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Prevention and Protection Interventions for Stateless Non-Refugee and Force Displaced Children

Tanya Herring

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This article advances a general theory of law and justice that would expand the Palermo Trafficking and Smuggling Protocols to a wider application in human rights jurisprudence. The aim of the research reported here is to close the gaps in member-state policy and scholarship that addresses prevention measures and protection mechanisms for forcibly displaced children seeking self-determination in states that have not ratified the UN Convention on Refugees and the UN Conventions on Statelessness. The research is based on the premise that a stateless nonrefugee status constructs an extremely vulnerable state for children during forced migration and when they are living in camps or detention centers. It focuses on the Rohingya and Lumad children in targeted regions of Southeast Asia in comparison with Roma children in Eastern Europe.

The study outcomes are structured to mitigate the exploitation of targeted vulnerable and highly vulnerable populations, regardless of nationality or citizenry. An innovative new model, the International Law's Response to Major Incidents of Forced Displacement (IL-R2/MIFD), is offered as the descriptor to the components of decision making, structures of pleadings, and applicable international laws to circumvent particular scenarios of human trafficking, and multiple forms of exploitation occurring as a result of massive forced displacement situations across the globe.

“We are facing the biggest refugee and displacement crisis of our time. Above all, this is not just a crisis of numbers; it is also a crisis of solidarity.”

—Ban Ki-Moon, Secretary-General of the United Nations, 2015

“International law protects the right of every child to acquire a nationality. Yet, childhood statelessness pervades all regions of the world. At least a third of the 15 million people who face life without a nationality today are children, and, every ten minutes, another child is born stateless.”

—*World's Stateless Report*, 2017

Self-determination is embodied in many international instruments, including the United Nations Charter articles 1 and 55 and the Universal Declaration of Human Rights, article 1, and it is affirmed in the United Nations General Assembly Resolution 1514 (1960) that states, “All peoples have the right to self-determination; by virtue of that right they may freely determine

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their political status and freely pursue their economic, social and cultural development.” Similarly, article 18 of the Universal Declaration of Human Rights asserts, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Yet, disagreement and controversy remain about a clear definition of “peoples” and how self-determination is viewed in a global society. The horrific 2015–2016 mass exodus of the Rohingya from Myanmar and the subsequent refugee crisis indicate that the right to exercise self-determination is not afforded to the stateless.¹ Instead, the Rohingya and similarly situated displaced children and their families in Southeast Asia, who meet the UN definition of marginalized and disadvantaged groups, are fleeing religious-discrimination-based conflict and the denial of peaceful self-determination.² Caught up in forced migration, on both land and sea, and living in inhumane conditions in detention centers and refugee encampments, children and other vulnerable persons too frequently fall prey to multiple forms of human trafficking.³ The United Nations High Commissioner for Refugees (UNHCR) in 2018 acknowledged that many refugees, asylum-seekers, stateless people, and migrants consistently get involved in exploitation, abuse, and violence during their migration journeys, during which countless have lost their lives on land and in crowded unseaworthy vessels.⁴ Children who are survivors of horrific, life-threatening land and sea journeys often cite as their driving force the basic elements of the UN principle on self-determination. That principle is stated in the UN Charter as one of the purposes of the United Nations:

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace. (chap. 1, art. 1(2)).

The denial of citizenship, among other human rights, has become an international concern in Southeast Asia, particularly in the focal states of this study—Bangladesh, Myanmar, Malaysia, and Thailand—which are not member states to the 1951 Refugee Convention, the 1954 Convention Relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness,⁵ or the 1967 Protocol Relating to the Status of Refugees⁶ and have no “due-diligence”⁷ obligation to these human rights treaties.⁸ Though the United Nations Convention on the Rights of the Child and many of its protocols have been ratified by more countries than has any other convention globally, many questions remain about how the convention is implemented and enforced for children without citizenship.⁹ As a result, many uncertainties arise over verifying whether the person is a child, defined by article 1 of the convention as a person under eighteen years of age. Additionally, the state obligations for a human rights treaty fall under the due diligence standard with minimum repercussions in regions without a Human Rights Court.¹⁰ Thus, the nonmember states of the Refugee and Statelessness Conventions do not recognize persons as refugees or as stateless; nor do they provide any of the internationally recognized supports set forth in these international derived statuses. For example, the introductory note of the 1954 Convention on Statelessness announces that “the Office of the United Nations High Commissioner for Refugees has been mandated to assist stateless refugees since it was established on 1 January 1951.” Moreover, since the entry into force of the 1954 and 1961 Conventions on Statelessness, the Executive Committee of the High Commissioner’s Programme has adopted a succession of General Assembly resolutions and conclusions. These resolutions and conclusions reiterate that UNHCR has a leadership role in assisting “non-refugee stateless

persons as a distinct population of persons of concern.”¹¹ Yet, UNHCR’s leadership role is hampered when states are not parties to the conventions on refugees and statelessness.

Method and Central Research Question

For this study, the indigenous groups are employed as research exemplars in the investigation, because the critical case has the capacity to yield what M. Q. Patton describes as “the greatest impacts on the development of knowledge.”¹² The Rohingya crisis presents a critical case that can be generalized, in keeping with the statement, “If it happens there, it will happen anywhere” or, vice versa, “If it doesn’t happen there, it won’t happen anywhere.”¹³ That is, if the proposed legal framework in Southeast Asia works with the Rohingya, it should work in other similar geographical areas and populations, and thus, it can be applied in other like situations.

The critical-case study methodology permits empirical analytic generalization of international remedies. Bent Flyvbjerg’s well-respected work supports the application of a critical case as “a case with strategic importance to the general problem.”¹⁴ Following the guidance and protocol of Flyvbjerg and other seminal case-study researchers, this case study maintains an internal database that allows the investigator to develop an audit trail of the body of evidence from data collection, through analysis, to final conclusions. Accordingly, the reader should be able to connect the conclusions presented in this case study and research protocols to the underlying analyses, the supporting strands of evidence, and the central research question: Can the Palermo Trafficking and Smuggling Protocols serve as a conduit to legal empowerment and peaceful self-determination?¹⁵

Case-study methodology is a social science discipline.¹⁶ This critical-case study design is used to clarify how laws are understood, how laws are subverted, and how frameworks can be modified to address gaps in the law. The presumption is that the cause, forced induced migration, and the effect, increased smuggling and trafficking of persons, can be mitigated or decreased with an application of a state-obliged legal framework using these two primary international instruments in tandem.

Background

The Rohingya and Lumad people of Southeast Asia are widely characterized in the literature as disadvantaged and highly marginalized in their respective regions. Their demographic characteristics align with those of other similarly situated groups in other regions of the world. The Rohingya, Lumad, and Roma are each considered impoverished. Historically, they share certain characteristics, including statelessness, frequent forced displacement, and discrimination. Their multiple movements exhibit the characteristics of disaster-induced migration.

For centuries, the Rohingya have been referenced as the “boat people” because of their consistent travels on the seas and their work as laborers in the fishing industry.¹⁷ Similarly, the derogatory terms “gypsies,” “vagabonds,” and “tinkers” are associated with the Roma and refer to their frequent travel modes and irregular employment.¹⁸ The Lumad are also a mobile group. According to archeological records, the Lumad are a Moro (ethnic Muslim) who are also referred to as “sea gypsies” and have been subjected to religion-based discriminatory violence. The Lumads’ disputes over land and their claims to indigenous self-determination in the Philippines, which occurred around the same time as the Rohingya crisis of 2016, have led to massive protests.¹⁹ Each of these nomadic lifestyles has rendered a significant number of the Rohingya, Roma, and Lumad societies as uneducated, impoverished, and highly vulnerable.²⁰

Self-Determination

Self-determination became the steering determinant following World War II and the reconstruction of Europe. A state is noted to have “the right of self-determination in the sense of having the right to choose freely its political, economic, social, and cultural systems” and to have “the right of a people to constitute itself in a state or otherwise freely determine the form of its association within a state.”²¹ This sociolegal research provides a critical discourse on the international prevention measures and protection mechanisms for populations seeking self-determination that have become forced displaced as a cause of statelessness or as a consequence of statelessness.²² This research focuses on stateless nonrefugees, who, according to the 1954 Convention on Statelessness, possess “profound vulnerability.” The convention refers to the “practical problems they face in their everyday lives” despite a state’s requirement to provide them with “identity papers and travel documents,” among other resources.²³ Without essential papers or documentation of identity, the stateless are subject to multiple forms of denial of access to justice, education, and services. For children, gaps in identification are the root cause of high vulnerability to exploitation and life-long challenges.²⁴

Marginalized Populations

The migration of human beings, ongoing for centuries, remains a critical method for overcoming hardship and deprivation. But for marginalized populations, forced migration has evolved as a necessity for survival. Reports from the Institute on Statelessness and Inclusion point out that not all stateless persons are refugees and not all refugees are stateless, though, inevitably, the two groups overlap. According to the Institute on Statelessness and UNHCR, for the purposes of international law, a person can be both a stateless person and a refugee.²⁵

History has shown that the disenfranchised suffer greatly and primarily live external to the ambit of law, where their extreme poverty is directly linked to the cause and consequence of gaps in effective legal rights. In times of conflict, regardless of domestic or international status, the disadvantaged and vulnerable are the unfortunate recipients of callous human rights violations that can be likened to grave breaches—a criminal level traditionally reserved for conflicts of war.

