



Padjajaran Journal of International Law
International Law Department Universitas Padjadjaran

ISSN: 2549-2152, ESSN: 2549-1296

Volume 9, Number 1, January 2025

DOI: 10.23920/pjil.v9i1.2097

The Legal Issue of Granting Political Asylum to Bashar al-Assad by Russia
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Abstract

This article examines the legal implications of Russia granting political asylum to Bashar al-Assad, the deposed president of Syria accused of grave international crimes. Political asylum, while a sovereign right of states, must align with international legal frameworks such as the 1951 Refugee Convention and the Rome Statute, which prohibit granting protection to individuals implicated in a crime against peace, war crimes, crimes against humanity, serious non-political crimes outside the country of refuge, and acts contrary to the purposes and principles of the United Nations. The analysis explores the interplay between humanitarian principles, state sovereignty, and international justice, with a focus on Russia's motivations and its compliance with international obligations. By reviewing Bashar al-Assad's alleged crimes and the legal mechanisms designed to ensure accountability, this article highlights the challenges posed by Russia's actions to the global justice system. The findings reveal that granting asylum in such cases undermines accountability, sets a troubling precedent, and reflects broader geopolitical dynamics that prioritize strategic interests over justice. Recommendations include strengthening international cooperation and legal mechanisms to address abuses of asylum and ensure accountability for perpetrators of serious international crimes.

Keywords: Legal issue, Political Asylum, Bashar al-Assad, Rusia.

A. INTRODUCTION

Political asylum has long been recognized as a fundamental sovereign right of states, often granted to individuals fleeing persecution, political oppression, or imminent threats to their safety. It serves as a critical instrument of humanitarian protection, enabling those at risk to seek refuge in foreign lands. However, the granting of asylum to individuals accused of

grave international crimes, such as war crimes, crimes against humanity, or genocide, poses a significant challenge to the principles of justice and accountability under international law. This tension is sharply illustrated in the recent decision by Russia to grant political asylum to Bashar al-Assad,⁴ the former president of Syria who was ousted on 8 December 2024, who is accused of some of the most heinous crimes

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⁴ Al Jazeera, "Russia Gave Asylum to Deposed Syrian President Al-Assad, Kremlin Confirms," <<https://www.aljazeera.com/news/2024/12/9/russia-gave-asylum-to-deposed-syrian-president-al-assad-kremlin-confirms>, accessed on 9 December 2024>.

of the 21st century.⁵

Bashar al-Assad's regime has been marred by widespread allegations of war crimes, including the use of chemical weapons against civilians, mass torture, extrajudicial killings, and the targeting of non-combatants during the protracted Syrian Civil War. International human rights organizations and investigative bodies have documented evidence implicating Assad and his administration in systematic atrocities that have caused untold suffering and displacement for millions.⁶ Despite these allegations, Assad has evaded formal prosecution, and Russia's decision to grant him asylum raises critical questions about the legality of such an act under international law.

The case of Bashar al-Assad is not merely a legal issue but also a reflection of the complex interplay of geopolitics, sovereignty, and international justice. Russia, a key ally of Assad throughout the Syrian conflict, has consistently supported his regime, providing military, political, and diplomatic backing. By offering him asylum, Russia may seek to preserve its strategic interests in Syria and the broader Middle East while shielding Assad from potential prosecution. This decision, however, risks undermining international efforts to hold perpetrators of serious international crimes accountable, thereby challenging the foundational principles of the Rome Statute and other international legal frameworks.

This introduction seeks to contextualize the issue by exploring the broader implications of granting asylum to individuals accused of grave international crimes. While asylum is often justified on humanitarian grounds, it cannot be used as a shield against accountability. The granting of asylum to individuals like Assad not only

undermines the principle of accountability but also sends a dangerous signal to other potential perpetrators that they may escape justice by aligning with powerful states willing to protect them.

The decision also brings into sharp focus the limitations of the current international legal system in addressing such cases. Despite the existence of robust legal frameworks, including the Rome Statute of the International Criminal Court (ICC), the principle of universal jurisdiction, and customary international law, there are significant gaps in enforcement mechanisms. These gaps are often exacerbated by geopolitical considerations, as powerful states leverage their influence to shield allies from prosecution.⁷ Russia's actions highlight these challenges, raising important questions about the role of state sovereignty in an increasingly interconnected world and the need for stronger mechanisms to ensure accountability for international crimes.

Bashar al-Assad's case epitomizes this tension. While he may seek asylum under the pretext of political persecution, the allegations against him are of such gravity that they cannot be ignored.⁸ The international community has a legal and moral obligation to ensure that individuals accused of crimes against humanity are held accountable. Granting asylum in such cases not only contravenes international legal norms but also undermines the credibility of the global justice system.

Moreover, the decision to grant asylum to Assad cannot be viewed in isolation. It must be analyzed within the broader context of Russia's foreign policy objectives and its role in the Syrian conflict. As a permanent member of the United Nations Security Council, Russia wields significant

⁵ Amnesty International, "It Breaks the Human: Torture, Disease and Death in Syria's Prisons" (London, 2016), p. 15–16, www.amnesty.org, accessed on 9 December 2024.

⁶ Sener Akturk and Tarek Cherkaoui, eds., *The Arab Spring: Past, Present, and Future*, (Ankara: TRT World Research Centre, 2024), p. 160.

⁷ Richard Croker, "Russia's Justification for Using Its Veto on Syria Is Pure Fiction,"

<<https://www.gov.uk/government/speeches/russias-justification-for-using-its-veto-on-syria-is-pure-fiction#:~:text=Russia%20has%20now%20used%20its,the%20illegal%20invasion%20of%20Ukraine>>, July 21, 2022.

