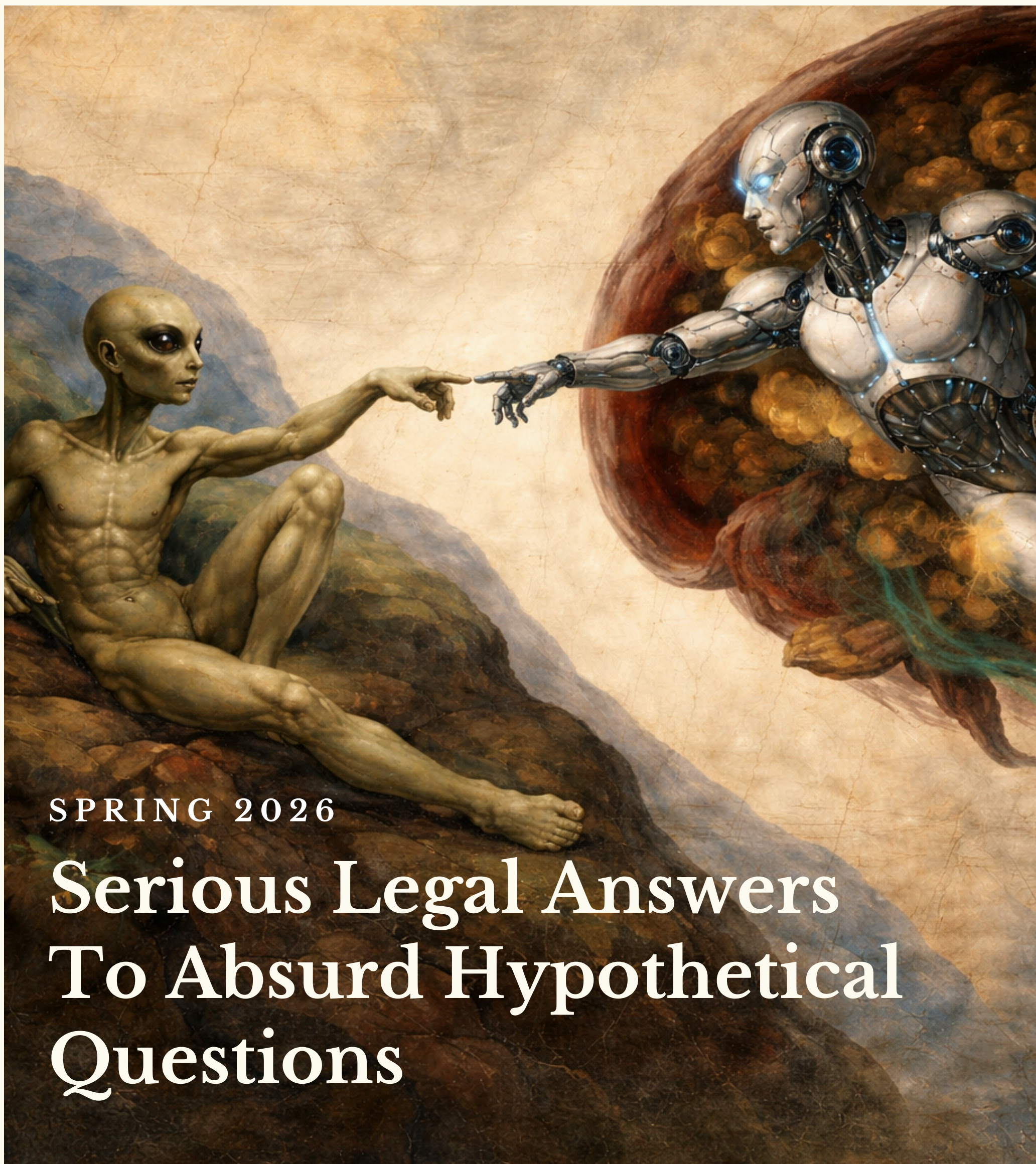


NEXUS PUBLICATION



# LEGAL

# WHAT IF?



SPRING 2026

Serious Legal Answers  
To Absurd Hypothetical  
Questions

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## CHAIR'S NOTE

How does one find an answer to the absurd, the hypothetical or the confounding? More challengingly, how does one explore it legally? Inspired by Randall Munroe's *What If*, our spring issue uses engaging topics to explore the limits and scope of our legal frameworks. Through a combination of legal theory and real case study, we attempt to push our understanding of the law and discover answers independent of existing research.

Join us in this as we explore the law like never before.

