
ARCHITECTURE OF INTERNATIONAL LAW WITH RESPECT TO 21ST CENTURY WARFARE: NORMATIVELY AMBITIOUS BUT OPERATIONALLY DEFICIENT

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ABSTRACT

The contemporary edifice of international law, though normatively robust in its commitment to humanitarianism, and state accountability, remains structurally and functionally inadequate in addressing the amorphous, digitized, and decentralized nature of 21st century warfare. This paper undertakes a critical interrogation of this disjuncture between international law's aspirational ideals and its operational deficiencies in the face of modern conflict.

The paper, first deals with the normative vacuum surrounding non-state actors and unconventional warfare, where traditional legal instruments designed for inter-state armed conflict; prove increasingly obsolete. Secondly, it explores the legal conundrums posed by cyber espionage and digital warfare, particularly the enduring challenges of attribution, state responsibility and ambiguity of borders in digital space. Third, the research evaluates the jurisdictional lacunae and enforcement paralysis that undermine key institutions such as the International Criminal Court and International Court of Justice, exacerbated by the realities of state sovereignty, political discretion, and Security Council veto power. Lastly, the paper interrogates the reliance on customary international law in the absence of a codified structure of regulations, laws and rules in high velocity conflict scenarios. Through analysis with contemporary case studies, this research contends that unless the international legal system recalibrates its architecture to address multidimensional fault lines, it risks descending into normative irrelevance amidst an era defined by asymmetry, anonymity and algorithm warfare.

The paper advocates for codification of clear and binding legal structures which behave as adaptive instruments that reflect the realities of modern conflict through treaty reform, technological regulation and institutional recalibration.

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1. Introduction

“International law” is a body of rules and principles that govern the relationships and conduct of sovereign states, international organizations, and individuals in their interactions with each other³. The international legal order, meticulously constructed upon high-minded ideals of sovereign parity, humanitarian imperatives, and accountability for breaches of peace, finds itself in existential disarray and the disruptive realities of twenty-first century warfare. The doctrinal pillars of the system, enshrined in instruments like the United Nations Charter, Geneva Conventions and the Rome Statue; radiate normative grandeur, they remain startlingly inert when confronted with the operational exigencies of an era marked by transnational insurgencies, algorithmic weaponry, and kinetic anonymity. The dissonance between law’s lofty architecture and war’s fractured, decentralised algorithms is no longer theoretical rather, systemic and chronic.

As Antonia Cassese notes, “International law has always lagged behind the evolution of conflict, it’s reflecting yesterday’s wars, not today’s”⁴. Nowhere is this lag more apparent than in its engagement with non-state armed groups and decentralised warfare. Conflicts in Syria, Yemen, Ukraine and Gaza underscore the growing involvement of non-state actors like Hamas or the Wagner group who operate outside conventional treaty framework. Despite attempts to incorporate them under Common Article 3⁵ and Additional Protocol II⁶, these legal tools remain under-enforced and vague in scope. Michael Schmitt, editor of the Tallin Manual, states, “cyber operations have outpaced the existing legal architecture”⁷, leaving states to operate in a jurisprudential grey zone. The Budapest Convention on Cybercrime⁸, as notable as it is, is limited in scope and ratification. The enforcement landscape, where ICC (International

³ <https://uolllb.com/blogs/uol/relationship-between-international-law-human-rights-and-domestic-law>

⁴ ANTONIO CASSESE, *INTERNATIONAL LAW* 123 (2d ed. 2005)

⁵ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Aug. 12, 1949, 75 U.N.T.S. 31

⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609

⁷ TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS (Michael N. Schmitt ed., 2017)

⁸ Convention on Cybercrime, Nov. 23, 2001, Europ. T.S. No. 185

Criminal Court) and ICJ (International Court of Justice) are emblematic of aspirational authority but suffer from procedural gaps. The ICC's jurisdiction is dependent on state council or UN Security Council referral, both of which are susceptible to geopolitical bargaining and jurisdiction makes binding adjudication an exception rather than a rule. Customary nature of international law forms hinges on two criteria i.e. state practice and opinion juris which are difficult to ascertain in context of covert cyber operations or armed groups. Jean d'Aspermont critiques custom's elasticity and warns that the absence of formalism facilitates manipulation by powerful actors under the guise of universalism⁹. Hence, global law, though normatively rich, remains operationally stagnant.

