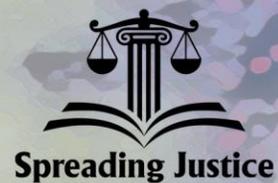
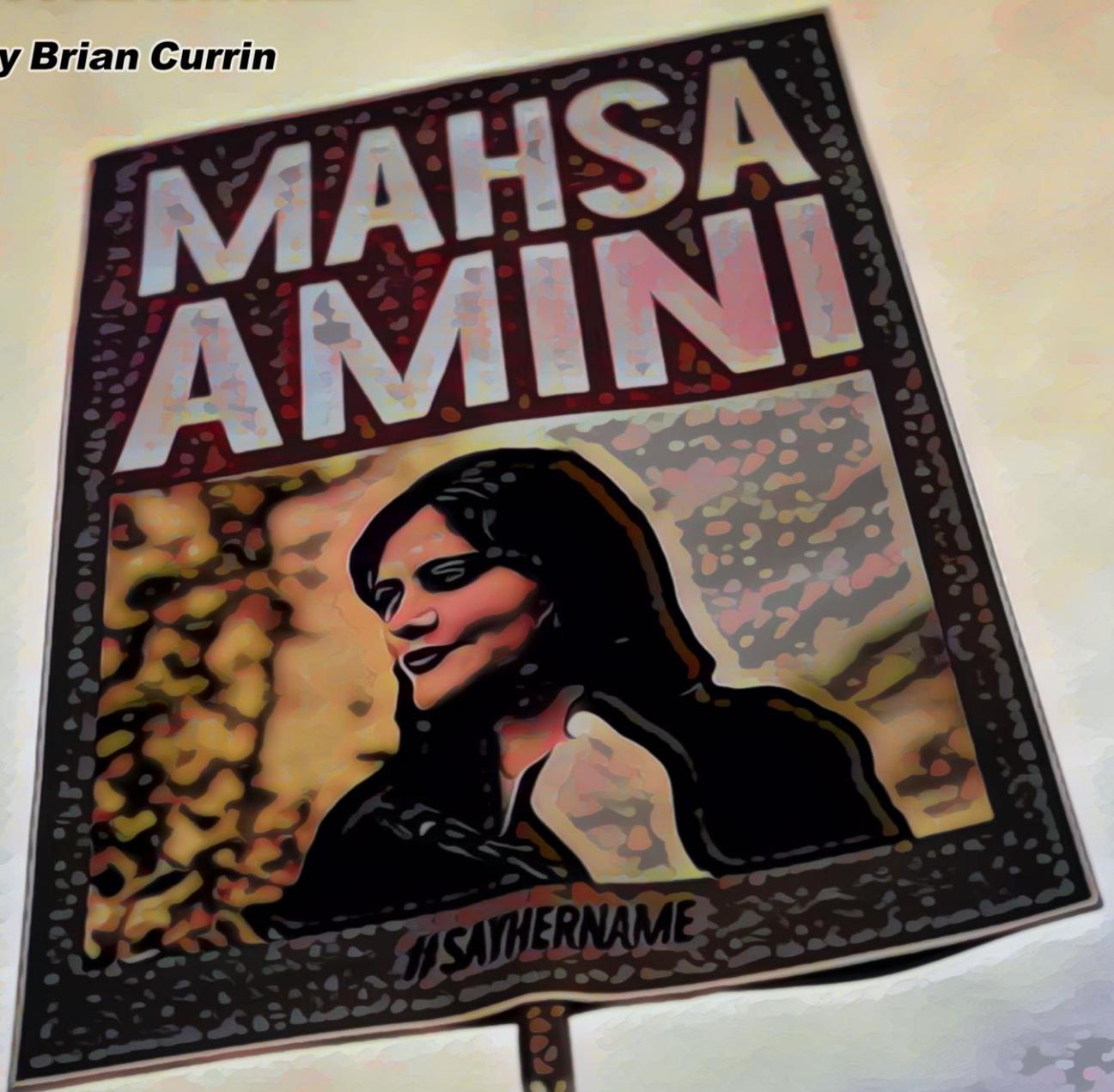


# MAHSA AMINI

**THE SEISMIC TRAGEDY THAT IS  
TRIGGERING A TSUNAMI THAT SHOULD  
NOT BE IGNORED**

*By Brian Currin*



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By: Brian Currin

For: Spreading Justice initiative of Human Rights Activists in Iran (HRA-SJ)

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## I INTRODUCTION

Strict adherence to legal positivism suggests that international law operates only at the international level and not within domestic legal systems – thereby stressing the importance of international law as being founded upon the consent of states; this view increasingly overstates the sanctity of single states which exist in a plural world, with a single people, a single humanity. Indeed, positivism asserts the supremacy of the state, with international law being accepted as applicable, at least on a theoretical level, only when consistent with the law of the land. A slightly less strict relegation of international law is the theory of dualism, which stresses that the rules of the systems of international law and municipal law exist separately and cannot purport to have an effect on, or overrule, the other. Essentially, this theory holds that international law and domestic law are separate bodies of law, operating independently of one another. As such, international law cannot only be applicable if deliberately accepted or even legislated to form part of municipal law. This is the transformation doctrine – I argue a doctrine that is not substantively different to the hard and fast positivist outlook; the only difference being that in one, the municipal law dominance, through the supremacy of the state is explicit while in the dualist theory, it is implicit as international law is applicable, but only if the state consents. As will be clear, this paper does not seek to purport to iron out jurisprudential and philosophical conflicts of international and municipal law, however it is important that the underlying point of departure of the paper is extracted from the above. More theories exist, but they are of no significance to this paper.