⁸ Sener Akturk and Tarek Cherkaoui, eds., *The Arab Spring: Past, Present, and Future*, (Ankara: TRT World Research Centre, 2024), p. 160–161.

influence over international mechanisms for justice, often using its veto power to block resolutions aimed at holding Assad accountable.⁹ This pattern of behavior reflects a broader trend of powerful states prioritizing geopolitical interests over international legal obligations, thereby weakening the global justice system. However, Russia is not alone in this practice. The United States has also faced criticism for granting asylum or protection to individuals accused of serious crimes or human rights violations. For example, during the Cold War, the U.S. provided refuge to several anti-communist leaders and figures accused of human rights violations or authoritarian practices, often justifying such actions as part of its broader geopolitical strategy. One notable case is that of Ferdinand Marcos, the former president of the Philippines, who fled to Hawaii where he was remained there until his death, at U.S urging despite allegations of human rights violations committed during his rule.¹⁰ These cases highlight that the issue of granting political asylum to controversial individuals is not new and remains a persistent challenge in balancing humanitarian principles with accountability for international crimes.

The implications of granting asylum to Assad extend far beyond the immediate case. It sets a troubling precedent that could embolden other states to offer sanctuary to individuals accused of serious crimes, undermining international efforts to combat impunity. It also raises questions about the effectiveness of international legal instruments in addressing such challenges, particularly in cases involving powerful states with vested interests.

This article aims to explore the legality of Russia's decision to grant asylum to

Bashar al-Assad within the framework of international law. It seeks to answer critical questions about the compatibility of such an act with Russia's obligations under treaties such as the Rome Statute, the Refugee Convention, and customary international law. By analyzing the legal framework governing asylum, the principle of accountability for international crimes, and the specific circumstances of this case, the article provides a comprehensive understanding of the legal and ethical dimensions of granting asylum to accused war criminals.

The discussion will begin with an examination of the legal framework for granting asylum, including the rights and obligations of states under international law. It will then delve into the principle of accountability and the role of international mechanisms in ensuring justice for grave crimes. The analysis will also consider Russia's actions in light of its international obligations and the broader implications for the global justice system. Finally, the article will draw on comparative case studies to highlight the challenges and opportunities in addressing such cases and offer recommendations for strengthening international legal mechanisms.

This case represents a critical juncture for the international legal order. As the world grapples with increasing instances of impunity for serious crimes, the need for robust mechanisms to hold perpetrators accountable has never been more urgent. The decision to grant asylum to Bashar al-Assad is not merely a legal issue but a test of the international community's commitment to justice and accountability. By examining this case through the lens of international law, this article seeks to contribute to the ongoing discourse on the

⁹ Richard Croker, "Russia's Justification for Using Its Veto on Syria Is Pure Fiction,"

¹⁰ Rachel A.G Reyes, "3,257: Fact checking the Marcos killings, 1975-1985,"

role of asylum in the pursuit of global justice and the challenges of balancing sovereignty with international legal obligations.

B. LEGAL FRAMEWORK FOR GRANTING ASYLUM

1. Sovereign Right to Grant Asylum

The right to grant asylum is a powerful expression of state sovereignty, allowing nations to offer refuge to individuals fleeing persecution, conflict, or oppressive regimes. This practice has deep historical and moral roots, reflecting humanity's enduring commitment to protecting the vulnerable.

The concept of asylum has been present throughout human history. In ancient civilizations, religious sanctuaries often served as safe havens for those seeking protection.¹¹ For example, in ancient Greece, individuals fleeing vengeance or punishment could seek sanctuary in temples. Similarly, medieval Europe recognized the Church's authority to provide asylum to fugitives, reinforcing the principle that granting refuge was an act of moral obligation.

The modern concept of asylum evolved in response to the atrocities of the 20th century, particularly during and after World War II.¹² The Holocaust underscored the dire consequences of failing to protect those fleeing persecution, prompting the establishment of an international framework for asylum. The UNCSR became the cornerstone of this system, defining who qualifies as a refugee and outlining the obligations of host states.

State sovereignty grants nations broad discretion in deciding whom to admit within their borders. This principle is fundamental to the international order, ensuring that states

retain control over their internal affairs. In exercising this discretion, states often weigh various factors, including humanitarian considerations, geopolitical interests, and domestic security concerns.

However, sovereignty is not an unbounded right. States are bound by international treaties and customary law, which impose certain limitations on their ability to grant asylum. These legal instruments aim to strike a balance between the rights of states and the needs of asylum-seekers, ensuring that the latter are protected while preventing abuse of the system.

The practice of granting asylum also carries symbolic significance. It reflects a state's values and its stance on human rights, justice, and international solidarity. In granting asylum, states may send strong political messages, either supporting democratic movements, opposing authoritarian regimes, or affirming their commitment to humanitarian principles. This symbolic dimension underscores the profound interplay between law, morality, and politics in the realm of asylum.

2. Legal Frameworks Governing Asylum and Its Limitations

The legal basis for asylum is firmly established in international law. Article 14 of the Universal Declaration of Human Rights (hereinafter referred to as UDHR) recognizes the right of individuals to seek and enjoy asylum. This principle is further elaborated in the UNCSR, which defines a refugee as someone who has a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion.¹³

The UNCSR doesn't just lay out the rights of refugees, it also highlights the

¹¹ Asylum Insight, "History of Asylum," November 2016.

¹² *Ibid.*,

¹³ Article 1(A) of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the status of Refugees.

responsibilities of countries that offer them protection. Governments are expected to treat refugees fairly, without discrimination, and ensure they have access to fair and effective asylum processes. Beyond that, these countries must help refugees build a life by giving them access to essentials like jobs, education, and social services.¹⁴ This support is crucial for refugees to integrate smoothly into their new communities and start rebuilding their futures.