1.1 Research rationale and Research objectives

The rationale for this study is grounded in the evolving landscape of contemporary conflict having outpaced functioning of global law. While post-World War II legal architecture was designed to regulate inter-state hostilities, the nature of 21st century warfare is asymmetric. This research seeks to fill the gap of ambitions and implementation by multi-thematic and integrated critique and to re-evaluate and potentially reconfigure legal norms to meet the challenges of present era.

The primary objectives of research are:

- To examine the limitations of international legal instruments in regulating armed conflicts involving non-state actors and unconventional warfare.
- To analyse the challenges posed by cyber espionage and digital warfare to existing frameworks of international law.
- To evaluate the jurisdictional ambiguities and enforcement gaps within international law in response to transnational acts of aggression.
- To assess the continued reliance on customary international law in the absence of codified regulations, and its impact on legal certainty in modern conflict.

⁹ Jean d'Aspremont, *The Politics of Deformalization in International Law*, 7 GOETTINGEN J. INT'L L. 503 (2015)

2. Literature Review

The field of international law has historically been based on a set of rules meant for relations between states. However, many scholars now see that this framework has difficulty staying relevant with the changing circumstances of 21st-century conflicts. The academic discussion points out a consistent gap between the ideal goals of international law and how it works in reality. This is especially true when addressing non-state actors, cyber warfare, jurisdiction enforcement, and customary norms.

In the foundational texts in the field, Antonio Cassese's *International Law* (2005)¹⁰, acknowledges that although international law has evolved considerably, it is still built on the Westphalian notion of sovereign equality, which renders it inherently state centric. Cassese observes that the legal system is ill-equipped to handle actors who exist outside formal sovereignty, such as insurgent militias or terrorist organisations. His work highlights the rigidity of conventional legal mechanisms when applied to non-international armed conflicts, especially in contexts of Syria, Yemen, and Gaza, where warfare is often multi-actor asymmetrical. As he aptly puts it critiquing NATO's intervention in Kosovo, "Should one remain silent and inactive only because the existing body of international law proves incapable of remedying such a situation?". Building on this critique, Emily Crawford's *Identifying the Enemy* (2015)¹¹ investigates how the Geneva Conventions and Additional Protocol II are not just underused but structurally misaligned with the realities of contemporary conflict. She illustrates misaligned with the realities with the realities of contemporary conflict. She illustrates how the vague definitions of "organised armed groups" and "minimum intensity" required for these legal instruments to activate often render them ineffective in real world conflicts. Here empirical analysis of civil wars and hybrid wars and hybrid combat reveals how non-state actors routinely evade legal classification, creating a legal vacuum that shields them from accountability.

In the realm of cyber warfare, Michael N. Schmitt, editor of the *Tallinn Manual 2.0* (2017)¹², which is the most comprehensive attempt to apply existing international law to cyber operations. While the manual represents a valuable "soft law" framework, Schmitt himself

¹⁰ ANTONIO CASSESE, *INTERNATIONAL LAW* 123 (2d ed. 2005)

¹¹ Emily Crawford, *IDENTIFYING THE ENEMY: CIVILIAN PARTICIPATION IN ARMED CONFLICT* (2015)