While the position of international law within municipal law is clearly complex and, for better or worse, dependent upon a country's domestic legislation (to varying degrees), a principle recognized both in international case law (e.g., the *Alabama claims*<sup>1</sup> case between the United States and the United Kingdom following the American Civil War) and in treaties (e.g., Article 27 of the Vienna Convention<sup>2</sup>) is that no municipal rule may be relied upon as a justification for violating

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<sup>1</sup> Alabama claims of the United States of America against Great Britain, 1872.

<sup>2</sup> Vienna Convention on the Law of Treaties, 1969.

international law! This principle shall be the golden thread of the arguments made in this article. Of course, the immediate ensuing question would be, “what is international law?”, a question which the article will attempt to answer comprehensively.

From the above, I argue strongly that the sovereignty of states is not as all-encompassing as might be assumed to be. In one global world, no state can be an island, no matter how sovereign. This is clear, as apart from voluntary cooperation, states increasingly have to answer many identical questions. The facing of common issues then necessarily leads to an increasing interpenetration of international law and municipal law across a number of fields, such as, environmental law (the prefix ‘international’ would be redundant, such is the singular and global nature of the environment), international investment law and, pivotal to this paper, human rights. These are but just a few examples of where the same topic is subject to regulation at both the domestic and the international level. Crisply put, ‘the interdependence and the close-knit character of contemporary international commercial and political society ensures that virtually any action of a state could well have profound repercussions upon the system as a whole and the decisions under consideration by other states.’<sup>3</sup>

The tragic death of Mahsa Amini has brought to the fore the regulation of human rights. Can a state, in this instance the Islamic Republic of Iran, assert, as it has done over many years, its sovereignty above all else? Above human rights? Above human life itself?

It is with the above in mind that in Section II of this article I start by setting out the circumstances, as reported in various media, that led to the death of Mahsa Amini. This will be accompanied by a brief timeline of developments since. I then set out the international law governing states in Section III, approaching it from the various sources it is drawn from. In Section IV, I briefly turn to give an outline of Iranian Municipal Law, while also pulling out some of the relevant institutions that govern Iranian citizens. Armed with the knowledge of both applicable international law and some of the relevant Iranian law and institutions, in Section V, I then look at the possible

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<sup>3</sup> Mukarrum A ‘International Law and Municipal Law’ 2019.

contraventions, if any, of international law through the lens of categories of source and/or contravention of law.

While the facts pertaining to events discussed in the article are admittedly based on desktop research, this article should not be read in isolation, as it is a continuation of all the profile reviews of Iranian officials and their impugned conduct that I have done in collaboration with Human Rights Activists in Iran's database of human rights perpetrators, Spreading Justice (HRA-SJ). In reality, this article is a deep dive that tries to assist in ensuring that the death of Mahsa is not in vain.

## II BACKGROUND & DEVELOPMENTS

As a point of departure, it is critical to note that the current situation, sparked, in chief, by the events that will be expounded on below, are dynamic, and information is constantly being updated and revised. Below is the information as best and widely reported as at early December 2022.

As per credible reports by the Human Rights Activists News Agency ('HRANA') - on the 13<sup>th</sup> of September 2022, Mahsa (Jhina) Amini was arrested at Taleghani Subway station of Tehran by an Iranian law enforcement group known as the Morality Police (whose main mandate is 'enforcing Iran's Islamic code of conduct'). Mahsa's crime was, 'improper Hijab'. Shortly after her arrest, she had to be transferred to hospital with concussions. She then went into a coma, succumbing to her injuries and dying in hospital, on the 16<sup>th</sup> of September of 2022. Eyewitnesses have stated they saw the Morality Police physically and brutally beat Mahsa; unsurprisingly the Morality Police rejected this version of events and incredulously claimed she had died of a heart attack while being under their custody. The evidence on Mahsa's body contradicts this claim

As reported by media, this triggered the first wave of what are widely considered the most historical protests since the 1979 Revolutionary War. This is significant as many of our previous individual human rights' abuse profiles had an aspect of stifling the right to protest; however, never at the scale and awareness of the protests which have followed the death of Mahsa. HRANA reports that:

‘The widespread protests sparked at the time Mahsa Amini was announced dead in front of Kasra Hospital on Argentina Street in Tehran, and then quickly spread to the streets despite the intimidating presence of Iran’s security forces. The protests intensified after Mahsa’s burial in a Saqqez cemetery. To the extent that after eighty-two days of nationwide protests between September 17, 2022, to December 7, 2022, they have spread to Iran’s all 31 provinces, 160 cities, and 143 major universities.’

