



# Asian Yearbook of International Law

Volume 29  
2023





# Asian Yearbook of International Law

*Volume 29 (2023)*



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# Foundation for the Development of International Law in Asia (DILA)

DILA was established in 1989, at a time when its prime movers believed that economic and political developments in Asia had reached the stage at which they would welcome and benefit substantially from a mechanism to promote and facilitate exchanges among their international law scholars that had failed to develop during the colonial era.

The Foundation was established to promote: (a) the study of and analysis of topics and issues in the field of international law, in particular from an Asian perspective; (b) the study of and dissemination of knowledge of international law in Asia; and (c) contacts and co-operation between persons and institutions actively dealing with questions of international law relating to Asia.

The Foundation is concerned with reporting and analyzing developments in the field of international law relating to the region, and not primarily with efforts to distinguish particular attitudes, policies or practices as predominantly or essentially "Asian". If they are shown to exist, it would be an interesting by-product of the Foundation's essential function, which is to bring about an exchange of views in the expectation that the process would reveal areas of common interest and concern among the states of Asia, and even more importantly, demonstrate that those areas of interest and concern are, in fact, shared by the international community as a whole.

# **Asian Yearbook of International Law**

Launched in 1991, the Asian Yearbook of International Law is a major internationally-refereed yearbook dedicated to international legal issues as seen primarily from an Asian perspective. It is published by Brill under the auspices of the Foundation for the Development of International Law (DILA).

When it was launched, the Yearbook was the first publication of its kind, edited by a team of leading international law scholars from across Asia. It provides a forum for the publication of articles in the field of international law, and other Asian international legal topics. The objects of the Yearbook are two-fold. First, to promote research, study and writing in the field of international law in Asia; and second, to provide an intellectual platform for the discussion and dissemination of Asian views and practices on contemporary international legal issues.

Each volume of the Yearbook contains articles and shorter notes, a section on State Practice, an overview of the Asian states' participation in multilateral treaties and succinct analysis of recent international legal developments in Asia, as well as book reviews. We believe this publication to be of importance and use to anyone working on international law and in Asian studies.

In keeping with DILA's commitment to encouraging scholarship in international law as well as in disseminating such scholarship, its Governing Board decided to make the Yearbook open access and is available through Brill Open.

## Acknowledgments

The Co-Editors-in-Chief would like to acknowledge and thank the staff of the Handong International Law School Law Review for their work reviewing and editing the citations in the Yearbook. The staff for 2025 includes Senior Editors: Than Woo Cho (Editor-in-Chief), Yea Jin Sin (Managing Editor), Heejin Jung, and Jaean Ohk; and Junior Editors: Yerim Hong, Minji Kim, Seung Yeun Oh, and Joo Hee Shin.

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# Editorial Note

Volume 29 of the *Asian Yearbook of International Law* commences with a collection of scholarly articles. This is succeeded by a compilation of legal materials, encompassing a detailed record of Asian states' participation in multilateral treaties and an exposition of their state practice within international law. The volume further includes a literature section, offering a bibliographic survey of relevant materials on international law in Asia, concluding with a comprehensive summary of DILA's activities in 2023.

## I Articles

The twenty-ninth volume of the Yearbook primarily comprises articles originating from DILA's 35th Anniversary Conference, convened in Seoul, Korea, from June 13 to 14, 2024. The conference theme, "Asian States' Potential Leadership in International Law," prompted presenters to explore questions concerning their respective countries' unique perspectives on international law and their contributions to its evolution. Leading international legal scholars from various countries contributed articles addressing these inquiries. These include Chang Yen-Chiang and Sun Jie from Dalian Maritime University, representing China; R. Rajesh Babu from the Indian Institute of Management Calcutta, representing India; Seokwoo Lee from Inha University Law School, representing Korea; Battogtokh Javzandolgor from the National University of Mongolia, representing Mongolia; Rommel J. Casis from the University of the Philippines (UP) College of Law, representing the Philippines; Wasantha Seneviratne from the University of Colombo and Ranuli Senaratne from SLIIT University, representing Sri Lanka; Dustin Kuan-Hsiung Wang from National Taiwan Normal University, representing Taiwan; and Kitti Jayangakula from Thammasat University, representing Thailand.

## II Legal Materials

From its inception, the Yearbook has been dedicated to offering scholars, practitioners, and students a comprehensive account of Asian state practice. This commitment aims to foster an understanding of how Asian states operate within the international system and how international law is integrated into

their domestic legal frameworks. The Yearbook achieves this through two principal methods: first, by documenting the engagement of Asian states in multilateral treaties; and second, by detailing the contemporary state practice of Asian nations. In 2023, numerous dedicated scholars contributed reports on the state practice of their respective countries.

### *Participation in Multilateral Treaties*

Karin Arts of the International Institute of Social Studies, Erasmus University Rotterdam in The Hague, The Netherlands has compiled and edited the participation of Asian states in multilateral treaties for the 2023 calendar year.

### *State Practice of Asian States in the Field of International Law*

The State Practice section within the Yearbook aims to provide readers with a comprehensive overview and concise summation of actions undertaken by Asian states that directly influence the development and application of international law. The distinguished state practice rapporteurs, as enumerated in the table of contents, have meticulously documented the state practice of their respective nations throughout the 2023 calendar year. Their contributions elucidate the mechanisms through which these states integrate and implement international legal principles within their domestic legal frameworks and in the conduct of their foreign relations.

## III Literature

### *Bibliographic Survey*

Angela Semeo Kim, Assistant Professor of Law at Handong Global University in Korea, prepared the bibliography which provides information on books, articles, notes, and other materials dealing with international law in Asia published in 2023.

## IV DILA Events

The *Yearbook* concludes with a report on the activities undertaken by DILA in the year 2023, namely the 2023 DILA International Conference which took place on June 26, 2023 at the National University of Mongolia in Ulaanbaatar, Mongolia; the 2023 DILA Academy and Workshop that was held at the Mirage

Tourist Camp on June 27; and the 2023 DILA+APOLIA International Conference in Taiwan that was held on December 5.

*Seokwoo Lee*

Co-Editor-in-Chief

*Hee Eun Lee*

Co-Editor-in-Chief



## *Articles*





# China

*Chang Yen-Chiang\* and Sun Jie\*\**

## 1 From Your Own Country, Is There a Unique Perspective of International Law?

Looking at the development history of international law in China, the origin and development of international law in China have both followed a path of legal transplantation.<sup>1</sup> With China gradually deepening its participation in international governance affairs, international law, as an important guide for China's participation in international governance, its development, and practical application have been given significant attention.<sup>2</sup> Regarding international law, China's current research focuses on exploring and constructing international law with Chinese characteristics.<sup>3</sup>

International law with Chinese characteristics is an important part of China's current international law construction. The construction of international law with Chinese characteristics aims to observe the world from a Chinese perspective, provide theoretical guidance for China to deal with international governance dilemmas, offer Chinese solutions to global challenges, further enhance China's discourse power in the international community, create a favorable external environment for China's development, and contribute Chinese strength to building a community with a shared future for mankind and achieving sustainable development.<sup>4</sup> International law with Chinese

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\* Professor of International Law, School of Law, Dalian Maritime University, China. The field work of this research is commissioned by the following project: National Social Science Fundamental Project, "Study on Domestic Rule of Law and Foreign Rule of Law Coordination in Global Environmental Governance", Grant No.: 23&ZD166.

\*\* Ph.D Student, School of Law, Dalian Maritime University, China.

1 Chenguang Wang, *Legal Transplantation and Legal Development in Transitional China*, in THE WORLD BANK: LEGAL REVIEW, VOLUME 4: LEGAL INNOVATION AND EMPOWERMENT FOR DEVELOPMENT 161, 177 (Hassane Cissé, Sam Muller, Chantal Thomas & Chenguang Wang eds., 2013).

2 Qingjiang Kong & Xiaojuan Ping, *International Law and International Institutions: Implications for a Rising China*, 1 THE CHINESE JOURNAL OF GLOBAL GOVERNANCE 157, 160 (2015).

3 He Zhipeng (何志鹏), *Guojifa Zhongguo Xuepai de Shengcheng* (国际法中国学派的生成) [A Chinese School of International Law in Forming], QINGHUA FA XUE (清华法学) [TSINGHUA UNIVERSITY LAW JOURNAL], MAY 15, 2022, at 174.

4 Guo Shuyong (郭树勇), *Zhongguo Guoji Guanxi Lilun Jianshe Zhong de Zhongguo Vishi Chengzhang ji Zhongguo Xuepai Giantu* (中国国际关系理论建设中的中国意识成长及

characteristics has three main features: first, international law with Chinese characteristics adheres to the guidance of Marxist theory. Marxist theory is a scientific summary of social development. Under Marxist international law theory, international law should develop towards caring for the well-being of the people and focusing on the overall development of humanity.<sup>5</sup> Adhering to Marxist theory as guidance provides a scientific understanding tool and correct value guidance for the development of Chinese international law, laying the foundation for its development. Under the guidance of Marxist theory, international law with Chinese characteristics has always focused on human survival and development, emphasized the interests of all humanity, and emphasized the construction of multilateral international relations characterized by peace, stability, mutual tolerance, green development, and win-win cooperation.<sup>6</sup> Secondly, international law with Chinese characteristics is guided by Xi Jinping's thought on the rule of law.<sup>7</sup> Xi Jinping's thought on the rule of law is the latest achievement of Marxist legal theory in China and an important ideological guide for constructing international law with Chinese characteristics. It scientifically addresses the theoretical, institutional, and practical issues of building the rule of law with Chinese characteristics and profoundly interprets the democratization and legalization of international political and economic relations in the context of the profound changes unseen in a century.<sup>8</sup> It also requires the construction of a world of enduring peace, universal security, common prosperity, openness, inclusiveness, cleanliness, and beauty, which is an important guiding ideology for China's participation in international governance, the construction of a new type of

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中国学派前途 [The Growth of Chinese Consciousness and Prospect of a Chinese School in the Construction of China's International Relations Theory], GUOJI GUANCHA (国际观察) [INTERNATIONAL REVIEW], Jan. 5, 2017, at 38.

- 5 Wang Cungang (王存刚), *Makesi Zhuyi Guoji Guanxi Lilun yu Shishi Jujin de Pingge ji Dangxia Yiyi* (马克思主义国际关系理论与与时俱进的品格及当下意义) [The Keeping-Pace-with-the-Times Character of Marxist International Relations Theory and Its Contemporary Significance], OUZHOU YANJIU (欧洲研究) [CHINESE JOURNAL OF EUROPEAN STUDIES], June 15, 2018, at 116.
- 6 He Zhipeng & Wei Xiaoxu, *Marxist View of International Law Reform from China's Perspective*, in LAW REFORMS AROUND THE WORLD: PERSPECTIVES FROM NATIONAL AND INTERNATIONAL LAW 182, 185 (Asif H. Qureshi ed., 2023).
- 7 Jing Huang & Yan Shao, *Research on Xi Jinping Thought on the Rule of Law on the Coordinated Promotion of Domestic and Foreign-Related Rule of Law*, STUDIES IN LAW AND JUSTICE, Nov. 4, 2022, at 30.
- 8 See Xiao Yongping, *The New Stage of Comprehensively Advancing the Rule of Law in China: Promoting the Coordination of National and International Rule of Law*, 1 WUHAN UNIVERSITY INTERNATIONAL LAW REVIEW 3, 21–22 (2021).

international relations, and the international legal order. Xi Jinping's thought on the rule of law provides direction and guidance for building international law with Chinese characteristics.<sup>9</sup> One of the important contents of Xi Jinping's thought on the rule of law is to coordinate the domestic rule of law and the rule of law concerning foreign affairs.<sup>10</sup> It clarifies the logical relationship among the international rule of law, the rule of law concerning foreign affairs, and the domestic rule of law. By taking the rule of law concerning foreign affairs as a bridge, it realizes positive interaction between the international rule of law and the domestic rule of law and constructs a systematic framework for the development of international law with Chinese characteristics.<sup>11</sup> Thirdly, international law with Chinese characteristics embodies Chinese cultural concepts and forms international governance theories with Chinese wisdom, providing new value measurements for international governance.<sup>12</sup> The development history of more than five thousand years of Chinese civilization has nurtured profound Chinese culture. Chinese civilization involves various cultural fields such as ideology, morality, political concepts, value pursuits, personality cultivation, and social ideals, forming a unique cultural discourse system that can provide diverse value guidance for constructing the international law knowledge system.<sup>13</sup> The construction of international law with Chinese characteristics has always adhered to the combination with Chinese traditional culture, integrating the concepts of "common governance for the world," "people-oriented," and "harmony" in Chinese traditional culture with international governance,<sup>14</sup> exporting values from Chinese traditional culture, strengthening China's international influence from the perspective of values, enhancing China's international discourse power, and creating a more friendly international environment for China's survival and development in the international community. Adhering to the extraction of new theories of international

9 Xiaobo Dong & Jie Guo, *Global Initiatives of Chinese Rule of Law Path*, in CHINESE RULE OF LAW PATH AND CULTIVATION OF FOREIGN-RELATED RULE OF LAW TALENTS 93, 113 (2024).

10 Huang & Shao, *supra* note 7, at 29.

11 See generally Xiao, *supra* note 8, at 3–4, 25.

12 Xuetong Yan, *Chinese Values vs. Liberalism: What Ideology Will Shape the International Normative Order?*, 11 THE CHINESE JOURNAL OF INTERNATIONAL POLITICS 1, 9 (2018).

13 Zeng Huaqun (曾华群), *Guanyu Guoji Fa "Guoji Huayu Tixi" de Sikao* (关于国际法“国际话语体系”的思考) [On the International Discourse System of International Law], GUOJI JINGJI FA XUEKAN (国际经济法学刊) [JOURNAL OF INTERNATIONAL ECONOMIC LAW], July 2, 2021, at 26.

14 See Wang Youming, *The EU's Global Governance Versus China's Harmonious World*, ARI 133/2010, in ELCANO ROYAL INSTITUTE (2010).

governance from China's traditional culture also provides a continuous source of innovation for the development of international law.<sup>15</sup>

Currently, China is actively developing international law with Chinese characteristics and has achieved significant progress. Firstly, China has preliminarily formulated a theory of international law with Chinese characteristics, with “a community of shared future for mankind” as its core.<sup>16</sup> This theory serves as a crucial basis for China's international discourse power and provides important guidance for China's participation in international governance.<sup>17</sup> It enables China to confidently address questions related to China, the world, humanity, and the era in the future. Since the 18th National Congress of the Communist Party of China, General Secretary Xi Jinping has made important remarks on international law topics, emphasizing China's active interpretation of the concept of Chinese characteristics in foreign-related rule of law and the construction of a theoretical system of foreign-related rule of law with Chinese characteristics.<sup>18</sup> Under General Secretary Xi Jinping's guidance, China has further expanded its traditional international law theory centered on the Five Principles of Peaceful Coexistence,<sup>19</sup> forming a new era of Chinese international law theory with “a community of shared future for mankind” at its core. The concept of “a community of shared future for mankind” emphasizes values of cooperation, mutual benefit, equality, and consultation, calling for States to seek common ground while reserving differences and to develop together on the basis of mutual respect and reasonable concern for the interests of other States.<sup>20</sup> This concept serves as the theoretical foundation for China's participation in global governance, and China has interpreted it in

15 Li Zhaojie, *Legacy of Modern Chinese History: Its Relevance to the Chinese Perspective of the Contemporary International Legal Order*, 5 SINGAPORE JOURNAL OF INTERNATIONAL & COMPARATIVE LAW 314, 325–26 (2001).

16 Zhang Hui, *Building a Community of Shared Future for Mankind: China's Vision of the International System in the New Era*, 1 WUHAN UNIVERSITY INTERNATIONAL LAW REVIEW 27, 28 (2021).

17 Zhang Hui, *A Community of Shared Future for Mankind – The Contemporary Development of the Social Foundations Theory of International Law*, SOCIAL SCIENCES IN CHINA, Mar. 7, 2019 at 187.

18 Huo Zhengxin, *Creating an Extraterritorial Application System of Chinese Law: From the Perspective of Advancing the Rule of Law in Domestic and Foreign-Related Affairs in a Coordinated Manner*, 18 FRONTIERS OF LAW IN CHINA 531, 532 (2023).

19 Wei Leijie (魏磊杰), *Xin Shidai Zhongguo Guoji Fa Guan de Lilun Goucheng yu Duoyuan Shijian* (新时代中国国际法观的理论构成与多元实践) [*Theoretical Composition and Pluralistic Practice of China's View of International Law in the New Era*], XUESHU YUEKAN (学术月刊) [ACADEMIC MONTHLY], June 20, 2022, at 110.

20 Chang Yen-Chiang, *On Legal Implementation Approaches Toward a Maritime Community with a Shared Future*, CHINA LEGAL SCIENCE, Mar. 19, 2020, at 5.

various legal instruments, forming a series of international governance concepts with Chinese characteristics, such as the Belt and Road Initiative and the concept of a maritime community with a shared future in ocean governance.<sup>21</sup>

Secondly, China attaches great importance to international law education and has gradually constructed and developed a discipline of international law with Chinese characteristics. Xi Jinping's thought on the rule of law requires the cultivation of a high-quality legal team with both morality and talent. Under the aforementioned guidance, the training of talents in foreign-related rule of law is an important part of China's development of international law with Chinese characteristics.<sup>22</sup> In the past, international law was a sub-discipline of law mainly divided into three branches: public international law, private international law, and international economic law.<sup>23</sup> With the development of international law with Chinese characteristics, the content of the discipline has gradually been enriched and improved, forming a discipline system consisting of public international law, private international law, international economic law, international commercial law, international dispute resolution law, and international legal history.<sup>24</sup> The academic research system and talent training mechanisms of universities have been further improved, and the training of talents in the foreign-related rule of law has become more systematic and specialized.<sup>25</sup> In the future, China will continue to build the discipline of international law with Chinese characteristics, strongly support the establishment

21 See generally Qian Jinyu, *A Community with a Shared Future for Human Beings in the Vision of Modernization of Global Governance: China's Expression and Practice*, 17 JOURNAL OF HUMAN RIGHTS 402 (2018).

22 Ma Huaide (马怀德), *Jiaqiang Shewai Fazhi Rencai Peiyang* (加强涉外法治人才培养) [Strengthening the Training of Foreign-Related Legal Personnel], HONGQI WENGAO (红旗文稿) [RED FLAG MANUSCRIPT], Jan. 2, 2024, [http://www.qstheory.cn/dukan/hqwg/2024-01/02/c\\_1130051192.htm](http://www.qstheory.cn/dukan/hqwg/2024-01/02/c_1130051192.htm).

23 Yang Zewei (杨泽伟), *Xin Shidai Zhongguo Guoji Fa Xueke Tixi de Jianshe* (新时代中国国际法学科体系的构建) [The Construction of Discipline System for China's International Law in New Era], WUHANDAXUE XUEBAO ZHEXUE SHEHUIKEXUE BAN (武汉大学学报(哲学社会科学版)) [JOURNAL OF WUHAN UNIVERSITY (PHILOSOPHY & SOCIAL SCIENCES EDITION)], Jan. 2, 2024, at 22.

24 Xiao Yongping (肖永平), *Shenke Bawo Shijie Da Bianju Tuijin Guoji Fa Yanjiu* (深刻把握世界大变局推进国际法研究) [Deepen the Study of International Law Based on Major Changes in the World], RENMIN RIBAO (人民日报) [PEOPLE'S DAILY], July 20, 2020, reprinted in QIUSHI.COM, [http://www.qstheory.cn/llwx/2020-07/20/c\\_1126259311.htm](http://www.qstheory.cn/llwx/2020-07/20/c_1126259311.htm).

25 Han Yonghong (韩永红), Tan Weiyang (覃伟英), *Mian Xiang "Yi Dai Yi Lu" Xuqiu de Shewai Fazhi Rencai Peiyang - Xianzhuang yu Zhanwang* (面向“一带一路”需求的涉外法治人才培养——现状与展望) [Cultivation of Foreign-Related Legal Talents for The "Belt and Road" Demand: Current Situation and Prospects], ZHONGGUO FAXUE JIAOYU YANJIU (中国法学教育研究) [China Legal Education Research], Oct. 17, 2019, at 88.

of relevant disciplines in universities, strengthen reforms in training modes, and cultivate high-level talents at the doctoral and master's levels. China will encourage universities to enhance the training of talent in the foreign-related rule of law for different legal domains and states, systematically design and implement special programs for training talents in the foreign-related rule of law, and strengthen the training of professional talents in international law, foreign-related law, and specific state laws.<sup>26</sup> China will also encourage talents in the foreign-related rule of law to participate in international exchanges and learnings and support outstanding Chinese arbitration talents in engaging in exchanges, appointments, and internships in international organizations or well-known international arbitration institutions.<sup>27</sup>

Additionally, China has explored a path of international law development with Chinese characteristics. On one hand, China has begun to adopt a holistic and systematic perspective on the development of international law. Previously, China tended to consider the development of international law in isolation.<sup>28</sup> In 2020, Xi Jinping's thought on the rule of law explicitly proposed the need to coordinate the promotion of the domestic rule of law and the foreign-related rule of law.<sup>29</sup> Under the guidance of Xi Jinping's thought on the rule of law, China has adopted a holistic perspective on the development of international law. China has introduced the emerging concept of "foreign-related rule of law," which closely links the domestic rule of law with the international rule of law. From a holistic perspective, China is taking a more open and inclusive approach to domestic and international laws, strengthening the foreign-related elements of China's domestic law, and incorporating

26 Du Huanfang (杜焕芳), *Quanmian Ba Wo Shewai Fazhi Rencai Peiyang de Fangwei, Yaosu he Weidu* (全面把握涉外法治人才培养的方位 要素和维度) [*Comprehensively Grasp the Orientation, Elements, and Dimensions of Cultivating Foreign-Related Legal Talents*], FAZHI RIBAO (法治日报) [LEGAL DAILY], May 24, 2023, reprinted in MINISTRY OF JUSTICE OF THE PEOPLE'S REPUBLIC OF CHINA, [https://www.chinalaw.gov.cn/pub/sfbgw/zwgkztzl/xxxxcgxjpfzsz/fzsxllqy/202305/t20230524\\_479457.html](https://www.chinalaw.gov.cn/pub/sfbgw/zwgkztzl/xxxxcgxjpfzsz/fzsxllqy/202305/t20230524_479457.html).

27 Du Chengming (杜承铭) & Ke Jingjia (柯静嘉), *Lun Shewai Fazhi Rencai Guojihua Peiyang Moshi zhi Chuangxin* (论涉外法治人才国际化培养模式之创新) [*An Innovative Approach to Cultivating Legal Talents With International Horizon in China*], XIANDAI DAXUE JIAOYU (现代大学教育) [MODERN UNIVERSITY EDUCATION], Jan. 20, 2017, at 86.

28 Huang Yao (黄瑶) & Lin Zhaoran (林兆然), *Zhongguo Guoji Gongfa Yanjiu Sishinian: Licheng, Jingyan yu Zhanwang* (中国国际公法研究四十年：历程、经验与展望) [*Forty Years of Research of International Public Law in China: Historical Process, Experience and Prospective*], FA XUE (法学) [LAW SCIENCE], Oct. 20, 2018, at 25.

29 Huang Jin, *Coordinate Rule of Law Efforts in Both Domestic and Foreign-Related Matters*, SOCIAL SCIENCES IN CHINA, Apr. 2, 2024, at 72.

relevant content from existing international law into domestic law to avoid conflicts between domestic and international laws in practical application.<sup>30</sup>

On the other hand, China is actively pursuing a transformation of its role in international governance. The transformation from a participant in global governance to a leader in global governance is an important aspect of China's development of foreign-related rule of law.<sup>31</sup> In the past, China's international legal knowledge system mainly mirrored Western international legal theories and ideas.<sup>32</sup> Currently, China is paying more attention to the innovation of major theories in international law. By exploring international law theories with Chinese characteristics, style, and demeanor, China aims to represent itself to the world and provide answers from a Chinese perspective.<sup>33</sup>

## 2 What Has Been Your Country's Contribution to the Development of International Law?

China has made significant contributions to the innovative development of international law. Firstly, at the theoretical level, China has formed a series of new theories of international governance with the core concept of a community with a shared future for mankind, providing new perspectives and solutions for addressing global governance challenges amid unprecedented changes.<sup>34</sup> For a long time, China has put forward many original theories regarding international governance. In the early days of the People's Republic of China, China proposed the "Five Principles of Peaceful Coexistence," which emphasizes that States should respect each other's sovereignty and territorial integrity, refrain from aggression, refrain from interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in

30 Gu Zuxue, *International Law as the Law of Domestic Governance: China's Propositions and Institutional Practice*, SOCIAL SCIENCES IN CHINA, July 26, 2017, at 158.

31 Dong & Guo, *supra* note 9, at 93–113.

32 He Zhipeng (何志鹏), *Zhongguo Zizhu Zhishi Tixi Jiangou de Guojifa Xue Weidu* (中国自主知识体系建构的国际法学维度) [*The International Law Dimension of Building China's Autonomous Knowledge System*], ZHENGFA LUNTAN (政法论坛) [TRIBUNE OF POLITICAL SCIENCE AND LAW], May 7, 2024, at 30.

33 Deng Lie (邓烈), "Zhongguo Xuepai" yu Zhongguo Guoji Fa Lilun de Zhengti Xing Chuangxin ("中国学派"与中国国际法理论的整体性创新) [*"Chinese School" and Integral Innovation of Chinese International Law Theory*], FA XUE PINGLUN (法学评论) [LAW REVIEW], July 13, 2022, at 35.

34 Qian, *supra* note 21, at 402.

international relations.<sup>35</sup> This principle has been absorbed by the basic principles of international law and has been affirmed and improved in subsequent exchanges and interactions among States. In the early 21st century, China combined traditional Chinese civilization with the theory of a “Harmonious World,” which provided a new value orientation for the development of international law, emphasizing the coordinated progress among different civilizations globally.<sup>36</sup> Later, the “Five Principles of Peaceful Coexistence,” formed a new era of Chinese international law theory with the “community with a shared future for mankind” as its core. Under the guidance of the concept of a community with a shared future for mankind, China actively establishes communities with a shared future with neighboring developing countries, promotes the establishment of a new type of international relations, and advances the establishment of a new international political and economic order.<sup>37</sup> China has also interpreted the concept of a “community with a shared future for mankind” in various fields, forming a series of international governance concepts with Chinese characteristics.<sup>38</sup> In response to the poverty issue existing in the international community, China has proposed the concept of “common prosperity for all.”<sup>39</sup> Based on the economic interests of small and weak States globally, China’s concept of “common prosperity for all” emphasizes cooperation as the keyword, aiming to break through the technological barriers faced by developing countries and reshape a healthy and orderly economic order through technical assistance and economic cooperation, thus achieving common prosperity among States.<sup>40</sup> Energy governance is currently an important issue faced by international governance. In response to global energy issues, China, under the

35 Jia Guide, *New China and International Law: Practice and Contribution in 70 Years*, 18 CHINESE JOURNAL OF INTERNATIONAL LAW 727, 727 (2019).

36 He Zhipeng (何志鹏), *Cong “Heping yu Fazhan” dao “Hexie Fazhan”*: *Guojifa Jiazhi Guan de Yanjin yu Zhongguo Lichang Tiaoshi* (从“和平与发展”到“和谐发展”——国际法价值观的演进与中国立场调适) [*From “Peace and Development” to “Harmonious Development”: The Innovation of Mega-Value in International Law and the Position of China*], JILIN DAXUE SHEUIL KEXUE XUEBAO (吉林大学社会科学学报) [JILIN UNIVERSITY JOURNAL OF SOCIAL SCIENCES], July 24, 2011, at 118.

37 XIAO XI & MEN HONGHUA, *China’s New Strategy for Dealing with Global Governance Crisis and Reform*, in CHINESE DIPLOMACY IN THE NEW ERA 117 (2021).

38 Feng Junqiang, *Study on the Practical Path of Building a Community with a Shared Future for Mankind*, 5 INTERNATIONAL JOURNAL OF FRONTIERS IN SOCIOLOGY 75, 75 (2023).

39 Jiangxing Yu, Jianan Ge, Yueqian Xu, & Biao Huang, *Debating China’s Common Prosperity with Evidence from Policy Practice*, JOURNAL OF CHINESE GOVERNANCE, 1, 2–4 (2025).

40 Zhao Xiaochun, *In Pursuit of a Community of Shared Future: China’s Global Activism in Perspective*, 4 CHINA QUARTERLY OF INTERNATIONAL STRATEGIC STUDIES, 23, 28 (2018).

guidance of the concept of a community with a shared future for mankind,<sup>41</sup> has formulated Xi Jinping's new era energy concept, which embodies the concepts of international cooperation and sustainable development emphasized by the community with a shared future for mankind.<sup>42</sup> At the international level, it emphasizes promoting international energy cooperation on the premise of safeguarding national energy security and constructing a dual-cycle energy system and an international circulation system. At the same time, it is necessary to attach importance to the role of the "rule of law" in ensuring energy security, deepen the legal guarantees for energy cooperation under the "Belt and Road Initiative", reconstruct international energy trading rules, and form a perfect governance framework around global energy.<sup>43</sup>

In the face of the dilemma of global ocean governance, China has further proposed the concept of a maritime community with a shared future based on the concept of a community with a shared future for mankind.<sup>44</sup> The concept of a maritime community with a shared future can be specifically interpreted as a community of shared interests, shared values, and a shared future for the oceans. China, therefore, advocates conducting ocean governance based on the values of peace, development, fairness, freedom, and democracy.<sup>45</sup> Furthermore, to ensure the orderly and standardized development of ocean governance, China believes that a sound legal framework should be established at the international level to clarify the responsibilities of each State in ocean governance, resort to legal means to resolve disputes between States over ocean governance, and ensure the long-term operation of mechanisms for ocean governance cooperation.<sup>46</sup>

Secondly, China has actively translated its new concepts of international governance, such as the community of shared future for mankind, into tangible practices, yielding substantial results. Among these endeavors, the most

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41 Feng, *supra* note 38.

42 Pingkuo Liu & Zhaohui Hei, *Strategic Analysis and Framework Design on International Cooperation for Energy Transition: A Perspective from China*, 8 ENERGY REPORTS 2601 (2022).

43 Kaho Yu, *Energy Cooperation Under the Belt and Road Initiative: Implications for Global Energy Governance*, 20 JOURNAL OF WORLD INVESTMENT & TRADE 243, 257–58 (2019).

44 Chang, *supra* note 20, at 12.

45 Weibin Zhang, Yen-Chiang Chang & Liangfu Zhang, *An Ocean Community with a Shared Future: Conference Report*, MARINE POLICY, Feb. 19, 2020, at 1, 1.

46 Meng Li & Yen-Chiang Chang, *Legal Order in the World's Oceans – UN Convention on the Law of the Sea*, 36 INTERNATIONAL JOURNAL OF MARINE AND COASTAL LAW 697, 701 (2021) (book review).

prominent is the “Belt and Road Initiative” proposed by China in 2013.<sup>47</sup> The joint construction of the “Belt and Road Initiative” represents China’s proposal for global open cooperation, improvement of the global economic governance system, promotion of global common development and prosperity, and the advancement of the building of a community with a shared future for mankind.<sup>48</sup> It also constitutes a significant contribution to upholding multilateralism and international cooperation. Since the inception of the “Belt and Road Initiative”, China has signed over 200 cooperation agreements with more than 150 States and over 30 international organizations,<sup>49</sup> resulting in over 3,000 cooperation projects and triggering investment nearing trillions of US dollars.<sup>50</sup> The Belt and Road projects have become the largest-scale international cooperation platform. As 2023 marked the tenth anniversary of the “Belt and Road Initiative,” China will continue to advance its construction.<sup>51</sup> While focusing on the development prospects in traditional areas such as economics and trade, production capacity, energy, and transportation, China will also pay attention to new fields such as finance, agriculture, poverty alleviation, green and low-carbon development, healthcare, and digital innovation. China will

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- 47 Gong Hongliu, *The Belt and Road Initiative (BRI): A China-Specific Approach for Global Governance*, 8 JOURNAL OF WTO AND CHINA 36, 36 (2018).
- 48 Ruan Zongze, *The Belt and Road Initiative Is Shaping a Shared 21st Century*, 76 CHINA INTERNATIONAL STUDIES 5, 5 (2019) (China).
- 49 Yan Fujing (严赋憬) & Chen Weiwei (陈伟伟), *Woguo Yi yu 152 Ge Guojia, 32 Ge Guoji Zuzhi Qianshu Gongjian “Yi Dai Yi Lu” Hezuo Wenjian* (我国已与152个国家、32个国际组织签署共建“一带一路”合作文件) [*China has Signed Cooperation Documents for the Joint Construction of the Belt and Road Initiative with 152 Countries and 32 International Organizations*], XIN HUA SHE (新华社) [XINHUA NEWS AGENCY] Aug. 24, 2023, reprinted in ZHONGHUA RENMIN GONGHEGUO ZHONGYANG RENMIN ZHENGFU (中华人民共和国中央人民政府) [THE STATE COUNCIL THE PEOPLE’S REPUBLIC OF CHINA], [https://www.gov.cn/lianbo/bumen/202308/content\\_6899977.htm](https://www.gov.cn/lianbo/bumen/202308/content_6899977.htm).
- 50 Du Haitao (杜海涛), Li Xiang (李翔) & Luo Shanshan (罗珊珊), *Gongtong Ba Zhe Tiao Zaofu Shijie de Xingfu Zhi Lu Pu de Geng Kuan Geng Yuan – Xi Jinping Zongshuji Guanyu Gongjian “Yi Dai Yi Lu” Zhongyao Lunshu Zongshu* (共同把这条造福世界的幸福之路铺得更宽更远 - 习近平总书记关于共建“一带一路”重要论述综述) [*Jointly Widen and Extend This Road of Happiness Benefiting the World – A Summary of General Secretary Xi Jinping’s Important Expositions on Jointly Building the “Belt and Road” Initiative*], RENMIN RIBAO (人民日报) [PEOPLE’S DAILY] Oct. 16, 2023, reprinted in ZHONGHUA RENMIN GONGHEGUO ZHONGYANG RENMIN ZHENGFU (中华人民共和国中央人民政府) [THE STATE COUNCIL THE PEOPLE’S REPUBLIC OF CHINA], [https://www.gov.cn/yaowen/liebiao/202310/content\\_6909316.htm](https://www.gov.cn/yaowen/liebiao/202310/content_6909316.htm).
- 51 Zhang Li (张丽), “Yi Dai Yi Lu” Changyi Shi Zhoumian Huigu yu Zhanwang (“一带一路”倡议十周年回顾与展望) [*Review and Prospect of the 10th Anniversary of the “Belt and Road” Initiative*], DUI WAI JING MAO (对外经贸) [FOREIGN ECONOMIC RELATIONS & TRADE], Apr. 30, 2024, at 23.

strengthen cooperation with other States to build a community of cooperation and mutual achievements.

Another notable contribution from China is the establishment of the International Mediation Institute.<sup>52</sup> In recent years, there has been an increasing demand for mediation in the international community. However, there is currently no intergovernmental international organization dedicated to mediation.<sup>53</sup> International disputes are still mainly resolved through litigation, arbitration, etc., which cannot fully meet international demand.<sup>54</sup> China has responded to the development and demand for international mediation by drafting and reaching a joint declaration with like-minded States to jointly establish the International Mediation Institute, which specializes in providing mediation services and offering friendly, flexible, economical, and convenient solutions for various international disputes. In 2022, China signed an agreement with the Hong Kong Special Administrative Region Government to specify the establishment of the preparatory office of the International Mediation Institute in the Hong Kong Special Administrative Region.<sup>55</sup> In the future, negotiations will be organized among governments on issues such as the establishment of international conventions for the International Mediation Institute.

Thirdly, China attaches great importance to the construction of international legal norms.<sup>56</sup> As an important member of the international community, China consistently respects and adheres to international law, abides by recognized international law and basic norms of international relations, fully considers relevant international treaties and conventions in its domestic legislation, and actively fulfills its international obligations. China consistently and resolutely upholds the international legal system with the purposes and

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52 Tian Feilong (田飞龙), *Zhongguoshi Xiandaihua yu Heping Fazhan Daolu de Zhidu Tansuo* (中国式现代化与和平发展道路的制度探索) [*Institutional Exploration of China's Modernization and Peaceful Development Path*], *ZHONG TIANFU XINLUN* (中天府新论) [NEW HORIZONS FROM TIANFU], MAY 5, 2023, at 34.

53 Vassilena Gashparova, *Towards Institutionalizing International Mediation*, 28 *LEX ELECTRONICA* 317, 336 (2023).

54 August Reinisch, *The Proliferation of International Dispute Settlement Mechanisms: The Threat of Fragmentation vs. the Promise of a More Effective System? Some Reflections from the Perspective of Investment Arbitration*, in *INTERNATIONAL LAW BETWEEN UNIVERSALISM AND FRAGMENTATION* 107 (Isabelle Buffard et al., eds., 2008).

55 Sun Jin & Ji Xiaoxue, *Faqi Jianli Guoji Tiaojie Yuan: Beijing Jichu ji Jinzhan* (发起建立国际调解院：背景、基础及进展) [*Establishing the International Organization for Mediation: Context, Basis and Progress*], *GUOJIFA YANJIU* (国际法研究) [CHINESE REVIEW OF INTERNATIONAL LAW], NOV. 15, 2023, at 4.

56 Kong & Ping, *supra* note 2, at 163.

principles of the United Nations Charter<sup>57</sup> at its core,<sup>58</sup> serving as a recognized builder of world peace, contributor to global development, and defender of international order. While firmly upholding existing international legal norms, China, guided by the vision of a community with a shared future for mankind, actively participates in international governance with a more proactive stance, actively exploring research areas, translating Chinese theories into practical rules, and directly influencing global governance.<sup>59</sup> On one hand, under the guidance of the concept of a community with a shared future for mankind, China actively participates in the reform of international rules. In the era of globalization, economic exchanges among States are becoming increasingly interconnected. China, relying on platforms such as the World Trade Organization (WTO), actively contributes to the formulation of rules in multilateral settings, actively initiates and participates in negotiations on regional economic and trade agreements, and makes outstanding contributions to the formation and development of bilateral and regional economic and trade rules.<sup>60</sup> In terms of quantity, China has signed over twenty-two free trade agreements,<sup>61</sup> and in terms of quality, China-initiated international economic and trade rules have also been qualitatively improved.<sup>62</sup> For example, the Comprehensive Agreement on Investment between China and the EU,<sup>63</sup> completed on December 30, 2020, has moved away from the traditional emphasis

57 U.N. Charter (opened for signature on June 26, 1945, and entered into force on October 24, 1945).

58 Jia, *supra* note 35.

59 See Yun-han Chu, *A Reformist, Not a Revisionist: The Emerging Global Role of China*, in *THE DECLINE OF THE WESTERN-CENTRIC WORLD AND THE EMERGING NEW GLOBAL ORDER: CONTENDING VIEWS* 186, 190–200 (Yun-han Chu & Yongnian Zheng eds., 2021).

60 See Qingjiang Kong & Li Chen, *Will China Redefine International Trade Norms?*, 16 *ASIAN JOURNAL OF WTO & INTERNATIONAL HEALTH LAW AND POLICY* 219, 231 (2021).

61 Xu Lingyuan (徐令缘), *Zhongguo Yi Yu 29 Ge Guo Jia He Diqu Qianshuo 22 Ge Zifei Xie Ding – Yi Gao Shuiping Kaifang Cujin Huli Gongying* (中国已与29个国家和地区签署22个自贸协定——以高水平开放促进互利共赢) [*China Has Signed 22 Free Trade Agreements with 29 Countries and Regions – Promoting Mutual Benefit and Win-Win Results with High-Level Opening Up*], *RENMIN RIBAO HAIWAI BAN* (人民日报海外版) [PEOPLE'S DAILY OVERSEAS EDITION] Apr. 11, 2024, reprinted in *ZHONGHUA RENMIN GONGHEGUO ZHONGYANG RENMIN ZHENGFU* (中华人民共和国中央人民政府) [THE STATE COUNCIL THE PEOPLE'S REPUBLIC OF CHINA], [https://www.gov.cn/yaowen/liebiao/202404/content\\_6944500.htm](https://www.gov.cn/yaowen/liebiao/202404/content_6944500.htm).

62 Nie Xinwei (聂新伟), *Zhidu Xing Kaifang: Lishi Luoji, Lilun Luoji Yu Shijian Luoji* (制度型开放：历史逻辑、理论逻辑与实践逻辑) [*Opening-up Based on Institutions: Logics of History, Theory and Practice*], *CAIJING ZHIKU* (财经智库) [FINANCIAL MINDS], Mar. 10, 2022, at 97.

63 Cristina Elena Popa Tache, *The EU-China Road to the Comprehensive Agreement on Investment*, 12 *JURIDICAL TRIBUNE* 476, 478 (2022).

on protecting foreign investment in bilateral investment protection agreements, incorporating content promoting investment openness, fairness, and sustainable development, making it a comprehensive and inclusive bilateral investment protection agreement including investment liberalization goals.<sup>64</sup> At the same time, China is also concerned about the crises facing the operation of the WTO. In 2020, China and some WTO members, such as the EU, reached the “Multi-party Interim Appeal Arbitration Arrangement”<sup>65</sup> in response to the crisis of the WTO Appellate Body’s paralysis, meeting the appeal needs of WTO members and maintaining the operation of the WTO dispute settlement mechanism. China actively focuses on WTO reform issues, issuing position papers on “China’s Position Paper on WTO Reform”<sup>66</sup> and “China’s Proposals on WTO Reform,”<sup>67</sup> providing Chinese wisdom for WTO reform.

On the other hand, China also pays close attention to international legislation in emerging fields. Currently, in international relations practice and inter-state competition, there is a trend of expanding from traditional terrestrial areas to new domains such as the oceans, polar regions, outer space, and cyberspace.<sup>68</sup> The lack of norms and fragmentation in governance in emerging fields greatly hinder the deepening of international governance processes. China pays close attention to these emerging fields and is deeply involved in studying and participating in the establishment of rules in new areas. Among them, the formulation and implementation of international law of the sea is

64 Gao Yunsheng & Sun Lu, *Accord Global d’Investissement Chine-UE et Ouverture de Haut Niveau de la Chine* [China-EU Comprehensive Investment Agreement and China’s High Level Opening Up], 2 ETUDES FRANCAISES [FRENCH STUDIES] 100, 107 (2023) (China).

65 *Zhongguo Yu Oumeng Deng Chengyuan Xiang Shimao Zuzhi Tongbao Duofang Linshi Shangsu Zhongcai Anpai* (中国与欧盟等成员向世贸组织通报多方临时上诉仲裁安排) [China, the EU and Other Members Inform the WTO of the Multilateral Interim Appellate Arbitration Arrangement], ZHONGHUA RENMIN GONGHEGUO SHANGWU BU (中华人民共和国商务部) [MINISTRY OF COMMERCE OF THE PEOPLE’S REPUBLIC OF CHINA] (Apr. 30, 2020, 7:59 PM), <http://m.mofcom.gov.cn/article/ae/ai/202004/20200402961036.shtml>.

66 *See Zhongguo Guanyu Shimao Zuzhi Gaige de Lichang Wenjian* (中国关于世贸组织改革的立场文件) [China’s Position Paper on WTO Reform], ZHONGHUA RENMIN GONGHEGUO SHANGWU BU (中华人民共和国商务部) [MINISTRY OF COMMERCE OF THE PEOPLE’S REPUBLIC OF CHINA] (Dec. 17, 2018, 6:39 PM), <http://m.mofcom.gov.cn/article/jiguanzx/201812/20181202817611.shtml>.

67 *See Zhongguo Guanyu Shimao Zuzhi Gaige De Jianyi Wenjian* (中国关于世贸组织改革的建议文件) [China’s Proposal Document on WTO Reform], ZHONGHUA RENMIN GONGHEGUO SHANGWU BU (中华人民共和国商务部) [MINISTRY OF COMMERCE OF THE PEOPLE’S REPUBLIC OF CHINA] (May 15, 2019 4:28 PM), <http://images.mofcom.gov.cn/sms/201905/20190514094326062.pdf>.

68 Xiao, *supra* note 24.

currently a key concern globally.<sup>69</sup> China responds to this call, actively participates in the institutional construction of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement),<sup>70</sup> and proposes constructive suggestions for the establishment of the BBNJ Agreement. For example, the concept of a community with a shared future for mankind advocated by China aligns with the purposes and principles of capacity building and marine technology transfer under the BBNJ Agreement. During the negotiation process of the BBNJ Agreement, guided by the concept of a community with a shared future for mankind, China played an important role in the negotiations of the BBNJ Agreement, and China's voice was heard by the world.<sup>71</sup>

As the status of rules in cyberspace continues to rise, China also attaches great importance to cyber governance. China proposes the initiative to build a community with a shared future in cyberspace.<sup>72</sup> In 2020, China submitted the "Global Data Security Initiative"<sup>73</sup> to the United Nations General Assembly, advocating that all States should be committed to maintaining a peaceful, secure, open, cooperative, and orderly cyberspace, respecting national

69 Jia, *supra* note 35, at 727.

70 Intergovernmental Conference on an International Legally Binding Instrument Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, *Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction*, U.N. Doc. A/CONF.232/2023/4 (June 19, 2023).

71 Bai Jiayu (白佳玉) & Wang Yi (王怡), *BBNJ Xie Ding Zhong Neng Li Jian She He Hai Yang Ji Shu Zhuan Rang Gui Fan de Shi Yong - Jian Lun Ren Lei Ming Yun Gong Tong Ti Li Nian Xia De Zhong Guo Yin Ying (BBNJ 协定中能力建设与海洋技术转让规范的适用——兼论人类命运共同体理念下的中国因应)* [*The Application of the Capacity-Building and the Transfer of Marine Technology Norms in the BBNJ Agreement: An Inspiration for China Under the Vision of a Community with a Shared Future for Mankind*], WUDA GUOJIFA PINGLUN (武大国际法评论) [WUHAN UNIVERSITY INTERNATIONAL LAW REVIEW], Nov. 30, 2023, at 35.

72 Xia Liping (夏立平), *Goujian Wangluo Kongjian Mingyun Gongtongti: Yiyi, Neirong yu Yingxiang (构建网络空间命运共同体：意义、内容与影响)* [*Building a Community of Shared Future in Cyberspace: Significance, Content and Impact*], 10 RENMIN LUNTAN XUESHU QIANYAN (人民论坛·学术前沿) [FRONTIERS] May. 31, 2023, at 94.

73 *Quan Qiu Shu Ju An Quan Chang Yi (全球数据安全倡议)* [*Global Data Security Initiative*], XIN HUA SHE (新华社) [XINHUA NEWS AGENCY] Sep. 08, 2020, *reprinted* in ZHONGHUA RENMIN GONGHEGUO ZHONGYANG RENMIN ZHENGFU (中华人民共和国中央人民政府) [THE STATE COUNCIL THE PEOPLE'S REPUBLIC OF CHINA], [https://www.gov.cn/xinwen/2020-09/08/content\\_5541579.htm](https://www.gov.cn/xinwen/2020-09/08/content_5541579.htm).

sovereignty in cyberspace, and advocating for the application of international law in cyber governance within the framework of the United Nations.<sup>74</sup> Other emerging domains, such as polar regions and outer space, are generally considered as the common heritage of mankind at the international level.<sup>75</sup> China pays high attention to the international governance of polar regions and outer space and explicitly states that the new domains, such as outer space and polar regions, are of significant national security importance in its domestic legislation. Regarding the international governance of polar regions and outer space, China continues to be guided by the concept of a community with a shared future for mankind, advocating that States around the world should actively engage in international exchanges and cooperation on the basis of mutual respect, equality, and mutual benefit, peacefully utilizing outer space, international seabed areas, and polar regions to increase the well-being of all mankind.<sup>76</sup>

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- 74 Ji Yenan (嵇叶楠), Hu Zhengkun (胡正坤) & Guo Feng (郭丰), *Cong 《Quanqiu Shuju Anquan Changyi》 Kan Zhong Guo Zai Quanqiu Shuju Anquan Yu Zhili Lingyu de Lichang he Jucuo* (从《全球数据安全倡议》看中国在全球数据安全与治理领域的立场和举措) [*China's Stance and Measures in Global Data Security and Governance from the Perspective of the Global Data Security Initiative*], ZHONGGUO XINXI ANQUAN (中国信息安全) [CHINA INFORMATION SECURITY], May 5, 2021, at 33. (China).
- 75 See Carol R. Buxton, *Property in Outer Space: The Common Heritage of Mankind Principle vs. the First in Time, First in Right, Rule of Property*, 69 JOURNAL OF AIR LAW & COMMERCE 689, 699 (explaining that the Outer Space Treaty and the Moon Treaty contains common heritage of mankind language) (2004); *But cf.* Sanjay Chaturvedi, *Ocean Governance and the Polar Regions: Geopolitics, Law, and Sustainability*, 15 OCEAN YEARBOOK 475, 520 (2001) (explaining that countries have different perspectives on polar regions, in that some argue for territorial claims while others argue for it to be common heritage of mankind).
- 76 *Xieshou Goujian Renlei Mingyun Gongtongti: Zhongguo de Changyi yu Xingdong, Zhonghua Renmin Gongheguo Guowuyuan Xinwen Bangongshi* (携手构建人类命运共同体：中国的倡议与行动，中华人民共和国 国务院新闻办公室) [*Working Together to Build a Community with a Shared Future for Mankind: China's Initiatives and Actions, Information Office of the State Council of the People's Republic of China*], XIN HUA SHE (新华社) [XINHUA NEWS AGENCY] Sep. 26, 2023, *reprinted in* ZHONGHUA RENMIN GONGHEGUO ZHONGYANG RENMIN ZHENGFU (中华人民共和国中央人民政府) [THE STATE COUNCIL THE PEOPLE'S REPUBLIC OF CHINA], [https://www.gov.cn/zhengce/202309/content\\_6906335.htm](https://www.gov.cn/zhengce/202309/content_6906335.htm).

# India

R. Rajesh Babu\*

## 1 From Your Own Country, Is There a Unique Perspective of International Law?

India's approach to international law is profoundly influenced by its historical experiences and colonial past. Even before gaining independence on August 15, 1947, India had well-established relations with other states based on widely accepted customs and rules of inter-state conduct. India staunchly advocates for a rule-based international legal order and multilateralism, firmly rooted in the principles of sovereign equality of states, mutual respect, and peaceful coexistence. These principles are enshrined in the Constitution of India's directive principles of state policy (DPSP), emphasising India's commitment to "(a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and (d) encourage settlement of international disputes by arbitration" (Article 51, Constitution of India).<sup>1</sup> These Directives, though not enforceable by any court, are considered fundamental in the governance of the country.<sup>2</sup>

India's perspective is rooted in the belief that for an international treaty to become internal law in India, it must first undergo a transformation into municipal law. Without appropriate legislation passed by the Indian Parliament, these treaties are not binding. Nevertheless, Indian courts have confidently upheld international treaties in the absence of comparable domestic laws, as long as they align with the Indian Constitution. A prime example is the *Vishaka v. State of Rajasthan* case,<sup>3</sup> where the Supreme Court used human rights to interpret constitutional provisions and relied on treaties that had not been ratified or enacted as law. Recently, the Supreme Court in *MK Ranjitsinh and Ors. v. Union of India and Ors* (2024) acknowledged that India has made international commitments founded in the Kyoto Protocol, Paris Agreement, etc., in order

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1 INDIA CONST. art. 51.

2 V.G. Hedge, *International Law in the Courts of India*, 19 ASIAN YEARBOOK OF INTERNATIONAL LAW 63, 67 (2013) (citing INDIA CONST. art. 37).

3 *Vishaka & Ors. v. State of Rajasthan & Ors.*, (1997) Supp. 3d SCR 404 (India).

to combat climate change, reduce greenhouse gas emissions, and promote renewable energy.<sup>4</sup> The Supreme Court emphasised the need to remain “alive to these obligations while adjudicating writ petitions which seek reliefs that may hinder these obligations from being fulfilled or otherwise interfere with India’s international commitments ...”<sup>5</sup> The Apex Court also recognised the right to a healthy environment and the right to be free from the adverse effects of climate change as a fundamental right.

Similarly, in the context of the treaty-making power, the Union Executive is empowered to execute treaties. In order to ensure that India is in a position to efficiently discharge all obligations emanating from the treaties, the ratification or accession is usually undertaken only after the relevant domestic laws have been amended, or the enabling legislation has been enacted. Thus, a proposal for entering into such treaties should specifically state that such ratification or accession will be made only after amending the relevant domestic laws or enacting the appropriate legislation.<sup>6</sup>

India’s foreign policy was initially focused on avoiding involvement in the power struggles of rival state alliances and promoting peace, harmony, and cooperation. India has consistently asserted its interpretation of the international legal order to safeguard its independence and sovereignty. Its unwavering stance on colonialism, self-determination, and its leadership in the Non-Aligned Movement (NAM) exemplify this guiding philosophy.

Some of these unique perspectives espoused by India are highlighted below.

India staunchly opposes colonialization and firmly upholds the people’s right to self-determination as a sacrosanct legal and political right. India believes that this right is a cornerstone of democracy and an indispensable aspect of international life.<sup>7</sup> However, India firmly asserts that the right to self-determination cannot be used to justify the secession of any part of a country or its population; rather, it should only be applied in the context of foreign domination or colonial exploitation. India also adamantly advocates for the right of people to defend themselves against colonial domination while exercising their right to self-determination. India notes that in its external

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4 M.K. Ranjitsinh & Ors. v. Union of India & Ors., (2024) 3 SCR 1320, 1330, 1333 (India).

5 *Id.* at 1353.

6 Ministry of External Aff., Guidelines/SoP on the Conclusion of International Treaties in India, SoP 24-07-2017 (Issued on Aug. 29, 2017).

7 S.G. Sreejith, Harris Jamil & R. Rajesh Babu., *India, Colonialism and the Right to Self-determination*, in 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW IN ASIA (Seokwoo Lee & Hee Eun Lee eds., 2021).

aspect, this right applies only to “peoples under alien subjugation or colonial rule” and does not apply to parts of “existing States.”<sup>8</sup>

Equally, India has strongly committed itself to the principle of sovereignty, multilateralism, and non-interference in the domestic affairs of sovereign states. As a founding member of the U.N., India has been an avid supporter of the multilateralism that the U.N. and its organs represent. In this context, India has historically placed its trust in the U.N. system as a neutral international forum and has made significant contributions to its functioning. India was also very critical of any military interventions without sanction by the U.N. Security Council, and this position was evident in the cases of Kosovo, Iraq, Libya, and Syria.

At the same time, India has been critical of the U.N. Security Council (UNSC) decisions wherein its stakes were involved, such as the liberation of Goa and the Kashmir dispute.<sup>9</sup> India was also critical of the UNSC for being dominated by powerful states and overlooking the concerns of newly independent states. India has highlighted the democratic and legitimacy deficits in the structure and composition of the UNSC.<sup>10</sup> In 1979, India, along with other states, advocated for equitable representation and an increase in the membership of the Security Council.<sup>11</sup> In 2005, India proposed a comprehensive U.N. reform. Regarding UNSC membership, India joined forces with Brazil, Germany, and Japan to push for a Council reform, which included the creation of four new permanent seats for them and two for Africa, as well as four additional elected seats. India argued that the power realities of the twenty-first century, along with any objective criteria, such as population, territorial size, GDP, economic potential, civilizational legacy, cultural diversity, political system, and past and ongoing contributions to the activities of the U.N.—especially to U.N. peacekeeping operations—make India eminently qualified for permanent membership.

India is resolutely committed to a nuclear-weapon-free world through global, verifiable, and non-discriminatory nuclear disarmament. Accordingly,

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8 1966 Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States, 43d mtg. at 15, U.N. Doc. A/AC.125/SR.43 (Apr. 12, 1966).

9 Archana Negi & Shannu Narayan, *India's Membership in the UN Security Council*, in 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW IN ASIA (Seokwoo Lee & Hee Eun Lee eds., 2021).

10 U.N. GAOR, 15th Sess., 882nd plen. mtg. at 111, U.N. Doc. A/PV.882 (Oct. 3, 1960) (citing the statement by Prime Minister Jawahar Lal Nehru).

11 Algeria et al., Request for the Inclusion of an Additional Item in the Agenda of the 34th Session: Question of Equitable Representation on and Increase in the Membership of the Security Council, U.N. Doc. A/34/246 (Nov. 14, 1979).

India has joined various multilateral export control regimes. However, India has consistently raised strong objections to the Nuclear Non-Proliferation Treaty (NPT) of 1968<sup>12</sup> and the Comprehensive Nuclear Test Ban Treaty (CTBT) of 1996.<sup>13</sup> While India was at the forefront of calling for a comprehensive ban on nuclear testing and nuclear non-proliferation, it firmly opposed these treaties, considering them discriminatory and a challenge to the fundamental principle of “sovereign equality of states.” India staunchly believes that access to nuclear options should not be restricted to a select few nations. In a statement presented before Parliament in 1996, the Minister of External Affairs (MEA) of the Government of India emphasized, “We have never accepted ... that it can be considered legitimate for some countries to rely on nuclear weapons for their security while denying this right to others.”<sup>14</sup> India has still not joined the NPT and maintains that it will not do so as a non-nuclear weapons state.

Further, India is the only non-NPT member to adhere to the “No First Use” nuclear weapons policy, meaning that India will use nuclear weapons only in response to a nuclear attack on Indian territory or forces. Additionally, India upholds the principle of “non-use of nuclear weapons against non-nuclear weapon states.” This commitment to a retaliation-only policy is part of India’s credible minimum deterrence (CMD) doctrine, which focuses on developing a minimal but credible deterrent to dissuade adversaries. This doctrine includes the provision that nuclear weapons may be used if Indian forces are attacked with biological or chemical weapons.

India has also expressed strong reservations about the structural bias in the international investment law normative framework, which has historically favoured the investors over the host state and its people. The current structure of bilateral investment protection treaties (BITs) and investor-state dispute settlement (ISDS) mechanisms thereunder are widely perceived by India as contributing to this imbalance. The highly contentious interpretation developed by the arbitrators in *White Industries Australia v India*,<sup>15</sup> a case India lost, accentuated this perception of bias. In response, India has proposed fundamental structural changes to rebalance the rights of investors and the obligations of the government. As part of this effort, India has terminated all existing BITs whose initial validity had expired, drafted a new Model BIT to minimise

12 Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161.

13 G.A. Res. A/RES/50/245, Comprehensive Nuclear-Test-Ban Treaty, (Sept. 10, 1996).

14 See U.N. GAOR, 50th Sess., 12th plen. mtg. at 15, U.N. Doc. A/50/PV.12 (Sept. 29, 1995).

15 *White Indus. Austl. Ltd. v. India*, IIC 529, Final Award (Ad Hoc Trib. 2011), [https://opil.ouplaw.com/display/10.1093/law:iic/529-2011.case.1/IIC529\(2011\)D.pdf](https://opil.ouplaw.com/display/10.1093/law:iic/529-2011.case.1/IIC529(2011)D.pdf).

arbitrary discretion, and proposed new ISDS provisions favouring local remedies and requiring foreign investors to exhaust local remedies for five years before pursuing arbitration.

India's unwavering commitment to safeguarding national interest is evident in its firm stance during the WTO Doha round of trade negotiations. India took a principled approach on vital issues such as food security, public health, trade facilitation, and fisheries subsidies. The instrumental role played by India in the agriculture negotiations at the WTO is a case to the point. Together with other developing countries, India has made over thirty-three submissions on agriculture.<sup>16</sup> The core of the submission was the protection of the livelihood of farmers in developing countries and the need for differential treatment. This position is exemplified by the statement of India's Minister for Commerce at the WTO stating, "I made it very clear in these talks that I am willing to negotiate commerce. I am not willing to negotiate livelihood security."<sup>17</sup>

In short, the growing stature as a reemerging global power has empowered India to actively engage in its attempts to reshape the multilateral order in its own terms by being assertive on alternative perspectives and taking proactive positions against the dominant narrative of the international legal order. In doing so, India is not attempting to replace the existing system, but is attempting to reform and strengthen the existing governance structure with a larger role for itself.

## 2 What Has Been Your Country's Contribution to the Development of International Law?

India, despite its relatively modest standing in the international arena following its independence in 1947, has made significant contributions to and exerted influence on the development of modern international law. In the initial decades, India took a bold and proactive stance on colonialism and the recognition of newly independent states. It endeavoured to shape an alternative Asian and African perspective of international law, maintained non-alignment with dominant powers, spearheaded campaigns against apartheid, and promoted the principle of peaceful coexistence. These influential ideas continue to resonate even today.

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<sup>16</sup> See Priyanshu Gupta & R. Rajesh Babu, *International Posturing Amidst Domestic Neglect: India's Agricultural Policy Examined*, 18 *WORLD TRADE REVIEW* 399 (2018).

<sup>17</sup> *Id.* at 413–14.

India's defining contribution to the development of modern international law is in the area of decolonization. The diplomatic challenge to colonialism came in the form of a combined effort of the Asian-African states with India as one of their representatives. At the 1955 Bandung Asian-African Conference Declaration, India and other Asian-African states collectively stated that "colonialism in all its manifestations is an evil which should speedily be brought to an end."<sup>18</sup> In 1960, India joined forty-one nations in presenting the Declaration on the Granting of Independence to Colonial Countries and Peoples, which was unanimously adopted by the U.N. General Assembly in 1960. The Resolution affirmed independence for countries and peoples under colonial rule. India was a founding member of C-24, the Special Committee on Decolonisation. Additionally, India was elected as the first chair of the Special Committee on the Situation with regard to the implementation of the Declaration. India actively supported the recognition of new states emerging from colonial rule and facilitated their admission as members of the U.N.

Similarly, India was a prominent critic of apartheid and racial discrimination in South Africa. It was the first country to address this issue at the U.N. in 1946 and played a key role in establishing a sub-committee against apartheid under the U.N. General Assembly. Additionally, India was one of the earliest countries to sign the International Convention on the Elimination of All Forms of Racial Discrimination when it was adopted in 1965. Out of nine core human rights treaties, India is a state party to six and a signatory to two. However, in recent years, India has been passive in the Committee owing to disagreement over the interpretation of caste being equated with race.

India, in collaboration with China, played a pivotal role in establishing the five principles of peaceful coexistence, commonly known as *Panchsheel*. These principles call for:

- (1) Mutual respect for each other's territorial integrity and sovereignty;
- (2) Mutual non-aggression;
- (3) Mutual non-interference in each other's internal affairs;
- (4) Equality and mutual benefit; and
- (5) Peaceful coexistence.

The *Panchsheel* principles have had a significant impact on the Final Communiqué of the Bandung Conference, the Non-Aligned Movement (NAM), and the UNGA Resolution on Peaceful Coexistence (1957). Adopted by several

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18 *Final Communiqué of the Asian-African Conference, ASIA-AFRICA SPEAK FROM BANDUNG*. JAKARTA: MINISTRY OF FOREIGN AFFAIRS, REPUBLIC OF INDONESIA 5 (April 24, 1955), <https://www.cvce.eu/s/3n>.

countries, *Panchsheel* represents a major contribution of the Asian tradition to the principles of international law governing international relations.

India, along with other developing nations, played a pivotal role in challenging the inherent bias of the international economic order and contributed to the adoption of several U.N. General Assembly resolutions advocating for a New International Economic Order (NIEO). India was influential in the adoption of U.N. General Assembly resolutions, such as the Permanent Sovereignty over Natural Resources (PSNR) 1962, the Declaration for the Establishment of a New International Economic Order (NIEO) 1974, and the Charter of Economic Rights and Duties of States 1974. Furthermore, India played a significant role in the drafting and adoption of the U.N. Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States 1970. In recent years, as a key member of the Group of 20 and the Quadrilateral Security Dialogue, commonly known as the QUAD, India continues to shape and strengthen global architecture and governance.

Over the decades, India has played a significant role in shaping the international legal system and influencing key global issues, such as terrorism, climate change, disarmament, and reforming the U.N. The country has actively participated in the development of international environmental law, human rights, and international trade law, while also promoting peaceful resolution of international disputes and adherence to international judgments and awards. Notably, India has made substantial contributions to the drafting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Supreme Court of India has proactively referred to the ICCPR and ICESCR in its judgments to strengthen human rights jurisprudence in India. This commitment is evident in India's involvement in the U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in 1998, despite later deciding not to become a state party to the Rome Statute. During its G20 Presidency in 2023, India highlighted the summit with its philosophy of *Vasudhaiva Kutumbakam* (The World is One Family).