¹² *TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS* (Michael N. Schmitt ed., 2017)

concedes that “state practice is too sparse and divergent to support definitive legal conclusions on many cyber issues”. The manual's non-binding status complicates things. It doesn't have enforcement powers and depends a lot on voluntary compliance and political support. This shows a significant gap in treaty law regarding digital threats. It emphasizes that while there may be high expectations for norms, they are not matched by legal enforceability in cyberspace. Kristen Eichensehr's work on attribution in cyber operations complements Schmitt's legal analysis. In her seminal article *The Law and Politics of Cyberattack Attribution* (2013)¹³, she explores how technical complexity and deliberate obfuscation prevent accurate and timely attribution; an essential requirement for state responsibility and legal recourse. She argues that “even with high confidence in technical data, political consensus on attribution often fails”, making legal action impractical and delayed. Her scholarship underscores a systemic issue where international law's reliance on attribution mechanisms becomes an obstacle rather than a solution in the cyber realm.

Makau Mutua presents a searing critique in *Savages, Victims and Saviours* (2001)¹⁴, wherein he argues that international legal institutions often exercise selective justice, disproportionately targeting actors from the Global South. The ICC, he posits, has shown an intense focus on African states while failing to address grave violations by powerful nations. This imbalance diminishes the court's legitimacy and exposes the power asymmetries. The paper aligns with Mutua's concern by arguing that the court's jurisdictional reach over political constraints. Further, complicating the issue is the UN Security Council's veto power, often exercised by permanent members to shield allies from accountability. David Bosco, in *Rough Justice* (2014)¹⁵, documents how UNSC referrals to the ICC have been marred by political selectivity, citing the failure to act decisively in Syria or Myanmar despite overwhelming humanitarian crises. Bosco notes that “the ICC is caught between legal idealism and geopolitical realism,” illustrating how enforcement is undermined by global power politics. This supports the paper's position that the legal framework's enforcement arms are structurally vulnerable to strategic manipulations.

A broader theoretical critique comes from Martti Koskeniemi, who influential article *The*

¹³ Kristen E. Eichensehr, *The Law & Politics of Cyberattack Attribution*, 67 HARV. INT'L L.J. 487 (2013)

¹⁴ Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201 (2001)

¹⁵ David Bosco, *ROUGH JUSTICE: THE INTERNATIONAL CRIMINAL COURT IN A WORLD OF POWER POLITICS* (2014)

Politics of International Law (1990)¹⁶ changes the indeterminacy of legal rules. He argues that international law oscillates between apology (political bias) and utopia (idealism), never quite able to assert itself with neutrality. In modern conflicts, especially involving disinformation campaigns, autonomous weapons, and hybrid operations and this ambiguity becomes a serious operational flaw. Koskeniemi's theory supports the claim that international law suffers from doctrinal fragmentation allowing states to interpret or ignore norms at will.

When discussing the increasing reliance on customary international law, scholars such as Michael Byers and Jean d'Aspremont raise concerns over its vagueness and manipulability. Byers, in *Custom, Power and the Power of Rules* (1999)¹⁷, highlights how powerful states influence the formation of custom by asserting their practices as norms, while d'Aspremont warns that the lack of formalism in custom allows hegemonic interests to masquerade as universality¹⁸. Their views reinforce his paper's arguments that in absence of codified rules, especially in emerging domains like cyber and space, custom becomes a legal smokescreen rather than a stable regulatory tool.

The literature reveals a growing consensus among scholars that the international legal system, while normatively grounded and historically influential, is increasing unfit for purpose in the context of contemporary conflict. The critiques range from legal doctrinal gaps to enforcement failures, from cyber law ambiguity to the politicisation of justice mechanisms. The research contributes to the discourse by an integrated argument stating that international law's structural deficiencies are not incidental but systemic, and that meaningful reform is the bridge.

3. History of International frameworks in warfare

The history of international legal frameworks regulating warfare reveals a gradual but incomplete transition from rudimentary customs to a fragmented yet ambitious legal regime and establishment of foundations of *jus ad bellum* and *jus in bello*. Rooted in Euro-centrism, the historical narrative of international law is based on relevancy of political ideologies, namely

¹⁶ Martti Koskeniemi, *The Politics of International Law*, 1 EUR. J. INT'L L. 4 (1990)

¹⁷ Michael Byers, *CUSTOM, POWER AND THE POWER OF RULES: INTERNATIONAL RELATIONS AND CUSTOMARY INTERNATIONAL LAW* (1999).