‘The protests did not stay limited to Mahsa’s death, it rather, quickly targeted the Iranian government’s political and ideological foundations. These protests were violently quashed by the anti-riot police and Iran’s militia force (Basij). teargas, pellets, and live ammunition were used in the repression of protestors. This widespread crackdown has led to the death of dozens of people and the wounding of hundreds of protestors.’

This initial 20-day protest has been characterised as being unique by the HRANA. Some of most pertinent distinguishing features are said to be:

- While many of Iran’s protests end up in violation of human rights’, their spark is usually economic or environmental in nature. However, this protest was triggered directly by a human rights’ violation; the murder of Mahsa by state officials.
- Mahsa was from an amalgamation of minority groups that are the subject of discrimination in Iran. She was Kurd and Sunni... yet this did not stop Iranians of all faiths and heritage from joining in the protests.
- Iranians of all classes joined the protests.
- Youth, with an estimated average age of 15 years, have played a pivotal role in the protests.
- In terms of length, the protests are some of the most sustained.
- The demands of the protesters have been unwavering on women’s rights – this suggests, contrary to how the state sees itself, a progressive, non-conservative society that yearns for the equality of human beings.
- Iranian protests have a history of bloodshed and torture as security forces have no qualms with spilling blood indiscriminately, while arresting and beating unarmed protesters; a trend we have seen many a times in the previous profiles. This has led to many Iranians choosing to stay away in fear of their lives. However, during these protests there have been

many instances of protestors showing solidarity, coming together to prevent people from being taken into custody or by standing in front of the police, equipped with full anti-riot gear.

- In terms of internet solidarity, the Mahsa Amini hashtag is the first in the history of Twitter to record more than 384 million tweets.

All in all, the above points to unparalleled upheaval since the war. Iranians have decided that the killing of Mahsa signifies crossing the Rubicon – no more will they allow themselves to be defined by, and subsequently tortured by, the state and its apparatus.

Since the initial 82 day protests which saw a reported 481 identified civilian Iranians lose their lives (plus an indeterminate number of unidentified Iranians), and despite significant efforts from the Iranian authorities to stifle the protests, Iranians, to this day, are refusing to relent. Some of the subsequent developments are:

- Almost half of the Internet service providers in Iran have seen a 50% drop in sales due to disruptions, censorship, and Internet shutdowns by the government during protests.
- Iranian security forces are targeting protestors with shotgun fire to their faces, breasts, and genitals, according to interviews with medics across the country. One physician from the central Isfahan province said he believed the authorities were targeting men and women in different ways

‘I treated a woman in her early 20s, who was shot in her genitals by two pellets. Ten other pellets were lodged in her inner thigh. These 10 pellets were easily removed, but those two pellets were a challenge, because they were wedged in between her urethra and vaginal opening,’ the physician said. ‘There was a serious risk of vaginal infection, so I asked her to go to a trusted gynaecologist. She said she was protesting when a group of about 10 security agents circled around and shot her in her genitals and thighs.’

- Protests have been slightly quelled as government fights back the cries of freedom and equality – however various organisation of protests, including social media users, continuously report protests of various sizes across many of Iran’s cities and provinces. As recently as December 5, the Critical Threats Project (‘CTP’) reported that ‘at least 29 anti-

regime protests took place in 18 cities across 16 provinces.’ These numbers have been fluctuating daily.

- There have been conflicting messages on whether the regime will abolish the morality police. The regime will likely maintain and continue enforcing its mandatory hijab law regardless of whether it abolishes the morality police.
- Judiciary Chief Gholam Hossein Mohseni Ejei ordered the relevant authorities to identify, arrest, and prosecute protesters organizing and promoting the countrywide strikes ‘quickly and decisively.’ Ejei accused protesters of coercing and manipulating the owners of businesses and shops to strike.
- On the 8<sup>th</sup> of December, in what was Iran’s first judicial execution since the protests started, a 23-year old protester by the name of Mohsen Shekari, was hanged after being convicted for blocking a Tehran Street and wounding a paramilitary on September 25, after a legal process that rights groups denounced as a show trial. His official indictment cited ‘Moharebeh’ as his official crime – a wide discretionary crime of ‘waging war against God’ that has been covered throughout many of the profiles (and will be looked at further when the Iranian penal Code is discussed).

### III INTERNATIONAL LAW GOVERNING STATES<sup>4</sup>

In an exercise situating the current state of affairs vis-à-vis protests in Iran, a formal look into international law follows by looking at various relevant international laws and their sources.

#### Customary International Law

There are two main requirements for the existence of customary international law; settled practice of states (*usus*) and the acceptance of an obligation to be legally bound (*opinio juris*). While the two are separate concepts, they do largely overlap and thus principles surrounding them cannot be isolated into mutually exclusive and collectively exhaustive elements.