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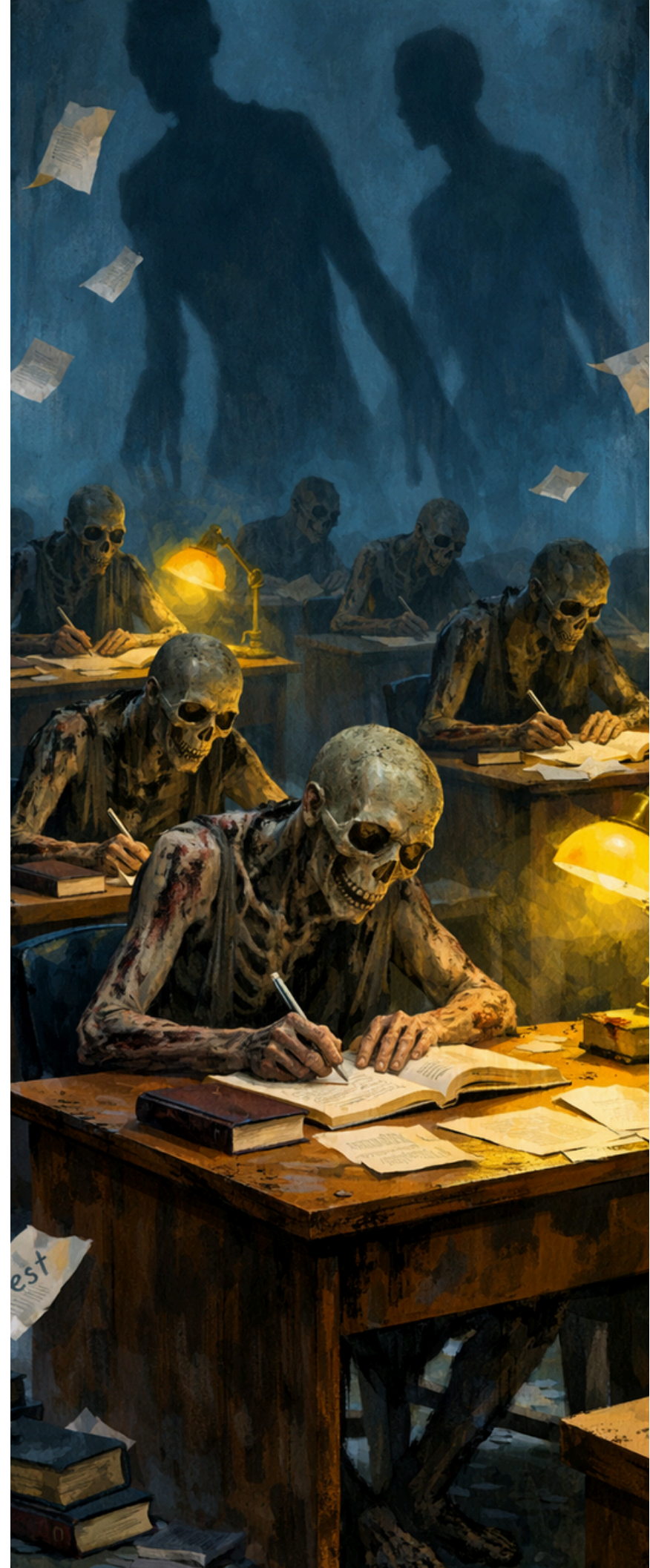
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OPEN SUBMISSION

BY: MARTA LIDUMA

# HABEAS CORPUS, REANIMATED: WHY THE DEAD MAY STILL BEAR RIGHTS

In the year 2100, zombies live amongst us in harmony and are a key contributor to the labour market. Companies freely use zombie labour for their businesses as they are a cheap and an easy worker to maintain. However, human rights groups have raised concerns against this practice.



LEGAL QUESTION: WOULD  
ZOMBIES QUALIFY FOR LABOUR  
PROTECTION OR DO THEY FALL  
OUTSIDE THE SCOPE AS “NON-  
PERSONS”?

**Before asking whether zombies deserve labour protection, we first face a more destabilizing question: are they actually dead?** Law defines death through cardiac or neurological cessation.<sup>1</sup> Yet a zombie walks, labours, and coexists in society. If these functions resume after death, the legal basis for “non-person” status collapses into a sorites paradox: at what moment of reanimation does a body stop being dead?

This uncertainty invites an ancient remedy. Habeas corpus (literally: ‘produce the body’) exists for exactly this situation: a being whose legal status is disputed and liberty restrained.<sup>2</sup> Historically, it forced courts to adjudicate the personhood of enslaved individuals. The Nonhuman Rights Project has since sought its application to cognitively complex animals.<sup>3</sup> No writ in legal history applies with more poetic precision to a reanimated body held in servitude. Where personhood is uncertain, habeas corpus demands that the question be heard.

Opponents will liken zombies to AI or robotics, i.e., tools performing functions, undeserving of protection. This analogy is strategically convenient and intellectually dishonest. A robot is manufactured. A zombie was born. It carries human DNA, human neural architecture, and biological continuity with a life that once held full legal standing.

Meanwhile, corporations—pure legal fictions with no biology whatsoever—enjoy constitutional protections including free speech and due process.<sup>4</sup> If the law can dress an abstraction in rights, it cannot coherently deny them to a biological entity living among us.

Even those agnostic on zombie personhood must deal with the consequences of inaction. Unregulated zombie labour directly threatens human workers through suppressing wages, degrading safety standards, and eroding the collective bargaining frameworks the ILO’s Decent Work Agenda was designed to protect.<sup>5</sup> The issue of regulation is as much about preserving the labour market’s integrity as it is about zombie rights.

**The taboo truth is that every objection to zombie labour protection echoes arguments once made to justify the exploitation of human beings deemed “less than persons.”** History judged those arguments harshly. We ought not to wait for history to judge us again.



# BATMAN : VIGILANTE OR WAR CRIMINAL?

SARAH ZELIFAN

IS BATMAN A NON-STATE ARMED ACTOR, OR HAS  
GOTHAM'S RELIANCE ON HIS ACTIONS MADE HIS  
VIGILANTISM ATTRIBUTABLE TO THE STATE UNDER  
INTERNATIONAL LAW?

As the Batsignal illuminates Gotham's smog-covered skies and a gaggle of latex-clad vigilantes take to the streets to target vast criminal networks, an interesting legal question arises: How does international law categorize vigilantes who systematically use force, surveillance, and detention, with the apparent tolerance—and at times cooperation—of state authorities? While Batman may appear to function as a private actor combating domestic criminal violence, Gotham's operational reliance on his actions complicates this characterization. The central question therefore becomes: Would Batman be considered an unlawful non-state combatant, or has Gotham's sustained acquiescence transformed his vigilantism into an attributable system of informal justice?

If Gotham City meets the threshold for a Non-International Armed Conflict (NIAC), Batman's actions fall under International Humanitarian Law rather than standard domestic policing. Within this framework, Batman may qualify as a member of an organized armed group directly participating in hostilities. Furthermore, Gotham's cooperation raises a second issue: whether the state's tolerance and coordination convert Batman's conduct into attributable state action, thereby exposing both Batman and Gotham to international responsibility for violations of humanitarian and human rights law.