The obligation to grant asylum, however, is not absolute. International law recognizes the right of states to control their borders and maintain national security. Importantly, UNCSR also includes provisions to prevent the misuse of asylum. Article 1(F) excludes individuals from refugee protection if there are serious reasons to believe they have committed a crime against peace, war crimes, crimes against humanity, serious non-political crimes outside the country of refuge, and acts contrary to the purposes and principles of the United Nations.¹⁵

These exclusions are crucial in maintaining the integrity of the asylum system. They ensure that the system remains a tool for protecting the vulnerable, not a shield for perpetrators of grave crimes. For instance, individuals accused of orchestrating acts of genocide cannot invoke the right to asylum to escape accountability.

In practice, the application of these legal frameworks is often influenced by domestic politics and international relations. States may face pressure to deny asylum to individuals perceived as politically controversial or detrimental

to bilateral relations. For example, granting asylum to a high-profile political figure might strain diplomatic ties with the individual's home country, leading to complex geopolitical ramifications.

The asylum process becomes even more complex because it's shaped by both international rules and local laws. International agreements set the big picture, but it's the national laws that decide how these commitments play out in real life. This can lead to very different experiences for asylum-seekers—some countries are more welcoming, while others impose stricter policies.¹⁶ These differences highlight why stronger global cooperation is so important: every asylum-seeker deserves to be treated fairly, no matter where they seek safety.

3. Non-Refoulement and Its Limitations

Non-refoulement is one of the most fundamental principles of international refugee law. It prohibits states from returning individuals to places where they face threats of persecution, torture, or death.¹⁷ This principle, enshrined in Article 33 of UNCSR, reflects the humanitarian ethos underpinning asylum. Non-refoulement ensures that vulnerable individuals are not abandoned to face harm, embodying a universal commitment to protect human dignity.

Non-refoulement extends beyond the Refugee Convention. It is recognized in the Convention against Torture (CAT) which is stated in Article 3 prohibits the return of individuals to places where they are likely to face torture.¹⁸

¹⁴ *Ibid.*,

¹⁵ Article 1(F) of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the status of Refugees.

¹⁶ American Immigration Council, "Asylum in the United States," January 2024, 1, <<https://www.americanimmigrationcouncil.org/research/asylum-united-states>>, accessed on 9 December 2024.

¹⁷ Article 33 of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the status of Refugees.

¹⁸ United Nations, "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (1984), Article 3, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture->

The principle has also achieved the status of customary international law,¹⁹ meaning it is binding on all states regardless of whether they are parties to the Refugee Convention.

Despite its foundational role, non-refoulement is not an absolute principle. Article 33(2) of UNCSR provides exceptions, allowing states to return individuals who pose a threat to the security of the host country and/or have been convicted of particularly serious crimes, making them a danger to the community.²⁰

In addition, Article 1(F) of UNCSR excludes individuals from refugee protection if there are substantial reasons to believe they have committed heinous crimes, such as war crimes, genocide, or acts contrary to the purposes of the United Nations.²¹ These exclusions ensure that non-refoulement does not become a tool for shielding individuals responsible for atrocities.

The limitations to non-refoulement highlight the tension between humanitarian principles and national interests. While states have a duty to protect asylum-seekers, they also have a responsibility to safeguard their citizens and uphold international peace and security.²² Striking this balance requires careful consideration of both individual circumstances and broader geopolitical implications.

C. ANALYSIS OF RUSSIA'S ACTIONS AND INTERNATIONAL RESPONSES TO ASSAD'S ASYLUM

1. Justifications for Granting Asylum

The justification for Russia's decision to grant political asylum to Bashar al-Assad is based on legal principles, specifically under Article 14 (1) of the UDHR which states, *"Everyone has the right to seek and to enjoy in other countries asylum from persecution"*. This article recognizes the right of persons to seek asylum from persecution in other countries and the right of states to provide protection to individuals facing persecution or threats to their safety in their home countries.²³ In addition, the UNCSR also provide for international co-operation in the field of asylum and resettlement. The UNCSR represent fundamental legal instruments for the protection of refugees, establishing a robust framework for international refugee law. Accession to these instruments contributes to minimizing tensions between states by reaffirming that the granting of asylum is a humanitarian and legal obligation, rather than a political act, and should be perceived as such by the country of origin. As of 2023, 149 states are parties to the 1951 Convention and its 1967 Protocol. Notably, the Russian Federation acceded to the Convention in 1992, thereby becoming a state party.²⁴

Additionally, based on this Convention, Russia adopted its own Federal Law on Refugees (hereinafter

and-other-cruel-inhuman-or-degrading>, accessed on 9 December 2024.

¹⁹ the UN Refugee Agency, *"Access to Territory and Non-Refoulement"*, <<https://emergency.unhcr.org/protection/legal-framework/access-territory-and-non-refoulement>>, accessed on 9 December 2024.

²⁰ Article 33(2) of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the status of Refugees.

²¹ Article 1(F) of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the status of Refugees.

²² Ria Wierma Putri et al., "Balancing the Principles of Non-Refoulement and National Security in The Protection of Refugee Rights: A Legal and Policy Analysis of Refugee Handling in Australia", *Jurnal IUS Kajian Hukum Dan Keadilan*, Vol. 12 No. 2, 2024, p. 374.

²³ Article 14(1) of the Universal Declaration of Human Rights.

²⁴ The UN Refugee Agency, *"Why accede to the 1951 Convention relating to the status of refugees and its 1967 Protocol"*, <<https://www.unhcr.org/about-unhcr>>, accessed on 27 January 2025.

referred to as FLR) in 1993. The accession in 1992 to the UNCSR and the adoption of the FLR in 1993 obliged Russia to take responsibility for the protection of this category of persons (asylum seekers). Moreover, since September 1, 1995, Russia is a party to the Agreement of the Commonwealth of Independent States (CIS) of September 24, 1993 "*On Assistance to Refugees and Forced Migrants*". Consequently, Russia has additional responsibilities to protect this vulnerable group.²⁵ Thus, both in the framework of national and international law, Russia holds a valid legal justification for its actions in granting political asylum to Assad who are potentially subject to persecution.