¹⁸ Jean d'Aspremont, *The Politics of Deformalization in International Law*, 7 GOETTINGEN J. INT'L L. 503 (2015)

to universalise but have a western standpoint only¹⁹.

Influenced by the just war theories of Grotius and Vattel, the first formal attempts to regulate armed conflict came with the 1899 and 1907 Hague Conventions, which tried to set boundaries to the Russians and methods of warfare, banning certain weapons and establishing the principle of command responsibility. It represented the move from ethical theories of war to legal frameworks. This set the stage for the post-World War 2 advances, such as the Nuremberg Trials, which transformed legal thought and practice by using the principle of personal responsibility for the crimes of humanity, genocide and warfare with the striking Nuremberg Judgment, “Crimes against international law are committed by men, not by abstract entities.” As international law matured, the 1949 Geneva Conventions and their Additional Protocols of 1977 broadened the scope of protection to non-combatants, and interned defenders of the states and the victims of internal strife. They granted protection to the wounded, the civilians, and the medicine men and women, and incorporated Common Article 3 which applies to non-international armed conflicts. As The Guardian noted in a 2015 piece marking 70 years of Nuremberg, “Global justice is still a work in progress”²⁰; reporting state accountability. The establishment of the International Criminal Court (ICC) through Rome Statute (1998) was intended to fill enforcement gaps left by earlier instruments, yet its selective jurisdiction and geopolitical vulnerabilities have led to criticisms of bias and inefficacy.

4. Analysing the working of international law in contemporary times

a) To critically examine the limitations of international legal instruments in regulating armed conflicts involving non-state actors and unconventional warfare.

Armed conflict, as defined under Common Article 2 of the Geneva Conventions, is any war that is declared or other armed fighting between two or more states, even where there is no formal declaration of war. It also encompasses non-international armed conflicts under Common Article 3, such as protracted violence between government troops and organised armed groups within a state's territory. Legal warfare is more and more used, where states take advantage of international legal systems to legitimize strategic moves. Civilian infrastructure,

¹⁹ BARDO FASSBENDER & ANNE PETERS eds., *THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW* (Oxford Univ. Press 2012)

²⁰ <https://www.theguardian.com/commentisfree/2015/nov/20/nuremberg-trials-global-justice-law>

though safeguarded by Article 52 of Additional Protocol I²¹ to the Geneva Conventions, is often attacked, resulting in severe humanitarian implications²².

Four main forms of armed conflict are identified in international law. International Armed Conflict (IAC) is between nations, as with the present Russia–Ukraine war. Non-International Armed Conflict (NIAC) is between a state and organized armed non-state actors, as seen during the Syrian Civil War. Hybrid war combines conventional force, cyberwar, and disinformation, observed during Russia's 2014 annexation of Crimea. Proxy war includes outside powers backing local actors, like Yemen, where regional states support rival sides, including the Yugoslav wars.

The Russian-Ukraine war is the biggest break of peace in Europe since the World War 2. With 8 million internally and 6 million across international borders, more than 14 million individuals have been displaced²³. As seen in Bucha with the bombing of Mariupol theatre, civilian targets have been constantly attacked. The war has rekindled legal debate regarding the crime of aggression under Article 8 of the Rome Statute and the role of neutral states in arms transfer and sanctions enforcement.

