of empirical legal research* (Oxford University Press 2010).

²³⁶ P Cane and H Kritzer (eds), *The Oxford handbook of empirical legal research* (Oxford University Press 2010) 2; F Leeuw and H Schmeets, *Empirical legal research, A guidance book for lawyers, legislators and regulators* (Oxford Press 2012) 6; M Heise, ‘The past, present, and future of empirical legal scholarship: Judicial decision making and the new empiricism’ (2002) *University of Illinois Law Review* 819 <<https://www.illinoislawreview.org/wp-content/ilr-content/articles/2002/4/Heise.pdf>> accessed 22 November 2019.

²³⁷ Socio-Legal Association Center <<http://www.slsa.ac.uk/>> accessed 12 August 2017; R Cotterrell, ‘Why must legal ideas be interpreted sociologically?’ (1998) 25(2) *Journal of Law & Society* 171, 192; D Harris, ‘The development of socio-legal studies in the United Kingdom’ (1983) 2 *Legal Studies* 315, 333 <<https://doi.org/10.1111/j.1748-121X.1983.tb00427.x>> accessed 20 November 2018.

Literature from the *Oxford Centre for Socio-Legal Studies* conveys that socio-legal researchers increasingly acknowledge the necessity to employ a wide array of methods. The scope extends to researching, studying law, and various legal phenomena under examination. Researchers further express the need to be informed by understanding debates about theory and methods in mainstream social science.

As socio-legal research, this study's engagement of Yin's Protocol, Stage 2, Design connects to Stage 5, the Analysis detailed in Appendix 1. The study undertook a library-based theoretical work. The work includes doctrinal and sociological research coupled with field research that promotes the analysis of empirical and real-world approaches to evidence-based practices, using a series of tools, scholarly principles, and resources to support the empirical outcomes.²³⁸

b) Qualitative Survey and Analysis. The research context provides societal decisions on preventing, protecting, and mitigating child human trafficking in the Southeast Asia (Myanmar) and South Asia (Bangladesh) region. Applying qualitative questionnaire methods includes creating and constructing data within the scope of establishing a process to grasp the practitioner's views. For this study, the questionnaire was formulated by capturing the essence of the study's central research question, sub-research questions, and objectives. A series of methods were used. First, the study employed on-site field research in and around the regions of the representative countries. Second, the research entailed examining a series of items, places, and people. For

²³⁸ AD De Groot, *Methodologies* (Mouton 1966) 42; A Bryant and K Charmaz (eds). *The SAGE handbook of grounded theory* (London: Sage 2007); C Charmaz, *Constructing grounded theory: A practical guide through qualitative analysis* (London 2007).

example, the investigation includes assessing legal reports, observing legal actions in courtrooms, or advocacy sessions, participating in focus groups, symposiums, practitioner action research, virtually collaborating with practitioners and advocates from or in association with the study's targeted regions and countries, Southeast Asia (Myanmar) and South Asia (Bangladesh), refer to Appendix 3.

The following two paragraphs provide a synopsis of the face-to-face survey process using the questionnaire as an instrument and the action-research:

- i. **Participant Questionnaire (Self-Report).** To formulate a self-report data-collection for practitioners of this study, the central research question and sub-research questions were the drivers to capture the type of focus that render:
 - (a) experiences, attitudes, opinions, and
 - (b) knowledge of child human trafficking and exploitation in the region.²³⁹
 - (c) The questionnaire served as a specific tool or instrument for the face-to-face survey modality conducted with the Malaysian Bar Council, Continuing Education, CPD Code: T3/12042019/BC194143/2.²⁴⁰ The 'who' response sampling was established by the career titles of invitees to the Bar Council continuing education workshop. The bar council invitee list established a more substantial sampling and representation of the research population focus, the practitioner (court practitioners, advocacy agencies, government

²³⁹ B Johnson and L Christensen, *Educational research: Quantitative, qualitative, and mixed approaches* (Sage 2012) 57, 161-243; A Fink, *The survey kit* (Sage Publications 2003); Ethics approval documents – refer to Appendix 3.

²⁴⁰ Refer to Appendix 3, copy of 'Identifying and Responding to Human Trafficking and Multiple Forms of Exploitation' Malaysian Bar Council, Circular No. 0xx/2019, dated 27 February 2019 provided.

officials, medical professionals, university, and community leaders), Refer to Appendix 3).

(d) Derived from the 15 principles of questionnaire²⁴¹ construction modeling in Appendix 3 but includes a series of closed-end questions and a set of response options for participants to select. The researcher used closed-end questions to confine well-defined variables to easily convert analysis to a visual descriptor of the categories and responses.²⁴² Collectively, identifying the target population and each item's wording consists of straightforward steps within the construction process. In addition, the face-to-face survey modality enhanced the choice of response format, as the Plickers® (electronic tool), equipped with a multi-faceted quick response code – 'QR code',²⁴³

ii. **Practitioner action research.** Action research used within the context of this study is foundationally based upon conducting, investigating, and evaluating practice.²⁴⁴ The 'plan, act, observe, reflect,' and revising framework allowed the development of an approach where the researcher and target research populations could collaborate in identifying the focal problem and potential solutions in a

²⁴¹ J McNiff and J Whitehead, *All you need to know about action research* (London: Sage 2006); E Wetzel and S Greiff. 'The world beyond rating scales: Why we should think more carefully about the response format in questionnaires' (2018) 34(1) *European Journal of Psychological Assessment* 1-5 <<https://doi.org/10.1027/1015-5759/a000469>> accessed 23 May 2019.

²⁴² N Schwarz. 'Self-reports: How the questions shape the answers' 54 *American Psychologist* 93-105 <<https://doi.org/10.1037/0003-066X.54.2.93>> accessed 22 May 2019.

²⁴³ Refer to Appendix 3 and/or review the following researcher formulated PowerPoint to assess survey participants using Plickers tools: <https://1drv.ms/p/s!Ajteu7FxUf1Mg-8dRWPsgOOYxmbxaQ?e=LV4kzd>

²⁴⁴ Steve Bartlett and Diana Burton. 'Practitioner research or descriptions of classroom practice? A discussion of teachers investigating their classrooms' (2006) 14(3) *Educational Action Research*, 395-405 <[doi: 10.1080/09650790600847735](https://doi.org/10.1080/09650790600847735)> accessed 30 June 2019.

conference, symposium, and field-work research environments.²⁴⁵ Issues of migration, children displaced across borders as stateless, refugees, or non-refugee are global socio-legal issues discussed among practitioners, academics, and government officials. Noting that the vulnerable population focus are children, stateless, refugee and non-refugee, across multiple geographies. Therefore, some of the views from practitioners may not include a direct experience in working with the Rohingya stateless, refugee and non-refugee, child. Evidence of social situations varies geographically, including implementing iterations of international law and judicial responses that distinguish actions by courts and practitioners. The application of action research in this study was viewed in-situ on how the quality of prevention, protection, and mitigation actions could be improved. These actions coincide with authors Cohen, Manion, and Morris, who describe action research as a 'powerful tool for change and improvement at a local level'.²⁴⁶

Action research is integrated throughout varying facets of the study as a systematic and collaborative process of collecting evidence, posturing, and probing problems in an effort aimed at problem-solving that are symbolic of the seminal works of Carr and Kemmis.²⁴⁷ Kemmis and McTaggart's 2000 work is indicative of spiralling or action research traditions. Variations of the author's

²⁴⁵ Researcher action research engagement of child-trafficking of stateless children in conference, symposium, and field-work research environments in Europe, Southeast Asia, Oceania, and North America.

²⁴⁶ L Cohen and others, *Research methods in education* (6th ed, London: Routledge 2006).

²⁴⁷ W Carr and S Kemmis. *Becoming critical: Education, knowledge and action research* (Routledge Falmer 1986).

traditions are captured in this study. Examples of interviews, field observations, and practitioner reflections explicitly focus on child human trafficking, forced migration, statelessness (refugee and non-refugee), and child rights. The researcher's action research identifies that these practices are commonly found in Australia, Canada, England, Hungary, Ireland (UK), Laos, Malaysia, the Netherlands, Russia, Scotland (UK), Serbia, Sweden, Switzerland, Thailand, the United States of America, and Wales (UK).²⁴⁸

c) Doctrinal Approach. Salter and Mason describe doctrinal research as 'a detailed and highly technical commentary upon, and systematic exposition of, the context of legal doctrine'.²⁴⁹ In contrast, authors Hutchinson and Duncan's 2012 writings illustrate doctrinal research as a 'library-based' research configuration to address a legal problem or inquiry.²⁵⁰ Each chapter of this research integrates 'doctrinal' or 'black letter law' methodology, principles, and practices. Meaning, the researcher has analysed the legal rules under the relevant international and domestic law instruments, their logical connections, probative values, or disjunctions by examining the cases, interpretation, and respective jurist literature.

d) Toulmin's Model of Analysis. The study applies Toulmin's Model²⁵¹ of analysis as a critical component of the replicability of the research, refer to Figure 9. The model follows

²⁴⁸ S Kemmis and R McTaggart, 'Participatory action research' in N K Denzin & Y S Lincoln (eds) *Handbook of qualitative research* (2nd ed., pp. 567-607) (Sage 2000).

²⁴⁹ M Salter and J Mason, *Writing law dissertations: An introduction and guide to the conduct of legal research* (Pearson 2007) 31.

²⁵⁰ T Hutchinson and N Duncan, 'Defining and describing what we do: Doctrinal legal research' (2012) 1[17] Deakin Law Review 212-213 <<https://ojs.deakin.edu.au/index.php/dlr/article/view/70/75>> accessed 18 April 2018.

²⁵¹ ET Feteris. 'Toulmin's argumentation model' in *Fundamentals of legal argumentation* (Argumentation Library, Springer, Dordrecht 2017); the model is used in Case C-388/01 The Commission of European Communities versus The Italian Republic, Case C-224/97 Ciola [1999] ECR I-2517, paragraph 14, Case C-281/98 Angonese [2000] ECR I-4139, paragraph 41, Case C-3/88 Commission v Italy [1989] ECR 4035 - Case C-224/97 Ciola [1999] ECR I-2517 - Case C-281/98 Angonese [2000] ECR I-4139.

a scholarly principle for applying legal reasoning, argumentation, comparative investigation and achieves 'the interpretative study of a specified issue' identified in the study's central and sub-research questions.²⁵² Employing the model allows the principal investigator to yield a body of evidence that creates a burden-of-proof shift across sides on the issues under examination. Within the context of this research, the argument model presents a chain link of evidence from the premise, research claim, to the research conclusion of the argument.²⁵³ Moreover, the argument models further enhance replicability.

The Toulmin Model of Argumentation,²⁵⁴ named after Stephen Toulmin, incorporates an argumentation process that provides an organizational structure for the persuasive and critical analysis of doctrinal and socio-legal evidence (Refer to Figure 9). The researcher has set epistemic objectives with a structure to produce determinations of fact that are as accurate as possible; in turn, the argument presented is warranted by the most legally available evidence.

Toulmin's method involves several relevant components established to weigh and balance research evidence with the arguments presented in the study:

- 1) *Fact and policy-based claims* or the premise is supported by the evidence presented by the principal investigator.

²⁵² I Parker, 'Qualitative research' in Peter Banister, Erica Burman, Ian Parker, Maye Taylor, Carol Tindall (eds), *Qualitative methods in Psychology: A research guide* (OU 1994) 2.

²⁵³ D Hitchcock and B Verheij (eds), *Arguing on the Toulmin Model* (Springer 2006); DN Walton, *Argument schemes for resumptive reasoning* (2001) 15 *Argumentation* 365–379 <<https://doi.org/10.1023/A:10120210178361996>> accessed 12 August 2017.

²⁵⁴ ET Feteris, 'Toulmin's argumentation model' in *Fundamentals of Legal Argumentation* (Argumentation Library, Springer, Dordrecht 2017); D Hitchcock and B Verheij (eds.) *Arguing on the Toulmin Model* (New Essays in Argument Analysis and Evaluation, Springer: Dordrecht 2006).

2) The granules of the argument identify the investigator's reasons for the legal position assumed. This posture includes the evidentiary support²⁵⁵ of the study's legal argument.

3) The *warrant* serves as the chain of reasoning and connects the study's evidential support with the rationale to the fact or research-based claim. The study purports three types of warrants. First, the study uses the *authority warrants* (legal reports augmented by human rights organizations) to connect the authoritative laws supporting the fact and research-based claims. Next, the study utilizes the *analogy warrant* (similarly situated children in legal reports and evidentiary reports from books, government reports, and data texts). The connection is derived from analogies of relevant and similar situations, legal or policy precedents, or events, such as those found in the State legal reports and official UN reports. Thirdly, the *causality warrant's* role links the evidence to the 'causative' factor or the claim's result. Within the context of the study, *Social Conflict Theory's* constructs are identified as the likelihood of the dotted line to the root cause for the violence against the Rohingya children and similarly situated children. In instances where the failure to comply with a State obligation or organs of the State fails to follow policy or rules results in the human trafficking situation, the study argumentation is included as a causality warrant.

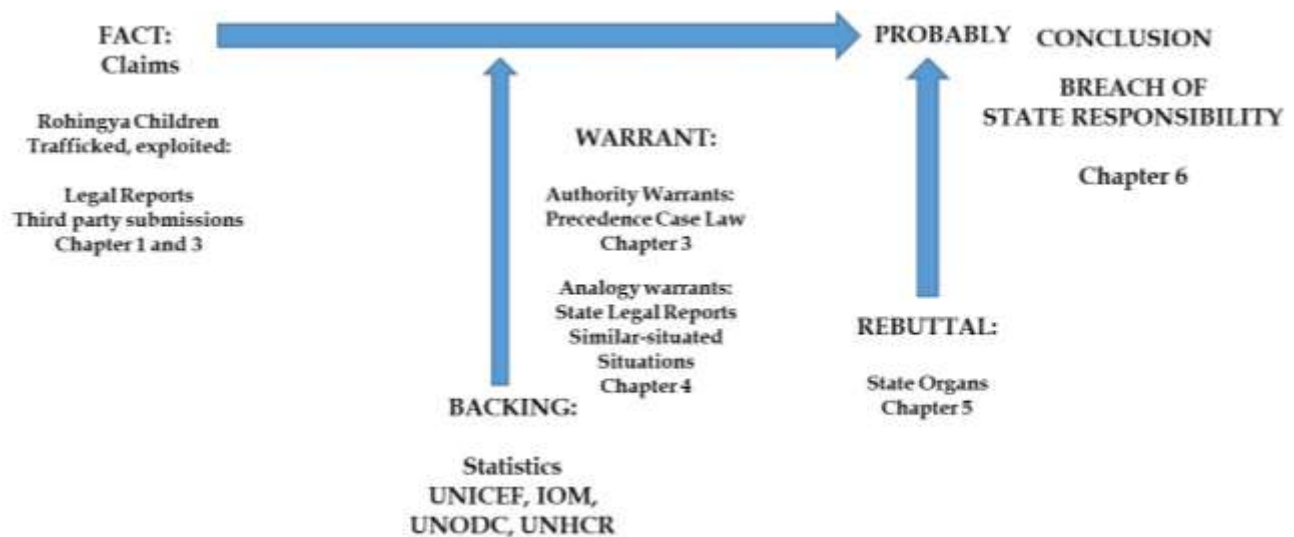
4) The *backing* (for example, UNICEF, IOM, UNODC, UNHCR sources) is represented by the inclusion of statistical data, quotations, formal report numbers, or other data texts to substantiate the warrant further.

5) The *counterargument* raises prospective objections to fact or research claims or likely rebuttals that may mitigate the principal research investigators' claims (other research articles). The reasoning is presented beforehand to suggest a flaw or weakness in the defense. Instances of this may include where there may be a discussion for 'excuses' for State obligation.

6) The *qualifier* segment of the argument model is established to limit the strength of counter-arguments of the claim. Each segment of Toulmin's Argumentation Model and its adaptation to the study is depicted in Figure 9.

²⁵⁵ Table 2, Research Evidence Matrix.

Figure 9. Toulmin's Argument Model



Note: Figure 9, an original graphic representation by T. Herring, author, uses privately licensed MS Office Suite software.

Each chain of the argument model addresses the central research questions and sub-questions using the codified State Articles of Responsibility for the targeted Southeast Asia (Myanmar) and South Asia (Bangladesh) states and its linkage to legal empowerment for forced employment displaced stateless Rohingya children. The analytical process includes interpreting case law where the authority of precedent varies significantly by State, wherein a judgment, verdict, or advisory opinion of a treaty is considered less weighted than a decision based upon established principles or general principles.²⁵⁶ The *compromise*,²⁵⁷ or the specific reference to international law, guides the

²⁵⁶ J Crawford and others (eds), *The law of international responsibility – Oxford commentaries on international law* (Oxford University Press 2010) 40.

²⁵⁷ *Compromise*: A formal agreement between nations submitting a dispute to arbitration and defining the terms of the submission, the powers of the tribunal to serve as arbitrator, and the procedure to be followed.

interpretation using the reasoning quality, the precedent character, the court's authority, and the specificity of the dispute.²⁵⁸

e) Tobin Criteria of Interpretation. The application of an interpretation approach allows the researcher to analyse the meanings and implications critically. Deciphering the applicable monistic or dualism model of implementation into domestic law allows the application of general legal doctrine contrasted with the *Tobin Criteria*.²⁵⁹ Usage of the Tobin Criteria allows an interpretation of underpinning rules and their domestic implementation applied in Chapter Four's State four-part criterion:

- a. 'the conceptualization of the issues before the court,
- b. the procedures to be adopted to determine these issues,
- c. the meaning to be given to the content of the rights in question, and
- d. the substantive reasoning by which to resolve the issues and balance the competing interest'.²⁶⁰

Carter and Burke's seminal text provides guidance on legal reasoning that suggests when a judge delivers a persuasive decision, and their position coincides with the *case facts*. Usually, there is a link between case facts, *societal views*, and the backgrounds of those facts.²⁶¹ Each of these connections touches on the shared *moral* foundation of societal

²⁵⁸ Crawford (n 256).

²⁵⁹ J Tobin, 'Judging the judges: Are they adopting the rights approach in matters involving children' (2009) 33[2] Melbourne University Law Review 579 <classic.austlii.edu.au/journals/MelbULawRw/2009/20.html> accessed 3 March 2018.

²⁶⁰ *ibid*.

²⁶¹ J Savelsberg and L Cleveland, Law and Society, 'Law and society' (Oxford Bibliographies Online 2017) <<https://www.oxfordbibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0113.xml>> accessed 28 March 2019.

expectations for the rules of law.²⁶² Human trafficking treads deep into those societal values.²⁶³ It is well-documented in literature that trafficking-in-persons is a global and local problem. Human trafficking case facts encapsulate some of the most horrific and evil elements that man can inflict.

By examining the study's research of whether a breach of the examined State's treaty obligations occurred, the rule of law will settle upon the quality of the legal reasoning. The ensuing process suggests that the rule of law requires that comparable cases render parallel decisions, bearing in mind that each case judgment is based on its own merits. Hence, this analysis relies upon the precedent-setting case decision-making process and the traditional compliance with the rules of procedure and evidence.

The process prompts transparency and shifting subjective preference toward an objective logic found in Toulmin's Model²⁶⁴ of argumentation used in this research. The model suggests that an argument written in this manner unfolds to convey both the argument's strengths and limitations. Therefore, as a research-based argument, one pretext should not pretend to be stronger than another. The intent is to arrive as close to the most 'realistic and feasible' solution as possible.

The study's 'data' leads to 'Claims with qualifiers or warrants'. The structure aligns with Yin's Case Study Protocol and the application of the thesis' theories, principles form an enthymeme, or conditional syllogism '(one clause presenting a reason or evidence) leads

²⁶² LH Carter and TF Burke, *Reason in Law* (Chicago Press 2010) 92.

²⁶³ J Hagopian, 'Global Human Trafficking, a Modern Form of Slavery' (Global Research 2015) <<https://www.globalresearch.ca/global-human-trafficking-a-modern-form-of-slavery/5377853>> retrieved 4 April 2019.

²⁶⁴ ET Feteris, 'Toulmin's argumentation model' in *Fundamentals of legal argumentation* (Argumentation Library, Springer, Dordrecht 2017).

to (another clause presenting an argument)':²⁶⁵ legal empowerment, vulnerability, and Social Conflict Theory. For example, if 'A', the concepts of Social Conflict Theory are actual, then 'B' its presence in Bangladesh and Myanmar are actual. Therefore, an essential means of achieving the rule of law is articulating and evaluating the various elements of legal reasoning. The reasoning involved includes interpreting constitutions, statutes, and regulations during balancing fundamental principles and policies. Subsequently, the reasoning includes adopting and modifying legal rules, applying those rules to cases, evaluating evidence, and making ultimate legal research decisions.

A review of the study's case research provides a review of gaps found in the adoption of rules and the misapplication of statutes (breaches of treaty obligations that may occur through both commission and omission). Thus, the research outcome seeks to provide a legal framework with the capacity to mitigate gaps in prevention, protection, and the prosecution of perpetrators who pursue forced displaced and vulnerable children for human trafficking and exploitation. The analysis employs an iterative, repetitive, structured method across each jurisdiction to either affirm or reject the research hypothesis. At the same time, the analysis seeks to respond to the central research question and the three sub-questions by employing each prong of the investigative analysis.

²⁶⁵ *ibid.*

2. Study Limitations

The study scope has limitations. The research does seek to achieve a comprehensive treatment of children's rights law, as it is embodied in targeted conventions and their respective articles: the UN Convention on the Rights of the Child, its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and, children's rights within the context of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Trafficking Protocol), supplemented by the UN Convention against Transnational Organized Crime (the Palermo Convention). Therefore, use of these instruments may not be proportional to their global purview. Yet, an examination of these instruments is made in contrast and response to the central research question and sub-research questions for this study.

The research takes, foremost, a technical legal perspective with the sociological components to present the most notable scholarship, case law, and transdisciplinary examination in the interpretation and provisions within the focal research states and jurisdictions. The research text sources, and questionnaire feedback are all limited in scope to English only. Sources from other languages, unless already translated into English, are omitted. The application of practitioner's action-research allows the researcher to include feedback questionnaire outcomes from regional area practitioners who may or may not have worked directly with the Rohingya child. However, these practitioners have supported the similarly situated stateless, refugee or non-refugee,

trafficked child directly, or indirectly with an array of services in other geographies. However, it does not include direct interviews from government officials or actual child trafficking victims, except in areas noted (refer to Appendix 3 and Table 2, evidence 3 and 4). Further, it is essential to note that practitioners cannot be seen as representing the child's voice – but are representing the children at times without having worked directly with them. All case studies within the research context are from actual trafficking victims and derived from UN public access data, international, and national court records. The appropriate human subject research provisions were implemented. Subsequently, due to the protected status of children and victims, their direct voice is lacking. Some of the content and context may have been lost in translation and editing.

Nonetheless, the victim stories included in this report are meant to be illustrative and serve as evidentiary resources. In keeping with the UNSC's increased focus on the elements of transitional justice and the rule of law in conflict and post-conflict societies. This research further facilitates truth-telling²⁶⁶ by reiterating the stories that characterize many – though not all – forms of human trafficking. Each fact-finding story is based on real experiences, and the victims' names have been changed as a result. The photographs and stories are from UN agencies where declarations have been posted to reflect the appropriate permissions and ethics guidelines to research human subjects.²⁶⁷

²⁶⁶ UN, 'Final report: ECPS taskforce for development of comprehensive rule of law strategies for peace operations' (UN and the Rule of Law, DPKO 2002) <www.un.org/ruleoflaw/blog/document/final-report-ecps-taskforce-for-development-of-comprehensive-rule-of-law-strategies-for-peace-operations/> accessed 31 December 2019.

²⁶⁷ UN Development Programmes (UNDP), 'Code of ethics' (UNDP 2017) <<https://www.undp.org/content/dam/undp/library/corporate/ethics/UND>> accessed 28 Nov 2018.

This research does not include procedural and remedial issues arising from State Responsibility, such as the exhaustion of local remedies or defense, which in texts refer to as the ‘circumstances precluding wrongfulness’.²⁶⁸ Not included or investigated in the study is the State Responsibility Articles’ text that outlines attribution.²⁶⁹ Attribution is inclusive of the causal connection between the injury, consent (art 20), self-defense (art 21), an excuse or defense through force majeure (art 23), distress (art 24), state of necessity (art 25), counter measures (arts 49-52), and consequence. Each of the articles mentioned above is beyond the parameters and scope of this research. Though some of the research evidence presented may encompass the *serious* breaches of obligations under peremptory norms—*jus cogens*, compelling law—of general international law, an analysis of Chapter three’s category of a breach is beyond the scope of this research’.²⁷⁰

There is a multitude of other international instruments that address statelessness, refugees, and non-refugees, as well as indigenous groups. This research is confined to an in-depth examination of the specified articles from the following main instruments that focus on the study’s central and sub-research questions: arts 1-4, 7-8, 11, 21, 32, 34-36, the UN Convention on the Rights of the Child and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Optional Protocol to the Convention on the Rights of the Child on a

²⁶⁸ *International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts*, (ARSIWA) Reports of the International Law Commission Report, 53rd session, UN Doc 1/56/10, August 2001, s 4 (‘ILC’s Articles on State Responsibility’).

²⁶⁹ The degrees of control for both grounds of attribution are different between them, and they also differ depending on the case law examined, with different control tests advanced by the ICJ, the ICTY and the ECtHR; The European Court of Human Rights (hereafter, ECtHR) has advanced its own test, which lowers even more the threshold required for the attribution of State responsibility.

²⁷⁰ ITLOS, Advisory Opinion, 2 April 2015, para 144.

Communications Procedure, and arts 1-17, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplemented by the UN Convention against Transnational Organized Crime (the Palermo Convention). The research discusses other instruments²⁷¹ that may coincide within the context of the legal argument. However, the focus remains solely on the Palermo Convention, Palermo Trafficking Protocol, and the Convention on the Rights of the Child instruments, including the CRC Committee General comments (GC).

The study excludes any research on policies, procedures for States or international organizations process for the determination, classifications, or approval of refoulment, asylum, or refugee status. Any reference to asylum or refugee status is constrained to the context of how a child is categorized under these titles. For example, a child classified as a stateless, refugee, or non-refugee receives prevention or protection measures against trafficking and exploitation from the States' obligations and policies as investigated in this study.

The research variables' legal empowerment, deterrence, redress, vulnerability, and *Social Conflict Theory* have multiple dimensions and contexts. However, the study limits the investigation of these concepts to the application and behaviors within the scope of child human trafficking and exploitation under Dahrendorf. They are further constrained to the application of the study's focal international instruments. The study has a fluid flow from Chapter one through Chapter six. Each chapter can serve as a stand-alone on the

²⁷¹ The International Covenant on Civil and Political Rights (ICCPR) prohibits several practices directly related to trafficking, including slavery, the slave trade, servitude and forced labour.

topic. Subsequently, some chapters reiterate vital concepts and issues to balance with critical concepts and issues of follow-on texts. Wherever needed, cross-references have been provided, such as charts, tables, and figures that align with other chapters in the study provided within the text and Appendices 1-5. Despite the parameters of this research, the study's totality is a crucial benefit for anti-trafficking organizations, practitioners, academics, policy, and lawmakers.²⁷²

Theories. The study recognizes that the theories applied within the context of this study have an extensive breadth and depth across the respective discipline. Thus, for example, Social Conflict Theory and the Deterrence Theories are constrained to this study's theorists cited and scope.

Other Limitations Noted.

1) **Geographic Scope.** The focal states of the research include South Asia (Bangladesh) and Southeast Asia (Myanmar). The research references conflict and post-conflict societies and repeatedly identify similar-situated geographies. If there are no similarities, the situation is non-applicable to other states in the region or across the world. Note, researcher is a US citizen completing her thesis in a UK University and whilst she has visited some of the region in focus here, she has not lived or experienced the social and cultural context of the region at length. Her perspective and socio-legal analysis is by necessity influenced by her experiences. A longer discussion of positionality has been included in Appendix 1.

²⁷² Refer to Appendix 1 and 3, and Practitioners' action-research, see fn 282.

2) **Conflict and post-conflict societies.** References to conflict and post-conflict societies align with those that may have been international or domestic and civil, as referenced in the study's footnotes 58 and 1388. In addition, the references align with 2004, United Nations Security Council, Report of the Secretary-General on justice and the rule of law. The documents contrast justice and the rule of law in conflict and post-conflict societies, such as post-conflict interventions with Cambodia (1992) and East Timor (1999) [see footnote 678, 1401]; ASEAN's role in mediating Cambodia-Vietnam and the Cambodia-Thailand conflicts; Myanmar's Rohingya crisis, the multiple conflicts in the Philippines ranging from pre-900s to contemporary 1986-to-present; and the Brunei Revolt (1962) and the Indonesia-Malaysia confrontation (1963-66).

3) **UN Agencies as a research resource.** This research relied extensively on United Nations agencies' reports, investigative methods - processes, and the intergovernmental role of maintaining international peace and security. However, there are views that contest the nature and role of United Nations' agencies, the validity of its research and outcomes. Concerns are expressed that the United Nations' agencies reports do not accurately reflect socioeconomic and cultural representations of the international community it serves. To further acknowledge the limitations of the United Nations resources, reports and publications refer to Appendix 2.

CHAPTER 2

CHAPTER 2

Part I - Review of the Literature (The Rapid Evidence Assessment – REA) refer to Appendix 2

1. REA, Introduction Overview

The researcher developed a strategy for searching extant literature, defined a set of study selection criteria, and crafted a scheme for documenting and analysing selected studies. Given the considerable volume of human trafficking literature, the review of literature exercises the Rapid Evidence Assessment (REA) process, often referred to simply as the *Rapid Review*. For further detail, refer to Appendix 2. The review of the literature transitions the research to Stages 1-3, design, prepare, and purpose, and bridges the research into Stage 4, data collection and analytical Stage 5 of Yin's critical-case study protocol detailed in Appendix 1. Segmented into two parts, both sections fulfill vital roles within the context of the study. One section captures the rapid evidence assessment with prescriptive data inclusive/exclusion diagrams and indexed data analysis (Weight-of-Evidence, WOE), Appendix 2. The second section provides a literature review background and overviews on the study's international instruments, principles, and theories.

The review of the literature utilizes the study's central research question to identify the association between the focal points of the study and the existing literature, further outlined in Appendix 2. The literature inclusion criteria are represented by data-texts covering the international cross-border trafficking of children who have been displaced

across borders. Excluded from the review of literature are readings from in-state composite crimes against children.²⁷³

The study's role for independent variables is to function as the cause and predictors of the research outcomes. Subsequently, the intervening variables represent the study's primary international instruments:

- 1) State responsibilities under the International Law Commission (ILC) Articles on Responsibility of States for International Wrongful Acts, 2001,²⁷⁴
- 2) The UN Convention on the Rights of the Child (CRC) and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC), Optional Protocol to the Convention on a Communications Procedure (OPIC), and
- 3) The Palermo Trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.²⁷⁵

Bangladesh and Myanmar are also the study's intervening variables impacting the independent and dependent variables. Connecting, the segments of the review of the literature are the effect and consequence variables:

- 1) prevent, protect, mitigate (deterrence strategies) human trafficking and exploitation,
- 2) forced displaced, stateless children,
- 3) legal empowerment, deterrence, redress, and
- 4) Social Conflict Theory

²⁷³ Refer to Appendix 2, Methodology for details on inclusion and exclusion criteria.

²⁷⁴ Refer to the Vienna Convention on the Law of Treaties.

²⁷⁵ Adopted and opened for signature, ratification, and accession by General Assembly resolution 55/25 of 15 November 2000.

2. REA Layout and Structure

The initial component of the literature review conveys a portrait of the body of research embracing child human trafficking. The researcher examines the literary views of over seventy seminal authors (refer to Appendix 1 and 2) to assist in drawing a perspective on the root causes of the challenges with preventions, protections, and vulnerability to child human trafficking. The analysis conveys a narratological scenario of the standard approach to battling human trafficking and sets this research apart from the rest. This section of the review of the literature responds to the sociological aspect of this study and adjoins the study of the law.

To analyse the identified studies and develop a taxonomy, the REA focuses on the research variables, relevant laws for this study, the origin, and the conceptual views of the legal scholars, practitioners, and Rapporteurs. Appendix 3 provides legal practitioners, scholars, and community leaders real-world insight aligned with the central research question and sub-research questions. After capturing the concept of the literature presented, the reader can decide to either affirm or disprove the posture of this study.

The study's author opines a research gap exists in international criminal law and international human rights frameworks on forced displaced and stateless child human trafficking interventions. The current literature suggests that the mainstream human trafficking experts assert that the countless quantity of trafficking is children and women. However, the phenomenon has minimal systematic and reliable data available beyond

quantitative recollections of statistics, recounting of horrific events, and restating of a limited application of international human trafficking law. Subsequently, the understanding of the criminal law and human rights approach has been constrained, specifically related to children — both boys and girls, and their trafficking trajectories. In the aftermath, literature gaps have been instrumental in the inadequate comprehension of the *modus operandi* of traffickers and their networks; the lack of evaluation research on the effectiveness of governmental anti-trafficking policies and the efficacy, among other gaps in the current state of knowledge about child human trafficking and any structured deterrence strategy. Thus, the rapid evidence assessment substantiates the author's posture of an extensive hole in researching child human trafficking's prevention measures and protection mechanism frameworks. However, this study's proffered socio-legal framework fills that gap and brings forth seldom or never used empowerment tools embedded within the law. (Refer to Case Study Protocol, Appendix 1).

3. Review of the Literature, Synthesis

This review of the literature emphasizes the increasing body of research focusing on the unlawful acts of child human trafficking or trafficking in persons and the violence against children while in a migrating status. The Convention on the Rights of the Child refers to these children as ‘children in vulnerable situations.’²⁷⁶ The Rapid Evidence Assessment (refer to Appendix 2) disclosed that multiple legal scholars, practitioners, and civil society organizations have a role in addressing human trafficking. Further, these groups have not developed a uniform or systematic methodology for collecting human trafficking data from various victim categories or data. As a result, human trafficking appears to continue a path of siloed examination with broken connectors between the criminal acts, the various victims across a global arena, the perpetrators, and the authorities charged with preventing and protecting.

The REA revealed an overt focus on women and the female child as sexual exploitation victims. Still, too few studies or research address the broader forms of exploitation, such as organ exploitation. As a result, the investigation of bonded labour and domestic servitude of children has been neglected. In recent years, the anti-trafficking discourse has emphasized the need to investigate the demand side of human trafficking that may link to demands for cheap labour or subversive economies. As identified in art 1(a) in the definition of Trafficking-in-Persons, organ exploitation is an uncomfortable truth and growing component of trafficking that is

²⁷⁶ CRC Committee, Joint General comment 4 and 23 on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, para 37; CRC Committee, GC 6: Treatment of unaccompanied and separated children outside their country of origin, para 81.

not prominently or minimally represented in the literature. This study does address organ exploitation and how children are the primary victims of this child-specific exploitation.

Many of the articles, papers, and books in the research focused on reporting descriptive summaries on the horrific events of human trafficking with a broad-brush approach toward identifying the various classifications and demographics of the victims. Statistics reported in government, non-government, and private organizations are extremely non-specific with formal reports indicating public and estimated figures to surmise the number of victims. Moreover, many statistical reports appeared to make significant assumptions that the statistical data immediately correlates to the causation of trafficking situations. In some instances, the researcher concluded that the statistics might have underestimated or biased the actual value. For example, statistical reports produced by government and non-government organizations often excluded quantitative background data to justify statistical conclusions, the type of measurement instruments employed, and most importantly, research authorization for vulnerable populations.

Unlike other crimes, human trafficking redress is complex. For example, property and finance crimes are usually based upon precise statistics, using complex computer data and systems input, and victims have clear redress rights with laws that have stiff penalties for violations. In contrast, human trafficking penalties and law enforcement is grossly lacking. Often, research of literature and in situ shows that the horrific crime of human trafficking is ambiguous in areas. The research of studies for this review of

the literature shows that the studies are too short in research duration, lack an interdisciplinary approach, and the research or studies are not distributed across areas of on-the-ground types of research. Still, the studies can be viewed as abstract in context.

It was noticeable, within the studies, the hyper-discussion on indigenous populations and their vulnerability to human trafficking, but any descriptive or prescriptive resolve was mute. Again, human trafficking issues were discussed abstractly or theoretically in these texts without correlation to solutions or focus on demographic groups. For example, human trafficking is inclusive of identifying child-specific trafficking of children displaced across borders. In many instances, it appears that research on human trafficking never reaches the intended practitioners or advocates. Or, in other situations, as demonstrated in the review of the literature for this study, there are no suggestions on how to utilize the law, services, and networks from the monism and dualism implementation of international law into national law. Instead, frequently found, there are mere listings of the international law or resources, but exclusion of indicators on how to apply or use either. In summary, the bulk of the literature is the remnant of iteration of the laws with no application guidelines.

The existing research's focal audience is governmental and non-governmental practitioners, legal, academic, and advocates at all levels. The study also seeks to provide processes and information on guiding access to embedded laws to empower populations vulnerable to human trafficking.

4. Definition of human trafficking and variants. The authoritative definition of human trafficking is identified in the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.²⁷⁷ However, article 3(a) still has a substantial variation in the elements of the crime. This distinction is investigated in Myanmar and Bangladesh within the scope of this research.

Since 15 November 2000, the Palermo Convention and its supplemental Protocols were adopted and opened for signature, ratification, and accession by the General Assembly resolution 55/25. The convention has been touted as the global paradigm shift in how the world views and addresses human trafficking. Yet, countless literature suggests there is still much confusion on optimizing the law in various states and regions, namely, Southeast Asia. Today, crime is still a point of confusion and contention among law enforcement officials across regions. Moreover, output reports still confuse human trafficking with the separate and distinct definition of smuggling. Works by Ezilo²⁷⁸ and Gallagher,²⁷⁹ among others, are foundational supporters of the Palermo Trafficking Protocol. Both Gallagher and Ezilo's roles as the UN Special Rapporteur on Trafficking in Persons, especially Women and Children, positioned them to champion the transition of the international law from its predecessor, the 1949

²⁷⁷ Adopted and opened for signature, ratification, and accession by General Assembly resolution 55/25 of 15 November 2000.

²⁷⁸ JN Ezeilo, 'Achievements of the Trafficking Protocol: Perspectives from the former UN Special Rapporteur on Trafficking in Persons' (2015) 4 Anti-Trafficking Review 141, 149, <<http://www.antitraffickingreview.org>> accessed 23 July 2018.

²⁷⁹ A Gallagher, *The international law of human trafficking* (Cambridge; New York: Cambridge University Press 2012); refer to Appendix 2, Table 6 in this study.

adoption by the General Assembly of the 'Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others'.²⁸⁰ Both Rapporteurs aver that the older international law was narrowly focused and did not provide adequate protection to areas currently embraced by the 2000 rendition. Other legal scholars have concurred that the 2000 Palermo Trafficking Protocol represents a 'comprehensive approach' to trafficking-in-persons leading States toward solid practices that provide prevention measures and protection mechanisms for all victims. The Palermo Trafficking Protocol's international law structural focus presses forward a global consolidated and collective action for human rights. Ezeilo laments the adoption and adaptation of the Palermo Trafficking Protocol's provisions address the multitude of vulnerability factors associated with at-risk populations and emphasize children's needs.²⁸¹

In contention, other legal scholars, practitioners, Yoo and Jensen's work on Bangladesh, Heissler's migratory studies, and Rafferty's work on human trafficking and child abuse regard the international law as lacking in victim support 21st century.²⁸² Yes, the current Palermo Trafficking Protocol provides, under art 4, an array of applications to reinforce the protection of victims of trafficking in person offenses. Article 4 is coupled with art 9 (1) (b), which addresses revictimization. Thus,

²⁸⁰ UNGA, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 2 December 1949, A/RES/317.

²⁸¹ J N Ezeilo, 'Report of the Special Rapporteur on trafficking in persons, especially women and children', A/HRC/10/16, submitted to the fourth session of the Human Rights Council in 2009; J N Ezeilo, 'Mandate of the Special Rapporteur on trafficking in persons, especially women and children', submitted to the 10th Session (HRC) in 2009, 25, 26.

²⁸² Refer to Appendix 2, Table 6 of this study.

one can conclude that addressing the victim's needs is incorporated with the Palermo Trafficking Protocol. However, authors Anette Brunovskis and Guri Tyldum highlight gaps in methods and application principles that draw upon social and societal challenges with victims of human trafficking.²⁸³ Echoes of these concerns can also be found in Denise Brennan's writings that convey the concerns from a host of field research experiences.²⁸⁴ Although this study's geographical focus lies within Southeast Asia (Myanmar) and South Asia (Bangladesh) region, similar challenges of addressing the needs of victims are abundant in writings from different regions. For example, a series of texts authored by E Gozdzia and E Collett from North America aligns with similarities from Latin America and the Caribbean Region writings by Laura Langberg that indicate gaps in victim support. Similarly, interchangeable discourse from advocates in the Middle East by authors Giuseppe Calandruccio and Aderanti Adepoji, from the sub-Saharan African Regions, unanimously express inadequate prevention, and protections for victims, both adult and children.²⁸⁵ Yet, across each of these authors, none made any suggestions, recommendations, or proffers for a revised legal framework, domestic or international, that includes legal empowerment. Instead, the nucleus of these studies appears to reinforce inadequacies in the Palermo Trafficking Protocol victim support

²⁸³ G Tyldum and A Brunovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking* 17, 34; refer to Appendix 2, Table 6 of this study.

²⁸⁴ Refer to Appendix 2, Table 6 and works by Denise Brennan' *Methodological Challenges in Research with Trafficked Persons: Tales from the Field* 34, 35.

²⁸⁵ Refer to Appendix 2, Table 6 and the writings by K M Perry and L McEwing, 'How do social determinants affect human trafficking in Southeast Asia, and what can we do about it? A systematic review' <<https://www.jstor.org/stable/pdf/healhumarigh.15.2.138.pdf>> accessed 30 November 2019.

specificities, the minimal focus on children, and the literature can be best described as descriptive of the elements of the Palermo Trafficking Protocol.

5. Victim needs to go unaddressed. Relatedly, in Southeast Asia, authors AKM Masud Ali, June JH Lee, and contributions from Farquet, Heikki Matilla, and Frank Laczko summarize the perils of victims that remain unaddressed under the current construct of the Palermo Trafficking Protocol. Collectively, the authors discuss issues with the existing research. Instances include the omission of latitudinal studies and cited sample populations that are too small. Other key issues include too small sample populations and minimal discussion focused on children, specifically disadvantaged or marginalized children from indigenous groups. Across the literature, discussion around the geographical areas of Southeast Asia arose. In each instance, there was a recitation of the same problem-focused research and the need to ratify the Stateless and Refugee Conventions in the regions.

Nicola Piper opens the debate on problem-focused research in her writings entitled, 'A Problem by a Different Name?'. Piper expresses concern about the repetition of the same issues and concerns about victims and how the terminology was expressed in the Palermo Convention almost twenty years ago, now has evolved into an extensive host of the societal problem with varying labels suited to the regional cultures.²⁸⁶ Nevertheless, none of the authors' focus centers on children or stateless children in refugee or non-refugee status. None focus on the case study group, the Rohingya, the

²⁸⁶ N Piper, *A Problem by a Different Name? A Review of Research on Trafficking in South-East Asia and Oceania* (Systematic Review) 203-233.

application and combination of stateless children using the UNTOC, OPSC, and the OPIC collectively to prevent, protect, and mitigate child human trafficking and exploitation. No other literature found proffered a manual or electronic application legal framework.

Nonetheless, research by Bump, Duncan, Gozdzia, and MacDonnell speaks specifically to children's issues of safety, rights, protections, vulnerability, and how their needs as victims of trafficking differ significantly.²⁸⁷ Their writings shift the literature to serving victims, meeting the child victim at their point of need, and speaking directly to their needs as individuals versus abstract victims. At the 'Second Conference on Identifying and Serving Child Victims of Trafficking', the research makes a galvanizing forward movement toward addressing child needs by demographic and differentiates the male child and the female child. The text notes the unique needs of the child's culture and recognizes both genders' susceptibility to human trafficking. This team's literary works can be compared to Mariska van der Linden and Beate Andrees' studies on human trafficking beyond sexual and open the doors from a labor market perspective as expressed by Lars Thomann's posture on compliance with international labour standards.²⁸⁸ The two authors approach human trafficking from the 'International Labor Organization' (ILO)'s positioning on market trends and how specific labor markets have developed more prone to human

²⁸⁷ Refer to Appendix 2, Table 6 of this study.

²⁸⁸ B Andrees and M NJ van der Linden, 'Designing trafficking research from a labour market perspective: The ILO experience' (Systematic Review) 55, 73; Lars Thomann, *Steps to compliance with international labour standards – The international labour organization (ILO) and the abolition of forced labour*. (VS Research 2011) 23.

trafficking. The labor market focal point is very well-received, considering the broad scope of human trafficking.

K Chen, Kneebone, and Debeljiak²⁸⁹ have published writings in books, journals, and literature review formats focusing on Southeast Asia's sexual exploitation²⁹⁰ troubles. Their research articles were highlighted in the review of literature and synthesis because the work delves into a range of exploitation issues across Southeast Asia and Oceania. The author's work includes the definitional issues of the Palermo Convention, but not so much with the Palermo Trafficking Protocol, where the primary researcher has contentions with the narrow scope of these articles. The problems lay within the scope of actual quantification, policymaker, and law enforcement issues. Their research also appears to include interviews, statistical data, and several quantitative and qualitative methods. More importantly, the writings from Chen, Kneebone, and Debeljak include a focus on migration, the challenges that have arisen from migration, and how variations in international and domestic laws adversely impact the combat against human trafficking. A section specifically dedicated to children and how diverting efforts to prevention could likely shift the current posture of human trafficking in Southeast Asia and the Oceania regions.

However, there are evident omissions on the definitions of trafficking, including those provided by the Protocol and how distinguishing trafficking from the international instruments focused on migration, smuggling, the how and when issues surrounding

²⁸⁹ Refer to Appendix 2, Table 6.

²⁹⁰ UN. GIFT, 'Global initiative to fight human trafficking' (February 2019)

<https://www.unodc.org/documents/Global_Report_on_TIP.pdf> accessed 22 February 2020).

the use of force, coercion, deception are applied and aligned to 'exploitation' and its subset of 'legal' versus 'illegal' migration. The articles collectively spoke to Southeast Asia's challenges but failed to make plausible recommendations for solutions or mitigation factors of human trafficking. Furthermore, the authors did not proffer recommendations of how ratified international instruments, or the elements of these instruments can be applied independently or conflated to enhance the prevention, protection of victims, or the prosecution of human trafficking offenders, which this research's investigation seeks to add to the body of literature.

6. REA Conclusions and Future Implications

The REA outcomes indicate that none of the articles from journals, books, and non-governmental organizations approach the context and underpinning concepts of this research. As a result, the broad range of topics surrounding child human trafficking, legal empowerment, cultural complexities, and regional challenges addressed in this research are excluded from the literature examined.

This study furthers the transnational human trafficking scholarship of Chen, Kneebone, and Debeljak on policy responses. This study's examination expands human trafficking migration research to incorporate prevention, protection, and mitigation of child trafficking. The research modifies the application of specific ratified international tools in targeted conflict and post-conflict geographies. The research also expands Bump, Duncan, Gozdzia, and MacDonnell's works by aligning vulnerability to the UN Transnational Organized Crime, the Trafficking Protocol, the CRC, the Optional Protocol for the sale of children, and the Optional Protocol to the Convention on the communications procedure. Finally, the study proffers those practitioners and advocates are allotted more resources to prevent, protect, and mitigate while addressing safety, rights, and protections issues by combining these targeted international instruments.

Summative, the analysis indicates that no literature proposed a legal framework targeting specific populations conjoined with an obliged instrument as this research presents. Also, there was no other research that proffered a legal framework model that addressed the specific needs of children with an examination of the mechanics of

countries. The constraints included the arrest procedure of offenders and the initial intake process for victims to formulate a legal framework to enhance prosecution, statutory prevention measures to mitigate child trafficking and exploitation, specifically as it relates to forced displaced, stateless children.

Moreover, the methodological approach of this study presents a unique and unprecedented process of researching, examining, studying, and proffering a child human trafficking intervention. The research purports that the implementation of regulatory policies, established through targeted ratified international conventions that formulate pure black letter law, practitioners and advocates have an opportunity to use and learn from the structure and development of the proffered interventions. Unlike other studies, articles, writings, this study focuses on analyses ratified international instruments for a targeted region and its socio-legal stance. The thesis proffers a legal framework that promotes laws supporting child human trafficking mitigation and cessation, regardless of the citizenry. The study prompts regulatory practitioners and advocates at all echelons to enact a tiered process that provides prevention and protection against the multiple forms of exploitation of children displaced across borders.

Subsequently, this Rapid Evidence Assessment has validated that the research underway is original and will be contributing to the body of literature on human trafficking of the stateless (refugee and non-refugee) child in Southeast Asia. This study creates and interprets new knowledge through original research and presents an advanced interdisciplinary scholarship. The REA also validates that the work is at

the forefront of the legal discipline concerning child human trafficking and exploitation prosecutorial approaches, prevention, and deterrence measures.

The study's central research question presents variables that provide significant literature to draw research conclusions on the investigated datasets and literature. Moreover, future implications indicate that the study outcomes can be received among various distribution channels in academia, government, legal practice, and community advocates, for example, non-governmental agencies. Finally, based upon the REA of the literature, the study has the potential to support and encourage next-level examinations of the phenomena of stateless child and human trafficking across varying regions.

Collectively, the study's literary texts form into a coherent body of work structured to advance children's rights, the rule of law in human trafficking, and exploitation with the scholarship of a quality that has satisfied peer-review. The research closes gaps in focused solution-driven prevention, protection practices in child trafficking, and exploitation scholarly research filled with statistics and singularly focused literature. The study combines international criminal law and international human rights to address pronounced geographically problematic impunity situations of child human trafficking and exploitation that is generalizable to analogous conflict and post-conflict societies.

7. Contributions to the Body of Knowledge. Chapters two through six of the thesis contents have been published in a series of peer-reviewed book chapters, journal articles, e-books, academic circulars, command/special committee reports, and

working papers. The publications are anchored in case law and concrete qualitative evidence to support an original socio-legal conceptual contribution:

1) Tanya Herring, 'Chapter: The multidisciplinary, interdisciplinary, and international global policy outlook of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (OPSC)' in *Globalisation, ideology, and human rights for the globalisation, education, and policy research* (Springer Publishers 2020).

2) Tanya Herring, 'Chapter 15: What role do the General comments of human rights instruments have in the community structure of the asylum-seeking refugee child? UNCRC art 22' in *Community structures and processes on lives of refugee children* (Vernon Publishing 2020).

3) Tanya Herring, 'Forced migration in Southeast Asia: Gaps in prevention and protection against the human trafficking of stateless Children' in *Migration and citizenship: Political science, policies and research, Global comparative perspective: Section five - Persistent policy challenges: Forced and return migration*, edited by Yasmeen Abu-Laban, Mireille Paquet, and Ethel Tungohan, (Springer Publishing 2020).

4) Tanya Herring, 'Prevention and protection interventions for stateless non-refugee and force displaced children' (2019) 31[2] *New England Journal of Public Policy*. <<https://scholarworks.umb.edu/nejpp/vol31/iss2/12>> accessed 20 December 2020.

5) Tanya Herring, 'The CRC and the unaccompanied minor border case study using Dahrendorf's Social Conflict Theory to proffer a legal framework: Australia, Bangladesh/Myanmar to the ASEAN Charter States, the Republic of Côte d'Ivoire, Africa, and USA/Mexico' in *The rights of unaccompanied minors: Perspectives and case studies Chapter 5, Access to justice for the unaccompanied asylum-seeking child* (Springer Publishing 2020).

6) Tanya Herring, *Ateliers Doctoraux – Chapter 1: The Palermo Protocols as a conduit to legal empowerment and peaceful self-determination*, Ph.D. workshops, (La citoyennete – Citizenship European School of Law Copyright 2019, Cahiers Jean MONNET Editions des Presses de l'Université, France) ISBN: 978-2-36170-190-9.

7) Tanya Herring, 'Chapter: Panel on Self-Determination, Trafficking of the Vulnerable' in *ICO-Handbook on Self-Determination* (ICO Handbook 2018) <<https://internationalcommunities.org/self-determination-trafficking-of-the-vulnerable-panel-7th-lawasia-conference-laos/>> accessed 20 December 2019.

8) Tanya Herring, 'Statelessness and the struggle to close the gap in human rights through legal empowerment: The Palermo Convention employed as a conduit' 2018 6(2) Newsletter of the American Political Science Association's Organized Section on Migration and Citizenship, ISSN 2578-2207
<<http://connect.apsanet.org/s43/wp-content/uploads/sites/13/2018/08/APSA-Migration-Citizenship-Newsletter-6-2-Summer-2018-.pdf>> accessed 20 December 2019.

9) Command Papers/Reports of committees of inquiry, 2019, 2020, in Welsh and English for the Llewelyn Williams Foundation to inform Welsh Legislation:

- a) *Efrydiaeth Ôl-radd Llewelyn Williams, Archwiliad cyfreithiol o Brexit, Cyfraith Cymru, a'r Deyrnas Unedig: Plant wedi eu Dadleoli ar draws Ffiniau a Chamfanteisio ar Blant* (Cmd 1 Mai 2019, Cyfres 1af)
<http://www.ywerinlegacyfund.wales/award/llewelyn-williams-postgraduate-studentship/>
- b) *Cynllun Efrydiaeth Ôl-radd Llewelyn Williams, Archwiliad cyfreithiol o Brexit, Cyfraith Cymru, a'r Deyrnas Unedig: Plant wedi eu Dadleoli ar draws Ffiniau a Chamfanteisio ar Blant* (Cmd 1 Hydref 2020, 2il gyfres)
<http://www.ywerinlegacyfund.wales/award/llewelyn-williams-postgraduate-studentship/>

10) Working and Conference Papers:

- a) Tanya Herring, 'Forced migration in Southeast Asia: Gaps in prevention and protection against the human trafficking of stateless children' (Migration and Citizenship: Policies and Research in Global Comparative Perspective, 4th International Conference on Public Policy, Concordia University, Montreal, Canada, 24-26 June 2019).
- b) Tanya Herring, 'The refugee child: Addressing the prevention and protections against exploitation' (Leeds, England - International Socio-Legal Conference, 3-5 April 2019).
- c) Tanya Herring, 'The responsibility to prevent' (Discussant Lead: Modernity and the 'hostile environment', 21st-century exclusion and othering in the United Kingdom, Conference: Refugees, Borders and Membership Conference, 24-26 October 2018; Workshop 10. Governing Mobility and Membership: Politics, Law and Technology, MIM - Malmo Institute for Studies of Migration, Diversity and Welfare, Malmö University, Sweden).

- d) Tanya Herring, 'The responsibility to prevent (R2Prev): Statelessness, forced migration, and human trafficking - 2018' (Trinity Law Colloquium, Dublin, Ireland, September 2019)
doi: 10.13140/RG.2.2.27776.94725.
- e) Tanya Herring, 'Research in progress, Stateless Rohingya children are at risk of human trafficking - Can 'legal empowerment' be achieved by an international norm responsibility to prevent (R2Prev)?' (2017 - New Trends and Directions in Migration Conference, Moscow, Russia).
- f) Tanya Herring, 'State obligations to forced-displaced vulnerable groups: Land and sea' (2017 - EMN HU NCP XIX. National Conference - Changing migratory trends in Europe, Belfast, Hungary - Minister of Interior).
- g) Tanya Herring, 'Stateless children in the United Kingdom, are at risk of human trafficking - Ongoing research' (2016 - Bangor Interdisciplinary Conference on Childhood and Youth, Bangor/Swansea Universities, Wales [Bangor Campus]).
- h) Tanya Herring, 'Using the Law of the Sea to protect child migrants displaced children' (2017 - Children Displaced Across Borders Conference, Swansea and Bangor Universities, Wales [Swansea Campus]).

CHAPTER 2:

Part II – Review and Background of the international instruments and UN Reports

1. The International Instruments

a) Treaty Foundation. The study examines the principal general collections of international treaties: 'The Consolidated Treaty Series, The League of Nations Treaty Series (LNTS), and The UN Treaty Series'.²⁹¹ The treaty is the foundation of obliged State Responsibility, and the instrument is essential within the scope of this research. The treaty is viewed as the fundamental building block of global structures and international affairs.²⁹² Two focal treaties and their respective protocols, the UN Convention against Transnational Crime (UNTOC), supplemented by the Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children, and the UN Convention for the Rights of the Child (CRC), and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography.²⁹³ The treaty's literature begins with the term *pacta sunt servanda*, borrowed from Roman law, adopted as a principle governing treaties in international law.²⁹⁴ This phrase, roughly translated, infers 'treaties shall be complied with' and identifies a general principle of international law as 'one that underlies the entire system of treaty-based relations between sovereign states'.²⁹⁵

²⁹¹ Duncan B Hollis, 'Defining Treaties' in *The Oxford Guide to Treaties* (Oxford Press 2012).

²⁹² *ibid*; Hollis suggests that 'Today, the treaty is the dominant instrument through which international law operates' (p 11, 43).

²⁹³ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification, and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002.

²⁹⁴ D Hutchinson, McNair and the Law of Treaties Revisited, (1989) 9[3] *Oxford Journal of Legal Studies* 374, 382 <<https://doi.org/10.1093/ojls/9.3.374>> accessed 22 March 2019.

²⁹⁵ J. Kunz, 'The Meaning and the Range of the Norm Pacta sunt Servanda' (1945) 19 *AJIT*; H Wehberg, *Pacta sunt Servanda*, (1959) *AJIT*; M. Niciu, *drept international public*, Editura Servosat, Arad, 1997, 42-43.

In its juridical contents and practical application, the principle of *pacta sunt servanda* conveys the fulfillment of good faith in treaty enforcement. Good faith is mentioned at a minimum of five times in the Vienna Convention on the Law of Treaties, which can be interpreted as a critical component.²⁹⁶ Furthermore, the UN Charter has enshrined good faith as a significant component, *Loizidou v Turkey*.²⁹⁷ In the courts,²⁹⁸ reference is made to where the parties are bound by good faith and several prominent places throughout international legal literature.²⁹⁹ More references can be found with other jurists who have weighed in on treaty obligations. As an example, the renowned Professor Oppenheim avers that...

‘treaties are legally binding because there exists a customary rule of international law that treaties are binding. The binding effect of that rule rests in the last resort on the fundamental assumption. This is neither consensual nor necessarily legal of the objectively binding force of an international law.’³⁰⁰

²⁹⁶ UN, Vienna Convention on the Law of Treaties, 23 May 1969, UN, Treaty Series, vol. 1155, p 331, entry into force: 27 January 1980.

²⁹⁷ art 2 para 2, Charter of the UN; M Markovic, ‘Fulfillment in good faith of obligations assumed in accordance with the UN Charter’, In *Principles of international law concerning friendly relations and cooperation*, (Milan Sahovil’C 1972) 375-383.

²⁹⁸ *Treatment of Polish Nationals* case, PCIJ 1932 A/B, n. 44, p 28.; *Minority Schools in Albania* case, PCIJ, 1935 A/B, n. 64, p 19-20.; *Rights of Foreign Nationals in Morocco* case, ICJ Reports 1952, p 212.; *North Sea Continental Shelf* cases, 1969 ICJ Reports 3 p 47 par. 85.; *Nuclear Tests* cases, 1974 ICJ Reports 253, p 268 par. 46.; *WHO/Egypt Agreement Advisory Opinion*, 1980 ICJ Reports 73, p 95-8 (par. 4851).; *Military and Paramilitary Activities in and against Nicaragua* case (jurisdiction and admissibility) 1984 ICJ Reports 392, p 418 par. 60.; *Border and Transborder Armed Actions Nicaragua-Honduras* (jurisdiction and admissibility) 1988 ICJ Reports 396, p 69 par. 105.

²⁹⁹ The author mainly consulted the following doctrine on good faith in international law for this text: Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, Stevens, and Sons, 1953.; R Kolb and F La Bonne. *Droit International Public* (PU, France 2000); O’Connor, *Good Faith in International Law*, (Dartmouth 1991); S Rosenne, *Developments in the Law of Treaties 1945-1986* (Chapter 3- Good faith in the codified law of treaties), Cambridge UP, 135-179; V S Mani, *Basic Principles of Modern International Law*, (Lancers Books 1993) 200-220; AM Stuyt, ‘Good faith and bad faith’ (1981) 28 N.I.L.J.; M Virally, ‘Review Essay: Good faith in public international law’ (1983) AJIL 130-134.

³⁰⁰ R Jennings and A Watts. *Oppenheim’s international law* (9th edn, London: Longman 1996) 22-52.

Oppenheim's assumptions are widely expressed as a fundamental norm or principle of *pacta sunt servanda*. Thus, juris and historical data are highly relevant in understanding the role and obligations of treaties. However, some legalists argue that good faith's association with *pacta sunt servanda* is not on par, and there is a significant variation in the notions. Justification for this position leans toward the scope of the legal obligations derive from good faith is wider than *pacta sunt servanda* alone. An illustration can be gathered from the presence of international obligations on States preceding the actual conclusion of a treaty³⁰¹ and usage of the word 'good faith' to denote obligations arising from other sources of law.

Arguably, there remains yet another contradictory posture of 'good faith' as the ICJ noted in the *Border and Transborder Armed Actions Nicaragua-Honduras* (jurisdiction and admissibility)³⁰² case that good faith is not a legal obligation onto itself. Still, one more likened to a behavioural standard.³⁰³ Nevertheless, varying perspectives from authoritative scholars compare good faith to a 'yardstick' for determining the existence of a legal obligation and the obligatory context it can be measured.³⁰⁴

b) Treaty Hierarchy. Article 26 of the Vienna Convention on the Law of Treaties 1969; and equally, art 38 of the Statute of the International Court of Justice (ICJ) and its

³⁰¹ T Hassan, 'Good faith in treaty formation' (1981) 21 Virginia J.L. 443 (450).; T O Elias, *The Modern Law of Treaties* (New York 1974) 26.; Res 53/101 adopted by the General Assembly on 8 December 1998 entitled 'Principles and Guidelines for International Negotiations', para 2(a).

³⁰² *Border and Transborder Armed Actions, Nicaragua v Honduras, Judgment, Jurisdiction and Admissibility*, [1988] ICJ Rep 69, ICGJ 102 (ICJ 1988), 20th December 1988, UN [UN]; International Court of Justice [ICJ], para no I.1.1 (a).

³⁰³ *Border and Transborder Armed Actions, Nicaragua v Honduras, Judgment, Jurisdiction and Admissibility*, [1988] ICJ Rep 69, ICGJ 102 (ICJ 1988), 20th December 1988.

³⁰⁴ *Border and Transborder Armed Actions, Nicaragua v Honduras, Judgment, Jurisdiction and Admissibility*, [1988] ICJ Rep 69, ICGJ 102 (ICJ 1988), 20th December 1988.

rulings³⁰⁵ are the principal judicial organs of the UN. Accordingly, art 38 of the Statute provides the classic and often contested hierarchical listing of international sources: treaties being a primary source and customary international law being secondary. Notwithstanding any other sources, the singular other hierarchical statement is contained in art 38(1)d, 'subsidiary means for the determination of rules of law'.³⁰⁶

The Vienna Convention on the Law of Treaties 1969 defines a treaty that will be examined throughout the study from art 2(1)a,

“‘Treaty’ means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or two or more related instruments and whatever its particular designation.”³⁰⁷

c) Compliance Instruments: The Universal Periodic Review (UPR) of the UN Human Rights Council - by Country (Mechanisms of the UN Human Rights Council (HRC)).

The Universal Periodic Reviews³⁰⁸ (UPR) for the countries Bangladesh, and Myanmar, for years 2018 through 2016, were included in the literature review to capture the government reporting viewpoint from a stakeholder perspective. Also, the researcher wanted to consider if the government perspectives would mirror the peer-reviewed literature on regional situations or the prevention measures and protection mechanisms for human trafficking on behalf of the stateless child.³⁰⁹ However, the

³⁰⁵ The PCIJ has consistently held that the provisions of municipal law cannot prevail over those of treaty.

³⁰⁶ Article 38(1) d.

³⁰⁷ Article 2(1)a VCLT 1969.

³⁰⁸ Letter from President of the Human Rights Council on rules and practices of the Universal Periodic Review Working Group, 18 September 2013

<<https://www.ohchr.org/Documents/HRBodies/UPR/HRCPresidentLetterOnUPR.pdf>> accessed 3 February 2019.

³⁰⁹ Refer to Appendix 2, Table 6 as shown in this report; J Gomez and R Ramcharan, 'The Universal Periodic Review of Southeast Asia: Civil society perspectives' (Springer Link 2018).

review of the reports was disappointing as no specific initiatives were identified. Regionally, Malaysia could see the most significant efforts with a child sexual assault court developed in 2016 and the subsequent human trafficking court in 2017. Each of the countries under review, members of the ASEAN Charter, was included in reports. However, aside from conferences, meetings, and discussions amongst leadership, the reports were mute on innovative initiatives that had the probability of functioning as revised legal frameworks with the capability or possibility of formulating improvement of the States' TIPS report on human trafficking through the prosecution of offenders.

The UPR of the United Nation's Rights Council was developed, in 2006, to address duties, special procedures, complaint mechanisms, and the advisory committee.³¹⁰ The UPR was established by UNGA Res 60/251. The UPR reports affirm that there are substantive gaps in human rights protections in the region. Based on the reports, there is indeed a need to enhance the engagement of civil society to address the political issues hindering human rights.

A review of two cycles of the UPR for the four jurisdictions under examination shows input from two key organizations: the Taiwan Foundation for Democracy and the Heinrich Böll Stiftung Southeast Asia office. Both civil society organizations provide extensive support for International Conferences related to the UPR in Southeast Asia.

³¹⁰ The UPR is a mechanism established by the HRC, with a goal to better the human rights record in each of the 193 UN member States by reviewing their human rights records every four and a half years; HRC Res 5/1 of 18 June 2007, inter alia, a key objective of the UPR process: 'The improvement of the human rights situation on the ground'.

However, aside from recommendations, the reports include no remarkable actions related to prevention, protection, prosecution, or addressing the needs of children. In addition, the documents are silent on any legal empowerment for vulnerable populations to human trafficking.

The reports indicate a slow to no response for the number of recommendations made instead of the level of actions taken. For example, in Southeast Asia, all countries received recommendations for better regional mechanisms to address human rights violations from 2010 through 2018. The reports reflect great concern for the 'menace of international terrorism in support of the failure to ratify multiple human rights instruments that support refugees, non-refugees, and the stateless. It indicates a high demand for the ASEAN's regional mechanisms to positively influence its members to higher levels of accountability for protecting human rights. Questions or inquiries were consistent with 'state connected' individuals in decision-making positions that demonstrate a 'reluctant' posture to human rights and the order of law.

A research conclusion can be drawn that 'good governance, democracy, and human rights for the people is a stance that simply eludes many Southeast Asia (Myanmar) and South Asia (Bangladesh) countries. As a result, several inquiries exist as to whether the UPR fills the void of 'name and shame' posture. To date, the States have fulfilled their duties to report under the UPR's Human Rights Council (HRC). Yet, a review of the reports indicates that civil society organizations have minimal impact, regardless of their consistent efforts to improve human rights. The individual report contents appear to be just a repeat of the laws without any specific follow-up on

implementation. It isn't easy to comprehend that each of these countries has ratified the UN Convention on the Rights of the Child. Yet, reports from civil agencies continuously show massive holes in the prevention and protection of these children.³¹¹ Overall, the UPRs for the region appear to leave the impression that reporting is just an exercise of futility to make surface claims for change. A broader examination of the official reports in conjunction with literature that do not mirror the reported outcomes. The State reports are indicative of due diligence being exercised in human rights protections. Further analysis of these due diligence efforts and claims outlines Chapter three of this study, which addresses due diligence, its intent, and obligatory gaps. Meanwhile, the literature examined indicates vast numbers of human rights violations that serve as a precursor to the impending child human trafficking in the region with few or minimal prosecutions compared to the offenses.

2. The Articles on Responsibility of Wrongful Acts: Theory and Overview of the Doctrine

The doctrine of State responsibility determines the 'how' and 'when' a State is held responsible for an international obligation breach. The process has been a phased series of formal endeavours led by the Assembly of the League of Nations.³¹² Before

³¹¹ Action research with Law Asia Conference Attendees, *Trafficking of the Vulnerable Workgroup*, (7th Annual Conference, Vienne, Laos, 7 June 2018); Workgroup Sessions, The Refugees, Borders, and Membership Conference, Malmö University, Sweden (Institute for studies of Migration, Diversity and Welfare, 24-26 October 2018); T Herring, 'Statelessness and the struggle to close the gap in human rights through legal empowerment: The Palermo Convention employed as a conduit' in *Migration and Citizenship: Newsletter of the American Political Science Association's Organized Section on Migration and Citizenship*, Summer 2018, Vol 6, no 2, p. 37-42 (Migration and Citizenship 2018)

<<https://mk0apsaconnectbv6p6.kinstacdn.com/wp-content/uploads/sites/13/2018/08/APSA-Migration-Citizenship-Newsletter-6-2-Summer-2018-.pdf>> accessed 3 November 2019.

³¹² Y Matsui, 'The Transformation of the Law of State Responsibility' (1993) 20 *Thesaurus Acroasium* 5, 65.

1924, the theory of State responsibility was not particularly well developed and underwent modifications with some variations grounded in theoretical foundations. Then, through a series of revisions, the *Draft Articles on Responsibility of States for Wrongful Acts*,³¹³ 1996, began to formulate the legal precedent for any Member State to be held responsible for their wrongful actions and the subsequent formation of legal, due process.

The foundational thought-process behind State responsibility can be construed as having a basis from different perspectives of the underlying theory. One group of legal minds, Brownlie, Cassese, and Crawford's works, aver *functional theory* as the foundation for state responsibility.³¹⁴ The authors appear to substantiate their purview on the understanding that 'States can be held responsible as they are legal persons, who act vicariously through individuals'.³¹⁵ As a further conceptual qualifier, the legal theorists also opine that 'States are principals rather than agents, and State responsibility is akin to the vicarious responsibility of an employer for the actions of her employee'.³¹⁶ This study uses the principles of the vicarious responsibility of State Responsibility foundationally set out by Brownlie, Cassese, and Crawford to advance the application of whether a breach has or has not occurred according to arts 1, 2(a)(b),

³¹³ Draft Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its 48th Session, ILC Yearbook 1996, Vol II (2), 58.

³¹⁴ J Crawford and J Watkins. 'International Responsibility' in J Tasioloulas and S Beeson (eds), *The Philosophy of International Law* (2010) 293.

³¹⁵ I Brownlie, *System of the law of nations: State Responsibility (Part I)* (Oxford: Oxford University Press 1983); A Cassese, *International law* (Oxford: Oxford University Press 2001); J Crawford, *State Responsibility: The General Part* (New York: Cambridge University Press 2013).

³¹⁶ *ibid.*

and three about child human trafficking and exploitation in conflict and post-conflict society.

The early ILC Yearbook reports from Special Rapporteurs. Jurists reflect a winding path of controversial debate amongst themselves and the States: FV Garcia Amador from 1954–1961, Judge Roberto Ago, an Italian Professor, submitted eight contributions from 1969–1980,³¹⁷ W Riphagen’s invaluable involvement from 1980–1986, G Arangio-Ruiz from 1988–1996,³¹⁸ and ultimately, the often revered J Crawford’s provisions that bridged previous versions from the 1998 volume to the codified 2001, A/CN.4/517 and Add 1.³¹⁹ The catalogue of literature preceding the ILC Articles’ adoption by the Commission is not wholly supplanted. Therefore, many theoretical perspectives of state responsibility and inquiries regarding ‘state crimes’ have been omitted in the 2001 State Responsibility Articles. Still, the 2001 version suggests that the older materials are still rendered also as a primary reference.³²⁰

Notwithstanding, two decisions affirm codification and enforcement: First, the decisions of the European Court of Human Rights (ECHR) cases of *Liseytseva and*

³¹⁷ Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, ILC, fifty-third session, in 2001, (A/56/10) YILC, 2001, vol. II, Part Two, at 38; Roberto Ago, who was responsible for establishing the basic structure and orientation of the project, saw the articles as specifying the principles which govern the responsibility of States for internationally wrongful acts, maintaining a strict distinction between this task and the task of defining the rules that place obligations on States... Yearbook ... 1970, vol. II, p 306, para 66 (c).

³¹⁸ Articles on the Responsibility of International Organizations, with commentaries 2011, Report of the ILC on the Work of its Sixty-third Session, GA Official Records, Sixty-sixth Session, supp no 10 (A/66/10), (hereinafter DARIO commentaries), Yearbook of the International Law Commission, 2011, vol. II, Part Two.

³¹⁹ ARSIWA; J Crawford, *The International Law Commission’s Articles on State Responsibility: Introduction, text, and commentaries*, (Cambridge University Press 2002).

³²⁰ DARIO commentaries.

*Maslov v Russia*³²¹ and *Samsonov v Russia*,³²² where the State Responsibility Articles and their commentaries are noted as ‘codified principles developed in modern international law in respect of the State’s responsibility for internationally wrongful acts’;³²³ Secondly, citing the International arbitral tribunal (under the ICSID Convention) where *Electrabel S.A. v Republic of Hungary* and the arbitral tribunal referred to the State Responsibility Articles as a ‘codification of customary international law’.³²⁴

³²¹ *Liseyitseva and Maslov v Russia*, (App nos 39483/05 and 40527/10), 9 October 2014.

³²² ECHR, First Section, App no 2880/10, Decision, 16 September 2014, para 45.

³²³ ECHR, First Section, App nos 39483/05 and 40527/10, Judgment, 9 October 2014, para 128.

³²⁴ *Electrabel S.A. v Republic of Hungary*, ITLOS, Judgment, 4 April 2014, para 429.

3. The UN Office on Drugs and Crime (UNODC)

The UN Office on Drugs and Crime (UNODC) serves as the linchpin for combat human trafficking and smuggling. The literature reflects that in 1997, the UNODC began its vital role in addressing the transnational criminal offense (UNTOC, art 3.2), the organized crime of drugs, and a host of other unlawful acts, including human trafficking and smuggling (UNTOC, art 2a).³²⁵ The organization publishes a multitude of articles, papers, and writings on human trafficking. However, the REA uncovered a similar situation as found in the other literature noted. None of the reports ‘specifically’ address the distinct prevention, protection, and mitigation section of the UNODC literature that promotes or suggests legal frameworks for legal empowerment.

The most recent publication, dated 2018, encompassed research and collections of data from 2014 through 2017. Within the scope of the 2018 UNODC Human Trafficking Report, in its fourth edition, is a General Assembly mandate hails from the 2010 UN Global Plan of Action to Combat Human Trafficking in Persons. The report covered 142 countries with a summary identifying trafficking flows, patterns, and challenges. However, aside from a litany of human trafficking indicators and collection of global, regional, and national statistics, the publication offered no frameworks or modified legal strategies to address human trafficking, no best practices, and technological

³²⁵ UN Convention Against Transnational Organized Crime, 2225 UNTS 209, done Nov 15, 2000, entered into force Sept. 29, 2003 (Organized Crime Convention), at art 32(1).

advances toward prevention, protection, or mitigation processes for adults or children subject to human trafficking.

a) UN Convention against Transnational Organized Crime (UNTOC). The Convention Against Transnational Organized Crime³²⁶ is referred to as the ‘parent’ agreement. Article 1 identifies the Convention as international cooperation to promote interstate cooperation structured to combat transnational organized crime.³²⁷ The principal provisions apply, *mutatis mutandis*, to the three additional protocols. UNTOC focuses on the transnational crime of human trafficking. Its articles address the substantial adverse impact the crimes have on people across the globe, in both a social and economic range.³²⁸ Aside from the core crimes of genocide, war crimes, crimes of aggression (crime against peace), and crimes against humanity,³²⁹ other crimes have a transboundary effect and are suppressed by Conventions.³³⁰ These crimes require cooperation and collaboration among the member States.

Under the provisions of the UNTOC, State parties are required to criminalize (a) art 5, participation in an organized criminal group; (b) art 6, where the proceeds of crime

³²⁶ UN Convention against Transnational Organized Crime and the protocols thereto, U.N. Doc.

A/55/383/Add.1; art 37.4, ‘Any protocol to this Convention shall be interpreted together with this Convention, considering the purpose of that protocol’; UNSC S/2004/616 ‘The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General, 23 August 2004

<<https://www.un.org/ruleoflaw/files/2004%20report.pdf>> accessed 2 July 2017.

³²⁷ Organized Crime Convention, art 1.

³²⁸ In Res. 56/120 the UNGA expressed deep concern over ‘the impact of transnational organized crime on the political, social, and economic stability and development of societies’ UN Doc. A/RES/56/120 (2002).

³²⁹ M Cherif Bassiouni, ‘International crimes: The Ratione Materiae of International Criminal Law’ in M. Cherif Bassiouni (ed), *International Criminal Law*, (3rd edn, Leiden 2008) 129, 134-5.

³³⁰ No particular form of words are necessary in the title, although the words ‘suppression’ and ‘prevention’ appear in many treaty titles.

are defined in art 2(e) and laundering of the proceeds of crimes is criminalized; (c) art 8, public sector corruption; (d) art 6(1), obstruction of justice, which are captured in Figure 10 for obligatory compliance by the research states, Bangladesh, and Myanmar. This research investigation includes the preliminary agreements and treaties (unilateral, bilateral, and multilateral) that impact transnational organized crimes involving the Palermo Trafficking Protocol and the targeted member States for this research.³³¹ Conventions require that transnational crimes be prosecuted within national or domestic legal systems versus international courts or tribunals.³³² The line between what offences are considered within the bounds of *stricto sensu*³³³ category instead of the ‘convention’ or ‘transnational’ category fits in the grey zone and is likely based upon State practice.³³⁴

³³¹ UN Convention against Transnational Organized Crime 2000; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention; Protocol against the Smuggling of Migrants by Land, Air, and Sea, supplementing that Convention; Other transnational crimes include piracy, slavery, terrorism offences, torture, apartheid, and enforced disappearances; references include Arts 100-5, UN Law of the Sea Convention 1982 (piracy); 1926 Slavery Convention; the UN Supplementary Convention on the abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956; the UN Convention on the Law of the Sea 1982, art 99 (slavery); International Convention on the Suppression and Punishment of the Crime of Apartheid 1973; International Convention for the Protection of all Persons from Enforced Disappearance 2006.

³³² It is the treaty in question, not some deeper rules of the international system that are said to render the proscribed activities ‘criminal’; There is the further question of what the key ‘procedural’ characteristic of a crime under international law. Is it that it supports universal jurisdiction? Is it that it can be tried in an international forum? Does one follow from the other?

³³³ International criminal law is currently subdivided into international criminal law *stricto sensu* — the so-called core crimes — and crimes of international concern — the so-called treaty crimes.

³³⁴ Categorizing these crimes is an ongoing debate as reflected in the Final Act of the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Annex, Res E, (1998) UN Doc. A/CONF.183, vol I at 71-2.

b) Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (Palermo Trafficking Protocol), supplemented by the UN Convention against Transnational Organized Crime

Trafficking in persons³³⁵ has been a longstanding global issue. In response to the global trafficking problems, a concerted effort was made to formulate new international, national, and regional legal instruments. An examination of the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons (UN Trafficking Protocol)³³⁶ begins with a brief review of the Protocol's predecessor, The 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others³³⁷ (hereinafter, the 1949 Convention).³³⁸ The trafficking protocol was adopted as a supplement to the UN Convention against Transnational Organized Crime (UNTOC). Both represent the high-water mark of efforts to address trafficking, notwithstanding its imperfections. The only other international treaty directing attention within the treaty's content to trafficking is the UN Convention on the

³³⁵ The first international instrument to address trafficking of persons, the International Agreement for the Suppression of White Slave Traffic, was adopted in 1904.

³³⁶ Palermo Protocol.

³³⁷ State parties that have yet to amend their penal codes in order to comply with art 5 of the Palermo Protocol include Croatia, India, Luxembourg, and Malta. *Kazneni Zakon* [Criminal Code], Sept. 29, 1997 (Croatia) ; Pen. Code (1860) (India) ; Code pénal [C. pén.] (Lux.) ; Criminal Code, 1854, c. 9 (Malta). Existing trafficking criminal laws in these countries largely reflect a definition of trafficking that is consistent with the previous Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; *Kazneni Zakon* art 178 (Croatia); Immoral Traffic (Prevention) Act, 1956, no 104, Acts of Parliament, 1956 (India); C. pén. art 379 (Lux.); White Slave Traffic (Suppression) Ordinance, 1930, c. 63, § 2 (Malta).

³³⁸ UNGA, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 2 December 1949, A/RES/317; The Convention was approved by General Assembly of the UN in resolution 317(IV) of 2 December 1949, 96 UNTS 271, entry into force 1951.

Elimination of All Forms of Discrimination against Women (1979) (CEDAW).³³⁹ The CEDAW³⁴⁰ calls upon state parties to ‘take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of the prostitution of women’.³⁴¹

Historically, Radhika Commaraswamy, who worked as the Special Rapporteur on Violence against Women, asserted that the 1949 Convention was ‘outdated, ill-defined, and non-responsive to the real-world scenario of trafficking and suggested that the non-consensual nature of trafficking should be the focus.’³⁴² Decades after the 1949 Convention, Rapporteur Joy Ngozi Ezeilo and Anne Gallagher have taken up the helm from Marcovich as leading advocates and authors of publications against trafficking persons.³⁴³ Though the 2000 Palermo Trafficking Protocol closed many gaps beset by the 1949 Convention, criticism remains based on the prosecution of trafficking offenders and support for victims.³⁴⁴

³³⁹ UNGA, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, UN, Treaty Series, vol. 1249, p 13; Adopted and opened for signature, ratification, and accession by General Assembly resolution 34/180 of 18 December 1979. Entry into force 3 September 1981, in accordance with article 27(1).

³⁴⁰ Article 45(a) CRC, which closely follows the text of art 22 of the Convention on the Elimination of All Form of Discrimination Against Women (CEDAW) – deals with the involvement of organizations in the Monitoring of the CRC.

³⁴¹ General Recommendations made by the Committee on the Elimination of Discrimination Against Women, General Recommendation no 19 (11th Session 1992)

<<http://www.un.org/womenwatch/daw/cedaw/recomm.htm>> accessed 2 January 2019.

³⁴² The Special Rapporteur therefore defines trafficking as ‘the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons.

³⁴³ Anne T Gallagher and Joy Ngozi Ezeilo. ‘The UN Special Rapporteur on Trafficking: A Turbulent Decade in Review’ (2015) 37[4] *Human Rights Quarterly* 913, 940. <<https://muse.jhu.edu/>> accessed 14 September 2019.

³⁴⁴ A Gallagher and N Karlebach, *Prosecution of trafficking in persons cases: Integrating a human rights-based approach in the administration of criminal justice* (BePress 2011)

<https://works.bepress.com/anne_gallagher/18/> accessed 20 July 2019.

The literature reflects that the 1949 Convention's structure consisted of a compendium of previous agreements targeting issues ranging from prostitution, the legal posture addressing the sex procurer versus the prostitute, to white slave trafficking dating back to 1904.³⁴⁵ Adopted just one year after the Universal Declaration of Human Rights and World War II, the 1949 Convention appears to suggest a humanistic endeavour brought forth by the League of Nations to address a host of factors impacting the trafficking of women and children. Yet, despite efforts to fortify the instrument with multiple layers of protection against trafficking, the 1949 Convention failed to define the actual phenomenon of trafficking.³⁴⁶

Notwithstanding, the varying perspectives on conceived as gaps, the 1949 Convention garnered its advocates, who brought forward varying theories on the instruments 'object and purpose'.³⁴⁷ For example, Malka Marcovich's³⁴⁸ advocacy and theories of the 1949 Convention centered on the viewpoint that all prostitution is sex slavery. Therefore, sex work was an avenue to combat the challenges of trafficking prostitutes and sexual violence.³⁴⁹ For example, Marcovich's concepts were penned in the 1949

³⁴⁵ 96 UNTS 271.

³⁴⁶ 96 UNTS 271; M Marcovich, 'Guide to the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others' (2002) <http://action.web.ca/home/catw/attach/Guide%20to%20UN%20C_vention-singl.pdf> accessed 28 August 2019.

³⁴⁷ I Bufard and K Zemanek, 'The 'Object and Purpose' of a Treat: An Enigma? (1998) 3 Austria Rev International & eur. L. 311, 343.

³⁴⁸ A historian and human rights activist, she is the author of several articles on prostitution and trafficking, as well as on anti-Semitism and the 'final solution'; Malka Marcovich was the President for the Movement for the Abolition of Prostitution and Pornography and All Forms of Sexual Violence and Sexist Discrimination, commonly referred to as MAPP,

³⁴⁹ Weissbrodted Anti-slavery International, 'Abolishing slavery and its contemporary forms' (UNHCHR, HR/PUB/02/4 2002) <www.ohchr.org> accessed 23 June 2019.

Convention Guide,³⁵⁰ which purported and supported Josephine Butler's 1866 feminist views on the systemic issues of prostitution and the connection to slavery and abolitionism.³⁵¹ The 1949 Convention had many other contentious points, but one of the most pervasive was that before 1960, there was no monitoring or enforcement mechanisms like all the UN Conventions written before 1960.³⁵²

³⁵⁰ M Marcovich, 'Guide to the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others' (N/D)

<<http://www.catwinternational.org/Content/Images/Article/88/attachment.pdf>> accessed 28 March 2019.

³⁵¹ Art 1, 1949 Convention.

³⁵² The UN Secretary-General noted the absence of a monitoring body and his concern that the lack of any enforcement mechanism would weaken the implementation and effectiveness of the Convention of December 2, 1949; 1996 report on the *Trafficking in Women and Girls* (A/51/309).

c) The Convention on the Rights of the Child (CRC), Background Overview

The institutional mechanisms of the Committee on the Rights of the Child, the Convention on the Rights of the Child (CRC), the Optional Protocols,³⁵³ and the authoritative implementation role of the General comments represent the international and domestic fulcrum encompassing the rights of the child. The CRC's 194 countries' global ratification with one exception, the United States,³⁵⁴ places the treaty as the most widely ratified UN human rights instrument. Each of the instruments and their respective implementation offers a useful case study within the context of the child as a rights holder.

The treaty's literature reflects that background on the legal framework for a child's best interest did not materialize initially in the CRC. In 1924, the League of Nations (LON) adopted the Geneva Declaration, which initiated the need to differentiate the rights and interests from an adult.³⁵⁵ However, the 1924 efforts were limited in scope

³⁵³ *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, G.A. Res. 54/263, Annex II, 54 U.N. GAOR supp (No 49) at 6, U.N. Doc. A/54/49, vol III (2000), entered into force January 18, 2002; *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts*, G.A. Res. 54/263, Annex I, 54 U.N. GAOR supp (No 49) at 7, U.N. Doc. A/54/49, vol III (2000), entered into force February 12, 2002; *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, G.A. Res. 66/138, U.N. Doc. A/RES/66/138 (2012), entered into force 14 April 2014; Noting that though the Optional Protocols operate under CRC, the instruments are independent multilateral agreements under international law.

³⁵⁴ UN Treaty Collections (2020) <<https://treaties.un.org/>> accessed 12 December 2016; Luisa Blanchfield, 'The UN Convention on the Rights of the Child' (Congressional Research Service series: CRS Report for Congress, April 01, 2013) <<http://fas.org/sgp/crs/misc/R40484.pdf>> accessed 2 December 2018; Christopher J Klicka, Esq. and William A Estrada, *Special Report: The U.N. Convention on the Rights of the Child, The Most Dangerous Attack on Parent's Rights in the History of the United States* (Home School Legal Defense Association, November 1, 1999, updated March 2007); authors Blanchfield, Klicka, and Estrada posit that the reason for the non-ratification of the CRC by the USA is the concerns about national sovereignty or control of the best interest child principle; other concerns revolve around the home schooling constraints.

³⁵⁵ International Save the Children Union in Geneva on 23 February 1923.

and not widely accepted, despite specifying the protections that should have been clear for any human...

‘The **child** that is hungry must be fed, the **child** that is sick must be **nursed**, the **child** that is backward must be helped, the delinquent **child** must be reclaimed, and the orphan and the waif must be sheltered and succoured’.³⁵⁶

Though well-intentioned, the 1924 Geneva Declaration - LON’s document had several gaps, and the most prominent is that it failed to specify the definition of a ‘child’.

Though defined in the current CRC, art 1, the definition of a child in various contexts, such as the juvenile justice system and some cultural rituals,³⁵⁷ remains a massive cultural and economic controversy today.³⁵⁸ States that still allow these practices are not in compliance with art 24(3) of the CRC, which states that ‘States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of a child’.³⁵⁹

The Geneva Declaration document encountered implementation challenges from the onset. A primary factor of the Geneva Declaration’s resistance to acceptance could be attributed to the events surrounding the 1920s era. Entrenched in World Wars and penurious times, in the 1920s, a child was viewed as property to be sold, exchanged, bartered, and enthralled in hard labour under dangerous conditions, and in many

³⁵⁶ The Geneva Declaration of the Rights of the Child adopted by the League of Nations in 1924.

³⁵⁷ Art 16(2) of the Convention on the Elimination of All Forms of Discrimination against Women, ‘the betrothal and the marriage of a child [under the age of 18] shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.’

³⁵⁸ N Shawki, ‘Norm-Based Advocacy and Social Change: An Analysis of Advocacy Efforts to End Child Marriage’ (2015) 34 [4] Social Alternatives < <https://www.questia.com/read/1P3-4011056571/norm-based-advocacy-and-social-change-an-analysis> > accessed 1 July 2019.

³⁵⁹ Article 24 (3), UN Convention on the Rights of the Child (1989).

places across the world thrust into armed conflict.³⁶⁰ Although a child's education was not compelled, and going to school was considered a privilege in the 1920s for the wealthy and aristocrats, after World War II and the establishment of the UN that the development of an international instrument focusing on the child was conceived – the 1959 Declaration of the Rights of the Child.³⁶¹

The drafter's adjoining of instruments for protection was evident, even in 1959, as the contents of the Convention on the Elimination of All Forms of Discrimination against Women, arts 5(b) and 16, para 1(d) capture the scope of child protection and interests.³⁶² However, the sizeable and global ratification of the CRC, as a binding international instrument, reflects the *intent* to protect one of the world's most vulnerable populations – a child.

i. The CRC Conflicts. Alston provided a children's rights treaty draft in 1978.³⁶³ Critics of the CRC opined that Alston painted a western image of childhood within the context of the CRC that did not align with other global views.³⁶⁴ Kaime was a

³⁶⁰ Geraldine Van Bueren, *The international law on the rights of the child* (Martinus Nijhoff Publishers, 1998) 9; Gauthier de Beco, "The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure: Good news?" (2013) 13[2] Human Rights Law Review 367–387 <<https://doi.org/10.1093/hrlr/ngt015>> accessed 21 December 2018.

³⁶¹ UNGA, *Declaration of the Rights of the Child*, 20 November 1959, A/RES/1386(XIV), adopted by the General Assembly on 20 November 1959 (Res 1386 (XIV)); T Buck, *International Child Law* (Routledge 2014) 89;

³⁶² UNGA, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, UN, Treaty Series, vol. 1249, p 13, Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women is part of the document. The amendment is not yet in force. Adopted and opened for signature, ratification, and accession by General Assembly resolution 34/180 of 18 December 1979. Entry into force 3 September 1981, in accordance with article 27(1).

³⁶³ Phillip Alston, *The best interest principle: Towards a reconciliation of culture and human rights* in Alston, P. (Ed.), *The best interests of the child: Reconciling culture and human rights* (pp 1-25). (Florence, Italy: Innocenti Studies 1994).

³⁶⁴ *ibid* 7.

vocal dissenter who declared, ‘apart from a tradition as a positive value in the promotion and protection of children’s rights,’³⁶⁵ the preamble of the CRC was lacking. Negotiations on the CRC extend for over a decade from 1978 to 1989, with Detrick’s writings covering various modifications of drafts through workgroups.³⁶⁶ The year 2019 marked the 30th anniversary, where the 54 CRC articles condense the full spectrum of human rights. The CRC emphasizes that every human being deserves economic, political, and social rights without regard to individual ability, birth status, ethnicity, gender, language, opinions, origins, wealth, and birth status.³⁶⁷ Continuous stakeholder engagements have brought forward *The End Child Prostitution and Trafficking* (ECPAT) organization’s Southeast Asia’s 2017 Report. Groups working across the region have advocated for legislations that prohibit some rituals that are deemed a form of sexual exploitation when ‘a child is received and used for sexual purposes in exchange for goods or payment in cash or kind’.³⁶⁸

Countries that ratify the CRC are bound to it by international law. Therefore, the Committee on the Rights of the Child ³⁶⁹(CRC Committee) has established a series of

³⁶⁵ Thoko Kaime, ‘Vernacularizing’ the Convention on the Rights of the Child: Rights and culture as analytic tools’ (2010) 18 International Journal of Children’s Rights 637-53, 639.

³⁶⁶ Sharon Detrick, *The UN Convention on the Rights of the Child: A guide in the ‘Travaux Préparatoires’* (Martinus Nijboff 1992) 21-2.

³⁶⁷ UNGA, *Convention on the Rights of the Child*, 20 November 1989, UN, Treaty Series, vol. 1577 <<https://www.refworld.org/docid/3ae6b38f0.html>> accessed 27 June 2019.

³⁶⁸ Article 2 and 3, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; ECPAT International, *Situational Analysis of the Commercial Sexual Exploitation of Children: Thailand* (Bangkok: ECPAT International, 2015), 62. Accessed 23 October 2016. http://www.ecpat.org/wp-content/uploads/legacy/SITAN_THAILAND_ENG_FINAL.pdf.

³⁶⁹ The Committee on the Rights of the Child (CRC) is the body of 18 Independent experts that monitors implementation of the Convention on the Rights of the Child by its State parties. It also monitors implementation

General comments to serve as the authoritative guide to member States.³⁷⁰ In addition, the Committee monitors member States annually through a report to the Third Committee of the UNGA that is accompanied by a statement from the CRC and a Resolution on the Rights of the Child.

The CRC is coupled with three protocols; two are examined in this research. On 25 May 2000, the two initial optional protocols were adopted –Optional Protocol restricts the involvement of children in military conflicts,³⁷¹ and the Optional Protocol prohibits the sale of children, child prostitution, and child pornography.³⁷² The third Optional Protocol relating to Communication of complaints adopted in December 2011 with a signature opening on 28 February 2012 and effective date of 14 April 2014.³⁷³ Of the three, the Optional Protocol to the Convention on the sale of children, child prostitution, and child pornography and the Optional Protocol to the Communication Procedure are included in this research. It has been ratified by each state under examination and has an integral role in protecting children in the region.

of two Optional Protocols to the Convention, on involvement of children in armed conflict and on sale of children, child prostitution and child pornography.

³⁷⁰ General comments provide interpretation and analysis of specific articles of the CRC or deal with thematic issues related to the rights of the child.

³⁷¹ UNGA, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000, adopted and opened for signature, ratification, and accession by General Assembly resolution A/RES/54/263 of 25 May 2000.

³⁷² UNGA, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 16 March 2001, A/RES/54/263, adopted and opened for signature, ratification, and accession by General Assembly resolution A/RES/54/263 of 25 May 2000.

³⁷³ UN Human Rights Council, *Optional Protocol to the Convention on the Rights of the Child on a Communications procedure*: Res / adopted by the Human Rights Council, 14 July 2011, A/HRC/RES/17/18, without a vote.

ii. Optional Protocol to the Convention on the sale of children, child prostitution, and child pornography (OPSC). The OPSC is a vital component of the proffered legal framework for this study as it provides specificity for the terms that are so frequently confused. As a result, many cases fail due to sociolect gaps in the interpretation of exploitation, the application of the term sexual assault versus charges of rape, the translation of child abuse across cultural and geographic regions, and the varying types of child abuse. The OPSC links with the Palermo Protocol as the terms trafficking in children and child abduction were not defined by the CRC or subsequent treaties. However, the OPSC, art 31(a)(i)b, adds clarity to many elements of trafficking, such as the trafficking of human beings for their organs. The term ‘sale of children’ has been defined in **art 2(a) of the OPSC** as ‘any act or transaction whereby any person or group of persons transfers a child to another for remuneration or any other consideration’.³⁷⁴ To encompass all transaction elements in OPSC art 3, wherein the context of the sale includes delivery or accepting the transaction is criminally covered. Article 35, CRC, and the OPSC have made it clear that States are obliged to recognize that ‘the sale of and trafficking in children are two distinct but linked human rights violations’, *Case of Ramirez Escobar and Others v Guatemala* (Merits, Reparations, and Costs).³⁷⁵ Research by David Smolin focuses on the definition of trafficking under international law and criticizes the narrow perspective. Smolin avers that the

³⁷⁴ OPSC, art 2(a).

³⁷⁵ *Case of Ramirez Escobar and Others v Guatemala* (Inter-American Court of Human Rights (IACtHR)) 2018, para 313 (translated from Spanish to English).

international definition is too easily interpreted as a 'quid pro quo' transaction that hinders international adoptions, where adoption is not considered harming a child.³⁷⁶ Subsequently, the annex to the initial reporting guidelines of the OPSC defined trafficking of children in line with art 3 of the UN Convention Against Transnational Organized Crime.³⁷⁷ In addition, the OPSC stands in support of the CRC's Arts 1, 11, 21, 32, 33, 34, 35, and 36.³⁷⁸ The OPSC also extends member-states measures to protect the child from sale, prostitution, and pornography. Grave concerns for the international trafficking of children in the various forms of exploitation prompted the OPSC. In 1999, at Vienna, the International Conference on Combatting Child Pornography on the internet further prompted worldwide criminalization efforts that focused on production, distribution, exportation, transmission, importation, intentional possession, and advertising child pornography'.³⁷⁹

The OPSC is integrated as a supporting element of several CRC articles with specific caveats that place an additional obligation upon State parties. Captured within the OPSC is the States' responsibility for:

'Related offences, OPSC.09; terminology application, OPSC.04 and OPSC.06; child prostitution OPSC.04; safeguarding clauses, OPSC.17; 'sale' of children terminology, OPSC.04 and OPSC.05; state responsibilities generally criminalization/penalisation duties, OPSC.07 and OPSC.09; international

³⁷⁶ David Smolin, 'Intercountry adoption as child trafficking' (2004) 39 *Vaparaíso University Law Review* 283, 325.

³⁷⁷ Committee on the Rights of the Child (CRC Committee), *Revised Guidelines Regarding Initial Reports to be Submitted by States Parties Under Article 12, para 1 of The Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (3 November 2006), Annex.

³⁷⁸ Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, requires parties to prohibit the sale of children, child prostitution and child pornography; OPSC entered into force on 18 January 2002.

³⁷⁹ *ibid.*

cooperation duties OPSC.10 and OPSC.14; the prevention duties OPSC.16; and, the protection of victims, OPSC.15 and OPSC.16'.³⁸⁰

Other examples can be found in how the OPSC details in art 4.2 for State Parties to form their extraterritorial criminal jurisdiction over enumerated offences by expanding the duty-bearer side of children's rights. The outcome is that the provision allows States to make it an offence for their nationals to carry out sexual offences of a child abroad.

Another significant example of the OPSC complimenting the CRC is contained within the Luxembourg Guidelines.³⁸¹ The guidelines speak to the CRC's art 34, where clarity is provided for distinguishing between sexual exploitation and sexual abuse of a child. However, for the prosecution of a case, definitional application of the terms is critical. On 28 January 2016, the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse were adopted by the Interagency Working Group on the Sexual Exploitation of Children, more commonly known as the *Luxembourg Guidelines*.³⁸² The *Luxembourg Guidelines* address the semantics of phrases and words used within the context of the offense covered under the CRC arts 34-36 and the OPSC. The guidelines, conjunctively with the OPSC, are implementation tools for member-States. The contents of the guidelines reiterate that 'words matter', and it is critical to avoid confusion around the different terminology applicable to the sexual

³⁸⁰ OPSC, paras 2 to 4 of art 3 of the OPSC.

³⁸¹ *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016* <<http://luxembourgguidelines.org/english-version/>> accessed 14 March 2017.

³⁸² *ibid.*

exploitation of children and sexual crimes against children. The thesis refers to the guidelines used during the analysis are in Chapters three and four of the study.

The OPSC appears to remove the shortcomings in the Palermo Trafficking Protocol, as it defined sexual abuse. Unlike other instruments, the OPSC draws from the UN Secretariat³⁸³ definition, derived collaboratively with the '*2017 World Health Organisation (WHO) Clinical Guidelines on Responding to Children and Adolescents Who Have been Sexually Abused*'.³⁸⁴ The guide recaptures ethical principles and human rights standards from the CRC to include the principle of best interest, evolving capacities, non-discrimination, and participation.³⁸⁵ The guidelines address many vital issues that would apply to the Rohingya child and other similarly-situated children who have been sexually abused, including addressing:

- a. sexual abuse is when an adult commits the criminal act, and other children, who are by virtue of their age or development stage are in a position of responsibility or trust, or power over the victim (Referring to j, evidence, there is no specification as to whether the children sexually abused whereby another adult or child upon a child).³⁸⁶
- b. child sexual abuse due to incest (the Rohingya child is forcibly displaced and often in precarious situations with family and non-familial adults and adolescents)

³⁸³ UN Secretariat, Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Abuse ST/SGB/2003/13 (9 October 2003) 'Section 1. Definition'

<<https://conduct.unmissions.org/sites/default/files/keydoc4.pdf>> accessed 29 December 2018.

³⁸⁴ World Health Organisation (WHO), (*WHO) Clinical Guidelines on Responding to Children and Adolescents Who Have Been Sexually Abused* (WHO 2017)

<<https://www.who.int/reproductivehealth/publications/violence/clinical-response-csa/en/>> accessed 22 December 2019; vii.

³⁸⁵ *ibid* Chapter 3, 15-17.

³⁸⁶ *ibid*.

- c. whether sexual assault is solely a sexual act or whether it is a combination of the intent 'to satisfy the needs of the perpetrator or another third-party including that of seeking power over a child',³⁸⁷
- d. the three types of child sexual abuse:
 - i. '(i) non-contact sexual abuse –(for example, threats of sexual abuse, verbal sexual harassment, sexual solicitation, indecent exposure, exposing the child to pornography);
 - ii. (ii) contact sexual abuse involving sexual intercourse (that is, sexual assault or rape); and
 - iii. (iii) contact sexual abuse, excluding sexual intercourse but involving other acts such as inappropriate touching, fondling, and kissing. Child sexual abuse is often carried out without physical force, but rather with manipulation (for instance psychological, emotional, or material)'.³⁸⁸

In the states under review, the respective legislation for the protection of children, legal reports, conference notes, or other texts reviewed for this study, there was no inclusion or reference to the CRC's art 34 definitions of sexual abuse and sexual exploitation. Similarly, the omission was the Optional Protocol to the Convention on the sale of children's definitions of exploitation captures the multiple forms of exploitation. In any situation, the case law makes no references to prevention measures, as proffered by this study's research – Kennedy's Deterrence Strategies. There was no indication in the legal reports that reflect the victim received any benefit or legal empowerment tools from the obliged State measures of the Palermo Trafficking Protocol's arts 6, 7, 8, or the CRC's, 32, 34-36, or any of the provisions for child victim protections allocated in the Optional Protocol for the sale of children, arts 9(4). The OPSC further obliges each state party, under art 11,

³⁸⁷ *ibid.*

³⁸⁸ *ibid.*, Chapter 7: Child sexual abuse provides the details for the types and conditions of abuse outlined in the definition.

‘Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child, and that may be contained in:

- (a) The law of a State party;
- (b) International law in force for that State’.

Herein is a gap that the research opines, if altered, will make a huge difference in achieving the multiple tasks of the Sustainability Goals of 2030. The omission of critical research-based global terminology has and continues to hinder the effective criminalization of the sexual abuse³⁸⁹ and exploitation of children, specifically those in vulnerable situations.

iii. Optional Protocol on a communications procedure (OPIC). Often referred to as the ‘complaints procedure’ and known in the literature as ‘communications procedure’ or a ‘complaints mechanism’ for the Convention on the Child's Rights. The OPIC serves as a means for children whose rights have been violated to challenge those deemed to respond to the violation(s). In this case, the complaints mechanisms seek redress for rights that have been violated by their respective country’s government whereby the UN would investigate the situation. The Committee on the Rights of the Child is a set of experts on children’s rights who act by reviewing through and responding to complaints filed by a child or on behalf of a child against governments. For the states under investigation, as of the writing of this thesis, Thailand is the only regional member-state, ratifying on 26 April 2014. As a result,

OPIC, art 1, para two states, ‘The Committee shall not exercise its competence regarding a State party to the present Protocol on matters concerning violations of rights set forth in an instrument to which that State is not a party’.

³⁸⁹ Sexual abuse of children and adolescents is a gross violation of their rights and a global public health problem.

OPIC, art 1, para 3, states, 'No communication shall be received by the Committee if it concerns a State that is not a party to the present Protocol'.

Conversely, Thailand still has an obligation through inter-state communications, whereas,

OPIC, art 12, paras 1(a)(b)(c) 1. A State party to the present Protocol may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under any of the following instruments to which the State is a party: (a) The Convention; (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography; (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.

Thailand would also be required to follow other provisions outlined under art 12, paras 2-4 that allow a government to accept the complaints procedure. The government can also decide that it wants to permit other governments to file complaints entailing children's rights violations as outlined in Part III, inquiry procedures, arts 13 -14, Part IV, arts 15-17 (referring to *A.B. v Italy*, *E.B. and ors v New Zealand*, *L.P. v the Czech Republic*, *Mohammed Sahid and ors v New Zealand*, *C.P. and ors v Denmark*; *Coronel and ors v Colombia*; *Irschik and ors v Austria*; *P.S. and ors v Denmark*).³⁹⁰

³⁹⁰ CRIN, CRC Complaints Mechanism' (CRIN 2013) <www.crin.org> accessed 19 Nov 2018; citing *A.B. v Italy*, *E.B. and ors v New Zealand*, *L.P. v the Czech Republic*, *Mohammed Sahid and ors v New Zealand*, *C.P. and ors v Denmark*; *Coronel and ors v Colombia*; *Irschik and ors v Austria*; *P.S. and ors v Denmark*.

Part III. Connecting research theories and principles to child human trafficking

1. Taxonomy of Vulnerability. In a sociological context, the vulnerability of an individual or child emerges as the missing link in formulating well-developed practices and policies. This study places emphasis on what constitutes vulnerability to child human trafficking as a prerequisite for the development of valid prevention programmes. The Palermo Trafficking Protocol and the Children's Rights Convention have prompted states to consider developing strategic policies to prevent trafficking while simultaneously having the capacity to address the real-world scenarios that perpetrators use to victimize vulnerable populations.

A Position of Vulnerability (APOV), Palermo Trafficking Protocol. Investigating the State's responsibility to vulnerable populations examines the domestic legal reports of Bangladesh and Myanmar's³⁹¹ legislature and statutes. Under each of the Sustainability Goals #8, Target 8.7, #16, Targets 16.2, 16.3, and 16.10, the vulnerability of children attaches to the goals to eradicate exploitation and trafficking. Article 9(4) of The Trafficking in Persons Protocol mandates States Parties to take positive steps to address the underlying causes of trafficking: specifically, to

‘take or strengthen measures ... to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment, and lack of equal opportunity; vulnerability to trafficking is certainly not fixed, predetermined, or even fully “known”.’³⁹²

An assortment of circumstances forms the context within which human trafficking occurs and the individual's capacity to respond. The international guidance implies

³⁹¹ Michael S. Quinn, 'Argument and authority in common law advocacy and adjudication: An irreducible pluralism of principles (1999) 74 Chi.-Kent L. Rev. 655

<<https://scholarship.kentlaw.iit.edu/cklawreview/vol74/iss2/15>> accessed 29 December 2019.

³⁹² Palermo Trafficking Protocol, art 9(4).

vulnerability should be addressed with a situation-specific analysis.³⁹³ When courts attempt to interpret treaty rules or their domestic rule counterpart, courts usually rely to some degree upon the *international* canon of codified rules of arts 31 and 32 of the Vienna Convention on the Laws of Treaties.³⁹⁴ However, exercising these types of practices may result in gaps in the domestic implementation of international treaties. The Palermo Trafficking Protocol, para 3(a), states that ‘a position of vulnerability’ (APOV) is a criterion for meeting the trafficking in persons’ definition. Notwithstanding the absence of an established definition, the term ‘vulnerability’ is commonly exercised across various academic disciplines that may include criminal justice, human security, environmental science, and health. Within the framework of trafficking, ‘vulnerability’ is commonly referenced to apply factors that enhance the likelihood of individuals or specific marginalized groups being trafficked. For example, in the scope of the displaced, stateless, refugee, and non-refugee children, their forced migration and situations encompass the dangers of detention camps. In addition, the dangers consist of factors prompted by human rights violations of ‘inequality, discrimination, and gender-based violence’.³⁹⁵ These ongoing components further promote social conditions, economic deprivations, and constrained individual choices that create avenues for traffickers and exploitation perpetrators.

³⁹³ OHCHR, ‘OHCHR Recommended Principles and Guidelines on Human Trafficking: Commentary’ (OHCHR 2010) 105-116 <<https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>> accessed 22 October 2018.

³⁹⁴ VCLT, art 31.

³⁹⁵ UN Global Plan of Action to Combat Trafficking in Persons. UN Doc. A/RES/64/293 (12 August 2010), preambular para 3; UNCRC, General comment 13, right of the child to freedom from all forms of violence (2011).

One example is the term 'criteria', which has been problematic in its global translations. Abuse of APOV is explicitly referred to as a 'means' of trafficking in the legislation of Egypt³⁹⁶ the Republic of Moldova (the 2005 Law on Preventing and Combating Trafficking in Human Beings, and the 2002 Criminal Code) the Netherlands.³⁹⁷ In a Netherlands' Supreme Court, in October 2009 issued interpretative guidance on the concept of APOV with six Chinese irregular migrants where the Court of Appeal ruled that it was sufficient that 'conditional intent' is sufficient... 'It is enough that the perpetrator was aware of the state of affairs that must be assumed to give rise to power or a vulnerable position'.³⁹⁸ The case reflects a correlation between abuse of power and APOV, which appears to be an overlap. With the Supreme Court case, the victims' vulnerable position gave rise to the perpetrator's position of power.³⁹⁹ The court did not distinguish between the two means, simply emphasizing the perpetrator's 'conditional intent' [to exploit].⁴⁰⁰

The APOV is investigated in the research jurisdictions, Bangladesh and Myanmar. What is clear is art 1, Convention on the Rights of the Child, specifies a child as a person under 18 years of age.⁴⁰¹ Therefore, to provide uncompromising clarity, the Palermo Trafficking Protocol specifically designates children⁴⁰² as a 'special case', for whom only two components of the international definition are required to meet the

³⁹⁶ Article 2 of Egypt's 2012 Law no 64 regarding Combating Human Trafficking.

³⁹⁷ Article 273f of the Dutch Criminal Code.

³⁹⁸ Supreme Court, 27 October 2009, LJN: B17099408; Den Bosch Court of Appeal, 17 September 2010, LJN: BN7215. A third suspect was convicted for human trafficking earlier that year: Den Bosch Court of Appeal, 19 February 2010, LJN: BL5492; L van Krimpen, 'The interpretation and implementation of labour exploitation in Dutch Case Law' in C Rijken (ed), 'Combating human trafficking for labour exploitation' (2011) 498.

³⁹⁹ *ibid.*

⁴⁰⁰ *ibid.*

⁴⁰¹ CRC, art 1.

⁴⁰² Child victims are recognized by art 8(1)(a) OPSC to be particularly vulnerable and in need of procedures that are adapted to their special needs.

criminal law threshold for human trafficking, movement, and exploitation. Consent, whereas ‘a child cannot give consent to be exploited, regardless of their awareness/agreement to movement,’⁴⁰³ as stated in the Palermo Trafficking Protocol, art 3,

‘(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be *irrelevant* where any of the means outlined in subparagraph (a) have been used;

‘(c) The recruitment, transportation, harbouring, or receipt of a child for the purpose of exploitation shall be considered, “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

‘(d) “Child” shall mean any person under eighteen years of age.’⁴⁰⁴

Conceptually, the abuse of APOV, collectively with the other *means* identified in the Protocol, has been a globally accepted and distinct essential part of the international legal definition of trafficking. The APOV has survived each of the significant treaties adopted following the Protocol and includes a definition of trafficking in persons; similarly, the same holds for interpretive texts and policy documents. However, official guidance on the manner the concept is to be understood remains ambiguous. None of the means cited within the Protocol are individually defined. Nevertheless, a presumption can be derived that the drafters wanted to convey that ‘abuse of a position of vulnerability’ can be relative to ‘any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved’.⁴⁰⁵

In contrast, the International Labour Organization’s (ILO) there are critical international instruments on forced labour, the Forced Labour Convention, 1930 (no

⁴⁰³ S Y Cho and K C Yodiamonnati, ‘An Empirical Analysis on the Impact of the Anti-trafficking Protocol’ (ILO 2011) <papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2117834_code1428834.pdf? > accessed 11 January 2018; Lars Thomann, *Steps to compliance with international labour standards – The international labour organization (ILO) and the abolition of forced labour* (VS Research 2011) 191.

⁴⁰⁴ Palermo Convention, 3(b), (c), (d).

⁴⁰⁵ Palermo Trafficking Protocol, art 3.

29)⁴⁰⁶ and the Abolition of Forced Labour Convention, 1957 (no 105),⁴⁰⁷ do not refer to ‘abuse of vulnerability’.⁴⁰⁸ However, research indicates that the ILO supervisory bodies have taken this under consideration during the examination of national legislation and practices.⁴⁰⁹ Furtherance of this practice can be seen in a noteworthy position made by the ILO Committee of Experts⁴¹⁰ on the Application of Conventions and Recommendations (CEACR), which noted,

‘adoption of legislation referring to the abuse of the *situation* of vulnerability of a person for the purpose of labour or sexual exploitation, and that the presence of this element can be considered an *indicator* of a situation where the consent of the worker has been vitiated’.⁴¹¹

Surprisingly, the Worst Forms of Child Labour Convention, C182,⁴¹² is also silent on a position of vulnerability, and presumptively, the *ILO Committee of Experts Recommendation Paper* would lead the Convention’s application.

The research target population –forced displaced, stateless, refugee, and non-refugee –vulnerability is further highlighted in the UN Office on Drugs and Crime’s 2018-Global Report on Trafficking in Persons,⁴¹³ which covers research and statistics from the periods of 2014-2016. Similarly, the 2012-2014 UN Office on Drugs and Crime’s

⁴⁰⁶ International Labour Organization (ILO), *Forced Labour Convention*, C29, 28 June 1930, C29; Lars Thomann, *Steps to compliance with international labour standards – The international labour organization (ILO) and the abolition of forced labour* (VS Research 2011) 191.

⁴⁰⁷ International Labour Organization (ILO), *Abolition of Forced Labour Convention*, C105, 25 June 1957, C105.

⁴⁰⁸ The ILO’s Worst Forms of Child Labour Convention (Convention no 182 of 1999); Thomann (n 406).

⁴⁰⁹ International Labour Organization (ILO) conventions focus on forced labour or services: The ILO Forced Labour Convention (Convention no 29 of 1930) and its newly adopted Protocol, which defines forced or compulsory labour, and the ILO Abolition of Forced Labour Convention (Convention no 105 of 1957); Franziska Humbert, *The challenge of child labour in international law* (Cambridge University Press 2009) 35, 79.

⁴¹⁰ The Committee of Experts on the Application of Conventions and Recommendations.

⁴¹¹ Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), ILC, 10st Session, ILO 2012 < https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_205472.pdf > accessed 22 April 2018.

⁴¹² International Labour Organization (ILO), *Worst Forms of Child Labour Convention*, C182, 17 June 1999, C182.

⁴¹³ UNODC, ‘2018 Global Report on Trafficking in Persons’ (UNODC 2018)

<<https://www.unodc.org/> UN Office on Drugs and Crime’s (UNODC) 2018-Global Report on Trafficking in Persons > accessed 29 January 2019; UN Office on Drugs and Crime, 2010 Signatories to the UN Convention against Transnational Crime and its Protocols <<http://www.unodc.org/>> accessed 9 January 2018.

Global Report on Trafficking in Persons sets ‘the evaluation of pattern flows of trafficking in persons at the global, regional, and national levels’⁴¹⁴ for periods dating back to 2010. Thus, the reports span beyond a decade of research, among other reports and conventions, and substantiates this study identifying the high vulnerability of human trafficking for migrating persons, ‘enroute or at destination’.⁴¹⁵ Moreover, the global report places emphasis on the conditions of people escaping conflict and persecution.⁴¹⁶

The UN Office on Drugs and Crime’s reports serve as a tangible link to trafficking risks of the forcibly displaced and stateless in this study's targeted Southeast Asia (Myanmar) and South Asia (Bangladesh) states. The report reflects Bangladesh and Myanmar remain high-risk areas in worldwide human trafficking studies.⁴¹⁷

⁴¹⁴ UNODC, ‘2012-2014 Global Report on Trafficking in Persons’ (UNODC 2012-2014)

<https://www.unodc.org/documents/data-and-analysis/glotip/2012-2014_Global_Report_on_Trafficking_in_Persons.pdf> accessed 29 Dec 2017; UN Office on Drugs and Crime, 2010 Signatories to the UN Convention against Transnational Crime and its Protocols <<http://www.unodc.org/>> accessed 9 January 2018.

⁴¹⁵ The analysis of the critical-case population, in relation to the States’ responsibility to the in-force instruments, in Chapter 3 is based on those children enroute or at destination as a stateless, refugee or non-refugee.

⁴¹⁶ UNODC (n 437-439).

⁴¹⁷ UNODC (n 437-439); UNHCR, ‘Human Trafficking’ (UNHCR 2010) 2

<<http://www.unhcr.org/4c9770ee6.pdf>> accessed 28 June 2018; Maria Riiskjaer and Anna Marie Gallagher, ‘Review of UNHCR’s Efforts to Prevent and Respond to Human Trafficking,’ UNHCR Policy Development and Evaluation Service September 2008.

2. CRC, Children in Vulnerable Situations. Codified in art 3, the Convention on the Rights of the Child and the best interest principle plays an integral role in decisions involving the admission or removal of a child from a host State.⁴¹⁸ In detail, the article examines the extent to which the best interest principle also serves as an independent source of international protection.⁴¹⁹ General comment 14 adds further clarity to member States as it explains that a child in a specific situation of vulnerability may not be parallel to the same as a child, who may not be in the same vulnerable situation – ‘each child is unique and each situation must be assessed according to the child’s uniqueness’.⁴²⁰ The Convention also identifies particular groups/subgroups of children as vulnerable for States to identify and implement special measures for these groups.⁴²¹ For example, article 22 of the CRC identifies asylum-seeking and refugee children with General comment 6 and children in armed conflict, art 38; similarly, in children with disabilities, art 23 as vulnerable groups.

The CRC Committee views discrimination as a vital component of vulnerability.⁴²² Arts 1, 2, 3, and 19 cover substantive issues prohibiting the prohibition of discrimination. The articles capture the best interest of the child, protection of the child against all forms of violence, or ill-treatment in a situation where a child would face an alleged risk of female genital mutilation (FGM) – *I.A.M. (on behalf of K.Y.M.) v*

⁴¹⁸ CRC, Article 3.

⁴¹⁹ Included in the Chapter 3 argument, under CRC.

⁴²⁰ UNCRC, General comment No 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art 3, para 1), 62nd session, UN Doc CRC/C/GC/14 (2013) (‘General comment No 14’) [76].

⁴²¹ Kirsten Sandberg, ‘The Convention on the Rights of the Child and the vulnerability of children’ (2015) 84 *Nordic Journal of International Law* 221-47, 229.

⁴²² CRC Committee, GC 15 (2013) On the right of the child to the enjoyment of the highest attainable standard of health (art 24) (17 April 2013) CRC/C/GC/15 para 8.

Denmark.⁴²³ Unlike the Palermo Trafficking Protocol, the Convention on the Rights of the Child Committee refers to a long list of children in ‘vulnerable situations’ versus ‘vulnerable groups’, to the opposed aspects of labeling children in these situations.⁴²⁴ The study posits that despite legislative developments and national and international interventions, there is still a lack of firm state definitions to take responsibility for effective human trafficking responses to elusive perpetrators and the gaps in meeting victims’ needs. On a broader scale, regardless of the region, statelessness is only one factor in vulnerability. In contrast, vulnerability is assessed and categorized according to many characteristics, as illustrated in Figure 10.

Vulnerability is usually associated with poverty, health, and age, coupled with the effects of forced migration across the world. A vulnerability within the context of a stateless person places children into multiple descriptive categories across each of the character levels identified in Figure 10. The categorical placements would presumptively place force displaced, stateless children at an even higher level of risk and vulnerability; therefore, this research strongly avers a stateless child warrants more levels of protection from member States.