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<sup>4</sup> See Dugard’s International Law for references of below

Usus (settled practice of states)

The practice must be general and widespread. Evidence of state practice is found in a variety of areas, including, but not limited to treaties, decisions of national courts, national legislation, diplomatic correspondence, policy statements by government officials, opinions of national law advisers, reports of the International Law Commission ('ILC') and comments by states on these reports, and resolutions of international organisations; the political organs of the United Nations in particular. A state's practice can be sourced from many places.

Where states actively demonstrate their support for a particular rule, no problem of proof arises. Indeed, some states provide easy access to their practice by publishing official reports on this subject. However, in many cases, there will be no clear evidence of this kind. In these circumstances, it may be possible to infer consent or acquiescence to a practice from the inaction of states. The ILC says only 'deliberate abstention from acting' may count as state practice. From the above, it is clear, even if not intuitive, that practice is inferred not only from conduct, but from absence of conduct. This suggests that where international norms exist, i.e. non-trade in people/no slavery, it is from the deliberate opposite conduct to the norm, that practice is inferred. This would make sense for a country like North Korea that distances itself from the UN and its organs that its practice is to not form part of the international community. In a more legalistic and doctrinal manner (but perhaps more instinctive), the International Court of Justice ('ICJ') has, through its jurisprudence, insisted that constant and uniform usage or widespread acceptance of a rule constitutes a proper prerequisite for usus e.g. as said in the Asylum Case. Note that the widespread acceptance is not to be read as universal acceptance. Therefore, a country cannot escape being bound by a rule of customary law (usus) merely because it can point to a few states that are exceptions to the customary rule. For settled international custom, a state cannot plead the so called 'persistent objector' defence. It can probably be argued, successfully too, that if a state can point to their continuous objection to a particular practice, then it cannot be part of their practice; however this defence would only work at the point in time where the rule is still in the process of being developed. Once a practice is settled international custom, there is no 'opt out' clause. This point has been the subject of debate in the context of jus cogens conduct and international law, where for example, some states refused to accept South Africa's persistent objection to treating

apartheid as a violation of international customary law. This is best explained on the ground that the prohibition on apartheid is a peremptory norm, a norm of jus cogens, to which the normal rules relating to the persistent objection do not apply.

#### Opinio Juris

A settled practice (*usus*) on its own is insufficient to create a customary rule. In addition, there must be a sense of legal obligation, a feeling on the part of the states that they are bound by the rule in question – that the general practice is accepted as law. In the North Sea Continental Shelf Cases between West Germany on one hand, and the Netherlands together with Denmark on the other, the ICJ stated:

*‘Not only must the acts concerned amount to a settled practice, but they must also be such, or carried in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it... The states concerned must therefore feel that they are conforming to what amounts to a legal obligation.’<sup>5</sup>*

As with all subjective matters, evidence of *opinio juris* is difficult to prove. Difficult as it may be the evidence may be found in the same materials that are used for investigating state practice. A grouping of likeminded jurists and scholars of international law argue that a concrete example of the search for *opinio juris* is where there is a consistent and widespread (not necessarily unanimous) adoption of an annual resolution, which resolution may well constitute settled practice (i.e. *usus*) regarding a rule contained in the resolution. The resolution itself, however, cannot establish a rule of customary international law unless it can be shown, whether by reference to the content of the resolution or by some other forms of conduct, that the states adopting the resolution believe the rule in question to be one of customary international law. As with settled practice, the question of the silent states – those states that do not express an opinion to the legal status of a rule – arises. In these instances, silence can, in certain circumstances, be taken to imply the acceptance

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<sup>5</sup> North Sea Continental Shelf Cases (n 36).

of a rule. This inference, however, can only be made when those states were able to react, and the circumstances called for some reaction.

Less technical is that a key feature of law is its universal applicability, not its universal acquiescence in the form of subjects opting in or out. It is this very option of opting out that make some commentators argue vehemently against international law being ‘law’ at all, for, as the argument goes, a law is binding and can never bow down to the intention of a subject to be bound by it. While the argument might not hold when it comes to treaties, I think it holds ground when it comes to international custom. Plural we may be; we all live in one world, with one human race.

My view, when it comes to the binding nature of international law not having to require *opinio juris*, is supported by one of the sources of customary international law i.e. Security Council resolutions. While the Security Council is not a legislative body (Security Council will be discussed), its resolutions are binding. Although the point of departure was combating terrorism, many of the Security Council’s resolutions have had the effect of creating international custom in relation to human rights. ‘Beginning with its adoption of resolution 1456 (2003), the Security Council has also consistently and repeatedly affirmed that states must ensure that any measures taken to counter terrorism, comply with all their obligations under international law, in particular international human rights law...’ This means that states can only counter terrorism effectively if they meet obligations under international law, with human rights being singled out. While the resolution can be read in full, the basic thinking is that if a state cannot respect the human rights of its own citizens – what chance do foreign citizens have? More formally and recently, in its resolution 2178 (2014), the Council stated that failure to comply with these and other international obligations (respect for human rights, fundamental freedoms etc.) including under the Charter of the United Nations, fosters a sense of impunity and is one of the factors contributing to increased radicalization. I would thus argue that ‘international obligations’ can be directly substituted with, among others, ‘international customary law’ as it would cause an absurdity for a country not to have any international obligations vis-à-vis human rights, simply because they do not feel bound by it.