Judicial precedents give useful guidance on legal issues in armed conflict. In *Nicaragua v. United States* (ICJ, 1986)²⁴, the Court adjudicated on illegal use of force and indirect aggression by arming insurgent forces. In *Georgia v. Russia* (ICJ, 2008), ethnic cleansing claims made procedural boundaries during conflict an issue. The Crimea Case before the ICJ involved Russian arguments of self-determination through referendum. Proceedings before the European Court of Human Rights concerning the Donbas region addressed questions of effective control and state responsibility. Proceedings before the European Court of Human Rights involving the Donbas region raised issues regarding effective control and state responsibility. The ICTY, created by UNSC Resolution 827 (1993), gave landmark decisions in *Prosecutor v. Tadić*²⁵, which elucidated individual criminal responsibility in NIACs, and in *Prosecutor v. Karadžić and Mladic*²⁶, which affirmatively updates the view that the Srebrenica

²¹ Protocol I, art. 52, 1125 U.N.T.S. 3

²² The Law Institute, "Protection of Civilian Objects," *Strengthening Civilian Protection: The 1977 Additional Protocols' Emphasis on Distinction* (explaining Article 52 prohibitions and two-part test)

²³ <https://apnews.com/article/619fa16039a2bd59ddb200f7e3b048e5>

²⁴ *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States*), Merits, 1986 I.C.J. Rep. 14 (June 27, 1986)

²⁵ *Prosecutor v. Duško Tadić aka "Dule"*, Case No. IT-94-1-T (ICTY Trial Chamber May 7, 1997)

²⁶ *Prosecutor v. Duško Tadić*, Case No. IT-94-1-A (ICTY Appeals Chamber July 15, 1999)

massacre was genocide and that political and military leaders can be held personally accountable for mass atrocities. Disputes also identify a geopolitical fault line between strategic blocs. Rules based international order and maxims such as Responsibility to Protect, are invoked by the Western powers. On the contrary, states such as Russia and China appeal to sovereignty and non-intervention that emphasise common historical ties and securities concerns. The justification provided by Russia of its intervention in Ukraine stems from perceived intrusion into NATO and defence of ethnic Russians, one of the perspectives being strongly opposed by Western powers.

The Global South tends to view the use of international law as selective. African, Asian, and Latin American countries voted against or abstained on UN resolutions concerning Ukraine, using their actions on Libya and Iraq as proof of double standards. As in these nations, foreign policy is more based on realpolitik and less on humanitarianism, hence consensus in the employment of force throughout the world is not easy to achieve.

In the Yugoslav Wars, schools were targeted as a deliberate attack, curricula politicized, and children denied education on an ethnic basis. These violations contravene Article 13 of the ICESCR and provisions of the Convention of the Rights of the Child. Loss of education causes intergenerational socio-economic harm. Although institutions like the ICC and UN Commissions of Inquiry have made legal architecture tougher, enforcement is ad hoc and highly politicised.

b) To analyse the challenges posed by cyber espionage and digital warfare to existing frameworks of international law.

Modern warfare occurs in cyberspace, yet international law has failed to keep pace with this transformation. The legal framework for cyber conflict is vague and identifying perpetrators is nearly impossible in legal terms.

In the case of Stuxnet (2010), piece of malware called Stuxnet targeted Iranian centrifuges used for uranium enrichment. It caused physical damage by forcing centrifuges to malfunction. It is widely believed to have been created by the USA and Israel; but no official admission was ever made. According to international law, particularly Article 2(4) of the UN Charter²⁷, any use of

²⁷ <https://main.un.org/securitycouncil/en/content/purposes-and-principles-un-chapter-i-un-charter#:~:text=B.,war%20or%20other%20territorial%20conflicts>.

force against state sovereignty is prohibited. However, no enforcement occurred, because another state's sovereignty is prohibited. However, no enforcement occurred because the cyberattack was not declared an "armed attack" by any state, and attribution was never legally established. This illustrates how cyber warfare operate in a grey zone and the law is bypassed through silent and technical ambiguity.