India has played a pivotal role in shaping modern international environmental law, particularly through its participation in the Stockholm Conference and the Rio Conference in 1992. These conferences were instrumental in setting the global environmental agenda. India's involvement was especially significant from the perspective of a developing country as it reflected its unique issues and concerns. India emphasized the crucial link between economic development and environmental protection, making it a priority. In particular, India's most significant contribution is the principle of common but differentiated responsibility (CBDR), which recognizes that while all countries

are responsible for addressing global environmental issues like climate change, developed countries bear a greater responsibility due to their historical contributions to global pollution.

Additionally, India advocated for the inclusion of two key aspects that became fundamental norms in many multilateral environmental treaties: financial assistance and facilitated access to technology. The Indian judiciary has also drawn upon the principles of international environmental law to address a wide range of environmental issues. This has led to the articulation of principles such as sustainable development, the polluter pays principle, the precautionary principle, and inter-generational equity as part of domestic environmental law. Other manifestations of India's contributions and initiatives for the development of international law include the establishment of the International Solar Alliance (ISA), the Coalition for Disaster Resilient Infrastructure (CDRI), the new Infrastructure for Resilient Island States (IRIS), and the India-U.N. Development Partnership Fund.

India's influence extends to the multilateral trading system, with the country increasingly playing a pivotal role in shaping the code of conduct for international trade since the 1970s. India's role during the Uruguay Round that established the WTO was moot. However, it has exerted considerable influence and leadership at the Doha Development Round of trade liberalization negotiations launched in 2001, advocating for a level playing field for developing countries. India, individually and jointly, submitted several proposals during the Doha Round of trade negotiations, formed regional and sectoral groupings, and dictated outcomes. India has actively participated in these negotiations, advocating for market access for products and services and emphasizing the importance of realizing the benefits of the Marrakesh Agreement for developing nations. For instance, India has taken a firm stance on behalf of the poor subsistence farmers in the G-33 group of developing countries, calling for a "special safeguards mechanism" to shield them from sudden influxes of inexpensive food imports. More recently, India has shown leadership in seeking moratorium on digitalized goods and proposed suspension of intellectual property rights on all COVID-19 vaccines, which had significantly affected a large number of countries. India has also taken a strong stand with reference to the WTO Fisheries Subsidies Agreement in achieving global sustainability goals while ensuring the well-being of millions of people who depend on fishing for their livelihoods. India's contributions have significantly impacted the course of trade negotiations and outcomes, demonstrating its leadership in the global trade arena.

India's contribution to international law is multifaceted and not limited to influencing international norms and policies. It is also shaped by remarkable legal personalities who have impacted the field. The nation has produced

numerous lawyers, jurists, and intellectuals who have played a pivotal role in the fight against colonialism, apartheid, and global economic inequality, while also offering developing countries a perspective on international law discourse. Notable Indian figures who have served on the ICJ include (i) Sir Benegal Narsing Rau (1952–1953); (ii) Nagendra Singh (1973–1988) who also served as President from 1985–1988; (iii) R S Pathak (1989–1991); and (iv) Dalveer Bhandari (2012–present).<sup>19</sup> Dr. Neeru Chadha was elected as a Judge of the International Tribunal for the Law of the Sea (ITLOS) for a nine-year term. Ujal Singh Bhatia (2011–2019) and A.V. Ganesan (2000–2008) served on the WTO Appellate Body. A noteworthy, often overlooked jurist from India is Justice Radhabinod Pal (1886–1967) who was a member of the U.N. International Law Commission (1952–1966) and one of the three Asian judges appointed to the International Military Tribunal for the Far East (IMTFE – Tokyo Tribunal) who dissented from the majority judgement and refused to sign the “joint affirmation to administer justice fairly.”<sup>20</sup>

Additionally, India has fostered several leading intellectuals in the field, in particular, Prof. P.R. Anand, Prof. Upendra Baxi, and Prof. B.S. Chimni, whose pioneering works have championed Third World approaches to international law. Their insights challenged the dominant narratives and enriched the evolving landscape of international law jurisprudence. Through these contributions, India asserts a vital voice in the ongoing development of international law, advocating for global justice and equity.

Finally, the significant contributions of Indian soldiers in peacekeeping operations, international scholars, and international civil servants have been accurately summarized by Kofi Annan, the former U.N. Secretary-General, who stated that “India’s has been [sic] one of the most eloquent voices in helping the United Nations .... shape its agenda on behalf of the developing world.”<sup>21</sup> For instance, India has sent more than 240,000 troops in around forty-nine of

19 Archana Negi & Shannu Narayan, *India's Contributions to the Working of the United Nations Principal Organs*, in 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW IN ASIA (Seokwoo Lee & Hee Eun Lee eds., 2021).

20 Monika Chansoria, *Justice Radhabinod Pal: The Life and Times of the Tokyo Trials Jurist*, JAPAN FORWARD (July 14, 2022), <https://japan-forward.com/justice-radhabinod-pal-the-life-and-times-of-the-tokyo-trials-jurist/>.

21 Former U.N. Secretary-General, Secretary-General's Public Lecture at the India International Centre: “In Larger Freedom – the Changing Role of the United Nations,” Including a Question and Answer Session (Apr. 28, 2005), <https://www.un.org/sg/en/content/sg/statement/2005-04-28/secretary-generals-public-lecture-the-india-international-centre-larger-freedom-the-changing-role-of-the-united-nations-including-question-and-answer-session>.

the seventy-one U.N. Peacekeeping Missions. India's approach to peacekeeping is rooted in the principles of neutrality, impartiality, and respect for sovereignty while maintaining a commitment to the protection of civilians and the facilitation of post-conflict reconstruction. Currently, India has around 5,750 troops and police who have been deployed to U.N. peacekeeping missions, being the third highest amongst troop-contributing countries. One hundred and seventy-seven Indian peacekeepers have lost their lives while serving in U.N. missions.<sup>22</sup>

Today, with increased political and economic strength, India has grown more confident in its global engagements. Its expanding partnerships around the world, both bilateral and multilateral, have enabled India to play a leading role—as an agenda setter—in shaping the international system.

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22 PERMANENT MISSION OF INDIA TO THE UN, [https://pminewyork.gov.in/pdf/menu/submenu\\_\\_1173178539.pdf](https://pminewyork.gov.in/pdf/menu/submenu__1173178539.pdf).

# Korea

*Seokwoo Lee\**

## 1 From Your Own Country, Is There a Unique Perspective of International Law?

Korea's experience in international relations is rather unique in the sense that Korea emerged not only from Japanese colonialism, but also from a war-torn country to become an Asian power. Some significant international legal issues include those which resulted from the Japanese occupation of Korea as well as from the Korean War.

### 1.1 *The Legacy of Colonialism*

The historical fact that Japan ruled and controlled Korea from 1910 to 1945 caused many international law issues, some of which have still not been settled, between Korea and Japan. The most critical and fundamental question, among others, is whether the Japanese ruling over Korea was based on the grounds of international law.

In particular, the validity of the two treaties—the treaty of 1905,<sup>1</sup> which deprived Korea of its diplomatic sovereignty, and the annexation treaty of 1910<sup>2</sup>—have been the subject of much controversy. Upon Korea's signing the Treaty on Basic Relations with Japan in 1965<sup>3</sup> to normalize diplomatic relations, the two countries tried to solve unsettled legal issues by concluding additional treaties such as the Agreement on the Settlement of Problems Concerning Property and Claims,<sup>4</sup> Agreement concerning Cultural Assets and Cultural Cooperation,<sup>5</sup> and Agreement concerning the Legal Status and Treatment

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1 Eulsa Neugyak [Japan-Korea Protectorate Treaty of 1905], Japan-Korean Empire, Nov. 17, 1905.

2 Hanil Byeonghap Joyak [Japan-Korea Annexation Treaty], Japan-Korean Empire, Aug. 22, 1910.

3 Hanil Gibon Joyak [Treaty on Basic Relations], Japan-S. Kor., June 22, 1965, 583 U.N.T.S. 33.

4 Hanil Jaesan Mit Cheonggugwon Munje Haegyeolgwa Gyeongjehyeomnyeoge Gwanhan Gyeoljeong [Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Co-Operation], Japan-S. Kor., June 22, 1965, 583 U.N.T.S. 173.

5 Munhwajae Mit Munhwahyeomnyeoge Gwanhan Ilbongwa Hangukgan Hyeopjeong [Agreement on the Art Objects and Cultural Co-Operation], Japan-S. Kor., June 22, 1965, 584 U.N.T.S. 49.

of the Korean Residents in Japan.<sup>6</sup> Without any success, the issue on legality or legitimacy of Japan's ruling over Korea under international law was never solved and rather ended up with vague provisions in the treaty, which, in turn, raises a matter of interpretation until the present time.

### 1.2 *International Legal Issues Arising from the Korean War and Inter-Korean Relations*

Armed conflicts that occurred on the Korean Peninsula in the early 1950s have raised a number of important legal issues under international law. The Korean War poses many legal issues, especially related to international humanitarian law, such as the legal characteristic of the armed conflict, the applicability of the rules of engagement, and the legal meaning of a longstanding ceasefire. As North Korea launched an armed attack against South Korea on June 25, 1950, a series of resolutions were adopted by the U.N. Security Council (UNSC Res. 82,<sup>7</sup> UNSC Res. 83,<sup>8</sup> UNSC Res. 84,<sup>9</sup> UNSC Res. 85).<sup>10</sup> It was the first time the U.N. Security Council had authorized the use of force since its inception in 1945, and members of the United Nations acted collectively to repel aggression.

As a veto by then Soviet Union was frequently used to block numerous Security Council initiatives during the Korean War, the U.N. General Assembly adopted a resolution known as "Uniting for Peace" (UNGA Res 5/377),<sup>11</sup> which stated that if the Security Council fails to exercise its primary responsibility to act as required to maintain international peace and security due to a lack of unanimity of the permanent members, the General Assembly should take over to keep the impetus for peace.

While a Military Demarcation Line was drawn on land at the time the Inter-Korean Armistice Agreement<sup>12</sup> was signed on July 27, 1953, such Demarcation Line did not extend into maritime areas. The seaward extension, known as the Northern Limit Line (NLL), which was drawn by U.N. Commander General Mark Clarke in 1958, has remained contentious and caused confrontations

6 Ilbonguge Geojuhaneun Daehanminguk Gungminui Beopjeok Jiwiwa Daeue Gwanhan Hyeopjeong [Agreement on the Legal Status and Treatment of the Nationals of the Republic of Korea Residing in Japan], Japan-S. Kor., June 22, 1965, 584 U.N.T.S. 3.

7 S.C. Res. 82 (June 25, 1950).

8 S.C. Res. 83 (June 27, 1950).

9 S.C. Res. 84 (July 7, 1950).

10 S.C. Res. 85 (July 31, 1950).

11 G.A. Res. 377 (v), Uniting for Peace (Nov. 3, 1950).

12 Military Armistice in Korea and Temporary Supplementary Agreement, N. Kor.-S. Kor., July 27, 1953, 4 U.S.T. 234.

between the two Koreas as the NLL was not officially part of the Armistice Agreement.

Some key inter-Korean issues, among others, include statehood and recognition, as well as the legal characteristics of the agreements signed by the two Koreas. An issue arises from the provision of the Constitution of the Republic of Korea, which stipulates that the territory of the Republic of Korea shall consist of the whole Korean Peninsula,<sup>13</sup> while the two Koreas were respectively admitted to the United Nations at the same time.

The U.N. membership issue raised a legal question as to whether the Republic of Korea recognized North Korea as a state. The issue gets more complicated as a question also arises as to the legal characteristic of the Agreement on Reconciliation, Nonaggression, and Exchanges and Cooperation between the South and the North<sup>14</sup> (known as the Inter-Korean Basic Agreement), signed in 1991, which recognizes that the relationship between the two Koreas is not a relationship as between states, but rather a special one constituted temporarily in the process of unification.

### 1.3 *Law of the Sea*

Situated at the center of the Northeast Asian Seas, the waters that surround three sides of Korea are important for economic, military, and strategic concerns. Such concerns embrace a wide range of maritime issues, including maritime delimitations and competition for marine resources. Korea has engaged in important legal matters pertaining to the Law of the Sea that are of vital importance, especially in relation to maritime delimitation in zones established by the U.N. Convention on the Law of the Sea.<sup>15</sup> There remains the issue of maritime delimitation due to overlapping claims over the continental shelf with the neighboring countries, such as between Korea and China in the West Sea and between Korea and Japan in the East Sea.

The contribution on the part of Korea in relation to maritime issues includes its active engagement in international efforts to protect marine safety and the marine environment. Since Korea joined the Convention on the International Maritime Organization,<sup>16</sup> Korea, as a Category A Council member with the

13 DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 3 (S. Kor.).

14 Nambuk Saiui Hwahaewa Bulgachim Mit Gyoryu.Hyeomnyeoge Gwanhan Habuiseo [Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation Between the South and the North], N. Kor.–S. Kor., Dec. 13, 1991, <https://peacemaker.un.org/en/node/8999>.

15 U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

16 Convention on the International Maritime Organization, Mar. 6, 1948, 9 U.S.T. 621, 289 U.N.T.S. 3.

largest interest in providing international shipping services, has been leading the development of maritime technology, such as e-navigation, eco-friendly vessels, and autonomous vessel technology.

#### 1.4 *Democracy and International Human Rights Law*

The development of human rights in Korea is closely related to the development of democracy in Korea achieved through the mass protest against dictatorship and military regime from the 1960s to the 1980s. With the development of democracy in Korea since the early 1990s, Korea began to accept major international human rights treaties, ratifying the International Covenant on Civil and Political Rights (ICCPR)<sup>17</sup> and its Protocol<sup>18</sup> in 1990, and the International Covenant on Economic, Social and Cultural Rights<sup>19</sup> in 1990.

Since then, Korea became a party to major international human rights treaties in the following dates, such as the Convention on the Rights of the Child (1991),<sup>20</sup> the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1995),<sup>21</sup> the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2004),<sup>22</sup> and the Convention on the Rights of Persons with Disabilities (2009).<sup>23</sup> In 2001, the National Human Rights Commission was established as a national human rights advocacy institution along with several truth and reconciliation commissions to investigate human rights violations under previous authoritarian regimes.

One of the recent human rights issues includes the right to conscientious objection to military service. Conscientious objection has been a topic of much debate in Korea for decades, especially in cases involving Jehovah's Witnesses. The Supreme Court and the Constitutional Court have consistently affirmed the punishment of conscientious objectors under Korea's Military

17 International Covenant on Civil and Political Rights, Dec. 19, 1966, T.I.A.S. 92-908, 999 U.N.T.S. 171.

18 Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171.

19 International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

20 Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

21 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, T.I.A.S. 94-1120.1, 1465 U.N.T.S. 85.

22 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, T.I.A.S. 13094, 2173 U.N.T.S. 222.

23 Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.

Service Act.<sup>24</sup> However, in 2018, the Constitutional Court held that the Korean law that did not recognize conscientious objection was not consistent with the Constitution. In the same year, the Supreme Court ruled that conscientious objection was justifiable under the Military Service Act.

## 2 What Has Been Your Country's Contribution to the Development of International Law?

Before 1948, Korea did not have a chance to contribute to the development of international law. At the time, the European-oriented international law began to regulate the inter-state relationship of East Asian nations, which accepted international law. Western international law scholars questioned whether Korea was a member of the international community as a sovereign state, and some did not recognize other East Asian countries aside from Japan, such as Korea, China, and Siam, as subjects of international law.

Korea could not contribute to the development of international law under such circumstances, especially when the nation went under the colonial rule of Japan as soon as it opened its door to the West, resulting in the Japanese annexation. Upon gaining independence from Japan on August 15, 1945, Korea was finally placed in a position where it could contribute to the development of international law.

However, due to how armed conflicts between the two Koreas destroyed most of the economic systems in the country, Korea experienced hardship, which prevented it from participating in any meaningful activity to contribute towards the development of international law.

Under this difficulty, however, a noticeable Korean state practice in terms of developing international law emerged, namely, the "Declaration by the President on Sovereignty of Adjacent Ocean"<sup>25</sup> (also known as the "Peace Line Declaration"). The declaration stated that Korea has sovereignty over all the natural resources, minerals, as well as marine products within a certain distance of water, including the ocean floors and the continental shelf near the Korean peninsula.

24 Military Service Act (S. Kor.), translated in Korea Legislation Research Institute's online database, [https://elaw.klri.re.kr/eng\\_service/main.do](https://elaw.klri.re.kr/eng_service/main.do) (search required).

25 Syngman Rhee, Injeop Haeyange Daehan Jugwone Gwanhan Seoneon [Proclamation of Sovereignty Over Adjacent Seas] (Jan. 18, 1952), [https://db.history.go.kr/id/dh\\_024\\_1952\\_01\\_18\\_0020](https://db.history.go.kr/id/dh_024_1952_01_18_0020).

The declaration also allocated maritime sovereignty to Korea far beyond the internationally recognized territorial limits. According to the order of international law at the time, unilateral declarations and measures by Korea could be understood as a violation of international law, infringing upon the right to fisheries in international waters.

Korea's such measures, however, can be viewed as pioneering, taking the lead in the changes of the maritime law, influenced by the United States President's Continental Shelf Declaration,<sup>26</sup> High Sea Fishery Declaration,<sup>27</sup> and the Latin American countries' contention on the expansion of the oceanic jurisdiction.

In the United Nations Law of the Sea Conference in Geneva in 1958, Korea, based on the purpose of the said Declaration, took a position emphasizing the special interests on fisheries of coastal states adjacent in international waters and stood against those countries that proposed freedom of fishing on the High Seas.

The Peace Line Declaration<sup>28</sup> expanded the notion of Exclusive Fisheries Zone to Asian regions and subsequently contributed to the establishment of the Exclusive Economic Zone. However, Korea's contention of sovereignty over the continental shelf was not accepted by the international community.

Armed conflicts in Korea in the early 1950s also affected the development of international law. For example, the United Nations, with the absence of the Soviet Union, jointly identified North Korea as an aggressor and implemented a resolution under the U.N. Security Council to provide assistance to South Korea. Due to the absence of the Soviet Union, the legal effect of the resolution was questioned based on the interpretation of Article 27 of the U.N. Charter.<sup>29</sup> Since then, the U.N. has held that an absence or abstention of a permanent member of the U.N. Security Council does not have an effect on the approval of the resolution by the U.N. Security Council.

The U.N. General Assembly adopted a resolution (377(v) of 1950) of "Uniting for Peace"<sup>30</sup> in order to avoid the Soviet Union's veto against a resolution as a response to the armed conflicts in the Korean peninsula. Through this resolution, a special session of the General Assembly, called "Special Emergency

26 Proclamation No. 2667, 10 Fed. Reg. 12303 (Sept. 28, 1945).

27 High Seas Fishing Compliance, 16 U.S.C. §§ 5501-5509 (1995).

28 Rhee, *supra* note 25.

29 U.N. Charter art. 27(3) ("Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.")

30 G.A. Res. 377 (v), Uniting for Peace (Nov. 3, 1950).

Session,” was formed, and the Interim Committee established in 1947 became meaningless.

After the armistice agreement was concluded, the repatriation of prisoners of war became an issue, and the concerned parties handled this matter in a way that respected the individual wishes of each prisoner of war. Such practice led to the insertion of Article 118 of the Geneva Convention Relative to the Treatment of Prisoners of War, which prescribes that “prisoners of war shall be released and repatriated without delay after the cessation of active hostilities,” which does not include the forced repatriation of prisoners of war who do not wish to be sent back to their country.<sup>31</sup>

The Korea–Japan Agreement of Joint Southern Continental Shelf Development of 1974<sup>32</sup> was influenced by the 1969 decision of the International Court of Justice on North Sea Continental Shelf Cases that perceived the continental shelf as an extension of the dry land,<sup>33</sup> which enabled Korea and Japan to jointly explore and develop natural resources in surrounding waters where the claims of sovereignty between Korean and Japan have been overlapped.

This Agreement has been viewed as one of the most important attempts for joint development by putting an end to an issue of sovereignty over disputed waters. The initiative was also a key example that contributed to the development of international law by creating an international model for joint development in the continental shelf—the first example which derived a consensus on the joint development based on the recommendation of the International Court of Justice (ICJ) decision in 1969.<sup>34</sup>

Furthermore, this Agreement is also viewed as putting great significance on the development of maritime law by setting a precedent of an implementation of the obligation to negotiate under general international law and a precedent of implementation of negotiation duties under Article 83(3) under the United Nations Convention on the Law of the Sea (UNCLOS).<sup>35</sup> Other than this, the

31 Geneva Convention Relative to the Treatment of Prisoners of War art. 118, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

32 Agreement Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries, Japan–S. Kor., Jan. 30, 1974, 1225 U.N.T.S. 113.

33 North Sea Continental Shelf (Ger. v. Den.; Ger. v. Neth.), Judgment, 1969 I.C.J. 3, at 22 (Feb. 20).

34 *Id.*

35 U.N. Convention on the Law of the Sea, *supra* note 15, art. 83(3) (“[T]he States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement ....”).

Agreement was a model of taking a tentative measure under the same article, being a model for a duty of cooperation under Article 123 of the UNCLOS.<sup>36</sup>

As a full-fledged member of the international community, Korea gives more statements and activities in meetings and forums related to international law, and Korea's contribution to the development of international law has become a common practice. To give a couple of examples, during the meeting in Rome for the establishment of the ICC, there were conflicting views on the system of acceptance of the ICC jurisdiction: one view was to adopt a method based on state's consent, and the other view was to recognize automatic jurisdiction as to the crimes that fall under universal jurisdiction. Amid this controversy, Korea proposed that the ICC should recognize jurisdiction if at least one of the following countries—country of origin of crimes, country of detention, country of defendant's nationality, or country of plaintiff's nationality—is either a State Party to the Rome Statute or has accepted the ICC jurisdiction. This proposal was not accepted in the ICC statute, but was supported by many countries with an appraisal for an excellent compromise and was evaluated as contributing to a final agreement to jurisdiction.

Another example is that, during the negotiation process of amending 2005 Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention),<sup>37</sup> Korea contributed to making an amended SUA Convention in line with the existing order under the international law of the sea. In particular, Korea has been appraised for drawing a compromise of inserting to the final protocol understanding that the definition of "related material" contained in the U.N. Security Council resolution of 2004<sup>38</sup> can be used in relation to the meaning of dual-use material.

Other than these, it has been also pointed out that Korea has contributed, through civil organizations and the victims themselves, to saving victims of military sex slaves and to raising public awareness in the international community that sexual violence during the war is an as intolerable a crime as the massacre of prisoners of war or torture.

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36 *Id.* art. 123 ("States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention ....").

37 Int'l Maritime Org. [IMO], *Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, LEG/CONF.15/21 (Nov. 1, 2005).

38 S.C. Res. 1540 (Apr. 28, 2004).

### 3 How Would You Evaluate Korea's State Practice of International Law?

Due to historical and geopolitical reasons, South Korea faces inherent limitations in its reliance on the interpretation and application of international law. The intricate entanglement of factors, such as the complex relationship with Japan rooted in the colonialization of the Korean Peninsula, the enduring dynamics of inter-Korean and the U.S.–Korea relations post-Korean War, economic interdependence, and the evolving significance of the Sino-Korean relations, reflects the multifaceted nature of South Korea's international landscape. The adept management of these highly dynamic bilateral relationships is directly linked to the nation's survival. Moreover, given South Korea's position as a member of the international community as well as the U.N., a clear interpretation and application of international law in navigating multilateral relations is vital. The recent security cooperation among South Korea, the U.S., and Japan in response to the North Korean nuclear threat and participation in the global supply chain vis-à-vis China and Russia both function as significant variables.

Of the East Asian countries, namely North Korea, Japan, China, and Russia, South Korea's distinction as the sole country that actually undergoes periodic regime changes through democratic processes serves as a valuable asset to the country. It also serves as a source of resilience for South Korea in the face of tumultuous global politics between major powers. To effectively manage this national asset, particularly as a nation that is primarily engaged in bilateral diplomacy over multilateral diplomacy, South Korea must possess a comprehensive understanding of current issues and a clear awareness of the disparities between domestic and international law and politics.

Then what criteria and orientation does South Korea employ in interpreting and applying international law in the face of complex national issues? Have policy alternatives based on such interpretations been appropriately executed? Going further, can South Korea lead in shaping international norms? Korea's fundamental perception of the Korea–Japan relations, including the 1965 Treaty on Basic Relations between Japan and the Republic of Korea,<sup>39</sup> is the illegality of the Japanese colonial period and the invalidity of the series of treaties that justified the colonialization. This can be observed from the decisions of the Constitutional Court and the Supreme Court regarding the comfort women and forced labor issues during the Japanese colonial period, as

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39 Hanil Gibon Joyak, *supra* note 3.

well as the continued conflict between Korea and Japan over the sovereignty of Dokdo, which is recognized as one of the first territories taken from Korea in Japan's quest to annex the entirety of the Korean peninsula. With a positivist approach being the prevailing method of interpretation for contemporary international law, there is a significant gap between the international legal assessment and the historical judgment of the legality or invalidity of the treaties concluded during Japan's colonization of Korea.

The September 19th Comprehensive Military Agreement,<sup>40</sup> a supplementary agreement to the "September Pyongyang Joint Declaration"<sup>41</sup> adopted by then President Moon Jae-in and North Korean leader Kim Jong Un at the Pyongyang Summit on September 19, 2018, was anticipated to become a point of contention for the Yun Seok-yeol administration due to fundamental differences in perceptions regarding the inter-Korean relations. As expected, it has recently become a subject of controversy, particularly regarding the core issue within the Comprehensive Military Agreement,<sup>42</sup> which concerns the asymmetry of the designated maritime cessation of hostile acts zone. This is fundamentally linked to diverging perceptions of the Northern Limit Line (NLL) in the West Sea and the undetermined maritime boundaries in the Five West Sea Islands between North and South Korea. This is another instance where changes in administrations have influenced the interpretation and application of international law regarding the need for a stable management of maritime order on the Korean Peninsula.

International law provides the legal foundation for diplomatic relations in international affairs. While diplomacy in accordance with international law is ideal, the pursuit of national interests in diplomatic endeavors may not always align with international legal principles. However, in diplomacy, even major powers tend to invoke or present international legal arguments despite their limited persuasiveness, rather than outright denying or challenging international law. Therefore, for foreign relations decisions that are based on diplomatic policies of a regime, post-regime change domestic political judgments must be limited, since regimes are always subject to change. Moreover, such

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40 Yeoksajeogin Panmunjeom Seoneon Ihaengeul Wihan Gunsu Bunya Habuiseo [Agreement on the Implementation of the Historic Panmunjom Declaration in the Military Domain], N. Kor.-S. Kor., Sept. 19, 2018, <https://www.ncnk.org/resources/publications/agreement-implementation-historic-panmunjom-declaration-military-domain.pdf>.

41 9Wol Pyeongyanggongdongseoneon [Pyongyang Joint Declaration of September 2018], N.Kor-S.Kor., Sept. 19, 2018, [https://www.mofa.go.kr/eng/brd/m\\_5476/view.do?seq=319608](https://www.mofa.go.kr/eng/brd/m_5476/view.do?seq=319608).

42 Agreement on the Implementation of the Historic Panmunjom Declaration in the Military Domain, *supra* note 40.

judgments should especially avoid employing domestic legal standards recklessly. In other words, any attempts to alter pre-existing international relations already shaped by international law after a regime change require careful consideration. In a different context, the recent remarks by a Nobel laureate during his visit to South Korea, highlighting the divergent cycles between scientific development and electoral processes, underscore a noteworthy point.

Given the historically Eurocentric nature of traditional international law and its use as a tool for unfair dominion over non-European regions, it is challenging to transform traditional international law into a universal law that contributes to the genuine interests and justice of all humanity. From this perspective, it is imperative for Korea to emphasize the need to interpret and apply international legal norms in a post-colonial era that genuinely reflects the interests of all to resolve the current issues between Korea and Japan. This involves understanding the historical facts and untangling the intricacies of the victimization that occurred during Japan's annexation of Korea. In essence, this can be understood as "the application and understanding of international law from a Korean perspective."

However, the issue is whether this "application and understanding of international law from a Korean perspective" will be adopted as an international norm. Scholars from third-world countries, including newly independent countries, have critiqued the legal principles set forth by contemporary international legal institutions that uncritically permit past imperialistic states' indiscriminate territorial expansion, particularly in the context of territorial disputes. Such critiques, as seen through positivist and functionalist judgments, have not received much sympathy from within the international law academy—moreover, there is currently no compelling alternative discourse being put forth. Therefore, overcoming the duality of acknowledging the need to advocate for the legitimacy of applying international law from a Korean perspective and recognizing the inevitable limitations that may arise in this process is expected to serve as an alternative in addressing Korea's historical issues. However, concerns remain regarding the potential lack of success in this endeavor.

# Mongolia

*Battogtokh Javzandolgor\**

## 1 From Your Own Country, Is There a Unique Perspective of International Law?

Mongolia has a unique geopolitical position and historical past that have shaped our vision within the framework of international law. This vision is consistent with ensuring our sovereignty, developing regional cooperation and integration into the global economy, and addressing regional security and environmental issues. Mongolia is taking steps to achieve this vision through various legal and diplomatic means while respecting its national interests.

The development of international law in Mongolia has been a volatile process, distinctively tied to the dissolution of a massive empire and its replacement by an independent, modern nation-state. The development of international law in Mongolia can be divided into three main historical periods from the relevant ancient times to the thirteenth century, the Middle Ages, and the modern period. First period is the period of the formation of the legal system of the nation of Mongolians. The Great Mongol State was formed, and it conquered vast territories under the so-called Great Zasag Law of Genghis Khan, the first integrated written code. The Law of the Yuan Empire became effective in the eastern part of the Mongolian Empire.

Mongolian historical sources and some records from that time contain provisions about war in relation to Mongolia's foreign relations policy. In this regard, researchers have stated, "In ancient times, borders of countries were not clearly defined, and war was a regular occurrence."<sup>1</sup> Therefore, the Middle-Ages Mongols created a certain set of military customs of warfare to manage the problem of endless wars between khanates, provinces and tribes.<sup>2</sup>

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1 ЖИГЖИДИЙН БОЛДБААТАР [Zhigzhidijn Boldbaatar], МОНГОЛ УЛСЫН ТӨР ЭРХ ЗҮЙН ТҮҮХЭН УЛАМЖЛАЛ ШИНЭЧЛЭЛИЙН ЗАРИМ АСУУДАЛ [Some Issues of Historical Traditions and Reforms in the State and Law of Mongolia] (2001).

2 See Макото Тачибана [Makoto Tachibana], *Столкновение Монголии с международным правом: монгольский перевод wanguogongfa* [Mongolia's Encounter with International Law: The Mongolian Translation of Wanguogongfa], in *ВОСЬМЬЕ ВОСТОКОВЕДНЫЕ ЧТЕНИЯ БГУ* [EIGHTH ORIENTALIST READINGS AT BSU] 302, 308 (2017).

At that time, foreign relations policies were more about the protection of territory, wartime order, and the rights of the participants of war. It was innovative at that time that foreign affairs were regulated by agreements and their own laws. It is worth noting that the international regulation of war began later, at the end of the nineteenth century. For example, at the Hague International Conference held in 1899 and 1907, several international treaties on war and peace were established. The example of Mongolia is proof that the tendency to regulate issues of war and peace and terms of cooperation with international treaties was first established between countries and regions and then became international issues. For example, governments at that time entered into agreements with neighboring countries, negotiating on contractual obligations and territorial protection, which became the basis of modern international law.

Since ancient times, Mongolian people have tended to their foreign relations by negotiating agreements with neighboring countries to protect their land and facilitate trade. This was confirmed by various written legal sources from the thirteenth century. Mongolian people valued establishing friendly relations with other countries, supporting foreign trade, and strengthening diplomatic relations.

The “Pax Mongolica,” Latin for “Mongol peace,” describes a period of relative stability in Eurasia under the Mongol Empire during the thirteenth and fourteenth centuries. The “Pax Mongolica” brought a period of stability among the people who lived in the conquered territory. Having conquered the occupied territories in Asia, the Mongols were able to guarantee the security and safety of travelers.

The relations of Central Asian tribes and states testify to the existence of strong traditional norms of conduct that can be considered forbearers of international norms that developed based on agreed, accepted, or imposed international customs. These include upholding formal equality of state formations as reflected in the 198 BC agreement of the nomadic groups and the Han empires, especially during the Ming Dynasty, regarding delineating their borders that led to building the Great Chinese Wall. The Mongolian nomadic culture and customs, as pointed out earlier, contributed to the development of equitable trade relations, inviolability of trade routes as reflected in the flourishing of the great Silk Road that linked Asia and Europe not only in trade, but also in cultural exchanges and mutual enrichment, inviolability and sanctity of state messengers and their services which meant immunity of envoys or ambassadors where violation of such led to wars, regulations to start, conduct and end wars, equal treatment of different religions and customs, etc.

Work is now underway to reconstruct the structure and regulations of the Great Zasag Law, also known as Yasa, which regulated many activities of the empire and assessed its role in the development of rules of conduct of states at

that time. Also, some provisions of the law from the Genghis Khan's era, such as the inviolability of ambassadors, have become one of the basic principles of diplomatic relations in modern international law.

International law in Mongolia is called “олон улсын эрх зүй” or “олон улсын хууль” in Mongolian language today, but there was no such term in the early twentieth century Mongolia.<sup>3</sup> However, this fact does not necessarily mean that Mongolia in the early twentieth century had not met international law. There are some evidence which show Mongolia had already accepted international law in the early twentieth century. The Mongolian government concluded an agreement with Imperial Russia on November 3, 1912.<sup>4</sup>

According to some information, when making out the draft of the agreement, the Mongols used the textbook on international law written by Bluntschli, which was a publication of China.<sup>5</sup> After the Mongolian Revolution of 1921, Mongolia went under the influence of the Soviet Union, and the Mongols started to use Russian words for modern concepts. Therefore, now it is necessary to study the words which newly coined in the early twentieth century through the Mongolian version of Wanguogongfa, the international law.

The introduction and application of international law in Asia have been widely discussed. More precisely, there was no understanding that Mongolia had introduced international law until the early twentieth century. Since democratization at the end of 1989, Mongolia has promoted the disclosure of information, making it easier for foreign researchers to access historical documents in Mongolia.<sup>6</sup> On the other hand, Mongolian researchers also object to the previous narrative of history which defined Mongolia as a passive state led by international relations, and they have started to insist that the Mongolian government has carried out positive diplomatic activities.<sup>7</sup> In fact, it would have been difficult for Mongolia to achieve and maintain its independence without such diplomatic activities. Nonetheless, some issues have remained unresearched not only in the period of socialism, but also after democratization. One of them is the introduction of international law into Mongolia.<sup>8</sup>

Since regaining its independence in 1921, Mongolia has focused on solidifying its position on the international stage, maintaining its territorial integrity,

3 *Id.* at 304.

4 *Id.*

5 ИВАН ЯКОВЛЕВИЧ КОРОСТОВЕЦ [IVAN YAKOVLEVICH KOROSTOVETS], *Девять месяцев в Монголии: Дневник русского уполномоченного в Монголии, Август 1912–Май 1913 г.* [*Nine Months in Mongolia: Diary of the Russian Plenipotentiary in Mongolia, August 1912–May 1913*] 110 (O. Batsaikhan et al. eds., 2009); Tachibana, *supra* note 2 at 304.

6 Tachibana, *supra* note 2 at 303.

7 *Id.*

8 *Id.*

and developing friendly relations with other countries. After being liberated from the Manchu rule and declaring its independence in 1921, for more than seventy years, Mongolia has been implementing its foreign relations within the so-called Soviet “socialist bloc.” Thus, international law has had unique impacts on Mongolia.

Although it was for implementing cooperation within the framework of its planned economic policy and the “socialist bloc”, Mongolia has also been focused on addressing the issues of protecting its position on the international stage and developing friendly relations with other countries. Until the 1990s, Mongolia concluded numerous treaties with the Soviet Union and allied countries on human rights, combatting crime, as well as issues of economy and foreign trade. Since then, more focus has been given to concluding international treaties to support the market economy and mutual agreements with other countries.<sup>9</sup>

This is because the economic and social regime established by the new Constitution of 1992 made it possible to establish relations with all the countries of the world, expand the depth of relations, join international organizations, and sign international treaties in accordance with the new regime. In terms of international relations, an open policy was implemented, and the Constitution embraced the introduction of international legal norms in Mongolia.

Since the adoption of the new Constitution, Mongolia has joined 294 international treaties<sup>10</sup> and focused on its compliance with generally accepted international legal norms and their implementation in its national laws. One of the criteria used to distinguish international legal approaches in modern times is the relationship between international and domestic law. Some countries, for example, the United States, the Russian Federation, and some European countries, establish their constitutions as taking precedence and follow a dualistic approach, while some countries always give precedence to international legal norms and follow the modern monistic approach. The next issue is that in accordance with international norms, Article 10 of the Constitution of Mongolia, which regulates the interdependence of international law with national law, does not strictly regulate the domestic application of international norms in

9 ДҮГЭРСҮРЭН М. & ХОСБАЯР О. [M. DUGERSUREN & O. KHOSBAYAR], ОЛОН УЛСЫН ЭРХ ЗҮЙ [INTERNATIONAL LAW], 130 (1996) (citing Монголын улсын олон улсын гэрээ, Төрийн мэдээлэл, тусгай дугаар 1–12 дахь боть [International Treaties of Mongolia, *State Information*, Special Issue of Vols. 1–12]).

10 Ариунболд, Ч [Ariunbold, Ch], *Монгол Улс олон талт 294 гэрээнд нэгдэн оржээ* [Mongolia has Joined 294 Multilateral Agreements], МОНГОЛЫН МЭДЭЭ [MONGOLIAN NEWS] (Oct. 6, 2021), <https://montsame.mn/mn/read/277150>.

detail, but does regulate some international treaties. Article 10, Section 1 of the Constitution stipulates that “Mongolia adheres to the universally recognized norms and principles of international law and pursues a peaceful foreign policy.”<sup>11</sup> In practice, most countries include international customary norms in internationally accepted norms and principles. Thus, a conclusion can be drawn that there is no clear regulation on how international customary norms apply in Mongolia, due to the fact that the norm is not considered a “soft law” or a norm that imposes direct obligations.<sup>12</sup>

## 2 What Has Been Your Country’s Contribution to the Development of International Law?

In recent years, Mongolia has witnessed significant strides in the development and strengthening of international law; our country has taken significant steps to bring its legal framework and jurisprudence into line with global standards.

According to official sources, Mongolia currently has joined a total of 294 treaties, of which there are sixty related to the U.N. and other international organizations, forty-eight related to human rights, twenty-four on environmental issues, nineteen on international security and disarmament, seven on humanitarian law, and thirty related to international crimes, eighteen related to international trade and development, thirty-five about airfare, transport, customs, and telecommunications cooperation, twenty on intellectual property, and thirty-three on space and maritime law.<sup>13</sup> On September 25, 1992, Mongolia declared its territory to be a single-state nuclear-weapon-free zone (NWFZ) and pledged to have that status internationally guaranteed. Mongolia’s Northeast Asia policy is not limited to promoting its nuclear-weapon-free status, but also includes enhancing trust with or between its immediate neighbors, thus contributing to broader regional trust and cooperation. Mongolia believes that, today, all states need to become contributors to security and not only its consumers. With that in mind, in 2014, it launched the so-called Ulaanbaatar dialogue (UBD), which is a 1.5 track regional dialogue among the states of the region and other interested stakeholders. The annual

11 МОНГОЛ УЛСЫН ҮНДСЭН ХУУЛЬ [CONSTITUTION OF MONGOLIA] Feb. 12, 1992, art. 10.

12 Дашням И [DASHNYAM I], МОНГОЛ ОРОНД ДУНДАД ҮЕИЙН ЭРХ ЗҮЙН ТОГТОЛЦООГ ХАЛЖ, ШИНЭ ҮЕИЙН ЭРХ ЗҮЙН АНХНЫ ТОГТОЛЦОО БҮРЭЛДЭН ТОГТСОН НЬ [THE MEDIEVAL LEGAL SYSTEM WAS ABOLISHED IN MONGOLIA AND THE FIRST MODERN LEGAL SYSTEM WAS ESTABLISHED], 18–39 (2002).

13 Ariunbold.Ch, *supra* note 10.

meetings focused on soft security issues of mutual concern, interest, and benefit. To follow-up on its initiative and acquire security assurances from the five nuclear-weapon states (known as the P5), Mongolia worked closely with each one of them as well as with the P5 as a group. Though the P5 welcomed the initiative, they were reluctant to recognize Mongolia as a single-state NWFZ since they thought in doing so, an undesirable precedent would be set for other states to declare their territories nuclear-weapon-free and expect security assurances from the P5. On the other hand, the non-nuclear-weapon states welcomed Mongolia's initiative as a "commendable contribution to regional stability and confidence-building,"<sup>14</sup> which was first reflected in the final document of 1995 Non-Aligned Movement's Cartagena summit and further supported in resolution 55/33S of United Nations General Assembly three years later. The resolution, entitled "Mongolia's international security and nuclear-weapon-free status," not only welcomed Mongolia's declaration, but also invited member states, including the P5, to cooperate with it by taking steps to "consolidate and strengthen Mongolia's independence, sovereignty and territorial integrity, the inviolability of its borders, its economic security, its ecological balance and its nuclear-weapon-free status, as well as its independent foreign policy."<sup>15</sup>

Despite our country's various steps, there has been positive progress—at least a stated recognition—of the importance of human rights and the rule of law as fundamental components of P5's vision within international law. For example, Mongolia is known for its active civil society and efforts to reform its judicial system. Our country has made constitutional reforms aimed at strengthening the rule of law and ensuring more balanced powers within the government. These steps, although gradual, reflect a broader regional trend toward legislation that protects human rights. However, there are serious problems that hinder fully realizing these ideals.

Mongolia envisions an economic future that is more integrated into the global economy, facilitated by adherence to international legal standards and agreements. Mongolia's membership in the World Trade Organization is proof of its commitment to global economic and legal norms. Mongolia's latest reforms aimed at liberalizing the economy and improving the investment climate are also designed to attract foreign investment in line with international standards. Such steps are necessary to diversify our nation's economy, reduce dependence on natural resources, and increase economic resilience.

Just after a year of its membership in the U.N., Mongolia sponsored a Resolution on Economic Development and Conservation of Nature, which

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14 U.N. SCOR, 50th Sess., at 31, U.N. Doc. A/50/752 (Dec. 13, 1995).

15 G.A. Res. 55/33, at 31 (Jan. 12, 2001).

was adopted by the General Assembly, in its 17th session in 1962.<sup>16</sup> The resolution considered natural resources of fundamental “importance to the further economic development of countries and of benefit to their populations”<sup>17</sup> and expressed the consciousness of the extent to which economic development of developing countries might jeopardize their natural wealth and resources, including flora and fauna. It endorsed a call by UNESCO to enact effective domestic legislation covering, *inter alia*, the preservation and rational use of natural resources. This resolution is considered the first detailed one adopted by the U.N. General Assembly on environmental protection. Thus, this document can be seen as Mongolia’s contribution to the development of international environmental law in general and to Principle 2 of the Rio Declaration, namely, that states have sovereignty over their natural resources and the responsibility not to cause transboundary environmental damage.

Mongolia has become a party to all relevant international environmental treaties and conventions, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention). Driven by its obligations under CITES and the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), several programs were adopted to protect specific species, such as red deer, argali, snow leopard, Saker falcon, musk deer, and Gobi bear. However, there is insufficient reliable and systematic information on the results of these programs. Monitoring and law enforcement remain significant challenges.

Mongolia joined the United Nations Framework Convention on Climate Change (UNFCCC) in 1993, the Kyoto Protocol in 1999, and the Paris Agreement on Climate Change in 2016. As a non-Annex 1 Party, Mongolia is not obligated to reduce its GHG emissions under the regulations of the Kyoto Protocol, but under the Paris Agreement, Mongolia has set a target to reduce its GHG emissions by 14% by 2030, as compared to a 2010 business-as-usual scenario.

Despite ongoing challenges—including the need for deeper and more fundamental systemic reforms such as judicial reform, strengthening institutional frameworks, more effectively combating corruption, and more effectively applying international law—the steps our country has taken so far reflect positive yet realistic approaches to achieving our vision. Mongolia is actively contributing to the creation of a more stable, prosperous, and legally coherent

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16 G.A. RES.1831(XVII) (Dec. 18, 1962).

17 *Id.*

regional order, operating within its unique geopolitical contexts, and leveraging its collective strengths.

The continued challenges Mongolia faces in implementing its anti-corruption reforms demonstrate a clear need for improvement in the immediate detection of corruption cases, stronger international cooperation, and mutual legal assistance in corruption-related criminal matters. To ensure momentum, an ongoing commitment to undertake anti-corruption reforms is crucial. These efforts should be complemented with more effective oversight by the civil society of Mongolia, aimed at scrutinizing whether the Government properly implements its National Anti-Corruption Strategy, as well as ensuring compliance with Mongolia's international obligations.

The International Development Law Organization (IDLO), funded by the Government of the United States of America (USG) through the Bureau of International Narcotics and Law Enforcement Affairs (INL), is implementing a project to improve the investigation and prosecution of corruption cases with the Independent Authority Against Corruption (IAAC), the Prosecutor General's Office (PGO), and relevant justice sector agencies.<sup>18</sup> The project seeks to address the persistent challenges posed by grand corruption in Mongolia through targeted capacity development efforts, improved coordination, and broader engagement.<sup>19</sup> IDLO's project will also support the IAAC with its self-assessment of the 2016 National Anti-Corruption Program and support the effective development, adoption, and implementation of a new National Anti-Corruption Program (2023–2030).<sup>20</sup>

In conclusion, the vision for Mongolia's future within the framework of international law is defined by a commitment to sovereignty, regional cooperation, human rights, economic integration, and environmental sustainability.

The Government of Mongolia also attaches great importance to Sustainable Development Goal 16, "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels."<sup>21</sup> It is crucial because no one should be left behind and deprived of the right to development and growth.

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18 *Mongolian Institutional Integrity and Transparency (MINT)*, INTERNATIONAL DEVELOPMENT LAW ORGANIZATION (last visited Apr. 18, 2025), <https://www.idlo.int/what-we-do/initiatives/mongolian-institutional-integrity-and-transparency-mint>.

19 *Id.*

20 *Id.*

21 G.A. Res. 70/1, Transforming Our World: the 2030 Agenda for Sustainable Development, at 14 (Oct. 21, 2015).

As a country that has adopted and successfully implemented the MDG-9 on “Strengthening human rights, fostering democratic governance and zero tolerance to corruption,” Mongolia has had a positive experience of keeping the rule of law as an integral part of the national development agenda. According to the universal[l]y agreed principles of the rule of law, the Government of Mongolia has improved its conformity of domestic laws and regulations with international human rights treaties and conventions. publishes national code of laws, international treaties, and conventions to promote and to facilitate access to justice for all. As a Party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Parliament of Mongolia has adopted Criminal Law abolishing the death penalty, as well the new Laws on the Rights of the Child and on the Protection of the Child were adopted in 2016, reflected the recommendations of the Council and the Committee on the Rights of the Child.<sup>22</sup>

Mongolia recognizes that multilateral treaties, conventions, and instruments create a conducive global order through the establishment of the international framework of norms and standards. The Government of Mongolia attaches great importance to the role of multilateral treaties in advancing the rule of law at the international level and gives importance to the work of international judicial organizations, such as the International Criminal Court, the International Tribunal of the Law of the Sea, the International Court of Justice, and the Permanent Court of Arbitration. Mongolia has taken steps to strengthen multilateral cooperation in the judicial sector. The Government of Mongolia has implemented legal aid projects, which are initiated by the United Nations Development Program. Legal aid is crucial, especially for clients who cannot afford fees, since it provides legal assistance and services to society without leaving anyone behind. Today, most Mongolians enjoy greater access to justice, in line with our own constitution, which stipulates the right to legal assistance, and national commitments to human rights.

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<sup>22</sup> U.N. GAOR, 72nd Sess., 7th mtg. at 2, U.N. Doc. A/C.6/72/SR.7 (Oct. 5, 2017), [https://www.un.org/en/ga/sixth/72/pdfs/statements/rule\\_of\\_law/mongolia.pdf](https://www.un.org/en/ga/sixth/72/pdfs/statements/rule_of_law/mongolia.pdf) (Statement of Permanent Rep. of Mongolia to the U.N.).

# Philippines

Rommel J. Casis\*

## 1 From Your Own Country, Is There a Unique Perspective of International Law?

The Philippines has a unique perspective on international law characterized by “Americanization,” “Localization,” and “Domestication.”

### 1.1 *The “Americanized” Perspective*

The Philippine perspective on international law is primarily influenced by its colonial experience with the United States. The Philippines was only a colony of the United States (U.S.) for less than 50 years but was a colony of Spain for over 300 years. But it is the U.S. that has influenced the Philippines more regarding its perspective on international law. While Spanish influence on specific aspects of Philippine civil law remains, Philippine political law, which includes international law, is firmly based on U.S. law. Furthermore, even the Japanese occupation of the Philippines during World War II did not affect the Philippine tendency to mimic the U.S. legal system.

The U.S. influence on the Philippine perspective on international law is perhaps explained by the fact that the U.S. prepared the Philippines for self-rule during the Commonwealth Era (1935–1946). As a result, the Philippine government, with its three branches, mirrors the structure of the U.S. government. Furthermore, the current Philippine Constitution<sup>1</sup> still resembles the one prepared during the Commonwealth Era.<sup>2</sup> Thus, like the U.S., the Treaty Clause of the Philippine Constitution requires Senate concurrence for a treaty to be valid. Furthermore, like the U.S., the Philippines has recognized the concept of executive agreements, which, like treaties, are international agreements covered by *pacta sunt servanda*.

The early international law doctrines developed by Philippine jurisprudence are essentially a result of its relationship with the U.S. This continued even after decolonization. For instance, several cases involving state immunity arose when U.S. military bases were still present in Philippine territory. These

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1 CONST. (1987) (Phil.).

2 CONST. (1935) (Phil.).

cases would involve U.S. military personnel or agencies associated with the military bases. While the Philippine Supreme Court has accepted the customary nature of state or sovereign immunity,<sup>3</sup> one peculiar aspect of Philippine jurisprudence is the cited legal basis for the rule. Some cases correctly identify the sovereign equality of states as the legal basis.<sup>4</sup> But most cases primarily invoke the provision in the Philippine constitution stating that “[t]he State may not be sued without its consent.”<sup>5</sup> Using this provision is strange because the term “State” in the Constitution should refer to the Philippine State, not any other state. But the Court used this provision to say that the U.S. cannot be sued without its consent. Furthermore, the stated reason why the state may not be sued without its consent is the maxim stated by American jurist Oliver Wendell Holmes that “there can be no legal right as against the authority that makes the law on which the right depends.”<sup>6</sup> Obviously, if the case is filed in Philippine courts, this principle can only apply to the Philippine state. The rationale does not apply to other states. Therefore, applying this constitutional provision to grant state immunity to foreign states makes no sense. Perhaps, this is just one example of how Philippine courts can “localize”<sup>7</sup> international law.

### 1.2 *The “Localization” of International Law*

Another example of this “localization” of international law is the Court’s treatment of the term “ratification.” The Vienna Convention on the Law of Treaties (VCLT) defines ratification as an “international act ... whereby a State establishes on the international plane its consent to be bound by a treaty.”<sup>8</sup> The VCLT also specifies how ratification is accomplished.<sup>9</sup> In contrast, Philippine courts use the term ratification in at least two ways. Sometimes, the term is used to refer to the Senate concurrence of treaties; at other times, it is used as the act of the President signing the treaty. Both of these acts, however, occur

3 United States v. Guinto, G.R. No. 76607, 261 PHIL. REP. 777 (Feb. 26, 1990).

4 See Arigo v. Swift, G.R. No. 206510, 743 PHIL. REP. 8, 33, 100–26 (Sept. 16, 2014).

5 CONST. (1987), art. XVI, § 3 (Phil.).

6 Providence Wash. Ins. Co. v. Republic of Philippines, G.R. No. L-26386, 140 PHIL. REP. 177 (Sept. 30, 1969).

7 “Localize” refers to the tendency of applying seemingly inapplicable Philippine laws or concepts to apply or define international law concepts and principles.

8 *Vienna Convention on the Law of Treaties* art. 2(b), May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

9 VCLT, *supra* note 8, at art. 16 (“instruments of ratification .... establish the consent of a State to be bound by a treaty upon: (a) their exchange between the contracting States; (b) their deposit with the depositary; or (c) their notification to the contracting States or to the depositary, if so agreed”).

before complying with the VCLT requirements for ratification. Thus, a treaty is “ratified” under Philippine law even before it is ratified under international law. Adding to the confusion, there are Supreme Court decisions that define ratification as if it were the same concept under international law. Such decisions would state that ratification is the act “through which the formal acceptance of a treaty is proclaimed.”<sup>10</sup> Ratification is also defined as the “formal act by which a state confirms and accepts the provisions of a treaty concluded by its representatives.”<sup>11</sup> These statements suggest that ratification under Philippine law is the final act by which a state formally consents to a treaty. However, under Philippine law, “ratification” is not the final act that signifies consent. Thus, the term “ratification” has been localized, although the Court sometimes forgets.

Furthermore, the concept of a “treaty” has also been localized. The VCLT defines a treaty as “an international agreement concluded between States in written form and governed by international law.”<sup>12</sup> But Philippine law defines treaty differently. Executive Order No. 459 (EO 459),<sup>13</sup> is the primary administrative issuance governing treaties under Philippine law. EO 459 does not adopt the VCLT definition of a treaty. Instead, it defines “international agreement” as “a contract or understanding, regardless of nomenclature, entered into between the Philippines and another government in written form and governed by international law ...”<sup>14</sup> Notice that this definition of “international agreement” resembles the VCLT definition of “treaty” somewhat. The main difference is that an international agreement may be between the Philippines and “another government” and not necessarily another state. Furthermore, EO 459 has a specific definition for “treaties” as “international agreements entered into by the Philippines which require legislative concurrence after executive ratification.”<sup>15</sup> Thus, under Philippine law, a treaty is only one type of international agreement. Yet another kind of international agreement is an executive agreement which is described as “similar to treaties except that they do not require legislative concurrence.”<sup>16</sup> According to Philippine law, treaties and executive agreements should be treated under international law as treaties,

10 Bayan v. Zamora, G.R. Nos. 138570, 396 PHIL. REP. 623 (Oct. 10, 2000).

11 Pimentel, Jr. v. Off. of the Exec. Sec’y, G.R. No. 158088, 501 PHIL. REP. 303 (Jul. 6, 2005).

12 VCLT, *supra* note 8, at art. 2(a).

13 Office of the President, Providing for the Guidelines in the Negotiation of International Agreements and its Ratification, Exec. Ord. No. 459 (Nov. 25, 1997) (Phil.), <https://www.officialgazette.gov.ph/1997/11/25/executive-order-no-459-s-1997/>.

14 *Id.* § 2(a).

15 *Id.* § 2(b).

16 *Id.* § 2(c).

even though they are not the same under Philippine law. For instance, the Philippine Supreme Court has ruled that *pacta sunt servanda* applies to executive agreements.<sup>17</sup>

The Philippine Supreme Court has recently ruled on whether Senate concurrence is necessary in case of treaty withdrawal.<sup>18</sup> The Constitution states that “[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.”<sup>19</sup> But it is silent on treaty withdrawal. When the Philippine president withdrew from the Rome Statute, petitions were filed in the Philippine Supreme Court contesting this. One of the arguments was that there should be Senate concurrence before withdrawal from a treaty. The Court ruled that the petitions were “moot when they were filed.”<sup>20</sup> But the Court went on at length to discuss when the President of the Philippines can unilaterally withdraw from a treaty and when he cannot.<sup>21</sup> First, the Court discussed when the president cannot unilaterally withdraw. This includes (a) when the treaty is entered into upon the instructions of Congress, (b) when a law is passed implementing the treaty, and (c) when the Senate expressly declares that its concurrence is required for withdrawal. Second, the Court identified the situations when the President can unilaterally withdraw. These are when (a) the President determines the unconstitutionality of a treaty and (b) a law inconsistent with a treaty is subsequently passed. This decision has been criticized for violating basic tenets of international law.<sup>22</sup>

Another example is when a treaty enters into force. As a general rule, the VCLT provides that a treaty enters into force “in such manner and upon such date as it may provide or as the negotiating States may agree.”<sup>23</sup> Thus, the treaty or international law governs entry into force. But under Philippine law, a treaty or executive agreement enters into force upon compliance with the domestic requirements stated in Executive Order No. 459. In other words, domestic law governs. The result is that it is possible that a treaty enters into force under Philippine law on a different date when the same treaty enters into force under international law.

17 Bayan v. Zamora, G.R. Nos. 138570, 396 PHIL. REP. 623 (Oct. 10, 2000).

18 See Pangilinan v. Cayetano, G.R. Nos. 238875, 898 PHIL. REP. 522, 536–90 (Mar. 16, 2021).

19 CONST. (1987), art. VII, § 21.

20 Rommel J. Casis, *Moot but Academic: An Exegesis of Pangilinan v. Cayetano*, 20 THE PHILIPPINE YEARBOOK OF INTERNATIONAL LAW 35, 35 (2021) [hereinafter Casis, *Moot*].

21 Pangilinan v. Cayetano, G.R. Nos. 238875, 898 PHIL. REP. 522, 525–26 (Mar. 16, 2021).

22 Casis, *Moot*, *supra* note 20, at 37–47.

23 VCLT, *supra* note 8, at art. 24.

### 1.3 *The “Domestication” of International Legal Principles*

Domestication refers to the process by which international law becomes applicable in the Philippine jurisdiction. Aside from the Treaty Clause, in the Philippines, international law is “domesticated” by the Incorporation Clause.<sup>24</sup> The Incorporation Clause provides that “the Philippines ... adopts the generally accepted principles of international law as part of the law of the land ....”<sup>25</sup> The term “the generally accepted principles of international law” was initially interpreted as referring to customary law.<sup>26</sup> However, in later cases, the Court ruled that the term also covers general principles of law. Furthermore, the Court would also include non-binding instruments such as the Universal Declaration of Human Rights,<sup>27</sup> treaties like the Vienna Convention on Diplomatic Relations,<sup>28</sup> and international jurisprudence as falling within the concept of generally accepted principles of international law. Theoretically, this broad manner by which the Court interprets the term “generally accepted principles of international law” allows the Philippines to adopt principles of international law beyond the formal sources listed under Article 38 of the International Court of Justice Statute.<sup>29</sup>

## 2 What Has Been Your Country’s Contribution to the Development of International Law?

The conservative view would be that Philippine contributions to international law can only commence upon independence from the U.S. In other words, state practice could have only begun when the Philippines officially became a state in 1946. However, a closer look at the historical and legal documents would show that Philippine contributions to international law began when it sought freedom from Spain. Some would argue that the Philippines briefly became a

24 Rommel J. Casis, *Domesticating International Law: Resolving the Uncertainty and Incongruence*, 19 THE PHILIPPINE YEARBOOK OF INTERNATIONAL LAW 128, 129–30 (2020) [hereinafter Casis, *Domesticating*].

25 CONST. (1987), art. II, § 2 (“The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”).

26 Casis, *Domesticating*, *supra* note 24, at 133.

27 G.A. Res. 217 (111) A, Universal Declaration of Human Rights (Dec. 10, 1948).

28 Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95.

29 Statute of the International Court of Justice art. 38, June 26, 1945, 59 Stat. 1055.

state<sup>30</sup> upon its proclamation of independence from Spain (June 12, 1898).<sup>31</sup> But this Republic based on the Malolos Constitution<sup>32</sup> was short-lived because of the U.S. occupation that shortly followed. However, similar to the Korean experience under China and Japan, the Philippine experience under U.S. rule also contributed to the development of international law. A few examples would include contributions to such concepts as recognition of statehood, the right to self-determination, modes of acquisition of territory, treaty interpretation, international and non-international armed conflicts, the application of international humanitarian law, and crimes against humanity, among others. However, given space constraints, this paper focuses on Philippine contributions after its independence from the U.S. in 1946.<sup>33</sup>

### 2.1 *Involvement in Judicial Decisions and Opinions*

Perhaps the most significant contribution of the Philippines is its participation in international dispute settlement mechanisms and international courts and tribunals, which has resulted in important rulings. The most prominent example is the South China Sea Arbitration (PCA Case No. 2013-19) which the Philippines commenced against China on January 22, 2013.<sup>34</sup> By filing this case, the Philippines demonstrated its commitment to resolving its territorial disputes peacefully and under the rule of law. The arbitration proceedings under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS) resulted in an Award that clarified and established State Party obligations under the UNCLOS.<sup>35</sup> For instance, it ruled on the effect of being a party to UNCLOS on historic claims to waters beyond territorial waters. Moreover, it defined what constitutes an island under Articles 13 and 121 of UNCLOS and the rights and duties of other States in a state's exclusive economic zone.<sup>36</sup> Furthermore, it clarified State Party obligations under Part XII or the duty to preserve and protect the marine environment.

30 J. Eduardo Malaya & Johaira Wahab-Manantan, *Dynamics Between Diplomacy and International Law: Reflections on the Philippine Experience*, 16 THE PHILIPPINE YEAR-BOOK OF INTERNATIONAL LAW 1, 7 (2017).

31 This view would make the Treaty of Paris (by virtue of which Spain ceded the Philippines to the U.S.) invalid.

32 CONST. (1899) (Phil.).

33 However, discussion on these matters can be found in 11 RAUL C. PANGALANGAN, PHILIPPINE MATERIALS IN INTERNATIONAL LAW 1 (2022).

34 The South China Sea Arbitration (Phil. v. China), PCA Case Repository 2013-19 (Perm. Ct. Arb. 2016).

35 U.N. Convention on the Law of the Sea annex 7, Dec. 10, 1982, 1833 U.N.T.S. 397.

36 Malaya & Wahab-Manantan, *supra* note 30, at 20.

Demonstrating its adherence to the rule of law in resolving international disputes, as early as 1972, the Philippines issued a Declaration recognizing the compulsory jurisdiction of the International Court of Justice (ICJ). While the Philippines has not been a party to a contentious case before the ICJ, it sought to intervene in the dispute between Malaysia and Indonesia over Pulau Ligitan and Pulau Sipadan. This intervention was motivated by the need to protect and preserve the Philippines' legal rights and interest in its claim over Sabah (North Borneo). This further demonstrates the Philippine commitment to resolving its territorial disputes peacefully. The Philippines has also participated in advisory opinions. For example, when the U.N. General Assembly requested the ICJ for an advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, the Philippines participated in the oral arguments before the Court. Professor Merlin Magallona appeared before the ICJ in November 1995. This was not the first time the Philippines argued before the ICJ for an Advisory Opinion. The Philippines previously argued before the ICJ on the Namibia Advisory Opinion and was the only state to do so apart from South Africa.<sup>37</sup> More recently, the Philippines also filed its written submissions to the ICJ Advisory Opinion on Climate Change.

## 2.2 *Participation and Advocacy in International Organizations*

The Philippines has also contributed to the development of international legal principles through its advocacy and participation in international organizations and forums.

The most important international organization in the world is the United Nations. Of course, the Philippines is also a founding member of ASEAN and is a member of many other organizations. But due to space constraints, this paper will focus only on a few examples involving the U.N.

The Philippines is a founding member of the U.N. and participated "in the U.N. Conference on International Organization in San Francisco that drafted the Charter of the United Nations."<sup>38</sup> The Philippines is among the first 50 original members and one of the few Asian countries.<sup>39</sup> Furthermore, "[t]he Philippine delegation took an active role in the deliberations, and authored ideas on 'trusteeship' in the drafting of the Charter and the proper disposition of former colonial territories."<sup>40</sup> It must be remembered that decolonization

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37 *Id.* at 11.

38 *Id.* at 8.

39 *Id.* at 10 (the others being China, India, Iran, Iraq, Lebanon, Saudi Arabia, Syria and Turkey).

40 *Id.* at 9.

was a sensitive issue after World War II. However, the Philippines insisted that the term “independence” be added to the term “self-government” in Article 76 of the U.N. Charter, drawing from its experience as a former colony.<sup>41</sup> Because of its active role in this issue, the Philippines was elected as one of the additional members of the Trusteeship Council.

As a U.N. member state, the Philippines has been active in many causes. For example, “[t]he Philippines was the first country in Southeast Asia to accede to the United Nations High Commissioner for Refugees’ (UNHCR) main instruments in 1981, the 195[1] Convention on the Status of Refugees, and its 1967 Protocol.”<sup>42</sup>

Scholars have noted that the Philippines “played a key role in jumpstarting the advocacy for the ‘archipelagic doctrine’ in international law.”<sup>43</sup> In particular, “Philippine practice with respect to archipelagoes and archipelagic base-lines shaped international law on these matters, through the content of its submissions to the conferences which led to the adoption of the 1982 UNCLOS, and also defined the scope of legal issues during negotiations in UNCLOS III.”<sup>44</sup> Philippine state practice on this matter includes official communications to the U.N. on the legal status of archipelagoes,<sup>45</sup> views expressed to the International Law Commission on its draft articles on the law of the sea, in its domestic laws, and the 1987 Philippine Constitution.