## UN Charter and Treaties

The focus in this section of the article is not on treaties in general, but as they relate to human rights.

As a point of departure, it is helpful to locate human rights in its post-world war II development. In 1945, the United States, the Soviet Union, the United Kingdom and France established an international military tribunal to try Nazi leaders for crimes against the peace, and war crimes; the Nuremberg trial. Trying similar charges, was the subsequent Tokyo trial.

The Nuremberg trial had a major impact on international law. It inspired criminal accountability for those responsible for war crimes and the systematic and large-scale violation of human rights and contributed substantially to the development of international humanitarian law. It was also the genesis of crimes against humanity and genocide jurisprudence. From a human rights perspective, the main significance of the Nuremberg precedent is that national leaders and government officials are no longer able to claim immunity before international courts from protection for egregious human rights violations by invoking the protection of municipal law or superior orders. What is of particular importance to note as we delve deeper into the relevant areas of the relevant treaties, is that neither Nazi Germany nor Japan were signatories to any international treaty (they did not exist at the time) - yet the officials were tried.

The United Nations' (UN) commitment to human right was made clear in the preamble to the charter which reaffirms 'faith in fundamental human rights, in the dignity and worth of the person, in the equal rights of men and women.' Iran is a member state of the United Nations, joining it in 1945 as one of the original 50 founding members. Today, the Islamic Republic of Iran is an active member of the UN. The UN has actively partnered with Iran since 1950, opening in Tehran in 1950, one of the very first UN Information Centres worldwide. One wonders why and how the disconnect even exists. The Charter itself, when laying out the purpose of the United Nations, in Article 1(3) alludes clearly to the importance of human rights by stating that:

‘To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;

Promote respect for human rights... without distinction as to... sex. Yet nearly 80 years later, the events described in the beginning of this article are as though the Charter never existed; or if it did, Iran, a founding member, has never heard of it. An escape for many countries has been Article 2(7) which states that:

*‘Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.’*

Chapter VII will be expounded on later, but in the second half of the 20<sup>th</sup> century, when Apartheid was doubling down on its brutality and decolonisation, Article 2(7) essentially forced states to choose between the supremacy of domestic jurisdiction on one hand, and human rights on the other. The ICJ, in its *Namibia Opinion*<sup>6</sup> of as far back as 1971, dispelled any doubts on the above balancing act – it held that member states could not use Article 2(7) to sidestep, circumvent or blatantly contravene the legal obligations that were imposed on member states by the human rights charter.

There are several international instruments that deal with human rights. Two are specifically regarded as the cornerstone international covenants; namely The International Covenant on Civil and Political Rights (‘ICCPR’), along with The International Covenant on Economic, Social and Cultural Rights (‘ICESCR’). Other international instruments are; International Convention on the Elimination of All Forms of Racial Discrimination (‘ICERD’),

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<sup>6</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* 1971 ICJ Reports 16.

Convention on the Elimination of All Forms of Discrimination against Women (‘CEDAW’), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (‘CAT’), Convention on the Rights of the Child (‘CRC’), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (‘CMW’), International Convention for the Protection of All Persons from Enforced Disappearance (‘CED’) and Convention on the Rights of Persons with Disabilities (‘CRPD’). Unfortunately, Iran is signatory only to the ICCPR – a treaty Iran acceded to and ratified on June 24, 1975. This means Iran is fully, and voluntarily bound by this instrument.

#### ICCPR

The ICCPR can be divided into various parts. Part I is Article 1 and deals with self-determination. It provides for all peoples a right to freely determine their political status and freely pursue their economic, social and cultural development. Part II (Articles 2 – 5) obliges parties to legislate where necessary to give effect to the rights recognised in the Covenant, to provide an effective legal remedy for any violation of those rights and importantly, entrenches the equality of all groups, while prohibiting all forms of discrimination. Important for the conduct regarding Mahsa and the subsequent squashing of protests are Article 2(1) which states:

*‘Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’*

The list is intentionally not exhaustive and clearly sets out sex as a prohibited ground of discrimination.

Article 2(2) states:

*‘Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or*

*other measures as may be necessary to give effect to the rights recognized in the present Covenant.'*

This means Iran has an obligation, not only to not violate the rights, but to create, within their domestic legal framework, legislation that recognises and protects all the rights provided for in the Covenant, 'notwithstanding that the violation has been committed by persons acting in an official capacity.'

Part III (Articles 6 – 27) then set out the actual rights provided for in detail. Importantly these rights apply to everyone (men and women), without any discrimination, and the state has an obligation to both protect these rights and provide remedies for when violated. More specifically and important for our analysis; Articles 6 – 8 deal with the right to life. Torture or any cruel and degraded treatment is prohibited:

#### Article 6

*1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

*2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.*

*3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.*

*4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.*

*5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*

*6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.*

Article 7 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation;

Articles 9 -11 deal with the security and liberty of the person. Articles 14 – 16 deal with fair trial and procedural fairness guarantees; Articles 12, 13, 17 – 24 deal with individual liberty, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy. I set out the relevant ones in full.