For many years, women and children have been the focus of international protections because of their high degree of vulnerability to exploitation, especially sexual. Yet, current research has expanded the realm of vulnerability to include the adolescent male child with a high degree of vulnerability; also, the vulnerability of an adult woman is in a separate category from that of the girl child.²⁶ Vulnerability, factors affecting vulnerability, and focused interventions for stateless, refugee, and forced displaced children is a recurring and primary theme of this study. Even now, many cultures continue to view women and children as property to be abused, exploited, bartered, sold, or married, regardless of age. Within the context of nationality, marriage and the loss of a marriage are connected to citizenship for woman and children. In some instances, a married man dies, the adverse impact of lost nationality affects the wife and children from the marriage.²⁷

Statelessness

The extent of statelessness has increased as migration has increased exponentially over the past several years. Thus, figures presented in this study that quantify statelessness and others studies

like it are estimates or date-based snapshots. At best, the figures are structured to convey the degree of severity for the purposes of research, policy making, or other decision-making processes. UNHCR records the increases in the numbers of stateless people, noting, for example, that a new record of 42.5 million forcibly displaced people globally was set in 2011.²⁸ Though these figures are already old, reports from UNHCR suggest that these numbers have risen sharply each year, escalating to “45.2 million in 2012 to 51.2 million in 2013 and 59.5 million in 2014.” This is an increase of more than 50 percent in five years. Statistically, future increases are likely to be similar. Because gender discrimination in nationality laws is often region specific, the figures are representative of how gender policies are a significant causative factor. Additional studies from UNHCR record absolute numbers, revealing that statelessness is affecting more people in the geographical regions of Asia and the Pacific than in any other location of the world.²⁹ In Asia, for 2015, UNHCR reported an approximate total of 1,423,000 persons under statelessness. Statelessness and the accompanying plight have no boundaries. In contrast, reports for the Americas record the lowest number of stateless persons, with figures slightly above 200,000. Experts assert that the Americas practice the strategies and advantages of a *jus soli* approach to nationality, conferring nationality at birth on all children born within the territory, and this action is a significant factor in the prevention of next-generation statelessness.³⁰

Though the Americas, specifically the United States, can be credited with exercising strategies that reduce statelessness, other research shows that these actions were outcomes of massive losses of missing and exploited children and the lack of a systematic approach. For example, the legislation for missing and exploited children was not placed into US national law until 1984 under President Ronald Reagan.³¹ Records from hearings before the House Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary reveal that more than five hundred thousand unidentified children were in morgues and coroner’s offices across the nation with wide speculation that many were victims of some form of exploitation.³² It took the United States thirty-two years to develop a reporting system for missing and exploited children, while there was an efficient reporting system in place for cars, weapons, and even missing agricultural animals. Subsequently, a question can arise about how many of these children were seeking self-determination and are stateless, trafficked, exploited, and now missing. More important, the situation in the United States reveals that developing measures to prevent and protect children is an evolving global issue, even for developed countries.

By comparison, statelessness is more comprehensively mapped in Europe than in any other region. Statistical reporting on statelessness has been achieved in forty out of the fifty countries that fall within the scope of UNHCR’s Europe regional bureau. The cumulative report outcomes from UNHCR indicate that an average of 670,828, and an estimated 85 percent are located in four countries: Latvia, the Russian Federation, Estonia, and Ukraine. Assumptions have been made that this accumulation is a product of the dissolution of the Soviet Union.³³

Examples can also be found in other regions. In the mid-1980s, several thousand West Papuans fled from the Indonesian part of New Guinea Island, across the border into Papua New Guinea, to escape political turmoil. Many remain in the area to this day. Their long-term absence from Indonesia led to the loss of their Indonesian citizenship under the operation of the nationality law, but most have not been able to naturalize as Papuan citizens because they do not meet the criteria or cannot pay the fee. Similarly, Western Sahara is a disputed territory in the Middle East and North Africa, flanked by Morocco, Algeria, and Mauritania.³⁴ The International Court of Justice ruled in 1975 that the residents of this territory must be allowed to participate in a referendum on the question of self-determination.³⁵ Subsequently, Morocco assumed control of

the territory without a referendum. Those Western Saharans, or Sahrawi, who did not want to be subject to Moroccan control were forced to flee the territory and thus became further victims of forced displacement. Records show that the majority of the group elected to live in refugee camps across the border in Tindouf, Algeria. UNHCR reports that there are 90,000 refugees from Western Sahara in Algeria, while the government of Algeria estimates the number to be far higher, at approximately 165,000. Also, according to UNHCR, there are more than 26,000 refugees from Western Sahara in Mauritania.³⁶ The legal status of these refugees is structured around an elaborate scheme that the record shows as a long-standing disagreement over heritage in Western Sahara between the government and an ethnic group.

Vulnerability

On a broader scale, regardless of the region, statelessness is only one factor in vulnerability, whereas vulnerability is assessed and categorized according to multiple characteristics, as illustrated in Figure 1. Even so, vulnerability has long been associated with age, health, and the presence of poverty, and is now combined with the endemic effects of forced migration across the world. A vulnerability within the context of refugee status and statelessness places children into multiple descriptive categories across each of the characteristic levels identified in Figure 1. The categorical placements would presumptively place stateless refugee and forcibly displaced children in an even higher level of risk and vulnerability that this research stoutly avers warrants more levels of protection from member states.

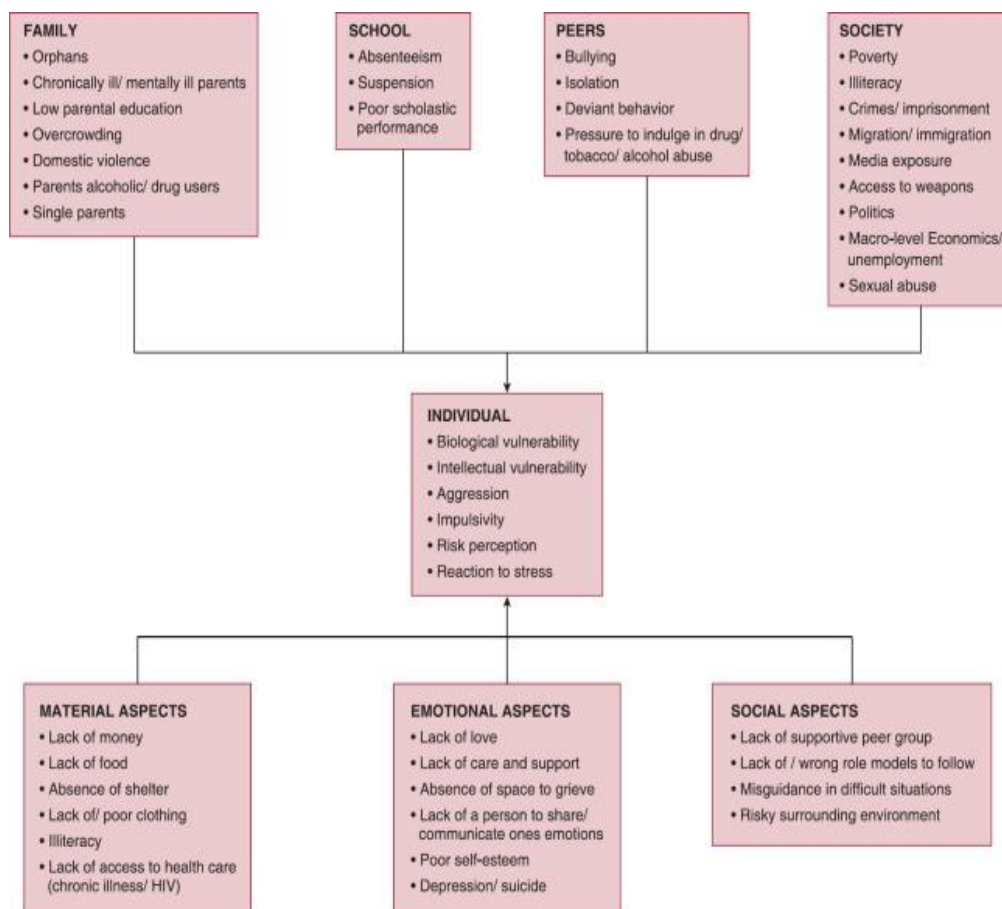


Figure 1. Factors influencing and determining vulnerability (Shilpa Khanna Arora, Dheeraj Shah, Sanjay Chaturvedi, and Piyush Gupta, “Defining and Measuring Vulnerability in Young People,” *Indian Journal of Community Medicine* 40, no. 3 [2015]: 193–197.)