World Bank's ‘Orphans and Vulnerable Children’s’ (OVC) toolkit is used within the research as legal empowerment, deterrence, and redress resource tool for practitioners. The toolkit defines vulnerability as ‘the group of children that experienced adverse outcomes, such as the loss of their education, morbidity, and

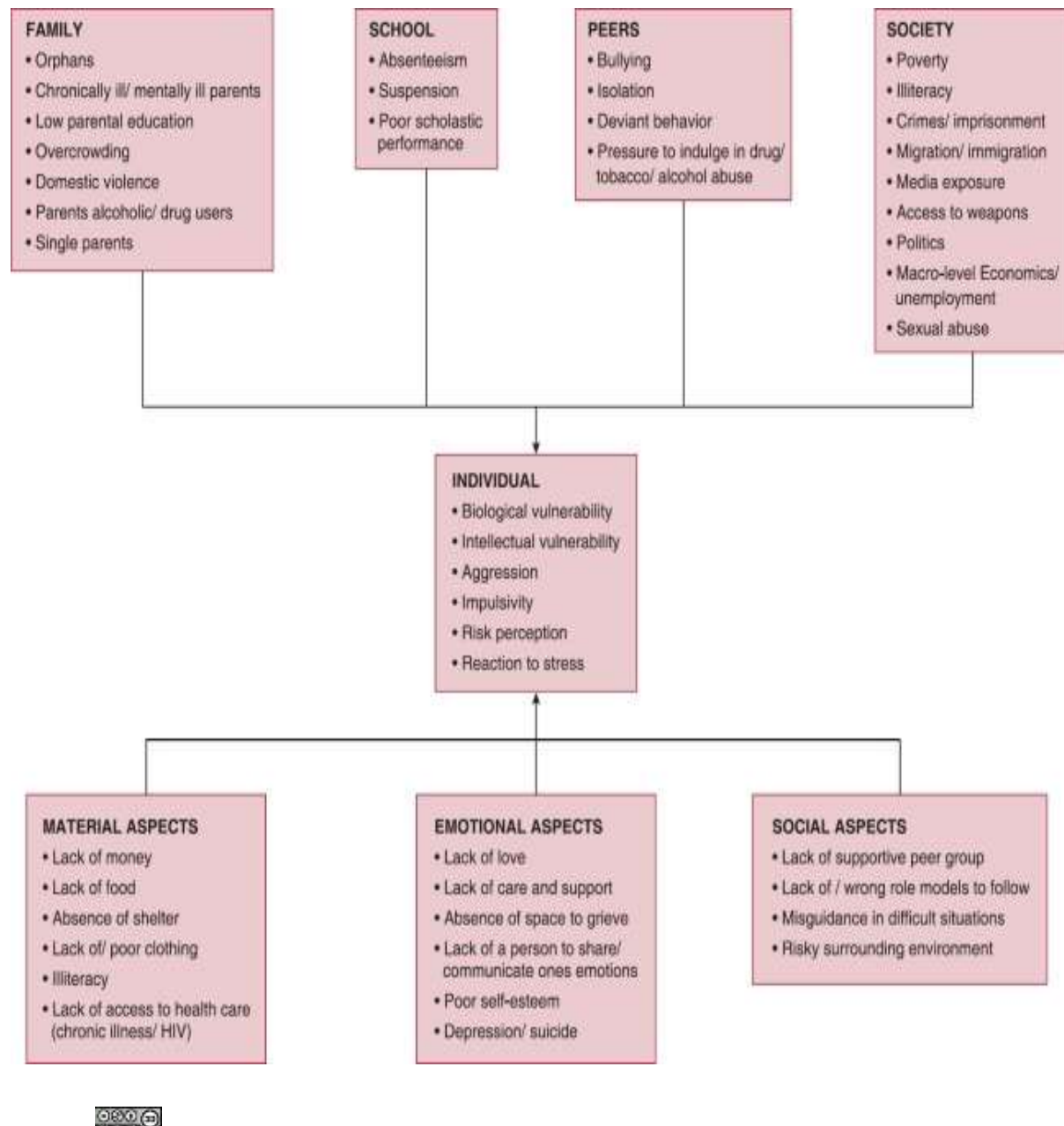
⁴²³ I.A.M. (*on behalf of K.Y.M.*) *v Denmark*, Communication no 3/2016, CRC/C/77/D/3/2016, UN Committee on the Rights of the Child (CRC), 25 January 2018; case summary: deportation of girl to Somalia, where she would face an alleged risk of being forced to endure FGM.

⁴²⁴ CRC Committee, GC 13 (2011): *The right of the child to freedom from all forms of violence* (18 April 2011) CRC/C/GC/13 para 53.

malnutrition, at higher rates than do their peers', literal meaning the term 'vulnerability' is the state or condition of being weak or poorly defended.⁴²⁵ The OVC toolkit allows explanations of the concept of vulnerability as it is identified in comparison to young people, who are more exposed to risks than their peers; descriptive of the deprivation of food, parental care, exploitation, abuse, neglect, violence, and infection with HIV and is a valuable tool to evaluate situational responsiveness. The universality of the toolkit is well-suited as a resource for the study of force displaced stateless Rohingya children.

⁴²⁵ World Bank, 'OVC core definitions'
<<http://info.worldbank.org/etools/docs/library/164047/howknow/definitions.htm>> accessed 17 February 2018.

Figure 10. Factors influencing and determining vulnerability ⁴²⁶



⁴²⁶ S K Arora and others, 'Defining and measuring vulnerability in young people' (2015) 40[3] Indian J Community Med 193, 197 <doi:10.4103/0970-0218.158868> accessed 12 January 2018; adapted for educational purposes only; Graphic is an open-access article distributed under the terms of the Creative Commons Attribution-Noncommercial-Share Alike 3.0 Unported, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Further scrutiny of vulnerability, characteristics of disadvantaged groups, correlation with state human trafficking rankings, and the comprehensive work of specific authors are integral in the study's analysis chapters and review of the literature.

3. Legal Empowerment, access to justice, deterrence, and redress. The battle against poverty has engaged access to justice and legal empowerment as its primary tools. Works by UNDP indicate that 'Access to justice is closely linked to poverty reduction...'.⁴²⁷ According to UNDP and the published literature by the Children's Rights and International Network, access to justice should be an essential resource and utilized as a voice.⁴²⁸ Literature by other authors, such as Van Rooji and Wojkowska, echoes the need for access to justice and legal empowerment and suggests varying approaches that speak to seldom applied laws noted in this study.⁴²⁹ The authors question how laws, policies, institutions, and stakeholders are operating in socio-political contexts. Evidence of that thought pattern is evitable in World Bank's 'Voices of the Poor' philosophical views, where the poor have limited access linked to 'lawlessness' and its adverse impacts upon the poor.⁴³⁰ A close relationship to the World Bank's views can be seen in the Rohingya-crisis.

⁴²⁷ UNDP, *Access to justice practice note* (New York: UN Development Programme Democratic Governance Group 2004) 3.

⁴²⁸ UNDP, *Programming for justice: Access for all* (Bangkok: UN Development Programme 2005); Children's Rights & International Network, 'Access to justice: Challenging violations of children's rights' (CRIN 2020) <<https://archive.crin.org/en/home/law/access.html>> accessed 2 February 2020); CRIN, 'Rights remedies and representation' (CRIN 2016)

<https://archive.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf> accessed 2 February 2020.

⁴²⁹ Benjamin Van Rooij, *Bringing justice to the poor: Bottom-up legal development cooperation, Occasional Paper* (Leiden: Van Vollenhoven Institute); Ewa Wojkowska, *Doing justice. How informal justice systems can contribute* (Oslo: UN Development Programme Oslo Governance Centre, December 2006) <<https://www.un.org/ruleoflaw/files/UNDP%20DoingJusticeEwaWojkowska130307.pdf>> accessed 2 February 2020.

⁴³⁰ World Bank, *Voices of the poor: Crying out for change* (New York, NY: Published for the World Bank, Oxford University Press).

Legal empowerment, deterrence, and redress in this research respond to the study's foundational scope of – Sustainability Development Goals, 16.3 – 'Promote the rule of law' at the national and international levels, provide equal access to justice for all,⁴³¹ and the focal component of this research: to promote legal empowerment in alignment with Sustainability Goal #16.10⁴³² –

'Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements'.⁴³³

Within the context of this study's second objective, legal empowerment conceptually is opined to be captured within the embedded laws of the research-focused treaties. The term's application is conceptually grounded in the principles of *Public Legal Education* (PLE), where Sarah Morse defined the term as,

'an umbrella term we have adopted to cover the many activities carried out worldwide aimed at educating members of the public in relation to legal rights and responsibilities...'⁴³⁴

People engaging in social justice and legal education issues refer to legal empowerment through several descriptors: street law, community legal education (CLE), legal literacy, and legal capability, among others.⁴³⁵ Legal empowerment is expanded upon within the study's argument. The concept has an essential role in public legal education. On the international platform, the term legal empowerment is

⁴³¹ The 2030 Agenda for Sustainable Development, UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1 <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 29 September 2019.

⁴³² Transforming our world: The 2030 Agenda for Sustainable Development, UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1 <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 29 September 2019.

⁴³³ Transforming our world: The 2030 Agenda for Sustainable Development, UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1, 25/35-26/35 <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 29 September 2019.

⁴³⁴ S Morse, 'I'm so glad that I live in a world where there are Octobers' (2017) 1[1] *International Journal on Public Legal Education* 13 <<http://dx.doi.org/10.19164/ijple.v2i1.704>> accessed 22 January 2018.

⁴³⁵ Kyoko Isoyama, 'Law education in Japan, Developments and challenges' (2019) 3[1] *International Journal of Public Education* 96, 116 <<https://northumbriajournals.co.uk/index.php/ijple/article/view/836/1219>> accessed 22 December 2019.

applied within a multitude of contexts in literature. However, this study adopts the UN' 2009 Commission on Legal Empowerment of the Poor's (CLEP) authoritative definition of legal empowerment as,

'The use of legal rights, services, systems, and reform, by and for the disadvantaged populations and often in combination with other activities, to directly alleviate their poverty, improve their influence on government actions and services, or otherwise increase their freedom.'⁴³⁶

The study examines the Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplemented by the UN Convention against Transnational Organized Crime, the Children's Rights Convention,⁴³⁷ Optional Protocol for the sale of children, and Optional Protocol on a communications procedure⁴³⁸ treaties. The study affirms the premise that legal empowerment is embedded within the identified international instruments. Further, there is accessibility regardless of citizenship and applicable to vulnerable victims of human trafficking and exploitation. Succinctly, the research also aligns with the UN Sustainability Goal #8, Target 8.7,⁴³⁹ where it calls on States to – 'Take immediate and effective measures to eradicate forced labour, end modern slavery... end child labour in all its forms'.⁴⁴⁰ The study examines legal reports and suggests the use of *embedded legal empowerment* elements within the existing ratified international Palermo Trafficking Protocol and its respective domestic order of the law

⁴³⁶ The Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, vol 1 (New York: UNDP, 2008).

⁴³⁷ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

⁴³⁸ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification, and accession by General assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002.

⁴³⁹ Sustainability Development Goal #8, Target 8.7.

⁴⁴⁰ UN Sustainability Goal #8, Target 8.7.

in Myanmar from the following articles expanded upon in Chapter five, legal empowerment, deterrence, and redress:

- a. 'Article 6 – Protection of victims of trafficking in persons,
- b. Article 7 – Status of victims of trafficking in persons in receiving states (highlighting victim rights under transit⁴⁴¹ state obligations),
- c. Article 8 – Repatriation of victims of trafficking in persons, and
- d. Article 9 – Prevention of trafficking in persons', Palermo Trafficking Protocol.

The CRC⁴⁴² and the Optional Protocol to the Convention on the sale of children,⁴⁴³ art 3, coincides with bilateral treaties and agreements in arts 4 and 10, focuses on vulnerability in art 8 and 9. The examination of embedded legal empowerment, deterrence, and redress links sociology with the law. The concept provides advocates and practitioners with the tools to promote awareness as a prevention tool and to prompt Pillar 1 of legal empowerment – (the capacity to seek access to justice and the 'rule of law'). In addition, pillar 1's concept includes the right to deterrence strategies and redress – referred to in the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.⁴⁴⁴ The projected research outcome is an upsurge of Public Legal Education in targeted areas that can be referred to as 'a mechanism for meeting the legal needs of disadvantaged communities and securing

⁴⁴¹ UNODC, 'Promoting Cooperation among Source, Transit and Destination Countries in Response to Human Trafficking' (UNODC 2019) <<https://www.unodc.org/centralasia/en/news/promoting-cooperation-among-source-transit-and-destination-countries-in-response-to-human-trafficking.html>> accessed 20 October 2019.

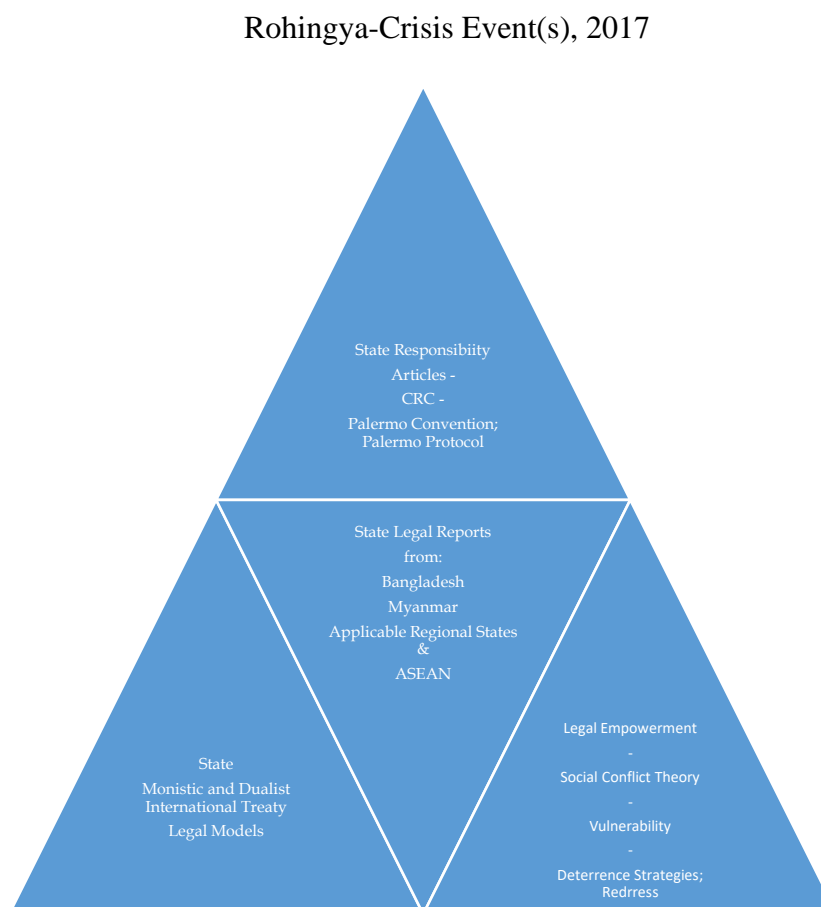
⁴⁴² Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

⁴⁴³ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification, and accession by General assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002.

⁴⁴⁴ The Commission on Legal Empowerment of the Poor, 'Making the Law Work for Everyone' (New York: UNDP 2008); Optional Protocol to the Convention on the Rights of the Child on a communication procedure, adopted and opened for signature, ratification, and accession by General Assembly resolution A/RES/66/138 of 19 December 2011.

access to justice'.⁴⁴⁵ Figure 11 reflects the conceptual diagram of an analytical matrix that places the targeted Southeast Asia (Myanmar), South Asia (Bangladesh) countries, and regions in an iterative comparative position to the respective investigative criteria — representing the triangulation of datasets.

Figure 11. Research Analysis Matrix, Triangulation of Datasets⁴⁴⁶



Note, Figure 11. Refer to Appendix 2, Methods, Data triangulation; a Venn diagram is used to illustrate interrelationships of how the research intersects across international instruments, state legal reports, regional agreements, and monistic/dualist legal systems, and supporting research theories.

⁴⁴⁵ L Wintersteiger, *Legal needs, legal capability, and the role of public legal education* (A Report by Law for Life: The Foundation for Public Legal Education 2016) 8 <https://research.thelegaleducationfoundation.org/wp-content/uploads/2018/03/LNCPLE_report.pdf> accessed 18 December 2019.

⁴⁴⁶ Graphic conceptual illustration created from privately licensed MS Office 365 Suite, PowerPoint, researcher original content; Graphic is an open-access item distributed under the terms of the Creative Commons Attribution-Noncommercial-Share Alike 3.0 Unported, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

4. Social Conflict Theory

This research does not strictly adhere to traditional sociological methods and applications.⁴⁴⁷ Instead, the study's application of sociological principles allows the researcher to explore the core components of *Social Conflict Theory* to build a legal framework of international criminal law and international human rights law adaptable to the targeted states. Therefore, this section attempts to address some of the critical components of understanding Southeast Asia (Myanmar), South Asia (Bangladesh), regional societies, and the purpose of sociology within the research context.

The concept of assessing national justice needs in conjunction with many factors associated with widespread abuse in Southeast Asia was investigated by the UNSC in 2004.⁴⁴⁸ Similar to this study's sociological alignment of underlying conflict association to historical abuse of vulnerable groups, the UNSC speaks from an international platform to encourage formulating frameworks that address investigating past crimes, identifying responsible parties for human rights violations, and preventing future abuses.⁴⁴⁹

⁴⁴⁷ D Yang, 'The theoretical context and judgment of sociological quantitative research method' (2009) 23[11] Jiangxi Sociology 56, 61 <<https://revisesociology.com/2017/12/28/quantitative-sociological>> accessed 3 November 2019.

⁴⁴⁸ UNSC, 'The rule of law and transnational justice in conflict and post-conflict societies: Report of the Secretary-General, S/2004/616' (2004) <<https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/>> accessed 3 November 2019.

⁴⁴⁹ *ibid.*

This study takes the next step by linking the UNSC's overall, as a branch of sociology, *Social Conflict Theory* to international criminal law and international human rights.

The shaping of *Conflict Theory* began around the late 50s. From the first annual meeting in the 70s of the American Sociological Association, *Social Conflict Theory* seized a prominent position. Since its conception, *Social Conflict Theory* has been on a continuum into the 20th century with classical sociologist theories from Karl Marx, Max Weber, and Georg Simmel.⁴⁵⁰ Conflict Theory was identified for this research as it emphasizes the conflicts of social life to 'explain' social change and its impact.⁴⁵¹

Works by Bartos and Wehr are reflective of the comprehensive approach to the explanation of the social conflict. The authors' writings connect to the different theoretical perspectives that capture the theory, characteristics, and practices of atrocities and systematic abuses that devastate societies reflective in transitional justice. Looking to the founder, Max Weber's definition of sociology as a subject of the science as it ties to the researcher's study posture, the theologist identified it as —

'the aim of which is to have an interpretive understanding of social actions and given a reasonable explanation of social actions processes and outcomes' aligns with the study's scope, aim, and objectives'.⁴⁵²

The theory is widely applied in dominant structural functionalism by representatives of the Conflict Theory School. British sociologist J Raikes, German sociologist Ralf

⁴⁵⁰ Max Weber, 'Science as a vocation' in H H Gerth and C W Mills (eds), *From Max Weber: Essays in sociology* (pp 129-158) (New York: Oxford University Press 1969).

⁴⁵¹ Otomar J Bartos and Paul Wehr. *Using conflict theory* (Cambridge, UK: Cambridge Univ Press 2002).

⁴⁵² XF Ma, 'Durkheim and Weber: The comparison of sociological research method' (2008) 31[22] *The Studies of Sociology* 15, 18 <<<https://www.acarindex.com/dosyalar/makale/acarindex-1423867208.pdf>> accessed 21 December 2017.

Dahrendorf, American sociologist L Collins⁴⁵³ and Lewis Coser.⁴⁵⁴ Each sociologist has a unique perspective but possesses differentiations that distinguish their purview of the theory. For example, Dahrendorf avers that an unequal distribution of authority and power within a social organization creates divided, opposite quasi-groups based upon a social structure of 'the ruler and the ruled', or commonly referred to as the 'have, and the have not's'.⁴⁵⁵ Along the same plateau, Raikes' conflict theory emphasizes that the distribution of material by the dominant force constructs social models and allows compulsory powers to integrate resources for their interests to form a collective actor.⁴⁵⁶ However, a slight variation in social conflict theory sets Collins apart. Collins' postures social conflict as the nucleus process of social life with actors creating and re-creating.⁴⁵⁷ Coser's model points out a good and bad role of conflict while expressing disapproval of structural functionalism.⁴⁵⁸

There is a substantive divergence in conflict theory across the sphere of macro sociology.⁴⁵⁹ This study focuses only on the concept of conflict theory by Dahrendorf, as his principles more closely fit the norms from the quasi-group organizational structures of the region. Dahrendorf's conflict theory speaks to how the states of

⁴⁵³ Randall, Collins. 'The conflict tradition' In *Four sociological traditions* (New York: Oxford Univ Press, 1994).

⁴⁵⁴ Lewis Coser, *The functions of Social Conflict: An examination of the concept of Social Conflict and its use in empirical sociological research* (Free Press, Tampa 1964); Ralf Dahrendorf, *The modern social conflict: The politics of liberty* (2nd edn, Transaction Publishers New Jersey 2007).

⁴⁵⁵ Ralf Dahrendorf, *The modern social conflict: The politics of liberty* (2nd edn, Transaction Publishers, New Jersey 2007).

⁴⁵⁶ R Collins, *Conflict Sociology* (Academic Press, New York 1974).

⁴⁵⁷ *ibid.*

⁴⁵⁸ *ibid.*

⁴⁵⁹ Gerhard Lenski. *Human societies: An introduction to macrosociology* (McGraw-Hill 2002).

Bangladesh and Myanmar have devoted themselves to group conflicts as a collective actor. The Rohingya community of children and similarly situated children are the outcast and the ruled. An instance of this mindset can be stated about Myanmar from the following quoted remark from State Counsellor Aung Suu Kyi in 2012,

‘Rape is used in my country as a weapon against those who only want to live in peace, who only want to assert their basic human rights. It is used as a weapon by armed forces to intimidate the ethnic nationalities and to divide our country’.⁴⁶⁰

The UN Special Rapporteur has made similar comments on the situation,

‘the failure to investigate, prosecute and punish those responsible for rape and sexual violence has contributed to an environment conducive to the perpetuation of violence against women and girls in Myanmar. Sexual violence in Myanmar has been mentioned in every report the U.N. Secretary-General has written on conflict-related sexual violence. Women’s civil society groups, such as the Women’s League of Burma, have been tirelessly documenting and reporting on military-orchestrated rape campaigns for years’.

Though the above comments are focused on Myanmar, historically, much of mainland Southeast Asia conflicts appear to mirror those in Myanmar to varying degrees. Southeast Asia has been embroiled in war, and conflict engulfed regions from South Vietnam and Cambodia to Laos.⁴⁶¹ Sociologists’ research has laid the basis for ongoing conflict and tension from and by members of the different segments.⁴⁶² The segments are defined in terms of religion, language, ways of life, and economic

⁴⁶⁰ Just Security, ‘Behind Myanmar’s Military alibi: A path to compliance with the ICJs Order to Protect Rohingya’ (Reiss Security on Law and Security at New York University School of Law 2020) <<https://www.justsecurity.org/68393/behind-myanmars-military-alibi-a-path-for-compliance-with-the-icjs-order-to-protect-rohingya/>> accessed 5 Feb 2020.

⁴⁶¹ H D Evers, *Sociology of Southeast Asia: Readings on social change and development* (Kuala Lumpur, Oxford University Press 1980); H D Evers, *Modernization in Southeast Asia* (Singapore, Institute of Southeast Asian Studies: Oxford University Press 1973).

⁴⁶² H D Evers and Peter Chen (eds), *Studies in ASEAN Sociology: Urban society and social change* (Singapore, Chopmen Enterprises 1978).

position, where the ruler and the ruled 'meet only in the marketplace, in buying and selling'.⁴⁶³ Most significantly, Furnivall notes that 'the conflict between rival economic interests exacerbates racial diversity'.⁴⁶⁴ However, Furnivall's writings have drawn attention to the vital principle of ethnic identity and differences in the social organizations of Southeast Asia. Yet, one of the most consistent criticisms of Furnivall is that he has a too simple view of the relations between ethnic and economic divisions in the region. Though Furnivall's works may use a broad brush stroke on racial and economic tensions, his views continue to come under scrutiny.

Meanwhile, the philosophy appears to be validated by Dahrendorf's concepts of *Social Concept Theory*. According to UN reports and Fact-finding reports, a research conclusion can be drawn that Dahrendorf's Social Conflict Theory looks like what has and continues to occur in Southeast Asia and South Asia (refer to Tables 1 and 2). Also, the reports can be surmised to suggest that conflict behaviors are directed toward indigenous groups, who possess the physical features and cultural history attributed to a redistribution of authority by organizations that have devoted themselves to group conflicts (refer to Figures 1, 3, and 4).⁴⁶⁵ Dahrendorf also points out that society means,

⁴⁶³ Victor King, 'The Sociology of South-East Asia: A critical review of some concepts and issues' (1994) Brill 171, 206 <<https://www.jstor.org/stable/27864515>> accessed 2 February 2020.

⁴⁶⁴ J S Furnivall, *Colonial policy, and practice: A comparative study of Burma and Netherlands India* (Cambridge, Cambridge: University Press 1948); Thant Myint-U, *The river of lost footsteps – histories of Burma*, (Farrar, Straus and Giroux New York) 63.

⁴⁶⁵ Ralf Dahrendorf, *The modern social conflict: The politics of liberty* (2nd edn, Transaction Publishers, New Jersey 2007); Georg Simmel, 'The problem of sociology' in D Levine (Ed.), *Georg Simmel: On individuality and social forms* (pp 23–27) (Chicago: University of Chicago Press 1971).

‘ruling, ruling means inequality, while inequality brings conflict, and conflict constitutes a source of social progress and degression... including the survival chance for the majority people’.⁴⁶⁶

Multiple journals, news articles, and press releases are littered with similar comments and opinions that convey the gaps in human rights are founded in discriminatory practices. The study illustrates the collective focal actor(s) in Bangladesh and Myanmar, exhibiting Social Conflict behaviors, whose violent actions form the vision of human suffering depicted in the UNHCR 100-days of horror Rohingya-crisis, Figures 7 through 8. These UNHCR’s 100-days of horror and surrounding conflict events have planted the region on the international platform of the International Criminal Court. The investigation by the ICC has led to the Pre-Trial Chamber I, Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under art 19(3) of the Statute about actions taken by Myanmar, where Bangladesh is a member state of the Rome Statute.’⁴⁶⁷

In this critical-case, the evidence is used to determine whether the collective actors engaged in group conflict have designated the Rohingya as the oppressed and persecuted minority in the targeted research States. As a result, the targeted States have breached their treaty obligations to prevent, protect, and mitigate child exploitation and trafficking. The central research question and the three sub-research questions set up the study to either prove or disprove that the sociological aspect of

⁴⁶⁶ Dahrendorf (n 456); G Jia and others, ‘A study of mega project from a perspective of social conflict theory’ (2011) 29 International Journal of Project Management 817, 827 <<http://doi:10.1016/j.ijproman.2011.04.004>> accessed 3 January 2019.

⁴⁶⁷ ICC, Pre-Trial Chamber I, Decision on the ‘Prosecution’s request for a ruling on Jurisdiction under art 19(3) of the Statute’, no ICC-RoC46 (3)-01/18 (6 September 2018); jurisdiction case in relation to Republic of the Union of Myanmar (‘Myanmar’) to the People’s Republic of Bangladesh (‘Bangladesh’).

the geographical region holds equal importance to the respective international instruments' implementation.

Subsequently, the study suggests that an alignment of the sociological, environmental aspect holds equal weight with establishing a legal framework. An illustrative comparison can be made to a situation when a physician makes a medical diagnosis and treatment that correlates to a patient's environment. For example, in malaria-prone areas, patients are administered medicinal treatments and mosquito nets to compensate for environmental hazards. Likewise, in social conflict areas, where the ruled, or marginalized populations, are subjected to persecution, the study proffers the legal framework for prevention. Hence, protection should be aligned with the sociological environment of the geographical area to also compensate for the environmental hazards. In essence, the sociological make-up of the region would support a legal framework where the decision-makers, or the ruled, were 'required' or mandated to abide.⁴⁶⁸ If not, the study opines that the likelihood of self-directed compliance would not occur. The current horrendous situations of the visceral dislike for the Rohingya and similar-situated children indicate this notion; refer to Tables 1, 2, and 3 and Figures 1, 3, and 4.

The current body of literature positions the sociological aspect separate and distinct from the formulation of a legal framework in an abstract and non-adaptive manner. This research contrasts and links the sociological context of the Southeast Asia (Myanmar) and South Asia (Bangladesh) region to a universally adaptable and

⁴⁶⁸ ECtHR, *Siliadin v France*, App no 73316/01, Judgment 26 July 2005.

enforceable legal framework, even for the rulers. Support of the concept is the case of *Gutiérrez and Family v Argentina*, where the Inter-American Court of Human Rights conferred that when a 'State has an obligation that it has failed to comply with; in other words, that this unlawful act is attributed to it'.⁴⁶⁹ The problem across the world is that local laws and customs set a stage of impunity for violence against children and failure to prevent and protect against exploitation and trafficking. Yet, the provisions of State Responsibility Articles, art 3, Characterization of an act of a State as internationally wrongful is upheld by the International arbitral tribunal ruling in the case of *The Rompetrol Group N.V. v Romania*,⁴⁷⁰ where 'the requirements of local law cannot be advanced as an excuse for non-compliance with an international obligation'.⁴⁷¹

⁴⁶⁹ Inter-American Court of Human Rights, Judgment, 25 November 2013, para 78.

⁴⁷⁰ *Rompetrol Group NV v Romania*, ICSID Case no ARB/06/3.

⁴⁷¹ ICSID case no ARB/06/3, Award, 6 May 2013, para 189.

5. Deterrence Strategies (Kennedy's Deterrence as an exemplar)

The Palermo Trafficking Protocol mandates that State parties shall 'establish comprehensive policies, programmes, and other measures to (a) prevent and combat trafficking in person; and (b) to protect victims of trafficking in persons, especially women and children from revictimization'.⁴⁷² Arts 9, paras 1-5 expand upon the prevention measures to encompass research, media campaigns, social programs complemented with economic initiatives to accompany obliged legislative and other measures.⁴⁷³ Coupled with the mandates of art 31, para 1-7, of the Palermo Convention, State parties are obliged to encompass national projects to prevent transnational organized crime.⁴⁷⁴ The obligation to deter and mitigate expands to the due diligence obligations from the Convention on the Rights of the Child, art 35, and Optional Protocol to the Convention on the sale of Children, art 9.⁴⁷⁵ The research states have initiated prevention measures that appear to adhere to the minimum requirements of treaty obligations.

However, criminologists aver that focused deterrence strategies, also referenced as 'pulling levers', are problem-oriented policing strategies that adhere to core principles of deterrence theory.⁴⁷⁶ Furthermore, research shows that the many focused

⁴⁷² Palermo Trafficking Protocol, art 9(1)(a)(b).

⁴⁷³ Palermo Trafficking Protocol, art 9(2)-(5).

⁴⁷⁴ Palermo Convention, art 31, paras 1-7.

⁴⁷⁵ Palermo Trafficking Protocol; the Convention on the Rights of the Child; Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography.

⁴⁷⁶ Anthony Braga and others, 'The Effects of 'Pulling Levers' Focused Deterrence Strategies on Crime' (2012) Campbell Systematic Reviews 6 <<https://onlinelibrary.wiley.com/doi/full/10.4073/csr.2012.6>> accessed 20 November 2019.

deterrence strategies target specific groups and crimes, often in explicit geographic areas.⁴⁷⁷ Therefore, the deterrence strategy is ideal as it approaches deterrence similarly as Social Conflict Theory targets societal behaviour.

Within the context of this study, the researcher opines that a strategic deterrence approach instead of an ad hoc plan for deterrence or prevention strategy can mitigate the violence, trafficking, and exploitation of children.⁴⁷⁸ A focused deterrence program aims to influence the perceived risk of sanctions and increase the deterrent of offenders. The strategies target specific criminal behaviour committed by minor repetitive offenders, subject to punishment and penalty. Perpetrators are immediately addressed and informed of the consequences of repetitive offending behaviour is intolerable. The deterrence strategy is focused on specific crimes, geographical regions, and high-profile offenders – gangs and cartels. Many deterrence strategies also include social services to aid behaviour changes and incentive programs for weapons and information.⁴⁷⁹

The obligations of the Palermo Trafficking Protocol are captured in Section III, Prevention, cooperation, and other measures, beginning with

‘art 9, prevention of trafficking in persons, art 10, information exchange and training, art 11, border measures, art 12, Security and control of documents, and art 13, legitimacy and validity of documents’.⁴⁸⁰

⁴⁷⁷ *ibid.*

⁴⁷⁸ *ibid.*

⁴⁷⁹ Tanya Herring, *Trafficking of the vulnerable workgroup*, (Conference Presentation Law Asia Conference, 7th Annual Conference, Vienne, Laos, 7 June 2018).

⁴⁸⁰ Palermo Trafficking Protocol; Interviews Hungarian Chamber of Civil Law Notaries in Budapest (Budapest, Hungary, 29-30 August 2018).

The States' obligation extends to transit, source, and destination requirements as elements of the prevention measures linked to other criminalization and victim support.⁴⁸¹ As a supplement to the Palermo Trafficking Protocol, the Organized Crime Convention mandates penalties that consider 'the gravity of the offence and give due regard to deterrence', art 11. Chapter four examines trafficking cases and assesses how frequently the prosecutorial process optimizes the penalties and associated deterrence mandates.

The Convention on the Rights of the Child, its Optional Protocol for the sale of children, and Optional Protocol to the Convention on a Communications Procedure also provide prevention and mitigation strategies, but they are seldom engaged.⁴⁸² However, jurisdictions neglect to adopt them jointly with other international instruments.⁴⁸³ There is an overwhelming concurrence in literature that more empirical research is needed to support conclusive insights from the practice of courts and the general usefulness of litigation using the Children's Rights Convention.⁴⁸⁴ However, what remains absent are published strategic prevention deterrence strategies. Though there are multiple strategies, the role of Kennedy's Deterrence

⁴⁸¹ Article 10(1) of the Palermo Protocol.

⁴⁸² UPR: Bangladesh, 21 Feb 2007; 3 Feb 2012; Thailand, 27 Oct 11, 27 Oct 11, 20 Jan 2012; Myanmar, 12 Jan 2012; Malaysia, 4 Dec 2006.

⁴⁸³ Tanya Herring, 'The responsibility to prevent' (Action Research Workgroup Sessions, The Refugees, Borders, and Membership Conference, Malmö University, Institute for Studies of Migration, Diversity and Welfare, 24-26 October 2018).

⁴⁸⁴ Aoife Nolan, *Children's socio-economic rights, democracy, and the courts* (Hart Publishing 2011) 258, 259.

Strategies⁴⁸⁵ within the study context is to illustrate how the application of a formal strategy can increase the possibility of mitigating the violence, human trafficking, and exploitation of forced displaced, stateless children in Bangladesh and Myanmar.⁴⁸⁶ Focused deterrence strategies reduce serious⁴⁸⁷ violent crime committed by criminal-active groups.⁴⁸⁸ Braga, Kennedy, and others, including recent works by Papachristos and Kirk, aver that focused deterrence strategies, correctly and timely implemented, push significant reductions in targeted crime problems.⁴⁸⁹ However, intermitted Universal Periodic Reviews (UPRs) indicate that Bangladesh and Myanmar have not implemented a replicable and scalable prevention plan.⁴⁹⁰ Instead, the UPRs speak to minimal mitigation/deterrence strategies on the list of issues and responses for the UNCRC, including public service announcements, billboards, and signage as the totality of prevention strategies.⁴⁹¹

⁴⁸⁵ Anthony Braga, David Kennedy, and others, 'New Approaches to the Strategic Prevention of Gang and Group-involved Violence' in C Ronald Huff (Ed.), *Gangs in America* (pp 271 – 286) (3rd edn, Thousand Oaks, CA: Sage Publications 2002).

⁴⁸⁶ T Herring, 'Statelessness and the struggle to close the gap in human rights through legal empowerment: The Palermo Convention employed as a conduit' in Migration and Citizenship: Newsletter of the American Political Science Association's Organized Section on Migration and Citizenship, Summer 2018, Vol 6, no 2, p 37-42 (Migration and Citizenship 2018) < <https://mk0apsaconnectbvy6p6.kinstacdn.com/wp-content/uploads/sites/13/2018/08/APSA-Migration-Citizenship-Newsletter-6-2-Summer-2018-.pdf> > accessed 3 November 2018.

⁴⁸⁷ UN Transnational Organized Crime Convention, art 16.

⁴⁸⁸ T Herring, *Trafficking of the Vulnerable Workgroup*, (7th Annual LawAsia Conference, Vienne, Laos, 7 June 2018).

⁴⁸⁹ AA Braga and D M Kennedy, Linking situational crime prevention and focused deterrence strategies. In G. Farrell and N Tilley (eds), *The reasoning criminologist: Essays in honour of Ronald V. Clarke* (London: Routledge) 65-79; AA Braga and others, 'The concentration and stability of gun violence at micro places in Boston, 1980-2008' (2010) 3 *Journal of Quantitative Criminology*, 26, 33-53.

⁴⁹⁰ UPR (n 490).

⁴⁹¹ UNCR, List of Issues by country.

The founding principle of deterrence theory is that the crime is preventable when the costs of committing the crime outweigh the benefits.⁴⁹² Apel and Nagin suggest general deterrence includes the highly publicized severity of the punishments administered to criminals.⁴⁹³ The criminologists further refer to advertising the law enforcement strategy and, most importantly, prosecuting to the law's fullest extent. With the focused deterrence strategies, discouragement equates to reducing the opportunities for crime and increasing alternative opportunities structure for offenders.

Kennedy's Framework demonstrates how coupled deterrence strategies or approaches to specific crimes center on procedural justice and legitimacy.⁴⁹⁴ The framework evaluative process adds a second element that currently cannot be validated among the research states – 1) a deterrence strategy and 2) an evaluative process. Kennedy's Deterrence Strategies and other structured strategic mitigation approaches are inclusive of an evaluative process.⁴⁹⁵ The application of focused

⁴⁹² David Kennedy, 'Pulling levers: Chronic offenders, High-crime settings, and a theory of prevention' (1997) 31 Valparaiso University Law Review 449, 484

<<https://scholar.valpo.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1860&context=vulr>> accessed 22 July 2018.

⁴⁹³ R Apel and D Nagin, 'General deterrence: A review of recent evidence' in J.Q. Wilson & J. Petersilia (eds), *Crime and public policy* (pp 411-436). New York: Oxford University Press.

⁴⁹⁴ David Kennedy, *Deterrence and crime prevention: Reconsidering the prospect of sanction* (London: Routledge Press); David Kennedy, 'Drugs, race, and common ground: Reflections on the High Point intervention' (2009) 262 National Institute of Justice Journal 12, 17 <<https://www.ncjrs.gov/pdffiles1/nij/225760.pdf>> accessed 2 July 2017.

⁴⁹⁵ Anthony Braga, 'Focused deterrence strategies' (2017)

<<https://DOI.ORG/10.1093/ACREFORE/9780190264079.013.11>> accessed 22 July 2018; Anthony Braga and D Weisburd, 'Must we settle for less rigorous evaluations in large area-based crime prevention programs? Lessons from a Campbell review of focused deterrence' (2014) 10 Journal of Experimental Criminology 573-597

deterrence strategies has been guided toward the reduction of crime by gangs and groups (organized crime gangs) and high-risk individuals (children in vulnerable situations).⁴⁹⁶

These programs represent differing applications of focused deterrence strategies to control distinct types of problems.⁴⁹⁷ The inclusion of moderator variables, such as program and research design types, assist law enforcement in understanding the variances across studies in the outcomes observed.⁴⁹⁸ The research for this study on deterrence strategy encompasses a systematic review and analysis of eleven evaluations of focused deterrence strategies by renowned criminologist Anthony Braga.⁴⁹⁹ The outcomes of his research indicated ten (10) noteworthy reports of crime reduction, with one report excluding any significant prevention benefits.⁵⁰⁰ Though Braga's research outcomes are small compared to the magnitude of the four

<https://doi.org/10.1007/s11292-014-9205-8> accessed 28 July 2018; Anthony Braga, *Problem-Oriented policing, and crime prevention* (2nd edn, Monsey, NY: Criminal Justice Press 2008).

⁴⁹⁶ T Herring, 'Trafficking of the vulnerable workgroup' (Conference Presentation, 7th Annual LawAsia Conference, Vienne, Laos, 7 June 2018).

⁴⁹⁷ A Braga, 'The effects of hot spots policing on crime' (2001) *Annals of the American Academy of Political and Social Science* 578: 104, 125 <<https://journals.sagepub.com/doi/abs/10.1177/000271620157800107>> accessed 22 February 2018; Anthony Braga, 'Hot spots policing and crime prevention: A systematic review of randomized controlled trials' (2005) *Journal of Experimental Criminology*, 317, 342 <<https://link.springer.com/article/10.1007/s11292-005-8133-z>> accessed 13 June 2018.

⁴⁹⁸ *ibid*; A Braga and D Kennedy, 'Linking situational crime prevention and focused deterrence strategies' in Graham Farrell and Nick Tilley (eds), *The reasoning criminologist: Essays in honour of Ronald V Clarke* (London: Taylor and Francis 2012).

⁴⁹⁹ Anthony Braga, David Kennedy, and others, 'New approaches to the strategic prevention of gang and group-involved violence' In C Ronald Huff (Ed.), *Gangs in America* (3rd edn, Thousand Oaks, CA: Sage Publications 2002) 271-286.

⁵⁰⁰ Anthony Braga, 'Hot spots policing and crime prevention: A systematic review of randomized controlled trials' (2005) *Journal of Experimental Criminology*, 317, 342 <<https://link.springer.com/article/10.1007/s11292-005-8133-z>> accessed 13 June 2018.

jurisdictions under review, Braga's research demonstrates that engaging a deterrence strategy, such as Kennedy's Deterrence Strategies, provides the end-users a moderated strategic approach with measurable components.⁵⁰¹ This study comprises mixed methods, principles, and theories to grasp and address the high level of violence, trafficking, and exploitation of forced displaced, stateless children.

⁵⁰¹ *ibid.*

CHAPTER 3, RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACT - PART ONE

“[I]t is one thing to define a rule and the content of the obligation it imposes, and another to determine whether that obligation has been violated and what should be the consequences of the violation” -- Judge Roberto Ago

CHAPTER 3

1. State Responsibility

a) Introduction to State Responsibility

Within the full scope of the study, this section aligns with Yin's Case Study Protocol, Stage 5, the Analysis, in response to the central research question, sub-research inquiry one, and research objective one.⁵⁰² State responsibility is examined for jurisdictions for the ubiquitous presence of human trafficking in Bangladesh and Myanmar.

The examination of State responsibility is grounded upon the codified International Law Commission (ILC) Articles on Responsibility of States for International Wrongful Acts.⁵⁰³ The research emphasis is constrained to art 1, art 2(a)(b), and 3. Referring to art 1, in the ruling of *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v the Plurinational State of Bolivia*,⁵⁰⁴ the courts affirmed that States incur responsibility for their internationally wrongful acts is 'a basic principle of international law'.⁵⁰⁵ Similarly, the European Court of Human Rights considered art 2 of the State Responsibility Articles and the excerpts of the 'commentary thereto as international law' referenced in *Likvidējamā P/S Selga and Lūcija Vasilevska v Latvia*.⁵⁰⁶ Both rulings opine Bangladesh and Myanmar are also subject to international law for wrongful acts and omissions. Concurrently, member states of the UN are obligated by the UN

⁵⁰² Refer to Yin's Case-study Protocol, Appendix I.

⁵⁰³ International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement no 10 (A/56/10), chp.IV.E.1, Adopted by the International Law Commission at its fifty-third session (2001).

⁵⁰⁴ ICSID Case no ARB/06/2, Award, 16 September 2015, para 327.

⁵⁰⁵ *ibid.*

⁵⁰⁶ ECHR, Fourth Section, App nos 17126/02 and 24991/02, Decision, 1 October 2013, paras. 64-65.

Charter to promote ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’.⁵⁰⁷ In a region that is prominent with dual legal systems, art 3, characterizations of an act of a State as internationally wrongful obliges States is governed by international law and does not conform to domestic law, ICJ, in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*.⁵⁰⁸

However, determining if there is a State Responsibility for trafficking requires unfolding complex layers of legal frameworks. Articles 42(a)(b) and art 48(1)(a)(b) set out the provisions of who may invoke State Responsibility and to whom the obligation is owed. Guidance is sought from the *Barcelona Traction* case⁵⁰⁹ where the obligations were *erga omnes*.

In the earlier Southwest Africa cases, the courts ruled whether the applicant states had legal rights or interests sufficient for jurisdiction.⁵¹⁰ Thus, the law of responsibility determines whether or not the conduct and the respective actor with the legal capacity breach international law.⁵¹¹ Legal reports indicate instances where the Court came

⁵⁰⁷ Charter of the UN, art 55(c); According to art 56 of the Charter, it is the obligation of all member states of the UN to take ‘joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in art 55’.

⁵⁰⁸ *International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, Judgment of 3 February 2015, para 128.

⁵⁰⁹ *Barcelona Traction, Light & Power Co., Ltd (Belg v Spain)*, Second Phase, 1970 ICJ Rep. 3, 32, para 33 (Feb 5).

⁵¹⁰ Southwest Africa cases (*Eth. v S.Afr.*; *Liber vs Afr.*), Second Phase, 1966 ICJ Rep. 6 (July 18) hereinafter, Southwest Africa). Labuda, P I, ‘The Special Criminal Court in the Central African Republic’ (2017) 15{1} Journal of International Criminal Justice, 175, 206 <doi: 10.1093/jicj/mqw074> accessed 23 June 2019.

⁵¹¹ Also, the VCLT, art 60 speaks to when a state party may invoke a material breach.

close to giving effect to individual rights in the *LaGrand case*⁵¹² and an earlier advisory opinion on UN staff members.

Though the law of state responsibility regulates the consequences of a breach of a legal obligation, it does not determine whether there has been a breach of the underlying primary norm. In the ICJ *Gabčíkovo/Nagymaros*⁵¹³ case and the situation between Hungary and Slovakia, the court ruled,

‘A determination of whether a convention is or is not in force, and whether it has or has not been properly suspended or denounced, it to be made pursuant to the law of treaties. On the other hand, an evaluation of the extent to which the suspension or denunciation of a convention, seen as incompatible with the law of treaties, involves the responsibility of the State which proceeded to it, is to be made under the law of state responsibility’.⁵¹⁴

Applicable to this research, *Gabčíkovo/Nagymaros* guides the approach where, first, wrongfulness is identified under the primary norm – treaty law.⁵¹⁵ Once treaty law is established, the law of State responsibility is utilized to determine the consequences of wrongfulness. The applicable treaty law has been established. As this research does not investigate the attribution, the study only examines Bangladesh and Myanmar under the provisions of art 4, State Responsibility Articles,

‘the conduct of any State organ, where it shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions...’⁵¹⁶

⁵¹² Concerning Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v United States of America*); Merits, 27 June 1986; *LaGrand Case (Ger. v US)*, Merits (Int’l Ct. Justice June 27, 2001), 40 ILM 1069 (2001).

⁵¹³ *Gabčíkovo-Nagymaros Project, Hungary v Slovakia*, Judgment, Merits, ICJ GL No 92, [1997] ICJ Rep 7, [1997] ICJ Rep 88, (1998) 37 ILM 162, ICGJ 66 (ICJ 1997), 25th September 1997, International Court of Justice [ICJ].

⁵¹⁴ *ibid*; Judgment of 25 September 1997, ICJ Reports 1997, p 7, at pp 17-18, para 47.

⁵¹⁵ *ibid*.

⁵¹⁶ State Responsibilities arts, art 4.

The *European Court of Human Rights* ruling, in *Jones and Others v the United Kingdom*,⁵¹⁷ refers to art 4 concerning torture. The relevant international law states that the State responsibility articles ‘for their part, provide for attribution of acts to a State, based on the basis that they were carried out... by organs of the State as defined in art 4’.⁵¹⁸

Subsequently, this research examines reports of direct actions and omissions by State organs and excludes actions or omissions for non-State actors or individuals.

The research does not explore art 8 in making a further determination of attribution as in the *Nicaragua*⁵¹⁹ case where the ICJ had to consider whether the conduct of the Nicaraguan contras was attributable to the United States.⁵²⁰ Therefore, the study does not delve into any aspect of the *effective control* test.⁵²¹ Instead, the study solely focuses on arts 1, 2(a)(b), and 3 of the State Responsibility Articles for its analysis. It starts with the assumption that the conduct at stake was an act of state, article 4, citing *Gabčíkovo/Nagymaros*.⁵²²

b) The Evidence (the warrant).⁵²³ The International Court of Justice accepts legal disputes between States, or more commonly referred to as ‘contentious cases, and

⁵¹⁷ ECHR, Fourth Section, App nos 34356/06 and 40528/06, Judgment, 14 January 2014, para 17.

⁵¹⁸ *ibid* para 207.

⁵¹⁹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Merits, Judgment of 27 June 1986, ICJ Reports 1986, p 14, at pp 64-65, paras, 15 and 116 (the *Nicaragua* case).

⁵²⁰ State Responsibilities Articles, art 8.

⁵²¹ *Nicaragua v United States of America*.

⁵²² Articles on the Responsibility of States for Internationally Wrongful acts, Report of the ILC, 53rd Session, ILC Yearbook 2001, Vol II (2), 26 (‘ARSIWA’); The International Law Commission adopted the draft articles on responsibility of States for internationally wrongful acts at its fifty-third session, in 2001. In resolution 56/83, the J Crawford, *State Responsibility: The general part* (Cambridge and New York: Cambridge University Press 2013).

⁵²³ J Warren, ‘Taming the warrant in Toulmin's Model of Argument’ (2010) 99[6] *The English Journal* 41, 46 <www.jstor.org/stable/20787665> access 18 February 2019; F H van Eemeren and others, ‘Toulmin’s model of

requests for advisory opinions on the legal questions' referred to it by a UN organ and specialized agencies; or, commonly referred to as advisory proceedings.⁵²⁴ The research analysis uses ocular and tangible evidence noted in Table 2 and Table 3,⁵²⁵ coupled with texts, legislation, and a host of other reports, inclusive of UN' and Human Rights Organization documents.

Table 2's research evidence is comprised of sources from what the European Court of Human Rights, in *Rantsev v Cyprus and Russia*, as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002). The rulings describe as third-party submissions that 'were of particular interest to the court and were used in court determinations'.⁵²⁶ Together, the law reports and non-governmental agency reports serve as warrants to the researcher's *fact-based claim*.⁵²⁷ The evidence reflects that the high frequency of child violence, trafficking, and exploitation are causative factors where Bangladesh and Myanmar's breached their convention obligations. Furthermore, the research investigates characteristics found in Social Conflict societies, whose behaviors lie themselves to

argumentation' in *Handbook of Argumentation Theory*, (Springer, Dordrecht 2014); S Toulmin, *The Uses of Argument* (Cambridge, England: Cambridge University Press 1969).

⁵²⁴ UN, *Statute of the International Court of Justice*, 18 April 1946.

⁵²⁵ Tables 8-10 support narratives are included in Chapters 3 to 4, respectively.

⁵²⁶ *Rantsev v Cyprus and Russia*, and the courts example of the Interights. The International Centre for the Legal Protection of Human Rights, a non-governmental organization based in the United Kingdom and AIRE Centre's report, an Advice on Individual Rights in Europe, a non-governmental organization located in London, played a major role in the Court's findings and holding'.

⁵²⁷ For a claim to be presented before the ICJ, 'the party against which the claim is brought and the subject of the dispute, the applicant State must, as far as possible, indicate briefly on what basis - a treaty or a declaration of acceptance of compulsory jurisdiction - it claims that the Court has jurisdiction, and must succinctly state the facts and grounds on which its claim is based'.

the tenets contrary to their treaty obligations.⁵²⁸ Therefore, the legal frameworks should have a mandatory component, and breaches should be pursued to the fullest extent of international law.

In contrast, Table 3 serves as the research counterargument,⁵²⁹ where each of the jurisdictions presents their position or defence against the key research evidence in Table 2. For example, Myanmar has presented specific defences against charges of sexual violence, and the States indicate that their obligation has been met under the respective treaty obligation. The counterargument evidence is used within the context of Chapters three through five's legal argument. In response to the research central question and sub-questions, has there been a breach in State obligations? Or does the spectrum of 'shall endeavour' evade the breach provisions of State Responsibility Articles 1, 2(a)(b) in contrast to the persuasive court rulings?⁵³⁰ Within the scope of local laws, such as those in Myanmar, where citizenship is divided into three categories where most indigenous groups are excluded – Myanmar 1982 Citizenship Law, are there States Social theoretical characteristics present?

c) The Argument. First, the law reports – the study's argument is based upon a compilation of case law decisions underpinning international laws, serving as the authority warrants. The law reports are from international courts, tribunals, and other bodies – the International Court of Justice, the International Tribunal for the Laws of

⁵²⁸ According to the Toulmin Argumentation Model, the Data: The facts or evidence used to prove the argument; Claim: The statement being argued (a thesis); Warrants: The general, hypothetical (and often implicit) logical statements that serve as bridges between the claim and the data.

⁵²⁹ Toulmin's Argument Model refer to Figure 9.

⁵³⁰ Spectrum of Endeavours, Figures 12 and 13.

the SEA,⁵³¹ the WTO Appellate Body,⁵³² international arbitral tribunals, the African Court on Human and People's Rights, the European Court of Human Rights, the Inter-American Court of Human Rights, and the Special Tribunal in Lebanon.⁵³³ Each ruling espouses State responsibility for breaches to in-force treaty and agreement obligations.⁵³⁴

For state responsibility, the ICJ's *Corfu Channel Case*,⁵³⁵ among others, prominently speaks to a States responsibility for the breach of an obligation. The research evidence refers to the European Court of Human Rights' judgments in *Siliadin v France* (no 73316/01, ECHR 2005-VII)⁵³⁶ and *Chowdury and Others v Greece*⁵³⁷ (no 21884/15).⁵³⁸ There is a substantive inclusion of the *Rantsev V Cyprus and Russia* (no 25965/04, ECHR 2010).⁵³⁹ Each case sets out the relevant provisions of international conventions concerning slavery and human trafficking, forced labour, and servitude.

In contrast, the third-party evidence is derived from other authenticated sources as research evidence on events surrounding the prevention, protection, and mitigation of violence, trafficking, and exploitation of Rohingya children and similarly situated

⁵³¹ UNGA, *Law of the Sea: resolution / adopted by the General Assembly*, 14 December 1990, A/RES/45/145.

⁵³² The WTO Appellate Body was established in 1995 under art 17.

⁵³³ State Responsibility Articles, arts 1, 2(a)(b), 3, 13; In resolution 68/104, A/RES/68/104, Res adopted by the General Assembly on 16 December 2013, sixty-eighth session Agenda item 77, the General Assembly acknowledged the importance of the State responsibility articles. A/RES/68/104.

⁵³⁴ U.N.T.S. UN Treaty Series 1946.

⁵³⁵ *Corfu Channel Case* (UK v Albania) (Merits) [1949] ICJ Rep 4.

⁵³⁶ *Siliadin v France* (no 73316/01, ECHR 2005-VII), paras 49 to 51.

⁵³⁷ There were several third-party interventions in this case, one of which was brought forward by the AIRE Centre.

⁵³⁸ *Chowdury and Others v Greece*, App no 21884/15, 30 March 2017.

⁵³⁹ *Rantsev V Cyprus and Russia* (no 25965/04, ECHR 2010), paras 137 to 174.

children of the targeted States in Table 2's research evidence matrix – used in Chapters 3-5 analysis. Each report has been authenticated from a UN organization, established non-governmental organization, Police Report, or judiciary source causally related to the Rohingya critical-case.

Or the evidence is derived from a similarly-situated case under examination. For example, chapter four analyses ASEAN and other jurisdictions involved in the Rohingya-crisis from the borders states of Bangladesh and Myanmar. It was evidenced that the Rohingya had nowhere to escape. The evidence of case law (authority warrants) and third-party submissions (analogy warrants) are integrated with legal and sociological concepts. The principles of a) vulnerability (a position of vulnerability [as referenced by the Palermo Trafficking Protocol], b) children in vulnerable situations {as referenced by the CRC Committee}),⁵⁴⁰ c) legal empowerment (access to justice), d) *Social Conflict Theory*, and e) Kennedy's Deterrence Theory strategies to analyze preventive measures that are each employed as analysis components. Each represents a series of data sets derived from court records and theories aligned with state behaviors, which are triangulated during the analysis to explain the phenomena under investigation.

⁵⁴⁰ CRC, General comment 14 adds further clarity to member States as it explains that a child in a specific situation of vulnerability.

d) Table 2. The Claim's Research Evidence Matrix.⁵⁴¹

The Claim Research Evidence	State Responsibility, Treaty Obligation Research Allegation of Breach	Narrative: Elements / Facts in Issue
Evidence #1 - Human Rights Council, Agenda item 2, Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, ⁵⁴² dated 29 June 2016, entitled: 'Situation of human rights of Rohingya Muslims and other minorities in Myanmar.'	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	Report of violence of vulnerable populations, specifically against children, who have been heavily engaged in forced displacement, bereft of basic sustenance, brutalized, and subjected to physical and psychological violence, abduction, and force. One quote detailed exploitation, '... and abuses against Rohingya Muslims and other minorities in Myanmar, particularly the recent incidents of trafficking and forced displacement of Rohingya Muslims'. ⁵⁴³ The report identifies how organized trafficking and criminal smuggling networks have facilitated and preyed upon the Rohingya and other minority indigenous groups with flows of close to one hundred thousand fleeing the Myanmar area beginning in early 2014 through 2015, with numbers continually escalating in the Andaman Sea. ⁵⁴⁴ Reports detailed unlawful confinement on sea vessels and at land-based transition points, sexual and gender-based violence, and brutalities. The report (para 11) also included the abandonment of over 5,000 Rohingya at sea with only two boats rescued by the Myanmar government on 22 and 29 May 2015 (para 50). ⁵⁴⁵ In addition, the report details a series of other human rights and criminal actions: denial of education (para 41), sexual violence (paras 36, 37), refusal of health care, forced labour (para 48, 49), trafficking (para 50, 51), and forced displacement (para 52, 53). Specifically, concerning children (para 60) notes, 'Cases of sexual and gender-based violence against women of ethnic minority communities perpetrated by Myanmar security forces have been documented for many years... with credible reports of rape, sexual slavery, and forced and servile marriages. According to reports, victims include women, men, girls, boys, including children as young as seven years old (S/2014/181, paras. 3739)'. ⁵⁴⁶

⁵⁴¹ Research Claim Evidence matrix consists of *Fact and research-based claims* or the premise that is supported by the evidence presented by the principal investigator's examination of data; The premise of the claim is that without being compelled to comply with treaty obligations, the countries with *Conflict Theory* construct characteristics will be non-compliant.

⁵⁴² Human Rights Council Thirty-second Session Agenda item 2 Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, A/HRC/32/18 29 June 2016 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/135/41/PDF/G1613541.pdf?OpenElement>> accessed 22 February 2019.

⁵⁴³ *ibid* p 1, para 1.

⁵⁴⁴ UN Office on Drugs and Crime, protecting peace and prosperity in Southeast Asia: synchronizing economic and security agendas, February 2016, pp 37-41; UNHCR, Mixed Maritime Movements in South-East Asia, 2015.

⁵⁴⁵ *ibid* p 4, paras 11, 50.

⁵⁴⁶ *ibid*.

The Claim Research Evidence	State Responsibility, Treaty Obligation Research Allegation of Breach	Narrative: Elements/Facts in Issue (Verbatim Reports)
Evidence #2 - UN Migration Report, dated 27 September 2017, reporting from Cox's Bazar, by the UN Migration Director General, William Lacy Swing. ⁵⁴⁷	Responsible State: Bangladesh* Myanmar International Instruments: Palermo Trafficking Protocol* UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	The report acknowledges the <i>countless</i> vulnerable Rohingya, classified internationally as stateless refugee children, women, and men, arriving in Bangladesh from Myanmar, who suffered gender-based violence and sexual assaults (sexual violence) ⁵⁴⁸ during forced migration and exploitation. The Migration Director also addressed the situation where thousands of Rohingya were lost at sea during the forced migration.
Evidence #3 - UN Human Rights Council Report, dated 10-28 September 2018, Human Rights Council Thirty-ninth session, Agenda item 4, entitled: 'Human rights situations that require the Council's attention'; Human Rights Watch Report, pp. 11-12, 4 October 2017; 27 August 2017 events with Maung Nu Village, Buthidaung Township, 564 th Light Infantry	Responsible State: Myanmar International Instrument Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	Outlines a host of human rights violations against the Rohingya, adults, and children, both males, and females, with substantiated medical reports to validate criminal actions; The victims' narratives of rape, torture, killings, and forced expulsions have grabbed the attention of the media and humanitarian organizations ever since the outbreak of violence; The mission found that they were involved in 'killing indiscriminately, gang-raping women, assaulting children and burning entire villages'; The Human Rights Council of the UN in its fact-finding mission report has acknowledged that the crimes the Myanmar armed forces have committed had the element of 'genocidal intent'. ⁵⁴⁹ The report initially observed that "The crimes in Rakhine State, and the manner in which they were perpetrated, are similar in nature, gravity and scope to those that have allowed genocidal intent to be established in other contexts"; events 27 August, Maung Nu Village, Buthidaung Township, 564 th Light Infantry Div.: ⁵⁵⁰

⁵⁴⁷ IOM UN Migration, 'UN Migration Director General Warns of Increasing Reports of Violent Sexual Assaults against Rohingya' (IOM Migration 2017) <<https://www.iom.int/news/un-migration-director-general-warns-increasing-reports-violent-sexual-assaults-against-rohingya>> accessed 3 February 2019.

⁵⁴⁸ Sexual violence includes but is not limited to rape.

⁵⁴⁹ IOM (n 547).

⁵⁵⁰ UN Human Rights Council Thirty-ninth session 10–28 September 2018 Agenda item 4, Human rights situations that require the Council's attention, 'Report of the independent international fact-finding mission on Myanmar' (A/HRC/39/64 UN Human Rights Council) 16 para 88, 17 para 89, 90 <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_39_64.pdf> accessed 3 January 2019; Khan, M. T., & Ahmed, S. (2019). Dealing with the Rohingya-crisis: The relevance of the general assembly and R2P. Asian Journal of Comparative Politics. <https://doi.org/10.1177/2057891119868312>.

The Claim Research Evidence	State Responsibility, Treaty Obligation Research Allegation of Breach	Narrative: Elements/Facts in Issue (Verbatim Reports)
Evidence #4 - UNHCR Mission Report. The UN Human Rights of the High Commissioner's Mission report, 13-24 September 2017	Responsible State: Bangladesh* Myanmar International Instruments: Palermo Trafficking Protocol* UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	The UN Human Rights of the High Commissioner's Mission report of OHCHR rapid response mission to Cox's Bazar, Bangladesh, dated 13-24 September 2017, p. 1 intentional formal plans and actions where children, in a forced displaced situation, were being captured and subjected to sexual violence, brutalized, and subjected to capture... 'This report also highlights that prior to the incidents and crackdown of 25 August, a strategy was pursued to: 1) Arrest and arbitrarily detain male Rohingyas between the ages of 15-40 years; 2) Arrest and arbitrarily detain Rohingya opinion-makers, leaders and cultural and religious personalities; 3) Initiate acts to deprive Rohingya villagers of access to food, livelihoods and other means of conducting daily activities and life; 4) Commit repeated acts of humiliation and violence prior to, during and after 25 August, to drive out Rohingya villagers en masse through incitement to hatred, violence and killings, including by declaring the Rohingyas as Bengalis and illegal settlers in Myanmar; 5) Instil deep and widespread fear and trauma – physical, emotional and psychological, in the Rohingya victims via acts of brutality, namely killings, disappearances, torture, and rape and other forms of sexual violence'... <i>Commissioner Zeid</i> ; "The devastating cruelty to which these Rohingya children have been subjected is unbearable – what kind of hatred could make a man stab a baby crying out for his mother's milk. And for the mother to witness this murder while being gang-raped by the very security forces who should be protecting her – what kind of 'clearance operation' is this? What national security goals could be served by this?" High Commissioner Zeid said, noting the report...the recent level of violence to be unprecedented'. ⁵⁵¹
Evidence #5 - Amnesty International Report, dated 21 October 2015, Index number: ASA 21/2574/2015 ⁵⁵²	Responsible State: Thailand International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	Reported that 'Women, men, and children trafficked, held in hellish conditions, beaten or killed for ransom; Fears that hundreds, maybe thousands, more refugees and migrants have perished at sea than first estimated with crisis declared in the Bay of Bengal and the Andaman Sea'. ⁵⁵³

⁵⁵¹ *ibid.*

⁵⁵² Research Evidence #5, Amnesty International Report, 21 October 2015, Index number: ASA 21/2574/2015, (refer to Research Evidence Matrix)

<<<https://www.amnesty.org/download/Documents/ASA2125742015ENGLISH.PDF>> accessed 22 December 2019.

⁵⁵³ Research Evidence #5, Amnesty International Report, 21 October 2015, Index number: ASA 21/2574/2015, (refer to Research Evidence Matrix)

<<https://www.amnesty.org/download/Documents/ASA2125742015ENGLISH.PDF>> accessed 22 December 2019.

The Claim Research Evidence	State Responsibility, Treaty Obligation Research Allegation of Breach	Narrative: Elements/Facts in Issue (Verbatim Reports)
Evidence #6 - Application Instituting Proceedings and Request for Provision Measures, The Republic of Gambia v Republic of the Union of Myanmar, 11 November 2019 ⁵⁵⁴	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	‘These acts are all attributable to Myanmar, which is thus responsible for committing genocide. Myanmar has also violated other fundamental obligations under the Genocide Convention, including attempting to commit genocide; conspiring to commit genocide; inciting genocide; complicity in genocide; and failing to prevent and punish genocide’. ⁵⁵⁵
Evidence #7 - UN OHCHR, Statement by Ms. Yanghee Lee, Special Rapporteur on the situation of human rights in Myanmar at the 37 th session of the Human Rights Council (12 March 2018) ⁵⁵⁶	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	‘The UN Special Rapporteur carried out an extensive fact-finding mission, where she reported first-hand accounts of ‘attacks in which homes were set ablaze by security forces, in many cases with people trapped inside, and entire villages razed to the ground. She documented parents ‘witnesses their young children being thrown into fires. She described Myanmar’s ‘security forces calling families out of their homes, separating men and boys to be executed in front of their families or taken away.’ She further recounted the ‘testimony of women and girls being raped and then killed, some burned alive in their homes while unconscious or tied up.’ ⁵⁵⁷
Evidence #8 - UN Secretary-General, <i>Note to Correspondents: Statement by Adama Dieng, UN Special Adviser on the Prevention of Genocide, on his visit to Bangladesh to assess the situation of Rohingya refugees from Myanmar</i> (12 March 2018) ⁵⁵⁸	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	‘The findings of the UN Human Rights Council’s Independent International Fact-Finding Mission on Myanmar (‘UN Fact-Finding Mission’) are especially significant. The Mission was established on 24 March 2017 amidst escalating violence against the Rohingya, with the mandate ‘to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State... UNHCR... in its Human Rights in its International Commissions of Inquiry and Fact-Finding Mission on International Human Rights Law and International Humanitarian Law – Guidance and Practice’. ⁵⁵⁹

⁵⁵⁴ Research Evidence #6, International Court of Justice, Application Instituting Proceedings and Request for Provisional Measures, the Republic of the Gambia v Republic of the Union of Myanmar, 11 November 2019.

⁵⁵⁵ *ibid.*

⁵⁵⁶ UN OHCHR, Statement by Ms. Yanghee Lee, Special Rapporteur, <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22806&LangID=E>> accessed 3 December 2019.

⁵⁵⁷ *ibid.*

⁵⁵⁸ UN Secretary-General Note to Correspondents: Statement by Adama Dieng, UN Special Adviser on the Prevention of Genocide on his visit to Bangladesh to assess the situation of Rohingya refugees from Myanmar (12 March 2018), <<https://www.un.org/sg/en/content/sg/note-correspondents/2018-03-12/note-correspondents-statement-adama-dieng-united-nations>> accessed 3 December 2019.

⁵⁵⁹ UN Fact-Finding Mission, Report of the Detailed Findings (2018), para 9.

The Claim Research Evidence	State Responsibility, Treaty Obligation Research Allegation of Breach	Narrative: Elements/Facts in Issue (Verbatim Reports)
<p>Evidence #9 - UN Human Rights Council, <i>Report of the independent international fact-finding mission on Myanmar</i> (12 September 2018), UN Doc. A/HRC/39/64 [hereinafter UN Fact-Finding Mission, <i>Report</i> (2018)], para 4; UN Human Rights Council, <i>Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar</i> (17 September 2018), UN - Doc. A/HRC/39/CRP.2 [hereinafter UN Fact-Finding Mission, <i>Report of the Detailed Findings</i> (2018)], para 4.</p>	<p>Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children</p>	<p>‘The Mission conducted over 600 interviews with victims and eyewitnesses as well as over 250 consultations with stakeholders, including intergovernmental and non-governmental organizations, researchers, and diplomats. It ‘took care to diversify its sources of information’ and, in selecting interviewees, ‘strove to only speaking with persons who had not previously spoken with any other organization or media outlet and confirmed this ahead of the interview.’ The Mission also “obtained a large body of satellite imagery and analysis with the support of UNOSAT [the UN Operational Satellite Applications Programme], and received a vast amount of documents, photographs and videos – some clandestinely recorded or obtained by the source.” It “only used those materials that it was able to authenticate,” and “[a]ll information was checked against secondary information assessed as credible and reliable, including organizations’ raw data or notes, expert interviews, submissions, and open-source material.”⁵⁶⁰</p>
<p>Evidence #10 - UN Human Rights Council, Detailed findings of the Independent International Fact-Finding Mission on Myanmar (16 September 2019), UN Doc. A/HRC/39/CRP.2 [hereinafter UN Fact-Finding Mission, <i>Report of the Detailed Findings</i> (2019)], para 1.</p>	<p>Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children</p>	<p>‘The UN Fact-Finding Mission issued an additional report on its detailed findings in September 2019, based on further investigation, with particular attention to events that transpired since September 2018. It conducted additional interviews with victims and witnesses, both targeted and randomly selected, taking “special care to avoid re-interviewing victims and witnesses.’ It also “obtained and analysed satellite imagery, photographs and videos and a range of documents,” and “cross-checked the information against secondary information assessed as credible and reliable’; The UN Fact-Finding Mission found further evidence of genocidal intent in the Myanmar authorities’ ‘tolerance for public rhetoric of hatred and contempt for the Rohingya,’ as well as in the ‘insulting, derogatory, racist and exclusionary utterances of Myanmar officials and others’.⁵⁶¹</p>

⁵⁶⁰ UN Human Rights Council, *Report of the independent international fact-finding mission on Myanmar* (12 September 2018), UN Doc. A/HRC/39/64 [hereinafter UN Fact-Finding Mission, *Report* (2018)], para 4; UN Human Rights Council, *Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar* (17 September 2018), UN Doc. A/HRC/39/CRP.2 [hereinafter UN Fact-Finding Mission, *Report of the Detailed Findings* (2018)], paras 4, 20, and 22.

⁵⁶¹ UN Fact-Finding Mission, *Report of the Detailed Findings* (2019), paras 32-33; In total, the Mission conducted 419 interviews, some of which concerned situations elsewhere in Myanmar. Ibid para 32.

The Claim Research Evidence	State Responsibility, Treaty Obligation Research Allegation of Breach	Narrative: Elements/Facts in Issue (Verbatim Reports)
Evidence #11 - Internal report, 2017, on file with the Commission and Fortify Rights. ⁵⁶²	Responsible State: Malaysia International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	'Royal Malaysian Police found a site believed to be a gravesite on Wang Burma hill in Wang, Kelian, Perlis State Commission exhumed approximately 132 remains from Wang Burma hill. However, the hospital identified 152 remains after the post-mortem examinations, and 136 remains were exhumed'. ⁵⁶³
Evidence #12 - On 8 October 1982, Myanmar's then Head of State, General Ne Win. ⁵⁶⁴ Online Burma/Myanmar Library, <i>Translation of the speech by General Ne Win provided in The Working People's Daily, 9 October 1982</i>	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	'The UN Fact-Finding Mission found evidence of genocidal intent in the 'existence of discriminatory plans and policies,' including Myanmar's 1982 Citizenship Law, a statute that remains in force, which makes citizenship and the legal rights associated therewith contingent upon belonging to one of the country's predetermined racial categories – known as 'national races' Pursuant to this legal regime, the Rohingya are not a 'national race,' and therefore have no rights. The Myanmar authorities even consider that "the Rohingya do not belong in Myanmar" because they "are not considered a 'national race.' According to the UN Fact-Finding Mission, the Myanmar authorities 'object' to the very "use of the name 'Rohingya,' insisting instead that they are referred to as 'Bengali' so as to suggest they belong not in Myanmar but in neighbouring Bangladesh'. ⁵⁶⁵
Evidence #13 - UN Fact-Finding Mission, <i>Report of Detailed Findings</i> (2018), paras. 1069-1095 (Flash Report, dated 2017). ⁵⁶⁶	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	'During these operations, Myanmar forces systematically shot, killed, forcibly disappeared, raped, gang-raped, sexually assaulted, detained, beat and tortured Rohingya civilians, and burned down and destroyed Rohingya homes, mosques, madrassas, shops, and Qurans. As they committed these crimes, the perpetrators called their victims "people from Bangladesh,' 'Bengali,' and 'Kalar.' ⁵⁶⁷

⁵⁶² ibid 69.

⁵⁶³ The Commission interview with hospital staff, 2018. The Commission, 'A Report on the Investigation of the Discovery of Wang Kelian Mass-Graves, Wang Kelian, Perlis State'.

⁵⁶⁴ On 8 October 1982, Myanmar's then Head of State, General Ne Win, declared that there should be 'three classes of citizens,' with full citizenship reserved for 'pure-blooded nationals,' and the remaining classes for those who 'cannot [be] trust[ed] fully' and who therefore must be denied 'full rights.' UN

Fact-Finding Mission, *Report of the Detailed Findings* (2018), para 476 (citing Online Burma/Myanmar Library, *Translation of the speech by General Ne Win provided in The Working People's Daily, 9 October 1982*, available at http://www.burmalibrary.org/docs6/Ne_Win%27s_speech_Oct-1982-Citizenship_Law.pdf). The 1982 Citizenship Law also permits citizenship through means not relevant here, including through naturalization.

⁵⁶⁵ ibid.

⁵⁶⁶ UN OHCHR, *Flash Report* (2017), p 15.

⁵⁶⁷ UN OHCHR, *Flash Report* (2017), p 15.

The Claim Research Evidence	State Responsibility, Treaty Obligation Research Allegation of Breach	Narrative: Elements/Facts in Issue (Verbatim Reports)
Evidence #14 , UN Special Rapporteur 2007 Report, UN Doc. 1/HRC/39/64, 2 August 2018, UNHRC	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	'In 2007, report on Myanmar noted, 'the failure to investigate, prosecute and punish those responsible for rape and sexual violence has contributed to an environment conducive to the perpetuation of violence against women and girls in Myanmar.' Sexual violence in Myanmar has been mentioned in every report the U.N. Secretary-General has written on conflict-related sexual violence. Women's civil society groups, such as the Women's League of Burma, have been tirelessly documenting and reporting on military-orchestrated rape campaigns for years.' ⁵⁶⁸
Evidence #15 , UN Human Rights Council, Res 34/22; ⁵⁶⁹ UN Human Rights Council, A/HRC/39/12, Myanmar ⁵⁷⁰	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	'In 2018, the UN documented the rape of an 8-year-old girl by the Myanmar Armed Forces (Tatmadaw Kyi). In September 2018, the independent international fact-finding mission on Myanmar, established by the Human Rights Council through its resolution 34/22, documented mass killings, rape, and sexual violence by Tatmadaw soldiers during 2017 "clearance operations" in Rakhine State, as well as credible accounts of sexual violence and torture in Kachin and Shan States (see A/HRC/39/64). The Fact-finding mission also documented cases of sexualized torture in detention which were perpetrated by the Tatmadaw Kyi.' ⁵⁷¹
Evidence #16 , UNSC, Report of the Secretary-General on children and armed conflict in Myanmar, UN Doc S/2018/956 (29 October 2018), para 15 ⁵⁷²	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC; UN Convention on the Rights of the Child; Optional Protocol for the sale of children; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Res 40/34, annex)	'The Myanmar military and security forces did not spare Rohingya children. The UN Secretary-General's annual report on children reports that during a 'clearance operation' in Buthidaung Township, both 'men and boys were taken from houses'. ~They 'had their hands tied and were forced to lie down on the ground' Witnesses saw 'the men and boys killed one by one.' At least '28 boys between the ages of 8 and 17 years old were killed.' ⁵⁷³

⁵⁶⁸ UN Human Rights Council, Report of the Independent International Fact-Finding Mission on Myanmar, UN Doc. 1/HRC/39/64, 2 August 2018, UNHRC, Report on Myanmar

⁵⁶⁹ Human Rights Council, 34th session of the Human Rights Council (27 February to 24 March 2017)

<<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Pages/ResDecStat.aspx>> accessed 2 January 2018.

⁵⁷⁰ UN Human Rights Council, 39th session of the Human Rights Council: Reports, A/HRC/39/12, Bangladesh, 10-28 September 2018, Agenda Item 6

<https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/12> accessed 12 August 2019.

⁵⁷¹ *ibid.*

⁵⁷² Report of the UN Secretary General, 'Conflict Related Sexual Violence' (UN 29 March 2019) <<https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annual-report-2018.pdf>> accessed 12 August 2019.

⁵⁷³ *International Court of Justice, Application Instituting Proceedings and Request for Provisional Measures, Republic of The Gambia v Republic of The Union of Myanmar*, 11 November 2019.

The Claim Research Evidence	State Responsibility, Treaty Obligation Research Allegation of Breach	Narrative: Elements/Facts in Issue (Verbatim Reports)
Evidence #17 , Human Rights Watch, 3 December 2019, 'We are not human', 81-page report on Bangladesh ⁵⁷⁴	Responsible State: Bangladesh International Instruments: UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	'Researchers spoke to 163 Rohingya children, parents, and teachers, as well as government officials, aid groups, and UN agencies in February 2019. According to the 81-page report, the Bangladeshi government has barred UN humanitarian agencies and NGOs from providing children in the camps with any formal or accredited education. Refugee children are prohibited from accessing formal education within or outside the camps'. ⁵⁷⁵
Evidence #18 , Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 5 and 12, 2016 ⁵⁷⁶	Responsible State: Thailand International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	'Traffickers held 20-year-old "Fatima", her husband, and their one-year-old child for four months in a human-trafficking camp in Thailand in 2014 while Fatima was pregnant. She told Fortify Rights: [The traffickers] demanded an additional 7,000 Malaysian Ringgit (US\$2,000) per person. The <i>dallals</i> beat people who could not pay. I saw so many people beaten by the <i>dallals</i> in the camp because they could not pay. The <i>dallals</i> beat me two times in the camp because we could not pay. They hit me with sticks on my back. My husband was also beaten. The <i>dallals</i> forced the women and children to stand outside the plastic sheet when it rained as a form of punishment'. ⁵⁷⁷ "Habiba", 42, told Fortify Rights: "[The traffickers] gave us rice and fish. It was not enough food for us . . . There were at least three other camps. The camp I was in was all women and children younger than 12." ⁵⁷⁸

⁵⁷⁴ Human Rights Watch, 'We are not human' (Human Rights Watch 3 December 2019) <<https://www.hrw.org/report/2019/12/03/are-we-not-human/denial-education-rohingya-refugee-children-bangladesh>> accessed 31 December 2019.

⁵⁷⁵ *ibid.*

⁵⁷⁶ Fortify Rights, internal report on human trafficking case, trial monitoring notes, Rachada Criminal Court, Human Trafficking Division, Bangkok, Thailand, May 5 and 12, 2016.

⁵⁷⁷ *ibid.* 49, 50.

⁵⁷⁸ *ibid.* 54.

The Claim Research Evidence	State Responsibility, Treaty Obligation Research Allegation of Breach	Narrative: Elements/Facts in Issue (Verbatim Reports)
Evidence #19 , The Commission interview with hospital staff, 2018. The Commission, “A Report on the Investigation of the Discovery of Wang Kelian Mass-Graves, Wang Kelian, Perlis State”, internal report, 2017, on file with the Commission and Fortify Rights. ⁵⁷⁹	Responsible State: Malaysia International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	‘Person N stated that according to the details from the lock-up register, 29 out of 38 detainees were brought to the Court on January 28, 2015, and ‘charged under Section 6(1)(c) of the Immigration Act 1959/63 (Amendment 2002) for failure to provide valid travel documents’. The police transferred the remaining nine detainees to the Langkap Immigration Detention Center in Perak State because they were underage. Despite evidence of human trafficking, the authorities did not screen or treat any detainees as survivors of human trafficking’. ⁵⁸⁰
Evidence #20 , Fortify Rights interview with #117, Chaiwut Chusakun, Songkhla Province, Thailand, May 17, 2015. ⁵⁸¹	Responsible State: Thailand International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	‘This report documents over 800 deaths of victims in the custody of traffickers. Traffickers deprived the men, women, and children in their custody of food, water, shelter, and mobility. On the ships, witnesses interviewed for this non-exhaustive report saw more than 112 people die from both intentional killings and the deprivation of food and water. Traffickers limited food to a small amount of rice and did not provide water for many of the victims A tour-boat operator who offered water to a ship of trafficking survivors observed children explain that they had resorted to drinking urine’. ⁵⁸²
Evidence #21 , List of issues and questions in relation to the combined fourth and fifth periodic reports of Myanmar, Committee on the Elimination of Discrimination against Women Sixty-fourth session 4-22 July 2016 Item 4 of the provisional agenda Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women ⁵⁸³	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	‘From 2015 to January 2016, there were 6 cases of sexual violence committed by military personnel. These cases were transferred to civilian courts. Before perpetrators are transferred to civilian courts for sexual violence, they are sentenced for military offense. From 2011 to 2015, 31 sexual violence cases committed by the military personnel were transferred to civilian courts’. ⁵⁸⁴

⁵⁷⁹ The Commission interview with hospital staff, 2018; The Commission, ‘A Report on the Investigation of the Discovery of Wang Kelian Mass-Graves, Wang Kelian, Perlis State’, internal report, 2017, on file with the Commission and Fortify Rights.

⁵⁸⁰ *ibid.*

⁵⁸¹ Commission Report, Chapter I. Section, ‘Deprivation of Food, Water, and Physical Space.

⁵⁸² *ibid* 91.

⁵⁸³ Committee on the Elimination of Discrimination against Women Sixty-fourth session 4-22 July 2016 Item 4.

⁵⁸⁴ *ibid.*

The Claim Research Evidence	State Responsibility, Treaty Obligation Research Allegation of Breach	Narrative: Elements/Facts in Issue (Verbatim Reports)
<p>Evidence #22, Bangkok Post Report, noted in Mekong Migration Organization, 30 July 2014.⁵⁸⁵</p>	<p>Responsible State: Myanmar and Thailand International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children</p>	<p>The report was initially published 15 Dec 2008 and resubmitted on 30 July 2014 as a pattern or reoccurring maltreatment of trafficked migrants in both Myanmar and Thailand:</p> <p>‘The tragic case of the death of 54 workers, men, women, and children from Myanmar in Thailand in April 2008. The Burmese workers died from suffocation as they were being transported in the Cold Storage truck meant for carrying perishable goods like fresh fish. Apparently, the driver of the truck forgot to turn the air-conditioner on. The hapless workers died from suffocation and heat in a cramped truck that carried a cargo of 120 illegal Burmese men, women, and children. Following this tragedy, a trail of discussions followed on the problem of cross-border human smuggling/trafficking between Myanmar and Thailand and broadly in the region. In such trafficking, there is always collusion between the unscrupulous people on both sides of the borders, as well as the complicity of the government officials at the local level. Following that tragedy, only eight people, all Thais, were charged for their involvement in the case. In fact, they were accused of providing shelter to illegal migrants and causing death to other persons by recklessness. The sixty-six survivors were charged with the illegal entry’.⁵⁸⁶</p>

⁵⁸⁵ Mekong Migration Network (MMN), ‘Death by Suffocation of 54 Burmese Migrants’ (MMN 30 July 2014) <<http://www.mekongmigration.org/?cat=10>> accessed 23 June 2019.

⁵⁸⁶ *ibid.*

e) Table 3. Research Claim, Rebuttal/Counter-argument Evidence Matrix

The Research Evidence Counterargument	State Responsibility, Treaty Obligation	Narrative: Elements/Facts in Issue (Verbatim Reports)
Evidence #1 , List of issues and questions in relation to the combined fourth and fifth periodic reports of Myanmar, Committee on the Elimination of Discrimination against Women Sixty-fourth session 4-22 July 2016 Item 4 of the provisional agenda Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women ⁵⁸⁷	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	The Report by Myanmar Government: 'Proclaims reform in Myanmar enables adopting new laws and policies which better protect forced labour and child labour while introducing safe labour migration channels. Improvements in these areas contribute greatly in preventing trafficking in persons; (b) New Border Liaison Offices were opened, which is significant in cooperating with neighbouring countries in tackling human trafficking; (c) Creating job opportunities and safe labour migration channels deter illegal migration and its related risks; (d) Shelters were established in Myawaddy, Muse and Kawthoung to accommodate trafficked victims; (e) The Information Centre was established which serves as a bridge between trafficking victims and organizations supporting the victims; (f) As a result of strengthening case management system with the support of the UNICEF, 175 trafficked children were reintegrated successfully to their communities. The Anti-Trafficking in Persons Law promulgated in 2005 is under review to meet current circumstances, and the Union Attorney General Office leads the process. UNICEF coordination'. ⁵⁸⁸
Evidence #2 , 12 Dec 2019, Transcript: Aung San Suu Kyi's speech at the ICJ in full, ICJ verbatim Record, 30 minutes, <i>Myanmar leader defended her country's military against genocide allegations</i> . ⁵⁸⁹	Responsible State: Myanmar International Instruments: Palermo Trafficking Protocol UNTOC UNCRC and OPSC	The Hague on Wednesday, 12 December 2019, transcript: 'the former human rights icon rejected the case at the UN' highest court - which was filed by the Gambia with the support of the 57-member Organisation of Islamic Cooperation (OIC) - alleging Myanmar violated the 1948 Convention on the Prevention and Punishment of the Crime of Genocide'. ⁵⁹⁰

⁵⁸⁷ CEDAW/C/MMR/Q/4-5/Add.1 <https://www.burmalibrary.org/docs22/Myanmar-CEDAW-2016-07-Answers_to_questions.pdf> accessed 22 February 2018.

⁵⁸⁸ *ibid*.

⁵⁸⁹ ICJ Verbatim Record <<https://www.icj-cij.org/files/case-related/178/178-20191212-ORA-02-00-BI.pdf>> accessed 28 January 2019; ICJ Verbatim Record, 12 December 2019;

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v Myanmar*) - Conclusion of the public hearings on the request for the indication of provisional measures submitted by the Republic of The Gambia - The Court to begin its deliberation.

⁵⁹⁰ ICJ Verbatim Transcript, 12 December 2019

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v Myanmar*) - Conclusion of the public hearings on the request for the indication of provisional measures submitted by the Republic of The Gambia - The Court to begin its deliberation <<https://www.icj-cij.org/files/case-related/178/178-20191212-PRE-01-00-EN.pdf>> and <<https://www.icj-cij.org/en/case/178>> accessed 2 February 2020.; Myanmar Rebutts Rohingya claims, <<https://www.rfa.org/english/news/myanmar/myanmar-rejects-evidence-presented-in-un-report-on-mass-sexual-violence-against-rohingya-04182018172101.html>> accessed 24 March 2019.

The Research Evidence Counterargument	State Responsibility, Treaty Obligation	Narrative: Elements/Facts in Issue (Verbatim Reports)
Evidence #3 , Thailand, 27 June 2017, Trafficking in Persons Report ⁵⁹¹	Responsible State: Thailand International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	'Report by Thailand government where it states, 'Thailand defended its efforts to stop human trafficking after the United States kept it on a trafficking watch list and urged U.S. officials to visit the country and see first-hand its efforts'. The 2017 Trafficking in Persons (TIP) report said Thailand reported more investigations, prosecutions, and convictions of trafficking cases, but it did not demonstrate "increasing efforts compared to the previous reporting period". ⁵⁹²
Evidence #4 , 2019 Trafficking in Persons Report – Malaysia; 2017 Trafficking in Persons Report – Malaysia 2019 ⁵⁹³	Responsible State: Malaysia International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children	'Home Affairs Minister Tan Sri Muhyiddin Yassin said that there is also a need to strengthen cooperation among government agencies, civil society organisations, and international institutions in anti-trafficking efforts. "I believe we can put an end to this crime by working together," he said at the launch of the first National Conference on Anti-Trafficking in Persons 2019 here today. "We have manifested our effort in curbing this issue with the appointment of specialised prosecutors and enforcement focal points in all states. In addition, a special court to handle trafficking cases has been established, and a multi-disciplinary task force has been set up to ensure that trials and the time frame to settle human trafficking cases are expedited," he added. Conducted conferences with the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Council (MAPO) and Joining Hands Against Modern Slavery, a coalition of non-governmental organisations working towards ending modern slavery'. ⁵⁹⁴

⁵⁹¹ US State Department, '2017 Thailand Trafficking in Persons Report' (US State Department 2017) <<https://www.state.gov/reports/2017-trafficking-in-persons-report/thailand/>> accessed 2 June 2018.

⁵⁹² *ibid.*

⁵⁹³ US State Department, '2017 Malaysia Trafficking in Persons Report' (US State Department 2019) <<https://my.usembassy.gov/our-relationship/official-reports/report-2019-trafficking-in-persons-062019/>> accessed 2 September 2019; US State Department, '2019 Malaysia Trafficking in Persons Report' (US State Department 2019) <<https://www.state.gov/reports/2019-trafficking-in-persons-report-2/malaysia/>> accessed 2 October 2019.

⁵⁹⁴ *ibid.*

The Research Evidence Counterargument	State Responsibility, Treaty Obligation	Narrative: Elements/Facts in Issue (Verbatim Reports)
<p>Evidence #5, Bangladesh, UNODC 2018 Report, Trafficking in Persons Report⁵⁹⁵ Bangladesh, 2017 Report, Trafficking in Persons Report⁵⁹⁶</p>	<p>Responsible State: Bangladesh</p> <p>International Instruments: Palermo Trafficking Protocol UNTOC UN Convention on the Rights of the Child Optional Protocol for the sale of children</p>	<p>‘Bangladesh introduced the Prevention and Suppression of Human Trafficking Act (PSHTA) in 2012, and since then, 4,152 trafficking cases have been lodged. According to Bangladesh Police, around 7,340 people, including women and children, have been trafficked between January 2013 and June this year. Since 2013, 6,106 people have been arrested in connection with human trafficking, but only 25 of them have been convicted, according to data from the Police Headquarters. The UNODC’s 2016 report also cited that Bangladesh reported just 10 to 15 convictions per year. It also said that the prosecutors were “overburdened and lacked expertise in trafficking cases.” In 2016, 290 cases were investigated, and 302 alleged traffickers were prosecuted. In 2017, the courts reached verdicts in nine cases and convicted one trafficker, sentencing the convict to life imprisonment, compared with 2016’s three convictions. The other eight cases resulted in acquittal. In May 2019, Bangladesh reported boosting efforts to combat human trafficking with a 2018-2022 national plan of action to improve enforcement through better inter-agency coordination, improved training of officers, and harmonization of existing laws. The plan, developed with technical support from the International Organization for Migration (IOM), was presented to local officials and counter-trafficking specialists at a conference in Cox’s Bazar this week. It follows legislation passed in 2012 to counter human trafficking in this South Asian country of 160 million. IOM Deputy Chief of Mission in Bangladesh Manuel Pereira told delegates that IOM is working hard to combat human trafficking in Bangladesh. “In Cox’s Bazar, IOM has helped 295 victims of trafficking since 2017. Some 60 percent were female; 40 percent were male; 87 percent of the total were trafficked for forced labour. But the real numbers are much higher – people do not say, ‘we are being trafficked,’” he noted.’⁵⁹⁷</p>

⁵⁹⁵ US State Department, ‘2017 Bangladesh Trafficking in Persons Report’ (US State Department 2017) <<https://www.state.gov/reports/2017-trafficking-in-persons-report/bangladesh/>> accessed 2 June 2018.

⁵⁹⁶ US State Department, ‘2018 Bangladesh Trafficking in Persons Report’ (US State Department 2018) <<https://www.state.gov/reports/2018-trafficking-in-persons-report/bangladesh/>> accessed 2 December 2018.

⁵⁹⁷ IOM, UN Migration, ‘Human trafficking takes centre stage in Bangladesh’ (IOM May 2019) <<https://www.iom.int/news/human-trafficking-takes-centre-stage-bangladesh>> accessed 22 July 2019.

The Research Evidence Counterargument	State Responsibility, Treaty Obligation	Narrative: Elements/Facts in Issue (Verbatim Reports)
<p>Evidence #6, Myanmar, the interview with the Ambassador of Myanmar to the UN, Feingold, 2003⁵⁹⁸</p>	<p>Responsible State: Bangladesh</p> <p>International Instruments:</p> <p>Palermo Trafficking Protocol</p> <p>UNTOC</p> <p>UN Convention on the Rights of the Child</p> <p>Optional Protocol for the sale of children</p>	<p>Burmese officials have long claimed to be committed to stamping out human trafficking, charged that Burma's low rankings in the U.S. TIP Reports reflect American belligerence toward their country, rather than a fair assessment of the situation⁵⁹⁹</p>

⁵⁹⁸ US State Department, '2018 Bangladesh Trafficking in Persons Report' (US State Department 2018) <<https://www.state.gov/reports/2018-trafficking-in-persons-report/bangladesh/>> accessed 2 December 2018.

⁵⁹⁹ D A Feingold, 'Trafficking, trade and migration: mapping human trafficking in the Mekong Region' in Chouvy PA (ed.) *An Atlas of trafficking in Southeast Asia: The illegal trade in arms, drugs, people, counterfeit goods and resources*, Paris: I.B. Taurus (2013), 53–88; D A Feingold, 'Trading Women. Documentary film 77-minute version', (2011) Philadelphia: Ophidian Films Ltd <www.der.org> accessed 12 January 2019.

f) Table 4. In-Force State Treaty Obligation Matrix: UNTOC (the Convention), Palermo Trafficking Protocol

Obligated Criteria	Bangladesh	Myanmar	ASEAN
UNTOC, Palermo Trafficking Protocol: art 1, para 3; art 5, art 16–compliance with the Convention, UNTOC – criminalize trafficking ⁶⁰⁰	UNTOC only, Yes	Yes	Yes
UNTOC: Article 34 para (3), Domestic measures may be broader in scope or more severe than those required by the Protocol, as long as all obligations specified in the Protocol have been fulfilled (art. 34, para 3, of the Convention).	UNTOC only, Yes, not a party to the Protocol	Yes	Yes
UNTOC: Article 37, para 1 and 2; No State can be a party to any of the Protocols unless it is also a party to the Convention. Simultaneous ratification or accession is permitted, but it is not possible for a State to be subject to any obligation of any of the Protocols unless it is also subject to the obligations of the Convention ⁶⁰¹	UNTOC only, Yes, not a party to the Protocol	Yes	Yes
UNTOC: Article 37, para 4; Protocol must also be considered, which may modify the meaning applied to the Convention in some cases; In interpreting the various instruments, all relevant instruments should be considered, and provisions that use similar or parallel language should be given generally similar meaning. In interpreting one of the Protocols,	UNTOC only, Yes, not a party to the Protocol	Yes	Yes

Note: ASEAN is an international personality, representing a significant component of the Southeast Asia region. Its monistic implementation of the Trafficking Protocol meets treaty compliance obligations via international agreements for Myanmar and the other Southeast Asian States (refer to Part II, State Responsibility, Section 7. ASEAN Charter Relevant Rules.

⁶⁰⁰ Offences established in accordance with the Protocol shall also be regarded as offences established in accordance with the Convention (art 1, para 3 of the Protocol). This principle, which is analogous to the mutatis mutandis requirement, is a critical link between the Protocol and the Convention. It ensures that any offence or offences established by a State in order to criminalize trafficking in human beings as required by art 5 of the Protocol will automatically be included within the scope of the basic provisions of the Convention governing forms of international cooperation such as extradition (art 16) and mutual legal assistance (art 18).

⁶⁰¹ Article 37 of the Organized Crime Convention and art 1 of each of the Protocols thereto together establish the basic relationship between the Convention and its Protocols. The four instruments were drafted as a group, with general provisions against transnational organized crime (for example, extradition and mutual legal assistance).

Obligated Criteria	Bangladesh	Myanmar	ASEAN
UNTOC, Palermo Trafficking Protocol: Member states are required to apply equally to the offences established in the Protocol to the Convention. Establishing a similar link is, therefore, an essential element of national legislation on the implementation of the Protocols: liability of legal persons (art. 10) prosecution, adjudication, and sanctions (art 11) confiscation (arts 12-14) jurisdiction (art 15) extradition (art 16) mutual legal assistance (art 18) special investigative techniques (art 20) obstruction of justice (art 23) witness and victim protection and enhancement of cooperation (arts 24-26) law enforcement cooperation (art 27) training and technical assistance (arts 29 and 30) and implementation of the Convention (art 34)	Yes, achieved from the BIMSTEC Convention on Cooperation in Combating International Terrorism, Transnational Organised Crime and Illicit Drug Trafficking as of 11 Dec 2009 ⁶⁰²	Yes, achieved through the ASEAN multilateral treaty	Yes, achieved through the ASEAN multilateral treaty

Note: ASEAN is an international personality, a significant component of the Southeast Asia region. Its monistic implementation of the Trafficking Protocol meets treaty compliance obligations via international agreements for Myanmar and the other Southeast Asian States (refer to Part II, State Responsibility, Section 7. ASEAN Charter Relevant Rules.

⁶⁰² BIMSTEC Convention on Cooperation in Combating International Terrorism, Transnational Organised Crime and Illicit Drug Trafficking, 11 Dec 2009; The Governments of the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Union of Myanmar, the Federal Democratic Republic of Nepal, the Democratic Socialist Republic of Sri Lanka and the Kingdom of Thailand, Member States of the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), hereinafter referred to collectively as the 'State Parties' and individually as 'State Party'

<<https://www.vifindia.org/sites/default/files/BIMSTEC%20Convention%20on%20Cooperation%20in%20Combating%20International%20Terrorism,%202009.pdf>> accessed 19 February 2020.

Obligated Criteria	Bangladesh	Myanmar	ASEAN
<p>Palermo Trafficking Protocol: Member states are required to apply equally to the offences - art 3(a) of the Trafficking in Persons Protocol sets out the following elements:</p> <p>(a) Acts (what is done) i. Recruitment ii. Transportation iii. Transfer iv Harbouring v Receipt of persons</p> <p>(b) Means (how it is done) i. Use of force ii. The threat of the use of force iii. Other forms of coercion iv Abduction v Fraud vi. Deception vii. Abuse of power or of a position of vulnerability viii. Giving or receiving payments or benefits to achieve the consent of a person having control over another.</p> <p>(c) Purpose (why it is done) i. Prostitution ii. Other forms of sexual exploitation iii. Forced labour or services iv Slavery v Practices similar to slavery vi. Servitude vii. Removal of organs</p>	Not a member state	Yes Dualistic Treaty implementation	Yes Monistic Treaty Implementation
<p>US State Department's Latest Annual Trafficking in Persons Report (2019), Tier Ranking</p> <p>Trafficking Victims Protection Act (TVPA), 2000, Tier 1 status is the government is fully compliant with the TVPA minimum standards; Tier 2 Watch List standard where the country's government is making efforts to comply with standards but is failing in other indicators; or Tier 3, where governments that have not made any efforts to comply with TVPA's minimum standards.</p>	Tier 2 Watchlist 2019	Tier 3 Worst level 2018, not ranked in 2019	N/A

Note: ASEAN is an international personality, a significant component of the Southeast Asia region. Its monistic implementation of the Trafficking Protocol meets treaty compliance obligations via international agreements for Myanmar and the other Southeast Asian States (refer to Part II, State Responsibility, Section 7. ASEAN Charter Relevant Rules.

g) Table 5. In-Force State Treaty Obligation Matrix: CRC, Optional Protocol to the Convention on the sale of children and Optional Protocol to the convention on a communications procedure – Positive Obligation

Criteria	Bangladesh	Myanmar
<p>CRC: art 44(1) Reporting Procedures: w/focal comments on:</p> <ul style="list-style-type: none"> a) Article 1, Scope of Application b) Article 2, Non-discrimination c) Article 3, Best interests of the child d) Article 4, General obligation e) Article 7, Name, and nationality f) Article 8, Preservation of identity g) Article 32, Protection from economic exploitation h) Article 34, Protection from sexual exploitation and abuse i) Article 35, Prevention of abduction, sale, and trafficking j) Article 36, Protection against all forms of exploitation 	Reported, 2003 ⁶⁰³	Reported 19 January 2012 ⁶⁰⁴
Note: Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure – Only Thailand is a Member-State, but has inter-state obligations that would apply to Bangladesh and Myanmar		

⁶⁰³ Concluding Observations of the Committee on the Rights of the Child, Bangladesh, U.N. Doc. CRC/C/15/Add.221 (2003); The Committee considered the initial report (CRC/C/3/Add.38) and Supplementary report CRC/C/3/Add.49) of Bangladesh at its 380th to 382nd meetings (CRC/C/SR.380-382), on 26 and 27 May 1997.

⁶⁰⁴ The Committee considered the combined third and fourth periodic report of Myanmar (CRC/C/MMR/3-4) at its 1675th and 1676th meetings (see CRC/C/SR.1675 and CRC/C/SR.1676) held on 19 January 2012, and adopted, at its 1697th meeting, held on 3 February 2012.

< https://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_MMR_CO_3-4.pdf > accessed 16 February 2020; para C(33), While noting the existence of a draft amendment to the Child Law raising the age of a child, the Committee is concerned about the current distinction between a child (up to the age of 16 years) and a youth (between 16 and 18 years); the absence of a minimum age for marriage for boys; and the legality of the marriage of girls as young as 14 years with parental consent; para C(35) The Committee reiterates its concern (CRC/C/15/Add.237 para 27) about the multiple forms of discrimination that persist in the State party, particularly those against girls and children in vulnerable and disadvantaged situations, such as children from ethnic and religious minority groups (including Rohingya children), children from remote and border areas, internally displaced children, children in street situations, children affected by HIV/AIDS, children with disabilities, orphans, and children in situation of poverty.

Criteria	Bangladesh	Myanmar	ASEAN
<p>Optional Protocol: 'shall' and 'shall endeavour', refer to Figure 12 & 13:</p> <p>a) Article 1 shall prohibit the sale of children</p> <p>b) Article 3 shall ensure... the following acts and activities are fully covered 3(1)(a)-(c), 2-5</p> <p>c) Article 4(1) shall take such measure as may be necessary to establish its jurisdiction over the offences referred to in Article 3, para 1; 3, shall also take such measures ... to establish its jurisdiction</p> <p>d) Article 5, offences referred to in Article 3, para 1, shall be deemed to include extraditable offences</p> <p>e) Article 6(1), shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings... for the offences set forth in Article 3, para 1, (2), shall carry out their obligations under para 1 of the present Article</p> <p>f) Article 7,(a)-(b), subject the provisions of their national law, measures for the seizure and confiscation, proceeds derived from offences</p> <p>g) Article 8(1-6) shall adopt appropriate measures to protect the rights and interests</p> <p>h) Article 9(1-5) shall adopt or strengthen, implement...</p> <p>i) Article 10(1-4) shall take all necessary steps to strengthen</p> <p>j) Article 11, (a-b) shall affect any provisions....</p> <p>k) Article 12(1-3) shall submit, within two years...</p>	<p>Refer to Figure 13, Shall Endeavour Spectrum and accompanying narrative - Research line graph plots Bangladesh between reasonable, and I will try, at the lower spectrum</p>	<p>Refer to Figure 13, Shall Endeavour Spectrum and accompanying narrative - Research line graph plots Myanmar, I will Try and Nothing, the bottom of the Shall Endeavour Spectrum</p>	<p>Refer to Figure 13, Shall Endeavour Spectrum and accompanying narrative - Research line graph plots ASEAN, I will Try and Nothing, the bottom of the Shall Endeavour Spectrum</p>

Table Note: Refer to Figure 13, Shall Endeavour Spectrum line graph and subsequent narrative; ASEAN is an international personality, a significant component of the Southeast Asia region. Its monistic implementation of the Trafficking Protocol meets treaty compliance obligations via international agreements for Myanmar and the other Southeast Asian States (refer to Part II, State Responsibility, Section 7. ASEAN Charter Relevant Rules.

Criteria	Bangladesh	Myanmar
CRC: Article 44(1) Reporting Procedures: ⁶⁰⁵ (a) within 2 years of the entry into force of the Convention; (b) thereafter, every five years (inclusive of the substantive optional protocols, based upon mid-2000s ruling. – General comment art 12, in accordance with Reporting Guidelines, art 44.02. *Adherence to List of Issues to Reporting (LOIPR), containing up to 30 questions, as of 1 September 2019.	Late	Late
CRC: Article 44(2) Reports shall indicate factors and difficulties	yes	yes
CRC: Article 44(5) The Committee may request from State Parties further information relevant to the implementation of the Convention – Countries with outstanding issues that are in breach of the Convention	Yes/ with unresolved issues	Yes/but with unresolved issues
CRC: Article 44(6) State Parties shall make their reports widely available to the public in their own countries.	Yes/ via UN Digital Library	Yes/ via UN Digital Library
CRC: Article 45, Implementation, and international cooperation	Infrequently	Infrequently
OPSC: Article 12 refers to Article 44 of the CRC	Same as CRC	Same as CRC

⁶⁰⁵ UN Digital Library, Consideration of the reports submitted by States parties under art 44 of the Convention: Convention on the Rights of the Child <<https://digitallibrary.un.org/?ln=en>> accessed 14 February 2020; search by State; supporting narrative in Chapter 3-4.

Criteria – Research of Case Law, EctHR Obligations	Bangladesh	Myanmar	ASEAN
States’ Positive Obligations to Human Trafficking: The European Court of Human Rights in – paras 64-65; paras. 264-268, <i>Rantsev v Cyprus and Russia</i>: a) Enactment of appropriate legislation b) Introduction of review procedures for the operation of certain businesses known to be a cover for human trafficking c) Establishment of punishments commensurate to the nature of the crime of trafficking d) Introduction of measures to discourage demand e) Assurance of the training of law enforcement for the identification of trafficking victims and for building trust amongst victims and law enforcement f) Encouragement of research, information campaigns, awareness law enforcement g) Vigorous investigation of allegations of human trafficking	a) yes b) no c) yes d) no e) no f) no g) no	a) yes b) no c) yes d) no e) no f) no g) no	a) yes b) no c) yes d) no e) no f) no g) no

Table Note: yes, indicators reflect variation on the ‘shall’ and ‘shall endeavour’ spectrum scale; refer to Figure 12 and 13, narrative explanation; note some legislative enactments do not meet the specific inclusive of the treaty compliance; narrative, Refer to Chapter three and four; ASEAN is an international personality, a significant component of the Southeast Asia region. Its monistic implementation of the Trafficking Protocol meets treaty compliance obligations via international agreements for Myanmar and the other Southeast Asian States (refer to Part II, State Responsibility, Section 7. ASEAN Charter Relevant Rules.

Criteria – Research of Case Law, EctHR Obligations	Bangladesh	Myanmar	ASEAN
States’ Positive Obligations to Human Trafficking: The European Court of Human Rights, <i>Case of Chowdury and Others v Greece</i>, 30 March 2017: a) An appropriate legal and regulatory framework for the criminalization of human trafficking b) Operational measures on the prevention of human trafficking and the protection of victims’ rights c) An effective investigation and judicial procedure Refer to Note 2	a) yes b) yes c) no	a) yes b) yes c) no	a) yes b) yes c) no

*Note 2: yes, indicators reflect variation on the ‘shall’ and ‘shall endeavour’ spectrum scale, refer to Figure 12, 13, and narrative explanation; note some legislative enactments do not meet the specific inclusive of the treaty compliance; narrative, refer to Chapter three and four; ASEAN is an international personality, a significant component of the Southeast Asia region. Its monistic implementation of the Trafficking Protocol meets treaty compliance obligations via international agreements for Myanmar and the other Southeast Asian States (refer to Part II, State Responsibility, Section 7. ASEAN Charter Relevant Rules).

h) Issues and Rules under Analysis Coupled with Research-Based Research Conclusions (IRAC)

Whether a breach of an obligation has occurred, through action or omission, draws on the investigation of the targeted states' relevant ratified or acceded treaties is the focal issue under analysis.⁶⁰⁶ The rules analysis utilizes legal reports and empirical theories (both socio-legal and criminology) as an analytical tool (the warrants) in conjunction with doctrinal principles. The analytic approach examines the critical-case legally salient facts to respond to the central research and sub-research questions with a focus on the study's dependent and independent variables.⁶⁰⁷ exploitation, human trafficking (referring to research evidence in Tables 8-11 and subsequent narratives),⁶⁰⁸ a State's responsibility to an international obligation, and whether there was an internationally wrongful act or omission.

The interpretive approach relies upon jurisprudence from a host of cases from the European Court of Human Rights,⁶⁰⁹ the African Court on Human and Peoples' Rights,⁶¹⁰ and the International Court of Justice. Internationally, laws prohibiting

⁶⁰⁶ Vienna Convention Law of Treaties (VCLT), arts 6-18, setting forth the rules governing the signing and ratifying of treaties.

⁶⁰⁷ Refer to Chapter 1's detail of the study variables, section - central and sub-research questions.

⁶⁰⁸ Trafficking in persons was urged in *Rantsev v Cyprus and Russia*, the criminal law approach, where it was declared an international crime, which slightly enlarged the definition of 'enslavement' to be classified as a crime against humanity, under art 7(1)(c) of the Rome Statute'; footnote 92, 'This crime was defined as 'the exercise of any or all of the powers attaching to the right of ownership over a person. Includes the exercise of such power in the course of trafficking in persons, in particular women and children;' Rome Statute of the International Criminal Court, art 7(2)(c) adopted on July 17, 1998, 2187 U.N.T.S. 90.

⁶⁰⁹ The European Convention on Human Rights has since 1950 defined and guaranteed human rights and fundamental freedoms in Europe. All 47 member states of the Council of Europe have signed this Convention and are therefore under the jurisdiction of the European Court of Human Rights in Strasbourg. In order to prevent torture and inhuman or degrading treatment, the Committee for the Prevention of Torture was established.

⁶¹⁰ The African Court on Human and Peoples' Rights (the Court) is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. The Protocol came into force on 25 January 2004.

serfdom,⁶¹¹ slavery,⁶¹² and exploitation are governed by a myriad of treaties, conventions, and declarations addressed in accompaniment to the focal instruments of this research. The study also utilizes four of the research dependent variables as conceptual tools in the analytical process: a) legal empowerment (access to justice, deterrence, redress), b) social conflict theory, c) vulnerability (a position of vulnerability; children in vulnerable situations), and d) deterrence strategies (Kennedy's Deterrence Strategies [general and specific] Criminology).

This research investigates the States' responsibility and its internationally wrongful acts with child violence, human trafficking, and exploitation in Bangladesh and Myanmar based upon the central and sub-research questions. Notably, and most prominently, art 4 of the Universal Declaration of Human Rights states, 'no one should be held in slavery or servitude, slavery in all its forms should be eliminated'.⁶¹³ The foundational principles for the two focal treaty instruments or the 'rules' of this study. First, the focal instrument is the Protocol⁶¹⁴ to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also referred to as the 'Palermo Trafficking Protocol'), supplementing the UN Convention against

⁶¹¹ Serfdom: defined as "the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status' (art 1(b)).

⁶¹² *Prosecutor v Kunarac, Kovac and Vukovic*, Case IT-96-23-T and IT-96-23/1-T, ICTY Appeals Chamber, 12 June 2002, para 117; Antonio Cassese, 'Crimes against humanity' in *The Rome Statute of the International Criminal Court: A commentary* (2002) 374-75.

⁶¹³ Universal Declaration on Human Rights, General Assembly of the UN, adopted by General Assembly Res 217 A(III) of 10 December 1948.

⁶¹⁴ The UN *Treaty Handbook* defines a *protocol* as follows: 'A *protocol*, in the context of treaty law and practice, has the same legal characteristics as a treaty 'The term *protocol* is often used to describe agreements of a less formal nature than those entitled treaty or convention; 'Generally, a *protocol* amends, supplements or clarifies a multilateral treaty. 'A *protocol* is normally open to participation by the parties to the parent agreement. However, in recent times, States have negotiated a number of *protocols* that do not follow this principle. The advantage of a *protocol* is that, while it is linked to the parent agreement, it can focus on a specific aspect of that agreement in greater detail.'

Transnational Organized Crime (hereinafter, the 'Palermo Convention'),⁶¹⁵ arts 1-13.⁶¹⁶ The examination looks first to the internationally accepted definition of human trafficking as stated in art 3(a), of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.⁶¹⁷ Under the scope of the 3P construct, the study examines three critical elements of the international definition: a) the 'act' or what is done, b) the 'means' or the how it is done, and c) the 'why' it is done.⁶¹⁸ The analysis uses the States' pertinent practice and juridical support to tackle human trafficking in contrast to the respective States' responsibility to prevent and protect against the multiple forms of exploitation and the study's proffered response.

i) The Palermo Trafficking Protocol – Rule Overview. The investigative research of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, supplemented by the UN Convention against Transnational Organized Crime,⁶¹⁹ is structured under the 3Ps of Prevent, Protect, and the Promote. The treaty's purpose is set out in art 2 under a three-prong statement of *purpose*.⁶²⁰ The purpose formulates into what is

⁶¹⁵ Convention Against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, done Nov 15, 2000, T.I.A.S. 13127 [hereinafter Palermo Protocol] < <http://treaties.un.org/doc/Publication/MTDGS/Volume%20II/Chapter%20XVIII/XVIII-12-a.en.pdf>. > accessed 20 July 2017; Anne Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' (2001) 23 Hum. Rights. Q. 975, 975–76; Anne Gallagher, 'Contemporary Practice of the United States Relating to International Law' (2001) 95 Am. J. Int'l L. 387, 408.

⁶¹⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

⁶¹⁷ Palermo Trafficking Protocol, para 3(a); A Gallagher, *The International Law of Human Trafficking* (Cambridge: Cambridge University Press 2010) doi:10.1017/CBO9780511761065.

⁶¹⁸ Legislative Guide for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, 2004, para 34; A Gallagher, *The international law of human trafficking* (Cambridge, CUP 2010) 30.

⁶¹⁹ *ibid*.

⁶²⁰ Refer to the Convention on the Law of Treaties, art 18, May 23, 1969, 1155 U.N.T.S. 331.

commonly referred to in the literature⁶²¹ as the 3Ps of trafficking reiterated in this section for clarity:

- 1) '***Prevent*** and combat trafficking in persons, paying particular attention to women and children.
- 2) To ***protect*** and assist the victims of such trafficking, with full respect for their human rights; and
- 3) To ***promote*** cooperation⁶²² among State Parties in order to meet those objectives'.⁶²³

In literature, the 3Ps are commonly referred to as Prevent, Protect, and Prosecute.⁶²⁴ However, within the actual Convention, art 2, does not use the wording of prosecute. Also, art 2 of the Trafficking Protocol excludes the mandatory obligation language, 'shall', and often is considered non-obligatory. However, as the treaty's object and purpose, States must comply with art 60 of the Vienna Convention on the Law of Treaties, which sets customary international law rules as violations considered a material breach.⁶²⁵

The variation that the Palermo Trafficking Protocol makes between other treaties is the distinguishing adults and children. Protection is the element of consent, as it defines trafficking in persons in art 3(a) and criminalizes the act, the means, and the purpose, art 5. Consent is not a required element for a child. For this research into

⁶²¹ Portland State University, Criminology and Criminal Justice Senior Capstone, 'Prevention of Human Trafficking: A Review of the Literature – Paper 9' (Paper 9, Portland State University 2011); A Criminology and Criminal Justice Senior Capstone Project research presenting an excellent overview of trafficking literature and the formulation of the 3Ps <http://pdxscholar.library.pdx.edu/ccj_capstone/9> accessed 19 August 2019; A Gallagher and P Holmes, 'Developing an effective criminal justice response to human trafficking: Lessons from the front line' (2008) 18[3] International Criminal Justice Review 318, 343 <<https://doi.org/10.1177/1057567708320746>> accessed 21 August 2019.

⁶²² R Pati, 'Combating human trafficking through transnational law enforcement cooperation: The case of southeastern Europe' George Andreopoulos (ed.) in *Policing across borders: Law enforcement networks and the challenges of crime control* (New York, Springer 2013) 89-122.

⁶²³ Article 2, Palermo Trafficking Protocol.

⁶²⁴ Cho Seo-Young, 'Evaluating policies against human trafficking worldwide: An overview and review of the 3P index' (2015) Journal of Human Trafficking, 86, 99 <<http://www.economics-human-trafficking.org/anti-trafficking-3p.html>> accessed 3 July 2017.

⁶²⁵ *Golder v the United Kingdom*, 21 February 1975, § 29, Series A no 18; art 31 §1 of the Vienna Convention.

child exploitation, the internationally accepted broader term, human trafficking, is used interchangeably with trafficking in persons (TIP) (as used within the treaty context). Operationalized, both terms are derived from the authoritative definition cited in the UNGA, 2000, article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons (TIP) as adopted by UNGA Res 217 A(III) of 10 December 1948. The article states the following, but critically analyses in follow-on text,

‘[Trafficking in persons] shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent⁶²⁶ of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.⁶²⁷

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,⁶²⁸ supplementing UN Convention Against Transnational Organized Crime,⁶²⁹ is the first globally legally binding instrument to achieve an all-embracing definition on trafficking in persons for the criminalizing of all forms of human trafficking.⁶³⁰ The research delves into gaps in the monistic and dualistic⁶³¹ domestic implementation of international treaty obligations and the impact of varying

⁶²⁶ Article 3, para (b), the consent of a victim in trafficking is specified as irrelevant when any of the stipulated ‘means’ are used.

⁶²⁷ Article 3, para (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

⁶²⁸ Legislators, drafters, and other officials engaged in efforts to ratify or implement the Protocol should also refer to the following: The text of the Organized Crime Convention (General Assembly resolution 55/25, annex I.

⁶²⁹ The UN Convention against Transnational Organized Crime adopted by General Assembly resolution 55/25 of 15 November 2000.

⁶³⁰ UNODC, art 3, art 5 Palermo Trafficking Protocol.

⁶³¹ James Crawford, *Brownlie’s principles of public international law* (8th edn, Oxford: Oxford University Press 2012); ‘Monism and dualism retain power as analytical tools. They act as consistent starting points for examinations of the relationship between international and domestic law’.

trafficking legislative definitions using case law outcomes as a critical analysis tool.⁶³² The Palermo Trafficking Protocol's international definition of trafficking-in-persons (TIP) encompasses a range of crimes. However, the domestic implementation of what constitutes the crime of human trafficking varies by State.⁶³³ The Palermo Trafficking Protocol gives an open-ended list of forms of exploitation. Seemingly, the Protocol neglects to define the term 'exploitation'. Yet, many composite crimes include trafficking in persons' where the definition also includes violence, kidnapping, and sexual assaults that target the most vulnerable children.⁶³⁴

As a result, this study contends that an examination of the States' legal reports, in Chapter four, reflects an omission of these crimes challenged by the prosecution, which in turn results in fewer convictions and fewer penalties. Consequently, the study examines whether the States' actions and omissions could be rendered a breach⁶³⁵ of State responsibility of in-force treaty obligations. Simultaneously, the examination incorporates whether other socio-legal vulnerability⁶³⁶ factors subject children to the violation of human trafficking in the research's targeted regions of South Asia and Southeast Asia. Finally, the examination of the Palermo Trafficking Protocol concludes by proffering a legal framework that the researcher posits is a more effective tool for the prevention and protection approach to optimize existing laws in

⁶³² Domestic measures may be broader in scope or more severe than those required by the Protocol, as long as all obligations specified in the Protocol have been fulfilled (art 34, para 3 of the Convention).

⁶³³ F Malekian and K Nordlöf, *Prohibition of the sexual exploitation of children constituting obligation* (Cambridge Scholar Publishing 2013) 33.

⁶³⁴ S K Arora and others, 'Defining and measuring vulnerability in young people' (2015) 40[3] *Indian J Community Med* 193, 197; <doi:10.4103/0970-0218.158868> accessed 12 January 2018.

⁶³⁵ ILC Articles' on Responsibility of States for International Wrongful Acts (ARSIWA), 2001, article 1.

⁶³⁶ CRC, General comment 14 adds further clarity to member States as it explains that a child in a specific situation of vulnerability.

support of the UN Sustainability Development Goal 8, Target 8.7, and Goal #16, Target 16.2, 16.3, and 16.10.

Secondly, arts 1-4,⁶³⁷ 7-8, 32, 34-36,⁶³⁸ of the UN Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography⁶³⁹ serve as the focal second-tier international instrument under examination for the positive obligations due from the targeted states. The study examines the violence, trafficking, and commercial sexual exploitation of Rohingya children as severe violations of children's rights. Expressly, they represent a gross breach of a child's right to protection from all forms of abuse, violence, and exploitation as enshrined in the Convention on the Rights of the Child:⁶⁴⁰

j) The Convention on the Rights of the Child – Rule Overview. The development of the Convention on the Rights of the Child⁶⁴¹ (CRC) was grounded to ensure that children can meaningfully participate in society.⁶⁴² Herein is an area of concern with Conflict Theory societies, where violence erupts and human rights are violated. Therefore, member states are required to uphold the obligations laid out in the CRC to protect children and guide the provision of adequate services. The CRC comprises three segments. Part I sets out the definition of the child and is inscribed in what is commonly referred to as the general principles:

⁶³⁷ UN Committee on the Rights of the Child (CRC), General comment no 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1), 29 May 2013, CRC /C/GC/14.

⁶³⁸ Ibid.

⁶³⁹ Optional Protocol to the Child Convention on the Sale of Children, Child Prostitution and Child Pornography, 2171 UNTS 227, done 25 May 2000, entered into force 18 January 2002, art 2(a).