Furthermore, the Philippines urged the review of the rule regarding the peaceful settlement of disputes under Article 33 of the U.N. Charter. In 1980, the Philippines hosted the Special Committee on the Charter of the U.N. and the Strengthening of the Role of the Organization. At this meeting, the participants elaborated on the Manila Declaration on the initiative of non-aligned countries.<sup>46</sup> On 15 November 1982, the U.N. General Assembly adopted as part of resolution 37/10 The Manila Declaration on the Peaceful Settlement of International Disputes.<sup>47</sup> The Manila Declaration reaffirmed the fundamental principles, such as the obligation to act in good faith, and modified some concepts. For example, the term “exclusively” was added to the phrase “settle international disputes by peaceful means.”<sup>48</sup> The Declaration also encourages

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41 *Id.*

42 *Id.* at 12.

43 *Id.* at 17.

44 *Id.* at 17–18.

45 *See id.* at 18.

46 *Id.* at 13 (this includes the Philippines, Egypt, Indonesia, Mexico, Nigeria, Romania, Sierra Leone, and Tunisia).

47 *Id.*

48 *Id.* at 14.

states to recognize the compulsory jurisdiction under Article 36, paragraph 2 of the ICJ Statute.<sup>49</sup>

### 2.3 *Contribution of Philippine Jurisprudence on State Practice*

The Philippines also contributes to international law through its state practice in the form of numerous cases that discuss and dissect international law principles and concepts. Perhaps the most prominent among these cases is *Oposa v. Factoran*, which discusses the idea of “intergenerational responsibility.”<sup>50</sup> In this case, the Court upheld the *locus standi* of minors to sue the Secretary of the Department of Foreign Affairs. It further stated, “[n]eedless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors’ assertion of their right to a sound environment constitutes ...”<sup>51</sup>

Perhaps, the earliest example of a significant case would be the 1922 case of *People v. Lol-lo*, which asserted universal jurisdiction over the crime of piracy.<sup>52</sup> The Court considered pirates as *hostes humani generis*. Thus, it defined piracy as “a crime not against any particular state but against all mankind”<sup>53</sup> and, therefore, “may be punished in the competent tribunal of any country where the offender may be found or into which he may be carried.”<sup>54</sup> It concluded that “[t]he jurisdiction of piracy unlike all other crimes has no territorial limits. As it is against all so may it be punished by all.”<sup>55</sup> In addition to these cases, there are many other cases wherein the Court upheld crucial international law doctrines on various human rights, jus cogens norms, erga omnes obligations, crimes against humanity, and principles on protecting the environment (e.g., the precautionary principle), among others.

49 *Id.* at 15.

50 *Oposa v. Factoran, Jr.*, G.R. No. 101083, 296 PHIL. REP. 694 (Jul. 30, 1993).

51 *Id.*

52 *See People v. Lol-lo*, G.R. No. 17958, 43 PHIL. REP. 19 (Feb. 27, 1922).

53 *Id.*

54 *Id.*

55 *Id.*

# Sri Lanka

*Wasantha Seneviratne\* and Ranuli Senaratne\*\**

## 1 From Your Own Country, Is There a Unique Perspective of International Law?

### 1.1 Introduction

Sri Lanka is an island nation, a republic situated in the Indian Ocean. Since its independence was granted in 1948 by the British, Sri Lanka's state practices relating to international law have offered a unique perspective on international law. This commentary, along with a few examples, demonstrates Sri Lanka's unique perspective on international law, highlighting its strengths, limitations, and potential for further development.

### 1.2 Sri Lanka's Perspective on International Law

Sri Lanka's perspective on international law is deeply rooted in its exceptional historical, political, and social contexts. The country's colonial history, spanning over 400 years under Portuguese, Dutch, and British rule, significantly shaped its legal system and its approach to international law. The imposition of Western legal frameworks during colonial rule led to a mixed legal system, incorporating elements of Roman-Dutch law, English common law, and local customary laws. With the incorporation of several international treaty provisions into the domestic law of Sri Lanka through enabling statutes, Sri Lanka's legal system has become enriched. The ongoing development of Sri Lanka's legal system continues to be influenced by its historical interactions with international law, its colonial legacy, and its efforts to assert a distinct national legal identity in the contemporary global context.

As a state party to a plethora of international treaties, Sri Lanka mainly follows a dualistic tradition in incorporating international law into domestic law, which requires the adoption of an enabling statute by the Parliament.<sup>1</sup> However, the Constitution of Sri Lanka does not include any provision in this

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1 Wasantha Seneviratne, Administration of Justice with Special Reference to Human Rights Protection: Challenges and Prospects, (2017) (transcript available in KDU Institutional Repository), <http://ir.kdu.ac.lk/handle/345/1652>.

regard. Occasionally, the courts of Sri Lanka have followed a monist approach in deciding cases, where the rights of the people and the environment are adversely affected due to the absence of enabling legislation despite the international obligations undertaken by the country. In this context, it can be said that Sri Lanka's approach is a mixed one to a certain extent and there prevails a need to constitutionalise the method of international law incorporation in the future.

It is noteworthy that Sri Lanka has ratified most key international conventions, including core human rights treaties,<sup>2</sup> the main conventions of the International Labour Organization (ILO),<sup>3</sup> major environmental conventions,<sup>4</sup> the 1949 Geneva Conventions,<sup>5</sup> the World Trade Organization (WTO) Agreements,<sup>6</sup> and the 1982 United Nations Convention on the Law of the Sea (UNCLOS).<sup>7</sup>

### 1.3 *Sri Lanka's International Relations and Obligations*

Sri Lanka became a member state of the United Nations (U.N.) on December 14, 1955, and has since developed strong ties with the organization, contributing to a positive relationship with the international community through the U.N.'s specialized agencies, funds, programs, and offices in Sri Lanka. Membership in the U.N. has provided Sri Lanka with opportunities to implement international obligations aimed at strengthening democracy and protecting human rights. The U.N. has fostered broad and wide-ranging partnerships with the Government, the civil society, the NGO community, bilateral donors, and international financial institutions. Sri Lanka is also a member of the

2 See *Ratification Status for Sri Lanka*, U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS., [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN) (last visited Apr. 5, 2025).

3 See *Ratifications for Sri Lanka*, INT'L LAB. ORG., [https://normlex.ilo.org/dyn/nrmlx\\_en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103172](https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103172) (last visited Apr. 5, 2025).

4 See, e.g., United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107.

5 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

6 See *Sri Lanka - Trade Policy Review*, WORLD TRADE ORG., [https://www.wto.org/english/tratop\\_e/tp17\\_e/tp17\\_e.htm](https://www.wto.org/english/tratop_e/tp17_e/tp17_e.htm) (last visited Apr. 5, 2025).

7 United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

regional organisation named SAARC (the South Asian Association for Regional Cooperation) and in the past has been an active member of the Non-aligned Movement and the Group of 77 countries.

However, while such commitments are expected to be upheld, successive governments have not always fulfilled these obligations consistently, except on limited occasions. This failure has contributed to widespread public discontent, social uprisings, and prolonged armed conflicts driven by ethnic and political tensions. Particularly, relevant state institutions work cordially to ensure that all Sri Lankan people enjoy better living conditions in accordance with the international standards to which Sri Lanka is a state party.

Since its independence, Sri Lanka has attempted to uphold state sovereignty and develop a national identity, which has influenced the country's engagement with international legal norms. Sri Lanka became a member of the United Nations in 1955 and has since then become a member of several international treaties and conventions, reflecting its commitment to multilateralism and international cooperation. However, this engagement has been selective, motivated by national interests and the need to balance international obligations with domestic priorities.

#### 1.4 *Non-international Armed Conflict in Sri Lanka*

Sri Lanka's international approach is influenced by the non-international armed conflict that occurred between the Government armed forces and the dissident terrorist organization named the Liberation Tigers of Tamil Eelam (LTTE), which plagued Sri Lanka for nearly three decades. This war situation profoundly impacted its perspective on international law, particularly in areas such as human rights, humanitarian law, and post-armed conflict transitional justice efforts. The protracted civil war brought issues of state sovereignty, self-determination, and the international community's interventions (non-military) to the forefront. The armed conflict and its aftermath have led to intense scrutiny from international bodies and human rights organizations, compelling Sri Lanka to strike a balance between addressing international concerns and asserting its sovereignty. So, efforts toward reconciliation and development in the post-war era have further influenced Sri Lanka's approach to international law. The country has engaged with international mechanisms for accountability and reconciliation, such as the Human Rights Council, while also seeking to implement domestic solutions that align with its unique socio-political landscape. Throughout the war, both sides faced allegations of severe human rights violations. These allegations triggered calls from the international community for greater adherence to international humanitarian law and human rights standards. The Human Rights Council has played a pivotal

role in this regard, passing several resolutions urging Sri Lanka to investigate alleged war crimes and human rights abuses. These resolutions have called for credible and independent investigations, emphasizing the need for accountability and reconciliation to achieve lasting peace. The government's efforts to address these calls have included the establishment of domestic mechanisms such as the Lessons Learnt and Reconciliation Commission (LLRC), though these efforts are met with criticism regarding their effectiveness and impartiality.

### 1.5 *People's Struggle of 2022*

In 2022, Sri Lanka saw a momentous occurrence dubbed the 'People's Struggle' (*Aragalaya*) due to the economic crisis that took place in the country owing to the mismanagement, corruption, and malpractices of governance. People's voices and peaceful protests became powerful, which eventually led the Executive President and the Prime Minister in power during this period to withdraw from their positions. The new government was formed based on constitutional provisions with the recognition of the need to respect the international law obligations of Sri Lanka. Sri Lanka's Constitution includes chapters on fundamental rights and directive principles of state policy that are based on the country's international obligations to a greater extent.

### 1.6 *Sri Lanka's Foreign Policy*

Following its independence in 1948, Sri Lanka adopted a foreign policy of non-alignment, a strategic stance that significantly influenced its approach to international law during the Cold War to maintain sovereignty and independence from the ideological blocs led by the United States and the Soviet Union. As a member of the Non-Aligned Movement (NAM), Sri Lanka aimed to balance its relations with major powers while prioritizing the interests of developing nations, seeking the broader goals of the NAM, which sought to promote peace, security, and development in the Global South. The first female Prime Minister of the world and Sri Lanka, Mrs. Sirimavo Bandaranaike, became the Chairperson of the NAM in 1976. Sri Lanka's leadership role within NAM was exemplified by its hosting of the Fifth NAM Summit in Colombo in 1976. Sri Lanka's active participation in NAM and its advocacy for these principles reflected its broader foreign policy goals of promoting peace, justice, and development through international law. Sri Lanka's active engagement in NAM underscored its commitment to the principles of sovereignty, territorial integrity, and non-interference in the internal affairs of the states. These principles were central to Sri Lanka's foreign policy and were reflected in its stance on various international legal issues.

### 1.7 *Sri Lanka's Approach to Treaty Obligations*

Sri Lanka's unique biodiversity and environmental challenges have significantly influenced its approach to international environmental law, underscoring the importance of global cooperation in addressing ecological issues. As a country rich in diverse ecosystems, including rainforests, coastal areas, and mountainous regions, Sri Lanka faces the dual challenge of promoting economic development while safeguarding its natural heritage. To this end, Sri Lanka has become a party to several key international environmental treaties. By ratifying these treaties, Sri Lanka has committed to global efforts to protect biodiversity, manage hazardous waste, and promote sustainable development. These international agreements have played a crucial role in shaping the country's environmental policies and legislative framework, ensuring that domestic actions are aligned with international standards and best practices.

As a developing nation, Sri Lanka's perspective on international economic law underscores the critical importance of fair and equitable trade practices. Sri Lanka's participation in the World Trade Organization (WTO) is a central aspect of this engagement, as the country advocates for the interests of developing nations within the global trading system. Sri Lanka has been vocal about the need for a trading environment that provides fair opportunities for all countries, emphasizing the elimination of trade barriers and subsidies that disproportionately benefit developed nations. This advocacy is driven by the recognition that equitable trade practices are essential for fostering sustainable economic growth and development in the Global South.

Thus, Sri Lanka's perspective on international law is indeed unique, shaped by a complex interplay of historical, political, and social factors. Overall, Sri Lanka's evolving approach to international law demonstrates a nuanced balance between adherence to global norms and the pragmatic need to address national challenges. This dynamic engagement underscores Sri Lanka's commitment to the principles of international law, reflecting its ongoing journey to reconcile its rich historical legacy with the demands of contemporary global governance. Through active participation in international treaties, organizations, and legal mechanisms, Sri Lanka continues to navigate its role in the international community, striving to harmonize sovereignty, development, human rights, and environmental sustainability within its unique national context.

### 1.8 *Conclusion*

Sri Lanka's periodic reviews by international human rights bodies, such as the U.N. Human Rights Committee and the Committee on the Elimination of Discrimination against Women, have highlighted persistent gaps and areas

needing improvement. These reviews have resulted in numerous recommendations aimed at strengthening human rights protections and addressing systemic issues. For instance, the U.N. Human Rights Committee has consistently urged Sri Lanka to ensure accountability for human rights violations committed during the civil war, calling for independent and transparent investigations. Similarly, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of Children have recommended measures to combat gender-based violence, discrimination, child abuse, etc. more effectively.

## 2 What Has Been Your Country's Contribution to the Development of International Law?

### 2.1 *Introduction*

Sri Lanka has made significant contributions to the progressive development of international law across various domains, including human rights, maritime law, environmental law, international criminal law, peacekeeping, and cultural and educational initiatives. This engagement is evidenced by its active participation in international bodies, treaties, and conferences, as well as the notable contributions of key Sri Lankan legal experts.

Sri Lanka has been an active member of the United Nations since 1955 and of many other international organizations. It has been contributing to the global dialogue on international peace, security, protecting, and promoting human rights standards and practices. Sri Lanka's exemplary role in these forums includes providing leadership in technical and knowledge-based activities and participating in drafting and adopting various treaties and resolutions. Sri Lanka was instrumental in the drafting process of the Convention on the Rights of the Child (CRC)<sup>8</sup> and has been a signatory since its adoption in 1989. Sri Lanka's efforts in promoting children's rights have been recognized internationally.

Sri Lanka was actively involved in the negotiations leading to the adoption of the United Nations Convention on the Law of the Sea (UNCLOS)<sup>9</sup> in 1982. As an island nation, it has a vested interest in maritime boundaries and resource management, contributing to the Convention's framework on Exclusive Economic Zones (EEZ) and continental shelves. For example, Sri Lanka's maritime boundary agreements with neighbouring countries, such

8 Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

9 United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

as India and the Maldives, have been guided by the principles established in UNCLOS, facilitating peaceful and cooperative management of maritime resources. Furthermore, Sri Lanka hosted the 2011 conference leading to the Colombo Declaration on Combating Maritime Piracy. This Declaration aimed at enhancing regional cooperation to combat piracy and ensure maritime security in the Indian Ocean. This initiative led to the establishment of the South Asia Regional Port Security Cooperative (SARPSCO) in Colombo, promoting collaborative efforts in maritime security and setting a precedent for regional maritime cooperation.

### 2.2 *Sri Lanka's Participation in Global Affairs*

Also, Sri Lanka has been an active participant in key environmental summits, including the Earth Summit in Rio de Janeiro (1992) and the Paris Agreement on Climate Change (2015). The country has consistently advocated for sustainable development practices and the protection of biodiversity. This commitment is reflected in Sri Lanka's National Environmental Action Plan (NEAP), developed in alignment with international environmental goals, which outlines comprehensive strategies for addressing environmental challenges. Additionally, as a member of the South Asia Co-operative Environment Programme (SACEP), Sri Lanka has been instrumental in the formulation and implementation of the South Asian Seas Action Plan (SASAP). This plan focuses on the protection and management of the marine environment in the South Asian region. Initiatives to combat marine pollution and conserve coral reefs and mangroves along Sri Lanka's coastline are prime examples of these efforts.

Sri Lanka has contributed personnel to various U.N. peacekeeping missions, enhancing international efforts in conflict resolution and post-conflict rebuilding. Sri Lankan peacekeepers have served in countries such as Haiti, Lebanon, and South Sudan, often in challenging environments.

Sri Lanka has successfully lobbied for the recognition of several of its cultural and natural sites as UNESCO World Heritage Sites, promoting the importance of preserving cultural heritage within the international legal framework. Sites such as the ancient city of Polonnaruwa and the Sinharaja Forest Reserve have gained international recognition, emphasizing cultural and environmental conservation.

### 2.3 *Prominent Sri Lankan Scholars in International Law*

Sri Lanka has produced several distinguished figures who have significantly contributed to the development and promotion of international law. Among them, Professor C.G. Weeramantry stands out for his extensive work and influence. He served as a judge and vice-president of the International Court of

Justice (ICJ), where he presided over landmark cases, including those concerning nuclear weapons and the settlement of a dispute between Hungary and Slovakia where he emphasized the need for sustainable development and intergenerational equity which have contributed to developing these norms in international law.<sup>10</sup>

Hamilton Shirley Amerasinghe was another pivotal figure in international maritime law, leading efforts to draft the United Nations Convention on the Law of the Sea (UNCLOS). His tenure as Sri Lanka's Permanent Representative to the U.N. saw him in various leadership roles, including President of the United Nations General Assembly and Chairman of multiple U.N. committees. Amerasinghe's contributions were crucial in promoting the peaceful uses of the sea-bed and ocean floor beyond national jurisdiction, significantly shaping international maritime regulations.

Dr. Radhika Coomaraswamy is a renowned human rights advocate who has made substantial contributions to international human rights law. She has served as the United Nations Special Rapporteur on Violence against Women, producing influential reports on violence in various contexts, including armed conflict and trafficking. Coomaraswamy's work has taken her across the globe, advocating for women's rights and contributing to significant U.N. studies, such as the Global Study on the implementation of UNSC Resolution 1325 on women, peace, and security.

Jayantha Dhanapala is a distinguished diplomat known for his expertise in disarmament. His presidency of the 1995 Nuclear Non-Proliferation Treaty Review and Extension Conference was a landmark event, balancing nuclear non-proliferation and disarmament goals. Dhanapala's role as Under-Secretary-General at the U.N. furthered efforts in arms control and disarmament.

Dr. A. Rohan Perera has played a significant role in shaping international legal frameworks, particularly in the realm of counter-terrorism. As Chairman of the U.N. Ad Hoc Committee on Comprehensive Convention on International Terrorism, Perera has been at the forefront of international efforts to combat terrorism.

Lakshman Kadirgamar made significant strides in international diplomacy and law, particularly in combating terrorism. His advocacy for the international recognition of Vesak Day as a global celebration highlights his efforts to promote cultural and religious understanding.

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<sup>10</sup> See *Gabčíkovo-Nagymaros Project (Hung. v. Slov.)*, Judgment, 1997 I.C.J. 7 (Sept. 25).

Dr. M.C.W. Pinto has made significant contributions to international law through his work with various international institutions, including the International Atomic Energy Agency and the World Bank. His involvement in the U.N. Conference on the Law of the Sea and the drafting of international treaties has had a lasting impact on maritime and environmental law.

Gamani Corea's tenure as Secretary-General of the United Nations Conference on Trade and Development (UNCTAD) marked a period of significant progress in international trade and development. His leadership in various U.N. committees and high-level panels has greatly influenced global economic policies and development strategies. Corea's contributions to international trade law have been instrumental in promoting equitable economic growth and development.

Professor M. Sornarajah and Professor Tony Anghie are renowned for their work in international law and in its specific areas, as well as for their third-world approaches to international law, and are recognized for their efforts to advance an Asian approach to international law. These distinguished Sri Lankan experts have left an indelible mark on international law, shaping its development through their dedicated efforts in various legal and diplomatic arenas. Their contributions continue to influence contemporary legal practices and international relations.

#### 2.4 *Conclusion*

Although Sri Lanka is a small sovereign state thriving amidst several challenges, it has not failed to contribute immensely through its active contribution to the development of various international legal instruments, case law jurisprudence, and the salient work of several international organizations by providing leadership for their advancement and effective commission of their work.

In conclusion, Sri Lanka's multifaceted contributions to international law reflect its active engagement and commitment to upholding and developing legal standards across various domains on the global stage. Through its participation in international bodies, the influence of distinguished legal experts, and its initiatives in human rights, maritime law, environmental law, international criminal law, peacekeeping, and cultural preservation, Sri Lanka has played a vital role in shaping the landscape of international law.

# Taiwan

*Dustin Kuan-Hsiung Wang\**

## 1 From Your Own Country, Is There a Unique Perspective of International Law?

### 1.1 Introduction

Taiwan's international law status is a complex and multifaceted issue with significant implications for global politics, diplomacy, and international relations. Understanding Taiwan's position in international law is crucial for comprehending the broader geopolitical dynamics in East Asia and beyond.

Taiwan's geopolitical position is of great strategic importance, influencing regional and global dynamics. Situated at the crossroads of East and Southeast Asia, Taiwan occupies a critical location in the Western Pacific. Its proximity to major sea lanes and its position within the First Island Chain make it a key player in regional security and economic activities. Taiwan's geopolitical position is shaped by its strategic location, economic prowess, and democratic values, making it a focal point in the broader geopolitical landscape of East Asia and beyond.

The “unsinkable aircraft carrier” is the best notion of Taiwan's geopolitical importance, and it was also the meeting point of the confrontation between two extreme ideologies, i.e., democracy and communism, during the Cold War era. It is also easy to know that there is a democratic entity in Taiwan, the Republic of China (ROC, or cited as Taiwan). The Republic of China was established in 1912 and comprises four divided groups of islands: Taiwan Island, Penghu Islands, Kinmen (also known as Quemoy) Islands, and Matsu Islands.<sup>1</sup>

The island's democratic governance and political freedom contrast with the communist regime of the People's Republic of China (PRC), making Taiwan a symbol of democratic resilience in the region. This ideological difference adds another layer of complexity to Taiwan's geopolitical position, as it navigates its relationships with major powers like the United States, Japan, and China.

Furthermore, in recent years, Taiwan's geopolitical significance has been further accentuated by its role as a leading supplier of advanced semiconductors, which are essential for global technology industries. This economic

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1 *Cross-Strait Relations: Fact Focus*, GOVERNMENT PORTAL OF THE REPUBLIC OF CHINA (TAIWAN), [https://www.taiwan.gov.tw/content\\_6.php](https://www.taiwan.gov.tw/content_6.php) (last visited Apr. 17, 2025).

strength enhances Taiwan's strategic value and ability to engage with international partners.

Taiwan's international law status also has significant regional security and stability implications. The East and South China Seas, where Taiwan has territorial claims, are strategically important areas and often the focus of geopolitical tensions. Taiwan's ability to navigate these complex legal and diplomatic waters is crucial for maintaining peace and stability in the region.

### 1.2 *Taiwan's International Legal Status*

Taiwan's perspective on international law is deeply influenced by its unique and contentious international legal status, an issue that has persisted since 1949. Following its defeat in the civil war with the Chinese Communist Party (CCP) from 1945 to 1949, the government of the ROC retreated to Taiwan in December 1949. Concurrently, the CCP established the PRC in Beijing. Since then, two Chinese regimes have existed, each asserting itself as the sole legal representative of the Chinese people and claiming entitlement to the entire territory of China. Taiwan has since operated as a political entity with its own government, economy, and military. The PRC's claim over Taiwan and its consistent opposition to any form of international recognition of Taiwan as a sovereign state have led to a complex and often contentious relationship between the two entities, with significant implications for international law and diplomacy. Two sides have claimed each enjoying sovereignty and jurisdiction over the other party.

This position is reflected in Article 4 of the Constitution of the Republic of China, which stipulates that “[t]he territory of the Republic of China according to its existing national boundaries shall not be altered except by resolution of the National Assembly.”<sup>2</sup> In addition, the Preamble of the Additional Articles of the Constitution of the Republic of China provides that: “[t]o meet the requisites of the nation *prior to national unification*, the following articles of the ROC Constitution are added or amended to the ROC Constitution.”<sup>3</sup> This expresses that according to Taiwan's constitution and domestic laws, unification remains the goal of its laws and policies.

Because each of them claims to be the legitimate representative of China, many disputes have arisen in international relations and international organizations. This has also led ROC to have a very special view on the theory and practice of international law. On the one hand, Taiwan has to deal with matters

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<sup>2</sup> MINGUO XIANFA [CONSTITUTION] art. 4 (1947) (Taiwan).

<sup>3</sup> MINGUO XIANFA ZENGXIU TIAOWEN [ADDITIONAL ARTICLES OF THE CONSTITUTION] (2005) (Taiwan) (emphasis added).

of pure international law, such as joining international organizations, establishing diplomatic relations with other countries, signing treaties, etc. Still, on the other hand, it has to be cautious in its interactions with the PRC because neither the ROC nor the PRC is a separate country and cannot be treated according to the rules of international law.

This situation has led to a delicate balance in international relations. Most countries adhere to the One-China policy, recognizing/acknowledging the PRC as the sole legitimate government of China. This policy complicates Taiwan's efforts to gain formal international recognition and participate fully in international organizations. Despite these challenges, Taiwan has managed to maintain unofficial diplomatic relations with numerous countries and participates in various international organizations, often under different names or as an observer. This delicate balance continues to shape Taiwan's international legal status and interactions with the global community.

### 1.3 *Capacity to Conclude International Instruments*

When a state comes to the ability to enter into agreements or treaties, every state inherently possesses this capacity. This principle is enshrined in Article 6 of the 1969 Vienna Convention on the Law of Treaties: "Every State possesses capacity to conclude treaties."<sup>4</sup> This underscores the importance of statehood as a fundamental element in acquiring the capacity to engage in treaty-making. Statehood confers the legal recognition and authority necessary for a state to participate in international agreements, thereby enabling it to assert its rights, fulfill its obligations, and engage in diplomatic relations on the global stage. Without statehood, an entity lacks the legal standing to enter into binding international treaties, highlighting the critical role of statehood in the realm of international law. However, according to the International Law Commission's Commentary, the term "State" used in Article 6 of the Vienna Convention on the Law of Treaties is defined as "with the same meaning as in the Charter of the United Nations, the Statute of the Court, the Geneva Conventions on the Law of the Sea and the Vienna Convention on Diplomatic Relations; i.e. it means a State for the purposes of international law."<sup>5</sup>

In such circumstances, Taiwan's ability to enter into international agreements is significantly constrained if other parties do not recognize it as a state. For bilateral agreements, a state that does not recognize Taiwan may refuse to engage in negotiations or formalize any agreements with it. This lack of

4 Vienna Convention on the Law of Treaties art. 6, May 23, 1969, 1155 U.N.T.S. 331.

5 Draft Articles on the Law of Treaties with Commentaries, [1966] 2 Y.B. Int'l L. Comm'n 187, 192.

recognition poses a substantial barrier to Taiwan's diplomatic efforts and limits its capacity to establish formal bilateral relations.

The situation becomes even more complex in the context of multilateral agreements. Non-recognizing states may view Taiwan as lacking the legal competence to participate in or conclude multilateral treaties. This perspective effectively excludes Taiwan from being a party to many international agreements, thereby limiting its ability to contribute to and benefit from global cooperation on various issues. Consequently, Taiwan's restricted capacity to conclude international agreements underscores the broader challenges it faces in achieving full participation and recognition in the international community.

Despite these complexities, the relationship between the ROC and the PRC remains challenging to clarify. Two primary issues require attention: the Median Line in the Taiwan Strait and the disputes over small island groups near the Chinese coastline. Addressing these issues is crucial for clarifying the relationship between the ROC and PRC and ensuring stability in the region.

#### 1.4 *Median Line of the Taiwan Strait*

The Median Line in the Taiwan Strait, also known as the "Davis Line," was established in 1955 by US General Benjamin O. Davis Jr., who was the commander of the 13th Air Force based in Taipei at the time. This line was drawn to create a buffer zone between the Chinese mainland and Taiwan, aiming to prevent military confrontations and maintain peace in the region. The Davis Line runs from 26°30' north latitude, 121°23' east longitude to 24°50' north latitude, 119°59' east longitude, and further to 23°17' north latitude, 117°51' east longitude.

The concept of the Median Line in the Taiwan Strait is rooted in the idea of a "virtual non-intrusive Median Line," which serves as an unofficial boundary to reduce the risk of military clashes. However, it is important to note that this Median Line is not recognized by international law. Most of the airspace over the Taiwan Strait is considered open-water airspace, allowing for international transit by all nations. As a result, when either side crosses this line, they are not technically violating the other's airspace. This lack of formal recognition and the open nature of the airspace contribute to the ongoing tensions and complexities in the region.

Following a series of intense air battles over the Taiwan Strait in 1958, the ROC Air Force still maintained air superiority from the Taiwan Strait to the Chinese southeast coast region and continued to conduct reconnaissance missions over the mainland until the 1990s. However, a tacit understanding emerged between Taiwan and mainland China regarding the Median Line's existence despite Beijing's steadfast refusal to officially recognize Taiwan's

sovereignty, maintaining that Taiwan is an inalienable part of its territory. This “unspoken agreement” led to a significant reduction in incursions into each other’s airspace, thereby minimizing the risk of renewed military conflict. This delicate balance has played a crucial role in maintaining relative peace and stability in the region, even as the underlying political tensions between the two sides persist.

During the Cold War era, the ROC Air Force maintained air superiority over the Taiwan Strait, with their military jets frequently crossing the Median Line to conduct reconnaissance missions. This dominance allowed Taiwan to gather crucial intelligence and assert its presence in the region. However, the situation began to shift after former President Lee Teng-hui proposed the “Two-State” theory, which directly challenged Beijing’s unification principle.

In response to this provocative stance, the People’s Liberation Army Air Force (PLAAF) began to increase its military activities in the area. In July 1999, PLAAF aircraft frequently crossed the Median Line in an attempt to pressure Taiwan into retracting the “Two-State” theory. These incursions were a clear demonstration of China’s disapproval and a strategic move to assert its claims over Taiwan.

Despite these aggressive maneuvers, China generally adhered to its side of the Median Line, providing some assurance to Taiwan that the PLAAF was not preparing for an imminent attack. This delicate balance of power and the tacit understanding between the two sides helped to maintain a fragile peace in the Taiwan Strait, even as underlying tensions persisted.

On March 31, 2019, a significant event occurred when two PLAAF fighters intentionally crossed the Median Line in the Taiwan Strait. This marked the first such incursion since 1999, signaling a notable shift in the cross-strait military balance. The incursion was brief, with the fighters being escorted and turned back by ROC Air Force interceptors. This incident, along with the frequent crossings of PLAAF fighters over the Median Line in recent years, reflects a changing dynamic in the region.

For decades, Taiwan’s air force maintained full control over the Taiwan Strait, effectively preventing Chinese military aircraft from crossing the Median Line. However, Beijing’s recent advancements in military capabilities have altered this balance, allowing Chinese fighters to challenge Taiwan’s air superiority. This evolving and delicate relationship underscores the shifting power dynamics in the Taiwan Strait and highlights the ongoing tensions between Taiwan and mainland China.

### 1.5 *Taiwan’s Islets within China’s Internal Waters*

As far as the cross-strait relations are concerned, the Kinmen (Quemoy) and Matsu islets play an important role. They are located in China’s internal waters,

which is the water area on the landward side of the baselines of the territorial sea and hold significant geopolitical importance due to their proximity to both the Chinese mainland and Taiwan. These island groups have been at the center of historical conflicts, Cold War tensions, and contemporary cross-strait relations. In the case of the two island groups' disputes, it is because they belong to Taiwan but are located in China's internal waters. Here is the situation:

Kinmen (Quemoy) Islands comprise twelve islets, covering an area of 150.45 km<sup>2</sup> off the southeastern coast of the Chinese mainland. It strategically controls the mouth of Amoy Bay. Kinmen is located 82 nautical miles west of the Penghu islands and 18 nautical miles east of Amoy. It is 198 nautical miles from Keelung in northern Taiwan and 155 nautical miles from Kaohsiung in southern Taiwan. The shortest distance between Kinmen and the Chinese mainland is only 1.25 nautical miles.

The Matsu Islands consist of nineteen islets, with a total area of 28.8 km<sup>2</sup>. This island group is situated at the mouth of the Min River on the Chinese mainland. The main island, Matsu, is 114 nautical miles northwest of Keelung and the same distance north of Kinmen. Kaoteng, one of the islets, is only 5.5 nautical miles from the Chinese mainland.

Taiwan has stationed coast guard forces on both island groups, allowing people to travel freely for tourism and trade. However, as relations have soured, fishery disputes and overlapping law enforcement have emerged in the waters surrounding these islands.

According to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the Kinmen and Matsu Islands are situated within the internal waters of the PRC.<sup>6</sup> This classification implies that, despite being under the sovereignty of Taiwan, these islands fall within the absolute sovereignty of China. This unique situation creates a complex legal and geopolitical scenario, as both Taiwan and China assert their respective claims over these strategically significant islands.

Over the past few decades, Taiwan has maintained a military presence on the Kinmen and Matsu Islands, stationing troops to fulfill national defense duties. Additionally, Taiwan has deployed Coast Guard personnel to these islands to carry out maritime law enforcement missions since the establishment of its Coast Guard in January 2000. These efforts aim to safeguard Taiwan's interests and ensure the security of the surrounding waters. The presence of Taiwanese military and coast guard forces on these islands underscores the ongoing tensions and the delicate balance of power in the region. This situation

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6 See U.N. Convention on the Law of the Sea art. 8, Dec. 10, 1982, 1833 U.N.T.S. 397, 401 [hereinafter UNCLOS].

highlights the broader challenges Taiwan faces in asserting its sovereignty and navigating its complex relationship with China.

Furthermore, the strategic location of the Kinmen and Matsu Islands adds another layer of complexity to the situation. These islands are situated close to the Chinese coastline, making them highly valuable for military and economic purposes. Control over these islands allows for better monitoring of maritime activities and enhances the ability to project power in the region. As a result, both Taiwan and China have a vested interest in maintaining their claims over these islands, leading to a continuous tension.

As tensions continue, the management of these island groups necessitates a nuanced approach involving delicate diplomacy and cooperative efforts. Ensuring stability and peace in the Taiwan Strait is paramount, and this requires both sides to engage in constructive dialogue and seek mutually beneficial solutions. The strategic importance of these islands, coupled with the historical and political complexities, makes their management a critical issue in cross-strait relations.

The development of cross-strait relations between Taiwan and mainland China will undoubtedly serve as a unique case study in the evolution of international law. The intricate legal, political, and diplomatic challenges both sides face provide valuable insights into how international law can adapt to address complex territorial disputes and sovereignty issues. As Taiwan and China navigate their relationship, the international community will closely observe the outcomes, which may set precedents for similar conflicts worldwide.

## 1.6 *Conclusion*

Taiwan's international legal status remains a complex and sensitive issue in global diplomacy. While it functions as a political entity, its lack of formal recognition under international law constrains its diplomatic and treaty-making capacities. The dominance of the One-China policy limits Taiwan's engagement in multilateral agreements, creating ongoing legal and political tensions.

The ongoing disputes over the Median Line in the Taiwan Strait, as well as the status of Taiwan's islets within China's internal waters, add layers of complexity to cross-strait relations as well as discussions on international law. These conflicts underscore the persistent challenges in reconciling historical claims, geopolitical dynamics, and legal principles. The Median Line, an unofficial boundary in the Taiwan Strait, has long been a point of contention, with both sides asserting their rights and interests. Additionally, the presence of Taiwan's islets within areas claimed by China further exacerbates tensions, as

both parties navigate the intricate web of historical narratives and contemporary geopolitical realities. Balancing these factors requires a nuanced approach that considers the legal frameworks, historical contexts, and strategic imperatives of both sides.

Ultimately, Taiwan's situation sets a precedent for international law regarding sovereignty, recognition, and state practice. As regional tensions evolve, Taiwan's legal and diplomatic status will continue to shape the broader framework of international relations and international law.

## 2 What Has Been Your Country's Contribution to the Development of International Law?

### 2.1 *Introduction*

Taiwan, located at the center of the island chain in the Western Pacific, is surrounded by the sea, making it a region of strategic importance and rich in fishery resources. This geographical advantage has significantly contributed to Taiwan's role in the development of the law of the sea.

The history of Taiwan's fishery industry is not just long but also storied. Since ancient times, the island's rich fishery resources have laid a solid foundation for its fishery development. This long-standing contribution commands respect and admiration. Taiwan's strategic location endows it with a wealth of marine biological resources, including diverse fishery resources. These resources not only meet the dietary needs of local residents but also serve as important export commodities.

Taiwan's fisheries are categorized into two main types: offshore and pelagic. Offshore fisheries are primarily conducted in the waters surrounding Taiwan, encompassing coastal and nearshore fishing activities. Pelagic fisheries, on the other hand, involve Taiwanese fishing vessels operating in more distant waters, such as pelagic trawl and longline fisheries.

However, Taiwan's fishery industry faces several challenges. The relatively narrow maritime areas between Taiwan and its neighboring countries often lead to overlapping claims when establishing exclusive economic zones in accordance with the United Nations Convention on the Law of the Sea. Additionally, the dedication and industriousness of Taiwanese fishermen frequently result in fishery disputes with neighboring countries, such as with Japan in the East China Sea and with the Philippines and Vietnam in the South China Sea.

## 2.2 *East China Sea*

International politics and international law play pivotal roles in the ongoing tensions in the East China Sea. There are some key elements regarding their influence.

The first one is about sovereignty disputes over the Diaoyutai/Senkaku Islands. The East China Sea is a hotspot for sovereignty disputes, with countries like China, Japan, and Taiwan asserting competing territorial claims over the Diaoyutai/Senkaku Islands. International political dynamics often intensify these disputes as each nation seeks to assert its territorial rights and strategic interests.

International law, particularly the United Nations Convention on the Law of the Sea (UNCLOS), provides a structured framework for resolving maritime disputes and managing resources in semi-enclosed seas like the East China Sea. Provisions for maritime boundaries, exclusive economic zones (EEZs), and the rights and responsibilities of coastal states are stipulated in the UNCLOS.<sup>7</sup> However, this “Charter of the Oceans” does not decide sovereignty issues. Even so, the term “provisional arrangements” was created in the UNCLOS.<sup>8</sup>

The concept of provisional arrangements, as stipulated in UNCLOS, Articles 74(3) and 83(3), encourages states to engage in practical cooperation while deferring final agreements on maritime delimitation.<sup>9</sup> This approach aims to prevent the escalation of disputes by promoting joint resource management and other collaborative efforts, even without a definitive boundary agreement. A good example is the 2013 “Taiwan-Japan Fisheries Agreement.” It demonstrates that states can find ways to cooperate on practical matters, such as fisheries management, despite ongoing sovereignty disputes.<sup>10</sup>

International law supports the idea that states should work together to conserve and sustain living resources in shared maritime areas. International law promotes collaborative efforts to manage and protect marine ecosystems and fishery resources by emphasizing common interests over territorial claims. Therefore, by focusing on common interests and setting aside sovereignty issues, international law and diplomatic efforts can provide avenues for peaceful dispute resolution. The Taiwan-Japan Fisheries Agreement highlights the advantages and importance of cooperation.

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7 See e.g., UNCLOS, *supra* note 6, at art. 58.

8 *Id.* at arts. 74(3), 83(3).

9 *Id.*

10 Shih Hsiu-chuan, *Taiwan, Japan Ink Fisheries Agreement*, *TAIPEI TIMES* (Apr. 11, 2013), <https://www.taipeitimes.com/News/front/archives/2013/04/11/2003559323>.

These elements prove the twisted interplay between international politics and international law in shaping the dynamics of the East China Sea, emphasizing the importance of legal frameworks, cooperative arrangements, and diplomatic efforts in managing and resolving conflicts.

The intersection of international politics and international law significantly shapes the dynamics of the East China Sea. This region is marked by territorial disputes, resource depredation or co-management, and efforts at conflict resolution among the involved parties. The interplay between these factors influences the actions and policies of the countries involved, including China, Japan, and Taiwan.

As mentioned earlier, one notable example of cooperation in this complex environment is the “Taiwan-Japan Fisheries Agreement” concluded in 2013. Under the Agreement, Taiwanese and Japanese fishing vessels in the overlapping EEZs are exempted from the jurisdiction of each other’s law enforcement, and the two sides agreed to discuss resource conservation and common fishing rules.<sup>11</sup> This Agreement demonstrates how states can work together to manage shared resources and address disputes, even amid broader geopolitical tensions. By focusing on practical arrangements and mutual interests, such agreements contribute to the stability and sustainable management of the region’s valuable marine resources.

The East China Sea is a prime example of how international politics and law can both complicate and promote cooperation among nations. It emphasizes the importance of diplomatic efforts and legal frameworks in addressing these challenges. It is important to highlight the considerations behind the “Taiwan-Japan Fisheries Agreement.” This Agreement is based on a framework of international law, particularly the provisions stipulated in the UNCLOS. Several implications are worth noting:

- A. The Agreement aimed to set aside sovereignty disputes over the Diaoyutai/Senkaku Islands. By shelving these contentious issues, the focus shifted to joint efforts in managing living resources within the designated zone where the overlapping EEZs exist. This approach allowed both Taiwan and Japan to cooperate on practical matters without getting entangled in broader territorial conflicts.
- B. The “Taiwan-Japan Fisheries Agreement” marked significant progress in easing tensions in the East China Sea, which has not been done before. By establishing provisional arrangements for cooperation, it helped stabilize the situation and prevent further escalation of disputes. This

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<sup>11</sup> *Id.*

Agreement served as a model for how neighboring countries can work together to address shared concerns and foster a more peaceful regional environment.

- C. The provisional arrangements outlined in Article 74(3) of the UNCLOS provided a legal foundation for the Agreement. This legal backing ensured that the cooperation between Taiwan and Japan was grounded in internationally recognized principles, lending legitimacy and support to their efforts.<sup>12</sup>
- D. It is important to understand that the Agreement covers the waters south of 27 degrees north latitude and north of the Yaeyama Islands, excluding the territorial seas around the disputed Senkaku (Diaoyutai) Islands, over which both Japan and Taiwan claim sovereignty. In other words, one of the key objectives of the Agreement was to promote the conservation and sustainable use of marine living resources in the overlapping exclusive economic zone between Taiwan and Japan. By working together, both countries aimed to ensure the long-term utilization of valuable fishery resources, benefiting their respective fishing industries and local communities.
- E. The Agreement emphasized the importance of focusing on shared interests, such as fishery cooperation, to resolve conflicts and manage resources sustainably. By prioritizing shared goals over territorial disputes, Taiwan and Japan were able to find common ground and work towards mutually beneficial outcomes. The “Taiwan-Japan Fisheries Agreement” was seen as a positive step towards maintaining peace in the East China Sea. By setting aside issues of territorial sovereignty and concentrating on fisheries management, the Agreement provided a framework for peaceful resolution of disputes. This cooperative approach helped build trust and fostered collaboration between the two countries.

These legal as well as political considerations collectively contributed to the finalization of the “Taiwan-Japan Fisheries Agreement” in 2013, highlighting the importance of cooperation and conflict resolution in the region. One thing that has to be emphasized is the practice of “provisional arrangement” in the UNCLOS Article 74(3) on EEZ delimitation and Article 83(3) on continental shelf delimitation: “[s]tates concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or

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<sup>12</sup> UNCLOS, *supra* note 6, at art. 74(3).

hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”<sup>13</sup>

The “spirit of understanding and cooperation” indicates that parties in dispute should negotiate in good faith, which has been defined in many well-established precedents of international law.<sup>14</sup> Moreover, the parties concerned cannot reach any final agreement on maritime delimitation. In that case, they are still obliged to restrain themselves from taking any action that would cause the dispute to deteriorate. Mutual restraint is the central idea that should be exercised pending the final Agreement or settlement so as not to impede the completion of the final delimitation.

### 2.3 *South China Sea*

The South China Sea is a highly contested area, making it a geopolitical hotspot and a critical zone for fisheries management. This sea’s extensive continental shelves, relatively shallow depths, and the influx of numerous large rivers make it one of the most productive bodies of water in terms of marine living resources. The South China Sea is recognized as having the highest level of biodiversity in the world. The fisheries resources in this region are of immense local, national, and international importance, significantly contributing to both the food supply and income of the people living in the surrounding areas. Each year, the South China Sea produces around five million tons of fish, accounting for approximately 10% of the global catch.

These marine resources are crucial for the food security of coastal populations, which number in the hundreds of millions in the littoral states of the South China Sea. Fish protein constitutes more than 22% of the average Asian diet, underscoring the vital role of fisheries in regional nutrition. Additionally, these fisheries provide employment to at least 3.7 million people, highlighting the importance of fishing activities in maintaining social stability and economic well-being.

Six claimants – Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam – claim nearly 70 disputed rocks, reefs, islets, and low-tide elevations in the South China Sea. These geographical features have become focal points for territorial disputes and competition over resources. Control over these areas directly affects access to fisheries, making them central to the geopolitical tensions in the region.

However, the South China Sea faces the classic “tragedy of the commons” scenario. Overexploitation of fish stocks threatens the sustainability of these

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<sup>13</sup> *Id.* at arts. 74(3), 83(3).

<sup>14</sup> *Id.*

resources, endangering food security, and livelihoods. The drive for individual self-interest often leads to resource depletion, exacerbating tensions among the claimant states.

Despite its unique political status, Taiwan's fishing industry is active in the contested waters of the South China Sea. Taiwan acknowledges that effective fisheries management requires a collective effort. Rather than focusing solely on sovereignty disputes, Taiwan emphasizes practical solutions that promote cooperation. By engaging in cooperative management, all claimant states can benefit from improved stability and sustainable resource utilization. Taiwan's pragmatic approach underscores the importance of collaboration in safeguarding shared marine resources. Through collective action, claimant states can mitigate overfishing, promote sustainability, and work towards peaceful resolution in the South China Sea.

Due to its political situation, Taiwan is not a signatory to the UNCLOS. Nevertheless, practical cooperation aligns with the principles outlined in UNCLOS, which emphasize the importance of cooperation among neighboring states. By leveraging existing legal frameworks, countries can effectively enhance cooperation and address fishery disputes. This approach is consistent with the "provisional arrangements" principle provided in UNCLOS Articles 74(3) and 83(3), which encourages states to cooperate on practical issues while deferring final agreements on boundary delimitation.<sup>15</sup>

#### 2.4 *Conclusion*

As fishery disputes continue in both the East and South China Seas, finding practical solutions is more important than ever. Recognizing that everyone involved shares responsibility and focusing on managing marine resources can help move toward peaceful resolutions. Taiwan's role as a practical and cooperative player shows that working together is possible, even with complex geopolitical challenges.

Taiwan has consistently shown the importance of practical, cooperative approaches to managing fishery resources. By focusing on joint efforts instead of territorial disputes, Taiwan has demonstrated that the disputed states can work together for the common good. This cooperation ensures the sustainable management of marine resources, supports regional stability, and promotes a spirit of teamwork among the nations involved.

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<sup>15</sup> UNCLOS, *supra* note 6, at arts. 74(3), 83(3).

By working together, the states can develop and put into practice effective strategies for conserving and managing fish stocks. This helps protect the livelihoods of millions of people who depend on these resources. Cooperation in fisheries management can also help prevent overfishing and the depletion of marine resources, which is crucial for maintaining the ecological balance in the region.

Furthermore, fostering a collaborative spirit can ease tensions and build trust among the countries involved. This makes it easier to address other contentious issues in the region. Taiwan's pragmatic engagement in fisheries management serves as a clear example of the importance of cooperation in protecting shared marine resources. By focusing on sustainable resource use and recognizing their shared responsibilities, the countries involved can work towards a peaceful and stable future for both the East and South China Seas.

# Thailand

*Kitti Jayangakula\**

## 1 From Your Own Country, Is There a Unique Perspective of International Law?

Thailand's approach to international law was shaped by its history, geopolitical position, and domestic politics. Using "bamboo diplomacy," Thailand balances relations with major powers to maintain independence. While the country has made strides in ratifying key human rights treaties and advancing economic and social rights, such as through Universal Health Coverage, domestic implementation remains challenging. Issues like restrictions on political freedoms and freedoms of expression persist, especially under military influence. The paper highlights the gap between Thailand's international commitments and domestic realities, underscoring the need for ongoing reforms to align with global human rights standards.

Thailand's perspective on international law is complicated and deeply influenced by its geopolitical position, domestic policies, and historical context. The country attempts to balance its international relations through a diplomatic approach often referred to as "bamboo diplomacy." This policy is characterized by the metaphor of bamboo bending with the wind, symbolizing a foreign policy that combines adaptability and pragmatism to secure national survival and independence. This alludes to the way in which the country has pursued a flexible, pragmatic policy, aimed at maintaining national survival and independence. "In bamboo diplomacy, Thailand is blatantly playing one great power off against the others amid great power competition."<sup>1</sup> In practice, Thailand strategically leverages its relationships with multiple global powers, seeking to maintain positive relations with several without positioning too closely with any single one. This approach allows Thailand to navigate complex international dynamics and preserve its autonomy on the global stage.

With regard to historical considerations, Thailand, formerly known as Siam until the mid-twentieth century, navigated a complex interplay of regional and global dynamics that significantly influenced its legal and diplomatic stance. A country's perspective on international law is shaped by its unique

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1 JITTIPAT POONKHAM, A GENEALOGY OF BAMBOO DIPLOMACY: THE POLITICS OF THAI DÉTENTE WITH RUSSIA AND CHINA 1 (2022).

historical and geopolitical contexts, making it a distinctive case study in this field. Tracking back to the colonial era, although Thailand avoided direct colonization by Western powers, it, nonetheless, experienced substantial colonial pressures that affected various aspects of its governance, including the practice and interpretation of international law. Thailand faced significant pressure from colonial powers during the eighteenth to early twentieth centuries. This period saw the imposition of numerous unequal treaties that established extraterritorial rights, exempting nationals of colonial powers from local laws and local courts. These treaties were a stark example of how colonial influences penetrated Thailand's sovereignty and affected its legal and judicial systems.<sup>2</sup> This period highlighted the challenges Thailand faced in maintaining sovereignty and legal autonomy amidst external pressures. In response to these pressures, Thailand undertook significant legal reforms aimed at modernizing its legal system to better interact with Western powers and to gradually regain full judicial sovereignty. This period of legal transformation was crucial in shaping Thailand's contemporary legal framework and its approach to international law.

Due to geographical and political considerations, Thailand's location in Southeast Asia has made it a critical player in regional diplomacy. Its international relations policy seeks to balance relationships with major powers, particularly the United States, China, and neighboring countries. This balancing act reflects Thailand's strategic considerations and cautious approach to international relations and international law. Importantly, at the subregional level in Southeast Asia, Thailand is a founding member of the Association of Southeast Asian Nations (ASEAN), and it actively participates in shaping regional norms and legal practices. Through ASEAN, Thailand engages in collective efforts to address regional issues, such as trade, security, and human rights, thereby contributing to the development of international law from a regional perspective.

After the end of World War II in 1945, the establishment of the United Nations represented a first step towards the acceptance of the principle of universality and uniformity of the law of nations (international law). The application of the principle of universality coincided with the admission of newly independent states as members to the United Nations. Thailand had an early involvement and was an early member of the United Nations.

Regarding human rights considerations, Thailand's engagement with international human rights law is characterized by a complex interplay between

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<sup>2</sup> See OWART SUTHIWARTNARUEPUT, FROM EXTRATERRITORIALITY TO EQUALITY: THAILAND'S FOREIGN RELATIONS 1855–1939, at 124–45 (2021).

its formal commitments to global standards and the practical realities of its domestic priorities. Thailand is a party to eight out of the nine core international human rights treaties. The first core human rights treaty is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>3</sup> Thailand acceded to it on August 9, 1985, and the CEDAW became effective in Thailand since September 8, 1985. Later, on June 14, 2000, Thailand became party to the Optional Protocol to the CEDAW, allowing the CEDAW Committee to accept complaints from individuals and instigate the inquiry procedure into “grave and systematic violations” of the CEDAW.<sup>4</sup> The second core human rights treaty is the Convention on the Rights of the Child (CRC).<sup>5</sup> Thailand acceded to the CRC on February 12, 1992, and the CRC became effective in Thailand since April 26, 1992. Subsequently, Thailand acceded to all three optional protocols to the CRC, namely: (1) Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC)<sup>6</sup> on January 11, 2006; (2) Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC)<sup>7</sup> on February 27, 2006; and (3) Optional Protocol to the CRC on a Communications Procedure (OPIC)<sup>8</sup> on September 28, 2002. The third core human rights treaty is the International Covenant on Civil and Political Rights (ICCPR).<sup>9</sup> Thailand acceded to the ICCPR on October 29, 1996, but has not acceded to any Optional Protocols to the ICCPR. ICCPR became effective in Thailand on January 29, 1997. The fourth core human rights treaty is the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>10</sup> Thailand acceded to the ICESCR on September 5, 1999, but has not acceded to any Optional Protocols to the ICESCR. ICESCR became effective in Thailand on December 5, 1999. The fifth core human rights treaty is the International

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3 Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

4 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women art. 8, Oct. 6, 1999, 2131 U.N.T.S. 83.

5 Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

6 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, May 25, 2000, 2171 U.N.T.S. 227.

7 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, 2173 U.N.T.S. 222.

8 Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Dec. 19, 2011, 2983 U.N.T.S. 131.

9 International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

10 International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

Convention on the Elimination of All Forms of Racial Discrimination (CERD).<sup>11</sup> Thailand acceded to the CERD on January 28, 2003, and the CERD became effective on February 27, 2003. The sixth core human rights treaty to which Thailand became a party to is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>12</sup> Thailand acceded to the CAT on October 2, 2007, and the CAT became effective on November 1, 2007. Thailand has not acceded to the Optional Protocol to the CAT (OPCAT).<sup>13</sup> The seventh core human rights treaty is the Convention on the Rights of Persons with Disabilities (CRPD).<sup>14</sup> Thailand acceded to the CRPD on July 29, 2008, and the CRPD became effective on August 28, 2008. Thailand also became a party to the Optional Protocol to the CRPD<sup>15</sup> on October 2, 2016, allowing the CRPD Committee to consider complaints from individuals. The last core human rights treaty is the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).<sup>16</sup> Thailand ratified the ICPPED on May 14, 2024, and it became effective on June 13, 2024. Thailand, however, has not signed the remaining core human rights treaty, which is the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families (CRMW).<sup>17</sup>

Nevertheless, Thailand encounters substantial obstacles in the domestic implementation of these international human rights laws. This includes the state's adherence to rights, such as freedom of expression, freedom of assembly, and the treatment of ethnic minorities and migrants. The application of laws like the *lèse-majesté* provision under Section 112 of the Thai Penal Code,<sup>18</sup> which criminalizes defamation against the monarchy, has been particularly

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11 International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195.

12 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

13 Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 18, 2002, 2375 U.N.T.S. 237.

14 Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3.

15 Optional Protocol to the Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2518 U.N.T.S. 283.

16 International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, 2716 U.N.T.S. 3.

17 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 2220 U.N.T.S. 3.

18 Pramuan Kotmai Aya [PKA] [PENAL CODE] § 112 (Thai.) (“Whoever, defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years.”).

contentious. Critics argue that this law is used to suppress free speech and dissent.

Finally, the political landscape in Thailand, notably the military's significant role following coups in 2006 and 2014, has also shaped the country's human rights environment. Under military rule, Thailand experienced heightened restrictions on political dissent and increased censorship. Although the country has since transitioned to a civilian government, the legacy of military intervention continues to exert a considerable influence on its human rights practices.

Despite these challenges, however, Thailand has achieved significant advancements in the realm of economic and social rights. The implementation of the Universal Health Coverage (UHC) scheme stands out as a successful initiative,<sup>19</sup> enhancing access to healthcare and contributing to poverty reduction. All Thai citizens are now entitled to essential healthcare services throughout their lives. This policy includes coverage for preventive, curative, and palliative care across all age groups.<sup>20</sup> The extension of benefits to high-cost treatments, such as kidney dialysis, cancer care, and stem-cell transplants, has enhanced financial protection for patients. Well-organized district health systems allow individuals to access care or referrals at nearby health facilities.<sup>21</sup> As a result, the increased use of services has led to a significant reduction in unmet needs for both outpatient and inpatient care.<sup>22</sup> This progress in economic and social rights illustrates a more favorable aspect of Thailand's human rights record.

Thailand's relationship with international human rights law is marked by a formal adherence to international treaties, contrasted with notable challenges to domestic implementation. The interplay of political, social, and economic dynamics profoundly affects the application and respect for these human rights laws within the country. This duality underscores the complexity of Thailand's human rights situation, highlighting areas of both progress and ongoing concern.

In conclusion, Thailand's approach to international law is shaped by its history, geopolitics, and domestic context. Through "bamboo diplomacy," it balances relations with multiple powers. While it has made progress in human

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19 Kanitsorn Sumriddetchkajorn, et. al., *Universal Health Coverage and Primary Care, Thailand*, 9 BULLETIN OF THE WORLD HEALTH ORGANIZATION 415, 415 (2019), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6560367/pdf/BLT.18.223693.pdf>.

20 *Id.*

21 *Id.*

22 *Id.*

rights, particularly in economic and social areas like healthcare, domestic challenges persist, especially regarding political freedoms and ethnic rights. Thailand's engagement with international law reflects a blend of formal commitment and ongoing challenges, requiring continued efforts to align with global human rights standards.

## **2 What Has Been Your Country's Contribution to the Development of International Law?**

Thailand has played a key role in developing international law both regionally and globally. As a founding member of ASEAN, it has helped shape legal frameworks, promote human rights, and advance environmental and economic cooperation. Thailand has also contributed to global efforts in humanitarian law, peacekeeping, and environmental protection, including climate change and biodiversity treaties. These contributions reflect Thailand's commitment to strengthening the rule of law and addressing global challenges.

Thailand has made contributions to the development of international law at both regional and global levels. This reflects Thailand's strategic role in the Southeast Asia subregion and its engagement with global legal frameworks.

With regard to ASEAN and regional integration, Thailand was one of the founders of ASEAN, along with Indonesia, Malaysia, the Philippines, and Singapore. The country played a significant role in the founding of the ASEAN. Thailand has made significant contributions to the development and promotion of international law within ASEAN, playing a key role in shaping legal frameworks and promoting cooperation among member states. Thailand's contributions to international law within ASEAN have been substantial and diverse, spanning the development of foundational legal frameworks, dispute resolution mechanisms, human rights advocacy, environmental law, maritime security, and economic integration. Through these efforts, Thailand has played a crucial role in strengthening the rule of law and promoting legal cooperation within the region, thereby enhancing ASEAN's capacity to address complex regional and global challenges.

As one of the founding members of ASEAN, Thailand was instrumental in the establishment of the legal and institutional frameworks that underpin the organization. The ASEAN Declaration of 1967 (Bangkok Declaration),<sup>23</sup> which Thailand helped to draft, laid the foundation for ASEAN's principles

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23 Ass'n of Se. Asian Nations [ASEAN], Declaration (Aug. 8, 1967), <https://asean.org/wp-content/uploads/2022/02/0719.pdf>.

and objectives, including respect for sovereignty, territorial integrity, and non-interference in the internal affairs of member states. Later, Thailand was a member state that played a significant role in the drafting and adoption of the ASEAN Charter,<sup>24</sup> which came into force in 2008. The Charter provides ASEAN with a legal personality and establishes a more rules-based framework for cooperation among member states. It codifies fundamental principles such as democracy, human rights, and the rule of law, thereby strengthening the legal basis for ASEAN's activities and interactions with the international community.

Thailand has actively contributed to the development of ASEAN's dispute settlement mechanisms. For instance, it has been involved in the formulation and implementation of the ASEAN Protocol on Enhanced Dispute Settlement Mechanism (2004), which aims to provide a more effective and efficient means of resolving disputes among member states. This protocol enhances the legal processes available within ASEAN for addressing trade and investment disputes, thus promoting a more predictable and stable legal environment in the region.

Thailand has been a strong advocate for the promotion of human rights within ASEAN. It has been actively involved in the regional human rights mechanisms under ASEAN. Thailand supported the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and has participated in discussions and initiatives aimed at improving human rights standards across Southeast Asia, which serves as a consultative body to promote and protect human rights in the region. Thailand's involvement in AICHR reflects its commitment to integrating international human rights norms into regional frameworks.

In addition, the country has also contributed to the development of international environmental law within ASEAN. It has been active in promoting legal frameworks for sustainable development and environmental protection. For instance, Thailand has supported initiatives related to the ASEAN Agreement on Transboundary Haze Pollution, which seeks to address environmental issues that cross national boundaries and require collective legal and policy responses.

Given its strategic location and extensive coastline, Thailand has been involved in regional efforts to address maritime security and uphold international maritime law. Thailand supports the implementation of the United Nations Convention on the Law of the Sea (UNCLOS)<sup>25</sup> within the ASEAN con-

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24 Ass'n of Se. Asian Nations [ASEAN], Charter (Nov. 20, 2007), <https://asean.org/wp-content/uploads/images/archive/publications/ASEAN-Charter.pdf>.

25 U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

text, advocating for a peaceful resolution of maritime disputes and cooperation on issues such as maritime safety and the protection of marine resources.

Finally, Thailand has promoted the harmonization of legal standards and regulations to facilitate economic integration within ASEAN. By supporting the ASEAN Economic Community (AEC) Blueprint, Thailand has contributed to the creation of a single market and production base, which necessitates the alignment of legal and regulatory frameworks among member states.

Concerning global legal frameworks integration, the integration of global legal frameworks is crucial for addressing complex, cross-border issues, in particular, international humanitarian law (IHL) and environmental protection. Engaging with these frameworks ensures that nations can collaboratively develop and enforce laws that uphold international standards and foster global cooperation.

Thailand has actively participated in IHL treaties aimed at protecting victims of both international and non-international armed conflicts. Thailand is a party to the Four Geneva Conventions of 1949, namely: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;<sup>26</sup> Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;<sup>27</sup> Geneva Convention Relative to the Treatment of Prisoners of War;<sup>28</sup> and Geneva Convention Relative to the Protection of Civilian Persons in Time of War.<sup>29</sup> In addition, Thailand has also ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC),<sup>30</sup> which is the consequence of the conferences under the framework of the International Committee of the Red Cross (ICRC) and the United Nations, respectively.

In addition, the country has contributed to peacekeeping operations under the United Nations, providing personnel and support in conflict areas. Thailand has participated in peacekeeping operations in many countries, particularly in Kuwait, Timor-Leste, and Fiji. Apart from these missions, Thailand also took

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26 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31.

27 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85.

28 Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

29 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

30 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, *supra* note 7.

part in peacekeeping activities in Cambodia, Darfur Sudan, South Sudan, Nepal, Burundi, Bosnia and Herzegovina, and South Africa. This participation underscores Thailand's commitment to upholding international humanitarian standards in the global context.

Concerning Environmental Law and Sustainable Development, Thailand has made significant contributions to international environmental law and sustainable development through a combination of policy initiatives, participation in international agreements, and domestic measures aimed at sustainability and environmental protection. Thailand has actively participated in international environmental agreements and has committed to the Sustainable Development Goals. It has signed and ratified various international treaties related to climate change, biodiversity, and marine conservation, contributing to global environmental governance.

In addition, Thailand has made contributions to regional and global environmental efforts by playing a leading role in ASEAN's environmental initiatives, including the ASEAN Agreement on Transboundary Haze Pollution<sup>31</sup> and regional strategies for biodiversity conservation and climate change adaptation. Furthermore, Thailand actively participates in international forums, such as the United Nations Environment Programme (UNEP) and the Asia-Pacific Economic Cooperation (APEC), to advocate for global environmental sustainability and share best practices.

In conclusion, Thailand has made significant contributions to international law, both regionally through ASEAN and globally. As a founding member of ASEAN, it has shaped key legal frameworks, promoted human rights, and advanced environmental protection. On the global stage, Thailand has actively engaged in international humanitarian law and peacekeeping efforts, while also supporting global treaties on climate change and sustainability. These efforts reflect Thailand's commitment to upholding the rule of law, fostering regional cooperation, and addressing global challenges.

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31 *ASEAN Agreement on Transboundary Haze Pollution* (June 10, 2002), <https://asean.org/wp-content/uploads/2021/01/ASEANAgreementonTransboundaryHazePollution-1.pdf>.

## *Legal Materials*





# Participation in Multilateral Treaties

*Karin Arts\**

## Editorial Introduction

This section records the participation of Asian states in open multilateral law-making treaties which mostly aim at world-wide adherence. It updates the treaty sections of earlier Volumes until 31 December 2023. New data are preceded by a reference to the most recent previous entry in the multilateral treaties section of the *Asian Yearbook of International Law*. In case no new data are available, the title of the treaty is listed with a reference to the last Volume containing data on the treaty involved. For this section, states broadly situated west of Iran, north of Mongolia, east of Papua New Guinea and south of Indonesia will not be covered.