The World Bank’s Orphans and Other Vulnerable Children (OVC) toolkit defines vulnerability as “the group of children that experience adverse outcomes, such as the loss of their education, morbidity, and malnutrition, at higher rates than do their peers.” The literal meaning of “vulnerability” is the state or condition of being weak or poorly defended.³⁷ OVC, as noted in Figure 1, further explains that the concept of vulnerability with regard to young people implies the ones who are more exposed to risks than their peers and who can be described as being deprived of food and parental care and as victims of abuse, neglect, violence, exploitation, and infection with HIV, which are all characteristics of refugee, stateless, and forced displaced youth.

The Rohingya, Lumad, and Roma already experience vulnerability by holding a stateless nonrefugee status and being members of a disadvantaged and marginalized group. This propensity to vulnerability is further heightened by the status as a child, as defined by article 1 of the United Nations Convention on the Rights of the Child as a person under the age of eighteen. UNICEF views vulnerable children as those who are abused, exploited, and neglected.

Subsequently, many children and their families seeking self-determination become stateless nonrefugees and are highly vulnerable to human trafficking and other forms of exploitation, specifically sexual and labor. For this research, emphasis is placed on the UNICEF categories of “without registration” and “trafficked children,” because Southeast Asia is the critical-case

geographical focal area. As such, these populations have little to no preventions and protections afforded to them and become victims of human trafficking and multiple forms of exploitation.

Legal Premise and Relevant Laws

The research reported here offers an innovative new model, the International Law's Response to Major Incidents of Forced Displacement (IL-R2/MIFD). The framework lists components consisting of decision making, applicable international and national laws to circumvent scenarios, which address human trafficking, smuggling, and multiple forms of exploitation that occur as a result of massive forced displacement situations across the globe, as well as a proposed response process. To close the gap in protections for vulnerable populations, this article offers a state-obliged legal framework.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (referred to as the Palermo Trafficking Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea, and Air list a state's responsibilities to specific compelled prevention measures and protection mechanisms for all persons regardless of nationality, gender, or religion. The major premise of the framework is that article 1 of the protocols affirms that they supplement the United Nations Convention against Transnational Organized Crime (referred to as the Palermo Convention) and that it "shall" be interpreted with the convention, creating a transnational-obliged requirement. The "shall" denotes the mandatory obligation and, in some instances, stronger prevention, protection obligation than one-dimensional human rights legal framework. The Palermo Convention "is the main instrument in the fight against transnational organized crime."³⁸ It targets specific areas and manifestations of organized crime: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea, and Air. . . . Countries must become parties to the Convention itself before they can become parties to any of the Protocols.

The modern concept of trafficking involves the enticement and the deception elements from traditional trafficking and exploitations. The Palermo Trafficking Protocol outlines the requirements for the three most essential policy dimensions of what is referred to as the 3P index: prevention, protection, and prosecution.³⁹ The Trafficking Protocol requires member states to formulate domestic legislation that is aligned with article 6—Protection of victims of trafficking in persons through deterrence and prosecution; article 7—Assist victims of trafficking in receiving states (highlighting victim rights under transit state obligations); article 8—Provide repatriation to victims of trafficking in persons, and article 9—Prevention of trafficking in persons, among other provisions.

An essential element for clarity in this study is the distinguishing difference between the definitions of human trafficking and smuggling, acknowledging, however, that there is some overlap. On one hand, migrant smuggling requires movement across the borders of a state, whereas trafficking does not. On the other hand, smuggling does not include an element of control, ownership, or exploitation, whereas trafficking does include these elements. Human trafficking is grounded in slavery and may be prosecuted as enslavement or as sexual slavery by article 7(1)(c) or 7(1)(g), Crimes against Humanity. Article 7(2)(c) of the Rome Statute of the International Criminal Court stipulates the meaning of "enslavement" as a crime against humanity and explicitly includes trafficking in persons as one of the acts that are incorporated in the terminology when exercised with "right of ownership over another person," in particular women and children.⁴⁰

Unless noted otherwise, all terms and definitions used in this study are grounded in those used by the UN and its organs.

Trafficking in persons. The Palermo Trafficking Protocol covers trafficking in persons, exploitation, and victims. Article 3:

- (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 or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery exploitation outlined 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, transfer, harboring or receipt of a child for exploitation shall be considered “trafficking in persons” even if this does not involve any of the means outlined in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Enslavement. The 1926 Slavery Convention, adopted September 25, 1926 (entered into force March 9, 1927) states:

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

Smuggling. The Protocol against the Smuggling of Migrants by Land, Sea, and Air defines smuggling as

the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. (3a)

Crime. For this convention, article 2 states:

- (a) “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 or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) “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.

The International Criminal Court’s standing is based on its being the “court of last resort.” But since the court has jurisdiction only over crimes committed by states parties to its founding treaty, the Rome Statute, and Myanmar is not a member state, the UN Security Council will have

to intervene. Nevertheless, inquiries abound from advocates at all echelons to prompt a formidable plan to protect children and their families during forced migrations,⁴¹ as a result of fleeing to achieve self-determination, or as a consequence to being declared stateless in a refugee or non-refugee status.⁴² This study seeks to close this protection gap and suggests an action plan that connects international criminal law and international human rights frameworks to reinforce and promote better states' responsibility and obligation.

In that vein, the Palermo Convention and its Protocol against the Smuggling of Migrants by Land, Sea, and Air supports the 1982 United Nations Convention on the Law of the Sea.⁴³ Consequently, the protection provided by the Law of the Sea extends to human rights with duty-bearers inclusive of ship masters, government rescue centers, and every coastal state party. As such, where relevant, the Law of the Sea applies to each state reviewed in this article and the entire Association of Southeast Asian Nations (ASEAN) region. The United Nations Convention on the Law of the Sea mandates:

Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him. (art. 98, para.1)⁴⁴

Article 98(2) obliges every coastal state party to

promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighboring States for this purpose.

The 1979 International Convention on Maritime Search and Rescue describes “rescue” a:

[a]n operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety. (Annex, chap. 1, 1.3.2)

The convention obliges state parties to

ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found. (Annex, chap. 2,2.1.10)⁴⁵

The elements of the Law of the Sea are usually not synonymous with human rights and surely not the UN principles of self-determination. It is unconventional to consider using the Law of the Sea to address prevention and protections for refugees or the stateless. But UNHCR publications, among many others, highlight the high volume of people risking their lives at sea, from diverse regions across the world, to “escape persecution, conflict, instability, and poverty” and the role of the Law of the Sea in human rights is overlooked.⁴⁶ This research identifies how the Law of the Sea can be generalized to the case-study group, the Rohingya, as a “vulnerable population”, who would benefit from the international law. The duty-bearer, the state, has responsibilities for protection, and what happens to all hopes of self-determination when there is a critical failure of safeguards. In this example, the Law of the Sea fulfills the protection role, regardless of nationality.

Bangladesh, Malaysia, Myanmar, and Thailand have not ratified the Refugee and Statelessness Conventions. But they have ratified the United Nations Convention against Transnational Organized Crime, one or more of the protocols (Bangladesh has not ratified the Trafficking Protocol), and the United Nations Convention on the Law of the Sea, each of which is an obliged treaty where a breach is addressed in part 1, chapter 1, articles 1 and 2(a)(b) of the Responsibility of States for Internationally Wrongful Acts, 2001 the International Law Commission articles.⁴⁷ States are obliged to respond to breaches that have been attributed to their conduct. Under the scope of the International Court of Justice (ICJ), member states have a venue for the settlement of international law disputes. The ICJ also renders advisory opinions in relation to referrals on legal inquiries. Consequently, UN member states are obliged to abide by the courts decisions where acceptance of the court’s jurisdiction has taken place.

Table 1. Research Target State Ratification

Target Region/Country	United Nations Convention against Transnational Organized Crime (Palermo Convention)	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Trafficking Protocol)	Protocol against the Smuggling of Migrants by Land, Sea, and Air (Palermo Smuggling Protocol)	UN Convention on the Law of the Sea
Bangladesh	July 13, 2011 ^a			July 27,2001
Malaysia	September 24, 2004	February 26, 2009 ^a		October 14. 1996
Myanmar	March 30, 2004 ^a	March 30, 2004 ^a	March 30, 2004 ^a	May 21, 1996 ^a
Thailand	October 17, 2013	October 17, 2013	December 18, 2001 ^s	May 15. 2011 ^a

Note: ^a denotes accession; ^s denotes signed but not ratified or acceded; each state has one or more reservations.