Apart from that, Russia's decision is also fundamentally rooted in political motivations, particularly in relation to the historical political ties between Assad's regime and Russian support. Russia emerged as one of the few countries still willing to support Assad. With strong historical ties to Syria and significant geopolitical interests in the region, Russia became the primary state capable of offering Assad the protection he needed, both diplomatically and militarily.²⁶

Russia's interest in supporting Assad's regime is closely tied to its need to secure and protect its military bases in Tartus and Hmeimim. These installations are critical for maintaining Russia's military presence in the Mediterranean and projecting power in the region. Tartus, in particular, represents Russia's only naval facility outside the former Soviet Union, making it a strategic asset of paramount

importance.²⁷ The stability of Assad's regime ensures that Russia can maintain and expand its foothold in the region, thereby solidifying its influence in Middle Eastern geopolitics.

Additionally, Russia's ongoing military operations in Ukraine provide further context for its actions in Syria. By securing its interests in Syria, Russia demonstrates its ability to operate effectively on multiple fronts. This simultaneous engagement underscores Moscow's ambition to assert itself as a global power capable of influencing international conflicts and deterring Western pressure. The Syrian intervention complements Russia's broader strategy of counterbalancing NATO's presence and actions near its borders, including in Eastern Europe.²⁸

Historically, when Russian troops were deployed to Syria in September 2015, it was seen as crucial for President Putin to "save" Syria and the regime of President Bashar al-Assad, who remained one of Russia's few remaining allies globally. The objective was not only to support Assad, but also to prevent the West from using the ongoing "Arab Spring" dynamics to replace him with a pro-Western leader, which would have been a setback for Russian interests. The deployment of Russian forces followed an official request from the Syrian government, giving Moscow a legal basis for its intervention.²⁹

The Russian intervention in Syria was not solely aimed at supporting an ally or asserting Russia's regional influence. It also served as a means of strengthening Russia's strategic deterrence in multiple ways. **First**, the

²⁵Ozbek, N., "Regulations on Refugees in the Russian Federation Law", Kent Akademisi Dergisi, Vol. 15 Issue 4, 2022, p. 2010-2024.

²⁶ Marina Miron & Rod Thornton, "Emerging as the 'Victor'(?): Syria and Russia's Grand and Military Strategies", *The Journal of Slavic Military Studies*, Vol. 34 Issue 1, 2021, p. 1-23.

²⁷Adam Taylor & Julia Ledur, "Fall of Assad puts Russia's large military footprint in Syria at risk", <<https://www.washingtonpost.com/world/2024/12/09/russia-military-bases-syria-tartus-hmeimim/>>, accessed on 27 January 2025.

²⁸ *Ibid.*,

²⁹ Marina Miron & Rod Thornton, *op cit.*, p. 1-23

conflict provided the Russian military with valuable combat experience. Operating in a complex environment and confronting a well-equipped, trained enemy, Russian forces gained practical experience in asymmetric warfare, counter-sabotage tactics, and the coordination of air and ground operations. This experience has been incorporated into Russia's ongoing military modernization process, improving its overall deterrence capabilities.³⁰

Second, Syria provided an opportunity to test new weaponry, including long-range missiles and advanced air defense systems. This testing served several purposes which allowed Russia to assess the functionality of its new weapons under real-world conditions, while also showcasing Russian military prowess to the world. The use of modern military technology in Syria acted as a deterrent, signaling Russia's military capabilities and strengthening its strategic deterrence posture.³¹

Russia's initial military strategy in Syria, based on 'limited actions,' was designed to prevent the fall of Assad's regime without overextending its own forces. This approach not only addressed short-term goals but also contributed to Russia's broader geopolitical ambitions. Despite the relatively modest resources committed, the strategy has proven successful in achieving its objectives. Russia successfully played a key role in preserving Assad's regime and in the defeat of ISIS. This political rationale provided justification for Russia's decision to grant Assad political asylum.

In light of its longstanding historical relations with Syria and its significant geopolitical interests in the region, Russia's decision to back Assad is deeply intertwined with its strategy to safeguard its military bases, counter Western influence, and assert itself as a global power. Granting political asylum to Assad, notwithstanding his classification as a war criminal, further demonstrates Russia's prioritization of national security and strategic deterrence over adherence to international legal norms. Ultimately, these actions highlight the complex interplay of historical, geopolitical, and military factors underlying Russia's support for Assad's regime.

2. Historical Examples of Political Asylum

Losing power is dangerous for dictators. When their time in office comes to an end, they face a higher risk of punishment such as death or imprisonment than democratic leaders. Not surprisingly, then, one of the most common post-tenure fates for dictators has been exile.³² When their regimes are threatened by coups, revolutions, or civil wars, dictators frequently flee their countries in search of safety, often seeking political asylum abroad. This is precisely what Bashar al-Assad did.

Historically, this is not the first time such an event has taken place. Several other leaders accused of crimes, aside from Assad, have also been granted asylum. For example, in the 1970s, Saudi Arabia offered political asylum to the ruthless dictator, Idi Amin of Uganda.³³ When Ugandan rebels and Tanzanian troops marched on Kampala in 1979, Ugandan dictator Idi Amin fled

³⁰ Marina Miron & Rod Thornton, *op cit.*, p. 1-23

³¹ Thornton, Rod, "Countering Prompt Global Strike: The Russian Military Presence in Syria and the Eastern Mediterranean and Its Strategic Deterrence Role", *The Journal of Slavic Military Studies*, Vol. 32 Issue 1, 2019, p. 1-24.