Its appropriate for present purposes to quote verbatim from Articles 18, 19, 21 and 22.

Article 18:

*1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*

*2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*

*3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*

*4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

## Article 19

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
  - (a) *For respect of the rights or reputations of others;*
  - (b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

## Article 21

*The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

## Article 22

1. *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*
2. *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the*

*imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*

*3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*

Part IV (Articles 28 - 45) are more operational and speak to the establishment of a human rights committee; Part V (Articles 46 -47) situates the Covenant amongst the United Nations machinery and finally, Part VI (Articles 48 – 53) deals with the technicalities and procedures of the Covenant itself, such as ratifying or amending etc.

The Articles set out in full above are of the greatest importance when analysing the conduct of Iranian officials during this period.

## Soft Law

These are the so called ‘imprecise standards’, generated by declarations adopted by diplomatic conferences or resolutions of international organisations, that are intended to serve as guidelines to states in their conduct, but which lack the status of ‘law’. One such example is the Universal Declaration of Human Rights (‘UDHR’). Although admittedly not binding, it provides an important framework that the UN General assembly, Security Council (remembering that Security Council resolutions are binding on all states) and the Human Rights Commission often refer to when they interpret and apply the human rights clauses of the Charter.

The UDHR is not a treaty, but a recommendatory resolution of the UN General Assembly. Some argue that it now forms part of International Customary Law. In 1968, at an international conference on human rights in Iran (Ironically), the Tehran (ironically) proclamation stated that:

*‘The UDHR states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.’*

While others oppose this as too far reaching for all countries of the world, it is widely accepted that the UDHRs basic principles such as non-discrimination, rights to a fair trial, and the prohibitions on torture, cruel inhuman or degrading treatment etc., undoubtably belong to the corpus of international customary law even though they may not always be observed.

#### IV IRANIAN MUNICIPAL LAW

The impugned Iranian law is the infamous Islamic Penal Code ('IPC') of the Islamic Republic of Iran. Section 1 deals with 'The Punishments and Security and Correction Measures'. The punishments provided for in this law include five types: 1- *Hudud* 2- *Qisas* 3- *Diyat* 4- *Ta'zirat* 5- Deterrent punishments. Worrying are:

Article 13 - *Hadd* is the punishment which its type and amount and quality is prescribed by Shari'a. Hadd punishment is implemented by stoning, whipping, lashing etc., usually to death.

Article 14 - *Qisas* [retaliation or eye-for-an-eye] is the punishment to which the criminal shall be sentenced and is equal to his/her crime.

Article 16 - *Ta'zir* is the chastisement or punishment which its type and amount is not determined by *Shari'a* but left to discretion of the judge, such as imprisonment, fine and lashes; the number of lashes must be less than the number stipulated for *Hadd* punishment.

Section 2 deals with *moharebeh* and corruption on earth. Selected examples of these punishments are in article 190, *Hadd* punishment for *moharebeh* and corruption on earth is one of the following four punishments:

- (a) The death penalty (with a Hadd method of death)
- (b) Hanging on gallows
- (c) Amputation of right hand and then left foot.
- (d) Banishment.

Article 195 - Crucifixion of a *mohareb* and a corrupt on earth shall be executed as follows:

(a) Method of tying shall not kill him/her.

(b) S/he shall not remain crucified for more than three days, but if they die within three days, s/he can be taken down [from the cross].

(c) If s/he remains alive after three days [s/he] shall not be killed.

Article 196 -Amputation of the right hand and left foot of a *mohareb* and a corrupt on earth shall be executed by the same method as for the *Hadd* punishment for theft.

These come directly from the IPC.

## V IRANIAN CONTRAVENTIONS OF INTERNATIONAL LAW

### International Customary Law crimes

There are five crystallised International Customary Law crimes, namely; Piracy, War Crimes, Crimes against Humanity ('CAH'), Genocide and Torture.

The CAT defines torture as:

‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.’

The probable beating received by Mahsa at the hands of the morality police fits squarely in the definition of torture.

Systematic persecution of a group of people, in this instance a woman and religious minority, is an example of enumerated offenses under CAH for which a government officials could be responsible and held criminally liable.

### International treaty crimes

Over and above the [detailed report of the first 82 days of nationwide protests](#) provided by the HRA-SJ, a database of human rights violators in Iran, has also [reported the weapons being used](#) to suppress the nationwide protests in Iran. Shell casings found at scenes, along with brutal physical evidence found on the protesting victims themselves show evidence of violent weapons being used on protesters. The weapons range from paintball guns to handguns and shotguns, to automatic and semi-automatic rifles such as the Kalashnikova (AK47) and Heckler & Koch G3.

The AK-47 is an assault rifle that operates with gas and is chambered for 7.62 x 39mm cartridge. The effective firing range for an AK-47 is between 300 to 400m and its maximum range is 2000m. The standard magazine capacities of this weapon are 30 or 75 rounds drum. The Heckler & Koch G3 has caliber of 7.62 and 51mm bullets. Its effective firing range is 200 to 400m and its standard magazine capacity is 30 as well as up to 100 round drum magazines. These are not tools used to disperse even the rowdiest of crowds. These are effective killing machines that have been used in wars, with the AK-47 playing a role even in the Iran Revolution. The weapons are reported to have been aimed at protesters faces and upper torso, evidence of an intention to kill and/or maim.