A backdoor malware planted within software by US company SolarWinds enabled hackers to breach US federal institutions, such as the Department of Defence and the Treasury. The attack was blamed on Russia's SVR spy agency by the US government, but it did not pursue the issue in the ICJ or before any international tribunal. This was an unambiguous case of cyber espionage, which under international law is not necessarily prohibited unless it results in damage constituting a use of force. Data-oriented spying, even against national security systems is not currently treated as an armed attack under international law. Russia's invasion of east Ukraine and annexation of Crimea were followed by ongoing cyberattacks on Ukrainian banks, power grids, and media. In 2015 and 2016, cyberattacks led to power blackouts in Kyiv. Throughout the 2022 war, these cyberattacks mounted along with military actions. International humanitarian law does extend to cyber warfare in armed conflict — but only if the attack results in damage or injury akin to conventional weapons. Most cyber operations are psychological, infrastructural, or disinformation, though. They jam but don't blow up; leaving them difficult to categorize under existing Geneva Convention rules. Further, attribution once more was a stumbling block. Through Ukrainian and US agencies linked the attacks to Russian military intelligence, no formal legal proceedings followed. In this case, the law exists, but because threshold is too high and attribution too difficult, it fails to net the valve of the cyber hemisphere.

c) To evaluate the jurisdictional ambiguities and enforcement gaps within international law in response to transnational acts of aggression.

The Rome Statute of 1998 created The International Criminal Court which was designed to be a permanent court that had jurisdiction over the prosecution of war crimes, genocidal crimes, crimes against humanity, and the crime of aggression. The structural limitations of the Court, however, beyond mandate, in relation to jurisdictional boundaries, reliance on states' cooperation, and structural disparities overwhelmingly limit its efficacy and legitimacy. The ICC's jurisdiction is treaty-based in nature. Its jurisdiction extends to crimes committed on the

territory of, or by citizens of, a State Party. It may also exercise jurisdiction if the United Nations Security Council makes a referral under Chapter VII of the UN Charter²⁸. The ICC does not have the capacity to arrest suspects or obtain evidence on its own but must do so through State Parties. The structural vulnerability to this makes enforcement subject to political will. The case of President of Sudan Omar al-Bashir²⁹ is an example. After the ICC issued arrest warrants, a number of States Parties refused to act, arguing other international commitments and regional immunity norms. This destabilizes the Court's authority and sends the message to perpetrators that accountability is optional. Failure by the UNSC to refer the Syrian case, on account of Russian and Chinese vetoes, betrays this political freeze, even though crimes have been committed on a scale deserving indictment in Syria.

The complementarity principle of the ICC, aimed at upholding national jurisdictions, can also be abused when states institute shallow or facade proceedings in order to avoid international investigation. The ICC has received an intensive backlash for an imbalanced approach towards African states. In its earlier investigations, the majority featured African states, leading to accusations of selective justice. Though individual incidents in Iraq, Afghanistan, Myanmar and Palestine have garnered attention, the pace of their inquiries were either slowed or blocked. Case Prosecutor v. Jean-Pierre Bemba Gombo³⁰, illustrates the challenge to obtain convictions despite clear command responsibility. The Appeals Chamber found Bemba not guilty based on a lack of evidence of failure to prevent or repress the crimes. The decision undermined the development of jurisprudence for command responsibility and emphasized evidentiary burdens, especially in sexual and gender-based crimes. Political considerations also taint enforcement. In Myanmar, the ICC jurisdiction was predicated on cross-border deportation into Bangladesh. By contrast, the ad hoc International Criminal Tribunal for the former Yugoslavia (ICTY) yielded two very effective international prosecutions. Its decisions in Prosecutor v. Tadić, and Prosecutor v. Krstić, set foundational precedents in establishing command responsibility, joint criminal enterprise, and genocide.

Feminist lawyers like Hilary Charlesworth, Christine Chinkin, and Shelley Wright criticize the exclusion of gendered harm and masculinist epistemologies that are ingrained in legal systems. While the Rome Statute criminalizes rape, sexual slavery, and enforced prostitution per se, the

²⁸ U.N. Charter ch. VII

²⁹ Prosecutor v. Omar Hassan Ahmad Al-Bashir, Case No. ICC-02/05-01/09 (Pre-Trial Chamber II 2017).