³² Krcmaric, D., & Escribà-Folch, A., "Dictators in exile: explaining the destinations of ex-rulers", *The journal of politics*, Vol. 79 Issue 2, 2016, p. 560-75.

³³ Confidential, "A Way Out? Models for negotiating an exit plan for entrenched leadership in South Sudan", (The enough project, 2017), enoughproject.org, accessed on 16 December 2014.

into exile in Libya and later settled in Saudi Arabia.³⁴ He was given a spacious villa in Jeddah, the Red Sea port where he lived with about six of his 30 children.³⁵

Idi Amin ruled the country with absolute control, and human rights organizations estimate that around 300,000 people died during his eight-year reign. The killings were carried out by death squads, such as the Public Safety Unit, the State Research Bureau, and the military police, made up of about 18,000 men, mostly recruited from Amin's home region. The victims included some well-known individuals, but most were ordinary people, like farmers, who were targeted for their wealth, wives, or tribal connections.³⁶

Saudi Arabia's decision to grant political asylum to Idi Amin is not the first of its kind. The country has extended refuge to several other leaders under similar circumstances. Saudi law permits political asylum in cases deemed to be in the public interest, and this has led to the granting of asylum to figures like former Pakistani Prime Minister Nawaz Sharif. Additionally, Zine El Abidine Ben Ali, known for his crackdown on Islamists, sought refuge in Saudi Arabia after his request for asylum was denied by France, one of his closest allies. However, not all Saudi citizens welcomed the country's decision to offer asylum to Ben Ali.³⁷

Another notable case involves France, a democratic state, giving permission to stay to Jean-Claude "Baby Doc" Duvalier, the former dictator of

Haiti, who was accused of widespread human rights violations.³⁸ After being overthrown in 1986 during a popular uprising, Duvalier fled to France, where he lived in exile for over two decades. Despite numerous allegations of embezzlement and atrocities committed during his regime, France allowed him to remain, citing humanitarian considerations.

Granting political asylum to state leaders accused of human rights violations and international crimes sets a worrying precedent. This practice raises concerns about the potential for similar situations to arise in the future, as seen in Russia's decision to grant asylum to Bashar al-Assad. By granting asylum to individuals with controversial records, states risk undermining international norms and accountability mechanisms designed to address violations of human rights and international law. Such actions could encourage other leaders facing similar allegations, leading to a cycle of impunity and complicating efforts to hold perpetrators accountable for their actions. As the world pays increasing attention to justice and human rights, granting asylum to such figures could erode confidence in the international legal system and undermine efforts to promote justice and stability around the world.

3. Legal Consequences and its Implications

It is widely recognized that individuals suspected of committing war crimes are not eligible for refugee status. This principle is explicitly outlined in the

³⁴ Krcmaric, D., & Escribà-Folch, A., "Dictators in exile: explaining the destinations of ex-rulers", *The Journal of politics*, Vol. 79 Issue 2, 2016, p. 560-75.

³⁵ Confidential, "A Way Out? Models for negotiating an exit plan for entrenched leadership in South Sudan", (The enough project, 2017), enoughproject.org, accessed on 16 December 2014.

³⁶ *Ibid.*,

³⁷ Al Jazeera, "Ben Ali gets refuge in Saudi Arabia", [https://www.aljazeera.com/news/2011/1/16/ben-ali-](https://www.aljazeera.com/news/2011/1/16/ben-ali-gets-refuge-in-saudi-arabia)

[gets-refuge-in-saudi-arabia](https://www.aljazeera.com/news/2011/1/16/ben-ali-gets-refuge-in-saudi-arabia), accessed on 18 December 2024.

³⁸ Randal C. Archibold, "Jean-Claude Duvalier Dies at 63; Ruled Haiti in Father's Brutal Fashion", <https://www.nytimes.com/2014/10/05/world/americas/jean-claude-duvalier-haitis-baby-doc-dies-at-63.html?auth=login-google1tap&login=google1tap>, accessed on 27 January 2025.

UNCSR and there is corresponding state practice supporting this stance. In 1994, in the context of Rwanda, the UN Security Council emphasized that "individuals involved in serious violations of international humanitarian law cannot avoid prosecution by fleeing their country" and that "the provisions of the Refugee Convention do not apply to such individuals." Additionally, the exclusion of suspected war criminals from asylum has been reinforced by the UN General Assembly in its Declaration on Territorial Asylum and in Resolution 3074 (XXVIII), which outlines the principles of international cooperation in the detection, arrest, extradition, and prosecution of war criminals.³⁹

This exception is also basically regulated in Article 1(f) UNCSR which states, *"the provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; c) he has been guilty of acts contrary to the purposes and principles of the United Nations."*⁴⁰ In the case of Bashar al-Assad, his alleged involvement in war crimes and crimes against humanity during the Syrian Civil War, which have been widely recognized by various international organizations, would, under this article, suggest that he should not be granted asylum protection. Even without a verdict from

the International Criminal Court, the suspicion of his involvement in such crimes would render him ineligible for refugee status and granted political asylum according to the provisions of this article.

Furthermore, Russia has regulations that align with Article 1(f) of the UNCSR, namely the Presidential Decree. The Presidential Decree prohibits the granting of political asylum to persons: **"persecuted for acts recognized as a crime in the Russian Federation (hereinafter referred to as RF), or guilty of actions contrary to the principles and goals of the UN;** prosecuted as defendants in a criminal case or in respect of whom there is a final and enforceable court verdict on the territory of the RF; arriving from third countries where they were not threatened with persecution; arrived from countries with developed and well-established democratic institutions in the field of human rights protection or arrived from a country with which the RF has agreements on visa-free border crossing, or a country where it is not prosecuted; who knowingly provided false information."⁴¹ This means that Russia has the right to decide who can receive political asylum and under what conditions, but it must still follow international law, which places some limits on the choices of countries.