The use of these weapons has been attributed to the FARAJA forces. FARAJA at the time of protests was under the ultimate authority of [Hossein Ashtari](#), the Chief Commander of Law Enforcement and Chief of Police. [Ahmad-Reza Radan](#) has been appointed to this position since January 7<sup>th</sup> 2023. Since Iran is signatory only to the ICCPR, the conduct of FARAJA in general, and Ashtari, will be tested against this instrument. However, as explained, this instrument, as one of only two cornerstone instruments on human rights, is more than adequate.

### Right to life

As of the end of February 2023, it is reported that at least 528 civilians including minors have died. All 528 of these are in violation of Article 6 of the ICCPR as none of these killings have been by

way of the death penalty (an exception to the right to life). These have been extra judicial killings and Iranians at the highest level of governance need to be held accountable.

#### Torture

The beatings of Mahsa and other protesters, the excessive use of force through assault rifles, the shooting of women genitals – all of these are examples of torture as described above. The conduct provided for in the HRANA report fits the definition of torture and thus Article 7 has also been breached.

#### Right to liberty

As of the end of February 2023, it is reported that 19,763 people have been arrested, including minors. This is an extraordinarily high number. While I do not have the benefit of a breakdown of the instances that have led to these arrest, their sheer volume, plus the fact that they are linked with a time of protesting for the fundamental rights of women, suggests strongly that Article 9 of the ICCPR i.e. ‘No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty...’ has been grossly violated.

#### Dignity of detainees

Although I am not armed with specific, disaggregated information, taking into account the fact that Mahsa was beaten as a (arbitrary) detainee of the Morality Police, further exacerbating that fact with Iran’s well documented fraught treatment of detainees and prisoners, it is highly probable that Article 10 of the ICCPR has also been violated.

#### Freedoms of Speech, Belief, Assembly and Associated Right to Protest

The above are a ‘bucket’ of inter-dependent rights, as discussed in detail in earlier reviews. The mass suppression of the #Mahsa/#WomanLifeFreedom protests, as described by the UNHRA, is a continuing violation of Articles 18, 19, 21 and 22 above.

The importance of this bucket of ‘freedoms’ rights cannot be understated. I am of the strong view that the genesis of all gross human rights violations begins by not respecting these freedoms. It is the intolerance of one’s right to freedom of thought, conscience and religion; it is the interference with one’s right to hold opinions, the right to freedom to express oneself; it is the refusal of people’s right to peaceful assembly and freedom of association with others – that leads to all other rights, including life, being violated.

The “Highlights from the recent protests” section of [the First 82 days report](#) details a number of violations against various Iranian citizens. In these, the number of international law violations are innumerable. Dealing with them individually would be the exact approach this article argues against – all those instances are proof of systematic violations, and possible remedies for such widespread, systematic violations, by state apparatus at all levels, is discussed below.

## VI ANALYSIS

I say the streets of Iran are speaking, and they are loud. The international community must answer the voices.

‘The international community must act!’ This is a phrase I have used repeatedly in the specific legal reviews I have done. However, what does ‘acting’ look like? What forms of action are permitted in international law? Who is the international community?

As a form of solidarity and more importantly, pressure on own governments, individual citizens of the world are legitimate role players. However, the ultimate role players – owing to having powers allocated by prescribed international law - more concretely, states, in their own capacity, and as member states of the UN, along with the political organs of the UN.

### Individual citizens of other countries

Although the solidarity and pressure by the peoples of the world can be useful. With the proliferation of social media, joining online campaigns through twitter and other platforms helps bring light and attention to the situation of Iran, as evidenced by the record over 300 million tweets

carrying Mahsa Amini's hashtag. It is easy and free to follow Iranian activists' social media accounts, and to share information and posts on protests. Donating and or supporting human rights organizations makes it possible for organisations such as Human Rights Activists of Iran to be on the ground collecting information, sharing information, providing legal opinions and generally being outlets for those oppressed. Another form of solidarity is writing to one's government or parliament asking them to support Iranian women's rights publicly. It is this public pressure that will hold your country accountable in front of its peers, even at international bodies such the UN. Organising and/or joining local protests is also a powerful form of demonstration and applying of pressure. Mass peaceful protests have occurred in Berlin, Paris, Washington, London and other cities around the world.

## States

The regimes violent suppression against Iranian civilians invited travel bans and sanctions on important government officials from nations like the UK, US, Canada, and Germany. Similarly, Iran has been hit with a slew of targeted sanctions by the EU.

Human Rights Activists in Iran (HRA), accompanied by 161 international and regional human rights organizations and women's rights defenders, announced their [solidarity with the protesters in Iran by publishing a statement](#). Before that, HRA and 12 other human rights organizations issued another [statement calling for the international community's intervention to counter the oppression of women and protesters by the Iranian government](#). Also, HRA with 19 human rights organizations, in [a letter addressed to the President of the United States, Joe Biden, asked him to fulfil his promise to confront authoritarian and repression in Iran](#).