³⁰ Prosecutor v. Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08, Judgment, Int'l Crim. Ct. (Mar. 21, 2016)

crimes are often treated in prosecutions as ancillary. This systemic disregard is exemplified in the reversal of Bemba's conviction. The ICC indictment of Russian President Vladimir Putin and Commissioner Maria Lvova-Belova for the illegal deportation of Ukrainian children, is a new addition outlining both assertion and helplessness. Russia, a non-state party, denies the ICC jurisdiction, and with its veto authority in the UNSC, enforcement remains politically unviable. The Russia–Ukraine war highlights the immobility of international criminal mechanisms confronting great powers. Similarly, the United States' refusal to ratify the Rome Statute and legislative immunities have also minimised the universality of the ICC.

d) To assess the continued reliance on customary international law in the absence of codified regulations, and its impact on legal certainty in modern conflict.

When there's a lack of all-encompassing and mandatory global agreements to control new types of warfare; like cyber-attacks, precision drone attacks, and self-operating weapon systems, nations and legal bodies often look to customary international law to guide behaviour³¹. This set of rules, which comes from how countries act and their belief that these actions are required, has long been an adaptable way to fill in the blanks where written law doesn't exist. These are binding during both international and non-international armed conflicts, whether treaties are ratified or not. But whereas custom is a needed safety net, it is slow to emerge, and its open-textured nature exposes it to selective interpretation. This creates a space where powerful states may invoke CIL to justify conduct rather than constrain it, particularly in areas of technological innovation where no treaty framework yet exists.

Weapons in Syria & Libya (2020–Present): In Syria, reports have been verified of the use of autonomous drones with the ability to target without human intervention. Similar reports from Libya report AI-supported targeting by various parties. As there is no treaty prohibiting autonomous weapons, their lawfulness would be contingent upon the employment of customary rules of proportionality and distinction. The lack of one controlling authority to enforce these rules allows states to claim compliance without independent scrutiny, leaving victims in a lack of law and accountability over their heads. • Drone Strikes in Pakistan, Yemen, Somalia (2004–Present): Drone strikes have been present in these nations for over a decade, often without the agreement of the host country and with gross civilian casualties. These steps

³¹ Dapo Akande & Marko Milanović, *The International Law Framework Regulating the Use of Armed Drones*, 72 Int'l & Comp. L.Q. 60, 68–74 (2023)

are legally justified under customary law of self-defence, as applicable to non-state actors. The absence of an accepted definition of terms such as "imminent threat" enables states to establish their own criteria, insulating their actions from legitimate external critique. Courts and tribunals can little or nothing to do in the face of jurisdictional and political obstacles and therefore customary law functions more as strategic cover than as a binding norm.

Intermittently recurring between Israel and Hamas is the contested application of CIL in non-international armed conflict. Israel says civilian death is acceptable while fighting within cities against such enemies that use human shields, provided proportionality is not violated. Palestinian artists have maintained that the same acts constitute collective punishment and indiscriminate attack, two of which are forbidden under customary law. Both sides twist the law to their side pending a final determination by the court, leaving civilians in both camps without access to an impartial arbiter. CIL continues to be an integral part of the international legal order but, as it stands, is not well adapted to the needs of modern warfare.

5. Research gap

Despite the abundance of scholarly discourse on international legal frameworks, a conspicuous lacuna persists in bridging the chasm between the law's idealistic constructs and its functional paralysis in the face of 21st-century conflicts. Much of the existing literature engages with discrete aspects of legal inadequacy, be it the inefficacy of enforcement mechanisms, the elusiveness of cyber attribution, or the selective justice administered by international tribunals. However, few studies adopt an integrated critique that maps the structural dysfunctions of the legal architecture across multiple theatres of modern warfare: cyber domains, asymmetrical conflicts involving non-state actors, and the manipulated elasticity of customary law. The professional world is divided into normative theorists and technical analysts, and what we are left with is a disjointed image of the functional facts of law in war. Though individual case studies such as Stuxnet and the annexation of Ukraine by Russia are examined individually, their combined effects on legal reform are seldom explored in depth. Moreover, there is a significant lack of literature looking at the effect of technological change in eroding legal accountability or proposing institutional redesigns to address the attribution problem.