The RF grants political asylum to persons seeking asylum and protection, i.e., a politically persecuted person, by whom the Geneva Convention on Refugees (adopted on July 28, 1951) means anyone who, "because of their race, religion, nationality, social affiliation or political opinion" is subject

³⁹ International Committee of the Red Cross, "Rule 158. Prosecution of War Crimes", <<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule158>>, accessed on 16 December 2024.

⁴⁰ Article 1(F) of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the status of Refugees.

⁴¹ Ozbek, N., "Regulations on Refugees in the Russian Federation Law", Kent Akademisi Dergisi, Vol. 15 Issue 4, 2022, p. 2010-2024.

to persecution with the threat to life or restriction of personal freedom, or has reasonable grounds to fear such persecution. This description corresponds to the definition of the concept of refugee, fixed in Article 1 of the 1993 FLR. At the same time, the RF should not take any legislative or other measures that could affect its international obligations regarding the detection, arrest, extradition and punishment of persons perpetrating war crimes and crimes against humanity.⁴² The sovereign right of the RF to grant political asylum at the same time includes the power to limit the circle of persons who can be provided with protection and patronage.

Therefore, the criticism directed at Russia's action lies in this existence of legal provisions that could limit the granting of political asylum to Bashar al-Assad, both under national and international law as mentioned previously. These limitations or exceptions are grounded on Assad's recognition as an individual responsible for committing international crimes.

Assad is carrying out systematic killings, torture and abuse in detention centers and elsewhere. Based on the various evidences smuggled out of Syria and official reports of the UN, atrocities including extra-judicial killings, mass arrests, torture, rape, forcible displacement, abductions, forced disappearances, pillaging and destruction of property, degrading or inhumane treatment are intensified. By the order of the regime, government

forces launched continual attacks using barrel bombs and other imprecise explosive weapons on civilian populated areas.⁴³

The current conflict in Syria started in March 2011 with popular protest against the authoritarian regime of President Bashar al-Assad and demands for the release of political prisoners.⁴⁴ The war crimes and crimes against humanity committed by Assad and his regime can be outlined as follows: **First**, the targeting and killing of civilians is a crime against humanity under article 7(1) a and war crime under articles 8(2)(a)(i), 8(2)(c)(i), and 8(2)(e)(i) of the Rome Statute. Syrian and Russian airstrikes have been indiscriminately directed at civilian areas, including homes, schools, markets, and hospitals. The government has used barrel bombs, cluster munitions, and flammable incendiary weapons in attacking civilian areas.⁴⁵ Assad's regime notoriously deployed strategies in contravention of medical ethics and international humanitarian law.⁴⁶ Foremost was his repeated usage of chemical weapons against civilian populations.⁴⁷ On August 21, 2013 that hundreds of people were killed in a chemical attack carried out in the East Ghouta district of Damascus by Assad forces.⁴⁸ On April 27, 2016, the Syrian-Russian Coalition launched an airstrikes on al-Quds Hospital killing 58 civilians and patients. In August alone, government forces bombarded health facilities in Idlib, Aleppo, Hama, and Homs.⁴⁹

⁴² Ozbek, N., "Regulations on Refugees in the Russian Federation Law", *Kent Akademisi Dergisi*, Vol. 15 Issue 4, 2022, p. 2010-2024.

⁴³ Kassaye, Kaleab, "The Long Road Towards Justice in Syria: Challenges and Perspectives on War Crimes", *J Civil Legal Sci Vol. 7 Issue1*, 2018, p. 1-3.

⁴⁴ Steenkamp, Christina, "The crime-conflict nexus and the civil war in Syria", *Stability: International Journal of Security and Development Vol. 6 Issue 1*, 2017, p. 11.

⁴⁵ Kassab, Seema, "Justice in Syria: Individual criminal liability for highest officials in the Assad regime", *Mich. J. Int'l L*, Vol. 39 Issue 2, 2018, p. 283.

⁴⁶ Irfan, B., Tareb, B., & Alabed, A., "Syria's Bashar al-Assad: the crimes of a physician", (*The Lancet*, December 2024).

⁴⁷ Baker A., "How many people have died in Syria's civil war?", <<https://www.nytimes.com/2024/12/11/world/middleeast/syria-civil-war-death-toll.html>> accessed on 11 December 2024.

⁴⁸ Kassaye, Kaleab, "The Long Road Towards Justice in Syria: Challenges and Perspectives on War Crimes", *J Civil Legal Sci Vol. 7 Issue1*, 2018, p. 1-3.

⁴⁹ Kassab, Seema, "Justice in Syria: Individual criminal liability for highest officials in the Assad regime", *Mich. J. Int'l L*, Vol. 39 Issue 2, 2018, p. 283.

Second, sexual violence and rape, which have been rampant throughout the Syrian Conflict, are war crimes under article 8(2)(e)(vi) and crimes against humanity under article 7(1)(g) of the Rome Statute. In 2013, the UN treated 38,000 victims of sexual violence in Syria, along with large numbers of other victims who fled to Jordan and Lebanon. The UN Independent International Commission of Inquiry on the Syrian Arab Republic (COI) was established in August 2011 by the Human Rights Council with a mandate of investigating alleged violations of international human rights law in Syria since March 2011. The COI verified that Syrian government forces and government-controlled militia (Shabbiha) have used sexual violence as a war weapon.⁵⁰

Third, the Assad government has purposefully engaged in blocking humanitarian assistance from reaching besieged areas in Syria. Intentionally directing attacks or obstructing the delivery of humanitarian assistance is considered a war crime under article 8(2)(e)(iii) of the Rome Statute. Government forces have prohibited medical treatment items, such as emergency health kits and antibiotics, from reaching civilians in need. Additionally, from 2012 until June 2016, the Assad regime blocked UN facilitated food and medicine meant to reach four thousand civilians from entering Darayaa.⁵¹

Fourth, arbitrary arrests, detention and kidnap are listed as crimes against humanity under article 7(1)(e). Torture and ill-treatment are also crimes against humanity under article 7(1)(f) and war crimes under articles 8(2)(a)(ii) and (iii), as well as article 8(2)(c)(ii) of the Rome Statute. These war crimes

and crimes against humanity are merely a sample of the types of human rights violations that the Assad government has perpetrated on Syrian civilians.⁵² The quantity of crimes committed is uncountable and the severity indescribable.