⁶⁴⁰ CRC, arts, 32, 34-36.

⁶⁴¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

⁶⁴² The Preamble of the CRC, where it contextualizes the CRC in the UN human rights framework, specifically, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

‘Articles 2 (non-discrimination and the right to equality), 3 (the best interests of the child), 4 (general obligation), 6 (right to life, survival, and development), and 12 (respect for the views of the child)’, are often debated among scholars and practitioners.⁶⁴³

Interestingly, the CRC Committee’s perspective can be drawn from General comment 5, which views the principles as general implementation measures instead of strict guidelines.⁶⁴⁴ Though the general principles are classified as critical and often repeated throughout literature, the CRC’s Committee’s notation of the general principles is omitted in significant volume amongst the General comments (GC), such as GC 6-15 and 17-20.⁶⁴⁵ Also, the General comments are omitted in a multitude of Children’s Rights and the Law literature.

Notwithstanding the role of Part I or the other segments of the CRC, Part II’s focus on the CRC’s monitoring body and Part III was centering on the general treaty law provisions,⁶⁴⁶ this study is directed toward Part I, arts 1-4, 7-8, 32, and 34-36. The remaining CRC articles are beyond the scope of this study. Again, repeated in this section for clarity, a *3Ps* construct, Provision, Protection, and Participation,⁶⁴⁷ is

⁶⁴³ John Tobin, ‘Understanding a human rights-based approach to matters involving children: Conceptual foundations and strategic considerations’ in Antonella Invernizzi and Jane Williams (eds), *The human rights of children: From visions to implementation* (Ashgate 2011).

⁶⁴⁴ UN Committee on the Rights of the Child (CRC), General comment no 5 (2003), General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5,

⁶⁴⁵ The Child’s Rights International Network (CRIN 2019). General comments constitute an authoritative interpretation as to what is expected of States parties as they implement the obligations contained in the CRC’. <<https://home.crin.org>> accessed 20 December 2019.

⁶⁴⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

⁶⁴⁷ Tomas Hammarbert, ‘The UN Convention on the Rights of the Child – and How to make it work’ (1990) 12(1) *Human Rights Quarterly* 97-105, 100 <<https://www.jstor.org/stable/762167>> accessed 31 December 2019; Gerison Lansdown, ‘Children’s Rights’, in Barry Mayall (ed), *Children’s childhoods: Observed and experienced* (Routledge Falmer) 36; Hammarbert initially recommended in 1990 that the articles in the CRC may be more easily comprehended when grouped under the 3P concept; similarly, in 1994, Lansdown concurred and suggested that these three principles of provision, protection, and participate underlie the CRC’s relevant articles.

utilized as the study's approach. The 3Ps are rarely challenged and universally used in children's rights research and policy,⁶⁴⁸ whereas,

- 1) **Provision rights:** these rights capture social rights, such as government-provided services for children - the right to health or education, and access to justice regardless of nationality, legal empowerment;⁶⁴⁹
- 2) **Protection rights:** acknowledge a child's age and the need to protect against violence, economic, sexual, and multiple forms of exploitation. Directs states to rights against discrimination, and promotes art 3, CRC, a child's best interest;⁶⁵⁰
- 3) **Participation rights:** these rights recognise that children are entitled to be listened to, have their own views and opinions and that their views should be considered by adults, which includes the ability to participate in their cultural rights, regardless of nationality.⁶⁵¹

A child is defined by the Convention on the Rights of the Child,⁶⁵² art 1, and supported by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography⁶⁵³ as people under the age of

⁶⁴⁸ Ann Quennerstedt, 'Children, but not really humans? Critical reflections on the hampering effect of the '3p's'' (2010) 18 International Journal of Children's Rights 619-35, 624-5 <<https://doi.org/10.1163/157181810X490384>> accessed 31 December 2019.

⁶⁴⁹ CRC, arts 2, 3, 7, 8, and 35 are under investigation for this research; however, other literature also highlight art 24, Right to the highest standard of healthcare, art 27, Right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development; Wouter Vandenhoe, 'Distinctive characteristics of children's human rights law' in Eva Brems, Ellen Desmet and Wouter Vandenhoe (eds), *Children's rights law in the global human rights landscape, isolation, inspiration, integration?* (Routledge); Tomas Hammarbert, 'The UN Convention on the Rights of the Child - and How to make it work' (1990) 12(1) Human Rights Quarterly 99, 100 <<https://www.jstor.org/stable/762167>> accessed 31 December 2019.

⁶⁵⁰ CRC, arts 34, 35, and 36 are investigated in this research; Wouter Vandenhoe, 'Distinctive characteristics of children's human rights law' in Eva Brems, Ellen Desmet and Wouter Vandenhoe (eds), *Children's rights law in the global human rights landscape, isolation, inspiration, integration?* (Routledge) 24; Tomas Hammarbert, 'The UN Convention on the Rights of the Child - and How to make it work' (1990) 12(1) Human Rights Quarterly 99, 100 <<https://www.jstor.org/stable/762167>> accessed 31 December 2019.

⁶⁵¹ CRC, arts 7 and 8 are investigated in this research; However, other literature also highlights arts 7, 8, Right to an identity (name, family, nationality), arts 12, 13, Right to express views freely and to be listened to art 17, Right to access to information, art 23, Right for disabled children to enjoy life and participate actively in society; Wouter Vandenhoe, 'Distinctive characteristics of children's human rights law' in Eva Brems, Ellen Desmet, and Wouter Vandenhoe (eds), *Children' rights law in the global human rights landscape, isolation, inspiration, integration?* (Routledge) 24; Tomas Hammarbert, 'The UN Convention on the Rights of the Child - and How to make it work' (1990) 12(1) Human Rights Quarterly 97-105, 100 <<https://www.jstor.org/stable/762167>> accessed 31 December 2019.

⁶⁵² UNGA, Convention on the Rights of the Child, 20 November 1989, UN, Treaty Series, vol 1577, p 3, adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 1989.

⁶⁵³ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification and accession by General assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002; art 2 (non-discrimination), Convention on the Rights of the Child, includes of its three Optional Protocols: On the

eighteen. The Convention on the Rights of the Child, art 2 provision ensures this protection is obliged regardless of a child's nationality, ethnicity, or culture.⁶⁵⁴ Thus, in Chapter Four, the CRC is a crucial argument about Rohingya children's situations with generalizability to similarly situated children. In parallel, art 2.1 sets out a non-discrimination provision that applies to children within the States' parties' jurisdiction as a positive obligation and is noted in practically every general comment.⁶⁵⁵

Despite the protections consistently stated in the Convention on the Rights of the Child, the convention does not define discrimination. Instead, the literature suggests that the CRC Committee views the definition of discrimination about differential treatment in similar cases; and situations in the absence of an objective and reasonable justification that is absent a legitimate reason or purpose under the Convention.⁶⁵⁶

Article 3, the best interest of the child, is a fundamental component of the Convention, as it is well-established in children's rights discourse. The Committee on the Rights of the Child identifies art 3.1, Convention on the Rights of the Child, as one of the four general principles reinforcing all other rights in the Convention.⁶⁵⁷ The CRC Committee dedicated General comment 14 (GC 14) to art 3.1.⁶⁵⁸ The subsequent

involvement of children in armed conflict; OPSC; OPIC

<https://ohchr.org/Documents/HRBodies/CRC/OHCHR_Map_CRC.pdf> accessed 3 July 2018; CRC treaty body database List of Issues

<https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=18&DocTypeCategoryID=1>.

⁶⁵⁴ UNCRC, art 2 (non-discrimination), the Convention applies to every child whatever their ethnicity, gender, religion, abilities, whatever they think or say, no matter what type of family they come from.

⁶⁵⁵ CRC Committee, General comment no 21 (2017) on children in street situations 21 June 2017, CRC/C/GC/20 paras 25-27; Bruce Abramson, *Article 2: Non-discrimination* (A Commentary on the UN Convention on the Rights of the Child, Martinus Nijhoff 2008) 64-5.

⁶⁵⁶ CRC Committee, General comment no 20 (2016) on the implementation of the rights of the child during adolescence (5 Dec 2016) CRC/C/GC/20 para 21.

⁶⁵⁷ Committee on the Rights of the Child (CRC Committee), General comment no 5(2003), General measures of implementation of the Convention on the Rights of the Child (27 November 2003) CRC/GC/2003/5, para 12.

⁶⁵⁸ CRC Committee, General comment no 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1) (29 May 2013) CRC/C/GC/14.

actions of States Parties to undertake all appropriate legislative, administrative and other measures to implement the Convention's rights are outlined in art 4, general obligation.⁶⁵⁹ The CRC Committee provided explanations in General comment 5 (GC 5) on the requirements for appropriate measures in implementation, provisions for direct applicability in the domestic legal order, to include unique structures, monitoring, and training, among others.⁶⁶⁰ Implementation is frequently confused with compliance or effectiveness. Effectiveness comprises a states' efforts to achieve compliance. Instead, implementation refers to the measures and actions put into practice by the State at the domestic level to modify public policy contents. Compliance may occur without any implementation efforts. Articles 32, 34-36 each focus on exploitation and violence against children, which are vital to the study of the Rohingya children in Bangladesh, Myanmar, and actions by border States in their respective regions.⁶⁶¹

Ratification and accession of the research target states are reflected in Table 6, followed by detailed notes and reservations:

⁶⁵⁹ CRC, art 4.

⁶⁶⁰ CRC Committee, General comment no 5 (2003), General measures of implementation of the Convention on the Rights of the Child (27 November 2003) CRC/GC/2003/5 para 1; CRC Committee, GC 19 on public budgeting for the realization of children's rights (art 4).

⁶⁶¹ CRC, arts 32, 34-36; M Zürn, 'Introduction: Law and compliance at different levels law and governance' in *Postnational Europe. Compliance beyond the Nation-State*. M. Zürn and C. Joerges. (Cambridge, Cambridge University Press 2005).

k) Table 6. Research Target State Ratifications and Accessions⁶⁶²

Target Region Country	UN Convention against Transnational Crime (UNTOC)	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Trafficking Protocol)	UN Convention for the Rights of the Child (CRC)	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (OPSC)	Optional Protocol to the Convention on Communications Procedures (OPIC)
Bangladesh	13 July 2011 ^a		3 August 1990	6 September 2000	
Myanmar	30 March 2004 ^a	30 March 2004 ^a	15 July 1991 ^a	26 January 2012 ^a	

^a denotes accession; ^s denotes signed.

Table 6 Notes. The treaty obligations representing the primary rules under the examination of this study are the UN Convention on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure,⁶⁶³ and the UN' Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplemented by the UN Convention against Transnational Organized Crime.⁶⁶⁴ Note: Thailand is the only member-state in the region to the OPIC, but has inter-state obligations, ratified 26 September 2012. The treaty examination includes discourse on how each State Party has adopted or neglected to adopt the international laws' fundamental principles of implementation within its domestic law, such as legislation and other measures. The only other treaties included in this examination relate to the bilateral or multilateral domestic compliance with the aforesaid international instruments, such as those bilateral and multilateral treaties with ASEAN.

⁶⁶² UN, 'UN Treaty Collection' (UN 2018) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en#10> accessed 18 January 2018; International Instruments: UN Convention against Transnational Crime (commonly referred to as the Palermo Convention); Countries Bangladesh and Myanmar each have reservations for the Palermo Convention, Palermo Trafficking Protocol, and the CRC.

⁶⁶³ Ibid, UN Treaty Collection.

⁶⁶⁴ Ibid, UN Treaty Collection.

L) Targeted State Reservations. A brief collective discourse on the focal States' treaty reservations⁶⁶⁵ is warranted. It seemingly provides insight into international relations' position and balances obliged commitments to the research evidence. Bangladesh's non-ratification or accession of the Trafficking Protocol is keenly noted. However, Bangladesh has ratified the UNTOC and is examined under the parameters of this treaty. Myanmar has ratified or acceded to the Trafficking Protocol and the UNTOC as a common thread among the two countries.

Bangladesh and Myanmar each have reservations⁶⁶⁶ of the UN Convention against Transnational Organized Crime (UNTOC), art 35, para 3, section, which reads,

'Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation'.⁶⁶⁷

The reservation, in turn, refers to para 2, Settlement of Disputes, whereas, UN Convention against Transnational Organized Crime, art 35, para 2 states,

'Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the *International Court of Justice* by request in accordance with the Statute of the Court'.⁶⁶⁸

⁶⁶⁵ *Golder v the United Kingdom*, 21 February 1975, § 29, Series A no 18; Vienna Convention, art 19(c): A state may make a reservation to a treaty unless the reservation is 'incompatible' with the object and purpose of the treaty.

⁶⁶⁶ Vienna Convention, art 20(2).

⁶⁶⁷ UN Transnational Organized Crime Convention, art 35, para 3.

⁶⁶⁸ UN Transnational Organized Crime Convention, art 35, para 2.

Similarly, each of the Trafficking Protocol's ratified country's declaration and reservations, from Myanmar, Malaysia, and Thailand, indicate art 15, para 3, Settlement of Disputes, whereby,

'Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. **The other States Parties shall not be bound by paragraph 2 of this article** with respect to any State Party that has made such a reservation'.⁶⁶⁹

Referring to art 15, para 2 states,

'Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court'.⁶⁷⁰

Debatably, a rebuttable presumption can be drawn from the consistency in the reservations among the three countries regarding 'the settlement of disputes.' Some understanding of the situation can likely be obtained by examining the UN Charter (art 2.3), developed by the UNGA Res 2625 (XXV), on Principles of International Law concerning Friendly Relations and Co-operation among States that provides the respective guidelines.⁶⁷¹ Originating from the 1899 Hague Peace Conference where the Convention for the Pacific Settlement of International Disputes was borne, a

⁶⁶⁹ Trafficking Protocol, art 15, para 3.

⁶⁷⁰ Trafficking Protocol, art 15, para 2.

⁶⁷¹ J Collier and V Lowe. *The Settlement of Disputes in International Law* (Oxford: Oxford University Press 1999).

second Hague Peace Conference in 1907 developed a revised version that evolved into a moratorium on the use of force.⁶⁷²

Art 2.4 of the UN Charter (art 2.3; art 33) promotes the 'significance of the prohibition of the use of force' and can be found within the ICJ, Judgment, 27 June 1986, Military and Paramilitary Activities in and against Nicaragua, Rec 1986, p 145, para 290.⁶⁷³

Thus, several components of the Nicaragua case have an integral role in researching the jurisdictions under review. Concurrently, art 33 of the UN Charter identifies a non-exhaustive list of peaceful methods to facilitate, dispute, and establish conciliatory settlement measures, comprising of, but not limited to, inquiry mediation, negotiation, arbitration, and judicial settlement of States' disputes.⁶⁷⁴

Arguably, the States' reservations could be tied to international scholarship, which can be conceived as lacking in diplomatic means of settlement and the minimal recorded successful benchmarked real-world practices. References for addressing the gaps are noted in art 37.1 of the UN Charter, where there are instances of unresolved disputes that entail the referral obligation to the Security Council. Among other international references, art 51 Ch. VII, Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, which states, (a)

'Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the UN until the Security Council has taken the measures necessary to maintain

⁶⁷² O Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law* (Hart 2010) 403.

⁶⁷³ *Nicaragua v United States of America* [1986] ICJ Rep 14, para 194.

⁶⁷⁴ J Merrills, *International dispute settlement* (4th edn Cambridge, University Press 2005).

international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.⁶⁷⁵

Referring to the elements of art 51, in the present Rohingya critical-case, the South Asia and Southeast Asia cluster of UNTOC member-state parties have elected not to be bound by the clause of referring disputes to the ICJ and may instead rely upon the alternatives noted herein. Another speculative but plausible causative basis for this action or reasoning could be that each of these countries may have an adverse position towards adjudication in international tribunals in general, including potential protest to the probable involvement of the ICJ. The sources of international law from which all legal obligations are derived are laid out in art 38.1 of the International Court of Justice.

Article 38.1 of the international law finds its sources in the following:

- 'a) international conventions, whether general or particular, recognized by states,
- b) international custom, as evidence of a general practice accepted as law,
- c) the general principles of law recognized by civilized nations,
- d) judicial decisions and the teachings of the most highly qualified publicists, of the various nations as subsidiary means for the determinations of rules of law'.⁶⁷⁶

⁶⁷⁵ Article 51 Ch. VII, Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.

⁶⁷⁶ Statute of ICJ, art 38.1.

Cases before the ICJ are based upon a bilateral framework.⁶⁷⁷ For example, a look at the *East Timor Case (Portugal v Australia)*⁶⁷⁸ brings forward points where the ICJ negated the ruling on the validity of the Continental Shelf due to Indonesia's absence as a third-party legal interest being heard within the ICJ's bilateral structure.⁶⁷⁹

m) UNCRC Reservations. As a reservation serves as a statement by a State, at ratification, to limit a right or eliminate a right, other states do not have the right to hold Bangladesh and Myanmar responsible for upholding the respective article or paragraph of an article specified. The UNCRC articles are usually overlapping, and protection can often be sought from other articles that are not under a States' reservation. However, Article 51.2 notes, 'A reservation incompatible with the object and purpose of the present Convention shall not be permitted,' which is derived from the general principles of international law.⁶⁸⁰ For the States under review:

- a. Bangladesh's reservations center on religious freedom and adoption safeguards – CRC art 14.1, 14.2, and 21,⁶⁸¹ none of these articles impact the research focus of this study.
- b. Myanmar's reservations include two extensive statements to CRC articles on freedom of association and freedom from inhumane treatment – art 15 and art

⁶⁷⁷ ICJ Report, (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania* (Advisory Opinion) 1950 74; 'a situation in which the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations'.

⁶⁷⁸ *East Timor Case (Portugal v Australia)* I.C.J. Rep. 1995.90 (Judgment 30 June 1995).

⁶⁷⁹ Third parties can request intervention under the ICJ Statute, Arts 62 and 63.

⁶⁸⁰ The Vienna Convention on the Law of Treaties (1969).

⁶⁸¹ Bangladesh first reservation, 'The Government of the People's Republic of Bangladesh hereby enter our reservation on article 14, paragraph 1'... 'Also, article 21 would apply subject to the existing laws and practices in Bangladesh.'

32.⁶⁸² Article 15 reservation has no impact on this study. However, art 32's reservation on protecting from economic exploitation is a concern argued later in the text.⁶⁸³ Comparatively, to neighboring states, Malaysia's remaining reservations to the CRC, it is the reservation to article 37, which deals with torture and the deprivation of liberty.⁶⁸⁴

n) Legal Interest. By a State's membership in the international community, States have a legal interest in protecting certain basic rights. Equally, as ascribed by the Universal Declaration of Human Rights,⁶⁸⁵ States have a responsibility to fulfill certain essential obligations to all populations regardless of their ethnicity, cultural background, or religion. The International Court of Justice acknowledges the peremptory norm of international law —*jus cogens*⁶⁸⁶ and that 'the rights and obligations enshrined by the

⁶⁸² Myanmar made two extensive statements in its reservations, each reading more like an opinion of article 15, para 2 and article 37 (consisting of three paragraphs); the reservations are inclusive of an interpretive declaration that focus on the country's 'consonance with its laws, rules, regulations, procedures and practice as well as with its traditional, cultural and religious values.'

⁶⁸³ Burma acceded to the CRC in August 1991, although with two significant reservations: Article 15, recognizing the right 'to freedom of association and of peaceful assembly'; and art 37, which states that 'No child shall be subjected to torture or other cruel, degrading and inhuman treatment or punishment.' These reservations were both withdrawn in October 1993.

⁶⁸⁴ The other remaining reservations are to art 2 (non-discrimination); art 7 (name and nationality); art 14 (freedom of thought, conscience, and religion); and art 28(1)(a) (free and compulsory education at primary level). Malaysia withdrew its reservations to article 1, 13 and 15 of the CRC on 6 July 2010; UN, Statement by the Honourable Gobalakrishnan Nagapan Member of Parliament and Representative of Malaysia on Agenda Item 65: Promotion and Protection of the Rights of Children
<www.un.int/malaysia/GA/66/66unga22_65children.pdf> accessed Jul 25, 2018.

⁶⁸⁵ UNGA, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), adopted by General Assembly Res 217 A(III) of 10 December 1948.

⁶⁸⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment of 26 February 2007, I.C.J. Reports 2007, p 111, para 161 (citing *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v Rwanda)*, Jurisdiction and Admissibility, Judgment of 3 February 2006, I.C.J. Reports 2006, p 32, para 64); compelling law.

Convention are rights and obligations *erga omnes*.⁶⁸⁷ Consequently, all States have a 'legal interest' in protecting the rights involved, allowing States to seek compliance with their obligations.⁶⁸⁸ *Belgium v Senegal*, in this instant case, each of the targeted States, Bangladesh, and Myanmar, are required to seek compliances with its treaty obligations. No special interest is required,⁶⁸⁹ *erga omnes partes*. Each Children's Rights Convention and member-State has the admissibility for a claim against Bangladesh and Myanmar as a common interest in compliance with the relevant obligations under the Convention. Therefore, the capacity to claim the cessation of an alleged breach can be made by any State party 'to ascertain the alleged failure to comply with its obligations... and to bring that failure to an end' – *Belgium v Senegal*.⁶⁹⁰

In the Asian States, over 260 million indigenous people represent more than 2,000 distinct civilizations.⁶⁹¹ Yet, globally, according to the UN, the gaps in protection and

⁶⁸⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Preliminary Objections, Judgment of 1 July 1996, I.C.J. Reports 1996 (II), p 616, para 31; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, Judgment of 3 February 2015, I.C.J. Reports 2015, p 47, para 87.

⁶⁸⁸ *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) (New Application: 1962), Second Phase*, Judgment of 5 February 1970, I.C.J. Reports 1970, p 32, para 33.

⁶⁸⁹ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, Merits, Judgment of 20 July 2012, I.C.J. Reports 2012, p 450, para 69.

⁶⁹⁰ *ibid.*

⁶⁹¹ ILO, 'The Rights of indigenous peoples in Asia' (ILO March 2017) UN Permanent Forum on Indigenous Issues, 'Indigenous peoples, Indigenous Voices'

<https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf> accessed 25 August 2018; Franziska Humbert, *The challenge of child labour in international law* (Cambridge University Press 2009) 35, 79.

prevention of harm to stateless indigenous people have risen disproportionately.⁶⁹² In addition, the reports indicate that indigenous people from all over the world continue to suffer disproportionately from high rates of poverty, health problems, crime, and human rights abuses.⁶⁹³

Research further suggests that forms of subjugation and serfdom envelope marginalized populations in targeted geographic regions across the globe. Where economic and cultural disadvantages are dominant, conflict and wartime enslavement result in situations where the worst child labour and exploitation exist.⁶⁹⁴ Consequently, no one source appears to have concise statistics or an accurate depiction of child exploitation's global issues. Variations in the type of exploitation, victim demographics, and the number of children exploited are consistently inconsistent among government agencies and community advocates across innumerable geographical regions.

Nonetheless, the International Organization for Migration (IOM) has published the 2018 Global Dataset and Global Dataset Codebook. The data set is coupled with a

⁶⁹² *ibid*; UNFPA (2017) <https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA_PUB_2018_EN_AnnualReport.pdf> accessed 20 August 2018; 'Indigenous people, Indigenous peoples - defined by the UN as people with ancestral ties to a geographical region who retain 'distinct characteristics' from other parts of the population - rank disproportionately high in most indicators of poor health, according to the UN Secretariat Department of Economic and Social Affairs'.

⁶⁹³ UN, 'UN Meeting Coverage and Press Release' (HR/5265-OBV/1500, 7 August 2015) <<https://www.un.org/press/en/2015/hr5265.doc.htm>> accessed 30 August 2018.

⁶⁹⁴ J Quirk. *The anti-slavery project: From the slave trade to human trafficking* (Philadelphia: PA, University of Pennsylvania Press 2011); A Brysk and A Choi-Fitzpatrick, *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (University of Pennsylvania Press 2012).

dictionary of terms that categorically identifies and provides staggering quantitative figures for migration victims of human trafficking by geographic region, depicting 91,421 individual cases, 172 countries of exploitation, and 169 nationalities.⁶⁹⁵ Unfortunately, a substantial volume of cases, almost ¼, originate from nationals in the study's targeted research states.

In accompaniment, the International Labour Organization (ILO) cites 2016 figures for trafficking is more than 1.39 million people in commercial exploitation.⁶⁹⁶ Likely, the deviation in statistics can be attributed to the type of exploitation and demographic status. Regardless of the statistical variations across UN agencies and organs, over the last several decades, promising initiatives have been structured to address exploitation in forced, bonded, and indentured servitude circumstances by varying countries with limited success.⁶⁹⁷ These initiatives were also included in team discussions by the Sustainable Development 2030 goals, with a focus on SDG 16, 16.2 were achieving the goals of access to justice, child violence risk may impact the effectiveness with child victims,

⁶⁹⁵ IOM, 'The Counter Trafficking Data Collaborative - Global Data Hub on Human Trafficking: The Global Dataset' (CTDC 3 Sept 2018) <<http://ctdatacollaborative.org/dataset/resource>> accessed 15 Oct 18.

⁶⁹⁶ International Labour Organization (ILO) 2016; Franziska Humbert, *The challenge of child labour in international law* (Cambridge University Press 2009) 122; Thomann (n 406).

⁶⁹⁷ Under Secretary for Democracy and Global Affairs, 'The facts about children trafficked for use as camel jockeys' (US Secretary of State Jan 2001-Jan 2009) <<https://2001-2009.state.gov/g/tip/rls/fs/2005/50940.htm>>accessed 4 Oct 18; P Mahdavi, *Gridlock: Labor, Migration, and Human Trafficking in Dubai* (Stanford University Press 2011).

‘Similarly, failing to reach the targets related to violence against children, especially 16.2, will compromise efforts in these areas, and hinder social and economic progress across the agenda.’⁶⁹⁸

In Southeast Asia (Myanmar) and South Asia (Bangladesh) region, this study’s population, the Rohingya, are stateless, indigenous, and Indo-Aryan-speaking people. In this region, exploitation is often hidden in plain sight. Children begging, lingering, and emerging from darkened, unsafe places or actively engaged in some form of serfdom permeate every facet of Southeast Asia (Myanmar) and South Asia (Bangladesh) society.⁶⁹⁹ As a stateless group, the 1954 Convention relating to the Status of Stateless Persons⁷⁰⁰ and the 1961 Convention on the Reduction of Statelessness⁷⁰¹ establish the legal definition for stateless persons as, ‘... individuals who are not considered citizens or nationals under the operation of the laws of any country’.⁷⁰² Research by the Netherlands based Institute for Statelessness and Inclusion further notes,

⁶⁹⁸ 2030 Agenda for Sustainability Development: A historical opportunity to end violence against children, Special Representative of the Secretary-General on Violence against Children.

⁶⁹⁹ UN Office on Drugs and Crime, ‘Human trafficking indicators’ (2019)

<file:///C:/Users/DRTAN/Desktop/Strategic-Research-Working-doc/human_trafficking_indicators_english.pdf> accessed 23 December 2018.

⁷⁰⁰ UNGA, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, UN, Treaty Series, vol. 360, p 117, Adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 526 A(XVII) of 26 April 1954, entry into force 6 June 1960, in accordance with article 39.

⁷⁰¹ UNGA, *Convention on the Reduction of Statelessness*, 30 August 1961, UN, Treaty Series, vol. 989, p 175, Adopted on 30 August 1961 by a conference of plenipotentiaries which met in 1959 and reconvened in 1961 in pursuance of General Assembly resolution 896 (IX) of 4 December 1954. Entry into force 13 December 1975, in accordance with article 18.

⁷⁰² UN High Commissioner for Refugees (UNHCR), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, September 2011.

‘...citizenship is the legal bond between a government and an individual, and allows for certain political, economic, social and other rights of the individual, as well as the responsibilities of both government and citizen.’⁷⁰³

The Institute’s research has linked statelessness as a prominent factor of displacement.⁷⁰⁴ As such, this research also adopts the authoritative definition provided by the International Organization for Migration for the displacement of people because of,

‘a serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses or impacts, which exceeds the ability of the affected community or society to cope using its own resources.’⁷⁰⁵

The UN High Commissioner for Refugees reports the Rohingya as stateless and meeting the IOM’s definition of forced displaced people in South Asia and Southeast Asia’s designated geographic research area.⁷⁰⁶ Accordingly, the study delves into the Rohingya situation since 1948 and the international literature that embraces the legal framework for the protection of stateless –refugee and non-refugee children; their legal status under the law – national and international; and their rights across each of the two states under examination: Bangladesh and Myanmar.⁷⁰⁷

⁷⁰³ The Institute for Statelessness and Inclusion, ‘The World’s Stateless’ (ISI, Wolf Legal Publishers 2014) 134 <<http://www.institutesi.org/worldsstateless.pdf>> accessed 22 July 2017.

⁷⁰⁴ *ibid.*

⁷⁰⁵ IOM, ‘Forced Migration’ (IOM 2017) <[IOM http://www.iom.int/jahia/Jahia/pid/523](http://www.iom.int/jahia/Jahia/pid/523)> accessed 22 October 2017; A Idris, ‘Malaysia and Forced Migration’ (2012) 2(1) Intellectual Discourse 31, 54; OPIC, 2014, a third Optional Protocol was adopted, allowing children to bring complaints directly to the Committee on the Rights of the Child. The Committee then investigates the claims and can direct governments to act.

⁷⁰⁶ UNHCR, Global Trends (UNHCR 2017) <www.unhcr.org/5b27be547.pdf> accessed 22 December 2017.

⁷⁰⁷ Refugee Children <http://repo.uum.edu.my/16031/1/2014_7.pdf> accessed 12 March 2017.

The research takes specific aim at the three elements of human trafficking: *action, means, and purpose*,⁷⁰⁸ ASEAN Charter's practice and guidelines, case law in two-state jurisdictions, and international law compliance and integration into domestic law with a critical focus on the child human trafficking during the United Nation's '2017, 100-day timeline', and in the region.⁷⁰⁹ Reasoning, many of the Rohingya's last events were not as well-documented by the UN, Amnesty International, Human Rights Watch, and the UN Fact-Finding Mission groups.⁷¹⁰ However, the evidence matrix indicates that some of those events were encapsulated within the legal reports.

⁷⁰⁸ A Gallagher, *The International Law of Human Trafficking* (Cambridge, CUP 2010) 29, 30.

⁷⁰⁹ Warnings by the International Organization for Migration (IOM), among multiple other advocacy agencies, published warnings. The IOM's article entitled, 'UN Migration Agency Warns of Trafficking, Labour Exploitation, Sexual Abuse of Rohingya Refugees', was published in November 2017 at the height of the Rohingya-crisis; IOM, 'UN Migration Agency Warns of Trafficking, Labour Exploitation, Sexual Abuse of Rohingya Refugees' (IOM 14 November 2017) <<https://reliefweb.int/report/bangladesh/un-migration-agency-warns-trafficking-labour-exploitation-sexual-abuse-rohingya>> accessed 5 Jan 2018.

⁷¹⁰ International Court of Justice, Application Instituting Proceedings and Request for Provisional Measures, *Republic of the Gambia v Republic of the Union of Myanmar*, 11 November 2019, para, 6, page 2, 'those facts are extensively documented by independent investigative efforts conducted under the auspices of the UN and corroborated by international human rights organizations and other credible sources'; inclusive of the independent human rights organizations are Amnesty International, Human Rights Watch,

2. General Principles

a) Article 1, Responsibilities of a State for its Internationally Wrongful Acts

The International Court of Justice (ICJ) legal report of *Corfu Channel Case* (Merits), 1949,⁷¹¹ sets out the first public international law case where the ICJ establishes State Responsibility and serves as a precedent-setting case for State breaches of obligations. In conjunction, the tenets of the International Legal Commission's, Part 1, provide the general principles for determining an internationally wrongful act of a State, wherein: art 1 captures the scope of the study's inquiry,

'That every international wrongful act of a State entails its international responsibility'.⁷¹²

Article 1 is mute on the distinction between treaty and non-treaty obligations. Moreover, there is no categorical differentiation between responsibility *ex contractu* and *ex delicto*, nor is any distinction made for the level of generality, such as bilateral and multilateral obligations.⁷¹³ Looking to the International Tribunal for the Law of the Sea, which indicates in *The M/V "Virginia G" Case (Panama/Guinea-Bissau)*⁷¹⁴ arts 1 and 31, paragraph 1, a reaffirmation is asserted that 'every international wrongful act of a State entails the international responsibility of that State' for

⁷¹¹ *Corfu Channel Case (United Kingdom v Albania); Assessment of Compensation*, 15 XII 49, International Court of Justice (ICJ), 15 December 1949, The Corfu Channel case (French: *Affaire du Détroit de Corfou*) was the first public international law case heard before the International Court of Justice (ICJ) between 1947 and 1949 concerning state responsibility for damages at sea, as well as the doctrine of innocent passage.

⁷¹² State Responsibility Articles, art 1.

⁷¹³ *ibid.*

⁷¹⁴ ITLOS, Judgment, 14 April 2014, para 429; On April 14, 2014, the International Tribunal for the Law of the Sea (the Tribunal) rendered its judgment in the case of the *M/V Virginia G.*, whereby, the judgment notably clarifies the scope of the sovereign rights of a coastal state with respect to living resources in its exclusive economic zone (EEZ) and a states' international wrongful act entailing the international responsibility of that State.

sovereign rights of an exclusive economic zone.⁷¹⁵ A research conclusion can be drawn from the case that an international wrongful act may consist of ‘one or more actions or omissions, or a combination of both’ concerning Bangladesh and Myanmar.⁷¹⁶ Formulating determinations of a wrongful act is contingent, first, upon the requirements of the obligation alleged to have been breached; next, the breach depends upon the conditions for the activity that has been set out in Part 1 Articles of State Responsibility.

i) Case analysis - Permanent Court of International Justice. Further insight is gained from the Permanent Court of International Justice’s application of the principle set out in art 1 in several prominent cases. In *Phosphates in Morocco*, the Permanent Court affirmed that when a State commits an internationally wrongful act against another State, international responsibility becomes attached ‘immediately as between the two States’.⁷¹⁷ Within the ASEAN Charter States, the analysis will investigate if any state claimed a wrongful act against another States (to Myanmar).

The most recent case connected to the subject focus of this study is the ICJ’s *Application Instituting Proceedings and Request for Provisional Measures, Republic of the Gambia v Republic of the Union of Myanmar*.⁷¹⁸ Review of the case notes that in accordance with arts 36(1) and 40 of the Statute of the Court, art 38 of the Rules of Court, pursuant to art 41 of the Statute, the Application includes a request that ‘the Court indicate

⁷¹⁵ ITLOS, Judgment, 14 April 2014, para 429.

⁷¹⁶ State Responsibility Articles, art 1.

⁷¹⁷ *Phosphates in Morocco*, Preliminary Objections, 1938, P.C.I.J. Series A/B, no 74, p 10, at p 28.

⁷¹⁸ *Application Instituting Proceedings and Request for Provisional Measures, Republic of the Gambia v Republic of the Union of Myanmar*, 11 November 2019.

provisional measures to protect the rights invoked herein from an imminent and irreparable loss' for the Rohingya.⁷¹⁹ In *The Gambia v Republic of the Union of Myanmar*, The Gambia asserts several wrongful acts by Myanmar. The contention points are noted in Table 2, Research Claim Evidence Matrix, and Table 3, Rebuttal/Counterargument Evidence Matrix. The Court instituted proceedings against The Republic of the Union of Myanmar. The allegation is that Myanmar violated the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the 'Genocide Convention').⁷²⁰

Several points from *The Gambia v Myanmar* can be correlated to this study. For example, The Gambia has identified several reports from UN organizations and their respective fact-finding missions' reliance upon reports from human rights organizations (**third-party submissions**). The third-party submissions postured an argument that Myanmar's inhuman treatment of the Rohingya met the threshold set in art 2 (a-e), Genocide Convention. Article 2 of the Convention defines genocide as

'any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; and (e) Forcibly transferring children of the group to another group'.⁷²¹

This study does not investigate the treaty obligations of the Genocide Convention.

However, several of the elements of art 2, Genocide Convention, overlap the human

⁷¹⁹ ICJ, 11 November 2019.

⁷²⁰ *Convention on the Prevention and Punishment of the Crime of Genocide* (adopted 9 December 1948, entered into force 12 January 1951), 78 UNTS 277.

⁷²¹ *ibid.*

trafficking and exploitation components of this research (specifically; a, b, and e) to art 3, best interest of the child, art 19, prohibition from violence, CRC.

Therefore, an analysis to determine *what* responsibility a State has to its international treaty obligation, a review of the decision in *CMS Gas Transmission Company v Argentine Republic*,⁷²² where Argentina faced several violations claims, is warranted. According to the case, the ad hoc Committee referenced the ‘principle of international law’ from art 1 of the State Responsibility Articles. Accordingly, it ruled that Argentina had breached the United States–Argentina Bilateral Investment Treaty (BIT).⁷²³

Art 1 of the State Responsibility Articles formulates the basic principle that every internationally wrongful act of a State necessitates its international responsibility. The same research conclusion was drawn in *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. v The Argentine Republic*. Where ‘the term “international responsibility” ... covers the new legal relations that arise under the provisions of an internationally wrongful act of a State’.⁷²⁴ An affirmation of these rulings and standings in the law are found within the international arbitral tribunal’s (under the ICSID Convention) three rulings, which identify wrongful acts are a basic principle of international law, *Quiborax S.A. Non Metallic Minerals S.A. and Allan Fosk Kaplūn v the*

⁷²² *CMS Gas Transmission Company v Argentine Republic* (ICSID Case no ARB/01/8), para 149, Decision on Annulment of 25 September 2007; CMS claimed that the measures at issue were in violation of several of Argentina’s obligations under the Argentina-US BIT and requested compensation of US \$261 million (the decreased value of its shares in TGN plus interest and costs);

⁷²³ *ibid.*

⁷²⁴ ICSID Case no ARB/03/19, Award, 9 April 2015, para 25; includes the reference to the identical award in *AWG Group LTD v The Argentine Republic*, UNCITRAL, award, 9 April 2015.

Plurinational State of Bolivia.⁷²⁵ Similarly, each of the cases that included *Suez, Sociedad General de Aguas de Barcelona S.A.*, and *Vivendi Universal S.A. v The Argentine Republic* and *Gold Reserve Inc. v Bolivarian Republic of Venezuela* outcomes upheld States as responsible for an international wrongful act based upon breaches of in-force treaty agreements, art 13, States Responsibility Articles.

Based upon the court rulings, the acts, and omissions from the precedence set by the International Court of Justice cases and others, a research conclusion can be drawn that Bangladesh and Myanmar are subject to art 1, State Responsibility Articles international responsibility has attached. Hence, the states are subjected to compliance with their in-force international treaty obligations to prevent, protect against human trafficking, exploitation, and violence against children. Table 6 shows the ratified treaty obligations in force for Myanmar and the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children. Bangladesh and Myanmar are state parties to the UN Convention for the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the UN Convention against Transnational Crime. Article 1 States Responsibility Articles make no differentiation between treaty obligations, whether bilateral or multilateral treaty obligations.

ii. Analysis - ASEAN. Comparatively, the research states have an international responsibility between two states, as reflected in the case of *Phosphates in Morocco*.⁷²⁶

⁷²⁵ ICSID Case no ARB/06/2, Award, 16 September 2015, para 327.

⁷²⁶ *Phosphates in Morocco, Preliminary Objections*, 1938, P.C.I.J. Series A/B, no 74, p 10, at p 28.

One of the research focus states, Myanmar is a member State formulated under ‘*One Vision, One Identity, One Community*’, the ASEAN Charter.⁷²⁷ The ASEAN Charter States,⁷²⁸ as an international personality, has multiple declaration codes, memoranda of understandings, agreements, and a gamut of non-treaty instruments serving as ‘guidance’ or ‘soft-law that guide migrants, immigration, and explicitly, human trafficking. Notwithstanding, the ASEAN Charter is a binding agreement amongst its member states. The ASEAN Charter, art 1, para 8, states each party commits to,

‘Respond to effectively, in accordance with the principal of comprehensive security, to all forms of threats, *transnational crimes*, and transboundary challenges;’⁷²⁹

Accordingly, Myanmar is bound to comply with its in-force treaty obligations. The analysis will look at the obligations to the treaties under review and the bilateral and multilateral treaties between the research States and ASEAN – the **2015 ASEAN Convention against Trafficking in Persons Especially Women and Children**.⁷³⁰

Under the ASEAN’s international legal personality umbrella, Part One of the Articles on State Responsibility does not differentiate between breaches by an international organization or charter obligations.⁷³¹ Instead, Part One sets out a single general

⁷²⁷ The ASEAN Declaration, Indonesia, Malaysia, Philippines, Singapore and Thailand, Bangkok, 8 August 1967; Association of Southeast Asian Nations <<http://www.aseansec.org/1212.htm>>; From the five countries that signed the Bangkok Declaration in 1967, it has added Brunei in 1984, and Vietnam, Laos, Myanmar, and Cambodia between 1995 and 1999.

⁷²⁸ The Association of Southeast Asian Nations consisting of Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam.

⁷²⁹ ASEAN Charter, art 1(8).

⁷³⁰ 2015 ASEAN Convention against Trafficking in Persons, Especially Women and Children, adopted in Kuala Lumpur, Malaysia on 21 November 2015.

⁷³¹ State Responsibility arts, Part One.

regime of State responsibility and makes no categorical distinctions. **Article 57, State Responsibility Articles, (2001), specifies the responsibility of an international organization,**

‘These articles are without prejudice to any question of the responsibility under international law of an international organization, or of any State of the conduct of an international organization’.

ASEAN can invoke responsibility upon its Member States as chartered international legal personality, but ASEAN equally has its responsibility. A similar research conclusion can be drawn from the review of another instrument, **the 1986 Vienna Convention on the Law of IO Treaties (VCLT-IO), art 2 para (i)**, indicating that consent is required for treaties bind international organizations.⁷³² Moreover, each State has entered, wilfully, into bilateral and multilateral agreements/treaties. Therefore, art 2 para(i) also speaks to the responsibilities of an international legal personality.⁷³³ ASEAN is further discussed in more detail later in the text.

⁷³² Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations art 34, opened for signature Mar. 21, 1986, 25 I.L.M. 543 (1986) (not yet in force) [hereinafter VCLT-IO] (‘A treaty does not create either obligations or rights for a third State or a third organization without the consent of that State or that organization.’); Thirty-five states must become parties before the VCLT-IO enters into force; so far, only thirty-one have done so, refer to art 85.

⁷³³ VCLT-IO, art 2, para(i).

b) Article 2(a)(b), Elements of an internationally wrongful act of a State

Under international law, *Gutiérrez and Family v Argentina* recalled that...

‘in order to establish that a violation of the rights embodied in the Convention has occurred, it is not necessary to determine, as under domestic criminal law, the guilt of the authors or their intentions, nor is it necessary to identify, individually, the agent to which the violations are attributed. It is sufficient that the State has an obligation that it has failed to comply with; in other words, that this unlawful act is attributed to it’.⁷³⁴

Ensuing, art 2, paras (a) and (b), guide the - *what (conduct), when, and how (during an act or omission)* of the research’s inquiry. Again, *CMS Gas Transmission Company v Argentine Republic*,⁷³⁵ the committee declared under the BIT that ‘Argentina was responsible for the wrongful measures it had taken’ and compensation was therefore payable.⁷³⁶ Another purview of art 2, as applied in *CMS v Argentine*, reflects where there are two favorable conditions for an internationally wrongful act are identified. Namely, respective Bangladesh and Myanmar’s conduct, which consists of either the action or omission beholding to the State establishes a breach of an international obligation. The analysis refers to **Table 2, Research Claim Evidence Matrix**⁷³⁷ with substantive fact-finding statements from victims and other organizations in the execution of transitional justice efforts in ‘strengthening the rule of law and

⁷³⁴ Inter-American Court of Human Rights, Judgment, 25 November 2013, para 78, note 163.

⁷³⁵ *CMS Gas Transmission Company v Argentine Republic* (ICSID Case no ARB/01/8), Decision on Annulment of 25 September 2007.

⁷³⁶ *Ibid*, para 149.

⁷³⁷ The circumstances in which conduct is attributable to a State is dealt with in Chapter II of Part One (arts 4 to 11); the rules concerning when conduct is to be considered to be a breach of an international obligation, and related questions concerning the point at which a breach occurs, and extension in time of breaches, are contained in Chapter III of Part One (arts 12 to 15).

transitional justice in the wake of conflict'.⁷³⁸ However, in Table 3, Rebuttal/Counterargument Evidence Matrix, State party representatives, H.E. Ms. Aung San Suu Kyi, Union Minister for Foreign Affairs of the Republic of the Union of Myanmar, denies responsibility.⁷³⁹ In the rebuttal for the State of Myanmar, H.E. Ms. Aung San Suu Kyi has shifted the blame to individual soldiers of the Myanmar armed forces,⁷⁴⁰ which contradicts with the courts' ruling of attribution in *Gutiérrez and Family v Argentina's* interpretation of art 3, characterization of an act of a State as internationally wrongful, in that '... it is not necessary to determine, as under domestic criminal law, the guilt of the authors or their intentions, nor is it necessary to identify, individually, the agent to which the violations are attributed'.

It is sufficient that the State has an obligation that it has failed to comply with; in other words, that this unlawful act is attributed to it'.⁷⁴¹ In the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, the International Court of Justice made note that 'Specifically, art 3 of the ILC Articles on State Responsibility, which reflects a rule of customary law, states that "the characterization of an act of a State as internationally wrongful is governed by international law'.⁷⁴²

⁷³⁸ UNSC, 'The rule of law and transnational justice in conflict and post-conflict societies: Report of the Secretary-General, S/2004/616' (2004) <<https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/>> accessed 3 November 2019.

⁷³⁹ Table 3, Rebuttal/Counterargument Research Claim Evidence Matrix.

⁷⁴⁰ *ibid.*

⁷⁴¹ Inter-American Court of Human Rights, Judgment, 25 November 2013, para 78, note 163.

⁷⁴² International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, Judgment of 3 February 2015, para 128.

Reviewing *Bernhard von Pezold and others v Republic of Zimbabwe* where the court ruled a 'breach of the BIT would be an internationally wrongful act' within art 2 of the ILC Articles as a 'breach of an international obligation', which can include treaty obligations.⁷⁴³ Accordingly, State Responsibility Articles, art 2 sets out the required elements for the existence of an internationally wrongful act: (a) conduct attributable to the State,⁷⁴⁴ which (b) is inconsistent with its international obligations.⁷⁴⁵ One specific component of this provision is the absence of any requirement concerning fault or a wrongful intent on behalf of the State to ascertain the existence of an internationally wrongful act. The element of a fault has no place in the law of State responsibility. Instead, it reflects the consideration that different primary rules on international responsibility may impose different standards of fault, ranging from 'due diligence'⁷⁴⁶ to strict liability for Bangladesh and Myanmar.

⁷⁴³ ICSID, Case no ARB/10/15, Award, 28 July 2015, para 722.

⁷⁴⁴ State Responsibility art, 2(a).

⁷⁴⁵ State Responsibility art, 2(b).

⁷⁴⁶ Due Diligence refer to Section 3.6.2.

c) Article 3, Characterization of an act of a State as internationally wrongful

Article 3 specifies international law's positioning in respect to domestic legal settings. For example, the Permanent Court of Arbitration (under UNCITRAL) ruled that *Luigiterzo Bosca v Lithuania*⁷⁴⁷ relied on art 3 to explain that it 'had to base its research conclusions on the substantive provisions of that Agreement [Between the Government of the Republic of Lithuania and the Government of the Italian Republic on the Promotion and Protection of Investments of 1994]'.⁷⁴⁸ The agreement was characterized as a treaty under international law, the provisions of art 2(1)(a), and art 26, UN Treaty Series, and not impacted by internal law. Relatedly, the arbitral tribunal ruling of *The Rompetrol Group NV v Romania*⁷⁴⁹ cited art 3,

Article 3, 'Characterization of an act of a State as internationally wrongful, 'That characterization of an internationally wrongful act is governed by international law and is not affected by its characterization as lawful by internal law'.⁷⁵⁰

The study's evidence is derived from various UN' agencies and global non-governmental organizations used by the International Court of Justice,⁷⁵¹ among other courts. The research focuses on the targeted State's actions and omissions 'direct' to an international obligation for an in-force treaty. The international instrument

⁷⁴⁷ *Bosca v Lithuania, Luigiterzo Bosca v Republic of Lithuania* (PCA Case no 2011-05).

⁷⁴⁸ UNCITRAL, PCA Case no 201-05, Award, 17 May 2013, para 199.

⁷⁴⁹ *The Rompetrol Group NV v Romania*, ICSID Case no ARB/06/03, Award, 6 May 2013, para 174.

⁷⁵⁰ ILC, ARSIWA, Art 3, *Alabama arbitration*, where a State cannot rely on its internal law as an excuse for not performing its international obligations.

⁷⁵¹ International Court of Justice, *Application Instituting Proceedings and Request for Provision Measures*, 11 November 2019, *The Republic of Gambia v Republic of the Union of Myanmar*; where the ICJ accepted evidence from UN-Fact-Finding Missions, 2018, 2019; UN Human Rights Council, UN Doc. A/HRC/39/CRP.2 and other organizations inclusive of the Human Rights Watch,

<https://www.hrw.org/sites/default/files/reports/burma0413_fullforweb.pdf> accessed 13 November 2019.

requires the prevention and protection of children, regardless of whether they are stateless, refugee and non-refugee, and vulnerable from trafficking and exploitation in Bangladesh and Myanmar. Notably, the conduct that may be attributed to a State. At the international level, a State is responsible for 'its organs of government or others who have acted under the direction, instigation, or control of those organs',⁷⁵² for instances agents of the State. The research examines actions noted in the targeted States' case law, policy, and legislation by its judicial systems, including the public prosecutorial teams, armed forces, and other governmental organizations.

⁷⁵² Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, ILC, fifty-third session, in 2001, (A/56/10) YILC, 2001, vol. II, Part Two, at 38; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, preface, art 8(1)(a), art 9(1); UN Human Rights Council (UNHRC), 'Res 20/4: The Right to a Nationality: Women and Children', UN doc A/HRC/RES/20/4, 16 July 2012.

3. Argument #1. Examining the Obligation under State Responsibility Articles, arts 1, 2(a)(b), and 3

a) **Analysis.** The analysis begins with acknowledging an in-force treaty obligation — where Table 6 outlines the treaty ratifications and accession for Myanmar to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplemented by the UN Convention against Transnational Organized Crime (UNTOC).⁷⁵³ For Bangladesh and Myanmar's ratification and accession, Table 6 also reflects in-force treaties to the UN Convention against Transnational Organized Crime (The Convention), the Convention on the Rights of the Child, and Optional Protocol for the sale of children.⁷⁵⁴ The analysis now shifts to whether the obligation to forcibly displaced, stateless children under the treaty provisions were breached.⁷⁵⁵

The first point of discussion is the bi-lateral agreements addressed within the UNTOC's art 30(4) and the components of art 31 that direct the inclusion of regional parties, such as the Association of Southeast Asian Nations (ASEAN).⁷⁵⁶ ASEAN is subject to recognition as a 'measure of international legal personality'.⁷⁵⁷ An

⁷⁵³ UNGA, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime*, 15 November 2000.

⁷⁵⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3; UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 16 March 2001, A/RES/54/263, Adopted and opened for signature, ratification, and accession by General Assembly resolution A/RES/54/263 of 25 May 2000.

⁷⁵⁵ Article 60, Vienna Convention, defines a material breach to include actions that violate provisions essential to the accomplishment of the *object or purpose* of the treaty. This could be read very narrowly: assuming a treaty's object and purpose is its essential content.

⁷⁵⁶ The Association of Southeast Asian Nations is a regional intergovernmental organization comprising ten countries in Southeast Asia, which promotes intergovernmental cooperation and facilitates economic, political, security, military, educational, and sociocultural integration among its members and other countries in Asia.

⁷⁵⁷ *Reparation for Injuries Suffered in the Service of the UN*, ICJ Reports 1949, 174, 179.

examination of the ASEAN Charter and a review of historical practice indicate an agreement. The agreement binds a series of conventions, treaties, and agreements⁷⁵⁸ that include the ASEAN Declaration against Trafficking in Persons, particularly Women and Children.⁷⁵⁹ However, the agreements have no legal effect and are not legally binding on member countries.

To circumvent this challenge, the ASEAN members adopted a legally binding agreement, the ASEAN Convention against Trafficking in Persons, Especially Women and Children⁷⁶⁰ (ACTIP), on 21 November 2015. As of March 2017, the ASEAN States of Cambodia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam have ratified the ACTIP. According to art 29 of the ACTIP, the Convention came into effect after six ASEAN State members completed the ratification.⁷⁶¹ The ratifications positioned the ACTIP to be the first legally binding regional instrument designed to battle human trafficking in a concerted format, with a structure to frame a legal approach across the ASEAN Member States.

Articles on the Responsibility of International Organizations (2001) sets the provisions which determine actors' capacity to breach international law. Subsequently, the Articles on State Responsibility's secondary rules 'indicate consequences of a breach

⁷⁵⁸ Table of ASEAN Treaties, Agreements, and Ratifications, as of October 2012 <<https://www.asean.org/wp-content/uploads/images/2012/resources/TABLE%20OF%20AGREEMENT%20%20RATIFICATION-SORT%20BY%20DATE-Web-October2012.pdf>> accessed 18 February 2019.

⁷⁵⁹ Place and date of signing, Vientiane, Lao PDR, 28 November 2004.

⁷⁶⁰ ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP), 22 Nov 2015, <<https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2015-ASEAN-Convention-against-Trafficking-in-Persons-Especially-Women-and-Children.pdf>> accessed 15 July 2019.

⁷⁶¹ Article 29 (Entry into Force and Amendment) of ACTIP.

of an applicable primary obligation⁷⁶² that apply to international human rights law through customary international law and treaties⁷⁶³ and analyzed in this study according to the evaluative process. As an international legal personality⁷⁶⁴ with a binding Charter, Bangladesh⁷⁶⁵ is not a member state but Myanmar's other states. Nonetheless, separately, ASEAN and Bangladesh both have extensive agreements relating to trafficking in persons, enforcement, and the region's prevention and protection measures and mechanisms.

⁷⁶² ILC, Commentaries on the Report of the International Law Commission, 53rd session, UN GAOR, 56th session, Supp No 10, UN Doc A/56/10 (SUPP) (2001) ('ILC Commentary'), reproduced in James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (2002) 16, 74.

⁷⁶³ D Bodansky and others, 'Invoking State Responsibility in the Twenty-First Century' (2002) 96 *American Journal of International Law* 798, 809.

⁷⁶⁴ R Kolb, 'The Concept of International Legal Personality, An Inquiry into the History and Theory of International Law', (2007) 18[4] *European Journal of International Law*, 775–776, <<https://doi.org/10.1093/ejil/chm035>> accessed 2 September 2019; International legal personality refers to entities endowed with rights and obligations under public international law. The term includes both human and non-human entities.

⁷⁶⁵ Bangladesh is not a member-State to the Palermo Trafficking Protocol but has bi-lateral agreements with the States that are parties. Also, Bangladesh is a focal country in the analysis of the central and sub-research questions of this study. However, Bangladesh is a member-state of the UN Transnational Organized Crime Convention.

b) The dichotomy of the obligation

The ‘shall endeavour’. The UN Transnational Organized Crime Convention and the Protocols thereto do not each have the same level of obligation. The UN Office of Drugs and Crimes’ legislative guide groups the obligatory requirements into three categories: a) Mandatory measures where there is a requirement for either absolute or specific conditions; b) Measures that indicate States can consider applying or ‘endeavour’ to apply; c) Measures that are optional.⁷⁶⁶ In each instance where the terms indicate ‘States are required’, there is a mandatory provision or ‘absolute’ on the endeavour graphic in Figure 12. Subsequently, the treaty language ‘required to consider’ translates that States are ‘strongly asked to seriously consider and adopt certain measures’, which could be plotted along with several points on the endeavour spectrum, Figure 12.

The language throughout the UN Transnational Organized Crime Convention⁷⁶⁷ and the Palermo Trafficking Protocol⁷⁶⁸ consistently use the language ‘shall endeavour’, which is indicative of the second tier of the UN Office of Drugs and Crime scale of measures obligation. Legal theorists Richard Gardiner, Robert Kolb, and Serge Sur, among others, support the concept that there isn’t any component of the law of treaties

⁷⁶⁶ UNODC, ‘Legislative guide: UN Convention against Transnational Organized Crime’ (UNODC 2016) 246, 248 < <https://www.unodc.org/unodc/en/treaties/CTOC/background/General-Assembly-documents.html> > accessed 22 January 2018.

⁷⁶⁷ Article 37 of the Organized Crime Convention and article 1 of each of the Protocols thereto together establish the basic relationship between the Convention and its Protocols.

⁷⁶⁸ Offences established in accordance with the Protocol shall also be regarded as offences established in accordance with the Convention (art 1, para 3 of the Protocol).

where the text-writer approaches more vicariously than the interpretation.⁷⁶⁹ The Vienna Convention on the Law of Treaties is silent on the interpretation of endeavour, but commercial contract case law serves as a guide.⁷⁷⁰ Commercial contract law inserts a qualification that parties are concurring to 'try' to achieve the particular obligation. However, this brings into question the lengths a party, or the research States, will pursue in 'trying' to achieve the obligation, refer to Figure 12. It is clear from the commercial contract case law that there is a spectrum of endeavours, with 'best endeavours' at one end and 'nothing' at the other. An example can be found in the civil law case of *Jet2.com v Blackpool Airports*, 2012,⁷⁷¹ where best endeavours had to be used even if the airport endured a commercial loss.⁷⁷² A further interpretation can be made those circumstances have a crucial role when enforceability arises in determining a breach, as illustrated in the civil case of *Astor Management AG and others v Atalaya Mining PLC*. Similarly, in *Phillips Petroleum Co UK Ltd v Enron Europe Limited*,

⁷⁶⁹ ILC (L. (1966). Report of the ILC on the Work of its 18th -Session: Draft Articles on the Law of Treaties with Commentaries (A/6309/Rev1), vol. II. Extract from the Yearbook of the International Law Commission <https://www.researchgate.net/publication/231814719_Interpretation_of_Treaties> accessed 12 March 2019.

⁷⁷⁰ Alexander P Fachiri, 'Interpretation of Treaties' (1929) 4 *The American Journal of International Law* 23, 745-52 <<https://doi:10.2307/2189742>> accessed 13 March 2018.

⁷⁷¹ *Jet2.com Limited v Blackpool Airport Limited* [2012] EWCA Civ 417, The Court of Appeal has ruled in favour of Jet2.com in a case concerning the construction of a 15 year old agreement relating to the use of Blackpool Airport by a low cost carrier; Blackpool Airport Limited ('BAL'), 95% owned by Balfour Beatty plc, had argued unsuccessfully before HHJ Mackie QC at trial that it was not obliged to keep Blackpool Airport open to accommodate Jet2.com's schedules beyond its promulgated opening hours. BAL had contended that the provisions of the agreement that obliged it to cooperate and use best endeavours to promote Jet2.com's low-cost services from Blackpool Airport and use all *reasonable endeavours* to provide a cost base that would facilitate Jet2.com's low-cost pricing did not require it to sacrifice its own commercial interests. BAL renewed that argument on appeal, namely that *best and all reasonable endeavours* entitled it to consider its own commercial interests before those of Jet2.com.

⁷⁷² *ibid*.

Court of Appeal (Civil Division), [1997] CLC 329, the court raised the question on the lengths a party must exercise in 'trying to achieve that obligation'. When placed in juxtaposition to the research States' obligation, further clarity can be obtained from the European Court of Human Rights rulings.

Contrasting, the standards for performance of obligations in *Rantsev v Cyprus and Russia*⁷⁷³, at paras 153(5), 154(2), 271, and 287, positive obligation, affirm the application of the endeavour clause in international law and human trafficking. The citation says, 'Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory'.⁷⁷⁴ Plotting an obligator's endeavour spectrum on the graph, Figures 12, 13 reflects the categorical performance of the endeavour clause. However, Figure 13 presents the research states plotted on the endeavour spectrum. The following narrative explains the endeavour stages as it is graphically presented:

c) Absolute/Best Endeavours to the Obligation. Absolute obligation entails the State's complete fulfilment of the obligation. An example of absolute can be found in two court rulings.⁷⁷⁵ First, in referring to *Siliadin v France*, where States are obligated to 'adopt laws to combat trafficking and strengthen policies and programmes to

⁷⁷³ *Rantsev v Cyprus and Russia*, para 153(5); as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

⁷⁷⁴ *ibid* 153(5), paras 154(2), 271, and 287.

⁷⁷⁵ 'States are required to' are used, the reference is to a mandatory provision. Otherwise, the language used in the legislative guide is 'required to consider', which means that States are strongly asked to seriously consider adopting a certain measure and make a genuine effort to see whether it would be compatible with their legal system.

combat trafficking', the question could arise of 'shall endeavour'.⁷⁷⁶ The second tier would encompass the courts' ruling of *Rantsev v Cyprus and Russia*, where the seven obligations are identified.⁷⁷⁷

However, the term 'best endeavours' has been highly judicially scrutinized, as in *IBM United Kingdom Ltd v Rockware Glass Ltd*⁷⁷⁸ where standards of reasonableness judge it. The ruling conveys that the term 'best endeavours' has the most tangible of the 'endeavours' formulations. Usually, in contract law, the best endeavour obligation is demonstrated by the obligor taking all reasonable steps within their power.⁷⁷⁹ 'Best endeavours' obligation and 'absolute' appear to align with the UNODC's mandatory measures and are reflected at the far-right peak of the spectrum as illustrated in Figure 12 (reading right to the left - absolute red sections through to all reasonable endeavours, orange lined sections of the spectrum).

d) Best Reasonable Endeavours/all Reasonable Endeavours/Reasonable Endeavours to the Obligation. The endeavour is 'less stringent' than applying best

⁷⁷⁶ *Siliadin v France*, no 73316/01, ECHR 2005-VII.

⁷⁷⁷ UNTOC, arts 2-31.

⁷⁷⁸ This case is cited by: Cited – *Overseas Buyers v Granadex* ([1980] 2 Lloyd's Rep 608); The court considered the meaning of a promise by one party to use its best endeavours. Held: Mustill J said: 'it was argued that the arbitrators can be seen to have misdirected themselves as to the law to be applied. Cited – *Rhodia International Holdings Ltd. Rhodia UK Ltd v Huntsman International Llc* ComC (Bailii, [2007] EWHC 292 (Comm), Times 06-Apr-07, [2007] 2 Lloyd's Reports 325); The parties contracted for the sale of a chemical surfactants business. The claimant had contracted to use reasonable endeavours to obtain the consent of a third party for the assignment of a contract to supply energy to the business. The defendant. Cited – *EDI Central Ltd v National Car Parks Ltd* SCS (Bailii, [2010] ScotCS CSOH – 141). Cited – *R and D Construction Group Ltd v Hallam Land Management Ltd* SCS (Bailii, [2010] ScotCS CSIH – 96, 2011 GWD 2-85, 2011 SLT 326). Cited – *Dhanani v Crasnianski ComC* (Bailii, [2011] EWHC 926 (Comm)) The parties disputed the terms of a contract between them under which the defendant was to provide substantial sums for the claimant to invest.

⁷⁷⁹ *ibid.*

endeavours where the party takes on one reasonable course of action. Still, not all courses of action are available to meet the obligation.⁷⁸⁰ Contract law, again, all reasonable endeavours are frequently adopted as a compromise between best and reasonable endeavours. In the case of *Rhodia International Holdings Ltd and another v Huntsman International LLC*, [2007] EWHC 292 (Comm) ruled that ‘an obligation to use reasonable endeavours was less stringent than one to use best endeavours. The commercial court held,

‘There might be a number of reasonable courses which could be taken in a given situation to achieve a particular aim. An obligation to use reasonable endeavours to achieve the aim probably only required a party to take one reasonable course, whereas an obligation to use best endeavours probably required a party to take all the reasonable courses she could. In that context, it might well be that an obligation to use all reasonable endeavours’.⁷⁸¹

An interpretation within this context can be made that an obligation to use ‘all reasonable endeavours’ equates with using ‘best endeavours’.⁷⁸² In contrast, it could be presumed that the same obligation instrument uses ‘both expressions’, which is often seen in treaty instruments. However, different citations referring to *Rhodia International Holdings Ltd and Another v Huntsman International LLC*’s ruling intend to impose a different standard.⁷⁸³ However, in UNODC’s application, the reasonable endeavour aligns with measures that indicate States have the latitude to apply or

⁷⁸⁰ *Rhodia International Holdings Ltd. Rhodia UK Ltd v Huntsman International Llc: ComC* 21 Feb 2007. References: [2007] EWHC 292 (Comm); where the court summarized by a judge in *Rhodia International v Huntsman* summarized it nicely when he explained that an obligation to use reasonable endeavours probably only requires a party to take one reasonable course, not all of them, whereas an obligation to use best endeavours probably requires a party to take all the reasonable courses he can.

⁷⁸¹ *Rhodia International Holdings Ltd and another v Huntsman International LLC*, [2007] EWHC 292 (Comm).

⁷⁸² *ibid.*

⁷⁸³ *ibid.*

‘endeavour’.⁷⁸⁴ *Rantsev v Cyprus and Russia*, the court ruled that Cyprus’ legislation had prohibited trafficking and sexual exploitation’.⁷⁸⁵ The Ombudsman criticised Cyprus’ implementation prohibiting trafficking and sexual exploitation but ruled the laws were satisfactory. Moreover, the Council of Europe Commissioner found Cyprus’ laws as ‘suitable’. Therefore, on Figure 12’s graph and the concerns expressed regarding implementation in *Rantsev v Cyprus and Russia*, Cyprus would likely fit between ‘best reasonable endeavours’ and ‘reasonable endeavours’.

e) ‘I’ll try’ to ‘Nothing’ Obligation. The ‘I’ll try’ endeavours present the most challenging posture of the three categories. There is a high degree of disagreement and uncertainty about where reasonable endeavours are plotted on the graph and ‘I’ll try’. Circumstances and the difference of opinion weigh heavily in determining between ‘reasonable endeavours’, ‘I’ll try’, and nothing. An example could easily be the Cyprus legislation situation. On the one hand, Cyprus was criticised, but in totality, Cyprus did fulfill the ‘reasonable endeavours’ of the obligation.

Yet, the AIRE Centre voiced extreme concern as to what can be best described as the ‘reasonable endeavours’ by Cyprus was insufficient. The case notations reflect that AIRE Centre cited the wording to ‘consider’ or ‘endeavours’ to introduce specific measures as hortatory and often lacked practical and effective rights for the protection

⁷⁸⁴ UNODC, ‘Legislative Guide for the UN Convention against Transnational Organized Crime and the Protocols there’ (UNDOC 2001) <https://www.unodc.org/pdf/crime/final_instruments/383a3e.pdf> accessed 8 April 2018.

⁷⁸⁵ *Rantsev v Cyprus and Russia*, paras 127 to 131.

of victims.⁷⁸⁶ AIRE Centre's posture would place the States' 'reasonable endeavours' closer to the 'I'll try' or possibly to 'nothing' plot on the graph and viewed as non-compliant by the court with the treaty obligation.⁷⁸⁷ Consequently, determining whether a State breached an obligation is contingent upon the circumstances, situation, and case law.

⁷⁸⁶ *ibid* para 276.

⁷⁸⁷ *ibid* para 276.

Figure 12. The spectrum of Reasonable Endeavours



Note, Figure 12, The spectrum of 'shall endeavours', from the Palermo Trafficking Protocol, is charted on the graph to assess the State's actions and omissions of its treaty obligations.⁷⁸⁸

⁷⁸⁸ Graphic adopted from Ashurst Business Services LLC for educational purposes only; modified by T Herring, using private licensed Microsoft PowerPoint™.

f) The Due Diligence Obligation Standard

International law clarifies that States are under a legal obligation to investigate and prosecute trafficking with due diligence, imposing a positive duty as in *Larissis et al. v Greece* and *Rantsev c Cyprus and Russia*.⁷⁸⁹ However, due diligence obligations are conduct obligations or means, thus leaving some discretion for the state in practice.⁷⁹⁰ This discretion explains why the record of compliance with these obligations is not highly satisfactory. For many years, international human rights law has been thought not to be severe and is often referred to as 'soft law'.⁷⁹¹

The state must combat not only trafficking but also the demand for the services of human trafficking. States are obliged to combat child human trafficking and exploitation that hinder human rights within their jurisdiction through the States' criminal laws.⁷⁹² There are a range and latitude of measures that states can adopt to combat human trafficking. The international obligations on states are frequently stated in general terms. Subsequently, parties to a legal instrument can adopt measures best suited to their respective national legal systems.

⁷⁸⁹ Case of *Rantsev c Cyprus and Russia* (25965/14) [2009] ECHR 22 (7 January 2010) (*Rantsev v Cyprus and Russia*); as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002; *Larissis et al v Greece*, Apps nos 140/1996/759/958-960,) – or itectuin if vuctuns.

⁷⁹⁰ International Law Association, 'Study Group on Due Diligence in International Law', First Report, 7 March 2014, <<https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1429&StorageFileGuid=fd770a95-9118-4a20-ac61-df12356f74d0>> accessed 20 April 2018.

⁷⁹¹ A T Guzman, 'International Soft Law' (2010) 2 J. Legal Analysis 171, 179
<<https://scholarshiplaw.berkeley.edu/facpubs>> accessed 21 June 2019.

⁷⁹² The prohibition against exploitation of children is a general prohibition under human rights law: The 1989 UN Convention on the Rights of the Child, 1577 UNTS 3, arts 34-37(a); the 2000 UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR supp (no 49) at 6, U.N. Doc. A/54/49, vol III (2000), arts 3(1)(b) and (2).

In contradiction, multiple cases before the Inter-American Court of Human Rights, European Court of Human Rights, and the UN Human Rights Committee shine a different light on how States are being held in violation of their international legal obligations to human rights.⁷⁹³ In *Rantsev v Cyprus and Russia*, concerning trafficking, the European Court of Human Rights identified an obligation on State parties to investigate cases of trafficking.⁷⁹⁴ The Court placed emphasis on the requirements for investigations to entail the full spectrum of the trafficking allegation through to the recruitment and exploitation.⁷⁹⁵ The court's ruling for the States' positive obligation for investigation was to be 'full and effective'.⁷⁹⁶ The positive obligation extended to the various States potentially involved in human trafficking—States of destination, States of transit, and States of origin.⁷⁹⁷ The affirmation by the court obliged the States to 'take such steps as are necessary and available to secure relevant evidence' regardless of where the investigation leads in or outside of the territory.⁷⁹⁸ The court ruled that,

'in addition to the obligation to conduct a domestic investigation within the respective territory, member States are also subjected to a duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other

⁷⁹³ For state-party compliance with the European Convention on Human Rights, see Christian Tomuschat, Quo Vadis, 'Argentoratium? The Success Story of the European Convention on Human Rights - and a Few Dark Stains' (1992) 13 Hum. RTS. L. J. 401; For state-party compliance with the American Convention on Human Rights, Annual Reports of the Inter-American Court of Human Rights.

⁷⁹⁴ *Rantsev v Cyprus and Russia*, (App no 25965/04); as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

⁷⁹⁵ *ibid.*

⁷⁹⁶ *ibid.*, para 307, p 76.

⁷⁹⁷ *ibid.*, para 289, page 71.

⁷⁹⁸ *ibid.*

States concerned in the investigation of events which occurred outside their territories'.⁷⁹⁹

The European Union was integrally involved in the decision on *Velásquez-Rodriguez*,⁸⁰⁰ in 1988, which brought the due diligence doctrine to the forefront for acts by private entities. State responsibility to prevent breaches of international obligations has been discussed in several legal decisions. In Chile, *Question of the Fate of Missing and Disappeared Persons*,⁸⁰¹ led by Judge Abdoulaye Dieye in Senegal, 1979, was the actual pioneer due diligence case. The case of *Velásquez-Rodriguez* is one of the most memorable, paving legal ground. The case is often referenced as the Commission alleged that Honduras violated 'art 4 –Right to Life, art 5 –Right to Humane Treatment, and art 7 –Right to Personal Liberty including art 1(1) – Obligation to Respect Rights. Each of these articles is paramount to the Rohingya-crisis.

The monumental impact to States' responsibility to due diligence can be attributed to the outcomes of the *Velásquez-Rodriguez*⁸⁰² case where the court ruled,

'The state's failure to **prevent** the disappearance, to investigate it, and to **punish** the perpetrators was a violation of the obligation in the Inter-American Convention to "ensure" the full exercise of rights and freedoms in the Convention, including the right to life'.⁸⁰³

⁷⁹⁹ *ibid.*

⁸⁰⁰ *Velásquez Rodríguez v Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) no 4, ¶ 147(g)(i) (July 29, 1988)*; the first case decided by the Inter-American Court of Human Rights. The *Velásquez Rodríguez* case, together with the *Godínez Cruz*, *Fairén Garbi*, and *Solís Corrales* cases, all considered by the Court around the same time, form a trio of landmark cases targeting forced disappearance practices by the Honduran government during the early 1980s.

⁸⁰¹ UN Doc. A/34/583/Add.1 (1979), paras. 172-175.

⁸⁰² *Velásquez Rodríguez v Honduras, Velásquez Rodríguez Case, Inter-Am.Ct.H.R. (Ser. C) no 4 (1988), Inter-American Court of Human Rights (IACrtHR)*, 29 July 1988.

⁸⁰³ *Velásquez Rodríguez v Honduras, Velásquez Rodríguez Case, Inter-Am.Ct.H.R. (Ser. C) no 4 (1988), Inter-American Court of Human Rights (IACrtHR)*, 29 July 1988; Loy. L.A. Int'l & Comp. L. Rev [vol 36:1913].

Noted in the ruling is the emphasis on preventing and punishing. As reflected in Table 2's evidence matrix, there are substantive comparisons to the *Velásquez-Rodriguez*, where the reports indicate the States', notes failed to prevent, investigate, and punish perpetrators. Yet, Table 3's Rebuttal/Counterargument Evidence Matrix contention is that the obligation was met. Subsequently, the due diligence standard has been encompassed into human rights instruments and supported by advocacy groups and UN bodies, including the Convention for the Rights of the Child and the Optional Protocol for the sale of children — the second focal instrument of this research.

A comparison of the Convention on the Rights of the Child can be made to the General comment on the International Covenant on Civil and Political Rights' (ICCPR)⁸⁰⁴ torture prohibition, where it states,

'It is the duty of the State Party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by art 7, whether inflicted by people acting in their official capacity, outside their official capacity, or in a private capacity'.⁸⁰⁵

In Bangladesh alone, not including the numbers across Myanmar, there have been reports in 2017 that approximately 4,700 children have been liberated from traffickers in five years; from Cox's Bazar, an estimated 3,500 girls have been trafficked over the last decade.⁸⁰⁶ The UNICEF Bangladesh Country Office reports that date from 1998,

⁸⁰⁴ The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual.

⁸⁰⁵ UN Human Rights Committee (HRC), CCPR General comment no 20; art 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992; Note: Bangladesh and Myanmar each have ratified or acceded to the ICCPR.

⁸⁰⁶ Centre for Women and Children's Studies, 'CWCS's direct assistance and support services to survivors of human trafficking and victims of sexual exploitation since 2010 – 2018' (2019) <<http://cwcsbd.org/>> accessed 18 June 2019; CWCS reports aiding 1170 human trafficking victims (317 receiving food and shelter + 720 receiving survivor counseling + 49 receiving vocational training + 74 job placement).

there are as many as 150,000-200,000 children on the street in Bangladesh engaged in prostitution, abusing illegal substances, and committing a range of petty crimes and low-range risky remunerative activities.⁸⁰⁷ Research indicates that whether the trafficking is internal or cross-border, the crime is inextricably connected to people's involuntary or deceitful movement to achieve the end-object sexual, labor, child marriage, organ removal, or many other forms of exploitation.⁸⁰⁸

States under investigation with Due Diligence Violations. Referring to the indicia of an effective investigation derived from *Finucane v The United Kingdom*,⁸⁰⁹

‘A State party that does not criminalize trafficking, and also fails to investigate *any* cases of trafficking, protect *any* victims, or to prosecute *any* perpetrators when there is reliable evidence available of the existence of a trafficking problem’... with the operative word of *any*, will not pass the ‘due diligence’ test.⁸¹⁰

In the *Finucane v The United Kingdom* case, there are substantive similarities to the Rohingya claims of death that have gone uninvestigated or investigations are done by the persons involved in the deaths were part of the investigation team.⁸¹¹ Subsequently, the EctHR ruled that the investigation failed to undergo public scrutiny. As a result, the investigation was tainted with possible collusion and ruled

⁸⁰⁷ UNICEF Bangladesh Country Office, Situation Assessment: Protection Cluster of Rights’ (2012) <<http://www.unicefinemergencies.com/downloads/eresource/docs/Rights%20based%20equity%20focused%20Situation%20Analysis%20guidance.pdf>> accessed 29 June 2019; A rights-based, equity-focused Situation Analysis (SitAn) includes: a disaggregated assessment of the status of and trends in the realization of children’s and women’s rights; an analysis of the immediate, underlying and structural causes of shortfalls and disparities across various groups; and policy and programmatic recommendations to address the shortfalls and disparities and accelerate progress towards development goals and the fulfilment of human rights conventions.

⁸⁰⁸ Palermo Trafficking Protocol, art 3(a).

⁸⁰⁹ *Finucane v The United Kingdom*, (29178/96) [2003] ECHR 328 (1 July 2003) UK, paras. 68-71.

⁸¹⁰ Commentary to the Trafficking Principles and Guidelines, 73, 194-196.

⁸¹¹ *Finucane v The United Kingdom*, (29178/96) [2003] ECHR 328 (1 July 2003) UK, paras. 68-71.

that there had been a violation of the right to life promulgated under art 2, EctHR, inadequate investigation into circumstances of death.⁸¹²

Comparatively, in *Chowdury and Others v Greece* (no 21884/15), the court concluded that the trafficked Bangladesh men, women, and children, strawberry pickers, had been subjected to forced labour and exploitation and violence when the guard opened fire. Accordingly, the ruling held the state responsible for ‘not fulfilling its positive obligations regarding human trafficking (to prevent trafficking, protect the victims, carry out an effective investigation and punish those responsible)’.⁸¹³

Guidance for States can also be found in the UN Doc. A/RES/63/156, GA Res. 63/156, ‘Trafficking in Women and Girls’, where it outlines,

‘States have an obligation to exercise due diligence to prevent, investigate, and punish perpetrators of trafficking in persons, and to rescue victims as well as provide for their protection, and that not doing so violates and impairs or nullifies the enjoyment of the human rights and fundamental freedoms of the victims’.⁸¹⁴

There have been minimal cases to address where the State has been responsible for failure to provide due diligence. Also, two cases in Austria correlate the Rohingya critical-case where the court emphasizes the ‘State should have known’ but failed to exercise due diligence. The first is in the case of *Goekce v Austria*,⁸¹⁵ where the State was found accountable for failure to provide protection and exercise due diligence by

⁸¹² *ibid.*

⁸¹³ *Chowdury and Others v Greece* (no 21884/15), judgment 30.3.2017

⁸¹⁴ UN Doc. A/RES/63/156, ‘Trafficking in Women and Girls’ GA Res. 63/156 (30 January 2009).

⁸¹⁵ *Goekce v Austria, Sahide Goekce (deceased) v Austria*, Comm. 5/2005, U.N. Doc. A/62/38, at 432 (2007), Committee on the Elimination of Discrimination against Women, 2007, CEDAW, domestic and intimate partner violence, international law.

its organs (the police department and State prosecutor) in the instances of domestic violence and diminishing the importance of violence against women.

Yildirim v Austria involves domestic violence and an exercise of the provisions of international law.⁸¹⁶ The State was found to violate arts 1, 2, 3, and 5 surrounding the failure to exercise due diligence. In the CEDAW case, *Yildiri v Austria*, the court extended the State organs at fault when it cited ‘the failure of judicial officials and law enforcement to collect data and maintain domestic violence’ as the causative factors for gender violence.⁸¹⁷

In another CEDAW case of a human trafficking victim, *Zhen Zheng v The Netherlands*,⁸¹⁸ international law was addressed concerning the States’ failure to exhaust remedies for trafficking and asylum. The case summary indicates that Zhenyg, a female trafficking victim without documentation (linked to the Palermo Trafficking Protocol), found that she failed to exhaust domestic remedies. However, the Committee did find the Netherlands at fault on two key points; Point 1, Ms. Zheng was not supported as a

⁸¹⁶ *Yildirim v Austria*, U.N. Doc CEDAW/C/39/D/6/2005, Communication no 6/2005, Committee on the Elimination of Discrimination against Women, 2007. CEDAW, domestic and intimate partner violence, divorce, international law, Report of the Comm. on the Elimination of Discrimination against Women, U.N. GAOR, 62nd Sess., supp no 38, U.N. Doc. A/62/38, Part III, Annex VII, B, at 454 (Aug. 10, 2007). The complaint stated that the State's action violated article 1 of CEDAW, because the Austrian *criminal justice system negatively impacts women* through the public prosecutors' failure to treat cases of domestic violence seriously. The complaint also cited the failure of judicial officials and law enforcement to collect data and maintain statistics on domestic violence instances denied Yildirim the enjoyment of her human rights in violation of article 2 and 3 of CEDAW on eliminating laws, regulations, and customs that adversely affect women. Finally, the complaint stated a violation of article 5 of the Convention on eliminating social and cultural attitudes towards women in the State's continual treatment of domestic violence as a social or domestic problem rather than a serious crime.

⁸¹⁷ *Yildirim v Austria*, U.N. Doc CEDAW/C/39/D/6/2005, Communication no 6/2005.

⁸¹⁸ *Zhen Zhen Zheng v The Netherlands*, CEDAW/C/42/D/15/2007, UN Committee on the Elimination of Discrimination Against Women (CEDAW), 17 February 2009.

victim of trafficking, and Point 2, the State did not exercise due diligence in her protection.⁸¹⁹

In the ASEAN regions under review, this research was unable to locate any cases in English that have been heard under a human rights tribunal against a state or non-state actor.⁸²⁰ Yet, there are multiple similarities where the Austrian cases could be aligned to the violence against the Rohingya women and female children in Table 2, Research Case Evidence Matrix. An argument could be made that Bangladesh and Myanmar ‘should have known’ that the Rohingya women (specifically, the girl child) would be in danger as a forced migrant and likely be subjected to gender-based violence as in the CEDAW case of *Goekce v Austria*.⁸²¹ Similarly, a debate could also be supported that each of the countries under review has a criminal justice system that negatively impacts women and their protection, as in the CEDAW case of *Yildirim v Austria*.⁸²²

⁸¹⁹ *ibid.*

⁸²⁰ Office of the UN High Commissioner, Optional Protocol to the Convention on the Elimination of Discrimination against Women CEDAW – Jurisprudence Committee database
<<https://www2.ohchr.org/english/law/jurisprudence.htm>> accessed 29 June 2019.

⁸²¹ *Goekce v Austria, Sahide Goekce (deceased) v Austria*, Comm. 5/2005, U.N. Doc. A/62/38, at 432 (2007).

⁸²² *Yildirim v Austria*, U.N. Doc CEDAW/C/39/D/6/2005.

g) An international law obligation and *The Corfu Channel Case*

In the ICJ's first public international law case, *Corfu Channel*,⁸²³ State's responsibility for international obligations at peacetime, among other issues, was decided. The case contrasts to the vicarious responsibility theory of an employer, wherein 'a state has an obligation not to knowingly allow its territory to be used for acts contrary to the rights of other states'.⁸²⁴ On March 26, 1948, the court's order formed the basis of proceedings that addressed two questions submitted for decision:⁸²⁵

First, 'is Albania responsible under international law for explosions which occurred on 22nd October 1946, in Albanian waters... for the damage and loss of human life....'⁸²⁶ Secondly, 'Has the United Kingdom under international law violated the sovereignty of the Albanian People's Republic by reason of the acts of the Royal Navy in Albanian waters on the 22nd October and on the 12th and 13th November 1946 and is there any duty to give satisfaction?'⁸²⁷ Finally, after both the United Kingdom and Albania postured their arguments, on the 25th of March 1948, a three-part judgment was rendered...

'The People's Republic of Albania 'is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life'... and 'the United Kingdom did not violate the sovereignty of the People's Republic of Albania by reason of the acts of the British Navy in Albanian waters on October 22nd, 1946;' and; 'gives

⁸²³ *United Kingdom v Albania*, Judgment, Merits, ICJ GL No 1, [1949] ICJ Rep 4, ICGJ 199 (ICJ 1949), 9th April 1949 I.C.J. 1949; The court heard arguments on the synopsis of the rule of law where international obligations in peace time are created through elementary consideration.

⁸²⁴ *ibid.*

⁸²⁵ *Corfu Channel Case (United Kingdom v Albania)*, I.C.J. Reports 1947-1948, p 53.

⁸²⁶ *Corfu Channel Case (United Kingdom v Albania)*, Merits, International Court of Justice (ICJ), 9 April 1949.

⁸²⁷ *Corfu Channel Case (United Kingdom v Albania)*, I.C.J. Reports 1947-1948, p 53.

judgment that by reason of the acts of the British Navy in Albanian waters in the course of the Operation of November 12th and 13th, 1946, the United Kingdom violated the sovereignty of the People's Republic of Albania'.⁸²⁸

The court rendered a decision that Albania's omission involved an international responsibility for the explosions and the damage and loss of human life.⁸²⁹

In the *Corfu Channel Case*, international law guided the judgments as it relied upon the actions and omissions of both the United Kingdom and Albania. In respect to liability, the judgment appeared to hinge heavily on Albania's omissions. International liability incurs a State's 'civil responsibility' and a States' subsequent obligation to pay compensation or make reparations for the injuries of non-nationals and nationals. Victims suffered outside its national boundaries consequential to the activities within a States' territory or under its control.⁸³⁰

The actions of the court, in this instance, may mirror the third-party submissions seen in the *Rantsev v Cyprus and Russian Case*,⁸³¹ but on behalf of the Rohingya-crisis and the steps to hold the State of Myanmar responsible and internationally liability. Evidence by the Human Rights Council Thirty-ninth session, 10–28 September 2018,

⁸²⁸ *Corfu Channel Case* (UK v Albania) (Merits) [1949] ICJ Rep 4.

⁸²⁹ *ibid*; '.... On October 22nd, 1946, damage was caused to His Majesty's ships *Saumarez* and *Volage*, which resulted in the death and injuries of 44, and personal injuries to 42, British officers and men by a minefield of anchored automatic mines in the international highways of the Corfu Strait in an area south-west of the Bay of Saranda...'

⁸³⁰ Report of the International Law Commission on the Work of Its Thirtieth Session: 170-178, U.N. Doc. N33/10 (1978), reprinted in [1978] 2 Y.B. Int'l L. Comm'n pt. 2, at 1, 149-52, UN Doc. NCN.4/SER.NI978/Add.1 (Part 2), referred to as the Thirtieth ILC Session Report; Robert Q Quentin-Baxter, 'Preliminary Report on International Liability for Injurious Consequences Arising out of Acts Not Prohibited by International Law,' U.N. Doc. NCN.4/334 & Add.1 & 2 (1980), reprinted in (1980) 2 Y.B. Int'l L. Comm'n pt. 1, at 247, U.N. Doc. NCN.4/SER.N1980/Add.1 (Part 1).

⁸³¹ *Rantsev*, at 64-66, paras 264-71, paras 108-36, where third-party submissions were of particular interest to the Court.

Agenda item 2, paras 2-6, in the Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General⁸³² seek State responsibility and accountability for state actions, omissions in the form of redress, and reparations for the Rohingya-crisis. In parallel, the Human Rights Council, Decision 36/115⁸³³, seeks State Responsibility for alleged criminal conduct that violates international law and includes a States' international liabilities for reparations for injuries, para 11.

Albania's judgment can be viewed comparatively to the Rohingya-crisis. The contrast lies with State responsibility, and the vicarious liability of a State for the torts committed by its servants can be examined under the *colour of law*. In the instant case, a commission or omission in the Rohingya-crisis appears based upon three principles seen in two cases. First, in *Peninsular and Oriental Steam Navigation Company v Secretary of State for India*,⁸³⁴ the court held that actions exercised under sovereignty established clear distinctions between functions under the State. Second, concerning detainment, sexual crimes, and violence against the Rohingya, seen in cases of the stateless

⁸³² Human Rights Council Thirty-ninth session 10–28 September 2018 Agenda item 2 Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, <http://www.networkmyanmar.org/ESW/Files/A_HRC_39_L22.pdf> accessed 15 September 2019.

⁸³³ Human Rights Council, Decision 36/115, Human Rights Council Twenty Seventh Special Session 05 December 2017, A/HRC/S-27/. Situation of human rights of Rohingya Muslims and other minorities in Myanmar <<https://www.universal-rights.org/wp-content/uploads/2017/12/AHRCS-27L1ASRECEIVED.pdf>> accessed 30 September 2019.

⁸³⁴ (1861) 5 Bom. H.C.R. App I, p1.; A consideration of the pre-Constitution cases of the Government's liability in tort begins with the judgment of the Supreme Court of Calcutta in the case *P & O Steam Navigation Co. v Secretary of State*. The principle of this case holds that if any action were done in the exercise of sovereign functions, the East India Company or the State would not be liable. It drew quite a clear distinction between the sovereign and non-sovereign functions of the state.

refugees, two cases, *Khatri (II) v State of Bihar*⁸³⁵ and *Rudal Shah v State of Bihar*,⁸³⁶ both reflect how in cases of wrongful detention and harm, the State remedies the victim. Third, similarities of this application to vicarious liability can also be interpreted from the victim's entitlements and the State's role as a corresponding *duty bearer* in their trafficking obligations. For example, art 6, the Palermo Trafficking Protocol, places a States' responsibility in the role of duty bearers in victims' protection, such as fiscal resources, housing, and counseling under the scope of physical, psychological, and social recovery.

Notably, in each application of the theory of a States' responsibility for vicarious liability, three principles are consistent: a) *respondent superior* (let the principal be liable), b) *Qui facit per alium facit per se* (he who acts through another does it himself), and c) socialization of compensation.⁸³⁷ In the Optional Protocol for the sale of children, art 9(3), States 'shall' 'ensure that all child victims of the offences described

⁸³⁵ (1981) 1 SCC 627; In this case it was laid down a most important principle of compensation against government for the wrong action of its official the important judgment was handed down by the Supreme Court against the Bihar Government for the wrongful and illegal detention of Rudal Shah in Muzaffarpur jail for as many as 14 years after he was acquitted by the Sessions Court in June 1968. The Court ordered compensation of Rs 30,000 for the injustice and injury done to Rudal Shah and his helpless family.

⁸³⁶ (1983) 4 SCC 141; Rudul Sah's case is a landmark judgment in the jurisprudence of state liability. It is considered particularly important as it led to the emergence of compensatory jurisprudence for the violation of fundamental rights under the Constitution; Rudul Sah's case was a public interest litigation (PIL) case filed in the Supreme Court under art 32 of the Indian Constitution (whereby one can directly approach the Supreme Court when fundamental rights have been infringed upon). The petition sought the release of Rudul Sah from illegal detention, and ancillary relief such as rehabilitation and compensation.

⁸³⁷ *Rudul Shah v State of Bihar*, (1983) 4 SCC 141; *State of Andhra Pradesh v Challa Ramkrishna Reddy*, (2000) 5 SCC 712; *D K Basu v State of West Bengal*, (1997) 1 SCC 416.

in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

Alternatively, the *Corfu Channel Case* can be compared as a model of the *agential theory* averred by renowned jurists Goodin, Erskine, Lang, List, and Pettit.⁸³⁸ The *agential theory* can be interpreted to suggest that the *Corfu Case* indicates a States' responsibility compared to a human beings' capacities for intentional actions (possessing *mens rea*) and deliberation usually associated with individual criminal actions.⁸³⁹

⁸³⁸ R Goodin, *Utilitarianism as a Public Philosophy* (Cambridge: Cambridge University Press 1995); T Erskine, 'Assigning Responsibilities to Institutional Moral Agents: The Case of States and 'Quasi-States.' (2001) 15[2] *Ethics & International Affairs* 67, 85; AF Lang, 'Crime and Punishment: Holding States Accountable' (2007) 21[2] *Ethics & International Affairs* 239, 257; C List and P Philip, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (New York: Oxford University Press 2011).

⁸³⁹ *ibid* 277; M Dixon, *Textbook on International Law* (6th edn, Oxford University Press 2007); The discussion of *mens rea* in international law differs greatly from that within the domestic context. The doctrine of *mens rea* is not clearly defined in either the Charter of the International Military Tribunal, regarding the crimes such as genocide, war crimes, or the crimes against humanity.

h) Obligations to international law and in-force treaties - *Factory at Chorzow, Merits*, PCIJ

References to war crimes and State responsibility were a significant discourse in the *Factory at Chorzow, Merits*,⁸⁴⁰ and correlations to the *Corfu Channel Case* of a State responsibility for 'civil liability' can be made. The *Factory at Chorzow, Merits*⁸⁴¹ also links a States' international responsibility to an obligation of reparation. The case *dictum*...

'is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation'.⁸⁴²

The *Factory at Chorzow, Merits*'⁸⁴³ case dictum, illustrates that the articles are structured upon the existence and content of the primary rules of international law as they are at the appropriate time. The case provides the framework for determining whether the obligations of each State have been breached and with what legal consequences for

⁸⁴⁰ Article 7, UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998; for war crimes, this means that individuals can be tried and found personally responsible for these crimes., and crimes against humanity; responsibility for child exploitation and trafficking can be linked to the targeted States of this research. In 1928, the defining inauguration of the concept of responsibility arose from the *Factory at Chorzow, Merits Case*.

⁸⁴¹ *Factory at Chorzów, Germany v Poland*, Judgment, Claim for Indemnity, Merits, Judgment No 13, (1928) PCIJ Series A No 17, ICGJ 255 (PCIJ 1928), 13th September 1928, League of Nations (historical) [LoN]; Permanent Court of International Justice (historical) [PCIJ]; p 4, 29; No 9, p 4, 21; para 62, 'Such an argument seems hardly reconcilable with the fundamental principles of the Court's jurisdiction, which is limited to cases specially provided for in treaties and conventions in force...'.

⁸⁴² *ibid* 4, 29; para 203, A judgment imposing a penalty creates an obligation and lays down in what that obligation consists of. In a system of municipal law, the judge may and should confine himself to certain observations and technical points, which observations may be read in the light of relevant municipal legislation. Thus, municipal law will define what is meant by a payment which the defendant is ordered to make and in particular whether and under what conditions the setting-off of a counterclaim is equivalent to payment in money of the judgment debt. If, on the other hand, in an international case, the Parties are at issue as to the action to be taken by the defendant in complying with the judgment, it appears to me that the nature of this action must be defined in the judgment in order to avoid any possible uncertainty.

⁸⁴³ *ibid* 4, 29.

other States. Among other facts in the *Factory at Chorzow* case, para 62 reinforces States obligations to treaties and the ICJ's jurisdictions,

‘Such an argument seems hardly reconcilable with the fundamental principles of the Court's jurisdiction, which is limited to cases specially provided for in treaties and conventions in force’.⁸⁴⁴

To establish the wrongful act, it must be brought in connection with the undertaking of the obligation. As the Articles on the Responsibility of International Organizations reflects in Chapter III, Breach of an International Obligation, art 13, stipulates that ‘an act of a state does not constitute a breach of an international obligation unless the obligation binds the state in question at the time the act occurs.’⁸⁴⁵ The same is valid, *mutatis mutandis*, for other sources of international obligations, such as customary international law.⁸⁴⁶ Thus, international law controls states⁸⁴⁷ as primary actors with the capacity to harm internationally. The salient point is that this case focuses on a violation of an international agreement. In contrast, the question before the court is a basis for whether Poland can be made liable for violating an international agreement.

⁸⁴⁴ *ibid* para 62.

⁸⁴⁵ Articles on the Responsibility of International Organizations, with commentaries 2001.

⁸⁴⁶ The articles are concerned only with the responsibility of States for internationally wrongful conduct, leaving to one side issues of the responsibility of international organizations or of other non-State entities (see articles 57, 58).

⁸⁴⁷ International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) (2001), *ILC Yearbook* 2001, vol II, Part 2. Commentaries, General Commentary, para 1.

4. Argument #2, How Does a Wrongful Omission by a State Impact a State's Responsibility to the Prevention and Protection of Stateless Children From Trafficking And Exploitation?

a) **Action or Omission.** An international actor '*a priori*' or omission presents more defining challenges. Still, the term omission lends itself to an unfilled obligation 'to act' and is referenced as a 'wrongful omission'. In contrast, the word 'omission', according to art 2, 'the word "act" covers both acts and omissions.'⁸⁴⁸ Reflection can be made upon the European Court of Human Rights, as this study's investigation in State responsibility hinges significantly upon the breach of a human rights instrument, where it noted,

'Fulfilment of a duty... on occasion necessitates some positive action on the part of the State; in such circumstances, the State cannot simply remain passive and "there is... no room to distinguish between acts and omissions"'.⁸⁴⁹

Citing the absence or failure to act contrary to a treaty obligation, an example can also be found in the ruling ascribed in *Mohsen Asgari Nazari v Iran*⁸⁵⁰ in two relevant points:

First, in response to the requirement to *act*, where the Iran-US Claims Tribunal's application of the principle, that there was 'no obligation to act' regarding Iran and State claim citing *Tippetts, Abbott, McCarthy, Stratton v TAMS-AFFA Consulting Engineers of Iran and others* (1984) 6 Iran-US CTR 219, 225.⁸⁵¹ The central issue was the

⁸⁴⁸ ILC, ARSIWA, art 2.

⁸⁴⁹ *Marckx v Belgium* (App no 6833/74), ECHR, Series, A No 31 (1979), 15 (para 31).

⁸⁵⁰ *Mohsen Asgari Nazari v Iran* (of 24 August 1994), Judge Howard Holtzmann strongly criticized what he saw as 'the Tribunal's growing tendency to write Awards that are overly long and excessively detailed'; Gary B Born, *International Commercial Arbitration* (vol II, Kluwer) 2454, note 168.

⁸⁵¹ Iran-US Claims Tribunal Cases, *Tippetts, Abbott, McCarthy, Stratton v TAMS-AFFA Consulting Engineers of Iran* (Case no 7), Chamber Two: Riphagen (Chairman), Aldrich, Shafeiei, The Tribunal held that the Claimant's 50% interest in TAMS-AFFA - an engineering consulting partnership - had been expropriated by Iran. Under

finding of expropriation or a violation of property rights. Second, citing, ‘approached by the Tribunal taking into account exclusively the effects of the acts of omissions...’⁸⁵² the court uses the international wrongful act determinants based upon *customary international law* and both *States treaty obligations* under the Friendship Treaty of 1955.⁸⁵³

Noting omissions, in conjunction with the States’ responsibility for its agents and organs, the Inter-American Court of Human Rights declared that ‘a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions....’⁸⁵⁴ Whereas an abstention ‘constitutes a (wrongful) omission’ where the State, or an international actor, was required to act. Accordingly, a failure ‘to observe treaty obligations’ represents an omission of a ‘to do’ and engages a responsibility of the respective State.

As investigated under the action’s element, evidence from third-party submissions, refer to *Rantsev v Cyprus and Russia*,⁸⁵⁵ was used to assess the situation with the stateless Rohingya population. Evidence 2, The UN Office of the High Commissioner,

‘international law and general principles of law’; courts’ conclusions: The Claimant was entitled to ‘the full value of the property of which it was deprived’. The Claimant requested, and was awarded, the ‘dissolution value’ of its interest in TAMS-AFFA ie TAMS-AFFA’s assets less its liabilities. In order to determine TAMS-AFFA’s assets and liabilities, the Tribunal was required to examine issues that fell beyond the scope of its jurisdiction...’.

⁸⁵² *Short v Iran* (1987) 16 Iran-US CTR 76, 83.

⁸⁵³ The Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran was signed in Tehran on August 15, 1955, received the consent of the Senate on July 11, 1956, and entered into force on 16 June 1957. The treaty is registered by the United States to the UN on 20 December 1957; However, the US withdrew from this treaty in October 2018 citing ongoing discord between the USA and Iran.

⁸⁵⁴ *Velásquez Rodríguez v Honduras, Merits, I-ACtHR, Series C, No 4* (1989), para 170.

⁸⁵⁵ *Rantsev*, at 64-66, paras 264-71, paras 108-36, where third-party submissions were of particular interest to the Court.

Mission report of OHCHR rapid response mission to Cox's Bazar, Bangladesh, dated 13-24 September 2017, outlines a host of human rights violations.⁸⁵⁶ The report also illustrates prevention and protection gaps, whereas the reports state, 'unaccompanied minors and single female heads of families might become victims of trafficking and sexual violence'.⁸⁵⁷ The facts primarily outline a series of human rights and criminal actions, such as a quote that directly highlights,

'Instil deep and widespread fear and trauma – physical, emotional and psychological, in the Rohingya victims via acts of brutality, namely killings, disappearances, torture, and rape and other forms of sexual violence'.⁸⁵⁸

b) Based upon the stated evidence, did a breach of State Responsibility occur?

The states' positive obligation to human trafficking in the European Court of Human Rights, *Rantsev v Cyprus and Russia*,⁸⁵⁹ persuasive. The case involved a,

'Russian national, Nikolay Mikhaylovich Rantsev, on behalf of his late daughter, Oxana Rantseva, who alleged that the Republic of Cyprus and the Russian Federation violated art 2, right to life, freedom from torture, inhuman and degrading treatment under art 3, freedom from slavery, servitude, forced and compulsory labor as ascribed under art 4, and a right to liberty and security of the persons, art 5, each under the European Court of Human Rights and Fundamental Freedoms'.⁸⁶⁰

Allegations of a State breach of obligation were lodged against the Republic of Cyprus and the Russian Federation.⁸⁶¹ The complaint centered on facts presented to the court that both the Republic of Cyprus and the Russian Federation insufficiently

⁸⁵⁶ Refer to Table 2, The Research Evidence Matrix, Evidence 2.

⁸⁵⁷ UN Office of the High Commissioner, 'Mission report of OHCHR rapid response mission to Cox's Bazar, Bangladesh' (UNOHCHR 13-24 September 2017) 11.

⁸⁵⁸ Refer to Table 2, The Research Evidence Matrix, Evidence 2.

⁸⁵⁹ App no 2596/04 (Eur. Ct. H.R. 2010).

⁸⁶⁰ Refer to Table 2, The Research Evidence Matrix, Evidence 2.

⁸⁶¹ *ibid.*

investigated the death of his daughter and failed to provide adequate protection from the risk of human trafficking, failure to investigate her death, and to seek justice for those responsible under arts 2 and 4 of the Convention.⁸⁶²

The court's legal basis for its ruling included the USA State Department's tier ranking of the countries that summarized reports on human trafficking in Cyprus.⁸⁶³ These reports' contents are similar to those submitted by the UN, Human Rights Commission, and the US State Department's Tier-Ranking seen in the Rohingya-crisis in Bangladesh and Myanmar. The court also reviewed applicable Cyprus and Russian laws and practices.⁸⁶⁴ Each of the target states has ratified the instruments under examination that provide the prevention and protection against trafficking and child exploitation.

Taken in totality with other evidence, the court ruled that the third-party submissions were convincing arguments that Cyprus and the Russian Federation had breached State Responsibility, under State Responsibility Articles, arts 1, 2(a)(b). The court specifically referenced art 3, Palermo Trafficking Protocol, stating, 'the court emphatically noted that maltreatment and cruelty are well-known, inherent characteristics of human trafficking...'.⁸⁶⁵ Moreover, the court referenced *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 & IT-96-23/I-A, Judgment at 36, para

⁸⁶² *ibid.*

⁸⁶³ *Rantsev v Cyprus and Russia*, at 17023, paras 92-107, Reports were issued by the Council of Europe Commissioner for Human Rights and the U.S. State Department.

⁸⁶⁴ *ibid* at 15-17, paras 80-90; at 23-29, paras 108-36.

⁸⁶⁵ *ibid.*

118 (Int'l Crim Trib. For the Former Yugoslavia, June 12, 2002), where situations of trafficking victims subjected to violence, force and coercion give the trafficker absolute control over the victims – an element of power attached to ownership. Further, the court outlined in para 6 the seven (a thru g) state obligations regarding human trafficking and cited *Rantsev*, at 65-65, paras 264-68.⁸⁶⁶

In contrast to the Rohingya-crisis and the allegations brought forward in Table 2, Evidence 1-4, the persuasive effect of the cases cited, the most compelling arguments were about art 4, the failure to protect. For the targeted states under examination, the European court's linkage of art 4 to the Palermo Trafficking Protocol aligns with the Protocols' arts 4, 5, 6, and 7 to include the offences transnational in nature for the protection of victims. In addition, the failure to prevent aligns with the obligations outlined in arts 9, 10, and 11, with particular emphasis on the security and legitimacy of documents requirements outlined in arts 12 and 13.

⁸⁶⁶ *ibid.*

c) Does the breach by one state impact a breach by another state? *Barcelona Traction, Light & Power Co. 'Belgium v Spain'*.⁸⁶⁷ The case reflects the two consequences and the dicta or part of the noteworthy decision in this analysis. Firstly, new obligations are created for the breaching Member State, including the duty of cessation and non-repetition of the act while making full reparation(s) arrangements.⁸⁶⁸ Secondly, and applicable for this analysis, the arts also generate new rights for the injured State(s), including the right to *cite responsibility* and constrained actionable rights inclusive of countermeasures.⁸⁶⁹ In the Rohingya-crisis situation, as presented in the evidence, Bangladesh is the injured state of Myanmar. Similarly, as the provision reads, the States of Malaysia and Thailand can also claim injury as they too were impacted by the Rohingya-crisis and Bangladesh's actions.

*Bosnia and Herzegovina v Serbia and Montenegro*⁸⁷⁰ case, under *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia),⁸⁷¹ Hungary's argument before the ICJ was based upon a fundamental allegation of 'a breach' by Czechoslovakia.⁸⁷² The obligation inquiry examined whether Czechoslovakia breached the Budapest Treaty arts 15, 19, and 20,

⁸⁶⁷ *Barcelona Traction, Light and Power Company, 'Belgium v Spain.'* New Application, 1970 ICJ Reports 4, 32.

⁸⁶⁸ Such reparations or 'secondary obligations' are owed to other Member States or to the international community as well as to non-state actors, individuals, or international organizations.

⁸⁶⁹ According to art 48, specific violations of international obligations have the capability to inflict harm on the international community to a point in which State Responsibility must be invoked for the betterment of the international community.

⁸⁷⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (*Bosnia Genocide*), Merits, 26 February 2007, ICJ Reports (2007) 43, at 221, para 430; *Corfu Channel (UK v Albania)* (*Corfu Channel*), Merits, ICJ Reports (1949) 4, at 22, *Island of Palmas Arbitration (The Netherlands v US)*, Decision of 4 April 1928, reprinted in UNRIAA, vol. 2, 829, at 839.

⁸⁷¹ ICJ Reports, 1997, p 7.

⁸⁷² *ibid.*

other conventions, and the general principles of public international law. To address these issues, Hungary and Slovakia concluded a Special Agreement⁸⁷³ in 1993, which represented the legal points for the questions before the ICJ and focused on several areas outside of the scope of this research, for example, ILC Articles on excuses, consequence (whether an obligation existed), and attribution (if one party could terminate the treaty if the other party had seriously breached).

In parallel, the primary argument examined in the *Gabčíkovo-Nagymaros* Project is its case refers to a primary treaty obligation, which focuses on State responsibility despite the political climate surrounding the events and situation. However, examining ASEAN, Bangladesh, and Myanmar also involves examining international treaty obligations and domestically implemented bi-lateral and multi-lateral treaties. The treaties query revolves around transnational crimes, crossing national borders, and the involvement of two or more sovereign States within the scope of human traffickers and their victims.⁸⁷⁴

d) An examination of the ICJ's Barcelona Traction Case. *The ICJ's Barcelona Case*⁸⁷⁵ leads the dialogue on obligations of a State towards the international community.

⁸⁷³ Special Agreement for Submission to the International Court of Justice of the Differences concerning the Gabčíkovo-Nagymaros Project Signed at Brussels on 7 April 1993
<http://untreaty.un.org/unts/120001_144071/9/8/00007471.pdf> accessed 3 March 2019.

⁸⁷⁴ *ibid.*

⁸⁷⁵ *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain); Second Phase*, International Court of Justice (ICJ), 5 February 1970; M Ragazzi, *The Concept of International Obligations Erga Omnes* (Oxford, Clarendon Press, 1997).

Whether the scale or character is deemed, a *serious breach*⁸⁷⁶ is beyond the scope of this research. However, in the *Barcelona Traction Case*, the court stated,

‘... an essential *distinction* should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omne*’.⁸⁷⁷

Breaches of obligations ‘owed to the international community as a whole’ refer to art 48(1)(b) and is applied. This fundamental component of the *Barcelona Traction* case is integral in analyzing the two-state jurisdictions and the critical-case of the Rohingya-crisis under review. An example of applicability can be found with the Rohingya-crisis, wherein art 15 could address the obligation and context of breaches that entail systematic conduct, such as Crimes against Humanity⁸⁷⁸ and Genocide,⁸⁷⁹ Gross and Systematic Human Rights Violations.

⁸⁷⁶ State Responsibility Articles, art 40 (1) ... applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law. (2) A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.

⁸⁷⁷ *ibid* p 32, para 33; M Ragazzi, *The Concept of International Obligations Erga Omnes* (Oxford, Clarendon Press, 1997).

⁸⁷⁸ Article 7 of the Rome Statute, a crime against humanity is committed when one or more prohibited criminal acts are ‘committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.’ An ‘attack’ in the context of crimes against humanity need not involve armed conflict and can occur during peacetime.

⁸⁷⁹ Article 6 of the Rome Statute, for the purpose of this Statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

Reviewing again the specifics of the *Barcelona Traction* case juxtaposed to the critical-case, the Rohingya-crisis, a qualitative breach differentiation has been a point of focal debate.⁸⁸⁰ The Court postured an injured State in the breach being an obligation owed to the international community. Where certain obligations are at stake, all States have a legal interest.⁸⁸¹ In the *Barcelona Case*, the focal word is ‘distinction’. In contrast, ILC State Responsibility Articles, 2001, arts 40 and 41 centers on serious breaches of peremptory norms and in turn entail distinguishable specific legal consequences under the parameters of State responsibility: ‘a) specific rights binding on other states, b) specific rights of other states, and c) specific obligations of the responsible state’.⁸⁸² Whereas, under the laws of State responsibility, where there are serious breaches of peremptory norms, the violator state is obligated to take specific actions to end the breach. Subsequently, all states incur obligations to respond, including the following vital points outlined under arts 40, 41, ILC State Responsibility Articles, 2001:

- ‘(1) take positive measures to end a breach, including non-recognition;
- (2) not recognize as lawful a situation created by a serious breach; and
- (3) not render aid or assistance to maintain the unlawful situation’.⁸⁸³

⁸⁸⁰ M Spinedi, ‘Crimes of state: Bibliography’ in *International Crimes of State*, J H H Weiler, A Cassese and M Spinedi (eds), (Berlin, De Gruyter 1989) 339, 353; NHB Jørgensen, *The responsibility of states for international crimes* (Oxford University Press 2000) 299, 314.

⁸⁸¹ James Crawford, *The International Law Commission’s Articles on State Responsibility: Introduction, text, and commentaries* (Cambridge: Cambridge University Press 2002), 16, 20; ‘The International Law Commission, a subsidiary organ of the UNGA with responsibility for the codification and progressive development of international law, has declined to resolve the issue of whether so called state crimes fall within the broader rubric of ‘state responsibility’.

⁸⁸² ILC, ARSIWA, article 40, 41.

⁸⁸³ arts 40, 41, ARSIWA.

In follow-on sections, some contextual inclusions of ‘a) specific rights binding on other states’ and ‘b) specific rights of other states’ underpin the research posture.

The study opines ASEAN, Malaysia, Bangladesh, and other states in the international community had a legal interest in Myanmar’s actions toward the Rohingya-crisis. A substantive report serves as analytical evidence to elaborate on how other states may have a legal interest.⁸⁸⁴ The report is sourced from the Myanmar 2018 Country Trafficking-in-Persons (TIP) Report, which falls under the third-party submissions for analysis that has been accepted by the European Court of Human Rights in *Rantsev v Cyprus and Russia*. In addition, the report provides an independent UN-assisted investigation reflecting...

‘... On May 1, 2015, a joint military-police task force discovered at least 30 bodies at an abandoned human trafficking camp in the Sadao district of Songkhla province close to the Thai-Malaysian border. Many were buried in shallow graves, while others were covered with blankets and clothes and left in the open. Police reports indicate the dead are ethnic Rohingya Muslims from Burma and Bangladesh, who starved to death or died of disease while held by traffickers who were awaiting payment of ransoms before smuggling them into Malaysia,’⁸⁸⁵ and,

‘...With large-scale violence against them (the Rohingya) in 2012 and 2015 by other groups in Rakhine State as well as by the government, many Rohingya have been forced into IDP camps or to neighboring countries where they live in dire conditions. In 2016 UNHCR, the UN Refugee Agency, estimated that over 168,000 Rohingya had fled Myanmar since 2012’⁸⁸⁶

⁸⁸⁴ Legal interest: ‘specific rights of other states’ and specific rights binding on other states’.

⁸⁸⁵ Human Rights Watch, *Thailand: Mass Graves of Rohingya Found in Trafficking Camp*, 1 May 2015 <<https://www.refworld.org/docid/554b2b3c4.html>> accessed 30 May 2019.

⁸⁸⁶ UNHCR, ‘Mixed Movements in South-East Asia 2016’ (UNHCR 2016). <www.refworld.org/pdfid/590b18a14.pdf> accessed 20 December 2018.

To analyze the excerpt of Myanmar's TIP Report, a consultation of Special Rapporteur Brownlie's comments on the 2000 Summary Record of State Responsibility warrants examination as it further underscores the category of breaches and its applicability. Brownlie's interpretation appears to be based on serious breaches that reflect a States' failure to perform obligations viewed universally. Accordingly, it causes all States to have a legal interest, regardless of a direct injury.⁸⁸⁷

The Rapporteur identified examples that included genocide, the use of force where it was prohibited, enslavement or failure to respect fundamental human rights, and humanitarian law.⁸⁸⁸ In comparison to Brownlie's comments, the 2018 Myanmar State Report indicates a sizeable loss of life and personal injury coupled with evidence of exploitation that could be aligned with enslavement and violence allegedly perpetrated by government armed forces (or organs of the state). Indeed, to surmise that people being placed in a situation where they would starve to death would describe a failure to respect fundamental human rights.

The audacious devaluation of lives and the massive exodus of hundreds and thousands of Rohingya men, women, and children were seen across the globe and the world, responses denounced the actions of Myanmar. Echoes of these efforts are

⁸⁸⁷ A/CN.4/SR.2653, Summary record of the 2653rd meeting, Topic: 'State Responsibility', Extract from the Yearbook of the International Law Commission: 2000, Volume 1
<http://legal.un.org/ilc/documentation/english/summary_records/a_cn4_sr2653.pdf> accessed 21 March 2019.

⁸⁸⁸ *ibid* para 64; Draft Articles on State Responsibility, Introductory Commentary to Part Two, Chapter 3, para (7). The Draft Articles and Commentaries are reproduced in UN Doc. A/56/10, at 43-365.

found from the Human Rights Watch and several advocacy groups, who formulate a global appeal to the UN, and excerpt of the appeal states,

‘All concerned UN member states should also consider *bilateral, multilateral, and regional actions* they can take to place added pressure on the Myanmar government,’ the coalition said. ‘In particular, we call on all states to immediately suspend military assistance and cooperation with Myanmar’... We urge UN delegations, especially those from the *114 countries committed to the Accountability, Coherence and Transparency (ACT) Code of Conduct*, who made a pledge to support ‘timely and decisive action’ to prevent or end the commission of genocide, crimes against humanity, and war crimes, to immediately undertake efforts to adopt a resolution in the UNGA addressing the situation, and call upon the UNSC to consider measures to be imposed on the Myanmar government’.⁸⁸⁹

Advocates across a broad spectrum of civilian and government levels press for Myanmar’s accountability and responsibility, emphasizing the suffering of children.⁸⁹⁰ Aside from some sanctions from the USA and Europe, no record of substantive actions from Southeast Asian regional States can be found.⁸⁹¹ There are

⁸⁸⁹ Human Rights Watch, ‘Myanmar: Global Appeal for UN Action Stop Crimes Against Humanity’ (28 September 2017) <<https://www.hrw.org/news/2017/09/28/myanmar-global-appeal-un-action>> accessed 28 January 2019; ‘Human Rights Watch and the other groups are urging UN delegations to immediately undertake efforts to adopt a resolution in the UNGA addressing the situation. The coalition is also calling on the Security Council to seriously consider an arms embargo against the military and targeted sanctions against individuals responsible for crimes and serious abuses...’

⁸⁹⁰ UNICEF-Bangladesh, ‘UNICEF and Bangladesh Authorities tie up to construct 10,000 latrines for Rohingya’ (UNICEF 2017) <https://www.unicef.org/bangladesh/media_10461.html> accessed 12 December 2017; UNICEF, the following statement was made... ‘What is already a dire humanitarian situation risks becoming a catastrophe,’ Edouard Beigbeder, the head of UNICEF programmes in Bangladesh said Tuesday, raising the alarm over the impact of the approaching cyclone and monsoon seasons. ‘Hundreds of thousands of children are already living in horrific conditions, and they will face an even greater risk of disease, flooding, landslides and further displacement.’

⁸⁹¹ A Ramzy, ‘Myanmar draws scorn for Rohingya-crisis, but few urge sanctions’ (New York Times, 18 September 2017) <<https://www.nytimes.com/2017/09/18/world/asia/myanmar-rohingya-sanctions.html>> accessed 20 February 2019; BBC News, ‘Rohingya-crisis: US imposes sanctions on top Myanmar generals’ (BBC, 17 July 2019) <<https://www.bbc.co.uk/news/world-asia-49014631>> accessed 19 July 2019; No homecoming for Rohingya: <https://www.bbc.com/news/av/world-48951449/myanmar-no-homecoming-for-rohingyas>

declarations under international law that prohibit various international interventions.

An example can be found in the *Military and Paramilitary Activities In and Against Nicaragua* (the *Nicaragua Case*). In this case, the ICJ clarified the prohibition of intervention as *jus cogens*; however, the intervention was through the use of force.⁸⁹² The basis of the inquiry of 'allowed interventions' can be found in art 2(4) of the UN Charter that notes, 'all Members shall refrain in their international relations from the threat or use of *force* against the territorial integrity or political independence any State'.⁸⁹³

The prohibition is limited to the exercise of 'forceful intervention'. Additionally, another constraint is the application to 'Member States of the UN'. Yet, investigating art 2(7) of the UN Charter, an interpretation can be made that it prohibits 'any form' of intervention 'into the internal affairs of a member State'; however, the reference again is only to interventions into the UN States.⁸⁹⁴ A purview of intervention includes

accessed 19 July 2019; 'But Mr. Pompeo said the sanctions had been prompted in part by Commander-in-Chief Min Aung Hlaing's recent decision to release, after just a few months, soldiers convicted of extra judicial killings at the village of Inn Din in 2017. They spent less time behind bars than two Reuters journalists, Wa Lone and Kyaw Soe Oe, who had been investigating the massacre. The two reporters spent more than 16 months in prison on charges of obtaining state secrets before being released in an amnesty on 6 May'.

⁸⁹² The *Nicaragua Case*, para 190.

⁸⁹³ *ibid.*

⁸⁹⁴ An example of where art 2(7) would not seem to be absolute in State practice was in 1991 when the UNSC 'insist[ed] that Iraq allow immediate access by international humanitarian organizations' (UNSC Res 688 (1991) (adopted 10 with 7 abstentions)). Chapter Five will consider the argument that Iraq was justified in claiming this would breach the State's territorial sovereignty under art 2(7) but that an alleged breach of art 2(7) needs to be considered in light of the Security Council's obligations under Chapter VII. Ultimately, Iraq relinquished and entered a Memorandum of Understanding that permitted access (UN Doc S/22459 (1991) cited in Jennings, R. and Watts, A. *Oppenheim's International Law* (9th edn.) (London: Longman, 1992) 443; It was based on Res 688 that the USA, the UK and France would subsequently justify its military intervention under operation Provide Comfort.

the *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States* is similarly extensively comprehensive on the prohibition of interventions. Still, it falls short of being binding, 'no State has the right to intervene, directly or indirectly, for any reason whatever in the internal and external affairs of any other State'.⁸⁹⁵

Another intervention could be charged against the State, where the term 'genocide' was and continues to be consistently bantered across the media and UN organizations; however, proving genocide is extremely difficult. Article II of the Genocide Convention dictates two key elements, the *mens rea* (intent) and physical element: 'proof that the perpetrator specifically intended to eliminate, in whole or substantial part, a targeted ethnic, racial, religious or national group'.⁸⁹⁶ For example, seeking plausibility for genocide can be further analyzed in the case of *Bosnia and Herzegovina* against Serbia for allegedly 'supporting genocide committed in Bosnia by the Bosnian Serb army', the ICJ's ruling found that Serbia neither committed nor was complicit in the genocide.⁸⁹⁷ Instead, the ICJ findings did show that Serbia did violate international

⁸⁹⁵ 'Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States' UN Doc A/RES/36/103 (1981).

⁸⁹⁶ Genocide was first recognized as a crime under international law in 1946 by the UNGA (A/RES/96-I). It was codified as an independent crime in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention); Convention on the Prevention and Punishment of the Crime of Genocide; approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951, in accordance with article XIII.