### **ESTABLISHING IF GOTHAM IS A NON-INTERNATIONAL ARMED CONFLICT (NIAC)**

A NIAC is defined as a sustained armed confrontation within a state's territory between governmental forces and organized non-state armed groups. Once this threshold is met, the situation is governed by International Humanitarian Law, including Common Article 3 of the Geneva Conventions and customary IHL.

The test from **Prosecutor v. Tadić** requires **(1) intensity of violence and (2) organization of the parties**.

Gotham meets this threshold due to sustained hostilities between state authorities and organized crime

syndicates such as those led by Black Mask or the Penguin. These groups maintain hierarchical structures, control territory, and employ military-grade or biochemical weapons, demonstrating violence that exceeds ordinary criminality.

Accordingly, Gotham's classification as a NIAC shifts the governing framework from domestic law enforcement to the conduct-of-hostilities paradigm under IHL.

### **BATMAN AS A NON-STATE ARMED ACTOR**

Once a NIAC is established, Batman's legal status must be assessed. Non-state armed actors are organized groups operating outside formal state control yet engaged in sustained armed activity, and are bound by **Common Article 3 and customary IHL**.

Under *Prosecutor v. Haradinaj*, relevant criteria include command structure, logistical capacity, operational continuity, and the ability to sustain military activity.

Batman satisfies these indicators. He operates within a structured network of allies, including Alfred and the "Bat-Family," with intelligence support from Oracle and occasional cooperation with Gotham police. Wayne Enterprises provides logistical backing, while Batman maintains continuous patrol operations and

responds regularly to calls for intervention. This demonstrates a sustained and organized capacity for armed activity, placing Batman within the category of a non-state armed actor participating in hostilities.

However, under customary IHL, such actors lack combatant immunity. Although Batman's "no-kill rule" may reduce lethality, his actions remain potentially criminal under domestic law.

### CONDUCT AND PROPORTIONALITY CONCERNS

Even within a NIAC, hostilities are governed by **(1) distinction, (2) proportionality, and (3) precaution.** Parties must avoid excessive civilian harm and take measures to minimize damage.

Batman's tactics raise concerns under these principles. His use of explosive entry, pervasive surveillance, and psychological intimidation may exceed what is necessary. Interrogation methods—such as hanging suspects from rooftops or inducing psychological distress—may constitute inhuman treatment. His detention practices are also problematic: suspects are incapacitated and transferred without formal procedures, violating safeguards under the International Covenant on Civil and Political Rights.

Overall, Batman's conduct reflects direct participation in hostilities while violating fundamental protections governing force and detention.

### WHEN VIGILANTISM BECOMES STATE CONDUCT

Under international law, private conduct is **attributable to a state if carried out under its instruction, direction, or control (Article 8 ARSIWA).** In *Nicaragua v. United States*, the ICJ established that attribution depends on effective control over specific operations.

In Gotham, several practices suggest coordination. Police regularly activate the Bat-Signal to request Batman's assistance, withdraw upon his arrival, and share intelligence. Suspects apprehended by Batman are processed through the formal justice system, demonstrating institutional reliance. Commissioner Gordon plays a key role in facilitating these interactions. When authorities request Batman's involvement or structure operations around him, this may satisfy the effective control threshold.

Although *Bosnia and Herzegovina v. Serbia and Montenegro* confirms that mere tolerance is insufficient, repeated coordination—such as Bat-Signal use and tactical alignment—suggests more than passive acquiescence and may support attribution.

## LEGAL CONSEQUENCES OF ATTRIBUTION

If attribution is established, Batman's status shifts from private actor to state proxy. Gotham could then incur international responsibility for violations arising from his conduct, including breaches of Common Article 3, the ICCPR, and IHL.

However, Gotham's reliance on his conduct raises the possibility of attribution, exposing both Batman and the state to responsibility for violations of human rights and humanitarian law.

PARADOXICALLY, THE MORE  
GOTHAM RELIES ON  
BATMAN, THE MORE  
LEGALLY VULNERABLE IT  
BECOMES.

Maintaining him as an unsanctioned vigilante preserves **plausible deniability**, whereas integrating his actions into state practice increases the likelihood of attribution.

## CONCLUSION

From an international law perspective, Batman's activities illustrate the intersection of vigilantism, armed conflict, and state responsibility. Gotham's violence likely meets the NIAC threshold, placing Batman within the category of a non-state armed actor.



Minerva bridles pegasus with the help of Mercurius by Jan Boeckhorst (1604-1668)

# REINING IN THE PEGASUS

SAMANTHA TOMILOWITZ

In the new-age digital world, magic is about to be reborn. The Pegasus, the winged white stallion foaled by Medusa in Greek mythology, was recently observed roaming the skies by multiple communities across the globe. Unlike the ancient stories, there appears to be more than one, and its population is on the rise. Humans are spellbound, awestruck by the sudden emergence of the winged creature, but the international legal framework of the 21st Century is unprepared for this unregulated, ill-defined wild animal.

Given the Pegasus's capacity for flight and its tolerance to human riders, world leaders swiftly demand reform in airspace regulation at once. If a common, undistinguished human were to mount a Pegasus and enter a neighbouring country's airspace, **WHAT LEGAL RECOURSE WOULD SAID COUNTRY HAVE AGAINST THIS FOREIGN ENTITY?**

Putting aside the question about whether the Pegasus species possesses limited legal personhood or endangered animal status, given its high intelligence and low population numbers, the legal focus will pertain only to its flight capabilities, deference for human companionship, and how, when conjoined, could pose a threat to State sovereignty\*. International air mobility has been regulated by the specialized United Nations (UN) agency, The International Civil Aviation Organization (ICAO), which receives its legal competence from the 1944 Convention on International Civil Aviation (Chicago Convention), since its ratification in 1947. Article 1 of the 1944 Chicago Convention recognizes that every State has complete and exclusive sovereignty over the airspace above its territory, although an upper limit has been formally defined. Provisions within the Convention outline the conditions under which a State can regulate, manage, and control the use of its own airspace, provided it does not use weapons against civil aircraft without cause. **A wild, roaming Pegasus creates a myriad of regulatory issues;** should it have a human rider, the problem becomes considerably more complex and bureaucratic.