These widespread war crimes and crimes against humanity in Syria have been documented by the UN and various human rights organizations throughout the conflict. Assad's required approval of every policy is direct evidence that he had knowledge of all the crimes being committed by his forces. Assad and high-ranking officials within his government could be found individually liable under Rome Statute Article 25, which details the various modes of individual criminal responsibility, and Article 28, which specifically delves into the responsibility of commanders and other superiors.

Article 25(3)(a) attributes individual criminal responsibility to a person who "*commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible.*"⁵³ Article 25(3)(a) of the Rome Statute offers two routes of prosecuting the officials at the highest levels of the Assad regime, including Assad himself. Alternatively, Article 25(3)(d) which state, "*in any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose*",⁵⁴ could be applied to Assad's conduct throughout the conflict. Additionally, Assad had the requisite *mens rea* as everything that he ordered was done with the goal of quashing the rebellion and destroying certain groups of people in Syria.

⁵⁰ *Ibid.*,

⁵¹ *Ibid.*,

⁵² *Ibid.*,

⁵³ Article 25(3)(a) of the Rome Statute.

⁵⁴ Article 25(3)(d) of the Rome Statute.

As president and commander in chief, Assad could similarly be found individually liable for war crimes and crimes against humanity under Article 28 of the Rome Statute.⁵⁵ Although the Assad regime has its own military apparatus and a hierarchy of power within it, Assad represents the ultimate authority over the military. His military is under his complete command and control. At that point, Assad took direct control of his military, overseeing daily decision-making. There is no way he could have been unaware of the crimes committed by his forces, as their actions were part of a national policy that he ultimately authorized. Moreover, Assad took no steps to prevent war crimes and crimes against humanity; instead, he actively encouraged and endorsed them.⁵⁶

Regarding Article 1(f) UNCSR, these exclusions are meant to ensure that individuals who have committed grave offenses under international law are not afforded the protections typically granted to refugees, which are intended for those who have fled persecution and seek safe asylum. The provision reflects the principle that individuals who have violated the most serious international laws should not be able to evade justice by seeking refuge under the Convention's protection. By granting asylum to Assad, Russia appears to be regarded as a violation of international law and disregarding the core principle embedded in Article 1(f) of the UNCSR, which aims to prevent individuals who have committed such egregious offenses from receiving the protections typically afforded to refugees.

The decision thus not only contravenes the spirit of the Convention but also undermines the international legal framework designed to promote accountability for human rights violations. In this context, Russia's action can be seen as a breach of its obligations under international law, as it grants political asylum to a person who, based on credible evidence, may be deemed ineligible for asylum due to his involvement in serious international crimes.

4. International Responses to Assad's Asylum

Assad's asylum has sparked significant debate globally. While Russia stands firm in its political support for Assad, much of the international community, particularly Western governments and human rights groups, view the decision as a dangerous precedent for evading justice.⁵⁷ This complex situation underscores the tension between national political interests and international legal obligations regarding human rights and accountability.

Western nations, including the United States and European Union members, have generally opposed the Russia's decision, emphasizing the importance of holding war criminals accountable. US President Joe Biden said deposed Syrian leader Bashar al-Assad should be "held accountable".⁵⁸ They argue that granting Assad asylum allows him to evade prosecution and sends a harmful message about the lack of consequences for those who commit severe violations of international law. Moreover, Hillary Clinton once described Assad as a war criminal, citing

⁵⁵ Article 28 of the Rome Statute.

⁵⁶ Kassab, Seema, "Justice in Syria: Individual criminal liability for highest officials in the Assad regime", *Mich. J. Int'l L.*, Vol. 39 Issue 2, 2018, p. 283.

⁵⁷ Syrian Network for Human Rights, "SNHR Calls on Russia to Extradite Bashar Assad for Trial in Syria", 2024, <https://snhr.org/blog/2024/12/11/snhr-calls-on-russia->

[to-extradite-bashar-assad-for-trial-in-syria/](https://snhr.org/blog/2024/12/11/snhr-calls-on-russia-to-extradite-bashar-assad-for-trial-in-syria/) accessed on 20 December 2024.

⁵⁸ Washington (AFP), "Biden calls for Assad to be 'held accountable'", <https://www.france24.com/en/live-news/20241208-biden-calls-for-assad-to-be-held-accountable>, accessed on 20 December 2024.

his violent crackdown on opposition forces and civilian populations. This declaration significantly complicated Assad's ability to seek refuge or support from other nations. The label of "war criminal" tarnished his international standing and made it politically difficult for many countries to offer him political asylum or protection, as doing so would risk their own reputations and diplomatic relations.⁵⁹

The United Nations, alongside numerous human rights organizations, has condemned Assad's actions during the Syrian civil war, particularly regarding allegations of war crimes and crimes against humanity. These organizations argue that granting Assad asylum undermines efforts to hold perpetrators accountable for such crimes. The international community, particularly through bodies like the International Criminal Court (ICC), has been working toward ensuring that individuals accused of gross human rights violations face justice.