### *Note*

- Where no other reference to specific sources is made, data were derived from *Multilateral Treaties Deposited with the Secretary-General*, [https://treaties.un.org/pages/ParticipationStatus.aspx?clang=\\_en](https://treaties.un.org/pages/ParticipationStatus.aspx?clang=_en) or, when not available there, from the *United Nations Treaty Series Online*, [https://treaties.un.org/Pages/Content.aspx?path=DB/UNTS/pageIntro\\_en.xml](https://treaties.un.org/Pages/Content.aspx?path=DB/UNTS/pageIntro_en.xml).
- Where reference is made to the Hague Conference on Private International Law (Hcch), data were derived from <https://www.hcch.net/en/instruments/conventions>.
- Where reference is made to the International Atomic Energy Agency (IAEA), data were derived from <https://www.iaea.org/resources/treaties/treaties-under-IAEA-auspices>.
- Where reference is made to the International Civil Aviation Organization (ICAO), data were derived from <https://www.icao.int/secretariat/legal/Lists/Current%20lists%20of%20parties/AllItems.aspx>.
- Where reference is made to the International Committee of the Red Cross (ICRC), data were derived <https://ihl-databases.icrc.org/en/ihl-treaties/treaties-and-states-parties>.

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\* Compiled by Dr. Karin Arts, Professor of International Law and Development, International Institute of Social Studies (ISS), The Hague, The Netherlands (part of Erasmus University Rotterdam).

- Where reference is made to the International Labour Organization (ILO), data were derived from <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO::>
- Where reference is made to the International Maritime Organization (IMO), data were derived from <https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%202024.pdf>.
- Where reference is made to the United Nations Educational, Scientific and Cultural Organization (UNESCO), data were derived from <https://www.unesco.org/en/legal-affairs/standard-setting/conventions>.
- Where reference is made to WIPO, data were derived from <http://www.wipo.int/treaties/en>.
- Where reference is made to the Worldbank, data were derived from <https://www.worldbank.org/en/about/leadership/members>.
- Reservations and declarations made upon signature or ratification are not included.
- Sig. = Signature; Cons. = Consent to be bound; Eff. date = Effective date; E.i.f. = Entry into force; Min. Age Spec. = Minimum Age Specified; Rat. = Ratification or accession.

### Table of Headings

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| Antarctica                                 | Judicial and administrative cooperation |
| Commercial arbitration                     | Labour                                  |
| Cultural matters                           | Narcotic drugs                          |
| Cultural property                          | Nationality and statelessness           |
| Development matters                        | Nuclear material                        |
| Dispute settlement                         | Outer space                             |
| Environment, fauna and flora               | Privileges and immunities               |
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| Humanitarian law in armed conflict         | Social matters                          |
| Intellectual property                      | Telecommunications                      |
| International crimes                       | Treaties                                |
| International representation               | Weapons                                 |
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### Antarctica

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### Commercial Arbitration

#### Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958

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| <i>State</i> | <i>Sig.</i> | <i>Cons.</i> |
|--------------|-------------|--------------|
| Timor Leste  |             | 17 Jan 2023  |

### Cultural Matters

Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character, 1949: *see* Vol. 7 pp. 322–323.

Agreement on the Importation of Educational, Scientific and Cultural Materials, 1950: *see* Vol. 12 p. 234.

Convention concerning the International Exchange of Publications, 1958: *see* Vol. 6 p. 235.

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International Agreement for the Establishment of the University for Peace, 1980: *see* Vol. 24 p. 32.

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Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005: *see* Vol. 28 pp. 145–146.

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### Cultural Property

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Convention concerning the Protection of the World Cultural and Natural Heritage, 1972: *see* Vol. 22 p. 306.

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### Development Matters

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| <i>State</i> | <i>Sig.</i> | <i>Cons.</i> |
|--------------|-------------|--------------|
| Iran         |             | 26 Jun 2023  |

### **Environment, Fauna and Flora**

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International Convention on Civil Liability for Oil Pollution Damage, 1969: *see* Vol. 15 p. 215.

International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969: *see* Vol. 9 p. 284.

Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1971: *see* Vol. 24 p. 331.

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971: *see* Vol. 12 p. 237.

Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended: *see* Vol. 7 p. 325.

Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances Other Than Oil, 1973: *see* Vol. 6 p. 239.

Protocol to the 1969 International Convention on Civil Liability for Oil Pollution Damage, 1976: *see* Vol. 10 p. 269.

Protocol Relating to the 1973 International Convention for the Prevention of Pollution from Ships 1978, as amended: *see* Vol. 15 p. 225.

Protocol to amend the 1971 Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1982: *see* Vol. 13 p. 265.

Convention for the Protection of the Ozone Layer, 1985: *see* Vol. 15 p. 215.

Montreal Protocol on Substances that Deplete the Ozone Layer, 1987: *see* Vol. 28 p. 149.

Amendments to Articles 6 and 7 of the 1971 Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1987: *see* Vol. 13 p. 266.

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Amendment to the Montreal Protocol, 1992: *see* Vol. 18 p. 103.

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Protocol to Amend the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992: *see* Vol. 24 p. 332.

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Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998: *see* Vol. 19 p. 182.

Amendment to the Montreal Protocol, 1999: *see* Vol. 19 p. 182.

Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 2000: *see* Vol. 25 p. 193.

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001: *see* Vol. 26 p. 143.

Stockholm Convention on Persistent Organic Pollutants, 2001: *see* Vol. 25 p. 193.

International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004: *see* Vol. 28 p. 150.

Amendment to Annex B of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, 2006: *see* Vol. 23 p. 182.

Nagoya–Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety, 2010: *see* Vol. 25 p. 194.

Doha Amendment to the Kyoto Protocol, 2012: *see* Vol. 25 p. 194.

Paris Agreement, 2015: *see* Vol. 26 p. 143.

### **International Convention on Oil Pollution Preparedness, Response, and Cooperation, 1990**

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(Status as provided by IMO)

| <i>State</i> | <i>Cons.</i> | <i>E.i.f.</i> |
|--------------|--------------|---------------|
| Indonesia    | 13 Dec 2022  | 13 Mar 2023   |

**Amendment to the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1995**

(Continued from Vol. 25 p. 193)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Thailand     |             | 9 Mar 2023  |

**International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001**

(Continued from Vol. 28 p. 150)

| <i>State</i> | <i>Cons.</i> | <i>E.i.f.</i> |
|--------------|--------------|---------------|
| Seychelles   | 28 Nov 2023  |               |

**Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 2010**

(Continued from Vol. 25 p. 194)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Bangladesh   | 6 Sep 2011  | 10 Jan 2023 |

**Minamata Convention on Mercury, 2013**

(Continued from Vol. 27 p. 113)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Bangladesh   | 10 Oct 2013 | 18 Apr 2023 |

**Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, 2016**

(Continued from Vol. 28 p. 150)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Korea (Rep.) |             | 19 Jan 2023 |

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Convention on the Law Applicable to Maintenance Obligations Towards Children, 1956: *see* Vol. 6 p. 244.

Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions, 1961: *see* Vol. 7 p. 327.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962: *see* Vol. 8 p. 178.

Convention on the Law Applicable to Maintenance Obligations, 1973: *see* Vol. 6 p. 244.

Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993: *see* Vol. 22 p. 310.

**Convention on the International Recovery of Child Support and Other Forms of Family Maintenance**

(Continued from Vol. 28 p. 151)

| <i>State</i> | <i>Cons.</i> | <i>Eif.</i> |
|--------------|--------------|-------------|
| Kyrgyzstan   | 27 Oct 2023  |             |

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Articles of Agreement International Finance Corporation (IFC), 1955: *see* Vol. 28 pp. 151–152.

Articles of Agreement International Development Association (IDA), 1960: *see* Vol. 28 pp. 153–154.

Agreement Establishing the Asian Development Bank, 1965: *see* Vol. 7 p. 327.

Convention Establishing the Multilateral Investment Guarantee Agency, 1988: *see* Vol. 19 p. 184.

## Health

Protocol Concerning the Office International d'Hygiène Publique, 1946: *see* Vol. 6 p. 245.

World Health Organization Framework Convention on Tobacco Control, 2003: *see* Vol. 19 p. 185.

Protocol to Eliminate Illicit Trade in Tobacco Products, 2012: *see* Vol. 24 p. 336.

## Human Rights, Including Women and Children

Convention on the Political Rights of Women, 1953: *see* Vol. 10 p. 273.

Convention on the Nationality of Married Women, 1957: *see* Vol. 10 p. 274.

Convention against Discrimination in Education, 1960: *see* Vol. 27 p. 115.

International Covenant on Civil and Political Rights, 1966: *see* Vol. 16 p. 165.

International Covenant on Economic, Social and Cultural Rights, 1966: *see* Vol. 23 p. 186.

International Convention on the Elimination of All Forms of Racial Discrimination, 1966: *see* Vol. 23 p. 186.

Optional Protocol to the International Covenant on Civil and Political Rights, 1966: *see* Vol. 15 p. 219.

Convention on the Elimination of All Forms of Discrimination against Women, 1979: *see* Vol. 11 p. 250.

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984: *see* Vol. 21 p. 245.

International Convention against Apartheid in Sports, 1985: *see* Vol. 6 p. 248.

Convention on the Rights of the Child, 1989: *see* Vol. 11 p. 251.

Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 1989: *see* Vol. 28 pp. 155–156.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990: *see* Vol. 18 p. 106.

Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1992, *see* Vol. 12 p. 242.

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999: *see* Vol. 7 p. 170.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000: *see* Vol. 20 p. 202.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000: *see* Vol. 25 p. 197.

Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002: *see* Vol. 24 p. 337.

**Optional Protocol to the Convention on the Rights of Persons with Disabilities, 2008**

(Continued from Vol. 28 p. 156)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Kazakhstan   | 11 Dec 2008 | 13 Jul 2023 |
| Timor-Leste  |             | 7 Feb 2023  |

**International Convention for the Protection of All Persons from Enforced Disappearance, 2010**

(Continued from Vol. 22 p. 313)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Maldives     | 6 Feb 2007  | 31 Jul 2023 |
| Korea (Rep.) |             | 4 Jan 2023  |

**Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, 2011**

(Continued from Vol. 25 p. 197)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Kazakhstan   | 7 Feb 2023  |             |

**Convention on the Rights of Persons with Disabilities, 2008**  
(Continued from Vol. 27 p. 115)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Timor-Leste  |             | 17 Jan 2023 |

### Humanitarian Law in Armed Conflict

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Protocol I Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts, 1977: *see* Vol. 18 p. 107.

Protocol II Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts, 1977: *see* Vol. 12 p. 244.

Protocol III Additional to the Geneva Conventions of 12 August 1949 and Relating to the Adoption of an Additional Distinctive Emblem, 2005: *see* Vol. 25 p. 198.

### Intellectual Property

Convention for the Protection of Industrial Property, 1883 as amended 1979: *see* Vol. 23 p. 188.

Convention for the Protection of Literary and Artistic Works, 1886 as amended 1979: *see* Vol. 28 p. 157.

Madrid Union Concerning the International Registration of Marks, including the Madrid Agreement 1891 as amended in 1979, and the Madrid Protocol 1989: *see* Vol. 27 p. 117.

Universal Copyright Convention, 1952: *see* Vol. 6 p. 251.

Protocols 1, 2 and 3 annexed to the Universal Copyright Convention, 1952: *see* Vol. 6 p. 251.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961: *see* Vol. 26 pp. 146–147.

Convention Establishing the World Intellectual Property Organization, 1967: *see* Vol. 13 p. 188.

Patent Cooperation Treaty, 1970 as amended in 1979 and modified in 1984 and 2001: *see* Vol. 22 p. 314.

Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, 1971: *see* Vol. 25 p. 199.

Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, 1979: *see* Vol. 6 p. 252.

Trademark Law Treaty, 1994: *see* Vol. 15 p. 222.

WIPO Performances and Phonograms Treaty, 1996: *see* Vol. 28 p. 157.

WIPO Copyright Treaty, 1996: *see* Vol. 28 p. 158.

Patent Law Treaty, 2000: *see* Vol. 24 p. 340.

Singapore Treaty on the Law of Trademarks, 2006: *see* Vol. 23 p. 189.

Beijing Treaty on Audiovisual Performances, 2012: *see* Vol. 26 p. 147.

**Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, 1957 as amended in 1979**

(Continued from Vol. 25 p. 199)

(Status as provided by WIPO)

| <i>State Party</i> | <i>Party</i> | <i>Latest Act to which State is Party</i> |
|--------------------|--------------|---|
| Indonesia          | 7 Oct 2023   | Geneva                                    |

**Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled, 2013**

(Continued from Vol. 28 p. 158)

(Status as provided by WIPO)

| <i>State</i> | <i>Party</i> |
|--------------|--------------|
| Vietnam      | 6 Mar 2023   |

**International Crimes**

Slavery Convention, 1926 as amended in 1953: *see* Vol. 15 p. 223.

Convention on the Prevention and Punishment of the Crime of Genocide, 1948: *see* Vol. 24 p. 342.

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956: *see* Vol. 14 p. 236.

Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963: *see* Vol. 9 p. 289.

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1968: *see* Vol. 6 p. 254.

Convention for the Suppression of Unlawful Seizure of Aircraft, 1970: *see* Vol. 8 p. 289.

Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971: *see* Vol. 8 p. 290.

International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973: *see* Vol. 7 p. 331.

Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents, 1973: *see* Vol. 14 p. 236.

International Convention Against the Taking of Hostages, 1979: *see* Vol. 20 p. 206.

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988: *see* Vol. 18 p. 111.

Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1988, *see* Vol. 12 p. 247.

International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989: *see* Vol. 11 p. 254.

Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991: *see* Vol. 23 p. 191.

Convention on the Safety of United Nations and Associated Personnel, 1994: *see* Vol. 11 p. 255.

International Convention for the Suppression of Terrorist Bombings, 1997: *see* Vol. 20 p. 206.

Statute of the International Criminal Court, 1998: *see* Vol. 25 p. 202.

International Convention for the Suppression of the Financing of Terrorism, 1999: *see* Vol. 17 p. 174.

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime, 2000: *see* Vol. 21 p. 250.

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention Against Transnational Organized Crime, 2001: *see* Vol. 21 p. 250.

International Convention for the Suppression of Acts of Nuclear Terrorism, 2005: *see* Vol. 28 p. 160.

Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 2005: *see* Vol. 25 p. 203.

Amendment to Article 8 of the Rome Statute of the International Criminal Court, 2010: *see* Vol. 27 p. 119.

Amendments on the Crime of Aggression to the Rome Statute of the International Criminal Court, 2010: *see* Vol. 27 p. 120.

**United Nations Convention Against Transnational Organized Crime, 2000**  
(Continued from Vol. 23 p. 191)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Bhutan       |             | 20 Feb 2023 |

**Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, 2000**  
(Continued from Vol. 28 p. 160)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Bhutan       |             | 20 Feb 2023 |

**Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention Against Transnational Organized Crime, 2001**  
(Continued from Vol. 21 p. 250)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| China        | 9 Dec 2002  | 19 Dec 2023 |

**United Nations Convention Against Corruption, 2003**  
(Continued from Vol. 23 p. 191)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Bhutan       | 15 Sep 2005 | 27 Sep 2023 |

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UN Convention on the Liability of Operators of Transport Terminals in International Trade, 1991: *see* Vol. 6 p. 257.

United Nations Convention on the Use of Electronic Communications in International Contracts, 2005: *see* Vol. 28 p. 161.

**Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific, 2016**

(Continued from Vol. 28 p. 161)

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Kyrgyzstan   |             | 20 Dec 2023 |

**Amendments to the Framework Agreement on Facilitation of Cross-Border Paperless Trade in Asia and the Pacific, 2016**

Bangkok 29 April 2022

Entry into force: not yet

| <i>State</i> | <i>Sig.</i> | <i>Rat.</i> |
|--------------|-------------|-------------|
| Kyrgyzstan   |             | 20 Dec 2023 |

**Judicial and Administrative Cooperation**

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Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 1970: *see* Vol. 26 p. 151.

**Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961**

(Continued from Vol. 28 p. 162)

(Status as provided by HccH)

| <i>State</i> | <i>Party</i> | <i>E.i.f.</i> |
|--------------|--------------|---------------|
| China        | 8 Mar 2023   | 7 Oct 2023    |
| Pakistan     | 8 Jul 2022   | 9 Mar 2023    |

**Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965**

(Continued from Vol. 26 p. 151)

(Status as provided by HccH)

| <i>State</i> | <i>Party</i> | <i>E.i.f.</i> |
|--------------|--------------|---------------|
| Singapore    | 16 May 2023  | 1 Dec 2023    |

### Labour

Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Conv. 87): *see* Vol. 27 p. 121.

Right to Organise and Collective Bargaining Convention, 1949 (ILO Conv. 98): *see* Vol. 27 p. 122.

Equal Remuneration Convention, 1951 (ILO Conv. 100): *see* Vol. 22 p. 320.

Abolition of Forced Labour Convention, 1957 (ILO Conv. 105): *see* Vol. 28 pp. 162–163.

Discrimination (Employment and Occupation) Convention, 1958 (ILO Conv. 111): *see* Vol. 22 p. 320.

Employment Policy Convention, 1964 (ILO Conv. 122): *see* Vol. 27 p. 122.

Minimum Age Convention, 1973 (ILO Conv. 138): *see* Vol. 28 p. 163.

Worst Forms of Child Labour Convention, 1999 (ILO Conv. 182): *see* Vol. 19 p. 194.

Promotional Framework for Occupational Safety and Health Convention, 2006 (ILO Conv. 187): *see* Vol. 28 p. 163.

### Forced Labour Convention, 1930 (ILO Conv. 29)

(Continued from Vol. 28 p. 162)

(Status as provided by ILO)

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| <i>State</i> | <i>Rat. Registered</i> |
|--------------|------------------------|
| Brunei       | 12 Jun 2023            |

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### Narcotic Drugs

Protocol Amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, 1946: *see* Vol. 6 p. 261.

Agreement Concerning the Suppression of the Manufacture of, Internal Trade in, and Use of, Prepared Opium and amended by Protocol, 1925, amended 1946: *see* Vol. 6 p. 261.

International Opium Convention, 1925, amended by Protocol 1946: *see* Vol. 7 p. 334.

Agreement Concerning the Suppression of Opium Smoking, 1931, amended by Protocol, 1946: *see* Vol. 6 p. 261.

Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1931, and amended by Protocol, 1946: *see* Vol. 7 p. 334.

Protocol bringing under International Control Drugs outside the Scope of the Convention of 1931, as amended by the Protocol of 1946, 1948: *see* Vol. 6 p. 262.

Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936, amended 1946: *see* Vol. 6 p. 262.

Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, 1953: *see* Vol. 6 p. 262.

Single Convention on Narcotic Drugs, 1961: *see* Vol. 13 p. 276.

Single Convention on Narcotic Drugs, 1961, as Amended by Protocol 1975: *see* Vol. 21 p. 253.

Convention on Psychotropic Substances, 1971: *see* Vol. 13 p. 276.

Protocol amending the Single Convention on Narcotic Drugs, 1972: *see* Vol. 15 p. 227.

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988: *see* Vol. 20 p. 210.

### Nationality and Statelessness

Convention relating to the Status of Stateless Persons, 1954: *see* Vol. 17 p. 178.

Optional Protocol to the Vienna Convention on Diplomatic Relations concerning Acquisition of Nationality, 1961: *see* Vol. 6 p. 265.

Optional Protocol to the Vienna Convention on Consular Relations concerning Acquisition of Nationality, 1963: *see* Vol. 8 p. 187.

### Nuclear Material

Convention on Civil Liability for Nuclear Damage, 1963: *see* Vol. 17 p. 179.

Convention on the Physical Protection of Nuclear Material, 1980: *see* Vol. 24 p. 345.

Joint Protocol Relating to the Application of the Vienna Convention (and the Paris Convention on Third Party Liability in the Field of Nuclear Energy), 1988: *see* Vol. 6 p. 265.

Convention on Nuclear Safety, 1994: *see* Vol. 24 p. 345.

Convention on Supplementary Compensation for Nuclear Damage, 1997: *see* Vol. 16 p. 178.

Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, 1997: *see* Vol. 24 p. 346.

Protocol to Amend the 1963 Convention on Civil Liability for Nuclear Damage, 1997: *see* Vol. 17 p. 180.

**Convention on Early Notification of a Nuclear Accident, 1986**

(Continued from Vol. 19 p. 196)

(Status as provided by IAEA)

| <i>State</i> | <i>Cons. (deposit)</i> | <i>E.i.f.</i> |
|--------------|------------------------|---------------|
| Turkmenistan | 14 Nov 2023            | 14 Dec 2023   |

**Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986**

(Continued from Vol. 28 p. 165)

(Status as provided by IAEA)

| <i>State</i> | <i>Cons. (deposit)</i> | <i>E.i.f.</i> |
|--------------|------------------------|---------------|
| Turkmenistan | 14 Nov 2023            | 14 Dec 2023   |

**Amendment to the Convention on the Physical Protection of Nuclear Material, 2005**

(Continued from Vol. 27 p. 124)

(Status as provided by IAEA)

| <i>State</i> | <i>Cons. (deposit)</i> | <i>E.i.f.</i> |
|--------------|------------------------|---------------|
| Laos         | 12 Apr 2023            | 12 Apr 2023   |

### Outer Space

Treaty on Principles Governing the Activities of the States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1967: *see* Vol. 16 p. 178.

Agreement governing the Activities of States on the Moon and other Celestial Bodies, 1979: *see* Vol. 10 p. 284.

Convention on Registration of Objects launched into Outer Space, 1974: *see* Vol. 15 p. 229.

### Privileges and Immunities

Convention on the Privileges and Immunities of the United Nations, 1946: *see* Vol. 19 p. 197.

Convention on the Privileges and Immunities of the Specialized Agencies, 1947: *see* Vol. 7 p. 338.

Vienna Convention on Diplomatic Relations, 1961: *see* Vol. 19 p. 197.

Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes, 1961: *see* Vol. 6 p. 269.

Vienna Convention on Consular Relations, 1963: *see* Vol. 19 p. 197.

Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes, 1963: *see* Vol. 6 p. 269.

Convention on Special Missions, 1969: *see* Vol. 6 p. 269.

Optional Protocol to the Convention on Special Missions concerning the Compulsory Settlement of Disputes, 1969: *see* Vol. 6 p. 269.

United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004: *see* Vol. 15 p. 230.

### Refugees

Convention relating to the Status of Refugees, 1951: *see* Vol. 12 p. 254.

Protocol relating to the Status of Refugees, 1967: *see* Vol. 12 p. 254.

### Road Traffic and Transport

Convention on Road Traffic, 1968: *see* Vol. 26 p. 155.

Convention on Road Signs and Signals, 1968: *see* Vol. 25 p. 208.

## Sea

Convention on the Territorial Sea and the Contiguous Zone, 1958: *see* Vol. 6 p. 271.

Convention on the High Seas, 1958: *see* Vol. 7 p. 339.

Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958: *see* Vol. 6 p. 271.

Convention on the Continental Shelf, 1958: *see* Vol. 6 p. 271.

Optional Protocol of Signature concerning the Compulsory Settlement of Disputes, 1958: *see* Vol. 6 p. 272.

United Nations Convention on the Law of the Sea, 1982: *see* Vol. 19 p. 198.

Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994: *see* Vol. 19 p. 199.

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea (...) relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995: *see* Vol. 25 p. 156.

## Sea Traffic and Transport

Convention Regarding the Measurement and Registration of Vessels employed in Inland Navigation, 1956: *see* Vol. 6 p. 273.

International Convention for the Safety of Life at Sea, 1960: *see* Vol. 6 p. 273.

Convention on Facilitation of International Maritime Traffic, 1965 as amended: *see* Vol. 26 p. 157.

International Convention on Load Lines, 1966: *see* Vol. 15 p. 230.

International Convention on Tonnage Measurement of Ships, 1969: *see* Vol. 15 p. 231.

Special Trade Passenger Ships Agreement, 1971: *see* Vol. 6 p. 275.

Convention on the International Regulations for Preventing Collisions at Sea, 1972 as amended: *see* Vol. 29 p. 167.

International Convention for Safe Containers, as amended 1972: *see* Vol. 20 p. 215.

Protocol on Space Requirements for Special Trade Passenger Ships, 1973: *see* Vol. 6 p. 275.

Convention on a Code of Conduct for Liner Conferences, 1974: *see* Vol. 6 p. 276.

Protocol Relating to the International Convention for the Safety of Life at Sea, 1974 as amended 1978: *see* Vol. 12 p. 256.

UN Convention on the Carriage of Goods by Sea, 1978: *see* Vol. 6 p. 276.

Protocol Relating to the International Convention for the Safety of Life at Sea, 1988: *see* Vol. 25 pp. 209–210.

Protocol Relating to the International Convention on Load Lines, 1988: *see* Vol. 26 p. 157.

**International Convention for the Safety of Life at Sea, 1974**

(Continued from Vol. 15 p. 231)

(Status as provided by IMO)

| <i>State</i> | <i>Cons. (dep.)</i> | <i>E.i.f.</i> |
|--------------|---------------------|---------------|
| Timor Leste  | 12 Oct 2022         | 12 Jan 2023   |

**International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended**

(Continued from Vol. 28 p. 168)

(Status as provided by IMO)

| <i>State</i> | <i>Cons. (dep.)</i> | <i>E.i.f.</i> |
|--------------|---------------------|---------------|
| Timor Leste  | 12 Oct 2022         | 12 Jan 2023   |

**Nairobi International Convention on the Removal of Wrecks, 2007**

(Continued from Vol 28 p. 168)

(Status as provided by IMO)

| <i>State</i> | <i>Cons. (dep.)</i> | <i>E.i.f.</i> |
|--------------|---------------------|---------------|
| Seychelles   | 28 Nov 2023         |               |

### Social Matters

International Agreement for the Suppression of the White Slave Traffic, 1904, amended by Protocol 1949: *see* Vol. 6 p. 278.

International Convention for the Suppression of the White Slave Traffic, 1910, amended by Protocol 1949: *see* Vol. 6 p. 278.

Agreement for the Suppression of the Circulation of Obscene Publications, 1910, amended by Protocol 1949: *see* Vol. 6 p. 278.

International Convention for the Suppression of the Traffic in Women and Children, 1921: *see* Vol. 6 p. 277.

Convention for the Suppression of the Traffic in Women and Children, 1921, amended by Protocol in 1947: *see* Vol. 6 p. 277.

International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, 1923: *see* Vol. 6 p. 277.

International Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, 1923, amended by Protocol in 1947: *see* Vol. 6 p. 277.

International Convention for the Suppression of the Traffic in Women of Full Age, 1933: *see* Vol. 6 p. 277.

International Convention for the Suppression of the Traffic in Women of Full Age, 1933, amended by Protocol, 1947: *see* Vol. 6 p. 277.

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950: *see* Vol. 12 p. 257.

Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950: *see* Vol. 12 p. 257.

International Convention Against Doping in Sports, 2005: *see* Vol. 25 p. 211.

### Telecommunications

Constitution of the Asia-Pacific Telecommunity, 1976: *see* Vol. 13 p. 280.

Agreement establishing the Asia-Pacific Institute for Broadcasting Development, 1977: *see* Vol. 10 p. 287.

Amendment to Article 11, Paragraph 2(a), of the Constitution of the Asia-Pacific Telecommunity, 1981: *see* Vol. 8 p. 193.

Amendments to articles 3(5) and 9(8) of the Constitution of the Asia-Pacific Telecommunity, 1991: *see* Vol. 9 p. 298.

Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 1998: *see* Vol. 15 p. 232.

Amendments to the Agreement establishing the Asia-Pacific Institute for Broadcasting Development, 1999: *see* Vol. 10 p. 288.

Amendments to the Constitution of the Asia-Pacific Telecommunity, 2002: *see* Vol. 13 p. 280.

**Convention on the International Mobile Satellite Organization (INMARSAT), 1976 as amended**

(Continued from Vol. 19 p. 202)

(Status as provided by IMO)

| <i>State</i> | <i>Cons. (dep.)</i> | <i>E.i.f.</i> |
|--------------|---------------------|---------------|
| Maldives     | 20 Jul 2023         | 20 Jul 2023   |

**Treaties**

Vienna Convention on the Law of Treaties, 1969: *see* Vol. 19 p. 203.

Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations, 1986: *see* Vol. 6 p. 280.

**Weapons**

Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Warfare, 1925: *see* Vol. 26 pp. 159–160.

Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, 1963: *see* Vol. 6 p. 281.

Treaty on the Non-Proliferation of Nuclear Weapons, 1968: *see* Vol. 11 p. 262.

Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, 1971: *see* Vol. 6 p. 282.

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972: *see* Vol. 22 p. 327.

Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques, 1976: *see* Vol. 21 p. 259.

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed Excessively Injurious or to have Indiscriminate Effects, 1980: *see* Vol. 28 p. 171.

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, 1992: *see* Vol. 21 p. 259.

Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and other Devices, as amended, to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed Excessively Injurious or to have Indiscriminate Effects, 1996: *see* Vol. 26 pp. 160–161.

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 1997: *see* Vol. 23 p. 201.

Convention on Cluster Munitions, 2008: *see* Vol. 25 p. 212.

Arms Trade Treaty, 2013: *see* from Vol. 28 p. 171.

**Additional Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed Excessively Injurious or to have Indiscriminate Effects (Protocol IV on Blinding Laser Weapons), 1995**

(Continued from Vol. 26 p. 160).

| <i>State</i> | <i>Sig.</i> | <i>Cons.</i> |
|--------------|-------------|--------------|
| Singapore    |             | 21 Sep 2023  |

**Comprehensive Nuclear Test Ban Treaty, 1996**

(Continued from Vol. 28 p. 171)

| <i>State</i> | <i>Sig.</i> | <i>Cons.</i> |
|--------------|-------------|--------------|
| Sri Lanka    | 24 Oct 1996 | 25 Jul 2023  |

**Amendment of Article 1 of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed Excessively Injurious or to have Indiscriminate Effects, 2001**

(Continued from Vol. 28 p. 171)

| <i>State</i> | <i>Sig.</i> | <i>Cons.</i> |
|--------------|-------------|--------------|
| Singapore    |             | 21 Sep 2023  |

**Protocol (v) on explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed Excessively Injurious or to have Indiscriminate Effects, 2003**

(Continued from Vol. 26 p. 161)

| <i>State</i> | <i>Sig.</i> | <i>Cons.</i> |
|--------------|-------------|--------------|
| Singapore    |             | 21 Sep 2023  |

**Treaty on the Prohibition of Nuclear Weapons, 2017**

(Continued from Vol. 28 p. 171)

| <i>State</i> | <i>Sig.</i> | <i>Cons.</i> |
|--------------|-------------|--------------|
| Sri Lanka    |             | 19 Sep 2023  |

# State Practice of Asian Countries in International Law

*Bangladesh*

*Sumaiya Khair\**

## HISTORY AND THEORETICAL APPROACH OF BANGLADESH IN INTERNATIONAL LAW

### Bangladesh's Approach to 'Law' and 'International Law'

#### UN GENERAL ASSEMBLY – SECURITY COUNCIL – MULTILATERALISM – COHERENCE AND COMPLEMENTARITY

#### *Statement by Bangladesh at the Open Debate of the Security Council on New Orientation for Reformed Multilateralism at the Security Council Chamber, 14 December 2023*

Bangladesh highlighted how the foundation of international peace and security has been jeopardized by multidimensional challenges, including climate change, conflict, food, energy, and financial crises, the COVID-19 pandemic, and the conflict in Ukraine. An ardent advocate of multilateralism, Bangladesh made the following observations:

First, the UN's Security Council's membership and structure are not in sync with current realities. For it to be fully representative, relevant, effective, democratic, transparent and fit for purpose, it must be reformed, having due regard to the representation and inclusiveness of all regions and the judicious use of veto power.

Second, the General Assembly symbolizes multilateralism and reflects better the will of the world's people than the Security Council does. There is a need to revitalize the work of the GA to preserve its inter-governmental, inclusive, consultative and democratic nature. It is important to bridge the power gap between the General Assembly and the Security Council as a matter of priority. Aligning the GA agenda with the goals and targets of the 2030 Agenda,

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eliminating duplication and overlap, promoting complementarity of related issues, and further reform of the working methods of the General Assembly and its main Committees must be prioritized.

Third, it is imperative to enhance synergy, coherence and complementarity among the agendas of the Assembly and its Committees, the ECOSOC and its subsidiary bodies. Interaction with the Security Council also must be improved.

Fourth, it is important to reform other multilateral institutions such as the International Monetary Fund (IMF), World Bank (WB), World Trade Organization (WTO), and World Health Organization (WHO) to enhance their capacity to effectively address the diverse challenges of current times and to adapt to twenty-first-century realities with particular focus on developing countries.

## **TERRITORY AND JURISDICTION**

### **Authority and Sovereignty over Territory**

#### **TRANSNATIONAL CRIMES – CYBERCRIME – CYBER DEFENCE – PRIVACY AND DATA PROTECTION – DUE DILIGENCE**

##### ***Cyber Security Act, 2023 (Law No. 39 of 2023)***

The Act replaces the Digital Security Act of 2018 to ensure cybersecurity and make new provisions for the detection, prevention, suppression, and prosecution of crimes committed through digital or electronic means and related matters. The Act shall be applicable extra-territorially. If any person commits any offence under this Act beyond Bangladesh which would be punishable under this Act if committed in Bangladesh, the provisions of this Act shall be applicable in such manner as if he had committed such offence in Bangladesh (Section 4(1)). If any person commits any offence within Bangladesh under this Act from outside of Bangladesh using any computer, computer system, or computer network situated in Bangladesh, the provisions of this Act shall be applicable in such manner as if the entire offence had been committed in Bangladesh (Section 4(2)). If any person commits any offence beyond Bangladesh under this Act from within Bangladesh, the provisions of this Act shall apply in such manner as if the offence had been committed in Bangladesh (Section 4(3)).

The government shall establish a National Cyber Security Agency (NCSA) consisting of 1 (one) Director General and several Directors as specified in

the rules for carrying out the purposes of this law (Section 5). The Agency shall function under the direction and advice of the National Digital Security Council, chaired by the Prime Minister (Section 12). To carry out the purposes of this Act, there shall be one or more digital forensic labs under the control and supervision of the Agency (Section 10). The government may declare any computer system, network or information infrastructure as critical information infrastructure (Section 15). The law defines “critical information infrastructure” as any external or virtual information infrastructure that controls, processes, circulates or preserves any information, data or electronic information and, if damaged or critically affected, may adversely affect public safety or financial security or public health and/or national security or national integrity or sovereignty.

Section 16 of the Act sets out measures for monitoring and inspecting a critical information infrastructure. The Director General of NCSA shall, if necessary, from time to time, monitor and inspect any critical information infrastructure to ensure that the provisions of this Act are properly complied with and submit a report on this behalf to the Government. If the Director General has reason to believe that any activity of an individual regarding any matter within his jurisdiction is threatening or detrimental to any critical information infrastructure, then he may, *suo moto*, or upon a complaint of any other person, inquire into the matter.

The Act prescribes steps to prevent potential threats to cybersecurity. If any data information related to any matter within the jurisdiction of the Director General of NCSA, being published or propagated in digital media, creates a threat to digital security, s/he may request the Bangladesh Telecommunications and Regulatory Commission (BTRC) to remove or, as the case may be, block the said data-information (Section 8(1)). If it appears to the law enforcement that any data information published or propagated in digital media hampers the solidarity, financial activities, security, defence, religious values or public discipline of the country or any part thereof, or incites racial hostility and hatred, they may request BTRC through the NCSA Director General to remove or block the data-information (Section 8(2)). In the case of both the above instances, the BTRC shall, with intimation to the Government of the said matters, instantly remove or, as the case may be, block the data information (Section 8(3)).

The Act sets out elaborate provisions on offences and punishment. It treats quite a few acts as offences punishable by imprisonment, a fine, or both. Some offences are cognizable and bailable, some are non-cognizable and non-bailable, while others are non-cognizable, bailable and subject to the permission of the court, and may be compromised (Section 52). Without going into the details of punishment, the acts that constitute offences under the Act are discussed.

According to Section 17, it is an offence if any person intentionally or knowingly makes illegal access to any critical information infrastructure; or uses illegal access, causes or tries to cause harm or damage to it, or makes or tries to make it inactive. It is also an offence if any person makes or abets to make illegal access to any computer, computer system or computer network; or makes or abets to make illegal access to any computer, computer system or computer network with the intent to commit an offence (Section 18).

Section 19 lays down that it shall be an offence if any person –

- (a) collects any data, data storage, information or any extract of it from any computer, computer system or computer network, or collects information with movable stored data information of such computer, computer system or computer network, or collects a copy or extract of any data; or
- (b) intentionally inserts or tries to insert any virus or malware, or harmful software into any computer or computer system, or computer network; or
- (c) willingly causes or tries to cause harm to data or data storage of any computer, computer system, computer network, or causes or tries to cause harm to any program saved in the computer, computer system, or computer network; or
- (d) obstructs or tries to obstruct a valid or authorized person from accessing any computer, computer system or computer network by any means; or
- (e) willingly creates or sells or tries to create or sell spam or sends unsolicited electronic mails without permission of the sender or receiver, for marketing any product or service; or
- (f) takes service of any person or deposits or tries to credit the charge fixed for the service to the account of any other person fraudulently or using unfair interference to any computer, computer system or computer network.

It shall be an offence if any person intentionally or knowingly hides, damages or modifies the source code used in any computer program, computer system or computer network, or tries to hide, damage or modify the source code, program, system or network through another person, and if such source code is preservable or maintainable, then such act of the person shall be an offence (Section 20).

If any person, using digital or electronic medium, makes or instigates any propaganda or campaign against the liberation war of Bangladesh, the spirit of the liberation war, the father of the nation, the national anthem or the national flag, then such an act shall be an offence (Section 21). It shall be an offence if any person commits forgery by using any digital or electronic medium, then such an act of the person shall be an offence (Section 22). For purposes of this

section, “digital or electronic forgery” signifies operating without any right or more than the authorized right or using unauthorized practice, erroneous data or program, information or wrong activity, information system, computer or digital network by producing, changing, deleting and hiding input or output of any computer or digital network by any person. If any person commits fraud by using any digital or electronic medium, then such an act shall be an offence.

If any person commits fraud by using any digital or electronic medium, then such an act of the person shall be an offence (Section 23). For purposes of this section, “digital or electric fraud” means to change or delete any information of, or add new information to, or tamper any information of, any computer program, computer system, computer network, digital device, digital system, digital network or social media by a person, intentionally or knowingly or without permission, and doing so, to diminish the value or utility thereof, or try to get any benefit for himself or any other person, or to cause harm to, or deceive, any other person.

According to Section 24, it shall be an offence if any person, intentionally or knowingly, by using any computer, computer program, computer system, computer network, digital device, digital system or digital network –

- (a) holds the identity of another person or exhibits the personal information of another person as his own to deceive or cheat; or
- (b) holds the personal identity of any person, alive or dead, as his own by forgery to –
  - (i) get or cause to get a benefit for himself or any other person;
  - (ii) acquire any property or any interest therein;
  - (iii) cause harm to a natural person or individual by impersonating another.

It shall be an offence if any person, through any website or any other digital or electronic medium, intentionally or knowingly transmits, publishes or propagates any data information which he knows to be offensive, false or threatening to annoy, insult, humiliate or malign a person; or publishes or propagates or abets to publish or propagate any information, wholly or partly, which he knows to be propaganda or false, to affect the image or reputation of the country, or to spread confusion (Section 25).

If any person collects, sells, possesses, provides or uses the identity information of any other person without lawful authority, then such an act shall be an offence (Section 26). For purposes of this section, “identity information” denotes any external, biological or physical information or any other information which, singly or jointly, can identify a person or a system, such as name, photograph, address, date of birth, mother’s name, father’s name, signature, national identity card, birth and death registration number, fingerprint,

passport number, bank account number, driving license, e-TIN number, electronic or digital signature, username, credit or debit card number, voice print, retina image, iris image, DNA profile, security related question or any other identification, which are available for advance technology.

A person shall be said to have committed the offence of cyber terrorism if s/he

- (a) obstructs legal access, or makes or causes illegal access to any computer or computer network or internet network to jeopardize the integrity, security and sovereignty of the State and to create a sense of fear or panic among the public or a section of the public; or
- (b) creates pollution or inserts malware in any digital device which may cause or is likely to cause death or serious injury to a person; or
- (c) affects or damages the supply and service of daily commodities of the public or creates adverse effects on any critical information infrastructure; or
- (d) intentionally or knowingly gains access to, or interferes with, any computer, computer network, internet network, any protected data-information or computer database, or gains access to any such protected data information or computer database which may be used against friendly relations with another foreign country or public order, or may be used for the benefit of any foreign country or any individual or any group (Section 27).

According to Section 28, if any person or group willingly or knowingly publishes or broadcasts or causes to publish or broadcast anything on any website or in any electronic format which hurts religious sentiment or values, intending to hurt or provoke religious values or sentiments, then such act shall be an offence. It shall be an offence if any person publishes or transmits any defamatory information as described in section 499 of the Bangladesh Penal Code (Act XLV of 1860) on any website or in any electronic format (Section 29).

If a person (a) makes any e-transaction through electronic and digital means from any bank, insurance or any other financial institution or any organization providing mobile financial service without legal authority; or (b) makes any e-transaction notwithstanding the Government or the Bangladesh Bank declaration that such e-transactions are illegal, such an act shall be considered an offence (Section 30). For purposes of this section, “e-transaction” signifies the deposit of money to or withdrawal from any bank, financial institution or a specific account number through digital or electronic medium or the giving of a direction or order for withdrawal, or legally authorized money transaction and transfer through any digital or electronic medium by a person for transferring his fund.

If any person intentionally publishes or transmits anything on any website or digital layout that generates enmity, hatred or hostility among different classes or communities of society, or destroys communal harmony, or creates unrest or disorder, or deteriorates or helps to deteriorate the law-and-order situation, then such act shall be an offence (Section 31). Hacking is also an offence under the Act. “Hacking” in this context means (a) to destroy, cancel or change any information of the computer data storage, or to reduce its value or efficacy or to cause harm in any way; or (b) to cause harm to any computer, server, computer network or any other electronic system by gaining access thereto without ownership or possession (Section 32).

If any person abets any offence under this Act, s/he shall be deemed to have committed the offence (Section 33) and shall be punishable with the same punishment as provided for the particular offence. It shall be an offence if any person files a suit or complaint against any other person without any just or lawful cause with the intent to injure that person (Section 33).

Where an offence under this Act is committed by a company, every owner, chief executive, director, manager, secretary, partner or any other officer or employee or representative of the company who is directly involved with the offence shall be deemed to have committed the offence unless s/he proves that the offence was committed without his knowledge or that s/he exercised all due diligence to prevent the offence (Section 35).

If any person causes financial loss to any other person using digital or electronic forgery under Section 22, digital or electronic fraud under Section 23 and identity fraud or personation under Section 24 of this Act, the Tribunal may issue an order to compensate the affected person with money equivalent to the loss caused, or such amount of money as it considers to be sufficient (Section 36). No service provider shall be liable under this Act, or rules made thereunder, for facilitating access to any data information, if he proves that the offence or breach was committed without his knowledge or that s/he exercised all due diligence to prevent the offence (Section 37).

Any offence committed under this Act shall be investigated by a police officer, referred to as the Investigation Officer (Section 38). The time limit for investigation has been set at ninety days from the date of taking charge of the investigation; however, the time limit can be extended with the permission of the controlling officer to whom the investigation officer is reportable or the Tribunal, as the case may be (Section 39). All persons, entities or service providers involved in the investigation shall keep all investigation-related information confidential; the Act permits persons, entities or service providers to provide or publish such information in the interest of the investigation (Section 46).

The investigation officer is vested with the power to (a) take into his custody any computer, computer program, computer system, computer network or any digital device, digital system, digital network or any program, data-information which has been saved on any computer or compact disc or removable drive or by any other means; (b) take necessary initiatives to collect data-information of traffic data from any person or agency; (c) take such other step as may be necessary for carrying out the purposes of this Act. In carrying out his duties, the Investigation Officer may take assistance from any specialist or any specialized organization (Section 40).

If a police officer has reasons to believe that (a) any offence has been committed or is likely to be committed under this Act; or (b) any computer, computer system, computer network, or data information related to an offence committed under this Act, or any evidence thereof has been preserved in any place or to a person, he may, for reasons of such belief to be recorded in writing, obtain a search warrant from the Tribunal or the Chief Judicial Magistrate or the Chief Metropolitan Magistrate, as the case may be. S/he may take the following steps, namely, (i) take possession of the data-information of traffic data in the possession of any service provider; (ii) create obstruction, at any stage of communication, to any telegraph or electronic communication, including recipient information and data-information of traffic data (Section 41). A police officer may act even without a warrant if he has reasons to believe that an offence under this Act has been or is being committed, or is likely to be committed in any place, or any evidence is likely to be lost, destroyed, deleted or altered or made unavailable in any way. Putting on record the reasons for his belief, s/he may undertake the following measures, namely –

- (a) enter and search the place, and if obstructed, take necessary measures in accordance with the Code of Criminal Procedure;
- (b) seize the computer, computer system, computer network, data information or other materials used in committing the offence or any document supportive to prove the offence;
- (c) search the body of any person present in the place;
- (d) arrest any person present in the place if the person is suspected to have committed or is committing an offence under this Act.

If an offence is committed under this Act, the computer, computer system, floppy disk, compact disk, tape drive or any other related computer materials or instrument through which the offence has been committed shall be liable to forfeiture according to the order passed by the Tribunal. However, if the Tribunal is satisfied that the person, under whose control or possession the computer, computer system, floppy disk, compact disk or any other

computer-related material or instrument has been found, is not responsible for committing the offence, then such materials shall not be forfeited (Section 53).

If any regional or international cooperation is necessary in investigating or trial of an offence committed under this Act, provisions of the Mutual Assistance in Criminal Matters Act, 2012 (Act No IV of 2012) shall be applicable (Section 54).

## TREATIES BILATERAL AGREEMENT

### Development Cooperation

#### *Bilateral Agreements between the Governments of Bangladesh and the Federal Republic of Germany, 3 September 2023, Dhaka*

Two bilateral agreements on Development Cooperation have been signed between Bangladesh and the Federal Republic of Germany, following up on their negotiations and commitments in December 2022. The total volume of the agreements is 191 million euros (about BDT 2215 crore), of which 55 million euros would be available for Technical Cooperation and 136 million euros for Financial Cooperation.

## BILATERAL TRADE – TRANSIT FACILITIES – ECONOMIC RELATIONS

#### *Bilateral Agreement between Bangladesh and Bhutan on Multi-modal Transit, 22 March 2023, Thimpu*

The Governments of Bangladesh and Bhutan signed an agreement on the Movement of Traffic-in-Transit and Protocol aimed at introducing multimodal transit facilities to landlocked Bhutan and providing them access to Mongla, Payra, and Chattogram ports of Bangladesh for the movement of their imported and export-oriented goods. Bangladesh similarly granted Bhutan access to its roads, waterways, railways and airways to move goods to and from third countries. Under this agreement, Bangladesh will also be able to export goods to other countries via Bhutan's roads. In addition to strengthening bilateral trade and commerce between the two countries, this agreement is expected to induce infrastructural development in Bangladesh, increase its revenues and benefit the private sector.

## INTERNATIONAL RELATIONS AND CO-OPERATION

### Bilateral Cooperation

#### BILATERAL TRADE AND INVESTMENT – LABOR REFORMS – WORKERS’ RIGHTS – PERSONAL DATA PROTECTION

*The United States and Bangladesh Convene the 7th Bilateral Trade and Investment Cooperation Forum Agreement Council Meeting, 20 September 2023, Dhaka*

The United States and Bangladesh held the 7th meeting of the United States-Bangladesh Trade and Investment Cooperation Forum Agreement (TICFA) Council in Dhaka in September 2023. Representatives of both countries engaged in discussions on issues ranging from bilateral trade relations, labor reforms, policies impacting the investment climate, digital trade, intellectual property protection and enforcement, and bilateral cooperation in the agricultural sector. Appreciating Bangladesh’s efforts at amending its labor laws, the United States encouraged Bangladesh to ensure freedom of association and collective bargaining to Bangladesh’s Special Economic Zones (SEZs) and the Export Processing Zones (EPZs), introduce a simplified and impartial trade union registration process, and dedicate more resources to labor inspections and enforcement. Both sides emphasized the importance of ensuring the protection of personal data and of intellectual property through law and policy reforms.

#### FOREIGN DIRECT INVESTMENT – ECONOMIC GROWTH – MARKET ACCESS – SUSTAINABLE DEVELOPMENT

*Bangladesh and the United Kingdom Hold the 2nd Trade and Investment Dialogue, 19 February 2023, Dhaka*

Bangladesh and the UK discussed issues of mutual interest, such as cooperation in areas including the least-developed countries’ LDC graduation,<sup>1</sup> investment cooperation, pharmaceuticals, ease of doing business, financial sector development, higher education, taxation issues and intellectual property

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<sup>1</sup> LDC graduation refers to a country’s transition from the category of Least Developed Countries to a developed nation, as defined by the United Nations.

protection. Commending the UK's Developing Countries Trading Scheme (DCTS), Bangladesh acknowledged its role in helping Bangladesh to integrate into the global economy and creating stronger trade and investment opportunities for it. The UK reiterated the commitments under DCTS to international conventions on labor standards and human rights, anti-corruption, climate change and the environment.

The two countries discussed possible collaboration in investment opportunities in the areas of financial and professional services, ready-made garments, private sector-led aerospace and higher education. The UK emphasized the importance of Bangladesh initiating necessary economic policies and systems to achieve rapid, sustainable and green economic development. The UK also stressed the importance of maintaining a level playing field for foreign companies interested in investing and operating in Bangladesh. Both countries recognized that the development of a conducive business environment and the removal of market access barriers would benefit both countries.

*Japan-Bangladesh Joint Statement on Strategic Partnership,  
26 April 2023, Tokyo*

Bangladesh and Japan issued a joint statement during the Bangladesh Prime Minister's official visit to Japan from 25th to 28th April 2023. The highlights of the statement are summarized below:

- The two countries reaffirmed their commitment to realizing a free and open Indo-Pacific based on the rule of law, where the rights, freedoms and sovereignty of all countries, regardless of size, influence or power, are protected by international law, rules and norms. They recognized that the maritime order based on common values such as freedom of navigation is crucial for the stability and prosperity of the international community;
- They emphasized the importance of transparent and fair development finance to achieve sustainable development and highlighted the importance of adhering to international rules and standards, such as debt sustainability and transparency. They recognized the importance of economic security, including strengthening the resilience of the supply chain, and the rules-based international economic order to resist challenges like economic coercion;
- Considering the Memorandum of Cooperation and Exchanges between the defence authorities of both countries, they pledged to continue to promote security cooperation such as mutual visits by vessels and aircraft, unit-to-unit exchange, training programs and goodwill exercises, and strengthen security cooperation;

- The two countries recognized that the war in Ukraine constituted a violation of international law, in particular, the UN Charter, and as such, posed a threat to the international order. They reiterated the call for a peace process through dialogue and diplomacy. Expressing deep concern over the loss of lives, they called for unhindered access to humanitarian assistance;
- The two countries expressed their commitment to fully comply with the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and reiterated that any unilateral attempts to change the status quo by force or coercion that could undermine regional stability, and the rules-based international order are unacceptable. They underscored the importance of the freedom of navigation and overflight of the high seas and civil aviation safety under the principles of international law and the relevant standards and recommended practices of the International Civil Aviation Organization (ICAO);
- Reiterating their commitment to realizing a world without nuclear weapons, the two countries reaffirmed that the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is the foundation of the international nuclear disarmament and non-proliferation regime and is essential for the pursuit of nuclear disarmament and the peaceful uses of nuclear energy;
- The two countries shared common concerns over international terrorism and underscored the importance of dismantling terrorist networks and financing channels and halting the cross-border movement of terrorists.

## Official Statements

### CYBER SECURITY – PROTECTION OF CRITICAL INFRA-STRUCTURE – TRUSTEESHIP COUNCIL – INTERNATIONAL COOPERATION

#### *Statement by Bangladesh at the United Security Council Arria-Formula Meeting on the Responsibility and Responsiveness of States to Cyberattacks on Critical Infrastructure, Trusteeship Council on 25 May 2023*

Referring to the 2023 Global Cybersecurity Outlook report, Bangladesh recognized the emerging risks to cybersecurity that are likely to be exacerbated by emerging technologies like artificial intelligence. It pointed out a projection which estimated that by 2025, cybercrime will cost the global economy a staggering \$10.5 trillion annually and underscored the critical nature of the issue. Bangladesh emphasized a coordinated and enhanced response to cybercrimes,

where the Trusteeship Council can help in countering this challenge by promoting international norms, fostering trust between states, and facilitating dialogue and cooperation to prevent conflicts arising from malicious use of ICT. Bangladesh observed that cyberattacks on critical infrastructure require a collaborative approach involving states, public and private entities, and international organizations. This demands a new social contract for the digital age that redefines the relationship between public and private sectors and establishes new obligations, with the private sector firms prioritizing security and resilience in their hardware manufacturing and software development, and the government providing the necessary support.

While reiterating the applicability of international law, including the UN Charter, to maintain peace, stability, and an open, secure, stable, accessible, and peaceful ICT environment, Bangladesh recognized the existing legal gaps, such as the attribution of cyberattacks, the threshold of State responsibility, and the use of force in cyberspace. In this context, it called to the Council to complement the work of the Group of Governmental Experts (GGES) and Open-Ended Working Group (OEWG) on ICT by enhancing understanding of international law in cyberspace.

Bangladesh called for closing the Skill Gap through collective action, particularly in the Global South. This includes enhancing digital literacy, technical skills, promoting cybersecurity education, and fostering international cooperation. It stressed that the Council could promote confidence-building measures and effective information sharing to mitigate cyber threats.

It concluded by seeking strong international cooperation, harnessing digital technology, and upholding international law for a safer and more resilient digital world.

**GLOBAL CRISES – PANDEMIC – WAR – INEQUALITY – INCLUSIVE  
DEVELOPMENT – SDG S – TECHNOLOGY TRANSFER**

*Statement by Bangladesh at the Eighth Multi-stakeholder Forum on  
Science, Technology, and Innovation for the Sustainable  
Development Goals (Theme: Science, Technology, and Innovation  
for Building Back Better from COVID-19 While Advancing the Full  
Implementation of the 2030 Agenda for Sustainable Development at  
All Levels), New York, 03 May 2023*

Bangladesh recognized that achieving sustainable development goals has become increasingly difficult in the fast-evolving global context affected by crises like the Covid-19 pandemic, the Ukraine war, the existing climate crisis

and growing inequality – all of which underline the need for a long-term focus on resilient, sustainable and inclusive development. It recalled how digital technologies played a critical role in mitigating the impacts of different crises but pointed out that they also deepened inequalities and exclusion across and within countries and regions. Bangladesh stressed that many developing countries, especially the LDCs, paid a high cost of exclusion, failing to access or use these technologies; they became mainly users and data providers rather than participating productively in the global digital value chains. Bangladesh acknowledged that science, technology and innovation were fundamental to sustainable industrial transformation and economic growth. Unfortunately, developing countries, particularly the LDCs, face many barriers in harnessing technology to drive innovation because they lack the resources to transform their traditional labor-intensive economies into modern, high-tech, technology-driven ones, facilitated by high investment in R&D.

Bangladesh stated that technological divides between the developed and the developing countries must be addressed through international cooperation. Developing countries must be given access to various new technologies to compete in and benefit from the increasingly complex technological landscape. Effective channels for technology transfer, particularly those related to sustainable development, green and low-carbon technologies, capacity-building, and assistance in research and development, are of paramount importance. It recognized that the new AI and data-driven frontier technologies hold enormous economic potential, but the global South countries would need investments in digital infrastructure, affordable internet access, and digital skills development to benefit from them. In this regard, Bangladesh asked for more efforts and policy interventions at the national and international levels to harness these technologies and mobilize the financing and capacity-building required for an equitable digital economic transformation. Bangladesh also observed that the world needs to use scientific innovation and technological intervention to address the climate crisis and other environmental challenges. Hence, transitioning to green technologies is key to offsetting carbon emissions, limiting the scale of climate change and mitigating already-occurring impacts. Bangladesh emphasized that tech providers and businesses have responsibilities for minimizing the negative environmental impacts of digital infrastructure, devices and services, to “green the Internet” and new technologies in the future.

Bangladesh concluded by highlighting the vital role of the South-South and Triangular Cooperation in facilitating access to technology and equitable distribution of the benefits of a digital transformation as many technological innovations are now taking place in the global South nations. Recognizing the benefits reaped by many of these countries by harnessing science and

technology to spur economic growth and sustainability, Bangladesh proposed that the exchange of knowledge, experiences and best practices through effective South-South and Triangular cooperation can help find innovative technological solutions to advance sustainable development.

## INTERNATIONAL ECONOMIC LAW

### INTELLECTUAL PROPERTY (WIPO) PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY – LOCARNO AGREEMENT

#### *Bangladesh Industrial Designs Act (Law No. 22 of 2023)*

With the necessity to make amendments on industrial design matters, this law has been enacted to repeal the Patents and Designs Act of 1911 (Act No 11 of 1911). The Act defines industrial design as the aesthetic visibility of the characteristic shape, line, color, graphical user interface, calligraphy, etc., of any manufactured product (Section 2).

Section 3 provides for establishing a Directorate, led by a Director General appointed by the government. Without prejudice to the generality of the Directorate, this Act, the Trademarks Act, 2009 (Act No. 19 of 2009), the Geographical Indication Products (Registration and Protection) Act, 2013 (Act No. 54 of 2013) and the Bangladesh Patents Act, 2022 (Act No. 5 of the year), the Directorate shall have the following four units, namely –

- (a) Industrial Design Unit;
- (b) Trademarks Unit;
- (c) Geographical Indication Unit; and
- (d) Patent Unit.

The Act also spells out the industrial designs that shall not enjoy any protection under this Act, namely –

- (a) any industrial design, in which only technical or practical aspects have been considered;
- (b) any industrial design, the commercial use of which is contrary to public order, environment and morality;
- (c) any unregistered industrial design; and
- (d) any design consisting of national emblems (Section 4).

Section 5 of the Act states that an industrial design shall be registrable under this Act – (1) if it is novelty, distinctive and industrially producible or usable; (2) if it contains any words, letters, trademarks, numbers, etc. subject to the submission of a non-claim letter by the applicant. According to this section,

an industrial design shall be deemed to be new if – (a) before the date of filing of the application or, as the case may be, before the priority date of filing of the application for registration, it has not been disclosed to the public by publication, exhibition, trade or any other use in a visible form in Bangladesh or anywhere in the world; (b) the design affixed to any part of the composition of the composite product is visible during normal use. For purposes of this law, “composite product” means a product of which each part can be manufactured and sold separately and which, when combined, forms a complete product.

Section 6 of the Act lays down that the right to register an industrial design shall belong to the owner or designer of the said design. If two or more persons jointly create an industrial design, such persons shall be entitled to joint registration thereof. The right to register an industrial design is assignable and can be inherited or transferred. Where an industrial design is created by a person employed under an agreement executed to create one or more designs, the employer shall have the right to register the same, unless the agreement expressly provides otherwise.

To register any industrial design, a person or his legal representative shall apply to the Director General in the prescribed form, subject to payment of a fee, along with the following documents –

- (a) a photocopy of the design, but if the design is embodied in a two-dimensional object, a sample of the object instead of a photocopy;
- (b) If the applicant is not the designer himself, a statement containing the justification on behalf of the applicant for obtaining the registration of the said industrial design; and
- (c) other documents as prescribed.

An application shall be made separately for each industrial design specifying the international class of goods related to the similar industrial design as per this Act and the Rules. If an applicant claims to be a joint designer of an industrial design, he may apply to the Director General in the prescribed manner to add him as a joint designer or, as the case may be, a co-participant in the registration of the said industrial design. An applicant may, at any time, apply for amendment or modification of the application so filed without altering or adding to the original design under consideration. An applicant may at any time during the pendency of the application withdraw their application in the prescribed manner (Section 7).

According to Section 11, the Director General or the officer so authorized shall examine any application for registration of industrial design filed under this Act. At the time of examination of an application for registration of an industrial design, the following matters shall be ascertained – whether the said application for registration has been duly filed in compliance with the

provisions of the Act; whether the industrial design for which registration is sought is new, distinctive and industrially producible or usable in accordance with the provisions of this Act. In case of deviation from any of these requirements, the Director General shall inform the applicant and ask for an explanation. The applicant must respond within two months from the date on which the notice of explanation was served. The Director General may, for reasonable cause, extend the said period by one month. If the applicant does not provide an explanation on the said matter within the prescribed period, the application shall be deemed to have been withdrawn.

Section 13 of the Act lays down the rights that accrue upon registration of an industrial design. The owner of an industrial design shall have the right to prevent the use of their registered industrial design by any other person. For the purposes of this section – (a) a registered industrial design shall be deemed to have been used if it has been incorporated into any product; (b) Where an industrial design is registered only for such part of a product, which is an essential and integral part of the product, the said industrial design shall be treated as the overall visibility of the integrated product.

However, these rights are not absolute and are subject to certain limitations. The rights in industrial design registration shall not be protected in the following cases, namely –

- (a) the use of any industrial design in any part of any aircraft, land craft or watercraft which has temporarily or accidentally entered the geographical limits of Bangladesh or any parts or accessories imported for the repair of such aircraft, land craft or watercraft;
- (b) activities performed on a personal basis and for non-commercial purposes;
- (c) activities carried out for educational or research purposes in educational or research institutions;
- (d) works carried out for experimental purposes in respect of any industrial design; and
- (e) reproduction of any particular part of an industrial design, which is governed only by practical or technical considerations or which is necessary for the fulfilment of technical purposes.

According to the Paris Convention, if an applicant or proprietor has previously applied for the same industrial design in a country covered by the Paris Convention, he can claim the date mentioned in the said application as the priority date. Section 8 of the Act provides that the period of priority shall be 6 (six) months, and the said period shall be calculated as per the provisions of Article 4 of the Paris Convention. An application filed in Bangladesh before the expiry of the said period shall not be invalidated by any act done within

that period, and no right of a third party shall arise as a result of the filing of any other application, disclosure of the invention, use or any such act. If any application filed under this section contains a declaration of priority claim, the applicant concerned shall file with the said application within the prescribed period a copy of the application certified by the authority of the country in which the previous application was filed and the date of filing of the application on the said certified copy.

Subject to the prescribed procedure and payment of fees, any person may apply to the Director General for cancellation of the registration of any industrial design for the following reasons: (a) the said industrial design is not an industrial design as defined in this Act; (b) the design is not new, distinctive and industrially producible or usable within the meaning of this Act; and industrial designs that are not protected under this Act. An application for cancellation of an industrial design registration may be filed within two years from the date of the grant of such registration. If any industrial design registered under this Act is cancelled, it shall be deemed to have been cancelled from the date of grant of registration and not to have been registered at all (Section 16).

Section 19 mentions the change or acquisition of ownership. Any person may apply to the Director General in writing for a change of ownership or appropriation of industrial design registration, subject to the prescribed procedure and payment of fees. No industrial design registration under this Act shall create any third-party right until an application for change of ownership or appropriation is recorded.

The law allows the proprietor of a registered industrial design to grant a license to any third party to use such registered industrial design by a written agreement to that effect (Section 20). For registration of any license agreement, the applicant shall submit the following documents with the application: (a) a copy of the license agreement showing the parties and any rights being licensed, certified by the relevant government authority; or (b) a certified statement of the license signed by the registered proprietor and the licensee.

Any interested party may request the Director General to register a license in respect of any registered industrial design, and no license shall create any rights of the third party until so registered. If any partner of the license to be recorded is not a party to the license agreement, the said license shall not be recorded unless the said partner consents to the said license in a document signed and submitted to the Director General. If the registration of any industrial design is cancelled under this Act, the license to use the industrial design shall cease to be in force and any payments made under the said license agreement shall be recoverable by the parties, in whole or in part, unless the payer in good faith benefits from using the said license (Section 20).

If a person, despite not being the owner or licensee of a registered industrial design, uses such an industrial design in his business, he shall be deemed to have infringed the registered industrial design, if it –

- (a) is identical to the registered industrial design, and the product in which it is used is similar to the registered industrial design;
- (b) is similar to the registered industrial design, and the goods or services in which it is used are identical to the registered industrial design; or
- (c) is identical with the registered industrial design, and the product in which it is used is identical with the registered industrial design and is likely to confuse the public or create a false impression that the similar industrial design is related to the registered industrial design (Section 21).