Assume that the Pegasus is not being utilized against any one State's national security interests. **To protect the species and help it thrive**, one of the first tasks of the international legal community is to categorize it - are they akin to birds or more similar to aircrafts due to their capability of controlled flight? Current aviation law treats birds as wildlife hazards, not aircraft. Several agencies, like the European Union Aviation Safety Agency (EASA) and the U.S. Federal Aviation Administration (FAA), classify birds as serious safety hazards to aviation, with the EASA reporting more than approximately 13,000 to 15,000 bird strikes annually. While the Pegasus has the potential to disrupt flight patterns due to its migratory nature, they cannot trace their genealogy back millions of years to Mesozoic dinosaurs, a feature birds can. It seems unlikely that the winged horse's classification as a sub-class of avian species will stand up to legal scrutiny.

Consider now the defining feature of the Pegasus - its ability to carry humans like cargo across the skies. Upon first consideration, the new species could be the benchmark in the latest advancement in aeronautical support. Even still, such a creature falls outside the scope of the legal definition of aircraft, which the

ICAO defines as ‘any machine that can derive support in the atmosphere from the reaction of the air against the earth’s surface’. Furthermore, the Pegasus does not lack consciousness or autonomy; it willfully selects its own rider when it’s not living amongst its own kind.

### **IT IS FIRST AND FOREMOST A WILD ANIMAL**

Remanding the Pegasus species under the jurisdiction of the State would fundamentally change its classification from a free-roaming animal to government property, since under the ICAO, all State aircraft are owned and operated by the government.

**Given the high potential of its use,** global lawmakers and regulators would likely create a new classification for the Pegasus species, one that is neither fully protected under international convention agreements like the Convention on the Conservation of Migratory Species of Wild Animals nor the International Union for Conservation of Nature (IUCN). Its existence poses too great a risk for the neurotic nature of government. If they aren’t hunted into oblivion, then they would be captured, branded, and utilized like all the workhorses before them. Careless riders would become a distant

memory, so much so that should a human accidentally stray into a foreign State’s airspace or territory atop a Pegasus, their transgression may be mistaken for an act of aggression. A simple midnight excursion could result in detainment at best or a hostile response at worst, all of which is legally permissible under international law.

**To maintain its dignity and preserve its magical essence, humans should abstain from bridling the Pegasus. For the Pegasus to remain free, it should avoid humanity at all costs.**



# WHEN SPACE LAW MEETS EXTRATERRESTRIAL LIFE

GODA BENDORIŪTĖ

Recently, Donald Trump, the President of the United States, has been discussing the possible release of government files concerning extraterrestrial life. Let us assume that he ultimately did release these documents - and that the disclosure is genuine rather than propaganda. Among the newly revealed information is a surprising incident involving the Netherlands.

On 27 January 2026, a spacecraft launched by a Dutch company set out on a mission to extract resources from outer space. The mission initially appeared to be a success: the spacecraft identified a resource-rich asteroid suitable for mining. However, a force majeure event occurred. The spacecraft collided - not with another space object, but with extraterrestrial beings. The resulting damage was enormous, and the Dutch were emotionally devastated. The extraterrestrials, however, did not appear pleased either.

**WHAT DOES THE LAW TELL US?**

## LEGAL FRAMEWORK

Space law is a relatively young branch of international law. However, the rapid technological innovation is making it increasingly relevant in the contemporary world. As a young legal system, it is not perfect and exhibits certain ambiguities. The case above will be used to illustrate how the current legal framework of space law would address the encounter with so-called “extraterrestrial beings” and what would be the current gaps in the existing system based on the presented case.

Currently, five main international treaties govern space law; The Outer Space Treaty (OST), the Rescue Agreement, the Liability Convention, the Registration Convention, and the Moon Agreement. For the purposes of this article, the primary focus will be on the OST, as it is the most relevant instrument for illustrating an encounter with aliens. The OST contains the foundational principles governing extraterrestrial activities and is the most broadly ratified treaty in the context of space law.

## ALIENS UNDER THE OST

Under Article I of the OST, space is described as a province of all mankind, excluding all other beings that do not qualify as humans. Thus, here the first

legal issue arises - it is unclear who would represent aliens in the current dispute, as aliens do not have a legal personality.

Under Article III of OST, activities in outer space shall be carried out in accordance with international law. Accordingly, the Netherlands must comply with Article 2(4) of the UN Charter, the prohibition of the use of force. The use of force would be allowed only in the case of self-defense under Article 51 of the UN Charter, or UN Security Council authorization via Chapter VII.

Under Article V of the OST, the state parties shall inform the Security Council about the phenomena they discover in outer space which could constitute a danger to the life or health of astronauts. As the aliens do not appear to be particularly friendly at the moment, the Netherlands could be concerned about the safety of its astronauts. Thus, Article V of the OST would provide the legal basis for notifying the Security Council of the potential threat. However, the provision only concerns potential threat situations.

**What if, after all, our aliens seem to be very kind and friendly?**

The article does not provide for any mandatory rules in case of an encounter with peaceful and approachable extraterrestrial beings. Possible modification would be to include a general duty to report any contact with extraterrestrial life, regardless of its perceived hostility.