This efforts have resulted in historical sanctions against human rights perpetrators, since the start of protests more than 185 individuals and entities have been sanctioned across 4 jurisdictions.

## United Nations

More forcefully, I argue for international intervention through the properly designated international bodies. I must not be seen to be arguing for regime change, instead, I am arguing for

the protection of Iranian lives and freedoms through holding Iran accountable to its obligations under international law. Mahsa's death is tragic. Even more tragic is that it is not the first time, neither, as history has shown, will it be the last time. As I write, Iran has already carried out four death penalties aimed at intimidating protesters. These death penalties were carried out in rushed court cases that lasted a few hours at most, which indicates that due process could not have been followed. Execution followed soon thereafter; clearly grossly unfair trials and unlawful executions.

### General Assembly

The General Assembly ('UNGA') is the plenary body of the United Nations, with one of its responsibilities being the maintenance of international peace and security. As argued previously, and supported by a Security Council resolution, peace cannot exist if human rights are not protected and advanced. Peace and human rights, are inextricably linked. The UNGA is authorised to discuss and to adopt resolutions on any question relating to the maintenance of international peace and security or any questions falling within the scope of the UN Charter. Although Resolutions of the UNGA are recommendations in nature, they can have considerable political weight. Surely, resolutions pertaining to Iran need to be taken by the UNGA and supported widely as 'important decisions', such as action against a fellow member state, need two-thirds majority to be adopted.

### Security Council

The Security Council is the executive body of the United Nations, and it has the primary responsibility of maintaining international peace and security. It has 5 permanent member states that have veto power, along with 10 alternating members who don't have veto power. Importantly, the Security Council is empowered to take decisions binding on all member states of the United Nations. In my estimation, the situation in Iran is at the level that needs binding decision-making by the Security Council

Chapter VI (of the UN Charter) empowers the Security Council to address disputes that in its judgment do not threaten international peace, but that, if continued, are likely to endanger the maintenance of peace and security.

International law scholars claim an argument exist on whether the Security Council may adopt a resolution which designates a situation as a threat to peace if it only involves a serious violation of human rights within a particular territory. One side argues that it cannot as there needs to be some external element which affects a neighbouring state or has the potential of provoking armed conflict between states; while others maintain that a serious violation of human rights within a single state permits a determination of threat to peace

The former, I argue, are wrong. To claim that there is peace when thousands of people of one state are persecuted continuously, and have their human rights violated grossly, yet claim that peace has been threatened when two forces of 100 soldiers in total throws sticks and stones on each other over a border (as with India and Pakistan recently) is to be purely academic and out of touch with realities.

#### ECOSOC Removal of Iran from CSW

On December 14 2022, Iran was removed from the UN Commission on the Status of Women (CSW) for the remainder of its 2022-2026 term for the oppression of women and girls and the actions of Islamic Republic since September 2022. In this historic event the resolution was put to a vote by UN Economic and Social Council (ECOSOC), where it received 29 votes in favour, 8 against, and 16 countries abstained.

#### Establishment of Fact-Finding Mission (FFM)

Resolution S35/1 on the deteriorating situation of human rights in the Islamic Republic of Iran, adopted on 24 November 2022, an independent fact-finding Mission has been established. Mandate of this mission is stated as follows by the [United Nations human Rights Council](#):

With the adoption of resolution S35/1 of 24 November 2022, the Human Rights Council provided the Independent International Fact-Finding Mission on the Islamic Republic of Iran with the following mandate:

To thoroughly and independently investigate alleged human rights violations in the Islamic Republic of Iran related to the protests that began on 16 September 2022, especially with respect to women and children;

To establish the facts and circumstances surrounding the alleged violations.

To collect, consolidate and analyse evidence of such violations and preserve evidence, including in view of cooperation in any legal proceedings.

To engage with all relevant stakeholders, including the Government of the Islamic Republic of Iran, the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, relevant United Nations entities, human rights organizations and civil society.

The Human Rights Council requested the Fact-Finding Mission to present an oral update to the Human Rights Council during an interactive dialogue at its fifty-third session (June/July 2023) and to present to the Council a comprehensive report on its findings during an interactive dialogue at its fifty-fifth session (March 2024).

## VII CONCLUSION

Taken together, the ‘highlights from the recent protests’ from the first 82 days report, plus the monthly profiles and legal reviews for Spreading Justice (HRA-SJ), are all proof of systematic persecution of Iranians. The atrocities of Iran are systematic and entrenched. It is clear that the State of Iran is guilty of crimes against humanity!

Only a whole-scale change can assist the crying voices of Iran; and it must start right at the top. Iranians of all classes, of all religions, of all creeds have come out in a unified voice for the first time since the Iranian Revolution.

The law of Iran, as seen in the IPC, makes it legal to carry out acts that undermine international law and human rights. The IPC itself is an instrument of gross human rights violation.

**Brian Currin**

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