⁸⁹⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Serbia and Montenegro*), 2007 ICJ 191.

law in two areas,⁸⁹⁸ which constituted a breach under State Responsibility Articles, arts 1, 2(a)(b). First, Serbia failed to ‘take reasonable steps to prevent the genocide’, and secondly, failing ‘to punish those who committed it’.⁸⁹⁹ The ICJ ruling provides an examination of State accountability⁹⁰⁰ as being distinguishable from the doctrine of

⁸⁹⁸ Under art I the States parties are bound to prevent such an act, which it describes as “a crime under international law,” being committed. The art does not *expressis verbis* require States to refrain from themselves committing genocide. However, in the view of the Court, considering the established purpose of the Convention, the effect of art I is to prohibit States from themselves committing genocide. Such a prohibition follows, first, from the fact that the article categorizes genocide as “a crime under international law”: by agreeing to such a categorization, the States parties must logically be undertaking not to commit the act so described. Secondly, it follows from the expressly stated obligation to prevent the commission of acts of genocide. That obligation requires the States parties, inter alia, to employ the means at their disposal, in circumstances to be described more specifically later in this Judgment, to prevent persons or groups not directly under their authority from committing an act of genocide or any of the other acts mentioned in art III. It would be paradoxical if States were thus under an obligation to prevent, so far as within their power, commission of genocide by persons over whom they have a certain influence but were not forbidden to commit such acts through their own organs, or persons over whom they have such firm control that their conduct is attributable to the State concerned under international law. In short, the obligation to prevent genocide necessarily implies the prohibition of the commission of genocide.

⁸⁹⁹ *ibid*; Ultimately, the Court considered that its jurisdiction was based on art IX of the Genocide Convention which provides that ‘disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in art III, shall be submitted to the ICJ at the request of any of the parties to the dispute’, thus the Court was entitled in the case to determine responsibility for any alleged breach of an obligation owed by State parties to the Convention (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia (Serbia and Montenegro))* (Preliminary Objections 1996) ICJ Reports 1993); Further proceedings were brought in the case by Yugoslavia claiming that because it was not a UN Member until 2000, it was not a State party to the ICJ Statute or the Genocide Convention. The Court rejected the argument as *res judicata*, given that it had decided jurisdiction in the matter in 1996 (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia (Serbia and Montenegro))* (Initiative to the Court to Reconsider Ex Officio Jurisdiction over Yugoslavia 2003) ICJ Reports 1993 para 18) (*Genocide Convention Case supra* note 89, para 40).

⁹⁰⁰ A Ammeter and others. ‘A Social Relationship Conceptualization of Trust and Accountability in Organizations’ (2008) *Human Resource Management Review* 343, <https://www.sciencedirect.com/science/article/abs/pii/S105348220400004X> accessed 19 November 2019; P Tetlock. ‘The Impact of Accountability on Judgment and Choice: Toward a Social Contingency Model’ (1992) *Advanced Experimental Social Psychology* 331

State responsibility. According to the judicial outcome, the Bosnian Serb commanders did not pre-plan the massacre. The ruling viewed the actions as an impulse decision (no-premeditation) occurring when the Muslim men of Srebrenica rendered an unexpected surrender. The ruling was an application of the 'strict test,'⁹⁰¹ (which is not examined within the context of this study), and the case files indicate a consideration was made that the Bosnian Serb Army was funded and supplied by Yugoslavia and rendered control over military actions. Notwithstanding the evidence presented, Yugoslavia could not be held liable for the Srebrenica massacre because there was no proof that Yugoslavia had effective control over that offensive.

Case law reflects upon when Serbia was found responsible for breaching arts 4 and 5 of the Convention. However, a closer analytical examination shows the distinction between finding Serbia responsible and not holding Serbia accountable; in contrast, Bangladesh and Myanmar are the two jurisdictions under examination and the Rohingya-crisis. Serious breach or injury to a State, referenced in art 42, is underpinned by art 60 of the Vienna Convention on the Law of Treaties⁹⁰² regarding the material breaches of treaties. Under para (a), 'a state is injured if the breached

<<https://www.sciencedirect.com/science/article/pii/S0065260108602877>> accessed 28 Nov 2019; The main difference between responsibility and accountability is that responsibility can be shared while accountability cannot. Being accountable not only means being responsible for something but also ultimately being answerable for your actions; In ethics and governance, accountability is answerability, blameworthiness, liability, and the expectation of account-giving; Responsibility may refer to: being in charge, being the owner of a task or event, as in State responsibility.

⁹⁰¹ The *strict test* sets parameters where military operations and where atrocities are committed, difficult to hold States accountable for violence by proxy.

⁹⁰² Commentaries, art 42, para 4; D Jonas and T Saunders, 'The objective and purpose of a treaty: Three interpretive methods' (2010) 43[3] Vanderbilt Journal of Transnational Law 565, 608. Refer to Appendix 5, Glossary.

obligation was owed to it individually', which occurs when a bilateral agreement, unilateral commitment, a general rule of international law exists and gives rise to the obligations between two states; or states that have specific obligations toward each other.⁹⁰³

⁹⁰³ *ibid.*

5. Argument 3: What are the Jurisdictional Requirements for the Prevention and Protection of Children from the Transnational Crime of Human Trafficking and Exploitation for Bangladesh and Myanmar?

a) Transnational Crimes and Jurisdictional Requirements

Transnational⁹⁰⁴ crimes are an area of criminal law with international implications and have a transboundary effect.⁹⁰⁵ Conventions require that transnational crimes be prosecuted within national or domestic legal systems versus international courts or tribunals.⁹⁰⁶ The line between what offences are considered within the bounds of *stricto sensu*⁹⁰⁷ category instead of the ‘convention’ or ‘transnational’ category fits in the grey zone and is likely based upon State practice.⁹⁰⁸

Therefore, this research investigates the ASEAN Charter and the two states’ instruments for effective facilitation of obliged law enforcement, prevention, and prosecution to suppress the transnational crimes of human trafficking and the exploitation of children.⁹⁰⁹ State parties to the UNTOC and its Protocols are compelled

⁹⁰⁴ P C Jessup, *Transnational Law* (New Haven: Yale UP 1956) 3; ‘Transnational’ found its way into treaty usage in the 2000 UN Convention against Transnational Organized Crime, 2225 UNTS 209. The Columbia Journal of Transnational Law dates from 1961. Is Transnational Criminal Law a branch of Transnational Law, or is the usage subtly different? ‘Transnational organized crime’ is ‘transnational’ because it crosses borders, not because it is subject to a suppression convention’.

⁹⁰⁵ N Boister, ‘Transnational Criminal Law’ (2003) 14 EJIL 953, 967-77
<<http://www.ejil.org/pdfs/14/5/453.pdf>> accessed 28 February 2019.

⁹⁰⁶ It is the treaty in question, not some deeper rules of the international system that are said to render the proscribed activities ‘criminal’; There is the further question of what the key ‘procedural’ characteristic of a crime under international law. Is it that it supports universal jurisdiction? Is it that it can be tried in an international forum? Does one follow from the other?

⁹⁰⁷ International criminal law is currently subdivided into international criminal law *stricto sensu* — the so-called core crimes — and crimes of international concern — the so-called treaty crimes.

⁹⁰⁸ Categorizing these crimes is an ongoing debate as reflected in the Final Act of the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Annex, Res E, (1998) UN Doc. A/CONF.183, vol I at 71-2.

⁹⁰⁹ E Nadelmann, ‘Global prohibition regimes: The evolution of norms in international society’ (1990) 44 International Organization 479, 481

to identify the criminal behaviour like crime, to align the penalties, and gravity with the offense.⁹¹⁰ This core element, aligning the gravity of the crime with the penalties, will be highly scrutinized. It is an area where advocates supporting victims of trafficking and exploitation have extensively expressed discontent.⁹¹¹

Agreements between States' parties also require extradition, *aut dedere aut judicare* (the prosecution case),⁹¹² and legal assistance. A State parties' obligation to extradition is exemplified in the trial of Hissène Habré,⁹¹³ where on 22 July 2011, Chad requested the extradition of Hissène Habré to Belgium; after, Habré' was allowed to live in Senegal for over 20 years with immunity.⁹¹⁴ Other provisions of transnational jurisdictional domestic agreements specify actions where the offence was committed in the respective territory, whether ships or aircraft. In instances where the offence is committed against the government or the State or by a stateless person, agreement provisions allow States to take jurisdiction for prosecution.⁹¹⁵

⁹¹⁰ UN Transnational Organized Crime Convention.

⁹¹¹ UNHCR, report evidence #1, #2, #3, #4, and #5.

⁹¹² M C Bassiouni and E M Wise, *Aut dedere aut judicare: The duty to extradite or prosecute in international law* (London, Martinus Nijhoff Publishers 1996; The Latin term is used to refer to the alternative obligation to extradite; 'judicare' implies a full trial and obligation in certain treaties, e.g., the four Geneva Red Cross Conventions of 1949.

⁹¹³ On May 30, 2016, former Chadian dictator Hissène Habré was convicted of crimes against humanity, war crimes, and torture, including sexual violence and rape, by the Extraordinary African Chambers in the Senegalese court system and sentenced to life in prison. On April 27, 2017, an appeals court confirmed the verdict and ordered Habré to pay approximately 123 million euros in victim compensation.

⁹¹⁴ Human Rights Watch, Senegal: Chad asks for the extradition of Hissène Habré to Belgium, 22 July 2011, available <<https://www.refworld.org/docid/4e3000df2.html>> accessed 30 May 2019; Refer to Appendix 5, Glossary for more detail.

⁹¹⁵ R Clark, 'Offences of international concern: Multilateral Treaty Practices in the Forty Years since Nuremberg' (1988) 57 NJIL 49, 58.

b) Jurisdictional Analysis.

When it is appropriate for a domestic court to exercise its jurisdiction is an essential issue contingent upon the subject matter of the international criminal law category and the respective instrument(s). Analogously, before the discussion proceeds with ASEAN and the two-state jurisdictional analysis, this section first outlines distinct ways of deciphering the varying aspects of the jurisdiction about international law and transnational cases.⁹¹⁶ Next, this study refers to the American Law Institute's Restatement (Third) of the Foreign Relations Law of the United States, which distinguishes between three 'categories of jurisdiction'.⁹¹⁷

First, the *jurisdiction to prescribe* applies to the relations or status of persons by domestic legislation, court, or administrative rules. Next, the *jurisdiction to adjudicate* where persons or things are subjected to the respective domestic courts or administrative tribunals for the criminal or civil proceedings can be found in day-to-day cases in each of the two states under review for this study. Thirdly, the *jurisdiction to enforce*, for example, to induce or compel compliance with its laws or regulations, whether through courts or by use of executive, administrative, police, or other non-judicial action was demonstrated in the trial of Hissène Habré.⁹¹⁸ The trial reflected how Chad

⁹¹⁶ American Law Institute, *Restatement of the Law, Third, Foreign Relations Law of the United States* (1987), §401.

⁹¹⁷ Am. Soc'y Int'l L., 'Jurisdictional, Preliminary, and Procedural Concerns,' in *Benchbook on International Law* § II.A (Diane Marie Amann ed., 2014), <www.asil.org/benchbook/jurisdiction.pdf> accessed 21 July 2019.

⁹¹⁸ On May 30, 2016, former Chadian dictator Hissène Habré was convicted of crimes against humanity, war crimes, and torture, including sexual violence and rape, by the Extraordinary African Chambers in the Senegalese court system and sentenced to life in prison. On April 27, 2017, an appeals court confirmed the verdict and ordered Habré to pay approximately 123 million euros in victim compensation.

compelled Belgium to comply with its laws and extradite⁹¹⁹ Hissène Habré. Finally, it is vital to note that in some situations, all three categories of jurisdiction may be applied simultaneously by the same State as in the *France v Turkey Lotus* case, where Turkey applied its prescriptive law.⁹²⁰ However, if Turkey had elected to surrender the defendant to France, France could have applied adjudicative and prescriptive jurisdiction.⁹²¹ Finally, for the determination of jurisdiction at sea, the PICJ provides a detailed explanation but is not addressed within the scope of this study.⁹²²

Literature opines five recognized bases of jurisdiction in customary international law. States may exercise *prescriptive jurisdiction*: territorial; nationality or active personality (offences committed by nationals); passive personality (offences against nationals); protective; universal.⁹²³ Two jurisdictions are explained further as they have

⁹¹⁹ Extradition is the classic example of one state assisting another in enforcement. The Restatement of the Law asserts in § 432: (1) A state may enforce its criminal law within its own territory through the use of police, investigative agencies, public prosecutors, courts, and custodial facilities, provided (a) the law being enforced is within the state's jurisdiction to prescribe;' (2) A state's law enforcement officers may exercise their functions in the territory of another state only with the consent of the other state, given by duly authorized officials of that state. Comment a to this section adds: Accordingly, if a state would not have jurisdiction to adjudicate with respect to a particular crime, for instance because the act did not take place or cause harm within its territory, the state may not bring its criminal law enforcement machinery to bear on the person accused of the act except to assist the law enforcement efforts of a state with jurisdiction to adjudicate.

⁹²⁰ The Case of the S.S. Lotus (*France v Turkey*), PCIJ, Ser. A, no 10 (1927).

⁹²¹ *ibid.*

⁹²² The PCIJ spoke obliquely to this: It is certainly true that – apart from certain special cases which are defined by international law – vessels on the high seas are subject to no authority except that of the State whose flag they fly. In virtue of the principle of freedom of the seas the absence of any territorial sovereignty upon the high seas, no State may exercise any kind of jurisdiction over foreign vessels on them. Thus, if a war vessel, happening to be at the spot where a collision occurs between a vessel flying its flag and a foreign vessel were to send on board an officer to make investigations or to take evidence, such an act would undoubtedly be contrary to international law.

⁹²³ I Cameron, *The Protective Principle of International Criminal Jurisdiction* (1994); Territorial jurisdiction, the most common, is premised on the place where the crime is committed; Nationality jurisdiction is more typical of civil

immediate applicability to ASEAN and the two states under review. Wherein, under the jurisdictions for review, universal jurisdiction may be seen in a domestic court. This jurisdiction example may have applicability when international law is applied to punish crimes where State legislation supports the exercise of *prescriptive* and *enforcement jurisdiction*.⁹²⁴ Each instance of jurisdiction is critical in the context of legal report analysis.

The UN Convention against Transnational Organized Crime (UNTOC)⁹²⁵ contains essential and detailed provisions on both formal and informal jurisdictional cooperation in criminal matters. Specifically, the UNTOC addresses jurisdictional issues universally applicable to both the perpetrator and victim, which have *mutatis mutandis* (or *necessary changes*)⁹²⁶ linkage and application to the Palermo Trafficking

law countries than of common law ones, but assertions of jurisdiction based on nationality are becoming more common in the Anglo-American system, especially in the case of military personnel and other representatives of the state, and in terrorism cases; 'Passive personality' was also asserted as a theory by Turkey against M. Demons. Turkish legislation, based on the Italian Penal Code, made it an offence to commit certain crimes (including homicide) against a Turkish citizen anywhere in the world. The majority of the Court stopped short of upholding Turkey's actions on this basis, and the United States and other common law countries were long opposed to such assertions of jurisdiction; 'Protective jurisdiction' is extraterritorial in its application; Universal jurisdiction is exercised by a State even in a situation where the State itself has no particular connection to the specific offence. It exercises that jurisdiction on behalf of the international community to impose sanctions.

⁹²⁴ The Princeton Principles on Universal Jurisdiction (2001) assert that 'national judicial organs may rely on universal jurisdiction even if their national legislation does not specifically provide for it'. The House of Lords declined to do so for aggression in *R v Jones* [2006] UKHL 16.

⁹²⁵ UN Convention against Transnational Organized Crime, opened for signature 15 November 2000, completed 29 September 2003. 2225 UNTS 209.

⁹²⁶ *Mutatis mutandis* is a Latin phrase that means 'by changing those things which need to be changed.' The phrase can also mean 'having substituted new terms.' *Mutatis mutandis* relates to due alterations to be made in similar statements.

Protocol, as well as to both of the Smuggling⁹²⁷ and Weapons⁹²⁸ Protocols. However, the Palermo Smuggling and Weapons Protocols are beyond the scope of this study.

As a supplement to the Palermo Trafficking Protocol, beginning with art 15, the UNTOC establishes a series of jurisdictional guidelines relevant to trafficking in person cases applicable for ASEAN and the two jurisdictions under examination, Bangladesh and Myanmar. Bangladesh and Myanmar are each state party to the UNTOC.

Therefore, state parties are obliged to comply with jurisdiction on several key areas of challenge prominent in human trafficking: In summary, art 16, Jurisdiction notes,

- a. para (1) details the principle of territoriality;
- b. (2) specifies the basis of active and passive personality principles, namely when State parties national is the perpetrator or victim;
- c. para (3) established extra-territorial jurisdiction⁹²⁹ for domestic prosecution in lieu of extradition when questions arise on the grounds of nationality; and,
- d. para (4) establishing the required jurisdiction in situations of domestic prosecution instead of extradition when nationality is questioned before the court.

⁹²⁷ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime.

⁹²⁸ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime, General Assembly resolution 55/255 of 31 May 2001.

⁹²⁹ Laws that regulate the conduct of nationals while abroad; laws that are applicable to the conduct of non-nationals outside the territory of the legislating State (universal jurisdiction).

UNTOC member states are bound by art 16, extradition, and art 17 that dictates the transfer of sentenced persons. In addition, art 18 covers mutual legal assistance provisions and includes stipulations to allow usage by countries not bound by applicable bilateral treaties or states exercising other complementary agreements. Art 19 covers the provision of a joint investigation, and it is linked to art 20's cooperation provisions in special investigative techniques. Subsequently, art 21's transfer of criminal proceedings and art 27's focus on addressing trafficking on the streets with law enforcement cooperation.

The UNTOC supplements the Palermo Trafficking Protocol; therefore, collectively, the instruments have the capacity for States parties to employ the treaty's provisions as a legal basis to obtain international cooperation. Under UNTOC, the extradition provision, art 16, there are two operational points:

- a) 'States parties that make extradition conditional on the existence of a treaty are required to inform the Secretary-General whether they will consider the Convention as the legal basis for this form of cooperation'; and
- b) 'States may also use national legislation and the principle of reciprocity to execute extradition requests'.⁹³⁰

The ASEAN Charter member States have entered a bi-lateral and multilateral treaty to operate under the Convention as the legal basis for cooperation.

⁹³⁰ Article 16, UN Transnational Organized Crime Convention.

CHAPTER 4,
THE OBLIGATION TO AN IN-FORCE TREATY:
THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL
ORGANIZED CRIME
AND THE PROTOCOLS THERETO

Part I.

The UN Convention Against Transnational Organized Crime (Palermo Convention, The Convention) and The Protocols Thereto,

1. Article 37 of the UN Convention against Transnational Organized Crime Convention (UNTOC) – Relation with Protocols

Article 37 of the Convention and art 1 of each Protocols establish the essential relationship between the Convention and its Protocols. The two instruments were drafted as a group,⁹³¹ with general provisions against transnational organized crime⁹³² in the Convention and elements specific to the subject matter of the Protocols in each of the Protocols.⁹³³ The Organized Crime Convention and the Protocols require a member-State of the Protocols to be a State party to the Convention.⁹³⁴ The Convention's provisions apply *mutatis mutandis* to the Protocols (article 1, (2) of each Protocol).⁹³⁵

The meaning of the phrase ‘mutatis mutandis’ is clarified in the *Travaux Préparatoires* as ‘with such modifications as circumstances require’ or ‘with the necessary modifications’.⁹³⁶

⁹³¹ Working Group of Government Experts on Technical Assistance Vienna, 17-19 October 2016, Item 4 of the provisional agenda Identification of technical assistance needs and good practices relating to the criminalization of the laundering of proceeds of crime (article 6)
<https://www.unodc.org/documents/treaties/UNTOC/COP/Session_8/CTOC_COP_WG.2_2016_4/CTOC_COP_WG.2_2016_4_E.pdf> accessed 20 February 2018.

⁹³² Extradition and mutual legal assistance.

⁹³³ Offences established in accordance with the Protocol and provisions relating to travel and identity documents.

⁹³⁴ This provision assures that in any case arising under a Protocol the Convention will also be available and applicable.

⁹³⁵ UNGA, *UN Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25; Adopted without vote, 62nd plenary meeting; Issued in GAOR, 55th sess., supp no 49. ‘Annex I: UN Convention against Transnational Organized Crime’: p. 4-31. ‘Annex II: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime’: p 31-39. ‘Annex III: Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime’: p 40-51.

⁹³⁶ *Travaux Préparatoires*, p 330.

Although the stated phrase impacts implementation and interpretation meaning for state parties to apply with the Convention to the Protocols, they may consequently be modified or interpreted to have the same meaning or effect.⁹³⁷ In other words, modifications and interpretations are permissible to consider the circumstances that arise under the Protocols. This general rule does not apply where the drafters have expressly excluded it.⁹³⁸

Article 1(3), of each Protocol, offenses established in accordance with the Protocol shall also be regarded as offenses established in accordance with the Convention. This principle, analogous to the ‘mutatis mutandis’ requirement, is a critical link between the Protocol and the Convention.⁹³⁹ It ensures that any offense or offenses established by each State pursuant to each Protocol will automatically be included in the scope of the basic provisions of the Convention governing forms of international cooperation such as extradition as promulgated in art 16 of the Convention and mutual legal assistance, art 18, the Convention.⁹⁴⁰

Article 1(3) serves as a link for the Protocols and the Convention by making other mandatory provisions of the Convention applicable to offenses that have been established under the Protocols, in this instance, the Palermo Trafficking Protocol. Specifically, the Convention sets out the obligations regarding: ‘art 6, money-laundering, art 8, corruption, art 10, the liability of legal persons, art 11, the prosecution, adjudication and sanctions, arts 12-14, confiscation, art 15, jurisdiction, art 16, extradition, art 18, mutual legal assistance, art 20, special investigative techniques, art 23, obstruction of justice, arts 24-26, witness and victim protection and

⁹³⁷ UNGA, *UN Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

⁹³⁸ *ibid.*

⁹³⁹ *Travaux Préparatoires*, p 330.

⁹⁴⁰ Articles 16, 18, the Convention.

enhancement of cooperation, art 27, law enforcement cooperation, art 29 and 30, training and technical assistance, and art 24, the implementation of the Convention', each apply equally to the offenses that have been established with the Protocol.⁹⁴¹ The legislative guide for implementation outlines the Protocol's requirements and minimum standard. However, as noted in the guide, the domestic measures may be broader in scope or more severe than those required by the Protocol. The requirement is that all obligations in the Protocols must be fulfilled per art 34(3) of the Convention.⁹⁴²

⁹⁴¹ UNGA, *UN Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

⁹⁴² Article 34, Implementation of the Convention.

a) Interpretation of the Convention and the Protocols (Article 37 of the Convention and Article 1 of each Protocol)

General rules for the interpretation and application of treaties are set out in articles 31 to 33 of the Vienna Convention on the Law of Treaties⁹⁴³ and are not discussed in detail in this legislative guide.⁹⁴⁴ There are instances where general rules may be supplemented by treaty rules with specific interpretative references appearing in the Convention and the Protocols, 16(14) the Convention. For example, article 16(14) makes the principle of non-discrimination a limit on the basic obligations for the extradition of offenders through the application and interpretation of the treaty.⁹⁴⁵ Article 35 of the Convention addresses the dispute settlement provisions consistent amongst the instruments requiring negotiations, which prompts arbitration for dispute resolution.⁹⁴⁶ Pursuant to art 37 of the Convention and art 1 Protocol, elements of the Convention must be considered when interpreting the Protocol.

Article 37 of the Convention and art 1 of each Protocols establish the basic relationship between the Convention and its Protocols. The instruments were drafted as a group, with general provisions against transnational organized crime (for example, extradition and mutual legal assistance) in the Convention and elements specific to the subject matter of the Protocols in each of the Protocols (to include offences established following the Protocol and provisions

⁹⁴³ Vienna Convention on the Law of Treaties (UN, Treaty Series, vol. 1155, no 18232)

Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN (General Assembly resolution 2625 (XXV), annex.)

⁹⁴⁴ UNODC, 'Legislative guide for the implementation of the UN Convention against Transnational Organized Crime' (UNODC 2012)

<<https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>> accessed 11 April 2018.

⁹⁴⁵ Article 16(14), the Convention.

⁹⁴⁶ Article 35 (Settlement of disputes).

relating to travel and identity documents). As the Protocols supplement the Organized Crime Convention, to become a party to any of the Protocols, a State is required to be a State party to the Convention. The provision ensures that in any case arising under a Protocol to which the State concerned is a party, all the general provisions of the Convention will also be available and applicable.

b) Substantive Criminal Law. The UN Convention against Transnational Organized Crime⁹⁴⁷ (UNTOC) has established a legislative guide⁹⁴⁸ for member States to assist with implementation. Though States may elect to apply a monistic or dualistic approach to implementation, specific obligations accompany the treaty.⁹⁴⁹ Chapter III of the legislative guide focuses on the substantive criminal law to the obligations of the Organized Crime Convention. There are four specific offenses that State parties must criminalize into the respective domestic laws:

- ‘a) participation in an organized criminal group (article 5), and
- b) criminalization is based either based on an agreement or conspiracy-style offence or as an offence based on criminal association, or both; money-laundering (article 6); corruption (article 8); and obstruction of justice (article 23)’- refer to Table 4-13.⁹⁵⁰

⁹⁴⁷ UNGA, *UN Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

⁹⁴⁸ UNODC, ‘Legislative guide: UN Convention against Transnational Organized Crime’ (UNODC 2016) 246, 248 < https://www.unodc.org/documents/treaties/Legislative_Guide_2017/Legislative_Guide_E.pdf > and < <https://www.unodc.org/unodc/en/treaties/CTOC/background/General-Assembly-documents.html> > accessed 22 January 2018.

⁹⁴⁹ General rules for the interpretation and application of treaties are set out in articles 31 to 33 of the Vienna Convention on the Law of Treaties; Vienna Convention on the Law of Treaties (UN, Treaty Series, vol. 1155, no 18232)

Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN (General Assembly resolution 2625 (XXV), annex.)

⁹⁵⁰ UNODC, ‘Legislative guide: UN Convention against Transnational Organized Crime’ (UNODC 2016) 246, 248 < https://www.unodc.org/documents/treaties/Legislative_Guide_2017/Legislative_Guide_E.pdf > accessed 26 December 2019.

In addition, article 2 captures significant criminal conduct and offences: a) organized criminal group, b) structured group, c) serious crime. Each is defined in art 2 of the Convention. Accordingly, the legislative guide emphasizes the critical role of these offences for the Convention as the minimum implementation standards.

c) Minimum Standards. State parties must meet a minimum threshold to conform to the Convention. Yet, each State party has the sovereignty to undertake effective measures if they conform to the minimum standards.⁹⁵¹ The implementation of the criminalization components of the Convention is accomplished through promulgating new laws or the amending of existing laws. The amendments to existing laws are prominent in Bangladesh that are specifically related to trafficking and exploitation. In addition, per art 34(3), States parties may elect to introduce more strict or severe measures than those provided by the Convention. Thus, implementation of the criminalization requirements in the Convention may be carried out by promulgating new laws or amendments of existing ones. Accordingly, domestic crimes reflect the implementation of the Convention, regardless of whether they are new laws or amended legislation.

The legislative guide denotes extradition proceedings and confiscation agreements to simplify mutual legal assistance to achieve close conformity. Concurrently, a range of acts covered by

⁹⁵¹ UNTOC, art 34(1), which provides that 'each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention'.

the Convention is criminalized.⁹⁵² The guide sets out that the criminalization of illegal conduct must be legislated into national criminal law; refer to Tables 13 and 14. Article (10)2 of the UNTOC provides the only exception regarding ‘legal persons, including corporate entities, the liability of which can be criminal, civil, or administrative, depending on the domestic legal principles’. Herein lies a significant gap with the states under review, as no record could be found in English, within the last ten years of any corporate entity (from land or sea) that received criminal, civil, or administrative punishment for offenses related to human trafficking and exploitation – *Rantsev v Cyprus and Russia*,⁹⁵³ footnote 45(6)(b) introduction of review procedures for the operation of certain businesses known to be a cover for human trafficking.

⁹⁵² UNODC, ‘Legislative guide: UN Convention against Transnational Organized Crime’ (UNODC 2016) 23 <https://www.unodc.org/documents/treaties/Legislative_Guide_2017/Legislative_Guide_E.pdf> accessed 26 December 2019.

⁹⁵³ *Rantsev v Cyprus and Russia*, paras 264-68.

i. Table 7. Minimum State Standards. Article 5 of the UN Convention against Transnational Organized Crime (UNTOC) – Criminalization of participation in an organized criminal group

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in:

a. Criminal activities of the organized criminal group;

b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim;

(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1(a)(i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1(a)(i) of this article,

Note, Table 7, art 5, UNGA, UN Convention against Transnational Organized Crime: resolution / adopted by the General Assembly, 8 January 2001, A/RES/55/25.

ii. Table 8. Minimum State Standards. Article 11 of the UN Convention against Transnational Organized Crime (UNTOC) – Prosecution, adjudication, and sanctions

‘1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8 and 23 of this Convention liable to sanctions that take into account the gravity of that offence.

[...] 6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.’

Note, Table 8, art 5, UNGA, *UN Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

2. Argument #4, Was the In-Force Treaty Obligations met for the Palermo Trafficking Protocol? An Examination of arts 1, 2(A)(B), 3 – State Responsibility Articles

Palermo Trafficking Protocol

a) The Obligation to 3Ps – Prevent, Protect, and Promote, Article 2, Palermo Trafficking Protocol

i. *Prevent*, arts 6, 7, and 8; cooperation and other measures, arts 9, ‘shall’ establish through comprehensive policies, programmes, and other measures, (a) ‘to prevent and combat trafficking in persons’, and (b) ‘to protect victims of trafficking in persons, especially women and children from re-victimization’; art 11, ‘shall’ strengthen, to the extent possible such border controls as may be necessary to prevent and detect trafficking in persons; ‘shall’ adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established’ under article 5 of this Protocol; art 11(6) links to the mandate of article 27 of UNTOC, law enforcement cooperation.⁹⁵⁴

ii. *Protection* through criminalization,⁹⁵⁵ art 5, often referred to as the teeth of the Protocol with the prosecution of traffickers connected to the mandates of UNTOC’s arts 3(1)(a) offences outlined in arts 5, 6, 8, and 23⁹⁵⁶ of the Convention, and 3(1)(b) serious crime as defined in art 2(b) of the Convention.⁹⁵⁷ The Palermo Protocol expresses a relatively unspecific obligation to reduce the market, while requiring that states do take measures: art 9(5) states that ‘States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking’.⁹⁵⁸

⁹⁵⁴ Palermo Trafficking Protocol.

⁹⁵⁵ The term ‘Prosecution’ is used in this research to encompass all aspects of the criminal justice response to trafficking in persons including investigation, the actual prosecutorial process, adjudication, and punishment; A T Gallagher and P Holmes, ‘Developing an Effective Criminal Justice Response to Trafficking in Persons: Lessons from the Front Line’ (2008) 18 International Criminal Justice Review <<https://ssrn.com/abstract=1292563>> accessed 22 February 2019.

⁹⁵⁶ UN Convention Against Transnational Organized Crime, 2225 Units 209, Done Nov 15, 2000, Entered into Force Sept. 29, 2003 (Organized Crime Convention), At art 32(1), article 5, criminalization of participation in an organized criminal group; article 6, criminalization of the laundering of proceeds of crime; article 8, criminalization of corruption; article 23, criminalization of obstruction of justice.

⁹⁵⁷ Palermo Trafficking Protocol.

⁹⁵⁸ Palermo Trafficking Protocol.

iii. *Promote* cooperation among States Parties in order to meet those objectives.⁹⁵⁹ Article 18-19, the Convention coincides with Palermo Trafficking Protocol, Section III, arts 9, 10, and 11.

b) Analysis. The Trafficking in Persons Protocol⁹⁶⁰ has three basic purposes, ascribed in art 2: 'the prevention and combatting of trafficking in persons; the protection and support of victims of trafficking; and the promotion of cooperation among the parties'.⁹⁶¹ The UN Human Trafficking Protocol states that the criminality it seeks to suppress relates exclusively to the forcible recruitment, transportation, transfer, harbouring, or receipt of victims, particularly women and girls, by organized criminals.⁹⁶² In 2015 Gallagher hailed the protocol as 'the single most important development in the fight against human trafficking'.⁹⁶³ In comparison, writings from JC Hathaway argue that the Trafficking Protocol remains the subject of sustained and vocal criticism from its inception.⁹⁶⁴ Haynes echoes Hathaway's opinion that the Trafficking Protocol is overly focused on the criminal investigation component and not enough mandated

⁹⁵⁹ Palermo Trafficking Protocol.

⁹⁶⁰ There was no internationally accepted definition for 'trafficking' until 2000, when the UN published a definition in art 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the Palermo Protocol).

⁹⁶¹ Article 2, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Nov 15, 2000, S. TREATY DOC. no 108-16 (2004), 40 I.L.M. 335, 377.

⁹⁶² Palermo Trafficking Protocol, art 3(a).

⁹⁶³ A Gallagher, 'Two Cheers for the Trafficking Protocol' (2015) 4 Anti-Trafficking Review 14 <<https://www.antitraffickingreview.org/index.php/atrjournal/issue/view/12>> accessed 22 July 2017; Anne Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis,' (2001) 23[975] HUM. RTS. Q. 975, 990, 93 <<http://www.traffickingroundtable.org/wp-content/uploads/2012/07/Human-Rights-and-the-New-UN-Protocols.pdf>> accessed 22 September 2017.

⁹⁶⁴ J C Hathaway, 'The human rights quagmire of human trafficking (2008) 49[1] Virginia Journal of International Law 18, 42, 52-53

<<https://repository.law.umich.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1295&context=articles>> accessed 23 August 2017.

emphasis is placed upon prevention.⁹⁶⁵ Many authors concur with Hathaway's position. Hathaway further suggests that the meta-problems of the Protocol stems from the approach failing to focus on migration as a critical issue where protection is needed most.⁹⁶⁶ The massive migration exodus from the Rohingya-crisis, and the subsequent trafficking in persons, would add credence to this theory.

Interestingly, the protocol began with no pre-ratification baseline measures and no actual indicators of how the treaties' success will be measured. Questions remain regarding the actual size of trafficking in persons and the tangled networks.⁹⁶⁷ To this date, this research has been able to disclose whether there are any baseline effectiveness statistics on any of the trafficking treaties on a nationally, regionally, or global scale. There are global estimates of victims' protection and support levels needs, while the delineation for the number of children rescued or trafficked remains indeterminate. Each of these issues has remained unresolved for over two decades since the treaty came into effect.⁹⁶⁸ One of the prominent issues apparent in every vein of research and study for the Protocol is an undertone amongst criminal theorists that perceive trafficking in persons as misleading. The underlying thought appears to be that 'trafficking in persons' leans more toward the transaction than the actual crime,

⁹⁶⁵ Dina Francesca Haynes, '(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act' (2007) 21 GEO. IMMIGR. L.J. 337, 345-46 <<http://traffickingroundtable.org/2011/01/not-found-chained-to-a-bed-in-a-brothel-conceptual-legal-and-procedural-failures-fulfill-the-promise-of-the-trafficking-victims-protection-act/>> accessed 22 August 2017.

⁹⁶⁶ *ibid.*

⁹⁶⁷ Kathleen Barry, 'The network defines its issues: Theory, evidence and analysis of female sexual slavery' in Kathleen Barry et al. (eds), *International feminism: Networking against female sexual slavery* (1984) 32, 41.

⁹⁶⁸ UNGA, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime*, 15 November 2000.

which is closely aligned with enslavement.⁹⁶⁹ Though the definition of trafficking-in-persons is hailed as universal and internationally accepted, prominent definitional issues still make it particularly intractable for application. The reasoning for this position can be found in the definition itself. Article 3(a)'s definition of Trafficking in persons is used as an umbrella term with applicability in a myriad of situations, actions, and outcomes versus a singular, unitary act that leads to a specific outcome. Instead, the definition leads the lay-person and evidentially law enforcement to interpret or misinterpret the trafficking in person defined as a several phase criminal acts that encapsulate — recruitment, transportation (which may entail in-country as well as across several state jurisdictions), and the implementation of 'control' in the place of destination, which may be mobile.

As a result, law enforcement and prosecutorial teams omit critical components that hinder deterrence through prevention and prosecution. Furthermore, the definition leaves open the reasoning that various groups, agents, legal persons, personalities, or individuals can formulate the organized criminal group, or structured group, who are committing a serious crime as defined in art 2 of the Convention. Therefore, the jurisdictional examination considers children and the provisions of art 3(c) of the Palermo Trafficking Protocol as paramount. Article 3(c) specifies that 'the recruitment, transportation, transfer, harbouring or receipt of a child for exploitation

⁹⁶⁹ *Siliadin v France*, § 112, 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'; *Stummer v Austria* [GC], § 11; *Stummer v Austria* [GC], § 11; *C.N. and V. v France*, § 90; *Rantsev v Cyprus and Russia*, §§ 273-27; and, described in the explanatory report accompanying the Anti-Trafficking Convention as the modern form of the old worldwide slave trade (*Others v Italy and Bulgaria*, § 151).

shall be considered ‘trafficking in persons’ even if it does not involve any of the means stipulated in art 3 (a). Since the Protocol recognizes that children can never provide consent or be willing participants in their exploitation, the jurisdictional review uses the analytical criteria to examine how the provisions are realized in legal reports of the targeted countries.

Further complexity emerges from the definition, whereas the constituent elements are also referenced as the separate or associate elements of other phenomena, such as smuggling (Smuggling Protocol) or other composite crimes included within the Convention – money laundering (art 6, 7), and corruption (art 8).⁹⁷⁰ Another example of the condition of slavery is an outcome, which is inclusive in the definition of trafficking. However, the definition does not always align with all enslaved persons, as some are not ‘trafficked’ in the true sense of art 3(a), Palermo Trafficking Protocol. Within the definition, ‘3(a), Palermo Trafficking Protocol, ‘... the exploitation of the prostitution of others....’ there are gaps in the law. Prostitution is problematic in terms of human rights and exploitation. Prostitution’s economic sector dissects across several countries where the acts are not universally criminalized or not treated as a human rights violation. Miring clarity on these issues can be viewed as pragmatics. The Palermo Trafficking Protocol can be adopted ‘without prejudice to how States Parties address prostitution in their respective domestic law’ as recommended in footnote 64 of the Legislative Guide to the Protocol). Though 3(a), Palermo Trafficking

⁹⁷⁰ UN General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000.

Protocol's definition may have answered many questions, it generated many more with the difficult terms, 'exploitation', 'coercion', 'vulnerability', with many practitioners across several industries, beyond exploitation.⁹⁷¹

Article 37, para 2 establishes that the Member State must also be a party to the Convention to be a part of the Protocol.⁹⁷² Simultaneous ratification or accession is allowed, but it is not possible for a State to be subject to any obligation of any of the Protocols unless it is also subject to the obligations of the Convention.⁹⁷³ The specific obligations of the Trafficking in Persons Protocol are:

- a. '1) Definition and criminalization of trafficking in persons,
- b. providing assistance to and protecting victims of trafficking in persons,
- c. prevention, and
- d. cooperation'.⁹⁷⁴

Drafters have focused on mandatory measures, measures that States parties must consider applying or endeavours to apply, and optional measures.⁹⁷⁵ States parties are required to establish trafficking in persons, art 3, as criminal offenses:

- '(a) The conduct outlined in art 3 of the Protocol, when committed intentionally (art 5, para 1);
- (b) Subject to the basic concepts of its legal system, attempting to commit that offence (art 5, para 2(a); and
- (c) Participating as an accomplice in that offense (art 5, para 2(b);

⁹⁷¹ Palermo Trafficking Protocol, 3(a)(b).

⁹⁷² The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (Assembly resolution 55/25, annex II, 'the Trafficking in Persons Protocol').

⁹⁷³ Each of those legislative guides for the implementation of the Protocols therefore begins with subject matter that is often common to the Protocols, such as technical provisions, including important provisions of the Organized Crime Convention that apply to, and thus create additional obligations with respect to, offences established in accordance with the Protocols.

⁹⁷⁴ Palermo Trafficking Protocol refer to Table 8.

⁹⁷⁵ Refer to Figure 13, Endeavour Spectrum.

(d) organizing or directing other persons to commit that offence (art 5, para 2(c)).⁹⁷⁶ State parties are also obliged in art 1, paras 2, and 3 of the Protocol to apply multiple provisions of the Convention to such conduct as described in art 3.⁹⁷⁷ Though Bangladesh is not a member state of the Trafficking Protocol, the country is a party to the UN Transnational Convention against Organized Crime and the serious crime provisions.

However, Myanmar is a member state with no reservations. For Myanmar as a third-party submission, evidence in Table 2 reflects that the State may be responsible for trafficking in persons as a crime and serious violation of human rights. Yet there is a three-prong issue with the Protocol that re-emerges: First, there is a dispute amongst the definitions as to whether the relevance of the victim's consent; secondly, whether the victims trafficking was across borders or within the country, intranational; and thirdly, if or whether there was compensation, enumeration in some form as to whether trafficking occurred. In each of the three countries, the definition is essential for how local law criminally disposes of the offense. Regarding children, what is universally accepted, is that a child cannot provide consent. Yet, as the states under review denote, age parameters determine the severity of the perpetrators' punishment.

The examination of the Palermo Trafficking Protocol's for State responsibility is first structured to investigate the role of the preamble's object and purpose. It is followed by a discourse on the relevant case law articles and an overview of the UN Convention on Transnational Crime's role to supplement the Palermo Trafficking Protocol. Next,

⁹⁷⁶ Palermo Trafficking Protocol; also, refer to Tables 10-11.

⁹⁷⁷ UN Convention Against Transnational Organized Crime, 2225 Units 209, Done Nov 15, 2000, entered into Force Sept. 29, 2003 (the Convention), at art 32(1); Palermo Trafficking Protocol.

the analysis follows Toulmin's Model of Argument, noted in the method section. The claim sets out gaps in the prevention, protection, and mitigation of trafficking and exploitation of Rohingya and similarly situated children. Evidence from Tables 2 and 10 supports the warrants, with Table 3 as the rebuttal/counterargument of the legal argument. Each argument and discourse of the in-force obligation, the Palermo Trafficking Protocol supplemented by the UNTOC, is formed under the *3Ps* construct of a critical analysis of the two research states and ASEAN's engagement (trafficking domestic implementation, bi-lateral and multilateral treaties).

3. Articles 1, 2(A)(B), 3 – State Responsibility Articles, did a breach occur with an in-force treaty obligation?

a) Palermo Trafficking Protocol, Article 1, the Preamble 3Ps and State under review/analysis. Commencing with art, I of the Palermo Trafficking Protocol clarifies that the Protocol serves as an amendment. It is labeled as Annex II and legally binding to the main treaty.⁹⁷⁸ Whereas art 1(1) denotes,

‘This Protocol supplements the UN Convention against Transnational Organized Crime (UNTOC). It shall be interpreted together with the Convention’.⁹⁷⁹

State Parties to the Convention and the Palermo Trafficking Protocol are mandated to create substantive and procedural laws that support the Conventions’ confiscation and seizure obligations.⁹⁸⁰ Chapter four and Table 4 put this point to question whether the States have supplemented the Protocol with the UNTOC’s provisions within its legal reports and implementation.

Therefore, specific provisions of the UNTOC art 1, (3) set the stage to reiterate the *object* of the Protocol to support trafficking in persons as a crime and violation of human rights. As a result, member States are obliged to punish traffickers under UNTOC’s art 3(1)(a) offences outlined in arts 5, 6, 8, and 23⁹⁸¹ of the Convention, and

⁹⁷⁸ Carlos Vázquez, ‘Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties’ (2008) 122[599] HARV. L. REV. 677, 80 < <https://harvardlawreview.org/2008/12/treaties-as-law-of-the-land-the-supremacy-clause-and-the-judicial-enforcement-of-treaties/> > accessed 12 September 2019.

⁹⁷⁹ Article 1(1), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

⁹⁸⁰ UN Organized Crime Convention, art 12.

⁹⁸¹ UN Convention Against Transnational Organized Crime, 2225 Units 209, Done Nov 15, 2000, Entered into Force Sept. 29, 2003 (Organized Crime Convention), At art 32(1), art 5, criminalization of participation in an organized criminal group; art 6, criminalization of the laundering of proceeds of crime; art 8, criminalization of corruption; art 23, criminalization of obstruction of justice.

3(1)(b) serious crimes⁹⁸² as defined in art 2 of the Organized Crime Convention. Subsequently, 'art 5 of the Protocol shall be regarded as offences established in accordance with the Convention' — Protection.⁹⁸³ Any State, which in this research is Bangladesh, is a party to the UN Transnational Convention against Organized Crime and not the Palermo Protocol; therefore, the country is mandated to establish that trafficking is, under its law, a 'serious crime' as set out in the Convention for these provisions to apply to trafficking offences.⁹⁸⁴ A prominent element of the serious crime definition entails confiscating proceeds or property of the value corresponding to such proceeds.⁹⁸⁵

The Palermo Protocol sets out what can conceivably be referred to as the treaty's object in its Preamble. The Preamble⁹⁸⁶ refers to 'effective action to prevent and combat trafficking in persons, especially women and children'. The preamble delineates a -

'Comprehensive international approach in the countries of origin, transit, and destination' and specifies the 3Ps further covered in the purpose of the Protocol, '*prevent* such trafficking, to *punish* the traffickers and to *protect* the victims of

⁹⁸² 'Serious crime' refers to conduct constituting a criminal offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. Organized Crime Convention, art 2(b). This definition is based on the results of a study of legislation in UN member states contained in U.N. Doc. A/AC.254/ 22 and Corr.1 & Add.1.

⁹⁸³ *ibid.*

⁹⁸⁴ UN Transnational Organized Crime Convention, art 2(9)(b), Legislative Guide to the Organized Crime Convention and its Protocols, Part 1, para 302.

⁹⁸⁵ UN Transnational Organized Crime Convention, art 2(b), serious crimes; links to the CRC Optional Protocol on the Sale of Children, art 7 that require States Parties to confiscate the assets and proceeds of relevant crimes.

⁹⁸⁶ VCLT, art 31(2) (referring generally to the treaty's 'text' as 'including its preamble and annexes'); Preamble, *The American Heritage Dictionary of the English Language* 1424 (3d ed. 1992) (defining a preamble as '[a] preliminary statement, especially the introduction to a formal document that serves to explain its purpose');

such trafficking, including by protecting their internationally recognized human rights'.⁹⁸⁷

Though the references to the origin, transit, and destination states are not straightforward within the treaty as a 'shall' obligation, arguably, the European Court of Human rights has seen the need to oblige states. In *Rantsev v Cyprus and Russia*,⁹⁸⁸ used in the context of due diligence requirements of States, the European Court of Human Rights has set out specific obligations for origin, transit, and destination states.⁹⁸⁹ Cited in *Siliadin's* judgment, the Court affirmed that,

'Article 4 entailed a specific positive obligation on Member States to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour... In order to comply with this obligation, member States are required to put in place a legislative and administrative framework to prohibit and punish trafficking'.⁹⁹⁰

States under review/analysis. Myanmar has initiated legislation and administrative frameworks that comply with the *Siliadin's* judgment.⁹⁹¹ Although, as noted earlier in the text, Bangladesh is not a member State of the Palermo Protocol, the country still has a similar obligation under the UN Convention against Transnational Organized

⁹⁸⁷ Preamble, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.

⁹⁸⁸ *Rantsev v Cyprus and Russia*, (Application no 25965/04); as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002)..

⁹⁸⁹ *Rantsev v Cyprus and Russia*, App no 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010, para 289, pg. 71; 'When a person is trafficked from one State to another, trafficking offences may occur in the State of origin, any State of transit and the State of destination. Relevant evidence and witnesses may be in all States. Although the Palermo Protocol is silent on the question of jurisdiction, the Anti-Trafficking Convention explicitly requires each member State to establish jurisdiction over any trafficking offence committed in its territory' para 289; as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

⁹⁹⁰ *Siliadin v France*, no 73316/01, ECtHR 2005-VII.

⁹⁹¹ *Siliadin v France*, no 73316/01, ECtHR 2005-VII.

Crime, art 11 – Prosecution, adjudication, and sanctions.⁹⁹² Each State has diverse legislation narrower than the international definition, but discrepancies exist amongst the research states to examine the object and purpose.

Within the full scope of the States' obligations, the question of whether Bangladesh and Myanmar have breached an obligation, or determining whether a material breach has occurred is pursuant to art 60, Vienna Convention, when,

- a. 'the violation of a treaty's *object* or *purpose*, or
- b. the violation of any clause essential to the accomplishment of the *object* or *purpose*, even if that particular clause is not itself part of the object or purpose'.⁹⁹³

As the phrase '*object and purpose*' is restated in multiple treaties, the Convention on the Law of Treaties, art 18, sets out the following rule,

'A State is obliged to refrain from acts which would defeat the *object and purpose* of a treaty when... it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval until it shall have made its intention clear not to become a party to the treaty...'⁹⁹⁴

To guide the interpretation and examination, the provisions of the Vienna Convention,⁹⁹⁵ art 31, General Rule of Treaty Interpretation state,

⁹⁹² UN Transnational Organized Crime Convention, art 11(1). Each State party shall make the commission of an offence established in accordance with articles 5, 6, 8, and 23 of this Convention liable to sanctions that consider the gravity of that offense.

⁹⁹³ Article 60, Vienna Convention on the Law of Treaties.

⁹⁹⁴ *Golder v the United Kingdom*, 21 February 1975, § 29, Series A No 18; Vienna Convention on the Law of Treaties, art 18, May 23, 1969, 1155 U.N.T.S. 331.

⁹⁹⁵ The 1969 Vienna Convention 'codified the law of treaties'. Drafted by the International Law Commission in the late 1960s and entered into force January 27, 1980. Over one hundred states have joined the Convention and are thereby bound by it. Even states that have not joined are bound insofar as many of the Convention's articles reflect customary international law; I Brownlie, *Principles of Public International Law* (6th edn 2003) 579, 80; where the author lists instances the ICJ has treated the Vienna Convention as adopting customary international law.

‘A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the *terms* of the treaty in their *context* and in light of its object and purpose’.⁹⁹⁶

Article 31 emphasizes three components of the treaty. First, the ordinary *meaning* granted by the ‘text’ – the *terms*, and the *context* of those terms – the treaty’s object and purpose⁹⁹⁷ are used to determine the meaning as it applies to the States under review.⁹⁹⁸ Looking to the ICJ’s decision in *Sovereignty over Pulau Ligitan and Pulau Sipadan*⁹⁹⁹ refers to the preamble of the relevant treaty only in its discussion of object and purpose, not in its discussion of text and context. Second, of the four interpretation methods, a grammatical, systematic, historical, teleological, and logical (functional) approach most proffered is the letter and spirit of the law (logical/functional). Systematic involves establishing the international legal standard meaning of a treaty as it relates to the whole text.¹⁰⁰⁰

⁹⁹⁶ *Golder v the United Kingdom*, 21 February 1975, § 29, Series A no 18; Vienna Convention, art 31.

⁹⁹⁷ Ian Brownlie, *Principles of Public International Law* (6th edn, 2003) 579, 80.

⁹⁹⁸ Vienna Convention, art 31(1); There is an important caveat to the Vienna Convention’s command that practitioners take context into account when interpreting a treaty: subsequent actions such as supplemental agreements and subsequent state practice count for more than prior drafting history; article 32 – allows practitioners to rely on drafting history only when ‘interpretation according to art 31... leaves the meaning ambiguous or obscure; or leads to a result which is manifestly absurd or unreasonable’.

⁹⁹⁹ *Sovereignty over Pulau Ligitan and Pulau Sipadan, Indonesia v Malaysia*, Judgment, Merits, [2002] ICJ Rep 625, ICGJ 54 (ICJ 2002), 17th December 2002, International Court of Justice [ICJ]; Whether Indonesia or Malaysia obtained title to the disputed territories either by succession or by activities revealing an intention to exercise state functions in respect of the two islands.

¹⁰⁰⁰ Oxford Public International Law, Part II Interpretation Applying the Vienna Convention on the Law of Treaties, The General Rule: (1) The Treaty, its Terms, and their Ordinary Meaning (2018)

<https://www.researchgate.net/publication/231814719_Interpretation_of_Treaties> accessed 22 January 2018.

In case law, a decision of the WTO's Appellate Body in the *U.S. Shrimp-Turtle*¹⁰⁰¹ dispute of the 1990s is a prominent decision of an international tribunal giving great weight to a treaty's preamble while employing object-and-purpose analysis. Notably, the opinion utilizes the preamble to justify an expansive reading of a subsequent treaty term, conferring a positive legal power on the preamble. It is also interesting because of the broad reach of the decision, which was determined to apply to the WTO Agreement and the specific sub-treaty at issue and all other agreements falling under the WTO's umbrella.

Regionally, the ASEAN 2015 Convention against Trafficking in Persons, Especially Women and Children, has a monist approach to the International obligations under the Palermo Trafficking Protocol. The obligations would include the object and purpose of the treaty, including arts 1-3. VCLT 60(1) and the actions and omissions identified in Table 2 establish a comparison to the counterarguments in Table 3 for Bangladesh and Myanmar. The countries are subject to a breach that may have occurred to the provisions of art 3, characterizing an act of a State as internationally wrong. In contrast, the local laws allowed the behaviors that resulted in child harm, exploitation, and trafficking – citing *Anchugov and Gladkov v Russia and Applying the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*.¹⁰⁰²

¹⁰⁰¹ Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, ¶12, WTO Doc. WT/DS58/AB/R (adopted Oct. 12, 1998).

¹⁰⁰² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, International court of Justice, Judgment of 3 February 2015, para 128.

Enforcing the legislation and administrative frameworks for the two jurisdictions continues to be a challenge. Based upon the research claim evidence in Table 2, a determination can be made that the obligation of having legislation with the object and purpose captured has been met.

b) Article 2, Palermo Trafficking Protocol - THE PREVENTION, PROTECTION, PROMOTION – 3Ps

Art 2 captures the treaty's purpose and the infamous 3Ps (prevention, protection, and promotion or, in some literature, prosecution). Art 2(a) states that the prevention and combating of trafficking requires specific attention to combat and prevent trafficking in women and children. Thus, the article sustains the fundamental principle for any human being, indiscriminate to age and gender.

The drafters concluded that anyone could become a victim. Therefore, emphasis on gender was made at General Assembly resolution 54/126, para 3, and formulated to appear in art 2(a) text. Whereas art 2(b) promotes the protection and support of victims of trafficking, and 2(c) promotes. Article 2 excludes any mandatory language but stands firm under the VCLT arts 16 and art 80 (object and purpose).¹⁰⁰³

States under review/analysis, Myanmar. As a state party to ASEAN Charter, ASEAN's 2015 Convention against Trafficking in Persons, especially women and children, serves as a binding agreement that has promulgated specific articles to meet the Charter member's requirements for transit, source, and destination states for seizure, law enforcement collaboration, and criminalizing statutes.¹⁰⁰⁴ The regional multilateral treaty sets out Chapter II for criminalizing the conduct through arts 5

¹⁰⁰³ Article 60, Vienna Convention, where a material breach occurs when, 1) 'the violation of a treaty's object or purpose, or 2) the violation of any clause essential to the accomplishment of the object or purpose, even if that particular clause is not itself part of the object or purpose'.

¹⁰⁰⁴ *Velásquez Rodríguez Case, Inter-Am Ct HR (Ser. C) No 4 (1988)*; The positive obligation extended to the various States potentially involved in human trafficking—States of destination, States of transit, and States of origin; The minimum standards are further detailed for the elimination of trafficking under Section 108, 'the government of a country of origin, transit, or destination', TVPA, Section 108.

through 10, which also encompasses provisions on jurisdiction.¹⁰⁰⁵ A couple of years earlier, in September 2005, Myanmar established its own Anti-Trafficking in Persons Law in accompaniment to ten other legislations.¹⁰⁰⁶ Similarly, policies by neighboring countries, such as Thailand's legislation, are directed toward the criminalization and prohibition of trafficking is captured in the Anti-Trafficking in Persons Act B.E. 2551 (2008), amended in 2015, where the general provision is captured Sections 6-14.¹⁰⁰⁷ The Thailand Constitution sets out human dignity, rights, liberties, and equality of the people's protection in Section 4.¹⁰⁰⁸

Bangladesh Constitution s1972, arts 11, 31, and 32 also meet these provisions despite not being a member State to the Palermo Trafficking Protocol.¹⁰⁰⁹ In addition,

¹⁰⁰⁵ Constitution of the Federation of Malaya on Merdeka Day (31 August 1957); Constitution of Malaysia on Malaysia Day (16 September 1963); last amendment Federal Constitution (Amendment) Act 1995, art 6, forced labour; The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) (ATIPSOM Act) is the specific legislation that addresses human trafficking. It was enacted in July 2007 and came into force in February 2008; Other relevant Malaysia Legislation: Anti-Money Laundering Act 2001 [Act 613], sPart1, Anti-Trafficking in Persons (Amendment) Act (2010), Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Part III, s12-26, Part V, s41A-57, ASEAN Charter, Child Act 2001 [Act 611] Child Act 2001 [Act 611] to fulfil its obligation under the Convention on the Rights of the Child (CRC) Child Care Centres Act 1984, Children and Young Persons (Employment Act) 1966, Domestic Violence Act 1994 Education Act 1996, Education Amendment Act 2002, Immigration Act 1959/63/ [Act 155], s8, part 2 Islamic Family Law (Federal Territory) Act 1984 (IFLA) [Act 303], Penal Code [Act 574].

¹⁰⁰⁶ The Anti Trafficking in Persons Law is **Myanmar's** domestic law addressing trafficking in persons (13 September 2005).

¹⁰⁰⁷ The Thailand Anti-trafficking in Persons Act B.E. 2551 (2008), 6 April 2017, s4; as amended (2015); Penal Code criminalized sex and labor trafficking and prescribed penalties of up to 12 years imprisonment and a maximum fine of 1.2 million baht (\$36,810) for offenses involving an adult victim, and up to 20 years imprisonment and 2 million baht (\$61,350) for those involving a child victim; Other Thailand Legislation: Anti-Trafficking in Persons Law, B.E. 2551 (2008), s6-14, Anti-Money Laundering Act, B.E. 2542 (1999), Penal Code, B.E. 2499 (1956), s319-321.

¹⁰⁰⁸ Constitution of the Kingdom of Thailand [Thailand], 6 April 2017, Section 4.

¹⁰⁰⁹ **Bangladesh** Labor Code, 2006, Children Act, 1974, Constitution of the People's Republic of Bangladesh [Bangladesh], 4 November 1972, Child Marriage Restraint Act, 1929, Dowry Prohibition Act, 1980, Emigration Ordinance, 1982, Extradition Act, 1974, Forced labor (Section 374), Kidnapping and abduction

Bangladesh State legislation of the Suppression of Immoral Traffic Act, 1933, Section 4 sustains the obligations set out in the UNTOC and those mirrored in the Palermo Trafficking Protocol.

(Sections 360-369) Law on Human Organ Transplant, 1999, Mock or invalid marriage (Sections 493, 496), Passport Order, 1973, Passport (Offense) Act, 1952, Penal Code, 1860, Procurement of female minors (Sections 366A, 366B), Rape (Section 375-376), Sale or purchase of minors for immoral purpose (Sections 372, 373), Slavery (Sections 370, 371), Women and Children Repression Prevention Act, 2000 (amended 2003), Section 5 (punishment for trafficking in women), Section 6 (punishment of trafficking in children, up to and including age 16), Section 7 (punishment for abduction of women and children), Other relevant sections include 9 (rape), 10 (sexual harassment), 18 (investigation of offense), and 20 (trial procedure), Wrongful confinement and wrongful restraint (Sections 342-346).

c) Article 3, Palermo Trafficking Protocol – THE PROTECTION – 3Ps.

Article 3(a)'s definition opened the door for international law to be created to prevent trafficking and protect victims while simultaneously establishing the foundation for the creation of domestic laws. As a result, many individual states, inclusive of the states under review.

Article 3(a) defines 'trafficking in persons' as:

'The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organ'¹⁰¹⁰

Article 3(a) warrants a closer examination in the critical analysis using the persuasive effect of judgments from the European Court of Human Rights. The European Court of Human Rights holdings criticized the Palermo Trafficking Protocol by noting,

'The Palermo Protocol protections are most 'hortatory or inspirational' because of the soft language used, such as 'consider' or 'endeavour to' introduce protective measures for victims.'¹⁰¹¹

When states establish their definitions of trafficking more broadly in a dualistic manner, three key differences are evident: a) whether the victim's consent is relevant,

¹⁰¹⁰ Palermo Trafficking Protocol, art 3(a); Radhika Coomaraswamy, the former Special Rapporteur on Violence Against Women, noted in her February 2000 report to the UN ('UN') Human Rights Council: 'At present, there is no internationally agreed definition of trafficking. The term 'trafficking' is used by different actors to describe activities that range from voluntary, facilitated migration, to the exploitation of prostitution, to the movement of persons through the threat or use of force, coercion, violence, etc. for certain exploitative purposes'; B Hedwards, Review of Human Trafficking: A Reference Handbook (Contemporary World Issues) (2018) 4{3} Journal of Human Trafficking, 273-275 <OCLC Number: 863412918> accessed 23 June 2019.

¹⁰¹¹ *ibid.*

b) whether the victim was trafficking internationally or intranational, and c) whether the victim received compensation for the employment of sexual services.¹⁰¹² The state-by-state variations include the applications and terms of ‘smuggling’, ‘trafficking’, ‘slavery’, and ‘trafficking’ across the states. The court then proceeds to criticize jurisdictions and reemphasize there exists international legal definitions of slavery and forced labour that is directly relevant to interpreting their substantive content within the context of the Trafficking in Persons Protocol. The court notes that slavery, as outlined in the *Prosecutor v Kunarac, Kovac and Kuvovic*, Case Nos IT-96-23 and IT-96-23/1-A¹⁰¹³ set out where human trafficking is a form of modern-day slavery. The requirement of ‘slavery’ was interpreted not to include a ‘right of ownership’, but only the presence of ‘one or more of the powers attached to a right’.¹⁰¹⁴ The provision also is found in the Slavery Convention,

‘slavery is defined in international law as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” ... Forced labour is defined in international law as “all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily”’.¹⁰¹⁵

¹⁰¹² Michelle Madden Dempsey and others, ‘Defining sex trafficking in international and domestic law: Mind the gaps’ (2012) 26(1) Emory International Law Review 137, 62 <<https://ebsco.aademic.search.comlete>> accessed 4 February 2018.

¹⁰¹³ *Prosecutor v Kunarac, Kovac and Kuvovic*, Case Nos IT-96-23 and IT-96-23/1-A, judgement at 36, para 118 (International Criminal Tribunal for the former Yugoslavia, 12 June 2002).

¹⁰¹⁴ *Rantsev v Cyprus and Russia*, (Application no 25965/04), fn 45; as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

¹⁰¹⁵ Universal Declaration on Human Rights that states in art 4; Slavery Convention 1926; art 7(a) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to slavery; While these definitions date back to the early part of the twentieth century, their continuing validity has been affirmed through both treaty and case law. Recent developments around the two terms (for example, judicial consideration of the indicators of ownership associated with slavery and refinements of understanding

Article 3(b) provides that the consent elements of a victim of trafficking to the intended exploitation are irrelevant. Thus, any of the means set out in art 3(a) have been used.

Article 3 also includes the exclusion consent clauses for a child and the furtherment of the criteria exemptions of the definition of trafficking as it applies, (c) recruitment and transportation. Just as critical, 3(d) the 'Child' shall mean any person under eighteen years of age, reiterating the upper age limit affirmed by the UN Convention on the Child's Rights, art 1.

State under review/analysis – Myanmar. Myanmar¹⁰¹⁶ has structured its anti-trafficking laws before ratifying the Trafficking Protocol and made future legislative modifications after ratification. Regionally, members of the ASEAN Charter, Myanmar, and regional states comply with domestically implemented bilateral and multilateral treaties under the Palermo Trafficking Protocol, art 9(4) and the Convention, art 19.¹⁰¹⁷ The ASEAN Charter's 2015 Convention against Trafficking in Persons, especially Women and Children's provisions that address Myanmar's obligations for definitions as set out in Palermo Protocol, art 3.

As a transit and destination state, Myanmar has a source state status. The state has established the Anti Trafficking in Persons Law as Myanmar's domestic law addressing trafficking in persons (13 September 2005), Chapters V and VI. The

with regard to the concepts of 'involuntariness' and 'menace of any penalty' in the definition of forced labour) are relevant to interpreting their substantive content within the context of the Trafficking in Persons Protocol.

¹⁰¹⁶ Ratifications – Table 6: Malaysia, UNTOC 24 Sept 2004, Palermo Trafficking Protocol, 26 Feb 2009; Myanmar, UNTOC 30 March 2004; Palermo Trafficking Protocol, 30 March 2004; Thailand, UNTOC 17 October 2013; Palermo Trafficking Protocol, 17 October 2013.

¹⁰¹⁷ In some situations, such as with Bangladesh, non-member States establish their own separate and distinct anti-trafficking laws – Bangladesh's Suppression of Immoral Traffic Act, 1993 (Section 4).

effectiveness of these laws is not assessed at this juncture of the research. However, per the provisions of art 3, Palermo Trafficking Protocol, and the court's guidance under *Rantsev v Cyprus and Russia*,¹⁰¹⁸ each state has met the object, purpose, and definition obligation.

Specifically, art 3, State Responsibility Articles, indicates where characterization of an act of a State is an internationally wrongful act is established regardless of local law in Myanmar. The Human Rights Council report¹⁰¹⁹ details Myanmar's organs conducting actions and omissions from a series of other human rights and criminal actions detailed against Rohingya children. The report depicts the 'denial of education (para 41), sexual violence (paras 36, 37), refusal of health care, forced labour (paras 48, 49), trafficking (paras 50, 51), and forced displacement (paras 52, 53)'.¹⁰²⁰ The report notes children (para 60) and states,

'Cases of sexual and gender-based violence against women of ethnic minority communities perpetrated by Myanmar security forces that recounted reports on land and sea, children were subjected to sexual and gender-based violence against children, girls, and boys, as young as seven years of age'.¹⁰²¹

According to reports from the Human Rights Council, or any legal reports in English up to 2019, no recorded investigation or steps have been taken to hold the offenders

¹⁰¹⁸ *Rantsev v Cyprus and Russia*, (Application no 25965/04); as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

¹⁰¹⁹ Refer to Table 2, The Research Evidence Matrix, Evidence 1, 2, and 3.

¹⁰²⁰ Refer to Table 2, The Research Evidence Matrix, Evidence 1.

¹⁰²¹ *ibid.*

legally responsible, in breach of art 5, Palermo Trafficking Protocol UNDOC, art 2(b) serious crimes.¹⁰²²

Table 2, Evidence 19,¹⁰²³ from the Commission's review, indicates an investigation and the discovery of Rohingya mass-graves that formulate a country's breach in protecting against trafficking and the prosecution, per art 5's obligation to criminalize offences of the conduct as outlined in the article 3(a)(b)(c) of the Protocol.¹⁰²⁴ In addition, the Human Rights Watch, 2017 World Report, indicated the problems of trafficking are still very substantive in the region. The report notes that female refugees are consistently vulnerable to abuse and subjected to abuse at all ages.¹⁰²⁵

Female child refugees are particularly vulnerable to abuse, and there is evidence of large numbers of coerced and forced marriages of ethnic Rohingya women and girls from Burma.¹⁰²⁶ Specifically, forced labour has been ramped as the State has not made the necessary steps to provide work authorizations to trafficking victims administratively.¹⁰²⁷ From the notation of this report, there has been no further reporting and investigating of suspects involved in the deaths of over 100 suspected victims of trafficking whose bodies were discovered in massive graves in 2015 at the Thai-Malaysian border.¹⁰²⁸

¹⁰²² Refer to Table 2, The Research Evidence Matrix, Evidence 1, 2.

¹⁰²³ Refer to Table 2, The Research Evidence Matrix, Evidence 18.

¹⁰²⁴ Palermo Trafficking Protocol, art 5; Refer to Table 2, The Research Evidence Matrix, Evidence 19.

¹⁰²⁵ Human Rights Watch, 'World Report 2017' (Human Rights Watch 2017)

¹⁰²⁶ Refer to Table 2, The Research Evidence Matrix, Evidence 19

¹⁰²⁷ *ibid.*

¹⁰²⁸ *ibid.*

d) Article 5, Palermo Trafficking Protocol – THE PROTECTION – 3Ps.

Article 5 obliges States to:

*‘Shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally’.*¹⁰²⁹

Article 5’s broad wording has led to international disagreements as to what the legislation should contain. Though all member states, including this study’s research States have adopted broader trafficking definitions, following art 5, research suggests that there has been a reverse impact. For example, the thought appears to be that the broader the definition, the increased prosecution of traffickers. Instead, the applicability of the definitions has reduced the number of trafficking convictions.¹⁰³⁰ In addition, research suggests that the demand for sexual services has fuelled the increase of sex slaves.¹⁰³¹

The UNODC Issue paper published the existing legal understandings of servitude, ‘practices similar to slavery’ and ‘exploitation of prostitution’ is directly relevant to interpreting their substantive content within the Protocol’s context.¹⁰³² However, while none of these three concepts is subject to a clear international legal definition, there is a general understanding of law’s substantive scope and content.¹⁰³³ The term

¹⁰²⁹ Palermo Trafficking Protocol, art 5.

¹⁰³⁰ Melissa Farley, ‘Prostitution, trafficking, and cultural amnesia: What we must not know in order to keep the business of sexual exploitation running smoothly’ (2006) 18 Yale J.L. & Feminism 109, 128 <<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1243>> accessed 22 Dec 2017.

¹⁰³¹ Kathleen Barry, ‘The network defines its issues: Theory, evidence and analysis of female sexual slavery’ In International feminism: Networking against female sexual slavery (1984) 32, 41 < James Hathaway, ‘The human rights quagmire of ‘Human trafficking’” (2008) 49[1] Va. J. Int’l L. 1,59> accessed 22 December 2017.

¹⁰³² Palermo Trafficking Protocol.

¹⁰³³ Case of *Siliadin v France* (Application no 73316/01, Judgement, 26 July 2005).

‘practices similar to slavery’¹⁰³⁴ encompasses debt bondage, sale of children for exploitation, serfdom, and servile forms of marriage, which have all been defined in international law. The UNHCR reported that Bangladesh's Rohingya refugees and poor Bangladeshi families are also vulnerable to human trafficking’.¹⁰³⁵ ‘Many victims of trafficking end up in forced or bonded labour, domestic servitude, or are trafficked for sex’.¹⁰³⁶

While servitude encompasses the elements of the practices, it also includes the legal elements of the ‘egregious exploitation of one person over another in the nature of slavery’. Still, it fails to reach the very high threshold of slavery.¹⁰³⁷ It is important to note that the Protocol does not equate prostitution with trafficking. For prostitution involving adults to fall within the definition of trafficking, all three definitional elements (act, means, and purpose) must be present, except for children.¹⁰³⁸ The relevant ‘purpose’ is ‘exploitation of prostitution’,¹⁰³⁹ where the court, in *L.E. v Greece*, specified exploitation as inclusive of prostitution. The time delays by the jurisdiction were deemed unreasonable.¹⁰⁴⁰ This Issue Paper explains the term’s interpretation as

¹⁰³⁴ Case of *Choudhury and others v Greece*, Application no 21884/15, 30 March 2017, Section III, Relevant International Law, sub paras A, B, C, and D.

¹⁰³⁵ UNHCR, ‘Taking on traffickers at the world’s largest refugee site’ (UNHCR, 2 December 2019) <<https://www.unhcr.org/uk/news/stories/2019/12/5ddbafa04/taking-traffickers-worlds-largest-refugee-site.html>> accessed 30 December 2019.

¹⁰³⁶ *ibid.*

¹⁰³⁷ *ibid.*

¹⁰³⁸ *L.E. v Greece*, Application no 71545/12, 20 October 2012; Palermo Trafficking Protocol, art 3.

¹⁰³⁹ *ibid.*

¹⁰⁴⁰ *ibid.*

‘referring not to prostitution per se but rather, to deriving some benefit from the prostitution of another person’.¹⁰⁴¹

The meaning of terms not subject to international legal definition or understanding in practice can be inferred from the Palermo Trafficking Protocol’s foundational drafting history, context, and the respective supplementary sources. Instances can be seen in the example of ‘forced services’,¹⁰⁴² which is not defined in international law. The definition can be inferred to extend the coverage of ‘forced labour’,¹⁰⁴³ including universal conditions and practices regarded as ‘work’, but ‘exact[ed] from a person under the menace of any penalty, and for which the said person has not offered him or herself voluntarily’.¹⁰⁴⁴ While the meaning of ‘sexual exploitation’¹⁰⁴⁵ is not fixed, a contextual analysis reveals specific parameters. When used in the context of the Protocol, this term could not be applied to prostitution generally as it could be interpreted that the targeted States of this study made clear that was not their intention.

The ordinary meaning of ‘removal of organs’ should be reliant upon its normative interpretation. However, the Palermo Trafficking Protocol is unclear on certain points. First, it explains organ removal exploitation, which is depicted as unlike slavery, servitude, and prostitution, but still considers the practice as inherently

¹⁰⁴¹ Issue Paper, UNODC <https://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf> accessed 21 December 2018.

¹⁰⁴² *ibid.*

¹⁰⁴³ *ibid* para020 A.

¹⁰⁴⁴ *ibid* para a, ILO, Convention, CO 29; Thomann (n 406).

¹⁰⁴⁵ *L.E. v Greece*, Application no 71545/12.

exploitative.¹⁰⁴⁶ Second, the Protocol expounds upon organ removal of a child for legitimate reasons, but it is constrained to these purposes.¹⁰⁴⁷ The following depicts a contrast, and different views of this point are discussed later under the CRC and its Optional Protocol to the Convention on the sale of children.

States under review/analysis – Myanmar. The State is obliged by art 5, Palermo Trafficking Protocol, to ‘adopt legislation and other measures to establish the definitions in art 3 as criminal offences’.¹⁰⁴⁸ Human trafficking does not require crossing borders. As a result, intranational trafficking is a convictable crime. Therefore, how legislation is phrased is essential to convictions. Article 5 also requires attempting to commit the offence to be criminalized, but only ‘subject to the basic concepts’ of the legal system of each State party as defined in art 3(a)(b)(c), the action, the means, and the purpose of exploitation. In addition, attention is pinpointed to art 3(d) specifies that a “Child” shall mean any person under eighteen years of age, and the obligation places an extra duty upon the member state.

¹⁰⁴⁶ UNODC, ‘Trafficking in persons for the purpose of organ removal’ (UNODC 2015) 49, 64, 95 <https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf> accessed 18 February 2018; ‘Human organs for transplants have two sources, deceased donors and living donors. Ultimately, human organs can only be derived from a human body, and thus any action in the field of organ transplantation must be carried out in accordance with the highest ethical and professional standards’ (page 7).

¹⁰⁴⁷ South African Court, UNODC’s Human Trafficking Case Law Database [*State v Netcare Kwa-Zulu Limited*]; Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin declares, article 21; Guiding Principle 5 provided in the WHO Guiding Principles, (as endorsed by the 63rd World Health Assembly in 2010, by resolution WHA63.22); Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs, Joint Council of Europe/UN Study, 2009.

¹⁰⁴⁸ Palermo Trafficking Protocol, art 5.

Research evidence from reports indicates Myanmar has breached its obligations. Evidence of a breach includes the 29 June 2016 Human Rights Council Reports,¹⁰⁴⁹ the 12 March 2018 UN OHCHR Statements by Yanghee Lee, Special Rapporteur,¹⁰⁵⁰ and the 27 September 2017 UN Migration Reports,¹⁰⁵¹ all of which indicate failure to adhere to the provisions of art 5 (establishing the conduct of trafficking in persons as criminal offenses).

According to the case record, the research states did not assess the means outlined in art 3(a). Regardless, for a child, whether there was consent is not an element of the crime. Child trafficking is the recruitment, transportation, transfer, and harbouring of a minor for the purpose of exploitation, even if none of the means outlined in art 3(a) are used.¹⁰⁵² The provisions of art 3(d) are structured to protect children from severe gross human rights violations, the abuse of power, and position over force displaced children. These claims were included in Myanmar's filing with the ICJ under the *Application Instituting Proceedings and Request for Provisional Measures, Republic of the Gambia v Republic of the Union of Myanmar*.¹⁰⁵³ These actions would render Myanmar in violation of art 5, which requires State Parties to set the offences outlined in art 3 as criminal offences. Myanmar failed to fulfil this requirement of criminalization as there is no record that any investigation of the incidents ever took place. Instead, public

¹⁰⁴⁹ Refer to Table 2, The Research Evidence Matrix, Evidence, 1.

¹⁰⁵⁰ Refer to Table 2, The Research Evidence Matrix, Evidence, 7.

¹⁰⁵¹ Refer to Table 2, The Research Evidence Matrix, Evidence, 2.

¹⁰⁵² Article 3(c) of the Palermo Trafficking Protocol.

¹⁰⁵³ The 1998 Rome statute of the International Criminal Court ('the Rome Statute'), which came into force on 1 July 2002, has jurisdiction on the crime of genocide, the crimes against humanity, war crimes, and the crime of aggression.

records indicate that Myanmar denies any wrongdoing – refer to Table 3, Rebuttal Evidence. Under the provisions of Myanmar’s 2008 Constitution, the military is an autonomous entity.¹⁰⁵⁴

Specifically, Myanmar’s Constitution, Chapter XIV: Transitory Provisions, art 445 upholds the military in a national political leadership role in the State.¹⁰⁵⁵ The Constitution does not grant ‘any branch of the civilian government, either legislative, executive, or judicial branches, any oversight over the military or any of the military-controlled territories.’¹⁰⁵⁶ For the dates of these incidents, public records reflect that not one person was arrested under national law for the crimes committed against children subjected to violence, trafficking, and exploitation.¹⁰⁵⁷ However, there are two points. First, in *Gutierrez and Family v Argentina*, the Inter-American Court of Human Rights referred to article 2 ‘to establish that a violation of the rights embodied in the Convention has occurred.’ An essential outcome of the ruling was that determining wrongfulness under domestic criminal law is not a necessity.

Moreover, the court ruled that it was not necessary to determine the guilt of the authors or their intentions. Also, it was unnecessary to identify the attribution of the

¹⁰⁵⁴ *Constitution of the Socialist Republic of the Union of Burma*, 3 January 1974, art 445.

¹⁰⁵⁵ Myanmar Constitution, 2008; art 338, which states, ‘All the armed forces in the Union shall be under the command of the Defense Services,’ and art 339, which says, ‘The Defense Services shall lead in safeguarding the Union against all internal and external dangers.’ The latter can be interpreted as giving the institution sole, undiluted power in this sphere; Under, Chapter XI: Provisions on State of Emergency, art 412(a), the president may declare a state of emergency in any situation that could lead to the disintegration of the country or a loss of sovereign power, or, if there is an attempt to take power through force, including an insurgency.

¹⁰⁵⁶ *Constitution of the Socialist Republic of the Union of Burma*, 3 January 1974, art 445.

¹⁰⁵⁷ Penal Code s366A-372, s374; Wards and Village Tracts Administration Act, 2011.

agent individually.¹⁰⁵⁸ As in this case, publicly, Myanmar has denied the wrongdoing of its military, and the State has not brought forth charges against the military officers, who were organs of the state. Therefore, according to art 2, State Responsibility, the State has an obligation that it has failed to comply with, and the unlawful act is attributed to it.¹⁰⁵⁹

Law enforcement cannot differentiate between which prostitutes are trafficked victims.¹⁰⁶⁰ Using the definition variants from article 3, nations with additional obligations, such as destination countries, have adhered to the international legislation with acceptable national laws gauged to protect victims of trafficking who have been brought into their country. Article 5 requires these nations to uphold and enforce the Protocol's trafficking definition. Paras 2(a), (b), (c) each specifies the elements of the criminal offense.

Since some states employ a dualistic implementation of the international laws of trafficking in persons, Section 6(2), s10 para 1 and 52 of the Anti-Trafficking in Persons Act, B.E. 2551 (2008), the country addresses enterprises of three (3) or more persons from an organized criminal group. It enhances the penalty to be equal to the penalty prescribed by law. UN Convention against Transnational Crime, art 2(a), use of terms, 'organized criminal group' shall mean a structured 'group of three or more persons'

¹⁰⁵⁸ *ibid.*

¹⁰⁵⁹ Inter-American Court of Human Rights, Judgment, 25 November 2013, para 78, note 163

¹⁰⁶⁰ Katalin Kelemen and Märta Johannsson, 'Still neglecting the demand that fuels human trafficking: A study comparing the criminal laws and practice of five European States on human trafficking, purchasing sex from trafficked adults and from minors' (2013) 21(3/4) *European Journal of Crime, Criminal Law and Criminal Justice* 247, 289 <<https://doi.10.1163/15718174-21042030>> accessed 4 February 2018.

varies in general phrasing. Yet, the wording carries a similar meaning in its dualistic format from international law. However, there are several areas where the dualist adaptation is impacted. The variation and critical difference come in art 5(1)(a)(i), UN Convention against Organized Crime, where it states, 'agreeing with one or more other persons to commit a *serious crime*' is more specific and can broaden law enforcement. Myanmar law is silent in this regard.

Nevertheless, unlike the other States has special provisions for children written directly into their trafficking legislation. The law provides special protection for a child over fifteen years of age.¹⁰⁶¹ Compliance with the provisions of the Palermo Trafficking Protocol varies greatly among Protocol signatory countries. In comparison, some countries define trafficking in a broader sense than the Palermo Trafficking Protocol. However, other signatories copied the art 3 definition verbatim, and some examples are outlined in this study. Yet, as illustrated in this study (refer to Table 4), a keen majority have adopted a narrower definition that has inhibited the volume of traffickers convicted of the crime.¹⁰⁶² Specifically, a comparison is made to art 5, Palermo Trafficking Protocol, comparatively to where it aligns with art 3(b) and (c) for consent, the means, and act.

¹⁰⁶¹ This law contradicts the UNCRC, where a child is protected to the upper age of 18.

¹⁰⁶²Michelle M Dempsey and others, 'Defining Sex Trafficking' (2014) 26(1) Emory international law review 137, 142 < <http://law.emory.edu/eilr/content/volume-26/issue-1/articles/define-sex-trafficking-in-international-and-domestic-law.html> > accessed 29 December 2019.

Research evidence presented from the Human Rights Council,¹⁰⁶³ UN' Migration Report,¹⁰⁶⁴ UNHCR Mission Report,¹⁰⁶⁵ Amnesty International,¹⁰⁶⁶ UN High Commissioner for Refugees-Myanmar Crisis,¹⁰⁶⁷ UN Secretary-General,¹⁰⁶⁸ and the UN Fact-Finding Mission,¹⁰⁶⁹ each speaks to massive situations of trafficking where Rohingya have been sold and resold several years for over a decade on both land and sea. Credible reports documented Rohingya girls subjected to forced sexual relationships, beatings, and scenarios where starvation was administered as punishment for failure to comply. Reports also include selling Rohingya girls in neighboring states subjected to similar prohibited behavior.¹⁰⁷⁰

There are reports of young children, the youngest at approximately seven years of age, toiling on ships out to sea. The children endure forced labour, beatings, sexual assaults, and multiple forms of brutality.¹⁰⁷¹ The inhumane harsh treatment of Rohingya children drinking urine in the absence of potable water presents a setting for the treatment bestowed upon this group.¹⁰⁷² The European Court of Human Rights appears to take the criticism further by noting that in some jurisdictions, 'there is a

¹⁰⁶³ Table 2, Research Evidence Matrix, Evidence #1.

¹⁰⁶⁴ Table 2, Research Evidence Matrix, Evidence #2.

¹⁰⁶⁵ Table 2, Research Evidence Matrix, Evidence #3.

¹⁰⁶⁶ Table 2, Research Evidence Matrix, Evidence #4.

¹⁰⁶⁷ Table 2, Research Evidence Matrix, Evidence #5.

¹⁰⁶⁸ Table 2, Research Evidence Matrix, Evidence #7.

¹⁰⁶⁹ Table 2, Research Evidence Matrix, Evidence #13,

¹⁰⁷⁰ Table 2, Research Evidence Matrix, Evidence #3.

¹⁰⁷¹ Table 2, Research Evidence Matrix, Evidence #1, 4, and 15.

¹⁰⁷² Table 2, Research Evidence Matrix, Evidence #20.

vacuum in jurisprudence that could clarify the scope of the positive obligations of the States contained in anti-trafficking international instruments' ... further stating,

'the jurisprudence of the Court under art 2, 3, and 4 had already established a positive obligation for States to protect an individual in cases when they knew or should have known that the person already was or was at risk of becoming a victim of human trafficking... the individual should not be left unprotected, or, worse yet, be returned to a person or place where he could be trafficked into exploitation.'¹⁰⁷³

The point cited is that the state 'should have known' the transition from Myanmar to Bangladesh, amid escalating violence, would prompt traffickers to take advantage of dire situations.¹⁰⁷⁴ Examples of criminal acts are the 152 remains were found on Wang Burma Hill as reported by a 2017 Internal Report by the Commission and Fortify Rights.¹⁰⁷⁵ Though Bangladesh is not a member-State, it is a member of the Organized Crime Convention and is obliged to publish anti-trafficking legislation – Bangladesh: Constitution of Bangladesh, 1972, arts 11, 31, 32, and 102; Suppression of Immoral Traffic Act, 1933 (Section 4). Each of the states under review has established legislation, and the query is whether there was an effective implementation under the due diligence standards of *Finucane v The United Kingdom*, (29178/96) [2003] ECHR 328 (1 July 2003) UK, paras. 68-71.

¹⁰⁷³ *Case of Rantsev v Cyprus and Russia*, (Application no 25965/04) as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

¹⁰⁷⁴ Table 2, Research Evidence Matrix, Evidence #4, 7, 10.

¹⁰⁷⁵ Table 2, Research Evidence Matrix, Evidence #11.

e. Articles 6-8, Palermo Trafficking Protocol – THE PROTECTION – 3Ps.

Assistance and protection for victims of trafficking is dealt with in art 6,

‘2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on the relevant court and administrative proceedings.

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons ...’¹⁰⁷⁶

Other protection measures for victims are captured in art 7. It advocates the permission of the victim’s territorial stay and addresses the fear of deportation often instilled by traffickers, while art 8 addresses the matter. However, more comprehensive protection obligations are outlined in UNTOC’s art 24, Protection of Witnesses. *Rantsev v Cyprus and Russia*, the case before the European Court of Human Rights, has led to international pressure on fulfilling obligations for state parties to assist victims. However, services such as translators for victims during court proceedings, third-party counseling, and residence (temporary or permanent) remain aloof in the Southeast Asia (Myanmar) and South Asia (Bangladesh) region.

State under review/analysis, Myanmar. There have been minimal efforts made for the repatriation of undocumented migrants from other ASEAN regions. With the high influx of migrants, the magnitude of assessing the scope of the sale of children, child

¹⁰⁷⁶ Palermo Trafficking Protocol, art 6.

sexual abuse, and exploitation is an insurmountable challenge.¹⁰⁷⁷ The cases of Myanmar revealed the consistent emergence of a failure to abide by the obligatory repatriation of victims' duties in arts 8 and 9.¹⁰⁷⁸ Myanmar appeared to negate the obligation to render the actions as serious crimes under the UNTOC, article 3(1)(b) and align the prosecution process accordingly.¹⁰⁷⁹ Art 3 is the use of terms¹⁰⁸⁰ delineated for the Protocol, inclusive of art 3(a).

The internationally recognized definition of trafficking in persons is commonly referenced in an abundance of literature¹⁰⁸¹ as human trafficking or people trafficking; article 3(b) the element of consent; 3(c) and 3(d) expounds upon the concepts of recruitment and the parameters of the law concerning children.¹⁰⁸² Table 2's Research Case Evidence Matrix shows that Myanmar's measures, arts 6-8, appear to be disjointed, lack cohesiveness and effectiveness. Myanmar is obliged to fulfilling the following mandatory requirements, but research case evidence suggests that the State did not meet the 'shall obligations' mandatory requirements:

¹⁰⁷⁷ *ibid.*

¹⁰⁷⁸ Refer to Table 2, The Research Evidence Matrix, Evidence 1, 2.

¹⁰⁷⁹ UN Transnational Organized Crime Convention, 3(1)(b).

¹⁰⁸⁰ Article 3(a) 'Trafficking in persons' ... (b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; (c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article; (d) 'Child' shall mean any person under eighteen years of age'.

¹⁰⁸¹ Portland State University. Criminology and Criminal Justice Senior Capstone, 'Prevention of Human Trafficking: A Review of the Literature – Paper 9' (Portland State University 2011)

<http://pdxscholar.library.pdx.edu/ccj_capstone/9> accessed 22 August 2019.

¹⁰⁸² Palermo Trafficking Protocol, art (b)(c)(d).

Firstly, art, 6(1), Protect the privacy and identity of victims in appropriate cases and to the extent possible under domestic law. A review of Evidence #1 dated 29 June 2016, at the Myanmar border, speaks about the loss of life, sexual and gender-based violence against women and children, indicates that no measures were exercised to address or record any privacy issues of trafficking victims. This research conclusion was drawn as each public record, including the testimony at the ICJ and rebuttal at Table 3.

Secondly, no English records reflect that under art 5(2), Myanmar made any of the trafficking victims aware of information on relevant court proceedings. The massive exodus of 2017 rendered no public record of any awareness warnings or support available for any Rohingya. At the ICJ hearing, de facto leader Aung San Suu Kyi took the stand to indicate that a handful of soldiers raped, assaulted, and were involved in unlawful activities were being addressed under domestic laws.¹⁰⁸³

Consequently, the ICJ and other states, namely The Gambia, should honor Myanmar's sovereignty. However, there is no public record made at the ICJ hearing or any other human rights forum that Myanmar, nor any of the other recipient states, Bangladesh (under the Palermo Convention) ensured that: (a) potential or actual victims received information on relevant court proceedings in appropriate cases and have an opportunity to have their views presented and considered art 6, para 2; (b) Endeavored to provide for the physical safety of victims while they are in their

¹⁰⁸³ Table 3, Rebuttal/Counterargument Research Claim Evidence #2.

territory per art 6, para 5; (c) Ensured that measures exist to allow victims the opportunity to seek compensation for damages suffered, art 6, para 6; (d) Facilitated and accepted the return of victims who are nationals or have the right of permanent residence, with due regard for their safety, art 8, para 1; (e) Verified without unreasonable delay whether a trafficking victim is a national or has the right of permanent residence and issue the necessary travel documents for re-entry, as set out in art 8, paras. 3 and 4. After the mass exodus and the migration of Rohingya and similarly situated children into Bangladesh (under the Convention) or surrounding jurisdictions under the ASEAN treaty, revealed that after an exhaustive search of public records, failed to show each State party followed the mandated requirement that it:

‘shall’ consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons’, as outlined in art 6, para 3.¹⁰⁸⁴

¹⁰⁸⁴ Palermo Trafficking Protocol, arts 6, 7, and 8.

f. Articles 9-13, Palermo Trafficking Protocol – PREVENTION, PROMOTE – 3Ps.

The list of exploitative¹⁰⁸⁵ purposes set out in the Protocol is not exhaustive and may be expanded provided. The non-exhaustive character of the Protocol's definition is manifested in two ways: (i) through the term 'at a minimum'; and (ii) through the absence of definitions relating to concepts that are not otherwise defined in international law.¹⁰⁸⁶ Articles 9, 10, and 11 represent Section III's Prevention, cooperation, and other measures that carry a shall include an obligation for arts 9(1)(a)(b), 4, and 5.

Rantsev v Cyprus and Russia, under the auspices of a human rights court, addresses the positive obligation. The case recognizes the duty of preventing human trafficking and cites the Palermo Trafficking Protocol repetitively. The Palermo Protocol emphasizes prevention through art 9, focusing on alleviating socio-economic and other 'push' or

¹⁰⁸⁵ Despite the international law application of the term exploitation, it is critical to the concept of trafficking. It also found that there is general, high-level agreement among practitioners in different States as to the conduct and practices that should fall within the 'purpose' element of trafficking in persons. However, it is apparent that States have also taken the opportunity presented by the Protocol's flexible approach to exploitation to tailor their understanding of the crime of trafficking in persons to national contexts and priorities. As in Myanmar, there is no specific charge sheet that indicates that you have been trafficked. When victims report trafficking, research indicates that the specific acts, noted in the definition of 3(a), Palermo Trafficking Protocol, are not depicted on arrest charge sheets or victim claims reports. Instead, a victim must have the capacity to spell out the acts that are defined under the Protocol for trafficking. A major issue that continues to be a challenge is the level of literacy and communication constraints that inhibit the timely and accurate reporting of incidents of trafficking. Legal empowerment would play a critical role in these situations

¹⁰⁸⁶ Issue Paper, UNODC, <https://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf> accessed 30 December 2018; States are permitted to expand that list by either adding new concepts or by interpreting undefined concepts in a way that captures certain conduct relevant in each country or cultural context. They are similarly permitted to include only the stipulated forms of exploitation and attach to those a narrow interpretation. In terms of expansion there are some limits, which may potentially include a threshold of seriousness that operates to prevent the expansion of the concept of trafficking to less serious forms of exploitation such as labour law infractions. It should be noted, however, that the Protocol does not clearly establish any such threshold.

‘pull’¹⁰⁸⁷ (terms referred to for destination, transit, and source States) factors inherent with demand. For example, countries can restrict industries that attempt to circumvent the legal systems, such as domestic helpers, massage parlour industries, and questionable entertainment organizations.¹⁰⁸⁸ Article 9(2) for the prevention and combatting of trafficking in persons that will protect victims against trafficking carries a ‘shall endeavour’ obligation for measures with research and media campaigns, along with social and economic initiatives that combat and prevent the trafficking of persons.

Article 10 declares an information exchange and training requirement for State parties with a ‘shall obligation’ for arts 10(1)(2)(3) that address organized criminal groups, travel documents, training for law enforcement, and the exchange of these elements across and within state parties. Modern-day slavery presents a complex global problem that employs a holistic approach through international cooperation. Acknowledging the need, art 10 presses for the exchange of information.

Measures within the scope of art 11 are structured to improve border controls for the interception of traffickers and the trafficked. Article 11 focuses on deterrence and prevention strategies of border control that carry a ‘shall obligation’ for arts 11(1)(2)(3)(4). However, arts 11(5) and (6) carry a ‘shall consider’ obligation that

¹⁰⁸⁷ Robert T Guerette, ‘The Pull, Push, and Expansion of Situation Crime Prevention Evaluation: An Appraisal of Thirty-Seven Years of Research’ in Johannes Knutsson and Nick Tilley (eds), *Evaluating Crime Reduction Initiatives*, Crime Prevention Studies, vol 24 (pp. 29 – 58) (Monsey, NY: Criminal Justice Press 2009).

¹⁰⁸⁸ Sverre Molland, ‘The perfect business: Human trafficking and Lao-Thai cross-border migration’ 2010 41(5) *Development and Change* <<https://doi.10.1111/j.1467-7660.2010.01665.x>> accessed 18 February 2018.

diminishes the strength of border protections, which entails a vital component of trafficking in persons.

Article 12 addresses the critical need to secure passports, identification cards, and similar documentation to identify and intercept and adjoin awareness campaigns forged at border crossings and businesses. Comparatively, some countries, such as those in Denmark, have specially trained their inspectors of forged documents and aided foreign workers with workshops during the acquisition of travel/work documents.¹⁰⁸⁹ There are multiple issues regarding the compliance and enforcement of the Palermo Protocol. Still, States are encouraged to increase effectiveness by voicing concerns instead of signing the Protocol and creating disjointed domestic laws without evaluating their capacity. Articles 10-13 link to the UNTOC's arts 26-31 that provide further mandates for State parties actions on prevention and protection measures.

Gaps in prevention measures and informational campaigns result in victims failing to report their trafficking situations, even if they are in a safe environment.¹⁰⁹⁰ Lapses in information result in trust gaps and compound the victims' fear of traffickers. Dependence on their traffickers and fear of deportation from authorities continue to act as barriers to the reporting of traffickers.¹⁰⁹¹ Conjunctively, arts 12 and 13 work collectively with art 11's Border Control elements. The article addresses security and

¹⁰⁸⁹ *ibid.*

¹⁰⁹⁰ Kelemen and Johansson, 'Still Neglecting the Demand' (2013) 21(3/4) *European Journal of Crime, Criminal Law and Criminal Justice* 268.

¹⁰⁹¹ *ibid.*

control documents, their legitimacy, and how these documents can become tools for organized groups of traffickers.

State under review/analysis, Myanmar. However, disaffected, displaced, and impoverished people in Myanmar are particularly vulnerable. Research supports the opinion that human trafficking exploitation is heightened during social and political turmoil. The research states for this study, historically and present, are enthralled in what has been described in this research as Social Conflict Theory societal characteristics. Women and children, both girls and boys, become forced into child soldiers and concubine sexual slavery roles.¹⁰⁹²

There are further obligations under regional treaties, such as the 2015 ASEAN Convention against Trafficking in Persons, especially Women and Children, Chapter III, Prevention, arts 11-13, prevention of trafficking in persons, areas of cooperation, and cross-border cooperation, control, and validity of documents. Myanmar was mandated to conform to bi-lateral and multilateral treaty preventions. The ASEAN Convention Charter obliges measures requiring criminalizing, investigating, and prosecuting trafficking. Human trafficking does not require crossing borders. Evidence presented in Table 2, Research claims evidence matrix, presented countless instances of border-crossing exploitation and violence. States, under review, failed to fulfil each of the following absolute (refer to Figure 13) and 'shall endeavour' State obligations of intranational trafficking convictable crimes:

¹⁰⁹² L Shelley, *Human Trafficking: A Global Perspective* (Cambridge: Cambridge University Press 2010).

1) ‘States Parties shall establish comprehensive policies, programmes, and other measures: (a) To prevent and combat trafficking in persons; and (b) To protect victims of trafficking in persons, especially women and children, from revictimization’ was met by each of the States under review, Myanmar with Bangladesh having an obligation under the Convention, and ASEAN, under the bilateral and multilateral treaty.¹⁰⁹³ Table 3, Rebuttal/Counterargument Research Claim Evidence refers to targeted States have met claimed requirements of para 2 where,

‘States Parties *shall endeavour* to undertake measures such as research, information, and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons’.

However, in the purview of Figure 12, Endeavour Spectrum, the outcome of the endeavours would rank between ‘nothing’ and reasonable endeavour on the spectrum compared to the state evidence presented in Table 2, Research Claim evidence.

2) ASEAN bilateral and multilateral agreement, Chapter IV, Protection, (arts 14 and 15),¹⁰⁹⁴ Chapter V, Law enforcement (arts 16 and 17),¹⁰⁹⁵ chapter VI, International Cooperation (arts 18 and 19),¹⁰⁹⁶ each speaks to the ASEAN Charter’s domestic implementation of the international law. After an exhaustive search, there is no public record in any of the UN Reports, court

¹⁰⁹³ Palermo Trafficking Protocol, art 9.

¹⁰⁹⁴ Article 14, Protection of victims of trafficking in persons; Article 15, Repatriation and return of Victims.

¹⁰⁹⁵ Article 16 Law Enforcement and Prosecution; art 17, Confiscation and Seizure.

¹⁰⁹⁶ Article 18, Mutual Legal Assistance in Criminal Matters, art 9, Extradition.

hearings with the ICJ, or any other recorded public process where any of these actions outlined were put into place for Table 2, Research claim evidence from Myanmar: the Policies, programmes, and other measures established under this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations, and other elements of civil society. Instead, the horrific pictures in Figures 6 and 7 reflect continuous pain and suffering by the Rohingya children. The only bilateral or multilateral cooperation provided to the vulnerable trafficked victims, embossed in poverty, is UNICEF and other UN helping agencies. The provisions of arts 9 – 13 require State parties to adopt and strengthen educational and social measures. Instead, the Rohingya children were not provided with any information materials on ‘all forms of exploitation of persons, especially women and children, that leads to trafficking’.¹⁰⁹⁷

¹⁰⁹⁷ Palermo Trafficking Protocol, art 9.

CHAPTER 4, PART II
STATE RESPONSIBILITY, BILATERAL, AND MULTILATERAL TREATIES

Part II. State Responsibility, Bilateral and Multilateral Treaties

1. Argument #5: ASEAN, Bilateral and Multilateral Treaties – Was there a Breach?

ASEAN's domestic implementation of the international Trafficking Protocol responds to the treaty obligations of arts 3(1), 5(1)(2), 9(1)(2), and 10(2); while simultaneously meeting the study's Kennedy mitigation and deterrence criteria. The instrument focuses on the prevention, protection, and support of victims under the ACTIP:¹⁰⁹⁸

- a. 'Chapter 1, General Provisions, art 1, Objectives, para 1 (a)(b)(c), whereby parties to the treaty agree to prevent and combat trafficking, protect and assist victims, and promote cooperation among the Parties.'
- b. 'Chapter II, Criminalization, art 5 applies to the prevention, investigation, and prosecution of the offences established within the Convention.'
- c. 'Chapter III, Prevention, art 11, Prevention of Trafficking in Persons, speaks to the establishment of the in-depth policies, organizational programs, and additional measures structured to prevent and combat trafficking in persons; and to protect persons from revictimization; art 12 addresses the collaborative and cooperation needed under the Convention to address the prevention of trafficking in persons, in conformity with the domestic laws of the respective Parties.'
- d. 'Chapter IV, Protection, art 14, Protection of Victims of Trafficking in Persons, capturing the guidelines for proper identification of victims, and includes...'
- e. 'Chapter V, Law Enforcement, art 1, Law Enforcement and Prosecution, details the detection, deterrence, and punishment requirements of law enforcement; also, legal system to address trafficking, '¹⁰⁹⁹

¹⁰⁹⁸ ACTIP, the adoption and signing of the text of the Treaty in Kuala Lumpur on 29 November 2004 by 8 of the ASEAN Member Countries. The Union of Myanmar and the Kingdom of Thailand added their signatures to the Treaty as original Parties on 17 January 2006, thereby completing the signature process on the Treaty.

¹⁰⁹⁹ *ibid.*

However, noticeably absent from the ACTIP ratification list in Bangladesh. Nonetheless, all ASEAN States, apart from Brunei and Bangladesh, have ratified the UN' Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and entered into force on 25 December 2003.

a) Treaty of Mutual Legal Assistance on Criminal Matters among Like-Minded ASEAN Member Countries. ASEAN has coupled the ACTIP with the *Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries*, in direct accordance with art 18, UNTOC, but aligns in conformity with the provisions of arts 5, 10, and 11 of the Palermo Trafficking Protocol. The ACTIP is binding and has all ten of ASEAN member states as parties: the Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Vietnam.¹¹⁰⁰ Elements of this treaty will be referenced throughout the analysis and argument.

According to State Responsibility Articles, art 3, an internationally wrongful act consists of two elements, the objective elements – an action or omission. Secondly, art 3 also refers to the subjective element is attributing the breach to a state. The prominent component here is that art 3 of the State Responsibility Articles includes neither fault (*culpa, dolus*) nor *damage* of an international wrongful act or States'

¹¹⁰⁰ The adoption and signing of the text of the Treaty in Kuala Lumpur on 29 November 2004 by 8 of the ASEAN Member Countries. The Union of Myanmar and the Kingdom of Thailand added their signatures to the Treaty as original Parties on 17 January 2006, thereby completing the signature process on the Treaty.

responsibility. The question that arises is whether the bi-lateral and multilateral treaties were in force international obligations according to art 13,

‘An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.’

The International Court of Justice, in the *Barcelona Traction Case*, ICJ Reports (1970) 3, references the *erga omnes* obligation, as well as the *jus cogens* laid down by the 1969 Vienna Convention on the Law of Treaties, arts 53 and 64, affirms that the multilateral obligation has a States’ legal duty to the international community.

b) States under review/analysis. Aside from the local domestic legislation for Myanmar, the Chartered States under ASEAN were bound under a multilateral treaty as of 21 November 2015. The 2015 ASEAN Convention against trafficking in persons, especially women and children are a binding regional instrument that obliges Charter members to effectively, under art 1(a) Objectives, ‘prevent and combat trafficking’ ..., (b) ‘protect and assist victims of trafficking in person’ ..., (c) ‘promote cooperation’ ... ASEAN’s Convention provisions are monistic to the international Palermo Trafficking Convention.

However, unlike Myanmar, which is dualistic, the convention includes the terms in art 2, the provisions of the UN Transnational Organized Crime’s definition of serious terms crime, and seizure of assets. Furthermore, a due diligence search resulted in no public record found, in English, where the provisions of the ASEAN Convention have imposed a breach for failing to uphold a stance against trafficking.

CHAPTER 4, PART III

STATE RESPONSIBILITY FOR IN-FORCE TREATY OBLIGATIONS

Part III. State Responsibility, CRCS, 3Ps, Arts 1-4. 7-8, 11, 21, 32, 34-36, OPSC, Arts 1-11, Positive Obligation

1. Argument #6, Article 1, 2(a)(b), 3, State Responsibility Articles: The Positive Obligation

RANTSEV V CYPRUS AND RUSSIA CRITERIA

a) The Analysis of the Positive Obligation - *Rantsev v Cyprus and Russia as it cites Prosecutor v Kunarac, Kovac & Vukovic, Case (no 25965/04)*

In the European Court of Human Rights 2010 case of *Rantsev v Cyprus*,¹¹⁰¹ the legal interpretation of human trafficking embraced a global concept. It broadened the definition to include a term commonly used as 'modern-day slavery'. The case argument hinged on the punishment of the perpetrator and the interest of the abused victim. An interpretation of the abused victim element of a State's anti-trafficking initiatives could be the inclusion of a societal and legal environment that protects the rights, safety, and dignity of trafficking victims. Likewise, the prosecution element of anti-trafficking interpretation concerns the effective prosecution of perpetrators and full justice assurance provided – redress, granted to the victim. The court used as basis slavery itself, justifying its argument with *jus cogens* and the norms that where 'no derogation is permitted'.¹¹⁰²

¹¹⁰¹ *Rantsev v Cyprus and Russia*, App no 25965/04 (Eur. Ct. H.R. 2010); as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

¹¹⁰² Vienna Convention on the Law of Treaties, art 53, May 23, 1969, 1155 U.N.~T.S. 332, 8 I.L.M. 679, 149 395 F.3d 932, 947; a *jus cogens* norm is a peremptory norm 'from which no derogation is permitted, and which can be modified only by a subsequent norm of general international law having the same character'.

The court applied the interpretation from the International Criminal Tribunal for the former Yugoslavia in *Kunarac*¹¹⁰³ to attach the matters concerning rights of ownership, situations of absolute control of one person over another induced through force, fear, or coercion, all of which echo the paradigm of human trafficking. Employing the definition of 'enslavement' from art 7(1)(c) of the Rome Statute of the International Criminal Court as a crime against humanity, there was a ground-breaking decision regarding art 4 of the European Human Rights Convention and the right to be free of slavery in *Rantsev v Cyprus*.¹¹⁰⁴ The ruling overturned the classical interpretive definition in the case of *Siliadin v France*.¹¹⁰⁵ As a result, the court identified in *Rantsev v Cyprus* seven State duties or obligations to human trafficking:

- a. 'Enactment of appropriate legislation on human trafficking, which would criminalize the phenomenon and establish criminal liability for legal and natural persons';
- b. 'Introduction of review procedures for the operation of certain punishments commensurate to the nature of the crime of trafficking';
- c. 'Establishment of punishments commensurate to the nature of the crime of trafficking'.

¹¹⁰³ *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 & IT-96-23/1-A, Judgement, at 36, para 118 (Int'l Crim. Trib. for the Fomer Yugoslavia, 12 June 2002).

¹¹⁰⁴ *Rantsev v Cyprus and Russia*, App no 25965/04 (Eur. Ct. H.R. 2010); as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

¹¹⁰⁵ *Siliadin v France*, 73316/01, Council of Europe: European Court of Human Rights, 26 July 2000; In accordance with contemporary norms and trends, States have a positive obligation under art 4 of the ECHR to criminalize and prosecute actions that hold any person in slavery, servitude, or forced or compulsory labour. 'Slavery' and 'servitude', however, are not classified as offences under French criminal law. arts 225-13 and 225-14 of France's Criminal Code do not specifically deal with these offences; instead, they deal only with general exploitation through labour and working and living conditions that are incompatible with human dignity. Because of this, France's criminal law did not afford *Siliadin* with practical and effective protection. Despite being subjected to treatment contrary to art 4 of the Convention, *Siliadin* was unable to see Mr. and Mrs. B convicted under French criminal law.

- d. 'Introduction of measures to discourage demand';
- e. 'Assurance of the training of law enforcement for the identification of trafficking victims and for building trust amongst victims and law enforcement';
- f. 'Encouragement of research, information campaigns, awareness campaigns, and education programs'; and
- g. 'Vigorous investigation of allegations of human trafficking'.¹¹⁰⁶

Omitted under the *Rantsev v Cyprus and Russia*¹¹⁰⁷ are the provisions outlined in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC), art 4, paras 1-4. The article provisions focus on establishing jurisdiction for the offences of child trafficking and exploitation.¹¹⁰⁸ Unlike other treaties for child trafficking and exploitation, the Optional Protocol provisions extend territorial control over ships and vessels, art 4, para 1.¹¹⁰⁹ However, the OPSC provisions are essential and adjoin art 39 of the CRC, implying obligations extending beyond national borders' jurisdictions.

Another critical element missing from the *Rantsev v Cyprus and Russia* ruling is the explicit prohibition of selling children as captured in the OPSC, arts 1-3. The *Rantsev v Cyprus and Russia*.¹¹¹⁰ The ruling clarifies the criminalization of human trafficking, which implies a movement for the crime to occur. However, it is essential to convey that transportation is not a required element. Instead, the sale of children includes all

¹¹⁰⁶ *Rantsev*, at 64-65, paras 264-68.

¹¹⁰⁷ *ibid.*

¹¹⁰⁸ Optional Protocol on the sale of children, art 4, paras 1-4.

¹¹⁰⁹ *ibid.*, para 1.

¹¹¹⁰ *Rantsev*, at 64-65, paras 264-68.

the historical forms of dowry, where families exchange a child for enumeration. Most recently, the harvesting and trafficking of human embryos used in-vitro fertilization (IVF) treatments. A subject that has been limited in documentation to date but very present has been addressed by the European Union. At the same time, the European Parliament resolution on the trade in human egg cells was recently published in the *Official Journal of the European Union*, 15 December 2005.¹¹¹¹

b) The path to the *Rantsev v Cyprus and Russia* case. The region under examination does not have a human rights court system in place for a research evaluation. Malaysia's Human-Trafficking Court is relatively new and has no vital precedent-setting cases. Though Malaysia began a Human Trafficking Court in 2018, there has been a marginal success on convictions. Therefore, the human rights precedent-setting cases must be derived from other geographies for this research. Using other human rights courts to determine the case law precedence of the positive obligation sets out a criterion to align the research's central research question's core — a States treaty obligation to prevent, protect, and mitigate child trafficking and exploitation.

The judgments from human rights courts have made adjudication on cases and memorialized safeguards that elucidate rules instituted by the Convention.

¹¹¹¹ Official Journal of the European Union, C 320 E, 15 December 2005, (P6_TA(2005)0074) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ%3AC%3A2005%3A320E%3ATOC>> accessed 20 February 2020; para 9, Wishes to see egg cell donation, like organ donation generally, strictly regulated in order to protect both donors and recipients and to tackle all forms of human exploitation; para E, whereas, despite the possibility of serious effects on women's life and health, the high price paid for egg cells incites and encourages donation, given the relative poverty of the donors; para H, whereas the procurement of cells may not be subject to any pressure or incentive, whilst the voluntary and unpaid donation of egg cells must be guaranteed, so that women do not become 'suppliers of raw material'.

Subsequently, these rulings have established an engagement that immolates one of the contracting parties, *Ireland v United Kingdom* and *Jeronovičs v Lativa* (no 44898/10), which uses art 4 of the Convention as a basis Prohibition of slavery and forced labour.¹¹¹²

The cases of *Siliadin v France*, § 112¹¹¹³ and *Stummer v Austria* [GC], § 116) at art 4 §1 of the Convention upholds that ‘no one shall be held in slavery or servitude’. The citation argues no provision for exceptions and no derogation even in a public emergency, *C.N. v the United Kingdom*, §65¹¹¹⁴ and *Stummer v Austria* [GC], §116).¹¹¹⁵ The similarity of the cases references to public emergency mirror the Rohingya-crisis. Myanmar claimed that the civil disorder served as justification for maltreatment, trafficking, and exploitation of children,¹¹¹⁶ refer to Table 2 evidence #1, and rebuttal, Table 3, evidence 1-3. An instrument for protecting individual human beings requires that State parties implement measures and mechanisms to safeguard practical and

¹¹¹² Article 4 of the Convention – Prohibition of slavery and forced labour, ‘1. No one shall be held in slavery or servitude, 2 No one shall be required to perform forced or compulsory labour, 3. For the purpose of this article the term ‘forced or compulsory labour’ shall not include: (a) any work required to be done in the ordinary course of detention imposed according to the provisions of art 5 of [the] Convention or during conditional release from such detention;; (b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service; (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community, (d) any work or service which forms part of normal civic obligations’; The first adjective ‘forced’ brings to mind the idea of physical or mental constraint. As regards the second adjective ‘compulsory’, it cannot refer just to any form of legal compulsion or obligation; scope of art 4 on the sole ground that one of the parties has undertaken with the other to do that work and will be subject to sanctions if he does not honour his promise, *Van der Mussele v Belgium*, § 34.

¹¹¹³ Case of *Siliadin v France*, (Application no 73316/01), Strasbourg, 26 \July 2006.

¹¹¹⁴ Case of *C.N. v the United Kingdom* (Application no 4239/08), Judgement, Strasbourg, 13 November 2012.

¹¹¹⁵ Case of *Stummer v Austria* [GC], §116.

¹¹¹⁶ *C.N. v the United Kingdom*, § 65; *Stummer v Austria* [GC], §116.

effective, *Rantsev v Cyprus and Russia*, §§ 273-275.¹¹¹⁷ The court's specific context of human trafficking and exploitation is based on the exercise of powers attaching to the right of ownership, *M and Others v Italy and Bulgaria*, § 151.¹¹¹⁸

The European Court of Human Rights examines freedom from forced or compulsory labour.¹¹¹⁹ The research establishes an analogy between the evidence in Table 2, line item #18.¹¹²⁰ The evidence notes the *dallals* where children were beaten and forced into labour,¹¹²¹ and sexual exploitation of the Rohingya children and similarly-situated children — *Graziani-Weiss v Austria*, *Stummer v Austria* [GC], § 118 and *Adigüzel v Turkey*, §§ 26-27.¹¹²² Table 2 evidence includes multiple pages of narratives for third-party reports. The evidence suggests that Myanmar failed to adhere to its Member State's obligations under the Palermo Trafficking Protocol to protect victims, arts 6, 'the assistance to and protection of victims of trafficking in persons'. The article obliges the State to protect victims in need of support, art 6(3)(a-e), housing,

¹¹¹⁷ *Rantsev v Cyprus and Russia*, §§ 273-275; art 4 makes no mention of trafficking, proscribing 'slavery', 'servitude' and 'forced and compulsory labour' §272.

¹¹¹⁸ *M. and Others v Italy and Bulgaria*, § 151; It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions. It is described in the explanatory report accompanying the Anti-Trafficking Convention as the modern form of the old worldwide slave trade, *Others v Italy and Bulgaria*, § 151).

¹¹¹⁹ In the case of *Van der Mussele v Belgium* § 39, the Court made use of the notion of a 'disproportionate burden' to determine whether a lawyer had been subjected to compulsory labour when required to defend clients free of charge as a court appointed lawyer, *C.N. and V. v France* § 74.

¹¹²⁰ Table 2, Evidence #18 and #19; Malaysia and Thailand.

¹¹²¹ In Article 4 § 3(d) of the European Convention ('any work or service', 'tout travail ou service' in French) and in the very name of the International Labour Organization (ILO), whose activities are in no way limited to the sphere of manual labour – ref. *Van der Mussele v Belgium*, § 33); Franziska Humbert, *The challenge of child labour in international law* (Cambridge University Press 2009) 376.

¹¹²² *Graziani-Weiss v Austria*; *Stummer v Austria* [GC], § 118, and *Adigüzel v Turkey*, §§26-27.

counseling, medical assistance, training opportunities, arts 7 and 8's humanitarian support, and repatriation. The narrative also did not refer to how the State would comply with the provisions of the CRC's obligations laid out in art 34 to 'take all appropriate national, bilateral and multilateral measures to preventing sexual abuse and exploitation'. Article 34 of the CRC stands as the benchmark for Bangladesh and Myanmar's obligation. However, the OPSC illuminates the preventive and responsive measures by enumerating the types of measures appropriate from the Commercial Sexual Exploitation of Children, 1996 Stockholm Declaration and Agenda for Action of the World Congress.¹¹²³

In Table 2, Evidence 3-4, 12, and 18-19, in Bangladesh and Myanmar, the cases indicate 'cost of coercion', 'penalty', elements adopted by the international labour conference in 1999. The terms are used in the broad sense where the victim was threatened to be sent back to their own country if there was no agreement to the exploitation as

¹¹²³ The World Congress against Commercial Sexual Exploitation of Children, *The Stockholm Declaration and Agenda for Action* (1996), para 12.; 'Stockholm Declaration includes the criminalization of commercial and other forms of sexual exploitation of children, penalization of offenders, protection of child victims, review, revision and effective enforcement of laws, programmes and practices both to eliminate the practice of commercial sexual exploitation of children and to protect children from such exploitation, development and implementation of 'comprehensive gender-sensitive plans and policies', assistance to child victims including recovery and reintegration facilities, and awareness-raising through education, social mobilization and development targeted at parents and children'.

referenced in *Graziani-Weiss v Austria*,¹¹²⁴ *Siliadin v France*, and *C.N. and V. v France*.¹¹²⁵

There were no notations in the case files, which were quite extensive, as to the exception of consent, in Palermo Trafficking Protocol, art 3(d), where a child cannot give consent and consent is not a required element to prove human trafficking in the involvement of a child. By contrast, Figure 8, research evidence #1-3 in Myanmar, #4 in Bangladesh Cox's Bazaar, and evidence #5, in the Bay of Bengal and the Andaman Sea are reviewed with the case of *Chowdury and Others v Greece*.¹¹²⁶ In *Chowdury*, similar to the Rohingya, the applicants' are Bangladesh nationals, situated as irregular migrants, 'worked in difficult physical conditions and without wages, under the supervision of armed guards, in the strawberry-picking industry in a particular region

¹¹²⁴ Where the refusal of the applicant, a lawyer, to act as a guardian gave rise to disciplinary sanctions, § 39; descriptive of forced labour interpretation in the case of *Tibet Menteş and Others v Turkey* (§ 68), the Court noted that the applicants, workers in airport shops complaining about unpaid overtime, had voluntarily agreed to their conditions of work involving continuous twenty-four-hour shifts. In addition, there was no indication of any sort of physical or mental coercion to force the applicants to work overtime. The mere possibility that they could be dismissed in the event of refusal did not, in the Court's view, correspond to 'the menace of any penalty' for the purposes of art 4; In *Adigüzel v Turkey*, where the applicant, a forensic doctor, complained that he was required to work outside the prescribed working hours without pecuniary compensation, the Court held that by choosing to work as a civil servant for the municipality, the applicant must have known from the beginning that he could be subject to work outside the standard hours without pay. Moreover, even if pecuniary compensation were not available, the applicant could have taken compensatory days off, which he never requested. He could thus not claim to be subject to a disproportionate burden. The risk of having his salary deducted or even being dismissed for refusing to work outside working hours was not enough to conclude that the work had been required under the threat of a 'penalty'. Considering the foregoing, the Court took the view that the additional services the applicant was required to provide did not constitute 'forced or compulsory labour'. The Court dismissed the complaint as incompatible *ratione materiae* with art 4 of the Convention (§§ 30-35).

¹¹²⁵ Where the applicant was threatened to be sent back to her country of origin, §780.

¹¹²⁶ *Chowdury and Others v Greece* (no 21884/15) Judgement 30.3.2017 (Section I); *Rantsev c Cyprus and Russia; Larissis et al v Greece*, Applications Nos 140/1996/759/958-960,

of Greece – constituted human trafficking and forced labour'.¹¹²⁷ In the *Chowdury* case, children were part of the victim group.

¹¹²⁷ *ibid.*

2. Acts and Omissions. An allegation of a State breach of positive obligation, from both acts and omissions, was lodged against the Republic of Cyprus, the Russian Federation, and Greece.¹¹²⁸ The research scenario for the allegations noted from the evidence suggests that the same could apply to Bangladesh and Myanmar. The law defines and protects the rights of individuals and groups. Societies, domestically and internationally, punish and regulate access to political, economic, and social venues. The law grants authority to act against cruelty underpins institutions that uphold society's fundamental beliefs and values. Globally, an estimated 8,000,000 women and children are trafficked each year across international borders, 80 percent ending in forced sex work.¹¹²⁹ As human trafficking is a crime involving severe human rights violations, trafficking produces victims that need rescue and protection.¹¹³⁰

Human trafficking presents challenges to observe and measure as a clandestine activity, specifically as it involves stateless children displaced across borders without proper papers and protections. However, within the context of this study, researched legal reports and empirical research suggest that the transnational crime of human trafficking occurs when borders are crossed, often between and from less developed to developed countries. The UN Office on Drugs and Crimes' (UNDOC) fourth bi-annual report of 2018 echoes the consistent alarming landscape of human trafficking trends in South Asia and Southeast Asia regions. Since the General Assembly's 2010

¹¹²⁸ *ibid.*

¹¹²⁹ C Joffres and others, 'Sexual Slavery without Borders: Trafficking for Commercial Sexual Exploitation in India', (2008) 7 *International Journal for Equity in Health* 22.