The effort for achieving justice in Syria is through the International Criminal Court (ICC). Since Syria has never ratified the Rome Statute, the ICC has no independent authority to investigate or prosecute crimes that take place within Syria's borders. Despite this, numerous attempts have been made by the international community to refer the situation in Syria to the ICC. The UN High Commissioner for Human Rights has recommended that the Security Council refer the situation in Syria to the ICC on many occasions. Several Security Council resolutions have been drafted, which even included explicit language calling out the crimes in Syria as "war crimes" and "crimes against humanity" which would give the ICC jurisdiction.

Additionally, in January of 2013, almost sixty states called upon the Security Council to refer the situation in Syria to the ICC in an open letter. Despite all these referral attempts, none of them have succeeded due to the politicized nature of the Security Council. Russia and China close allies of the Syrian regime have continuously blocked all Security Council resolutions that attempt to promote accountability efforts in Syria.

Under the auspices of the UN Human Rights Council, the Independent International Commission of Inquiry on the Syrian Arab Republic has been working to investigate all alleged violations of international human rights law since March 11 in the Syrian Arab Republic, to establish the facts and circumstances that may amount to such violations and of the crimes perpetrated and, where possible, to identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable.⁶⁰

Investigators suggest that the existing evidence that links the Assad regime to war crimes and crimes against humanity is complete and more incriminatory than any body of evidence that has been previously gathered during an active conflict. Despite the thoroughness of the evidence, the Assad government continues to violate international law and perpetrate massive human rights abuses as the internal conflict persists throughout the country. The incriminating evidence that exists is likely sufficient to attribute individual criminal liability to Assad and high-ranking officials within the regime

⁵⁹ Krcmaric, D., & Escribà-Folch, A., "Dictators in exile: explaining the destinations of ex-rulers", *The journal of politics*, Vol. 79 Issue 2, 2016, p. 560-75.

⁶⁰ Beth Van Schaack, "Mapping War Crimes in Syria", *Int'l L. Stud* Vol. 92, 2016, p. 282.

under these provisions of the Rome Statute.

The Security Council has had some direct influence on international criminal law, for instance, when it puts on its legal hat and declares some norm is subject to individual responsibility and thus possible criminal prosecution. It has also played a direct role in making clear that states are legally required to cooperate with certain criminal courts. The Security Council has had considerable indirect influence in the sense that its creations, like the two UN ad hoc courts, have then proceeded on their own to develop legal norms and punish a number of defendants through convictions and incarceration. This indirect influence extends to the ICC when the Council refers a subject matter, and then the Office of the Prosecutor and legal chambers proceed on their own.⁶¹

In conclusion, finding Assad and top officials within his regime individually criminally liable for war crimes and crimes against humanity is possible through prosecution at the ICC. Articles 25 and 28 provide several modes of liability that are potential pathways for their prosecution. The evidence exists. The blueprints exist. The only thing left is for jurisdiction to take hold, and that cannot happen without support from the entire international community. However, Russia's granting of asylum is seen by many as a step backwards in the fight against impunity and a violation of international principles of justice.

D. CONCLUSION

In conclusion, Russia's decision to offer political asylum to Bashar al-Assad and his family on "humanitarian grounds" appears to be driven predominantly by political

considerations than adherence to international legal norms. These political considerations include Russia's strategic interest in maintaining a stronghold in the Middle East through its military bases in Tartus and Hmeimim, which serve as vital assets for projecting power and securing influence in the region. By ensuring Assad's safety, Russia secures a key ally who has facilitated its military and geopolitical ambitions.

Furthermore, granting asylum to Assad aligns with Russia's broader strategy of counterbalancing Western influence in global politics. By shielding Assad, Russia demonstrates its ability to defy Western-led accountability mechanisms and assert its role as a power capable of protecting its allies, irrespective of their international standing or allegations of crimes. This move also reinforces Russia's narrative of opposing perceived Western interventionism, thereby appealing to other states wary of Western dominance.

Another layer of political interest lies in Russia's desire to gain leverage in negotiations involving Syria's future. By granting Assad asylum, Russia positions itself as an indispensable actor in any political resolution of the Syrian conflict, further cementing its influence in Middle Eastern geopolitics. Additionally, the decision serves to strengthen Russia's domestic narrative of standing firm against international pressure, thereby bolstering its leadership's image at home.

From a legal perspective, individuals accused of committing crimes against humanity or war crimes are not entitled to humanitarian asylum. Referring to Article 1(f) UNCSR, the provision reflects the principle that individuals who have violated the most serious international laws should not be able to evade justice by seeking refuge under the Convention's protection. Bashar al-Assad is accused of committing

⁶¹ David P. Forsythe, "The UN Security Council and Response to Atrocities: International Criminal Law and the P-5", *Human Rights Quarterly* Vol 34 Issue 3, 2012, p. 840-863.

crimes against humanity and war crimes against the Syrian people and is not entitled to seek asylum. By granting asylum to Assad, Russia appears to be regarded as a violation of international law and disregarding the core principle embedded in Article 1(f) of the UNCSR. Moreover, Russia's decision to grant asylum to Bashar al-Assad contradicts its international obligations to ensure accountability for those responsible for crimes against humanity.

The research recommendations are as follows, first, the United Nations and international community need to pressure Russia to fulfill its legal and moral obligations and prevent the misuse of humanitarian asylum as political cover for war criminals. Second, strengthening international norm by enhancing mechanisms to address abuses of asylum rights and supporting universal jurisdiction and international cooperation. Third, Russian government should take steps to extradite Bashar al-Assad to custody of the new Syrian authorities to face a fair trial in Syria. Finally, the future Syrian government must commit to upholding the principles of transitional justice and ensure a fair trial for Bashar al-Assad and for all individuals accused of committing gross violation against the Syrian people.

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