This study successfully fills the gap currently in existence by integrating these disparate critiques into a unifying framework. It offers thematic cross-section analysis of the stagnation of doctrine that is characteristic of international law, supported by contemporary case studies,

and proposes reformist institutional and legal reforms that seek to reclaim its authority and relevance.

6. Recommendations

- A. Codification of Cyber norms under a new multilateral cyber convention: An UN-led binding treaty focused specifically on cyber operations, including rules on attribution, sovereignty, and proportionality in cyberspace. Cyber operations that connote warfare must be included under “armed attack” under UN Charter Chapter VII. A neutral cyber attribution mechanism under ICJ or an independent body can be established. Reviving Tallinn process and expand it into a treaty process can be a step forward for security in cyber sphere.
- B. Establishment of an International Attribution Tribunal: A technical hybrid tribunal under the aegis of the UN general assembly or ICJ to determine state responsibility in cyber and armed conflicts. This tribunal can offer binding or advisory rulings on attribution and breaches and also, review classified and open-source evidence.
- C. Expansion of ICJ’s Compulsory Jurisdiction: ICJ’s jurisdiction over transnational cyber operations, non-international armed conflicts and violations of emerging norms like data sovereignty or AI-based combat.
- D. Strengthening the role of the UN Human Rights Council in warfare oversight: In grey zone conflicts, humanitarian aids and laws need to be enforced, so done efficiently. A new framework that attributes obligations to non-state actors in line with humanitarian law and designation of legal standing to hold such actors accountable in international forums.
- E. Expansion of the United Nations: The UN should gain autonomy on legal affairs and expand into attribution tribunals, hybrid warfare evidence banks, digital forensics peacekeeping units, cyber accountability councils, reverse veto mechanisms for digital conflicts where there the General Assembly can override Security Council, civilian data protection protocols, international weapons technology systems.

7. Conclusion

The edifice of international law, conceived in the moral necessities of post-World War order, is today at a crossroads, afflicted by structural torpor and technological stagnation. While its

normative framework, based on sovereignty, humanitarianism, and justice—continues to be inspirational, its operational fact is characterized by fragmentation, selectivity, and immobilism. From algorithmic drone warfare and faceless cyber-attacks to the procedural limbo of the ICC and the interpretive pliability of customary law, contemporary conflict has made the law's conventional tools blunt and anachronistic.

This paper has argued that the fundamental discord lies not merely in the failure of enforcement, but in the misalignment of legal design with the demands of contemporary warfare. Non-state actors exploit gaps in treaties, cyber powers exploit the vagaries of attribution, and hegemonic states exploit legal norms under the cover of customary law. The state of international law today is such that it is a cathedral full of high ideals; however, it is one with crumbling foundations and shattered stained glass. Reform, therefore, is not a matter of academic interest, it is a legal and ethical necessity. International society must transcend the rhetorical promises to bring about a root-and-branch re-appraisal. The institution of codified cyber norms, the creation of neutral attribution tribunals, the expansion of judicial institutions' jurisdictional scope, and organizational capacity building within the United Nations to override geopolitical vetoes are not fantasies but the required building blocks of legal effectiveness in an era of hybrid, digitized, and asymmetrical conflict.

If international law is to remain a going concern, however, it has to break free of its reputation as a relic of post-war idealism and become a dynamic system that can tackle the issues of today. The legal system has to learn to communicate in the language of algorithms, asymmetry, and anonymity, or face the threat of obsolescence.

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