¹¹³⁰ *Chowdury and Others v Greece* (no 21884/15) judgement 30.3.2017 (Section I); *Rantsev v Cyprus and Russia*; *Larissis et al v Greece*, Applications Nos 140/1996/759/958-960,

mandate, UNDOC has covered 142 country patterns and flows of trafficking in persons across global, regional, and national levels.¹¹³¹ As a result, 2012, 2014, 2016, and 2018 reports each notate the high volume of trafficking victims in the Southeast Asia (Myanmar) and South Asia (Bangladesh) region.¹¹³² This research proffers a shift from a single dimension human rights approach to a combined structure where international criminal law and human rights instruments work in tandem, not separately, in justice systems across South Asia, Southeast Asia, and other like-scenarios.

3. The Legal Reports. The examination of the legal report extends to the critical analysis of whether the CRC and OPSC are included in the Bangladesh and Myanmar justice system framework. The study avers that the CRC can work in tandem with the Palermo Trafficking Protocol to mitigate the large volume of child trafficking and exploitation in South Asia and Southeast Asia. The study further opines that case law in other critical human rights courts serves as persuasive in global regions, such as the ASEAN targeted states under review.

¹¹³¹ UNODC, (UN publication, Sales no E.19.IV.2) <https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf> accessed 18 August 2019; UNODC, 'Global Report on Trafficking in Persons 2016 (UN Publication, Sales no E.16.IV.6) analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf' accessed 28 June 2018; UNODC, Global Report on Trafficking in Persons 2014 (UN publication, Sales no E.14.V.10 <https://www.unodc.org/res/cld/bibliography/global-report-on-trafficking-in-persons_html/GLOTIP_2014_full_report.pdf> accessed 28 June 2019; UNODC, Global Report on Trafficking in Persons 2012 (UN publication, Sales no E.13.IV.1) <https://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf?source=post_page-> accessed 18 August 2019; UNODC has been systematically collecting data on trafficking in persons for more than a decade, trend information is presented for a broad range of indicators.

¹¹³² UNODC (n 1131).

CRC art 1 provides the universal definition of a child being a person under 18 years of age. However, Myanmar and Bangladesh maintain laws on how a child is viewed for marriage and employ an age of majority that threatens this protection. Articles 32, 34-36 of the CRC focus on the ‘protection of the child from economic exploitation, protection for sexual exploitation and abuse’, ‘prevention of abduction, sale, and trafficking’, and ‘protection against all other forms of exploitation’, respectively. Further, CRC’s art 36 declares, ‘States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare’. The scope of art 36 is structured to cover any form of exploitation other articles do not include. It clarifies that children and young people should not be exploited for any reason. However, the Optional Protocol to the Convention on the Sale of Children, Child Prostitution, and Child Pornography affirms the explicit protection of children in arts 1, 2, and 3 against trafficking, child prostitution, and child pornography, child labour, and especially the worst forms of child labour.

At regional levels, several cases linked to art 34 of the CRC are comparable as persuasive opinions to Table 2’s research evidence for Bangladesh and Myanmar. Comparatively, to the states under review, Myanmar, evidence #1-3, 7-8, 13, 15 would render these states as a breach of State responsibility for the sexual assault of a child that has gone uninvestigated and not prosecuted, *Rantsev v Cyprus and Russia*¹¹³³ and

¹¹³³ *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR 2010).

O'Keefe v Ireland.¹¹³⁴ For instance, the European Court of Human Rights has adjudicated several cases around sexual abuse or the exploitation of a child. The consent of a child and the local law became a contention in Romania and the Netherlands. Both countries were found to have not upheld their positive obligations under CRC arts 19 and 34. In *M.C. v Bulgaria*, the case involved Bulgarian authorities, who had not to prosecute the rape of a 14-year-old due to the domestic legislation, which allowed consent at the age of 14.¹¹³⁵ The ruling pronounced a positive obligation upon the member State to punish rape effectively, conduct an effective investigation, and prosecute.

Further, the court noted that the lack of resistance to the rape did not equate to consent and reiterated that the victim was a child under 18. The cases of *X and Y v The Netherlands*¹¹³⁶ and *M.G.C. v Romania*,¹¹³⁷ where the ECHR dealt with two cases where local law placed the age of majority at 11, under Romanian law, and the Netherlands, failed to provide practical and effective protection under criminal law to children with mental disabilities. The *O'Keefe v Ireland*¹¹³⁸ case brought forward several vital

¹¹³⁴ *O'Keefe v Ireland* Application no 35810/09 (ECtHR 2014, para 115, 120; European Convention on Human Rights (ECHR), Articles 3 (torture or inhuman or degrading treatment), 8 (privacy), 13 (effective domestic remedy), 14 (discrimination) and 41 (just satisfaction); citing European Convention on Human Rights, Protocol No. 1, Article 2: Right to education, International Covenant on Civil and Political Rights (ICCPR), Article 24: Child's right to protection without discrimination International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 10 (special measures of protection and assistance on behalf of children) and 12 (provision for the healthy development of children).

¹¹³⁵ *M.C. v Bulgaria* (Application no 39272/98) Judgment (ECtHR) 2003 para 153.

¹¹³⁶ *X and Y v The Netherlands* (Application no 8978/80) Judgment (ECtHR) 1985 para 30.

¹¹³⁷ *M.G.S. v Romania* (Application no 61495/11) Judgment (European Court of Human Rights (ECtHR) 2016, paras 57, 70, and para 65, respectively.

¹¹³⁸ *O'Keefe v Ireland* (Application no 35810/09) Judgment (ECtHR) 2014, para 115 and 120.

elements. The sexual abuse of a male child occurred in the 1970s, and the abuse was connected to a faith-based school where 20 other pupils were also sexually abused. The applicant was unsuccessful in Ireland, but the ECtHR ruled that Ireland had violated its positive obligation to ‘take reasonable steps to protect the applicant from sexual abuse and provide an effective remedy to the abused’.¹¹³⁹ The court cited CRC art 19 and 34. The ruling noted that the State had an obligation to protect children in all aspects of their safety, including from sexual abuse.

Further, the protection should be comprehensive. Expanding upon the ruling would encompass the Rohingya children and similarly-situated cases. Table 2 presents examples of the evidence where the respective states appear to fail in providing comprehensive protection.

4. Analysis — Was there a breach? The analysis focuses succinctly and specifically on CRC arts 1-4, 7-8, 32, 34-36,¹¹⁴⁰ the Optional Protocol for the sale of children, and excludes all other articles of the CRC; but includes the articles on the Optional Protocol to the Convention on the sale of children. The argument examines the research states of focus for fulfilling obligations as outlined in the primary positive obligation case law of *Rantsev v Cyprus and Russia*’s¹¹⁴¹ criteria as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A. First, the argument narrative reflects that each research state has established appropriate legislation on human trafficking

¹¹³⁹ *O’Keefe v Ireland (Application no 35810/09) Judgment* (ECtHR) 2014, paras 115 and 120.

¹¹⁴⁰ All other articles of the CRC are beyond the scope of this research.

¹¹⁴¹ *Rantsev v Cyprus and Russia*, paras 264, 268 as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

with no reservations to 32, 35-36 or the Optional Protocol for children's domestic adaptation in a dualistic format. Second, distinguishing the 'object and purpose' of the CRC and the Optional Protocols, the semantic distinction in modal verbs applies throughout the treaties to infer the 'type' of obligation, which can be linked back to the 'shall endeavour' spectrum in Figure 12. The application of 'shall' and 'should' also describes the obligation as a mandatory intent to establish requirements or conditions each State 'should' employ.¹¹⁴²

The CRC theorist Williams, a prominent children's rights academic, posits that 'should' is used in a prescriptive text of international treaties in a format, for example, when 'enunciating general guidelines and principle which often have strong moral or ethical overtones' and the author refers to art 27.2 of the CRC, where it states, 'The benefits should where appropriate, be granted, taking it to account the resources...'.¹¹⁴³ Williams further opines that the use of 'medium-strength modal verbs, such as should', is 'broad enough' to encompass an infinite range of situations.¹¹⁴⁴ In contrast, authors D'Acquisto and D'Avanzo refer to the 1997 works of Trosborg in the translation of legal texts to distinguish between the two different schools of translation: (a) linguistic approach and (b) the functional approach.¹¹⁴⁵ For

¹¹⁴² Germana D'Acquisto and Sefania D'Avanzo, 'The role of SHALL and SHOULD in two international treaties' (2009) 3(1) *Critical approaches to Discourse Analysis across disciplines* 36-45, 40 <https://www.lancaster.ac.uk/fass/journals/cadaad/wp-content/uploads/2015/01/Volume-3_DAcquisto-DAvanzo.pdf> accessed 22 August 2018.

¹¹⁴³ Christopher Williams, *Tradition and change in legal English: Verbal constructions in prescriptive texts* (Peter Lang 2007) 128, 129.

¹¹⁴⁴ *ibid* 129.

¹¹⁴⁵ A Trosborg, *Rhetorical Strategies in Legal Language* (Germany: Gunter Narr Verlag, Tübingen 2007).

this study of the Palermo Trafficking Protocol, the research analysis also used the functional interpretational approach, which is also utilized for this investigation segment.

The functional approach leads the interpreter to apply emphasis on the function of the target text. This approach is taken into consideration for the analysis throughout the section. Whereas Williams' approach is not applied in the analysis as implementing the States usage of 'should' does not fit his interpretation. Instead, looking to the General comments, the CRC Committee aligns with the functional approach and other UN treaty bodies, which seemingly provide a teleological interpretation of the respective treaty provisions about the Convention and its Protocols.

The most applicable guidelines for the period this research was completed for the CRC were published in 2015. In 2015, the CRC Committee published treaty-specific guidelines regarding the format and content for the periodic report submission for each state party in art 44, para 1(b) of the CRC.¹¹⁴⁶ Under Provisions (3Ps), both Bangladesh and Myanmar have ratified the Children's Rights Convention (CRC) and the Optional Protocol to the Convention on the Child's Rights on the sale of children, child prostitution, and child pornography and therefore encumbered positive

¹¹⁴⁶ Convention the Rights of the Child, 3 March 2015, CRC/C/58/Rev 3; It refers to the initial reporting guidelines, issued in 1991 (general guidelines regarding the form and content of initial reports to be submitted by states under article 44, para 1(a) of the Convention, 15 October 1991, CRC/C/5 and the various updates: (a) CRC Committee, General Guidelines Regarding the Form and Contents of Periodic Reports to be submitted by States Parties, under art 44, para 1(b) of the Convention , 11 October 996, CRC/C/58; CRC Committee, CRC Treaty Specific Reporting Guidelines, Harmonized according to the common core document, 1 October 2010, CRC/C/58/ev 2).

obligations.¹¹⁴⁷ Nonetheless, the Protection (3Ps) dualist approach for Bangladesh and Myanmar is different. Though different, each country met the obligation for the legislative criminalization of trafficking. However, there is a prohibition for allowing their national and cultural views to infringe upon their State treaty obligations – *Loizidou v Turkey*,¹¹⁴⁸ where a state's implementation can be plotted along the 'shall endeavour' spectrum, Figure 13.

The Provisions (3Ps) obligation extends to States taking measures to reduce the market for trafficking using international and regional instruments prohibiting slavery and the human trafficking of children.¹¹⁴⁹ The CRC and Protocol treaties outlay a host of jurisdictional provisions. The sale of children is laid out in art 2 of the Optional Protocol. It obliges the Member States to the provisions, 'any act or transaction whereby any person or group of persons transfers a child to another for remuneration or any other consideration'.¹¹⁵⁰ The key language applies to 'any' person. Thus, the

¹¹⁴⁷ Bangladesh, ratified, 6 September 2000; Malaysia, ratified, 12 April 2012; Myanmar ratified, 26 January 2012; Thailand, ratified 11 January 2006.

¹¹⁴⁸ European Court of Human Rights (ECtHR) judgment in the case of *Loizidou v Turkey* (1995), para 72.

¹¹⁴⁹ In ECtHR, *Siliadin v France*, Application no 73316/01, Judgment 26 July 2005, the punishment consisting of a fine for breach of art 4 was considered to give insufficient support against such violations: 'the member States' positive obligations under art 4 of the Convention must be seen as requiring the penalization and effective prosecution of any act aimed at maintaining a person in such a situation' (margin no 112). The Court also criticised the imprecise language of the legislation which gave scope for varying interpretation and application. The ECtHR found that the criminal law failed to give the minor applicant in the case practical and effective protection against the treatment she had been subjected to and called for 'greater firmness' due to increasingly high standards that are required regarding protection (margin Nos 143–144, 147–148). Other important cases under art 4 are *Rantsev v Cyprus and Russia*, Application no 25965/282; as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002); *C N v United Kingdom* App no 4239/08, Judgment 13 November 2012; *C N and V v France* App no 67724/09, Judgment 11 October 2012.

¹¹⁵⁰ OPSC, art 2.

research States, selling the child under prostitution, or an organized group for enumeration goes against the OPSC. Also, the Optional Protocol for the sale of children extraterritorial jurisdiction, extradition, legal assistance, seizure, and confiscation issues in arts 4 through 7. Yet, examining the States' Committee on the Rights of the Child's List of Issues and the Concluding Observations tells an outcome of questionable compliance of in-force treaty obligations.

These reports are used as evidence (qualifiers and warrants) to support the claim that their CRC reporting for the Universal Periodic Review (UPR) underscore critical treaty compliance issues for the forced displaced, stateless migrating child against trafficking and exploitation.¹¹⁵¹ Found in each of the country's mandatory reporting are narratives that are vague, ambiguous, and lofty regarding implementation measures that formulate effective outcomes for the protection of children from trafficking and the multiple forms of exploitation as mandated in CRC arts 34, 35-36 and the Optional Protocol for the sale of children, arts 1-10.¹¹⁵² The list of issues

¹¹⁵¹ The List of Issues is adopted by the Committee and sent to each State concerned right after its corresponding pre-session. It includes a list of questions on selected issues, a request for updates on new laws, institutions, policies and programmes and ratifications of human rights instruments, and specific disaggregated data and statistics; The deadline for the State's written replies is specified in the list of issues (it is usually published about 2 months before the session); The deadline for additional submissions from children's rights defenders can be found on the Committee's webpage. The list of issues are usually published two to three weeks after the country pre-session on the Committee's webpage, but there is no official timeline and it may take longer <https://crcreporting.childrightsconnect.org/convention-on-the-rights-of-the-child-list-of-issues/> accessed July 2017, July 2018, and July 2019
<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CRC> accessed July 2019; Periodic Review highlights Myanmar, access to justice for children
<https://archive.crin.org/sites/default/files/myanmar_access_to_justice-updatedoct2015.pdf> accessed 10 February 2020.

¹¹⁵² Refer to Chapter four, State jurisdictions, case studies.

discussed in the international reporting and analysed in this study appear to be repetitive and unfulfilled requests for clarity and compliance for States of their international obligations.

The research analysis unveiled substantive gaps that do not follow the Convention's implementation for member States. The most prominent gaps can be found in the domestic laws of art 37, Bangladesh's Repression of Women and Children Act of 2000 (amended in 2003). Similarly, there are gaps in Myanmar's Anti-Trafficking in Persons Law (2005). Each omits the mandatory language specified in the Convention, art 2(b), art 3(1)(a),(b), where 'serious crime' refers to conduct constituting a criminal offense punishable by 'a maximum deprivation of liberty of at least four years or a more' as a human trafficking serious penalty.¹¹⁵³ The UNTOC requires that both Bangladesh and Myanmar acknowledge that the country is recognized as a source, transit, and destination country for human trafficking. As a result, the State legislators raised the punishment for those convicted in trafficking law as of 2015. The law now allows prosecutors to seek the death penalty and fine up to 400,000 bahs (≥ \$12,000USD) for a human trafficking conviction. Yet, upon an extensive examination of the law, the law remains mute on the 'serious crime' clause.

Likewise, with measures for demand, each of the research states is plagued with in-depth corruption and in the region. For example, neighboring states, such as Thailand's prominent mayor, were arrested. In addition, over 50 police officers were

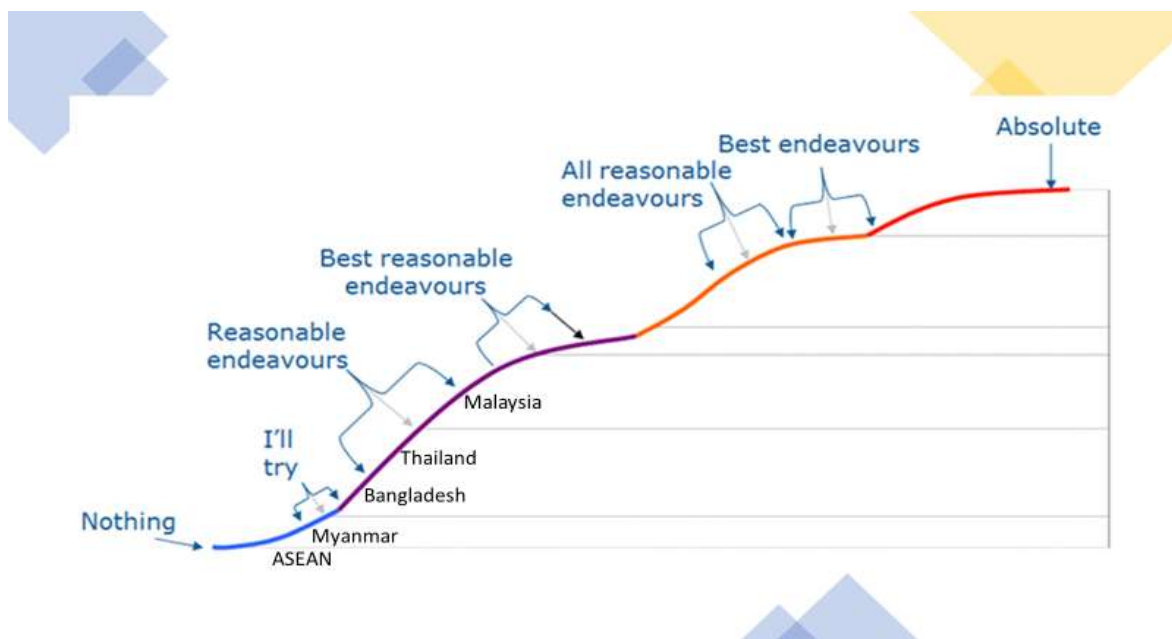
¹¹⁵³ *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

under investigation in one of the many scandals to appropriately and effectively indeed be preventive in the region.¹¹⁵⁴ Wherein, this research also relies upon the US State Department's research and rankings outcomes in determining whether the positive obligations of the research states have been met in: (a) Assurance of the training of law enforcement for the identification of trafficking victims and law enforcement, (b) Encouragement of research, information campaigns, awareness campaigns, and educational programs, and (c) the vigorous investigation of allegations of human trafficking, compliance with arts 1-4, 7-8, 11, 21, 32, 34-36 and the Optional Protocol for the sale of children plotted on Figure 13, Research States charted to the *Shall Endeavour Spectrum* of obligations.¹¹⁵⁵

¹¹⁵⁴ Table 2, Evidence #18 and #20.

¹¹⁵⁵ *ibid.*

Figure 13. The Research States Plotted to the Shall Endeavour Spectrum, Bangladesh and Myanmar's Positive Obligation Compliance



Note, Figure 13, The spectrum of 'shall endeavour', the positive obligation is charted on the graph to assess the State's actions and omissions of its treaty obligations.¹¹⁵⁶ The plotting of Bangladesh and Myanmar's evidence places them at the reasonable endeavours to the Nothing spectrum of the scale and accompanies the follow-on narrative. Refer to sections 4.10-4.11.

¹¹⁵⁶ Graphic adopted from Ashurst Business Services LLC for educational purposes only.

5. Argument #7: Obligation to in-force treaties – Convention on the Rights of the Child; Optional Protocol for the Sale on Children, Child Prostitution and Child Pornography; Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure.

The CRC, OPSC, and the OPIC¹¹⁵⁷ attempt the broad tasks of prevention and the duty on a State to combat human trafficking stems from the treaty obligation.¹¹⁵⁸ The CRC is also a landmark document because it requires that signatory states take all available measures that provide adequate public resources. The obligations are structured to ensure that children's rights are respected, protected, as well as fulfilled. Thus, governments have various duties and responsibilities under the CRC, from formulating, implementing, and monitoring necessary policies and laws to allocating sufficient funds for programmes that advance children's wellbeing and development. The States' criminal laws secure rights within the perspective jurisdiction.¹¹⁵⁹ Obligations include a prosecutorial framework that includes an effective investigation, prosecution, and sentencing of traffickers.¹¹⁶⁰

¹¹⁵⁷ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography adopted and opened for signature, ratification, and accession by General Assembly resolution, A/RES/54/263 of 25 May 2000 entered into force on 18 January 2002; Optional Protocol to the Convention on the Rights of the Child on a Communications procedure, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/66/138 of 19 December 2011.

¹¹⁵⁸ CRC, arts 34-36.

¹¹⁵⁹ Optional Protocol to the sale of children, art 4(1-4), 'each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in art 3, para 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.'

¹¹⁶⁰ In ECtHR, *Siliadin v France*, Application no 73316/01, Judgment 26 July 2005, the punishment consisting of a fine for breach of art 4 was considered to give insufficient support against such violations: 'the member States' positive obligations under art 4 of the Convention must be seen as requiring the penalisation and effective prosecution of any act aimed at maintaining a person in such a situation' (margin no 112), *Rantsev v Cyprus and Russia*, Application no 25965/04, Judgment 7 January 2010, margin no 282; as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002); *C N v United*

However, the general terms used within the treaty's content allow State parties to adopt the mechanisms and measures that best suit their national legal system.¹¹⁶¹ As a result, many prosecutorial frameworks fall short and local laws, and inequality customs induce an environment of impunity consistent with Conflict Society Theory constructs — the bourgeois in contention with the proletariat.¹¹⁶² As a result, the lives of children who do not fit into the desired demographics are not valued, and offenders who traffic and exploit these children go unaddressed.¹¹⁶³

The horrid facts surrounding the sale of children, child prostitution, and child pornography are, justifiably, emotionally loaded concepts anywhere on the globe. In 2014, the UNODC published a gender report indicating that 49% trafficked were adult women, 18% were adult men, and the remaining trafficked were composed of 21% girls and 12% boys under the age of 18.¹¹⁶⁴ From almost a decade-old statistic, 34% of children comprising the approximate number of trafficking victims is unacceptable. The realities of child protection are complex, with barriers in the political, legal, and social arenas that make it extremely difficult to identify and establish the critical

Kingdom App no 4239/08, Judgment 13 November 2012; *C N and V v France App no 67724/09*, Judgment 11 October 2012.

¹¹⁶¹ VCLT, art 27.

¹¹⁶² I Taylor and others, *The new criminology: For a social theory of deviance* (London: Routledge 1988); Debating Marx's beliefs that the general population was divided into two groups. He labeled the wealthy, who controlled the means of production and business, the bourgeois. He labeled the workers who depended on the bourgeois for employment and survival the proletariat. Marx believed that the bourgeois centralized their power and influence through government, laws, and other authority agencies in order to maintain and expand their positions of power in society. Though Marx spoke little of deviance, his ideas created the foundation for conflict theorists who study the intersection of deviance and crime with wealth and power.

¹¹⁶³ Marilyn Walter, 'Trafficking in humans: Now and in Herman Melville's *Benito Cereno*' (2005) 12 *Wm & Mary J Women & Law* 135, 168 < <https://scholarship.law.wm.edu/wmjowl/vol12/iss1/5/>> accessed 26 March 2018.

¹¹⁶⁴ UNODC, 'Trafficking by Gender' (UNODC 2014) 29.

boundaries and parameters of criminal behaviour. The literature review indicated that there is minimal research that studies the criminal profile of the predatorial behaviour of the trafficker. Instead, there is more detailed research on money laundering than it is for the horrid personal crime of trafficking a child.

a) The CRC Thematic Clusters

It is equally challenging to define boundaries and parameters in legal terms that fit many global communities. Moreover, it is equally challenging to prosecute exploitative behaviour towards children and, above all, prevent its occurrence. Therefore, the CRC is structured under 'eight (8) thematic clusters of individual rights: (a) General Measures of Implementation, (b) The Definition of the Child, (c) General Principles, (d) Civil Rights and Freedoms, (e) Family Environment and Alternative Care, (f) Basic Health, and Welfare, (g) Education, Leisure, and Cultural Activities, and (h) Special Protection Measures'.¹¹⁶⁵

The Optional Protocol for the sale of children draws on the inspiration of other early human rights conventions that reflected gaps in protections for children. For example, early iterations of conventions include:

- (a) the 1921 International Convention for the Suppression of the Traffic in Women and Children, and its Protocol lacked specificity in distinguishing protection for prostitution victims,

¹¹⁶⁵ The Convention on the Rights of the Child.

(b) 1926 Slavery Convention brought forward language used in *Rantsev v Cyprus*¹¹⁶⁶ 2010 European Court of Human Rights case definition of ‘enslavement’;

(c) However, the lack of use of the 1950 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others was objected to by specific states in the regions as those that ratified the Convention expressed reservations about the referral of disputes to the ICJ and the prostitution reference in art 1, ‘even with the consent of that person...’¹¹⁶⁶

Arguably, one can interpret the object of the Optional Protocol for the sale of children was to combine elements from each of these earlier renditions of human rights treaties to transition into an optimal protection convention for children. The Optional Protocol does criminalize the specific acts of the sale of children, the prostitution of a child and includes complicit acts. Member states are also obliged to the minimal standards for protecting child victims through criminal justice proceedings, including compensation. However, the Optional Protocol for the sale of children does not exempt from the dual criminality principle.¹¹⁶⁷

This section acknowledges that the negative obligations are understood as the obligations to refrain from violating a right. In contrast, positive obligations are

¹¹⁶⁶ Other additional treaty references from earlier human rights conventions included the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1979 Convention on the Elimination of all forms of Discrimination against Women; and the 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

¹¹⁶⁷ Dual criminality is a requirement in the extradition law of many countries. It states that a suspect can be extradited from one country to stand trial for breaking a second country's laws only if a similar law exists in the extraditing country.

understood as those obligations to take action by realizing a right.¹¹⁶⁸ Though this research examines the CRC and the Optional Protocol for the sale of children under the construct of the 3Ps, it would be remiss in not identifying the alternative construct of Respect, Protect, and Fulfil.¹¹⁶⁹ The Respect, Protect, and Fulfil construct is often referred to as the tripartite typology of obligations. The tripartite typology has a place in other UN institutions and agencies, the Committee on Economic, Social and Cultural Rights (CESCR),¹¹⁷⁰ General comment 14, and CRC Committee GC 15, para 71. Still, it is not as widely envisaged as the 3Ps. Eide's tripartite model has informed multiple CRC commentaries, and it was used within the context of his role as the UN Rapporteur for the Right to Food.¹¹⁷¹

However, the tripartite typology comes with substantive criticism that supported its exclusion from this research. Within Eide's concept, the obligation to respect is interpreted to abstain from violating a right and is likened to the medical 'do not harm'. The problem with this application is what is interpreted as 'do no harm'? The

¹¹⁶⁸ D Shelton and others, 'Positive and Negative Obligations' in *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013).

¹¹⁶⁹ The normative content of the tripartite typology of obligations, Respect (refrain from interfering directly or indirectly with the enjoyment of the right; Respect freedoms and entitlements); Protect (Prevent third parties from interfering with right guarantees; Protect freedoms and entitlements from other threats; Protect freedoms and entitlements from third parties or from other threats); Fulfil (Obligations to facilitate, provide & promote; Adopt appropriate legislative, budgetary, judicial, promotional and other measures towards the full-realization of the right; fulfil the entitlements through facilitation, direct provision or promotion).

¹¹⁷⁰ The Committee on Economic, Social and Cultural Rights (CESCR), General comment (GC) no 14, The right to the highest attainable standard of health (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4, 2000, para 33.

¹¹⁷¹ Economic and Social Council, 'UN Special Rapporteur for the right to food: The right to adequate food as a Human Right - Final Report submitted by Ashjörn Eide' (Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, 51st session, Item 4 of the Provisional Agenda) E/CN.4/Sub.2/1999/12 28 June 1999 <file:///C:/Users/Dr%20Tanya%20FP%20Herring/Downloads/E_CN-4_Sub-2_1999_12-EN.pdf> accessed 29 December 2020.

translation, across the globe, is considered too ambiguous for universal application.¹¹⁷² The obligation to protect is understood as to prevent third parties from violating a right.¹¹⁷³ Again, the question becomes who are 'third parties'? Does this exclude parents, guardians, and caregivers?¹¹⁷⁴ Or, does it only include nonfamilial relations? One could also question whether it only includes the government or other non-state actors? The concept appears to be too confusing and ambiguous. Lastly, the obligation to ascertain the requirements equally is unclear and left too much for interpretation.¹¹⁷⁵

¹¹⁷² Ida E Koch, *Human rights as indivisible rights: The protection of socioeconomic demands under the European Convention on Human Rights* (Brill 2009) 14, 20.

¹¹⁷³ Economic and Social Economy (n 1171).

¹¹⁷⁴ UNICEF, *Handbook on The Optional Protocol on the sale of children, child prostitution and child pornography* (UNICEF 2009); Recruitment: A child can be sold to a trafficker by parents or other caregivers, or by an institution; Transport, transfer, harbouring: During the movement of the child, the child can be sold by one trafficker to another.

¹¹⁷⁵ *ibid.*

b) The 3Ps, UN Convention on the Rights of the Child, CRC

Provision, ‘the right to get one’s basic needs fulfilled – social rights, the rights to food, health care, education, recreation, and play —article 1, the scope of the Convention; article 2, non-discrimination; article 3, best interest; article 4, general obligation – economic, social, and cultural rights’;¹¹⁷⁶

Protection, ‘the right to be shielded from harmful acts or practices; as the child’s survival and development is a central tenet of the CRC; safe from discrimination, physical and sexual abuse, exploitation, substance abuse and conflict —article 2, non-discrimination and the right to equality; article 3, best interest; article 7, name and nationality, avoidance of statelessness; article 8, preservation of identity; article 32, protection from economic exploitation; article 34, protection from sexual exploitation and abuse; article 35, prevention of abduction, sale, and trafficking; article 36, protection against all other forms of exploitation’;¹¹⁷⁷ OPSC: 1-10

Participation, ‘the right to be heard on decisions affecting one’s own life; civil and political rights —article 3, best interest’.¹¹⁷⁸

4.14.1 The Provisions, Protections, and Participation (3Ps) - Instead of a categorical and specific section(s) of the law addressing the unique needs of child sexual exploitation, trafficking, and the sale of children, each of the research states under review has disjointed domestic legislation that appears to touch on similarities of offenses found in trafficking in person laws and broad-brushed to apply to children. In some instances, the legislation does meet the positive obligation criteria of *Rantsev v Cyprus*.¹¹⁷⁹ In other instances, the court's criteria are not met. Much of the states’ laws fall short of direct or a monistic implementation of the treaty obligations found in the CRC and the Optional Protocol, which would be suitable if all essential language were present. Focusing on Bangladesh and Myanmar, at first glance, it

¹¹⁷⁶ CRC, arts 1-4.

¹¹⁷⁷ CRC, arts 2-3, 7-8, 34, 35, and 36.

¹¹⁷⁸ CRC, art 3.

¹¹⁷⁹ *Rantsev v Cyprus and Russia*, paras 264, 268 as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002); fn 45, 6(a) ‘enactment of appropriate legislation on human trafficking...’

would appear that the country's legislation meets the criteria. However, the detailed country analysis reflects shortcomings in meeting the obligations outlined in the CRC, the Optional Protocol for the sale of children, and the *Rantsev v Cyprus* positive obligations. Though each State criminalizes exploitation and trafficking, gaps make the legislation not fully compliant.

In the first element of the *Rantsev v Cyprus* criteria, an example of gaps in the legislation can be found at the Myanmar and Bangladesh border, where the governments struggle extensively with drug trafficking, insurgency, and human trafficking in the form of legitimate business.¹¹⁸⁰ Table 2, Evidence #11, on Bangladesh and Myanmar, reflect that both countries have continual problems with businesses perpetrating as legitimate organizations but are trafficking organizations where children have been found in graves reported by Internal Commission Reports and Fortify Rights in 2017. For example, Evidence #18 reflects an extensive human trafficking ring where children were beaten and forced to drink urine¹¹⁸¹ to meet the

¹¹⁸⁰ Myanmar, Bangladesh relations: Challenges and opportunities (2016) 3

< https://www.myanmarisis.org/publication_pdf/final-version-myanmar-bangladesh-relations-mmedits-ah2-1wpFhW.pdf > accessed 1 September 218.

¹¹⁸¹ International criminal law – The Rome Statute of the International Criminal Court defines torture and cruel, inhuman or degrading treatment as war crimes under art 8 (2 a ii, iii & xxi and 2 c i & ii), and as crimes against humanity under art 7 (1 f & k); International humanitarian law - 'Degrading treatment' involves humiliation and debasement; torture is prohibited by art 3 common to the four Geneva Conventions, art 12 of the First and Second Conventions, arts 17 and 87 of the Third Convention, art 32 of the Fourth Convention, art 75 (2 a & e) of Additional Protocol I and art 4 (2 a & h) of Additional Protocol II. In international armed conflict, torture constitutes a grave breach under arts 50, 51, 130 and 147 respectively of these Conventions. Under art 85 of Additional Protocol I, these breaches constitute war crimes. In non-international armed conflict, they are considered serious violations. In addition, art 3 common to the Geneva Conventions, art 75 (2 b & e) of Additional Protocol I and art 4 (2 a & h) of Additional Protocol II prohibit 'outrages upon personal dignity, in particular humiliating and degrading treatment'; International Human Rights Law - Universal Declaration of Human Rights (art 5), the International Covenant on Civil and Political Rights (art 7).

substantive requirements of water (evidence #20).¹¹⁸² Yet, no public record¹¹⁸³ covering a ten-year search period reflects the provisions in the legislation, measures, or prosecution of a legal person in Bangladesh or Myanmar. Optional Protocol for the sale of children addresses businesses that exploit children for trafficking, per art 1(4), ‘subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offenses established in paragraph 1’.¹¹⁸⁴

Nonetheless, reports show that evidence #18 and #20 capture legal persons in direct violation of art 1(4) with no State reporting of the incident, except for what has been captured by third-party submitters – Fortify Rights.¹¹⁸⁵ There has been no rebuttal or counterargument from Fortify Rights by either Bangladesh or Myanmar. The failure to prosecute any legal person or adhere to any legislation, measure and prosecutorial efforts has not been published in any governmental public records under the UNTOC SHERLOC system, the Universal Periodic Review, and response to issues.

In recent years, the region has been downgraded in the US State Department’s annual Trafficking in Persons Report¹¹⁸⁶ to the lowest level under the country’s Trafficking in Victims Protection Act (TVPA) minimum standards. Though these standards are not linked to the United Nation’s oversight, the international laws underpin their

¹¹⁸² Table #8, Evidence #11, 18, and 20; as it cites *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23 and IT-96-23/1-A, Judgement, at 36, para 118 (ICTY, 12 June 2002).

¹¹⁸³ Public access research refers to the UNTOC SHERLOC reporting system, the Universal Periodic Reviews dating from 2009 through 2019, or the world-wide web.

¹¹⁸⁴ Optional Protocol for the sale of children, art 1(4).

¹¹⁸⁵ Table 2, Research Claim Evidence Matrix, Evidence #18 and 20.

¹¹⁸⁶ The USA’s TVPA minimum standards reporting aligns with USA backed Trafficking-in-Persons Reports.

application. Most relevant is the third-party submission of the TVPA classification. The US State Department ranking was used as a court's legal basis for ruling a states' positive obligation in *Rantsev v Cyprus and Russia*¹¹⁸⁷ (the rankings under the 3Ps of Prevention, Protection, and Prosecution have been applied).

c) Optional Protocol to the Convention on the sale of children (OPSC) and the Optional Protocol to the Convention on a Communications procedure (OPIC).

OPSC was the focus at the International Conference on Combatting Child Pornography in Vienna, 1999. The monumental topic was the growing availability of child pornography on the world wide web, and other technologies have evolved were another avenue for children's vulnerability came to the forefront. The deep concern brought forward was the disproportionate representation of the girl child at a greater risk of sexual exploitation,¹¹⁸⁸ which resulted in the Protocols adoption at the World Congress against Commercial Sexual Exploitation of Children, from 27-31 August 1996. Each bore the 'shall' obligation throughout arts 1, 3, 4, 6-12. Figure 13 reflects these articles plotted on the graph interpreted as mandatory State compliance.

Art 1, OPSC indicates 'States shall prohibit the sale of children, child prostitution, and child pornography as provided for by the present Protocol'. Article 2 further defines the conduct and is considered collectively with art 3. The articles identify a host of acts that, as a minimum, should be 'fully covered by the criminal or penal legislation of States Parties. The member-States obligations to the Optional Protocol include

¹¹⁸⁷ *Rantsev v Cyprus and Russia*, at 17-23, paras 91-07 (summarizing reports on human trafficking in Cyprus issued by both the Council of Europe Commissioner for Human Rights and the US State Department).

¹¹⁸⁸ Optional Protocol on the sale of children, Introduction.

the repression of the crimes of sexual exploitation of the child; transfer of organs of the child for profit, engagement of the child in forced labour; inclusive of offering, obtaining, procuring, or providing a child for child prostitution, as defined in art 2. A key element of art 2 is the specificity of a child sale in the Optional Protocol that declares ‘any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration’.¹¹⁸⁹

The OPIC, often referenced as the 3rd Optional Protocol, establishes a context for the complaints procedure after entering it into force on 14 April 2014. The complaint, also referenced as a ‘communication’ or a ‘petition’ has no specific format or structure to follow. The only requirement is that it be in writing, contain the basic personal information (name, nationality, and date of birth), and specify the state party. The complaint must be expressed as clearly as possible. The complaint should include the chronological order of facts, any efforts exercised to exhaust domestic remedies, court documents, and any statements on relevant treaties... if known.¹¹⁹⁰

The significant relevance to the stateless child is that the OPIC allows a complaint to be brought against any State which had jurisdiction over the victim when and where the violation occurred that has ratified the Optional Protocol.

Many governments have accepted the UN treaty on child rights; however, the ratification does not automatically equate to the ability to complain about violations of those rights in that State.

¹¹⁸⁹ Optional Protocol on the sale of children, art 2.

¹¹⁹⁰ Refer to capacity of the *2Prevent&Protect* e-app and manual proffered framework, Table 9 of text or Appendix 4, to serve as the vehicle for children, or their advocate to file a complaint (petition); Committee on the Rights of the Child (CRC) Human Rights Treaties Division (HRTD) Office of the UN High Commissioner for Human Rights (OHCHR) Palais Wilson – 52, rue des Paquis CH-1201 Geneva (Switzerland) Tel. 41 11 97 91 Fax: +41 22 917 90 08, e-mail: crc@ohchr.org.

The OPIC is comprised of multiple parts with a specific purpose. Part II, arts 5 through 12, set out the complaint (petition) process. Part III, arts 13 and 14, delineate the CRC Committee's inquiry procedure and the process for findings. In addition, the CRC member States should refer to art 12, inter-state communications, where there is an opt-out possibility regarding the inquiry procedures for grave or systematic violations under arts 13-14. Finally, arts 15-24 of Part IV continue the procedural provisions and expand on international assistance cooperation, distribution, and dissemination of the optional protocol's ratification, access, and amendments.

i. Provision, CRC, art 1. Though art 1 of the CRC does not define a minimum age, it does set an upper age limit of 18 for every human being to be considered a child under the Convention. Although Bangladesh and Myanmar have acknowledged the definition of a child, the questionable component arises with the upper age limit in national legislation that provides for a lower age of majority in some instances.

ii. Provision, CRC, art 2, non-discrimination. Article 2 is a general principle of the CRC, as it prohibits discrimination. The CRC Committee formulated input specifically addressing discrimination as prohibited irrespective of budgetary resources.¹¹⁹¹ Yet, Myanmar's Tier 2 status reflects a denial of citizenship is a blatant disregard of art 2, whereas, on 9 October 1982,¹¹⁹² Myanmar's 1982 Citizenship Law statute remains in force. The law makes citizenship and the legal rights contingent upon belonging to one of the country's predetermined racial categories, 'national races', resulting in the Rohingya's maltreatment.¹¹⁹³

¹¹⁹¹ CRC Committee, *Consideration of reports submitted by States Parties under art 44 of the Convention: Concluding observations of the Committee on the Rights of the Child: France* (1994) CRC/C/15/Add.20 para 19; CRC Committee, *Consideration of reports submitted by States Parties Under art 44 of the Convention: Concluding observations of the Committee on the Rights of the Child: Bolivia* (1993) CRC/C/15/Add.1 para 14.

¹¹⁹² Refer to Table 2, The Research Evidence Matrix, Evidence, 12.

¹¹⁹³ On 8 October 1982, Myanmar's then Head of State, General Ne Win, declared that there should be 'three classes of citizens,' with full citizenship reserved for 'pure-blooded nationals,' and the remaining classes for those who 'cannot [be] trust[ed] fully' and who therefore must be denied 'full rights.' UN Fact-Finding Mission, Report of the Detailed Findings (2018), para 476 (citing Online Burma/Myanmar Library, Translation of the speech by General Ne Win provided in The Working People's Daily, 9 October 1982, available at http://www.burmalibrary.org/docs6/Ne_Win%27s_speech_Oct-1982-Citizenship_Law.pdf). The 1982 Citizenship Law also permits citizenship through means not relevant here, including through naturalization.

CRC, General comment 5 sets out state party implementation guidance for the Convention on the Rights of the child that has not been adhered to by Myanmar.¹¹⁹⁴ Whether the Rohingya children were in Myanmar or Bangladesh, States have a duty to adhere to the rights set out in the CRC without discrimination, art 2 and General comment 5.¹¹⁹⁵ Despite the provisions of CRC Committee, General comment 21, Myanmar has not revised or rescinded legislation where necessary to prevent and eliminate discrimination and remains in breach of art 2.¹¹⁹⁶

iii. Provision, Protection, and Participation, CRC, art 4, The General Obligation.

Article 4, General Obligations are postured as compulsory and oblige State parties to take all appropriate administrative and legislative measures to implement the CRC.¹¹⁹⁷ General comment 5 provides Bangladesh, Myanmar, and other states with appropriate real-world implementation.¹¹⁹⁸ The wording of ‘shall undertake’ serves as the mandatory language or the ‘absolute’ (refer to Figure 13) obligation for states to allocate budgeting to realize State responsibility.¹¹⁹⁹ Article 4 serves a critical role as a joint CEDAW and CRC Committee general recommendation/general comment that sets out a holistic framework against harmful practices. This article is the basis for this

¹¹⁹⁴ CRC Committee, GC 5 (2003): General measures of implementation of the Convention on the Rights of the Child (27 November 2003) CRC/GC/2003/5 para 12.

¹¹⁹⁵ CRC, art 2; CRC Committee, GC 5 (2003): General measures of implementation of the Convention on the Rights of the Child (27 November 2003) CRC/GC/2003/5 para 12.

¹¹⁹⁶ CRC Committee, GC 21 (2017) on children in street situations, para 14.

¹¹⁹⁷ Mervat Rishmawi, *Article 4: The Nature of states parties’ obligations* (Martinus Nijhoff Publishers).

¹¹⁹⁸ CRC Committee, GC 5 (2003): General measures of implementation of the Convention on the Rights of the Child (27 November 2003) (CRC/GC/2003/5 para 1.

¹¹⁹⁹ CRC Committee, GC 19 (2016) on public budgeting for the realization of children’s rights (art 4) (20 July 2016) CRC/\C/GC/19 para 18.

study's proffered framework of combining criminal law and human rights. The pros and cons of a criminal law approach, CEDAW Committee, and CRC Committee, Joint general recommendation/GC 31,

'although criminal law sanctions must be consistently enforced in ways that contribute to the prevention and elimination of harmful practices, States Parties must also take into account the potential threats to and negative impact on victims, including acts of retaliation.'

In contrast, evidence #1 and 4 details severe and gross human harmful practices by Myanmar and Bangladesh. In a forced displaced situation, 'children were captured and subjected to sexual violence, brutalized, and subjected to capture, repeated acts of humiliation and violence...' ¹²⁰⁰ However, reporting, per art 44, for Bangladesh and Myanmar indicate no record of the application of CRC Committee, GC 5: General measures of implementation of the Convention on the Rights of the Child, para 5. However, art 4, CRC places no limits on States Parties' obligations to the children 'within their jurisdiction'.

Under CRC, Commentary on art 2 requires only the obligation to respect and ensure the Convention rights *without discrimination* be limited to the jurisdiction of the State party concerned. ¹²⁰¹ However, the CRC Committee has clarified that States Parties are obliged to 'cooperate with other states' efforts to mobilize the maximum available resources for children's rights'. ¹²⁰²

¹²⁰⁰ Refer to Table 2, Evidence #1 and #4.

¹²⁰¹ CRC, art 2; Contra: Bruce Abramson, *Article 2: non-discrimination* (A Commentary on the UN Convention on the Rights of the Child, Martinus Nijhoff 2008) 127-8.

¹²⁰² CRC Committee, GC 19 on public budgeting for the realization of children's rights (art 4).

States that lack capacity, especially those States with limited substantive resources, such as in ASEAN, has been impacted by natural disasters, among other factors, are guided by CRC Committee, GC 19 on public budgeting for the realization of children's rights, in alignment with art 4, CRC. Therefore, in reporting, the CRC Committee is looking to see if these States sought international cooperation and demonstrated that they had exhibited every possible effort in this regard'.¹²⁰³ Similarly, States that do have the resources are obliged to provide essential international cooperation 'with the aim of facilitating the implementation of children's rights in the recipient state'.¹²⁰⁴ However, after an extensive review of the collaborative agreements and international bi-lateral/multilateral treaties, the researcher could not find any agreements that supported this obligation amongst the research states.

¹²⁰³ CRC, art 4.

¹²⁰⁴ CRC Committee, General comments Nos 5, 14.

iv. Protection, CRC, arts 7-8; 32, 34-36. Arts 7-8, name and nationality, and art 8, preservation of identity continue to be areas of concern; evidence #4, UNHCR Mission Report from the High commissioner concluded that the Rohingya were still being identified as illegal settlers, who were subjected to discrimination, violence, and deprivation of governmental services, to include education. Illiterate and forced to stay with the confines of Cox's Bazaar, the children have little hope of a formidable future or the retention of their heritage, receiving a birth certificate, and documents have been denied in Bangladesh, Cox's Bazar, and Myanmar.¹²⁰⁵

Multiple research evidence reports reflect open and notorious violations of CRC's art 32 Protection from economic exploitation, art 34, Protection from sexual exploitation and abuse, art 35, Prevention of abduction, sale, and trafficking. Lastly, art 36, Protection against all other forms of exploitation. In Myanmar, several credible reports have been that the State violates arts 32, 34-36. Likewise, Human Rights Watch, 29 October 2018,¹²⁰⁶ reports reflect that armed conflict was inflicted upon children as young as eight and up to 17-years old through the military's 'clearance operation'. As a result, countless children were likely damaged for life due to the physical and sexual abuse and violence characteristic of adverse childhood experiences (ACE).¹²⁰⁷ The term 'clearance operation' is a crucial terminology application here, as the country explains these actions in the counterargument section of this study, Table 3, Counterargument Evidence. The UN's Human Rights Council report and the High Commissioner and the Secretary-general, dated 29 June 2016,

¹²⁰⁵ Refer to Table 2, The Research Evidence Matrix, Evidence 4.

¹²⁰⁶ Refer to Table 2, The Research Evidence Matrix, Evidence, 16; Jeremiah and others (n 87).

¹²⁰⁷ *ibid.*

identify sexual and gender-based violence, sexual violence, and trafficking reports.¹²⁰⁸

Evidence from UN Migration Report, 27 September 2017 recaps violations of the elements of the articles with kidnapping, sexual violence, and total non-compliance from the authoritative implementation guidance from the CRC General comments.¹²⁰⁹

v. Provision, Protection, and Participation, CRC, art 3, Best Interest; art 4, General Obligation, arts 32, 34-36, Sexual exploitation, abduction, sale, and trafficking, All other forms of exploitation

States under review: Association of Southeast Asian Nations (ASEAN) Charter and Southeast Asia and South Asia - Bangladesh and Myanmar

Each of the jurisdictions under examination is research evaluated by the European Court of Human Rights case law criteria, that of the obliged treaty provisions of both the CRC and Optional Protocol to the sale of children. The States' legal duty to human trafficking and exploitation is prominently reflective in the court rulings present in *Rantsev v Cyprus and Russia* (App no 25965/04),¹²¹⁰ *L.E. v Greece* (App no 71545/12), and the requirements for an effective investigation derived from *Finucane v The United Kingdom*,¹²¹¹ among others precedent and relevant cases impacting on the State's positive obligation for the prevention, protection, and exploitation of human trafficking.

The following text is reflective of the states under review and analysis of the positive obligation for ASEAN (because of a multilateral treaty agreement), Bangladesh, and Myanmar:

¹²⁰⁸ Refer to Table 2, The Research Evidence Matrix, Evidence 1.

¹²⁰⁹ CRC, GC 5.

¹²¹⁰ *Rantsev*, at 64-65, paras. 264-68.

¹²¹¹ *Finucane v The United Kingdom*, (29178/96) [2003] ECHR 328 (1 July 2003) UK, paras 68-71; 'a State party that does not criminalize trafficking, and also fails to investigate *any* cases of trafficking, protect *any* victims, or to prosecute *any* perpetrators when there is reliable evidence available of the existence of a trafficking problem'...

e) States under review: The international obligation of ASEAN Charter, *Rantsev v Cyprus*

The encompassing *issues and facts* of the territory first center on the *Association of Southeast Asian Nations (ASEAN) Charter*. ASEAN was established on 8 August 1967 and is considered an inter-governmental organization, conferred as a legal personality.¹²¹² The ASEAN geographic region includes a population of over half a billion and an economic GDP of more than 2.9 trillion US dollars.¹²¹³ However, the ASEAN Charter has a pivotal role in the actions taken by its member States in the prevention measures and protection mechanisms in the region against human trafficking and violence, abuse of children.¹²¹⁴

Until recent years, ASEAN's focal *issues* have primarily been centered on labour migration instead of forced migration.¹²¹⁵ However, after 2005, the current state of forced migration in its member states, trafficking-in-persons situ.¹²¹⁶ In the ASEAN region, thousands of people flee conflict (both armed and religious), persecution, and catastrophic natural disasters.¹²¹⁷ In addition, the UN Office for Disaster Risk

¹²¹² International Law Commission, Draft Articles on Responsibility of International Organizations provisionally adopted by the International Law Commission at its fifty-eighth session, UN Doc A/58/10 (2003) at 38-45, online: <<http://www.un.org/law/ilc>> accessed 22 April 2019; International organizations, as understood by the ILC, 'may include as members, in addition to States, other entities.' As to the theoretical foundation of such organization's international legal personality, the ILC has observed that the ICJ 'appeared to favor the view that when legal personality of an organization exists, it is an 'objective' personality. Thus, it would not be necessary to enquire whether the legal personality of an organization has been recognized by an injured State before considering whether the organization may be held internationally responsible according to the present draft articles. On the other hand, an organization merely existing on paper could not be considered as having an 'objective' legal personality under international law' at 42.

¹²¹³ H Plecher, 'Gross domestic product (GDP) of the ASEAN countries from 2008 to 2018' (Statista 2019) <<https://www.statista.com/statistics/796245/gdp-of-the-asean-countries/>> accessed 10 April 2019.

¹²¹⁴ A J Bellamy and C Drummond, 'The responsibility to protect in Southeast Asia: Between non-interference and sovereignty as responsibility' (2011) 24[2] *The Pacific Review* 79-200 <<https://www.tandfonline.com/doi/abs/10.1080/09512748.2011.560958>> accessed 8 April 2019.

¹²¹⁵ ILO, 'Asia-Pacific migration network, ILO regional office for Asia and the Pacific' (ILO 2019) <<http://apmigration.ilo.org/asean-labour-migration-statistics>> accessed 11 April 2019.

¹²¹⁶ *ibid.*

¹²¹⁷ A Ahsan and others, *International migration and development in East Asia and the Pacific* (Washington DC: World Bank 2014).

Reduction, natural disasters have taken a heavy economic and human tragedy toll in the Asia-Pacific region.¹²¹⁸ According to The Hague Process on Refugees and Migration Foundation (THP Foundation) Handbook, these scenarios have contributed to onslaughts of force migrations that descriptively meet the text categories¹²¹⁹ where there is fighting, persecution, armed conflicts (and religious conflicts). To this point, coercion is deserving of further discussion as it relates to the Rohingya-crisis. A correlation to a forced migration situ, art 3 of the Trafficking Protocol, and the description of *coercive means*. Consent to an act is made irrelevant as these criminal elements of forced migration are seen to remove a person's free will.¹²²⁰ Succinctly, the definition of human trafficking connects that taking advantage of a position of vulnerability translates into a *coercive means* of recruiting or transporting people.¹²²¹

6) ASEAN and the vulnerable migrants. When examining the Rohingya-crisis, a coercion linkage can be established to meet a 'position of vulnerability', where a person has no real and acceptable alternative or viable options.¹²²² Many others are

¹²¹⁸ UN Office for Disaster Relief Reduction (UNISDR), 'The Asia-Pacific disaster report: Reducing vulnerability and exposure to disaster' (2012) <<https://www.unisdr.org/archive/29286>> accessed 29 January 2019.

¹²¹⁹ The Hague Process on Refugees and Migration, *People on the move: Handbook of selected terms and concepts* (The Hague/Paris: UNESCO Section on International Migration and Multicultural Policies 2008), 29 <<https://www.scribd.com/document/335385588/UNESCO-People-on-the-Move-Handbook-Terms-for-Migration>> accessed 17 July 2017; UNCRC, General comment 23, human rights of children in the context of international migration in countries of origin, transit, destination, and return (2017).

¹²²⁰ B Hastie. 'By any means necessary: Towards a comprehensive definition of coercion to address forced labour in human trafficking legislation' (Order no MR84192, McGill University (Canada)). ProQuest Dissertations and Theses, 101, 7-40.

¹²²¹ Article 23 of the Organized Crime Convention – Criminalization of obstruction of justice; each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention; (b) The use of physical force, threats, or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

¹²²² CRC, General comment 14 adds further clarity to member States as it explains that a child in a specific situation of vulnerability.

forced to leave their country of origin in South Asia and Southeast Asia.¹²²³ Poverty and development projects initiated and imposed by the government, in many, but not all cases, result in the loss of livelihood.¹²²⁴ Despite the dismissive and disassociated posture with the regions' migratory situation that has been fostered by many of the ASEAN States, the global attention that has beset on the Rohingya-crisis'¹²²⁵ and the accompanying parallel forced migration has created situations impossible to ignore or diminish in magnitude. Official government ASEAN reports suggest that the migratory categories are blurred with refugees looking for relief from anyone, including traffickers and smugglers.¹²²⁶

Similar to their parents and other adults caught in the migratory flows, a child is also an irregular migrant worker. Contingent upon situations, a child may meet the international definition of a stateless refugee, accompanied or unaccompanied by a parent or legal guardian.¹²²⁷ As a result of the unstable and vulnerable regional situations, volumes of research support a premise that a child within an ASEAN Charter state is highly likely to be trafficked.¹²²⁸

The AICHR has been criticized harshly for the omission of an explicit mandate to perform a protection duty. Globally, questions remain as to why ASEAN is reluctant to intervene with formidable measures or mechanisms to address statelessness, forced

¹²²³ L Jones, 'ASEAN's unchanged melody? The theory and practice of 'non-interference' (2010) 23(4) *The Pacific Review* 479-502 <<https://doi.org/10.1080/09512748.2010.495996>> accessed 23 April 2019.

¹²²⁴ IOM, *Situation report on international migration in East and Southeast Asia: Regional thematic working group on international migration including human trafficking* (Bangkok: IOM 2008) 119.

¹²²⁵ Rohingya-crisis, refer to Figure 3.

¹²²⁶ IOM, *Situation report on international migration in East and Southeast Asia: Regional Thematic Working Group on International Migration including human trafficking* (Bangkok: IOM 2008) 119.

¹²²⁷ *ibid.*

¹²²⁸ The UN Action for Cooperation against Trafficking in Persons (UN-ACT) and Mahidol University in Bangkok co-organized the International Seminar on Mixed Migration in Southeast and East Asia, 21-22 June 2017.

migration, and a host of migrant humanitarian concerns.¹²²⁹ A most important point to note is that the ASEAN Charter has no human rights court, no mandate to receive complaints, or allocates a process to conduct investigations for redress.

7. ASEAN Charter Relevant Rules. An investigation into the governing rules of the ASEAN Charter indicates its status as a *legal personality*, which subjects it to international law.¹²³⁰ To further understand the ASEAN Charter's legal standing, scrutiny of art 78¹²³¹ from the 1947 Paris Peace Treaties¹²³² gives insight into the basis and application of international legal personalities within customary international law. The analytical basis for examining the international legal personality of an organization can be distinctively made when constituent documents express provisions granting legal personality, as noted within the ASEAN Charter, Chapter II, Article 3. Further understanding of ASEAN's legal standing as an international legal personality can be derived from the International Court of Justice (ICJ) opinion, which notes,

“[i]nternational organizations are subjects of international law, and, as such, are bound by any obligations incumbent upon them under general rules of international law.”¹²³³

¹²²⁹ ASEAN Intergovernmental Commission on Human Rights, 'Terms of Reference', [4.5] <<http://aichr.org/documents/>> accessed 7 February 2019.

¹²³⁰ A final consideration in this abstract 'consideration of international legal personality is that it is not plenary – in other words, even if international legal personality is found to exist, that does not conclude the inquiry of what powers such an entity may in fact exercise. In the *Reparations* case, the ICJ noted that: The Court has concluded that the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is 'a super-State', whatever that expression may mean...'; 'Whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice'.

¹²³¹ Article 78, 'UN nationals' means individuals who are nationals of any of the UN, or corporations or associations organised under the laws of any of the UN, at the coming into force of the present Treaty, provided that the said individuals, corporations, or associations also had this status on September 3, 1943, the date of the Armistice with Italy. The term 'UN nationals' also includes all individuals, corporations, or associations which, under the laws in force in Italy during the war, have been treated as enemy.

¹²³² Canada: Immigration and Refugee Board of Canada, *Hungary: Paris Peace Treaty 1947*, 30 May 1989.

¹²³³ Interpretation of the agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, 1980 ICJ Rep. 73, 89–90 (Dec. 20) [hereinafter WHO-Egypt Advisory Opinion].

Among scholars, there is a range of positions of how general international law binds international organizations. Yet, a narrower view of the single sentence in the ICJ's 1980, WHO-Egypt advisory opinion further supports the footing for obligations imposed upon international organizations where it states, 'under their constitutions or under international agreements to which they are parties'.¹²³⁴

Yet, with responsibility, only a subject of international law may be internationally responsible. Referring to the *Reparations Advisory Opinion*, a conclusion was derived by the International Court that the UN is an international person by noting,

'its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged'.¹²³⁵

The court further concluded that the UN...

'is a subject of international law and capable of possessing international rights and duties, and that it has the capacity to maintain its rights by bringing international claims'.¹²³⁶

The next primary rule is ASEAN's commitment to the CRC. The CRC has been affirmed within the ASEAN Intergovernmental Commission on Human Rights (AICHR)-Philippines and AICHR-Singapore, collaborating with Child Rights Coalition Asia. Though not recognized within the context of a Declaration, the principles outlined in the Commission are structured to highlight awareness and understanding in the implementation of the CRC and the two of the relevant Optional Protocols: a) The Involvement of Children in Armed Conflict (OPAC) and b) the

¹²³⁴ WHO-Egypt Advisory Opinion, para 37.

¹²³⁵ *Reparations for injuries suffered in the service of the UN*, ICJ Reports 1949, 174, 179.

¹²³⁶ *ibid.*

Optional Protocol to the Convention on Communications Procedure (OPIC).¹²³⁷ Each member of the ASEAN Charter is a State Party to the CRC but has not ratified all the Optional Protocols. However, ASEAN does not have a separate and distinct domestic and binding law for implementing the CRC.

Another notable prominent but non-legal instrument is the ASEAN's 2002 UN Recommended Principles and Guidelines on Human Rights and Human Trafficking.¹²³⁸ The critical element in notating this document is that it includes specific details for its member States to improve victim protection, reduce victim detention, enhance criminal justice responses, and move toward legislative development. Though non-binding and no measurable goals and objectives exist, these principles, on the surface, reflect a correlation to Kennedy's deterrence and mitigation strategy.

In international law, declarations, though not binding, have the *capacity* to become customary international law. Declarations, unlike reservations, do not affect legal obligations but are often made when a State expresses its consent to be bound by a specific treaty. Thus, a position could be taken that ASEAN is using declarations to clarify its position on the respective treaty text of its member States. This intent could serve as an explanation of ASEAN's adoption of the following instruments, also identified as informational to this study's examination:

¹²³⁷ The concept of the 'child's best interests' is not new. Indeed, it pre-dates the Convention and was already enshrined in the 1959 Declaration of the Rights of the Child (para 2), the Convention on the Elimination of All Forms of Discrimination against Women (arts 5 (b) and 16, para 1 (d)), as well as in regional instruments and many national and international laws.

¹²³⁸ UN High Commissioner for Human Rights, recommended Principles and Guidelines on Human Rights and Human Trafficking, delivered to the Economic and Social Council, UN Doc 3/2002/68/Add.1, May 20, 2002 [hereinafter UN Trafficking Principles and Guidelines].

- a. April 2010, Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children,
- b. 2007, Protection and Promotion of the Rights of Migrant Workers,¹²³⁹
- c. the ASEAN Human Rights Declaration (AHRD), and
- d. 2004, ASEAN Declaration Against Trafficking in Persons - particularly Women and Children, preceded by the 1997 ASEAN Declaration on Transnational Crime,¹²⁴⁰ superseded by the ASEAN Convention against Trafficking in Persons, especially Women and Children (ACTIP), 22 Nov 2015.

¹²³⁹ ASEAN, 'Declaration on the protection and promotion of the rights of migrant workers' (Philippines 2007) <<http://www.aseansec.org/19264.htm>> accessed 7 February 2019.

¹²⁴⁰ The 2004 Declaration was preceded by: ASEAN, *ASEAN Declaration on transnational crime* (Manila: The Philippines, 20 December 1997) <<http://www.asean.org/communities/aseanpolitical-security-community/item/asean-declaration-on-transnational-crime-manila-20december-1997>> accessed 7 February 2019; ASEAN, 'ASEAN plan of action to combat transnational crime, endorsed by the 2nd ASEAN Ministerial Meeting on Transnational Crime' (AMMTC), Yangon, Myanmar, 23 June 1999, <<http://www.asean.org/communities/asean-political-security-community/item/joint-communique-of-the-second-asean-ministerial-meeting-on-transnational-crime-ammtcyangon-23-june-1999>> accessed 7 February 2019.

8. States under review: Bangladesh, the States' Positive Obligation

As a small deltaic country in South Asia, Bangladesh has a total land area of 145,035 square km region and is recorded as the eighth largest population in the world.¹²⁴¹ Bangladesh gained independence from Pakistan after the 1971 Bangladesh Liberation War and was established as a parliamentary democracy.¹²⁴² Geographically, it is located in the Bengal delta, the world's largest delta.¹²⁴³ Its low-lying deltaic terrain experiences extensive climate variability, both spatially and temporally, thereby rendering the area highly disaster-prone.¹²⁴⁴ Frequently encased in riverine floods and coastal storm surges, the vulnerable poor populations are often forced displaced due to natural disasters and political unrest.¹²⁴⁵

A snapshot of the country's population, in March 2017, from the Bangladesh Bureau of Statistics presents a population to be at approximately 158.9 million, with 70% percent residing in rural areas.¹²⁴⁶ The most critical statistic is the gender ratio is 50:49 for women and men.¹²⁴⁷ Despite the proportionate ratio of women to men, research supports the societal picture that Bangladesh has a strongly patriarchal culture with limited opportunities for women beyond the culturally traditional family setting. With the deep-rooted cultural and traditional practices intermingled with unceasing

¹²⁴¹ US State Department, '2019 TIP Country Report' (US State Department 2019).

¹²⁴² A F Salahuddin Ahmed, *History and heritage: Reflections on society politics and culture of South Asia* (The University Press Limited 2007).

¹²⁴³ Figure 8, Southeast Asia regional mapping.

¹²⁴⁴ *ibid*; Naz Zaman, *1971 and After: Selected stories* (The University Press Limited 2001).

¹²⁴⁵ *ibid*.

¹²⁴⁶ Bangladesh Bureau of Statistics (BBS), 'Bangladesh Statistics 2017' (BBS, Statistics, and information division (SID) Ministry of Planning) <www.bbs.govbd> accessed 20 December 2019.

¹²⁴⁷ *ibid*.

political unrest, and challenging economics, Bangladesh remains one of the least developed countries in the world.¹²⁴⁸ Bangladesh's ratification still commits the country to a positive obligation of the CRC. Despite at least 100 credible reports of forced labour and sex trafficking of Rohingya within Bangladesh, the government did not report investigating or prosecuting these potential crimes.¹²⁴⁹ Moreover, the Bangladesh High Court¹²⁵⁰ did not hear any of the anti-trafficking cases filed by Rohingya. The Bangladesh governments' actions are in direct contention to *L.E. v Greece* and *Finucane v The United Kingdom's* stated positive State obligations where the government failed to

‘adopt effective legal and regulatory framework, take protective operational measures, and conduct effective investigations, and criminal proceedings’.¹²⁵¹

The Bangladesh Constitution affords some protection against human trafficking. Art 27 and art 28 both address rights of equality and discrimination. Article 32 focuses on liberty and the right to life. A closer purview of art 34(1)¹²⁵² reflects provisions for protection against forced labour and exploitation, which appears to be mirrored in the Palermo Trafficking Protocol and the CRC's Optional Protocol to the Convention on

¹²⁴⁸ Mohammad Ayub Khan, *Friends not masters: A political autobiography* (The University Press Limited 2008); The book is reprinted as part of UPL's Road to Bangladesh series which is designed to present published accounts of the background to the emergence of Bangladesh.

¹²⁴⁹ Refer to Table 2.

¹²⁵⁰ High Court Division Judgements of the Supreme Courts of Bangladesh

<http://www.supremecourt.govbd/web/?page=judgments.php&menu=00&div_id=2> accessed 28 July 2019,

¹²⁵¹ The heart of the judgment rather lies in the determination of whether Greece has failed to fulfill its positive obligations under art 4. Following the tenor of *Rantsev v Cyprus and Russia*, the Court examined whether Greece has failed to fulfill its positive obligations to (i) adopt effective legal and regulatory framework; (ii) take protective operational measures; and (iii) conduct effective investigation and criminal proceedings.

¹²⁵² Article 34(1) states: ‘All forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in accordance with law.’

the sale of children. In juxtaposition, similarities can be seen in art 3(a), Palermo Trafficking Protocol's definition of trafficking-in-persons, and art 34-36 of the Bangladesh Constitution, even though it does not directly criminalize human trafficking. CRC arts 35-36 center on elements of trafficking – freedom of movement and declares it unlawful to subject a person to torture, cruel, inhumane, or degrading treatment. Nonetheless, the Act is the principal legislation for punishing trafficking in women and children in Bangladesh. Sections 5 and 6 of the Act detail the punitive measures for the trafficking of women and children and set out the judicial process through a special tribunal, the Nari-o-Shishu, Nirjaton Domon.¹²⁵³

Criteria 2 of the obligation for punishments commensurate to the nature of the crime of trafficking is addressed with The Act, which is mainly penal. For example, Sections 4-12, 14, 17, and 30 prescribe the punishments for the offences. The Act punishments range from ten years to death for the trafficking of women or to life in prison and death for the trafficking of children.¹²⁵⁴ The operative word in Section 2 of the Act is 'Repression', which is interpreted in the Bangladesh judicial system to encompass all kinds of mental, physical violence and assaults on a woman or child.¹²⁵⁵ However, the Act still does not meet criteria #3, as it does not provide the protection afforded by the definition of trafficking in persons in the Palermo Trafficking Protocol. An

¹²⁵³ Nari o shishu Nirjaton Damon Ain (Act xviii of 1995) is a specialized law that passed into law and came in force on 17 July 1995. It has been amended for two times up to date, one is in 2000 and another is in 2003 and introduced some more precise provisions. Nari o Shishu Nirjaton Damon (amendment) Ain 2000; The Act clearly defines that the perpetrators under this Act will be triable in a special tribunal which is established under this Act.

¹²⁵⁴ The Prevention of Women and Children Repression (The Act).

¹²⁵⁵ The Prevention of Women and Children Repression (The Act).

example of the protection gap can be found in *State v Abul Kashem*,¹²⁵⁶ where the prosecutor found insufficient evidence for the minor trafficked victim *Rubel* to Dubai. The child was sold to be used in a heavy child trafficked criminal enterprise of camel jockeying in camel races.¹²⁵⁷ Yet, the prosecution's case was unable to prove the case beyond a reasonable doubt.

9. Case Analysis: Bangladesh. A critical analysis of Bangladesh's *State v Abul Kashem*¹²⁵⁸ case indicates a weakness in applying the elements of the trafficking definitions that were a detriment to the prosecutions' loss of the case. Though Bangladesh ratified the CRC on 3 August 1990, and the Optional Protocol for the sale of children on 6 September 2000, the case employed none of the legislative protections mandated by the States' ratified instruments. There was no reference to the Children's Act of 1974, or its successive instruments, Children Rules 1976 (no S.R.Q. 1.03-L/76) or Children's Act, 2013 (Act no 24 of 2013), under Part VI - Special Offences in Respect of Children. The outcome of this case further supports the premise of this study. A combined legal framework of the Palermo Trafficking Protocol (or its domestic

¹²⁵⁶ 9 Bangladesh Law Chronicle (2004) 391, Criminal Appeal(H) 5214/2005; source: Dhaka Law Report, Mumbai Law Report, Bangladesh Legal Decisions and Bangladesh Legal Chronicles; Judgements of the Supreme Court of Bangladesh, (Appellate Division Judgements of the Supreme Court of Bangladesh) <http://www.supremecourt.govbd/web/?page=judgments.php&menu=00&div_id=1> accessed 22 August 2019.

¹²⁵⁷ US State Department, 'The facts about children trafficked for use as camel jockeys' (Office to Monitor and Combat Trafficking in Persons, 8 August 2005) <<https://2001-2009.state.gov/g/tip/rls/fs/2005/50940.htm>> accessed 28 September 2019.

¹²⁵⁸ *ibid.*

implementation), the CRC, and its Optional Protocol for the sale of children presents more robust prevention and protection than that of a singular presented law.

The 2012 revisions of PSHTA,¹²⁵⁹ Chapter 2, criminalizes sex trafficking and labor trafficking. The PSHTA's Chapter 1 definitions are more monistic to the Palermo Trafficking Protocol with CRC and OPSC provisions included. Also, the PSHTA prescribes five years to life imprisonment and a fine of not less than 50,000 Bangladeshi Taka (BDT) (equivalent to the US \$595), but still excludes 'serious crime' clause from art 2, the Convention. In the 2012 update of the Act, the crime of bonded labor was treated as a separate offense and prescribed lesser penalties of five to 12 years' imprisonment and a fine of not less than 50,000 BDT (equivalent to the US \$595).

The legal report analysis examined whether the penalties were sufficiently stringent regarding sex trafficking, commensurate with those prescribed for other serious crimes,¹²⁶⁰ such as rape or sexual assault. Sexual crimes are prescribed in the Bangladesh Penal Code, 1860, Section 375, which defines 'rape' as sexual intercourse taking place without the will or consent of, or by obtaining consent with false promises, with any women under the age of 14. The Penal Code does not address marital rape and specifies it as not a crime providing the wife is aged over 13 years.¹²⁶¹

¹²⁵⁹ The Bangladesh Prevention and Suppression of Human Trafficking Act (PSHTA), 2012; public records reflect that since 2012, 4,152 trafficking cases have been lodged. However, no English published record exists of these cases and the English published cases on record noted in this study do not reflect successful prosecution.

¹²⁶⁰ UN Convention Against Transnational Organized Crime, 2225 Units 209, Done Nov 15, 2000, Entered into Force Sept. 29, 2003 (Organized Crime Convention), At art 32(1), art 2(b), art 3(1)(b), and art 5(1)(a)(i), serious crimes.

¹²⁶¹ The Penal Code 1860, Section 375,

<http://bdlaws.minlaw.govbd/sections_detail.php?id=11§ions_id=3231> Accessed: 6 October 2019.

The inclusion of 13 years of age as acceptable for marriage in the Penal Code is concerning. Also, the Penal Code only addresses vaginal rape. It fails to acknowledge or address sodomy or any other elements of sexual assault that are recognized as torture.

In the European Court of Human Rights' ground-breaking judgment of *Aydin v Turkey*,¹²⁶² the ruling held that rape could constitute torture. The courts examined the violation of rights on rape in *Aydin v Turkey*¹²⁶³ and how it is defined within the court's jurisprudence. The case included the gender-sensitive manners of approach that had adversely impacted prosecution.¹²⁶⁴ However, the provisions of the domestic laws were silent on criteria #5. The assurance of training of law enforcement for the identification of trafficking victims and building trust amongst victims. Similarly, there are no indications that the State engaged in any aspect of research, information campaigns, and awareness.

Records available in English indicate that Bangladesh does not have a history of vigorous investigations of human trafficking, which is contrary to the court's rulings

¹²⁶² *Aydin v Turkey* (1998) 25 EHRR 251; the case is about a 17-year-old Kurdish girl was raped by the military officers. During investigation, the military commander was questioned, custody register subpoenaed, and the applicant sent to three gynaecological examinations. However, officers who allegedly held her in custody or the villagers who might have seen her being taken to custody were not interviewed, while the gynaecological examinations, conducted by inexperienced doctors, were focused solely on establishing whether or not she had lost virginity. While the proceedings were still pending at the time of the Court's judgment, there seemed to be no progress. The applicant argued that she was subjected to torture in violation of art 3 and that she had no effective remedy in violation of art 13.

¹²⁶³ *ibid.*

¹²⁶⁴ Ivana Radacic, 'Rape cases in the jurisprudence of the European Court of Human Rights: Defining rape and determining the scope of the state's obligations' (2008) 3 EHRLR 357

<<https://www.bib.irb.hr/347400?rad=347400>> accessed 2 November 2019.

in *Chowdury and Others v Greece* (no 21884/15).¹²⁶⁵ In the *Chowdury and Others v Greece* case,¹²⁶⁶ Bangladesh nationals were seen by the court as trafficking victims, who Greece failed to put forth an adequate response to human trafficking through the exploitation of the vulnerability of unauthorized migrant works.¹²⁶⁷ According to the 2019 Bangladesh Country TIP Report, investigations, prosecutions, and convictions for trafficking remained inadequate compared to the scale of the problem with only a .04 percent conviction rate for trafficking.¹²⁶⁸ There is no reliable demographic estimate of women and children trafficked from Bangladesh to other countries. According to estimates by human rights activists, 200-400 young women and children are smuggled from Bangladesh into Pakistan every month.¹²⁶⁹ Most of these young women and children end up in prostitution. In addition, many Bangladeshi women are involved in the sex trade in India, mainly in Kolkata, Mumbai, and Delhi brothels.¹²⁷⁰

Bangladesh's 2015 List of Issues reporting to the CRC served as a foretaste to the 2017 Rohingya issues.¹²⁷¹ The CRC Committee identified for Bangladesh areas of concern

¹²⁶⁵ *Chowdury and Others v Greece* (no 21884/15) judgement 30.3.2017 (Section I).

¹²⁶⁶ *ibid.*

¹²⁶⁷ *ibid.*

¹²⁶⁸ US State Department, '2019 TIP Country Report' (US State Department 2019) 87

<<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report-.pdf>> accessed 23 September 2019.

¹²⁶⁹ F Coin, 'Sex trafficking: The global market in women and children', (2011) 15 Dep. Deportate, Esuli, Profughe 401-403 <www.research.lancs.ac.uk/portal/en/publications/sex-trafficking-the-global-market-in-women-and-children> accessed 22 February 2018.

¹²⁷⁰ *ibid.*

¹²⁷¹ UNCRC, 'Convention on the Rights of the Child: Concluding observations on the fifth periodic report of Bangladesh' (CRC/C/BGD/CO/5, 30 October 2015)

under Section IV, item #20, para (b), which identified that children, who have been victims of sexual abuse and exploitation, including victims of trafficking, as well as the number of complaints, investigations, and prosecutions in that regard, and (c) children who have been victims of child marriage, as well as the number of complaints, investigations, and prosecutions in that regard.¹²⁷² According to Bangladesh's CRC report, this information was incomplete, and recommendations were rejected or not action taken. Likewise, Bangladesh's report of treaty violations on 25 August 2015 identified the State's organs were engaged in brutalization where children were violated. The States' actions violate both CRC arts 32 and 35.¹²⁷³ No actions complied with CRC art 3, the child's best interest, or art 4's general obligations for member states.

Cox Bazar evidence¹²⁷⁴ from the UN Migration Report, dated 27 September 2017, by the UN Migration Director General acknowledges,

‘the countless vulnerable Rohingya, classified internationally as stateless refugee children, women, and men, arriving in Myanmar, who suffered gender-based violence, and sexual assaults (sexual violence)’.¹²⁷⁵

The actions and omissions of Bangladesh and Myanmar bring to question the ‘shall endeavour’ level of compliance, where again both countries sit at the bottom of the endeavour spectrum noted in Figure 13. As Bangladesh is both an origin and transit

<<https://bangladesh.savethechildren.net/sites/bangladesh.savethechildren.net/files/library/Concluding%20observation%202015.pdf>> accessed 23 February 2018.

¹²⁷² UNCRC, ‘Convention on the Rights of the Child: Concluding observations on the fifth periodic report of Bangladesh’ (CRC/C/BGD/CO/5, 30 October 2015).

¹²⁷³ *ibid.*

¹²⁷⁴ Table 2. The Research Evidence Matrix, Evidence #2.

¹²⁷⁵ UN Migration Report, dated 27 September 2017, reported from Cox Bazar, by the UN Migration Director General, refer to Table 2, Research Case Evidence Matrix.

state, while Myanmar is a transit and destination state, the minimum standards are set to eliminate trafficking under TVPA, Section 108, ‘the government of a country of origin, transit, or destination’.¹²⁷⁶ The laws appear to be a patchwork across the international and national forums that leave gaps in how origin, transit, and destination States function in the real world. As a result, an unsurmountable volume of migrants, especially those engaged in forced migration, occur in the region. The *Permanent Court of Arbitration (under UNCITRAL rules) in Hulley Enterprises Limited (Cyprus) v The Russian Federation* ruling indicated that the court found that

‘only conduct attributed to the State at the international level is that of its organs of government, or of others who have acted under the direction, instigation or control of those organs, as agents of the State’.

Evidence #17, Table 2, conveys that Bangladesh is responsible for serious crimes¹²⁷⁷ under the Convention. Therefore, in determining if a breach occurred, the first criteria were establishing legislation that criminalizes trafficking under *Rantsev v Cyprus*¹²⁷⁸ and the CRC, 32, 34-36 and Optional Protocol, arts 1-10 provisions.

Bangladesh has many disjointed legislative Acts, national policies, and other legislations that have been in force since 1860. For example, the Act for Children in Penal Code originated in 1860, elements of the old law, spun into the Convention for the Suppression of the Trafficking in Persons and the Exploitation of the Prostitution of Others, 1949, which is still active. However, the National Children’s Policy of 1994 focus appeared to be on societal roles of children. Within the scope of the National

¹²⁷⁶ TVPA, Section 108.

¹²⁷⁷ Convention against Transnational Organized Crime, art 2(b), ‘serious crime’ shall mean conduct constituting an offense punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

¹²⁷⁸ *Rantsev v Cyprus*, at 64-65, paras. 264-68.

Children's Policy introduction, it directly references the CRC and the policy being the country's domestic implementation. It also directly references protecting the child from trafficking, exploitation, and a range of abuses in OPSC arts 3-7 but fails to guide deterrence measures and redress violators.

Bangladesh's Convention for the Suppression of the Trafficking in Persons and the Exploitation of the Prostitution of Others, 1949, augments the Prevention of Women and Children Repression Act, 2000.¹²⁷⁹ In yet another series of legislation, The Bangladesh Children's Act, 1974, was adopted 1974-06-21 was repealed by BGD-2013-L-94284, and the new Children's Act 2013.¹²⁸⁰ The Children's Act (Act no 24) of 2013 is the revised legislation. It reflects the current domestic implementation of the CRC's 1990 ratification— one of the first in the region. Specifically, Part V details the measures for the care and protection of destitute and neglected children. The 2013 version of the Act transcends beyond the ratification of 1990 and is the Act that would have been the domestic legislation protecting the Rohingya children but failed. Bangladesh was one of the initial two states in the region to ratify the CRC in August

¹²⁷⁹ The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others was approved by General Assembly resolution 317 (IV) of 2 December 1949, It entered into force on 25 July 1951, in accordance with article 24, This Convention is administered by the Office of the High Commissioner for Human Rights.

Official Text-1: <<https://Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others.pdf> > accessed 22 February 2018; The Prevention of Women and Children Repression (Act XVIII of 1995) is a specialized law that passed into law and came into force on 17 July 1995. This law mainly deals with the violence's against women and children. The word 'woman' means, according to this Act, a woman of any age and 'child' means any person under the age of sixteen (Amended) [i]. 'Repression' means violence which includes all kinds of assaults to woman or child whether it could be physical or mental.

¹²⁸⁰ Children Act, 1974, Bangladesh; Elimination of child labour, protection of children and young persons, 1976-03-11, BGD-1976-R-75121, Children's Act 1976 (no S.R.Q. 1.03-L/76); BGD-2013-L94284, Children's Act, 2013 (Act no 24 of 2013).

1990. It published an extensive article, '25 Years of the CRC in Bangladesh, Snapshot of Success'¹²⁸¹, to reflect the country's commitment to children's rights.

Within Bangladesh, the national law does not prohibit prostitution. However, units associated with the trade, including brothels, soliciting, accepting payments for 'immoral' acts, are criminalized and make a statement on behalf of 'girls' but omits boys.¹²⁸² The questionable documents indicate that the failure to educate rural girls or boys leaves children, especially girls, consistently vulnerable to cultural norms. Uneducated, the children are labeled 'unmarriageable', 'unwanted', and meeting the textbook CRC and Palermo Trafficking Protocol of a child in 'vulnerable situations'.¹²⁸³ Therefore, a child enters into a vicious cycle with traffickers and pimps, who are often their male rapists (both familial and nonfamilial) in violation of art 2, Optional Protocol for the sale of children, CRC, art 35. Elements of the *Social Conflict Theory* are evident even in this area. It is well documented that 'single women are unable to survive in society,' where they are subjected to unbridled violence.¹²⁸⁴ Once a girl is sexually assaulted, molested, or any other type of sexual violation, she and her other female siblings are tarnished and rendered unmarriageable.¹²⁸⁵

¹²⁸¹ *ibid* 9.

¹²⁸² *ibid*.

¹²⁸³ CRC, General comment 14 (2013) adds further clarity to member States as it explains that a child in a specific situation of vulnerability has a higher need for protection; art 3, the Convention on the Rights of the Child, and the best interest principle; art 9(4) of The Trafficking in Persons Protocol.

¹²⁸⁴ K Carrington. 'Sex Trafficking: The Global Market in Women and Children' (2006) 35(2) *Contemporary Sociology*, 175–177 <<https://doi.org/10.1177/009430610603500248>> accessed 22 December 2018; Kathryn Farr, *Sex Trafficking: The Global Market in Women and Children* (New York, NY: Worth Publishers 2005) 224.

¹²⁸⁵ *ibid*.

Subsequently, the female child goes to the only place of acceptance, back into a sexually abusive and violent environment.

Though dowry has been abolished legally, it is still a common practice. It puts the female child in a position to be sold, a direct violation of every article under the Optional Protocol for the sale of children. Any unmarried female must reside in the home of a male family member, and the girl child is rendered a burden and, subsequently, more vulnerable to an array of harm.¹²⁸⁶ Bangladesh society is no different from others where the child, male or female, can and is subjected to sexual, other physical, and psychological abuse.¹²⁸⁷

Yet, in Bangladesh, the issues of child marriage are equally as complex and multi-dimensional. Culturally, there are varying views on child marriage.¹²⁸⁸ As a result, in Bangladesh, the country has the highest prevalence rate of child marriage in the world according to the UNICEF 'State of the World Children 2011 Report. The report shows that: (a) one-third of women, 20-24, were married by the age of 15, (b) two-third were married by the age of 18, (c) and research by the International Centre for Diarrhoeal Disease Center in Bangladesh indicates that 64 percent of women aged 20-24 were married 'before' reaching 18 years of age.¹²⁸⁹ Similarly, the indicators that Bangladesh has experienced child marriage issues for an extended period are reflective in a

¹²⁸⁶ *ibid.*

¹²⁸⁷ *ibid.*

¹²⁸⁸ Save the Children, '25 Years of the CRC in Bangladesh snapshot of success' (Child Rights Advocacy Coalition in Bangladesh/Save the Children 2014)

<<https://resourcecentre.savethechildren.net/sites/default/files/documents/crc402520report2028bangladesh292020th20november202014.pdf>> accessed 22 March 2018.

¹²⁸⁹ *ibid.* 12.

UNICEF Child Equality 2013 questionnaire of women in their 40s.¹²⁹⁰ The questionnaire indicated that women, currently aged between 45 to 49 years of age, had declared they were married before and by the time they were 18.¹²⁹¹

These real-world scenarios are contrary to Bangladesh's National Children's Policy, 2011, and the Children's Act of 2013. The Penal Code 1860 cites offences causing death for dowry (the female child) as a violation covered under Section 299, 300, 301 to 308. However, under the Prevention of Women and Children Repression Act, 2000, the offences are covered under Section 11. Section 11, Repression Act 2000, now allows the death penalty and adds a fine. Violations of the 1860 law focused on women and child trafficking under Section 359 to 363, 366, 372, and 373. The change in Section 5, 6 of the Repression Act of 2000 also increased the penalty fine but advocated for a speedy trial method.¹²⁹² Unfortunately, the provision for disposing of cases within 180 days under section 20 of the Act, 2000 has been unsuccessful. Despite the revisions in the law, an examination of legal reports from the period of 2003-2013... a ten-year period reflects unsuccessful results¹²⁹³ — the higher court judgments were set aside, and the accused were acquitted in the majority of the cases.¹²⁹⁴

¹²⁹⁰ UNICEF, UNICEF Annual Report 2013 (UNICEF 2013)

<<https://resourcecentre.savethechildren.net/sites/default/files/documents/crc402520report2028bangladesh292020th20november202014.pdf>> accessed 22 March 2018.

¹²⁹¹ *ibid.*

¹²⁹² The Prevention of Women and Children Repression Act 2000.

¹²⁹³ 24 Bangladesh Legal Decision (Appellate Division) 201; 9 Bangladesh Law Chronicle (2004) 163; 9 Bangladesh Law Chronicle (2004) 3391; 9 Mumbai Law Report (Appellate Division) 32.

¹²⁹⁴ 24 Bangladesh Legal Decision (Appellate Division) 201; 9 Bangladesh Law Chronicle (2004) 163; 9 Bangladesh Law Chronicle (2004) 3391; 9 Mumbai Law Report (Appellate Division) 32.

Each of the renditions of the law still presents significant gaps. For example, paragraph 2 of 2011, National Children Policy sets out two definitions — identifying a child as an individual under 18.¹²⁹⁵ However, it adds another category of ‘adolescents’ and specifies 14-18. The added definition appears to create other challenges, as in some of the paragraphs. It adds specific protection for adolescents but fails to include children of all ages under 18. For example, paragraph 4 outlines the fundamental principles of the policy where it includes a statement explicitly addressing discrimination solely for the female child.¹²⁹⁶ Throughout the policy, it switches from ‘child and adolescent’, solely references ‘adolescent’, and then solely references ‘child’.¹²⁹⁷ The ambiguity creates problems with enforcement and implementation.

According to the 2019 Trafficking in Persons’ Report classifies the country as, ‘does not fully meet the minimum standards for eliminating trafficking but is making significant efforts to do so’. The country adopted a National Action Plan to combat trafficking by convicting traffickers and initiating an investigation into a police officer. The police officer was accused of child sex trafficking. The country continued to investigate some potential trafficking crimes against Rohingya refugees.¹²⁹⁸ The country’s law referenced,

‘2012 Prevention and Suppression of Human Trafficking Act (PSHTA) criminalized sex trafficking but fails to specifically identify the child exploitation specificities as required by the CRC and Optional Protocol for the

¹²⁹⁵ 2011, National Children Policy.

¹²⁹⁶ 2011, National Children Policy.

¹²⁹⁷ 2011, National Children Policy.

¹²⁹⁸ US State Department, ‘Trafficking in Persons Report Country Narrative – 2019’ (US State Department 2019) <<https://www.state.gov/wp-content/uploads/2019/06/2019-TIP-Report-Narratives-A-C.pdf>> accessed 22 December 2019.

sale of children,¹²⁹⁹ labor trafficking, and prescribed penalties of five years to life imprisonment and a fine of not less than 50,000 Bangladeshi Taka (BDT) (\$595).¹³⁰⁰

Yet, this study contradicts whether Bangladesh met its treaty obligations as it failed to identify the sale of children with trafficking in children. Bangladesh has legislation prohibiting trafficking in persons but lacks legislation explicitly prohibiting the sale of children in compliance with art 35, CRC, and the Optional Protocol for the sale of children, arts 2-3. State parties have an obligation to fulfill both.

Bangladesh did not include the 'serious crime' clause in its legislation; bonded labor is considered a separate and lesser offense with penalties ranging from five to 12 years' imprisonment, fines of approximately 50,000 BDT (\$595).¹³⁰¹ It was omitting the serious crime clause results in the exclusion of forfeiture of profits and other penalties regulated by the Convention. Despite the national plan submitted by the State Party, the actual events that occurred differed. For example, the US State Department Report indicated that Bangladesh had received more than 100 credible reports of sex trafficking and forced labour. However, despite the claims from the National Action Plan, a search of court records reflects 'no' investigation by the government took place, and the Bangladesh High Court did not hear any anti-trafficking cases filed by Rohingya through the period ending December 2019.¹³⁰²

¹²⁹⁹ Child exploitation: In the context of child trafficking, exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (art 3 of the 'Palermo Protocol', adopted in 2000, entered into force in 2003.)

¹³⁰⁰ *ibid.*

¹³⁰¹ *ibid.*

¹³⁰² *ibid.*, 86.

Bangladesh's research evidence consists of UNHCR Mission Reports where an infant was stabbed for crying for his mother's milk, raping children, and inflicting them with violence and brutality. Each directly breaches treaty obligations CRC 32, 34-36.¹³⁰³ Bangladesh submitted its fifth report at the 2028th and 2029th meetings held on the 15 and 16th of September 2015.¹³⁰⁴ The Committee expressed repetitive concern about allocating resources that appeared to be exacerbated by gaps in the CRC's implementation's effective monitoring and evaluation system.¹³⁰⁵ The repetitive non-compliance with CRC Committee, General comment 2 (2002) instructions, noted in Table 2's – Research Evidence Matrix, #1 and 2 and denied by Bangladesh, Table 3, Rebuttal.¹³⁰⁶

Referring to the obligations in CRC, arts 1-4, where the Bangladesh legislation acknowledged the definition of a child. Therefore, incorporating these provisions within domestic legislation was met. However, for arts 2, non-discrimination and art 3, the best interest of the child, arts 32, 34-36, Protection from sexual exploitation and abuse, all other forms of exploitation, abduction, sale, and trafficking, were not met based upon the reported evidence in the US State Department TIP Report 2019.¹³⁰⁷

¹³⁰³ Refer to Table 2, The Research Evidence Matrix, Evidence 4.

¹³⁰⁴ Concluding observations on the fifth periodic report of Bangladesh, CRC C/BGD/CO/5, 30 October 2015, Fifth periodic Report of Bangladesh
<<https://bangladesh.savethechildren.net/sites/bangladesh.savethechildren.net/files/library/Concluding%20observation%202015.pdf>> accessed 28 December 2017.

¹³⁰⁵ *ibid* para 12, pg 3.

¹³⁰⁶ Table 2, Research Evidence Matrix, #1 and #2; Table 3, Rebuttal/Counterargument Claim Evidence Matrix; Bangladesh has put laws in place to appoint a children's ombudsperson, it has yet to be implemented (refer to CRC/C/BD/CO/4, para 18).

¹³⁰⁷ *ibid* 86.

Likewise, Optional Protocol for the sale of children, arts 1-3, the prohibition of the sale of children, child prostitution and child pornography; and, the provisions of arts 4-7, and art 8, the protection of victims, and art 9, the prevention were not met. However, the report does indicate that art 10, with international cooperation, did take place by allowing UN agencies to provide emergency services to the Rohingya children and has presented barriers also in the past (referring to US State Reports 2016-2018). Evidence from the 2019-Trafficking in Persons Report, Table 2 indicates that the state did not meet its positive obligation as noted in *Prosecutor v Kunarac, Kovac & Vukovic*, Case Nos IT-96-23, IT-96-23/1-A, Judgment, at 36, para 118 (ICTY). Para 6 indicates State obligations regarding human trafficking. In comparison, para (g) requires vigorous investigation of allegations of human trafficking. However, the research reflects that the most dominant discrimination and best interest issues regarding the Rohingya child and similarly situated children lie with the State of Bangladesh.

Similarly-situated Case, Bangladesh

Articles 3, 32, 34-36, CRC, OPSC, 1-11 (BSEHR) and Ors v Government of Bangladesh and Ors. Applying the Bangladesh Constitution, the Penal Code, and the Children's Act, 1974, on 23 July 1999, during a police raid, in the Nimtali and Tanbazar, Narayanganj area.

Issue. The police executed a raid targeting sex workers, which included their children, who were abused, beaten, and pushed into a waiting bus to be transferred to detention in Kashimpur Vagrant Home, contrary to the provision of Bangladesh's Vagrancy Act, 1950 and CRC, art 3, best interest, 32, 34-36. Nonetheless, the court ruling acknowledged that the women and children in the brothel were likely kidnapped, trafficked, and displaced persons forced into prostitution and acknowledged that the children were likely off-springs of the prostitutes thrust into the same conditions.¹³⁰⁸

¹³⁰⁸ Bangladesh Society for the Enforcement of Human Rights (BSEHR) and Ors v Government of Bangladesh and Ors, UNODC no BGD002; Trafficking Case Law, SHERLOC, CRC and OPSC application.

Rules. The laws applied in this case - Constitution of Bangladesh, 1972 (arts 11, 31, & 32); Suppression of Immoral Traffic Act, 1933 (Section 4), Children's Act 1974.

Applicable Bangladesh Domestic Legislation against Trafficking:

- The Constitution of Bangladesh; The Women and Children Repression Prevention Act, 2000 (amended 2003); The Penal Code, 1860; The Suppression of Immoral Traffic Act, 1993 (repealed after enactment of The Women and Children Repression Prevention Act, 2000); The Children Act, 1974; The Bangladesh Passport Order, 1973; The Passport (Offense) Act, 1952; The Emigration Ordinance, 1982; The Extradition Act, 1974; The Bangladesh Labor Code, 2006; The Bangladesh Human Trafficking Deterrence and Suppression Act of 2012

Analysis. The case file indicates that Bangladesh did not use all its legislation structured to address trafficking in this case available in 1999. The Children's Act of 1974 was excluded from the prosecutorial framework. Bangladesh has maintained its posture in the 2nd tier of the US Trafficking in Persons Report as of 2019. As the police are organs of the State, the state had a duty under arts 3, 32, 34-36 to protect the children from violence, trafficking, and sexual exploitation, and the actions are considered those of the State directly. Therefore, the state was obliged to criminalize the offence and prosecute the perpetrator and accomplices under its Suppression of Immoral Traffic Act, in compliance with a serious crime defined under art 2 and art 5 criminalizing the acts of the UN Convention against Transnational Organized Crime. Bangladesh had a responsibility not to breach its State obligations as cited under the *Corfu Channel Case*. The country's positive obligations from *L.E. v Greece* (protection of victims), *Chowdury and Others v Greece* (effective investigation), *Rantsev v Cyprus and Russia* (the seven steps outlining State obligations) and cited in *Prosecutor v Kunarac, Kovac & Vukovic*, case Nos IT-96-23 & IT-96-23/1-A.),¹³⁰⁹ footnote 45, 6(b) introduction of review procedures for the operation of certain businesses known to be a cover for human trafficking. Instead of following the treaty obligations of the Convention,¹³¹⁰ the CRC, the police (State organ) dropped off the trafficked children at a dilapidated Kashimpur Vagrant's Home. They failed to comply with state obligations under the Palermo Trafficking Protocol, arts 6, 7, and 8 (prevention and protection), as well as the positive obligations under the CRC, arts 1-4, 32, 34-36 prevention and protection against sexual abuse and exploitation; and more importantly art 3, child's best interest.

Conclusion. The High Court Division (Supreme Court) ruling is that the Secretary, Ministry of Foreign Affairs, failed to arrange for her repatriation from India to Bangladesh and provide resources. The court directed the Respondents (India and Bangladesh) to initiate action in the matter through state levels for repatriation of the victim. However, the High Court did not address the States' failure to comply with its obligations under the CRC, domestic implementation protections for children

¹³⁰⁹ *L.E. v Greece* (no 71545/12), *Chowdury and Others v Greece* (no 21884/15), *Rantsev v Cyprus and Russia* (no 25965/04) cited in *Prosecutor v Kunarac, Kovac & Vukovic*, case Nos IT-96-23 & IT-96-23/1-A.).

¹³¹⁰ UNGA, *UN Convention against Transnational Organized Crime; resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

under the Bangladesh Children's Act, 1974. Instead, the court's total focus was singular on the repatriation versus the duty it owed for the victim's status as a child and a child in a vulnerable situation. The research conclusion opines that the State breached its obligations to the arts 2 and 5 of the Convention; the State also failed to adhere to its positive obligations under the CRC 3, as the actions were undoubtedly not in the best interest of the child, arts 32, 34-36, of the CRC for violence, exploitation, and sale of a child.

Moreover, there was an apparent omission to the references to prevention measures, as proffered by this study's research — Kennedy's Deterrence Strategies. As a state party of the CRC in 1999, the CRC's, 32, 34-36, or any provisions for child victim protections. The case in question was held in 1999, and Bangladesh did not ratify the OPSC until 6 September 2000. Therefore, the provisions of the OPSC would not be in force.

10. State under review: Greater Mekong Subregion: Myanmar, Thailand, the Positive Obligation

Along with neighboring Thailand, Myanmar is considered 2/3rd of the Greater Mekong Subregion (GMS) and Cambodia, Lao PDR, China, and Vietnam.¹³¹¹ Each country has low compliance with the Trafficking in Persons Tier ranking with the US State Department.¹³¹² Although Thailand is linked to Myanmar as a transit, origin, and destination state, it is equally as essential to address the State in-force treaty obligations of both Myanmar and Thailand in the context of the GMS.¹³¹³ Child sexual exploitation in this region is prominent in an online¹³¹⁴ modality, in local brothels, and organized crime units, according to the UN Office on Drugs and Crime's Transnational Organized Crime in East Asia and the Pacific – a Threat Assessment.¹³¹⁵

¹³¹¹ Burma was a founding signatory to the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) Process. In October 2004, to the surprise of some UN officials, Burma was proud to host the initial meeting of the COMMIT in Rangoon. Senior Government ministers from the six countries of the Mekong sub-region signed a memorandum of understanding on cooperation and joint action against trafficking in persons in the sub-region; Thant Myint-U, *The river of lost footsteps – histories of Burma*, (Farrar, Straus and Giroux New York) 63.

¹³¹² Refer to Table 4-11.

¹³¹³ The Greater Mekong Sub-region (GMS) countries – China, Cambodia, Laos, Myanmar, Thailand, and Vietnam – have launched a collective initiative known as Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) to tackle the menace of human trafficking in that region.

¹³¹⁴ UNODC 2013, Director General of the Judicial Administration System Department, Ministry of Justice, 'The Australian Federal Police, presented a case study on a successful operation that led to the arrest of 184 child sex offenders who used technology to access their victims'; 'Offenders were arrested in the United Kingdom, the United States, New Zealand, Australia, and Thailand,' said a Liaison Officer of the Australian Federal Police. 'The three-year joint operation with other law enforcement agencies identified many other members of a website who had a sexual interest in young boys.'

<<https://www.unodc.org/southeastasiaandpacific/en/laopdr/2013/06/project-childhood/story.html>> accessed 2 July 2018.

¹³¹⁵ UNODC, Transnational Organized Crime in East Asia and the Pacific, A Threat Assessment' (UNODC 2013) 15 <https://www.unodc.org/documents/data-and-analysis/Studies/TOCTA_EAP_web.pdf> accessed 28 July 2019.

Cross-border trafficking flows – sub-regional and transregional – are more often connected to organized crime since they require more organization and higher investments to maximize profits. There is a strong correlation between the level of organized crime measured at the origin country and the share of citizens of these countries detected in the major destinations of transregional trafficking.¹³¹⁶

The GMS has deep-rooted and historical gender inequality and poverty problem. In the GMS, children are trafficked either within their own countries or across neighboring countries.¹³¹⁷

The border into neighbouring countries, for example, from Laos to Thailand or Cambodia to Thailand, or Myanmar to Cambodia, and so on, although the significant regional destination remains. Some children are moved vast distances across international borders, and some are trafficked across the world into developed regions such as Europe, the USA, and Australia.¹³¹⁸ The UN Inter-Agency Project on Human Trafficking indicates no universally accepted estimate of child trafficking numbers across the globe.¹³¹⁹ However, this region has established numbers validated by

¹³¹⁶ K Schwab, *The Global Competitiveness Report 2013-2014* (World Economic Forum 2013, 2014); Van Dijk, *Measured by the Composite Organized Crime Index* (COCI, 2008) 162-167; the organized crime perception index referring to the year 2013 of the World Economic Forum, Schwab 2013.

¹³¹⁷ According to Burmese officials, there were 155 trafficking cases in 2009, including for forced marriage, forced prostitution, forced labor, and child trafficking. These cases all involved cross-border, as opposed to domestic, trafficking. Of these, the highest numbers (85) were for forced marriage.

¹³¹⁸ An analysis of a total 641 trafficking cases between 1 January 2006 and 31 December 2010 shows that 69.7% were for forced marriage, and China was the destination country in 80% of cases (Union of Myanmar, Ministry of Home Affairs, Central Body for Suppression of Trafficking in Persons (n.d.): 45-46).

¹³¹⁹ UN, 'The UN Inter-Agency Project on Human Trafficking (UNIAP)' (UN 2012) <<https://uia.org/s/or/en/1100068079>> accessed 21 March 2018; The UN Inter-Agency Project on Human Trafficking in the Greater-Mekong Sub-region (UNIAP) was established in 2000 to allow UN agencies to promote

UNICEF of approximately ten million children, primarily girls, subjected to child sex trafficking.¹³²⁰ The region reports that a third of all sex workers in South Asia and Southeast Asia targeted countries are initially from the region, aged between 12 and 17, and forced into prostitution.¹³²¹ Therefore, it would be a challenge to have discourse about Myanmar without including the longstanding regional issues.

The prominent inquiry asks how thousands of children can be systematically engrossed in the horrible, inhuman facts of child sexual assault, forced into prostitution as young as seven, and subjected to violence in two countries that have both ratified:

- a) the Children's Rights Convention,
- b) the Optional Protocol to the Convention on the sale of Children,
- c) the Palermo Trafficking Protocol, and the UN Convention against Transnational Crime (the Palermo Convention).

a coordinated approach and response to trafficking with stakeholders involved in fighting it, supported by improved information on the subject and the efficacy of responses. Phase I (2000-2003) promoted critical analysis, built linkages between agencies, and supported small-scale pilot initiatives to address emerging issues. Phase II (2003-2006), originally seen as a consolidation phase, supported the development of a sub-regional Memorandum of Understanding (MoU) between the governments of the six Greater Mekong Subregion (GMS) states (Cambodia, China, Lao PDR, Myanmar, Thailand, and Vietnam), accompanied by a Sub-regional Plan of Action (SPA I) to operationalize the agreement. This process, known as the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT, to which UNIAF functions as the Secretariat), provides a sub-regional institutional framework for counter-trafficking initiatives. Phase III (originally for the period of January 2007 to November 2009) aims to further consolidate and institutionalize existing initiatives, complemented by a —research and development role.

¹³²⁰ UNICEF, *Child Trafficking in East and South-East Asia: Reversing the Trend* (UNICEF East Asia and Pacific Regional Office, Bangkok 2009).

¹³²¹ N Kristof, 'Children for sale – a special report: Asian childhoods sacrificed to prosperity's lust' (1996) The New York Times, 14 April 1996 <[www.nytimes.com/1996/04/14/world/ children-for-sale-special-report-asian-childhoods-sacrificed-prosperity-s-lust.html](http://www.nytimes.com/1996/04/14/world/children-for-sale-special-report-asian-childhoods-sacrificed-prosperity-s-lust.html)> accessed 22 March 2018.

Myanmar has an abundance of regional instruments, specifically in trafficking and addressing the phenomena of migration. However, the outcomes are evidence that the region remains fragmented with implementing policies and laws that appear unenforceable.¹³²² For the states under review, how can the large volumes of children subjected to child sex trafficking occur if the State has met each of its in-force treaty obligations to prevent, protect, and mitigate against child trafficking and exploitation? Precisely, the courts found in *Chowdury and Others v Greece* (no 21884/15) that the State had not fulfilled its positive obligation to investigate forced labour exploitation. Similarly, in the *Corfu Channel Case*, the State was held responsible for its breach of obligations with its knowledge of minelaying.¹³²³ Therefore, Myanmar held an obligation to uphold its responsibilities to each treaty and protocols for trafficking, exploitation, and the sale of children, Optional Protocol, arts 1 and 3.

11. Legal Framework, Myanmar. The evidence in Table 2, and taking into consideration the rebuttal in Table 3, the States have established a consistent pattern of noncompliance to in-force treaty obligations taking place, and a breach of the ILC State Articles, arts 1, 2(a)(b), and 3 has occurred.¹³²⁴ Each State has an international, bilateral, and multilateral obligation. In contradiction to CRC, arts 7 and 8, where a child's name, nationality, and identity are preserved, Myanmar's 1993 Child law prohibits *all* children from enjoying citizenship under the 1982 Citizenship Law.

¹³²² Stephen Castles and Mark Miller, *The age of migration: International population movements in the modern world* (Hampshire: Palgrave Macmillan 2003).

¹³²³ *Chowdury and Others v Greece* (no 21884/15).

¹³²⁴ Committee on Foreign Relations, *Trafficking, and extortion of Burmese migrants in Malaysia and Southern Thailand* (A Report to the Committee on Foreign Relations, US Senate, 3 April 2009).

The law categorizes citizens: a) full citizens, b) associate citizens, and c) naturalized citizens.¹³²⁵ Children not fitting into the three categories under Section 154(C) of Myanmar's 1974 constitution are discriminated against in education and access to social services, each in conflict with art 2, non-discrimination, and art 3, best interests of the child. Even among citizens, there is class discrimination as Myanmar's art 10 states, 'every child shall have the right to citizenship in accordance with the provisions of the existing law',¹³²⁶ which contradicts ILC State Articles of Responsibility, art 3 as applied in *Perenco Ecuador Ltd v The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*.¹³²⁷ The case reflects that...

'under well-established principles of international law, as codified in art 3 of the ILC Articles on State Responsibility, the fact that a law has been declared constitutional by the local courts, even by the highest court of the land, is not dispositive of whether it was in conformity with international law'.¹³²⁸

Full citizenship requires proof of birthplace, nationality, and ancestry that proceeded the initial British annexation in 1823. Despite CRC Committee, General comment 21 (2017), Myanmar has not revised or rescinded legislation where necessary to prevent and eliminate discrimination and remains in breach of art 2, CRC¹³²⁹, and arts 7-8.

Analogous to Thailand and Malaysia, critical states in the discussion of the Rohingya, in Myanmar's *List of Issues*, derived from the 3rd and 4th Periodic Review, 2004-2010,¹³³⁰

¹³²⁵ Myanmar, 1993 Child Law.

¹³²⁶ Myanmar Constitution, art 10; Myanmar Penal Code s366A-372, s374.

¹³²⁷ *Perenco Ecuador Ltd v The Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador)*, ICSID Case no ARB/08/6, Decision on Remaining Issues of Jurisdiction and on Liability, 12 September 2014, para 534.

¹³²⁸ *ibid.*

¹³²⁹ CRC Committee, GC 21 (2017) on children in street situations, para 14.

¹³³⁰ 'List of Issues: Myanmar' 06/02/2004, CRC/C/Q/MMR/2, (List of Issues)

<https://www.burmalibrary.org/docs11/TB-CRC-list_of_issues-2004.pdf> accessed 21 June 2017.

inquiries were made by the CRC Committee, and responses identified significant issues that appear to be longstanding and precursors of the current Rohingya-crisis, which include:

- 'a) The practical implementation of the general principles of the Convention (articles 2, 3, 6, and 12) in both the courts of law and administrative, social welfare programmes. In this instance, the country has not universally applied these laws to the protection of all children. With the devastation and extreme violence the Rohingya children endured, there was no adherence to articles 2, 3, 6, and 12).
- b) Birth registration for child minority group and the right to citizenship (articles 7-8), c) child abuse, including sexual abuse (articles 19, 32-36),
- d) the situation of internally displaced children and families and that of returnees,
- e) sexual exploitation and trafficking of both boys and girls, and
- f) The situation of children belonging to ethnic and/or religious minorities'.¹³³¹

Evidence from the Human Rights Council, 29 June 2016, paras 36, 37; paras 48, 49, paras 50, 51, and para 60 captures S/2014/181,¹³³² paras 3739 - indicate that children, both girls, and boys have experienced: sexual and gender-based violence, trafficking on both land and sea whereby Myanmar organs of the State. Coupled with UN Reports, dated 27 September 2017;¹³³³ UN Human Rights Council Reports, dated 10-28 September 2018;¹³³⁴ UN OHCHR, Special Rapporteur on the situation of human rights in Myanmar, 12 March 2018;¹³³⁵ UN Secretary-General, 12 March 2018,¹³³⁶ UN Human Rights Council, UN Human Rights Council, dated 12 September 2018, para

¹³³¹ *ibid* Part IV, 4, 5.

¹³³² Refer to Table 2, The Research Evidence Matrix, Evidence, 1.

¹³³³ Refer to Table 2, The Research Evidence Matrix, Evidence, 2.

¹³³⁴ Refer to Table 2, The Research Evidence Matrix, Evidence, 3.

¹³³⁵ Refer to Table 2, The Research Evidence Matrix, Evidence, 7.

¹³³⁶ Refer to Table 2, The Research Evidence Matrix, Evidence, 8.

4,¹³³⁷ UN Fact-Finding Mission, 16 September 2019, para 1,¹³³⁸ UN Human Rights Council, Res 34/22, documented mass killings, rape, and sexual violence, September 2018,¹³³⁹ for Myanmar and incidents in enroute to Bangladesh, and in Bangladesh.¹³⁴⁰ Under the Optional Protocol, UN Special Rapporteur, 2007 report,¹³⁴¹ indicates a failure to investigate, prosecute, and punish those responsible for rape and sexual violence; soldiers' sexual violence and torture in Kachin and Shan States; September 2018,¹³⁴² UN Human Rights Council, Res 34/22.¹³⁴³ Therefore, the research evidence would conclude a breach of its positive obligation to CRC 2-3, 7-8, 32, 34-36.

¹³³⁷ Refer to Table 2, The Research Evidence Matrix, Evidence, 9.

¹³³⁸ Refer to Table 2, The Research Evidence Matrix, Evidence, 10.

¹³³⁹ Refer to Table 2, The Research Evidence Matrix, Evidence, 15.

¹³⁴⁰ Refer to Table 2, The Research Evidence Matrix, Evidence 1, 2-4, 17.

¹³⁴¹ Refer to Table 2, The Research Evidence Matrix, Evidence, 14.

¹³⁴² Refer to Table 2, The Research Evidence Matrix, Evidence, 15.

¹³⁴³ Refer to Table 2, The Research Evidence Matrix, Evidence, 16.

CHAPTER 5:
THE EMBEDDED LAWS FORMULATING THE REVISED LEGAL
FRAMEWORK

Part I. The Embedded laws formulating the Revised Legal Framework

State Responsibility, the conduit to the revised legal framework: Legal Empowerment, Deterrence, and Redress linked to Social Conflict

1. Framework Basis. The study's hypothesis infers those breaches in State responsibility are the root causes of the forced displaced, stateless Rohingya children, and similarly situated children's high vulnerability to being victims of human trafficking and its multiple forms of exploitation. The hypothesis further opines that legal empowerment's¹³⁴⁴ access to justice, effects of deterrence strategies,¹³⁴⁵ and redress are embedded within the ratified treaties of the Convention on the Rights of the Child, its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Optional Protocol to the Convention on Communications Procedure,¹³⁴⁶ as well as the Palermo Trafficking Protocol, supplemented by the UN Convention against Transnational Organized

¹³⁴⁴ The CLEP defined legal empowerment as 'a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.' For the CLEP, legal empowerment has 'four pillars': access to justice and the rule of law, which are 'the fundamental and enabling framework'; The Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, vol 1 (New York: UNDP, 2008); 'The commission emphasized that legal empowerment is a process that serves two end goals – protection and opportunity: 'protecting poor people from injustice – such as wrongful eviction, expropriation, extortion, and exploitation – and offering them equal opportunity to access local, national, and international markets'; CRIN, 'Access to justice report' (CRIN 2016)

<https://archive.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf> access 10 February 2020.

¹³⁴⁵ Valerie Wright, *Deterrence in criminal justice: Evaluating certainty vs severity of punishment* (The Sentencing Project 2010); Deterrence in relation to criminal offending is the idea or theory that the threat of punishment will deter people from committing crime and reduce the probability and/or level of offending in society. It is one of five objectives that punishment is thought to achieve; the other four objectives are denunciation, incapacitation (for the protection of society), retribution and rehabilitation; Criminal deterrence theory has two possible applications: the first is that punishments imposed on individual offenders will deter or prevent that particular offender from committing further crimes; the second is that, public knowledge that certain offences will be punished has a generalized deterrent effect which prevents others from committing crimes.

¹³⁴⁶ CRC, UNGA, *Convention on the Rights of the Child*, 20 November 1989, UN, Treaty Series, vol. 1577, p 3,

Crime.¹³⁴⁷ This section interlaces the study's research variables: legal empowerment, deterrence strategies, redress, and Social Conflict Theory. These elements are already connected within each of the international instruments under examination and the research geography. However, they are not studied or practiced jointly as a congruent approach to addressing child human trafficking and exploitation in the targeted regions or other regions, supported by Rapid Evidence Assessment, literature review. A similar statement can be noted for using Social Conflict Theory, its constructs in conflict and post-conflict societies, to guide the application of law to formulate a child human trafficking legal framework.

This study further suggests that a lack of coherent approaches has created gaps that adversely impact the efficacy of tackling child human trafficking, exploitation and would hinder reaching the 2030-Sustainability Development Goal targets under SDG #8 and #16.¹³⁴⁸ The thesis posits that the UN Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and Optional Protocol to the Convention on a Communications Procedure,¹³⁴⁹ and the Palermo Trafficking Protocol, supplemented by the UN Convention against Transnational Organized

¹³⁴⁷ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 25 December 2003, 2225, U.N.T.S. 209, entered into force 29 September 2003; UNGA, *UN Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

¹³⁴⁸ UN 2030, Sustainability Development Goals, Goal #8, Target 8.7 and Goal #16, Targets 16.2, 16.3, and 16.10.

¹³⁴⁹ CRC; UN Human Rights Council, Optional Protocol to the Convention on the Rights of the Child on a Communications procedure: Res / adopted by the Human Rights Council, 14 July 2011, A/HRC/RES/17/18, without a vote; UNGA, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 16 March 2001, A/RES/54/263, adopted and opened for signature, ratification, and accession by General Assembly resolution A/RES/54/263 of 25 May 2000.

Crime¹³⁵⁰ are being studied and implemented from a peripheral viewpoint instead of from an embedded and implanted approach.¹³⁵¹ Furthermore, the study posits that practitioners and legal structures in the targeted geographical areas view these instruments in a one-dimensional application versus applying the provisions across many prevention and protection spheres, including housing, medical assistance, court administration, counseling support, education, and training.¹³⁵²

2. The Obligation. The study purports the States' obligation to in-force obligations to the focused treaties are an integral component of the proposed legal framework. The positive obligation of the Convention on the Rights of the Child and its Optional Protocol for the sale of children (OPSC), art 4, CRC promulgates the general obligation that encumbers member-States to take all appropriate measures, to include legislative, administrative, and implement the Convention.¹³⁵³ The study also avers that human rights treaties provide legal empowerment tools that guide redress and trigger the prevention elements of Kennedy's Deterrence Strategies or other models of focused

¹³⁵⁰ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 25 December 2003, 2225, U.N.T.S. 209, entered into force 29 September 2003; UNGA, *UN Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

¹³⁵¹ T Herring, 'The Palermo Protocols as a conduit to legal empowerment and peaceful self-determination' in *Ateliers Doctoraux-PHD Workshops*, European School of Law, Bangor 2018 (Presses de L'Universite Toulouse 2018).

¹³⁵² Interviews with Bar Council Malaysia, CPD Event Questionnaires, 'Identifying and responding to human trafficking and multiple forms of exploitation' (Kuala Lumpur, Malaysia, 12 April 2019); refer to Appendix 3; Practitioner Questionnaire Response #2.

¹³⁵³ CRC Committee General comment 5 (2003), General measures of implementation of the Convention on the Rights of the Child, art 4, 6, 11, and 42; Williams J, 'Incorporating children's rights: The divergence in law and policy' (2007) 27(2) *Legal Studies* 261, 287 < <https://doi.org/10.1111/j.1748-121X.2007.00049.x> > accessed 30 November 2017.

specific or direct deterrence strategies.¹³⁵⁴ Each member-state has a requirement to report procedures on how these obligations are executed, art 44, and implemented, art 45.¹³⁵⁵

For the stateless Rohingya child, who has also been forced displaced, the CRC affirms protection from trafficking and exploitation through arts 32, 34-36. Within the articles, the embedded legal empowerment articles render prevention and protection measures within the context of the article that obliges the Member State to legal empowerment, effects of deterrence measures, and redress. Contained in CRC, art 32, are the general obligations for protecting children from economic exploitation that comprises a four-tier approach inclusive of 'legislative, administrative, social, and educational measure'.¹³⁵⁶ The four-tier approach represents the catalyst to a child's legal empowerment that enables them to benefit from access to justice, and effective deterrence strategy, and redress. Yet, many practitioners question the current application of the legislation that occurs in their country for the vulnerable population.¹³⁵⁷

¹³⁵⁴ CRC, arts 32, 34-37; the recovery and reintegration of child victims, art 39.

¹³⁵⁵ Williams J, 'Incorporating children's rights: The divergence in law and policy' (2007) 27(2) Legal Studies 261, 287 < <https://doi.org/10.1111/j.1748-121X.2007.00049.x> > accessed 30 November 2017.

¹³⁵⁶ CRC, art 32.

¹³⁵⁷ Interviews with CPD Event Questionnaires, *Identifying and responding to human trafficking and multiple forms of exploitation*, Bar Council Malaysia (Kuala Lumpur, Malaysia, 12 April 2019); Appendix 3, Practitioner Questionnaire Response #2; Interviews with LawAsia Conference Attendees, *Trafficking of the Vulnerable Workgroup*, (7th Annual Conference, Vienne, Laos, 7 June 2018).

To aid state parties, the UN Secretariat's detailed definition of sexual abuse, used in conjunction with the Luxembourg Guidelines,¹³⁵⁸ has addressed semantics that serves as barriers to conviction and access to other protection measures for victims.¹³⁵⁹ The study's narrative addressed instances in case law where terminology and semantics were factors that adversely impacted the outcomes.

Arts 8 and 9 of the Optional Protocol to the Convention on the sale of children (OPSC) augment the CRC, specifically arts 32 and 34-36. Legal empowerment and access to justice are prominent in the OPSC. Art 8(1)(a) focuses on the vulnerable child and has a 'shall' obligation for State parties to adopt procedures to recognize their particular needs, including their unique needs as witnesses.¹³⁶⁰

¹³⁵⁸ *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (The Luxembourg Guidelines 2016)* Section D.

¹³⁵⁹ J Williams, 'England and Wales' in *Litigating the Rights of the Child* (Springer 2014).

¹³⁶⁰ *ibid.*

3. Legal Empowerment links to Social Conflict Theory

Legal Empowerment, Redress

In Bangladesh and Myanmar, the degree of poverty amongst the forced displaced and stateless child is unconscionable. Legal empowerment is a vital component of survival. Without deterrence measures and lawful access to redress, the forced displaced and stateless child has no protections. The premise of this research coincides with practitioner feedback. Without a State upholding its responsibility to in-force treaty obligations, the likelihood of survival and protection from harm for the force displaced, the stateless child is likely non-existent.¹³⁶¹ Art 24 of the UN Charter confers the primary responsibility for international peace and security to the Security Council in the conflict and post-conflict societies of the targeted regions.¹³⁶² Regardless of society's conflict, many cultures and national laws restrict gender and citizenship court appearances.¹³⁶³ For example, Myanmar's art 132(1) provision of the Code of Civil Procedures prohibit in-person court appearances,

“[w]omen who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in court’.

¹³⁶¹ Practitioner Research with LawAsia Conference Attendees (7th Annual Conference, Vienne, Laos, 7 June 2018); The vulnerable population focus are children, stateless, refugee and non-refugee, across multiple geographies. Therefore, some of the views from practitioners may not include a direct experience in working with the Rohingya stateless, refugee and non-refugee, child.