As aliens do not possess a legal personality, the question of responsibility arises. What if it wasn't a force majeure after all, but an alien's failure to take due diligence requirements on their spacecraft? Article VI of the OST provides that states shall bear responsibility for the activities in outer space. Under Article VII, the responsibility, however, is mentioned only by a state towards another state. Thus, once again, it remains unclear how the Netherlands should proceed, as there is no legal subject against whom responsibility could be invoked and no established framework for attributing liability to non-human actors.

The OST also allows the involvement of other states. Under Article IX of the OST, if a state believes that another state's activities in outer space might cause harmful interference with peaceful exploration of space, it may request consultation regarding such activity. In our scenario, if, for example, the US decides that the Netherlands' interaction

with aliens is a serious menace to humankind, it could request the Netherlands to talk. However, the question arises whether a mere consultation would be sufficient when all humanity is at risk. The provision arguably should provide for a more nuanced threshold of a direct state intervention. While Article III of the OST links space regulation to international law, as mentioned at the beginning, intervention would be allowed only with the Security Council's authorization. Such authorization, however, both on Earth and in outer space, may be subject to the veto power. Thus, allowing direct intervention in outer space would ensure that urgent threats could be addressed even in the absence of Security Council consensus.

Finally, under Article XVI of the OST, a state can withdraw from the treaty only one year after receipt of the notification regarding such withdrawal. Thus, in case of an accident in outer space, the states could not easily escape their obligations towards other states. However, as demonstrated by the above analysis, obligations vis-à-vis non-human entities are currently non-existent; thus, the treaty amendments would be needed.

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## CONCLUDING REMARKS

Currently, extraterrestrial beings do not possess any legal personality under the OST, which leads to significant ambiguities in the context of legal obligations and liability. It remains unclear how States should act both in the event of an encounter with friendly aliens and in situations where extraterrestrial entities might be considered a threat to humanity. Such issues might appear dystopian at present, but as human activity in outer space continues to expand rapidly, the likelihood of encountering alien life becomes increasingly high. Addressing these legal gaps would not only prevent potential forms of colonialism and imperialism toward non-human beings but also ensure the safety and protection of all humanity.



# MIRROR, MIRROR ON THE WALL: THE CONTRACT MOST VOID OF ALL?

NIKI SETOODEH-MANESH

Across the rolling hills of Germany, lies the kingdom of Snow White and the Wicked Queen.

"You must put her to death, and bring me her heart for a token":

The envious Queen's command for the murder of Snow White, a child, by the Huntsman, and his subsequent deception presents a complex legal dilemma pitting traditional contract doctrine against the unyielding force of peremptory norms.

**THE QUESTION ARISES: CAN THE QUEEN SUE HER HUNTSMAN FOR A BREACH OF CONTRACT, OR DOES THE ILLICIT NATURE OF HER DIRECTIVE RENDER ANY AGREEMENT VOID FROM INCEPTION?**

Any claim of contractual breach, such as the one the Queen might invoke against her huntsman, fundamentally depends on whether there was a prior establishment of a valid agreement. But did a valid contract between the Queen and the Huntsman ever materialise? Under widely recognised principles of contract formation, articulated in the Draft Common Frame of Reference (DCFR), a contract (DCFR II.-1:101(1)) generally requires an agreement between parties, through a juridical act, to possess the requisite intention to create a binding legal relationship, reaching sufficient agreements on terms (DCFR II.-4:101(a)-(b)).

The Queen explicitly expressed a clear offer: "You must put her to death, and bring me her heart for a token" (DCFR II.-4:201(1)). Her expectation of a specific outcome (Snow White's death and proof thereof) demonstrates her intent to enter a binding agreement. The Huntsman, by "consenting" to the Queen's demand, ostensibly relayed his acceptance, creating a *prima facie* sufficient agreement on the object and terms of the grim quest (DCFR II.-4:204(1)). Thus, on a superficial level, the formal elements of offer, acceptance, sufficient agreement, and an intent to create a legal relationship appear to be present in this macabre exchange.

While parties generally enjoy extensive contractual autonomy and freedom (DCFR II.-1:102(1)), this freedom is inherently constrained when the contents of an agreement contradict legal rules and principles and are intrinsically unlawful (DCFR II.-7:301).

Additionally, the illegality of the agreement's object immediately raises phantoms of a potential voidness *ab initio*. The Queen's directive for the murder of a vulnerable child contravenes general principles of public order, as well as unequivocally violates the fundamental right to life, a cornerstone of customary international law. A right that is also explicitly protected under instruments such as the International Covenant on Civil and Political Rights (ICCPR).

Moreover, the prohibition against murder is universally recognised as a peremptory norm of general international law (*jus cogens*). These norms embody the highest hierarchical order of international law, reflecting and aiming to protect fundamental values that are universally applicable, allowing for no derogation. Article 53 of the Vienna Convention on the Law of Treaties (VCL T) proclaims that "a treaty is void if, at the time of its conclusion, it conflicts

with a peremptory norm of general international law.” While the VCLT expressly concerns treaties between states, its principle *vis-à-vis* the invalidity of agreements conflicting with *jus cogens* extends analogously beyond treaty law, including contractual agreements between individuals.

Consequently, the Queen's purported "contract" with the Huntsman is unenforceable. In fact, it is void *ab initio*, lacking any binding effect from its very inception (DCFR II.-1:103(1)) as it is entrenched in an act infringing a *jus cogens* norm. Therefore, no valid obligation ever arose, eradicating any basis for a claim of contractual breach by the Queen.

The Huntsman's decision not to execute the illegal, arbitrary, murderous order was a fortunate one, because even if the Queen's order had not been void from inception, compliance with such a directive, even from a sovereign ruler, would still have offered the subordinate Huntsman no legal protection under modern international law.