The law provides both administrative and judicial measures to compensate for infringement of an industrial design. Section 22 states that if any person infringes an industrial design, the proprietor may apply to the Director General for administrative compensation against such an infringing person by paying the prescribed form, procedure and fee.

If the Director General, after examining the application, is satisfied that there has been an infringement of the industrial design, he shall, after giving the person concerned a reasonable opportunity of being heard, order administrative compensation against the violator and may also, if deemed appropriate, order the confiscation of the concerned product or materials, materials, etc. If the compensation is not paid within the prescribed period, the concerned owner can file a case against the industrial design infringer in a court of competent jurisdiction. The court may pass the following orders in cases of infringement of industrial designs – (a) prohibitory injunction;(b) payment of compensation; or (c) any other remedy granted (Section 23). Courts may issue interim injunctions or temporary injunctions under the Code of Civil Procedure to prevent infringement of industrial designs if a suit is filed by the proprietor of an industrial design (Section 24).

If any person fails to comply with any order made under this Act, the Court may levy compensation or make such other order as it deems fit. If any person knowingly or having reasonable cause to know infringes any industrial design registered under this Act, the Court shall order compensation of a sum of not less than Taka 0.1 million or the amount of loss suffered by the person of not more than Taka 1 million (Section 25). To prevent repeated infringements of the industrial design, the court may order the seizure or destruction of the goods in which the industrial design has been used or the raw materials or products with which the counterfeit industrial designs have been prepared (Section 26).

**INTELLECTUAL PROPERTY – BERN CONVENTION – TRIPS –  
MARRAKECH TREATY**

*Copyright Act, 2023 (Law No. 34 of 2023)*

The Act repeals the Copyright Act of 2000 (amended in 2005), ushering in significant changes, like the incorporation of the liberal version of the ‘fair use’ provision (Sections 70, 73). Section 2 of the Act offers a comprehensive list of definitions related to copyright. The new law widens copyright protection to include literature, drama or music, folk knowledge and folk culture; films, information and communication technology (ICT)-based digital work, sound recording and artistic works (Section 14). It also provides new definitions for anonymous or owner of pseudonymous work, database, public domain, monogram, producer, person, editor, and property rights (Section 2). Recognizing the need to protect folk culture, folk music and songs, the Act dedicates extensive provisions to the preservation and protection of these traditions (Sections 34–37). Section 2(42) of the Act includes the term “innocent commercial use”, as opposed to unreasonable commercial use of copyrighted works, which prejudices the interests of the owner.

Sections 7–13 deal with operational/administrative matters, *e.g.*, the copyright office, the registrar and the copyright board, and their role and functions. The copyright office performs specific tasks, including issuing copyright registration and certifying, licensing of translation, stopping the import of illegal copies of any intellectual products, conserving folk culture, advising the government about copyrights and providing incentives to the original artists. The Act provides for the appointment of additional copyright registrars. The copyright board is empowered to address copyright-related grievances (Section 18).

Sections 15–21 cover ownership rights. The law explicitly states that the innovator or creator will be the original owner of the copyright of his/her work and goes on to illustrate the application of this right in respect of literature, drama, photography, art, engraving, film, public speech or statement, etc. Pursuant to this Act, upon the death of the creator, copyright ownership of manuscripts will pass to the rightful heir mentioned in the will or codicil (Section 19). A creator or innovator can surrender ownership of the copyright of his/her work by informing the copyright office in due process (Section 20). Copyright ownership in case of literature, drama, music or artistic works (except photography) shall remain in force throughout the lifetime of the creator and will remain in force for 60 years after his/her death (Section 22(1)). Copyright ownership in the case of films, photography, sound recordings, and digital works using ICT shall remain in force for 60 years from the date of its publication/release (Sections 23–26). Every broadcasting organization shall

have the right to reproduce legally produced broadcast material, and this right shall subsist for 25 years from the date it was first produced (Section 30).

The Act provides stricter punishment for the infringement of copyright, which includes both fines and imprisonment in Sections 84–107. Offences such as publishing, serving, or performing someone else's content or work can result in a fine of Tk500,000. In the case of infringement of film copyrights, the penalty has been set at Tk1 million and a maximum of five years' imprisonment.

## INTELLECTUAL PROPERTY – WTO – TRIPS

### *Bangladesh Patent Act 2023 (Law No. 53 of 2023)*

The Act repeals the Patent Act of 2022. Aimed at strengthening the rights and responsibilities of patent holders and striking a balance between the protection of patent rights and addressing public interest, the new Act shifts administrative power from the Office of the Registrar to the Director General of the Department of Patents, Industrial Designs, and Trademarks to streamline decision-making processes. It grants certain powers to the Director General like those of civil courts, thereby boosting the efficiency of the patent system (Section 56). It establishes a clear court structure, with District Courts handling patent cases and the High Court Division addressing appeals. The Act excludes some matters from the ambit of patent protection, for instance, invention, scientific theories and mathematical procedures; treatment of humans or animals through surgery or therapy; any invention that is frivolous or any process that contradicts established natural laws; any invention, the primary/potential/commercial use of which erodes public discipline or integrity or which is harmful to the health of people, animals, plants or environment, etc. (Section 6).

The Act offers a comprehensive list of various reliefs that the District Court may grant to patent holders in the event of infringement of patent rights. Section 25 of the Act provides holders with two-fold rights – first, when the subject matter of the patent is a product, the right to prevent the manufacture, use, proposal to sell, sale or importation to Bangladesh with similar intentions, a product without the consent of the patent holder, and second, when the subject matter of the patent is any process, the right to prevent the application and use, proposal to sell, sale or import of the process with similar intentions by a third party without the permission of the owner. Patent infringement occurs when these rights are violated (Section 44(1)). The Act prescribes several actions in the event of a patent infringement, for example, invoking the grounds of revocation (Section 33), withdrawing the patent in public interest

(Section 34) and filing a suit (Section 44). A concerned individual can move the court seeking cancellation of the patent (Section 32). The Act outlines certain exemptions to patent rights (Section 62), that is, patent rights will not apply to work done for personal or non-commercial purposes, and purposes of education, testing or research; the use of the patented product or process in good faith before the filing of the patent application; any work conducted in a pharmacy or treatment by a physician as per medical guidelines or any drug manufacturing or treatment-related work for personal purposes; and, temporary use of a patented invention in foreign ships, aircraft, or land vehicles while they are in Bangladesh.

The Act provides both civil and criminal remedies for patent infringements. It empowers the court to grant interim or temporary injunctions to restrain activities that violate the rights of the patent holder (Section 47(3)). The court is also empowered to award damages in the form of financial compensation (Section 49(1)). The court has full discretion to determine the amount by considering factors, such as the date of registration of the patent, availability of the patent, and adverse effects on the local Industry (Section 49[2]). Criminal remedies include prosecution (Section 44(1) and penalties (Section 54) for various offences related to patent infringement, including making false entries in registers, falsely representing patented products, and unauthorized use of certain expressions related to patent authorities. Offenders may be liable to pay fines as specified by the Act.

A patent will remain valid for 20 years from the date of submission of the patent application or the right of priority, as the case may be (Section 28). The law empowers the government to issue a compulsory license during a state of emergency or for official purposes (Section 39). It offers flexibility to patent holders by waiving the obligation to apply for renewal five years before the expiry date. It sets a three-month fixed period for the annual fee payment with no extension possibilities, which serves as a reference point for patent holders to fulfil their financial obligations within the prescribed time.

While primarily focused on regulating patent rights within the country, the provisions of the Act recognize the importance of international norms and practices in patent enforcement. For instance, patented products introduced by any person into the market of any country are eligible for parallel importation (Section 60(1)). Resonating with the international practice of exhausting patent rights upon the first sale of a patented product, this provision potentially facilitates trade and efficient market access. Moreover, this provision simultaneously acknowledges the validity of foreign patents, respects the

rights of patent holders in those jurisdictions (Section 60(2)), and recognizes patents as territorial rights granted by individual countries.

## **International and Regional Trade Treaties and Bodies**

### **TRANSPARENCY AND FAIRNESS IN PUBLIC PROCUREMENT – UNCITRAL – WTO GOVERNMENT PROCUREMENT AGREEMENT (GPA)**

#### *Bangladesh Public Procurement Authority Act, 2023 (Law No. 32 of 2023)*

This Act was enacted to ensure increased transparency, accountability and efficiency in public procurement and to enable a level playing field for all parties interested in competing in the bidding process. The Act also aims to strengthen professionalism in the regulation and management of government procurement processes.

The law converted the Central Procurement Technical Unit (CPTU) into the Public Procurement Authority (PPA) to regulate government purchase processes, to ensure that all government procurement laws are followed, and to take responsibility for inspections, adjustments, management and supervision. A legal entity, the authority can sue and may be used in its name (Section 4). Located in the capital, Dhaka, the functions and administration of the PPA are vested in the Regulatory Board, consisting of 10 members and headed by the Minister for Planning (Section 7) as Chairman of the Board. The Regulatory Board shall meet at least four times a year, and decisions shall be reached based on majority votes, with the Chairman having the casting vote (Section 8). The PPA will have a Chief Executive Officer (CEO), reportable to the Regulatory Board (Section 10).

Section 9 of the Act spells out the duties and functions of the PPA. They include but are not limited to – developing policies, rules and laws for government procurement; introducing necessary amendments to existing regulations; ensuring execution of government procurement-related laws; monitoring compliance with procurement laws; efficient coordination, management and supervision; developing professionalism in government procurement entities; ensure sustainable and easy procurement for the best possible use of public funds, etc.

**WORLD TRADE ORGANIZATION – INTERNATIONAL  
TRADE – EXPORT DIVERSIFICATION – CONSUMER  
WELFARE – TRANSPARENCY**

*National Tariff Policy 2023*

Bangladesh has formulated its first tariff policy, with the objective of “achieving sustainable economic growth, including increasing the competitiveness of domestic industries, expanding and diversifying exports, encouraging investment and creating employment through trade liberalization and tariff structure rationalization” [clause 5.1]. The policy aims at achieving the targets set in Vision Plan 2041 and the 8th Five Year Plan; addressing post-transition challenges from LDCs; expanding and diversifying exports by reducing anti-export bias; rationalizing Tariff Structure; encouraging domestic and foreign investment by ensuring Predictable Tariff Regime; increasing employment; enhancing Bangladesh’s participation in global and regional value chains; addressing the challenges of external shocks on the economy; and, reducing disparities in prices of products in the local market and to promote consumer welfare by reducing the burden of excessive protection [clause 5.2].

The policy is a step towards Bangladesh’s attempt to diversify exports, attract foreign investment, sign free trade agreements, and enhance economic progress. Some of the key considerations that the policy addresses include, *inter alia*,

- Duties and taxes imposed on imports are to be aligned with the rate that Bangladesh committed to the World Trade Organization;
- Greater transparency should be brought into the customs system by maintaining the same duty and tax rates for similar products;
- Tariffs imposed on imports are to be reduced gradually to a reasonable level for the welfare of the consumer;
- User-specific tariff concessions should be avoided;
- To encourage competitiveness in the domestic industry, the duty protection rate should be reduced step by step;
- Supplementary duties and value-added tax should be converted into ‘trade-neutral taxes’;
- Regulatory duty is to be levied only in exigent circumstances;
- Measures relating to anti-dumping duties, countervailing duties, and safeguard duties on imported items should be taken;
- The Minimum Import Value system should be abolished in line with the World Trade Organization;
- The bond facility system is provided for hundred per cent export-oriented industries, and disguised exporters should be made more transparent and simplified;

- The Duty Drawback scheme for exports is to be made transparent and simplified to refund all duties and taxes paid on raw materials [clause 6]. The National Board of Revenue has been tasked to develop an action plan to harmonize the country's tariff regime in line with policy requirements [clause 7.1]. There shall be a sixteen-member Monitoring and Review Committee to be headed by the Minister, Ministry of Commerce, which will meet biannually [clause 7.2]. The Committee shall be empowered to (a) supervise the implementation of the tariff policy as per the action plan; (b) review the progress of implementation of recommendations related to industrial defense by the Bangladesh Trade and Tariff Commission; (c) provide necessary advice for the implementation of the tariff policy; and (d) undertake necessary revisions [clause 7.2.2].

### Official Statements

#### DEVELOPMENT FINANCING – SDGS – DEBT DISTRESS – DOMESTIC RESOURCE MOBILIZATION – REFORM OF THE INTERNATIONAL FINANCIAL ARCHITECTURE

*Statement by Bangladesh at the Second Committee General Discussion on Agenda Items 16 and 17 on Macroeconomic Policy Question: Follow-up to and Implementation of the Outcomes of the International Conferences on Financing for Development, 05 October 2023, New York*

Bangladesh maintained that its economy grew by 8.15% just before the pandemic, after which a series of crises jolted its growth trajectory and put its economy under stress. It shared how it negotiated a loan package of 4.7 billion dollars with the IMF to curb inflation, manage the balance of payment, and maintain its development expenditures. Referring to discussions on how developing countries could access finance to address the multi-dimensional issues facing developing economies, Bangladesh expressed its concern that the resources available barely aligned with the SDGs, nor were they being channeled at the scale and speed necessary to achieve the SDGs. It stressed that international public finances were often costly and out of reach of developing countries that needed them the most. Bangladesh maintained that the focus should be on finding ways to divert the available resources for achieving the SDGs. In this connection, Bangladesh highlighted a few points:

First, realign priorities of multilateral development banks (MDBs), international financial institutions (IFIs), and private lending agencies to mobilize additional funds for SDG implementation and climate action;

Second, attach highest priority to delivering concessional resources to developing countries, in particular the LDCs, climate and debt-vulnerable countries, for a longer term and preferably in a higher quantity of grants;

Third, have in place disaster clauses in all lending instruments to allow vulnerable countries to absorb shocks during crises;

Fourth, prioritize fair and effective debt relief measures based on coordination and transparency among creditors;

Fifth, fix SDR borrowing limits based on needs and vulnerability, instead of quota, supported by easy lending processes;

Sixth, review the global credit rating system as the current rating system further restricts access to funds for many low- and middle-income countries. The limits on their voting rights, quotas, and representation in MDBs and IFIs also undermine their bargaining power;

Seventh, ensure that official development assistance (ODA) and climate funds commitments made by development partners are met. Currently, ODA accounts for only 0.09 % of developed countries' GNI, far below the 0.20% for LDC-specific targets. The promised \$100 billion climate funds must also be fully delivered, providing climate-vulnerable countries with much-needed funds for adaptation and mitigation.

In conclusion, Bangladesh stated that the international financial architecture must be inclusive and representative of the Global South. Development narratives from countries like Bangladesh demonstrate that they can do their part, and it is high time the international financial system responded to their expectations.

## INTERNATIONAL ENVIRONMENTAL LAW

### Official Statements

#### PARIS AGREEMENT – CLIMATE FINANCE GOVERNANCE – LOSS AND DAMAGE – ENERGY TRANSITION – TERRITORIAL SOVEREIGNTY

*Joint Statement by Bangladesh and France, 11 September 2023, Dhaka*  
President Emmanuel Macron paid a bilateral visit to Bangladesh from 10–11 September 2023. The President of France and the Prime Minister of Bangladesh met to reiterate the deep-seated friendship between the two

countries based on shared democratic values, the promotion of human rights, sustaining peace and sustainable development. Some of the key issues that featured in the joint statement include –

- Swift implementation of the Paris Pact for People and the Planet and the mobilization of additional financing from all sources for development, climate and biodiversity. Both countries recognize the need for more inclusive governance of global financing architecture;
- Accelerate global efforts to facilitate access to climate finance for developing countries and assist developing countries vulnerable to the adverse effects of climate change in responding to loss and damage;
- Accelerate the global energy transition away from fossil fuels to meet the targets for renewable energy production and energy efficiency around the world;
- Strengthen mutual cooperation in sustainable and resilient food and agriculture systems to support food security;
- Joint ventures in leveraging marine resources in the Bay of Bengal in a sustainable manner;
- Expand bilateral trade and explore potential for investment in quality and resilient infrastructure development in Bangladesh, including in the railway sector;
- Shared growth and inclusive development through economic partnership, spanning every sector from industry to services, and expansion of business-to-business collaboration;
- Joint efforts towards efficient management of cybersecurity issues for a global, open and secure cyberspace governed by international law;
- Strengthening scientific, technological and research cooperation and encouraging academic exchange.

Both countries reaffirmed their unwavering commitment to upholding international law and the UN Charter, notably the principle of peaceful resolution of conflicts, and territorial sovereignty. Both countries condemned unconstitutional change of government and unlawful military takeover in any country and called for urgent and unimpeded humanitarian assistance for those displaced by conflicts, violence and atrocity crimes.

**CLIMATE CHANGE – SEA LEVEL RISE – FORCED  
DISPLACEMENT – ADAPTION AND MITIGATION**

*Statement by Bangladesh at the Security Council Open Debate  
on Threats to International Peace and Security – Sea-Level Rise:  
Implications for International Peace and Security, 14 February 2023,  
UN Security Council Chamber of the United Nations Headquarters,  
New York*

Bangladesh stated that the rise in sea levels is a risk multiplier affecting human security, creating new risks or exacerbating existing ones by undermining food, energy and water security and even causing the loss of national territory. It also causes forced displacement, triggering challenges in population management, housing and social security architecture in the affected regions. Bangladesh stressed the need for a concrete legal framework and effective response mechanisms to address the issue of forced displacement. As one of the countries that is vulnerable to the effects of climate change, Bangladesh contended that comprehensive national policies and strategies would have an impact if the global response to sea level rise and its diverse implications remains slow and inadequate. It maintained that a broad understanding and recognition of the implications of the sea-level rise is critical for taking appropriate action at the national, regional and global levels. Bangladesh urged that these risks and vulnerabilities must be addressed holistically, including through measures that contribute to mitigation and adaptation. In this regard, climate finance, technology transfer and capacity building are crucial. Bangladesh urged developed countries to fulfil their commitments to strengthen support for vulnerable countries.

**HUMAN RIGHTS**

**Protection under International and Domestic Law**

**WOMEN’S RIGHTS – CHILDREN’S RIGHTS – ACCESS TO JUSTICE**

*Family Courts Act, 2023 (Law No. 26 of 2023)*

The Family Courts Act (FCA) repeals the long-standing Family Courts Ordinance of 1985 and, among other things, establishes family appellate courts consisting of one district judge in each court to hear appeals from family courts. The Act will apply to the whole of Bangladesh except Rangamati, Bandarban and Khagrachari Hill districts – areas primarily hosting minority indigenous

communities. The law does not define family or family matters; it only determines the jurisdiction of the court in divorce, dower, maintenance, restitution of conjugal rights, and guardianship and custody matters (Section 5). Issues arising from the formation of marriage, inheritance, will, hiba (gift), maintenance of parents, adoption, etc., cannot be brought before the court.

While many of the provisions of the 1985 Ordinance have been retained in the new law, two significant changes have been brought by the Act related to the Family Courts' procedures, such as increasing the court fee of family court cases and augmenting the definition of the family appellate court. Section 25 of the FCA has increased the family court case fee from BDT 25 to BDT 200. The new law allows appeals against the decree of Family Trial Courts to the Courts of District Judges, including to any courts of other judges equivalent to district judges, e.g., Women and Children or Labor Courts, which is expected to help reduce the burden of cases. The FCA permits to adduce of witness evidence in the court through an affidavit without being present at the trial (Section 13(6)). Previously, according to Section 17(2) (b) of the 1985 Ordinance, no appeal shall be made from a decree passed by a Family Trial Court for a dower not exceeding BDT 5000. The FCA has repealed the said provision of the 1985 Ordinance and increased the dower amount to not exceeding BDT 50000 for appeal purposes. Although appeals against the judgments of the Family Courts could only be brought to the Court of District Judges as per the previous law, the new law has provisions of appeal to the District Judge Court as well as the courts of other judges equivalent to the district judges, *i.e.*, women and children or labor courts. It has been updated to reduce the increased pressure by the provision of an appeal in the previous law for the district judge to hear the appeals.

**DEMOCRATIC GOVERNANCE – RIGHT TO VOTE –  
RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS – RULE OF  
LAW – ICCPR – UNCAC**

***Representation of the People (Amendment) Act 2023 (Law No. 17  
of 2023)***

This Act has brought major amendments to the 1972 Representation of the People Order (President's Order No. 155) (RPO). The new law, which replaces the contents of Article 25 of the earlier RPO, states that if at any stage of polling, the Presiding Officer finds that (a) the poll is so interrupted or obstructed for reasons beyond his/her control of the Presiding Officer that it cannot be resumed during the polling hours prescribed by this law; or (b) any ballot box

used at the polling station is unlawfully and forcibly taken out of the custody of the Presiding Officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered to the extent that the poll results cannot be properly; or (c) a person or persons legally or illegally entering the polling station, prevents the Presiding Officer or other polling officers from performing their electoral duties by exerting physical force or displaying arms, s/he shall stop the poll immediately, and seek assistance from the nearest law enforcing agencies. On receiving such information, members of the law enforcement agencies shall remove and arrest the concerned person/s instantly and restore law and order inside the polling station. If they fail to do so, the Presiding Officer shall stop the poll and leave the polling station with all his officers and report the matter to the Returning Officer, who will immediately report the circumstances to the Election Commission. In the circumstances, the Election Commission shall direct a fresh poll at that polling station, unless it is satisfied that the result of the election has been determined based on the results of the polling at other polling stations in the same constituency. All electors shall be entitled to vote in the fresh poll, and the votes cast in the poll that was stopped shall not be counted.

The new law has added a new section (Section 84A) to supplement Section 84 of the earlier RPO. According to the new provision, if a person, by threat, intimidation, hurt or otherwise by application of force, obstructs or tries to obstruct any person from performing duties in connection with any election under this law, or obstructs or tries to obstruct any media representative or observer authorized by the Election Commission in connection with any election, and/or does any harm to his body or damage to his equipment related to performance of duty or prevents or tries to prevent any voter from going to polling station to cast vote or any candidate from submitting nomination paper, or compels or tries to compel any candidate to withdraw nomination paper, shall be guilty of an offence and shall be punishable with rigorous imprisonment for a term which may extend to seven years, but not less than two years, and also with fine.

The new law has replaced the term "election" with "polling" as per the new Section 91, which states that the Election Commission may withhold the result of any polling station/s if it is convinced that the result of such polling station/s was grossly prejudiced by malpractices including coercion, intimidation, manipulation or otherwise. After a prompt inquiry in an appropriate manner, it shall direct publication of the result of the polling station/s or cancel the polling with a direction for holding a fresh poll in such polling/s stations, as may seem just and appropriate.

**RIGHTS OF PWDs – NON-DISCRIMINATION – INCLUSION –  
AFFIRMATIVE ACTION**

*National Foundation for the Development of Persons with Disability  
Act 2023 (Act No. 44 of 2023)*

The Act establishes a Foundation for the development of persons with disability (PWD) (Section 3). Section 3 of the law empowers the Foundation to undertake several activities aimed at helping persons with disability on various fronts. Some of these activities include but are not limited to – ensuring the rights and safeguarding PWDs as prescribed by the Rights and Safeguarding of Persons with Disability Act 2013; facilitating employment, grants and loans for PWDs; offering financial and administrative assistance to PWDs; providing technical assistance and cooperation to government and non-government initiatives for the care and development of PWDs; providing opportunities for therapy and rehabilitation of PWDs; taking necessary steps to ensure the rights, dignity, welfare, protection and quality of life of PWDs; taking initiatives to increase awareness about the special needs of PWDs and incorporating the same in educational curricula at all levels; ensuring the inclusion of PWD issues in media and communications to facilitate their artistic and cultural development; ensuring safe access to all places; providing caregiver services to PWDs, etc. The work of the Foundation will be guided by an Executive Board headed by the Secretary of the Ministry of Social Welfare (Section 7).

**MIGRANT WORKERS – ACCOUNTABILITY IN RECRUITMENT  
PROCESS – WORKPLACE SAFETY – INTERNATIONAL  
CONVENTION ON THE PROTECTION OF ALL MIGRANT  
WORKERS AND MEMBERS OF THEIR FAMILIES**

*Overseas Employment and Migrants (Amendment) Act 2023 (Law  
No. 41 of 2023)*

This law amends the Overseas Employment and Migrants (Amendment) Act 2013 by ushering in a new category of personnel to safeguard the interests of aspiring migrant workers who are often exploited by unscrupulous intermediaries. The amendment aims to bring intermediaries within the accountability framework by engaging “sub-agents” or “representatives”, who are registered persons who collect migrant workers for overseas employment as per the recruiting agent’s requirement (Section 2). Under this law, every recruiting agent would be able to appoint a person registered as a sub-agent in the due

process determined by rules. S/he would discharge his/her role and responsibility according to the rules [Section 4]. Section 5 adds the words “migrant workers’ duties” along with their rights.

Section 7 of the new Act replaces Section 30 of the earlier law. Section 30 now states that the government will, if necessary, take steps to ensure easy access to bank loans, tax exemptions, savings investments, stipends, financial assistance, skills training, and reintegration for the benefit of migrant workers and members of their families. The government may take necessary financial and protective measures to safeguard the rights, dignity, and physical integrity at every stage migration process and in destination countries. Section 8 of the law adds a new Section 30A, which provides that every migrant worker will receive requisite training and migrate legally and will not engage in illegal activities in the destination country. Every migrant worker will be bound to provide all requisite information for the preparation of necessary documents in support of his/her travel and employment abroad.

Section 10 adds a new Section 33A which states that if any recruiting agent continues to engage in recruitment or related work after his/her license has been withdrawn or cancelled, s/he will be liable for a minimum of one year but not more than two years’ imprisonment, and a minimum of BDT 10,000 but not more than BDT 500,000 fine. Section 11 of the new Act replaces the contents of Section 35 of the earlier Act, which prescribes both imprisonment terms and fines for violating the provisions. Section 35 now provides that if any recruiting agent continues his/her business in violation of the provisions of this Act, or without employing a registered sub-agent, s/he shall be punishable with both imprisonment and fines.

## **ENVIRONMENT – POLLUTION – RIGHT TO LIFE**

*Environmental Conservation Rules 2023, SRO NO. 53/LAW/2023*

*Dated 5 March 2023 Issued by the Ministry of Environment and Forests*

Under Section 20 of the Bangladesh Environment Conservation Act of 1995, the Government passed the Bangladesh Environment Conservation Rules (2023) in a bid to reduce environmental pollution. According to Rule 3, any person affected or likely to be affected by environmental pollution may apply for redress to the Director General (DG) of the Directorate of Environment. The DG shall address the matter within 30 working days of receiving the application at a public hearing unless he considers it necessary to extend the time limit. The owner, occupier or agent of the factory, premise or place shall be duly

notified by the officer authorized by the DG to collect samples of air, water, soil or other substances for analysis [Rule 4].

In complying with standard practice, the Rules require industrial units and projects to be classified into four categories – red, yellow, orange, and green, based on their activities, levels of pollution, and potential harm to the environment and health [Rule 5]. The green category indicates low impact on human health and environment, yellow symbolizes moderate/medium impact, orange denotes significant impact, and red signifies strong/severe impact on human health and environment. Rule 6 requires the owner of a new industrial unit or project in the yellow, orange and red categories to obtain both a location clearance certificate and an environmental clearance certificate from the Department of Environment. For green-categorized industrial units and projects, owners only need to obtain an environmental clearance certificate. However, industrial units and projects set up in government and private export processing zones, economic zones, and industrial cities of Bangladesh Small and Cottage Industries Corporation are required to obtain only an environmental clearance certificate, regardless of how they are categorized; they are required to secure a location clearance certificate [Rule 6]. Rule 6 further states that no one is allowed to establish infrastructure in the categories of yellow, orange and red without having first obtained a location clearance certificate from the Department of Environment. Gas, electricity, water, and other essential services cannot be provided to new industrial units or projects categorized as yellow, orange, or red unless they have obtained a location clearance certificate. New industrial units of all categories must have an Environmental Clearance Certificate before conducting trial production or launch projects. Applications for the requisite certificates must be made in the prescribed form [Rules 10–13]. Applicants seeking a location clearance certificate shall receive the certificate within 21 working days from the date of submission of the application. If the application is rejected, the applicant shall be notified within 5 working days of the decision along with the grounds of rejection. In the event of an environmental clearance certificate, the applicant shall receive it within 20 working days from the date of submission. If it is rejected, the applicant shall be notified, along with the grounds of rejection, within 7 working days of the decision.

According to Rule 20, an environmental clearance certificate for green category industrial units or projects will be valid for 5 years from the date of issue and shall be renewable in 5-year intervals. A yellow category industrial unit or project's location or environmental clearance certificate shall be valid for 2 years from the date of issue, renewable at 2-year intervals. Location or environmental clearance certificate, orange and red categories industrial units

or projects shall be valid for 1 year from the date of issue, renewable at 1-year intervals. All categories of industrial units or projects must apply for renewal 30 days before the expiry of the certificate/s and by paying the required renewal fee [Rules 21–22].

If any individual or initiator of an industrial unit or project is aggrieved by any notice, order, or directive under these Rules, s/he may file an appeal to the government-established appellate authority within 30 days of receiving such notice, order, or directive [Rule 27]. For purposes of the Act and Rules, the appellate authority shall be comprised of –

- Secretary, Ministry of Environment, Forests and Climate Change (who will serve as the Chairman of the appellate authority).
- Additional Secretary (Environmental Pollution Control), Ministry of Environment, Forests and Climate Change.
- Joint Secretary (Environment-II), Ministry of Environment, Forests and Climate Change, Representative (not lower than a joint secretary) nominated by the Legislative and Parliamentary division.
- Deputy Secretary, (Environmental Pollution Control-Sub Wing), Ministry of Environment, Forests and Climate Change (who will also be the Member Secretary) [Rule 28].

Rule 29 lays down the procedure to be followed by the appellate authority in handling an appeal. Upon receiving an appeal, the appellate authority shall fix a date for hearing of the appeal and notify the parties concerned. The parties will be asked to furnish relevant information, documents, and oral testimony where necessary. According to Rule 30, if the appellant does not appear on the day fixed for hearing, the Appellate Authority may dismiss the appeal. However, it may extend the time for hearing based on the appellant's request. If an appeal application is rejected, an application for execution may be submitted to the Appellate Authority within 21 working days from the date when the order of rejection was issued. No clearance certificate will be issued or renewed pending the disposal of the appeal.

The Department shall furnish a report containing the analysis of the samples of water, liquid waste, air and sound and the information or data derived from such analysis upon application of any person, industrial unit or project entrepreneur or organization, subject to payment of the applicable service fees [Rule 34]. The fees so payable shall be deposited in the government treasury through appropriate means, and evidence shall be preserved by the depositor [Rule 35].

## Official Statements

### REFUGEE PROTECTION – SAFE AND ORDERLY RETURN – INTERNATIONAL SOLIDARITY

*Statement by Bangladesh at the Adoption of the 3rd Committee  
Resolution about Rohingya Muslims in Myanmar, 15 November 2023,  
Conference Room-1, UNHQs, New York*

Recalling how, despite collective efforts, no real progress has been achieved in enabling the Rohingyas to return to their homes, Bangladesh observed how the root causes of their persecution remained unaddressed and demands for justice were unmet due to continued armed conflicts and deteriorating conditions. Stressing the urgent need for the safe, voluntary and dignified return of the Rohingyas to Myanmar, it observed that the responsibility lay with Myanmar to create conditions for the protection of their basic rights, including the right to movement and access to livelihood opportunities. Pending their return, the Rohingyas living in the camps in Bangladesh deserved the solidarity of the international community. In this connection, Bangladesh appreciated the first-ever Security Council Resolution on Myanmar (2669) adopted in December 2022, which recognized the profound impacts of the ongoing state of emergency, increasing incidents of violence, arbitrary detention and executions of civilians in Myanmar and hoped for continued attention of the international community to this cause, as reflected in this resolution.

### UN PEACEKEEPING MISSIONS – SEXUAL ABUSE AND EXPLOITATION – CRIMINAL ACCOUNTABILITY – RIGHTS OF VICTIMS

*Statement by Bangladesh at the General Debate on “Criminal Ac-  
countability of the UN Officials and Experts on Missions”,  
78th UNGA, 10 October 2023, Trusteeship Council Chamber, UNHQs,  
New York*

Commending the UN officials and experts on missions who play a central role in upholding international peace and security through unwavering commitment, bravery and personal sacrifice, Bangladesh emphasized the need for accountability measures when individuals associated with these missions engage in criminal activities. It called for prompt and thorough investigations into allegations of wrongdoing to uphold the image, credibility, and integrity

of the United Nations and its Charter principles. As one of the major contributors to UN peacekeeping missions and an early endorser of the Secretary General's voluntary compact on preventing and addressing sexual exploitation and abuse, Bangladesh attached utmost importance to the issue of criminal accountability of UN officials and experts on missions and maintained a 'zero tolerance' policy on any allegations of misconduct against its peacekeepers, including allegations of sexual exploitation and abuse.

Bangladesh expressed disappointment at the slow progress in ensuring criminal accountability of UN officials and experts on missions for their misconduct despite significant efforts across the UN system. To strengthen the collective commitment to eradicating this problem, Bangladesh flagged a few points:

**First**, invest more in preventive measures. In this regard, develop customized training modules for in-mission and pre-deployment training, including refresher training. Equally important is to ensure access to the training materials, including in native languages.

**Second**, it is important to harmonize the standards of investigation of the crimes allegedly committed by United Nations officials and experts on mission. In this regard, regular exchange of information and sharing of best practices among the stakeholders is important.

**Third**, ensuring criminal accountability of UN personnel and experts on Missions is a shared responsibility. All parties must collaborate, including by providing timely information and other materials required for investigations and criminal proceedings.

**Fourth**, it is critical to ensure the capacity building of the host country, particularly by strengthening the Judicial and Security Sectors.

**Finally**, while addressing the issue of criminal accountability, the rights and protection of victims. Enhanced measures to support victims of misconduct must be in place in coordination with the victim's home country.

It is imperative to exercise extreme caution to safeguard the confidentiality of communications regarding allegations of misconduct. This is crucial to prevent unfair stigmatization of individuals, especially when allegations have yet to be proven beyond a reasonable doubt.

**MIGRATION – DISPLACEMENT – DIASPORA – SKILLS  
TRANSFER – INEQUALITIES – RACISM – XENOPHOBIA**

*Statement by Bangladesh at the International Dialogue on Migration (IDM) Panel Discussion on “Empowering Diasporas, Migrants and Displaced Persons as Development Agents”, 30 March 2023, UNHQs, New York*

Bangladesh underscored the role of migration in achieving sustainable development. It observed how diasporas are a great resource for both the countries of destination and origin through the transfer of skills, culture and innovative ideas that contribute to trade and investment, technology transfer and poverty reduction. Recalling how, despite their contribution, migrants continue to be the worst victims of widespread inequalities, racism and xenophobia, and protracted separation from their families, including during the pandemic, Bangladesh advocated for safe, orderly, and regular migration.

Bangladesh shared the contribution of the Bangladeshi diaspora to remittance, development of business networks, investments and philanthropy – all of which helped boost the economy of the country, diversify exports, undertake charitable activities, and establish new business models.

Calling for the empowerment of migrants and a global policy framework for their meaningful engagements, Bangladesh stressed the need to design policies to protect and safeguard their rights against all forms of discrimination, including social, economic and cultural. Bearing this in mind, Bangladesh emphasized that it is more important now than ever that the developed countries fulfil their ODA commitment and deliver at least 0.15 to 0.20% of their GNI to the LDCs and the most vulnerable countries. Development partners must collaborate further to ensure the effectiveness of ODA and foreign financial flows. One way could be promoting a tripartite model involving the diaspora, the development partners and the national government. It suggested that official development assistance can be directed towards nurturing the successful business models of the diaspora, particularly in the field of ICT – enabled start-ups and other ventures through collaboration between diaspora entrepreneurs and the host government.

Bangladesh also called on the development partners to invest in skills development, ICT education, bridging the digital divide and building capacity in developing countries, including by using ODA.

## INTERNATIONAL HUMANITARIAN LAW

### Official Statements

#### WAR CRIMES – GENOCIDE – CRIMES AGAINST HUMANITY – ICC

*Statement by Bangladesh at the General Debate of the 22nd Session of the Assembly of States Parties of the International Criminal Court, New York, 07 December 2023*

Reiterating its commitment to the principles and purposes of the Rome Statute, Bangladesh recognized the potential of the International Criminal Court (ICC) to advance the global commitment to end impunity and prevent the occurrence of the most serious crimes under international law. It emphasized the following points:

First, Bangladesh believed that the credibility of the Court lies primarily in its ability to serve the victims, particularly those who are the most vulnerable and the least heard. Alluding to the Rohingya refugee situation, it sought early completion of the investigation undertaken by the Office of the Prosecutor which is critical for ending the longstanding culture of impunity in Myanmar and supporting the right of the Rohingyas to safe, voluntary, and dignified return to their homeland.

Second, as a criminal court, the ICC is mandated to deter perpetrators from continuing or re-committing the crimes under its jurisdiction. It is critically important that the ICC remains objective in its attention to the protracted situations. Bangladesh remains concerned by the failure of the ICC to make any progress in the investigation of the Palestine situation, which has only encouraged the State of Israel to continue its atrocities in the occupied Palestinian Territory. Given the ongoing Israeli aggression and atrocities in Gaza, Bangladesh, along with four other countries, made a referral to the ICC seeking an investigation by the Office of the Prosecutor of possible commission of genocide, war crimes and crimes against humanity in the occupied Palestinian Territory. Bangladesh called upon the Office of the Prosecutor to prioritize this investigation, with the view to preventing the continuation of Israel's genocidal actions in Gaza.

Third, the mandate and responsibility of the ICC to punish the most serious crimes can be better realized by the effective use of its complementarity principle. To this end, Bangladesh called for enhanced institutional arrangements for disseminating the ICC's norms and practices with interested national jurisdictions for further strengthening complementarity, bearing in mind the

varied contexts of national jurisdictions. Bangladesh stressed the importance of expanding ICC's technical cooperation capacity, particularly in terms of victim and witness protection.

Fourth, the ICC must ensure good governance and equity in its work. Bangladesh encouraged the Court to uphold geographical representation and gender balance in its structure and urged for all possible efforts towards addressing the gaps in equitable geographical representation.

Finally, Bangladesh emphasized the importance of promoting the universality of the Rome Statute. While countries must ratify the Rome Statute, the ICC must also demonstrate, through its actions, that it can deliver justice to the victims and hold the perpetrators accountable, no matter how powerful they are.

### Official Statements

#### HUMAN RIGHTS – GENOCIDE – CRIME AGAINST HUMANITY – HUMANITARIAN ASSISTANCE

##### *Statement by Bangladesh at the Fourth Committee of the 78th Session of the UNGA under Agenda Item 50: Israeli Practices and Set- tlement Activities Affecting the Rights of the Palestinian People and Other Arabs of the Occupied Territories, 06 November 2023, Confer- ence Room 4*

Recalling the atrocities committed by Israel on Palestinians, Bangladesh asked to ensure immediate, continuous, sufficient and unhindered provision of essential supplies and services to civilians throughout the Gaza Strip. Alluding to the reports of the Secretary-General and the Special Committee, both of which narrated how the rights of the Palestinians and other Arabs of the occupied territories have been affected by the illegal Israeli practices and settlement activities and the latest update of Israel's illegal acts of settlements, demolition, and forced evictions, Bangladesh stated that Israel's illegal practices and policies, and the UN's failure to take any action, have contributed to the deterioration of the situation. Bangladesh referred to the observations and recommendations made by the Secretary-General and urged for consensus actions to make Israel comply with those recommendations. Bangladesh also referred to the resolution adopted at the 10th Emergency Special Session on 27 October 2023, which firmly rejected any attempts at forced transfer of the Palestinian civilian population.

Bangladesh observed that despite decades of talks about protecting the rights of the Palestinians under the illegal occupation of Israel, and making Israel accountable for the flagrant disregard for and violation of international human rights, humanitarian law, and numerous resolutions adopted in the General Assembly and the Security Council, there has been no tangible progress in taking concrete actions to solve the crisis, particularly in respect of achieving the “two State” solution. Consequently, the world today is a witness to one of the direst humanitarian crises of our times, characterized by willful blockade of humanitarian assistance, targeted killing of civilians and UN personnel, and the use of white phosphorus in artillery shells.

*Statement by Bangladesh at the Informal Plenary Meeting of the General “Briefing on the Humanitarian Situation in the Gaza Strip”, General Assembly Hall, 17 November 2023*

Bangladesh recalled witnessing the escalation of war crimes and genocide in the Gaza Strip, including the targeted killing of civilians and humanitarian workers and obstructing access to humanitarian assistance to the dying. Bangladesh urged to take immediate action in line with the Resolution ES 10/21 adopted in the emergency session on 27 October 2023, for an immediate humanitarian truce and to ensure unhindered and sufficient supply of humanitarian assistance in Gaza. Bangladesh maintained that it is unacceptable that the international community, including the United Nations, has failed to take any visible action against such gross violation of international human rights and humanitarian laws, including the 4th Geneva Convention by the Israeli Occupying Forces. It called out to Israel to comply with all norms and principles of protection of civilians and the inviolability of civilian structures under international humanitarian and human rights law. Bangladesh contended that Israel has been enjoying impunity, given the unconditional support it receives from some countries. Demanding an end to the culture of impunity, Bangladesh reiterated its call to bring the perpetrators of genocide and crimes against humanity to justice.

**ARMED CONFLICT – CHILD RIGHTS – VIOLENCE AGAINST  
CHILDREN – CRC – OPTIONAL PROTOCOLS**

*Statement by Bangladesh at the Open Debate of the Security Council  
on the Theme “Children and Armed Conflict: How to Prevent and  
Respond to Grave Violations against Children in Armed Conflict”,  
5 July 2023*

Bangladesh observed that the grave violations against children in many conflict zones around the world marred our collective conscience and required enhanced measures to protect children in armed conflict. Drawing from its own experience of the horrors of war, Bangladesh reiterated its commitment to protecting civilians, especially children, in armed conflict.

Bangladesh recognized that the protection of children in armed conflict is primarily the responsibility of the State. Thus, States should ensure that their national laws are in line with international human rights and humanitarian law, such as the Convention on the Rights of the Child and its Optional Protocols. This includes enacting legislation that criminalizes grave violations against children and establishing robust judicial systems to effectively hold perpetrators accountable. Bangladesh noted the significance of integrating child protection provisions and capacity in UN peacekeeping operations and special political missions. However, it observed that the available resources did not match the scale of child protection risks in conflict-affected areas and hence, urged to increase the allocation of critical resources to effectively address the protection needs of children in conflict.

Bangladesh conceded that innovation plays a crucial role in addressing the evolving challenges faced by children in armed conflict. As such, innovative approaches to child protection must be explored and piloted, leveraging technology, digital platforms, and data-driven solutions. It is advised that leveraging technological advancements for the collection and analysis of data to anticipate risks and taking early action for protecting children in armed conflict is equally important. Bangladesh recommended to tailor responses be tailored to the specific needs of girls. This involves investing in gender-responsive programming, empowering girls through education, and challenging harmful gender norms. It stressed the importance of addressing child protection concerns in early warning, conflict analysis, mediation, transitional justice, disarmament, demobilization, and reintegration processes as recommended by the Secretary-General.

## USE OF THREAT OR FORCE

### Nuclear Weapons and Disarmament

#### NUCLEAR DISARMAMENT – PRESERVING HUMANITY – ENVIRONMENTAL PROTECTION

*Statement by Bangladesh at the Second Meeting of States Parties  
to the Treaty on the Prohibition of Nuclear Weapons under Agenda  
Item 10: General Exchange of Views, 28 November 2023, UNHQs,  
New York*

Observing that nuclear weapons continue to pose the most significant threats to humanity, resulting in catastrophic consequences, Bangladesh made the following points:

First, to realize the shared objective of the total elimination of nuclear weapons, the global community must unequivocally reject the use of nuclear weapons while actively supporting the peaceful application of nuclear technology for the collective benefit of humanity.

Second, the international community must recognize that the use or threat of nuclear weapons constitutes a clear violation of international law, including the Charter of the United Nations, not to mention the devastating humanitarian and environmental consequences. As such, nuclear deterrence in military and security concepts, doctrines, and policies must be shunned.

Third, allocating significant financial resources to modernize and expand nuclear arsenals is unjustifiable in a world struggling to fulfil basic human needs. These resources could be better utilized to protect the planet and the people and build a world free of conflicts.

# State Practice of Asian Countries in International Law

## *Central Asia*

*Sergey Sayapin\* and Nurofarid Amonulloeva\*\**

This contribution follows up on the relevant section in 28 *Asian Yearbook of International Law* (2022), and describes developments in Central Asian States (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) pertaining to international law and foreign policy in 2023.

### HISTORY AND THEORETICAL APPROACH OF CENTRAL ASIAN STATES IN INTERNATIONAL LAW

#### Central Asian States' Approach to 'Law' and 'International Law'

##### *Kazakhstan*

In June 2023, Russia's Security Council accused Western nations of attempting to drive a wedge between Russia and Kazakhstan by interfering in the affairs of sovereign nations. The comments were made during a visit by Security Council Secretary Nikolai Patrushev to Kazakhstan, where he met with counterparts from across Central Asia (Al Jazeera, "Russian official accuses West of 'manipulation' in Kazakhstan": <https://www.aljazeera.com/news/2023/6/23/moscow-west-trying-to-create-kazakhstan-russia-wedge>). Patrushev's deputy, Alexander Shevtsov, claimed that the United States and its allies were supporting nationalist sentiment in Kazakhstan, spreading misinformation, and manipulating public opinion through the internet and social networks. This accusation comes amid signs that Kazakhstan is distancing itself from Russia's sphere of influence, including its decision to stop hosting Syria talks, cancelling a concert by a pro-Russian singer, and President Kassym-Jomart Tokayev's absence from an annual economic forum in St.

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Petersburg. Kazakhstan has also largely abstained from backing Moscow in United Nations votes on the Ukraine war.

In October 2023, Kazakhstan's Parliamentarian Zharkynbek Zharkynbekov sparked controversy by suggesting that women who are victims of domestic violence should be held accountable for their abuse (Human Rights Watch, "Punish the Victim, Says Kazakhstan Parliamentarian": <https://www.hrw.org/news/2023/10/09/punish-victim-says-kazakhstan-parliamentarian>). Human Rights Watch highlighted that such attitudes contributed to the systemic failure to protect women and girls from abuse, emphasising the urgent need for comprehensive legal reforms and societal change to combat domestic violence effectively.

Likewise, in October 2023, Human Rights Watch and eight other organizations called on Kazakhstan to abolish its "foreign funding register", a publicly accessible list of individuals and entities receiving foreign financial support (Human Rights Watch, "Kazakhstan: Abolish the 'Foreign Funding' Register": <https://www.hrw.org/news/2023/10/20/kazakhstan-abolish-foreign-funding-register>). Critics argued that the register stigmatized civil society actors and human rights defenders, potentially exposing them to harassment and retaliation. The decree mandating the register established a separate reporting scheme for organizations and individuals receiving foreign funding for certain broadly defined activities. Human Rights Watch urged Kazakhstan to repeal the decree and legislative provisions that require the publication of this list, as they contravene international human rights standards and undermine the work of independent civil society organizations and activists.

### *Kyrgyzstan*

The 2023 Human Rights Report for the Kyrgyz Republic, released by the US Department of State, indicated no significant changes in the human rights situation during the year (US Embassy to the Kyrgyz Republic, "Kyrgyz Republic 2023 Human Rights Report": [https://kg.usembassy.gov/wp-content/uploads/sites/139/2024/05/528267\\_KYRGYZ-REPUBLIC-2023-HUMAN-RIGHTS-REPORT-1-1.pdf](https://kg.usembassy.gov/wp-content/uploads/sites/139/2024/05/528267_KYRGYZ-REPUBLIC-2023-HUMAN-RIGHTS-REPORT-1-1.pdf)). Credible reports detailed issues such as torture by law enforcement, harsh prison conditions, arbitrary arrests, judicial independence problems, restrictions on freedom of expression and media, government corruption, gender-based violence, and significant restrictions on workers' freedom of association.

In March 2023, Human Rights Watch reported that Kyrgyz law enforcement agencies were complicit in crimes against women, including domestic violence and bride kidnapping (Human Rights Watch, "Law Enforcement Complicit in Crimes Against Women in Kyrgyzstan": <https://www.hrw.org/news/2023/03/10>

/law-enforcement-complicit-crimes-against-women-kyrgyzstan). Despite legal reforms, police allegedly fail to investigate complaints, and perpetrators frequently go unpunished. Human Rights Watch urged the Kyrgyz government to enforce existing laws and hold law enforcement accountable for their alleged inaction.

In July 2023, Kyrgyzstan's Constitutional Court ruled in favour of Altyn Kapalova, a lesbian feminist, artist, and writer, affirming her right to give her children matronymic surnames (Human Rights Watch, "Kyrgyz Woman Wins Strategic Gender Equality Case": <https://www.hrw.org/news/2023/07/03/kyrgyz-woman-wins-strategic-gender-equality-case>). This landmark decision challenged the patriarchal naming convention that typically assigns children their father's surname, marking a significant step toward gender equality in the country. Kapalova's legal battle spanned over two years, during which she faced systemic resistance from authorities. Her persistence not only secured a personal victory but also set a precedent for challenging gender-based discrimination in Kyrgyzstan's legal system.

In August 2023, Kyrgyzstan repatriated 95 citizens – 31 women and 64 children – from Syrian internment camps, marking its third such operation (Al Jazeera, "Kyrgyzstan brings back 95 ISIL wives, children from Syrian internment camps": <https://www.aljazeera.com/news/2023/8/30/kyrgyzstan-brings-back-95-isil-wives-children-from-syrian-internment-camps>). This mission was conducted with support from the United States, the United Nations Children's Fund (UNICEF), and the International Committee of the Red Cross (ICRC). The repatriates were among thousands from Central Asia who joined ISIL between 2013 and 2015. Previous repatriations occurred in February 2023 and March 2021. The Kyrgyz government has provided humanitarian assistance during these missions, and the United States has been acknowledged for its logistical support.

In October 2023, Russian President Vladimir Putin made a rare foreign visit to Kyrgyzstan, his first since the International Criminal Court (ICC) issued an arrest warrant for him in March over alleged war crimes, including the illegal deportation of Ukrainian children (Al Jazeera, "Russia's Putin makes rare visit to Kyrgyzstan despite ICC arrest warrant": <https://www.aljazeera.com/news/2023/10/12/russias-putin-makes-rare-visit-to-kyrgyzstan-despite-icc-arrest-warrant>). During his two-day stay in Bishkek, Putin met with Kyrgyz President Sadyr Japarov and Azerbaijani President Ilham Aliyev, attended a summit of the Commonwealth of Independent States (CIS), and participated in ceremonies marking the 20th anniversary of Russia's airbase near Kant. The visit underscored Russia's strategic interests in Central Asia, particularly in light of growing regional engagement with China. Both Kyrgyzstan and China are not

members of the ICC, thus not obligated to enforce the arrest warrant. Putin's trip highlighted Moscow's efforts to maintain influence in Central Asia despite international legal challenges.

### *Tajikistan*

On 4 April 2023, Human Rights Watch called for the immediate release of Manuchehr Kholiqnazarov, a prominent human rights lawyer from Tajikistan's Gorno-Badakhshan Autonomous Region (GBAO). Kholiqnazarov was sentenced to 16 years in prison in December 2022 on politically motivated charges, including "participation in a criminal association" and "participating in the activities of a banned organisation due to its extremist activities" (Human Rights Watch, "Tajikistan: Free Autonomous Region Rights Defender": <https://www.hrw.org/news/2023/04/04/tajikistan-free-autonomous-region-rights-defender>). Human Rights Watch considered his detention a direct retaliation for his advocacy of human rights and his involvement in investigating the 2021 killing of Gulbiddin Ziyobekov, a Pamiri man whose death had sparked protests in GBAO.

On 21 November 2023, Tajik President Emomali Rahmon and Russian President Vladimir Putin oversaw the signing of eight new cooperation documents aimed at enhancing bilateral ties in various sectors (Asia Plus, "Tadzhikistan i Rossiya podpisali vosem dokumentov o sotrudnichestve" [Tajikistan and Russia signed eight documents on cooperation]: <https://asiaplustj.info/ru/news/tajikistan/politics/20231122/tadzhikistan-i-rossiya-podpisali-vosem-dokumentov-o-sotrudnichestve>). The agreements encompass industrial, transport, economic, judicial, and scientific domains, reflecting a comprehensive approach to strengthening partnership.

On 22 November 2023, Tajikistan and Azerbaijan signed a series of agreements to implement major investment projects aimed at expanding trade, economic, and investment cooperation between the two countries (Asia Plus, "Tadzhikistan i Azerbaidzhan dogovorilis o realizatsii ryada krupnyh investitsionnyh proyektov" [Tajikistan and Azerbaijan have agreed to implement a number of major investment projects]: <https://asiaplustj.info/ru/news/tajikistan/economic/20231124/tadzhikistan-i-azerbaidzhan-dogovorilis-o-realizatsii-ryada-krupnih-investitsionnih-proektov>). The agreements were finalized during a meeting between Tajikistan's Minister of Economic Development and Trade, Zavki Zavkizoda, and Azerbaijan's Minister of Economy, Mikayil Chingiz oglu Jabbarov, held in Baku within the framework of the UN Special Programme for the Economies of Central Asia (SPECA) Summit.

On 27 November 2023, Tajikistan and the European Union (EU) held their 10th annual Cooperation Committee meeting in Brussels (Asia Plus, "O chem dogovorilis Tadjikistan i Evrosoyuz v Brussele?" [What did Tajikistan and the

EU agree on in Brussels?]: <https://asiaplustj.info/ru/news/tajikistan/economic/20231129/o-chem-dogovorilis-tadzhikistan-i-evrosoyuz-v-bryussele>). The meeting was co-chaired by Tajikistan's Minister of Economic Development and Trade, Zavki Zavqizoda, and the European External Action Service's Deputy Managing Director for Central Asia, Luc Devigne. The discussions focused on strengthening bilateral relations and advancing key development initiatives. The meeting underscored the EU's commitment to supporting Tajikistan's development goals and enhancing bilateral cooperation. Both sides emphasized the importance of expediting the finalization of a new Partnership and Cooperation Agreement to further strengthen their collaboration.

On 27–28 November 2023, Tajikistan hosted the 11th Herat Security Dialogue in Dushanbe, inviting representatives from all Afghan political groups, including the Taliban (Asia Plus, “Predstaviteley Talibov prigrasili v Dushanbe [Taliban representatives invited to Dushanbe]”: <https://asiaplustj.info/ru/news/tajikistan/politics/20231127/predstavitelei-talibov-prigrasili-v-dushanbe>). The meeting aimed to discuss Afghanistan's evolving situation, focusing on national dialogue, gender equality, humanitarian aid, and regional solidarity.

In December 2023, Tajikistan and China signed an agreement to establish a new air corridor named “Pomir-Shenche” (Asia Plus, “Tadzhikistan i Kitay podpisali solasheniye ob otkrytii novogo aviakorridora” [Tajikistan and China signed an agreement on opening a new air corridor]: <https://asiaplustj.info/ru/news/tajikistan/economic/20231206/tadzhikistan-i-kitai-podpisali-soglashenie-ob-otkritii-novogo-aviamarshruta>). The agreement was formalized in Dushanbe on 5 December 2023, by Loiq Begijonzoda, Director-General of Tajikaeronavigatsiya, and Liu Wenci, Director-General of the Xinjiang Air Traffic Management Bureau. This new flight path is designed to enhance aviation connectivity between the two countries, facilitating increased flight frequencies and providing a foundation for developing international air services with other nations. The Pomir-Shenche corridor is named after the Gorno-Badakhshan Autonomous Region (GBO) in Tajikistan, indicating that the route will traverse this region. This development is expected to bolster bilateral ties and support the expansion of international aviation networks.

On 9 December 2023, Tajikistan and Iran signed a cooperation agreement focusing on disaster response and emergency management (Asia Plus, “Tadzhikistan i Iran dogovorilis o sotrudnichestve v sfere reagirovaniya na chs” [Tajikistan and Iran agreed on cooperation in emergency response]: <https://asiaplustj.info/ru/news/tajikistan/security/20231209/tadzhikistan-i-iran-dogovorilis-o-sotrudnichestve-v-sfere-reagirovaniya-na-chs>). The agreement aims to enhance bilateral collaboration in addressing natural disasters and improving emergency preparedness and response mechanisms.

On 14 December 2023, the Eurasian Development Bank (EDB) announced plans to allocate \$130 million in 2024 to support the completion of the Rogun Hydroelectric Power Plant (HPP) in Tajikistan (Asia Plus, “EABR nameren vydelit dlya dostroyki Rogunskoy GES 130 millionov dollarov” [EDB intends to allocate 130 million dollars for the completion of the Rogun hydroelectric power station]: <https://asiaplustj.info/ru/news/tajikistan/economic/20231214/eabr-nameren-videlit-dlya-dostroiki-rogunskoi-ges-130-millionov-dollarov>). This commitment was confirmed by EDB Senior Managing Director Denis Ilyin during a press conference in Almaty. The bank emphasised the project’s significance not only for Tajikistan but also for the broader region. The Rogun HPP is a critical infrastructure project aimed at addressing energy shortages in Tajikistan and enhancing regional energy security. Once completed, it is expected to be the largest hydroelectric power station in Central Asia, with an installed capacity of 3,600 MW. The project has garnered support from various international financial institutions, including the World Bank, the Asian Infrastructure Investment Bank (AIIB), and the Islamic Development Bank, among others.

### *Turkmenistan*

Human Rights Watch’s 2024 World Report indicates that Turkmenistan’s human rights record remained dire in 2023, marked by a closed society with suppressed fundamental freedoms, including those of religion, movement, expression, and association (Human Rights Watch, “Turkmenistan: Events of 2023”: <https://www.hrw.org/world-report/2024/country-chapters/turkmenistan>). Political reforms have deepened authoritarian rule, and the government denies the existence of poverty and food insecurity. While some activists were released, many remain imprisoned on politically motivated charges, and enforced disappearances, torture, and ill-treatment persist. Restrictions on civil society, media, and internet access continue, with persecution of activists and their families both within and outside the country. Forced labour in the cotton fields is widespread, and citizens face barriers to freedom of movement, including arbitrary denials of international travel. The government tightly controls religious groups, punishing those practicing beyond state-approved religions, and women and girls face significant restrictions, including on reproductive rights. International actors, including the EU and the US, have engaged with Turkmenistan, raising concerns about human rights, but these efforts have yet to yield significant improvements.

On 21 November 2023, Human Rights Watch (HRW) reported that Turkmen authorities prevented independent journalist Soltan Achilova from travelling to Geneva to attend a human rights award ceremony (Human Rights

Watch, “Turkmenistan: Journalist Prevented from Travelling Abroad”: <https://www.hrw.org/news/2023/11/21/turkmenistan-journalist-prevented-travelling-abroad>). Despite being nominated for the 2021 Martin Ennals Award for Human Rights Defenders, Achilova was forcibly hospitalised on 20 November 2023, under the pretext of having an infectious disease.

### *Uzbekistan*

In September 2023, the Swiss General Prosecutor’s Office formally charged Gulnara Karimova, daughter of Uzbekistan’s first president, with organizing a criminal group, money laundering, bribery as a public official, and document forgery (Current Time, “Genprokuratura Shveysarii obvinila Gulnaru Karimovu v organizatsii prestupnogo soobshchestva i otmyvanii deneg” [The Swiss Prosecutor General’s Office has accused Gulnara Karimova of organising a criminal association and money laundering]: <https://www.currenttime.tv/a/obviniya-gulnara-karimovoy/32616112.html>). Alongside Karimova, a key figure from a Russian telecom company’s Uzbek branch was also charged with orchestrating corruption schemes. Swiss authorities have confiscated assets worth 780 million Swiss francs linked to Karimova, including real estate and bank holdings, while similar investigations and asset seizures have taken place in multiple countries, including the UK, the US, and Russia. Karimova has been serving prison sentences in Uzbekistan since 2013 for corruption-related crimes, with her total illicit wealth estimated at around \$1.4 billion spread across several countries.

On 1 December 2023, the Shaykhontohur District Court in Tashkent fined a cafe owner for gender discrimination, marking the first such case under Uzbekistan’s newly enacted law prohibiting gender-based discrimination (Current Time, “V Tashkente upravlyuayusshchego kafe oshtrafovali za gendernuyu diskriminatsiyu. Eto pervoye podobnoye delo v Uzbekistane” [Tashkent cafe manager fined for gender discrimination. First such case in Uzbekistan]: <https://www.currenttime.tv/a/tashkent-shtraf-za-gendernuyu-diskriminatsiyu/32709899.html>). The incident occurred on 18 November 2023, when journalist Inobat Akhatova and a friend were denied entry to the Sahil Street Food café after 10:30 PM, based on the establishment’s internal policy that prohibited women from entering at that time. Akhatova reported the incident to the authorities, leading to the café owner being fined 6.6 million Uzbek sums (approximately \$537). Both the owner and an employee acknowledged their wrongdoing and issued public apologies.

On 7 December 2023, President Shavkat Mirziyoyev of Uzbekistan granted amnesty to 334 individuals in honor of the 31st anniversary of the country’s Constitution (Current Time, “Shavkat Mirziyoyev pomiloval 334

zaklyuchennyh nakanune Dnya Konstitutsii Uzbekistana” [Shavkat Mirziyoyev pardoned 334 prisoners on the eve of Constitution Day of Uzbekistan]: <https://www.currenttime.tv/a/mirziyoev-pomiloval-334-zaklyuchennyh/32720973.html>). The decree stipulated that the pardoned individuals had “sincerely repented their deeds and firmly embarked on the path of correction”. Among those pardoned, 34 were fully released from their sentences, 249 were granted parole, and 6 had their sentences commuted to lighter penalties. Additionally, 45 individuals had their prison terms reduced. The amnesty also included 18 foreign nationals, 23 women, 15 men over 60 years old, and 88 individuals involved in activities of organizations banned in Uzbekistan.

### CENTRAL ASIA – REGIONAL AFFAIRS

In February 2023, Human Rights Watch highlighted the unprecedented inclusion of three Central Asian nations – Kazakhstan, Kyrgyzstan, and Uzbekistan – as members of the United Nations Human Rights Council (Human Rights Watch, “Prominence of Central Asian Countries on The Human Rights Council Is an Opportunity for Change”: <https://www.hrw.org/news/2023/02/24/prominence-central-asian-countries-human-rights-council-opportunity-change>). Human Rights Watch urged these nations to align their actions with their commitments, emphasizing that their roles on the Council should be leveraged to drive meaningful human rights reforms both domestically and internationally.

On 20 March 2023, United Nations High Commissioner for Human Rights Volker Turk called on Uzbekistan and Kazakhstan to act on their human rights reform pledges during visits to both countries (Human Rights Watch, “UN Human Rights Chief Calls for Reforms in Uzbekistan and Kazakhstan”: <https://www.hrw.org/news/2023/03/20/un-human-rights-chief-calls-reforms-uzbekistan-and-kazakhstan>). He urged both governments to address key issues, including accountability for protest-related deaths and the protection of women’s rights. In Kazakhstan, Turk emphasized the need for independent investigations into the deaths of over 230 people during anti-government protests in January 2022. He also highlighted concerns over the use of force against protesters and the lack of accountability for these incidents. In Uzbekistan, Turk called for reforms to protect women’s rights and ensure accountability for human rights violations. He urged the government to take concrete steps to uphold its human rights commitments and address ongoing concerns.

The Samarkand Declaration, issued from the Fourth Meeting of Foreign Ministers of Afghanistan's Neighboring States on 13 April 2023, involved China, Iran, Pakistan, Russia, Tajikistan, Turkmenistan, and Uzbekistan, all committing to Afghanistan's peaceful development, unity, and independence, free from terrorism and drug trafficking (Ministry of Foreign Affairs of the People's Republic of China, "Samarkand Declaration of the Fourth Meeting of Foreign Ministers of Afghanistan's Neighboring States": [https://www.mfa.gov.cn/eng/zy/gb/202405/t20240531\\_11367494.html](https://www.mfa.gov.cn/eng/zy/gb/202405/t20240531_11367494.html)). Discussions emphasized forming an inclusive Afghan government, countering terrorism by groups like the Islamic State of Iraq and the Levant (ISIL), Al-Qaeda, the Eastern Turkistan Islamic Movement (ETIM) and others, combating drug production, and respecting human rights. The declaration also called for continued international dialogue and humanitarian aid, while highlighting the importance of economic projects for Afghanistan's integration into the global economy.