¹³⁶² Security Council Report, ‘February 2019 Monthly Forecast: Myanmar, January 2019’ (UNSC, February 2019) <<https://www.securitycouncilreport.org/monthly-forecast/2019-02/myanmar-2.php>> accessed March 2019.

¹³⁶³ T Herring, ‘The Palermo Protocols as a conduit to legal empowerment and peaceful self-determination’ in *Ateliers Doctoraux-PHD Workshops, European School of Law, Bangor* (Presses de L’Universite Toulouse 2018).

In the situation with the Rohingya, parents, guardians, and families lack education, citizenship, legal title, or any form of ownership to the ramshackle dwellings they referred to as home. Though born in their respective country, the children also lack citizenship and many experiences of faith-based discrimination, violence, and daily marginalization.¹³⁶⁴

In the 2017 Rohingya-crisis exodus, children's homes were destroyed. The 'clearance operations' at Rakhine State, in 2017, represented a continuum of widespread and systematic human rights violations in Myanmar with close connections to State and military policy.¹³⁶⁵ Forced displaced in shanties, exposed to contaminated drinking water, and waterborne diseases have stunted a child's growth in refugee centers and places throughout the route to and including Bangladesh's Cox Bazaar.¹³⁶⁶ The targeted research areas are the epitome of conflict and post-conflict societies engulfed in the constructs of Social Conflict Theory.¹³⁶⁷

The UNHCR's 2019 *Settlement and Protection Profiling: Round 5 Report* conveys the daily challenge for a child's safety.¹³⁶⁸ The reports indicate that since August 2017, an

¹³⁶⁴ T Herring, 'Statelessness and the struggle to close the gap in human rights through legal empowerment: The Palermo Convention employed as a conduit' in Migration and Citizenship: Newsletter of the American Political Science Association's Organized Section on Migration and Citizenship, Summer 2018, Vol 6, no 2, p 37-42 (Migration and Citizenship 2018) < <https://mk0apsaconnectbvy6p6.kinstacdn.com/wp-content/uploads/sites/13/2018/08/APSA-Migration-Citizenship-Newsletter-6-2-Summer-2018-.pdf> > accessed 3 November 2018.

¹³⁶⁵ *Report of the Independent International Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/39/64, 12 September 2018 (hereinafter 'Summary Report of the IIFM'), at 8-9.

¹³⁶⁶ UNHCR, 'The UNHCR 2019 Settlement and Protection Profiling: Round 5 Report' (SPP Round 5 Report – November 2019) < <https://data2.unhcr.org/en/documents/download/72651> > accessed January 2019.

¹³⁶⁷ Amnesty International, 'Fleeing my whole life': Older people's experience of conflict and displacement in Myanmar (London, 2019) 35-59.

¹³⁶⁸ *ibid.*

estimated 741,000 Rohingya refugees have fled from Myanmar into Cox's Bazar, Bangladesh, increasing the total number of refugees to around 910,000.¹³⁶⁹ The CRC Committee recognizes that the targeted states, and other states in the ASEAN region, are not parties to the Refugee or Stateless Conventions. As a result, gaps in the protection of children are imminent. The CRC Committee General comment 22 (2017) lays out special obligations to state parties for the human rights of children in the context of international migration. Likewise, CRC Committee General comment 23 (2017) links to General comment 22 (2017). It provides member states guidance on the human rights of children in the context of international migrations in countries of origin, transit, destination, and return CRC art 22.

The thesis presents the focused international instruments, the CRC, OPSC, the Palermo Trafficking Protocol, supplemented by the UNTOC, as possessing embedded laws that provide legal empowerment, deterrence strategies, and redress to children in countries that lack these protections, or if countries do provide these protections, but only for those having citizenry or meeting nationality specialized demographics.¹³⁷⁰

¹³⁶⁹ *ibid.*

¹³⁷⁰ Herring (n 483; 496; 1351; 1363).

4. The Convention on the Rights of the Child (CRC). The legal status of the CRC, in national legal systems, is mixed. For almost 30 years, the CRC has been the canonical statement of children's rights. Unfortunately, the CRC is not often used as the enforceable legal instrument with the capacity to serve as a child's legal empowerment conduit for assessing justice. Since its 2009 inception and through the end of the study in 2016, the Child Rights International Network (CRIN) database of case law captured over 354 cases from across the globe and summarized their application with the CRC.¹³⁷¹ The most cited CRC articles in the CRIN cases are art 3, the child's best interest; art 9, separation from parents; art 19, protection from all forms of violence; and art 37, detention, and punishment. As heinous as trafficking and exploitation are to a child, there were minimal. A closer review of the 354 cases reflects the study's Rapid Evidence Assessment, where there has been primarily a singular-dimensional usage of the CRC in legal systems.

The CRIN's 354 global case studies cover seven years, 2009-2016. The period appears to reflect the gaps in understanding among advocates and State parties on how the CRC serves in court as an authority, independently, or in conjunction with other relevant law, and as an interpretive guide. Thus, this study's analysis of the CRC, in conjunction with the Palermo Trafficking Protocol supplemented by the UNTOC, in Chapter 4, analyses the CRC across all three dimensions.

On the international platform, using the CRC as a legal empowerment tool for children has established precedence. For example, in *The Prosecutor v Thomas Lubanga*

¹³⁷¹ CRIN, 'CRIN Court Cases' (CRIN 2020) <<https://home.crin.org/site-search>> accessed January 2019.

Dyilo, ICC-01/04-01/06,¹³⁷² Reparation/Compensation case, the court addressed the exploitation of children as child soldiers, how the evidence would be received, and a structured process and policy for children at the ICC.¹³⁷³ In conformity with the provisions of the CRC, the ICC established processes in which children are treated in ICC proceedings and how reparations¹³⁷⁴ serve as redress.

The previous text provided a detailed explanation of the monist and dualist State legal system for Bangladesh and Myanmar's research states. The discourse in this section focuses on the CRC international application in the legal system. Stronger in 'monist' countries, the CRC is automatically incorporated into national law. Whereas, in 'dualist' systems, court precedence and legislation are needed. CRC State parties can provide legal empowerment to a child in two areas: the force of law and justiciability.

a) CRC, the force of law. The CRC holds a mixed legal status in national legal systems. A child can gain legal empowerment in a monist legal system from the CRC as it has automatic inclusion into national law after ratification. While the dualist

¹³⁷² *The Prosecutor v Thomas Lubanga Dyilo*, ICC-01/04-01/06, Reparation/Compensation. Found guilty, on 14 March 2012, of the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities (child soldiers). Sentenced, on 10 July 2012, to a total of 14 years of imprisonment < <https://www.icc-cpi.int/drc/lubanga/pages/alleged-crimes.aspx> > accessed 21 November 2019; Reparations: On 7 August 2012, Trial Chamber I issued a decision on the principles for reparations to victims in the case. On 3 March 2015, the Appeals Chamber amended the Trial Chamber's order for reparations. Plan for symbolic collective reparations approved on 21 October 2016. On 15 December 2017, Trial Chamber II set the amount of Mr. Lubanga's liability for collective reparations at USD 10,000,000. Chamber to decide in due course on next steps in implementation of collective reparations; Williams J, 'England and Wales' in *Litigating the Rights of the Child* (Springer 2014).

¹³⁷³ The Office of the Prosecutor. 'Policy on Children' (ICC, November 2016) <https://www.icc-cpi.int/iccdocs/otp/20161115_OTP_ICC_Policy-on-Children_Eng.PDF> 28 December 2019.

¹³⁷⁴ The Trust Fund for Victims (TFV) is the first of its kind in the global movement to end impunity for the gravest of crimes and alleviate suffering. The establishment of the International Criminal Court (ICC) on 1 July 2002 resulted in the creation of the TFV under article 79 of the Rome Statute.

countries encapsulate separate legislation for implementation and the child must work through national laws to gain legal empowerment and access to justice. Though Bangladesh is a dualistic legal system, an example can be found in Bangladesh's legal reports. In 2000, *Ershad v Bangladesh and ORS*,¹³⁷⁵ the court ruled that international norms are only relevant where there is an absence of ambiguity in national law,

'where the domestic laws are clear but inconsistent with the international obligations of the state concerned, the national courts will be obliged to respect national law'.¹³⁷⁶

In another decision, in 2009, *BNWLA v Bangladesh* sets out provisions where the CRC is incorporated into the country's national law following a Supreme Court Decision,

'when there is a gap in the municipal law in addressing any issue, the courts may take recourse to international conventions and protocols on that issue for the purpose of formulating effective directives and guidelines to be followed by all concerned until the national legislation enacts laws in this regard...'¹³⁷⁷

b) Justiciability. Conferral of the CRC is a commitment to justiciable. The most prominent example is that the right to an education is guaranteed in international and regional human rights law, art 28, CRC. Meaning, for the courts to enforce the provisions of the CRC directly, there is no requirement for a corresponding domestic legal provision needed for a redress of an award for rights that have been violated. Table 2, Research Evidence, reflects Bangladesh's likely breach of obligation position under art 28, education for the Rohingya children. A question with Bangladesh is whether the right to education has been implemented at the national level by adopting the provisions into its legislation, constitution, and policies. A legal recourse or

¹³⁷⁵ *Ershad v Bangladesh and ORS* (Appeal, 21 BLD (AD) 200, 69; ILDC 476 (BD 2000), 16 August 2000).

¹³⁷⁶ *ibid.*

¹³⁷⁷ *BNWLA v Government of Bangladesh and others* (14 BLC (2009) 703).

redress, under justiciability, is to be adjudicated in a judicial or quasi-judicial forum, such as the UN treaty bodies.¹³⁷⁸ Under justiciability, access to justice is critical as the victim is provided an opportunity to hold violators accountable. Under the deterrence scheme, others are discouraged from violating.

When courts are not available, Southeast Asia's National Human Rights Institutions (NHRIs) receive complaints from parents or guardians.¹³⁷⁹ Complaints can be submitted by or on behalf of a child where rights have been violated under the CRC.¹³⁸⁰ An example of how the NHRI works the Malaysian law and concluded that an Australian native sexually assaulted a Malaysian child. The offender was criminalized under the OPSC, and the redress afforded with it, *XYZ v Commonwealth of Australia* [2006] HCA 25.¹³⁸¹

Across major judicial tribunals and courts, forced displaced and stateless children have sought legal empowerment under the provisions of the CRC with success. For example, the European Court of Human Rights, *Rahimi v Greece* [2011],¹³⁸² has used

¹³⁷⁸ A de Zayas, 'The CRC in litigation under the ICCPR and CEDAW' in T Liefwaard and J Doek (eds), *Litigating the Rights of the Child* (Springer, Dordrecht 2015) <https://doi.org/10.1007/978-94-017-9445-9_11> accessed 23 January 2020.

¹³⁷⁹ S Detrick, *The UN Convention on the Rights of the Child: A guide to the 'travaux préparatoires'* (Dordrecht/Boston/London: Martinus Nijhoff Publishers 1992).

¹³⁸⁰ Human Rights Commission of Malaysia (SUHAKAM) was established by Parliament under the Human Rights Commission of Malaysia Act 1999, Act 597. The Act was published by the Gazette on 9 September 1999; Its mandate is to promote human rights education, advise on legislation and policy, and conduct investigations.

¹³⁸¹ *XYZ v Commonwealth of Australia* [2006] HCA 25; (2006) 227 ALR 495; (2006) 80 ALJR 1036 (13 June 2006); ILDC 528 (AU 2006).

¹³⁸² *Rahimi v Greece* [2011] Application no 8687/08; The boy had been detained in a facility for refugees pending deportation alongside adults in poor conditions. The court drew on the CRC's requirement that detention be a last resort, as well as the requirement that all decisions concerning a child must treat the best interests of the child as a primary consideration in reaching the conclusion that the detention was unlawful under the ECHR.

CRC legal empowerment as a tool to interpret and apply the right to liberty and security for an unaccompanied child for unlawful detention, CRC art 37. In another CRC art 37 based petition, the InterAmerican Court ruling served as a legal empowerment tool for displaced minors in detention, *Minors in detention v Honduras* [1999] Case 11.491. The case involved the unlawful arrest of street children, similarly situated to the Rohingya case study children. In this case, a National Human Rights Institution¹³⁸³ served as petitioners to address a violation of CRC, art 37.¹³⁸⁴ The case alleges the State of Honduras routinely deprived children of their liberty, placed the child in incarceration, in a vulnerable position to be subjected to physical and sexual abuse at the Central Penitentiary.¹³⁸⁵

5. The Kennedy Model (Exemplar). The study opines that the prevention and protection measures and mechanisms are disjointed and unstructured as almost an after-thought instead of an in-force obligation. Instead, the research has identified a model, Kennedy's deterrence strategy, to convey the need for a strategic approach with prescribed penalties that coalesce with the certainty of apprehension and punishment – refer to Table 9 in Chapter 6. Both legal empowerment and Kennedy's Deterrence Strategies are intertwined with the behaviors associated with Social Conflict Theory. The study reemphasized the linkage between societal behaviors, the need for deterrence, and legal empowerment tools embedded within the law for the

¹³⁸³ The Center for Justice and International Law and the Asociacion Casa Alianza.

¹³⁸⁴ Article 37, Deprivation of liberty, prohibition of torture, degrading and inhuman treatment and of capital punishment and life imprisonment.

¹³⁸⁵ *Minors in Detention v Honduras*, Case 11.491, Inter-Am. C.H.R., Report no 41/99, OEA/Ser.L/V/II.106, doc. 6 rev (1999).

vulnerable. The research highlighted that to eradicate human trafficking, the traffickers need to be deterred from engaging in the day-to-day business of trafficking in persons and exploitation.

The critical-case target population, the Rohingya children, are a historically marginalized group, who the UNODC has identified as highly susceptible to trafficking and exploitation. The group has and continues to be the victims of violence in a societal background where the ruler and the ruled clash in violence. The research investigates the Palermo Trafficking Protocol, Part II, arts 6-8, Part III, arts 9-10. In addition, the study includes the detailed examination of the UN Transnational Convention against Organized Crime art 24. Specifically, the Protection of Witnesses, art 25, saying, 'assistance to and protection of victims' are each embedded legal empowerment tools that can provide victims access to justice; and enable the benefit of crime reduction/mitigation programs such as Kennedy's Deterrence Strategies.

Legal empowerment tools embedded within the law provide access to justice tools is to equipment populations, such as the critical-case group – the Rohingyas, with access to justice tools despite a State' local laws that may deny stateless, forced displaced children prevention and protection against trafficking due to discrimination or lack of citizenry.¹³⁸⁶ The obligations of 'shall' and 'shall endeavour' convey the scale of the obligation (refer to Figure 13). Each State is obliged to comply with the embedded legal empowerment and deterrence strategies of the articles therein.¹³⁸⁷

¹³⁸⁶ Chapter five.

¹³⁸⁷ Chapter five.

6. Social Conflict Theory

Associating the distinctive characteristics of social conflict societies with the rule of law is not a new phenomenon. The Secretary-General, UN' 2004 report, 'The rule of law and transitional justice in conflict and post-conflict societies' speaks to recognizing the political context, assessing national needs, and notes,

'Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives. Advancing all three in fragile post-conflict settings requires strategic planning, careful integration, and sensible sequencing of activities.'¹³⁸⁸

This study has adapted this stance to the social structure and value systems of the particular population of the targeted States. The central research question sought to understand better why international laws against child human trafficking and exploitation are more effective in other regions than in the targeted research area.¹³⁸⁹ With this information, the study avers a pivotal and highly critical hypothesis as the geographical regions for Bangladesh and Myanmar have been identified, within the scope of this study, to meet the sociological, behavioural constructs of *Social Conflict Theory*. Meaning, the investigative study of the region, within the context of child trafficking, exploitation, and violence against children, has led to a presumptive association to be made that 'the ruled' will likely not provide access to justice unless forced to comply with the provisions of international law. Whereas a minimum

¹³⁸⁸ UN Secretary General, 'The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General' (2004) < <https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/> > accessed 3 November 2019: The rule of law, US Aid, retrieved from

https://www.usaid.gov/sites/default/files/documents/1866/USAID-Post_Conflict_ROL_508.pdf >

¹³⁸⁹ R Dahrendorf, *The Modern social conflict. An essay on politics on liberty* (W Wertenstin, Warszawa: Cztenlnik 1988).

standard under the UN Convention against Transnational Organized Crime (UNTOC),

‘1. Each State Party shall make the commission of an offence established in accordance with articles 5, 6, 8, and 23 of this Convention liable to sanctions that take into account the gravity of that offence’.¹³⁹⁰

The Convention further notes that,

‘Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.’¹³⁹¹

In a *Social Conflict Theory* societal climate, the legal empowerment tools are derived from the study’s two focal instruments, their respective protocol, and supplement, that form the proffered legal framework for this study: The Palermo Trafficking Protocol, supplemented by the UNTOC; the CRC, and Optional Protocol to the Convention on the sale of children. Dahrendorf’s research on Social Conflict Theories examines the role of the conflict as an integral factor in the encounters or potentially conflictual situations among individuals, social groups, political parties, and a range of other groups.¹³⁹² The theorist asks whether sociological social conflict theories provide a better or more in-depth understanding of the underlying conditions and motivations of the social actors.

¹³⁹⁰ UNGA, *UN Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

¹³⁹¹ *ibid.*

¹³⁹² D Bryan, and G Gillespie, *Transforming conflict: Flags and emblems* (Belfast: Institute of Irish Studies, Queen’s University 2005).

The study has shown Rohingya and similarly-situated children as an outcast in the Southeast Asia (Myanmar) and South Asia (Bangladesh) regions.¹³⁹³ This history and background of the region portray the foundation of the unrest lies within ethnic conflicts.¹³⁹⁴ The research diverges on the definition with the various conflict theories of Johan Galtung, Jeffrey Rubin, and others, who distinguish between social and ethnic conflict with varying historical perspectives.¹³⁹⁵ Contrasted to the UN Secretary's Report on conflict and post-conflict societies, the report highlights key issues and lessons learned from promoting justice and the rule of law.

The research, to this point, has examined the societal norms of Bangladesh and Myanmar. The focus includes the country's current national legal framework of child protection treaty compliance and the constructs of behaviors contrasted to Table 2, research evidence, and rebuttals at Table 3. The targeted research states discourse presented in this study appears to contour the violent and volatile societal alignment with Dahrendorf's Social Conflict Theory.¹³⁹⁶ The conglomerate of theorists, Johan

¹³⁹³ M Banton, *Race relations* (London: Social Science Paperbacks, Tavistock Publication 1967).

¹³⁹⁴ W Isajiw, 'Definitions of ethnicity' (1974) 1 *Ethnicity* 111, 124.

¹³⁹⁵ D Bryan, 'Titanic town: Living in a landscape of conflict' in S. J. Connolly (ed.), *Belfast 400 People, Place and History* (Liverpool: Liverpool University Press 2012) 3.

¹³⁹⁶ Within the field of Sociology, Ralf Dahrendorf worked to develop conflict theory. This new theory attempted to bring together structural functionalism and Marxism. Dahrendorf states that capitalism has undergone major changes since Marx initially developed his theory on class conflict. This new system of capitalism, which he identifies as post-capitalism, is characterized by diverse class structure and a fluid system of power relations. Thus, it involves a much more complex system of inequality. Dahrendorf contends that post-capitalist society that has institutionalized class conflict into state and economic spheres. Dahrendorf believed that the basis of class conflict was the division of three groups of society: quasi groups, interest groups, and conflict groups. Thus, society can be split up into the 'command class' and the 'obey class' and class conflict should refer to situations of struggle between those with authority and those without. Quasi groups are 'aggregates of incumbents of positions with identical role interests'. Interest groups are derived from the quasi groups, and they are organized with members, an organization, and a program or goal with impact from politics and economics.

Galtung, Jeffrey Rubin, and others, appear to have a unified perspective with Dahrendorf, which aligns with the in situ in Bangladesh and Myanmar. Dahrendorf makes an interesting and essential observation on conflict regulation. First, he paints a broad brush to describe power as a mechanism and fundamental rule of social conflict. Second, the author associates the actual conditions of ethnic conflict concerning social life, culture, enmeshment customs, identifications, or the ability to live in proximity with the ethnic tradition of others. Though other authors question Dahrendorf's envisage of power, there appears to be unison that conflict can be regulated.

Dahrendorf first acknowledges that likely actual resolution of conflict may not be accomplished. However, the conflict is so multi-faceted that it cannot be resolved, but it can be regulated.¹³⁹⁷ There are countless examples of how third parties to aid in resolving conflict in the peace process but may have their interests and goals reliant upon historical, faith, and class divisions.¹³⁹⁸ For example, in the Bangladesh and Myanmar ASEAN regions, the UNSC's (2004)¹³⁹⁹ Report to the Secretary-General publication draws stark similarities to other conflict regions noted in Kosovo,¹⁴⁰⁰

¹³⁹⁷ R Dahrendorf, *The modern social conflict. An essay on politics on liberty* (W Wertenstin, Warszawa: Cztenlnik 1988).

¹³⁹⁸ Anna Burns, *Milkman* (Faber 2018).

¹³⁹⁹ UN Secretary General, 'The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General' (2004, S/2004/616)

<<https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/>> accessed 3 November 2019.

¹⁴⁰⁰ *ibid*; UN Interim Administration Mission in Kosovo.

Timor-Leste,¹⁴⁰¹ and El Salvador¹⁴⁰² efforts to impart the rule of law and transitional justice in conflict and post-conflict societies.

The study proposes that the conflict in Southeast Asia be ‘regulated’ by the ILC State Responsibility Articles, where the states are held responsible for the breach of an obligation. Specifically, the breach of an obligation to prevent and protect forced displaced and stateless children from human trafficking and exploitation. Unless forced or in the language of Dahrendorf ‘regulated’ to comply, the *Social Conflict Theory* posits that the power-based group will not cease and deescalate the conflict. Instead, the conflict may likely escalate further than the research evidence presented in Table 2 and throughout the research. The study identified the levels of obligation, including the positive obligation, who and what venue could hold the States Bangladesh and Myanmar responsible for their acts and omissions — any State in the international community and those adversely impacted by bi-lateral multilateral treaties. The Application made evidence of this promulgation in international law of *the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)*, which is well-known as the Genocide Case.¹⁴⁰³

¹⁴⁰¹ *ibid*; UN Transitional Administration in East Timor/UN Mission of Support in East Timor.

¹⁴⁰² *ibid*; UN Observer Mission in El Salvador.

¹⁴⁰³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)*, 23 January 2020; on 11 November 2019, the Republic of The Gambia (‘The Gambia’) filed in the Registry.

Part II: Conjoined: Deterrence Strategies

7. Conjoined: Deterrence Strategies (Kennedy's Deterrence Strategies) and Legal Empowerment (access to justice), and Redress (combining criminal law and human rights).

The type of law that is being upheld is an integral portion of the deterrence strategies.

Ball, a renowned criminology theorist, posits that deterrence's effectiveness depends upon the particular society in question.¹⁴⁰⁴ The theorist provides analogies of how in one society, basic deterrence strategies or some form of deterrence is not in most societies, such as signs and information. The obliged international laws are from two veins, one of international criminal law and international human rights, or the positive obligation. The Palermo Trafficking Protocol was supplemented by the UNTOC, the CRC, and the OPSC Protocol implemented into domestic legislation for the designated research states: Bangladesh and Myanmar.

The purpose of the international and domestic instruments is ultimately embossed in the instrument's titles – The Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Convention on the Rights of the Child, and the Optional Protocol to the Convention on the Sale of Children. However, the specific purpose statement for this research is the prevention, protection, and mitigation of child human trafficking and exploitation of children. This research focuses on a targeted group – Rohingya children, forced displaced and stateless, and similarly-situated children. Here in this

¹⁴⁰⁴ John C Ball, 'Deterrence concept in criminology and law' (1955) 46 J Crim L & Criminology 347 <<https://scholarlycommons.law.northwestern.edu/jclc/vol146/iss3/5>> accessed 20 April 2018.

second phase, the components of the laws oblige states to specific deterrence strategies under the scope of prevention measures and protection mechanisms.

The legal framework opines that each segment of the focused international instruments serves a purpose and the deterrence (penology) theory¹⁴⁰⁵ spectrum. The proffered legal framework is based upon two basic effectiveness concepts: general deterrent and specific deterrent. However, most trafficking and exploitation research does not approach the studies and application of the instruments along the vein of the deterrence spectrum. Huge volumes of human trafficking literature envisage discussion on 3Ps, Prevent, Protect, and Prosecute.¹⁴⁰⁶ This study takes the next step and aligns each of the 3Ps to deterrence strategy. Comparatively, general deterrence is linked to prevention and the threat of legal punishment to deter the public at large. On the other hand, specific deterrence aligns with the criminalization of the acts where the impact of the actual legal punishment on those apprehended serves as a deterrence. Whether deterrence is deployed as a threat, risk of detection and punishment, or perpetrators' actual prosecution and punishment, the States under review lacked a coherent model.

In the ASEAN region, the 3Ps fall extremely short of the strategic planning to form a deterrence strategy, the execution, and applying the range of underlying assumptions.

¹⁴⁰⁵ Valerie Wright, Deterrence in criminal justice (The sentencing project 2010)

<<https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>> accessed 20 December 2019.

¹⁴⁰⁶ Seo-Young Cho, 'Evaluating policies against human trafficking worldwide: An overview and review of the 3P Index' (2015) 1(1) Journal of Human Trafficking 86-99, <DOI: 10.1080/23322705.2015.1014660> accessed May 2017.

As noted in the earlier portion of the text, there is a volume of research on the relevant international instruments but minimal on the actual offenders. Therefore, no backstory or background profile is done on what type of individual or legal person offender(s) comprise the trafficker, especially in conflict and post-conflict regions. None of the ASEAN jurisdictions investigated, or international law explored, have published extensively the 'who' by identifying the offender that brutally sexually assaults a child, deprives the child of water until they are forced to drink their urine, sells, and exchanges a child as though they were chattel, then, kills and buries the child when the economic exchanges go awry.¹⁴⁰⁷

The punishing of offenders to prompt others from committing the same crime is well-known as deterrence.¹⁴⁰⁸ An increase in the certainty of punishment has a high potential that the risk of apprehension may deter offenders. In contrast to this theory, there is a presumption that the offender uses rational reasoning to commit the crime and take the risk of apprehension and punishment. A simple analogy could be a bank robbery. Across the globe, despite all the security measures used to thwart a bank robber, people still rob banks and risk severe punishment. Aside from the severe punishments, the analogy falls short compared to the trafficking and exploitation of a child, a human life.

Nonetheless, there are very extreme similarities. The criminal arm of the conjoined legal program has severe punishments ascribed at the international level. In some

¹⁴⁰⁷ Table 2, The Claim's Research Evidence Matrix.

¹⁴⁰⁸ Paul Gendreau and others, *The effects of prison sentences on recidivism* (Ottawa, Canada: Public Works and Government Services Canada 1999).

country's convictions can be death but intensified at the state level to include death and long incarceration sentences. This paper contends that these laws formulate a schema of observed dependent variables that can prevent, protect, and mitigate child human trafficking for stateless, forced displaced children.

The existing discourse among law enforcement and practitioners is the efficacy of deterrence and that many consider its penal policies archaic. The preface of Kennedy's scholarly works received accolades from criminalists, who base their comments on Kennedy's on-the-ground experiences.¹⁴⁰⁹ The concept to be drawn from Kennedy is that deterrence comprises strategies; moreover, those strategies target criminals associated with certain crimes in both national and international contexts. This study's proffered legal framework aligns with Kennedy's approach to deterrence, where a compelling series of strategies are schemed to achieve specific, measured goals and outcomes that identify characteristics of victims and their perpetrators.¹⁴¹⁰ The research calls upon State compliance with treaty prevention, protection obligations to the Trafficking Protocol, the UNTOC, the CRC, and OPSC. Throughout the investigation of Bangladesh and Myanmar, none of the official UN reports, legal reports, and a review of other data sources has identified any formulation of a deterrence strategy, as ascribed by criminologists and scholars, in these countries. Practitioner questionnaire outcomes support the library research and indicate that there has not been and continues not to be a highly publicized deterrence strategy

¹⁴⁰⁹ D Kennedy, *Deterrence, and crime prevention: Reconsidering the prospect of sanction* (New York: Routledge 2009).

¹⁴¹⁰ *ibid.*

beyond the distribution of limited flyers, a website on the national police website, and notices placed haphazardly throughout the countries.¹⁴¹¹ No evidence could be found where prevention measures were quantified or adjusted to meet an influx or situation of criminal activities.¹⁴¹² Further, the research was unable to identify where any written strategic plans for deterrence existed in response to Table 2's claims of massive deaths, trafficking, exploitation, and horror experienced by childhood statelessness as ascribed in the writings of the Institute on Statelessness and Inclusion.¹⁴¹³ Criminologists and scholars Nagin and Paternoster aver a proper deterrence strategy should consist of specific and general constructs, coupled with up-to-date systems comprised of offender profiles applicable to the appropriate crimes.¹⁴¹⁴ Bangladesh and Myanmar are obliged by their respective UNTOC treaty to deter crimes and criminals for the prevention, protection of all children – forced displaced and stateless:

- a. Article 2(a) 'organized criminal group', where the State would require processes within the general deterrence strategy to address structured groups of three or more persons; Similarly, art 2(c), 'structured group', the State would make public appeals to identify that the offence does not require a formally defined role for its members, continuity of its membership or a developed structure to be charged with the crime. The State could reiterate, in a specific deterrence strategy, the harsh punishments and identify those who have been punished to the public – general deterrence. However, Sherman's writing contradicts some of the traditional views of punishment averred by Nagin and

¹⁴¹¹ Refer to Chapter four and Table 2; Refer to practitioner questionnaire outcomes, Appendix 2.

¹⁴¹² D Kennedy, *Deterrence and crime prevention* (New York 2008).

¹⁴¹³ Institute on Statelessness and Inclusion, *The world's stateless children* (ISI 2017).

¹⁴¹⁴ Daniel S Nagin, 'Criminal deterrence research at the outset of the twenty-first century' in Michael Tonry (eds), *Crime and justice: A review of research* (23 edn, Chicago: Univ. of Chicago Press 1998) 1-42; R Paternoster, 'How much do we really know about criminal deterrence?' (2010) 100[3] *Journal of Criminal Law and Criminology* 765-823 < <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?>> accessed 23 December 2019.

Paternoster.¹⁴¹⁵ Sherman questions whether formal negative sanctions should be the only standardized progressive sanction and is one of the few scholarly criminologists who suggest there should be flexibility. The flexibility posited by Sherman consists of adjusting the crimes' gravity with the integration of informal sanctions, such as shaming is integrated.¹⁴¹⁶ Despite the conflicting views on deterrence, members state to the UNTOC have minimums whereby serious crimes have a minimum four-year incarceration sentence committed by structured groups and other inter alia associated crimes such as corruption and money laundering.¹⁴¹⁷

- b. Article 2(b), 'serious crime', would mean the States' parties are implementing specific strategies where the punishable offences included the maximum deprivation of liberty, with severe incarceration times. An example presented by some criminalists would reflect the severest punishment could be the death penalty or incarceration for life.¹⁴¹⁸ While those from Sherman's school of thought aver those informal sanctions can be just as effective.¹⁴¹⁹
- c. Article 2(d) 'property', (e) proceeds of crime, (f) 'freezing' or 'seizure', (g) 'confiscation', (h) 'predicate offence', (i) 'controlled delivery', (j) 'regional economic integration organization', where the State's deterrence strategy would include both specific and general components in response to domestic legislation that outlines the legal effects of the Convention's provisions.

The research evidence identified in Table 2 indicated substantial gaps in any deterrence strategy for the States under review. Based upon what can be described as incidents of organized crime in Myanmar - evidence #9-16, Myanmar, and Thailand - evidence #21, Thailand - evidence #20, Malaysia - evidence #19, and Bangladesh - evidence #17, the legal reports do not indicate any deterrence processes in place. Instead, the research evidence is indicative of a fragmented implementation of deterrence that does not meet the obligations of art 34(1) of the Convention's

¹⁴¹⁵ L W Sherman, 'Defiance, deterrence and irrelevance: A theory of the criminal sanction' (1993) 30 [11] *Journal of Research in Crime and Delinquency* 445-473 <<http://doi:10.1177/0022427893030004006>> accessed 2 January 2019.

¹⁴¹⁶ *ibid.*

¹⁴¹⁷ UNTOC, art 3, 5-6.

¹⁴¹⁸ *ibid.*

¹⁴¹⁹ Sherman (n 1415).

provisions for State member implementation and the Trafficking Protocol's prevention measures structured in arts 6-12. The legislation requires State parties to establish corruption-related offences, inclusive of article 8, aiding, abetting, organizing, and directing a serious crime where surrounding data from Table 2 indicated was a factor in evidence 21 with Myanmar/Thailand and evidence 20 that involved over 800 deaths of trafficked and exploited persons.

The frameworks espoused by Kennedy and Loughran promote deterrence measures aligning with the society in which the offender and the vulnerable person reside as a composition of the profile assembly.¹⁴²⁰ For example, how a criminal is deterred and caught in downtown New York City, USA, or London would vary significantly from how an offender, committing the same offence, would be deterred and caught in the remote or sometimes desolate or urban areas of Bangladesh and Myanmar.

¹⁴²⁰ D Kennedy, *Deterrence and crime prevention* (New York 2008).

CHAPTER 6 - CAPSTONE, STUDY FINDINGS

1. CRITICAL-CASE STUDY CONCLUSION

Stage 6, Share

a) Summary Overview. Research conclusions and sharing, at Stage 6, Yin's Case Study Protocol output provides a methodological approach to addressing the unspoken but ever-present global issues of child human trafficking, violence, and exploitation. The study's socio-legal approach contrasts with a multi-faceted business challenge requiring a combination of different resource tools on location. This research combined international criminal law and international human rights as tools to address a myriad of problems in a designated geographical area but identified its ability to be replicated in similar geographies.

The region is not a member-State to the Refugee or Stateless Conventions. Thus, instead of pursuing a tautology of the frequently applied argument as to why these Conventions are not ratified, the researcher's preliminary investigation led the research down a different path in Stage one. The study embraced an array of individual articles and conventions, comprised of a combination of widely ratified instruments, with the ability to accomplish many of the same protections as the Refugee and Stateless Conventions that were not contingent upon the citizenry. Yet, the conventions and articles selected to meet the regional and societal challenges while simultaneously creating an allowance for legal empowerment, the effects of deterrence, and redress.

As the horrific events of child human trafficking occur during society, this study also was cultivated during field research, on location, in Southeast Asia, the Southern

Pacific regions of Oceania, and Eastern Europe where child human trafficking frequency is prominent. The research entailed listening and observing court hearings, making inquiries from practitioners as to why some evidence is more or less relevant or effective and not others. In addition, the investigation required observing prosecutorial frameworks, researching texts alongside other legalists to grasp the underlayer problems of why the UNTOC, Palermo Trafficking Protocol, the CRC, the OPSC, and the OPIC perform sufficiently in one region and not others throughout each stage of the study.

The solution-driven research supports States' needs to address child trafficking and posture the world to eradicate the exploitation and violence against children. The research examined persuasive jurisprudence from across the globe in contrast to Bangladesh and Myanmar's real-world situations of child human trafficking, exploitation, and some of the most unspeakable violence against children. The study conducted an assessment, based upon the study's evidence and rebuttal to draw a research-based conclusion as to whether a breach of and in-force obligation had occurred based upon two provisions: a) the ILC State Responsibility Articles and b) the specific obligations of the in-force treaties: The Palermo Trafficking Protocol, supplemented by the UNTOC, the Convention on the Rights of Children, and the Optional Protocol for the sale of children.

The study used dependent variables – legal empowerment, Social Conflict Theory, and deterrence strategies. The study approached the international instruments from a different platform. The variables are used to examine and repurpose the international

instruments. Articles are not read from a superficial and siloed manner or as a single-purpose, non-interchangeable legislation. Instead, the researcher has analyzed the articles to form a nucleus for the prevention, protection, and mitigation of stateless forced displaced children to formulate a cohesive legal framework adaptable to the societal norms and transferable to other similarly situated societies, conditions, and targets populations. The research forms a proffered framework that provides legal empowerment for those without access to justice in a Social Conflict Theory construct society. The deterrence strategy fits the offender's profile using the appropriate criminology contexts for the prevention and protection of children from trafficking, exploitation.

b) Summary Discussion - The Socio-legal Study.

Socio-legal theorists opine that law and society are not divisible.¹⁴²¹ Instead, they are interlinked in a cooperative and interdisciplinary manner. The study meticulously examined primary instruments to protect trafficked and exploited children and their mechanisms to enable the primary researcher to formulate opinions, make recommendations, and propose informed decisions. In a manner not entirely different from organic anatomy, such an approach requires a simultaneously macroscopic and microscopic approach, describing the detailed procedures and overall context, the specific and the general, the trends and the underlying factors impacting child human trafficking and their exploitation.

To effectively address the social-legal problems as a socio-legal study, the research delved into the fields of social science and extrapolated real-world in situ events. Using sociological and case study theories, the critical-case study population, the Rohingya, was identified for the research. The research walked the reader through the background, sociological factors, and the study's evidentiary warrants to substantiate the population selection. Methodically, the central research question and sub-research questions formulation set out the study's variables, which guided the Rapid Evidence Assessment and led the direction of the study across the five chapters. Employing the study's mixed research methods, the principal researcher examined the relevant literature using the REA process, configured where the research would

¹⁴²¹ M Dillon, *Sociological Theory: Theorists, Concepts, and their Applicability to the Twenty-First Century* (Wiley-Blackwell 2010).

add value within the body literature, and linked text to the investigation of the primary international instruments.

The correlation and contrast of the international instruments with domestic implementation across four jurisdictions and ASEAN engaged the research's evidentiary support: authority warrants (legal reports and human rights organization reports), analogy warrants (similarly-situated children in legal reports), causality warrants (incidents of failure to comply with a State obligation; third-party submissions, Table 2), the backing (UNICEF, UNODC resources), and the counterargument from States under review, captured in Table 3. The socio-level and doctrinal elements are weaved to formulate arguments. A three-fold conclusion does not rely solely on a doctrinal approach. Instead, the study's approach embraced societal factors, such as those under the auspice of *Social Control Theory*.¹⁴²² The socio-legal student captures an organon of prominent principles of class, status, discrimination, and violent societal behaviors in the research states. The societal factors aid in identifying causation that the researcher opines impacts an effective legal framework against child human trafficking and exploitation in the research targeted geographical areas. External information, such as field research, is essential for informants as the data provides critical real-world scenarios. The social, legal lens has expanded the examination and the diverse textual divergence across disciplines

¹⁴²² Bendix and Lepset, *Social stratification in comparative perspective* (2nd edn, The Free Press, New York, Collier-Macmillan Limited London) 196.

to formulate research conclusions. The socio-legal study's research questions were poised around the research independent, intervening, and dependent variables.

The research presented an argument that extrapolated a response to the study's central and sub-research queries. From this juncture in the study, the research question responses served as an explanation to determine whether the study's hypothesis was or was not proven.¹⁴²³

As a capstone of the study, the research conclusions posits that the central and sub-research queries were answered, and the hypothesis has been validated. The conclusion is segmented to adapt to the study's blueprint in addressing each research issue and how they were argued by research objective in juxtaposition to the respective State obligations.

c) The Obligation.

Subsequently, a research examination highlighted the central research questions and sub-research questions. Each question indicated that the States of Bangladesh and Myanmar each had in-force treaty obligations to the UN Transnational Convention against Organized Crime.¹⁴²⁴ Except for Bangladesh, Myanmar also has in-force treaty obligations to the Palermo Trafficking Protocol.¹⁴²⁵ In addition, each of the research States, Bangladesh and Myanmar, also had in-force treaty positive obligations for the UN Convention on the Rights of the Child and its Optional Protocol to the Convention

¹⁴²³ Research Study Hypothesis, Chapter one.

¹⁴²⁴ Chapter four.

¹⁴²⁵ Chapter four.

on the Sale of Children.¹⁴²⁶ Next, the study investigated art 31(1), 32 of the Vienna Convention on the Law of Treaties, which asks for a 'good faith' interpretation according to the 'ordinary meaning.'¹⁴²⁷

The in-force obligations of the Palermo Trafficking Protocol and the supplementary UN Transnational Convention against Organized Crime establish the requirements for the prevention, protection, and mitigation against the human trafficking and exploitation of forced displaced, stateless children.¹⁴²⁸ Looking to the Palermo Trafficking Protocol, art 3(c-d) further details the obligations for the child for acts, means, and consent to determine whether the criminal offence of trafficking has occurred. Article 9(4) acknowledges children have a position of vulnerability (APOV)¹⁴²⁹ and guides member States on rendering adjudication that involves these populations.

¹⁴²⁶ Chapter three, Table 4, ratifications of treaty by state.

¹⁴²⁷ UN, *Vienna Convention on the Law of Treaties*, 23 May 1969, UN, Treaty Series, vol. 1155, p 331; Black Law Dictionary, 2018; 'The term ordinary meaning rule is a principle of statutory interpretation that when a word is not defined in a statute or other legal instrument, the court normally construes it in accordance with its ordinary or natural meaning. The rule guides courts faced with litigation that turns on the meaning of a term not defined by the statute, or on that of word found within a definition itself'. 'According to this rule, statutes are to be interpreted using the ordinary meaning of the language of the statute unless a statute explicitly defines some of its terms otherwise.' 'However, if the words are clear, they must be applied, even though the intention of the legislator may have been different, or the result is harsh or undesirable.'

¹⁴²⁸ Chapter four.

¹⁴²⁹ A position of vulnerability, Chapter two.

2. Summary of the Findings, Part I: State Responsibility

In Stage One,¹⁴³⁰ the scope of the study was derived from the *UN' 2030 Sustainability Goal #8*,¹⁴³¹ *Target 8.7* and *Goal #16*,¹⁴³² 16.2, 16.3, and 16.10,¹⁴³³ whereby the goals call upon States to eradicate the pervasive violence against children and their exploitation.

The central research question asks,

‘How can State responsibilities of targeted Southeast Asia (Myanmar) and South Asia (Bangladesh) Countries’ ... Bangladesh and Myanmar, under treaty obligations of the UN Convention on the Rights of the Child, and its Optional Protocol to the Convention on the sale of children, the Palermo Trafficking Protocol, supplemented by the Palermo Convention, in conjunction with bi-lateral and multilateral treaties, be interpreted to prevent, protect, and mitigate against the human trafficking, and exploitation of forced displaced stateless children through the use of legal empowerment and deterrence strategies’?¹⁴³⁴

State two involved the college of data from texts and the implementation of the Rapid Evidence Assessment, where the study's originality was affirmed. Data and evidence collection entailed library research, practitioner observance, and engagement, as well

¹⁴³⁰ Refer to Case Study Stages, Appendix 1, Figure 1.

¹⁴³¹ UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1, Sixty-ninth session Agenda items 13 (a) and 115,

<https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf> accessed 15 September 2019.

¹⁴³² SDG Goal #16, Promote peaceful and inclusive societies for sustainable development, and build effective, accountable, and inclusive institutions at all levels; UNGA on 4 December 2014, The 2030 Agenda for Sustainable Development, adopted by all UN Member States in 2015A/69/700, ‘The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet, Synthesis report of the Secretary-General on the post-2015 sustainable development agenda sustainable Development Goal 8, Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all’

<https://www.un.org/ga/search/view_doc.asp?symbol=A/69/700&Lang=E> accessed 28 September 2019. .

¹⁴³³ UN Economic and Social Council, E/2019/68, 2019 session 26 July 2018–24 July 2019 Agenda items 5 (a) and 6 <<https://undocs.org/E/2019/68>> accessed 22 July 2019; The 2030 UN Sustainability Development Goals <<https://sustainabledevelopment.un.org/?menu=1300>> accessed 12 September 2019; UN Res adopted by the General Assembly on 25 September 2015, A/RES/70/1; The 2030 Agenda for Sustainable Development, adopted by all UN Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet, now and into the future.

¹⁴³⁴ Refer to Chapter one, Research Questions.

as field observations. Finally, in transition to Stage 3 and 4 involved responding to the central research question through an intense examination of the ILC State Responsibility Articles 1, 2(a)(b), and 3 to reach a research-based conclusion that each of the states under review is responsible for their internationally wrongful acts.¹⁴³⁵

The research determined that the ICJ sets out the responsibility of States for their internationally wrongful acts to general international law under the ILC Articles of Responsibility. Case law from the ICJ, the ICSD, the European Court of Human Rights,¹⁴³⁶ and other tribunals dictated the interpretation of the focal articles. As an underpinning analytical resource, the study applied ICJ's court's findings in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*.¹⁴³⁷ The study contrasted evidence from third-party submissions in Table 2, applicable case law, international and domestic jurisprudence, and juxtaposed the examination to State Responsibility Articles 1, 2(a)(b), and 3.

According to State Responsibility art 1, 'every international wrongful act of a State entails the international responsibility of that State' applies to Bangladesh and Myanmar. The ruling informs the analysis of ICSID Case no ARB(AF)/09/1's *Gold Reserve Inc v Bolivian of Venezuela*.¹⁴³⁸ The case indicates breaches were found for fair

¹⁴³⁵ Chapter three, Argument #1.

¹⁴³⁶ HUDOC database (<http://hudoc.echr.coe.int>) provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions, and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Minister.

¹⁴³⁷ *International Court of Justice, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, Judgment of 3 February 2015, para 128.

¹⁴³⁸ *International Centre for Settlement of Investment Disputes, no ARB(AF)/09/1's Gold Reserve Inc v Bolivian of Venezuela*.

and equitable treatment/minimum standards for claims derived from the government's deprivation of rights regarding precious metals.¹⁴³⁹ The investigation combined and contrasted research evidence in Table 2 to Table 3. A research-based legal conclusion is that Bangladesh and Myanmar breached State Responsibility art 1. Under art 2(a)(b), in assessing the responsibility of Bangladesh and Myanmar, the investigation concluded that the two conditions of attribution of conduct and breach formed a cornerstone of State responsibility under international law.¹⁴⁴⁰ Article 2 was affirmed by the elements of two cases: *Bernhard von Pezold and others v Republic of Zimbabwe*¹⁴⁴¹ and *Tulip Real Estate and Development Netherlands B.V. v Republic of Turkey*.¹⁴⁴² Specifically, the reference to treaty obligations in *Pezold and others v Republic of Zimbabwe*, where the tribunal noted that a '[b]reach of the BIT would be an international wrongful act within art 2 of the ILC Articles as a 'breach of an international obligation', which can include treaty obligations'.¹⁴⁴³ Case law was used to challenge third-party evidence from Table 2 and rebuttal from Table 3. The study concluded that Bangladesh and Myanmar are subject to art 2, and a treaty obligation was breached.

Next, the study argued that compliance with art 3 reflects a rule of customary law affirmed by *Tulip Real Estate and Development Netherlands B.V. v Republic of Turkey*.¹⁴⁴⁴

¹⁴³⁹ *ibid.*

¹⁴⁴⁰ Chapter three, Issue #2.

¹⁴⁴¹ ICSID, Case no ARB/10/15, Award, 28 July 2015, para 722.

¹⁴⁴² ICSID, Case no ARB/11/28, Decision on Annulment, 30 December 2015, para 183.

¹⁴⁴³ ICSID, Case no ARB/10/15, Award, 28 July 2015, para 722.

¹⁴⁴⁴ ICSID, Case no ARB/11/28, Decision on Annulment, 30 December 2015, para 183.

Further, art 3, a characterization of an act of a State as internationally wrongful,¹⁴⁴⁵ well establishes that a 'breach of local law requirements cannot be advanced as an excuse for non-compliance with an international obligation.'¹⁴⁴⁶

Lastly, contrasted to each of the domestic legislation for the states under review, the research disclosed local laws excluded the Rohingya child and similarly-situated populations from citizenship and protections directly correlated to local discriminatory laws and practices. State Responsibility art 3 was further examined through the lens of the International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of the Genocide (Croatia v Serbia)*. The ICJ ruling sets out that,

'in either of these situations [of showing that genocide as defined in the Genocide Convention has been committed], states that '[t]he characterization of an act of a State as internationally wrongful is governed by international law'.¹⁴⁴⁷

The study established the treaty obligations of each of the states under review. Apart from Bangladesh from the Palermo Trafficking Protocol, each of the other states, Myanmar had in-force treaty obligations to the UNCRC, OPSC, the Convention, and the Palermo Trafficking Protocol. However, Bangladesh requires a 'serious crime' clause, where the country was also required to establish legislation against trafficking. Stage 5, the Analysis, the research walked through each of the focal treaty obligations by examining the real-world events. Research evidence is positioned in Table 2, state

¹⁴⁴⁵ Chapter three, Issue #3.

¹⁴⁴⁶ Chapter three, ILC State Responsibility examination, Issues #1-3; International arbitral tribunal (Under the ICSID Convention), *The Rompetrol Group N.V. v Romania*.

¹⁴⁴⁷ International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, Judgment of 3 February 2015, para 128.

rebuttals in Table 3, and specific treaty mandate examinations in Tables 10 and 11 are outlined in Chapters 3 and 4 narratives. The UN Transnational Convention's legislative guides against Organized Crime require that the treaty be read in alignment with art 1 of the Palermo Trafficking Protocol. According to objectives #1 and #3, sub-research questions #1 and #3, State Responsibilities, the researchers concluded that there was a research-based breach of the Palermo Trafficking Protocol, arts 6, (3)(a-d), (4)(5)(6); art 7, art 8; and the UN Transnational Convention against Organized Crime, art 5. In addition, the investigation assessed that not one of the country's had a record of fulfilling art 10, the liability of legal persons, where the State met the requirements of art 10(2), where the liability of the legal person may be criminal, civil, or administrative.

The research outcome also identified that Bangladesh and Myanmar each may have similar components in their legislature that address the 'serious crime' term referenced in art 2(b) and 3(1)(b) of the Convention. However, the research identified that the English version of the States' respective implementation into legislation omitted the serious crime provisions of art 5(1)(a)(i), the Convention. Extensive research also showed no legal reports available in English that identified serious crime application in its prosecution of 'an organized criminal group' or 'structured group' as defined in art 2 of the Convention.

For Bangladesh and Myanmar, the same research outcome is applicable for demonstrating that art 13, international cooperation for purposes of confiscation, has ever been implemented. ASEAN's bilateral/multilateral treaties include the art 13

provisions. The study refers to third-party evidence in Table 2's criminal acts. However, no English record has been found that indicates any prosecutorial efforts for these criminal offences.

Sharing of the findings, under the scope of Part I, has already begun with multiple publications that provide open access to the research.

3. Summary Statement of the Findings, Part II: State Positive Obligation. The investigation of The positive obligation of Bangladesh and Myanmar were contrasted primarily to the European Court of Human Rights rulings in *Chowdury and others v Greece*,¹⁴⁴⁸ *Likvidējamā P/S Selga and Lūcija Vasilevska v Latvia*,¹⁴⁴⁹ *Siliadin v France*,¹⁴⁵⁰ *C.N. and V France, C.N. v the United Kingdom*,¹⁴⁵¹ and *Rantsev v Cyprus and Russia*.¹⁴⁵² First, under *Siliadin v France*¹⁴⁵³ and the European Court of Human Rights' ruling, the research found that the legislation in force by Bangladesh (under the Convention), Myanmar did not afford the critical-case study population, the Rohingya children, and similar-situated children, effective protection against trafficking. The research argued that though there was legislation that met the minimum standards for the

¹⁴⁴⁸ *Case of Chowdury and Others v Greece*, (App no 21884/15), judgment, Strasbourg, 30 March 2017; the Court found that Greece had failed to comply with its positive obligations because the authorities, who knew through official reports and the media about the situation in which migrant workers found themselves well before the shooting incident involving the applicants, had failed to take adequate measures to prevent trafficking and to protect the applicants (§§ 111-115).

¹⁴⁴⁹ ECHR, Fourth Section, app Nos 17126/02 and 24991/02, Decision, 1 October 2013, paras 64-65.

¹⁴⁵⁰ (Application no 73316/01).

¹⁴⁵¹ *C.N. v the United Kingdom*, App no 4239/08, Council of Europe: European Court of Human Rights, 13 November 2012; UNODC no: FRA013, forced labour or services, servitude; In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being subjected to treatment in breach of art 4 of the Convention. In the case of an answer in the affirmative, there will be a violation of that Article where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk.

¹⁴⁵² *Rantsev v Cyprus and Russia*, § 287; failures of the police, notably, to inquire further into whether Ms. Rantseva had been trafficked, the decision to confide her to the custody of M.A and their failure to comply with various domestic law provisions led the Court to find that the Cypriot authorities had failed to take measures to protect Ms Rantseva from trafficking (§ 298); *ibid*.

¹⁴⁵³ (App no 73316/01).

criminalization of trafficking in persons, there were two areas where the research conclusion deemed the legislation did not meet its positive obligations:

1) art 3 of the Optional Protocol for the sale of children, criminalizing the 'sale of children'. The trafficking and selling of children either through adoption or forced labour have been blurred for many years. Explicitly, under the positive obligation, to the Optional Protocol to the Convention on the sale of children, art 3 refers the member State to art 2, where 'each State party shall ensure that... the following acts and activities are fully covered under its criminal or penal law.' Unfortunately, each targeted State has failed to include this provision in its domestic law prohibiting and criminalizing children's sales.¹⁴⁵⁴

In Bangladesh and Myanmar, the legislation on surrogacy is vague and ambiguous with specifications on altruistic surrogacy, where supposedly there is no enumeration. However, there are provisions where the adoptive parents can provide medical costs, living costs, etc. Also, there are other restrictions on whether the surrogate or the adoptive parents are citizens or noncitizens. States must comply with obligations as noted in art 3, OPSC.

¹⁴⁵⁴ US State Department, 'Trafficking in Persons Report - 2005' (Released by the Office to Monitor and Combat Trafficking in Persons) < <https://2001-2009.state.gov/g/tip/rls/tiprpt/2005/46606.htm> > accessed 20 June 2017; 'Baby selling is not an acceptable route to adoption and can include many attributes in common with human trafficking. Though baby selling is illegal, it would not necessarily constitute human trafficking where it occurs for adoption, based on the Trafficking Victims Protection Act, the UN Protocols on Trafficking in Persons, the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption; Trafficking, on the other hand, implies exploitation of the victims. If an adopted child is subjected to coerced labor or sexual exploitation, then it constitutes a case of human trafficking'.

2) In other areas, there are multiple gaps in each of the States' legislation where dowry still exists and where child marriage is prevalent. For example, trafficked children are subjected to forced marriage.¹⁴⁵⁵ Subsequently, there is a state breach and failure in the CRC, arts 1-4, 32, 34-36, and the OPSC, art 1-10. For each state under review, the legislation does not prohibit the sale of children, and art 6 'shall' requirement is absolute in that 'States Parties shall prohibit the sale of children....'

3) In *Rantsev v Cyprus and Russia*,¹⁴⁵⁶ the court outlined seven specific obligations based on a ruling citing *Prosecutor v Kunarac, Kovac & Vukovic*.¹⁴⁵⁷ *Siliadin v France* requires that state parties penalize and prosecute 'effectively' any act aimed at maintaining a person in a situation of slavery, servitude, or forced or compulsory labor with a mandatory criteria obligation:¹⁴⁵⁸ a) to put in place appropriate legislation and administrative framework, b) to take operational measures to protect victims or potential victims.¹⁴⁵⁹

In Chapter 4, each of the states was investigated based upon the seven-point criteria. The evidence in Table 2 was used against the rebuttals in Table 3. However, the 'shall endeavour' obligation spectrum was used to evaluate the positive obligation's carried out or into effect, referenced in Figures 12 and 13. The evaluative outcome showed that there were variations in the positive obligations of *Rantsev v Cyprus and Russia*

¹⁴⁵⁵ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 'The six grave violations against children during armed conflict: The legal foundation' (The Legal Foundation, 2009 updated November 2013) <<http://childrenandarmedconflict.un.org>> accessed 30 November 202

¹⁴⁵⁶ *Rantsev v Cyprus and Russia*, App no 25965/04 (ECtHR 2010).

¹⁴⁵⁷ Case Nos IT-96-23 & IT-96-23/1-A Judgment, at 36, para 118 (ICTY, June 12, 2002).

¹⁴⁵⁸ *C.N. v the United Kingdom*, § 66; *Siliadin v France*, § 112; *C.N. and V. v France*, § 105.

¹⁴⁵⁹ *Rantsev v Cyprus and Russia*, § 286; *C.N. v the United Kingdom*, § 67.

criteria ranged from absolute to nothing. In each instance, when the evaluation was made against the research evidence, the criteria of other European Court of Human Rights, other case law, the evaluative plotting on the scale is reduced from 'shall endeavour' to 'nothing'.

In view of another example, based upon the criteria set in *Chowdury and others v Greece*,¹⁴⁶⁰ the court identified a positive obligation was not met due to gaps in an effective investigation. However, in the instance of the Rohingya children, the study outcomes indicate that there has been no public record, in English, of an arrest or investigation. As a result, neither Bangladesh nor Myanmar met their positive obligation, as reflected in *Siliadin v France*. The court found France had not met its state obligation when it failed to consider the facts and circumstances of vulnerability.¹⁴⁶¹

¹⁴⁶⁰ *Case of Chowdury and Others v Greece*, (App no 21884/15), judgment, Strasbourg, 30 March 2017; forced labour; open fire on migrant workers, para 8, 9, page 20.

¹⁴⁶¹ *ibid* para 20; art 9(4), Palermo Trafficking Protocol, 'a position of vulnerability'; art 3, CRC, 'children in vulnerable situations'; CRC, General comment 14 (2013) adds further clarity to member States as it explains that a child in a specific situation of vulnerability.

4. Proffered Legal Framework

The research has reached an inescapable conclusion that existing attempts to combat trafficking typically consist of either legal or human rights approaches. The singular human rights approach is more prominent. The investigation indicates that the targeted member States implement limited articles of the Palermo Trafficking Protocol into their domestic law, or possibly one or two provisions from the respective domestic implementation of the UNCRC through the Children's Act. The case analysis and research have also identified that the provisions of the UNTOC are omitted, as well as the strong measures from the CRC, arts 34-36, the OPSC. There is no use of the OPIC provisions that render the highest prevention, protection, and mitigation, including the victim's redress charted in Table 9.

Trafficking in persons is a severe crime under international criminal law, and it also constitutes a severe violation of human rights prohibited by the instruments examined in this study. Therefore, the thesis proffers a comprehensive legal and proposed framework to address the phenomenon directed toward preventing and combating the trafficking of children and protecting them as victims towards the UN Sustainability Goals, 2030, to eradicate trafficking in human beings. The proffered framework is recommended with UNHCR resources and Legislative Guides that provide specific guidelines on the determinations for the child's best interest.¹⁴⁶²

¹⁴⁶² UNHCR, 'UNHCR guidelines on determining the best interest of the child' (UNHCR 2008)

<<http://www.unhcr.org/4566b16b2.pdf>> accessed 22 December 2018; UNODC, 'Legislative guide for the UN Convention against Transnational Organized Crime and the Protocols thereto' (UNOTC)

<<https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>> accessed 23 July 2017.

The three-dimensional legal framework pulls on the full force of the Palermo Trafficking Protocol and its supplemented instrument, the UN Convention against Transnational Organized Crime, along with the applicable provisions of the UNCRC, OPSC, and OPIC. Collectively, these instruments provide both the advocacy practitioner and prosecutorial team with the most significant capacity to secure a conviction and render the child the greatest prevention, protection, and redress.

The *first level* of defense to combat against trafficking is through the criminal justice system's prevention and protection deterrence strategies:

a) **Specific deterrence** guides State officials to apprehend, prosecute, and penalize traffickers to discourage future behaviour in a person being charged with the crime, trafficking-in-persons. Each state is obliged to exercise measures to deter the offense of trafficking and emphasize fines, prison sentences, or both. The severity of the punishment typically determines the effectiveness of the deterrence. The Chapter 4 case analysis of Bangladesh and Myanmar identified gaps in the specific deterrence and enforcement of the criminal acts of trafficking in persons. The Palermo Trafficking Protocol's art 5, supplemented by the UNTOC's arts 5, 8-12, and the respective domestic implementation, outline the criminalization of the trafficking in persons criminal actions.

b) **General deterrence**, as ascribed by Loughran's description, positions the States' obligation to uphold an instructional platform for the public-at-large instead of just

focusing on the individual being charged with the criminal acts.¹⁴⁶³ When States set harsh punishment, such as the death penalty and exorbitant long sentences for child exploitation, general deterrence becomes more effective as it dissuades the public from similar criminal acts.¹⁴⁶⁴

The *second strand*, the Palermo Trafficking Protocol, arts 6, 7, and 8 serve as legal empowerment tools. Connectively, the UNCRC, arts 32, 34-36 prohibits violence, trafficking, and exploitation of children and serves as the Prevention, Protection, and Promotion of safety for children. Finally, UNCRC's Optional Protocol, arts 3-6, mandates member-states to draft legislative actions that criminalize human trafficking and the multiple forms of exploitation that serve as a deterrent and provide embedded legal empowerment tools. Unlike other instruments, the Optional Protocol for the sale of children details the varying types of exploitation beyond sexual, often omitted in other State laws. The exploitation includes the removal of organs, expansion to the adoption of children, and forms of surrogacy that violate international law. Regardless of the citizenry or any form of demographics (race, religion, or gender), State parties are responsible for obliging provisions of the in-force treaty.

The international instruments provide redress to trafficked persons through support, prevention from re-victimization, and provisional assistance throughout and beyond the prosecutorial process of their perpetrators. The redress for the trafficked person is

¹⁴⁶³ T Loughran, 'Deterrence' in *Criminology*, Oxford Bibliographies (Oxford Publications 2018)

<<https://www.doi.org/10.1093/OBO/9780195396607-0167>> accessed 12 January 2020.

¹⁴⁶⁴ *ibid.*

paramount but is not as strongly reflected in the Palermo Trafficking Protocol¹⁴⁶⁵ 6, 7, and 8 with the 'shall endeavour' as a State mandate. However, the most substantial obligation to redress is affirmed in UNTOC, arts 10 and 14, and the OPIC. The UNCRC, OPSC, art 8(1)(g) and 9(4) outlines a strong mandate for member-States to establish and enforce legislation that focuses on redress; OPIC, arts 5-12 individual, group, and process for inter-state complaints serve as prevalent access to justice and redress process.

The *third strand* involves the prevention of trafficking at its source, where root cause factors target origin, transit, and destination member states of the Palermo Trafficking Protocol's UNTOC, arts 29-30. In addition, the Palermo Trafficking Protocol, section II, arts 6-8, provides essential prevention and protection assistance to trafficking victims, measures concerning the victim's state status, and the repatriation of trafficking victims. The third strand is the Trafficking Protocol, section III, arts 9-13, dedicated to the Prevention, cooperation, and other measures, including officials' information and exchange and border security control documents. Again, conjunctively, the OPSC provides specific prevention directives in arts 8-10, and the OPIC outlines the redress or complaints mechanism for individuals and states.

Table 9 (Legal Framework, Software app for practitioners and victims). The proposed legal framework, Table 9, works in concurrence with the researcher's

¹⁴⁶⁵ Supplemented by the UN Transnational Organized Crime Convention.

development of a global ‘software app’.¹⁴⁶⁶ The researcher has developed a computer software program, small enough to use for mobile devices or as a desktop application, with the capacity to perform the proffered legal framework for practitioners/advocates and vulnerable persons. The app allows the practitioner/advocates and vulnerable persons to create a pdf and video of the claim for redress in each of the UN-recognized languages. The claim can be used as supporting evidence or a template for practitioners to build a legal case/brief for court submission. In regions where literacy is limited, the app allows a drop-down designation of the type of crime, the region/country. In addition, it tags the selected country ‘s respective ratified international instruments as focused on throughout this research. The app works with both i-phones and Android phones with availability on Goggle Play Store™ and AppStore™.

¹⁴⁶⁶ Human Trafficking Legal Framework/Strategic Litigation, ‘2Prevent&Protect’ (2021); licensed, framework developed, and software logic by T. Herring; US Patent, Trademark, & Copyright Office, Case #1-10349770151; Certificate of Registration, TXu 2-275-732, Effective Date of Registration, 09 April 2021; Registration Decision Date: 09 September 2021, refer to Appendix 4 for e-app screenshots and dialogue.

c) Table 9. Proffered Legal Framework/Strategic Litigation; Children’s prevention, protection, and mitigation against trafficking and exploitation (Practitioner/Advocate Guide) [also refer to Appendix 4 copyrighted and licensed e-app, *2Prevent&Protect*]

Strands of Proffered Framework: General Deterrence ¹⁴⁶⁷ Specific Deterrence ¹⁴⁶⁸ Legal Empowerment ¹⁴⁶⁹ Redress ¹⁴⁷⁰	Palermo Trafficking Protocol	Supplemented by: UN Convention against Transnational Organized Crime	Convention on the Rights of the Child (CRC)	CRC, Optional Protocol to the Convention on the sale of children	CRC, Optional Protocol to the Convention on a Communications Procedure
1st Strand (Prevention, Protection, & Promotion) a) Specific Deterrence b) General Deterrence c) Legal Empowerment d) Redress	a) art 5 b) art 5 c) arts 5, 6-9, 11-13 d) art 5	a) arts 5, 6, 8, 23 b) arts 5, 6, 8, 23 c) arts 18-31 d) arts 18-31	a) arts 1-4, 19, 32-36, 40 b) arts 1-4, 19, 32-36, 40 c) arts 3, 11, 21, 32-40 d) arts 3, 11, 21, 32-40	a) arts 3-7, 9-11 b) arts 3-7 c) arts 3-8 d) arts 8(1-5), 9-10	a) art 3 b) art 4(1)(2) c) arts 13-14 d) arts 5-12
2nd Strand, Redress (Protection) a) Specific Deterrence b) General Deterrence c) Legal Empowerment d) Redress	a) arts 5 b) arts 5 c) arts 6-9, 11-13 d) arts 6-8	a) arts 5, 6, 8, 10-14 b) art 23 c) art 31 d) arts 5, 6, 8, 23	a) arts 1-4, 11, 19, 32-36, 40 b) arts 1-4, 11, 19, 32-36, 40 c) arts 3, 11, 21, 32-36, 40 d) arts 3, 11, 19, 32, 34-36, 40	a) arts 8(1)(g), 9-10 b) arts 1-7 c) art 8(1-5) d) arts 8, (1-5), 9-10	a) art 3 b) art 4(1)(2) c) arts 13-14 d) arts 5-12
3rd Strand, Prevention & Protection a) Specific Deterrence b) General Deterrence c) Legal Empowerment d) Redress	a) art 5 b) art 5 c) arts 6-9, 11-13 d) arts 6-8	a) arts 24-31 b) arts 24-31 c) art 31 d) arts 5, 6, 8, 23, 31	a) arts 3, 11, 19, 32-36, 40 b) arts 1-4, 11, 19, 32, 34-36, 40 c) arts 1-4, 11, 19, 32, 34-36, 40 d) arts 3, 11, 19, 32, 34-36, 40	a) art 8(1) (a-g) c) art 8(1) (a-g) d) arts 9-10	a) art 3 b) arts 4(1)(2) c) arts 13-14 d) arts 5-12

¹⁴⁶⁷ General deterrence: (Prevention), (Protection), (Promote) potential perpetrators thinking about committing the crime, protecting potential victims, and promoting legal empowerment under the full strength of the law; note that there are several articles that comprise each instrument; however, the articles noted target child human trafficking and exploitation.

¹⁴⁶⁸ Specific deterrence: (Prevention), (Protection), (Promote) apprehend, prosecute, and penalize traffickers, who have engaged in crime; protecting the victim from continual and future re-victimization, and promoting the correctional system to maximize the pain of committing the crime and to minimize its benefits.

¹⁴⁶⁹ Legal Empowerment: access to justice using the provisions of embedded laws within the States in-force treaty obligations; Report of the UN High Commissioner for Human Rights, ‘Access to justice for children’, A/HRC/25/35 16th December 2013, 6 para 13 accessed 19 December 2020; CRIN, ‘Access to justice’ <https://archive.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf> 10 February 2020.

¹⁴⁷⁰ Redress: (Prevention), (Protection), (Promote), during the criminal justice system process, the children, who are victims of the offences described in the Protocol, the best interest of the child ‘shall’ be a primary consideration; Report of the UN High Commissioner for Human Rights (n 1469).

5. Research future implications

The study investigated legal scholarship that elucidated past and present domestic, international, and transnational issues protecting trafficked and exploited children. The future implications of this study include expanding the approach of child trafficking and exploitation research to include a socio-legal approach. Also, moving forward, the study encourages practitioners to adapt child trafficking and exploitation frameworks to apply to conflict and post-conflict legal jurisdictions and regions. Understanding the societal needs through the lens of Dahrendorf's Social Conflict Theory and other sociological theories is crucial. It aided the researcher to convey that if the rulers are not held responsible or regulated, the probability of protecting the vulnerable has diminished. Equally, the study provides practitioners an example of tangible variables when establishing and adopting a legal framework to the appropriate State's jurisdiction.

There is a likelihood, moving forward, the international instruments will be viewed differently. To address child human trafficking, this research has executed a socio-legal study of where conflict, post-conflict societies, and law have merged. A vital component of this study was to change the research platform and shift the approach to a broader, less one-dimensional view of how to battle child human trafficking and exploitation.

APPENDICES

Appendix 1 – Case Study Protocol

Appendix 2 – Rapid Evidence Assessment

Appendix 3 – Ethics Approval, Survey/Questionnaire. Participant Responses

Appendix 4 – Proffered Legal Framework, Children’s prevention, protection, and mitigation against trafficking and exploitation (Practitioner/Advocate Guide) [to be utilized with or without licensed e-app, *2Prevent&Protect*

Appendix 5 – Glossary and Special Terms

APPENDIX 1

Case Study Protocol

Appendix 1

1.0 The Case Study Protocol

1.1 The Protocol Process. Yin's work denotes that the case study protocol, depicted in Appendix 1, Table 1, contains the international instruments used in the study, the procedures, the flow of the stages, and the guidelines to follow when using a case study method. The author further suggests that using a protocol as a critical blueprint increases the reliability and replicability for every facet of the research, which includes the type of research question, the totality of data collection, and every step to the final write-up reflected in Stage 6, which begins the sharing of the outcomes.

Following the case study protocol of Yin¹⁴⁷¹ and the research, method process flows supported by Flyvbjerg, Creswell, and other seminal case study researchers. This critical-case study focuses on unfolding the human trafficking of forced displaced, stateless Rohingya children and similar-situated children.¹⁴⁷² By identifying the forced displaced, stateless Rohingya as the population group of interest, the results allow the research to generalize back to the demographics: a) forced displaced, b) stateless (refugee and non-refugee), and c) an indigenous child populace. Accordingly, the desired outcome is that the reader can connect the conclusions presented in this case study and protocol to the

¹⁴⁷¹ R K Yin, *Case study research design and methods* (5th edn, Thousand Oaks, CA: Sage 2014); RK Yin, *Case study research: Design and methods* (2nd edn, Newbury Park, CA: Sage Publications 1994).

¹⁴⁷² NV Ivankova and others, 'Using mixed methods sequential explanatory design: From theory to practice' (2006) 18[1] *Field Methods* 3, 20 <<http://journals.sagepub.com/doi/abs/10.1177/1525822X05282260>> accessed 3 January 2018; J W Creswell and others, 'Advanced mixed methods research designs' In *Handbook on mixed methods in the behavioral and social sciences*, ed. A. Tashakkori and C. Teddlie, 209-240. (Thousand Oaks, CA: Sage 2003).

underlying analyses. The supporting strands of legal and social evidence respond to the central research question and sub-research questions.¹⁴⁷³

Yin's universal case study protocol comprises six interdependent stages,¹⁴⁷⁴ as illustrated in Appendix 1, Figure 1 and outlined in Appendix 1, Table 1. The required elements of this socio-legal research also combine additional methodological principles supported by Miles, Huberman, and Saldaña's 2013 scholarly works and those of Yin's 2009 and 2014 publications.¹⁴⁷⁵ Illustrated throughout the protocol is the non-hierarchical inclusion of other methods used to respond to the research questions of this study, such as those theories and approaches used for doctrinal research to analyse the formulation of 'legal doctrines', either 'pure or containing elements of legal sociology', and 'rules'.¹⁴⁷⁶ The three most common qualitative methods used for data collection are applied in this study. First, observation is appropriately executed for collecting data in a real-world, naturally occurring context, obtained through experiences of the primary investigator's field research. Next, practitioner action research, where the primary research practitioner engages other practitioners to receive an optimal collection of data in a continuing professional development atmosphere.¹⁴⁷⁷ The research included practitioners,

¹⁴⁷³ R K Yin, 'Validity and generalization in future case study evaluations' (2013) 19[3] *Evaluation* 321, 332.

¹⁴⁷⁴ R K Yin, *Case study research: Design and methods* (4 edn, Los Angeles, CA: Sage 2009).

¹⁴⁷⁵ M B Miles and others, *Qualitative data analysis: A methods sourcebook* (Thousand Oaks, CA: Sage 2013).

¹⁴⁷⁶ P Chynoweth, *Legal research in the built environment: A methodological framework: Chapter 3*, (Research Institute for the Built and Human Environment, University of Salford 2009) 28; F Leeuw and H Schmeets, *Empirical legal research* (EE Elgar Publishing 2016) 158, 220; Within the common law jurisdictions legal rules are to be found within statutes and cases (the sources of law) but it is important to appreciate that they cannot, in themselves, provide a complete statement of the law in any given situation.

¹⁴⁷⁷ Indicative of steps in action research where: 1) identification of the problem area, 2) collection and organization of data, 3) interpretation of data, 4) action based on data, and 5) reflection; B Johnson and L Christensen, *Educational research: Quantitative, qualitative, and mixed approaches* (Sage 2012) 57, 161-243; A Fink, *The survey kit* (Sage Publications 2003); Ethics approval documents – refer to Appendix 3.

government officials, legal scholars, and advocates through virtual and face-to-face modalities in conference and research team settings, symposium panels, and policy teams.¹⁴⁷⁸

Methods linkage to research questions and questionnaire construct. The following section provides an overarching condensed synopsis of Yin's six-stage protocol graphically represented in Appendix 1, Figure 1 and Appendix 1, Table 1. The conceptual diagram and table depict an intricate and detailed process of this socio-legal critical-case study. Elements of each stage, including research instruments, and ethical-compliance submissions documents for the involvement of human subjects¹⁴⁷⁹ and approvals, are outlined throughout this section.

Each stage of the protocol creates a milestone response to the research central and sub-questions. The first three stages require the researcher to conduct an extensive background in literature, an examination of theory, and a directed focus on the process of responding to the study's research questions. The latter stages guide the researcher through two essential phases: data collection, analysis, and validity to achieve the research findings shared at stage six.

Specifically, the data collection segment portrays a strategy that incorporates sorting and storage (see Appendix 1, Table 1. Bridging the data collection to analysis is a defined process with explanations on the criteria for analysis and interpretation. The

¹⁴⁷⁸ N Denzin and Y Lincoln, *Handbook of qualitative research* (Sage Publications 2000); D Loseke, *Methodological thinking: Basic principles of social research design* (Thousand Oaks, CA: Sage 2012); D Jorgensen, *Participant observation: A methodology for human studies* (Newbury Park, CA: Sage 1989).

¹⁴⁷⁹ Refer to Appendix 3, Bangor University Ethics Approval.

instrumentation formulation is also an essential element of this research for capturing text and observations. Ethics approval has been obtained for Bangor University's 'CBLESS Research Ethics Committee' before commencing any research involving human subjects. With all other instruments, the research questionnaire is structured to utilize open-ended and evaluative questions whenever possible. The evaluative questions 'require a comparison between what is happening (the condition) to norms and expectations or standards for what should be happening (the criterion)'.¹⁴⁸⁰ Each element is strategically linked to the research hypothesis, central, and sub-research questions. The case study's iterative process of the doctrinal method shares several characteristics of legal research in general, but with some specificities of three central characteristics described by McCrudden as:

- 1) 'Hermeneutic it takes the insider's view on all the legal systems studied.
- 2) Institutional in that the knowledge of the law is embedded in the institutional structures of concepts and organizations of the Southeast Asia (Myanmar) and South Asia (Bangladesh) state legal systems in question.
- 3) It is interpretative in that the comparative law permits interpretation of targeted legal systems' in Southeast Asia: Bangladesh and Myanmar.¹⁴⁸¹

¹⁴⁸⁰ W M Tellis, 'Application of a case study methodology' (1997) 3[3] The Qualitative Report 1, 19. <<http://nsuworks.nova.edu/tqr/vol3/iss3/1>> accessed 3 January 2018.

¹⁴⁸¹ C McCrudden, 'Legal research and the social sciences' (2006) 122 Law Quarterly Review 632.

The data elements descriptively identify which research question, sub-questions, or propositions are addressed. The elements also provide a range of possible outcomes but provide the information needed to distinguish between research findings and alternative explanations. Thus, for example, Kidder and Judd identify each stage of 'planned validity', a required component of generalizability, whereas the design and data collection checklist develops a:

- 1) **Construct validity** – obtained through an application of correct operational measures that are executed in every facet of the case protocol; the processes provide specific emphasis on data collection from library databases, doctrinal jurisprudence, observations, practitioner action research, among others, research applications to achieve the use of multiple sources of evidence and clear lines of designation for the chain of evidence.¹⁴⁸²
- 2) **Internal validity** – demonstrated through a causal relationship between the research outcomes and effect; the complex hypothesis and central question state the cause with the sub-research questions pinpointing variables to guide the research to achieve outcomes and link to the causation.
- 3) **External validity** – pinpoints the theoretical domain to which study findings can be generalized; the research uses Subjective Legal Empowerment (SLE) Theory to address the view of legal empowerment as a repeatable process, methodology,

¹⁴⁸² Note this study has sought and received ethics approval for all research that has involved human subjects; Ethics approval documents and instruments are located at Appendix C in compliance with Bangor University's Ethics Committee guidelines; Note: All statements and research outcomes are singularly derived by the researcher and comply with the

and model to address efforts to reduce inequalities among the poor and disadvantaged. The research also exercises key components of Dahrendorf's Social Conflict Theory to decipher the 'why' behind societal violence against children.¹⁴⁸³

Methods link to research variables. Yin and Gerry's theories in qualitative research indicate that anything that can vary in research due to circumstances is referred to as a variable.¹⁴⁸⁴ Further, the theorists also explain that an independent variable (IV), by definition, is one that the researcher can manipulate. However, the variable is independent of everything that occurs during the research because it does not change easily once it is chosen. Together, the variables formulate the qualitative data sets triangulated in the study and graphically depicted in Appendix 1 - Figure 1, Appendix 2 - Figure 2, and Appendix 2, Research Methods.

Research methodologists have defined triangulation of data sets as a multimethod approach to data collection and analysis.¹⁴⁸⁵ The basic idea underpinning the concept of triangulation is that the phenomena under study can be understood best when

¹⁴⁸³ R K Yin, *Case study research: Design and methods* (3rd edn, Sage Publications 2003); L H Kidder and C M Judd, *Research methods in social relations* (5th edn, New York: Holt, Rinehart, and Winston) 26; S Golub, 'The commission on legal empowerment of the poor: One big step forward and a few steps back for development policy and practice' (2009) 1[1] Hague J Rule Law 101-116.

¹⁴⁸⁴ RK Yin, *Case study research design and methods* (Sage Publications 2014); A Bennett, 'Case study methods, design, use, and comparative advantages' in Detlef F. Sprinz and Yael Wolinsky-Nahmias, eds. *Models, numbers & cases. Methods for studying international relations* (University of Michigan Press 2004) 19-52; J Gerring, 'Qualitative methods' in *Annual review of political science* (2017) 15-36; specify the research question and the class of events ('analytical unit') to be studied define the dependent, independent, and intervening variables, based on relevant theories; using an iterative method refers to a systematic, repetitive, and recursive process in qualitative data analysis. An iterative approach involves a sequence of tasks carried out in the same manner each time and executed multiple times.

¹⁴⁸⁵ P Rothbauer, 'Triangulation' in LM Given (ed), *The SAGE encyclopedia of qualitative research methods* (SAGE Publications 2008) 88, 89; data collection in this study encompassed qualitative surveys, practitioner action research, and literature research guided by the Rapid Evidence Assessment process.

approached with various datasets.¹⁴⁸⁶ Within this study, the data is comprised of the categories of data sets or variables positioned throughout the research. In contrast, the study's dependent variable (DV) should change due to the independent variable.¹⁴⁸⁷ In essence, the State responsibilities, human trafficking, and exploitation (the IVs) are affected by the DVs —prevention, protection, and mitigation (deterrence strategies), redress, forced displaced stateless children, legal empowerment, and Social Conflict Theory constructs that are manifested by descriptors/behaviors.

The study's scope, goals, and objectives include a proffered legal framework's aim of how the targeted state conducts prevention, protects, mitigates human trafficking, and exploits forced displaced stateless children. The study then argues the subsequent triggering of legal empowerment, the effects of deterrence (both specific and general), and redress for forced displaced and stateless children in a society exhibiting Dahrendorf's Social Conflict Theory constructs.¹⁴⁸⁸ For this study, Kalob and others 2008 works explain the third type of variable, the confounding or the intervening variable.¹⁴⁸⁹ The research authors' identification of these variables, outside of the independent variables, is slated to have the capacity to confound the results of the study by affecting

¹⁴⁸⁶ A dataset (also spelled 'data set') is a collection of raw statistics and information generated by a research study. In this study data sets are represented by information from the qualitative questionnaire instrument and research texts.

¹⁴⁸⁷ *ibid*; specify the research question and the class of events ('analytical unit') to be studied define the dependent, independent, and intervening variables, based on relevant theories; The independent variable is the antecedent while the dependent variable is the consequent.

¹⁴⁸⁸ R Dahrendorf, 'Toward a theory of social conflict' (1958) 2[2] *The Journal of Conflict Res* 171, 182 <<http://www.jstor.org/stable/172974>> 22 February 2018.

¹⁴⁸⁹ L Kalof and others, *Essentials of social research* (University 2008) 37.

the dependent variable.¹⁴⁹⁰ This study's central research question variables are listed below and represent composites of the sub-research questions:

- 1) **Independent variables:** (cause, predictor) State responsibilities, (child) human trafficking, and exploitation
- 2) **Confounding/Intervening variables:**
 - a) UN Convention on the Rights of the Child and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure
 - b) The Palermo Trafficking Protocol supplemented by the UN Convention against Organized Crime,
 - c) The related ASEAN domestic bi-lateral and multilateral¹⁴⁹¹ self-executing binding treaties, and
 - d) Targeted
- 3) **Dependent variables:** (effect, consequence)
 - a) prevent, protect, and mitigate (deterrence strategies) human trafficking and exploitation,
 - b) forced displaced, stateless children,
 - c) legal empowerment, deterrence strategies, redress, and
 - d) Social Conflict societies (indicators of Social Conflict Theory descriptors)

1.10.3 The Rules of Legal Reasoning applied within the Study. The doctrinal method allows the investigator to utilize the rules of legal reasoning and argumentation from multiple sources of law, to include evidence supported by,

‘statutes, precedent, published writings of legal scholars and other documents originating from written opinions of higher courts, writings in legal history, philosophy’.¹⁴⁹²

¹⁴⁹⁰ *ibid.*

¹⁴⁹¹ Article 1, the present convention applies to treaties between states, UN Treaty Series, Vienna Convention on the Law of Treaties, #18232, Multilateral.

¹⁴⁹² M Van Hoecke (eds), *Methodologies of legal research: Which kind of method for what kind of discipline?* (Hart Publishing 2011); G Samuel, ‘Taking methods seriously (Part One)’ (2007) 2 *Journal of Comparative Law* 94, 105ff <<https://kar.kent.ac.uk/id/eprint/2133>> accessed 20 February 2018.

Throughout the analysis, the doctrine of *stare decisis* (precedence) and the related concepts of *obiter dicta*¹⁴⁹³ (parts of a decision) compare and contrast court holdings from the targeted States to reflect a mandatory¹⁴⁹⁴ and persuasive¹⁴⁹⁵ authority. As a result, the rulings may be considered *suggestive*, but not definitive under law standards. This analytical reasoning process is used as Southeast Asia (Myanmar) and South Asia (Bangladesh) region does not have a Supreme Court *per se* or a Human Rights Court¹⁴⁹⁶ that could provide a mandatory authority.

Consequently, most of the study's legal analysis opinions and obiter dicta are a persuasive (suggestive) effect or describe a secondary source of authoritative weight that is not binding upon the court.¹⁴⁹⁷ The researcher's justification of the process is based upon how states that include the United Kingdom, Germany, France, and the United States, judges rely upon the binding authority for decisional justification.¹⁴⁹⁸ However, in contrast, legal reasoning seldom invokes persuasive authority, except for domestic judges in Africa. In the segment of Africa, persuasive authority is an interpretive tool as

¹⁴⁹³ C Baldick, *The Oxford dictionary of literary terms* (Oxford University Press 2008); an opinion voiced by a judge while giving judgment that was not essential to the decision in the case. It does not form part of the *ratio decidendi* of the case and, therefore, creates no binding precedent, but may be cited as persuasive authority in later cases.

Persuasive authority - the basic idea is intuitive: the reasoning in a decision can persuade even if it does not bind.

¹⁴⁹⁴ *ibid*; mandatory authority is what the court must consider when analyzing an issue and on what it must base its decision, e.g., controlling case law and statutes.

¹⁴⁹⁵ *ibid*; persuasive authority is what the court may consider when analyzing an issue, but it is not on what the court is required to base its decision.

¹⁴⁹⁶ In 2017, Malaysia instituted the regions' first Human Trafficking Court. However, as of the date of this research publications, no record could be located whether the courts' rulings have been cited as a mandatory authority or utilized in any persuasive capacity in the region or globally.

¹⁴⁹⁷ Cornell Law School, Legal Information Institute, 'Persuasive authority' (2020) <https://www.law.cornell.edu/wex/persuasive_authority> accessed 2 January 2020.

¹⁴⁹⁸ Helmut Phillip Aust and Georg Nolte (ed), *The interpretation of international law by domestic courts: Uniformity, diversity, convergence* (Oxford University Press 2016) 277.

the judicial system appears to be torn between emulation and translation.¹⁴⁹⁹ For example, in *Petrus v State*,¹⁵⁰⁰ the Botswanan Court of Appeal made a determination of corporal punishment using s7 of the Constitution of Botswana in conjunction with persuasive inference from US case law, a European Court of Human Rights¹⁵⁰¹ judgment, a judgment from a German Court, and a dissenting Jamaican case judgment, each written by African legal scholars. Subsequently, Southeast Asia's lack of a mandatory authority will follow a similar path of a persuasive authority as in *Petrus v State* to draw research conclusions. Examples of research evidence include the UN Office on Drugs and Crime's international case database and international courts and tribunals.

Patterno and others' 2005 works are applicable as the legal theorist denotes legal argumentation is not uniform; instead, the authors suggest that use varies according to the corresponding argumentation types.¹⁵⁰² For example, the authors identify that judicial argumentation is prominent as a judge's decision can be binding. The authors further explain that the general description of the law can transition into the professional sociology of law and yield explanatory research.¹⁵⁰³ Van Hoecke and others suggest that legal doctrine is an explanatory science used to dissect the phenomena under

¹⁴⁹⁹ ME Adjami, 'African courts, international law, and comparative case law: Chimera or emerging human rights jurisprudence?' (2002-03) 24 Mich J Intl L 103
<<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1302&context=mjil>> accessed 3 December 2017; Labuda, P I, 'The special criminal court in the Central African Republic' (2017) 15{1} Journal of International Criminal Justice, 175, 206 <doi: 10.1093/jicj/mqw074> accessed 23 June 2019; Adjami indicates that domestic judges in Africa frequently invoke court decisions from national (and regional) courts in other parts of the world.

¹⁵⁰⁰ *Petrus and Another v the State* 1984 BLR 14 (CA); Questions of law relating to corporal punishment reserved by the High Court for the consideration of the full bench of the Court of Appeal.

¹⁵⁰¹ U Kilkelly, 'The CRC in litigation under the ECHR' in Liefwaard T and Doek J (eds), *Litigating the rights of the child* (Springer Publication 2015).

¹⁵⁰² E Patterno, 'Legal doctrine and legal theory' in C Roversi (eds), *A treatise of legal philosophy and general jurisprudence* (Springer Publication 2005) 814, 818.

¹⁵⁰³ *ibid.*

examination and respond to the study's research questions.¹⁵⁰⁴ Examples of the legal doctrine in juxtaposition to explanatory social sciences are prominent throughout this socio-legal study. The research identifies the legal perspective but simultaneously looks for solutions to *how* and *why* the research inquiries.

¹⁵⁰⁴ *ibid.*

1.10.4 Socio-Legal Approach. Sociology is a human's whole life, where Auguste Comte, the founder of sociology, renders the research method of sociology focusing on the entirety of society.¹⁵⁰⁵ This sociological inquiry asks why child exploitation is so prominent in the targeted States and how it can be stopped? As a result, the methods include observing, comparing, and historical viewing in a holistic way. Research on the region's history includes the States target population and the criminal activity of human trafficking and exploitation. The primary researcher observes in situ and compares across both sociological – doctrinal principles and approaches. An example is the critical-case study methodology, where the protocol process falls within the social science discipline as explained by renowned researchers Yin, Tashakkori, and Creswell.¹⁵⁰⁶

As applied in this study, the socio-legal design is sometimes used to investigate how legal actors consider, interpret, and understand the law, procedure, and policy phenomena. The critical components of the socio-legal and case study method are used to reply to this study's research questions explicitly. The methods link the questions to the research hypothesis, central research question, and sub-research questions. Subsequently, this chapter describes the methodology for the study and includes a discussion of the following key areas:

- 1) Research design, a socio-legal study using Yin's case study methods (study protocol – internal validity), (Refer to Appendix 1)

¹⁵⁰⁵ D Yang, 'The theoretical context and judgment of sociological quantitative research method' (2009) 23[11] *Jiangxi Sociology* 56, 61 <<https://link.springer.com/content/pdf/bfm:978-1-349-17619-9/1.pdf>> accessed 27 March 2018; A Sturman, 'Case study methods' in JP Keeves (Ed.). *Educational research, methodology and measurement: An international handbook* (Pergamon 1997) 61, 66.

¹⁵⁰⁶ A Tashakkori and J W Creswell. 'Exploring the nature of research questions in mixed methods research' (2007) 1[3] *Journal of Mixed Methods Research* 207, 211 <<https://doi.org/10.1177/1558689807302814>> accessed 3 Aug 2017.

- 2) Participant questionnaires (construct validity) (refer to Appendix 3)
- 3) Data collection methods and procedures, inclusive of library desk research, qualitative field research employing practitioner-action research¹⁵⁰⁷ methods with international research committees (construct, internal, external validity, and researcher's positionality) (refer to Appendix 1)
- 4) Data analysis using doctrinal methods and qualitative analytical criteria using the Rapid Evidence Assessment (REA) (construct validity), and,
- 5) Procedures used to establish the three levels of research validity – construct (items on a questionnaire adequately cover the construct being studied with application of the 15-steps of the construct),¹⁵⁰⁸ internal (trustworthy cause-and-effect relationship; study protocol), and external (replication; inclusion and exclusion criteria that aided in defining the target population) (refer to Appendix 1, 2, and 3).

¹⁵⁰⁷ R Johnson and L Christensen, *Educational research – Quantitative, qualitative, and mixed approaches 7e* (7th edn Sage 2020) 55, 114, 157-175; S Bartlett and D Burton, 'Practitioner research or descriptions of classroom practice? A discussion of teachers investigating their classrooms' (2006) 14[3] Educational Action Research <<https://doi.org/10.1080/09650790600847735>> accessed 12 January 2018; S Kemmis, 'Participatory action research and the public sphere' (2006) 14[4] Educational Action Research <<https://doi.org/10.1080/09650790600975593>> accessed 23 July 2018; S Kemmis, 'Action research as a practice-based practice', (2009) 17[3] Educational Action Research <<https://doi.org/10.1080/09650790903093284>> accessed 23 July 2018; D Schön. *The reflective practitioner: How Professionals Think in Action* (New York, Basic Books 1983); 'Simple definitions of practitioner research addresses the investigator, the setting, and the purpose. The investigator is the practitioner, in workplace settings... to communities. The general purpose is to better align the practitioner's purpose with their actions... an underlying commonality of purpose is the desire to improve upon and develop deeper insights into one's practice. Practitioner research by its nature offers practitioners a voice in the research conversation'; The researcher in this study actively engaged in workplace settings in forums consisting of conferences, consortiums, workgroups, investigative research teams, and international research committees focusing on human trafficking, forced migration, statelessness (refugee and non-refugee) and child rights in Australia, Canada, England (UK), Hungary, Ireland (UK), Laos, Malaysia, the Netherlands, Russia, Scotland (UK), Serbia, Sweden, Switzerland, Thailand, the United States of America, and Wales (UK). The research's vulnerable population is Rohingya children, classified as stateless, refugee, and non-refugee, in Bangladesh and Myanmar and similarly situated children across multiple geographies. Therefore, some of the views from practitioners may not include a direct experience in working with the Rohingya stateless, refugee and non-refugee, child.

¹⁵⁰⁸ B Johnson and L Christensen, *Educational research* (4th edn Sage 2012) 161, 193-243; provides an inclusive and fundamental logic of empirical research using questionnaires.

1.10.5 Case Study (The Critical-case). Case study research involves an intense analysis of an individual unit. Yin's writings explain the case study approach is appropriate to address an **explanatory research question**. This critical-case study protocol-based stage aligns well with the research of forced displaced, stateless Rohingya children in the targeted Southeast Asia (Myanmar) and South Asia (Bangladesh) countries. The critical-case study allows the researcher to gain a dialectical foundation and a deep holistic view of the research inquiry.

The investigation facilitates describing, understanding, and explaining the complex situation of State obligations¹⁵⁰⁹ to force displaced stateless Rohingya children, similarly situated children, and the prevention, protection against human trafficking under two prominent international instruments in this research: the UN Convention on the Rights of the Child and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Palermo Trafficking Protocol, supplemented by the UN Convention on Transnational Crime.

Looking at the case study approach for this research, it follows two generally accepted definitions:

- 1) First, Bromley identifies a case study as a 'systematic inquiry into an event or a set of related events which aims to describe and explain the phenomenon of interest'.¹⁵¹⁰ In this critical-case, the study's event is the UN High Commissioner for Refugees' 100-days of horror and hope Rohingya-crisis and the related events

¹⁵⁰⁹ The Protocol makes several additional references to exploitation: in the preamble, noting (in the context of a statement of purpose) the existence of a range of international instruments 'to combat the exploitation of persons'; in connection with its provision on the irrelevance of consent; and in a provision requiring States Parties to address the demand that fosters 'all forms of exploitation of persons'; Trafficking in Persons Protocol, art 3(b) (consent to the intended exploitation is irrelevant where any of the listed means are used).

¹⁵¹⁰ DB Bromley, Academic contributions to psychological counselling: I. A philosophy of science for the study of individual cases. (1990) 3[3] Counselling Psychology Quarterly 302.

of human trafficking captured by the UN and included in international human rights organizations' reports other credible sources.

2) Secondly, Yin's (2009) world-renowned definition builds upon Bromley's work and is the prominently accepted description of a case study among a broad range of researchers:

'A case study inquiry copes with the technically distinctive situation in which there will be many more variables of interest than data points, and as one result relies on the different evidence sources, and data converging in a triangulating method... An empirical inquiry about a contemporary phenomenon, set within its real-world context—especially when the boundaries between phenomenon and context are not evident'.¹⁵¹¹

Yin's case study descriptor applies to this research as the complex hypothesis, and the central research question has multiple variables, as noted in Section II of this study. However, Yin's definition expands to include a second component, with the emphasis on real-world context. The real-world context includes collecting data in its natural settings from multiple sources of evidence instead of a primary focus on 'derivative' data—preconfigured statistics.¹⁵¹² Meaning, the research will occur in situ (rather than isolated in a library or courtroom), resulting in transferable findings.¹⁵¹³

The researcher conducts on-site field research in and around the region of the representative countries by physically examining legal reports, observing legal actions or advocacy sessions, participating in focus groups, symposiums, practitioner action research, or virtually collaborating with practitioners and advocates from or in the study's targeted Southeast Asia (Myanmar) and South Asia (Bangladesh). Subsequently, the researcher will optimize open-ended inquiries through various tools, including a

¹⁵¹¹ RK Yin, *Case study research: Design and methods* (Sage Publication 2009) 17, 18.

¹⁵¹² DB Bromley, *The case-study method in psychology and related-discipline* (John Wiley & Sons 1986) 23.

¹⁵¹³ B Latour, *The making of law: An ethnography of the Conseil D'Etat* (Polity Press 2010).

face-to-face survey using a questionnaire (instrument) and outcomes from practitioner action research sessions. The process can provide rich insight into a particular geographic situation, whether particular in time (the UNHCR's 100-day pilgrimage study), in location (Southeast Asia – Myanmar and South Asia – Bangladesh), or subject matter (human trafficking of force displaced stateless Rohingya children and similarly-situated children).¹⁵¹⁴ The outcomes of the case study approach support the study's capacity to examine rival hypotheses, propositions, potential explanations previously advanced, or to test findings from a previous case study that examines a similar phenomenon (a replication or confirmation study):¹⁵¹⁵

Seizing Yin's emphasis on 'real-world', Creswell's 2014 works further define a special type of case study used in this research, the critical-case study. The critical-case study can be described as a case with a specific inherent interest or its circumstances.¹⁵¹⁶ Flyvbjerg's well-known work further substantiates applying a critical case as 'a strategic importance to the general problem'.¹⁵¹⁷ This critical-case study examines and layers the phenomena by context. The methodology further allows the investigator to analyze how laws are understood, why they are applied and misapplied, subverted, complied with, or whether the law can be best illustrated through monistic and dualism models of international law into domestic law.

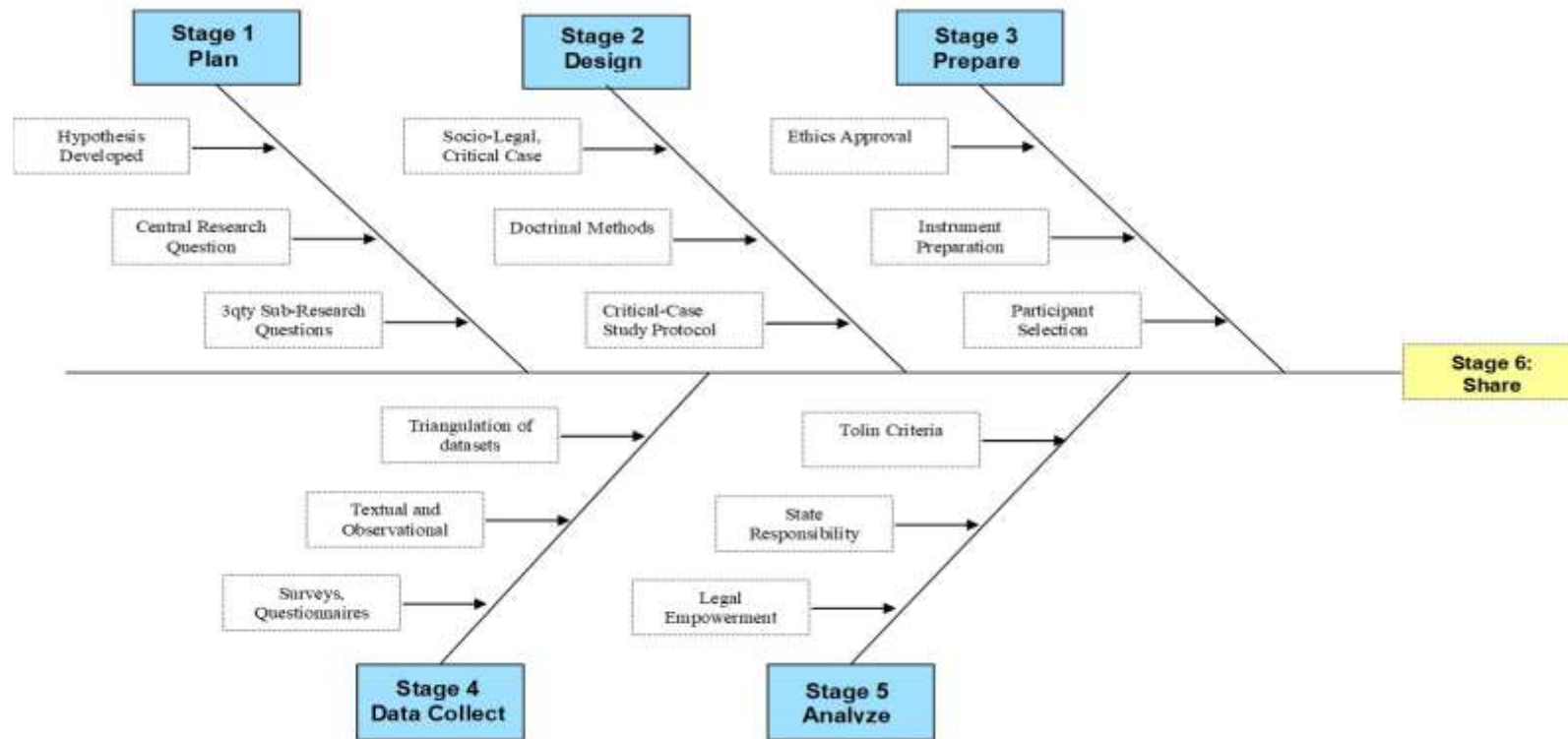
¹⁵¹⁴ ML Small, 'How many cases do I need?' On science and the logic of case selection in field-based research' (2009) 10[1] *Ethnography* 5, 18 < <https://doi.org/10.1177/1466138108099586>> accessed 4 July 2017.

¹⁵¹⁵ J Gerring and R McDermott 'An experimental template for case study research' (2007) 51[3] *American Journal of Political Science* 688, 701 < <https://doi.org/10.1111/j.1540-5907.2007.00275.x>> accessed 14 August 2017.

¹⁵¹⁶ JW Creswell, *Research design: Qualitative, quantitative, and mixed methods approaches* (Sage Publication 2014).

¹⁵¹⁷ B Flyvbjerg, 'Five misunderstandings about case-study research' (2006) 12[2] *Qualitative Inquiry* 219, 245 <<https://doi.org/10.1177/1077800405284363>> accessed 9 July 2017.

Appendix 1, Figure 1. Method Conceptual Diagram, Stages of the Socio-Legal (Cause-Effect Analysis), Critical-case Study



Note, Figure 1. The conceptual diagram uses the 'Ishikawa Fishbone' to illustrate the process for examining the cause and effect of this research. Using Yin's (2009; 2014) research method and design six-stage case protocol, whereas some stages are done independently, while others may be done concurrently; For this study, the framework of doctrinal and social science methods are integrated and intertwined through Stage 1 to Stage 6, the completion of the study and sharing of the outcomes. The study's hypothesis, objectives, central, and sub-research questions are viewed from a cause-and-effect inquiry for this intervention-based research.¹⁵¹⁸ Stage 4, Data Collect, Bangor University Ethics Approval, Survey Instrument, and Outcomes, refer to Appendix 3; Stage 6, Share, Open-access publications with Springer and McGill-Queen's University Press.

¹⁵¹⁸ Nancy R Tague, 'Seven basic quality tools' (2004) The Quality Toolbox 15; Kaoru Ishikawa, *Guide to quality control* (Tokyo, JUSE 1968); Graphic fishbone design adapted for educational purposes.

Appendix 1, Table 1 – Yin’s (2009; 2014) Case Study Protocol¹⁵¹⁹

Protocol Stage	Procedures and General Rules
Stage 1, Planning – Overview of the Case Study	The planning stage primarily focuses on identifying the research questions or the rationale for doing a case study – outlined in Section I of the study. The decision to use the critical case study method has been analyzed and study limitations/constraints and strengths were completed as ascribed by Yin, 2009; Reflected in Chapter 1.
Stage 2, Design – Unit of analysis Defined	The design stage primarily defined the unit of analysis and the likely critical case to be studied and identified procedures to sustain case study quality as noted by Yin, 2009. Research design strategically aligned to the research objectives and questions, Chapter 1 to the research conclusions and projected. Methods and steps undertaken during data collection and data analysis; Reflected in Chapter 1 Methods and Analysis of Chapter 3.
Stage 3, Prepare – identifying relevant case study issues, rules, analysis, and conclusions	The prepare stage focused on aiming to identify any relevant issues in the case study design and endeavoured to address any such issues before starting the data collection stage; Reflected in Chapters 1 and 2.
Stage 4, Collect – Data Collection Procedures, procedures for protecting human subjects, identification of likely sources of data	The collect stage incorporates abiding by the case study protocol, utilizing varying sources of evidence from Rapid Evidence Assessment, legal reports, and third-party court submissions from human rights organizations, ascertaining the critical-case, and affirming the chain of evidence or ‘audit trail’ (evidence matrix) to explain how conclusions are drawn referring to the works of Yin, 2009 and Miles & Huberman’s, 1994 works; Reflected in Chapter 2 Rapid Evidence and Assessment (REA), Evidence Matrix, and Appendices.
Stage 5, Analysis – Data Collection, tools, and inquiries	The analysis stage employed analytic techniques display data (facts) apart from interpretations recommended by Yin, 2009. Qualitative research aims to analytical generalization. Analytical generalization involved the extraction of abstract concepts from each unit of analysis noted by Yin, 2013; Analysis Chapters 3, 4, and 5.
Step 6, Sharing – A guide for the case study report, data outline, format, and presentation of other documents (instruments), and other documentation (ethics approvals)	The shared stage centers closing out the research, summarizing the findings, identifying the target audience, by developing the textual and visual materials, presenting sufficient evidence for a reader to reach his/her own conclusions in the form of the thesis. Reviewing and re-writing until done well, as proffered by Yin, 2009. Similarly, Klein and Myers's work discusses seven principles for evaluating interpretive field studies; Analysis Chapter 3, 4, 5, and Appendices – Ethics, Instruments; Distribution, and Research Impact

¹⁵¹⁹ RK Yin, *Case study research: Design and methods* (4th edn, SAGE Publications 2009) 84, 86; S Baškarada, ‘Qualitative case study guidelines’ (2014) 19 *The Qualitative Report*, How to art 24, 1, 18
<<http://www.nova.edu/ssss/QR/QR19/baskarada24.pdf>> accessed 22 June 2018; The 6-stage case study protocol has been adapted, and modified for this research, but contains a replication of the procedures and principles outlined in Yin’s (2014) text as a prescriptive methodological process; Yin’s Protocol used for educational purposes only.

The study's approach allows an analytical generalization.¹⁵²⁰ Detailed in the methods section of the study, employing Yin's Case Study Protocol, the researcher is equipped with the tools needed for response to the study's inquiries, make projections about the transferability of findings, utilize theoretical analysis of research factors, and produce outcomes on the effect of the context. The Ishikawa Diagram,¹⁵²¹ or primarily identified as the fishbone, is a cause-effect analysis and process tool. The diagram is used in this study as a transparent depiction of Yin's Case Study Protocol for grouping process categories for responding to the research inquiries.¹⁵²² The fishbone diagram's development is based on identifying and grouping the potential root causes, which generate the problem, and its application is used across a myriad of disciplines. Yin's Case Study Protocol—Planning, Design, and Prepare, Stages 1-3, begins with the issue and problem inquiry of the study; Why?

¹⁵²⁰ B Flyvbjerg, 'Five misunderstandings about case-study research' (2006) 12[2] *Qualitative Inquiry* 219, 245 <<https://journals.sagepub.com/doi/10.1177/1077800405284363A>> accessed 30 December 2019.

¹⁵²¹ K Ishikawa, *What is total quality control? The Japanese way* (Englewood Cliffs, NJ: Prentice-Hall, Inc 1985); original was published by JUSE Press, this is the English translated edition by Lu, David. J.

¹⁵²² Ilie Gheorghe and Carmen Nadia, 'Application of fishbone diagram to determine the risk of an event with multiple causes' (2010) 3 *Management Research and Practice* 1, 20 <www.mrp.ase.ro/no21/f1.pdf> accessed 22 August 2017; G Watson, 'The legacy of Ishikawa' (2004) 37[4] *Quality Progress* 47, 54 <http://www.fjstories.org.au/sites/default/files/Legacy_of_Ishikawa.pdf> accessed 21 August 2017.

Positionality

The process of interrogating and conveying positionality relative to the orientation of research has a critical role. The research stance addresses objectivity. Jacobson and Mustafa's (2019) writing note that a researcher's view can be interpreted and impacted, unknowingly, by a researcher's social worlds, the where, how, and when.¹⁵²³ Our social worlds are impacted by where, when, and how we are socially located and in what society.

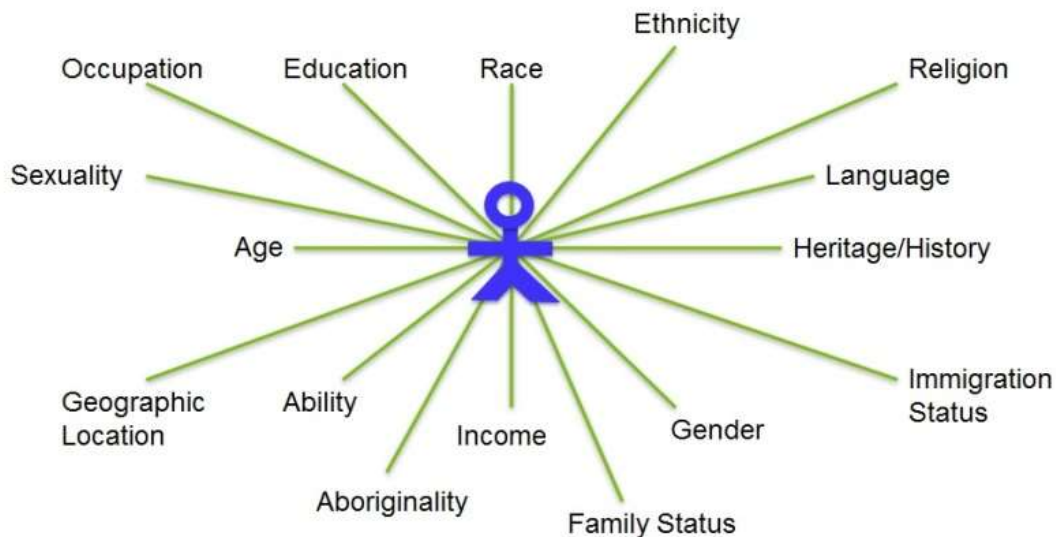
The researcher's beliefs, value system, and moral stance are fundamental components, inseparable from the qualitative or quantitative research processes. Depicted below are the multitude of variants that may impact research. Though this research exercises validity measures, the following positionality queries attempt to respond:

- 1) How does the researcher's personal, professional context cohere or diverge from the queries of research? Optimizing qualitative research methods/protocols
- 2) What, if any, legacies from a transnational, national, or local societal context inform the researcher's positionality? 4th generation, American Indian and Black heritage
- 3) Are there ways the researcher can exercise conscientiously, reifying or disrupting views throughout the research process? Exercising validity techniques

¹⁵²³ D Jacobson and N Mustafa, 'Social identity map: A reflexivity tool for practicing explicit positionality in critical qualitative research' (2019) *International Journal of Qualitative Methods* <doi:10.1177/1609406919870075> accessed on 21 October 2021.

- 4) How has the researcher's race, notions of difference, and ethnicity a conceptual praxis of analysis of the research context? Awareness/field research

Appendix I. Figure 1. Social Identify Map Factors



Note. Appendix 1. Figure 1. The diagram displays the multitude of factors impacting positionality, a diagram adapted from Cannon, Higginbotham, and Leung (1988).¹⁵²⁴

Balancing notations from Mthethwa-Sommerce, the indication is, 'the external world's positioning of social justice educators is based on their identity markers' fusion and its impact on social justice educators' understanding of their research and identities.¹⁵²⁵

¹⁵²⁴ L Cannon, E Higginbotham, and M Leung, 'Race and class bias in qualitative research on women' (1988) 2 *Gender & Society* 449-462

<<https://doi.org/10.1177/089124388002004003>> accessed 22 October 2021; D Jacobson and N Mustafa, 'Social identify map: A reflexivity tool for practicing explicit positionality in critical qualitative research' (2019) 18

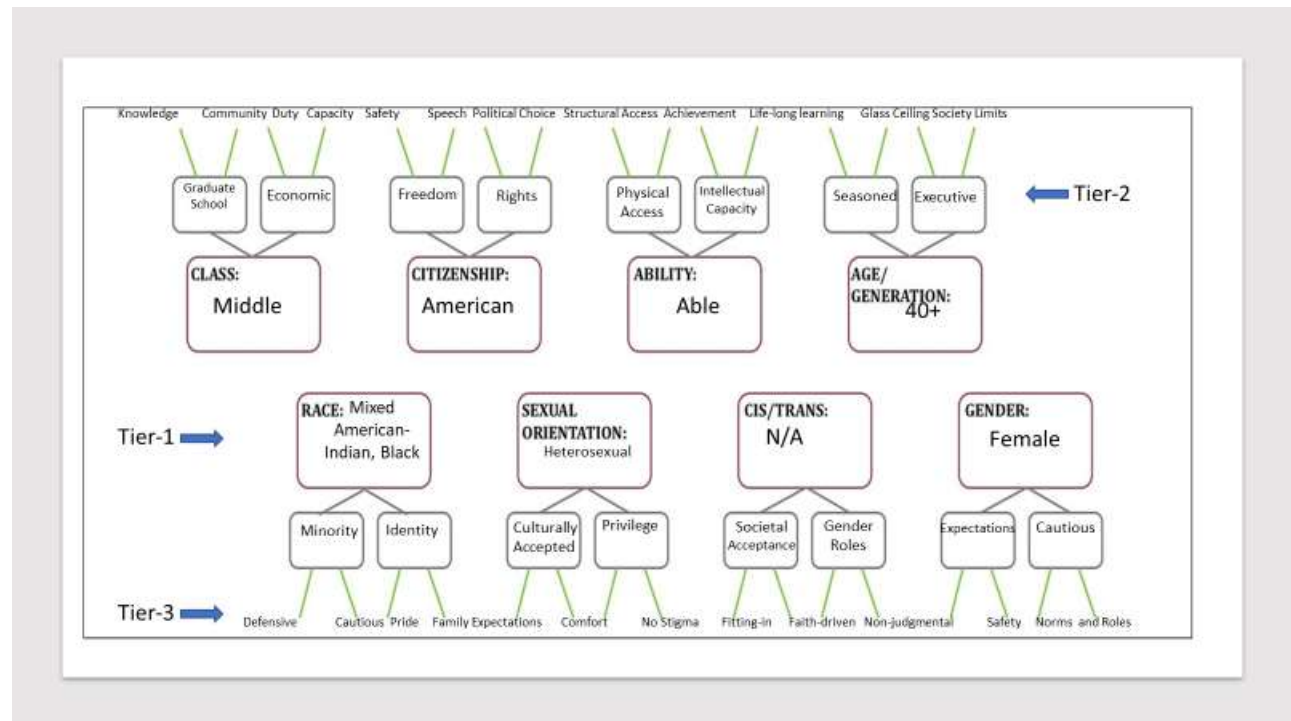
International Journal of Qualitative Methods, 1-12

<[doi: 10.1177/1609406919870075](https://doi.org/10.1177/1609406919870075)> accessed 21 October 2021.

¹⁵²⁵ S Mthethwa-Sommers, 'Positionality influences' (2014) in *Narratives of Social Justice Educators. Springer Briefs in Education*. Springer, Cham. <https://doi.org/10.1007/978-3-319-08431-2_5> accessed 21 October 2021.

Coupled with positionality research, the following is the research Position Statement and depiction in mapping:

Appendix I. Figure 2. Researcher's 3-Tier Social Identity Map - Positionality



Note, Appendix I. Figure 3. The map is structured in three tiers, not to be used as a rigid tool but as a flexible commencing point that guides the researcher and allows reflection of her social positioning. Thus, the map contains three identifications of her societal identifies; Tier 1 – social identifies; Tier 2 – positions impacted by life; Tier 3, particularities of our social identity, each are reflected in her position statement.¹⁵²⁶

¹⁵²⁶ Ibid (n 1524). Figure drawn by researcher using personal software, MS PowerPoint®, adapted from Cannon et al (1988).

Position Statement. The researcher is a middle-class female American of minority heritage (American Indian, Black, 40+ age), seasoned higher-education educator, and academic in the social sciences (education, management, and law). In addition, she is physically able with an extensive higher-education background in both qualitative and quantitative research at the international level. The researcher is a non-native to the geographies investigated.

APPENDIX 2

Rapid Evidence Assessment (REA)

(Literature Review, WOE)

Appendix 2. Rapid Evidence Assessment

2.1 The Rapid Evidence Assessment (REA) Process and Outcomes

The systematic review is rated as the most valid authoritative review or literature analysis using secondary research methods. However, the Rapid Evidence Assessment (REA) provides the next level of summarized evidence, and the REA process is used across the globe to inform both practice and research.¹⁵²⁷ The REA can provide a short ‘systematic review’¹⁵²⁸ of the existing research on human trafficking, legal frameworks addressing prevention measures and protection mechanisms, and stateless children.¹⁵²⁹ Although the REA is usually conducted in a three to six-month standard timeline allotted for gathering and producing review evidence, the rapid evidence assessment process shortens the timescale of the one year to eighteen-month systematic review. This study’s REA was conducted assiduously from July 2018 through November 2018, over four months, within the customary time.¹⁵³⁰

¹⁵²⁷ T Varker and others, ‘Rapid evidence assessment: Increasing the transparency of an emerging methodology’ (2015) 21[6]; ‘A rapid evidence assessment provides a balanced assessment of what is known (and not known) in the scientific literature about an intervention, problem, or practical issue by using a systematic methodology to search and critically appraise empirical studies’.

¹⁵²⁸ D Gough and others, *Systematic reviews, and research* (Sage Publications 2018).

¹⁵²⁹ D Gough and others, ‘A systematic map and synthesis review of the effectiveness of personal development for improving student learning’ London: EPPI-Centre, Social Science Research Unit; Government Social Research ‘REA Toolkit: Rapid evidence assessment toolkit index’ (2009)

<http://www.gsr.gov.uk/professional_guidance/rea_toolkit/> accessed 20 July 2018; ‘six types of review methods in the REA toolkit: literature review, quick coping review, rapid evidence assessment, full systematic review, multi-arm systematic review, review of reviews’; D Gough and others, *An introduction to systematic reviews* (Thousand Oaks, CA: SAGE Publications 2012); Government Social Research, ‘Rapid evidence assessment toolkit’ (UK Civil Service 2013) <<http://www.civilservice.gov.uk/networks//gsr/resources-and-guidance>> accessed 22 September 2018.

¹⁵³⁰ D Gough and others, ‘A systematic map and synthesis review of the effectiveness of personal development for improving student learning’ London: EPPI-Centre, Social Science Research Unit; Government Social Research ‘REA Toolkit: Rapid evidence assessment toolkit index’ (2009)

<http://www.gsr.gov.uk/professional_guidance/rea_toolkit/> accessed 20 July 2018.

Simply stated, the rapid review's purpose for this research is to provide information on what is already known about the practice or policy of child human trafficking utilizing 'systematic review methods to search and critically appraise existing research'.¹⁵³¹ Comparably, the REA reveals the gaps in the current body of knowledge and responds to what, where, or how this study closes the holes in scholarship. Therefore, this study uses the REA as a process to deliver an exhaustive investigation to identify and conduct a quality assessment of relevant research resources established within the explicit criteria. As evidence-based law research, this study's methods and processes are likened to those done by research institutions under the Pew Charitable Trusts and MacArthur Foundation. Both organizations focus on evidence-based policymaking.¹⁵³² Support of evidence-based research in law can also be found in works published by the Yale Law Journal, the Journal of Empirical Legal Studies, and other legal journals. Recent works indicate that author submissions encompass empirical methods modeling those found in social sciences.¹⁵³³ The REA's extensive use in social science encourages its use in government and an array of organizations. Similarly, this REA also uses a methodical

¹⁵³¹ *ibid.*

¹⁵³² Pew-MacArthur, 'Legislating evidence-based policymaking: A look at state laws that support data-driven decision-making' (March 2015) <<https://www.pewtrusts.org/-/media/assets/2015/legislationresultsfirstbriefmarch2015.pdf>> accessed 11 November 2018; Pew-MacArthur Results First Initiative, a project of the Pew Charitable Trusts and John D. and Catherine T. MacArthur Foundation, works with states to implement an innovative cost-benefit analysis approach that helps them invest in policies and programs that are proven to work.

¹⁵³³ A Sebok, *Law reviews submission guidelines* (Fall Version 10 2006) <<http://www.concurringopinions.com/%2006%20Submission%20Guide%201.01.doc>> accessed 18 September 2018.

examination with protocol-based ‘regimented’ techniques focused on the ‘resolution of questions’ or to ‘decipher dilemmas’.¹⁵³⁴

2.2 The Process

The REA was chosen for this study for its capacity for generalizability, replicability, and transparency.¹⁵³⁵ The REA process incorporates the acclaimed Search, Appraisal, Synthesis, and Analysis (SALSA) framework, as exemplified in the following tables. As a critical review tool, the REA aims to demonstrate that the writer has extensively researched the literature and critically evaluated its quality to ‘present, analyze, and synthesize’ content from varying sources.¹⁵³⁶ Moreover, this rapid evidence assessment critically appraises knowledge from existing literature and their authors on the legal policies, practices, and laws surrounding State responsibility for human trafficking’s prevention measures and protection mechanisms under three consistent research themes throughout the study: a) child human trafficking (stateless children); b) State responsibility and accountability (focused on: Bangladesh and Myanmar), and c) legal

¹⁵³⁴ D Sackett, ‘Evidence-based medicine: How to practice and teach EBM (2nd edn, London; Churchill Livingstone 2002); D L Sackett and others, ‘Evidence-based medicine, what it is and what it isn’t’ (1996) 312 British Medical Journal 71, 72 <oi: 10.1136/bmj.312.7023.71> accessed 28 February 2020

¹⁵³⁵ I Miall and others, ‘What is an evidence map? A systematic review of published evidence maps and their definitions, methods, and products’ (2016) 5[1] Systematic Reviews <<https://systematicreviewsjournal.biomedcentral.com/track/pdf/10.1186/s13643-016-0204-x.pdf>> accessed 28 February 2020.