In the past, the plea of 'superior orders' was sometimes invoked as a shield against individual accountability for illegal acts, arguing that illegality could

be overlooked when commands were from a higher authority. However, this defense was tenaciously rejected in the aftermath of World War II, irrevocably altering standards of individual accountability, blind obedience, and legal positivism, through the 1945-46 Nuremberg Trials.

**The International Military Tribunal at Nuremberg decisively and unequivocally rejected the defense of "blind obedience" to resounding unlawful orders.**

It established that individuals bear criminal culpability for crimes committed under international law, regardless of their official capacity. The excuse that individuals are simply complying with a government order, despite the act's obvious criminality, does not relieve them of this responsibility, as subordinates must refuse criminal commands.

This pivotal principle of criminal superior orders, later codified into Article 33 of the Rome Statute of the International Criminal Court (ICC), explicitly states that an order to commit genocide or crimes against humanity is "manifestly unlawful" and, therefore, cannot relieve an individual of criminal responsibility.

Although Snow White's tale precedes the formal codification of these principles, the underlying moral and legal imperative behind them is unequivocal. Certain commands are so plainly unlawful that they cannot legitimately be executed.

Ultimately, the Huntsman's failure to murder Snow White cannot be construed as a contractual breach. By sparing Snow White, despite the Queen's genocidal instructions, he acted in line with the ethical and legal obligations that emerged post-Nuremberg. He is not a breaching contractor, but rather an actor whose refusal to execute an unlawful order places him in compliance with a higher, evolving standard of international legality.

### **A BREACH THAT CANNOT BE BREACHED**

Any potential prospective claim by the Queen against her Huntsman ultimately fails, not because his performance was imperfect, his deception saved a child's life, but because the very object of the contract rendered it illegal, and therefore void *ab initio*. A contract founded on illegality cannot be breached because its inherent illegality prevents any obligation from ever arising. Ultimately, international law, specifically

*jus cogens* principles, inescapably prevails over private contractual arrangements.

The Huntsman's refusal to carry out the murder, therefore, reflects the profound post-Nuremberg transformation of international law: subordinates are not only permitted, but also morally and legally obligated, to refuse criminal commands. What appears to the Queen as a contractual breach is, in fact, a demonstration of compliance with a higher legal duty; a redefinition of disobedience from treachery into legality. The mirror may answer to vanity; the law answers to peremptory norms. Even in a kingdom governed by magic, law has the final word.



# AGE OF MACHINES: WHEN DO YOU STOP BEING HUMAN?

ELINA MERT

The evolution of identity has been one of the most intriguing dilemmas throughout history. The Ship of Theseus paradox, originating from the musings of Plutarch, questions whether an object remains fundamentally the same if all its parts are replaced over time. This thought experiment shaped our understanding of the concept of human identity.

Amid fast advancements in the areas of Artificial Intelligence (AI) and biotechnology, the debate surrounding identity and legal personhood creates another angle. Moreover, the rise of the Transhumanist movement indicates a potential societal shift in the traditional human experience by redefining legal personhood.

**BEGGING THE QUESTION, WILL AI BIO-ENHANCED PERSONS (AI HYBRIDS) BE ENTITLED TO THE SAME RIGHTS AND PROTECTIONS AS THEIR CONTEMPORARIES, AND WHERE SHOULD THE LINE BE DRAWN?**

To understand the significance of personhood, it is important to assess its functions and foundations. The naturalistic argument associates personhood with the biological functioning of human beings, thus entailing certain rights. For biologically enhanced human beings, this could be problematic. For example, if a person transfers their consciousness to a humanoid machine/robot (avatar), that individual would not be classified as a person under the naturalistic argument, due to its lack of biological characteristics.

In contrast, non-naturalistic arguments have a more expansive nature, relying primarily on the principle of rational agency, psychology, and cognitive abilities. However, this theory hinges on what it means to exercise rational agency and human rights. The exercise of rational agency stems from one's capacity to engage in moral matters, underpinning the importance of the "soul" as a defining element of personhood. Consequently, AI hybrids should be able to benefit from human rights law like non-enhanced persons as long as the "soul" element is fulfilled. Still, it is difficult to produce a consistent argument when it comes to an avatar, as many philosophical and ethical elements are at play.

Under most jurisdictions, robots are classified as objects of property without legal personality to have certain rights and obligations. In order to prevent potential ethical issues and assign accountability for robot-related liability, the European Parliament (EP) has proposed creating a specific legal status for "electronic personhood" for highly advanced and autonomous robots. However, such legal concepts do not touch upon the concept of a robot as a "host body" for the human being, thus creating a future dilemma: what category will avatars fall into?

Modern legal doctrines present two main approaches to legal personhood: the singularist view and the cluster view. Under the singularist view, an entity qualifies as a legal person solely by their capacity to hold certain rights and duties. This helps to establish protections for parties unable to act independently, such as fetuses or disabled persons. The cluster view defines legal personhood through engagement in a large cluster of legal roles, such as making contracts, owning property, or bearing liability. It considers the legal roles of an adult citizen of sound mind, showcasing the presence of legal limits when it comes to children or incapacitated persons.

AI hybrids would qualify for the same protections and rights, given that they maintain sentience and capacity to bear those rights and responsibilities. In the case of avatars, it could be argued that the robot body plays the role of “life support” for the person’s soul, serving as prosthetics for the person who lost their body. Therefore, some might argue that the avatar lacks the capacity to perform certain legal roles in the same sense as an incapacitated person.

International law introduces legal sources identifying natural legal personality and related rights and obligations. The Universal Declaration of Human Rights (UDHR) specifies that human beings are born equal in dignity and rights and are “endowed with reason and conscience”. This document prescribes rights to all human beings, and while it mentions non-naturalistic points, the “reason and conscience” act more like descriptions rather than requirements for qualifications. Due to the lack of an established definition of a “human being”, the wide scope of human rights allows AI hybrids to qualify for the same obligations and rights as regular humans.