Table 2. Reservations and Declarations: United Nations Convention against Transnational Organized Crime (Palermo Convention)

Bangladesh Reservations	“In accordance with the provision in paragraph 3 of Article 35 of the Convention, the People’s Republic of Bangladesh does not consider itself bound by paragraph 2 of the said Article.”
Malaysia Declarations	“(a) Pursuant to Article 35, paragraph 3 of the Convention, the Government of Malaysia declares that it does not consider itself bound by Article 35, paragraph 2 of the Convention, and (b) the Government of Malaysia reserves the right specifically to agree in a

	particular case to follow the arbitration procedure set forth in Article 35, paragraph 2 of the Convention or any other procedure for arbitration.”
Myanmar Reservations	“The Government further wishes to make a reservation on Article 35 and does not consider itself bound by obligations to refer disputes relating to the interpretation or application of this Convention to the International Court of Justice.” ^a
Thailand Reservations	“[I]n accordance with paragraph 3 of Article 35 of the Convention, the Kingdom of Thailand does not consider itself bound by paragraph 2 of the same Article.”

^a United Nations; in a communication received September 17, 2012, the government of the Union Myanmar notified the Secretary-General of the withdrawal of the following reservation made upon accession to the convention: “The Government of the Union of Myanmar wishes to express reservations on Article 16 relating to extradition and does not consider itself bound by the same.” Source: UN Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en#10.

Table 3. Reservations and Declarations: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Trafficking Protocol) supplementing the United Nations Convention against Transnational Organized Crime

Malaysia Reservation	“1. (a) Pursuant to Article 15, paragraph 3 of the Protocol, the Government of Malaysia declares that it does not consider itself bound by Article 15, paragraph 2 of the Protocol; and (b) the Government of Malaysia reserves the right specifically to agree in a particular case to follow the arbitration procedure set forth in Article 15, paragraph 2 of the Protocol or any other procedure for arbitration.”
Myanmar Reservation	“The Government of the Union of Myanmar wishes to express reservation on Article 15 and does not consider itself bound by obligations to refer disputes relating to the interpretation or application of this Protocol to the International Court of Justice.”
Thailand Reservation	“[I]n accordance with paragraph 3 of Article 15 of the Protocol, the Kingdom of Thailand does not consider itself bound by paragraph 2 of the same Article.”

Note: The protocol was adopted by resolution A/RES/55/25 of November 15, 2000, at the fifty-fifth session of the General Assembly of the United Nations, entry into force 28 January 28, 2004, in accordance with article 22.

Table 4. The Protocol against the Smuggling of Migrants by Land, Sea, and Air (Palermo Smuggling Protocol) (excerpt from the Government of Myanmar)

Myanmar Reservation	“The Government of the Union of Myanmar wishes to express reservation on Article 20 and does not consider itself bound by obligations to refer disputes relating to the interpretation or application of this Protocol to the International Court of Justice.”
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Source: 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). Extract from the Report of the International Law Commission on the work of its Fifty-third session.

State Responsibility for an International Wrongful Act

The framework asserts that when the state fails to comply with these treaty-based preventions, protections for victims, and the prosecution of offenders, it will have breached its international obligations as outlined in part 1, chapter 1, articles 1, 2(a)(b), and 3 of the Articles on the Responsibility of States for Internationally Wrongful Acts (the ILC articles):

Every international wrongful act of a State entails the international responsibility of that State. (art. 1)

There is an internationally wrongful act of a State when conduct consisting of an act or omission:

- (a) is attributable to the State under international law; and
- (b) constitutes a breach of an international obligation of the State (art. 2).

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law. (art. 3)

Legal Empowerment and the Principle of the Four Pillars

The director general's UN 2009 Assembly Report outlines the four pillars of legal empowerment: access to justice and the rule of law, property rights, labor rights, and business right.⁴⁸ This research aligns those pillars with the basis for the UN Charter on Self-Determination. Embedded in these international laws are components that address the first pillar, access to justice, the UN Commission on Legal Empowerment of the Poor defines 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."⁴⁹

In states where citizenship has been denied, papers for identity and rights afforded to other citizens are withheld. But this research asserts that employing state-obliged international instruments, with the capacity to provide all populations,⁵⁰ despite domestic legal status, prevention measures, and protection mechanisms against human trafficking and its multiple forms of exploitation closes critical gaps left in nonmember states to the Refugee Convention and the Conventions on Statelessness for the Rohingya, Lumad, and similarly situated groups.

The four pillars provide a guide to the panoramic view of this study, which examines what works and what does not and why, and seeks to identify and close the gaps needed to help practitioners and policy makers provide the much-needed prevention, protection, and subsequent prosecution of the perpetrators who exploit force displaced children and their families, on land and sea.⁵¹

The Rohingya: Case 1, the "Critical Case"

This study delves into the Rohingya situation since 1948 and the international literature that embraces the legal framework for the protection of stateless children; their legal status under the law—national and international—and the guarantee of their rights.⁵² It also looks at the literature on the Balkan Roma, migrant, and stateless nonrefugee children, who "are more vulnerable than adult refugees and ordinary citizen children."⁵³ Unfortunately, citizenship and immigration rights laws have rendered them stateless. Also, their position as stateless children renders them more

susceptible to the danger of being abused, trafficked, smuggled, and treated as illegal immigrants or criminals.⁵⁴ As the Southeast Asia territorial rainy monsoon season begins, the United Nations has expressed concern for pregnant women and children by increasing support.⁵⁵

The Rohingya are one of Myanmar's many ethnic minorities and claim ancestry from Arab traders and other ancient groups from the region of centuries past.⁵⁶ Like so many other millions, the Rohingya are caught in the middle of an initially domestic and now international conflict. Historical data and reports from multiple media sources and the United Nations indicate that Myanmar's government denies citizenship to the Rohingya and, in keeping with the dominant "public" attitude, views them as illegal immigrants from Bangladesh.⁵⁷ In recent years, according to UNHCR estimates, more than a hundred thousand Rohingya have been displaced or have been subject to extreme violence, brutality, and exploitation. Matthew Smith of CNN, like many other journalists, depicts the Rohingyas as, "amongst the world's least wanted" and "one of the world's most persecuted minorities."⁵⁸

The Rohingya have documented denial of self-determination and human rights and other freedoms, and since 2016, they have been subject to forced displacement. The Rohingya are particularly vulnerable to all forms of violence and the many forms of exploitation covered under the Palermo Convention and the Palermo Trafficking and Smuggling Protocols.⁵⁹ The underlying premise of the Palermo Protocol is that without a nationality, stateless people, especially children, often face severe obstacles and barriers that prohibit access to education, employment, healthcare, legal remedies, freedom of movement, and other fundamental citizenry rights. UNHCR chronicled the events of the Rohingya for a hundred days as a reflection of the hundreds of years of struggle. A timeline of the Rohingya crisis that appears on the Internet (<https://reliefweb.int/report/bangladesh/100-days-horror-and-hope-timeline-rohingya-crisis>) depicts an international community scrambling to address what has generally been described as a humanitarian nightmare by a comprehensive and broad level of international leadership.

The loss of human life and severe human suffering among the Rohingya in 2016 and 2017 led to comparisons of their treatment to crimes against humanity. Lurid images of suffering children engulfed in inhabitable living conditions fleeing Myanmar's domestic and now international conflicts across the border to Bangladesh and other countries have become a worldwide matter. The claims of "atrocities crimes" committed against the Rohingya is supported by the UNHCR, Zeid Ra' ad al-Husseini, and others, who have called the exodus of the Rohingya "a textbook example of ethnic cleansing." The term "atrocities crimes" identifies three legally defined international crimes: genocide, crimes against humanity, and war crimes. The crimes are defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Conventions and their 1977 Additional Protocols, and the 1998 Rome Statute.

Referring to the UN Office on Genocide Prevention and the Responsibility to Protect, the UN Commission of Experts developed two reports to address the violations of international humanitarian law committed in the territory of the former Yugoslavia as a point of reference: Interim Report S/25274, which defines ethnic cleansing as "rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area," and Final Report S/1994/674, which describes ethnic cleansing as "a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means the civilian population of another ethnic or religious group from certain geographic areas."

The UN Commission of Experts describe the practices as "constituting crimes against humanity [that] can be assimilated to specific war crimes." The UN experts add that the acts are within the realm of the Genocide Convention and therefore amount to breaches of international

humanitarian law. In the early 1990s, odious imagery was not as quickly broadcast and delivered in real time as it is now because of technological advancements in communication. Now, in contrast to the limited and delayed reporting from a small corner of the world in Africa and Yugoslavia in 1993–1994, media broadcasts are wide-reaching and in real time, and these reports have inspired outcries and demands across the globe for immediate action from the United Nations, the International Criminal Court, and other international bodies.