On 18 September 2023, Human Rights Watch urged US President Joe Biden to prioritize human rights during his upcoming meeting with the five Central Asian leaders on the sidelines of the United Nations General Assembly (Human Rights Watch, "Central Asia/US: Put Rights At Heart of Talks": <https://www.hrw.org/news/2023/09/18/central-asia/us-put-rights-heart-talks>). A few days later, German Chancellor Olaf Scholz was called upon to prioritise human rights in areas such as freedom of expression, political participation, and the protection of civil society during his meeting with the five Central Asian leaders on 29 September (Human Rights Watch, "Germany Should Keep Focus on Rights in Central Asia Talks": <https://www.hrw.org/news/2023/09/28/germany-should-keep-focus-rights-central-asia-talks>).

In November 2023, Human Rights Watch (HRW) urged the European Union (EU) to leverage its trade agreements with Central Asian countries – specifically Kazakhstan, Kyrgyzstan, and Uzbekistan – to promote human rights and democratic reforms (Human Rights Watch, "EU: Use Trade Leverage to Support Democracy and Rights in Central Asia": <https://www.hrw.org/news/2023/11/24/eu-use-trade-leverage-support-democracy-and-rights-central-asia>). These nations benefit from the EU's Generalized Scheme of Preferences Plus (GSP+), which offers preferential trade access in exchange for commitments to uphold 27 international conventions covering labour rights, human rights, environmental protection, and good governance.

# State Practice of Asian Countries in International Law

*China*

*Yen-Chiang Chang\** and *Guo Long\*\**

## TERRITORY AND JURISDICTION

### Authority and Sovereignty over Territory

*Statement of the Government of the People's Republic of China on the Baselines of the Territorial Sea Adjacent to the North Part of the Beibu Gulf (1 March 2024) and Statement of the Government of the People's Republic of China on the Baselines of the Territorial Sea Adjacent to Huangyan Dao (10 November 2024)*

In 2024, the Chinese Government issued important statements on the baselines of the territorial sea in the northern part of the Beibu Gulf and on Huangyan Island, respectively, which not only clarified China's sovereignty and maritime rights and interests in the relevant sea areas, but also reflected China's firm determination to fulfil its international obligations as a State party to the United Nations Convention on the Law of the Sea.

*Statement of the Government of the People's Republic of China on the Baselines of the Territorial Sea Adjacent to the North Part of the Beibu Gulf*

On 1 March 2024, the Chinese Government, in accordance with the Law of the People's Republic of China on the Territorial Sea and Contiguous Zone promulgated on 25 February 1992, declared the baselines of the territorial sea in the northern part of Beibu Gulf. The baselines of the territorial sea adjacent to the north part of the Beibu Gulf are composed of the straight lines joining the adjacent base points as listed in Table 1 and Figure 1 below:

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TABLE 1 Base points constituting the straight baselines of northern part of the Beibu Gulf's territorial sea

|   |              |               |
|---|--------------|---------------|
| Junbi Jiao  | 19°21.1'N    | 108°38.6'E    |
| Shenjian Jiao   | 19°49.6'N    | 109°09.5'E    |
| Bingma Jiao   | 19°54.1'N    | 109°15.7'E    |
| Xieyang Dao   | 20°54.2'N    | 109°12.4'E    |
| Weizhou Dao   | 21°00.6'N    | 109°05.2'E    |
| Baixugong Jiao  | 21°23.3'N    | 108°12.3'E    |
| The first marking point of the demarcation line between China and Vietnam in the Beibu Gulf | 21°28'12.5"N | 108°06'04.3"E |

SOURCE: [HTTPS://WWW.UN.ORG/DEPTS/LOS/LEGISLATIONANDTREATIES/STATEFILES/CHN.HTM](https://www.un.org/depts/los/legislationandtreaties/statefiles/chn.htm), LAST VISITED: 2025/04/10

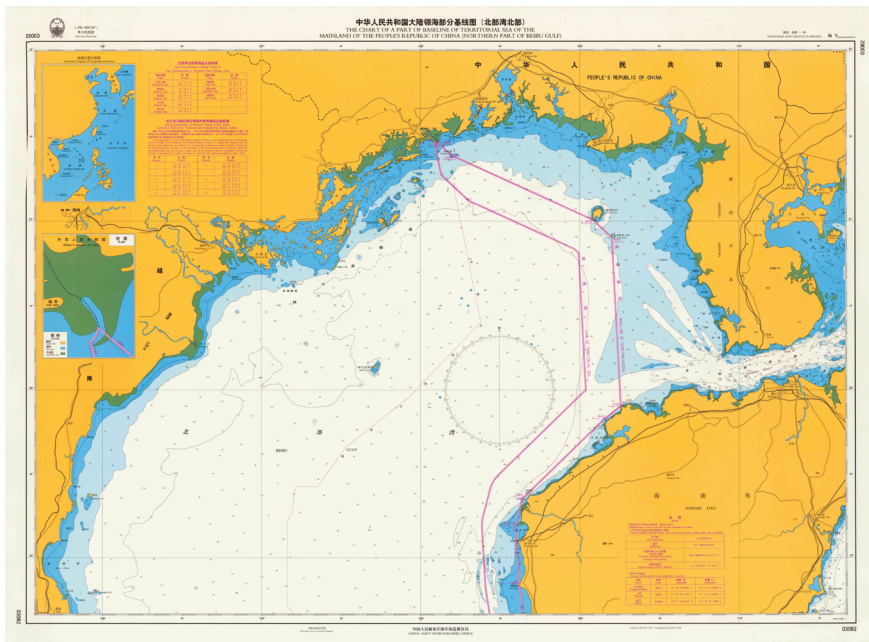


FIGURE 1 The chart of a part of baseline of the territorial sea of the mainland of the People's Republic of China (northern part of the Beibu Gulf)  
 SOURCE: [HTTPS://WWW.UN.ORG/DEPTS/LOS/LEGISLATIONANDTREATIES/STATEFILES/CHN.HTM](https://www.un.org/depts/los/legislationandtreaties/statefiles/chn.htm), LAST VISITED: 2025/04/10

This statement aims to clarify China's maritime rights and interests and territorial sovereignty in the Beibu Gulf and to provide a legal basis for maritime management and resource development in the relevant waters.

***Statement of the Government of the People's Republic of China on the Baselines of the Territorial Sea Adjacent to Huangyan Dao***

On 10 November 2024, the Chinese government announced the baselines of the territorial sea adjacent to Huangyan Dao of the People's Republic of China in accordance with the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone promulgated on 25 February 1992. Huangyan Island is an inherent territory of China, and this declaration aims to clarify China's sovereignty over the island and its maritime rights and interests in the relevant waters. The baselines of the territorial sea adjacent to Huangyan Dao are composed of straight lines joining the adjacent base points as listed in Table 2 and Figure 2 below:

TABLE 2 Base points constituting the straight baselines of Huangyan Dao's territorial sea

|                 |             |              |
|-----------------|-------------|--------------|
| Huangyan Dao 1  | 15 °08.1' N | 117 °50.9' E |
| Huangyan Dao 2  | 15 °07.4' N | 117 °50.8' E |
| Huangyan Dao 3  | 15 °07.0' N | 117 °50.6' E |
| Huangyan Dao 4  | 15 °06.6' N | 117 °50.2' E |
| Huangyan Dao 5  | 15 °06.1' N | 117 °49.5' E |
| Huangyan Dao 6  | 15 °06.3' N | 117 °44.2' E |
| Huangyan Dao 7  | 15 °07.3' N | 117 °43.1' E |
| Huangyan Dao 8  | 15 °12.7' N | 117 °42.6' E |
| Huangyan Dao 9  | 15 °13.1' N | 117 °42.8' E |
| Huangyan Dao 10 | 15 °13.4' N | 117 °43.3' E |
| Huangyan Dao 11 | 15 °13.5' N | 117 °43.9' E |
| Huangyan Dao 12 | 15 °13.5' N | 117 °44.4' E |
| Huangyan Dao 13 | 15 °09.6' N | 117 °49.7' E |
| Huangyan Dao 14 | 15 °09.0' N | 117 °50.4' E |
| Huangyan Dao 15 | 15 °08.5' N | 117 °50.8' E |
| Huangyan Dao 1  | 15 °08.1' N | 117 °50.9' E |

SOURCE: [HTTPS://WWW.UN.ORG/DEPTS/LOS/LEGISLATIONANDTREATIES/STATEFILES/CHN.HTM](https://www.un.org/depts/los/legislationandtreaties/statefiles/chn.htm), LAST VISITED: 2025/04/10

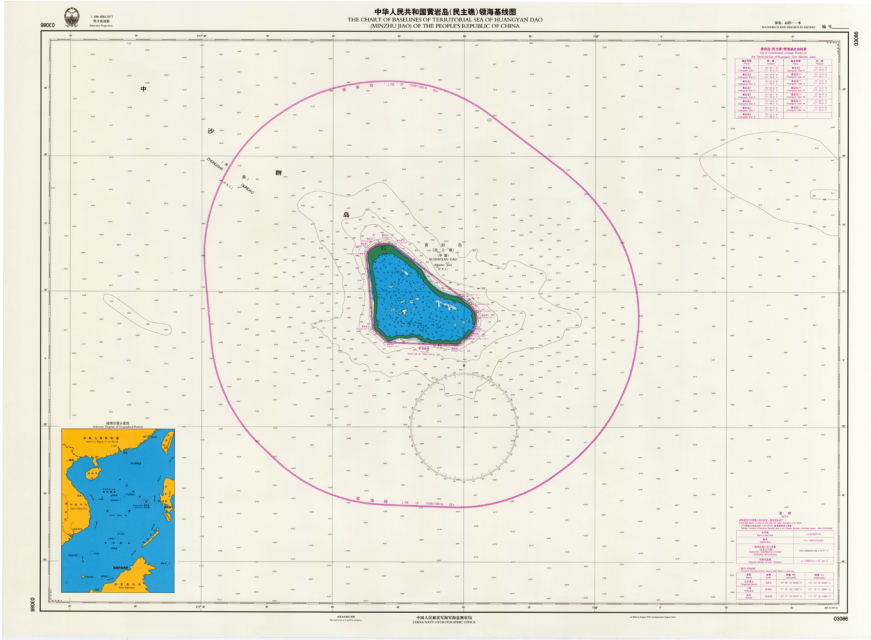


FIGURE 2 The chart of baseline of territorial sea of Huangyan Dao (Minzhu Jiao) of the People's Republic of China

SOURCE: [HTTPS://WWW.UN.ORG/DEPTS/LOS/LEGISLATIONANDTREATIES/STATEFILES/CHN.HTM](https://www.un.org/depts/los/legislationandtreaties/statefiles/chn.htm), LAST VISITED: 2025/04/10

This statement is a move by the Chinese Government to safeguard its territorial sovereignty and maritime rights and interests in accordance with the law, and is consistent with international and domestic law.

These statements by the Chinese Government not only provide a clear legal basis for safeguarding China's territorial sovereignty and maritime rights and interests, but also provide the international community with a clear geographical and legal framework. By depositing the relevant statements and charts with the United Nations, China has demonstrated its respect for and compliance with international law. These statements also lay the foundation for future scientific research, marine spatial planning and resource development and utilization in the relevant waters. At the same time, it also shows that China will resolutely take necessary measures to respond to any infringement of China's sovereignty and rights while exercising restraint in the South China Sea.

## SOVEREIGN/STATE IMMUNITY

### Immunity of States from Jurisdiction

#### *Law of the People's Republic of China on the Immunity of Foreign States*

*Document Number: Order No. 10 of the President of the People's Republic of China, Date Issued: 1 September 2023; Effective Date: 1 January 2024*

The Fifth Session of the Standing Committee of the Fourteenth National People's Congress of the People's Republic of China adopted the Law of the People's Republic of China on State Immunity of Foreign States (State Immunity Law) on 1 September 2023, and the Law shall come into force on 1 January 2024. The State Immunity Law consists of 23 articles, which are mainly provisions revolving around the immunity of foreign States and their property in Chinese courts. The Law clarifies the basic principles of immunity from jurisdiction of foreign States and their property, while providing for six categories of exceptions to immunity; it also deals with immunity from measures of constraint for the property of foreign States and the exceptions thereto, as well as the scope of application of the Law, the role of the Ministry of Foreign Affairs in the relevant cases, and the special provisions on litigation procedures, and clarifies the relationship with other laws and international treaties.

Article 3 of the State Immunity Law provides that: "A foreign State and its property shall enjoy immunity from the jurisdiction of the courts of the People's Republic of China, unless otherwise provided for in this Law". This article clarifies, at the legislative level, the position of China in adopting the principle of limited immunity.

Article 4 of the State Immunity Law provides for the acceptance of China's jurisdiction by foreign States, and the Law specifies the circumstances in which a foreign State accepts the jurisdiction of Chinese courts by express means, including through international treaties, written agreements, the submission of written documents to Chinese courts, diplomatic channels, and so on. Articles 5 and 6 of the State Immunity Law specify, respectively, the circumstances in which a foreign State is deemed to have accepted the jurisdiction of Chinese courts and the acts that are not deemed to have accepted the jurisdiction of Chinese courts.

Articles 7 to 12 of the State Immunity Law provide for exceptions to the immunity of foreign States and their property, including commercial activities, labour or service contracts, compensation for personal injury or property damage,

specific property matters, intellectual property matters and arbitration-related matters, and in the event that a dispute arises between a foreign State and a relevant civil subject in China in respect of the above-mentioned matters, the foreign State does not enjoy immunity from jurisdiction in Chinese courts.

Articles 13 and 14 of the State Immunity Law distinguish between immunity from jurisdiction and immunity from judicial coercion; acceptance by a foreign State of immunity from the jurisdiction of a Chinese court does not amount to a waiver of immunity from judicial coercion, and waiver of immunity from judicial coercion must be expressly waived in a separate and effective manner.

Articles 16 to 19 of the State Immunity Law set out the procedures for the trial and execution of civil cases against the State and its property, and provide for service of process and trial in absentia in cases of immunity, in addition to stipulating that where procedural matters are not provided for in this Law, the Civil Procedure Law of the People's Republic of China shall apply. Among the ways in which Chinese courts may serve summonses or other litigation documents on foreign States, service by means of a diplomatic note has been added. It also clarifies the role of the Ministry of Foreign Affairs of the People's Republic of China in handling cases of foreign State immunity.

Articles 20 and 21 of the State Immunity Law reaffirm the privilege and immunity enjoyed by organizations and members of the diplomatic community in accordance with the laws of the State, the international treaties to which the State is a party or in which it is a party and international custom, while at the same time adopting the principle of reciprocity in respect of privilege and immunity.

Prior to the enactment of the State Immunity Law, Chinese courts had always adopted the principle of absolute immunity, whereas the enactment of specific legislation on foreign state immunity marks a shift from the principle of absolute immunity to the internationally mainstream principle of limited immunity. In cases where a foreign State is deemed to have accepted the jurisdiction of the courts of China, i.e., where “a foreign State participates as a defendant in a lawsuit before a Chinese court and defends the case on the merits or raises a counter-claim”, the Law stipulates in the corresponding provision that if the foreign State is able to prove that it could not have been aware of the fact that it had an immunity that could be claimed until it had made the defense. If the foreign State can prove that it could not have been aware of the fact that it could claim state immunity prior to making its plea, it may claim immunity from jurisdiction within a reasonable time after it knew or should have known of the fact. The relevant provisions provide a legal basis for the right of a foreign State to claim jurisdictional immunity from the courts of China, which is consistent with the content of Article 8 of the United Nations

Convention on Jurisdictional Immunities of States and Their Property, and complies with the obligations of States parties. The State Immunity Law establishes China's foreign State immunity system, which adopts the legislative style of "immunity is the principle, non-immunity is the exception", which is fully in line with the prevailing international practice, and is another major milestone in China's efforts to promote the rule of law at the domestic level as well as the rule of law in relation to foreign affairs.

## SETTLEMENT OF DISPUTES

### Diplomatic Approaches and Peace Initiatives

#### *China, Brazil on Political Settlement of Ukraine Crisis, 23 May 2024*

Against the backdrop of the Ukrainian crisis, China and Brazil reached a consensus on the political settlement of the Ukrainian crisis on 23 May 2024, a consensus that reflects the two States' shared commitment to international peace and security and their firm stance on resolving international disputes through dialogue and cooperation.

The parties call on all parties concerned to abide by the "three principles" of de-escalation, namely, no spillover from the battlefield, no escalation of fighting, and no fire from the parties. At the same time, the two sides believe that dialogue and negotiation are the only viable way to resolve the crisis in Ukraine, and that conditions should be created for the resumption of direct dialogue, with a view to cooling the situation and easing it until a comprehensive ceasefire is reached. China and Pakistan support the timely convening of an international peace conference recognized by the Russian and Ukrainian sides, with the equal participation of all parties, and with fair discussions on all peace options. In addition, the two sides emphasize the need to increase humanitarian assistance to the regions concerned, to prevent the emergence of a humanitarian crisis of a larger scale, to avoid attacks on civilians and civilian facilities, to protect civilians, including women and children, and prisoners of conflict, and to support the exchange of prisoners of conflict between the parties. The two sides also oppose the use of weapons of mass destruction, in particular nuclear, biological and chemical weapons, and do everything possible to prevent nuclear proliferation and avert nuclear crises, as well as attacks on peaceful nuclear facilities such as nuclear power plants, and all parties should abide by international law, including the Convention on Nuclear Safety, and resolutely avoid man-made nuclear accidents. Lastly, the two sides oppose the fragmentation of the world and the creation of closed political or

economic blocs, and call for the strengthening of international cooperation on energy, currency, finance, trade, food security and the protection of the security of key infrastructure, such as oil and gas pipelines, undersea fiber-optic cables, electric power and energy facilities, and fiber-optic networks, so as to maintain the stability of the global industrial chain and supply chain.

This consensus not only demonstrates the ability of China and Brazil to cooperate in international affairs, but also further consolidates the bilateral relations between the two States, provides the international community with a framework for the peaceful resolution of the Ukrainian crisis, emphasizes the importance of dialogue and cooperation, and provides a useful reference for global governance and international dispute resolution.

## INTERNATIONAL ECONOMIC LAW

### Implementation of International Economic Law – Tax Law

#### *Tariff Law of the People's Republic of China*

*Document Number: Order No. 23 of the President of the People's Republic of China, Date Issued: 26 April 2024; Effective Date: 1 December 2024*

The Tariff Law of the People's Republic of China (the Tariff Law) was promulgated on the basis of the expired Regulations of the People's Republic of China on Import and Export Tariffs (the Tariff Regulations). The Tariff Regulations were formulated against the historical background of China's recent accession to the World Trade Organization (WTO) at the turn of the century, and they have been amended several times since then. Due to factors such as legal status, legislative technology and the context of the times, it is difficult for them to better serve the new environment of economic development and the new pattern of foreign trade. In order to further promote a high level of opening up to the outside world and create a market-oriented, rule of law-oriented and internationalized business environment, the Tariff Law came into being. The Tariff Law consists of seven chapters and 72 articles, including the general provisions, tariff items and rates, tax payable, tax preferences and special cases of tariff collection, collection management, legal liabilities, bylaws, and the import and export tariff rules of the People's Republic of China. It substantially consolidates the former Tariff Regulations and many scattered documents and contains new contents, representing a major reform and improvement of China's tariff system.

Paragraph 2 of Article 3 of the Tariff Law adds “e-commerce platform operators engaged in cross-border e-commerce retail imports, logistics enterprises and customs declaration enterprises, as well as units and individuals obliged by laws and administrative regulations to withhold and pay customs duties on behalf of others” as the withholding obligation for customs duties, which is based on the development of the business model of cross-border e-commerce and other present-day business models. This is a new addition based on the development of cross-border e-commerce and other current business models. Article 9 stipulates that “tariff lines are composed of tariff codes and catalog provisions” and “rules for the application of tariff lines include rules for classification.” This article is a new addition, which makes detailed provisions on the composition of tariff lines and rules for their application. Article 11 stipulates that the application of tariff rates shall be in accordance with the corresponding rules of origin, and adopts the international common standards of origin, which is also new. Article 41 of the Tariff Law stipulates that the administration of tariff collection can be carried out in a mode that separates the release of goods from the determination of the amount of tariff. The tariff collection management shall adapt to the needs of the development of new forms and modes of foreign trade, and enhance the level of informatization, intelligence, standardization and facilitation. This provision provides the system of separating the release of goods from the amount of duty can greatly improve the speed of customs clearance, reflecting the legislative purpose of promoting foreign trade and advancing a high level of opening to the outside world. Article 54 is a new anti-circumvention provision, which allows the State to take anti-circumvention measures such as adjusting tariffs for behavior that reduces the amount of tax payable without a reasonable commercial purpose. Chapter 6 of the Tariff Law regarding legal liability is a new chapter, as the original Tariff Regulations only set out principle provisions in the by-laws, but this time the Tariff Law sets out a separate chapter, which details the legal liability and specifies the corresponding penalties.

The Tariff Law clearly stipulates that China may take corresponding measures in accordance with the principle of reciprocity against States and regions that do not fulfill the most-favored-nation or tariff-preferential clauses in international treaties and agreements concluded with China or to which China is a party, and it also stipulates the statutory process of adjusting tariff rates, especially the adjustment of most-favored-nation tariff rates, tariff-quota tariff rates and export tariffs, which must be proposed by the Tariff Commission of the State Council and reviewed by the State Council before being submitted to the Standing Committee of the National People’s Congress for a decision.

This is in line with the principle of most-favored-nation treatment of the World Trade Organization and the principle of transparency. The Tariff Law also integrates the three major technical elements of customs tariffs, namely pre-categorization of goods, origin and valuation, reflecting China's compliance with the relevant international trade treaties and agreements of the WTO and the World Customs Organization. The introduction of the Tariff Law will enhance the internationalization of China's tariff system while creating a fairer, more transparent and more convenient environment for international trade and investment.

### **Anti-money Laundering and Financial Regulation**

#### *Anti-money Laundering Law of the People's Republic of China*

*Document Number: Order No. 38 of the President of the People's Republic of China, Date Issued: 8 November 2024; Effective Date: 1 January 2025*

In 2006, China promulgated the first Anti-Money Laundering Law of the People's Republic of China (the Anti-Money Laundering Law), and on 8 November 2024, the new Anti-Money Laundering Law was amended and passed by the Standing Committee of the Fourteenth National People's Congress, and came into force on 1 January 2025. This is a systematic and large-scale revision of the Anti-Money Laundering Law after a lapse of 18 years. The new Anti-Money Laundering Law consists of seven chapters, namely, General Provisions, Supervision and Administration of Anti-Money Laundering, Obligations of Anti-Money Laundering, Investigation of Anti-Money Laundering, International Cooperation of Anti-Money Laundering, Legal Liability, and Supplementary Provisions. Though the setting of the chapters is the same as that of the old Anti-Money Laundering Law, the new Anti-Money Laundering Law has supplemented and perfected the relevant system by clarifying the scope of application of the law, strengthening the supervision and administration of Anti-Money Laundering, and perfecting the provisions of the obligations of Anti-money laundering, etc. The total number of provisions has been expanded from 37 to 65. This is of great significance to the maintenance of financial security, the improvement of the national financial risk prevention and control system, the expansion of high-level two-way financial liberalization, and the enhancement of the ability to participate in international financial governance.

Article 2 of the new Anti-Money Laundering Law expands the definition of Anti-money laundering on the basis of the original seven categories of predicate offenses by adding the expression "... and other crimes", which leaves a certain amount of space for the increase or regulation of subsequent predicate offenses of money laundering, and broadens the scope of application of the Law. The scope of application of this Law has been broadened to better meet the challenges of new types of money-laundering methods and global financial crimes. Article 3 refers to "shall improve the risk prevention and control system" and Article 4 emphasizes "Anti-money-laundering measures shall be appropriate to the risk of money-laundering", reflecting the concept of "risk-based", which is consistent with the concept of Anti-money laundering regulation in the *International Standards on Anti-Money Laundering, Counter-Terrorist Financing and Counter-Proliferation Financing: FATF Recommendations*. Article 12 expands the jurisdiction of China's Anti-money-laundering law to cover money-laundering and terrorist financing activities occurring outside China that endanger China's sovereignty and security, infringe upon the lawful rights and interests of citizens, legal persons and other organizations, or disrupt the financial order in China. Article 46 emphasizes that China carries out international cooperation on Anti-money-laundering in accordance with international treaties concluded or participated in, or in accordance with the principle of equality and reciprocity, reflecting China's active participation in international cooperation on Anti-money-laundering and its respect for international rules. Articles 47 to 50 set out in detail the specific measures for international cooperation in Anti-money-laundering, including mutual legal assistance, intelligence and information-sharing, and cooperation in Anti-money-laundering investigations, etc., which provide the legal basis and operational framework for China's cooperation with other States in the field of Anti-money-laundering. Articles 49 and 50 establish a framework for cross-border Anti-money-laundering cooperation, clarifying the response of domestic financial institutions in the event that a foreign State directly requests information or control of assets in violation of the principles of reciprocity and consensus. It also emphasizes the need to comply with China's data security and personal information protection regulations when providing data and information abroad.

The provisions of China's new Anti-Money-Laundering Law have fully taken into account and absorbed the relevant provisions of international treaties, so as relevant State practice, providing a platform for international cooperation in Anti-money-laundering and joint efforts to combat money-laundering crimes.

## INTERNATIONAL ENVIRONMENTAL LAW

### Public Health and International Health Regulations

#### *Frontier Health and Quarantine Law of the People's Republic of China*

*Document Number: Order No. 27 of the President of the People's Republic of China, Date Issued: 28 June 2024; Effective Date: 1 January 2025*

The Frontier Health and Quarantine Law of the People's Republic of China was adopted at the eighteenth meeting of the Standing Committee of the Sixth National People's Congress on 2 December 1986, and came into force in 1987. Thereafter, the Law was amended for the first time on 29 December 2007, by the Thirty-first Meeting of the Standing Committee of the Tenth National People's Congress; for the second time on 27 August 2009, by the Decision on Amending Some Laws adopted by the Tenth Meeting of the Standing Committee of the Eleventh National People's Congress; and for the third time on 27 April 2018, by the Thirteenth Session of the National People's Congress Standing Committee adopted the Decision on Amending the Law of the Frontier Health and Quarantine Law of the People's Republic of China and Six Other Laws at its second meeting for the third amendment; and on 28 June 2024, the law was comprehensively amended by the Standing Committee of the Fourteenth National People's Congress at its Tenth meeting, and the amended law came into force on 1 January 2025. The revision summarized the experience of preventing and controlling the Corona Virus Disease 2019 (COVID-2019), improved the system of sanitary and quarantine at the State borders, and enhanced the scientific and precise nature of the relevant measures. The revised Frontier Health and Quarantine Law further clarifies the responsibilities of the Customs in the areas of infectious disease surveillance, health supervision and emergency response, optimizes the process of quarantine and inspection, and strengthens the mechanism of synergy with the relevant departments, which is highly consistent with the spirit of the International Health Regulations (2005).

In terms of overall layout, the chapters of the new law have been increased from the six chapters of the 2018 Frontier Health and Quarantine Law to eight chapters, with two new chapters on emergency response and safeguards, and the overall number of provisions has been increased to fifty-seven. Content-wise, the 2024 Frontier Health and Quarantine Law has been

improved. Article 3 of the new law provides a definition of infectious diseases, which covers a broader scope than the 2018 Frontier Health and Quarantine Law, while at the same time the new law increases the requirement for a catalog of infectious diseases, dividing it into a catalog of quarantine infectious diseases and a catalog of surveillance infectious diseases. Article 5 of the new law stipulates that the General Administration of Customs (GAC) shall unify the management of national state-border sanitary and quarantine work, and that health, disease prevention and control, and other relevant departments shall work closely together in State borders sanitary and quarantine work, in order to establish a departmental coordinating mechanism and strengthen information sharing and synergistic linkage. Compared to the previous general provision that the State borders sanitary and quarantine authorities deal with related matters, the 2024 Frontier Health and Quarantine Law stipulates the obligation of cooperation between the competent parts as well as related departments, with a greater focus on the coordinating role between the laws. The second, third and fourth chapters of the new law provide for quarantine and inspection, infectious disease surveillance and health supervision, respectively, fully integrating the important experience of the prevention and control of COVID-19 epidemics, and significantly expanding in both style and content compared to the 2018 Frontier Health and Quarantine Law. The newly added Chapter 5, namely, "Emergency Disposal" specifies the specific types of emergency disposal measures and requires prior announcement. Chapter 6, entitled, "Safeguards", the responsibilities of various departments in safeguarding sanitary quarantine have been added, and it is stipulated that the State will incorporate the work of sanitary quarantine at national borders into the system of prevention and control of infectious diseases, thus connecting with the Law of the People's Republic of China on Prevention and Control of Infectious Diseases. In the chapter regarding legal responsibility, 2024 Frontier Health and Quarantine Law also makes more specific provisions on the legal responsibility for various violations of Frontier Health and Quarantine Law, refining the law on penalties and increasing the level of punishment.

Article 25(2) of the Frontier Health and Quarantine Law of 2024 stipulates that the General Administration of Customs shall, within the framework of international public health cooperation, improve the layout of the infectious disease surveillance network and strengthen the surveillance of infectious disease outbreaks outside China, reflecting the spirit of international law on global public health cooperation, especially when dealing with the spread of cross-border infectious diseases, which requires the concerted action of all States. The newly added chapter concerning "Safeguards" contains clear provisions on public health capacity-building at border crossings, financial security

and infrastructure development, which is in line with the requirements for “core capacity” building emphasized in the International Health Regulations (2005). The second paragraph of Article 28 of the new law stipulates that the relevant departments of the State Council shall, in accordance with the international treaties on sanitary and quarantine at national borders concluded by China or to which China is a party, notify the relevant States or regions and international organizations of information related to infectious diseases in accordance with their duties, which is in line with the requirements of sharing and notification of information on epidemics as stipulated in the International Health Regulations (2005), and reflects the requirements of international law on global public health cooperation, which helps to form a synergistic response to infectious diseases on an international level.

### **Environmental Protection through Law/Regulation**

#### ***Marine Environmental Protection Law of the People's Republic of China***

***Document Number: Order No. 12 of the President of the People's Republic of China, Date Issued: 24 October 2023; Effective Date: 1 January 2024***

The Marine Environmental Protection Law of the People's Republic of China (Marine Environmental Protection Law), enacted in 1982, is a comprehensive piece of specialized legislation on marine environmental protection, which has been revised twice (in 1999 and 2023) and three times amended (in 2013, 2016, and 2017). The Marine Environmental Protection Law, as revised in 2023, came into force on 1 January 2024. This revision is based on the current situation and needs of China's marine ecological environmental protection, and makes all-round adjustments to China's marine environmental protection system, reflecting the fundamentals and the core essence of China's ecological civilization construction, and is of great significance in accelerating the construction of a strong maritime power, safeguarding the rights and interests of the oceans and realizing ecological civilization as well as the harmonious coexistence of human beings and nature. The revised Marine Environmental Protection Law includes the General Principles, Supervision and Management of the Marine Environment, Marine Ecological Protection, Pollution Prevention and Control of Land-based Pollutants, Pollution Prevention and Control of Engineering and Construction Projects, Pollution Prevention and Control of Waste Dumping, Pollution by Vessels and Related Operational Activities, Legal

Liability, and the Supplementary Provisions, and is revised from the original ten chapters totaling 97 provisions to nine chapters totaling 124 provisions, with an increase of 27 provisions.

Compared with the 2017 Marine Environmental Protection Law, the 2023 revised Marine Environmental Protection Law has many institutional innovations and pragmatic and practical initiatives.

The part of the General Provisions in Chapter 1 (Article 1–Article 11) emphasizes adherence to the systemic concept, land and sea integration, and regional coordination, clarifies the division of responsibilities, and improves the institutional mechanism for marine environmental protection. Article 1 improves the purpose of the legislation, increasing the protection of ecological security and public health, safeguarding national maritime rights and interests, building a strong maritime State, promoting the construction of ecological civilization, promoting sustainable economic and social development, and achieving harmonious coexistence of human beings and nature, etc., and Article 3 adds the principle of “protection priority, prevention and control at source, land and sea integration, integrated management, public participation, and damage to bear responsibility.”

Chapter 2 Supervision and Management of the Marine Environment (Article 12–Article 32) to “land and sea integration, regional linkage” as the basis of the system, pay more attention to global, comprehensive governance.

Chapter 3 Marine Ecological Protection (Articles 33–45) emphasizes the strengthening of marine ecological protection of key areas and fields, especially highlighting the protection of marine biodiversity.

Chapter 4 Prevention and Control of Pollution from Land-based Sources (Articles 46–60) strengthens the prevention and control of pollution in near-shore sea areas.

Chapter 5 Pollution Prevention and Control of Engineering Construction Projects (Articles 61–70) emphasizes the integration of the protection of the marine environment in coastal engineering projects and marine engineering construction projects.

Chapter 6 Prevention and Control of Pollution from Waste Dumping (Articles 71–78), requires the establishment of a sound system of authorization, management and supervision, adds a licensing system for waste dumping, strengthens supervision and clarifies related responsibility issues.

Chapter 7 on Pollution Prevention and Control from Ships and Related Operational Activities (Articles 79–92) retains the structure of Chapter 8 of the former Law on “Prevention and Control of Pollution and Damage to the Marine Environment from Ships and Related Operational Activities”, and fully

absorbs the recommendations of the Maritime Administration on the prevention and control of pollution from ships and related operational activities, and has increased the number of provisions from 11 to 14, thus enhancing the efforts to prevent and control pollution from ships and related operational activities.

This amendment is the first time that the wording “marine biodiversity” is used in a provision. Article 36 of the Marine Environmental Protection Law clearly emphasizes that the State shall strengthen the protection of marine biodiversity, improve the system of investigation, monitoring, assessment and protection of marine biodiversity, and maintain and repair important marine ecological corridors; at the same time, the provision also stipulates that the exploitation of resources in the ocean and coastal zones shall effectively protect important marine ecosystems, biological species and biological genetic resources, and maintain marine biodiversity. This is consistent with the concept of conservation and sustainable use of marine biodiversity in the Agreement on the Conservation and Sustainable Use of Marine Biodiversity in Areas Beyond National Jurisdiction under the United Nations Convention on the Law of the Sea (BBNJ Agreement). Article 79 of the Marine Environmental Protection Law translates the requirements on the management of ships’ ballast water and sediments contained in the International Convention for the Control and Management of Ships’ Ballast Water and Sediments into domestic law, stipulating that ships shall take effective measures in accordance with the relevant national regulations to treat and dispose of ballast water and sediments and to strictly prevent and control the introduction of exotic harmful organisms. Articles 86 and 87 of the Marine Environment Protection Law implement the relevant provisions of the International Convention for the Safe and Environmentally Sound Recycling of Ships, strengthening environmental regulation of shipbreaking activities, standardizing the behavior of shipbreaking enterprises and reducing environmental pollution in the shipbreaking process.

# State Practice of Asian Countries in International Law

*India*

*R Rajesh Babu\* and Sujith Koonan\*\**

## Introduction

This report brings out current trends in state practice and domestic implementation of international law in India. The report mainly focuses on the interpretation and application of international law by the domestic courts, primarily the Supreme Court and High Court of India. The report also reflects some of the major developments and engagements of India in the context of international law, most importantly, treaties that India entered into during the relevant period. While international law has been referred to in a large number of judgments by the Supreme Court of India, this report includes only those judgments in which the court has engaged with or applied the relevant international law norms and rules that are reflective of India's state practice.

## STATEHOOD AND SOVEREIGNTY

### Admission of the State to the World Community – Entry into UN and Regional Bodies, Recognition of the State by the International Community

#### *India Elected to Key ECOSOC Subsidiary Bodies (April 2023)*

India was elected by the Economic and Social Council (ECOSOC) of the United Nations as a member of the UN Statistical Commission, the Commission on Narcotic Drugs and the Programme Coordinating Board of the Joint UN Programme on HIV/AIDS (UNAIDS). These are important subsidiary bodies of the ECOSOC. The Statistical Commission is the highest body dealing with international statistical activities and is responsible for standards setting in the field of statistics. India was a member of the Statistical Commission last in 2004. Thus, India is returning to the Statistical Commission after a gap of

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two decades. The experience of India in the field of official statistics especially about its diversity and demography is immense and will be a value addition to the functioning of the Statistical Commission.

### **Recognition of and by India – Recognition of Governments, Recognition of States, Recognition by Judicial Bodies**

#### ***India Engages with Taliban's Government despite Non-recognition***

An official representative from India participated in a crucial meeting convened by Amir Khan Muttaqi, the Foreign Minister of the Taliban's self-proclaimed government in Afghanistan. While India, along with most nations, has not recognized the regime established by the Sunni Islamist militant group following its takeover of the war-torn country in August 2021, this involvement underscores the importance of dialogue in fostering regional stability.

The meeting gathered a diverse group of representatives from India, Kazakhstan, Turkey, Russia, China, Iran, Pakistan, Uzbekistan, Turkmenistan, Indonesia, and Kyrgyzstan in Kabul. The discussions centered on enhancing regional cooperation initiatives, particularly aimed at advancing “constructive engagement” between the Taliban-led government and its neighboring countries. An official from the Government of India represented New Delhi in this significant talk, highlighting India's commitment to addressing regional concerns despite the lack of formal recognition.

### **SOVEREIGN/STATE IMMUNITY**

#### **Immunity of States from Jurisdiction**

#### ***Australian Federal Court Finds India Waived Foreign State Immunity in Proceedings to Recognise and Enforce US\$1m Million Award***

#### ***CCDM Holdings, LLC v Republic of India (No 3) [2023] FCA 1266***

The arbitral proceedings that gave rise to this case were initiated on 3 July 2012 by three Mauritian shareholders of the Indian company, Devas Multimedia Private Limited (Investors). The Indian Government had annulled the Devas/Antrix Agreement on 17 January 2011, referring to defence, strategic and societal needs. The Investors invoked Article 8 of the India-Mauritius BIT and initiated ad hoc arbitration under the UNCITRAL Arbitration Rules, with the Permanent Court of Arbitration. On 25 July 2016, the tribunal determined

that the annulment of the agreement constituted unlawful expropriation. Subsequently, on 13 October 2020, the tribunal ordered India to pay US\$111 million in compensation. On 21 April 2021, the Investors filed proceedings in the Federal Court of Australia, seeking recognition and enforcement of the Quantum Award under section 8(3) of the International Arbitration Act 1974 (Cth) as if it were a judgment of the court. They also requested that judgment be entered for amounts based on the Quantum Award.

The Federal Court in its 2023 decision, reasoned that under section 10(2) of the Foreign States Immunities Act 1985 (FSIA), immunity is waived if a State submits to the jurisdiction of Australian Courts in a proceeding 'by agreement'. The key question was whether India had waived its immunity and submitted to the Federal Court's jurisdiction by agreeing to the terms of the New York Convention.

The Court first considered the principles applicable in determining whether submission by agreement has been made. Citing from the High Court's decision in *Kingdom of Spain*, the Court emphasised the requirements for a waiver of immunity to be:

- "express" (that is, to be derived from the express words of the international agreement, either as an express term or as a term implied with great care, for reasons including necessity); and
- where it is implied, established by "clear and unmistakable necessary implication". In other words, if an international agreement does not expressly use the word 'waiver', the inference that an express term involves a waiver of immunity will only be drawn if the implication is clear from the words used and the context.

The Court held that, by becoming a party to the New York Convention, India had submitted to the jurisdiction of the Court within the meaning of section 10(2) of the FSIA "by way of clear and unmistakable necessary implication".

The Court clarified the obligation of contracting States under Article III of the New York Convention to recognize arbitral awards as binding and enforce them. This obligation represents a promise made by each contracting State to all other contracting States. By ratifying the New York Convention, India was agreeing – and, in fact, requiring – Australia to recognize and enforce any arbitral award that falls within the scope of the Convention. Opposing recognition and enforcement on the grounds of foreign State immunity would contradict Article III.

Additionally, the Court stated that, at the stage of determining whether the sovereign award debtor has waived immunity, it is sufficient for the award creditor to present a valid arbitration agreement along with the relevant

arbitral award. The award creditor does not need to prove that the apparent arbitration agreement is valid or applicable at this stage. Any challenges to the validity or applicability of the arbitration agreement will be addressed later in the proceedings when considering the award debtor's grounds for resisting enforcement under Article v of the New York Convention (<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2023/2023fca126>).

## RELATIONSHIP BETWEEN INTERNATIONAL AND DOMESTIC LAW

### Treatment of International Law by Domestic Courts – Treaties, Custom

#### *Application of the Most Favoured Nation (MFN) Clause in India's Double Taxation Avoidance Agreements (DTAAs)*

#### *Assessment Officer Circle (International Taxation) vs. Nestle SA, Supreme Court of India on 19 October 2023 Civil Appeal No(s). 1420 OF 2023*

Nestlé SA, a Swiss corporation, received dividends from its Indian subsidiary. According to the DTAA between India and the Netherlands, France, and Switzerland, the withholding tax rate on dividends was set at 10%. Nestlé invoked the MFN clause, seeking a reduced rate of 5%, similar to the rates in India's DTAAs with other OECD member countries. However, the Assessing Officer rejected this claim, leading to dispute. The key issues that arose were whether a taxpayer has the right to invoke the MFN clause when a third country, with which India entered into a DTAA, was not an OECD member at the time the DTAA was established. Additionally, there was the question of whether the MFN clause should be automatically applied or if it requires a separate notification to take effect.

The Delhi High Court ruled in favor of Nestlé, stating that the MFN clause allows for the automatic application of the lower tax rate without the need for a separate notification under Section 90 of the Income Tax Act. The court relied on executive orders from Swiss, Dutch, and French authorities that were issued unilaterally and implemented by their respective revenue authorities. The court emphasized that these practices were in line with the requirements of Section 90.

The Supreme Court, while overruling the decision of the Delhi High Court, held that a notification under Section 90(1) of the Income Tax Act, 1961, is mandatory for any court, authority, or tribunal to enforce a DTAA or any protocol

that alters its terms or conditions. The Court clarified that the mere inclusion of a third-party country in the OECD does not automatically grant MFN benefits to the existing DTAA's; these benefits must be explicitly notified. As a result, the Supreme Court concluded that without such a notification, the benefits of the MFN clause cannot be accessed. The Court reasoned that the provisions of the DTAA do not automatically extend to citizens of India and that any change to Indian law or citizens' rights requires legislative action. If neither the law nor citizens' rights is altered, then no new legislation is necessary.

Thus, without a formal notification, the MFN benefits cannot be automatically extended based on a third country's later entry into the OECD.

*Capital Gain Tax – India-Singapore Double Taxation Avoidance Agreement (DTAA)*

*Commissioner of Income Tax vs Citicorp Investment Bank High Court of Bombay, Income Tax Appeal No. 256 of 2018 (Judgement Dtd 2023)*

The Citicorp (assessee), a Foreign Institutional Investor (FII) registered with the Securities and Exchange Board of India (SEBI) invested in debt securities in India. The Citicorp submitted its return of income on 30 September 2009, and reported a capital gain of Rs. 86,62,63,158/- from the sale of debt instruments and claimed an exemption under Article 13(4) of the India-Singapore DTAA. The assessee noted that as a FII, it was liable to pay tax in Singapore on its worldwide income. The assessee also stated that the Singapore Revenue Authority confirmed this taxation in a certificate dated 4 April 2012. Furthermore, the assessee argued that Article 13(4) of the DTAA allows for the taxation of capital gains in Singapore. Since the assessee is offering its worldwide income for taxation in Singapore, it contends that the remittance of such income to Singapore is irrelevant for claiming benefits under the DTAA.

The Assessing Officer (AO) rejected this argument, stating that to qualify for any benefits under the DTAA, the assessee must adhere to its provisions. While Article 13(4) allows for the exemption of capital gains in the source country (India), Article 24 of the DTAA restricts this exemption to the extent that the capital gains are repatriated to the other country (Singapore). The AO concluded that the assessee failed to demonstrate that the capital gains were repatriated to Singapore, and therefore, the assessee was not entitled to the claimed exemption. The Dispute Resolution Panel (DRP) upheld the action of

AO, however, on Appeal, before the ITAT-Mumbai allowed the appeal of the assessee and held that the assessee was entitled to the benefit of Article 13(4) of DTAA between India and Singapore. The same was appealed to the High Court of Mumbai.

The High Court held that the property being alienated consists of debt instruments. As such, the assessee falls under Article 13(4) of the DTAA, which states that gains from the alienation of any property (in this case, debt instruments) shall be taxable only in Singapore, where the alienator (the assessee) is a resident. Therefore, the entire capital gain amounting shall be taxed in Singapore. Under Singaporean law, capital gains are taxed only on amounts remitted to or received in Singapore, meaning the tax benefits from this agreement will apply only to that portion of income. Clause 2 of Article 24 is not relevant here. Consequently, the exemption under the DTAA in India will only apply to income actually remitted to or received in Singapore, as per Singaporean taxation rules. If the income is taxed based on its total amount – regardless of remittance – then Article 24(1) does not apply. Understanding this distinction is crucial for assessing tax implications in this scenario.

## TREATIES

### Making and Concluding Treaties

#### *Select Treaties Signed by India during the Year 2023*

During the year 2023, some of the important international agreements signed by India are the following:

- Agreement Between the Government of the Republic of India and The Government of the Republic of the Philippines Regarding Indian Grant Assistance For Implementation of Quick Impact Projects (7 February 2023).
- Agreement between the Government of India and the Government of the Republic of Suriname Regarding India Grant Assistance for Implementation of Quick Impact Projects (10 March 2023).
- Treaty of Transit Between the Government of India and the Government of Nepal (1 June 2023).
- NITI Aayog and the UN in India, signed the Government of India-UN Sustainable Development Cooperation Framework (GoI-UNSDCF) for the period 2023–2027 in New Delhi (16 June 2023).

- Migration and Mobility Agreement Between the Government of The Republic of India and The Government of The Italian Republic (2 November 2023).
- Agreement Between the Government of The Sultanate of Oman and The Government of Republic of India Concerning the Gainful Employment Of Accompanying Persons of Official Employees (15 December 2023).

In addition, India has entered into Memorandums of Understanding (MoU) with several countries on various subjects which are available online.

## DIPLOMATIC AND CONSULAR RELATIONS

### Diplomatic and Consular Personnel and Immunity

#### *Parity in Canadian Diplomatic Presence in India (20 October 2023)*

India demanded “parity” in diplomatic representation, resulting in Canada reducing its diplomatic presence. Forty-one Canadian diplomats and their dependents left India. India cited the Vienna Convention on Diplomatic Relations to justify its demand. Canada claims India threatened to remove diplomatic immunity from most of its diplomats.

## SETTLEMENT OF DISPUTES

### International and Regional Dispute Resolution Mechanisms

#### *Arbitration Proceedings: Indus Waters Treaty Dispute*

The longstanding dispute between India and Pakistan over the Indus Waters Treaty saw pivotal arbitration proceedings. In May 2023, the Court of Arbitration in The Hague concluded hearings on its competence to address Pakistan’s objections to India’s hydro-electric projects on the Indus river system. Notably, India abstained from these proceedings, questioning the court’s jurisdiction and advocating for a Neutral Expert mechanism as outlined in the treaty.

## Enforcement of International and Foreign Awards

### *Scope of Review of Foreign Arbitral Award under the Review Jurisdiction of the Supreme Court*

*Arun Dev Upadhyaya vs Integrated Sales Service Ltd. and Anr. R.P.*  
(C) Nos. 1273–1274 / 2021 in Civil Appeal Nos. 8345–8346 of 2018  
(Judgment Dated 5 July 2023)

Under an agreement, Integrated Sales Service Ltd. (Respondent No. 1) was designated to find customers for DMC on a commission basis. Furthermore, as outlined in Clause 8(d), any disputes that arise between the two companies will be governed by the laws of the State of Missouri, USA, and in case of disagreement on appointment of sole arbitrator, the appointment will be made in accordance with the Rules of the American Arbitration Association (AAA).

In 2005 and 2008, two amendments were made to the Agreement. Mr. Arun Dev Upadhyaya, the Director of DMC (Review Petitioner), signed the first amendment in 2005 but resigned on 31 March 2009. Shortly afterward, R-1 Company initiated arbitration against DMC and Gemini Bay Transcription Pvt. Ltd. (GBTL), seeking damages of USD 4.8 million. DMC and GBTL argued that GBTL was not a party to the Agreement and therefore should be excluded from the arbitration process. The Review Petitioner argued that (i) he was not a signatory, (ii) he had not agreed to any arbitration as an individual, and (iii) any demand for arbitration against him personally was invalid. The Arbitrator ultimately ruled in favor of R-1, finding DMC in breach of the Representation Agreement. He determined that DMC, GBTL, and the Review Petitioner colluded against R-1, holding them jointly and severally liable for USD 6,948,100.00 plus interest. In 2015, R-1 sought enforcement of the arbitral award in the High Court of Bombay, Nagpur Bench.

In a 2016 judgment, the High Court determined that the Arbitral Award was a foreign award only enforceable against DMC, excluding GBTL and the Review Petitioner. Unsatisfied, R-1 appealed to the Division Bench of the High Court, which on January 4, 2017, ruled the Award enforceable against both GBTL and the Review Petitioner. The Review Petitioner then appealed the Supreme Court, while GBTL and DMC entered separate Special Leave Petitions (SLPs). Ultimately, on 10 August 2021, the Supreme Court dismissed all appeals. Aggrieved by the Supreme Court order, the Review Petitioner filed a Review Petition before the Supreme Court (R.P. (C) Nos. 1273–1274 / 2021).

The Supreme Court noted that eighteen grounds have been raised in the review petitions and the judgment of the Supreme Court dated 10 August 2021

reflects that all the grounds taken in the review have been discussed in detail and findings returned not accepting the claim of the Review Petitioner. What is sought to be argued is basically that the view taken is erroneous and therefore, impugned judgment deserves to be reviewed. The Supreme Court, after examining Article 137 of the Constitution and Order XLVII Rule 1 of the Supreme Court Rules, 2013, reiterated that review petitions are confined to correcting errors apparent on the face of the record and cannot serve as avenues for re-arguing the case. It clarified that the review jurisdiction is extremely narrow and does not allow for reconsideration of issues that have already been decided.

The Court emphasized that the grounds for refusing enforcement of a foreign award are explicitly enumerated in Section 48 of the Arbitration and Conciliation Act, 1996, and do not permit a merits-based review. The Court reaffirmed its previous stance that an Indian court cannot re-examine the findings of the foreign arbitral tribunal, as doing so would defeat the purpose of international arbitration. The Court further noted that according to Section 44 of the Arbitration and Conciliation Act, 1996, six criteria must be met for an award to be considered a foreign award under that section. All arguments presented have been considered by this Court in its judgment dated 10 August 2021. Accepting the arguments now would result in expressing a different opinion on points that have already been raised and decided. This does not align with the established criteria of Order XLVII Rule 1 of the CPC concerning errors apparent on the face of the record. Furthermore, other grounds for invoking the power of review are either non-existent or have not been raised in the current petitions. Therefore, we do not find sufficient grounds to grant the review petitions, which are hereby dismissed.

Based on these findings, the Supreme Court dismissed the review petitions, upholding its previous decision to enforce the foreign arbitral award. The ruling sets an important precedent in Indian arbitration law, affirming that foreign arbitral awards can be enforced against non-signatories under specific circumstances and that courts will not interfere in the merits of such awards.

*Constitutional Validity of an Arbitration Clause That Provided for a Pre-deposit of 7% of the Total Claim to Invoke the Arbitration Procedure*

*Lombardi Engineering Ltd v. Uttarakhand Vidyut Nigam Limited (UVNL) Arbitration Petition No. 43 of 2022 [2023]*  
13 S.C.R. 943 (6 November 2023)

Lombardi Engineering Ltd. filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for the resolution of disputes and claims arising

from the contract dated 25 October 2019, with UVNL, a wholly owned corporation of the Government of Uttarakhand. UVNBL had issued a notice inviting tenders for the construction of a road, and a portion of this work was awarded to the Lombardi Engineering Ltd. through a contract based on the terms and conditions outlined in the tender. The tender included various clauses, one of which was Clause 29, pertaining to arbitration in the event of any disputes between the parties. The clause read as follows:

Where the party invoking arbitration is the contractor no reference for arbitration shall be maintainable, unless the contractor furnishes a security deposit of a sum determined according to the table given below, and the sum so deposited shall on the determination of arbitration proceeding, be adjusted against the costs, if any awarded by the Board against the party and the balance remaining after such adjustment or in the absence of the such costs being awarded the whole of the sum shall be refunded to him within one month from the date of the award.

| Amount of claim  | Rate of security deposits                                |
|--|--|
| For claim below Rs 10,000                              | 5% of amount claimed                                     |
| For claim of Rs 10,000 and above but below Rs 1,00,000 | 3% of amount claimed subject to minimum of Rs 500        |
| For claims of Rs 1,00,000 and above                    | 2% of the amount claimed subject to a minimum of Rs 3000 |

The Court, *inter alia*, addressed the following issues

- Whether the dictum as laid down in *ICOMM Tele Limited* (supra) can be made applicable to the case in hand more particularly when Clause 55 of the General Conditions of Contract provides for a pre-deposit of 7% of the total claim for the purpose of invoking the arbitration clause?
- Whether this Court while deciding a petition filed under Section 11(6) of the Act 1996 for appointment of a sole arbitrator can hold that the condition of pre-deposit stipulated in the arbitration clause as provided in the Contract is violative of the Article 14 of the Constitution of India being manifestly arbitrary?

In the first question, the UVNL argued that the Lombardi Engineering Ltd did not satisfy the preconditions, specifically the requirement for a 7% pre-deposit of the claimed amount. As a result, the prescribed procedure was not followed. The UVNL contended that the Petitioner's reliance on the case of *ICOMM Tele Limited v. Punjab State Water Supply and Sewerage Board* (AIR 2019 SC 2682) was misplaced, as the arbitration clause in that case differed significantly; it included a provision for the forfeiture of the security deposit. They pointed

out that the security deposit in the current contract is refundable and is meant to ensure that only legitimate claims are made, thereby preventing frivolous disputes. To support this argument, they referenced Clause 4 of the General Conditions of Contract (GCC), which stipulates that the security deposit is refundable. UVNL further argued that this clause does not exempt the security deposit referenced in Clause 55.

The Court determined that the requirement for a 7% pre-deposit, as outlined in Clause 55 of the GCC, lacks specificity and fails to explain how the 7% amount will be adjusted at the end of the arbitration proceedings. In response to the UVNL's claim that the pre-deposit is refundable according to Clause 4 of the GCC, the court pointed out that this clause relates to the security deposit for performance, not to the pre-deposit (para 67). The court ruled that Clauses 3 and 4, which deal with the performance security deposit and its refund, are unrelated to the 7% pre-deposit requirement specified in Clause 55 of the GCC. The ambiguous condition regarding the 7% pre-deposit of the total claim increases the potential for arbitrary decisions, thereby violating Article 14 of the Constitution (para 68). The court also highlighted that if claim is found to be frivolous, then the arbitral tribunal can always impose cost.

In response to second question above, the court emphasized that the Constitution is the supreme source of law in the country. All other laws derive their validity from their conformity with the Constitution. The Constitution contains explicit provisions stating that any law that violates its terms is unlawful and can be struck down. The Arbitration Agreement must comply with the requirements outlined below and cannot violate:

- (i) Section 7 of the Arbitration and Conciliation Act;
- (ii) any other provisions of the Arbitration and Conciliation Act, 1996, as well as Central or State laws;
- (iii) the Constitution of India, 1950.

The concept of "party autonomy," as argued by the UVNL cannot be stretched to the point where it infringes upon fundamental rights enshrined in the Constitution. For an arbitration clause to be legally binding, it must align with the "operation of law," which includes adherence to the Constitution (para 84).

The court concluded that there is no merit in the argument suggesting that, when considering an application under Section 11(6) of the Arbitration and Conciliation Act for the appointment of an arbitrator, the Court should refrain from evaluating the validity or reasonableness of the conditions stated in the arbitration clause based on Article 14 of the Constitution.

*Award Can be Set Aside on Fraud and Can Render the Award in Conflict with the Public Policy of India*

*Antrix Corporation Ltd. v. Devas Multimedia Private Limited, Division Bench of the High Court of Delhi (17 March 2023)*

The dispute originated from a contract in which Antrix, a company wholly owned by the Government of India, agreed to build, launch, and operate satellites while leasing the spectrum capacity of those satellites to Devas, an Indian company primarily owned by entities based in Mauritius and the US. However, in February 2011, the Government of India decided to deny the S-Orbital slots to Devas and instructed Antrix to repudiate the contract. Following this, arbitration was conducted by the International Chamber of Commerce (ICC) under its rules. The arbitral tribunal determined that the termination of the contract was wrongful and ordered Antrix to pay the Devas a sum of USD 562.2 million.

When Antrix challenged this decision, the Delhi High Court set aside the 2015 ICC award in August 2022, citing “patent illegalities and fraud” and stating that it conflicted with the public policy of India, as per Section 34 of India’s Arbitration and Conciliation Act, 1996. On appeal, the division bench of the Delhi High Court upheld the single-judge decision in March 2023, agreeing that the commercial relationship between the parties was a result of fraud committed by Devas. Therefore, anything derived from this relationship – such as the contract, disputes, and arbitral awards – was tainted by fraud. The court remarked, “[a] fraud of such scale would certainly render the award in conflict with the public policy of India.” Furthermore, the division bench emphasized that allowing Devas and its shareholders to benefit from their fraudulent actions would mean the court would be perpetuating the fraud, which contradicts the principles of justice, equity, and good conscience.

On 6 October 2023, the Supreme Court rejected the appeal filed by Devas and refused to interfere with the decision of the Delhi High Court decision.

*An Arbitration Agreement within an Unstamped Contract Is Enforceable under the Indian Stamp Act of 1899*

*In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899*  
 MANU/SC/1325/2023: 2023 INSC 1066 (13 December 2023)

The Supreme Court of India addressed whether an arbitration agreement within an unstamped contract is enforceable under the Indian Stamp Act of 1899. This case involved N.N. Global Mercantile (P) Ltd. and Indo Unique

Flame Ltd. The court, by a majority, upheld previous rulings in SMS Tea Estates and Garware Wall Ropes, stating that an unstamped instrument cannot be acted upon until it is duly stamped. This ruling affects the enforceability of the arbitration agreement. However, the minority opinion contended that stamping is a curable defect and should not obstruct arbitration proceedings.

The court has referred the matter to a seven-judge bench for further consideration, highlighting the need for harmonious interpretation between the Arbitration Act and the Stamp Act.

## INTERNATIONAL ENVIRONMENTAL LAW

### Environmental Protection through Law/Regulation

#### *Environmental Impact Assessment*

#### *Residents Welfare Association v. the Union Territory of Chandigarh* [Supreme Court of India, Judgement Dated 10 January 2023]

In this case concerning issues relating to urban development, the Supreme Court of India referred to a report by the United Nations Environment Programme and used its definition of Environmental Impact Assessment. The Court said:

The said publication defines EIA to be an analytical process or procedure that systematically examines the possible environmental consequences of the implementation of a given activity (project). It is aimed to ensure that the environmental implications of decisions related to a given activity are taken into account before the decisions are made. [Para 147, UNEP, Integrating the environment in urban planning and management: key principles and approaches for Cities in the 21st century, 31 May 2013, <https://www.unep.org/resources/report/integrating-environment-urban-planning-and-management-key-principles-and>]

#### *Legislative Power to Implement International Law Obligations*

#### *Sukhivender Kaur Gill v. State of Uttarakhand and Ors, 2023 SCC Online Utt 2243 [High Court of Uttarakhand]*

This is a case challenging the power of a state legislature to enact on matters relating to plastic matters in the light of the fact that a union law covering the same subject matter is already in force. The issue of the power to make law to

give effect to India's international law obligations and to give effect to various decisions taken at international conferences was raised by the parties to the dispute. In this regard, the High Court, delved upon constitutional provisions in this regard.

The High Court summarised the Appellant's argument in the following words:

the Environment (Protection) Act, 1986 is a Central enactment, which has been framed in the light of the decision taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, and it was resolved in the said conference to take appropriate steps for protection and improvement of human environment. According to the appellant, it is only on account of the said treaty and convention, that the enactment, namely, The Environment (Protection) Act, 1986 came to be enacted by the Parliament. Learned counsel for the petitioner submits that Entry 13 of List 1 of the Seventh Schedule vests exclusive competence/authority on the Parliament to make laws in relation to. "Participation in international conferences, associations and other bodies and implementing of decisions made thereat". According to the appellant, the Environment (Protection) Act, 1986 is relatable to Entry 13 of the List 1 Union List of the Seventh Schedule. Thus, according, to the appellant, the State Legislature has no competence to frame the aforesaid enactment viz the Uttarakhand Plastic and Other Nonbiodegradable Garbage (Regulation of Use and Disposal) Act, 2013.

The High Court observed that:

The executive powers of the Union Government extend to the matters enumerated in the Union List. Therefore, by virtue of Entry 13 of List 1-Union List, the Parliament can make laws in relation to participation in international conferences, associations and other bodies and to implement decisions made thereat. Similarly, the Union Government can exercise its executive power, which is relatable to Entry 13 of the List 1 of Union List. The subject matter of the (Protection) Act, 1986 is as it's title suggests, Human. It lays down the norms for saving the Human from pollution and, consequent degradation. The subject matter of the (Protection) Act, 1986 is not related to participation in conferences, associations and other bodies, and to implement decisions made thereat. The Environment (Protection) Act does not seek to lay down any guideline or norm with regard to participation in International Conferences or

Associations or other bodies. It does not define what is meant by these terms; it does not lay down any mandatory or directory procedure to be followed qua participation in International Conferences or Associations or other bodies, and how decisions taken thereat would be implemented; it does not say who will represent India in such conferences/associations or meetings of other Bodies; it does-not say how and when the decisions taken at such conferences/associations would be implemented. None of these aspects have been touched upon in the Environment (Protection) Act. [Para 11]

When the Parliament framed the Environment (Protection) Act, it merely recited the background in which the Environment (Protection) Act was enacted, in its preamble. From this, it does not follow that the Environment (Protection) Act is a legislation which is relatable to Entry 13 of List I Union List. The subject matter of Entry 13 of List I – Union List was not the subject on which Environment (Protection) Act was legislated. The Environment (Protection) Act, 1986 is an instance, where India participated in an International Conference, i.e. the UN conference on the Human Environment at Stockholm in June, 1972, which resolved on the appropriate steps to be taken for protection and improvement of human environment, and, the decisions taken thereat were implemented by enactment of the Environment (Protection) Act. [Para 12]

The above observation or understanding of the High Court needs to be read and analysed with the relevant parts of the Environment (Protection) Act, 1986. The preamble of the Act explicitly states that:

WHEREAS the decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;

AND WHEREAS it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property.

The preamble of the statute clearly states the link between an international conference and the statute and in this way, the statute has a clear link with Entry 13 of List I Union List as opposed to the observation by the High Court.