However, when it comes to avatars, many legal, philosophical, and ethical

implications will burden the legal systems all over the world. Repercussions include, but are not limited to, the ownership of the robot body or liability in the event of malfunction or criminal affiliation. Furthermore, social tension is inevitable. If rights, obligations, and liability are the same for regular persons, AI hybrids and avatars, it might instill fear of inequality and domination. If it is easier for avatars/AI hybrids to avoid responsibility, or if such responsibility will have disproportionate effects on regular human beings, the people may choose to abandon the “social contract” that disadvantages them.

The rise in Transhumanist philosophy intensifies existing concerns, advocating for human enhancement through technological advancements, using the help of machine intelligence to overcome previously inescapable aspects within the human experience, such as disease and death. However, critics warn about the potential facilitation of the emergence of new levels of inequality in all aspects of life. Moreover, such developments could reinforce the existing social and financial inequalities, restricting relevant social changes. For example, AI hybrids could be used to maintain existing corrupt governments, using their enhanced physical capabilities to

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suppress opposition. Despite the UN Declaration on Bioethics and Human Rights and related human rights documents, which aim to guarantee that future developments will promote the welfare of humankind as a whole, there is still a lack of legal doctrine that will ensure the protection of human rights. Thus, the emergence of new human rights frameworks is closer than anticipated, leaving the question of what defines someone as a human being to future policymakers and legal scholars.



# STARSTRUCK: CAN ALIENS BE PROSECUTED FOR HUMAN CRIMES?

MICAH WADE

IF AN ALIEN WERE TO LAND ON EARTH AND COMMIT A CRIME, WOULD A NATION BE ABLE TO CLAIM SOVEREIGNTY OVER THE ALIEN AND PROSECUTE IT IN DOMESTIC COURTS?

An alien; an extraterrestrial being, with enough sentience and intelligence capable of intentionally committing crimes, MURDERED a local Dutch citizen, IGNITING rumours of international intervention. Advancing from the preliminary, three main questions arise that must be addressed to come to some formidable conclusion as to punishment.

Firstly, when does a state get the right to claim national jurisdiction over a crime?

Secondly, what role does international law play and when does it get involved?

Thirdly, can human laws regarding criminal punishment apply to non-humans, and how far does the concept of legal capacity satisfy this question; could it be the basis for prosecuting any alien crimes on earth?

In assessing the veracity of national law, international law must be consulted. The crime of murder inevitably concerns a victim. The victim's citizenship assists in solving this issue. The passive personality principle originates from a fairly modern legal tradition, gaining traction in the 20th century as a reactive legal mechanism due to globalisation and the emergence of transnational crimes. The principle itself provides that a nation can claim jurisdiction where the nationality of the victim is the nationality of that country. This approach grants a state the power to exert jurisdiction over a case due to the interest of justice, namely, justice for the victim. Therefore, national laws will apply, given that once the principle of jurisdiction is satisfied, allowing a nation to preside over the case, international law is subjugated as a natural consequence.

Of course, if the victim were living, they could testify to the legal capacity and sentience of the alien. However, this is impossible; thus, there is a need to prove legal capacity to fulfil the burden of proof. This is where national rules regarding legal capacity come into play. Most states in the Western legal tradition hold that legal capacity involves some understanding by the defendant of the legal consequences of his conduct, and that these were considered when acting.

Taking the Dutch example, van Kempen writes, "*In honouring defence rights, the Supreme Court of the Netherlands (de Hoge Raad, HR) ever more explicitly attaches responsibilities for the defence to enter a defence and submit requests in time, ...and to be 'to the point', ... [the defence] must also be explained adequately.*" Assuming that the alien was sentient suggests some acceptable degree of legal capacity that satisfies the burden of proof. **This could be the noose with which the law could figuratively hang the perpetrator.** Therefore, proving legal capacity remains the crux of the issue.

A proposed solution would be to assess the behaviour alone to infer intention, including keen attention to method and the existence of a weapon. Meticulous planning could point to self-awareness, whilst a weapon could suggest a higher notion of culpability. A behaviour-based approach used to elicit evidence of capacity would form expert evidence utilized to infer intent on the part of the alien. In being extraterrestrial life, the burden then should be shifted to be one of proving the sentience and cognitive exercise innate to the crime; effectively highlighting the similarities to human intelligence, and building the case from that core concept. The same way that a *modus operandi* is often used in cases of multiple murders, for example, to infer pattern and malice,

actions that require a human-like cognition, should be proof enough to convict. Yet, such a burden would be novel to criminal law and would need to rely on more abstract legal principles - thus, the ball is placed back in the court of international law to some extent.

Mendelson notes, *“To create a rule of particular law, only two States are needed. In the Right of Passage over Indian Territory case, the ICJ upheld the existence of a purely bilateral custom between India and Portugal... [it] might burden or benefit all States other than the one who enjoys the right...”*. Given that if this case were to be left and not prosecuted, there could be large implications for other states across the world, it would be likely that the practice suggested would be supported by states with a similar interest in such a novel conviction. On this basis, it would be likely to be introduced as a new precedent using extensive interpretation of any existing criminal code, particularly any sections of the code dealing with the capacity of the defendant.

**The burden of proof in criminal cases is one of ‘beyond a reasonable doubt’, yet in this case, the guiding questions of capacity are generally novel.**

Therefore, customary international law as a guiding hand would assist in determining a just outcome by determining what doubt is ‘reasonable’.

Interpretation by analogy as a remedy for domestic judges in civil law systems allows for an *in absentia* trial due to the language barrier. This would be the most effective means of pursuing proceedings. This would include examining the expert witness account of the capacity and cognition of said alien (the defendant). Further to this, utilising customary international law principles allows for a conviction based on more abstract principles of law.