The Lumad: Case 2

Like the Rohingya, the Lumad are an indigenous people with historical roots that extend back centuries. The Lumad are located in Mindanao, Philippines, and comprise an estimated eighteen major ethnolinguistic groups. In 2008, the Institute for War and Peace published a controversial document, a memorandum of agreement on ancestral domain (MOA-AD). The originators of the MOA-AD announced that they intended to bring peace to the region and form the Bangsamoro Juridical Entity (BJE) as a substate led by the local Muslim community in Mindanao.⁶⁰ Indigenous groups assert, however, that the BJE is a pretext to evict them from their native lands and interfere in their religious beliefs and their social and cultural systems.

Conflict reignited between Muslim separatist groups, the Moro Islamic Liberation Front, and government troops after the Lumad authorities refused to sign the MOA-AD. Since neither the Philippines nor Malaysia has ratified the UN Convention on Refugees or the UN Conventions on Statelessness, the most prudent international prevention and protection measures are the provisions of the Palermo Convention, articles 6, 7, and 8.

Whereas no leader has come forward among the Rohingya to intervene and optimize tools of legal empowerment in their dispute over ancestral lands and nationality rights, the Lumad tribal chief, Timuay Nanding Mudai, led a successful self-determination rights rebuttal. In response, the Manila Supreme Court ordered a temporary restraining order shortly before a scheduled signing in Malaysia. In this instance, again unlike what occurred among the Rohingya, the tribal chief was joined in opposition of the BJE by more than two hundred other ethnic leaders representing indigenous groups in the provinces of Palawan and Mindanao.

The Lumad objected to their lack of involvement in the document's origination; specifically, the elements covered a majority of the Subanen, which has been a Lumad tribal ancestral home. Also, the areas in dispute included Zamboanga del Sur and Zamboanga del Norte, both in the Western Mindanao region. The leaders defended their home rights in the Cagayan de Oro Declaration of August 27, 2008. One of the few legal documents that have declared rights for migrants, the document states: "We assert that Mindanao is not only inhabited by the Bangsamoro people, but also by indigenous peoples and 'migrant' settlers."

The Roma: Case 3

The Roma live primarily in Eastern Europe, which was formerly Communist bloc countries. Linguistic research indicates that different groups of Romany people originated in India, though the groups left sometime before the tenth century. The Romany people eventually arrived in most sections of Europe by the Middle Ages with further migration in Europe between 1000 and 1025.⁶¹ The special rapporteur on minority issues, Rita Izsák, reports that the Roma have made substantial contributions to seasonal labor and services that others in the community were unable or unwilling to execute.⁶² Nonetheless, the Roma remain without rights to land that they have occupied for centuries.

Collectively, the group refers to themselves as Roma; the adjectival form is Romani or Romany, which also refers to their spoken language. This terminology can cause confusion by giving the false impression that they are from Romania. The Roma have experienced discrimination based on the premise that they are “dirty” or “criminal.” This discrimination has led to a collapsed opportunity for stable employment among Roma seeking traditional employment in factories and shops and in the other professions. It has also resulted in the “traditional” Romany’s gaps in education and the resulting fulfillment of jobs described by Fraser as “tinkering, dealing scrap metal, farm labor, bear training, and circus entertainment.”⁶³

This lack of rights—a status of statelessness—is mainly associated with cultural or societal discrimination. The Roma’s isolation and the negative stereotypes about them are largely based on the real or perceived notion that they are migratory and their lack of citizenship. The Roma have found themselves in a cyclical trap that has passed down through the generations. Like their parents, who were denied opportunities, the new generation will be unable to move forward without education and training.

Discussion

The analytical framework of this study examines the substantive international instruments relating to human rights and state obligations, focusing on international criminal law with respect to human trafficking; smuggling; exploitation of children on land, in territorial waters, and on the high seas, that is, in international waters; and rights due all children, despite nationality and religious background.

The research investigation seeks to establish a causal relationship or link implied by the chosen theory and critical-case example to derive conclusions that support the Rohingya children and other children in similar situations across the globe in an effort to provide a more comprehensive and thorough analysis of what the global and regional stateless nonrefugee child exploitation data shows as a gap in prevention and protection measures for those seeking self-determination.

The study coincides with the charter presented by the UN Special Rapporteur on Anti-trafficking’s application of the Palermo Convention and the Palermo Trafficking and Smuggling Protocols in its broader scope and its cross-section with the fabric of human rights law. Statelessness can be viewed through several lenses.⁶⁴ This research argues that repurposing the administration of the Palermo Convention and the Palermo Trafficking and Smuggling Protocols within a member state’s legal framework will prompt the states’ duty to protect the stateless. Repurposing the law presents an opportunity to position it as a primary conduit to support human rights instruments for the disadvantaged and marginalized populations before, during, and after forced migration. The research strengthens the debate that compliance or failure to comply with the Palermo Convention prompts a transnational consequence that collaterally affects another country and obliges the member state to put in place prevention measures and protection mechanisms for stateless nonrefugee, disadvantaged, and marginalized groups of children seeking self-determination.

Optimizing the administration of the Palermo Convention and its protocols opens up global resources to help address the many safety needs of targeted populations. Moreover, the Palermo Convention and the revised administration set forth in the protocols can serve as a buttress to member states committed to the United Nations Convention for the Rights of the Child. The international law closes the gap and addresses the humanitarian needs of stateless nonrefugees and the forced displaced in the vast number of nonmember states that provide the authoritative

definition: the 1954 and 1961 UN Conventions on Statelessness and the 1951 UN Refugee Convention.

State Treaty Obligation

The argument that member states have an obligation under the Palermo Convention rests heavily on international law. The most formal and reliable form of international commitment is the treaty.⁶⁵ Treaties provide multiple advantages in addition to signaling a high level of commitment. They represent clear and well-defined obligations of states; they can provide for explicit dispute resolution, through treaties such as the North America Free Trade Association, and define rules for accession and exit.⁶⁶ Member states are obliged to conduct themselves in accordance with the international law provided in article 38 of the 1946 Statute of the International Court of Justice as “evidence of a general practice accepted as law.”⁶⁷ As the two requisite elements for determining whether a legal norm has been acquired within the respective member states’ customary status, state practice and *opinio juris* are examined through the case law, law reports, and international practices.

To optimize protection of the stateless, research requires the unfolding of the phenomena. The process includes vulnerability mapping and a review of systematic and targeted preventions under the Palermo Trafficking and Smuggling Protocols. State treaty responsibilities, under the provisions of the Articles on Responsibility of States for Internationally Wrongful Acts, 2001 (ILC Articles), oblige support to the concepts of legal empowerment and self-determination.⁶⁸ The support comes in the form of an obliged state responsibility to the international community to include those without nationality or those discriminated against.

Myanmar

The Republic of the Union of Myanmar, previously referred to as Burma, is a sovereign state in Southeast Asia bordered by Bangladesh, China, India, Laos, and Thailand.⁶⁹ Its longstanding political unrest has significantly hindered its position on humanitarian protections. Azeem Ibrahim’s research attests that since Burma became independent in 1948, the country’s leadership and political forces have been targeting the Rohingya and calling for their expulsion from their homeland. Ibrahim and other historians depict the region as closed and detached from the international scrutiny. The region has an extensive and complex history. Even under British rule, the descriptor used for the Rohingya was “ugly as ogres,” lacking the “fair and soft skin” of other Burmese ethnic groups.⁷⁰

Though the British Commonwealth ruled the country until 1948, Burma claimed democracy until 1962 and transitioned to military rule from 1962 to 2011. Burmese leadership met with the then U.S. secretary of state Hillary Clinton in November 2011 and British prime minister David Cameron shortly after that. Other dignitary visits soon followed with Tony Blair, EU Commission president José Manuel Barroso, and President Barack Obama in 2012.⁷¹ Despite a series of events involving the ASEAN leadership in 2014, sanctions, and embargoes, no changes toward citizenry for the Rohingyas or their treatment have emerged.