¹⁵³⁶ S Kulviwat and others, ‘Determinants of online information search: A critical review and assessment’ (2004) 14[3] Internet Research: Electronic Networking Applications and Policy 245, 253 <<https://reader.elsevier.com/reader/sd/pii/S0278431918305012?token=1CA3F3DF32D27A356C6789E7E19CFED6A2DEFB46A62DC2282B83CFDF7D1BAB7E72ACC483891F953A2BDBC4F3668E8904&originRegion=eu-west-1&originCreation=20210410232200>> accessed 28 February 2020.

empowerment resources embedded in the law. The technique allows the researcher to broaden the search strategy, thereby restricting the volume of grey literature.¹⁵³⁷

2.3 The Rapid Assessment Review Question

The ultimate objective of this rapid review is to research the best available evidence to answer the study's central research question while determining if this study addresses the gaps in the body of literature. Following the 'population, intervention, comparison, outcome' (PICO) tool,¹⁵³⁸ the rapid review assumes the study's central research question to develop effective research strategies:

Central Research Question and Rapid Assessment Review Question:

- How can State responsibilities of targeted Southeast Asia (Myanmar) and South Asia (Bangladesh) countries under the treaty obligations of the Convention on the Rights of the Child and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Optional Protocol to the Convention on the Rights of the Child on Communications Procedure, the Palermo Trafficking Protocol supplemented by the UN Convention against Transnational Organized Crime, and related domestic ASEAN bilateral and multilateral treaties, prevent, protect, and mitigate against the human trafficking and exploitation of forced displaced stateless children, while linking to legal empowerment, the effects of deterrence, and redress in Social Conflict theoretical societies?

¹⁵³⁷ Grey literature are materials and research produced by organizations outside of the traditional commercial or academic publishing and distribution channels. Common grey literature publication types include reports, working papers, government documents, white papers, and evaluations.

¹⁵³⁸ O Gough and others, *Systematic reviews, and research* (Sage Publications 2018).

- 1) P (population) – stateless children, forced displaced children, and children vulnerable to human trafficking,
- 2) I (interventions) – human trafficking prevention measures and protection mechanisms,
- 3) C (comparison) – State responsibilities to State actions, and
- 4) O (outcome) – mitigated human trafficking of stateless children; legal framework interventions; promoting legal empowerment embedded within the law.

2.4 Rapid Evidence Assessment

This study's REA follows a step-by-step prescriptive protocol:

- 1) 'Background,
- 2) Review Inquiry or Question,
- 3) Inclusion, and the Exclusion Criteria,
- 4) the adopted Search Strategy,
- 5) Data Extraction,
- 6) the Critical Appraisal – depicted in Appendix 2, Table 6,
- 7) Review Results and the Synthesis,
- 8) Review Limitations, and
- 9) Conclusions/Implications.'¹⁵³⁹

¹⁵³⁹ E Barends and others, 'CEBMA guideline for rapid evidence assessments in management and organizations' (Version 1.0 Center for Evidence Based Management, Amsterdam 2017) <<https://www.cebma.org/guidelines/>> accessed 3 July 2018.

2.5 The Background Phase

For decades, the Southeast Asia region has been under criticism for human rights violations on land and sea.¹⁵⁴⁰ The geographic composition of the Southeast Asia (Myanmar) and South Asia (Bangladesh) region contributes to the concerns about stateless children as the topography has a multitude of extremely rural villages, areas with deep jungles surrounded by massive bodies of water, and governed by State obligations to the UN Convention on the Law of the Sea (UNCLOS).¹⁵⁴¹ The desperate migration of men, women, and children by sea is not a new phenomenon. Daily, migrants globally cross or attempt to cross sea borders to escape persecution and an array of human rights violations.¹⁵⁴² Though Bangladesh ratified on 27 July 2001, Malaysia on 14 October 1996, Myanmar on 21 May 1996, and Thailand on 25 May 2001, UNCLOS have no direct reference to human rights. However, as part of the international legal framework at sea, UNCLOS is interrelated with human rights and refugee law. In addition, in instances where sea movements are involved with armed conflict, international humanitarian law may be triggered.¹⁵⁴³

Many areas in the region have become modernized and tourist attractions. However, both isolated and urban areas have become a haven for the forcibly displaced and the

¹⁵⁴⁰ Amnesty International, 'Rights today in Southeast Asia - 2018' (Amnesty International 2019)

<<https://www.amnesty.org/en/latest/research/2018/12/rights-today-2018-south-east-asia/>> accessed 4 July 2019.

¹⁵⁴¹ The UN Convention on the Law of the Sea, also referred to as the Law of the Sea Convention or the Law of the Sea Treaty, Dec 10, 1982, 1933 U.N.T.S. 397, enacted into force on 1 November 1994.

¹⁵⁴² OHCHR, 'Human rights protection challenges affecting migrants at sea' (OHCHR, 2019)

<<https://www.ohchr.org/EN/NewsEvents/Pages/ProtectionMigrantsAtSea.aspx>> accepted 22 August 2019.

¹⁵⁴³ Article 98 of UNCLOS, entered into force 16 November 1994; Chapter V, Regulation 33 1-1 of the 1974, International Convention for the Safety of Life at Sea (SOLAS), entered into force 25 May 1980, as amended; Chapter 2.1.10 of the 1979 International Convention on Maritime Search and Rescue (SAR), entered into force 25 March 1980, as amended.

organized criminal behaviors of predatory human traffickers. The Mekong River is prominent and known for its thriving economic role in the region. The river passes through the geographical area of focus – Myanmar. Though the Mekong Basin represents life and economic growth, the river has long since been a pathway for drug traffickers and has become an unobscured pathway to human traffickers.¹⁵⁴⁴ As recent as 2015, 159 unmarked graves, considered human trafficked migrants, were found along the Thai borders.¹⁵⁴⁵ Countless stories are surrounding human trafficking and the merciless predatory acts along the Mekong Basin. In August 2018, a critical arrest was made with a primary human trafficking kingpin, who used waterways to traffick persons between Bangladesh and other regional states.¹⁵⁴⁶ Research suggests that trafficked persons are a variegated group. Collectively, the group includes a cross-section of impoverished adults and their children simply looking for a better life, yet they are often forced to work in dangerous work conditions on land and sea.¹⁵⁴⁷ The women, girls, and

¹⁵⁴⁴ UNODC, 'Mekong River drug threat assessment – March 2016, restricted distribution' (UNODC 2018) 43 <http://unodc.org/documents/southeastasianandpacific/Publications/2016/Mekong_River_Drug-Threat_Assessment_low.pdf> accessed 3 August 2018.

¹⁵⁴⁵ Reuters, 'Malaysia finds 139 graves in 'Cruel' jungle trafficking camps' (Reuters 25 May 2015) <<http://www.reuters.com/article/us-asia-migrants-idUSKBNO0A06W21050525>> accessed 28 September 2018; J Pearlman, 'I knew it was the refugees – Who else would be buried in the jungle?' (The Telegraph, 31 May 2015, 5:37 p.m.) <<http://www.telegraph.co.uk/news/worldnews/asia/Thailand/11641802/I-knew-it-was-the-refugees-who-else-would-be-buried-in-the-jungle.html>> accessed 23 September 2018; In November 2015, Thai police arrested nine-one individuals in connection with human trafficking; Fortify Rights, 'Thailand: Human trafficking case obstructed, Chief investigator in hiding' (9 Dec 2015) <<http://www.fortifyrights.org/publication-20151209.html>> accessed 29 September 2018.

¹⁵⁴⁶ Pattaya One, 'Human trafficking to Malaysia: CID captures 'kingpin'' (22 August 2018) <<https://pattayaone.news/human-trafficking/>> accessed 22 September 2018.

¹⁵⁴⁷ US State Department, 'Trafficking in persons report' (2012) 44; 'According to the Trafficking in Persons report of 2012, published by the State Department of the United States of America, an estimated 20.9 million people are victims of human trafficking at any given time. Asia and the Pacific region remain largest in terms of number of victims'.

young boys are deceived into working in the sex trade.¹⁵⁴⁸ Notwithstanding the ongoing issues in the region, there are few legal frameworks in place to address the problem.

Trafficking Victims Protection Act (TVPA). The crime of human trafficking is problematic globally but extremely troubling in Southeast Asia. In 2014, Southeast Asia's Bangladesh and the Myanmar States were ranked as a Tier-3 under the Trafficking Victims Protection Act (TVPA).¹⁵⁴⁹ However, in 2019, there was some transition to Tier 2 (refer to Table 3). Section 110 identifies 'the nature and extent of severe forms of trafficking in persons... in each foreign country'.¹⁵⁵⁰ The minimum standards are further detailed for eliminating trafficking under Section 108, 'the government of a country of origin, transit, or destination'.¹⁵⁵¹ The reporting system's three tiers formulate:¹⁵⁵²

1)' Tier 1, full compliance with the TVPA's minimum standards for the elimination of trafficking;

¹⁵⁴⁸ *ibid.*

¹⁵⁴⁹ Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. §7101-10, amended by Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 22 U.S.C. §§7101-7110 (supp III 2005), *amended by* TVPRA of 2005, 22 U.S.C. §§7101-10 (supp IV 2007), *amended by* William Wilberforce TVPRA of 2008, 22 U.S.C. §§7101-02 (supp III 2010), *amended by* TVPRA of 2013, Pub. L. no 113-4, 127 Stat. 54; The Trafficking Victims Protection Act of 2000, as amended (TVPA), defines 'severe forms of trafficking in persons' as: sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. A victim need not be physically transported from one location to another for the crime to fall within this definition.

¹⁵⁵⁰ TVPA, Section 110; Trafficking Victims Protection Act of 2000 (<TVPA), 22 U.S.C. §7101-10, amended by Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 22 U.S.C. §§7101-7110 (supp III 2005), *amended by* TVPRA of 2005, 22 U.S.C. §§7101-10 (supp IV 2007), *amended by* William Wilberforce TVPRA of 2008, 22 U.S.C. §§7101-02 (supp III 2010), *amended by* TVPRA of 2013, Pub. L. no 113-4, 127 Stat. 54.

¹⁵⁵¹ *ibid*; TVPA, Section 108.

¹⁵⁵² *ibid*; The Department places each country in this Report onto one of four tiers, as mandated by the TVPA. This placement is based not on the size of the country's problem but on the extent of governments' efforts to meet the TVPA's minimum standards for the elimination of human trafficking, which are generally consistent with the Palermo Protocol.

- 2) Tier 2, countries displaying an effort for compliance, but not entirely within the compliance standards; and
- 3) Tier 3, countries that fail to meet the standards and ‘not making significant efforts to do so’.¹⁵⁵³

The Tier-3 ranking in Southeast Asia classifies the States as the lowest in the global evaluative compliance process with the 2000 Trafficking Victims Protection Act standards.¹⁵⁵⁴ The low ranking equates reducing non-humanitarian and development assistance, ranging from fiscal and other non-fiscal support services to sanctions.¹⁵⁵⁵ Among the ongoing controversy of human trafficking in the region, politics are not too far away. Upgrades to a Tier-2 Watch List ranking in 2015 can be viewed as a political

¹⁵⁵³ S Feve and C Finzel, ‘Trafficking of people’ (2001) 38[1] *Harvard Journal on Legislation* 279, 290; In accordance with the Trafficking Victims Protection Act of 2000: **The Tiers - Tier 1:** Countries and territories whose governments fully comply with the Act’s minimum standards; **Tier 2:** Countries whose governments do not fully comply with the Act’s minimum standards but are making significant efforts to bring themselves into compliance with those standards; **Tier 2 Watch List:** Countries and territories whose governments do not fully comply with the Act’s minimum standards but are making significant efforts to bring themselves into compliance with those standards, and: a) The absolute number of victims of severe forms of trafficking is very significant or is increasing significantly; or b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) The determination that a country or territory is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country or territory to take additional future steps over the next year; **Tier 3:** Countries and territories whose governments do not fully comply with the minimum standards and are not making significant efforts to do so; In making tier determinations between Tiers 2 and 3, the Department considers the overall extent of human trafficking in the country; the extent of government noncompliance with the minimum standards, particularly the extent to which government officials have participated in, facilitated, condoned, or otherwise were complicit in trafficking; and what reasonable measures the government would have to take to come into compliance with the minimum standards within the government’s resources and capabilities.

¹⁵⁵⁴ Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C. §7101-10, amended by Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 22 U.S.C. §§7101-7110 (supp III 2005), *amended by* TVPRA of 2005, 22 U.S.C. §§7101-10 (supp IV 2007), *amended by* William Wilberforce TVPRA of 2008, 22 U.S.C. §§7101-02 (supp III 2010), *amended by* TVPRA of 2013, Pub. L. no 113-4, 127 Stat. 54.

¹⁵⁵⁵ A Gallagher and J Chuang, ‘The use of indicators to measure government responses to human trafficking’ in Kevin E. Davis, Angelina Fisher, Benedict Kingsbury, and Sally Engle Merry (eds), *Governance by Indicators: Global power through rankings* (2012) 317; A Gallagher, ‘Human rights and human trafficking in Thailand: A shadow TIP Report’ in KD Beeks and D Amir (eds), *Trafficking and the global sex industry* (Lexington, Md: Lexington Books 2006).

step.¹⁵⁵⁶ The change resulted from amendments to the local legislation.¹⁵⁵⁷ In 2017, Malaysia heard cases in the first human trafficking court in the region.¹⁵⁵⁸ The new Malaysia Human Trafficking Court heard its' first case in early summer 2018.¹⁵⁵⁹ Though the TVPA Act of 2000¹⁵⁶⁰ and its global tier ranking are United States initiatives that include attachments of aid and sanctions, the legislation remains a model for global efforts. The TVPA restrictions on assistance can range from withholding government officials or employee participation in educational, cultural exchange programs to non-trade-related foreign assistance. However, the European Court of Human Rights gives the TVPA¹⁵⁶¹ credence in *Rantsev v Cyprus and Russia*, ICJ case where third-party submissions are throughout the case, and the US State Department's TVPRA's tier rankings are prominently noted in the court's ruling under 'The Facts and the Law; Statement of Facts, Part II. B'. The Court's Legal Basis sections of the ruling, 17-23, paras

¹⁵⁵⁶ US State Department, '2016 Trafficking-in-Persons-Report' (US State Department 2016) <<https://www.state.gov/j/tip/rls/tiprpt/2016/258696.htm>> accessed 18 July 2018.

¹⁵⁵⁷ Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Act 670, An Act to prevent and combat trafficking in persons and smuggling of migrants and to provide for matters connected therewith. [Part 1, II, Section 66 and 67- 1 October 2007, [P.U. (B) 339/2007; Part III, IV, V and VI - 28 February 2008, P.U. (B) 86/2008] ENACTED by the Parliament of Malaysia.

¹⁵⁵⁸ National Human Rights Society, 'Malaysia launches special court for human trafficking' (National Human Rights Society 28 March 2018) <<http://hakam.org.my/wp/2018/03/28/17984/>> accessed 22 April 2018.

¹⁵⁵⁹ Beh Lih Li, 'Malaysia plans special court on human trafficking as cases soar' (15 January 2018, Thomson Reuters) <<https://www.reuters.com/article/us-malaysia-humantrafficking/malaysia-plans-special-court-on-human-trafficking-as-cases-soar-idUSKBN1F41JW>> accessed 23 February 2019.

¹⁵⁶⁰ Sections 108 and 110 of the Trafficking Victims Protection Act of 2000 (Div. A, Pub. L. no 106-386), as of April 1, 2018, the beginning of the reporting period for this report. On January 8 and 9, 2019, prior to the end of the reporting period on March 31, 2019, Congress passed the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018 (Pub. L. 115-425) and the Trafficking Victims Protection Reauthorization Act of 2017 (Pub. L. 115-427), respectively. Among other changes, these acts amended the TVPA, including sections 108 and 110 relating to the minimum standards for the elimination of trafficking and the annual TIP Report's tier rankings.

¹⁵⁶¹ The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 added to the original law a new requirement that foreign governments provide the Department of State with data on trafficking investigations, prosecutions, convictions, and sentences in order to fully meet the TVPA's minimum standards for the elimination of trafficking (Tier 1). The 2004 TIP Report collected this data for the first time. The 2007 TIP Report showed for the first time a breakout of the number of total prosecutions and convictions that related to labor trafficking, placed in parentheses.

91-107, provide relevance in global determinations of compliance with human trafficking law.

The Rohingya Crisis and the Stateless Child. In 2016 and 2017, the UN High Commissioner for Refugees has captured the historic and tragic events of the ‘Rohingya-crisis’, massive human rights violations, and has again shined a negative light on human rights concerns in Southeast Asia. In addition, the troubling issues of trafficking stateless children have catapulted a series of human rights and international criminal law violations to the global public. Accordingly, the UN High Commissioner for Refugees has heavily reported on the treatment of refugees. In addition, significant emphasis has been placed on the vulnerability of children to human trafficking, specifically the stateless.

Stateless children are highly mobile, traveling either unescorted or with other displaced families, as with the Rohingya. These children and their families are often housed in detention centres, refugee camps and placed in situations of high vulnerability to exploitation.¹⁵⁶² Though human trafficking is an age-old crime, structured universal intervention efforts were not materialized until the Protocol to Prevent, Suppress, and Punish Tracking in Persons, Especially Women and Children supplementing the UN Convention against Transnational Organized Crime, 2000 was adopted by the global community.¹⁵⁶³ As of 2018, there are 147 signatories and 189-member State parties to the Palermo Convention and one or more of its protocols.

¹⁵⁶² A Gallagher, ‘Human rights and human trafficking in Thailand: A shadow TIP report’ In *Trafficking and the Global Sex Industry*, edited by KD Beeks and D Air (Lanham, MD: Lexington Books 2006).

¹⁵⁶³ Signed New York, 15 November 2000, entry into force 25 December 2003, UN, Treaty Series, vol 2237, p. 319; Doc. A/55/383.

In juxtaposition are the issues of stateless children and persons, as defined by the global Convention on the Reduction of Statelessness was signed 30 August 1961,¹⁵⁶⁴ which appears to have eluded Southeast Asia. None of the focal States of this study have ratified the Stateless Convention or the Refugee Convention and do not recognize the international status or protections outlined in these conventions. As a result, there are gaps in protections for the stateless, refugee and non-refugee, in the Southeast Asia (Myanmar) and South Asia (Bangladesh) region.

Moreover, this study suggests that existing literature does not proffer an interventional international and domestic framework that coincides with embedded laws to promote legal empowerment. Therefore, this study seeks to close the gap with a proposed framework that differs significantly from the singular but avers that existing literature is repetitive with declarations for ratifying the Refugee and Stateless Conventions or the descriptive restatement of facts, figures, and events of human trafficking of stateless children. Subsequently, this review examines the body of literature that addresses State responsibility for prevention measures and protection mechanisms of the human trafficking of stateless children. Finally, based upon the central review inquiry, the rapid review examines the literary perspectives and approaches surrounding State responsibility, legal empowerment, and stateless children.

The targeted Southeast Asia (Myanmar) and South Asia (Bangladesh) states are categorized as a source, transit, or destination countries. In some instances, such as

¹⁵⁶⁴ Signed 30 August 1961 and entered into force 13 December 1975, General Assembly Resolutions 3274 (XXIX) of 10 December 1974 and 31/36 of 30 November 1976.

Thailand, the 2016 Trafficking in Persons' Report¹⁵⁶⁵ ranks the country in all three categories. As a result, the Rohingya may carry a different legal status, internationally or domestic. Consequently, according to the respective domestic anti-trafficking legislation, the investigated state responsibilities for prevention and protection will fluctuate. Similarly, the definition of trafficking and exploitation vary by state. For example, in Myanmar, the 2000 UN Protocol is patterned with variations that substantially impact domestic laws. Subsequently, the criminalization and punishments differ in the targeted states' respective domestic criminal/penal codes, impacting the legal empowerment capacity for each country's displaced, stateless person.

In contrast, member states are required to follow the General comments issued by the CRC.¹⁵⁶⁶ The CRC Committee has held in its General comment 6 (2005) that the definition of a refugee in the 1951 Refugee Convention 'must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children'.¹⁵⁶⁷ Since the targeted research states are not members of the Refugee or Stateless Convention, a non-member status can be a counterargument. The term migrant has been and continues to be used by the target

¹⁵⁶⁵ US State Department, '2016 TIP Report U.S. Trafficking in Persons Report' <<https://www.state.gov/j/tip/rls/tiprpt/2016/index.htm>> accessed 28 Dec 2017.

¹⁵⁶⁶ CRC Committee; The CRC Committee elaborates its general comments with a view to clarifying the normative contents of specific rights provided for under the Convention on the Rights of the Child or particular themes of relevance to the Convention, as well as offer guidance about practical measures of implementation. General comments provide interpretation and analysis of specific articles of the CRC or deal with thematic issues related to the rights of the child. General comments constitute an *authoritative interpretation* as to what is expected of States parties as they implement the obligations contained in the CRC; Williams J, 'Incorporating children's rights: The divergence in law and policy' (2007) 27(2) Legal Studies 261, 287 < <https://doi.org/10.1111/j.1748-121X.2007.00049.x>> accessed 30 November 2017.

¹⁵⁶⁷ CRC Committee, General comment 6 (2005): Treatment of unaccompanied and separated children outside their country of origin, para 74.

states to identify the Rohingya. Children are mainly considered to be experiencing vulnerabilities in migration, and the best interests of the child principle are set as a baseline in addressing and reducing such vulnerabilities.¹⁵⁶⁸ On this point, the CRC Committee has expressed those unaccompanied children are in heightened need of protection, such as being given free access.

¹⁵⁶⁸ IOM, *Global Compact for safe, Orderly, and Regular Migration*, (A/RES/73/195 20, Res adopted by the General Assembly on 19 December 2018) para 15, <https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195> accessed 22 March 2019.

2.6 The Rapid Evidence Assessment Inclusion and Exclusion Criteria

The literature for this study follows the three key themes of the study: a) child human trafficking (stateless children); b) State responsibility and accountability (focused on: Bangladesh and Myanmar); and c) legal empowerment resources embedded in the law. Historical and contemporary research on the topical focus areas includes the origin of laws, opinions, commentators from legal scholars, and State-specific literature. The REA identifies the salient literature but includes and excludes the following:

- a. Includes literature addressing international child human trafficking instruments ratified in the States under examination; excludes literature addressing international human trafficking instruments not ratified in the States under examination,
- b. Includes literature addressing international human rights instruments ratified in the States under examination; excludes literature addressing international human rights instruments not ratified in the States under examination,
- c. Includes literature addressing legal empowerment theories, principles, and practices, regardless of geographical location, but confined to Pillar #1, 'access to justice',
- d. Includes literature addressing international State responsibility and accountability for wrongful acts,
- e. Includes literature about International Courts, tribunals but excludes regional courts and opinions that are not Southeast Asia or region-specific,

- f. Includes historical information on the target populations under examination – indigenous groups, stateless, refugee and non-refugee, and forced displaced children; however, it excludes children who are not stateless, refugee and non-refugee, and forcibly displaced,
- g. Though the focus is on Southeast Asia indigenous populations, it does include children, who are classified under the category of marginalized¹⁵⁶⁹ and disadvantaged groups¹⁵⁷⁰ but restricted to comparative or similar-situated groups in other geographical areas,
- h. Restricted to peer-reviewed articles, books, and materials or ‘government’, international, that include UN-based grey or technical materials, reports, data computations; the research excludes newspapers, blogs, opinion articles, or non-scholarly materials. The peer-review determination for journal articles was determined using two approaches:
 - a) visiting the journal’s website, which usually describes the peer-review process if it exists, and

¹⁵⁶⁹ UN Sustainability Goals, ‘Marginalized populations: Treatment of people’ (Charter for Compassion 2018) <<https://charterforcompassion.org/charter-tool-box-a-framework-for-getting-started/marginalized-populations-treatment-of-people>> accessed 12 January 2018; UN definition of marginalized serves as the operationalized application for the purposes of this research: people in our community who may be ‘marginalized’ (definitions include underserved, disregarded, ostracized, harassed, persecuted, sidelined).

¹⁵⁷⁰ Audrey Chapman and Benjamin Carbonetti, ‘Human rights protections for vulnerable and disadvantaged groups: The contributions of the UN Covenant of Economic Social and Cultural Rights’ (2011) 33[3] Human Rights Quarterly 682, 732 <<https://www.jstor.org/stable/23015998>> accessed 23 December 2017; UN, ‘Report of the World Summit for Social Development’ (Copenhagen, 6-12 March 1995) para 25(i), 66 <<http://www.un.org/documents/ga/conf166/aconf166-9.htm>> accessed 21 November 2017; The term disadvantaged groups used within the context of this study refers to persons that experience a higher risk of poverty, social exclusion, discrimination and violence than the general population. The UN’s working definition of disadvantaged groups include, but are not limited to, ethnic minorities, migrants, people with disabilities, isolated elderly people, and children.

- b) utilizing the Ulrich's International Periodical directory to cross-check the journal's title.
- i. Restricted to English literature dated between the dates of 2000 through 2017. The constraint of the dates represents the signing of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention against Transnational Organized Crime, 2000 and the UN High Commissioner for Refugees peak of the Rohingya-crisis in November 2017.

2.7 The Rapid Evidence Assessment Search Strategy

The study strategy is to gather data texts from significant research that epitomizes the association between the research question's study variables:

- 1) Independent variables: (cause, predictor), state responsibilities, the Convention on the Rights of the Child, Optional Protocol to the Convention on the Sale of Children, Optional Protocol to the Convention on Communications Procedure, the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime¹⁵⁷¹
- 2) Confounding/Intervening variables: targeted state countries (Bangladesh and Myanmar)
- 3) Dependent variables: (effect, consequence) prevent, protect, and mitigate human trafficking, forced displaced stateless (refugee and non-refugee) children, legal empowerment, and Social Conflict Theory

The study variables are transitioned into the keywords identified for the search strings of the REA. Cultivating the search strings includes identifying and choosing controlled terms specific to each database, again derived from the central research question variables. The study employed electronic and hand searching through the Stateless Institute Publications, State reports of the Universal Periodic Review, and the Bangor University Library database using the formulated Boolean operators, truncation,

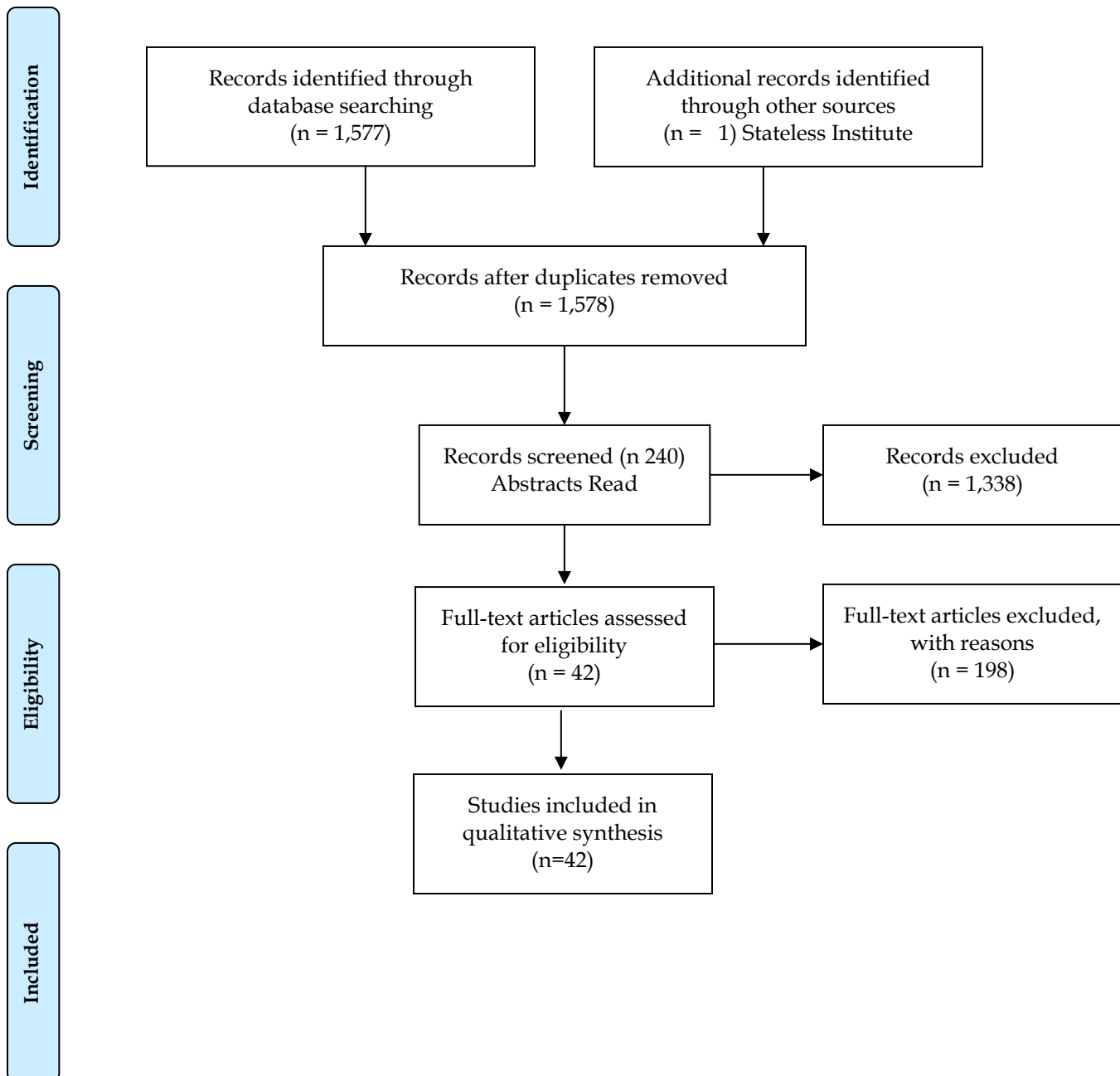
¹⁵⁷¹ Adopted and opened for signature, ratification, and accession by General Assembly resolution 55/25 of 15 November 2000.

wildcards, and proximity searching tools. To search continued until saturation is achieved for the periods beginning July 2018 through November 2018. An adapted PRISMA flow diagram, Appendix 2, Figure 1, outlined the search phases and is depicted in the following figures.

Appendix 2. Figure 1, First Search String ¹⁵⁷²



PRISMA 2009 Flow Diagram



¹⁵⁷² Adopted from D Moher and others, 'Preferred reporting items for systematic reviews and meta-Analyses: The PRISMA statement', (2009) Public Library of Science < <https://doi.org/10.1371/journal.pmed1000097>> accessed 12 July 2018; PRISM diagram represents the first search string.

Search String #1, Initial

The search string enabled literature retrieval and examined the influences preventing and protecting the stateless child from human trafficking. The literature is rich with evidence regarding stateless populations and the challenges they face. The goal is to identify the relevant research and position on the current scholarship, connecting the prevention measures and protection mechanisms for stateless children against human trafficking. The review of literature expounds upon the legal and social history, advancements, shortfalls, and interventions. The initial search string was as follows:

(Southeast Asia human trafficking* OR Southeast Asia trafficking* OR Southeast Asia trafficking in persons*) AND (child trafficking* OR stateless child trafficking* OR Southeast Asia stateless child trafficking* OR Southeast Asia refugee child trafficking* OR Southeast Asia indigenous child trafficking) AND (human trafficking preventions and protections* OR child human trafficking preventions and protections*) AND (migration and human trafficking* OR human trafficking forced migration*)

There were **1,577** hits retrieved with this search string.

An initial review of the abstracts leads to the broad exclusion of **1,388** articles based on relevance. An additional **900** articles were excluded on country and language. The remaining articles were screened for relevance, and **26** additional articles were excluded. Hence, the final dataset includes **42** relevant articles for further synthesis, as noted in Appendix 2, Table 6.

Purging references not causally related to child trafficking

The principal researcher removed citations not tangentially related to the topic of child human trafficking, such as child abuse, non-trafficking related, and child fostering were removed. These references were eliminated from the preliminary search results unless the resulting publication indicated a direct correlation or relationship to child trafficking or one of the multiple forms of human trafficking. Moreover, if there was no other substantial inclusion of child trafficking, the reference was removed.

Separating references not based on the research focus

The preliminary results of the literature search presented a plethora of published works on human trafficking. However, many of these references are not research-based. Hence, these items were part of the separations because of non-research-based writings, which included: essays, manuals, guides, anti-trafficking activities, and other similar texts. Also, these items were not peer-reviewed.

Appendix 2, Table 1, Search Resource Type ¹⁵⁷³

Peer-reviewed	1,577
Reviews	114
Books & e-Books	16
Text Resources	15
Conference Proceedings	3

Appendix 2, Table 2, Search Resource by Discipline ¹⁵⁷⁴

Political Science	316
Human Trafficking	237
Human Rights	222
Law	270
History & Archaeology	209

¹⁵⁷³ Bangor University database search resource by type, 21 July 2018; first-search string results.

¹⁵⁷⁴ Bangor University Library database search by discipline, 21 July 2018; first-search string results.

Search String #2 – Country Specific

The review included a second search string to retrieve research on country-specific child human trafficking literature. Again, wildcards were implemented to prompt comprehensive results in search string #2 as follows (Malaysia and Thailand are included for purposes of capturing neighboring state and regional matters related to Bangladesh and Myanmar):

(Bangladesh child human trafficking* OR Bangladesh human trafficking) AND

(Malaysia child human trafficking* OR Malaysia human trafficking) AND

(Myanmar child human trafficking* OR Myanmar human trafficking) AND

(Thailand child human trafficking* OR Thailand human trafficking) AND

(Child human trafficking State Responsibilities Southeast Asia* OR State responsibilities child protections Southeast Asia*)

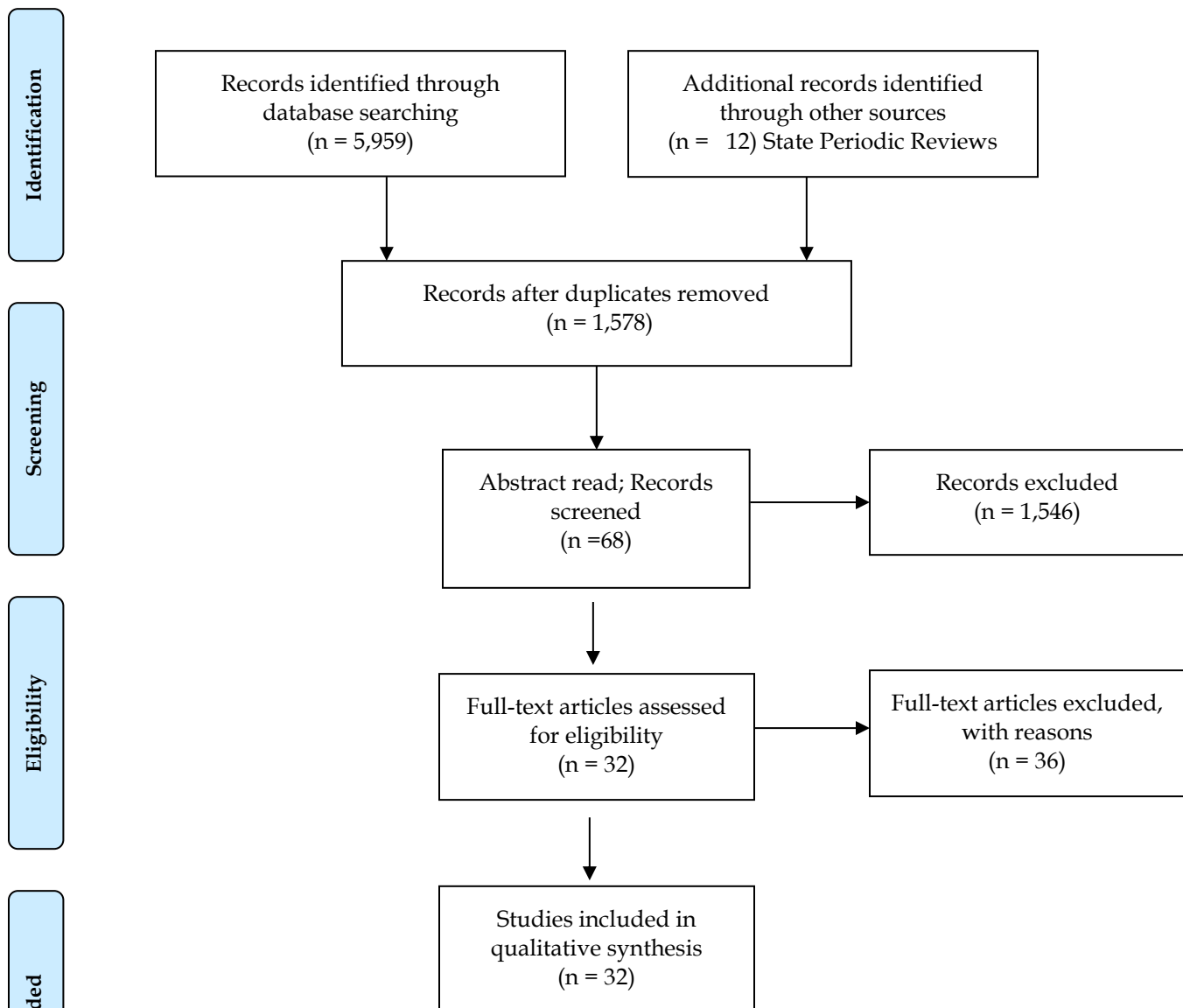
The country-specific search string returned the following scholarly reviewed articles:

Bangladesh, 1,441; Malaysia, 1,405; Myanmar, 700, Thailand, 2,049; Child Human Trafficking State responsibilities, 364 = 5,959 depicted in phases in the PRISM diagram, Appendix 2, Figure 2.

Appendix 2, Figure 2, PRISMA Flow Diagram ¹⁵⁷⁵



PRISMA Flow Diagram



¹⁵⁷⁵ Adopted from D Moher and others, 'Preferred reporting items for systematic reviews and Meta-Analyses: The PRISMA statement', (2009) Public Library of Science < <https://doi.org/10.1371/journal.pmed1000097> > accessed 12 July 2018; PRISM diagram represents the second search string, country specific; There were 5,959 hits retrieved with this search string; Deductions for duplications, 4,381; An initial review of the abstracts lead to the broad exclusion of 1,546 articles based on relevance, which included an 740 articles were excluded on country non-application and language. The remaining articles were screened for relevance, and 36 additional articles were excluded. The final dataset includes 32 relevant articles for further synthesis.

2.8 Qualitative Analysis, Weight of Evidence (Woe) Framework

The qualitative analysis process utilizes various processes to determine the fitness of evidence and quality appraisal judgments. Determining the conceptual points of quality is complex. This research study, like others, can be assessed against a multitude of criteria. Within the confines of a review, the research study evidence is judged primarily by its capacity to respond and focus on the review question. Following the principles, protocols, and procedures noted in Gough et al., this RAE utilizes the weight-of-evidence (WoE) analysis.¹⁵⁷⁶ Under the WoE process, the review question contemplates the extent to which a study is 'fit for purpose' with the research design and efficacy.

The studies outlined in the following table depict those resulting in acceptance for the screening and eligibility stage. These studies were weighted for evaluation as they met the quality and relevance and to the extent, the studies would contribute to the review of literature synthesis. Those studies not meeting the criteria are excluded under the 'sensitivity analysis'¹⁵⁷⁷ process, identified, and outlined in spreadsheets for Appendix B (Journals), Appendix C (Books), and Appendix D (other texts) by title and author.

¹⁵⁷⁶ D Gough, 'Giving voice: Evidence-informed policy and practice as a democratizing process' In Reiss M. et. al. (Eds) *Dimensions of Difference* (London, Trentham Books 2007).

¹⁵⁷⁷ JPT Higgins and S Green (eds), *Cochrane handbook for systematic reviews of interventions* 4.2.6 (Cochrane Review 2006) <<http://www.cochrane.org/resources/handbook/hbook.htm>> accessed 22nd May 2018; 'This is a process where the effect of including or excluding lower quality studies is assessed. If the effect is minimal the studies may be included in the results of the review'.

2.9 United Nations Agencies as a Research Resource. The Charter of the United Nations, coupled with International Court of Justice statute , configure the international communities formal constitution.¹⁵⁷⁸ The United Nations (UN) and its agencies, among other duties, monitor economic and social indicators that include trends in population, health status that extend to both mental, physical, and behavioural that incorporate serious protracted conflict and post-conflict situations. ¹⁵⁷⁹ Within the context of this study, the United Nations published knowledge products¹⁵⁸⁰ were applied throughout the context and content. United Nations publications aided in responding to the research questions, which included accessing documents in English that may have been limited and inaccessible in the language of the focus states.

Prevalently stated in the research are the United Nations reports and publications of its International Commissions of Inquiry and International Fact-finding Missions.¹⁵⁸¹ According to the Commissions of Inquiry, the standards of procedures for reporting and publication require that...

¹⁵⁷⁸ Chapter XVI Article 103 in UN's Charter.

¹⁵⁷⁹ United Nations, 'UN documentation: Overview' (UN Documentation Library, 2021) <<https://research.un.org/en/docs>> accessed 30 November 2021; Ahmad Medhat, 'A critical analysis to the United Nations' performance in the light of contemporary global challenges' (April 1, 2020) <<https://ssrn.com/abstract=3564486> or <http://dx.doi.org/10.2139/ssrn.3564486>> accessed 30 November 2021.

¹⁵⁸⁰ UN Publications, 'Purposes of the United Nations' (UN 2021) <<https://shop.un.org/About>> accessed 30 November 2021; Dag Hammarskjöld Library | Bibliothèque Dag Hammarskjöld (2021) <<https://www.un.org/en/ccoi/dag-hammarskjo%CC%88ld-library>> accessed 2 December 2021; According to Dag Hammarskjöld Library | Bibliothèque Dag Hammarskjöld , 'The United Nations employs a variety of subject matter experts who create knowledge products to advance these goals. These products include books, statistical databases, and other digital resources comprising facts and expertise on international peace and security, human rights, gender issues, economic and social development, international trade, climate change, international law, governance, public health, transportation, and statistics.'

¹⁵⁸¹ Ibid; Within the United Nations, fact-finding, and investigation of violations of human rights and international humanitarian law are carried out by a variety of bodies and mechanisms, including special rapporteurs of the Human Rights Council, field offices of OHCHR, including human rights components integrated in peace missions, and certain treaty-based bodies. While the methodological standards applicable to professional fact-finding and investigations are the same, regardless of the entity that conducts the activity.

‘Information is gathered from a variety of sources, including primary sources (such as victims, witnesses,¹⁵⁸² investigators’ direct observations at the locations where facts occurred and declarations by alleged perpetrators), and secondary sources (such as second-hand testimonies, the media, information provided by human rights NGOs, medical reports, and certificates)’.¹⁵⁸³

In its information gathering process, the United Nations uses information contained in Chapter 11, of its ‘Manual on Human Rights Monitoring’.¹⁵⁸⁴ The resource is noted by the Dag Hammarskjöld Library | Bibliothèque Dag Hammarskjöld representatives as just one example of many used to guide and direct methods and ethical practices exercised for its published outcomes used in academia across the world.¹⁵⁸⁵

However, there are audiences, within the international community, who have voiced concerns that surround fairness, cultural differences, and views, of the United Nations’ agencies reporting and credibility with its publications.¹⁵⁸⁶ Works by Philip Alston posit that the UN Commission on Human Rights’ replacement by a new Human Rights Council in 2006 is reflective of the varying reasons of political and biased views for loss of credibility among the United Nations agencies.¹⁵⁸⁷ Literature from Alston, Jacobson,

¹⁵⁸² Ibid (n 1580); ‘The testimony of victims and witnesses constitutes the most valuable information available to the investigation. Apart from those who experienced the events first-hand, there may also be other observers of situations who could provide important information, including local officials, staff of United Nations and international agencies, United Nations peacekeepers, diplomats, refugees and displaced persons, community, and religious leaders’ p. 43.

¹⁵⁸³ Ibid (n 1580); ‘Information comes in various forms: oral testimony, documents, video material, photographs, personal observations and satellite images’ p. 43.

¹⁵⁸⁴ United Nations Human Rights Office of the Higher Commissioner, ‘Manual on human rights monitoring, Chapter 11, Interviewing’ (UN-UNHCR 2011) <<https://www.ohchr.org/Documents/Publications/Chapter11-MHRM.pdf>> 2 December 2021.

¹⁵⁸⁵ Dag Hammarskjöld Library | Bibliothèque Dag Hammarskjöld (n 1580); Interview communications with Susan Goard, Dag Hammarskjöld Library | Bibliothèque Dag Hammarskjöld on 30 November 2021 and 2 December 2021.

¹⁵⁸⁶ Ahmad Medhat, ‘A critical analysis to the United Nations’ performance in the light of contemporary global challenges’ (April 1, 2020).

¹⁵⁸⁷ Philip Alston, ‘Reconceiving the UN human rights regime: Challenges confronting the new UN Human Rights Council’ (2006) 7 Melbourne Journal of International Law 185, 224

<Reconceiving the UN human rights regime : challenges confronting the new UN Human Rights Council. | Melbourne Journal of International Law (informit.org)> accessed 30 November 2021.

and others, make a declaration that key reforms are needed to remove bias, and transform a system of “special procedures’ to formulate a more effective, universal, equitable definition of human rights, and the resulting reports and publications from the United Nations.¹⁵⁸⁸ Though the United Nations agencies hold a substantive international position, it is imperative that the researcher of this study and others note that there remain areas of growth and to acknowledge criticisms. As a result, the United Nations should continue working toward the goal where its agencies can possess and sustain a systematic observation and methodology in research, including objectivity, transparency and replicability/reproductivity in its reports and publications internationally.

For now, globally, researchers and a host of other organizations depend upon the United Nations reports and publications for a myriad of reasons including the capacity to contribute to subject areas’ body of knowledge. As in this thesis, international researchers are limited to reports and publications from the United Nations to serve as a focal and reliable source. The thesis’ author acknowledges varying views and criticism of the United Nations’ reports and publications. However, she also notes that without the United Nations reports and publications, access to vital international research and information would not occur due to language constraints, physical geographic locations, and the capacity to live, interact, and conduct field-research for any length of time in non-native countries.

¹⁵⁸⁸ Alston (n 1587); Medhat (n 1586); Harold Jacobson, ‘The United Nations and colonialism: A tentative appraisal’ (1962) 16[1] *International Organization* 37-56 <<http://www.jstor.org/stable/2705599>> accessed 30 November 2021.

Appendix 2, Table 3, Weight of Evidence Critical Analysis (full-articles read, included in synthesis)

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility– understandable Specificity – method specific quality	WoE (B) – Rating Purposivity- fit for purpose method	WoE (C) – Rating Utility – provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer the review question (cumulative)
Blackburn, Ashley G.; Taylor, Robert W; Davis, Jennifer Elaine, 2010, Understanding the Complexities of Human Trafficking and Child Sexual Exploitation: The Case of Southeast Asia,	Journal	4	4	4	12
Allain, Jean. <i>Slavery in International Law: Of Human Exploitation and Trafficking</i> . Leiden: Boston: Martinus Nijhof Publishers, 2013	Book	4	4	4	12
Aronowitz, Alexis A. <i>Human Trafficking, Human Misery: The Global Trade in Human Beings. Global Crime and Justice</i> . Westport, Connecticut: Praeger, 2009	Book	5	5	4	14
Perry, Kelsey McGregor; McEwing, Lindsay, Health and Human Rights, 2013, vol 15(2), pp.138-159 How do social determinants affect human trafficking in Southeast Asia, and what can we do about it? A systematic review	Article	3	3	3	9

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility – understandable Specificity – method specific quality	WoE (B) – Rating Purposivity- fit for purpose method	WoE (C) – Rating Utility – provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer the review question (cumulative)
Rafferty, Yvonne Bilson, Andy Child Abuse Review, November 2007, Vol.16(6), pp.401-422 Children for sale: Child trafficking in Southeast Asia	Journal	4	4	4	12
Renshaw, Catherine Michigan Journal of International Law, Summer 2016, Vol.37(4), pp.611-65 Human Trafficking in Southeast Asia: Uncovering the Dynamics of State Commitment and Compliance	Journal	5	5	5	15
Gautam Poudel, Pragya; Barroso, Cristina S Scandinavian Journal of Public Health, 01 November 2018, pp.1403494818807816 Social determinants of child trafficking addressed by government and non-government strategies in South and Southeast Asia: an integrative review	Journal	3	3	3	9

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility – understandable Specificity – method specific quality	WoE (B) – Rating Purposivity- fit for purpose method	WoE (C) – Rating Utility – provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer the review question (cumulative)
Auethavornpipat, Ruji, Asia Pacific Bulletin, Sep 12, 2017, Issue 396, pp.1-2 Addressing the Root Causes of Conflict-Driven Human Trafficking in Southeast Asia	Journal	5	5	5	15
Kuo, Michelle Kuo, Michelle (correspondence author), Harvard International Review, July 2000, vol 22(2), pp. 42-45 'Asia's dirty secret: prostitution and sex trafficking in Southeast Asia'	Journal	3	3	3	9
Manning, Chris, <i>Labour Migration and Human Trafficking in Southeast Asia: Critical Perspectives</i> , Routledge Bulletin of Indonesian Economic Studies, 02 January 2014, vol 50(1), p.142-143	Journal	4	4	4	12
Perry, Kelsey, McGregor, & McEwing. 'How do social determinants affect human trafficking in Southeast Asia, and what can we do about it? A systematic review', Health and Human Rights, 2013, vol 15(2), 138- 159	Article	4	4	4	12

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility– understandable Specificity – method specific quality	WoE (B) – Rating Purposivity, Fit for purpose method	WoE (C) – Rating Utility – Provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer the review question (cumulative)
Chen, Kai Southeast Asian Studies, Dec 2013, Vol.2(3), 615-620, "The Perfect Business": Human Trafficking and Lao-Thai...)	Journal	3	3	3	9
A problem by a different name? A review of research on trafficking in South-East Asia and Oceania Piper, Nicola International migration, 2005, vol 43(1-2), 203-233	Journal	3	3	3	9
‘Challenges to the rapid identification of children who have been trafficked for commercial sexual exploitation.’ Rafferty, Yvonne (Science Direct 2016)	Journal	3	4	4	11
Labour Migration and Human Trafficking in Southeast Asia: Critical Perspectives, Manning, Chris, Routledge, Bulletin of Indonesian Economic Studies, 02 January 2014, Vol.50(1), p.142-143	Journal	5	5	5	15

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility– understandable Specificity – method specific quality	WoE (B) – Rating Purposivity, Fit for purpose method	WoE (C) – Rating Utility – Provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer the review question (cumulative)
Combating the Organized Sexual Exploitation of Asian Children: Recent Developments and Prospects Hodgson, Douglas Hodgson, Douglas (correspondence author) International Journal of Law and the Family, April 1995, Vol.9(1), 23-53	Journal	5	5	5	15
“The Impact of Domestic and Transnational Conditions Yoo, Eunhye, Politics & Gender, 2012, Vol.8(3), 304-340	Journal	3	4	3	10
‘Rethinking ‘trafficking’ in children's migratory processes: the role of social networks in child labor migration in Bangladesh.’ Heissler, Karin A., Children's Geographies, Routledge, 01 February 2013, vol 11(1), p. 89-101	Journal	4	4	3	11
Jensen, Kari B. ‘Child Slavery and the Fish Processing Industry in Bangladesh’ Focus on Geography, June 2013, vol 56(2), 54-65	Journal	5	5	5	15

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility – understandable Specificity – method specific quality	WoE (B) – Rating Purposivity, Fit for purpose method	WoE (C) – Rating Utility – Provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer the review question (cumulative)
Child Human Trafficking: See, Pull, Cut the Threads of Abuse Normandin, Patricia A. Journal of Emergency Nursing, November 2017, vol 43(6), 588-590	Journal	3	3	4	10
Legal Assessments of Child Victims of Human Trafficking for Sexual Purposes Lindholm, Johanna; Cederborg, Ann-Christin Behavioral Sciences & the Law, January 2016, vol 34 (1), 218-233	Journal	5	5	5	15
Texts and materials on international human rights, Rhona K M Smith Abingdon, Oxon UK; New York: Routledge 3rd ed.	Books	5	5	5	15
Bokhari, Farhat, and Emma Kelly London, eds. <i>Safeguarding Children from Abroad: Refugee, Asylum Seeking and Trafficked Children in the UK</i> . Best Practice in Working with Children. Philadelphia: Jessica Kingsley, 2012	Books	5	5	5	15

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility – understandable Specificity – method specific quality	WoE (B) – Rating Purposivity, Fit for purpose method	WoE (C) – Rating Utility – Provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer the review question (cumulative)
Gallagher, Anne T. The International Law of Human Trafficking. Cambridge; New York: Cambridge University Press, 2012	Book	5	5	5	15
Goździak, Elżbieta M. "Empirical Vacuum: In Search of Research on Human Trafficking." In Gartner, Rosemary, and William McCarthy (eds.), The Oxford Handbook on Sex, Gender, and Crime. Oxford University Press, 2014.	Book	4	4	4	12
Hoang, Kimberly Kay. 'Human Trafficking Reconsidered: Rethinking the Problem, Envisioning New Solution. New York; London: International Debate Education Association, 2014.	Book	3	4	4	11
Kneebone, Susan, and Julie Debeljak. 'Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion'. Vol 20, New York: Routledge, 2012.	Book	4	4	4	12

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility – understandable Specificity – method specific quality	WoE (B) – Rating Purposivity, Fit for purpose method	WoE (C) – Rating Utility – Provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer the review question (cumulative)
Mallia, Patricia. 'Migrant Smuggling by Sea: Combating a Current Threat to Maritime Security through the Creation of a Cooperative Framework.' Publications on Ocean Development. Leiden; Boston: Martinus Nijhoff Publishers, 2010	Book	5	5	5	15
Samarasinghe, Vidyamali, and Barbara Burton. Female Sex Trafficking in Asia: The Resilience of Patriarchy in a Changing World New York: Routledge, 2008	Book	3	3	3	9
Yea, Sallie, ed. Human Trafficking in Asia: Forcing Issues. New York: Routledge, 2014	Book	3	3	3	9
Abdul, Mohammad, Munim Joarder, and Paul W. Miller, "The Experiences of Migrants Trafficked from Bangladesh." Annals of the American Academy of Political and Social Science 653 (2014)	Journal	5	5	5	15

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility – understandable Specificity – method specific quality	WoE (B) – Rating Purposivity, Fit for purpose method	WoE (C) – Rating Utility – Provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer the review question (cumulative)
Banović, Božidar, and Željko Bjelajac. "Traumatic Experiences, Psychophysical Consequences and Needs of Human Trafficking Victims." <i>Vojnosanit Pregl</i> 69, no 1 (2012): 94-97	Journal	3	3	3	9
Berger, Stephanie M. "No End in Sight: Why the "End Demand" Movement Is the Wrong Focus efforts to Eliminate Human Trafficking." <i>Harvard Journal of Law & Gender</i> 35, no 2 (2012): 523-70	Journal	3	3	3	9
Caneppele, Stefano, and Marina Mancuso. "Are Protection Policies for Human Trafficking Victims Effective? An Analysis of the Italian Case." <i>European Journal on Criminal Policy and Re- search</i> 19, no 3 (2013): 259-73	Journal	5	5	5	15
Chris, Manning, 'Labour Migration and Human Trafficking in Southeast Asia: Critical Perspectives, Routledge' <i>Bulletin of Indonesian Economic Studies</i> , 02 January 2014, Vol.50(1), p.142-143	Journal	5	5	5	15

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-4 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility – understandable Specificity – method specific quality	WoE (B) – Rating Purposivity, Fit for purpose method	WoE (C) – Rating Utility – Provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer a review question (cumulative)
Atzet, Ian. “Post-Crisis Actions to Avoid International Child Trafficking.” <i>Journal of Law & Family Studies</i> 12, no 2 (2010): 499-510	Journal	5	5	5	15
Avdeyeva, Olga A. “Does Reputation Matter for States’ Compliance with International Treaties? States Enforcement of Anti-Trafficking Norms.” <i>International Journal of Human Rights</i> 16, no 2 (2012): 298-320	Journal	5	5	5	155
Cho, Seo-Young, Axel Dreher, and Eric Neumayer. “Determinants of Anti-Trafficking Policies: Evidence from a New Index.” <i>Scandinavian Journal of Economics</i> 116, no 2 (2012): 429-54	Journal	5	5	5	15
Cho, Seo-Young, and Krishna Chaitanya Vadlamannati. “Compliance with the Anti-Trafficking Protocol.” <i>European Journal of Political Economy</i> 28, no 2 (2012): 249-65	Journal	5	5	5	15

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility – understandable Specificity – method specific quality	WoE (B) – Rating Purposivity, Fit for purpose method	WoE (C) – Rating Utility – Provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer a review question (cumulative)
Universal Period Review, CRC, Country: Bangladesh Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
Universal Periodic Review, CRC Country: Malaysia Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
Universal Periodic Review, CRC Country: Myanmar Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
Universal Periodic Review, CRC Country: Thailand Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
TIP Report, UNODC Country: Bangladesh Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
TIP Report, UNODC Country: Malaysia Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
TIP Report, UNODC Country: Myanmar Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
TIP Report, UNODC Country: Thailand Periods: 2000 – 2018	Grey Government Literature	5	5	5	15

Article/Data Under Analysis Using Weight of Evidence (WoE) Rating 1-5 (peer-reviewed) ≥3 ranking	Type of Article	WoE (A) – Rating Transparency Accuracy – accurate Accessibility – understandable Specificity – method specific quality	WoE (B) – Rating Purposivity, Fit for purpose method	WoE (C) – Rating Utility – Provides relevant answers Propriety – legal and ethical research	WoE (D) – Rating Overall Assessment The extent that a study contributes evidence to answer a review question (cumulative)
2018 UNODC Global Report on Trafficking in Persons, 4 th edition	Grey Government Literature	5	4	4	13
2018 UNODC Global Report, Booklet #2, Trafficking in Persons, Armed Conflict Context	Grey Government Literature	4	4	4	12
2018 UNODC Global Report, Smuggling of Migrants, 1 st edition	Grey Government Literature	4	4	4	12
Universal Periodic Review, CRC Country: Thailand Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
TIP Report, UNODC Country: Bangladesh Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
TIP Report, UNODC Country: Malaysia Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
TIP Report, UNODC Country: Myanmar Periods: 2000 – 2018	Grey Government Literature	5	5	5	15
TIP Report, UNODC Country: Thailand Periods: 2000 – 2018	Grey Government Literature	5	5	5	15

APPENDIX 3,
Ethics Approval, Participant Questionnaire, and Survey Outcomes

Ethics approval #1, 2017, Practitioner's action-research (refer to fn 282)¹⁵⁸⁹

COLEG BUSNES, Y GYFRAITHADDYSGA GWYDDORAU CYMDEITHAS
COLLEGE OF BUSINESS AND EDUCATION AND SOCIAL SCIENCES



11/12/17

Annwyl/ Dear Tanya Herring

Yng/ Re: 'Stateless Rohingya children in Bangladesh, Malaysia, Thailand, and Burma are at risk of Human Trafficking.' – Can legal empowerment be achieved by an International Norm Responsibility to Prevent (R2Prev)?

Diolch am eich cais diweddar i Bwyllgor Ymchwil Moeseg CBLESS.

Mae'r pwyllgor wedi ystyried eich cais, ac fe wyf yn awr mewn sefyllfa i roi caniatâd, ar ran y Pwyllgor Ymchwil Moeseg CBLESS, i chi gychwyn eich prosiect ymchwil.

Dymunaf yn dda i chi gyda'ch ymchwil.

Thank you for your recent application to the CBLESS Research Ethics Committee. The Committee has considered your application and I am now able to give permission, on behalf of the CBLESS Research Ethics Committee, for the commencement of your research project.

I wish you well with your research.

Yn gywir iawn/ Yours sincerely

Dr. Marguerite Hoerger
Chair, CBLESS Research Ethics Committee
Cadair, Pwyllgor Ymchwil Moeseg CBLESS

Cc: Goruchwyliwr/Pennaeth Ysgol
Supervisor/Head of School

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¹⁵⁸⁹ Practitioner action-research refer to Section 1.11; see fn 282.

Ethics Approval #2, 2019



PRIFYSGOL
BANGOR
UNIVERSITY

**Ysgol y Gyfraith
Prifysgol Bangor**

*School of Law
Bangor University*

Ymchwilydd / Researcher: Dr Tanya Herring, 18/3/2019
Prosiect / Project: Workshop in Malaysia

Mae'r astudiaeth hon wedi cael ei chadarnhau o ran agweddau moesegol, yn dilyn ymgynghoriad gyda'r arolygwr (os perthnasol) a gyda'r swyddog Moeseg yr Ysgol. Mae rhyddid i'r fyfyrwr a enwir uchod barhau gyda chasglu'r data a gweithio ar yr astudiaeth.

This study has been approved with regards to ethical concerns, following consultation with the supervisor and the School Ethics officer. The student named above is now free to continue with collecting the data and working on the study.

Dr Wei Shi

Darllenwr yn y Gyfraith/ *Reader in Law*
Ysgol y Gyfraith/*School Ethics officer*
Ysgol y Gyfraith/ *School of Law*

RESEARCH PROJECT

NOTE:

- **Data collection cannot begin without approval from the Research Ethics Committee or the School's Ethics Officer as its representative.**
- **Once you have completed this form, you should discuss it with your supervisor and then email it, along with any relevant materials, to your School's Ethics Officer, who will advise you further.**
- **Project approval will be significantly delayed if the application is incomplete, lacks detail, or was submitted during vacation periods.**
Obtaining approval can take 4 – 6 weeks.

1 Researcher's Details

Staff:	Yes	No	<input checked="" type="checkbox"/>	Student:	Yes	No	<input checked="" type="checkbox"/>
If Student, please select from the below:							
Undergraduate	<input checked="" type="checkbox"/>	Postgraduate Taught		Postgraduate Research			

Forename:	Tanya	Surname:	Herring
E-mail address:	Sop660@bangor.ac.uk		
School in which research is being conducted:	School of Law		

2 Project Information

Title of the research project:	THE PALERMO PROTOCOL AS A CONDUIT TO LEGAL EMPOWERMENT: A Critical-Case Socio-Legal Research Investigating State Responsibility for the Prevention and Protection of Force Displaced Stateless Children Vulnerable to Human Trafficking In Southeast Asia
Proposed research start date:	September 2018
Proposed research end date:	June 2020

3 Supervisor details (if relevant)

Title:	Dr	Full name:	Tara Smith
E-mail address:	t.smith@bangor.ac.uk		

4 Aims and objectives of the research project

Research Aim. The aim of this socio-legal study is to research a State obliged framework that has the capacity to close the troubling holes in prevention measures and protection mechanisms of children displaced across borders and vulnerable to exploitation.¹

The research syllogism opines that a conjoined structure of international criminal law and international human rights envelopes a stronger prevention, protection obligation than a singular presented human rights legal framework; as a result, embedded legal empowerment resources in the law have the capacity to be triggered and possibly deter and mitigate² the adverse childhood experiences (ACE)³ of child exploitation.

5 Source of Research Funding (if any):

N/A

6 Participants

Describe the participant sample who will be contacted for the project and how many participants are you planning to recruit (e.g. 15-25 adult Welsh-English bilinguals).

Adult, 18+ years- practitioners, legal and government; community organizers and advocates, English speakers in a conference/workshop type setting conducted solely in English... (No Welsh or other foreign language will be used.)

¹ Exploitation is used in this research to describe the abuse of a child where some form of remuneration is involved or whereby the perpetrators benefit in some manner – monetarily, socially, politically, etc. Exploitation constitutes a form of coercion and violence, detrimental to the child's physical and mental health, development, and education

² DB Cornish and RVG Clarke, *Opportunities, precipitators, and criminal decisions: A reply to Wortley's critique of situational crime prevention*. In M. J. Smith & D. B. Cornish (Guest Eds.), *Theory for practice in situational crime: Mitigation and crime prevention* in this research refers to 'Situational crime prevention (SCP)', which is a criminological perspective that calls for expanding the crime-reduction role well beyond the justice system. SCP sees criminal law in a more restrictive sense, as only part of the anticrime effort in governance. It calls for minutely analyzing specific crime types (or problems) to uncover the situational factors that facilitate their commission. Intervention techniques are then devised to manipulate the related situational factors. In theory, this approach reduces crime by making it impossible for it to be committed no matter what the offender's motivation or intent, deterring the offender from committing the offense.

³ Adverse childhood experiences (ACE) are described as exposure to and victimization of physical abuse, sexual abuse, and familial violence; R Jeremiah and others, 'Exposing the culture of silence: Inhibiting factors in the prevention, treatment, and mitigation of sexual abuse in the Eastern Caribbean' (2017) 66 *Child Abuse & Neglect* 53–63.

How are you going to recruit subjects? Be as specific as possible. If applicable, please also indicate whether the necessary permissions have been obtained (e.g. from school headmaster).
Recruit thru invitations for engagement in conferences, lectures, presentations, and workshop type of setting
Note: You need to consider how you will consider anonymity of all participants.

Will any of the participants be under the age of 18?	Yes		No	XX
IF YES , have ALL members of the research team who are collecting data from minors been checked by the Disclosure and Barring Service?	Yes	N/A	No	N/A
Note: You need to show a copy of the DBS approval when submitting your ethics application.				

Potential Offense/Distress to Participants. Is there a possibility that participants will become distressed or offended as a result of your research? If so, how do you plan to mitigate their distress or offense? Justify why this offense or distress is necessary for your research.
No
Note: You must state that all participants have the right to withdraw at any point.
Payments. In this section please specify if the participants/investigators are being paid and if so, state the payment source.
No, participants are being paid.

7 Research Tools

Describe the research tools that will be used to elicit data from the sample (e.g. tests, questionnaires, interviews, observation).
Questionnaire
Note: You should submit a copy of all tool(s) you intend to use (e.g. questionnaire/s) - where practical with this completed form

8 Data storage

Will the data be stored only on Bangor University's servers, and made accessible only to the researcher and their supervisor (if applicable)?	Yes XX	No
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If NO, please answer questions 9a and/or 9b as required.	
8a If the data is not only stored on Bangor University's servers, describe where, how and for how long sensitive data will be stored, and what security measures are in place to ensure the data is protected.	
N/A	
8b If the data is accessible to anyone else, describe who will have access to the data (and why).	
The data outcomes (not raw data) will be provided in a research report. This data outcomes will be stored on the University 'M' drive.	
Note: All research data should be stored on the University 'M' drive and or suitably encrypted laptop (if necessary please consult with IT support)	

9 Data publication

Explain by what method it is expected that the data will be published - e.g. journal article, report for a public body - or whether it is intended to be used solely for a Bangor University assignment (e.g. dissertation).
The data outcomes will be used for doctoral research study – thesis, researcher's articles, and publications.
Note: Participants should be made aware of how the data will be managed and published. The information should be stated on the consent form.

10 Research location

Does the project involve research at sites (other than Bangor University) that require permission by a responsible person (e.g., a school or club)?	Yes		No	
			XX	
If NO then proceed to 11				
If YES then complete the following:				
Name and address of non-Bangor University site				
Details of contact person on non-Bangor University site:				
Full name:		Telephone		
Post:				
Address:				
E-mail:				
Please list any additional external research sites beyond the first:				

Has written agreement been given by the appropriate person/body on the non-BU site for the research to be conducted?	Yes		No	
<p style="text-align: center;">Note:</p> <p style="text-align: center;">Research on sites other than Bangor University may NOT be started until such written agreement has been given AND copies of that agreement submitted to the CAHB Research Ethics Committee.</p>				

11 Ethical considerations

All research must be undertaken in accordance with Bangor University's Research Ethics Policy. Please make a clear and concise statement of the ethical considerations raised by the project, in response to each of the questions below.

How will your participants be informed about the purpose, methods and intended possible uses of the research, what their participation in the research entails and what risks, if any, are involved?

Information will be contained in the participant information handout

How will you ensure that the confidentiality of materials and information supplied by research subjects and the anonymity of respondents are respected?

No name or identification will be used on the survey instruments – all results are tallied by Flickers survey calculations, using an I-pad, and captured on using an electronic bar-code

How will you ensure that all participants voluntarily consent to take part in the study?

A permission or authorization for participation will be noted with an opportunity for the participant to withdraw at any time.

How will you minimise risk to human research participants?

No materials used will call distress or offense, nor no part of the survey will involve any physical contact.

Are there any further ethical considerations that are not covered by the questions above? How will you deal with them throughout the duration of the project?

N/A

12 Consent form and participant information sheet

Please attach a copy of;

- The consent form
- The participant information sheet.

A standard CAHB Consent Form is available on our webpage. We suggest you add detailed information on how subjects can withdraw from the study. The participant information sheet should describe, in 1-3 paragraphs, the aims of the study.

13 Declaration

I confirm that the information in this form is accurate to the best of my knowledge.

Signature of Researcher:	<i>Tanya Herring</i>
Print name:	Tanya Herring
Date of submission:	5 March 2019

Supervisor's agreement (required if the researcher is a student):

I confirm that I have reviewed this form and all ancillary materials (e.g. participant information sheet, consent form) and that I will notify the CAHB Research Ethics Committee in case of unethical conduct.

Signature of Supervisor:	
Print name:	
Date:	

From: Tara Smith <t.smith@bangor.ac.uk>

Sent: 06 March 2019 13:02

To: Tanya Herring <sop660@bangor.ac.uk>; Wei Shi <w.shi@bangor.ac.uk>

Subject: RE: Ethics Application for Research, Malaysia

Dear Wei,

As Tanya's supervisor, I support this ethics application.

Best wishes,

Tara

Ethics Consent

YSGOL Y GYFRAITH
SCHOOL OF LAW

LETTER OF INVITATION, INFORMATION AND CONSENT FORM



**Consent for Participation and Inclusion
in the Doctoral Research of:**

Dr Tanya Herring, Bangor University Law School

DESCRIPTION

Dr Tanya Herring's research is entitled:
**THE PALERMO PROTOCOL AS A CONDUIT TO
LEGAL EMPOWERMENT:**
A Critical-Case Socio-Legal Research, Investigating State Responsibility for the
Prevention and Protection of Force Displaced Stateless Children
Vulnerable to Human Trafficking in Southeast Asia

IDENTIFICATION AND RECRUITMENT OF STUDY PARTICIPANTS

The aim of this socio-legal study is to research a State obliged framework that has the capacity to close the troubling holes in prevention measures and protection mechanisms of children displaced across borders and vulnerable to exploitation.¹ As a participant in this study, you are asked to provide your input on ways that could possible deter and mitigate² the adverse childhood experiences (ACE)³ of child exploitation through international and domestic/national laws.

¹ Exploitation is used in this research to describe the abuse of a child where some form of remuneration is involved or whereby the perpetrators benefit in some manner – monetarily, socially, politically, etc. Exploitation constitutes a form of coercion and violence, detrimental to the child's physical and mental health, development, and education

² DB Cornish and RVG Clarke, *Opportunities, precipitators, and criminal decisions: A reply to Wortley's critique of situational crime prevention*. In M. J. Smith & D. B. Cornish (Guest Eds.), *Theory for practice in situational crime: Mitigation and crime prevention* in this research refers to 'Situational crime prevention (SCP)', which is a criminological perspective that calls for expanding the crime-reduction role well beyond the justice system. SCP sees criminal law in a more restrictive sense, as only part of the anticrime effort in governance. It calls for minutely analysing specific crime types (or problems) to uncover the situational factors that facilitate their commission. Intervention techniques are then devised to manipulate the related situational factors. In theory, this approach reduces crime by making it impossible for it to be committed no matter what the offender's motivation or intent, deterring the offender from committing the offense.

³ Adverse childhood experiences (ACE) are described as exposure to and victimization of physical abuse, sexual abuse, and familial violence; R Jeremiah and others, 'Exposing the culture of silence: Inhibiting factors in the prevention, treatment, and mitigation of sexual abuse in the Eastern Caribbean' (2017) 66 *Child Abuse & Neglect* 53–63.

Participant Questionnaire

Dr. Tanya Herring; sop660@bangor.ac.uk
YSGOL Y GYFRAITH
SCHOOL OF LAW

PARTICIPANT QUESTIONNAIRE



Introductory paragraph

Research Aim. The aim of this socio-legal study is to research a State obliged framework that has the capacity to close the troubling holes in prevention measures and protection mechanisms of children displaced across borders and vulnerable to exploitation

- 1) **Target audience: Legal Advocates, Government Officials, Academics**

Question #1: What barriers are in the law that prohibit the effective arrest and conviction of criminals, who traffick children?

- a) Protection of victims
- b) Gaps in the law
- c) Enforcement of the law
- d) Training of legal practitioners
- e) Training of law enforcement practitioners
- f) All of the above
- g) None of the above

Question #2: Is the criminal punishment for the trafficking of children sufficient?

- a) Yes
- b) No

(Please feel free to use reverse side of this page if more space is needed for written responses)

PARTICIPANT QUESTIONNAIRE



Introductory paragraph

Research Aim. The aim of this socio-legal study is to research a State obliged framework that has the capacity to close the troubling holes in prevention measures and protection mechanisms of children displaced across borders and vulnerable to exploitation

1) **Target audience: Community Advocates, Academics**

Question #2: Do you know where or how to find embedded legal empowerment, or access to justice, resources in your country's human trafficking laws for child victims of human trafficking and exploitation (labour, sexual, organ ?

Category	Response	Response
Emergency Housing	Yes	No
Medical Assistance	Yes	No
Counselling Support	Yes	No
Court Administrator Assistance	Yes	No
Education and Training	Yes	No

Question #2: How are the state child protection laws in your country promoted?

- a) The television news
- b) The country's website or internet sources
- c) Schools
- d) The local newspaper
- e) All of the above

(Please feel free to use reverse side of this page if more space is needed for written responses)

PARTICIPANT QUESTIONNAIRE

Introductory paragraph

Research Aim. The aim of this socio-legal study is to research a State obliged framework that has the capacity to close the troubling holes in prevention measures and protection mechanisms of children displaced across borders and vulnerable to exploitation

1) **Target audience:** Community advocates, Legal advocates, Academics


Question #1: If a child is forced displaced or stateless, are they treated the same for:

Category	Response	Response
Emergency Housing	Yes	No
Medical Assistance	Yes	No
Counselling Support	Yes	No
Court Administrator Assistance	Yes	No
Education and Training	Yes	No

Question #2: Do you know where a forced displaced or stateless child can find assistance from human trafficking/exploitation?

- a) Social Services
- b) The Police
- c) the church/community organizations
- d) The courts
- c) The church or community organization

Submitted presentation resources and research ethics approval docs prior to arrival in Malaysia/ Received acknowledgement; presented ethics complete package and questionnaire requirements onscreen during the presentation:

 [Malaysia-12-April-2019-T-Herring-Presentation-Resource-Handouts.zip](#)

From: Tanya Herring <sop660@bangor.ac.uk>

Sent: 09 April 2019 02:46

To: Yap Yoong Jian <yoongjian@malaysianbar.org.my>

Cc: Santhi Latha <santhi@malaysianbar.org.my>; Nur Syafiq Bin Che Isa <syafiq@malaysianbar.org.my>;

Roslan Mahamud <roslan@malaysianbar.org.my>

Subject: Re: 12 April 2019, Malaysia Workshop

Bar Association Liaison, acknowledgment:

From: Yap Yoong Jian <yoongjian@malaysianbar.org.my>
Sent: 02 April 2019 04:48
To: Tanya Herring
Cc: Santhi Latha; Nur Syafiq Bin Che Isa; Roslan Mahamud
Subject: Re: 12 April 2019, Malaysia Workshop

Dear Tanya

In addition to the earlier email, would you mind to share your mobile number for ease of communication on the day of the event?

Thanks
Jian

Yoong Jian | Senior Officer
Continuing Professional Development
T: +6 03-2050 2015 | F: +6 03-2050 2112
Bar Council, 15 Leboh Pasar Besar, 50050 Kuala Lumpur

Yoong Jian | Senior Officer
Continuing Professional Development

T: +6 03-2050 2015 | F: +6 03-2050 2112

Bar Council, 15 Leboh Pasar Besar, 50050 Kuala Lumpur

E: yoongjian@malaysianbar.org.my | W: cpd.malaysianbar.org.my |

F: www.facebook.com/MBarCPD

Circular No Doo/2019 Dated 27 Feb 2019

CPD Code: T3/12042019/BC/BC194143/2

Identifying and Responding to Human Trafficking and Multiple Forms of Exploitation

A workshop for court practitioners, advocacy agencies, government officials, medical professionals, university and community leaders

12 Apr 2019 (Friday) | 2:30 pm to 5:00 pm
2 CPD points

Raja Aziz Addruse Auditorium
Wisma Badan Peguam Malaysia
(Formerly known as Wisma Straits Trading)
Unit 2-02A, 2nd Floor
2 Lebuh Pasar Besar, 50050 Kuala Lumpur

Training Category



CPD : BRIDGES

Registration Fees

Members of the Bar	RM90
Members Admitted from 1 July 2011	RM60
Law Students and Pupils in Chambers	RM45
Non-Members	RM180

Registration for the event will begin at 2:00 pm

This is an interactive workshop that includes the following:

- (1) The criminal elements that define human trafficking:
 - The scope and nature of the problem in Malaysia and the Southeast Asian region
 - Focusing on Malaysia as a human trafficking destination, source, and transit country for child organ, sexual, and labour exploitation
 - The tactics utilised by traffickers to recruit and exploit victims of all ages and gender — men, women, and children
 - Learning from precedent-setting cases of other countries
- (2) A community's response to human trafficking:
 - Recognising the signs and indicators of abuse and exploitation
 - Preventive measures and protection for victims embedded within the law

This workshop also focuses on the national and international legal frameworks that govern human trafficking in Malaysia through the following:

- (1) Malaysia's human trafficking court and its domestic laws
- (2) International law obligations in respect of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

About the Speaker

Dr Tanya Herring is a legal scholar who is a Senior Fellow/Researcher in the United Kingdom. She holds multiple degrees: doctorate degrees in education and management; LLM in International Criminal Law and International Human Rights, MBA, and MSA. She is a Doctoral Candidate in International Criminal Law and International Human Rights, and has the following specialised training/certification: Children at the Heart of Human Rights Certification Program, University of Geneva; Institute of Statelessness and Inclusion, Tilburg University, the Netherlands; Advocacy Training, Association of Defence Council Practising before the International Courts and Tribunals; Arbitration, Bangor.



Dr Herring's research proffers a framework that incorporates legal empowerment, succinct with the Palermo Convention's national application in Southeast Asia, and global generalisable principles for domestic implementation. Her research premise suggests that human trafficking, smuggling, and multiple forms of exploitation, can be mitigated by optimising the applications of the Palermo Convention. Her areas of expertise include the UN Convention on the Rights of the Child; self-determination principles; and the International Labour Organization Forced Labour Conventions: C029, C182, and P029.

Organised by
Bar Council Continuing Professional Development Department



To register, please click below
cpd.malaysianbar.org.my

Participants: face-to-face survey modality, using Plickers®

Bar Council Malaysia

Evaluation Form

Title: CPD Event:
Identifying and Responding to Human Trafficking and
Multiple Forms of Exploitation
T3/12042019/BC/BC194143/2
Date: 12 April 2019
Organiser: Bar Council
Speaker(s): Dr Tanya Herring

Please indicate () the level of agreement with the statements listed below:

Evaluation Criteria	Very Poor	Poor	Medium	Good	Very Good
Quality of Subject Matter					
(1) Comprehensiveness					✓
(2) Structure					✓
(3) Usefulness					✓
(4) Content					✓
Speaker(s)					
(1) Presentation					
(2) Knowledge of the topic					✓
(3) Interaction with audience	Yes				
(4) Would you recommend this speakers)?	Yes		No		
(5) Would you attend more events by this speaker(s)?			No		
Facilities					
(1) Environment				✓	
(2) Usage of training tools (eg. audio/visual aids)					✓
Overall					
(1) Was the event value for money?	Yes		No		
(2) Would you recommend this event?	Yes		No		
(3) Would you attend more events on this topic?	Yes		No		
(4) Would you attend more events by this provider?	Yes		No		
General Remarks	I would recommend this training to the Malaysian authorities.				

Please state NIA if it is not applicable.

If you would like to provide feedback directly to Bar Council about the course, please contact the CPD Department by email at cpd@malaysianbar.org.my.

Presentation Evaluation Outcome Report

Survey/Questionnaire Process and Reporting of Participant Outcomes

Participant Questionnaire Process

The participant responses were captured using Plickers®¹⁵⁹⁰ as a validation and feasibility mechanism tool during a Law Counsel Continuing Education Workshop in Southeast Asia.¹⁵⁹¹ Plickers® is an electronic assessment tool. The software system works using a downloaded app on the i-pad, and it is designed to aid the facilitator in collecting data without using pen and paper. For the qualitative surveys used in this research, the researcher employed quick-response (QR) code placards that are components of the Plickers® system.

The QR code placard captured each participant's response using the i-pad in conjunction with a SmartBoard®. The QR code placard maintains participant anonymity as the facilitator captures each response by scanning the room with an i-pad. The scanned responses are ported into the iPad and translated into the pie graph to represent the participant's responses. Refer to the below-embedded PowerPoint Presentation for an overview of the process:¹⁵⁹²

¹⁵⁹⁰ Plickers Software <<https://get.plickers.com/>> accessed 12 April 2019; PowerPoint slides for 12 April 2019 graphic representation of Plickers outcomes: <https://1drv.ms/p/s!Ajteu7FxUf1Mg-8JHTdPYRbN0rKJag?e=5Uhnka>

¹⁵⁹¹ The validity, reliability, and feasibility of a test is important for data collection process. Before and after collecting the data, the researcher considered the validity, reliability, and feasibility of their data. First, content validity indicates the degree to which an instrument measures what it is supposed to measure. It is the extent to which differences found with a measuring instrument reflect true differences among those being tested. Construct validity also refers to how well the researcher translated or transformed a concept, idea, or behaviour that is a construct into a functioning and operating reality, the operationalization. Construct validity has two components: convergent and discriminant validity. Measuring instrument provides adequate coverage of the topic under study.

¹⁵⁹² Cut and paste link into browser to view demonstration of Plickers® used as a feasibility and validation tool: <https://1drv.ms/p/s!Ajteu7FxUf1Mg-8dRWPsgOOYxmbxaQ?e=LV4kzd>

Survey Questionnaire

There are three questionnaire queries executed in a face-to-face survey modality during a workshop with specified participants. Each question of the questionnaire represents a component of the central research question and designated sub-research questions. The questions are used to inform the researcher of the qualitative professional opinions from practice and perspectives of practitioners (lawyers [criminal and family law], advocates [counselors, academics, child protection], government representatives, and community leaders):

- 1) Questionnaire 1: addresses research sub-question #1;
- 2) Questionnaire 2: addresses research sub-question #2, and
- 3) Questionnaire 3: addresses research sub-question #3

The study follows the questionnaire guidance of Johnson and Christensen's 4th edition of *Educational Research*, which outlines the '15 Principles of Questionnaire Construction' and research actions as follows.¹⁵⁹³

¹⁵⁹³ B Johnson and L Christensen, *Educational research: Quantitative, qualitative, and mixed approaches* (Sage 2012) 57, 161-243.

Qualitative Survey, 15-Principles of Questionnaire Construction

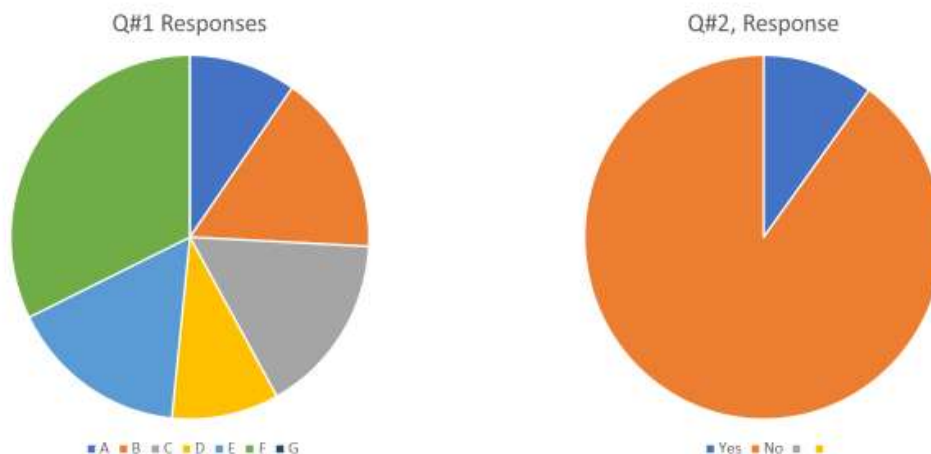
Guidelines and Thesis Research Actions

Principles	Guidelines	Research Actions
1	Make sure your questionnaire items match your research objectives	Yes; matches research objectives and research questions
2	Understand your research participants	Yes; engaged with research participants in Europe, Southeast Asia, Australia, USA, and Russia using participant action research
3	Use natural and familiar language	English language; no jargon; discussion ref: principal importance to questionnaire
4	Write items that are clear, precise, and relatively short	Clear, precise, and short
5	Do not use 'leading' or 'loaded' questions	No leading or loaded questions; used neutral wording and emphasis.
6	Avoid double-barreled questions	No double-barreled questions
7	Avoid double negatives	No double negatives
8	Determine whether an open-ended question is needed	A series of closed-end questions and a set of response options for participants to choose
9	Use mutually exclusive and exhaustive response categories available for close-ended questions	Used a set of response options for participants
10	Consider the different types of response categories available for close-ended questions	Used checklist response categories that responds that did not examine the relationship between multiple response items
11	Use multiple items to measure abstract constructs	Used multiple items to measure abstract constructs to achieve high reliability and validity.
12	Consider using multiple methods when measuring abstract constructs	Used a set of response options for participants and discussion
13	Use caution if you reverse the wording in some of the items to prevent response set in multi-item scales	Avoided reverse wording; compared and contrasted different response sets
14	Develop a questionnaire that is easy for the participant to use	Questionnaire used on Smart Board© using Plickers® and the Quick Response (QR©) code
15	Always pilot test your questionnaire	Used 'think-aloud technique' participants verbalized their thoughts and perceptions

Plickers® Questionnaire Responses Output, Question #1

Question #1: What barriers are in the law that prohibit the effective arrest and conviction of criminals, who traffick children?
a) Protection of victims, b) Gaps in the law, c) Enforcement of the law, d) Training of legal practitioners, e) Training of law enforcement practitioners, f) All of the above, or g) None of the above

Question #2: Is the criminal punishment for the trafficking of children sufficient? Yes or No



Outcomes Discussion:

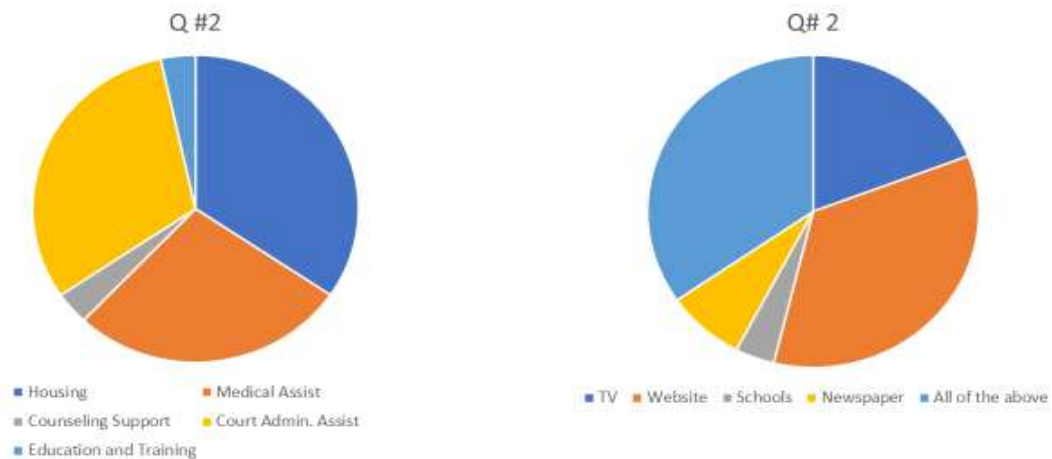
Questionnaire Response #1 is based on sub-Research Question #1. The question focuses on State Responsibilities to the prevention, protection measures, and mechanisms against human trafficking and exploitation of forced displaced, stateless children? The questionnaire placed elements of arts 1-4, 7-8, 32, 34-36 of the CRC, OPSC, arts 1-13, OPIC articles, particular emphasis on Article 5 of the Palermo Trafficking Protocol and the UNTOC into layman's and practitioners' language regarding the States' obligation to prevent and protect the targeted population of children. It also asks how they saw barriers in the law prohibiting offenders' effective arrest and conviction.

The overwhelming response to this qualitative inquiry is f) all of the above (green) with e), the training of law enforcement practitioners as a barrier closely following (orange), and gaps in the law (blue).¹⁵⁹⁴ Overall, the practitioners acknowledged that barriers in the current law's application hinder the States' responsibility to Article 5 of the Palermo Trafficking Protocol. Secondly, there was a consensus that the criminal punishment for the trafficking of children was insufficient. Throughout the thesis, the practitioners' responses are interspersed to respond to the researcher's hypothesis, research goals, and objectives.

¹⁵⁹⁴ Survey response depicted in a pie chart (or a circle chart) is a **circular statistical graphic**, which is divided into slices to illustrate numerical proportion. In a pie chart, the arc length of each slice (and consequently its central angle and area), is proportional to the quantity it represents; 52 participants.

Plickers® Questionnaire Responses Output, Question #2

Question #2: Do you know where or how to find embedded legal empowerment, or access to justice, resources in your country's human trafficking laws for child victims of human trafficking and exploitation (labour, sexual, organ)?
Question #2: How are the state child protection laws in your country promoted?



Outcomes Discussion:

Questionnaire Response #2 is based on sub-Research Question #2. The question focuses on legal empowerment and embedded laws that provide the targeted population with access to justice, the effects of deterrence, and redress as prevention measures to reduce children's vulnerability to human trafficking. The questionnaire placed elements of arts 1-4, 7-8, 32, 34-36 of the CRC, OPSC, OPIC, arts 1-13, of the Palermo Trafficking Protocol and its supplemented instrument, the UNTOC, into layman's and practitioners' language regarding the States' obligation to prevent trafficking and exploitation of the targeted population of children; also, protect them with deterrence and redress through reparations, access to housing, medical assistance, counseling, and support, education and training, court administrative support and a host of other measures.

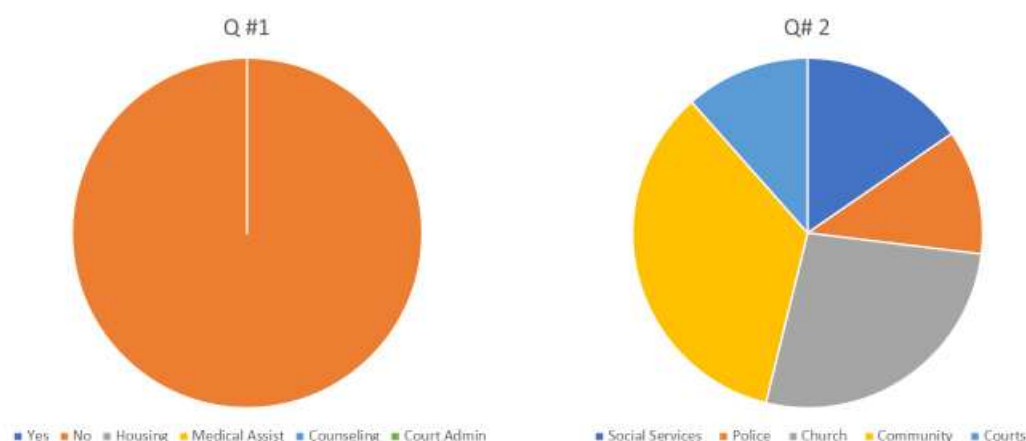
The overwhelming response to this qualitative inquiry is balanced between yellow, blue, and orange. First, very few acknowledge that education, training, and counseling support were embedded laws within the Palermo Trafficking Protocol and its supplemented instrument, the UNTOC.¹⁵⁹⁵ The overwhelming response was that no one even acknowledged the UNTOC supplemented the Palermo Trafficking Protocol. Secondly, the overall group conversations amongst the group indicated that there was no strategy. The television was the primary medium for notices of deterrence notices about protecting trafficked children. However, the conversation indicated whatever medium was used. It was unclear what laws protected children. The notices were infrequent or seldom, and the overall consensus was that they were ineffective and not taken seriously as a deterrent amongst the community. Throughout the thesis, the practitioners' responses are interspersed to respond to the researcher's hypothesis, research goals, and objectives.

¹⁵⁹⁵ Survey response depicted in a pie chart (or a circle chart) is a **circular statistical graphic**, which is divided into slices to illustrate numerical proportion. In a pie chart, the arc length of each slice (and consequently its central angle and area), is proportional to the quantity it represents; 52 participants.

Plickers® Questionnaire Response Output, #3

Question #1: If a child is forced displaced or stateless, are they treated the same for housing, medical assistance, counseling, or the courts

Question #2: Do you know where a forced displaced or stateless child can find assistance from human trafficking/exploitation: social services, police, church, community, or police?



Outcomes Discussion:

Questionnaire Response #3 is based on sub-Research Question #3. In contrast, the question focuses on access to justice and the States' obligation to provide justice resources for the forced displaced, stateless child? The questionnaire placed arts 1-4, 7-8, 32, 34-36 of the CRC, OPSC, arts 1-13, Palermo Trafficking Protocol, the UNTOC, arts 6-9, 11 of the Palermo Trafficking Protocol into layman's and practitioners' language regarding the States' obligation to promote prevention and protection resource to the targeted population of children. In addition, practitioners were asked how these resources were made available to those in need.

The overwhelming response to this qualitative inquiry for question one was no. The question was a flip of question number two but rephrased. Once rephrased, it appears the participants acknowledged these resources could be present but not made available to the target population of this study.¹⁵⁹⁶ For question number two, it appears that the respondents thought the community advocates were a primary resource instead of the government social services, police, and courts. Overall, the practitioners focused on acknowledging that barriers in the current law's application hinder the States' international obligation to provide access to justice. The practitioners continually expressed an unawareness of each of the international instruments under discussion or the States' national law implementation within its full context. Throughout the thesis, the practitioners' responses are interspersed to respond to the researcher's hypothesis, research goals, and objectives.

¹⁵⁹⁶ Survey response depicted in a pie chart (or a circle chart) is a **circular statistical graphic**, which is divided into slices to illustrate numerical proportion. In a pie chart, the arc length of each slice (and consequently its central angle and area), is proportional to the quantity it represents; 52 participants.

Appendix 4

**Proffered Legal Framework, Children's prevention, protection, and mitigation
against trafficking and exploitation (Practitioner/Advocate Guide)
[to be utilized with or without licensed e-app, *2Prevent&Protect*]**

Appendix 4.

2Prevent&Protect©

(A revised legal framework [an e-app and manual application] for the prevention, protection, and mitigation of child human trafficking)

Background. The legal framework, *2Prevent&Protect*©,¹⁵⁹⁷ labeled Appendix 4, Table 1, serves as the schematic on the inner workings. These functional operations reflect the researcher's development of a global 'software e-app' human trafficking prevention and electronic protection system.¹⁵⁹⁸ The researcher has developed a manual application that aligns to a computer software logic, operating process, content direction, and systems flow that can function on a mobile device or as a desktop application.

The framework, in e-app form, can perform the researcher's investigated study's proffered legal framework for practitioners/advocates and vulnerable persons to optimize the prevention, protection, and mitigation of child human trafficking and exploitation as outlined in the following international conventions, supplements, and protocols incorporated within the legal framework that creates *2Prevent&Protect*©:

¹⁵⁹⁷ *2Prevent&Protect*©, US Patent, Trademark & Copyright registered intellectual property, Case #1-10349770151, US Copyright Office, Certificate of Registration, Registration Number, TXu2-275-732.by Tanya F.P. Herring, effective date of registration 09 April 2021; registration decision date, 09 September 2021.

¹⁵⁹⁸ T. Herring, e-app, Human Trafficking Software, '2Prevent&Protect' (Zoho.com 2021); licensed, founded, developed, and software logic by T Herring, 2021; In the thesis, the e-app is summarized at Appendix 4, expounds upon a narrative with screenshots of the e-app capacity; In the thesis content, the manual legal framework is listed at Table 9, as a Prevent, Protect, Legal Empowerment schematic; refer to Table 1 in Appendix 4.

1) Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Trafficking Protocol),¹⁵⁹⁹ supplemented by the UN Convention against Transnational Organized Crime (UNTOC, or the Palermo Convention),¹⁶⁰⁰ and

2) The UN Convention on the Rights of the Child (CRC, or UNCRC),¹⁶⁰¹ and the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, the Optional Protocol to the Convention

¹⁵⁹⁹ The provisions of the Convention apply, *mutatis mutandis*, to the Protocol (art 1, para 2 of the Protocol); Offences established in accordance with the Protocol shall also be regarded as offences established in accordance with the Convention (art 1, para 3 of the Protocol). This principle, which is analogous to the *mutatis mutandis* requirement, is a critical link between the Protocol and the Convention. It ensures that any offence or offences established by a State in order to criminalize trafficking in human beings as required by art 5 of the Protocol will automatically be included within the scope of the basic provisions of the Convention governing forms of international cooperation such as extradition (art 16) and mutual legal assistance (art 18). It also links the Protocol and the Convention by making applicable to offences established in accordance with the Protocol other mandatory provisions of the Convention on criminalization, obligations in the Convention concerning money-laundering (art 6), liability of legal persons (art 10), prosecution, adjudication, and sanctions (art 11), confiscation (arts 12-14), jurisdiction (art 15), extradition (art 16), mutual legal assistance (art 18), special investigative techniques (art 20), obstruction of justice (art 23), witness and victim protection and enhancement of cooperation (arts 24-26), law enforcement cooperation (art 27), training and technical assistance (arts 29 and 30) and implementation of the Convention (art 34) apply equally to the offences established in the Protocol. Establishing a comparable link is therefore an important element of national legislation on the implementation of the Protocols.

¹⁶⁰⁰ No State can be a party to any of the Protocols unless it is also a party to the Convention (art 37, para 2 of the Convention). Simultaneous ratification or accession is permitted, but it is not possible for a State to be subject to an obligation of any of the Protocols unless it is also subject to the obligations of the Convention; The Convention and the Trafficking in Persons Protocol must be interpreted together (art 37, para 4 of the Convention and art 1, para 1 of the Protocol). In interpreting the various instruments, all relevant instruments should be considered and provisions that use similar or parallel language should be given generally equivalent meaning. In interpreting one of the Protocols, the purpose of that Protocol must also be considered, which may modify the meaning applied to the Convention in some cases (art 37, para 4 of the Convention).

¹⁶⁰¹ UNGA, *Convention on the Rights of the Child*, 20 November 1989, UN, Treaty Series, vol 1577, p 3, The Convention on the Rights of the Child (a/k/a CRC or UNCRC abbreviations commonly used in other texts within this research) was adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force on 2 September 1990, in accordance with art 49; The Committee on the Rights of the Child (the Committee) has identified art 3, paragraph 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child, and applies it as a dynamic concept that requires an assessment appropriate to the specific context.

on a communications procedure, and the CRC Committee General comments.¹⁶⁰²

The concept behind *2Prevent&Protect* is to bring a wealth of information captured in international instruments that are not easily accessible to the layperson and even some practitioners. However, even with the available information, understanding the aligning process lacks the respective crime. The *2Prevent&Protect* e-app and manual paradigm create the alignment that renders the appropriate ratified convention, respective article, geographic location, and national hotline into a document or video that can be submitted to a State and trigger the State obligation act accordingly. Thus, *2Prevent&Protect* fosters the critical elements of human rights, where every person has the right to access for the prevention, protection against child human trafficking and exploitation.

¹⁶⁰² UNCRC; *Optional Protocol to the convention on the sale of children, child prostitution and child pornography*, 2171 UNTS 227, done 25 May 2000, entered into force 18 January 2002, art 2(a); Sale of children for exploitation: defined as '[a]ny institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour' (art 1(d)). Subsequent developments call into question whether exploitative purpose or result are in fact required. For example, an Optional Protocol to the Convention on the Rights of the Child defines 'sale of children' as: 'any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration'. This broader definition could potentially operate to extend the concept of sale of children to include practices such as sale for adoption and even commercial surrogacy arrangements; UN Human Rights Council, *Optional Protocol to the Convention on the Rights of the Child on a communications procedure: resolution/adopted by the Human Rights Council*, 14 July 2011, A/HRC/RES/17/18, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/66/138 of 19 December 2011, entered into force 14 April 2014; General comments, the UN Human Rights Treaty Committees publish their interpretation of the content of human rights provisions, known as general comments on thematic issues or methods of work; All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially two years after acceding to the Convention and then every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of concluding observations. <www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx> accessed 30 December 2019.

State Responsibility. The basis for the state alignments and the underpinning of the legal framework are the obligations that arise under art 1, 2(a)(b), and 3 of the ILC's Articles on Responsibility of States for Internationally Wrongful Acts, adopted on 10 August 2001.¹⁶⁰³ Under the legal framework outlined under footnote 2, conventions and articles are electronically tagged within the e-app to represent the primary report outcomes for practitioners/advocates gauged to provide optimum legal empowerment to child victims. The conventions and articles listed in footnotes 4-5 represent the primary report outcomes for child victims. However, reports include footnote two's critical elements and the codified ILC's Articles on Responsibility of

¹⁶⁰³ Article 1, Article 2(a)(b), and 3; wherein, Article 1, in the ruling of *Quiborax S.A., Non-Metallic Minerals S.A. and Allan Fosk Kaplún v the Plurinational State of Bolivia*, the courts affirmed that States incur responsibility for their internationally wrongful acts is 'a basic principle of international law'. Much the same, the European Court of Human Rights considered art 2 of the State Responsibility Articles and the excerpts of the 'commentary thereto as international law' referenced in *Likvidējāmā P/S Selga and Lūcija Vasilevska v Latvia*. Both rulings confer that the research states, Bangladesh, and Myanmar are also subjected to international law for wrongful acts and omissions. Concurrently, member states of the UN are obligated by the UN Charter to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. In a region that is prominent with dual legal systems, art 3, characterizations of an act of a State as internationally wrongful obliges States is governed by international law and does not conform to domestic law, ICJ, in Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v Serbia*).

However, determining if there is a State responsibility for trafficking requires the unfolding of complex layers of legal frameworks. Articles 42(a)(b) and art 48(1)(a)(b) set out the provisions of who may invoke State Responsibility and to whom the obligation is owed. Seeking guidance from the Barcelona Traction case, where the obligations were *erga omnes*; and, in the earlier Southwest Africa cases when the courts ruled whether the applicant states had legal rights or interests sufficient for jurisdiction. Thus, it is the law of responsibility which actually determines whether or not we can even identify the conduct and the respective actor with the legal capacity to breach international law. There have been instances where the Court came close to giving effect to individual rights in the LaGrand case and in an earlier advisory opinion on matters regarding UN staff members.

States for Internationally Wrongful Acts, adopted on 10 August 2001¹⁶⁰⁴ as an underpinning instrument.

The e-app and manual framework reflect the research outcomes that are a significant contribution to prevention and protection barriers lay in the capacity for victims to accurately report crimes to authorities, which in turn ‘trigger’ the States’ responsibility to provide access to justice and for practitioners to optimize laws available to them to protect. The revised framework presents a paradigm that outlines the international laws, human rights, and criminal law that provide optimum prevention and protection.

The research suggests that combining human rights and criminal law presents more robust support for child human trafficking victims. A substantive examination of the Southeast Asian case law juxtaposed across global legal reports proffers that the gap in combining all ratified international laws toward prevention and protection is universal. Subsequently, the proffered framework, *2Prevent&Protect*®, provides solutions of how each of the international instruments under investigation can be used to prevent, protect, and mitigate against child human trafficking and provide: legal empowerment, the effects of deterrence, and redress.

¹⁶⁰⁴ UNGA, Responsibility of States for internationally wrongful acts: resolution / adopted by the General Assembly, 8 January 2008, A/RES/62/61.

The Manual Outline of the Framework and the ‘e-app’ process flow - 2*Prevent&Protect*®

The app performs, electronically, the formulated and prescribed written framework described and illustrated in Table 9 in the text but repeated in Appendix 4 as Table 1. Translated into an electronic process, based upon a subscribed¹⁶⁰⁵ e-app platform, pictured in Appendix I or manual outline sets out a *formula* that allows the practitioner/advocates and vulnerable person to:

- 1) Identify themselves using their phone number or email address to sign in and establish access to the e-app (2*Prevent&Protect*®).¹⁶⁰⁶ There is no requirement that a real name be used. However, the document's signature process authenticates the person(s) making the respective human-trafficking claim. The intent is that the outcome report can be provided to the appropriate authority to ‘trigger’ the States’ obligation in both pdf and video.
- 2) Next, once signed in, the person can identify him or herself as a practitioner or victim. The e-app guides the individual through a series of queries that outline their human trafficking experience to produce a PDF and video report¹⁶⁰⁷ for submission to the appropriate authorities.

¹⁶⁰⁵ Currently operating under a paid subscription with Zoho Corp, but subject to change to other subscribed platform users.

¹⁶⁰⁶ The phone system is utilized as most vulnerable individuals do not have an email address; but the majority of vulnerable persons can gain access to a phone.

¹⁶⁰⁷ The video can fulfill the need to write out the complaint and is well-suited for individuals with literacy issues or lack the capacity to write out their human trafficking experience. Either way, the system is triggered to match the location and helpline data, and the appropriate convention and article to ‘trigger’ the States obligation to prevent, protect, and mitigate against human trafficking.

- 3) The e-app allows a drop-down designation of the type of crime, the region/country, and tags the selected country's respective ratified international instruments as focused on throughout this research.
- 4) Upon the country's notification, the e-app tags the country ratified and the national, State-run, human trafficking contact information (website and phone number) as a resource for report/claim submission.
- 5) The e-app is formulated in each of the UN-recognized languages. The report can be used as supporting evidence or a template for practitioners to build a legal case/brief for court submission in pdf or video.
- 6) The e-app application is usable on i-phones and Android phones. In addition, it is available on the Google Play Store® and AppStore® and globally accessible.

Appendix 4, Table 1. Proffered Legal Framework, Children's prevention, protection, and mitigation against trafficking and exploitation (Practitioner/Advocate Guide)
[to be utilized with or without licensed e-app, 2*Prevent&Protect*®]

Strands of Proffered Framework: General Deterrence ¹⁶⁰⁸ Specific Deterrence ¹⁶⁰⁹ Legal Empowerment ¹⁶¹⁰ Redress ¹⁶¹¹	Palermo Trafficking Protocol	Supplemented by: UN Convention against Transnational Organized Crime	Convention on the Rights of the Child (CRC)	CRC, Optional Protocol to the Convention on the sale of children	CRC, Optional Protocol to the Convention on a Communications Procedure
1st Strand (Prevention, Protection, & Promotion) a) Specific Deterrence b) General Deterrence c) Legal Empowerment d) Redress	a) art 5 b) art 5 c) arts 5, 6-9, 11-13 d) art 5	a) arts 5, 6, 8, 23 b) arts 5, 6, 8, 23 c) arts 18-31 d) arts 18-31	a) arts 1-4, 19, 32-36, 40 b) arts 1-4, 19, 32-36, 40 c) arts 3, 11, 21, 32-40 d) arts 3, 11, 21, 32-40	a) arts 3-7, 9-11 b) arts 3-7 c) arts 3-8 d) arts 8(1-5), 9-10	a) art 3 b) art 4(1)(2) c) arts 13-14 d) arts 5-12
2nd Strand, Redress (Protection) a) Specific Deterrence b) General Deterrence c) Legal Empowerment d) Redress	a) arts 5 b) arts 5 c) arts 6-9, 11-13 d) arts 6-8	a) arts 5, 6, 8, 10-14 b) art 23 c) art 31 d) arts 5, 6, 8, 23	a) arts 1-4, 11, 19, 32-36, 40 b) arts 1-4, 11, 19, 32-36, 40 c) arts 3, 11, 21, 32-36, 40 d) arts 3, 11, 19, 32, 34-36, 40	a) arts 8(1)(g), 9-10 b) arts 1-7 c) art 8(1-5) d) arts 8, (1-5), 9-10	a) art 3 b) art 4(1)(2) c) arts 13-14 d) arts 5-12
3rd Strand, Prevention & Protection a) Specific Deterrence b) General Deterrence c) Legal Empowerment d) Redress	a) art 5 b) art 5 c) arts 6-9, 11-13 d) arts 6-8	a) arts 24-31 b) arts 24-31 c) art 31 d) arts 5, 6, 8, 23, 31	a) arts 3, 11, 19, 32-36, 40 b) arts 1-4, 11, 19, 32, 34-36, 40 c) arts 1-4, 11, 19, 32, 34-36, 40 d) arts 3, 11, 19, 32, 34-36, 40	a) art 8(1) (a-g) c) art 8(1) (a-g) d) arts 9-10	a) art 3 b) arts 4(1)(2) c) arts 13-14 d) arts 5-12

¹⁶⁰⁸ General deterrence: (Prevention), (Protection), (Promote) potential perpetrators thinking about committing the crime, protecting potential victims, and promoting legal empowerment under the full strength of the law; note that there are several articles that comprise each instrument; however, the articles noted target child human trafficking and exploitation.

¹⁶⁰⁹ Specific deterrence: (Prevention), (Protection), (Promote) apprehend, prosecute, and penalize traffickers, who have engaged in crime; protecting the victim from continual and future re-victimization, and promoting the correctional system to maximize the pain of committing the crime and to minimize its benefits.

¹⁶¹⁰ Legal Empowerment: access to justice using the provisions of embedded laws within the States in-force treaty obligations; Report of the UN High Commissioner for Human Rights, 'Access to Justice for Children', A/HRC/25/35 16th December 2013, 6 para 13 accessed 19 December 2020.

¹⁶¹¹ Redress: (Prevention), (Protection), (Promote), during the criminal justice system process, the children, who are victims of the offences described in the Protocol, the best interest of the child 'shall' be a primary consideration; Report of the UN High Commissioner for Human Rights (n 1610).

IV. Research future implications

The study investigated legal scholarship that elucidated domestic, international, and transnational issues, past and present, concerning trafficked and exploited children's protection. This study's future implications include expanding the child trafficking and exploitation research to include a socio-legal approach. Also, moving forward, the study encourages practitioners to adapt child trafficking and exploitation frameworks to apply to conflict and post-conflict legal jurisdictions and regions. The research opens avenues for future research using the study's outcomes.

This study also illustrates the next level of application of the intervention. Understanding societal behaviors through the lens of Dahrendorf's Social Conflict Theory and other sociological theories is crucial. It aided the researcher to convey that if the rulers are not held responsible or regulated, the probability of protecting the vulnerable has diminished. Equally, the study provides practitioners an example of concrete variables when establishing and adopting a legal framework to the appropriate State's jurisdiction in a manual or e-app format with the multi-language, global capacity resource. The *2Prevent&Protect*® manual and e-app platform serve as a universal resource that can serve globally and build further research from outcomes. There is a likelihood, moving forward, the international instruments will be viewed differently.

Appendix 4. Figure 1, 2Prevent&Protect®, (e-app, web-based home page screenshot, and data sampling

2Prevent&Protect e-app screenshot, computer-based home screen view, 9 April 2021

2 Prevent & Protect

Select If you are a Victim or Practitioner*

- ☐ Victim
- ☐ Practitioner

Submit

Reset

Victim Details

Victim Name*

Phone

+44

Current Location*

Address Line 1

City / District

State / Province

Postal Code

-Select-

Country

Enter an address to plot on map

Helpline Number

Reason

Convention Name

-Select-

Article Number

-Select-

Type of Crime (Crimes against Person) or (Organized Criminal Enterprise)

- ☐ Removal of organs/organ exploitation
- ☐ kidnapping for the purpose of exploitation
- ☐ Sexual assault: defined as the action or an act of forcing an unconsenting person to engage in sexual activity; a crime involving forced sexual contact or "sexual contact that usually involves force upon a person without consent
- ☐ fraudulent papers
- ☐ cybercrime
- ☐ Illicit money flows
- ☐ Forced labour
- ☐ sexual slavery
- ☐ the recruitment of persons
- ☐ forceful transportation of persons for the purpose of exploitation
- ☐ the purchase, sale, transfer, harbouring or receipt of persons for the purpose of exploitation
- ☐ by threat or use of violence, abduction, force, fraud, deception, or coercion (including abuse of authority) - trafficking in persons

- ☐ debt bondage (for the purpose of placing or holding such person, whether for pay or not, in forced labor or slavery-like practices, in a community other than the one in which such person lived at the time of the act)
- ☐ Sex trafficking, properly defined, is the repeated rape of an individual
- ☐ slavery, servitude, forced or compulsory labour
- ☐ domestic servitude
- ☐ criminal activity (e.g., cannabis cultivation, petty street crime, illegal street trade, etc.)
- ☐ sexual exploitation (brothels, closed community, for child abuse images)
- ☐ benefit fraud: application of residence
- ☐ forced begging
- ☐ illegal adoption
- ☐ forced marriage
- ☐ forced child marriage
- ☐ groomed with money, gifts or through relationships and forced to carry out day to day dealing
- ☐ The inducement or coercion of a child to engage in any unlawful sexual activity
- ☐ The exploitative use of children in prostitution or other unlawful sexual practices
- ☐ The exploitative use of children in pornographic performances and materials
- ☐ abduction of, the sale of or traffic in children for any purpose or in any form
- ☐ No child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment
- ☐ Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age
- ☐ the deprivation of a child of his or her liberty unlawfully or arbitrarily
- ☐ recruiting any person who has not attained the age of fifteen years into their armed forces
- ☐ failure to protect and care for children who are affected by an armed conflict
- ☐ any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment; or armed conflicts
- ☐ denial of a child's sense of dignity and worth

- ☐ the abduction of the sale of or traffic in children for any purpose or in any form
- ☐ failure to take all appropriate measures, including legislative, administrative, social, and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties and
- ☐ failure to protect a child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development
- ☐ failure to protect a child protects the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.
- ☐ prostitution of others or other forms of sexual exploitation
- ☐ servitude
- ☐ confiscation of papers (identification cards; passports)
- ☐ force transport over State/country borders
- ☐ sale of children
- ☐ child sex tourism; Sexual exploitation of children in the context of travel and tourism
- ☐ Offering, delivering, or accepting, by whatever means, a child for the purpose of a. Sexual exploitation of the child; b. Transfer of organs of the child for profit; c. Engagement of the child in forced labour
- ☐ Child pornography by any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes
- ☐ physical assault
- ☐ assault and battery: the action of threatening a person together with the action of making physical contact with them
- ☐ indecent acts to a minor/child: Indecent liberties are acting that society regards as "indecent or improper." Again, the definition is quite broad to include as many acts as possible.
- ☐ Lewd or lascivious acts include acts such as: Exposing one's genitals to a child; Attempting to engage a child in sexual activity; Asking to play with a child's genitals or breasts
- ☐ grievous bodily harm
- ☐ unlawful physical contact
- ☐ child sex tourist; Travelling perpetrators of child sexual offences
- ☐ Child prostitute, child sex worker; Victim of sexual exploitation
- ☐ Webcam child sex tourism/webcam child sex abuse; Live online child sexual abuse

- ☐ psychological maltreatment, mental abuse, verbal abuse, and emotional abuse or neglect
- ☐ sexual harassment, verbal abuse and threats of a sexual nature, exposure, unwanted touching, and incest
- ☐ acts of omission (e.g., neglect/lack of supervision/lack of parental care leading to children's vulnerability to sexual abuse/exploitation)
- ☐ all violations of their human dignity and sexual integrity
- ☐ sexual violence may constitute a form of torture or other cruel, inhuman, or degrading treatment or punishment under certain

circumstances

- ☐ Cruel, Inhuman or Degrading Treatment or Punishment
- ☐ Child sexual abuse: defined as "any sexual activity between a child and closely related family member (incest) or between a child and an adult or older child from outside the family. It involves either explicit force or coercion.
- ☐ "non-contact sexual abuse" is sexual harassment of children, including verbal harassment such as unwanted sexual comments
- ☐ Sexual touching of a child is a form of sexual abuse
- ☐ domestic servitude - in a private home or commune
- ☐ child soldier
- ☐ forced to work in precarious conditions
- ☐ child maltreatment
- ☐ laundering of the proceeds of crime
- ☐ Criminal activities of the organized criminal group
- ☐ Transnational Criminal offence: (a) It is committed in more than one State; (b) It is committed in one State, but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State...
- ☐ "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty
- ☐ "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes

Document Type

- ☐ Image
- ☐ Video
- ☐ Audio

☐ Document

Signature

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Practitioner Details

Practitioner Name

First Name

Last Name

Child Name

-Select-

Phone

+44

Current Location*

Address Line 1

City / District

State / Province

Postal Code

-Select-

Country

Enter an address to plot on map

Reason/Query from Practitioner*

Article Name

-Select-

Article Number

-Select-

Type of Crime

- ☐ Removal of organs/organ exploitation
- ☐ kidnapping for the purpose of exploitation
- ☐ Sexual assault: defined as the action or an act of forcing an unconsenting person to engage in sexual activity; a crime involving forced sexual contact or "sexual contact that usually involves force upon a person without consent
- ☐ fraudulent papers
- ☐ cybercrime
- ☐ Illicit money flows
- ☐ Forced labour
- ☐ sexual slavery
- ☐ the recruitment of persons
- ☐ forceful transportation of persons for the purpose of exploitation
- ☐ the purchase, sale, transfer, harbouring or receipt of persons for the purpose of exploitation
- ☐ by threat or use of violence, abduction, force, fraud, deception or coercion (including abuse of authority) - trafficking in persons
- ☐ debt bondage (for the purpose of placing or holding such person, whether for pay or not, in forced labor or slavery-like practices, in a community other than the one in which such person lived at the time of the act

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Document Type

- ☐ Image
- ☐ Audio
- ☐ Video
- ☐ Document

Signature

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Appendix 5.¹⁶¹²

Glossary of terms, operationalization of research language, expansion of convention details, and applicability within the study to enhance understanding.

¹⁶¹² Glossary contains information, verbatim, from sources cited throughout the thesis and not paraphrased.

AIRE Center (*Case of Chowdury and Others v Greece*). Discussion of the case, The AIRE Centre considered the necessary working conditions for Article 4(2) to be triggered, the degree of a restriction of liberty as well as a person's human dignity, the provisions of the European Social Charter and EU law concerning conditions of work; The court finds that forced labour constitutes one form of exploitation subsumed by the definition of trafficking, as is clearly shown in Article 4a of the Council of Europe Convention on Action against Trafficking in Human Beings - The positive obligations under Article 4(2) of the ECHR must be interpreted in light of the Council of Europe Convention and the manner in which it has been interpreted by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings. Accordingly, contracting States have three positive obligations under Article 4(2): a) an appropriate legal and regulatory framework for the criminalization of human trafficking; b) operational measures on the prevention of human trafficking and the protection of victims' rights; c) an effective investigation and judicial procedure.

Argumentation Model. Stating that the function of an argumentation scheme is to orchestrate a dialogue by use of 'appropriate critical question[s],' the asking of which shifts 'a burden or weight of presumption to the other side in a dialogue'. In his argumentation model, argumentation is a novel approach to analyzing how claims can be justified in response to challenges. The model replaces the old concepts of 'premise' and 'conclusion' with the new concepts of 'claim,' 'data,' 'warrant,' 'modal qualifier,' 'rebuttal,' and 'backing.' Because of the impact Toulmin's ideas about logic and everyday reasoning have had, he can be regarded as one of the founding fathers of modern argumentation theory.

Article 1, paras 403, 414-417. States parties may, however, apply the extradition powers to other offences (such as trafficking that does not involve an organized criminal group) and, under Article 16(2), are encouraged to do so. Also, a reference to the Commentary to the Trafficking Protocol, pp 205-206, assists States in implementation.

Article 1, CRC. Make an exception to the applicability of the CRC, mentioning the possibility that the age of majority is attained before the age of 18 under national law. This is also the case for the OPSC, which explicitly refers to Article 1 of the CRC and thus adopts the exact scope of applicability Article 1, UNCRC.

Article 1 of the 1954 UN Convention relating to the status of stateless persons, 'a person who is not considered a national by any State under the operation of its law' is described as a stateless person. Thus, these people can be considered de jure stateless persons, although the term de jure is not used in the Convention itself but was later

used in the UN Guidelines on Statelessness. The 1954 Convention is the only international treaty explicitly aimed at regulating the treatment of stateless persons. The League of Nations 1930 Special Protocol Concerning Statelessness, which came into force in 2004, does not address standards of treatment but is concerned with specific obligations of the state whose nationality a stateless individual last possessed.

Article 2 of the OPSC defines child pornography as ‘any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual Articles of a child for primarily sexual purposes’; Paragraphs 2 to 4 of Article 3 of the OPSC cover several issues concerning responsibility for participation in the offences defined in the first paragraph of the Article. Paragraph 2 contains a provision that States Parties shall criminalize the commission of the sale of children, child prostitution, and child pornography. Parties are also compelled to criminalize an attempt to commit any of the acts listed in paragraph 1 of Article 3, as well as complicity or participation in any of the acts. This is to be done following each State’s general legal provisions concerning attempt, complicity, and participation.

Article 3, CRC. Provides: ‘(1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration; (2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures; (3) States Parties shall ensure that the institutions, services, and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 9(5) states that State parties shall adopt or strengthen legislative or other measures, such as educational, social, or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking’.