The overarching ‘why’ in this case is the core of why customary international law must be looked to during the proceedings. If an alien’s actions against a human were to be left unchallenged, this could encourage such actions on a mass scale. The bigger picture concerns the potential for crimes that accord with interspecies terrorism. Therefore, by sending a clear message from Earth that such acts would not be tolerated, whilst allowing for justice to prevail for the victim, this acts as a pre-emptive warning.

In short, if an alien were to land on Earth and commit murder, the nation of which the victim was a citizen of would be able to claim sovereignty over the alien and prosecute it in domestic courts, but would need to rely on customary international law to aid in such a novel conviction.



# A FISH OUT OF COURT: A Legal Analysis of Mermaids as Subjects of Rights or Ecological Assets

GABRIELA MARTINS RODRIGUES

In most modern societies, physical and psychological suffering is understood more as a product of human actions towards others, rather than a result of divine intervention or fate. This social-political recognition is essential to the creation of the modern category of the victim. However, this category is not simply characterized as ‘the ones who suffer’; instead, to be qualified as a victim, it is necessary to be socially perceived as having suffered an injustice.

THUS, VICTIM STATUS CANNOT BE OBTAINED WITHOUT COMMUNITY RECOGNITION — IT IS A SOCIAL CONSTRUCTION CONNECTED TO THE VALUES OF A GIVEN SOCIETY.

For centuries, domestic and gender-based violence were considered as private matters of the family entity, rather than crimes or injustices that deserved legal attention. In Brazilian courts, until 2021, defendants in passionate crimes commonly used the argumentative strategy known as the “legitimate defense of honor” to justify violence against women. This reflects how status is “fully cultural in nature”, created by socially shared values in Cecilia Ridgeway’s terms.

Another example of the influence of societal value and legal order on the construction of victimhood is the figure of

homo sacer in Roman law, as discussed by Giorgio Agamben. The homo sacer was a legal sanction imposed on any person who, after committing a crime, was stripped of the protection of the State: anyone could inflict violence upon them, including killing, without it being legally condemned or considered a crime. In other words, once the homo sacer was placed outside the juridical and political order, he not only lost protection but also the capacity to be recognized as a victim. Yet, in the previous cases, the individual remains human but holds an inferior juridical status in which violence becomes justifiable or non-punishable. However, what happens if the category of being a human is uncertain?

Considering a hypothetical case in which a mermaid — a being who is half human and half fish — suffers homicide or an attempted killing, how should the legal system categorize this act? Would it be seen as a crime under criminal law or as an offense to biodiversity under EU environmental and wildlife law? Is it an attempted killing or an act of illegal fishing? As discussed, in such cases, the answer cannot rely solely on science and biology. It depends on whether society, and, consequently, the legal order, recognizes this being as a subject of fundamental human rights, or as a legally

protected species. **Therefore, the question to be addressed is: According to the EU legal framework, if mermaids existed, could the killing or attempted killing of them be classified as a violation of fundamental rights or as an offense against wildlife legal protection?** Accordingly, it must be assessed whether, within the Charter of Fundamental Rights of the European Union and Council Directive 92/43/EEC (Habitats Directive), the hypothetical violence would constitute homicide or a wildlife offense.

As argued by Daniel Thym, the contemporary concept of personhood was developed by lawyers and philosophers during the early modern era, as “a right-bearer inherent in any human being in their legal writing”. Moreover, the Charter of Fundamental Rights of the European Union (CFREU) is the primary instrument consolidating key personal freedoms and rights under a universal perspective; all rights enshrined in the Charter are guaranteed to all human beings. It also defines the legal obligations of protection of these rights at both the EU level and national level. It is noteworthy that the Charter declares that the European Union places the ‘individual’ at the heart of its activities, reinforcing the importance and centrality

of human beings within the EU legal order. This centrality is reflected, for instance, in the fact that the first three Articles of the first Chapter establish, respectively, the inviolability of human dignity, the right to life, and the right to have the physical and mental integrity respected. However, the Charter does not precisely conceptualize the rights-bearing subject, but rather presupposes it, leaving unclear whether “human beings” or “persons” should be understood only in biological and scientific terms, or in light of broader understandings. In contrast, as defined in Article 2(1)(a)(i) of Victim’s Rights Directive (2012/29/EU), a victim is “a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence”, explicitly linking victimhood to a legal status.

Regarding the hypothetical case, it reveals that the characterization of a mermaid as a victim is a product of the current legal order’s will. Similar to the ‘legitimate defense of honor’, victimhood is a social construction that shifts when a society decides that a specific suffering deserves attention and legal recognition. Thus, the mermaid’s fate relies not only on scientific and biological evidence but also on whether protecting such a being aligns with the beliefs of the community.

If so, the mermaid will be perceived by the social-political sphere as an inherent rights-bearer of fundamental human rights and, thus, eligible for victim status. Otherwise, if the legal system follows a strictly biological classification, it will be classified as an ecological asset whose life remains subordinate and tied to human interests. Essentially, the mermaid would not be granted victim status, as its suffering would be interpreted as an environmental offense instead of a violation of human dignity and the right to life.

Overall, an individual must have their suffering understood as unfair according to society's beliefs, and recognized as requiring legal attention to obtain victim status. This classification does not rely on proof of humanity in the biological sense, but rather on the shared values that shape the legal order. With societal progress, these same individuals became legally equal to others, acquiring rights to be respected. That said, the protection of mermaids is a reflection on whether political decisions will prefer to extend our moral horizon and emphasize recognizing that all sentient beings suffering deserves legal attention, or to maintain an anthropocentric perspective in which other species are treated as mere ecological assets.

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