Notwithstanding Myanmar’s nonparty status to the Rome Statute, on April 9, 2018, Judge Antoine Kesia-Mbe Mindua, under regulation 46(3), presided over the prosecution’s request for a ruling on jurisdiction under article 19(3) of the statute over the objections of Myanmar. The following segment of the pretrial hearing explains the justification:

The coercive acts relevant to the deportations occurred on the territory of a State, which is not a party to the Rome Statute (Myanmar). However, the Prosecution considers that the Court may nonetheless exercise jurisdiction under article 12(2)(a) of the Statute because an essential legal element of the crime—crossing an international border—occurred on the territory of a State which is a party to the Rome Statute (Bangladesh).⁷²

A significant component of the prosecutor’s submissions states:

The Prosecution seeks a ruling on the Court’s jurisdiction under article 12(2)(a)—specifically, to verify that the Court has territorial jurisdiction when persons are deported from the territory of a State which is not a party to the Statute directly into the territory of a State which is a party to the Statute.⁷³

The international world anxiously awaited the outcome of article 19(3) of the statute, which was decided by majority approval. Shortly afterward, September 18, 2018, the prosecutor announced the formal opening of the preliminary examination investigation to exercise jurisdiction over “the alleged deportation of the Rohingya people from Myanmar occurred on the territory of Myanmar (which is a State not party to the Statute) to Bangladesh (which is a State party to the Statute).”⁷⁴ On July 4 2019, the prosecutor authorized an investigation into the list of alleged crimes that covers the period since October 9, 2016.

Target Region Challenges

Several countries have reformed their gender discriminatory nationality laws or initiated new ones in the past fifteen years. Nepal, Brunei Darussalam, and Malaysia, however, prohibit mothers the ability to convey nationality to their children.⁷⁵ Beyond national laws, there remain many practices in rural communities that further perpetuate women’s inequality issues, including laws against their owning property and the “bride price” for girls sold into marriage.

The focal area, depicted in Figure 2, including Myanmar, Bangladesh, Thailand, the Philippines, and Malaysia, continues to be plagued with gender equality challenges and has been labeled by UNHCR as the highest stateless population in the world.⁷⁶ Figure 2 illustrates how tightly clustered these countries are, that they share multiple borders, and that they are situated near territorial and international waters. The U.S. State Department’s 2017 Trafficking Victims Protection Act (TVPA) ranks countries on a four-tier scale according to their record of meeting the TVPA’s minimum standards. The Tier 2 Watch List, for example, includes the governments of countries that do not fully meet the TVPA’s minimum standards but are making significant efforts to bring themselves into compliance with those standards, and for which:

- a. the *absolute number* of victims of severe forms of trafficking is very significant or is significantly increasing;
- 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 is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take *additional steps over the next year*.⁷⁷

Though these countries do not fully meet the TVPA minimum requirements, they all have either ratified or accepted by acceding, with reservations, one or more of the following: the Palermo

Convention, the Palermo Trafficking Protocol, and the Palermo Smuggling Protocol, as shown earlier in Tables 1–3.



Figure 2. Southeast Asia, research regional geographical focus

Proposed Intervening Response Plan

The Palermo Trafficking Protocol, supplementing the Palermo Convention, is the basis for the formulation of a generalizable and replicable international law framework. The Palermo Convention is an international law and its domestic integration mandated into legislation allows this research to proffer a practitioner's model of practice for the prevention, protection measures, and mechanisms to mitigate and possibly circumvent human trafficking, smuggling, and exploitation of forced displaced children, IL-R2/MIFD, to describe the components of decision making and legal frameworks used in conjunction with a computer-based app, serving as a e-toolkit.⁷⁸

Briefly stated, IL-R2/MIFD mimics the model established by the medical industry. The medical industry, across the globe, has established uniformity for handling major incidents. With little resistance, the World Health Organization and an international team of health care professionals spring into action in response to major medical incidents, such as an outbreak of cholera. In such instances, there is usually minimal differentiation between the nationalities of the medical resource personnel. Instead, the attention is focused on providing a universal level of care, regardless of the geographical area to be addressed. There are issues and concerns where conflicts, domestic or international, are involved. But reports indicate that most efforts are successful in providing critical medical preventive care and emergent care.

Moreover, in medical care, major incidents are delineated by origin, such as whether they are natural or man-made. Correspondingly, in issues involving refugees, UNHCR provides the authoritative definition of internally displaced persons (IDPs), as

persons or groups of persons, who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters, and who have not crossed an internationally recognized state border.⁷⁹

The model of practice e-toolkit, due for publication in 2021, outlines the fundamental steps of the IL-R2/MIFD, a logic-based process, where legal practitioners and advocates respond to and deploy to forced displaced scenarios as a preventive and protective measure in much the same way medical providers respond to major medical incidents. The model of practice e-toolkit provides a uniform scenario of IL-R2/MIFD responses that includes addressing the three types of displacement related to statelessness: displacement as a cause of statelessness, displacement as a consequence of statelessness, and statelessness as a challenge in the displacement context (an obstacle or barrier to the resolution of refugee problems).⁸⁰ The responses are not exhaustively listed within this brief summary. But the IL-R2/MIFD e-toolkit optimizes the elements of the Palermo Trafficking Protocol's prevention and protection elements of the 3P index, while providing information to individuals who are highly susceptible to human trafficking and other forms of exploitation. This new platform is innovative and much needed to address the many vulnerable populations seeking self-determination who still fall prey to perpetrators of human trafficking, smuggling, and exploitation, whether individuals or enterprises. This research posits that by employing the IL-R2/MIFD and optimizing the use of the Palermo Trafficking and Smuggling Protocols, supplemented by the Palermo Convention in member states, international teams can mitigate the harm done to vulnerable individuals seeking self-determination who are exposed to exploitation during forced migration situations.

Notes

¹ Azeem Ibrahim, *The Rohingyas: Inside Myanmar's Hidden Genocide* (London: Hurst, 2016). The Rohingya, one of Myanmar's many ethnic minorities, claim ancestry from Arab traders and other ancient groups from the region of centuries past. Ibrahim writes: "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 countries including Bangladesh, Malaysia, Indonesia and Thailand by rickety boats via the waters of the Strait of Malacca and the Andaman Sea. . . . 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 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'" (15). The UN General Assembly, Convention Relating to the Status of Stateless Persons provides the authoritative definition for a stateless person: "a person who is not considered as a national by any State under the operation of its law" (September 28, 1954, United Nations Treaty Series, 360:117, article 1(1)).

² 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," *Human Rights Quarterly* 33, no. 3 (2011): 682, 732. This article uses the UN definition of "marginalized," according to which people who are marginalized include those who are underserved, disregarded, ostracized, harassed, persecuted, or sidelined. "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>. Also, in this article the term "disadvantaged groups" 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. "Report of the World Summit for Social Development," United Nations Department of Economic and Social Affairs, March 6–12, 1995, para. 25(i), 66, <https://www.un.org/development/desa/dspd/world-summit-for-social-development-1995.html>.

³ UN Support Mission in Libya and UNCHR, "'Detained and Dehumanized': Report on Human Rights Abuses against Migrants in Libya," December 13, 2016, http://www.ohchr.org/documents/countries/LY/DetainedandDehumanised_en.pdf; "Vulnerable persons" is defined under the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which was adopted by the General Assembly in 1992, as a list of rights to which persons belonging to minorities are entitled, including the right to enjoy their own culture, to profess and practice their own religion, and to use their own language. It also contains measures that states can implement to create an environment conducive to the enjoyment of such rights.

⁴ "Desperate Journeys: Refugees and Migrants Arriving in Europe and at Europe's Borders: January–December 2018," UNHCR, <https://www.unhcr.org/desperatejourneys/>.

⁵ UN General Assembly, Convention on the Reduction of Statelessness, August 30, 1961, adopted August 30, 1961 into force December 13, 1975.

⁶ UN General Assembly, Convention Relating to the Status of Refugees, July 28, 1951, United Nations, Treaty Series, 189:137, adopted by the General Assembly December 14, 1950, entry into force April 22, 1954; 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, September 2011.

⁷ The seminal judgment setting forth the due diligence standard is *Velásquez-Rodríguez v. Honduras Case, Judgment*, Inter-Am.Ct.H.R. (ser. C) no. 4, Judgment of July 29, 1988, para. 172, where the Inter-American Court of Human Rights examined a case involving disappearances in Honduras. The court determined that the Honduran government could be held liable under the American Convention if it failed to take appropriate steps to prevent or punish private individuals who caused others to disappear.

⁸ Article 1(1) is the persuasive point of contention for nonratification from Bangladesh, Malaysia, Myanmar, Thailand, and each of the other Southeast Asian nonmember states, except for the Philippines.

⁹ UN General Assembly, Convention on the Rights of the Child, November 20, 1989, United Nations, Treaty Series, 1577: 3. The Convention on the Rights of the Child was adopted and opened for signature, ratification, and accession by General Assembly resolution 44/25 of November 20, 1989.

¹⁰ United Nations Declaration on the Elimination of Violence against Women (1993), art. 4: States are urged to “[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”

¹¹ 1954 Convention on Statelessness, Introductory Note, 4.