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Article 10(1), the Palermo Trafficking Protocol. Mandates information exchange among law enforcement, immigration, and other relevant authorities of States Parties to allow them to identify the types of travel documents, means, and methods used to facilitate human trafficking; Article 11(1) of the Palermo Protocol obliges States

Parties, including transit countries, to strengthen measures to prevent and detect trafficking in persons at their borders. In contrast, Article 11(6) provides that States Parties 'shall consider strengthening cooperation among border control agencies by, among other things, establishing and maintaining direct channels of communication'. Measures to prevent human trafficking on commercial carriers are elaborated in Articles 11(2)– (3); In response to the obligations outlined in Article 9 of the Palermo Protocol, transit countries are to establish policies, programmes, and other measures, such as socioeconomic initiatives, research, information, and mass media campaigns in collaboration with non-governmental organizations (NGOs) to prevent trafficking in persons. In addition, Articles 9(4)– (5) specifically require countries combating human trafficking to cooperate multilaterally to alleviate factors that make victims vulnerable, including 'poverty, underdevelopment and lack of equal opportunity', and to diminish demand; Finally, since falsification of documents can facilitate trafficking, countries are obligated under Article 12 of the Palermo Protocol to ensure the security and control of documents they issue.

Article 16, UN Transnational Organized Crime Convention. The obligation to make trafficking an extraditable offence would only apply to offences constituting a 'serious' transnational crime under the Convention and protocol and involving an organized criminal group: Legislative Guide to the Organized Crime Convention and its Protocols.

Article 16(2) of the Convention on the Elimination of All Forms of Discrimination against Women, The betrothal and the marriage of a child [under the age of 18] shall have no legal effect. All necessary action, including legislation, shall be taken to specify a minimum age for marriage and make the registration of marriages in an official registry compulsory.'

Article 31, VCLT, addresses the VCLT's general rules of treaty interpretation: '1. a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the treaty's terms in their context and in the light of its object and purpose'.

Article 45(d) of the CRC allows the Committee to make suggestions and general recommendations. Like other human rights treaty bodies, the CRC Committee adopts general comments on specific provisions or themes to assist states in their reporting obligations and the implementation of the CRC.

Article 273f of the Dutch Criminal Code, which defines trafficking, includes a means element relevant to establishing the crime of trafficking.

Articles on the Responsibility of States for Internationally Wrongful Acts. General Assembly took note of the Articles (hereinafter referred to as the State responsibility Articles), the text of which was annexed to that resolution, and commended them to the attention of Governments without prejudice to the question of their future

adoption or other appropriate action; Under Toulmin's argumentation model, the State Articles of Responsibility serve as the authority warrants to connect the authoritative laws in support of the fact and policy-based claims.

ASEAN. 'Most Association of Southeast Asian Nations (ASEAN) member countries perceive themselves as non-immigrant nations. It means that most ASEAN countries are not the destination for immigrants to settle. This approach also appears when they respond to the massive influx of refugees in the Southeast Asian region. In the absence of ASEAN regional mechanism on refugee protection (which means covered all stage of treatment for refugee)'. Association of Southeast Asian Nations, or ASEAN, was established on 8 August 1967 in Bangkok, Thailand, signed the ASEAN Declaration (Bangkok Declaration) by the founding members of ASEAN, namely Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei Darussalam then joined on 7 January 1984, Viet Nam on 28 July 1997, and Cambodia on 30 April 1999, making up the ten members of ASEAN today. The ten ASEAN member states (AMS) ratified the ASEAN Charter, which entered into force on 15 December 2008. With the entry into force of the ASEAN Charter, ASEAN will henceforth operate under a new legal framework and establish several new organs in its community-building process.

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Child sexual abuse. The initial definition of child sexual abuse comes from WHO, Report of the Consultation on Child Abuse Prevention, Geneva, 29-31 March 1999; The WHO Guidelines for medico-legal care for victims of sexual violence: WHO, WHO Guidelines for medico-legal care for victims of sexual violence (WHO 2003) Chapter 7: Child Sexual Abuse provides the details for the types and conditions of abuse outlined in the definition. The three types of child sexual abuse:

- (i) non-contact sexual abuse (for example, threats of sexual abuse, verbal sexual harassment, sexual solicitation, indecent exposure, exposing the child to pornography);
- (ii) contact sexual abuse involving sexual intercourse (that is, sexual assault or rape); and
- (iii) contact sexual abuse, excluding sexual intercourse but involving other acts such as inappropriate touching, fondling, and kissing. Child sexual abuse is often carried out without physical force instead of manipulation (psychological, emotional, or material).

Child-sensitive. '*Child-sensitive*. The Global Compact promotes existing international legal obligations with the rights of the child. It always upholds the principle of the child's best interests as a primary consideration in all situations concerning children in the context of international migration, including unaccompanied and separated children; Child-sensitive. The Global Compact promotes existing international legal obligations concerning the rights of the child. It always upholds the principle of the child's best interests as a primary consideration in all situations concerning children in the context of international migration, including

unaccompanied and separated children; (i) Whole-of-government approach. The Global Compact considers that migration is a multidimensional reality that cannot be addressed by one government policy sector alone. To develop and implement effective migration policies and practices, a whole-of-government approach is needed to ensure horizontal and vertical policy coherence across all sectors and levels of government; (j) the Whole-of-society approach. The Global Compact promotes broad multi-stakeholder partnerships to address migration in all its dimensions by including migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, national human rights institutions, the media, and other relevant stakeholders in migration governance.

CLEP. ‘The commission emphasized that legal empowerment is a process that serves two end goals – protection and opportunity: ‘protecting poor people from injustice – such as wrongful eviction, expropriation, extortion, and exploitation – and offering them equal opportunity to access local, national, and international markets’; The CLEP defined legal empowerment as ‘a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.’ For the CLEP, legal empowerment has ‘four pillars’: access to justice and the rule of law, ‘the fundamental and enabling framework’.

Convention for the Suppression of the Trafficking in Persons and the prostitution of Others (1949 Convention). In accordance with Article 24; the following international instruments were in force, (1) International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the UN on 3 December 1948, (2) International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol, (3) International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the UN on 20 October 1947, (4) International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol, Whereas the League of Nations in 1937 prepared a draft Convention extending the scope of the above-mentioned instruments, and Whereas developments since 1937 make feasible the conclusion.

CMS Gas Transmission Company v Argentine Republic (ICSID Case no ARB/01/8), Decision on Annulment of 25 September 2007. CMS claimed that the measures at issue violated several of Argentina’s obligations under the Argentina-US BIT and requested compensation of US \$261 million (the decreased value of its shares in TGN plus interest and costs).

Committee of Experts on the Application of Conventions and Recommendations. An independent body composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The

annual report of the Committee of Experts covers numerous matters related to the application of ILO standards.

Common-Law Countries. Common law countries generally give significant weight to prior judicial opinions. By adhering to the outcomes relating to questions of law of prior decisions, familiar law judges build a body of jurisprudence that, hopefully, leads to consistent and predictable outcomes. In this way, adherence to binding or persuasive judicial opinions serves the same purpose as *stare decisis*: '[The] promotion of the evenhanded, predictable, and consistent development of legal principles.

Composite crime. A genuinely distinct and different from a complex or compound crime. In a composite crime, the composition of the offenses is fixed by law. Still, in a complex or compound crime, the combination of the offenses is not specified but generalized, that is, grave and/or less grave, or one offense being the necessary means to commit the other. In a composite crime, the penalty for the specified combination of crimes is specific. Still, in a complex or compound crime, the penalty corresponds to the most serious offense imposed in the maximum period. A light felony that accompanies a complex or compound crime commission may be subject to separate information. Still, a light felony that accompanies a composite crime is absorbed. *People v Esugon*, G.R. no 195244, June 22, 2015

Compromis'. In relation to the principle of responsibility, judicial disputes answer wider questions that 'rest on a special basis in the form of a *compromis*' and may exclude or impact the tribunals' capacity to decide a problem.

Consolidated Treaty series covers the period from 1648 to the early years of the present century; the League of Nations Treaty Series (LNTS) covers the period from 1920 to the Second World War, and the UN Treaty Series covers post-war treaties. In addition, several states publish collections of treaties to which they are published, such as the United Kingdom Treaty Series and the United States Treaty series.

Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3; The Committee on the Rights of the Child (the Committee) has identified Article 3, paragraph 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child, and applies it is a dynamic concept that requires an assessment appropriate to the specific context. Other literature also highlights Article 6, Right to life, Article 9, Right not to be separated from parents (unless this harms the child), Article 19, Right to be protected from all forms of abuse Article 20, Right to special attention (e.g., adoption and fostering if deprived of the family), Article 32, Right to be protected from economic exploitation. Article 33, Right to be protected from illicit drugs.

CRC Committee. Elaborates its general comments to clarify the normative contents of specific rights provided under the Convention on the Rights of the Child or particular themes of relevance to the Convention and offer guidance about practical implementation measures. In addition, general comments provide interpretation and analysis of specific Articles of the CRC or deal with thematic issues related to the child's rights.

CRC Committee. Like other human rights treaty bodies, the CRC Committee adopts general comments on specific provisions or themes to assist states in their reporting obligations and the implementation of the CRC.

CRC. There is one exception in the CRC to the upper age limit of 18: Article 37.2-3 CRC refers to persons 'who have not attained the age of fifteen years' with regard to recruitment and participation in hostilities; however, States parties to the OPAC are now under stricter obligations that in principles use 18 as the upper age limit, with the exception of voluntary recruitment.

Critical cases. Critical cases where contradictory and paradoxical issues can be illuminated could contribute to existing theory or illustrate the inadequacy of theories and methods used... 'Particularly how a critical-case can be used for generalizations' (p 236).

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DARIO commentaries: Text of Articles with commentaries divided into the following Articles: definition and nature of treaties (Article I), the conclusion of treaties (Article II), Conditions of validity of treaties (Article III). Article III is subdivided into the following sections: capacity of the Articles and their agents (sec. I), the reality of consent (sec. II), the legality of the object of the treaty (sec. III), and form and publicity (sec. IV); Report of the Special Rapporteur, Sir Hersch Lauterpacht (5th session of the ILC (1953)); A/CN.4/63 (in Yearbook, 1953, vol. II); ILC Report, A/2456 (A/8/9), 1953, chap. V(II)(i), para 164.

Declaration of the Child. After considering several options, including drafting an entirely new declaration, the UN resolved in 1946 to adopt the document, in a much-expanded version, as its statement of children's rights. Many different governments were involved in the drafting process. A slightly expanded version, with seven points in place of five, was adopted in 1948; then, on 20 November 1959, the UNGA adopted a Declaration of the Rights of the Child, based on the structure and contents of 1924 original, with ten principles. An accompanying resolution, proposed by the delegation of Afghanistan, called on governments to recognize these rights, strive for their acceptance, and publicize the document as widely as possible.

Disadvantaged Groups. The term disadvantaged groups used within this study refers to persons who experience a higher risk of poverty, social exclusion, discrimination, and violence than the general population. The UN's working definition of disadvantaged groups includes, but is not limited to, ethnic minorities, migrants, people with disabilities, isolated elderly people, and children.

Draft Articles on Responsibility of States for International Wrongful Acts. The UN established the International Law Commission in 1948 to assist in developing and codification of international law. The Draft Articles on State Responsibility are an authoritative statement on the law, referred to, but not yet adopted by the General Assembly.

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ECtHR's HUDOC database of the Court's. Case-law enables searches to be done by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarized through the keywords); The SHERLOC portal is an initiative to facilitate the dissemination of information regarding the implementation of the UN Convention against Transnational Organized Crime, the three Protocols thereto and the international legal framework against terrorism; UNODC Database: To facilitate the data collection and the dissemination of information, UNODC has developed a variety of online databases dedicated to various areas of UNODC's mandates. The databases provide easy access to laws, jurisprudence, and other information on existing national practices and strategies, allowing practitioners to expand their knowledge and learn from the experiences of other countries; Human Trafficking Knowledge Portal: The Human Trafficking Knowledge Portal of SHERLOC aims to promote the uniform interpretation and application of the Trafficking in Persons Protocol through dedicated case law and legislation database; Online public court records for Bangladesh and Myanmar; Legal Field Research in Malaysia and Thailand.

ELM. The application of likelihood applies to the development of the elaboration likelihood model (ELM) across three decades of research. The ELM began as a theory about the processes responsible for attitude change and the strength of the attitudes that result from those processes. It has now been applied to a wide variety of critical change phenomena. By focusing on the core mechanisms of change, the ELM has organized the many different theories, outcomes, and variables relevant to persuasion and influence.

European Court of Human Rights (ECtHR) judgment in the case of *Loizidou v Turkey* (1995), para 72; States cannot refer to their national regulations as justification for not fulfilling their international obligations (VCLT, Article 27); It is a duty for states to criminalize sexual exploitation and prosecute those who offer children's sexual services, as well as those who purchase or attempt to purchase sexual acts from

children. Clearer obligations are contained in the 2000 UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography Articles 3(1)(b) and (2).

Evolving capacities. Evolving capacities is the concept in which education, child development, and youth development programs led by adults consider the capacities of the child or youth to exercise rights on their behalf. It is also directly linked to the right to be heard, requiring adults to be mindful of their responsibilities to respect children's rights, protect them from harm, and provide opportunities so they can exercise their rights. The concept of evolving capacities is employed internationally as a natural alternative to famous child and youth development concepts.

Exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude, or the removal of organs

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Forced Displaced. Forced displacement, following the Asian Tsunami of December 26, 2004, and the tragedies of Haiti, many stories of child trafficking were reported. The Thailand Tsunami made an estimated 35,000 children lose one of their parents, thus vulnerable to trafficking'. 'Even before Tsunami, the Southeast Asian region and the so-called Mekong Delta was known as a hotbed of human trafficking. Indo-China grabbed the media attention as a source of trafficked women and children for neighboring countries and as far as Europe and North America'.

Forced Migration. The nonvoluntary movement of persons to escape armed conflict, a situation of violation of his or her rights, a natural disaster, or a man-made disaster. This term applies to refugee movements and forces exchanges of populations among States.

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General Comments. General comments constitute an authoritative interpretation of States parties' expectations to implement the obligations contained in the CRC.

Generalizability. Generalizability usually implies that results are transferable. It does not work the other way around: having transferability does not mean that your results are generalizable. Some studies (especially true with case studies) are incredibly detailed and specific about an exceedingly small and defined group. The results, then, are usually not applicable to the general population. However, the results still have transferability—as long as the results are applied to the same group.

Generalizability. The generalizability of a study's results depends on the researcher's ability to separate the 'relevant' from the 'irrelevant' facts of the study and then carry forward a judgment about the relevant facts'.

Global Consultations. Global Consultations on International Protection/Third Track: Refugee Protection and Migration Control: Perspectives from UNHCR and IOM, UNHCR, and IOM, EC/GC/01/11, 31 May 2001.

Globalization. It represents a substantial impact on the definition of ‘national security,’ as the interconnectedness of many threats calls for them to be simultaneously addressed at the national and global levels. Law enforcement efforts must increasingly include elements of international and transnational communication and cooperation. Police forces in different countries must find common ways to share data and track international crime trends; presently, these cooperative efforts are not well done, as illustrated in the cited cases.

Goekce v Austria, Sahide Goekce (deceased) v Austria, Comm. 5/2005, U.N. Doc. A/62/38, at 432 (2007), Committee on the Elimination of Discrimination against Women, 2007, CEDAW, domestic and intimate partner violence, international law; Sahide Goekce's husband shot and killed her in front of their two daughters in 2002. Police reports show that law enforcement failed to respond in a timely fashion to the dispute that resulted in Ms. Goekce's death. The complaint to the Committee on behalf of the decedent stated that Austria's Federal Act for the Protection against Violence within the Family provides inadequate protection for victims of repeated, severe spousal abuse and that women are disproportionately affected by the State's failure to prosecute and take reports of domestic violence seriously. The Committee found that although Austria has established a comprehensive model to address domestic violence, State actors must investigate reports of this crime with due diligence to provide redress and protection effectively. The Committee concluded that the police knew or should have known that Ms. Goekce was in danger and were therefore accountable for failing to exercise due diligence in protecting her.

Golder v the United Kingdom, 21 February 1975, § 29, Series A no 18; Article 31 §1 of the Vienna Convention, The Court must have regard to the fact that the context of the provision is a treaty for the adequate protection of individual human rights and that the Convention must be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions; Article 60, Vienna Convention on the Law of Treaties, where a material breach occurs when, 1) ‘the violation of a treaty’s *object or purpose*, or 2) the violation of any clause essential to the accomplishment of the *object or purpose*, even if that particular clause is not itself part of the object or purpose’.

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History of the Child. ‘The history of child protection in America is divisible into three eras: The first era extends from colonial times to 1875 and may be referred to as the era before organized child protection. The second era spans 1875 to 1962 and

witnessed the creation and growth of organized child protection through nongovernmental child protection societies. The year 1962 marks the beginning of the third or modern era: the era of government-sponsored child protective services'; 2014, a third Optional Protocol was adopted, allowing children to bring complaints directly to the Committee on the Rights of the Child. The Committee then investigates the claims and can direct governments to act.

Human Rights Approach. The commentary explains that a human rights-based approach is a conceptual framework for dealing with a phenomenon such as trafficking normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It affirms that such an approach requires analyzing how human rights violations arise throughout the trafficking cycle and States' obligations under international human rights law. It seeks to both identify and redress the discriminatory practices and unjust distributions of power that underlie trafficking, that maintain impunity for traffickers, and that deny justice to victims of trafficking:

- i. 1989: Article 1 of the CRC sets forth that, *'[f]or the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.'*
- ii. 1990: Article 2 of the African Charter on the Rights and Welfare of the Child (ACRWC) states that *'[f]or the purposes of this Article, a child means every human being below the age of 18 years'*
- iii. 1999: Article 2 of International Labour Organization (ILO) Convention no 182 on the Worst Forms of Child Labour (WFCL) (ILO C182) sets forth that the term 'child' shall apply to *'all persons under the age of 18'*.

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ILO's Worst Forms of Child Labour Convention (Convention no 182 of 1999). Prohibits perpetrators from using children under 18 years of age for all forms of slavery or practices similar to slavery, trafficking, debt bondage, serfdom, forced or compulsory labour, and prostitution. In addition, article 7(2)(b) and (c) requires States to take effective and timely measures to provide for the rehabilitation and social integration of former victims of the worst forms of child labour, including trafficking, as well as to ensure their access to free primary education, and wherever possible and appropriate, vocational training.

Institute on Statelessness and Inclusion. An independent non-profit organization dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global center committed to promoting the human rights of stateless persons and ending statelessness. Its work combines research, education, human rights advocacy, field

and network building, and awareness-raising. The Institute is incorporated in the Netherlands, where it has Public Benefit Organisation (PBO) status.

Interagency Work Group. This was also the position taken by the Inter-agency Working Group on the sexual exploitation of children. Further information can be found at Interagency working group on the sexual exploitation of children, Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (Bangkok: ECPAT International, 2016), 66.

Inter-American Court of Human Rights, 19 August 2014, Advisory Opinion OC-21/14, 'In accordance with the request of the applicant States, on August 19, 2014, the InterAmerican Court issued the Advisory Opinion entitled 'Rights and guarantees of children in the context of migration and/or in need of international protection,' which determines, as precisely as possible and according to the provisions cited above, the State obligations concerning children associated with their migratory status, or that of their parents, which, in consequence, States must consider when designing, adopting, implementing and applying their immigration policies, including in them, as appropriate, both the adoption or application of the corresponding norms of domestic law and also the signature or implementation of the pertinent treaties and/or other international instruments'.

International agreements come in a multitude of forms. Some have dispute resolution while others do not, monitoring provisions vary from significant to non-existent, and some are highly detailed while others are frustratingly vague; For example, the International Covenant on Civil and Political Rights (ICCPR) provides for the submission of reports by the articles when so requested by the Human Rights Committee ('the Committee'). The Committee is authorized to review and comment on these reports. See International Covenant on Civil and Political Rights, Article 40(1)(b)(4), Dec. 16, 1966, 999 U.N.T.S. 171. The Genocide Convention, on the other hand, does not provide for any formal monitoring system. See Convention on the Prevention and Punishment of the Crime of Genocide, Jan. 12, 1951, 78 U.N.T.S. 277.

International Court of Justice (ICJ), sometimes called the World Court, is the principal judicial organ of the United Nations; The ICJ's primary functions are to settle international legal disputes submitted by states (contentious cases) and give advisory opinions on legal issues referred to it by the UN (advisory proceedings). Through its opinions and rulings, it serves as a source of international law. The ICJ is the successor of the Permanent Court of International Justice (PCIJ), established by the League of Nations in 1920 and began its first session in 1922. After the Second World War, both the League and the PCIJ were succeeded by the UN and ICJ. The Statute of the ICJ draws heavily from that of its predecessor, and the latter's decisions remain valid. All members of the UN are parties to the ICJ Statute. Third parties can request intervention under the ICJ Statute, Articles. 62 and 63. On intervention under Article 62, see *Case Concerning the Continental Shelf (Tunisia/Libya Arab Jamahiriya)* (application

by Malta to intervene) I.C.J. Rep. 1981, 3; *Case Concerning the Continental Shelf (Libya Arab Jamahiriya/Malta)* (application by Italy to intervene) I.C.J. Rep. 1984, 3; *Land, /stand and Maritime Frontier Dispute (El Salvador/Honduras)* (application by Nicaragua to intervene) I.C.J. Rep. 1990, 92. On intervention under Article 63, *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v the United States)* (declaration of intervention) I.C.J. Rep. 1984, 215.

International Criminal Court (ICC). The inclusion of sexual slavery in the Rome Statute occurred without much debate and has since been recognized as simply reflecting customary law'; the elements of the crime of sexual slavery should be based, at least in part, on the definition of slavery found in international instruments.

International Criminal Tribunal for the Former Yugoslavia. Acknowledged that the traditional conception of slavery has evolved to encompass various contemporary forms of slavery in situations where these forms are: 'based on the exercise of any or all of the powers attaching to the right of ownership.

International Law of Commentaries. The ILC Commentaries clarify that 'Article 55 is designed to cover both 'strong' forms of *lex specialis*, including what is often referred to as self-contained regimes, as well as 'weaker' forms such as specific treaty provisions on a single point.

International refugee protection regime. A dynamic body of universal and regional refugee law and standards, founded on the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto (UN, Treaty Series, vol. 606, no 8791), complemented by international human rights and humanitarian law instruments (such as Article 14 of the Universal Declaration on Human Rights (A/RES/3/217 A)); the stateless non-refugee and the stateless refugee are described under the 1954 Convention on the Status of Stateless Persons, introductory note, Geneva 2014, page 4, 5.

International Save the Children Union Document, 23 February 1923. 1)The child must be given the means requisite for its normal development, both materially and spiritually, 2) The hungry child must be fed, the child that is sick must be nursed, the backward child must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succoured, 3) The child must be the first to receive relief in times of distress, 4) The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation, 5) The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men. The text was endorsed by the League of Nations General Assembly on 26 November 1924 as the World Child Welfare Charter and was the first human rights document approved by an inter-governmental institution; It was reaffirmed by the League in 1934. Moreover, heads of State and Government pledged to incorporate its

principles in domestic legislation. In France, it was ordered to be displayed in every school.

ITLOS, Advisory Opinion, 2 April 2015, para 144; as noted in the International Tribunal for the Law of the Sea's request for an advisory opinion submitted by the Sub-Regional Fisheries Commission's findings that Articles 1, 2 of the States Responsibility Articles 'are the rules of general international law. iv. 2000: The OPSC refers explicitly, in its Preamble, to Article 1 of the CRC.

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LaGrand case. The ICJ found that the Vienna Convention on Consular Relations, in Article 36, created individual rights, which Germany as the national state of the detained person could raise as a diplomatic protection claim before the Court. Germany further claimed that the right of individuals to be informed of their rights without delay was an individual human right. Still, the court noted that since it had found that the USA had violated the rights of the LaGrand brothers under Article 36, para 1 of the Convention, it did not need to consider the additional argument. para 7.

Loizidou v Turkey, 40/1993/435/514, Council of Europe: European Court of Human Rights, 23 February 1995. Whereas the applicant's Government's application referred to Article 48 (b) (Article 48-b) of the Convention. The object of the Government's application was to obtain a decision as to whether the facts of the case concerning the applicant's property disclosed a breach by Turkey of its obligations under Article 1 of Protocol no 1 (P1-1) and Article 8 (Article 8) of the Convention.

Luxembourg Principles: 'Terminology guidelines for the protection of children from sexual exploitation and sexual abuse' – 'Child' is not a contentious term as such and is used in a large number of international legal instruments. While the precise textual legal definition of 'child' can vary slightly depending on the instrument, it is clear that a quasi-universal understanding of the legal notion exists.

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Marginalized. UN definition of marginalized serves as the operationalized application for this research: people in our community who may be 'marginalized' (definitions include underserved, disregarded, ostracized, harassed, persecuted, sidelined).

MDG2 - The links between child protection and the Millennium Development Goals' that touch on two goals directly linked to children's rights: MDG 2 on achieving universal primary education and MDG4 on reducing child mortality. Other goals on eradicating extreme poverty and hunger (MDG 1), promoting gender equality (MDG 3), improving mental health (MDG 5), combatting HIV/AIDS, malaria, and other diseases (MDG 6), and ensuring environmental sustainability (MDG 7) also contained elements linked to children's rights to an adequate standard of living and health as well as to the principles of non-discrimination. The 2030 Agenda for Sustainable Development, adopted by all UN Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet, now and into the future.

Multiple systems estimators. Multiple Systems Estimation as an alternative, efficient method of estimating the number of non-detected numbers of victims of trafficking in persons in a country.' 'UNODC has been collecting international statistics on detected victims of trafficking in persons since 2003. However, there is no sound estimate of the non-detected number of victims of trafficking in persons worldwide due to methodological differences and the challenges associated with estimating the sizes of hidden populations such as trafficking victims' (p 2).

-O-

OPSC, paras 2 to 4 of Article 3 of the OPSC cover several issues concerning responsibility for participation in the offences defined in the first paragraph of the Article. Paragraph 2 contains a provision that States Parties shall criminalize the commission of the sale of children, child prostitution, and child pornography. Parties are also compelled to criminalize an attempt to commit any of the acts listed in paragraph 1 of Article 3, as well as complicity or participation in any of the acts. This is to be done in accordance with each State's general legal provisions concerning attempt, complicity, and participation.

Optional Protocol on a Communications Procedures (OPIC). On 19 December 2011, the UNGA approved a third Optional Protocol on a communications procedure, which will allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols. The Protocol entered into force in April 2014. OPIC is about a 'complaints procedure', also known as a 'communication procedure' or a 'complaints mechanism' for the CRC. The complaints procedures are a way for people whose rights have been violated to challenge whoever is responsible for those violations; CRIN, 'CRC Complaints Mechanism' on the other side, the right to set off, the common intentions of the parties as to the goal of every contract interpretation, or the existence of implied contractual obligations. Good faith may also limit the exercise of the parties' legal rights, e.g., concerning the prohibition of abuse of rights or the parties' right to withhold performance. Before resorting to the overriding general principle of good faith, one

should always seek to apply these more specific and concrete principles and rules'. Good faith is used and applied within multiple contexts in international law, e.g., the fundamental principle of good faith is the source of many other general but more specific principles and rules of transnational commercial law, such as the principle of sanctity of contracts ('pacta sunt servanda') as the basis of transnational contract law, the prohibition of inconsistent behavior, the duty to renegotiate, the duty to notify and cooperate with the

-P-

Palermo Protocol did not have the legal effect of criminalizing trafficking in any legal system. Moreover, at the time of drafting the protocol, there was no standing International Criminal Court ('ICC') – thus, insofar as one might be tempted to say that there currently exists an international criminal legal system, such a system indeed did not exist at the time of the Palermo Protocol's drafting. The Palermo Protocol, negotiated pursuant to the authority of the UN's Vienna-based Commission on Crime Prevention and Criminal Justice, was drafted between January 1999 and October 2000 in a series of eleven meetings of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime. *See About the Court*, Int'l Crim. Ct., <<http://www.icc-cpi.int/Menus/ICC/About+the+Court>> last accessed 30 August 2017. Even now, trafficking does not fall under the jurisdiction of the ICC. *See Rome Statute of the International Criminal Court Article 5*, 2187 U.N.T.S. 3 [hereinafter Rome Statute] (claiming jurisdiction over the crime of genocide, crimes against humanity, war crimes, and the crime of aggression).

PCIJ Court. The PCIJ Court observed in the case concerning the Treatment of Polish National in Danzig: 'a state cannot adduce against another state its constitution to evade obligation incumbent upon it under international law or treaties in force'. Again, it was observed in the Free Zone case; 'it is certain that France cannot rely on her legislation to limit the scope of international obligations'. The same view was repeated in the Greco Bulgarian Communities by the PCIJ in its Advisory Opinion; 'it is a generally accepted principle of international law that in the relations between powers who are contracting parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty'.

Principle of Good Faith. The Principle of good faith is pivotal for transnational contract law and legal relationships that the parties may not contractually exclude or limit its application. Subsection (c) makes it clear that the Principle of good faith is not subject to the Principle of freedom of contract; the situation can be compared to the States entering an international contractual relationship where there is an offer and acceptance, and the treaty outlines the terms and conditions of the parties. Good Faith is not limited to the interpretation of contracts but provides a behavioral standard for the parties from the beginning to the end of their (pre-) contractual relationship. This

means that each party should behave towards the other party that cannot harm the latter and considers the reasonable expectations of businessmen in the other side's shoes. The parties to a contract must display a normal degree of honesty and sincerity, which is reasonable for safeguarding the other parties' interests, particularly in trying not to act in a way that can unduly surprise or inflict damages on the other party.

Rantsev v Cyprus and Russia, and the court's example of the Interights, is a third-party contributor to the ICJ. In addition, the International Centre for the Legal Protection of Human Rights, a non-governmental organization based in the United Kingdom, and AIRE Centre's report, an Advice on Individual Rights in Europe, a non-governmental organization located in London, played a significant role in the Court's findings and holding.

-R-

Rape as a Weapon of War. Sexual violence includes but is not limited to rape. Although there is no agreed-upon definition of sexual violence, commonly applied ones encompass any act of a sexual nature or attempt to obtain a sexual act carried out through coercion. Sexual violence also includes physical and psychological violence directed at a person's sexuality, including unwanted comments or advances, or acts of traffic such as forced prostitution or sexual violence; Article 58, Rome Statute, Duties and powers of the Prosecutor with respect to investigations states, 'Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses...' including age, gender as defined in Article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.

Rapid Evidence Assessment. A Rapid Evidence Assessments (REAs) is another type of evidence summary that can inform practice. The REA applies the same methodology as a Systematic Review. Both involve the following steps: background, question, inclusion criteria, search strategy, study selection, data extraction, critical appraisal, results, synthesis, limitations, conclusions, and implications for practice.

References to 'good faith' found in the Preamble, Article 26 (*pacta sunt servanda*), Article 31 (general rules of interpretation), Article 41 (provisions of internal law), and Article 69 (consequences of invalidity; Third Report of the Special Rapporteur, Sir Humphrey Waldock (16th session of the ILC (1964))); The Draft Articles, Part II, Articles 30 thru 54, speak to the essential validity, duration, and termination of treaties; Second Report of the Special Rapporteur, Sir Humphrey Waldock (15th session of the ILC (1963)); This section of the ILC Articles reinforces the practical applications of good faith and the fulfillment of that good faith for in-force treaties.

Adjacent guidance on treaties is captured in Part III, Article 55, for the application, interpretation, revision, effects, and treaties.

Research Design. The research design refers to the overall strategy chosen to integrate the different components of the study coherently and logically, thereby ensuring you will effectively address the research problem; it constitutes the blueprint for the collection, measurement, and analysis of data.

Rohingya. The 2015 Rohingya refugee crisis refers to the mass migration of people from Myanmar (formerly known as Burma) in 2015, collectively dubbed ‘boat people’ by international media. Nearly all who fled traveled to Southeast Asian and South Asia countries including Bangladesh, Malaysia, Indonesia and Thailand by rickety boats via the waters of the Strait of Malacca and the Andaman Sea’. The Rohingya people are stateless Indo-Aryan-speaking people who reside in Rakhine State, Myanmar (also known as Burma). There were an estimated about 1 million Rohingya living in Myanmar before the 2016–17 crisis. On 22 October 2017, the UN reported that an estimated 603,000 refugees from Rakhine, Myanmar, had crossed the border into Bangladesh since August 25, 2017. This number increased to 624,000 by November 2, 2017, and over 625,000 by December 6, 2017. The Rohingya people are a stateless Indo-Aryan ethnic group who follow Islam and reside in Rakhine State, Myanmar (previously known as Burma). An estimated 1 million Rohingya were living in Myanmar before the 2016–17 crisis’.

Rule of Law. The UN system, the rule of law, is a principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in applying the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

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Sage Grounded Theory. Sage Grounded theory involves the progressive identification and integration of categories of meaning from data. It is both the process of category identification and integration (as method) and its product (as theory). A grounded theory provides us with guidelines on identifying categories, making links between categories, and establishing relationships between them. Grounded theory as theory is the end-product of this process; it provides us with an explanatory framework to understand the phenomenon under investigation.

Sale of children for exploitation. They were defined as '[a]ny institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour' (Article 1(d)). Subsequent developments call into question whether an exploitative purpose or result is required. For example, an Optional Protocol to the Convention on the Rights of the Child defines 'sale of children' as: 'any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration'. This broader definition could potentially operate to extend the concept of sale of children to include practices such as sale for adoption and even commercial surrogacy arrangements.

Servile forms of marriage. Is servile forms of marriage: defined as any institution or practice whereby '(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person (Article 1 (c)). This definition does not include forced marriage (understood as a union of two persons, at least one of whom has not given their full and free consent to the marriage), and forced marriage is not separately identified as a practice similar to slavery.

Sexual abuse of children and adolescents is a gross violation of their rights and a global public health problem. Furthermore, it adversely affects the health of children and adolescents. Health care providers are uniquely positioned to provide an empathetic response to children and adolescents who have been sexually abused. Such a response can go a long way in helping survivors recover from the trauma of sexual abuse. WHO has published new clinical guidelines Responding to children and adolescents who have been sexually abused aimed at helping front-line health workers, primarily from low resource settings, provide evidence-based, quality, trauma-informed care to survivors? The guidelines emphasize the importance of promoting safety, offering choices, and respecting the wishes and autonomy of children and adolescents. In addition, they cover recommendations for post-rape care and mental health; and approaches to minimizing distress in the process of taking a medical history, conducting the examination, and documenting findings.

Sexual exploitation. The most commonly identified form of human trafficking (79%), followed by forced labour (18%). This may be the result of statistical bias. The exploitation of women tends to be visible in city centers or along highways. Because it is more frequently reported, sexual exploitation has become the most documented type of trafficking in aggregate statistics. In comparison, other forms of exploitation are under-reported: forced or bonded labour; domestic servitude and forced marriage; organ removal; and the exploitation of children in begging, the sex trade, and warfare.

Sexual Violence. Child sexual abuse around the world is rife. Research estimates suggest 1 in 5 children will suffer some form of sexual violence in their lives. CRIN believes transparency, accountability, access to justice for children, and protection from violence are crucial to securing children's status as individuals with rights. So we are campaigning to end sexual violence, focusing on closed institutions where a lack of accountability, entrenched power structures, and arcane institutions allow the abuse to continue. Our goal is to push for reforms to open these to scrutiny, prevent cover-ups and allow victims to access justice. Our work so far has looked at:

- a. Sexual abuse of children in religious institutions, as a State party to the UN Convention on the Rights of the Child,
- b. Sexual abuse by peacekeepers: our focus began following the revelations of sexual abuse of children by peacekeepers in the Central African Republic,
- c. We are also working to change the underlying structures that allow perpetrators, whether the State or an individual, to escape accountability, and
- d. Access to justice for children is often an afterthought. We have mapped whether and how children can access justice for the abuse they have suffered in every country in the world. However, time limitations are a severe barrier to victims of sexual abuse accessing justice. We are campaigning to suspend limitation periods.

Siliadin v France, App no 73316/01, Judgment 26 July 2005, the punishment consisting of a fine for breach of Article 4 was considered to give insufficient support against such violations: 'the member States' positive obligations under Article 4 of the Convention must be seen as requiring the penalization and effective prosecution of any act aimed at maintaining a person in such a situation (margin no 112). The Court also criticized the imprecise language of the legislation, which gave scope for varying interpretation and application. The ECtHR found that the criminal law failed to give the minor applicant in the case practical and effective protection against the treatment she had been subjected to and called for 'greater firmness' due to increasingly high standards that are required regarding protection (margin Nos 143-144, 147-148). Other essential cases under Article 4 are *Rantsev v Cyprus and Russia*, App no 25965/04, Judgment 7 January 2010, margin no 282; *C N v United Kingdom* App no 4239/08, Judgment 13 November 2012; *C N and V v France* App no 67724/09, Judgment 11 October 2012.

Similarly situated. Defines similarly situated as alike in all relevant ways for purposes of a particular decision or issue; Similarly- situated children serve as the study's analogy warrant, where the connection is derived from analogies of relevant and similar situations, legal or policy precedents, or events, such as those found in the State legal reports and official UN reports regarding trafficked children, conflict, and post-conflict societies.

Single-case designs. 'Single-case designs... one rationale for a single-case is when it represents the critical-case in testing a well-formulated theory. The theory has specified a clear set of propositions and the circumstances within which the propositions are believed to be true. A single case, meeting all the conditions for testing the theory, can confirm, challenge, or extend the theory. The single case can then be used to determine whether a theory's propositions are correct or whether some alternative set of explanations might be more relevant... the single case can represent a significant contribution to knowledge and theory building. Such a study can even help refocus future investigations in an entire field' (p 47).

Sociological Theories of Crime/Theories & Assumption in Sociology. 'The growing serious situation of racial problems, terrorism, faith conflicts, as well as economic crises calls for people to pay more attention to the social conflict theory'.

In everyday society, people often treat the word "theory" as interchangeable with "hypothesis." However, theory means something very specific in a sociological/scientific context. Theories are perceptual tools that people use to order, name, and shape a picture of the world. As such, they play an essential role in the way we interpret facts.

Several competing theories attempting to explain the same evidence can arrive at different conclusions. That's because every theory relies on some set of assumptions. In the case of sociological theories of crime, those are often assumptions about the nature of individual people, the group, and the relationship between the two. In other words, differing assumptions about human nature and its relation to social order.

Southwest Africa cases. In the earlier Judgment on the Preliminary Objections, the Court found that it had jurisdiction because both Ethiopia and Liberia were former members of the League of Nations and thus could bring a claim against South Africa to enforce the obligations of the mandate. Southwest Africa cases (*eth. v S.Afr.; Liber v S.Afr.*), Preliminary Objections, 1962 ICJ Rep. 319 (Dec 21); But at the merits phase, the Court found an insufficient legal interest, Refer to fn 518.

Special Rapporteur. Special Rapporteur, therefore, defines trafficking as 'the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons: (i) by threat or use of violence, abduction, force, fraud, deception or coercion (including abuse of authority), or debt bondage; [and] (ii) for the purpose of placing

or holding such person, whether for pay or not, in forced labor or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in (i)'; Palermo Protocol, Article 3 is consistent with the limited scope of this Article, the definition as set forth above focuses on the language defining sex trafficking of adult victims, omitting language relating to labor trafficking, organ trafficking, or trafficking of minors.

State Neglect – Forms of Violence. Article 19 of the Convention on the Rights of the Child requires States to protect the child against “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.” Neglect, concerning parents or guardians, has been defined as “a type of maltreatment that refers to the failure by the caregiver to provide needed, age-appropriate care although financially able to do so or offered financial or other means to do so” (USDHHS, 2007). There is no universal definition of State neglect. It could theoretically be applied to a range of circumstances, for example, a failure to provide adequate education or a refusal to provide adequate housing. However, to narrow the definition, avoid overuse. For this information page, State neglect concerns circumstances in which the State is substituted as the ‘caregiver’ regarding the definition above. In other words, State neglect is “a type of maltreatment that refers to the failure by the State to provide needed, age-appropriate care although financially able to do so or offered financial or other means to do so.” State neglect might occur when a child is in its round-the-clock care, for example, in the criminal justice process or alternative care institutions.

According to the report of the Independent Expert for the United Nations Study on Violence Against Children (RIE, para 58): "Neglect is also a feature of many residential institutions where conditions are so poor that they put the health and lives of children at risk. In many facilities for children with disabilities, there is no access to education, recreation, rehabilitation, or other programs. Children with disabilities are often left in their beds or cribs without human contact or stimulation for long periods. This can lead to severe physical, mental, and psychological damage." States must take appropriate steps to ensure children are not exposed to violence in state-run institutions. Failure to do so is a form of State neglect. However, the UN Study notes a heightened risk of violence to children in care institutions, and “the greatest amount of evidence concerns violence of various kinds by staff, including neglect, and violence by children against other children” (UNVC, 2006: 187). Inadequate conditions for children in detention may also constitute neglect. In many countries, laws require children to be transferred quickly from police custody to an appropriate children’s facility or brought before a judge within 24 to 48 hours or less. But in practice, children may remain in police lock-ups for long periods, often without notification to their parents or guardians, notes the Study. For example, in the Philippines, laws requiring police to inform the Department of Social Welfare and Development within eight hours of a child’s arrest are frequently not observed. As a result, children may remain detained in police cells for up to a month.

In Jamaica, an investigation in the late 1990s “found that many children who were abused, neglected or accused of only petty offenses remained in filthy and overcrowded police lock-ups for periods of eight months or more” (UNVC, 2006: 198). Perhaps unsurprisingly, neglect contributes to mortality and morbidity in young children. According to a report by the World Health Organisation, girls face a greater risk of neglect (Krug et al. 2002), while disability is also a risk factor (UN, 2005). State neglect is broad and, as already explained, an ill-defined issue, so strategies to prevent lousy practice might better be aimed at specific issues. For example, SOS Children’s Villages International has undertaken a huge amount of work to improve conditions for children in alternative care. The Better Care Network also provides a library of information relating to children in care. Many different organizations are also working on improving conditions for children in detention, such as Penal Reform International and the Open Society Institute.

Strategic Litigation. Strategic litigation uses the legal system to correct, clarify, or bring policy into line with the law. In these ways, it can bring broader, long-term changes in society. It begins by bringing a case to court. Sometimes, the case is based on a legal complaint by an individual whose rights have been violated. Other times an NGO or other agency can apply to challenge a law or policy directly, without a formal plaintiff. If the court agrees to hear the case, then the government or a corporation has to respond to your legal evidence and arguments and devote serious attention to the issue. If the case is won, a state or corporation may be legally required to change its policy; a judge could also rule that the law must be changed to protect children’s rights more effectively. If the case is lost, there can still be many benefits. Throughout the case, a government often has to release not ordinarily public information; the media may become interested; the process can strengthen your expertise. Sometimes, the case prompts elements of government and parliament, who might previously have ignored or discredited you, to discuss the change you are calling for on its merits.

Sustainability Development Goal 8 Target 8.7 call on states to: ‘take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.

Sustainability Development Goal 8 Target 8.7. Call on states to: ‘take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.

The Systematic Review. Examined the contents of pulling levers interventions from 93 distinct abstracts for closer review and the full-text reports, Journal Articles, and

books; these texts were carefully assessed to determine whether the interventions involved pulling levers focused deterrence strategies and whether the studies used randomized controlled trial designs or nonrandomized designs.

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Tobin Model. John Tobin is a Professor of Law at Melbourne Law School, where he is the director of studies for the human rights program. Professor Tobin specializes in human rights law and particularly children's rights. He is the Chief examiner of the Law Institute of Victoria's Child Law Specialization Program, the Victoria Legal Aid, Department of Justice Legal Team, who was influential in the international standards of age adjustment to 18; Tobin's 4-part criteria aids in interpreting the underpinning rules and their application in society for domestic implementation.

It is trafficking in Persons Protocol. The Trafficking in Persons Protocol, for example, requires States Parties to take positive steps to address the underlying causes of trafficking: specifically, to 'take or strengthen measures ... to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity; vulnerability to trafficking is certainly not fixed, predetermined or even fully 'known'. A multitude of factors operates to shape the context within which trafficking takes place and the individual's capacity to respond. A genuine understanding of vulnerability will almost always require situation-specific analysis; The CRC Committee refers to the use of 'children in vulnerable situations' instead of vulnerable children. The Trafficking in Persons Protocol, for example, requires States Parties to take positive steps to address the underlying causes of trafficking: specifically, to 'take or strengthen measures ... to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity; vulnerability to trafficking is certainly not fixed, predetermined or even fully 'known'. A multitude of factors operates to shape the context within which trafficking takes place and the individual's capacity to respond. A genuine understanding of vulnerability will almost always require situation-specific analysis; The CRC Committee refers to the use of 'children in vulnerable situations' instead of vulnerable children.

Transparency. The UN is the best hope we have of securing human rights across the world. But if the UN is to remain fit for purpose, accountability and confidence in its processes must be guaranteed. Too many of the UN's decisions remain shrouded in secrecy, from appointment processes to the motivations for limiting NGO access and internal procedures for handling allegations of abuse. Prevention is critical: better-informed children are the best hope of preventing much of the abuse from occurring in the first place. We work with others to ensure children have access to appropriate age-related information.

Treaty Ascension or Ratification. Signatory of a treaty expresses the states that endorse the principles contained within the treaty by signing without being legally binding upon them. Though less common, accession has the same legal effect as ratification; after a treaty has entered into force, a state that did not participate in its drafting can still become a member by acceding to the treaty. A treaty's object and purpose sum the treaty's essential elements separated from the unessential ones.

Treaty obligations. The obligatory force of treaties defines the juridical contents of a fundamental principle of the right of treaties generalized as such in the present international right: *pacta sunt servanda* (treaties must be respected).

-U-

UN Charter. It was established by the UN Charter in June 1945 and began its activities in April 1946. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the UN. The seat of the Court is at the Peace Palace in The Hague (Netherlands). The Court has a twofold role: first, to settle, following international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and second, to give advisory opinions on legal questions referred to it by duly authorized UN organs and agencies of the system; In its Application to the ICJ, The Gambia also requested provisional measures to 'protect against further, irreparable harm to the rights of the Rohingya group under the Genocide Convention'. In response, the ICJ issued an order on 23 January 2020. Under this order, the Court directed Myanmar to 'take all measures within its power' to prevent the commission of acts defined in the Genocide Convention, including by ensuring that its military and any irregular armed units refrain from committing these acts; On 22 June 2020, in resolution 43/26, the Human Rights Council called 'for close and timely cooperation between the Mechanism and any future investigations by national, regional or international courts or tribunals, including by the International Criminal Court or the International Court of Justice; On 20 January 2021, the Government of Myanmar filed 'preliminary objections to the jurisdiction of the Court and the admissibility of the Application'. On 28 January 2021, the Court issued an order directing The Gambia to submit a written response to these objections by 20 May 2021. After that, the Court is expected to hold hearings before deciding on Myanmar's preliminary objections.

UN Permanent Forum. UN Permanent Forum on Indigenous Issues, 'Indigenous peoples, Indigenous Voices' - 'Indigenous people, Indigenous peoples - defined by the UN as people with ancestral ties to a geographical region who retain 'distinct characteristics' from other parties of the population - rank disproportionately high in most indicators of poor health, according to the UN Secretariat Department of Economic and Social Affairs'.

UN to supplement the 2000 Convention against Transnational Organized Crime (Palermo Convention). The Palermo Convention and its Protocols consist of three protocols that were adopted by the. They are: (1) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo I), (2) the Protocol against the Smuggling of Migrants by Land, Sea, and Air (Protocol II), and (3) the Protocol against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components and Ammunition (Protocol III) <<http://ochchr.org>> accessed 11 August 2017; The United States considers 'trafficking in persons,' 'human trafficking,' and 'modern slavery' to be interchangeable umbrella terms that refer to both sex and labor trafficking. The Trafficking Victims Protection Act of 2000, as amended, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime describe this compelled service using some different terms, including involuntary servitude, slavery, or practices similar to slavery, debt bondage, and forced labor. Specifics include: (b) The text of the Protocols (Assembly resolutions 55/25, annexes II and III, and 55/255, annex); (c) Interpretative notes for the official records (travaux préparatoires) of the negotiation of the UN Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1); (d) The legislative guides for the implementation of the Organized Crime Convention and the other Protocols. UNODC, Article 3 of the Protocol represents the first clear, internationally agreed definition of trafficking in persons (see also paras. 25-62 of the section entitled 'Definition and criminalization of the smuggling of migrants' in the legislative guide for the Protocol). This forms the basis of the subject matter covered in the Protocol, the basis of international cooperation, and other fundamental elements of the treaty. Prominent among these is the obligation to establish criminal offences: all States Parties to the Protocol are obliged by Article 5 to criminalize trafficking, either as a single criminal offense or a combination of offences that cover, at a minimum, the full range of conduct covered by definition.

UN, Statute of the International Court of Justice, 18 April 1946. Set up in 1945 under the Charter of the UN to be the principal judicial organ of the Organization, and its essential instrument, the Statute of the Court, forms an integral part of the Charter (Chapter XIV). By signing the Charter, a Member State of the UN undertakes to comply with the decision of the Court in any case to which it is a part. Since, furthermore, a case can only be submitted to the Court and decided by it if the parties have in one way or another consented to its jurisdiction over the case, it is rare for a decision not to be implemented. A State which considers that the other side has failed to perform the obligations incumbent upon it under a judgment rendered by the Court may bring the matter before the Security Council, which is empowered to recommend or decide upon measures to be taken to give effect to the judgment.

UNGA. At the UN, much of the activity in norm creation and efforts to enforce those norms has taken place under the aegis of Article 55 of the UN Charter, which obligates

the Member States to 'promote', among other things, 'conditions of economic and social progress and development' and 'universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. Balanced against this programmatic obligation is Article 2 (7) of the Charter, denying the authority of the UN to 'intervene in matters which are essentially within the domestic jurisdiction of any state'.

UNODC. As the guardian of the Protocol, UNODC addresses human trafficking issues through its Global Programme against Trafficking in Persons. A vast majority of States have now signed and ratified the Protocol. But translating it into reality remains problematic. Very few criminals are convicted, and most victims are probably never identified or assisted'. In addition, the Palermo Trafficking Protocol is conjoined to the UN Convention on the Rights of the Child, whereby a child is any 'person' under the age of 18.

United Nations Transnational Convention against Organized Crime (UNTOC). Defines a transnational offense as one which is committed in more than one state; or committed in one state but substantially planned, directed, or controlled in another state; or committed in one state but involving an organized criminal group operating in more than one state: or committed in one state but having substantial effects on another state, Organized Crime Convention, Article 3.2. An organized criminal group is defined as 'a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences . . . to obtain, directly or indirectly, a financial or other material benefit .' Article 2(a). Notably, the convention's travaux préparatoires will indicate that 'financial or other benefit' is to be understood broadly to include, for example, personal or sexual gratification; The four instruments were drafted as a group, with general provisions against transnational organized crime (for example, extradition and mutual legal assistance) in the Convention and elements specific to the subject matter of the Protocols in each of the Protocols (for example, offenses established following the Protocol and provisions relating to travel and identity documents). As the Protocols are not intended to be independent treaties, to become a party to any of the Protocols, a State is required to be a State Parties to the Convention. That ensures that, in any case, that arises under a Protocol to which the States concerned are parties, all of the general provisions of the Convention will also be available and applicable; Offences established in accordance with the Protocol shall also be regarded as offences established in accordance with the Convention (Article 1, para 3 of the Protocol). This principle, analogous to the mutatis mutandis requirement, is a critical link between the Protocol and the Convention. It ensures that any offense or offences established by a State to criminalize trafficking in human beings as required by Article 5 of the Protocol will automatically be included within the scope of the introductory provisions of the Convention governing forms of international cooperation such as extradition (Article 16) and mutual legal assistance (Article 18).

UNTOC, Articles 2-31. 1) Enactment of appropriate legislation on human trafficking, which would criminalize the phenomenon and establish criminal liability for legal and natural persons'; noted in Section I, Article 5, Palermo Trafficking Protocol, supplemented by the UNTOC, Articles 2-31; 2) 'Introduction of review procedures for the operation of certain punishments commensurate to the nature of the crime of trafficking'; noted in Section I, Article 5 of the Palermo Trafficking Protocol and supplemented by UNTOC, Article 2, serious crime and Articles 3-31; 3) 'Establishment of punishments commensurate to the nature of the crime of trafficking; noted in Section I, Article 5, Palermo Trafficking Protocol and supplemented by the UNTOC, Articles 2-31; 4) 'Introduction of measures to discourage demand'; noted in Section III, Articles 9-13, Palermo Trafficking Protocol and supplemented by the UNTOC, Article 31, Prevention; 5) 'Assurance of the training of law enforcement for the identification of trafficking victims and for building trust amongst victims and law enforcement'; Section II, Protection, Articles 6, 7, and 8; supplemented by UNTOC, Articles 24-28; 6) 'Encouragement of research, information campaigns, awareness campaigns, and education programs'; Section III, Articles 9-10, and supplemented by UNTOC, Articles 28-29; 7) 'Vigorous investigation of allegations of human trafficking' overall synopsis, but not direct in Section I, Article 5, Palermo Trafficking Protocol, supplemented by UNTOC, Article 19; UN Convention Against Transnational Organized Crime, 2225 UNTS 209, done Nov 15, 2000, entered into force Sept. 29, 2003 (Organized Crime Convention), at Article 32(1); Each of the jurisdictions under examination are evaluated by the European Court of Human Rights criteria.

UPR Review. A UPR review cycle is a four-and-half year period within which all UN Member states' human rights records are reviewed. The working group convenes three two-week sessions per year or 14 sessions throughout an entire cycle.

v. 2000: Article 3(d) of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime ('the Palermo Protocol'), defines the child as '*any person under 18 years of age*'.

vi. 2001: The Council of Europe Convention on Cybercrime ('the Budapest Convention') uses the term 'minor' in Article 9 dealing with child pornography and states that it includes all persons under 18 years of age. However, a State Parties may require a lower age limit, which shall not be less than 16 years.

-V-

Vienna Convention, Article 20(2). When it appears from . . . the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent to be bound . . . , a reservation requires acceptance by all parties.' The law surrounding reservations is complex and burdened with a web of rules. Article 20(2) creates one of the highest hurdles: unanimous approval of

all states parties for a reservation to be effective. This is a nearly impossible hurdle in multilateral negotiations. By its plain language, Article 20(2) looks solely to the treaty to determine if any reservation should require unanimous consent. In other words, unanimous consent may become necessary regardless of the content of the reservation.

vii. 2007: The Lanzarote Convention establishes in Article 3(a) that a child is '*any person under the age of 18 years*'.

-W-

White Slavery. An early example of such usage is the 1904 International Agreement for the Suppression of the White Slave Traffic, 1 LNTS 83, which required administrative action against trafficking in persons. A criminalization obligation was added in the 1910 International Convention for the Suppression of the White Slave Traffic, 211 Consolidated Treaty Series; However, suppression and prevention are interpreted in this study as the deterrence of the criminal act(s). It was followed in 1910 by the International Convention for the Suppression of White Slave Traffic. Subsequently, in 1921, the League of Nations adopted a Convention for the Suppression of Trafficking in Women and Children, affirmed in the later International Convention for the Suppression of Traffic in Women of Full Age of 1933. The 1949 Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others brought the former instruments under the auspices of the UN. *Rantsev v Cyprus and Russia*, paras 127 to 131. , 'Those who 'procure, entice or lead' others into prostitution are to be prosecuted'; The Convention does not put the responsibility of the criminal act on persons in prostitution. This is a crucial point because procurers, recruiters, and traffickers use a consent defense to argue that they should not be prosecuted in many cases.

WHO. The World Health Organization (WHO) defines CSA as 'the involvement of a child in sexual activity that they do not fully comprehend and is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violate the laws or social taboos of society. The term CSA includes a range of activities like 'intercourse, attempted intercourses, oral-genital contact, fondling of genitals directly or through clothing, exhibitionism or exposing children to adult sexual activity or pornography, and the use of the child for prostitution or pornography.

WTO Appellate Body. Established in 1995 under Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). It is a standing body of seven persons that hears appeals from reports issued by panels in disputes brought by WTO Members. The Appellate Body can uphold, modify, or

reverse the legal findings and conclusions and Appellate Body Reports, once adopted by the Dispute Settlement Body.

-Y-

Yildirim v Austria, UN Doc CEDAW/C/39/D/6/2005, Communication no 6/2005, Committee on the Elimination of Discrimination against Women, 2007. CEDAW, domestic and intimate partner violence, divorce, international law, Report of the Comm. on the Elimination of Discrimination against Women, U.N. GAOR, 62nd Sess., supp no 38, U.N. Doc. A/62/38, Article III, Annex VII, B, at 454 (Aug. 10, 2007). The complaint stated that the State's action violated Article 1 of CEDAW because the Austrian criminal justice system negatively impacts women through the public prosecutors' failure to treat domestic violence cases seriously. The complaint also cited the failure of judicial officials and law enforcement to collect data and maintain statistics on domestic violence instances that denied Yildirim the enjoyment of her human rights in violation of Articles 2 and 3 of CEDAW on eliminating laws, regulations, and customs that adversely affect women. Finally, the complaint stated a violation of Article 5 of the Convention on eliminating social and cultural attitudes towards women in the State's continual treatment of domestic violence as a social or domestic problem rather than a serious crime.

SECONDARY SOURCES

Bibliography

Books

Adams B N and R A Sydie, *Sociological theory* (Thousand Oaks 2001)

Adler M, *Recognising the problem: Socio-Legal research training in the UK* (Edinburgh University 2007)

<http://www.ucl.ac.uk/laws/sociolegal/empirical/docs/Adler_REPORT.pdf> accessed 21 July 2017

Ahsan A and others, *International migration and development in East Asia and the Pacific* (World Bank 2014)

Alston P, 'The best interest principle: Towards a reconciliation of culture and human rights' in Alston, P. (Ed.), *The best interests of the child: Reconciling culture and human rights* (Florence, Italy: Innocenti Studies 1994) 1-25

Am. Soc'y Int'l L., 'Jurisdictional, preliminary, and procedural concerns,' in *Benchbook on international law* § II.A (Diane Marie Amann 2014), <www.asil.org/benchbook/jurisdiction.pdf> accessed 21 July 2019

Andrees B and M NJ van der Linden, 'Designing trafficking research from a labour market perspective: The ILO experience' (Systematic Review 2005)

Aoife Nolan, *Children's socio-economic rights, democracy, and the courts* (Hart Publishing 2011)

Apel R and D Nagin, 'General deterrence: A review of recent evidence' in J Q Wilson & J Petersilia (eds), *Crime and public policy* (Oxford University Press 2011) 411-436

Aronowitz A, *Human trafficking: A reference book* (ABC-CILO, Santa Barbara, CA 2017)

Baldick C, *The Oxford dictionary of literary terms* (Oxford University Press 2008)

Barry K, 'The network defines its issues: Theory, evidence and analysis of female sexual slavery' in *International feminism: Networking against female sexual slavery* 32, 41f (Kathleen Barry 1984)

Bartos OJ and P Wehr, *Using conflict theory* (Cambridge University Press 2002)

Bassiouni M C and E M Wise, *Aut dedere aut judicare: The duty to extradite or prosecute in international law* (Martinis Nijhoff Publishers 1996)

Bennett A, 'Case study methods. Design, use, and comparative Advantages' in Detlef F. Sprinz / Yael Wolinsky-Nahmias, eds.: *Models, numbers & cases. Methods for studying international relations* (University of Michigan Press 2004) 19, 52

Braga A, *Problem-oriented policing, and crime prevention* (Criminal Justice Press 2008)

Braga A and D M Kennedy, 'Linking situational crime prevention and focused deterrence strategies' in G. Farrell & N. Tilley (eds), *The reasoning criminologist: Essays in honour of Ronald V. Clarke* (Routledge 2012) 65-79

Braga A and David Kennedy, 'Linking Situational Crime Prevention and Focused Deterrence Strategies' in Graham Farrell and Nick Tilley (eds), *The reasoning criminologist: Essays in honour of Ronald V. Clarke* (Taylor and Francis 2012)

Braga A and others, 'New Approaches to the Strategic Prevention of Gang and Group-involved Violence' in C Ronald Huff (ed), *Gangs in America* (Sage Publications 2002) 271-286

Braga A, David Kennedy, and others, 'New Approaches to the Strategic Prevention of Gang and Group-involved Violence' in C. Ronald Huff (Ed.), *Gangs in America* (Sage Publications 2002) 271-286

Brennan D, *Methodological challenges in research with trafficked persons: Tales from the field* (Wiley Publishing 2005) <<https://doi.org/10.1111/j.0020-7985.2005.00311.x>> accessed 22 December 2017

Bromley D B, *The case-study method in psychology and related-discipline* (John Wiley & Sons 1986)

Brownlie I, *Principles of Public International Law* (Oxford University Press 2003) 579, 80

Brownlie I, *System of the law of nations: State Responsibility (Part I)* (Oxford University Press 1983)

Bryant A and K Charmaz (eds), *The SAGE handbook of grounded theory* (Sage Publications 2007)

Bryman A and E Bill, *Business research methods* (Oxford University Press 2011)

Bryman A and E Bill, *Business research methods* (Oxford University Press 2015)

Bryman A, 'Triangulation' in MS Lewisbeck, A Bryman, and L Futing, *Encyclopedia of Social Science Research Methods* (Sage Publications 2004) 11421143

Brysk A and A Choi-Fitzpatrick, *From human trafficking to human rights: Reframing contemporary slavery* (University of Pennsylvania Press 2012)

Cameron I, *The Protective Principle of International Criminal Jurisdiction* (Dartmouth Publishing Co 1994)

Cane P and H Kritzer (eds), *The Oxford handbook of empirical legal research* (University Press 2010)

Carter L H and T F Burke, *Reason in law* (Chicago Press 2010)

Cassese A, *International law* (Oxford University Press 2001)

Charmaz C, *Constructing grounded theory: A practical guide through qualitative analysis* (London 2007)

Charney M W, *A history of modern Burma* (Cambridge, University Press 2009)

Cheng B, *General principles of law as applied by international courts and tribunals* (Stevens and Sons 1953)

Cherif Bassiouni M, 'International crimes: The Ratione Materiae of International Criminal Law' in M. Cherif Bassiouni (ed), *International criminal law*, (Leiden 2008) 129, 134-5

Collard S and others, *Public legal education framework* (University of Bristol 2011)

Collier J and V Lowe. *The settlement of disputes in international law* (Oxford University Press 1999)

Collins R, *Conflict sociology* (Academic Press 1974)

Collins R, 'The conflict tradition' in *Four sociological traditions* (Oxford University Press 1994)

Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, (UNDP 2008)

Cornish D B and R V G Clarke, 'Opportunities, precipitators, and criminal decisions: A reply to Wortley's critique of situational crime prevention in M J Smith & D B Cornish' (eds), *Theory for practice in situational crime Mitigation* (Criminal Justice Press 2003)

Corten O, *The law against war: The prohibition on the use of force in contemporary international law* (Hart 2010) 403

Coser L, *The functions of social conflict: An examination of the concept of social conflict and its use in empirical sociological research* (Free Press 1964)

Coser L and others, 'Conflict and critical theories' in *Theory Cumulation and Schools of Thought* (Sage Publications 2006)

Crawford J, *Brownlie's principles of public international law* (Oxford University Press 2012)

Crawford J, *State Responsibility: The General Part* (Cambridge University Press 2013)

Crawford J, *The International Law Commission's Articles on State Responsibility: Introduction, text, and commentaries* (Cambridge University Press 2002)

Crawford J R, *State Responsibility* (Oxford Public International Law, Oxford University Press 2015)

Crawford J and J Watkins. 'International responsibility' in J Tasioloulas and S Beeson (eds), *The philosophy of international law* (2010)

Crawford J and others (eds.), *The law of international responsibility – Oxford commentaries on international law* (Oxford University Press 2010)

Creswell J W, *Research Design: Qualitative, quantitative, and mixed methods approach* (Sage Publications 2013)

Creswell J W, *Research Design: Qualitative, quantitative, and mixed methods approaches* (Thousand Oaks Publications 2014)

Creswell J W, *Research Design: Qualitative, quantitative, and mixed methods approaches* (Sage Publications 2014)

Creswell J W, *Research Design: Qualitative, quantitative, and mixed methods approaches* (Sage Publications 2016)

Dahrendorf R, *The modern social conflict: The politics of liberty* (Transaction Publishers 2007)

De Groot A D, *Methodologies* (Mouton Publications 1966)

- Detrick S, *The UN Convention on the Rights of the Child: A guide in the 'Travaux Préparatoires'* (Martinus Nijboff 1992)
- Denzin N and Y Lincoln (eds), *The Sage handbook of qualitative research* (Sage Publications 2005)
- Denzin N K and Y S Lincoln, *The SAGE handbook of qualitative research* (SAGE Publications 2011)
- de Zayas A, 'The CRC in litigation under the ICCPR and CEDAW' in Liefwaard T., Doek J. (eds) *Litigating the Rights of the Child* (Springer 2015)
- Dixon M, *Textbook on International Law* (Oxford University Press 2007)
- Dörr O. and K Schmalenbach, 'Article 26. Pacta sunt servanda' in Dörr O., Schmalenbach K. (eds) *Vienna Convention on the Law of Treaties* (Springer 2012)
- Elias T O, *The modern law of treaties* (New York 1974)
- Emeren F H van and others, 'Toulmin's Model of Argumentation' in *Handbook of argumentation theory*, (Springer Publications 2014)
- Evers H D, *Modernization in Southeast Asia* (Oxford University Press 1973)
- Evers H D, *Sociology of Southeast Asia: Readings on social change and development* (Kuala Lumpur, Oxford University Press 1980)
- Evers H D and Peter Chen (eds), *Studies in ASEAN Sociology: Urban society and social change* (Chopmen Enterprises 1978)
- Feingold D A, 'Trafficking, trade and migration: Mapping human trafficking in the Mekong Region' in Chouvy PA (ed.) *An atlas of trafficking in Southeast Asia: The illegal trade in arms, drugs, people, counterfeit goods, and resources* (I B Taurus 2013)
- Feteris E T, 'Toulmin's argumentation model' in *Fundamentals of legal argumentation* (Springer 2017)
- Herring T, 'The Palermo Protocols as a conduit to legal empowerment and peaceful self-determination' in *Ateliers Doctoraux-PHD Workshops*, European School of Law, Bangor 2018 (Presses de L'Université 2018)

- Hitchcock D and B Verheij (eds), *Arguing on the Toulmin Model: New essays in argument analysis and evaluation* (Springer Netherlands 2006)
- Finkelstein M O, *Basic Concepts of Probability and Statistics in the Law*, (Springer Science and Business Media 2009) doi10.1007/b105519 1
- Furnivall J S, *Colonial policy and practice: A comparative study of Burma and Netherlands India* (University Press 1948)
- Flyvbjerg B, *Rationalitet og Makt* (Danish: Rationality and Power 1991)
- Gallagher A and N Karlebach, *Prosecution of trafficking in persons cases: Integrating a human rights-based approach in the administration of criminal justice* (BePress 2011) <https://works.bepress.com/anne_gallagher/18/> accessed 20 July 2019
- Goodin R, *Utilitarianism as a Public Philosophy* (Cambridge University Press 1995)
- Gomez J and R Ramcharan, *The universal periodic review of Southeast Asia: Civil society perspectives* (Asia Centre 2018)
- Gough D, 'Giving voice: evidence-informed policy and practice as a democratizing process' in Reiss M. et. al. (Eds) *Dimensions of Difference* (Trentham Books 2007)
- Gough O and others, *Systematic reviews and research* (Sage Publications 2018)
- — and others, *An introduction to systematic reviews* (SAGE Publications 2012)
- Guerette, R T, 'The Pull, Push, and Expansion of Situation Crime Prevention Evaluation: An Appraisal of Thirty-Seven Years of Research' in Johannes Knutsson and Nick Tilley (eds), *Evaluating Crime Reduction Initiatives, Crime Prevention Studies*, vol 24 (Criminal Justice Press 2009) 29-58
- Gutman P, *Burma's lost kingdom: Splendors of Arkan* (Weatherhill 2001)
- Hagopian J, *Global human trafficking, a modern form of slavery* (Global Research 2015) <<https://www.globalresearch.ca/global-human-trafficking-a-modern-form-of-slavery/5377853>> retrieved 4 April 2019
- Hague Process on Refugees and Migration, *People on the Move: Handbook of Selected Terms and Concepts* (UNESCO Section on International Migration and Multicultural Policies 2008), 29 <<https://www.scribd.com/document/335385588/UNESCO-People-on-the-Move-Handbook-Terms-for-Migration>> accessed 17 July 2017

Harris D, *Cases and materials on international law* (Sweet & Maxwell 2012)

Hastie B, *By any means necessary: Towards a comprehensive definition of coercion to address forced labour in human trafficking legislation* (Order no MR84192, McGill University (Canada), ProQuest Dissertations and Theses) 101, 7-40

Helmut P and Georg Nolte (Ed), *The interpretation of international law by domestic courts: Uniformity, diversity, Convergence* (Oxford University Press 2016)

Henckaerts Jean-Marie and Louise Doswald Beck, *Customary International Humanitarian Law* (International Committee of the Red Cross Vol I & II 2005)

Henn M and others, *A critical introduction to social research* (Sage Publication 2006)

Herring T, 'Chapter: The multidisciplinary, interdisciplinary, and international global policy outlook of The Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography (OPSC)' in *Globalisation, ideology, and human rights for the globalisation, education and policy research* (Springer Publishers 2020)

Herring T, 'Chapter 15: What role do the General comments of human rights instruments have in the community structure of the Asylum-Seeking Refugee Child? UNCRC Article 22' in *Community structures and processes on lives of refugee children* (Vernon Publishing 2020)

Herring T, 'Migration and citizenship: Political science, policies and research' in *Global Comparative Perspective: Section Five: Persistent Policy Challenges: Forced and Return Migration*, edited by Yasmeen Abu-Laban, Mireille Paquet, and Ethel Tungohan, *Forced Migration in Southeast Asia: Gaps in Prevention and Protection against the Human Trafficking of Stateless Children* (Springer Publishing 2020)

Herring T, 'The Rights of Unaccompanied Minors: Perspectives and case studies' in Chapter 5, Access to justice for the unaccompanied asylum-seeking child: International State Responsibility Obligations to Protect and Provide Access to Justice for the Asylum-Seeking Child: *The CRC and the Unaccompanied Minor Border Case Study using Dahrendorf's Social Conflict Theory to Proffer a Legal Framework: Australia, Bangladesh/Myanmar to the ASEAN Charter States, the Republic of Côte d'Ivoire, Africa, and USA/Mexico* (Springer Publishing 2020)

Herring T, *Ateliers Doctoraus – Chapter 1: The Palermo Protocols as a Conduit to Legal Empowerment and Peaceful Self-Determination*, PHD workshops, La citoyennete – Citizenship European School of Law Copyright 2019, Cahiers Jean MONNET Editions des Presses de l'Université, France. ISBN: 978-2-36170-190-9

Herring T, 'e-book, ICO-Handbook on Self-Determination' in *Chapter: Panel on Self-Determination, Trafficking of the Vulnerable*, (ICO Handbook 2018)
<<https://internationalcommunities.org/self-determination-trafficking-of-the-vulnerable-panel-7th-lawasia-conference-laos/>> accessed 20 December 2019.

Higgins J P T and S Green (eds), *Cochrane Handbook for Systematic Reviews of Interventions* 4.2.6 (Cochrane Review 2006)
<<http://www.cochrane.org/resources/handbook/hbook.htm>> accessed 22nd May 2018

Hitchcock D and B Verheij (eds.) *Arguing on the Toulmin Model* (Springer: Dordrecht 2006)

Hollis D B, 'Defining treaties' in *The Oxford Guide to Treaties* (Oxford Press 2012)

Hubert F. *The challenge of child labour in international law* (Cambridge University Press 2009)

Ibrahim A, *The Rohingyas: Inside Myanmar's hidden genocide* (C Hurst & Co 2016)

I Taylor and others, *The new criminology: For a social theory of deviance* (Routledge 1988)

Jennings R and A Watts, *Oppenheim's International Law* (Longman, 1992)

Jennings R and A Watts, *Oppenheim's international law* (Longman 1996)

Jessup PC, *Transnational Law* (Yale UP 1956)

Jørgensen NHB, *The responsibility of states for international crimes* (Oxford University Press 2000)

Kalof L and others, *Essentials of social research* (Open University 2008)

Kennedy D, *Deterrence and crime prevention* (New York 2008)

— —, *Deterrence and crime prevention: Reconsidering the prospect of sanction* (Routledge Press)

— —, 'Old wine in new bottles: Policing and the lessons of pulling levers' in D. Weisburd & A.A. Braga (Eds). *Police innovation* (Cambridge University Press) 156-157

- Kilkelly U, 'The CRC in Litigation Under the ECHR' in Liefwaard T., Doek J. (eds) *Litigating the rights of the child* (Springer 2015)
- Koch I, E *Human rights as indivisible rights: The protection of socioeconomic demands under the European Convention on Human Rights* (Brill 2009)
- Kolb R and F La Bonne, *Droit International Public* (PU 2000)
- Lansdown G, 'Children's rights' in Barry Mayall (ed), *Children's Childhoods: Observed and Experienced* (Routledge 1994)
- Latour B, *The making of law: An ethnography of the Conseil D'Etat* (Polity Press 2010)
- Leeuw F and H Schmeets, *Empirical legal research, A guidance book for lawyers, legislators and regulators* (Oxford Press 2012)
- Leeuw F L and Hans Schmeets, *Empirical Legal Research a Guidance Book for Lawyers, Legislators and Regulators* (Edward Elgar Publishing 2016)
- Lenski G, *Human societies: An introduction to macrosociology* (McGraw-Hill 2002)
- List C and P Philip, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford University Press 2011)
- Ligitan P and Pulau Sipadan, *International Court of Justice [ICJ] Convention on the Law of Treaties, The General Rule: (1) The Treaty, its Terms, and their Ordinary Meaning* (2018)
<https://www.researchgate.net/publication/231814719_Interpretation_of_Treatie> accessed 22 January 2018
- Loescher Gil, *The Oxford handbook of refugee and forced migration* (Political Science, International Relations, Comparative Politics, online publication 2014)
<<http://10.1093/oxfordhpb/9780199652433.013.0003>> accessed 21 February 2018
- Luce G H, *Phases of Pre-Pagan Burma* (Oxford University Press 1986)
- Mani V S, *Basic principles of modern international law* (Lancers Books 1993)
- Mahdavi P, *Gridlock: Labor, Migration, and Human Trafficking in Dubai* (Stanford University Press 2011)
- Malekian F and K Nordlöf, *Prohibition of the sexual exploitation of children constituting obligation* (Cambridge Scholar Publishing 2013)

Marcovich M, 'Guide to the UN Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others' (N/D) <<http://www.catwinternational.org/Content/Images/Article/88/attachment.pdf>> accessed 28 March 2019

Markovic M, 'Fulfillment in Good Faith of Obligations Assumed in Accordance with the UN Charter' in *Principles of international law concerning friendly relations and cooperation*, (Sahovil'C 1972)

Merrills J, *International dispute settlement* (Cambridge University Press 2005)

Mohammad Ayub Khan, *Friends not masters: A political autobiography* (The University Press Limited 2008)

Niciu M, *drept international public* (Editura Servosat 1997)

Nolan A, *Children's Socio-Economic Rights, Democracy and the Courts* (Hart Publishing 2011)

O'Connor J F, *Good Faith in International Law* (Darmouth 1991)

Parker I, 'Qualitative research' in Peter Banister, Erica Burman, Ian Parker, Maye Taylor, Carol Tindall (eds), *Qualitative methods in Psychology: A research guide* (OU 1994)

Pati R, 'Combating human trafficking through transnational law enforcement cooperation: The case of Southeastern Europe', George Andreopoulos (ed.) in *Policing across borders: Law enforcement networks and the challenges of crime control* (New Springer 2013)

Patterno E, 'Legal Doctrine and Legal Theory' in Roversi C. (eds) *A treatise of legal philosophy and general jurisprudence* (Springer 2005)

Patton M, *Qualitative research and evaluation methods* (Sage Publication 2002)

Petre M and Gordon Rugg, *The unwritten rules of PhD research open up study skills*. (Open University Press 2010)

Petty R and P Briñol, 'The elaboration likelihood model' in P. A. Van Lange, A. W. Kruglanski, & E. T. Higgins, *Handbook of theories of social psychology*, vol 1 (Sage Publications 2012)

Portland State University, *Criminology and Criminal Justice Senior Capstone, 'Prevention of Human Trafficking: A Review of the Literature – Paper 9'* (Portland State University 2011)

Quirk J, *The anti-slavery project: From the slave trade to human trafficking* (University of Pennsylvania Press 2011)

Ragazzi M, *The concept of international Obligations Erga Omnes* (Clarendon Press 1997)

Riiskjaer M and Anna Marie Gallagher, *Review of UNHCR's efforts to prevent and respond to human trafficking* (UNHCR Policy Development and Evaluation Service September 2008)

Rishmawi M, *Article 4: The Nature of states parties' obligations* (A Commentary on the UN Convention on the Rights of the Child) (Martinus Nijhoff Publishers 2006)

Rosenne S, *Developments in the law of treaties 1945-1986* (Chapter 3- Good faith in the codified law of treaties) (Cambridge UP)

Rothbauer P, 'Triangulation' (2008) in L. M. Given (ed), *The SAGE encyclopedia of qualitative research methods* (Sage Publications)

Rothman K F and others. *Modern Epidemiology* (Wolters Kluwer Health/Lippincott Williams & Wilkins 2008)

Salahuddin Ahmed, A F, *History and heritage: Reflections on society politics and culture of South Asia* (University Press Limited 2007)

Salter M and J Mason, *Writing law dissertations: An introduction and guide to the conduct of legal research* (Pearson 2007)

Savelsberg J and L Cleveland, *Law and society'* (Oxford Bibliographies Online 2017) <<https://www.oxfordbibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0113.xml>> accessed 28 March 2019

Shavelson R J and L Towne, *Scientific research in education* (National Academy Press 2002)

Shelley L, *Human trafficking: A global perspective* (Cambridge University Press 2010)

Shelton D and others, 'Positive and Negative Obligations' in *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013)

- Simmel G, 'The problem of sociology' in D. Levine (Ed.), *Georg Simmel: On individuality and social forms* (University of Chicago Press 1971)
- Spinedi M, 'Crimes of state: bibliography' in *International Crimes of State*, J H Weiler, A Cassese and M Spinedi, eds (De Gruyter 1989)
- Sturman A, 'Case Study Methods' in J P Keeves (Ed.). *Educational research, methodology and measurement: An international handbook* (Pergamon 1997)
- Thomann L, *Steps to compliance with international labour standards – The international labour organization (ILO) and the abolition of forced labour* (VS Research 2011)
- Thwin Aung M, *Pagan: The origins of modern Burma* (University Press 1985)
- Tobin J, 'Understanding a human rights-based approach to matters involving children: Conceptual foundations and strategic considerations' in Antonella Invernizzi and Jane Williams (eds), *The human rights of children: From visions to implementation* (Ashgate 2011)
- Toulmin S, *The uses of argument* (Cambridge University Press 1969)
- Trosborg A, *Rhetorical Strategies in Legal Language* (Gunter Narr Verlag, Tübingen 2007)
- Tyldum G and A Brunovskis, *Describing the unobserved: methodological challenges in empirical studies on human trafficking* 17, 34 (2005)
<<https://onlinelibrary.wiley.com/doi/10.1111/j.0020-7985.2005.00310.x>> accessed 23 November 2018
- UNICEF, *Handbook on the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography* (UNICEF 2009)
- Valentine M, *Developing a critical theory of child abuse: a discussion of the nature of child abuse as a manifestation of the social order* (University of Warwick, 1989)
- Van Bueren G, *The international law on the rights of the child* (Martinus Nijhoff Publishers 1998)
- Vandenhoe W, 'Distinctive characteristics of children's human rights law' in Eva Brems, Ellen Desmet and Wouter Vandenhoe (eds), *Children's rights law in the global human rights landscape, isolation, inspiration, integration?* (Routledge 2017)
- Van Eemeren and others, *Handbook of argumentation theory* (Springer 2014)

Van Hoecke M eds, *Methodologies of legal research: Which kind of method for what kind of discipline?* (Hart Publishing 2011)

Van Krimpen L, 'The interpretation and implementation of labour exploitation in Dutch Case Law' in C Rijken (ed), *Combating human trafficking for labour exploitation* (Blackwell Publishing 2011)

Van Rooij B, *Bringing justice to the poor: Bottom-up legal development cooperation, Occasional Paper* (Leiden: Van Vollen-hoven Institute 2015)

Vold GB, *Theoretical criminology* (Oxford University Press 1998)

Walton D N, *Argument Schemes for Presumptive Reasoning* (Springer 1996)

Weber M, 'Science as a vocation' in H.H. Gerth and C.W. Mills (eds), *From Max Weber: Essays in sociology* (Oxford University Press 1969) 129

Webley L, 'Qualitative approaches to empirical legal research' in Peter Cane & Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010)

Williams C, *Tradition and change in legal English: Verbal constructions in prescriptive texts* (Cambridge University Press 2007)

Williams J, 'England and Wales' in *Litigating the Rights of the Child* (Springer 2014)

Wilson R, 'The relationship between school and society: Part II - Conflict Theory' in *The Building Blocks of Social Foundation*,] 6(1),
<<http://scholarworks.gvsu.edu/cgi/viewcontent.cgi?article=1006&context=colleague>> accessed 27 March 2019

Wintersteiger L, *Legal needs, legal capability and the role of public legal education* (The Foundation for Public Legal Education 2016)

Wojkowska E, *Doing justice. How informal justice systems can contribute* (UN Development Programme Oslo Governance Centre)

Yin R K, *Case study research: Design and methods* (Sage Publication 2009)

Yin R K, *Case Study Research Design and Methods* (Sage Publication 2014)

Zaman N, *1971 and After: Selected stories* (The University Press Limited 2001)

Zürn M, 'Introduction: Law and compliance at different levels law and governance' in *Postnational Europe. Compliance beyond the Nation-State*. M. Zürn and C. Joerges. (Cambridge, Cambridge University Press 2005).

Journal Articles and Online Journals

Adjami M E, 'African courts, international law, and comparative case law: Chimera or Emerging human rights jurisprudence?' (2002-03) 24 Michigan J Intl L 103 <<https://repository.law.umich.edu/cgi/viewcontent.cgi?referer=https://www.bing.com/&httpsredir=1&article=1302&context=mjil>> accessed 12 March 2018

Alexander P F, 'Interpretation of Treaties' (1929) 4 The American Journal of International Law 23, 745-52 <<https://doi.org/10.2307/2189742>> accessed 13 March 2018

Alston P, 'Reconceiving the UN human rights regime: Challenges confronting the new UN Human Rights Council' (2006) 7 Melbourne Journal of International Law 185, 224 <Reconceiving the UN human rights regime : challenges confronting the new UN Human Rights Council. | Melbourne Journal of International Law (informit.org)> accessed 30 November 2021

American Law Institute, Restatement of the Law, Third, Foreign Relations Law of the United States (1987) HIL §401 <<https://h2o.law.harvard.edu/collages/41732>> accessed 22 July 2018

Ammeter A and others. 'A Social Relationship Conceptualization of Trust and Accountability in Organizations' (2008) Human Resource Management Review 343 <<https://www.sciencedirect.com/science/article/abs/pii/S105348220400004X>> accessed 2 January 2018

Arora S K and others, 'Defining and Measuring Vulnerability in Young People' (2015) 40[3] Indian J Community Med 193, 197; <[doi:10.4103/0970-0218.158868](https://doi.org/10.4103/0970-0218.158868)> accessed 12 January 2018

Bartlett S and D Burton, 'Practitioner research or descriptions of classroom practice? A discussion of teachers investigating their classrooms', (2006) 14[3] Educational Action Research <<https://doi.org/10.1080/09650790600847735>> accessed 12 January 2018

Baškarada S. 'Qualitative Case Study Guidelines' (2014) 19 The Qualitative Report, How to Article 24, 1, 18 <<http://www.nova.edu/ssss/QR/QR19/baskarada24.pdf>> accessed 22 June 2018

Bellamy A J and C Drummond, 'The responsibility to protect in Southeast Asia: between non-interference and sovereignty as responsibility' (2011) 24[2] The Pacific Review 79-200 <<https://www.tandfonline.com/doi/abs/10.1080/09512748.2011.560958>> accessed 8 April 2019

Berg C, 'The UN 1951 Convention Relating to the Status of Refugees is not fit for purpose' (ABC News 18 Oct 2011) <<https://abc.net.au/news/2011-10-19/berg-why-are-we-clinging-to-an-outdated-refugee-convention/3577538>> accessed 15 October 2018

Bhabha J, 'Looking back, Looking forward: The UN Trafficking Protocol at fifteen', (2015) 4 Anti-Trafficking Review 3 – 12 <<https://www.antitraffickingreview.org>> accessed 3 July 2016.

Bodansky B and others, 'Invoking State Responsibility in the Twenty-First Century' (2002) 96 American Journal of International Law 798, 80
<[doi: https://doi.org/10.2307/3070683](https://doi.org/10.2307/3070683)> accessed 14 October 2018

Boister N, 'Transnational criminal law' (2003) 14 EJIL 953, 967-77
<<http://www.ejil.org/pdfs/14/5/453.pdf>> accessed 28 February 2019

Braga A, 'Hot Spots Policing and Crime Prevention: A Systematic Review of Randomized Controlled Trials' (2005) Journal of Experimental Criminology, 317, 342
<<https://link.springer.com/article/10.1007/s11292-005-8133-z>> accessed 13 June 2018

— —, 'The Effects of Hot Spots Policing on Crime' (2001) Annals of the American Academy of Political and Social Science 578: 104, 125
<<https://journals.sagepub.com/doi/abs/10.1177/000271620157800107>> accessed 22 February 2018

— — and others, 'Focused deterrence strategies and crime control: An updated Systematic review and meta-analysis of the empirical evidence.' (2018) 17{1} Criminology & Public Policy 202, 50.
<<http://campbellcollaboration.org/lib/project/96/>> accessed 21 December 2019

— — and others, 'The concentration and stability of gun violence at micro places in Boston, 1980-2008' (2010) 3 Journal of Quantitative Criminology, 26, 33-53
<<https://link.springer.com/article/10.1007/s10940-009-9082-x>> accessed 26 August 2017

— — and others, 'The Effects of 'Pulling Levers' Focused Deterrence Strategies on Crime' (2012) Campbell Systematic Reviews 6
<<https://journals.sagepub.com/doi/abs/10.1177/0022427811419368>> accessed 27 August 2017

Bufard I and K Zemanek, 'The "Object and Purpose" of a Treaty: An Enigma?' (1998) 3 *Austria Rev International & Eur. L.* 311, 343
<<https://www.thefreelibrary.com/The+object+and+purpose+of+a+treaty%3a+three+interpretive+methods.-a0227454069>> accessed 21 December 2019

Caballero-Anthony M, 'Finance and Development' (2018) 58[3] *Finance and Development* 3
<<https://www.imf.org/external/pubs/ft/fandd/2018/09/pdf/human>> accessed 23 December 2019

Cannon L, E Higginbotham, E., and M Leung, 'Race and class bias in qualitative research on women' (1988) 2 *Gender & Society* 449-462
<<https://doi.org/10.1177/089124388002004003>> accessed 21 October 2021

Centre for Women and Children's Studies, 'CWCS's direct assistance and support services to survivors of human trafficking and victims of sexual exploitation since 2010 - 2018' (2019) <<http://cwcsbd.org/>> accessed 18 June 2019

Chapman A and B Carbonetti, 'Human Rights Protections for Vulnerable and Disadvantaged Groups: The contributions of the UN Covenant of Economic Social and Cultural Rights' (2011) 33[3] *Human Rights Quarterly* 682, 732
<<https://www.jstor.org/stable/23015998>> accessed 22 March 2019

Charney J I, 'Third State Remedies in International Law' (1989) 10 *Michigan Journal of International Law* 57-101
<<https://repository.law.umich.edu/mjil/vol10/iss1/13/>> accessed 21 March 2019

Clark R, 'Offences of international concern: Multilateral Treaty Practices in the Forty Years since Nuremberg' (1988) 57 *NJIL* 49, 58
<<https://doi.org/10.1163/157181088X00047>> accessed 28 May 2019

Cohen D and B Crabtree, *Qualitative Research Guidelines Project* (2014) 2[3] *Open Journal of Social Sciences* <<http://www.qualres.org/HomeCrit-3805.html>> accessed 20 August 2017

Clark R, 'Offences of international concern: Multilateral treaty practices in the forty years since Nuremberg' (1988) 57 *NJIL* 49, 58
<<https://www.cambridge.org/core/books/an>> accessed 29 May 2019

Collard S and others, 'Public Legal Education Evaluation Framework' 2011 University of Bristol Personal Finance Resource Centre, Bristol
<<http://www.bristol.ac.uk/media-library/sites/geography/migrated/documents/pfrc1201.pdf>> accessed 23 March 2019

Cook S and J Pincus, 'Poverty, inequality and social protection in Southeast Asia' (2014) 31[1] *Journal of Southeast Asian Economies*, 1, 17
<[http://www.unrisd.org/80256B42004CCC77/\(httpInfoFiles\)/DEE34124C03E9646C1257CC9002CD47A/\\$file/Journal%20SEAE%20SC%20JP.pdf](http://www.unrisd.org/80256B42004CCC77/(httpInfoFiles)/DEE34124C03E9646C1257CC9002CD47A/$file/Journal%20SEAE%20SC%20JP.pdf)> accessed 2 December 2019

Cotterrell R, 'Why Must Legal Ideas Be Interpreted Sociologically?' (1998) 25(2) *J. of Law & Society* 171, 192
<<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1713&context=mj>> accessed 21 August 2018

D'Acquisto G and S D'Avanzo, 'The role of SHALL and SHOULD in two international treaties' (2009) 3(1) *Critical approaches to Discourse Analysis across disciplines* 36-45, 40 <https://www.lancaster.ac.uk/fass/journals/cadaad/wp-content/uploads/2015/01/Volume-3_DAcquisto-DAvanzo.pdf> accessed 22 August 2018

Dahrendorf R, 'Toward a theory of social conflict' (1958) 2[2] *The Journal of Conflict Res* 171, 182 <<http://www.jstor.org/stable/172974>> 22 February 2018

de Beco G, 'The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure: Good news?' (2013) 13[2] *Human Rights Law Review* 367-387 <<https://doi.org/10.1093/hrlr/ngt015>> accessed 21 December 2018

Dempsey M and others, 'Defining sex trafficking' (2014) 26(1) *Emory international law review* 137, 142 <<http://law.emory.edu/eilr/content/volume-26/issue-1/articles/define-sex-trafficking-in-international-and-domestic-law.html>> accessed 29 December 2019

Dempsey M and others, 'Defining sex trafficking in international and domestic law: Mind the gaps' (2012) 26(1) *Emory International Law Review* 137, 62
<<https://ebSCO.aademic.search.comlete>> accessed 4 February 2018

Dewansyah B and I Handayani, 'Law and Policy Related to Refugee in Indonesia, Malaysia and Thailand' (CEJISS 12.4 2018), 473-485
<https://www.academia.edu/38056443/Reconciling_Refugee_Protection_and_Sovereignty_in_ASEAN_Member_States_Law_and_Policy_Related_to_Refugee_in_Indonesia_Malaysia_and_Thailand> 20 February 2019

Efat S I J and S Anisuzzaman, 'Human Trafficking in South Asia: Application of Anti Trafficking Laws and The States' Duty to protect human rights of the victims' (2015) 7[4] *International Journal of Business, Economics and Law* 53-59
<<https://www.ijbel.com/.../september-2015/vol-7-august-2015-issue-4-law>> accessed 29 July 2018

Erskine T, 'Assigning responsibilities to institutional moral agents: The case of states and 'Quasi-States.' (2001) 15[2] *Ethics & International Affairs* 67, 85
<<https://onlinelibrary.wiley.com/doi/full/10.1111/j.1747-7093.2001.tb00359.x>>
accessed 21 February 2019

Farley M, 'Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly' (2006) 18 *Yale J.L. & Feminism* 109, 128
<<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1243>> accessed 22 Dec 2017

Feve S and C Finzel, 'Trafficking of people' (2001) 38[1] *Harvard Journal on Legislation* 279, 290
<<https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=188749>> accessed 21 December 2018

Flyvbjerg B, 'Five misunderstandings about case-study research' (2006) 12[2] *Qualitative Inquiry* 219, 245
<<https://journals.sagepub.com/doi/abs/10.1177/1077800405284363>> accessed 21 August 2017

Freenan D, 'Foreword: Socio-legal studies and the humanities' (2009) 5[3] *International Journal of Law in Context* 235-242
<<https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/foreword-sociolegal-studies-and-the-humanities/2D98015165E246CC9D4D9C4175000349>> accessed 28 July 2017

Gallagher A, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis,' (2001) 23[975] *HUM. RTS. Q.* 975, 990, 93
<<http://www.traffickinggroundtable.org/wp-content/uploads/2012/07/Human-Rights-and-the-New-UN-Protocols.pdf>> accessed 22 September 2017

— — A, 'Two Cheers for the Tracking Protocol' (2015) 4 *Anti-Tracking Review* 14
<doi: <https://org/10.14197/atr.20121541>> accessed 23 September 2017

— — and P Holmes. 'Developing an effective criminal justice response to human trafficking: Lessons from the front line' (2008) 18[3] *International Criminal Justice Review* 318, 343 <<https://doi.org/10.1177/1057567708320746>> accessed 21 August 2019

— — and J N Ezeilo, 'The UN Special Rapporteur on Trafficking: A turbulent decade in review' (2015) 37[4] *Human Rights Quarterly* 913, 940. <<https://muse.jhu.edu/>> accessed 14 September 2019

– – and P Holmes, 'Developing an Effective Criminal Justice Response to Trafficking in Persons: Lessons from the Front Line' (2008) 18 International Criminal Justice Review <<https://ssrn.com/abstract=1292563>> accessed 22 February 2019

– – 'Contemporary Practice of the United States Relating to International Law' (2001) 95 Am. J. Int'l L. 387, 408 <<https://www.cambridge.org/core/services/aop-cambridge-core/content/>> accessed 23 February 2019

– – 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' (2001) 23 Hum Rights Q 975, 975-76
Gerry J, Qualitative methods (2017) 36 Annual Review of Political Science
<<https://doi.org/10.1146/annurev-polisci-092415-024158>> accessed 03 Jan 2018

Guzman A T, 'International Soft Law' (2010) 2 J. Legal Analysis 171, 179
<<https://scholarship.law.berkeley.edu/facpubs>> accessed 21 June 2019

Hammarbert T, 'The UN Convention on the Rights of the Child – and How to Make it Work' (1990) 12(1) Human Rights Quarterly 97-105, 100
<<https://www.jstor.org/stable/762167>> accessed 31 December 2019

Hassan T, 'Good faith in treaty formation' (1981) 21 Virginia J.I.L. 443 (450)
<<https://www.jstor.org/stable/4242744>> accessed 20 July 2018

Hathaway J C, 'The human rights quagmire of human trafficking' (2008) 49[1] Virginia Journal of International Law 18, 42, 52-53
<<https://repository.law.umich.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1295&context=articles>> accessed 23 August 2017

Haynes D F, '(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act' (2007) 21 GEO. IMMIGR. L.J. 337, 345-46
<<http://traffickingroundtable.org/2011/01/not-found-chained-to-a-bed-in-a-brothel-conceptual-legal-and-procedural-failures-fulfill-the-promise-of-the-trafficking-victims-protection-act/>> accessed 22 August 2017

Heise M, 'The Past Present and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism' (2002) University of Illinois Law Review 819
<<https://scholarship.law.cornell.edu/facpub/733>> accessed 27 July 2018

Herring T, 'Prevention and Protection Interventions for Stateless Non-Refugee and Force Displaced Children' (2019) 31[2] New England Journal of Public Policy. <<https://scholarworks.umb.edu/nejpp/vol31/iss2/12>> Accessed 20 December 2020

Herring T, 'Statelessness and the struggle to close the gap in human rights through legal empowerment: The Palermo Convention employed as a conduit' (2018) 6 {2} Migration and Citizenship: The American Political Science Association's Organized Section on Migration and Citizenship, Summer 37-42 (Migration and Citizenship 2018) <<https://mk0apsaconnectbv6p6.kinstacdn.com/wp-content/uploads/sites/13/2018/08/APSA-Migration-Citizenship-Newsletter-6-2-Summer-2018-.pdf>> accessed 3 November 2018

Hutchinson D, 'McNair and the Law of Treaties Revisited' (1989) 9[3] Oxford Journal of Legal Studies 374, 382 <<https://doi.org/10.1093/ojls/9.3.374>> accessed 22 March 2019

Hutchinson T and N Duncan, 'Defining and describing what we do: Doctrinal legal research' (2012) 1[17] Deakin Law Review 212-213 <<https://ojs.deakin.edu.au/index.php/dlr/article/view/70/75>> accessed 18 April 2018

Idris A, 'Malaysia and Forced Migration' (2012) 2(1) Intellectual Discourse 31, 54. UNHCR, Global Trends (UNHCR 2017) <www.unhcr.org/5b27be547.pdf> accessed 22 December 2017

Isoyama K, 'Law education in Japan, Developments and challenges' (2019) 3[1] International Journal of Public Education 96, 116 <<https://northumbriajournals.co.uk/index.php/ijple/article/view/836>> accessed 21 July 2018

Jacobson D and N Mustafa, 'Social identity map: A reflexivity tool for practicing explicit positionality in critical qualitative research' (2019) International Journal of Qualitative Methods <[doi:10.1177/1609406919870075](https://doi.org/10.1177/1609406919870075)>

Jeremiah R and others, 'Exposing the culture of silence: Inhibiting factors in the prevention, treatment, and mitigation of sexual abuse in the Eastern Caribbean' (2017) 66 Child Abuse & Neglect 53-63 <<https://www.ncbi.nlm.nih.gov/pubmed/28242101>> accessed 22 July 2018

Jia G and others, 'A study of mega project from a perspective of social conflict theory' (2011) 29 International Journal of Project Management 817, 827 <[http://doi:10.1016/j.ijproman.2011.04.004](https://doi.org/10.1016/j.ijproman.2011.04.004)> accessed 3 January 2019

King V, 'The Sociology of South-East Asia: A Critical Review of Some Concepts and Issues' (1994) Brill 171, 206 <<https://www.jstor.org/stable/27864515>> accessed 2 February 2020

Joffres C and others, 'Sexual Slavery without Borders: Trafficking for Commercial Sexual Exploitation in India' (2008) 7 International Journal for Equity in Health 22 <<http://doi.org/10.1186/1475-9276-7-22>> accessed 13 February 2019

Jonas D and T Saunders, 'The objective and purpose of a treaty: Three interpretive methods' (2010) 43[3] Vanderbilt Journal of Transnational Law 565, 608 <https://works.bepress.com/david_jonas/1/download> accessed 2 January 2018

Jones L. 'ASEAN's unchanged melody? The theory and practice of 'non-interference' (2010) 23(4) The Pacific Review 479-502 <<https://doi.org/10.1080/09512748.2010.495996>> accessed 23 April 2019

Kaime T, 'Vernacularizing' the Convention on the Rights of the Child: Rights and culture as analytic tools' (2010) 18 International Journal of Children's Rights 637-53, 639 <https://www.researchgate.net/publication/337549861_Children's_Rights> accessed 2 February 2020

Kelemen K and M Johansson, 'Still Neglecting the Demand' (2013) 21(3/4) European Journal of Crime, Criminal Law and Criminal Justice 268 <<https://doi.org/10.1163/15718174-21042030>> accessed 1 February 2020

Kemmis S, 'Action research as a practice-based practice', (2009) 17[3] Educational Action Research <<https://doi.org/10.1080/09650790903093284>> accessed 23 July 2018

— — 'Participatory action research and the public sphere' (2006) 14[4] Educational Action Research <<https://doi.org/10.1080/09650790600975593>> accessed 23 July 2018

Kennedy D, 'Drugs, race, and common ground: Reflections on the High Point intervention' (2009) 262 National Institute of Justice Journal 12, 17 <<https://www.ncjrs.gov/pdffiles1/nij/225760.pdf>> accessed 2 July 2017

— — 'Pulling levers: Chronic offenders, high-crime settings, and a theory of prevention' (1997) 31 Valparaiso University Law Review 449, 484 <<https://scholar.valpo.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1860&context=vulr>> accessed 22 July 2018

- Khan, M T and S Ahmed, 'Dealing with the Rohingya-crisis: The relevance of the general assembly and R2P' (2019) *Asian Journal of Comparative Politics* <<https://doi.org/10.1177/2057891119868312>> accessed 22 October 2019
- Kolb R, 'The Concept of International Legal Personality, An Inquiry into the History and Theory of International Law, (2007) 18[4] *European Journal of International Law*, 775-776, <<https://doi.org/10.1093/ejil/chm035>> accessed 2 September 2019
- Kunz J, 'The Meaning and the Range of the Norm Pacta sunt Servanda' (1945) 19 *AJIT* <<https://www.jstor.org/stable/2192340>> accessible 11 December 2019
- Labuda, P I, 'The Special Criminal Court in the Central African Republic' (2017) 15{1} *Journal of International Criminal Justice*, 175, 206 <doi: 10.1093/jicj/mqw074> accessed 23 June 2019
- Lang A F, 'Crime and Punishment: Holding States Accountable' (2007) 21[2] *Ethics & International Affairs* 239, 257 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1747-7093.2007.00072.x>> accessed 20 June 2019
- Levin B, 'Values and assumptions in criminal adjudication' (2015-2016) 129 *Harvard Law Review* 385 <<https://scholar.law.colorado.edu/articles/627/>> accessed 3 Dec 2019
- Ma X F, 'Durkheim and Weber: The comparison of sociological research method' (2008) 31[22] *The Studies of Sociology* 15, 18 <<https://www.sesync.org/sites/default/files/education/sociology-2.pdf>> accessed 2 December 2019
- Matsui Y, 'The Transformation of the Law of State Responsibility' (1993) 20 *Thesaurus Acroasium* 5, 65 <<http://www.gbv.de/dms/spk/sbb/toc/334958695.pdf>> accessed 23 July 2018
- Molland S, 'The perfect business: Human trafficking and Lao-Thai cross-border migration' (2010) 41(5) *Development and Chane* <<https://doi.10.1111/j.1467-7660.2010.01665.x>> accessed 18 February 2018
- Mordeson J and others, 'Human Trafficking: Source, Transit, Destination Designations' (2019) 13[03] *New Mathematics and Natural Computations* <<https://doi.org/10.1142/S1793005717400063>> accessed 24 December 2019
- Morse S, 'I'm so glad that I live in a world where there are Octobers' (2017) 1[1] *International Journal on Public Legal Education* 13 <<http://dx.doi.org/10.19164/ijple.v2i1.704>> accessed 22 January 2018

Nadelmann E, 'Global prohibition regimes: The evolution of norms in international society' (1990) 44 *International Organization* 479, 481
<<https://www.jstor.org/stable/2706851>> accessed 28 February 2019

Newbery E, 'Child abuse: The current theory base and future research needs' (1983) 22[3] *Journal of the American Academy of Child Psychiatry* 262, 268
<<http://www.elinewberger.com/child-abuse-the-current-theory-base-and-future-research-needs/>> accessed 22 December 2019

Perrin B, 'Just Passing Through? International Legal Obligations and Policies of Transit Countries in Combating Trafficking in Persons', (2010) 7(1) *European Journal of Criminology*, 11, 27 <doi: 10.1177/1477370809347946> accessed 2 February 2019

Perry K M and L McEwing, 'How do social determinants affect human trafficking in Southeast Asia, and what can we do about it? A systematic review' 2013 *HHR Journal* <<https://www.hhrjournal.org/2013/12/how-do-social-determinants-affect-human-trafficking-in-southeast-asia-and-what-can-we-do-about-it-a-systematic-review/>> accessed July 2017

Petchaaramesree S, 'ASEAN and its approach to forced migration issues' (2016) 20[2] *The International Journal of Human Rights* 173, 190
<<https://doi.org/10.1080/13642987.2015.1079021>> accessed 14 October 2018

Piper N, 'A problem by a different name? A review of research on trafficking in South-East Asia and Oceania' (2005) (Systematic Review)
<<https://doi.org/10.1111/j.0020-7985.2005.00318.x>> accessed 21 March 2019

Quennerstedt A, 'Children, but not really humans? Critical reflections on the hampering effect of the "3p's"' (2010) 18 *International Journal of Children's Rights* 619-35, 624-5 <<http://kingscollege.net/pomfret/3300/readings/Quennerstedt.pdf>> accessed 20 March 2019

Sachariew K, 'State responsibility for multilateral treaty violations: Identifying the "Injured State" and its legal status' (1988) 35 *NILR* 273-89
<<http://www.gaetanoarangioruiz.it/publications/fourth-report-on-state-responsibility/fourth-report-on-state-responsibility/>> accessed 19 March 2018

Samuel G, 'Taking methods seriously (Part One)' (2007) 2 *Journal of Comparative Law* 94, 105ff <<https://www.kent.ac.uk/law/people/1372/samuel-geoffrey>> accessed 12 August 2017

Sandberg K, 'The Convention on the Rights of the Child and the vulnerability of children' (2015) 84 *Nordic Journal of International Law* 221, 47, 229 <[https:// doi: 10.1163/15718107-08402004](https://doi.org/10.1163/15718107-08402004)> accessed 21 December 2019

Sean Quinn M, 'Argument and authority in common law advocacy and adjudication: An irreducible pluralism of principles' (1999) 74 *Kent Law Review* 655, 772 <<https://scholarship.kentlaw.iit.edu/cklawreview/vol74/iss2/15>> accessed 20 December 2019

Seekins D M, 'The social, political, and humanitarian impact of Burma's Cyclone Nargis' (2008) 6[5] *The Asia-Pacific Journal* <<https://apjpf.org/-Donald-M--Seekins/2763/article.pdf>> accessed 2 October 2018

Seo-Young C, 'Evaluating policies against human trafficking worldwide: An overview and review of the 3P Index' (2015) *Journal of Human Trafficking*, 86, 99 <<http://www.economics-human-trafficking.org/anti-trafficking-3p.html>> accessed 3 July 2017

Shavelson R J and others, 'On the science of education design studies' (2003) 32[1] *Educational Researcher* 25-28 <<http://www.jstor.org/stable/3699932>> accessed 19 August 2017

Shawki N, 'Norm-Based advocacy and social change: An analysis of advocacy efforts to end child marriage' (2015) 34 [4] *Social Alternatives* <<https://www.questia.com/read/1P3-4011056571/norm-based-advocacy-and-social-change-an-analysis>> accessed 1 July 2019

Smolin D, 'Intercountry adoption as child trafficking' (2004) 39 *Vaparaíso University Law Review* 283, 325 <<https://scholar.valpo.edu/cgi/viewcontent.cgi?article=1252&context=vulr>> accessed 3 July 2019

Solicitor General's Committee on Public Legal Education, 'A Ten-Year Vision for Public Legal Education' (Law Works, 31 October 2018) <<https://www.lawworks.org.uk/sites/default/files/files/10YearVisionForPLE-web.pdf>> accessed 30 October 2019

Stuyt A M, 'Good faith and bad faith' (1981) 28 *N.I.L.J.* <<https://www.jstor.org/stable/3750419>> accessed 1 July 2019

Tashakkori A and J W Creswell. 'Exploring the nature of research questions in mixed methods research' (2007) 1[3] *Journal of Mixed Methods Research* 207, 211 <<https://journals.sagepub.com/doi/pdf/10.1177/1558689807302814>> accessed 2 March 2018

Tashakkori T and J W Creswell, 'Exploring the nature of research questions in mixed-methods research' (2007) 1[3] *Journal of Mixed Methods Research*, 207, 211
<<https://journals.sagepub.com/doi/pdf/10.1177/1558689807302814>> accessed 2 July 2019

Tetlock P. 'The impact of accountability on judgment and choice: Toward a social contingency model' (1992) *Advanced Experimental Social Psychology* 331
<<https://www.sciencedirect.com/science/article/pii/S0065260108602877>> accessed 12 August 2017

Thwin M A, 'Burma before Pagan: The status of archeology today?' (1985) 25[2] *Asian Perspectives* 1, 22
<<https://scholarspace.manoa.hawaii.edu/bitstream/10125/19244/1/AP-v>> accessed 2 July 2019

Tittenbrun J, 'Ralph Dahrendorf's conflict theory of social differentiation and elite theory' (2013) 6[3] *Innovative Issues and Approaches in Social Sciences* 122
<https://www.researchgate.net/publication/270621430_RALPH_DAHRENDORF'S_CONFLICT_THEORY_OF_SOCIAL_DIFFERENTIATION_AND_ELITE_THEOR> accessed 25 February 2019

Tobin J, 'Judging the judges: Are they adopting the rights approach in matters involving children' (2009) 33[2] *Melbourne University Law Review* 579
<classic.austlii.edu.au/journals/MelbULawRw/2009/20.html> accessed 3 March 2018

Tomuschat C and Q Vadis, 'Argentoratium? The Success Story of the European Convention on Human Rights - and a Few Dark Stains' (1992) 13 *Hum. RTS. L. J.* 401
<<https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1191&context=umialr>> accessed 2 March 2018

Van Krieken P, 'The High Commissioner for Refugees and Stateless Persons' (1979) 26 *Netherlands International Law Review* 24-36
<<https://doi.org/10.1017/S0165070X00017666>> accessed 12 October 2018

Virally M, 'Review essay: Good faith in public international law' (1983) *AJIL* 130-134
<<https://discovery.ucl.ac.uk/id/eprint/1470678/1/2UCLJLJ40%20-%20Good%20Faith.pdf>> accessed 12 October 2018

Walter M, 'Trafficking in humans: Now and in Herman Melville's Benito Cereno' (2005) 12 *Wm & Mary J Women & Law* 135, 168
<<https://scholarship.law.wm.edu/wmjowl/vol12/iss1/5/>> accessed 26 March 2018

Warren J, 'Taming the Warrant in Toulmin's Model of Argument' (2010) 99[6] *The English Journal* 41, 46 <www.jstor.org/stable/20787665> access 18 February 2019

Williams J, 'Incorporating children's rights: The divergence in law and policy' (2007) 27(2) *Legal Studies* 261, 287 <<https://doi.org/10.1111/j.1748-121X.2007.00049.x>> accessed 30 November 2017

Yang D, 'The theoretical context and judgment of sociological quantitative research method' (2009) 23[11] *Jiangxi Sociology* 56, 61
<<https://link.springer.com/content/pdf/bfm:978-1-349-17619-9/1.pdf>> accessed 27 March 2018

— — 'The theoretical context and judgment of sociological quantitative research method' (2009) 23[11] *Jiangxi Sociology* 56, 61
<sociology.org.uk/notes/revgrm5.pdf> accessed 12 October 2018

Command Papers and Law Commission Reports

Articles on the Responsibility of International Organizations, with commentaries 2011, Report of the ILC on the Work of its Sixty-third Session, GA Official Records, Sixty-sixth Session, Supp no 10 (A/66/10), (hereinafter DARIO commentaries), Yearbook of the International Law Commission, 2011, vol II, Part Two

Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, ILC, fifty-third session, in 2001, (A/56/10) YILC, 2001, vol. II, Part Two, at 38

Issue Paper, (UNODC) <https://www.unodc.org/documents/human-trafficking/2015/UNODC_IP_Exploitation_2015.pdf> accessed 30 December 2018

International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement no 10 (A/56/10), chp.IV.E.1, adopted by the International Law Commission at its fifty-third session (2001)

Cynllun Efrydiaeth Ôl-radd Llewelyn Williams, *Archwiliad cyfreithiol o Brexit, Cyfraith Cymru, a'r Deyrnas Unedig: Plant wedi eu Dadleoli ar draws Ffiniau a Chamfanteisio ar Blant* (Cmd 1 Mai 2019, Cyfres 1af)
<http://www.ywerinlegacyfund.wales/award/llewelyn-williams-postgraduate-studentship/>

Cynllun Efrydiaeth Ôl-radd Llewelyn Williams, *Archwiliad cyfreithiol o Brexit, Cyfraith Cymru, a'r Deyrnas Unedig: Plant wedi eu Dadleoli ar draws Ffiniau a Chamfanteisio ar Blant* (Cmd 1 Hydref 2020, 2il gyfres)
<http://www.ywerinlegacyfund.wales/award/llewelyn-williams-postgraduate-studentship/>

Websites, Blogs, and Films

ASEAN Intergovernmental Commission on Human Rights, 'Terms of Reference', [4.5] <<http://aichr.org/documents/>> accessed 7 February 2019

Cho S Y and K C Yodiamonnati, 'An empirical analysis on the impact of the Anti-trafficking Protocol' (ILO 2011)
<papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2117834_code1428834.pdf?> accessed 11 January 2018

Colonial Office, 'Census of India: Burma' (Rangoon 1911)
<http://www.burmalibrary.org/docs22/1911_census_of_India-Vol-09-Burma-01-tpo.pdf> accessed 22 September 2018

Dag Hammarskjöld Library | Bibliothèque Dag Hammarskjöld (2021)
<<https://www.un.org/en/cco/dag-hammarskjold-CC%8ld-library>> accessed 2 December 2021

Ellis-Peterson H, 'Underage Muslim girls are regularly forced into marriage with Malaysian men, and the government turns a blind eye' (Guardian, 1 September 2018)
<<https://www.theguardian.com/world/2018/sep/01/thailand-malaysia-muslim-child-forced-marriage>> accessed 23 March 2019

Feingold D A, *Trading Women Documentary film 77-minute version* (Ophidian Films Ltd 2011) <www.der.org> accessed 12 January 2019

Hague Process on Refugees, 'The Hague process on refugees and migration' (2019)
<http://thp.merit.unu.edu/migration_policy/> accessed 2 January 2019.
The New York Times, 'Editorial, The Tsunamis and Child Trafficking' (New York Times January 13, 2005) <<https://www.nytimes.com/2005/01/13/opinion/the-tsunamis-and-child>> 22 June 2018

Human Rights Watch, 'All you can do is pray: Crimes against humanity and ethnic cleansing of Rohingya Muslims in Burma's Arakan State' (2013)
<<https://www.hrw.org/report/2013/04/22/all-you-can>> access 28 January 2019

Human Rights Watch, 'Burma: Communal violence undercuts rights gains' (2014)
<<https://www.hrw.org/news/2014/01/21/burma-communal-violence-undercuts-rights-gains>> accessed 28 January 2018

Human Rights Watch, 'Senegal: Chad asks for the extradition of Hissène Habré to Belgium' (22 July 2011) <<https://www.refworld.org/docid/4e3000df2.html>> accessed 30 May 2019

ILO, 'Asia-Pacific migration network, ILO regional office for Asia and the Pacific' (ILO 2019) <<http://apmigration.ilo.org/asean-labour-migration-statistics>> accessed 11 April 2019

Just Security, 'Behind Myanmar's military alibi: A path to compliance with the ICJs order to protect Rohingya' (Reiss Security on Law and Security at New York University School of Law 2020) < <https://www.justsecurity.org/68393/behind-myanmars-military-alibi-a-path-for-compliance-with-the-icjs-order-to-protect-rohingya/> > accessed 5 Feb 2020

Lwin N S, 'Making Rohingya stateless' < <https://www.newmandala.org/making-rohingya-statelessness/> > accessed 28 September 2018

Macdonald A P, 'Time to engage Myanmar's Military' (14 February 2015 Asia Times) <http://www.atimes.com/atimes.com/Southeast_Asia/SEA-01-040215.html> accessed 29 September 2018

Medhat A, 'A critical analysis to the United Nations' performance in the light of contemporary global challenges' (April 1, 2020) <<https://cairo.academia.edu/AMedhat>> accessed 30 December 2021

Mekong Migration Network (MMN), 'Death by Suffocation of 54 Burmese Migrants' (MMN 30 July 2014) <<http://www.mekongmigration.org/?cat=10>> accessed 23 June 2019

Moher D and others, 'Preferred Reporting Items for Systematic Reviews and Meta-Analyses: The PRISMA Statement', (2009) Public Library of Science < <https://doi.org/10.1371/journal.pmed1000097>> accessed 12 July 2018

Myanmar – Bangladesh Relations: Challenges and Opportunities (2016) < https://www.myanmarisis.org/publication_pdf/final-version-myanmar-bangladesh-relations-mmedits-ah2-1wpFhW.pdf> accessed 1 September 218.

National Center for Homeless Education 'Trafficking and the Commercial Sexual Exploitation of Children (CSEC)' (NCHE 2019) <<https://nche.ed.gov/csec/>> accessed 30 September 2019

National Working Group for Sexually Exploited Children and Young People 'How is Child Sexual Exploitation Defined?' (2008) <<http://www.nwgnetwork.org/who-we-are/what-is-child-sexual-exploitation>> accessed 28 Sept 2017

Oliver-Smith A, 'Disasters and Forced Migration in the 21st Century' (2016) <<http://understandingkatrina.ssrc.org>> accessed 22 June 2018

Paton C, 'A short report on Arakan' (London: Colonial Office 1826)
<<https://www.scribd.com/document/143190474/Charles-Paton-s-aShort-Report-on-Arakan>> accessed 21 October 2018

Plecher H, 'Gross domestic product (GDP) of the ASEAN countries from 2008 to 2018' (Statista 2019) <<https://www.statista.com/statistics/796245/gdp-of-the-asean-countries/>> accessed 10 April 2019

Plickers <<https://get.plickers.com/>> accessed 12 April 2019

Poduga P, 'Thailand's Civil Wars' (Harvard's Political Review, March 2013)
<<https://harvardpolitics.com/world/thailands-civil-war/>> accessed 23 June 2019

Portland State University - Criminology and Criminal Justice Senior Capstone,
'Prevention of Human Trafficking: A Review of the Literature - Paper 9' (Paper 9,
Portland State University 2011)
<http://pdxscholar.library.pdx.edu/ccj_capstone/9> accessed 19 August 2019

Refugee Children <http://repo.uum.edu.my/16031/1/2014_7.pdf> accessed 12 March 2017

Schuetze K, 'South East Asia: Immediately step up to rescue thousands at grave risk at sea' (Amnesty International 13 May 2015) <<https://www.amnesty.org/en/press-releases/2015/05/south-east-asia-immediately-step-up-efforts-to-rescue-thousands-at-grave-risk-at-sea-1/>> accessed 29 October 2017

Socio-Legal Association Center <<http://www.slsa.ac.uk/>> accessed 12 August 2017

Socio-Legal Association Center <<http://www.slsa.ac.uk/>> accessed 12 August 2017

Sustainable Development Solutions Network (SDSN)
<<https://indicators.report/targets/8-7/>> accessed 30 September 2019

United Nations, 'UN documentation: Overview' (UN Documentation Library, 2021)
<<https://research.un.org/en/docs>> accessed 30 November 2021

UN News, Law & Crime, 'Report reveals linkages between human trafficking and forced marriage' (UNICEF) (Law & Crime Prevention, UN News)
<<https://news.un.org/en/story/2020/10/1074892>> accessed 19 October 2021

UN Publications, 'Purposes of the United Nations' (UN 2021)
<<https://shop.un.org/About>> accessed 30 November 2021

US State Department, '2019 TIP Country Report' (US State Department 2019) 87
<<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report-.pdf>> accessed 23 September 2019

US State Department, 'The facts about children trafficked for use as camel jockeys' (Office to Monitor and Combat Trafficking in Persons, 8 August 2005)
<<https://2001-2009.state.gov/g/tip/rls/fs/2005/50940.htm>> accessed 28 September 2019

WHO, 'Guidelines for medico legal care for victims of sexual violence' (Geneva: World Health Organization)
<<http://whqlibdoc.who.int/publications/2004/924154628x.pdf>> accessed 9 November 2018

Wehberg H, 'Pacta sunt Servanda' (1959) AJIT <<https://www.trans-lex.org/129500>> accessed 22 June 2017

Williamson E, 'Human Trafficking' (Washington, D.C.: US Department of Justice, Office of Justice Programs, Office for Victims of Crime, Training and Technical Assistance Center 2012) 31-41
<<http://www.nationalacademies.org/hmd/~media/Files/Resources/SexTrafficking/guideforlegalsector.pdf>> 21 July 2018

Wintersteiger L, *Legal needs, legal capability and the role of public legal education* (A Report by Law for Life: The Foundation for Public Legal Education 2016) 6, 32
World Bank, 'OVC Core Definitions'
<<http://info.worldbank.org/etools/docs/library/164047/howknow/definitions.htm>> accessed 17 February 2018

World Bank Group and UN, 'Pathways for Peace: Inclusive approaches to preventing violent conflict' (2018) International Bank for Reconstruction and Development/The World Bank
<<https://openknowledge.worldbank.org/handle/10986/28337>> accessed 27 March 2018

World Health Organisation (WHO), *(WHO) Clinical Guidelines on Responding to Children and Adolescents Who Have Been Sexually Abused* (WHO 2017)
<<https://www.who.int/reproductivehealth/publications/violence/clinical-response-csa/en/>> accessed 22 December 2019

Interviews (Practitioner Research)

Interviews with Bar Council Malaysia, CPD Event ‘Questionnaires, Identifying and responding to human trafficking and multiple forms of exploitation’ (Kuala Lumpur, Malaysia, 12 April 2019)

Interviews with LawAsia Conference Attendees, 7th Annual Conference (Vienne, Laos, 7 June 2018)

Interview communications with Susan Goard, Dag Hammarskjöld Library | Bibliothèque Dag Hammarskjöld on 30 November 2021 and 2 December 2021

Interviews with Workgroup Sessions, The Refugees, Borders, and Membership Conference, Malmö University. Institute for studies of Migration, Diversity and Welfare (Malmö, Sweden 24-26 October 2018)