*Ammol Kumar v. State of Bihar, 2023 SCC OnLine Pat 278 [High Court of Patna]*

In this case relating to environmental issues caused by brick kilns, the High Court of Patna reiterated the link between international environmental law and environmental law in India. The Court notes that the key environmental legislations in India such as the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 are enacted in India in order to give effect to the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972. It further states that:

Hon'ble the Supreme Court has through various judgments elucidated the importance of the protection of the environment, the constitutional mandate to do so as also the obligation under International Law. [Para 18]

The Court further elaborates that point as:

The Stockholm declaration is the 'Magna Carta' of our environment. The objective of all laws on environment should be to create harmony between economic and social need on one hand and environmental consideration on the other since neither can be scarified at the altar of the others. The required standard to judge the risk of harm to the environment or to human health is to be decided in public interest, per the reasonable person test. [Para 20]

The Court further referred to the idea of 'environmental rule of law' in the light of the judgement of the Supreme Court of India in *Citizens for Green Doon v. Union of India, 2021 SCC OnLine SC 1243* where in the Supreme Court has extensively relied on a report on 'environmental rule of law' by the United Nations Environment Programme (UNEP). [Para 26]

*South Port Ltd. v. State of Goa, 2023 SCC OnLine Bom 1966 [High Court of Bombay]*

This case is on the law making power in India vis-à-vis international law obligations and policy decisions. The Court elaborated the legal position in this regard as follows:

The Environment Protection Act, 1986 and the Air Pollution Act, 1981 indeed refer to the United Nations Conference on Human Environment held in Stockholm in June, 1972, in which India participated, and where

it was decided to take appropriate steps for the protection and improvement of the human environment. The preamble to both these enactments speaks about the necessity to implement the decisions taken at the United National Conference at Stockholm in June 1972. Similarly, the National Green Tribunal Act, 2010, apart from referring to the United Nations Conference on Human Environment held in Stockholm in June 1972 also refers to the decisions taken at the United Nations Conference held in June 1992 in which India participated. The preamble to this Act also speaks about the implementation of the decision taken at aforesaid conferences and to have a National Green Tribunal in view of the environment of the multi disciplinary issues relating to the environment. Accordingly, there can be no doubt about legislations enacted by the Parliament were for the purposes of implementing the decisions taken at the Stockholm and Rio de Janeiro conferences held in 1972 and 1992 in which India participated. Clearly, therefore, these legislations can be said to be preferable to Article 253 of the Constitution read with Entry 13 of List 1, Seventh Schedule to the Constitution. [Para 121]

But the impugned Act and the levy imposed by the impugned Act neither seeks to implement any decisions taken at Stockholm, Rio de Janeiro or any other international conferences or treaties in which India participated or was a party. None of the Counsel for the petitioners pointed out or seriously contended that the provisions of the impugned Act either conflicted with the provisions of the Environment Protection Act, 1986, or Pollution Act, 1981 or the National Green Tribunal's Act, 2010. A perusal of the three enactments and their comparison with the provisions of the impugned Act does not make out any case of conflict or inconsistency between the Central legislation and the impugned Act, a State legislation. [Para 122]

In such circumstances, it is difficult to accept the petitioners' contention that the moment some decision is taken at an international conference or a treaty is signed or the moment when any legislation is enacted to implement any treaty agreement or convention with any other or any decision made by the Association or other body, the State legislature is completely denuded from enacting any legislation on the said subject, even though such subject continues to remain in the State List Seventh Schedule to the Constitution and such legislation, in no manner conflicts or contradicts the Parliamentary legislation. With respect, the Petitioners' proposition is too broad a proposition to accept, particularly when the petitioners have failed to demonstrate any conflict between the legislations referred to by them and the impugned legislation. No

contention was raised about the impugned Act rendering it difficult or otherwise even remotely affecting the implementation of the decisions at Stockholm or Rio de Janeiro. [Para 123]

In pith and substance, if the parliamentary legislation is for implementing any treaty agreement or convention or any decision made at an International Association or other body, then such legislation, even if it relates to a subject in the State List, will have to be held as within the legislative competence of the Parliament given the provisions of Article 253 read with Entry 13 of the State List of Seventh Schedule to the Constitution. This would be the proper import of Article 253 of the Constitution. However, this does not mean that State Legislation on a field relatable to the entries in the State List, which does not even remotely conflict with Parliamentary legislation, made in the exercise of the powers under Article 253 read with Entry 13 of List I, would fall foul of the State's legislative competence. [Para 124]

### Animal Rights

*Human and Environment Alliance League and Another v. Debal Ray, Principal Chief Conservator of Forests, Wildlife and Chief Wildlife Warden, Department of Forests and Others, 2023 SCC OnLine Cal 365 [High Court of Calcutta]*

This is a case concerning the issue of animal rights. The Court, by referring to a decision by the Supreme Court of India in *Animal Welfare Board of India v. A. Nagaraja* ((2014) 7 SCC 547) recognised the inherent right of animals to live and underlined that animals have also honour and dignity which cannot be arbitrarily deprived of and its rights and privacy have to be respected and protected from unlawful attacks. The Court relied on the rights of animals as recognised in Universal Declaration of Animal Welfare (UDAW) (<https://europaregina.eu/wp-content/uploads/2023/05/udaw-universal-declaration-on-animal-welfare-wspa.pdf>).

### Protection of Wetlands

*Sambhar Salt Ltd v. Union of India, 2023 SCC OnLine NGT 486 [National Green Tribunal]*

This matter is related to protection of a lake, which is a declared Ramsar site. The National Green Tribunal relied extensively on the Ramsar Convention on

Wetlands of International Importance Especially as Waterfowl Habitat, 1971 to underline the ecological value of wetlands and also the duties and functions of the state.

53. Ramsar Convention Sites are such as are enlisted in terms of the convention of wetlands of international importance especially as water for habitat. An international convention was held at Ramsar (Iran) as water in 1971 ... India signed the above convention document on 01 February 1982. Pursuant to Ramsar Convention, first two sites declared as Ramsar Sites were Keoladeo National Park Rajasthan and Chilika Lake Odisha which were declared Ramsar sites on 1 October 1981. Sambhar Lake with which we are concerned is the third such site which was declared as Ramsar Site on 23 March 1990 besides two other sites namely Loktak Lake, Manipur and Harike Wetland, Punjab. Since then a large number of sites have been included in Ramsar Sites in India and up to August 2022 there are 75 such sites.

54. Ramsar Convention recognizes the inter-dependence of man and environment and concentrates on the importance of wetlands in the world. It considered the environmental ecology functions of wetlands as regulators of water regime and has habitats supporting a characteristic flora and fauna, especially water. The convention convinced itself that wetland constitute a resource of great economic, cultural, scientific, and recreational value, the loss of which would be irreparable. It desires to stem the progressive encroachment on and loss of wetlands now and in the future. It recognized that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource. It decided that the conservation of wetlands and their flora and fauna can be ensured by combining far-sighted national policies with coordinated international action. ...

55. Thus, Ramsar Convention is an international treaty for conservation and sustainable utilization of wetland, recognizing the fundamental ecology functions of wetlands and their economic cultural scientific and recreational value. Wetlands are vital for human survival. They are among the world's most productive environments; cradles of biological diversity that provide water and productivity upon which countless benefits and ecosystem services that they provide to humanity ranges from fresh water supply, food and building material and biodiversity, to flood control, groundwater recharge and climate mitigation. Study after study demonstrate that wetland area and quality continue to decline in most regions of the world. As a result, the ecosystem services that wetlands

provide to people are compromised. It is with this background, the Ramsar Convention for protection of wetlands of international importance was signed by several countries, presently about 172 countries as 'Contracting Parties' which recognizes the value of having one international treaty dedicated to a single eco-system. Ramsar Convention uses a broad definition of wetlands which includes all lakes and rivers, underground aquifers, swamps and marshes, wet grasslands, peatlands, oases, estuaries, deltas and as tidal flats, mangroves and other coastal areas, coral reefs, and all human-made sites such as fish ponds, rice paddies, reservoirs and salt pans.

56. ... Ramsar Wetlands once identified and included in the list, must have precisely described boundary of the wetland and delimited on a map. The country who has caused a wetland to be included in the list of Ramsar Wetlands shall consider its international responsibility for 'conservation management' and 'wise use' of migratory stock of waterfowl and formulate and implement its planning so as to promote conservation of wetlands included in the list and as far as possible wise use of wetlands in their territory. If there is any change in the ecological character of any wetland included in the list or is likely to be changed as a result of technological development, pollution or other human interference, information on such changes shall be passed without delay to the organization or Government responsible for the continuing bureau duties specified in Article 8.

## HUMAN RIGHTS

### Specific Human Rights Incidents or Cases

*Indivisibility of Human Rights – Anil Agarwal Foundation and Ors. vs. State of Orissa and Ors. (12 April 2023 – SC): MANU/SC/0372/2023 [Supreme Court of India]*

This case challenges a land acquisition proceeding. The Supreme Court, by referring to one of its previous decisions (*People's Union for Democratic Rights v. Union of India*, MANU/SC/0038/1982: (1982) 3 SCC 235), reiterated the normative value of international human rights law and more importantly, underlined the indivisibility of civil and political rights and economic, social and cultural rights. Further, the Court emphasized the relationship between and the dependence of these two sets of human rights.

The [o]nly solution for making civil and political rights meaningful to these large Sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realize the economic, social and cultural rights. There is indeed a close relationship between civil and political rights on the one hand and economic, social and cultural rights, on the other hand, and this relationship is so obvious that the International Human Rights Conference in Teheran called by the General Assembly in 1968 declared in a final proclamation: Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.

*Remedies to Violations of Human Rights – Dinganglung Gangmei vs. Mutum Churamani Meetei and Ors. (7 August 2023 – SC): MANU/SC/0862/2023 [Supreme Court of India]*

This is a case relating to community-based violence in the state of Manipur. The Court, while discussing the issue of remedies, referred to an important UN Document in this context, that is, United Nations General Assembly Resolution 60/147, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law'. More specifically, the Court referred to the idea of 'full and effective reparation' as enshrined in the UN Document referred above and specifically the remedy of guarantee of non-repetition.

The sectarian strife has also led to large-scale destruction of residential property and places of religious worship. In this backdrop, this Court is duty-bound to step in while performing its plain constitutional obligation. This Court is also of the opinion that its intervention will be a step towards the guarantee of non-repetition that victims of such crimes are entitled to. The remedies which have been granted are those which the Court feels will be even-handed across all communities and do justice to all those who have been injured (in any manner) by the sectarian violence. The victims of violence must receive remedial measures irrespective of their community. Likewise, the perpetrators of violence must be held accountable irrespective of the source of violence. There are serious allegations including witness statements indicating that the law enforcing machinery has been inept in controlling the violence and, in certain situations, colluded with the perpetrators. Absent a proper investigation,

this Court will not enter a finding of fact on these allegations. But, at the very least, such allegations require an objective fact-finding to be conducted. Those who are responsible for a breach of public duty must equally be brought to account, regardless of their rank, position, or post. Every officer of the state or other employee of the state who is guilty not only of the dereliction of their constitutional and official duties but of colluding with perpetrators to become offenders themselves, must be held accountable without fail. This is the promise of justice that the Constitution demands from this Court and from all branches of the state. [Para 18]

### Protection under International and Domestic Law

***Right of Contractual Workers to Maternity Benefits – Kavita Yadav vs. the Secretary, Ministry of Health and Family Welfare Department and Ors. (17 August 2023 – SC): MANU/SC/0922/2023 [Supreme Court of India]***

This case concerning the question whether maternity benefits, as contemplated in the Maternity Benefit Act, 1961, would apply to female employees appointed on contract if the period for which they claim such benefits overshoots their contractual period. The court held that women are ‘eligible for full maternity benefits even if such benefits exceed the duration of her contract’ [para 10]. While interpreting the law broadly to make the benefits of the law to workers engaged on a casual basis or on muster roll on daily wages, the Court relied on ‘obligations Under Articles 14, 15, 39, 42 and 43 of the Constitution, and India’s international obligations under the Universal Declaration of Human Rights 1948 and Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women’.

***Rights of Disabled Persons – Mohamed Ibrahim vs. the Chairman and Managing Director and Ors. (16 October 2023 – SC): MANU/SC/1147/2023***

This case concerning the dismissal of a person from employment due to his color blindness, the Court decided in his favour and during this process underlined the principles of affirmative action and reasonable accommodation as enshrined in International Human Rights Law. The Court borrowed the following from a previous decision in *Jeeja Ghosh v. Union of India*, (MANU/SC/0574/2016):

In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.

*Rights of Non-heterosexual Persons – Supriyo and Ors. vs. Union of India (UOI) (17 October 2023 – SC), MANU/SCOR/135749/2023*  
[Supreme Court of India]

In this case concerning rights of non-heterosexual persons, the Court engaged with international law rules directly and indirectly. While addressing the question of the right of non-heterosexual persons to marry, the Court concluded that there is no such fundamental right flowing from the Constitution of India. It observed that:

The Constitution does not expressly recognize a fundamental right to marry. Yet it cannot be said that many of our constitutional values, including the right to life and personal liberty may comprehend the values which a marital relationship entails. They may at the very least entail respect for the choice of a person whether and when to enter upon marriage and the right to choose a marital partner. [Para 185]

This is further clarified in the following words:

The Constitution does not expressly recognize a fundamental right to marry. An institution cannot be elevated to the realm of a fundamental right based on the content accorded to it by law. However, several facets of the marital relationship are reflections of constitutional values including the right to human dignity and the right to life and personal liberty;

The freedom of all persons including queer couples to enter into a union is protected by Part III of the Constitution. The failure of the state to recognise the bouquet of entitlements which flow from a union would

result in a disparate impact on queer couples who cannot marry under the current legal regime. The state has an obligation to recognize such unions and grant them benefits under law. [340(g) and (i)]

The legal position as interpreted by the Court needs to be evaluated in the light of Article 16(1) of the Universal Declaration of Human Rights and Article 23(2) of the International Covenant on Civil and Political Rights. The former provides that '[m]en and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution'. The latter also recognises the 'right of men and women of marriageable age to marry and to found a family' and imposes an obligation of state parties to take 'appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children'.

In the context of the right to dignity, autonomy, and privacy, the Court relied on Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity. The Court quotes Principle 24 of the Yogyakarta Principles which states that:

Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

The Court highlights the importance of the Yogyakarta Principles in the domestic legal context in India despite India's official disagreement with it on the basis of the fact that the Supreme Court of India has 'recognized their relevance to the adjudication of cases concerning sexual minorities' [Para 234]. The Court went on to state that:

Depriving someone of the freedom to choose their life partner robs them of their autonomy, which in turn is an affront to their dignity. Preventing members of the LGBTQ community from entering into a union also has the result of denying (in effect) the validity of their sexuality because their sexuality is the reason for such denial. This, too, would violate the right to autonomy which extends to choosing a gender identity and sexual orientation. The act of entering into an intimate relationship and the choices made in such relationships are also protected by the right to privacy. [Para 234]

In the context of the reality where queer persons are forced to undergo painful and cruel medical procedures, the Court explicitly relied on international human rights law rules in the following words:

The first segment of this judgment detailed how the families or relatives of queer persons compel them to undergo “conversion” therapies (to “convert” their sexual orientation from homosexual to heterosexual) or make them marry a person of the opposite sex to “cure” their homosexuality or for other reasons. Other pseudo-medical treatments are similarly designed to “cure” queerness. Such practices violate the right to health of queer persons as also their right to autonomy and dignity. In terms of Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. “Conversion” therapies and other “treatments” which are aimed at altering sexual orientation amount to cruel, inhuman and degrading treatment of queer persons. They have the effect of denying their full humanity. The mental well-being suffers to no end because cruel techniques are used in these so-called treatments. The treatment is, by its very nature, cruel. It is the duty of the state to ensure that these inhumane practices do not continue. [Para 280]

***Right to Self-Determination and Right to Property – Urban Improvement Trust, Bikaner vs. Gordhan Dass (D) through L.Rs. and Ors. (19 October 2023 – SC): MANU/SC/1175/2023***

In this matter relating to land acquisition, the Court referred to international human rights law and made the following the observation:

Before proceeding to deal with the issue of the legitimacy of the land acquisition proceeding, it would be appropriate to set out the international legal framework on compulsory land acquisition. The right to self-determination is enshrined within the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), amongst other instruments which is defined as the right of all people to freely dispose of their natural wealth and resources, and that no person may be deprived of its own means of subsistence. Article 17 of the Universal Declaration of Human Rights provides that, “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.” Self-determination also includes an obligation for states to refrain from any forcible actions

that deprive people of enjoying such rights. The concept of Free, Prior and Informed Consent (FPIC) within international development law is most clearly stated in the United Nations Declaration on the Rights of Indigenous Peoples in Articles 10, 11, 19, 28 and 29 which prescribes situations in which FPIC must be obtained before granting compensation, taking of indigenous property etc. Development experts have recognized that FPIC is not only important for Indigenous people but can also be used as a positive approach to involve local communities in decision-making about any proposed development. Engaging them in such processes fosters a greater sense of ownership and engagement and, moreover, helps safeguard their right to development as a basic human rights principle. These principles are not to be found under the Land Acquisition Act, 1984 but the concept of acquiring land through consent and Social Impact Assessment (SIA) on whether a project serves “public purpose” has been added in the 2013 avatar of the Land Acquisition Act. Therefore, the Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is found to be more attuned to the notion of fairness and is progressive to this extent. [Para 88]

Any invocation of the right of self-determination in India is to be understood in the light of India’s reservation to it. For instance, India’s reservation to Article 1 of the ICCPR states that ‘[T]he Government of the Republic of India declares that the words ‘the right of self-determination’ ... apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation – which is the essence of national integrity’ (<https://pmindiaun.gov.in/pageinfo/ODY3>).

*Right against Arbitrary Arrest – Priya Indoria vs. State of Karnataka and Ors. (20 November 2023 – SC): MANU/SC/1246/2023 [Supreme Court of India]*

In this case concerning anticipatory bail, the Court referred to the relevant provisions of the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966 as ‘relevant law’ and observed that:

Article 9 of the Universal Declaration of Human Rights, 1948 establishes that “no one shall be subjected to arbitrary arrest, detention or exile.” Article 10 of the International Covenant on Civil and Political Rights of the United Nations, 1966 establishes that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent

dignity of the human person". These provisions in the International Human Rights instruments are a necessary safeguard against the reality of arbitrary and inhumane deprivation of liberty and the inability of those thus deprived to benefit from legal resources and constitutional guarantees that they are entitled to for the conduct of their defence as required by law in any judicial system and by application of international human rights standards. [Para 19]

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# State Practice of Asian Countries in International Law

*Indonesia*

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## TREATIES

### MAKING AND CONCLUDING TREATIES – NEGOTIATION – ACCESSION – RATIFICATION – DEPOSIT – REGISTRATION – INTERNAL CONSTITUTIONAL ARRANGEMENTS

#### *Implementation of the Indonesia-Singapore Extradition Treaty*

The year 2023 has brought rising hope for anti-corruption enforcement with the issue of Law No. 5 of 2023. It was a long journey since the ideas surfaced before 2000 and then manifested into a national act in 2023. In 2000, Indonesia and Singapore were parties to the UN Convention against Transnational Organised Crime (UNTOC) and later in 2003 to the UN Convention against Corruption (UNCAC). Both conventions were the UN's concrete steps to declare war on transnational crime and corruption. It was followed by the signing of the Indonesia-Singapore Extradition Treaty in 2007. However, nothing happened as a follow-up step of the extradition treaty. Some legal experts even call it a drawback since there was no proceeding action to put the treaty into action. Thus, the issue of Law No. 5 of 2023, on Legalisation of the Treaty between the Government of the Republic of Indonesia and the Government of the Republic of Singapore for the Extradition of Fugitives, was a long-awaited regulation. The treaty on the extradition of fugitives was partly the result of a good relationship between the two governments as ASEAN Members. Nevertheless, regarding ASEAN, the regional association also has a mutual legal assistance treaty signed in 2004, in which Indonesia and Singapore are both parties.

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Law No. 5 Year 2023 was not a direct step after signing the extradition treaty in 2007. Before signing the treaty in 2007, the Government of Indonesia initiated informal discussions about the possibility of cooperation in the extradition of fugitives since 1998. Later, in 2002, a formal debate between the two governments was carried out, and both agreed to develop an action plan based on this discussion. The signing of the Indonesia-Singapore Extradition Treaty was held in 2007. However, parliaments from both countries did not directly ratify the treaty because the ratification would be done in parallel with other treaties between the two governments. Thus, on several occasions after the signing of the treaty, the Government of Indonesia continued to raise the issue to ratify the treaty immediately and put it into action. As a result, at the Indonesia-Singapore Leaders' Retreat in Bintan, Riau Islands, on 25 January 2022, both governments signed the Indonesia-Singapore Extradition Treaty. As a follow-up, Law No. 5 of 2023 was issued in 2023 as the legalization of the treaty and later to be the legal basis for the treaty to be put into action.

Singapore has become one of Indonesia's most important countries, especially regarding corruption enforcement. Singapore became one of the destinations for the perpetrators, even those convicted of corruption, to run and hide from indictment or sentence. Singapore is located very close to Indonesia and takes only one to two hours by plane from the capital of Indonesia, Jakarta. The immigration policy was also simple and manageable. The government of Singapore provided these facilities to support the growth of investments and trade, but they became an opportunity for corruptors to hide their assets and even themselves. Some of these perpetrators also have changed their nationality to make a 'new start' in their lives by concealing their crime and then being able to move to other countries with new identities. The action of hiding assets and changing nationality has become one awareness that the Government of Indonesia anticipated in Law No. 5 of 2023. As explained by Yasonna Laoly, the Minister of Legal and Human Rights Affairs at that time, the Act has a retroactive time to the past 18 years from when it was issued. For perpetrators who have changed their nationality, the extradition treaty agreed to consider the nationality when the crime occurred. Thus, it can still reach those perpetrators who have changed their nationality. To be concise, the issue of Law No. 5 of 2023 has brought new hope to the Government of Indonesia against corruption. Nevertheless, it also challenges whether this act will be adequately enforced and produce an effective result.

*Ayub Torry Satriyo Kusumo*

## International Economic Law

### INTERNATIONAL AND REGIONAL TRADE TREATIES AND BODIES

#### *Border Trade in Indonesia after the Amendment of the Indonesia-Malaysia Border Trade Agreement*

The Indonesia-Malaysia Border Trade Agreement (BTA) has long anticipated that amendments will be made to address the evolving challenges border regions face, particularly regarding economic development and security. Originally agreed upon in 1970, the BTA was designed as a framework to facilitate trade between communities residing in the border areas of both countries. The agreement allows monthly tax-free transactions of up to 600 Malaysian Ringgit per person, aiming to support local economies by providing easier access to goods and services. In addition to its economic function, the BTA also serves as a diplomatic instrument, strengthening economic ties while mitigating potential conflicts. However, with shifts in geopolitics and the financial landscape, the initial provisions of the BTA have come under increasing scrutiny, sparking discussions on the need for comprehensive revisions.

One of the most pressing issues is the growing security concerns related to cross-border activities. Increased mobility across the border has, at times, been exploited for illegal activities, such as smuggling and the unauthorized movement of goods. Another significant challenge is the limited infrastructure development in border areas. Poor road conditions, inadequate logistics facilities, and restricted access to essential services create barriers for communities that rely on cross-border trade for their livelihoods.

Based on these challenges, Indonesia and Malaysia's governments have negotiated to revise the substance of the BTA. In 2019, a review negotiation of the 1970 Border Trade Agreement (BTA) was conducted in Penang, Malaysia. During these negotiations, it was concluded that the 1970 BTA needed to be revised, as it could no longer accommodate the rapidly growing cross-border trade activities. This revision also aligned with Indonesia's national priority program at the time, which aimed to develop border regions as part of broader efforts to strengthen economic and social integration in remote areas. The Ministry of Trade issued Government Regulation No. 34 of 2019 on Border Trade, which serves as a legal framework to support the more comprehensive and integrated management of border trade alongside the development of physical infrastructure in these areas.

The review of the BTA has undergone multiple stages, culminating in a substantial agreement during the 8th meeting on 21 March 2022. A significant milestone in the amendment process was achieved on 8 June 2023,

when Indonesia's Minister of Trade, Zulkifli Hasan, and Malaysia's Minister of Investment, Trade, and Industry, Tengku Zafrul Aziz, signed the updated Border Trade Agreement (BTA) in Malaysia.

The 2023 BTA does not introduce significant changes compared to the 1970 BTA. However, it provides more detailed explanations regarding definitions. The 2023 BTA outlines mechanisms for implementation, monitoring, and review, as specified in Article VII. These mechanisms are managed by the Border Trade Agreement Committee, which is responsible for overseeing the agreement's implementation and conducting periodic evaluations to ensure its continued alignment with the agreed objectives. A significant change pertains to the list of tradable goods, which is detailed in Annex I of the agreement. These goods primarily consist of essential daily necessities, with 60 types of goods from Indonesia and 32 types from Malaysia explicitly listed in the document.

A fundamental similarity between the 1970 BTA and the 2023 BTA is the trade value limit of 600 Malaysian Ringgit per month. This limit has been retained, as it is considered sufficient by some border communities to meet their basic needs for a month. However, others argue that this limit is inadequate and have urged the government to increase the trade value threshold to reflect current economic demands better. Furthermore, from Indonesia's perspective, the focus of the BTA remains on fulfilling the needs of border communities, which continue to rely heavily on imported goods from Malaysia without a strategic plan to enhance local productivity. Ideally, the Indonesian government should follow up on this potential by introducing incentives and policies that support the economic development of its border communities, such as fostering local industries that can supply essential goods domestically. Without such a strategy, the BTA risks reinforcing economic dependency and exacerbating regional disparities in Indonesia's border areas.

*Fatma Muthia Kinanti*

## **Law of the Sea**

### **STATE LEGISLATION ON MARITIME ZONES, RIGHTS AND OBLIGATIONS**

#### *Indonesia's Domestic Regulation the Exploration of the Area*

On 16 October 2023, the Indonesian government issued Presidential Regulation No. 80 of 2023 on the International Seabed Area (*PerPres 80/2023*). This

regulation is part of the national policy in managing marine space and exploring resources beyond national jurisdiction. The issuance of this regulation cannot be separated from the international legal framework, especially the United Nations Convention on the Law of the Sea (UNCLOS) 1982, which regulates the international seabed area, exploration and exploitation of its natural resources, and the principles of justice in the utilization of the results of exploitation.

This regulation marks Indonesia's commitment to managing global marine resources while upholding national interests. This article will discuss the primary substance of *PerPres 80/2023*, its implications for national marine policy, and its relationship to international maritime law, especially UNCLOS 1982.

*PerPres 80/2023* aims to regulate national policies related to Indonesia's involvement in managing the International Seabed Area by emphasizing several main aspects. This regulation recognizes Indonesia's interests as an archipelagic state in the exploration and exploitation of mineral resources on the seabed outside national jurisdiction, which is managed by the International Seabed Authority (ISA). In addition, this regulation emphasizes the importance of protecting the marine environment, where every exploration and exploitation activity must follow the precautionary principle stipulated in UNCLOS 1982 to prevent damage to the marine ecosystem. Regarding international cooperation, this Presidential Regulation provides a framework for Indonesia to collaborate with ISA and other countries as a sponsoring country for companies involved in exploration and scientific research. Furthermore, this regulation also emphasizes that Indonesia's involvement in utilizing resources in the International Seabed Area must continue to consider national security and the country's economic interests so that the potential benefits of seabed exploration can be optimally utilized to support national development.

The concept of the International Seabed Area was first introduced in Article 136 of UNCLOS 1982, which states that the seabed and its resources are "the common heritage of mankind." This concept emphasizes that no country can claim sovereignty over the International Seabed Area as stipulated in Article 137 of UNCLOS and that the utilization of resources must be carried out for the common interest of humanity, primarily to support the development of developing countries in accordance with Article 140 of UNCLOS. To manage the utilization of this area fairly and sustainably, the International Seabed Authority (ISA) is mandated under Articles 156–158 of UNCLOS to oversee the exploration and exploitation of mineral resources on the seabed. Thus, UNCLOS 1982 provides a clear legal basis for managing the International Seabed Area, which also forms the basis for *PerPres 80/2023* in regulating Indonesia's national policy regarding its involvement in the utilization of the area.

*PerPres 80/2023* issuance shows that Indonesia is increasingly active in managing marine resources internationally, strengthening its position as an archipelagic country with rights and interests in seabed exploration, as stated in UNCLOS 1982. As a member of ISA, Indonesia has a more significant opportunity to play a role in negotiating the rules for the exploration and exploitation of seabed mineral resources, such as polymetallic nodules and hydrothermal sulfides. From an economic and maritime security perspective, the International Seabed Area contains valuable mineral resources, such as nickel, cobalt, and manganese, which are greatly needed in the high-tech and renewable energy industries. With this Presidential Regulation, Indonesia can legally and legitimately participate in the utilization of these resources in accordance with international law. However, Indonesia's involvement in seabed exploration also brings challenges, especially related to maritime security and environmental impacts. Deep-sea exploration activities can hurt marine ecosystems, fisheries, and biodiversity, so the policies implemented must align with the precautionary principle stipulated in UNCLOS 1982 to ensure that resource exploitation does not damage the sustainability of the marine environment.

Although *PerPres 80/2023* is a positive step in increasing Indonesia's role in managing the International Seabed Area, several challenges must be considered in its implementation. Regarding national regulations and legal infrastructure, Indonesia needs to adjust various domestic rules to align with this Presidential Regulation, including policies related to the environment, mineral resource exploration, and maritime security, to create legal certainty in its implementation. In addition, technological and research capabilities are the main challenges, considering that seabed exploration requires high technology and significant investments. Therefore, Indonesia must cooperate with developed countries and global research institutions to establish seabed exploration and exploitation capacity. In terms of international coordination, Indonesia must be active in maritime diplomacy so that its rights and interests in the International Seabed Area are still taken into account, both in the ISA forum and through bilateral and multilateral cooperation with other countries to ensure fair access to seabed resources and sustainable protection of the marine environment.

*PerPres 80/2023* marks a step forward in Indonesia's maritime policy by aligning national regulations with international maritime law, notably UNCLOS 1982. This regulation provides a legal framework for Indonesia to participate in exploring and exploiting resources in the International Seabed Area through cooperation with the ISA and using high technology. However, in its implementation, the Indonesian government must consider various challenges,

including maritime security, environmental protection, and technological readiness. The success of this policy is highly dependent on cross-sector coordination, increased technological capacity, and active involvement in international forums to ensure that national interests are maintained in managing global marine resources. The issuance of this Presidential Regulation shows that Indonesia is ready to take a more significant role in global maritime governance, which aligns with the principles of international maritime law and national interests.

*Arie Afriansyah*

## **Human Rights**

### **IMPLEMENTATION OF HUMAN RIGHTS TREATIES**

#### ***Incorporating Genocide and Crimes against Humanity into the New Criminal Code***

On 2 January 2023, the Government of Indonesia enacted Law No. 1 of 2023, introducing the new Indonesian Criminal Code. The enactment marks the decolonization of the 1918 Criminal Code, which was established during the Dutch colonial regime. The Code makes some significant improvements to Indonesian criminal law, yet the Code redundantly tries to define genocide and crimes against humanity. Genocide and crimes against humanity are international crimes that are classified as the most serious crimes in the Rome Statute. Indonesia has not ratified the Rome Statute and has not signed it.

The Government of Indonesia adopted provisions on genocide and crimes against humanity in the new Criminal Code, which has been passed in Article 598, Part One of Serious Crimes Against Human Rights, Chapter 35 of Special Crimes. The definition of Genocide and Crimes against Humanity was adopted from Law Number 26 of 2000 in the Human Rights Court. Law Number 26 of 2000 on the Human Rights Court was passed by Indonesia, establishing domestic jurisdiction and making crimes against humanity a felony. According to the law, the Indonesian Human Rights Court can hear and decide matters involving crimes against humanity.

Five principles distinguish the most serious crimes from general crimes. First, the statute of limitations does not apply. Second, it can be applied retroactively. Third, the obligation to hand over the perpetrator or put him on trial, or to hand over the perpetrator or to punish him. Fourth, the criminal

responsibility of military commanders or civilian superiors for crimes committed by subordinates under their adequate power or control. Fifth, the non-absolute application of *nebbies in idem*.

Including human rights crimes in the new Criminal Code will create inconsistencies in law enforcement. These two crimes can be viewed as ordinary crimes. It will also eliminate the five principles of the most serious crimes and potentially facilitate impunity. The regulation of these types of crimes will be more practical through a separate special law, not in the Criminal Code. In addition, procedural law differs from general criminal law because the most serious crimes have many unique characteristics.

Disharmony in the implementation process could be caused by the likelihood of a single criminal act being regulated by more than one regulation. This action will weaken law enforcement and human rights, especially in prosecuting cases of gross human rights violations. The adoption of provisions on the crime of genocide and crimes against humanity in the Criminal Code is inappropriate because it is not in accordance with the concepts in Law No. 26 of 2000 and the Rome Statute. International law enforcement is highly dependent on law enforcement at the national level.

*Afandi Sitamala*

## PROTECTION UNDER INTERNATIONAL AND DOMESTIC LAW

### *Indonesia's Active Contribution to International Refugee Protection*

In mid-November 2023, Rohingya boats entered the Indonesian region. Approximately a thousand refugees are looking for a place to enter the Aceh and northern Sumatra regions. According to reports on refugees arriving at sea, they face security and protection challenges such as gender violence, physical abuse, malnutrition, exploitation, and extortion. Another source stated that people (including children) died at sea, with disease and malnutrition as the likely causes. Rohingya refugees confirmed that they were aware of the risks but that they were still on board, highlighting the widespread fear and despair that delayed their decision to embark on these trips.

The many refugees who arrived did not do so for the first time. Indonesia has been experiencing refugees for many years. Indonesia has long been a destination for Rohingya refugees seeking protection and opportunities after leaving Bangladesh and Myanmar by sea. Between November and December 2023, 11 ships carrying 1.752 Rohingya refugees sailed from Aceh to northern Sumatra.

Refugee movements remain seriously concerned about the risks posed by smuggling and trafficking. Refugee children are also very vulnerable to these risks mentioned above because they do not have identification or documents or have even been separated from their relatives. Therefore, Indonesia has been a refugee transit country for many years, even though Indonesia has not yet ratified the 1951 Convention.

Indonesia is a transit country and temporary refuge for thousands of refugees despite its non-participation in the 1951 Convention. Protection of refugees' rights is a concrete action that actively contributes to the world community. As a legal basis for Indonesia's refugee protection, the Government has issued national guidelines for managing refugees arriving with Government Regulation No. 125 of 2016. In response to the wave of incoming refugees in mid-November 2023, the President of the Republic of Indonesia instructed the Minister of Political, Legal, and Human Rights Affairs to swiftly manage the refugees as well as to eagerly cooperate with international or national institutions and organizations such as UNHCR and IOM, as published on the official page of the President of the Republic of Indonesia. Fortunately, in mid-2023, the Coordinating Ministry of Political, Legal, and Security Affairs revised the former Coordinator Ministerial Decree No. 118 of 2022 on The Taskforce for International Refugee Handling into Coordinator Ministerial Decree No. 21 of 2023. This progressive step anticipated the unexpected arrival of refugees in mid-November. However, these efforts barely achieve the desired result, as many problems exist.

Indonesia has not ratified the 1951 Convention but has issued rules for handling the incoming refugees. The response of local governments should be consistent with the rules mentioned above. However, it cannot be denied that the local conditions of the time also played a role in the people's reaction. The difficulty of maintaining an everyday life, the lack of employment opportunities, the increase in criminal activity, and the fears of local communities towards refugees becoming refugees are reasons for their reactions. Despite the various limitations on the site, the Indonesian government seeks and strengthen cooperation with national and international bodies to provide them with suitable housing and facilities while preventing refugees from being displaced.

Indonesia has shown to the global community that being a non-party to the 1951 Convention is not a hindrance to taking part in global contributions, one of which is protecting international refugees. Indonesia believes that an international contribution is not limited to the boundary of ratification of the International Convention, but goes far beyond the concrete and active contribution. Indonesia also considered sharing responsibility by strengthening

collaboration with national and international bodies in managing and protecting refugees based on resource limitations. Indonesia also holds to the principles of humanity and justice, which have become the basis for actively participating in global concerns. Indonesia believes that the rights of refugees must be protected as part of human rights.

*Ayub Torry Satriyo Kusumo*

# State Practice of Asian Countries in International Law

## Iran

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## HISTORY AND THEORETICAL APPROACH OF IRAN IN INTERNATIONAL LAW

### Iran's Approach to International Law

#### *Iran's Views concerning the "Report of the International Law Commission on the Work of Its Seventy-Third and Seventy-Fourth Sessions"*

In 2023, the Islamic Republic of Iran presented its views on the Report of the International Law Commission on the work of its Seventy-third and Seventy-fourth sessions. This included topics "General principles of law", "Sea-level rise in relation to international law", "Settlement of disputes to which international organizations are parties", "Prevention and repression of piracy and armed robbery at sea", "Subsidiary means for the determination of rules of international law", as well as "Succession of States in respect of State responsibility".

On the eleventh draft Conclusions on "General principles of law" and conclusion of its first reading, Iran maintained that due to the relative opacity of general principles of law, they have been invoked far less frequently in the ICJ's rulings and reasonings in comparison with *e.g.* international conventions and international custom notwithstanding the well-established fact that there is no hierarchy among the main sources of international law. At times, certain general principles of law common to various legal systems have been referred to by the ICJ and the PCIJ (*e.g.*, estoppel, acquiescence, good faith, *res judicata*, *nemo iudex in re sua*, and *ex injuria jus non oritur*). This should also form the basis of draft Conclusion 7 concerning the flawed "formation of general principles of law within the international legal system" given the differently referenced "principles of international law" in certain instruments (*e.g.* the 1970 UNGA Resolution 2625). Additionally, in Iran's view, "judicial decisions", especially those of international courts and tribunals should be given more weight than "teachings" for the purpose of determining general principles of law, respectively subjects of Conclusions 8 and 9. In a nutshell, State consent and link to national legal systems, to the Islamic Republic of Iran, is essential in terms of formation and validity of reference to a general principle of law.

Concerning the topic "Sea-level rise in relation to international law", the Islamic Republic of Iran stressed the importance of parameters of statehood as per Article 1 (b) of the 1933 Montevideo Convention on the Rights and Duties of States specifically in terms of "defined territory", as well as the sovereign rights and maritime zones reflected in the 1982 United Nations Convention on the Law of the Sea based on the size and form of each State's adjacent coastal territorial land. In line with the ICJ's dictum, in its judgment of 20 February 1969,

to the effect that “the land dominates the sea”, Iran highlighted the principle of *uti possidetis juris* and the importance of the continuity of pre-existing boundaries in the interests of legal stability and the prevention of conflict. In Iran’s view, the principle of *rebus sic stantibus* would not apply to delimitation lines as it is subject to the exclusion set forth in Article 62 (2) (a) of the 1969 Vienna Convention on the Law of Treaties (VCLT). Iran further argued that the application of the principle of equity to sea-level rise in the context of climate change in favour of preservation of existing maritime entitlements merits further consideration.

As regards “Settlement of disputes to which international organizations are parties”, the Islamic Republic of Iran proposed that the problems of practical concern to States and international organizations should be identified on which the Commission could provide clarification or guidance. At the outset, Iran questioned the necessity of defining and/or re-defining the notion of “international organizations” in view of international practice regarding their identification and discernment especially since the Commission has already referred to “international organizations” as “intergovernmental organizations” in most of its previous works including in the VCLT, the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986), the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character (1975), and the Vienna Convention on Succession of States in respect of Treaties (1978). In all instances, “international organization” is defined as an “intergovernmental organization”. On the scope of the work, Iran opined that it should cover only intergovernmental organizations and that non-governmental organizations and business entities should be excluded. From Iran’s viewpoint, jurisdictional immunities of an international organization have consequences for the settlement of disputes to which it is a party, in particular in the absence of an agreed means thereof. Finally, besides proposing the addition of “good offices” in draft guideline 2 (c), in Iran’s view, “draft guidelines” would be an appropriate form for the outcome of the Commission’s work on this topic.

On the topic “Prevention and repression of piracy and armed robbery at sea” and the first report of the Special Rapporteur, given the significance of piracy as a serious crime affecting the community of nations, Iran stated that the element of “threat” in draft article 3 (a) concerning the definition of armed robbery at sea should also be included in draft article 2 (1)(a). The Islamic Republic of Iran also made reference to its legislative practice, in particular Article 281 of the new Iranian Penal Code dated April 2013, which is general in character and could cover armed robbery at sea. Furthermore, where it falls short of “Muharabba”, which is a very serious crime punishable by severe penalties

under the Iranian Islamic Penal Code, Articles 652, 653, and 683 would nonetheless apply. The “draft Legislation on Maritime Robbery”, too, is currently under consideration by the Iranian Parliament; it encompasses the main elements of piracy as stipulated in Article 101 of the UNCLOS, while also treating any act causing serious and widespread damage to the marine environment as an aggravating factor. Since piracy is regarded as an imprescriptible crime under the said draft Legislation, no statute of limitations applies. A signatory to the UNCLOS, the Islamic Republic of Iran regards the provisions of UNCLOS on piracy as reflective of customary international law and as such the new draft Legislation on Piracy is significantly informed by the relevant provisions of UNCLOS. Iran further considers it questionable if vessels with private security personnel or privately contracted armed security personnel on board enjoy all characteristics under general international law specific to “merchant ships”. On a relevant note, Article 6(3) of the Resolution adopted on 30 August 2023 by the *Institut de Droit International* concerning “Piracy, Present Problems” states the obvious, that needs to be considered in the ILC’s work on the topic; the provision states that “Flag States shall ensure that privately contracted armed security personnel act in conformity with generally accepted international standards for maintaining the safety and security of vessels and aircraft at sea”. Iran also called attention for the ramifications of piratic practices conducted by certain States in the high seas through forcible entry by their armed forces on board foreign-flagged commercial ships for the purpose of confiscating their consignments or other purposes that have no legal or legitimate grounds under international law. It was also recalled that the Security Council has noted efforts of certain countries in combating piracy and armed robbery off the coast of Somalia within the context of the Shared Awareness and De-confliction Initiative (SHADE) (S/RES/2442 6 November 2018) including those of the Islamic Republic of Iran.

On “Subsidiary means for the determination of rules of international law” and preparation of the Special Rapporteur’s first report, while taking note of the inclusion of this topic in the Commission’s program of work, the Islamic Republic of Iran viewed it premature to provisionally adopt the draft conclusions 1–5 by the Drafting Committee based on the first report before receiving and considering comments and observations of member States. In Iran’s view, it is axiomatic that “subsidiary means” are supplementary, ancillary, auxiliary and secondary sources of law. Furthermore, the following is a summary of Iran’s comments on the first report of the Special Rapporteur on the topic: the argument concerning the non-exhaustive nature of Article 38 (1) (d) of the ICJ’s Statute is not persuasive and lacks sufficient reasoning. It is not clear how “the

practice of international courts and tribunals” would differ from “judicial decisions”. “Practice of States” could constitute a rule of customary international law if it is consistent and widespread, based on *opinio juris*. Application of judgments of national courts for the purpose of Article 38(1)(d) of the ICJ’s Statute should be subject to consistent and widespread decisions, and consistent with established principles and rules of international law; as the ICJ has noted in its advisory opinion on the Legality of the Threat or Use of Nuclear Weapons, General Assembly resolutions may sometime have normative value and can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*; therefore, certain provisions of some General Assembly resolutions could give rise to specified legal rules, not all General Assembly resolutions have such a character. Regarding submissions before courts and tribunals, distinction should be made between the pleadings before international courts and tribunals including written, on the one hand, and oral pleadings, on the other, including those of Counsel and advocates, legal advisers, and Agents’ speeches. Also, speeches made by Agents reflect both State practice and official position of States and should be given a distinct weight. In a similar vein, “judicial decisions” should be given more weight than “teachings and legal writings” due to their normative difference. Nonetheless, the weight attached to the works of prominent and eminent groups of scholars such as the *Institut de Droit International* and the International Law Association should be much higher than that of individual scholars. Relevant to the same, the exemplary criteria for assessing the “representativeness of teachings,” namely “gender and linguistic diversity” need further scrutiny as they are not decisive for this purpose. In tandem with the same, Special Rapporteurs appointed at, or by, international organizations are not necessarily publicists, let alone “highly qualified publicists” as set forth in Article 38(1) of the Statute. As a final point, the advisory opinions of the ICJ are not *per se* declarations *erga omnes*, but dicta derived therefrom may contain certain obligations *erga omnes*.

Concerning “Succession of States in respect of State responsibility”, the Islamic Republic of Iran welcomed adoption of “draft guidelines”, recalled its previous observations on the topic before the seventy-seventh session of the Sixth Committee and further assured to provide its complementary comments and observations on the draft guidelines in due time.

*Ali Garshashi*

## TREATIES

### **Making and Concluding Treaties – Negotiation, Accession, Ratification, Deposit, Registration, Internal Constitutional Arrangements**

#### *Ratification of the United Nations Convention on the Use of Electronic Communications in International Contracts*

The Iranian Majlis ratified the *United Nations Convention on the Use of Electronic Communications in International Contracts* (New York, 2005) in October 2023. The Convention entered into force in 2013 and currently has 19 State parties. Under Article 22 of the Convention, “No reservations may be made under this Convention.”

The Majlis ratified the Convention with two declarations under Articles 19 and 21:

1. The Government of the Islamic Republic of Iran, in accordance with Article 19, Paragraph 2, and Article 21 of the Convention, considers itself obligated to implement the Convention within the framework of the Electronic Commerce Law, approved on 17/10/2003, with subsequent amendments and additions. The Convention will not apply to electronic transactions and exchanges that are exempted under the Electronic Commerce Law.
2. Compliance with Principles 77 and 125 of the Constitution of the Islamic Republic of Iran is mandatory for any amendment to the Convention, and compliance with Principle 139 of the Constitution is required for the settlement of claims and referral to arbitration.

Iran is not a party to the *Convention on the International Sale of Goods*.

*Amir Maghami*

## DIPLOMATIC AND CONSULAR RELATIONS

### **Restoration of Iran-Saudi Arabia Relations after 7 Years**

On 10 March 2023, the senior representatives of Iran and Saudi Arabia, mediated by the Chinese government, signed a joint statement to resume bilateral relations after seven years. These two States had experienced deep disagreements over important regional issues; however, Saudi Arabia suspended its diplomatic and commercial relations with Iran following attacks on Saudi

diplomatic and consular premises in Tehran and Mashhad. Subsequently, Iranian media reported that ten individuals involved in the attacks on Saudi diplomatic premises were sentenced to up to six months. Although this response could be categorized as a form of satisfaction, one of the forms of reparation in the legal regime of international state responsibility, the continued severance of ties between Saudi Arabia and Iran clearly indicated that Riyadh was dissatisfied with the nature of addressing the issue by Iran. Nonetheless, on 10 March, news agencies reported that after several days of intense negotiations, delegations of Iran and Saudi Arabia formally announced the end of a seven-year diplomatic rupture by signing a “Joint Trilateral Statement” in Beijing. According to this Statement, before entering into a negotiation in China, parties had embarked on “rounds of dialogue” in Oman and Iraq “during the years 2021–2022.” Through this formal Statement, both States reaffirmed their commitments “to the principles and objectives of the Charters of the United Nations and the Organization of Islamic Cooperation (OIC), and international conventions and norms.” Moreover, Tehran and Riyadh decided to “resume diplomatic relations ... and re-open their embassies and missions ...” and respect “the sovereignty of states and the non-interference in internal affairs of states.” They also agreed that the ministers of foreign affairs of both States shall meet to implement the Statement, arrange for the return of their ambassadors, and discuss means of enhancing bilateral relations.

Some weeks later, Hossein Amir-Abdollahian and Faisal bin Farhan, the foreign ministers of the two States, met and discussed in Beijing on 6 April 2023. According to the website of the Ministry of Foreign Affairs of Iran, the two sides exchanged views on the timing and manner of the reopening of the embassies. Also, A joint statement was issued following the discussion, inter alia, held that “the two sides stressed the importance of activating and pursuing the implementation of” the Joint Trilateral Statement and “enhancing mutual trust and expanding cooperation, and contributing to realising security, stability and prosperity in the region.” Moreover, both States “affirmed their keenness to explore ways of boosting bilateral relations and activating the security cooperation agreement between the two States, signed on 17 April 2001, as well as the general agreement on cooperation in the fields of economy, trade, investment, technology, science, culture, sports and youth, signed on 27 May 1998.”

*Siamak Karimi*

## INTERNATIONAL RELATIONS AND CO-OPERATION

### Iran's Admission to BRICS

Nearly seven months after Iran's official request, the President of South Africa announced at a press conference that Iran had been admitted as a member of this group on 24 August 2023. BRICS is an interstate association initially comprised of the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China, and the Republic of South Africa. This group was primarily established to promote development and coordination on economic issues, investment, and trade relations.

BRICS members periodically hold summits to enhance coordination. It would seem that the 15th BRICS Summit in Johannesburg held on 22–24 August 2023 was a key moment in this group. In fact, during this summit, the members decided to expand BRICS by inviting new states to join. Accordingly, Iran, Egypt, the United Arab Emirates, Saudi Arabia, and Ethiopia were declared as new members.

Since the intensification of economic sanctions against Iran during Donald Trump's first administration in 2018, Iran has pursued various strategies to mitigate the effects of these sanctions. One such strategy has been Iran's membership in economic groups that could help the country benefit from economic and trade cooperation with states less inclined to enforce U.S. sanctions against Iran. Therefore, Iran has repeatedly declared that one of its objectives for joining BRICS is to reduce the impact of U.S. economic and trade sanctions.

*Siamak Karimi*

### Settlement of Disputes

#### Diplomatic Solution of Disputes

##### *Developments regarding UNSC Resolution 2231 and JCPOA*

The Joint Comprehensive Plan of Action (JCPOA) is the result of more than a decade of negotiations between its participants (Iran, US, UK, France, China and Russia, known as 5+1 States). This non-binding but important instrument with legal implications was concluded on 14 July 2015, and was approved by the Security Council on 20 July 2015, based on Resolution 2231. From the very beginning of the days leading up to the conclusion of the JCPOA, many challenges have arisen and continue to arise in the path of concluding and implementing this instrument. The most important challenge was the withdrawal of the United States on 8 May 2018, which led to the gradual non-

implementation by its participants, in order of non-implementation by the United States, the other 5+1 States (unavoidably and under pressure from the United States), and finally, Iran from 8 May 2019. According to Resolution 2231, the first round of sanctions on Iran ended in the fifth year of implementation of the JCPOA (18 October 2020) regarding conventional weapons and restrictions on the movement of individuals on the sanctions list. Recently, on 18 October 2023, in keeping with the schedule set out in Annex II to Resolution 2231, the restrictions contained in paragraphs 3, 4, and some parts of paragraph 6 terminated.

According to the paragraph 3, “Iran is called upon not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology, until the date eight years after the JCPOA Adoption Day or until the date on which the IAEA submits a report confirming the Broader Conclusion, whichever is earlier.” This paragraph has been the subject of legal disputes between the 5+1 States and Iran for 8 years. On the one hand, the US, France, UK and Germany (and of course some others, including Israel) sent letters to the Security Council after each Iranian ballistic missile activity to draw the body’s attention to the inconsistency of Iran’s actions with the provisions of paragraph 3. Iran, and sometimes Russia and China, in their responses or statements of positions, believed that the aforementioned measures not only did not constitute a violation of the paragraph 3, but that the paragraph in question did not create a binding obligation for Iran, because these States believed that the wording of this paragraph made missile activity contrary to this paragraph conditional on the existence of a subjective element in Iran’s related activities based on “designed to be capable of delivering nuclear weapons.” Iran also believed that it did not design its ballistic missiles with the intention of launching a nuclear weapon. In addition, due to the lack of a definition for a ballistic missile, the certain 5+1 States believed in the definition contained in the documents of the “Missile Technology Control Regime” (capable of carrying a warhead of 500 kg and a range of 300 km), while Iran and Russia described the decisions of 5+1 States the MTCR as non-binding.

Complementing paragraph 3 of Annex II to Resolution 2231 is paragraph 4, which requires the UN member States to export ballistic missile-related items and technology or investment, technical and financial assistance, and other services related to these missiles to Iran only under the supervision and authorization of the Security Council. In fact, this paragraph refers to the document approved by the “Missile Technology Control Regime” that was sent by the US in an annex to a letter to the Security Council close to the conclusion of the JCPOA. The Council also included the annex to this letter in paragraph 4 of Resolution 2231 in order to give that document a standard status in

determining goods or technology related to ballistic missiles in the context of Iran's nuclear program.

Another provision of Annex II, Part 3 of Paragraph 6, concerns the freezing of assets and financial and economic resources of individuals who are on the list of the sanction regime until the date of the adoption of Resolution 2231 or who are included in this list on the initiative of the Security Council after the adoption of Resolution 2231. Part 4 of Paragraph 6 of Annex II also states that financial resources belonging to individuals subject to sanctions under the sanction regime should be withheld for a period of eight years, except in exceptional cases such as payments related to medical services, taxes, insurance, and legal services.

The approach of the JCPOA member states shows that they have come to terms with the end of the 8-year restrictions included in Annex II of the resolution and are trying not to undermine the validity of Resolution 2231 while maintaining their sanctions regime.

The three European member states of the JCPOA, UK, France and Germany, announced in a joint statement a month before 18 October 2023 that despite the relevant deadline, these three States and the European Union still believe that they should impose sanctions related to Iran's nuclear program. The reasons given for this action are that first, Russia is using Iranian drones against Ukraine; second, Iran may transfer its ballistic missiles to Russia; and third, Iran should remain deprived of its benefits due to its continuous and flagrant violations of the JCPOA since 2019.

The European Union also announced in a statement on 18 October 2023 that due to Iran's failure to implement the JCPOA since 2019, the Union has decided to maintain its missile sanctions on Iran. This is while the Union claims that the previous sanctions lifted by the Union as a result of the conclusion of the JCPOA are still considered lifted. In this statement, the Union has announced its readiness to lift the missile sanctions on Iran after Iran implements its JCPOA commitments. On this basis, the Council of the Union amended its implementing directive on the Iranian nuclear sanctions on 16 October 2023 in such a way as to maintain the missile sanctions by October 18.

The United States responded by presenting its view in the form of a collective statement through 47 partner states in the "Proliferation Security Initiative (PSI)". The statement, while expressing concern about Iran's missile and drone programs, announced that the states participating in this initiative will make every effort to counter the threat of Iran's missile program.

The Russian Foreign Ministry also announced in a statement that Russia no longer considers it necessary to comply with the Security Council restrictions on the provision of missile technology to Iran, and that from October 18 onwards, the provision of equipment from Russia to Iran or from Iran to Russia

that falls within the framework of the ballistic missile technology control regime will not require prior approval by the Security Council. Russia described the imposition of sanctions on missiles by the United States and the European Union as an attempt to obtain political concessions from Tehran, and stated that these measures will not affect countries that behave in accordance with international law and observe their obligations.

The question that may be raised is whether there is a contradiction between the actions of EU and States that believe to maintain sanctions on Iran's ballistic missile activity with Resolution 2231. This point is also somehow understood from the content of Iran's letter to the Security Council (dated 18 October 2023) on the issue of lifting these restrictions. According to paragraph 4 of this letter, restrictions based on Resolution 2231 should also be terminated at the national and regional levels in line with the resolution. Therefore, if the basis for the restriction is other than Resolution 2231, it seems that this is not inconsistent with the international obligations of actors at the national and regional levels. However, it remains to be seen whether each of the actors at the national or regional levels has an obligation towards Iran not to impose and implement the sanctions lifted under Resolution 2231. For example, it appears that the US is still bound by the provisions of the 1955 Treaty of Amity, Economic Relations and Consular Rights between Iran and US, at least until October 2019, and also by the International Court of Justice interim order in the case of "Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)" until the Court's ruling, not to impose sanctions on areas such as aircraft spare parts. Another legal basis for the prohibition on imposing restrictions or sanctions lifted in October 2023 can be found in Iran's letter to the Security Council. According to paragraph 6, Iran believes that reimposing the same or similar restrictions would constitute a violation of Resolution 2231, as stated in its preamble to Article 25 of the Charter. From Iran's perspective, since the purpose of the resolution and its second annex is to promote and facilitate the development of normal economic and trade relations with Iran, and in particular, the second annex seeks to create a conducive environment for the full implementation of Resolution 2231, taking measures contrary to it is a violation of the first and second operative paragraphs of the resolution and the timetable set out in the second annex to the resolution. From Iran's perspective, Resolution 2231 emphasizes the commitment of all States to effectively end the aforementioned restrictions at the level of national systems and expects States to review and amend any restrictions or sanctions in this regard in accordance with their domestic legal systems. There are, albeit, some slight differences between the official statement published on the website of the Iranian Ministry of Foreign Affairs and the letter it sent to the Security

Council, including the fact that Iran stated in the statement on the website of the Ministry of Foreign Affairs,

“[T]he defense doctrine of the Islamic Republic of Iran has always been and will be based on indigenous capabilities and capacities arising from the strength and resistance of the Iranian people. Unconventional weapons and weapons of mass destruction have no place in the defense doctrine of the Islamic Republic of Iran. In addition, the Islamic Republic of Iran will continue to take the necessary measures to strengthen its capabilities in order to protect its sovereignty, independence, and territorial integrity against any aggression, as well as to confront the threat of terrorism in the region. Within this framework, Iran’s military capabilities, including ballistic missiles, are exclusively for legitimate defense.”

*Abdollah Abedini*

## **International and Regional Dispute Resolution**

### ***Recommending Tehran Regional Arbitration Center to the Country’s Executive Organs***

In a circular promulgated by the Vice President of Iran on 19 March 2023, all executive organs, as listed in Article 5 of the Civil Services Management Law, were required to designate Tehran Regional Arbitration Center (TRAC) as the dispute settlement body when entering into arbitration agreements or other agreements with local and foreign commercial parties. Executive organs in the said Article 5 include ministries, non-governmental public institutions, state entities, as well as organs such as National Iran Oil Company, Organization for Development and Renovation of Iran’s Industries, Central Bank of Iran, state banks, and state insurance firms.

TRAC was established in 2005 pursuant to the 1997 Agreement between the Islamic Republic of Iran and the Asian-African Legal Consultative Organization with objectives such as conducting arbitration, promotion of international commercial arbitration in the region, etc.

The aforementioned circular urges that executive organs should do so by convincing the local and foreign parties and ensuring them about the independence of this arbitration center, while upholding the Article 139 of the Iranian Constitution (concerning the restriction on referring disputes relating to state and public property to arbitration). Annexed to this circular is the English and

Farsi versions of TRAC model mediation agreement and TRAC model arbitration clause.

Preceding this circular, a similar circular issued in 2012 demanded the executive organs to choose the Arbitration Center of Iran Chamber of Commerce, Industries, Mines and Agriculture (“ACIC”) as the dispute settlement body for their contracts.

*Mansour Vesali*

*New Edition of ACIC Arbitration Rules Coming into Effect in 2023*

The Arbitration Center of Iran Chamber (ACIC), as one of the main arbitral institutions in Iran, released a new edition of its Arbitration Rules, which came into effect on 20 May 2023. The new Arbitration Rules apply to the cases filed on this date onward, unless otherwise agreed by the parties.

The new edition of ACIC Arbitration Rules has been introduced with the aim of amending and updating the rules, taking into account the principles and standards of institutional arbitration.

The 2023 ACIC Arbitration Rules introduce certain developments and changes to the arbitration proceedings administered by ACIC. The most significant updates introduced concern multiple contracts arbitration (for claims arising from different contracts with the same or compatible arbitration clauses), consolidation of arbitral proceedings, electronic filing system (to be used for filing the request for arbitration, notification of awards, etc.), third party joinder, determination of seat by the ACIC Court (in case the parties have not determined a seat or in case of unclarity of the designation of seat by the parties), virtual proceedings, grounds for replacement of an arbitrator, ordering interim measures by an emergency arbitrator prior to the appointment of arbitrators, and expedited procedure (in cases with amount in dispute below a threshold of 100,000 EUR for international arbitrations).

*Mansour Vesali*

**International Court of Justice (ICJ)**

*Declaration Recognizing the Jurisdiction of the International Court of Justice as Compulsory*

On 25 June 2023, Iran accepted and recognized the compulsory jurisdiction of the ICJ by issuing a related declaration under Article 36, Paragraph 2, of the Statute of the Court. The text of the declaration is as follows:

“1. The Government of the Islamic Republic of Iran, while reaffirming its commitment to strengthening and supporting the International Court of Justice in discharging its duty of the pacific settlement of disputes as the principal judicial organ of the United Nations, accepts as compulsory *ipso facto* and without special agreement, on the condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with Article 36, Paragraph 2, of the Statute of the Court, until such time as notice may be given to terminate the acceptance, only in relation to the following disputes:

- (i) The jurisdictional immunities of the State and State property;
  - (ii) Immunity from measures of constraint against the State or State property.
2. Except as provided for in sub-paragraphs 1(i) and/or 1(ii), no other dispute shall be entertained by the Court. In particular:
- (i) Disputes relating to questions that fall essentially within the domestic jurisdiction of the Islamic Republic of Iran;
  - (ii) Disputes relating to sovereignty, sovereign rights, or jurisdiction over land or maritime areas;
  - (iii) Disputes with any State not recognized by the Islamic Republic of Iran.
3. The Government of the Islamic Republic of Iran reserves the right at any time, by means of a written notification addressed to the Secretary-General of the United Nations, and with effect from the moment of such notification, either to amend, change, or withdraw the present declaration.”

For many years, *jurisdictional immunities* have been one of the most important legal issues that Iran has engaged with. Iran believes that some States, particularly the United States and Canada, have breached its jurisdictional immunities, as well as the immunities related to its properties, by enforcing domestic court rulings against Iran. For example, Iran’s main motivation for instituting the case concerning Certain Iranian Assets was the issue of State and property immunity. In that case, the Court found that the issue of immunity was outside the scope of the Treaty of Amity between Iran and the U.S., which Iran had claimed the U.S. had violated. Since there was no treaty serving as a jurisdictional basis for filing the claim, Iran decided to accept the compulsory jurisdiction of the Court in a limited manner.

Two days after issuing the declaration, Iran initiated proceedings against Canada in the case of *Alleged Violations of State Immunities*. In its application, Iran stated that the Court has jurisdiction over the dispute and the authority

to rule on Iran's claims. Both Iran and Canada accepted the compulsory jurisdiction of the Court on 26 June 2023, and 10 May 1994, respectively. Regarding the subject-matter of the dispute, Iran stated: "The dispute arises from a series of legislative, executive, and judicial measures adopted by Canada against Iran and its property since 2012 in violation of Iran's jurisdictional immunity and immunity from measures of constraint under customary international law ... Iran has repeatedly protested, including through diplomatic channels, to Canada regarding the violation of its international obligations and has requested Canada to cease its wrongful acts and to make full reparation for the injuries caused, but to no avail."

In the final section of its application, Iran requested the Court to adjudge and declare that by failing to respect the immunities of Iran and its property, Canada has violated its international obligations toward Iran. Specifically:

- (a) That by allowing claims to be brought against Iran for alleged support of terrorism, Canada has committed and continues to commit violations of its obligations to respect Iran's jurisdictional immunity under customary international law;
- (b) That by recognizing or enforcing in Canada foreign judgments rendered against Iran for alleged support of terrorism, Canada has committed and continues to commit violations of Iran's jurisdictional and enforcement immunities under customary international law;
- (c) That by allowing and adopting pre-judgment and post-judgment measures of constraint against Iran's property, Canada has failed to respect Iran's immunity from enforcement under customary international law;
- (d) That Canada shall ensure that no steps shall be taken based on the legislative, executive, and judicial acts at issue in this case, which, to the extent determined by the Court, are inconsistent with Canada's obligations toward Iran under customary international law, and shall provide guarantees of non-repetition;
- (e) That Canada shall, by means of its own choosing, take all necessary steps to ensure that all judicial decisions rendered by its courts in violation of Iran's immunity become unenforceable and ineffective;
- (f) That Canada is under an obligation to make full reparation, including compensation to Iran, for the violation of its international obligations, in a form and amount to be determined by the Court at a subsequent stage of the proceedings. In this respect, Iran reserves the right to introduce and present to the Court, in due course, the reparation owed by Canada; and,
- (g) Any other remedy that the Court may deem appropriate."

It is expected that this case will help clarify international law regarding State immunity in situations involving allegations of sponsoring terrorism.

*Amir Maghami*

*Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*

As discussed in the Report of 2022 (page 234), on 16 July 2018, the Islamic Republic of Iran (Iran) filed an Application in the Registry of the Court and instituted proceedings against the United States of America (the United States) concerning alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights. In the order dated 21 January 2022, the Court authorized the submission of a Reply by Iran and a Rejoinder by the United States, and fixed the time-limits for the filing of these pleadings. Subsequently, in the order dated 20 October 2022, the Court extended the time limits for both parties.

– Order of 18 September 2023

In this order, the Court, having regard to the background, coupled with Article 48 of the Statute of the Court and to Article 44, paragraph 3, of the Rules of Court, and taking into account the views of the parties, extended to 15 December 2023 the time-limit for the filing of the Rejoinder of the United States, and reserved the subsequent procedure for further decision (*Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Order of 18 September 2023*, *I.C.J. Reports 2023*, p. 569).

*Rezvan Bagherzadeh*

*Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*

As discussed in the Report of 2022 (pages 233–234), on 14 June 2016, Iran filed an Application instituting proceedings against the United States with regard to a dispute concerning the adoption by the United States of a series of measures that, in violation of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (the Treaty of Amity). Subsequently, the Court issued its judgment on preliminary jurisdiction on 13 February 2019. From 19 to 23 September 2022, the Court conducted public hearings in the case to consider the parties' arguments concerning the merits of the case.

– Judgment of 30 March 2023

In this Judgment, the Court delivered its judgment on the merits and:

By ten votes to five, upheld the objection to jurisdiction raised by the United States relating to the claims of Iran under Articles III, IV and V of the Treaty of Amity, to the extent that they relate to treatment accorded to Bank Markazi and, accordingly, found that it had no jurisdiction to consider those claims; By thirteen votes to two, rejected the United States' objection to admissibility relating to the failure by Iranian companies to exhaust local remedies; By eight votes to seven, found that the United States had violated its obligation under Article III, paragraph 1, of the Treaty of Amity; By twelve votes to three, found that the United States had violated its obligations under Article IV, paragraph 1, of the Treaty of Amity; By eleven votes to four, found that the United States had violated its obligation under Article IV, paragraph 2 of the Treaty of Amity; By ten votes to five, found that the United States had violated its obligations under Article X, paragraph 1, of the Treaty of Amity; By thirteen votes to two, found that the United States was under obligation to compensate Iran for the injurious consequences of the violations of international obligations referred to the paragraphs above; By fourteen votes to one, decided that, failing agreement between the parties on the question of compensation due to Iran within 24 months from the date of the present judgment, this matter would, at the request of either party, be settled by the Court, and reserved for this purpose the subsequent procedure in the case; Unanimously, rejected all other submissions made by the parties.