¹² M. Q. Patton, *Qualitative Evaluation and Research Methods* (Beverly Hills, CA: Sage, 1990) 169, 186. This social science research principle is also supported by Bent Flyvbjerg’s renowned work, which substantiates the application of a critical-case as “a case with strategic importance to the general problem.” The critical-case study methodology permits empirical analytic generalization of international remedies. Bent Flyvbjerg, “Five Misunderstandings about Case-Study Research,” *Qualitative Inquiry* 12, no. 2 (2006): 219, 245.

¹³ Patton, *Qualitative Evaluation*, 174.

¹⁴ Flyvbjerg, “Five Misunderstandings,” 245.

¹⁵ Nataliya V. Ivankova, John W. Creswell, and Sheldon L. Stick, “Using Mixed Methods Sequential Explanatory Design: From Theory to Practice.” *Field Methods* 18, no. 1 (2006): 3, 20, available at: <https://journals.sagepub.com/doi/abs/10.1177/1525822X05282260>; John W. Creswell, Vicki L. Plano-Clark, Michelle Gutmann, and William E. Hanson, “Advanced Mixed Methods Research Designs,” in *Sage Handbook of Mixed Methods in the Behavioral and Social Sciences*, ed. Abbas Tashakkori and Charles Teddlie, 209–240 (Thousand Oaks, CA: Sage, 2003); R. K. Yin, “Validity and Generalization in Future Case Study Evaluations,” *Evaluation* 19, no. 3 (2013): 321, 332.

¹⁶ Abbas Tashakkori and J. W. Creswell, “Exploring the Nature of Research Questions in Mixed Methods Research,” *Journal of Mixed Methods Research* 1, no. 3 (2007): 207, 211.

¹⁷ Ibrahim, *Rohingyas*.

¹⁸ Adam Warnke, “Vagabonds, Tinkers, and Travelers: Statelessness among the East European Roma,” *Indiana Journal of Global Legal Studies* (1999) 7, no.1 (1999), <https://www.repository.law.indiana.edu/ijgls/vol7/iss1/13/>; Council of Europe, “Factsheets on Roma Culture,” <http://romafacts.uni-graz.at/index.php/culture.1>; European Roma Rights Centre, “Written Comments for Consideration by the European Commission concerning Roma Inclusion in the Western Balkans,” Progress Reports 2016, July 2016.

¹⁹ Cristina Rey, “Moro and Indigenous Peoples Forge Historic Alliance for Self-Determination,” *IC Magazine*, January 20, 2017.

²⁰ Nimfa Bracomonte, Astrid Boza, and Teresita Poblete, “From the Seas to the Streets: The Bajau in Diaspora in the Philippines,” *International Proceedings of Economics Development and Research* 20 (2011): 287–291, <http://ipedr.com/vol20/56-ICHSC2011-M10061.pdf>.

²¹ Charter of the United Nations, art.1, para. 2, article 55, para 1; evolved from the 1941 Atlantic Charter and the Dumbarton Oaks proposals.

²² Bohdan Nahaylo, “Population Displacement in the CIS: The Background, Problems and Challenges,” CIS Conference on Refugees and Migrants, European Series, UNHCR Regional Bureau for Europe 1996.

²³ 1954 Convention on Statelessness, introductory note, 3.

²⁴ “For Every Child in Danger: Identify, Protect, Repeat,” UNICEF.UK, 2017, http://unicef.org.uk/wp-content/uploads/2017/10/Unicef_ChildTraffickingBriefing2017.pdf.

²⁵ Institute on Statelessness and Inclusion, “Statelessness, Human Rights, and Sustainability,” ISI Development Agenda, Background Paper, 2017, http://www.institutesi.org/SDG_working-paper2017.pdf.

²⁶ Shilpa Khanna Arora, Dheeraj Shah, Sanjay Chaturvedi, and Piyush Gupta, “Defining and Measuring Vulnerability in Young People,” *Indian Journal of Community Medicine* 40, no. 3 (2015): 193–197, available at <http://doi.org/10.4103/0970-0218.158868>.

²⁷ “UNHCR and CRTD.A: Regional Dialogue on Gender Equality, Nationality, and Statelessness—Overview and Key Findings,” UNHCR, 2011, <https://unhcr.org/4f33ea656.pdf>

²⁸ “Global Trends: Forced Displacement in 2015,” UNHCR, 2016, <http://www.unhcr.org/576408cd7.pdf>; *Collection of International Instruments Concerning Refugees and Others of Concern to UNHCR* (Geneva: UNHCR, June 2007), available at <https://www.unhcr.org/uk/publications/legal/455c71de2/collection-international-instruments-legal-texts-concerning-refugees-others.html?query=list%20of%20international%20human%20rights%20refugee%20law>.

²⁹ Population Statistics (UNHCR), http://popstats.unhcr.org/en/persons_of_concern. According to the UNHCR, each row of data represents the information about UNHCR’s populations of concern for a given year and country of residence and/or origin. In the 2018 data, figures between 1 and 4 have been replaced with an asterisk (*). These represent situations where the figures are being kept confidential to protect the anonymity of individuals. Such figures are not included in any totals.

³⁰ “Global Action Plan to End Statelessness, 2014–2024,” UNHCR, November 4, 2014.

³¹ “Our History,” National Center for Missing and Exploited Children,”

<http://www.missingkids.com/footer/about/history>.

³² Missing Children’s Act, Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 97th Congress, 1st sess. on H.R. 3781, November 18 and 30, 1981, <https://files.eric.ed.gov/fulltext/ED225051.pdf>.

³³ “Global Trends: Forced Displacement in 2016,” UNHCR, <https://www.unhcr.org/5943e8a34.pdf>; “Global Trends: Forced Displacement in 2017,” UNHCR, <https://www.unhcr.org/5b27be547.pdf>; “Global Trends: Forced Displacement in 2018,” UNHCR, <https://www.unhcr.org/5d08d7ee7.pdf>.

³⁴ “Global Trends: Forced Displacement in 2015,” UNHCR, 2015, <http://www.unhcr.org/576408cd7.pdf>; “Global Trends: Forced Displacement,” 2016–2018.

³⁵ “Western Sahara: Advisory Opinion of 16 October 1975, International Court of Justice.

³⁶ “Algeria,” UNHCR, 2013, <http://unhcr.org/50a9f8260.pdf>.

³⁷ Shilpa Khanna Arora, Dheerja Shah, Sanjay Chaturvedi, and Piyush Gupta, “Defining and Measuring Vulnerability in Young People,” *Indian Journal of Community Medicine* 40, no. 3(2015): 193–197.

³⁸ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention against Transnational Organized Crime, November 15, 2000; UN General Assembly, Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the United Nations Convention against Transnational Organized Crime, which was adopted by General Assembly resolution 55/25 on November 15, 2000. The Palermo Convention and its protocols can be found online at <https://www.osce.org/odihr/19223?download=true>.

³⁹ In accordance with its article 16, the protocol will be open for signature by all states and by regional economic integration organizations, provided that at least one member state of such organization has signed the protocol, between December 12 and December 15, 2000, at the Palazzi di Giustizia in Palermo, Italy, and thereafter at United Nations Headquarters in New York until December 12, 2002.

⁴⁰ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), July 17, 1998, Text of the Rome Statute circulated as document A/CONF.183/9 of July 17, 1998 and corrected by process-verbaux of November 10, 1998, July 12, 1999, November 30, 1999, May 8, 2000, January 17, 2001, and January 16, 2002. The statute entered into force on July 1, 2002. The International Criminal Court has indicted individuals for sexual slavery (e.g. Joseph Kony and Vincent Otti) and enslavement (Raska Lukwiya, Okot Odhiambo, Dominic Ongwen, and Vincent Otti) as crimes against humanity. In July 2019, a three-judge panel found Ntaganda guilty on all eighteen counts of war crimes and crimes against humanity committed in the mineral-rich northeastern region of Ituri between 2002 and 2003, to include sexual enslavement.

⁴¹ “Glossary on Migration,” International Organization for Migration (IOM), 2019,

https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf. According to IOM, forced migration is a “migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion.”

⁴² Persons in a refugee-like situation includes “groups of persons who are outside their country or territory of origin and who face protection risks similar to those of refugees, but for whom refugee status has, for practical or other reasons, not been ascertained” (“Algeria,” 2013).

⁴³ Avi Brisman, “United Nations Convention on the Law of the Sea,” in *Encyclopedia of Global Justice*, ed. Deen K. Chatterjee (Dordrecht: Springer, 2011).

⁴⁴ UN General Assembly, Convention on the Law of the Sea, December 10, 1982; entry into force November 16, 1994.

⁴⁵ International Maritime Organization (IMO), International Convention on Maritime Search and Rescue, April 27, 1979, United Nations Treaty Series 1403.

⁴⁶ “High Commissioner’s Dialogue on Protection Challenges: Protection at Sea,” Background Paper, UNHCR, November 11, 2014, <http://www.refworld.org/docid/54b8fa5d4.html>.

⁴⁷ International Law Commission (ILC), Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, supplement no. 10 (A/56/10), IV.E.1, adopted by the ILC at its fifty-third session (2001); James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013), doi: 10.1017/CBO9781139033060.

⁴⁸ UN General Assembly, Sixty-fourth session, A/64/133, July 2009, Eradication of Poverty, <https://www.un.org/esa/socdev/documents/reports/Legal%20empowerment%20of%20the%20poor.pdf>

⁴⁹ UN Commission on Legal Empowerment of the Poor, “The Four Pillars of Legal Empowerment,” in *Making the Law Work for Everyone*, 25–42 (New York: Commission on Legal Empowerment of the Poor and United Nations Development Programme, 2008).

⁵⁰ International instruments underpinning prevention measures and protection mechanisms against child and adult exploitation are not contingent on nationality or legal status.

⁵¹ Tanya Herring, “3-State Field Research,” ICO-Research Fellows, ICO, January 2018.

⁵² Dina Imam Supaat, “Refugee Children under the Malaysian Legal Framework,” *UUM Journal of Legal Studies* 4 (2014): 118–148, http://repo.uum.edu.my/16031/1/2014_7.pdf.

⁵³ Nigel Thomas and John Devaney, “Safeguarding Refugee and Asylum-Seeking Children,” *Child Abuse Review* 20 (2011): 307.

⁵⁴ Alice Farmer, “Refugee Responses, State-like Behavior, and Accountability for Human Rights Violations: A Case Study of Sexual Violence in Guinea’s Refugee Camps,” *Yale Human Rights and Development Law Journal* 9(2006): 44.

⁵⁵ “Rohingya Refugees Face Immense Health Needs; UN Scales Up Support Ahead of Monsoon Season,” *UN News*, February 20, 2018, <https://news.un.org/en/story/2018/02/1003122>.

⁵⁶ Ibrahim, *Rohingyas*.

⁵⁷ “Who Will Help Myanmar’s Rohingya?” *BBC News*, January 10, 2017, <http://www.bbc.co.uk/news/world-asia-38168917>.

⁵⁸ Matthew Smith, “Is Genocide Unfolding in Myanmar?” CNN, March 4, 2017; Herring, “3-State Field Research.”

⁵⁹ “UN Calls for ‘Full Rohingya Citizenship,’” *Al Jazeera*, December 30, 2014, <https://www.aljazeera.com/news/Americas/2014/12/un-calls-full-rohingya-citizenship-myanmar-monks-rakhin-2014123044246726211.html>.

⁶⁰ Institute for War and Peace Reporting, “Lumad Demand Self-Determination,” September 24, 2008, <http://www.refworld.org/docid/4964675ec.html>.

⁶¹ Ian F. Hancock, *Land of Pain: Five Centuries of Gypsy Slavery* (Austin: University of Texas, 1982).

⁶² United Nations General Assembly Report, A/HRC/29/24, May 11, 2015, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/.../A_HRC_29_24_E.doc.

⁶³ Angus Fraser, “Juridical Autonomy among Fifteenth and Sixteenth Century Gypsies,” *American Journal of Comparative Law* 45, no 2 (1997): 291.

⁶⁴ Joy N. Ezeilo, “Achievements of the Trafficking Protocol: Perspectives from the Former UN Special Rapporteur on Trafficking in Persons,” *Anti-Trafficking Review* 4 (2015): 144–149, www.antitraffickingreview.org; Stephanie Maher, “Historicizing ‘Irregular’ Migration from Senegal to Europe,” *Anti-Trafficking Review* 9 (2017): 77–91, available at www.antitraffickingreview.org.

⁶⁵ Treaties are also the focus of most theories of compliance with international law. Oscar Schacter, “Towards a Theory of International Obligation,” *Virginia Journal of International Law* 8 (1968): 300–301.

⁶⁶ Various other costs and benefits involved in treaties that are not directly relevant to the question of how treaties impact behavior include, for example, the fact that treaties often take longer to negotiate than less formal agreements and that they must be approved by signatory governments (which may increase the chances that the treaty will be honored because it increases the level of domestic support and may entrench the agreement in domestic laws).

⁶⁷ Article 38 directs the court to decide disputes referred to it in accordance with international law by applying (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states, (b) international custom, as evidence of general practice accepted as law, (c) the general principles of law as recognized by civilized nations, (d) subject to the provisions of article 59, judicial decisions, and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of the rules of law.

⁶⁸ International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, supplement no. 10 (A/56/10), IV.E.1; P. Malanczuk, “Countermeasures and Self-Defence as Circumstances Precluding Wrongfulness in the International Law Commission’s Draft Articles on State Responsibility,” *Journal of Foreign Public Law and International Law* (Max-Planck-Institut) 43 (1983),

https://www.zaoerv.de/43_1983/43_1983_4_a_705_812.pdf; Stephen Golub and Kim McQuay, “Legal Empowerment: Advancing Good Governance and Poverty Reduction,” in *Law and Policy Reform at the Asian Development Bank*, 2001; “Legal Empowerment,” a 2001 report by the San Francisco-based Asia Foundation, defines legal empowerment as “the use of law to increase the control that disadvantaged populations exercise over their lives.” In its resolutions 9 (XXIV) of August 18, 1971 and 9 (XXV) of August 31, 1972, the Sub-Commission recommended that the Commission on Human Rights request that the Sub-Commission on Prevention of

Discrimination and Protection of Minorities place on its agenda: “The historical and current development of the right of peoples to self-determination on the basis of the Charter of the United Nations and other instruments adopted by the United Nations organs.”

⁶⁹ “About Us,” ILO in Myanmar, 2016, <http://www.ilo.org/yangon/country/lang--en>; the name Myanmar was adopted as part of a new set of laws in 1989.

⁷⁰ Ibrahim, *Rohingyas*; Ishaan Tharoor, “World Views: Why Does This Buddhist-Majority Nation Hate These Muslims So Much?” *Washington Post*, 13 February 13, 2015. https://www.washingtonpost.com/news/worldviews/wp/2015/02/13/why-does-this-buddhist-majority-nation-hate-these-muslims-so-much/?utm_term=.49f50286ae67.

⁷¹ “Disenfranchisement and Desperation in Myanmar’s Rakhine State: Drivers of a Regional Crisis,” ASEAN Parliamentarians for Human Rights, October 2015, https://aseanmp.org/wp-content/uploads/2015/10/APHR_Rakhine-State-Report.pdf.

⁷² ICC-RoC46(3)-01/18-1 09-04-2018 1/31 NM PT, para. 2, https://www.icc-cpi.int/CourtRecords/CR2018_02057.PDF.

⁷³ *Ibid.*, para. 4.

⁷⁴ “Preliminary Examination: Bangladesh/Myanmar” ICC, September 6, 2018, <https://icc-cpi.int/bangladesh-myanmar>.

⁷⁵ “Background Note on Gender Equality, Nationality Laws and Statelessness 2016,” UNHCR, March 8, 2016, <http://www.refworld.org/docid/56de83ca4.html>; Institute of Statelessness and Inclusion, “The World’s Stateless Children: Campaigning for Gender Equality in Nationality Laws, ISI, January 2017, chap. 13, <http://www.corteidh.or.cr/tablas/r36668.pdf>.

⁷⁶ “Detained and Dehumanized” OCHCR Report on Human Rights Abuses Against Migrants in Libya. December 13, 2016, https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf.

⁷⁷ “Office to Monitor and Combat Trafficking in Persons Report 2017,” U.S. Department of State, 2017, <https://www.state.gov/j/tip/rls/tiprpt/2017/271117.htm>.

⁷⁸ Model of Practice (MOP), used in law and other occupations, such as nursing, is a conceptual model, a practice model, or frame of reference. These terms are used interchangeably. A MOP takes the philosophical base of the profession and organizes the concepts for practice and provides an overall view of the profession. It also provides the practitioners with tools for evaluation, terms to describe the practice, to give, and a guide for intervention. IL-R2/MIFD supports the hypothesis that in situations of massive forced displacement, international criminal law should implement a protocol similar in nature and reactionary response to medical major incidents, whereas the Palermo Convention, Palermo Trafficking Protocol, and Palermo Smuggling Protocol (3P index), within member states, is activated to address prevention measures, protection and prosecution mechanisms to thwart human trafficking, smuggling, and exploitation of highly vulnerable and stateless children and their families.

⁷⁹ UNHCR Emergency Handbook, 2018, <https://emergency.unhcr.org/entry/95355/idp-definition>.

⁸⁰ Zahra Albarazi and Laura van Waas, “Statelessness and Displacement,” Norwegian Refugee Council, Tilburg University, 2014, https://files.institutesi.org/stateless_displacement.pdf.