Judges Tomka, Bennouna, Yusuf, Iwasawa, Nolte, Charlesworth and Judge *ad hoc* Momtaz appended separate opinions; Judge Robinson and Judge *ad hoc* Barkett appended separate opinions, partly concurring and partly dissenting; Judges Abraham, Bhandari and Salam appended declarations; Judge Sebutinde appended a dissenting opinion to the Judgment of the Court (*Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Judgment, *I.C.J. Reports 2023*, p. 51).

*Rezvan Bagherzadeh*

*Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v. Islamic Republic of Iran)*

On 4 July 2023, Canada, the Kingdom of Sweden, Ukraine and the United Kingdom of Great Britain and Northern Ireland filed a joint Application instituting proceedings against Iran before the International Court of Justice (the Court) concerning a dispute under the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (the Montreal Convention).

In their Application, Canada, Sweden, Ukraine and the United Kingdom claimed that Iran had violated a series of obligations under the Montreal Convention as a result of the shooting down of a civil aircraft in service on 8 January 2020, Ukraine International Airlines Flight PS752, by military personnel of Iran's Islamic Revolutionary Guard Corps. All 176 passengers and crew aboard the flight, many of whom were nationals and residents of the Applicant States, were killed in the crash.

According to the Applicants, Iran "failed to take all practicable measures to prevent the unlawful and intentional commission of an offence described in Article 1 of the Montreal Convention, including the destruction of Flight PS752. It also subsequently failed to conduct an impartial, transparent, and fair criminal investigation and prosecution consistent with international law".

Canada, Sweden, Ukraine and the United Kingdom seek to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article 14, paragraph 1, of the Montreal Convention, to which all four Applicants and Iran were parties (*Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v. Islamic Republic of Iran)*, *I.C.J. Reports 2023*, Joint Application Instituting Proceedings).

– Order of 16 October 2023

In this order, the Court fixed 16 October 2024 and 16 October 2025 as the respective time-limits for the filing of the Memorial of Canada, Sweden, Ukraine and the United Kingdom and the Counter-Memorial of Iran Aerial Incident of 8 January 2020 (*Canada, Sweden, Ukraine and United Kingdom v. Islamic Republic of Iran*), *Order of 16 October 2023*, *I.C.J. Reports 2023*, p. 575).

*Rezvan Bagherzadeh*

## Enforcement of International and Foreign Awards

### *State Immunity from Jurisdiction: French Cour de Cassation Confirms Refusal to Enforce the US Court Decision against Iran*

Having upheld the sovereign immunity of Iran from jurisdiction, the first civil chamber of the French *Cour de Cassation* confirmed on 28 June 2023 a decision of the Paris Court of Appeal refusing to enforce a US court decision (Cour de cassation, première chambre civile, 28 juin 2023, n° 21–24.067). An *exequatur* (enforcement order) had been sought in France for the decision made by the United States District Court for the District of Columbia on 11 March 1998 (*Stephen M. Flatow v. The Islamic Republic of Iran et al.*, 999 F.Supp. 1) awarding US\$ 247 million in compensatory and punitive damages in a case brought by Stephan Flatow as the administrator of the estate of Alisa Michelle Flatow. Alisa Michelle Flatow was an American student who was killed in a suicide bombing in the Gaza strip in 1995, for which Palestine Islamic Jihad claimed responsibility. The case was brought by Alisa Michelle Flatow's father against Iran and some high-ranking Iranian officials pursuant to amendments to the US Foreign Sovereign Immunities Act, which grant jurisdiction over foreign states and their officials, agents and employees for personal injury or death resulting from state-sponsored terrorist attacks. The Paris Court of Appeal denied the application for enforcement on 16 March 2021 based on state immunity.

In response to the challenge made to the Paris Court of Appeal's ruling, the *Cour de Cassation* pointed out that in accordance with Article 509 of the Civil Procedure Code, a French court when seizing a request for enforcement of a foreign judgment must, after verifying its admissibility, assess the fulfilment of three distinct conditions: the indirect jurisdiction of the foreign court based on the connection between the case and the foreign seized court, conformity with the substantive and procedural international public policy, and absence of fraud. The Court also confirmed that when invoking state immunity by a foreign state, it is for the French court to decide on that, despite the fact that the French court could not review the merit of the judgment. In addition, the US court's denial of state immunity could not dispense the French court with exercising its judicial power to assess whether invoking state immunity by Iran was admissible.

The Court upheld that foreign states enjoy immunity from jurisdiction with regard to the claims arising from acts that constitute, by their nature or purpose, an exercise of sovereignty rather than an act of private or commercial nature.

The *Cour de Cassation* extensively relied on the holdings of international courts in its analysis. The Court referred to the case law of the European Court of Human Rights according to which, '[t]he grant of immunity is to be seen not as qualifying a substantive right but as a procedural bar on the national courts' power to determine the right' (*Al-Adsani v. The United Kingdom* [GC], no. 35763/97, § 48, ECHR 2001-XI), and 'the grant of sovereign immunity to a State in civil proceedings pursues the legitimate aim of complying with international law to promote comity and good relations between States through the respect of another State's sovereignty' (Ibid § 54). Moreover, the court relied on the ICJ's pronouncement in the *Jurisdictional Immunities of the State* case, where it asserted that no conflict exists 'between a rule, or rules, of jus cogens, and the rule of customary law which requires one State to accord immunity to another' (*Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*), Judgment, I.C.J. Reports 2012, para. 93).

In view of the *Cour de Cassation*, the Paris Court of Appeal had rightly held that the acts given rise to the claim could not be characterized as non-sovereign acts. Finally the court stated that even if the facts of the case constituted a legitimate restriction on immunity from jurisdiction, the circumstances of the case would not justify an exception to the state immunity since the demonstration of the direct involvement of Iran was not the basis for the US court to award damages, but rather the civil liability that the state must bear in respect of the material resources and assistance provided to the group claiming responsibility for the attack.

*Mansour Vesali*

### *Crescent Arbitration Proceedings*

#### *Background of Crescent Arbitration Proceedings*

As discussed in the Report of 2021 (pages 206–208) and the Report of 2022 (pages 235–238), the arbitration proceedings initiated by Crescent Petroleum Company International Limited ('Crescent Petroleum') and Crescent Gas Corporation Limited ('Crescent Gas') (Crescent Petroleum and Crescent Gas are collectively referred to as 'Crescent') against the National Iranian Oil Company ('NIOC') stemmed from a Gas Sale and Purchase Contract ('GSPC') signed between NIOC and Crescent Petroleum on 25 April 2001. The GSPC, governed by Iranian law, stipulated that NIOC would supply specified quantities of natural gas to Crescent for a minimum period of 25 years, commencing on 1 December 2005, at agreed-upon prices and terms.

On 26 July 2003, Crescent Petroleum assigned its rights and obligations under the GSPC to Crescent Gas pursuant to Article 16 of the GSPC. To facilitate downstream sales of gas, Crescent Gas established a partly-owned subsidiary, Crescent National Gas Corporation Limited ('CNGC'). On 8 June 2005, Crescent Gas and CNGC entered into a separate Gas Supply Agreement ('GSA') to ensure CNGC could fulfil its commitments to contractors and customers.

However, NIOC failed to deliver any gas. Consequently, Crescent initiated arbitration in 2009, claiming USD 13.9 billion in damages due to NIOC's breach of contract. The ad hoc arbitration, administered by the Permanent Court of Arbitration in The Hague and seated in London, spanned 13 years with multiple changes to the tribunal. On 25 February 2010, the Tribunal ordered the bifurcation of the proceedings into two phases: (1) a first phase covering jurisdictional issues and liability; and (2) if jurisdiction and liability were found, a second phase covering remedies.

In 2014, after several rounds of written submissions from both parties and sessions of hearings, the tribunal upheld jurisdiction and found NIOC in breach of its gas supply obligation on 31 July 2014 (the 'Liability Award'). The Liability Award was later upheld by the English Commercial Court in 2016. As a result of the Liability Award, it was determined that NIOC breached the GSPC, and the proceeding then moved to the remedies phase.

On 27 September 2021, the tribunal – comprising former Australian Chief Justice Murray Gleeson AC, Sir Jeremy Cooke, and Lord Phillips of Worth Matravers – issued a partial award on remedies (the 'Partial Remedies Award'). In this award, the Tribunal dismissed NIOC's jurisdiction objections regarding Crescent Gas and CNGC, as well as defenses based on Iranian law, force majeure, and claims of impossibility of performance due to economic sanctions against Iran. The Tribunal ordered NIOC to pay Crescent a total of \$2,429,970,000 within three months, including \$1,344,700,000 for Crescent Gas' lost profits under the GSPC and \$1,085,270,000 for CNGC's lost profits under the Crescent Gas-CNGC GSA. Post-award interest was set at 12-month EIBOR + 1 percentage point, compounding annually.

The Liability Award and the Partial Remedies Award addressed claims arising from the 2005–2014 period (the 'First Crescent Arbitration'). In 2018, a second arbitration was initiated to address claims covering the contractual period from 2014 to 2030 (the 'Second Crescent Arbitration'). This arbitration, seated in Geneva, was divided into three phases: the first focused on jurisdiction, the second on the validity of the contract's termination, and the third on liability and quantum. On 30 July 2019, the tribunal issued its award on jurisdiction, followed by an interim award on 5 May 2020, in which it held that Crescent had lawfully terminated the GSPC. Later that year, an attempt to set aside the

interim award was dismissed by the Swiss Supreme Court. The Court ruled the challenge inadmissible on the basis that the award was of a preliminary or interim nature, as it did not finally resolve any part of the claims submitted, and therefore was not subject to annulment proceedings. The final award of the Second Crescent Arbitration has not yet been rendered.

*Post-Award Proceedings Related to First Crescent Arbitration –  
Judgment of the Court of Appeal of England and Wales [2023]*

**EWCA 826, 13 July 2023**

As outlined in the 2022 Report (pages 236–237), the NIOC had its jurisdictional challenge to the Partial Remedies Award in the First Crescent Arbitration summarily dismissed by Butcher J at the High Court on 21 October 2022. NIOC then appealed the High Court’s rejection of its application for permission to appeal under section 67 of the Arbitration Act 1996, arguing that the High Court had misinterpreted the expert opinion on Iranian law. Specifically, NIOC contended that Butcher J had made several errors, including: (1) improperly conducting a mini-trial to assess the expert evidence, (2) applying an overly literal interpretation to the arbitration clause’s “relating to” phrase, instead of the more restrictive interpretation required by Iranian law, and (3) failing to allow the possibility that cross-examination of the Iranian law expert could alter or supplement the evidence.

The Court of Appeal dismissed NIOC’s appeal, affirming that, had the arbitration agreement been governed by English law, the damages in question would clearly fall within the jurisdiction of the arbitrators. The Court reviewed the principles set out in *BNP Paribas SA v Trattamento Rifiuti Metropolitan SpA* regarding the role of foreign law experts in contractual interpretation, emphasizing that such experts are restricted to identifying the applicable rules of interpretation and are not permitted to offer opinions on the meaning of the contract.

The Court concluded that the Iranian law evidence submitted by NIOC overstepped this boundary, as it did not focus on explaining the principles of Iranian law relevant to the jurisdictional issue. Consequently, large portions of the expert report were deemed inadmissible. Additionally, the Court held that Butcher J had not conducted a mini-trial, but rather had assessed the viability of NIOC’s case in relation to Iranian law. The Court also disagreed with NIOC’s claim that Butcher J had applied an overly literal interpretation, agreeing instead that the arbitration provisions in the original agreement were broadly drafted. The Court concluded that there was no doubt that the judge had correctly applied the principles of Iranian law and that the liability to CGNC claim clearly fell within the scope of the arbitration agreement.

Ultimately, the Court of Appeal concluded that NIOC's appeal had no reasonable prospect of success and upheld the High Court's decision, rejecting the section 67 challenge.

*Post-Award Proceedings Related to First Crescent Arbitration –  
Judgment of the Athens Court of First Instance, 18 April 2023*

On 18 April 2023, the Athens Single-Member Court of First Instance ruled in favor of enforcing the Partial Remedies Award in the First Crescent Arbitration Proceedings. The NIOC challenged the enforcement on multiple grounds under Articles 4 and 5 of the New York Convention, including arguments related to international public policy. It asserted that the underlying contract was tainted by corruption and that the award granted compensation for contractual benefits and transactions that were prohibited under EU and US sanctions on Iran.

In its ruling, the Athens court stated that issues such as inadequate reasoning, misinterpretation of foreign legal provisions, or errors in assessing the merits of the case by the arbitrators do not, by themselves, constitute a violation of international public policy. The court emphasized that its review was confined to the factual determinations made by the arbitral tribunal, which remained binding regardless of whether they were correct.

Regarding the allegations of corruption, the court highlighted that the arbitrators had found no direct link between the purported corrupt acts and the final terms of the gas supply agreement. As a result, these claims could not justify invalidating the contract. The court also clarified that reassessing these findings would effectively reopen the merits of the case, which was beyond its jurisdiction. With respect to the sanctions argument, the court noted that this issue had already been considered and dismissed by the arbitral tribunal.

Additionally, NIOC contended that the award contravened a fundamental principle of Greek law, which requires that compensation be strictly reparative in nature. The court rejected this claim, ruling that Greek law does not prohibit awarding additional sums beyond actual damages, provided that such amounts are reasonable and do not inherently conflict with public policy.

Finally, NIOC argued that it lacked the legal capacity to enter into the arbitration agreement, citing Article 139 of the Iranian Constitution, which requires ministerial and parliamentary approval for such clauses – approval that had not been granted. The court dismissed this argument, noting that the Iranian Constitution does not explicitly state that the absence of such approval renders an arbitration clause void, and that, in any event, NIOC had fully participated in the arbitration without raising objections.

*Post-Award Proceedings Related to First Crescent Arbitration – Court of Appeal The Hague, ECLI:NL:GHDHA:2023:2556, Rejection of Request for Disqualification, 13 October 2023*

While enforcement proceedings for the Liability Award in the First Crescent Arbitration were pending before Judges Mr. D.A. Schreuder, Mr. C.A. Joustra, and Mr. H.M.H. Speyart van Woerden at the Court of Appeal of The Hague, NIOC challenged these judges on 1 September 2023, arguing during the hearing that the manner in which the hearing was conducted created the impression of judicial bias.

In their written response dated 11 September 2023, the judges rejected the allegations and opposed the disqualification request. Subsequently, on 14 September 2023, NIOC submitted additional grounds for disqualification to the disqualification chamber. The hearing on the matter before the disqualification chamber was held on 15 September 2023, where NIOC's legal counsel argued that certain procedural decisions made by the court, as well as the conduct during the oral hearing, allegedly created the appearance of bias or partiality.

Under Article 36 of the Dutch Code of Civil Procedure, a judge may be challenged if there are facts or circumstances that could harm judicial impartiality. In this case, NIOC's grounds for disqualification primarily related to procedural decisions made during the oral hearing. However, the disqualification chamber's authority does not extend to reviewing the correctness of procedural decisions unless these decisions, when considered in light of all circumstances and measured against objective standards, clearly demonstrate evidence of judicial bias. NIOC contended that the cumulative effect of the procedural decisions, combined with the conduct of the judges during the hearing, provided sufficient grounds to question the impartiality of the court.

The disqualification chamber rejected NIOC's request for disqualification. It found no compelling evidence to substantiate NIOC's claims of bias. The chamber emphasized that the explanations provided by the contested judges – both in writing and during the disqualification hearing – demonstrated that both parties had been afforded the opportunity to present their positions during the oral hearing. The chamber further noted that there was a clear divergence between the parties' views on whether the hearing should proceed and the events that occurred during the hearing. However, differing interpretations of procedural matters alone do not constitute evidence of judicial bias. The procedural decisions and the reasoning behind them did not, in the chamber's view, indicate any lack of impartiality when assessed against objective standards.

In light of the above, the disqualification chamber concluded that NIOC's request for the disqualification of judges Mr. Schreuder, Mr. Joustra, and

Mr. Speyart van Woerden should be denied. The procedural decisions made during the oral hearing, as well as the conduct of the judges, were not found to give rise to an objectively justified fear of bias. Accordingly, the request for disqualification was rejected.

*Post-Award Proceedings Related to First Crescent Arbitration –  
Challenge of Arbitrators in the Second Crescent Arbitration  
Proceedings*

As noted above, in 2018, Crescent initiated the second Crescent arbitration proceedings against NIOC, seeking damages amounting to USD 18.6 billion. The ad hoc arbitration is seated in Geneva, with the ICC Court having been delegated the authority to rule on challenges to arbitrators. The tribunal was initially chaired by Laurent Aynès, with Charles Poncet and Klaus Sachs serving as co-arbitrators.

In March 2023, NIOC challenged the President of the Tribunal, Laurent Aynès, claiming that his law firm had been involved in a separate ICC arbitration indirectly concerning Iranian state entities. NIOC further argued that Aynès' law firm had previously raised serious corruption allegations against high-ranking Iranian officials and had collaborated with Crescent's lead counsel. Additionally, NIOC argued that Aynès himself had previously worked alongside Crescent's lead counsel. On 23 March 2023, the ICC upheld NIOC's challenge, resulting in Aynès' removal from the tribunal.

On 4 May 2023, arbitrator Klaus Sachs resigned, further affecting the tribunal's composition.

On 28 September 2023, NIOC challenged Charles Poncet, citing statements he made in a Swiss television program, *En liberté*. Poncet, a regular host of the Geneva-based show, delivered a monologue on 31 August 2023, titled "*Cachez ce sein!*" ("Hide that Breast!"), in which he discussed swimwear regulations in Swiss public pools. In this segment, Poncet made inflammatory and derogatory remarks about Muslim men who support the burkini, referring to them as "prudish microcephalics" and "bearded, pot-bellied pashas" with "exotic accents." He further suggested that legal measures should be imposed on those seeking to enforce religious dress codes in public spaces.

Among other comments, Poncet stated:

*"They are not content with forcing their miserable daughters or partners to cover themselves from head to toe in a grotesque get-up that guarantees they will die of heat before getting in the water, while at the same time risking catching a bad cold when getting out of the pool. These fathers of modesty or mothers of modesty are trying to control our daughters' and partners' freedom to go swimming as they please. They have no problem resorting*

*to humiliation and using the rudest language possible to achieve that. A burkini-clad hag might snarl ‘Cover up, slut!’ as she walks past an attractive Swiss woman in a flattering bikini at the pool. A bearded, pot-bellied pasha might quickly add, ‘You’re not ashamed of exposing yourself like that?’ his scowling gaze fixed on the young woman’s crotch doing nothing to hide his accent, which we’ll call exotic.”*

*“And now we’re supposed to put up with bearded hypocrites stopping young women from sunbathing when they feel like it? [...] If some idiot wants to be covered up from head to toe to go swimming, good for her. But there’s no way we can tolerate a bunch of mentally-retarded, sectarian, puritanical, prudish people purporting to impose their way of doing things on other people and telling them what to do.”*

*“We urgently need to crack down and impose, and I do mean impose, tolerance of others on these little pashas. They should be slapped with heavy fines and reprimands, and excluded by force and without legal process from public establishments if they attack free young women [...] who, if we don’t step in, will very quickly be forced to submit to these modern-day hypocrites [...].”*

NIOC argued that these statements demonstrated a long-standing bias against Muslims and Islam, compromising Poncet’s impartiality in a case involving an Iranian state-owned entity. Specifically, NIOC contended that Poncet’s remarks created a perception of bias under Swiss law, which recognizes apparent bias as sufficient grounds for disqualification, without requiring proof of actual bias. In support of this argument, NIOC cited the 2021 Swiss Federal Supreme Court ruling in the *Sun Yang* case, where an arbitrator’s controversial social media posts about China led to the annulment of a CAS award against a Chinese athlete.

On 7 November 2023, the ICC accepted NIOC’s challenge to Poncet. The tribunal’s decision, communicated to the parties on 16 January 2024, emphasized that Poncet’s public comments could reasonably be perceived as demonstrating anti-Muslim bias, thereby undermining his ability to adjudicate impartially in a dispute involving an Iranian state-owned entity.

*Hosna Sheikhattar*

## INTERNATIONAL ECONOMIC LAW

### New Central Bank Act

The nature of Iran's Central Bank was one of the more important issues in the case of *Certain Iranian Assets* (2023). In June 2023, the Majlis passed a new act: *The Central Bank of the Islamic Republic of Iran Act*. This latest law repealed the country's Monetary and Banking Law (1972) and does not contain any provisions similar to the latter regarding the commercial nature of the Bank. Moreover, it does not declare that commercial law governs the Bank. The law recognizes the independent legal personality of the Bank and grants it the authority to formulate monetary policies.

It appears to be in line with Article 19 of the *United Nations Convention on the Immunity of States and Their Properties* (2004), which Iran has ratified but has not yet enforced.

As a new development, the law also recognizes cryptocurrencies, which may be either centralized (Central Bank-controlled) or decentralized. The Supreme Board of the Bank has the authority to authorize the storage and exchange of cryptocurrencies.

*Amir Maghami*

## AIR LAW AND LAW OF OUTER SPACE

### Iran's Aviation or Space Policy and Legislation

#### *Space Safety Program*

In line with its obligations under the Convention on International Civil Aviation (Chicago Convention), Iran developed the Space Safety Program. In view of this country, however, some legal gaps and challenges hinder the implementation of the existing program. Iran believes that the International Civil Aviation Organization (ICAO) can play a crucial part in filling these gaps. For this purpose, a National Safety Plan (NSP) was designed and will be operated by the Civil Aviation Authority of Iran (CAAI) for a period of three years (2024 to 2026). As stated by Iran, the NSP -comprising of national aviation safety goals and safety enhancement initiatives- aims at addressing safety deficiencies. It should be noted that the NSP will be implemented in accordance with both the Global Aviation Safety Plan adopted by the ICAO and the Middle East Regional Aviation Safety Plan.

### *Draft Bill on Unmanned Aerial Vehicles (UAVs)*

On 13 December 2023, a draft bill on the Organization of the Civil UAVs, which was proposed by Iran's Ministry of Defence and Armed Forces Logistics, was approved by the Islamic Consultative Assembly. Examining 27 articles of the Civil UAVs Draft Bill, it can be inferred that UAVs can be solely used for civil purposes including but not limited to earth observation, preservation of environment, disaster management and search and rescue operation. In addition, except for exceptional circumstances, imports of UAVs are prohibited.

### *Restrictive Measures against Iran*

On 16 October 2023, the Council of the European Union adopted a resolution for the purpose of implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran. By this Resolution, Annex IX to the mentioned Regulation was also amended. According to the revised Annex, new organizations and companies were put under sanctions. These are *Defense Industries Organization (DIO)* including *Aviation Industries Organization (AvIO)*, *Qods Aeronautics Industries*, an Iranian company which designs and manufactures Unmanned Aerial Vehicles (UAVs), *Sho'a' Aviation*, an Iranian aviation company procures military goods, and *Pars Aviation Services*, an Iranian aviation company operated under the control of the Islamic Revolutionary Guard Corps.

### *Proceedings against Iran in the International Court of Justice (ICJ)*

On 4 July 2023, four States, i.e., Canada, Sweden, Ukraine and United Kingdom filed in the Registry of the ICJ an application instituting a proceeding against Iran regarding the Aerial Incident of 8 January 2020. The detail of this case is discussed under the Section 'Settlement of Disputes' in this Report.

## *Space Law*

### *Participation in the Committee on the Peaceful Uses of Outer Space (COPUOS)*

As a member of the COPUOS, Iran regularly attends in annual sessions of the main committee. In 2023, Iran made statements under different substantive agenda items including *General Exchange of Views, Ways and Means of Maintaining Outer Space for Peaceful Purposes, Report of the Legal Subcommittee on its Sixty-Second Session, Space and Sustainable Development, Space and Water, Space and Climate Change, and Future Role and Method of Work of the Committee.*

### *Statements on General Exchange of Views*

Reaffirming its respect for the fundamental principles of international space law as set forth in the space law instruments, Iran reported on their activities during the past year, *i.e.*, 2022. In this regard, it referred to the successful launch of a remote sensing satellite (Noor 2) into the Low Earth Orbit (LEO) on 8 March 2022 and ‘Khayyam’ Satellite which was launched in August and registered on the United Nations Office for Outer Space Affairs (UNOOSA) Website in December 2022. Additionally, Iran reminded that tackling the threat of militarization and weaponization of outer space as well as preventing the continuous violation of State sovereignty by private operators of mega-constellations are placed under the mandate of the Committee.

### *Statements on ‘Ways and Means of Maintaining Outer Space for Peaceful Purposes’*

Under this agenda item, Iran warned of the risk and threat of aggressive use of outer space, such as deploying large satellite constellations for military purposes. In the new era of space activities, Iran stated that current legal mechanisms are unable to deal with emerging issues in outer space. Considering that, it emphasized that preserving outer space as a peaceful domain for both current and future generations is largely dependent on preventing the occurrence of space armed conflicts.

### *Statements on ‘Report of the Legal Sub-Committee on Its Sixty-Second Session’*

While reinforcing the importance of the five space-law treaties in exploration, exploitation and utilization of space resources, Iran stated that an international regime for governing exploration and exploitation of space recourse should be established within the COPUOS. In view of this country, the new legal regime, as an output of the *Working Group on the Legal Aspects of Space Resource Activities*, should address the needs and concerns of all countries, whether they are developing or developed.

### *Statements on ‘Space and Sustainable Development’*

Reminding the importance of space applications in socio-economic development, Iran stated that its space capabilities were utilized to enhance national economic and social development. As a consequence of the natural disasters occurred in recent years, Iran also emphasized its need for satellite supporting data. In this respect, it stated that ‘Khayyam’ satellite plays a crucial part in providing timely and accurate observation data during the disaster cycle.

### *Statements on 'Space and Water'*

According to Iran, particular attention has been paid to the role of Earth Observation Satellites in water resources monitoring by the Iranian Space Agency (ISA). For example, ISA operated the waterbody monitoring system, which is based on data derived from 'Khayyam' satellite.

### *Statements on 'Space and Climate Change'*

Using Earth Observation (EO) data, the ISA developed programs contributing to climate change and its monitoring and risk assessment. Among them, Iran referred to the Flood Early Warning and Rapid Mapping Dashboards as well as Drought Monitoring and Risk Assessment Dashboards. Beyond that, Iran stated that the ISA is cooperating with the Asia-Pacific Space Cooperation Organization (APSCO) for the purpose of tackling climate change through capacity-building measures.

### *Statements on 'Future Role and Method of Work of the Committee'*

Due to new developments in space technologies, Iran proposed changes to the approaches, tools and procedures of the COPUOS. For instance, Iran believes that the implementation of the Guidelines for the Long-term Sustainability of Outer Space Activities should be facilitated by the Committee through providing access to the necessary databases and catalogues. Furthermore, Iran emphasized that space law rulemaking is to be conducted within the COPUOS. For this reason, it disagreed with the Artemis Accords which were developed outside the Committee.

### *Participation in the COPUOS Sub-Committees*

Iran also attends and participates in the annual sessions of the COPUOS sub-committees, i.e., the Legal Sub-committee (LSC) and Scientific and Technical Sub-Committee (STSC).

### *Statements in the LSC*

Iran made statements under different substantive agenda items of the LSC including *General Exchange of Views, Status and Application of the Five United Nations Treaties on Outer Space, General Exchange of Views on Potential Legal Models for Activities in the Exploration, Exploitation and Utilization of Space Resources, and General Exchange of Information and Views on Legal Mechanisms Relating to Space Debris Mitigation and Remediation Measures, Taking into account the Work of the Scientific and Technical Subcommittee.*

*Statements on ‘General Exchange of Views’*

Under this agenda item, Iran warned of the challenges raised by the emergence of large satellite constellations. In this regard, Iran referred to its continuous objection to the unauthorized and illegal operation of SpaceX’s Starlink Satellite Constellations within its territory. In view of this country, satellite operators are not authorized to provide internet services in Iran without obtaining a license. Considering that, it stated that Starlink activities in Iran are in contrast with the fundamental principles of international law as set forth in the United Nations Charter on the one hand, and international space law, including Article III and VI of the 1967 Outer Space Treaty (OST), on the other hand. Iran mentioned that despite its objection before the UNOOSA, International Telecommunication Union (ITU), the United Nations Security Council, and the Federal Communication Commission (FCC), no response has yet been received. Reaffirming the threat of the large satellite constellations to the sustainability of outer space activities and equitable access of developing countries to the LEO, therefore, Iran reinforced the need for adoption of a new set of regulations by the Committee and its LSC.

*Statements on ‘Status and Application of the Five United Nations Treaties on Outer Space’*

Under this agenda item, Iran emphasized the importance of the respect to the provisions of five space-law treaties, notably Article III of the OST, according to which space activities should be carried out in compliance with international law including the Charter of the United Nations. Moreover, Iran reiterated its arguments regarding the violation of its Sovereignty as a result of Starlink services.

*Statements on ‘General Exchange of Views on Potential Legal Models for Activities in the Exploration, Exploitation and Utilization of Space Resources’*

While Iran proposed the establishment of a new international framework for the purpose of managing and coordinating the exploration, exploitation and use of space resources, it stated that any rule-making efforts which are developed outside the Committee may lead to neglecting the rights of developing countries. Considering that, Iran suggested that the international community should use the provisions of the 1979 Moon Agreement in order to design a new international regime.

*Statements on 'General Exchange of Information and Views on Legal Mechanisms Relating to Space Debris Mitigation and Remediation Measures, Taking into Account the Work of the Scientific and Technical Subcommittee'*

Under this agenda item, Iran reminded the responsibility of space-faring nations to mitigate space debris and take necessary remediation measures. On this basis, Iran stated that all countries possess common but differentiated responsibilities for combating space debris.

*Statements in the STSC*

Iran made statements under different substantive agenda items of the LSC including *General Exchange of View, Remote Sensing, Future Role and Method of Work, Long-term Sustainability of Outer Space Activities, Disaster Management Support, Space Weather, and Dark and Quiet Skies*. While Iran's concerns under the first four items were somehow discussed before, it is worth mentioning that this country referred to its commitments as a host for the United Nations Platform for Space-based Information for Disaster Management and Emergency Response (UNSPIDER)'s regional support office, during the disaster cycle. Additionally, it stated that a set of measures was taken in order to tackle space weather events. For instance, Iran referred to the development of the Cosmic Particles Radion Observatory. Last but not least, reminding the threat caused by large-satellite constellations deployed in the LEO, Iran asked the COPUOS to consider the issue of preserving the dark sky as a common heritage.

*Sima Moradinasab*

**Iran and ICAO**

*Developments in the Aerial Incident of Ukrainian Flight PS752*

On 16 April 2023, Mizan News Agency, as the official news agency of the Iranian judiciary, announced the verdict of the Tehran Military Court on the tragic incident of the crash of Ukrainian Flight PS 752. The aircraft, bound for Ukraine, crashed near Tehran shortly after take-off on 8 January 2020, and unfortunately, all passengers on board died. According to the Mizan News Agency, a comprehensive judicial investigation into this case, which has been one of the most important, sensitive, and complex judicial processes in Iran in recent years, was initiated by the Iranian Armed Forces Judicial Organization based on the principles of territorial jurisdiction, inherent jurisdiction, and local and personal jurisdiction. Having held a total of 20 sessions, in which a

total of 117 plaintiffs filed their complaints and 55 of the plaintiffs participated by leaving their points of view during the sessions, the court issued its verdict.

In the verdict, the first-degree defendant, as the commander of the Tor M-1 defense system, thought that the characteristics of the target were similar to a cruise missile, and contrary to the order of the command post and without obtaining permission and contrary to the relevant instructions, launched two missiles at the aircraft. The charges of the first-degree defendant are as follows: according to the relevant operational order, the Tor M-1 defense system was in a limited fire mode and firing missiles without obtaining permission from the command post was not allowed. Based on the statements of the person in charge of the command post desk, a warning message was sent to all defense positions that no one had the right to take action without coordination with the command. On the basis of the announcement of the General Staff of the Armed Forces, in the event of a momentary loss of communication, the system commander should have been placed in a waiting and cease-fire mode in accordance with the communication loss instruction.

Considering that the defendant's behavior was due to ignorance of the matter and a misconception about the discovered target, and that he fired at the target believing it to be hostile and approaching, and did not intend to shoot down the passenger plane, the court found the first-degree defendant guilty of the charges and was sentenced to three years of imprisonment for the charge of aiding and abetting the manslaughter of the passengers of the aircraft. The defendant was also sentenced to the maximum penalty (10 years of imprisonment) due to the cancellation of the notified order and considering the extensive effects and consequences of this action. Accordingly, the total prison sentence issued for the first-degree defendant is 13 years of imprisonment. In addition to imprisonment, the first-degree defendant was also sentenced to pay blood money to the parents of the deceased who had demanded blood money, and the court has also imposed an additional punishment on this defendant.

Moreover, based on the charges contained in the indictment and the mistakes and negligence committed by the other defendants in this case, the court sentenced the second and third defendants (personnel of the M1 Tour Defense System) to one year in prison, the fourth defendant (person in charge of the M1 Tour Defense Systems Desk) to three years in prison, the fifth defendant (person in charge of the M1 Tour Defense System Command Post) to three years in prison, the sixth defendant in the case (the then commander of the Fifth Tehran Air Defense Base) to two years in prison, the seventh defendant in the case (shift officer of the Tehran Regional Operations Control Center) to two years in prison, the eighth defendant (the then commander of the Tehran

Regional Operations Control Center) to one and a half years in prison, the ninth defendant (the then commander of the Tehran Air Defense Region) to one year in prison, and the tenth defendant (the then commander of the IRGC Air and Space Air Defense) to one year in prison. In addition to the determined sentences, the court sentenced the second to tenth defendants to supplementary punishment. It is worth noting that, in accordance with the request of some of the plaintiffs to the court, the Military Prosecutor's Office has been ordered to continue the investigation into this case and take legal action to prosecute the culprit or other possible culprits.

In agreement with Iranian domestic law, the verdict issued in this case is preliminary and the parties can object to this verdict and there is an opportunity to object to it within 20 days from the date of notification of the verdict. In effect, the verdict was also objected to and the Supreme Court of Iran, while confirming some of the objections, returned the case to the court that issued the verdict to eliminate the deficiencies.

In line with the resolution of the Iranian government cabinet in January 2020, in addition to criminal proceedings and compensation for the damage caused by the crime, each victim of this incident has been provided with an amount of 150 thousand dollars or its equivalent in euros as an *ex gratia* payments, regardless of judicial proceedings.

It is worth noting that next development that occurred in the case was instituting proceedings by four States, Ukraine, Canada, the United Kingdom and Sweden against Iran in the International Court of Justice on 4 July 2023. According to the plaintiffs' application, the Iran has violated 1971 Montreal Convention for the suppression of unlawful acts against the safety of civil aviation by failing to comply with the following provisions: failure to conduct a prompt initial investigation (Article 6), failure to refer the case to the competent domestic authorities (Article 7), failure to take all practical measures to prevent the accident (Article 10), failure to provide the greatest possible cooperation in criminal proceedings (Article 11), and failure to report as soon as possible the accident to ICAO (Article 13). The latest development in this case is that Iran has raised preliminary objections on 22 January 2025.

In addition, negotiations between the Iran and four States were held in Geneva on 2 and 3 October 2023. After these negotiations, the parties issued statements. The statement of the four States dated 3 October 2023 stated:

“The Coordination Group takes seriously its commitment to the peaceful resolution of disputes. Since 2020, the Group has made multiple attempts to resolve this matter through negotiations, and in September 2023 Iran finally agreed to meet with all members of the Group for discussions. The Group's focus during the negotiations has always been on Iran's

responsibility for its violations of international law and its obligation to make full reparation for the injury caused by the downing. For the Group, full reparation means more than financial compensation. It has not been possible to make meaningful progress. Iran continues to disregard our claims. Based on the discussions, which took place this week, the Group considers that our respective positions are too far apart to be reconciled through negotiations.”

In this regard, on the 10 October 2023 the Ministry of Foreign Affairs of the Islamic Republic of Iran also issued a statement that stated based on good faith and in line with transparency, the delegation of the Islamic Republic of Iran, consisting of representatives of the relevant agencies, intended to present a complete report on the measures taken, but due to the opposition of the four States to conduct functional negotiations free from any prejudice and accusations, the report was not presented. According to this statement, the Iran had completed all the tasks that the rules of international law regarding air accidents have imposed on the country where the accident occurred in the shortest possible time, such as reading the black boxes of the aircraft with the participation of the relevant States, publishing the final technical report of the accident in Persian and English for public, investigating the charges of the accused, and paying \$15,000 to the family of each victim. According to the Iran statement, at the end of this meeting, the delegation of the Islamic Republic of Iran emphasized the continuation of interaction and dialogue as a principled position and declared its readiness to conduct negotiations focused on results.

*Abdollah Abedini*

## HUMAN RIGHTS

### Implementation of Human Rights Treaties in Judicial Decisions

#### *Judgment of the Appeal Court of Mazandaran Province*

According to Article 1133 of the Iranian Civil Code, a man has the right to apply for divorce by complying with the conditions stipulated in the Code. In addition, following an amendment on 19 November 2002, women were also granted the right to request a divorce under specific conditions outlined in Articles 1119, 1129, and 1130 of the Civil Code. Historically, the husband's right to initiate divorce at any time has been recognized in Iranian law. However, legal scholars have long debated and criticized the way this right has been

exercised, particularly when implemented without considering the broader circumstances of married life or its impact on the wife and children. In many cases, the application of this right – simply because it does not contradict the law – has led to significant hardships for families.

The present case, decided by the Appeal Court of Mazandaran Province (Division No. 11, 20 December 2023, Case No. 140247920000883457, Verdict No. 140274390008878326), illustrates a departure from this traditional interpretation. The judges reviewed an appeal against a ruling by Branch 4 of the Sari Family Court, which had issued a certificate of impossibility of reconciliation (divorce). However, the Appeal Court overturned this ruling, linking divorce provisions to human rights considerations, particularly the rights of persons with disabilities and the right to health and well-being.

In their reasoning, the judges acknowledged that while Article 1133 of the Civil Code grants men the right to divorce, the specific circumstances of this case required special consideration. The couple had been married for 55 years and had four children, two of whom – Mr. H (52) and Mrs. F (42)—suffered from severe physical and mental disabilities. These children required continuous care, which necessitated the cooperation and involvement of both parents. The judges highlighted that the Civil Code emphasizes the responsibility of spouses to support each other and contribute to family stability and child-rearing.

The court also referred to key international human rights instruments related to the rights of persons with disabilities, including the Universal Declaration of the Rights of Persons with Mental Retardation (1971), the Declaration of the Rights of Persons with Disabilities (1975), and the World Programme of Action for Persons with Disabilities (1982). Over time, international perspectives have shifted from a compassion-based approach to a rights-based approach, emphasizing the fundamental rights of disabled individuals. Iran, having ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2009, incorporated its provisions into domestic law under Article 9 of the Civil Code. Furthermore, Iran enacted the Law on the Protection of Persons with Disabilities in 2018, reinforcing the state's obligations toward disabled individuals.

Based on these legal frameworks, the judges stated: *“A disabled person is not merely someone in need of pity, but an individual with rights equal to those of all human beings.”* Given that the children in question were born from the couple's marriage and had severe disabilities, they were entitled to protection, and the parents had a legal and moral obligation toward their well-being. As the children's legal guardian, the father bore a greater responsibility for their care, and granting a divorce in these circumstances would expose them to serious risks.

The judges further referenced the Committee on the Rights of Persons with Disabilities' General Comment No. 1 (2014), which emphasizes that all decisions affecting individuals with disabilities must prioritize their best interests. In this case, the appellant (the father) had failed to present any alternative arrangements ensuring the continued care of his disabled children.

In their third argument, the judges cited various legal, religious, and constitutional sources, including verse 14 of Surah Mominun and verse 70 of Surah Israa from the Holy Quran, the Preamble of the Iranian Constitution, Article 1 of the CRPD (2006), and the Preamble of the Universal Declaration of Human Rights (1948). These texts affirm the principle that individuals with disabilities deserve special protection due to their vulnerability. The judges argued that, given the couple's long-standing marriage, continued cooperation between the spouses was essential for the well-being of their disabled children. Allowing the divorce to proceed would disrupt the children's support system and contradict both domestic and international human rights principles.

The court further reasoned that while the Civil Code grants the husband the right to divorce, exercising this right in the given circumstances would be an abuse of right, conflicting with both domestic and international human rights standards as well as Article 40 of the Iranian Constitution. The judges emphasized that, at an advanced stage of life, separating the wife from her children was not only socially unacceptable but also against public conscience. Moreover, the emotional and physical separation of the disabled children from their mother would likely exacerbate their conditions, further violating their right to health and hygiene, as protected under Article 25 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Iran ratified without reservations in 1976.

Additionally, the judges highlighted the impact of cultural and religious factors on post-divorce interactions. In Iran's traditional and religious context, divorced couples typically do not maintain close relations. This reality would make it difficult for the parents to collaborate in caring for their disabled children. The CRPD also mandates that member states avoid any measures that negatively affect persons with disabilities, and in this case, granting a divorce would directly contradict that obligation.

Another key point raised by the court was the state's duty to preserve and support the family. According to Principles 10 and 21 of the Iranian Constitution, Article 9(1) of the ICESCR (1966), and Article 22(1) of the International Covenant on Civil and Political Rights (ICCPR) (1966), protecting the family is a fundamental obligation of the state and judiciary. As representatives of the judiciary, domestic court judges are therefore required to refrain from actions that would reduce protections or services for persons with disabilities.

In its final argument, the court addressed the conflict between two fundamental rights: the husband's right to divorce and the right of severely disabled individuals to support and care. Citing the Tehran International Conference on Human Rights (1968) Declaration and the Vienna Declaration and Programme of Action (1993), which affirm the indivisibility of human rights, the judges stressed that all human rights must be considered equal. Furthermore, they referenced the International Court of Justice's (ICJ) precedent, which prioritizes human rights standards over conflicting domestic laws.

Ultimately, the judges concluded that the rights of persons with disabilities take precedence over the husband's right to divorce. Given the weight of domestic and international legal instruments, as well as ethical considerations, the court overturned the appeal and annulled the initial divorce ruling.

*Mona Karbalaye Amini*

*The Directive of November 2023 on "Referring to International Human Rights Conventions in Judicial Decisions"*

Considering that one of the key issues in the implementation of international law is the role of domestic courts in developing and enforcing international legal obligations, the International Affairs Department of the Judiciary issued a directive on 29 November 2023, titled "*Directive on Referring to International Human Rights Conventions in Judicial Decisions*", to align domestic judicial decisions with the international human rights obligations of the Islamic Republic of Iran. This directive comprises six clauses, as follows:

The first clause obliges judges to exercise diligence and precision in ensuring that no domestic laws conflict with human rights obligations.

The second clause stipulates that only human rights conventions ratified under Articles 77 and 125 of Iran's Constitution may be invoked in domestic courts.

Clauses three and four emphasize that references to human rights conventions in judicial decisions must not be merely symbolic. Rather, they should be grounded in a commitment to precision, reasoning, and proper documentation. Furthermore, broad interpretations of these conventions' provisions that conflict with Sharia law, the Constitution, or domestic laws must be avoided.

The fifth clause explicitly prohibits judges from referring to customary law, doctrines, *ex aequo et bono*, General Assembly and Security Council

resolutions, or international conventions not binding on Iran, as these are not defined as “conventions.”

The final clause highlights the necessity for judges to consider Iran’s reservations to human rights conventions when invoking them.

The issuance of the *Directive on Referring to International Human Rights Conventions in Judicial Decisions* represents one of Iran’s steps toward adhering to and implementing human rights conventions. It implicitly requires judges to take international obligations into account in their adjudication.

*Mahnaz Rashidi*

***District Court of The Hague Judgment of 15 November 2023 in Favour of Iranian Nationals Regarding Chemical Weapons***

On 15 November 2023, the District Court of The Hague delivered a judgment in a case addressing allegations of liability against two Dutch companies, Otjiaha B.V. (formerly Melchemie) and Forafina Beleggingen 1 B.V. (formerly KBS Holland). The court ordered Forafina Beleggingen 1 B.V. to compensate five Iranian nationals who suffer from severe injuries resulting from Saddam Hussein’s chemical weapon attacks during the Iraq-Iran war (1980–1988). (District Court, case no. C/09/621323/HA ZA21-1041 + C/09/624251/HA ZA 22–93, 15 Nov. 2023).

These individuals had been exposed to mustard gas, leading to chronic health issues. During the Iran-Iraq war, mustard gas and other chemical weapons were deployed by Iraq, particularly in attacks near Jofeyr (1984), Sumar (1986), and Abadan (1986). The plaintiffs alleged that Otjiaha and Forafina supplied thionyl chloride and other chemical substances to Iraq between 1982 and 1984. These chemicals were used in the production of mustard gas. The plaintiffs claimed that the companies, along with Otjiaha’s director, knew or should have known that the materials would be used in chemical weapons and, therefore, were liable for their injuries.

Attorneys representing Otjiaha and its director argued that they could not have reasonably known about the misuse of thionyl chloride, a chemical with legitimate industrial applications, such as in agriculture and plastics manufacturing. The court accepted the defense, emphasizing that during the early 1980s, it was not widely known that Iraq was using mustard gas in its war against Iran. Furthermore, it highlighted that at the time, the Dutch government was supporting trade with Iraq, and there were no export restrictions

on thionyl chloride. Finally, the court concluded that Otjiaha and its director lacked the required knowledge or intent for liability. As a result, the allegations against them were dismissed.

However, Forafina Beleggingen 1 B.V. did not appear in court to defend itself. Thus, based on the evidence presented by the plaintiffs, the court found sufficient grounds to hold Forafina liable for the damages. Given that the firm was absent from the proceedings, the exact amount of compensation to be paid has not yet been determined.

This ruling reaffirms that companies can be held liable for their actions and decisions supporting the use of weapons of mass destruction, even if they are not directly involved in their deployment. While the compensation amount in this case is yet to be determined at a later stage, the decision serves as a reminder of the long-lasting impact of chemical weapons and the necessity of preventing their use in the future. The judgment may lead to a broader trend toward ensuring corporate accountability for involvement in human rights violations worldwide.

*Mahshid Ajeli Lahiji*

## INTERNATIONAL HUMANITARIAN LAW

### Protection of Individuals under International Humanitarian Law

#### *Humanitarian Demining*

On the occasion of International Day for Mine Awareness and Assistance in Mine Action, 4 April 2023, the head of Iranian Mine Action Center outlined its activities and emphasized that, given its vast expertise in the field, Iran is eager to expand collaboration with countries and international organizations, especially in training and operational initiatives.

The Iranian Mine Action Center held a workshop for military attachés from more than 19 countries, covering demining methods, land remediation processes, and handling various explosive hazards.

#### *Refugees and Asylum Seekers*

On the occasion of the Global Refugee Forum organized by UNHCR, Iran provided an update on its efforts to support asylum seekers. The country highlighted that it currently hosts over five million Afghan refugees, making it one of the largest refugee-hosting nations. Despite receiving minimal international aid and facing significant challenges, Iran emphasized its ongoing provision

of essential services to Afghan refugees for over 40 years. Iran affirmed that it offers free education and training to all Afghan students, with approximately 670,000 Afghan children enrolled in schools, including 3,700 with special educational needs. Additionally, more than 33,000 Afghan students are currently attending Iranian universities. In response to recent Taliban restrictions, Iran has facilitated the process for Afghan women and girls to obtain visas, enabling them to continue their education in Iran (Statement by before the Global Refugee Forum, 13 December 2023, see also Statement Before UN Security Council Briefing on “Situation in Afghanistan”, New York, 8 March 2023).

### *Gaza*

Iran condemned frequently the attacks on civilian and civilian structures in Gaza as a flagrant violation of IHL.

The Tehran International Conference on Palestine held in December 2023 highlighted serious concerns about the ongoing conflict, emphasizing violations of IHL in Gaza, including the widespread destruction of infrastructure, including hospitals, schools, and essential services, which has exacerbated the humanitarian crisis. The use of prohibited weapons like phosphate bombs and cluster munitions, as well as the targeting of civilians, medical personnel, and aid workers, are gross violations of IHL. These actions, including the forced evacuation of residents and denial of humanitarian aid, have been condemned as war crimes, ethnic cleansing, and crimes against humanity. Calls were made for international legal bodies like the ICC to prosecute these violations, urging the end of the occupation and the recognition of Palestinians’ right to self-determination. The conference underscored the urgent need for international intervention to halt the violence, with a focus on lifting the siege, providing unrestricted humanitarian aid, and preventing forced displacement. It also criticized Israel’s illegal settlement policies and demographic changes in Palestinian territories, which contravene IHL.

Iran voted in favor of General Assembly’s request to the International Court of Justice (ICJ) in a resolution adopted on 30 December 2022, (A/RES/77/247) for an advisory opinion on the legal consequences of Israel’s ongoing violation of the Palestinian people’s rights to self-determination, as well as its prolonged occupation, settlement, and annexation of Palestinian territory.

### *Civilian Objects*

In the report submitted by the Secretary General’s on the implementation of the Security Council Resolution 2631 (2022) on progress made towards fulfilling the mandate of the United Nations Assistance Mission for Iraq (UNAMI), “one attack on a school by the Iranian Islamic Revolutionary Guard Corps”,

has been reported. Iran, in a letter dated 6 February 2023 to the President of the Security Council and UN Secretary General, rejected this statement and affirmed its adherence to international humanitarian law.

### *Protection of Children in Armed Conflict*

According to the Report of the Secretary General on “Children and Armed Conflict” (A/77/895-S/2023/363, 5 June 2023), two children were targeted in Iraq by the Revolutionary Guard Corps of the Islamic Republic of Iran. (para 73). On the occasion of Open Debate on Children and Armed Conflict on 5 July 2023, Iran rejected this assertion by stating that “Iran has consistently fulfilled its commitments under international humanitarian law, and Iran’s anti-terrorist efforts have always been conducted in strict accordance with international law and with full respect for international humanitarian law.”

In the same statement, Iran reiterated the crucial role of IHL in safeguarding children, emphasizing that “Ensuring the protection of children in armed conflicts demands a multifaceted approach that includes several key aspects. Firstly, putting an end to ongoing conflicts and preventing their resurgence is essential. This requires the full and effective compliance of all conflicting parties with international humanitarian law, which sets forth guidelines for the protection of civilians, including children.”

### *Situation in Ukraine*

Iran in its statement before the General Assembly on the draft resolution entitled “Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine” reiterated its position on the respect of IHL by all parties to the armed conflict “including taking constant precautions to protect civilians and critical infrastructure and facilitating safe and unfettered access to humanitarian aid for those in need” (Statement dated 22 February 2023. It is worth adding that Iran abstained from voting on this resolution).

In regard to the assertion by Ukraine that Iran transfers unmanned aerial vehicles (UAVs) for use in the war in Ukraine, Iran rejected such assertion by stating that it has taken “impartial position on the conflict in Ukraine” (Statement dated 12 June 2023 to the President of the Security Council and UN Secretary General, as well as 27 June 2023).

### *Open-Ended Working Group on Conventional Ammunition*

On the occasion of the fourth substantive session of the Open-Ended Working Group (OEWG) on Conventional Ammunition, established under General Assembly resolution 76/233, Iran reaffirmed its commitment to working constructively with the OEWG. Iran also shared its proposals on the draft updated

outcome, which included: “equal emphasis on security and safety aspects, balanced representation of the views of all member states, due consideration of their respective red lines, and a commitment to the specificity and inclusiveness of the OEWG.” Additionally, Iran stressed the importance of avoiding any wording that could imply a contradiction to the voluntary nature of the text.

### *Missing Persons*

From 19 to 22 November 2023, Iran hosted a meeting of the technical workgroup of the tripartite mechanism between the Islamic Republic of Iran, the Republic of Iraq, and the International Committee of the Red Cross to determine the fate of the missing and human remains of the Iran-Iraq war of 1980–88, signed between the parties in 2013. During the meetings of the technical workgroup between the representatives of the Iranian and Iraqi delegations (consisting of the representatives of the relevant institutions from the two countries responsible for the implementation of the search and recovery operations) under the supervision of the International Committee of the Red Cross, they discussed and consulted about the technical aspects of strengthening and expanding operational cooperation regarding search and recovery operations.

Iran voted against the General Assembly Resolution Establishing Independent Institution on Missing Persons in Syria adopted on 29 June 2023. Iran voiced regret that the Syrian Government was not consulted at any stage of the process, adding that the instrumentalization of the United Nations undermines its credibility as an international body established to protect and promote its goals through dialogue and international cooperation. Iran, however, encouraged “the Government of the Syrian Arab Republic to strengthen its cooperation with the International Committee of the Red Cross in consideration of the question related to missing persons” by finalizing a bilateral memorandum of understanding between the Syrian Government and ICRC.

### *Judicial Proceedings into Downing of Ukrainian Airline, Flight 752*

After a total of 20 court sessions, the Second Military Court of Tehran issued its verdict. The court’s ruling focused on the actions of the first defendant, the commander of the TOR-M1 defense system, who fired two missiles at Ukrainian flight PS752.

The court found that the first defendant’s actions, based on a mistaken belief that the target was hostile, led to the shooting down of the passenger plane. The defendant was convicted of manslaughter for the deaths of the passengers and sentenced to three years in prison. Additionally, due to the consequences of his actions and the cancellation of a prior order, he was sentenced to an additional 10 years, bringing the total sentence to 13 years of imprisonment.

The defendant was also ordered to pay compensation (diya) to the victims' families and additional supplementary penalties.

Other individuals involved in the incident were also convicted for their roles. Defendants, including personnel from the TOR-M1 defense system, the command post, and various commanders, received sentences ranging from one to three years in prison. The court also ordered additional supplementary penalties for these individuals. Moreover, the military prosecutor's office was instructed to continue its investigations into potential further culpable parties. The first-instance court's decision was subject to appeal.

While some of the plaintiffs withdrew from the proceedings, citing a complete lack of transparency, the families of other victims decided to file an appeal. Following the appeal, the case was referred to the Supreme Court.

*Katayoun Hosseinnejad*

## USE OF FORCE

### Responses to Threats and Attacks

#### *Confrontations between Iran and Israel*

In 2023, as in previous years, Israeli authorities threatened Iran in their speeches, while Iran continued to address the Security Council, emphasizing that such statements violate the United Nations Charter and international law. Iran consistently warned against this behavior and repeatedly stated that: "Iran reserves its legitimate right, in accordance with international law and the Charter of the United Nations, to respond to any threat posed by the Israeli regime and protect its people, as well as national security interests, at any time it deems appropriate" (See e.g.: S/2023/9, 3 January 2023; S/2023/165, 2 March 2023; S/2023/672, 14 September 2023; S/2023/697, 26 September 2023).

Iran also continued to submit reports and correspondences to the Security Council regarding the alleged Israeli attacks on its territory. For example, on 1 February 2023, Iran reported that: "on Saturday, 28 January 2023, [...] an attempt was made to launch a terrorist attack against a workshop complex of the Iranian Defense Ministry in the city of Isfahan using three micro aerial vehicles. Fortunately, Iran's air defence system was able to intercept and bring down two of the drones, effectively thwarting the attack. Early investigations suggest that the Israeli regime was responsible for this attempted act of aggression" (S/2023/78, 1 February 2023).

On 5 April 2023 Iran reported to the Security Council that: “two Iranian military advisers, Major Milad Heidari and Captain Meqdad Mahqani Jafarabad, who served as advisers to Syrian forces fighting terrorism, were martyred in the recent Israeli regime terrorist attacks launched on Damascus and its suburbs on 31 March 2023” (S/2023/250, 5 April 2023). Iran asked for decisive action by the Security Council and declared that: “it will not hesitate to take the necessary measures, in accordance with international law and the Charter of the United Nations, to respond decisively to any threat or attack posed by the Israeli regime and to defend its security and national interests, as well as to protect its people” (Ibid. See also: S/2023/1039, 28 December 2023).

Following the October 7, attack by Hamas, Israel submitted a letter to the Security Council, stating that: “Hamas is a murderous Islamist terrorist organization which follows the same Jihadist genocidal ideology of ISIS and whose only purpose is to destroy the State of Israel and its people. The terrorist organization is directed by the Ayatollah regime in Iran, which proactively promotes terrorist activity in Israel and against Israeli and Jewish targets all over the world. Iran supports and finances Hamas and other terrorist organizations in Gaza, providing various weapons to the terrorist organization, which were brutally turned against innocent Israeli civilians today” (S/2023/742, 9 October 2023).

Iran denied the allegations against it and stated that: “the Islamic Republic of Iran categorically and explicitly rejects any unfounded claim about its involvement in Palestine’s response to Israeli occupation and aggression. The recent decisions and measures taken by Palestine’s resistance groups are solely determined by the Palestinians themselves and are firmly rooted in the fundamental principle of self-determination” (S/2023/764, 13 October 2023). Iran further maintained that: “the international community unambiguously recognizes that the Palestinian people have endured 75 years of relentless aggression, violence, racial discrimination and apartheid policies imposed by the Israeli regime. The occupation of their land persists, marked by city blockades, property and farmland destruction and confiscation, and the forced displacement of residents from their homes. These persistent atrocities blatantly violate the peremptory norms of international law, including the unequivocal prohibition of acquiring territory through force, the inherent right to self-determination and the prohibition on racial discrimination and apartheid, which stand as blatant evidence of such occupation. It is regrettable that the international community’s response to these severe violations has fallen short in holding those responsible accountable” (Ibid).

In another letter to the Security Council, Iran reacted to the Israeli army’s threat to use nuclear weapons against Gaza: “the use or even the mere threat

of nuclear weapons, irrespective of the circumstances or the responsible party, constitutes a flagrant violation not only of international law but also of the fundamental principles enshrined in the Charter of the United Nations, especially Article 2 (4)" (S/2023/846, 7 November 2023).

Iran continued to communicate with the Security Council to express its concerns regarding the humanitarian situation in the Gaza Strip due to the ongoing war (See e.g.: S/2023/847, 8 November 2023; S/2023/854, 10 November 2023). With respect to Palestinians right to self-defence, Iran stated that: "the right to self-defence is an inherent right clearly recognized in the Charter of the United Nations and under international law. Being deprived of their fundamental right of self-determination and subjected to continuing aggression and rights abuses, the Palestinian people are fully entitled to defend their rights and dignity and to resist against occupation and aggression. The Palestinian people do not require authorization or instruction from any party to exercise this inherent right; the Palestinian people's resistance movement is mature and independent enough. Given the Palestinians' eight-decade-long endeavour, bravery, pain and suffering in living under brutal occupation, they are able to master their own choices, make their own decisions and decide on when, where and how to fight for their legitimate and lawful cause. No gaslighting can ever change the pure fact that the "Al-Aqsa Storm" operation symbolizes the Palestinian people's spontaneous collective urge to defend their inherent rights and human dignity against occupation and is a genuinely natural response to endless oppression and aggression by the occupiers" (S/2023/854, 10 November 2023).

Israel also, in its letters to the Security Council, referred to attacks by Hezbollah and other groups in southern Lebanon and stated that: "these organizations continue unabated to strengthen their military presence and capabilities and amass new and sophisticated weapons with the direct aid, support and guidance of Iran. Just recently, the Shiite Iran -backed militia "Imam Hussein", originally deployed in Syria, has been transferred to south Lebanon in order to support Hezbollah's campaign against Israel. This is yet another clear sign of the Iranian destructive involvement in the region" (S/2023/867, 13 November 2023). In response, Iran observed that: "the Israeli regime sought to justify and cover up its ongoing violations of Security Council resolutions 1559 (2004) and 1701 (2006), its genocidal aggression against the innocent people of Palestine in the Gaza Strip and the West Bank, and its disruptive, vicious and terrorist actions in the region. Accordingly, its endeavours to shift blame onto Iran are entirely unfounded and lack any legal basis" (S/2023/950, 4 December 2023).

### *Clashes with the US*

On 28 March 2023, the US representative reported to the Security Council that: “the United States has undertaken precision strikes against facilities in eastern Syria used by militia groups affiliated with Iran’s Islamic Revolutionary Guard Corps that have perpetrated an ongoing series of armed attacks against United States personnel and facilities in Iraq and Syria [...] As has been previously reported, militia groups backed by the Islamic Revolutionary Guard Corps have perpetrated a series of attacks against United States personnel and facilities in Syria” (S/2023/227, 28 March 2023. See also: S/2023/877, 15 November 2023; S/2023/923, 28 November 2023; S/2023/1070, 29 December 2023).

Iran reacted to this letter and declared that the US is trying to: “legitimize its ongoing violation of international law in Syria by accusing Iran of supporting the so-called non-State militia groups. The allegations imputed to Iran in the letter are completely unfounded and categorically rejected” (S/2023/242, 3 April 2023). Iran also stated that: “the Syrian Arab Republic has consistently called upon the United States to put an end to its occupation and unlawful presence in Syria, and therefore the United States’ invocation of and reliance on the right to self-defence under Article 51 of the Charter of the United Nations to justify its armed attacks against civilian infrastructure in Syria is nothing more than an arbitrary and erroneous interpretation of Article 51 of the United Nations Charter that is untenable, invalid and devoid of any legal support. [...] The United States must stop its unlawful actions, end its illegal occupation and adhere to its international legal obligations, including the pertinent resolutions of the Security Council, which required all Member States to uphold and respect Syria’s national sovereignty, independence and territorial integrity. [...] The Islamic Republic of Iran reiterates, once again, its strong commitment to Syria’s national sovereignty, territorial integrity, unity and political independence. Iran’s presence in Syria is fully legal and is based on a formal request and consent from the Syrian government to provide assistance and support in the fight against terrorism. The Islamic Republic of Iran reserves its inherent right to self-defence under international law and will take decisive measures to protect its forces, interests and facilities from any threat or unlawful act perpetrated by the United States or others” (Ibid. See also Letter dated 31 March 2023 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council: S/2030/240, 5 April 2023. See also: S/2023/845, 7 November 2023; S/2023/853, 13 November 2023). It is worth mentioning that Iran repeatedly denied any “acts or attacks against United States military forces, whether in Syria or any other place” (See e.g.: S/2023/892, 20 November 2023; S/2023/953, 4 December 2023).

Following a statement by Jake Sullivan, the U.S. National Security Adviser, which Iran viewed as an implicit threat to use force against its peaceful nuclear facilities – framed through US support for the so-called recognition of Israel's freedom of action – Iran condemned the statement as a violation of international law and the United Nations Charter, particularly Article 2(4): “[...] it threatens to use force against the peaceful nuclear facilities of a State Member of the United Nations. Furthermore, such a statement not only implies the United States’ potential complicity in any future acts of terrorism or aggression carried out by the Israeli regime against Iran, including against its peaceful nuclear facilities, but also serves as an admission of responsibility by the United States for its role in assisting, facilitating and supporting Israel’s terrorist and sabotage operations against Iranian officials, scientists, civilians and peaceful nuclear facilities, thus requiring the United States to bear the consequences of such internationally wrongful acts, in accordance with international law” (S/2023/339, 12 May 2023). Iran further stated that it “reserves its inherent and legitimate right under international law to take all necessary measures to protect and defend its citizens, interests, installations and sovereignty against any aggression, including any terrorist, military or sabotage acts” (Ibid).

On 7 August 2023, the US representative in a letter to the Security Council declared that: “since 2021, Iran has interfered with the travel of at least 20 foreign-flagged commercial vessels, detaining 4 vessels this year alone. This includes attempts on 4 and 5 July 2023 by an Iranian Navy vessel to seize by force two oil tankers exercising freedom of navigation in the Gulf of Oman” (S/2023/588, 7 August 2023). In response, Iran rejected the claims raised by the US and stated that: “in fact, the United States that has consistently eroded and endangered navigational rights and freedoms in the Persian Gulf, the Sea of Oman and the wider domain of maritime security and international commerce. The United States’ persistent engagement in reckless and provocative actions, combined with its illegal military presence in the Persian Gulf region, ostensibly under the guise of “safeguarding navigation freedom” and “upholding maritime security”, conceals a disruptive agenda that genuinely jeopardizes both navigational freedom and maritime security. Furthermore, the United States’ continuous illicit activities are compounded by recent unlawful actions, such as the seizure of Iranian oil tankers and oil shipments in international waters and on the high seas. These actions blatantly defy established international law and contravene the principles enshrined in the Charter of the United Nations, thus posing a grave threat to freedom of navigation, maritime security and international commerce” (S/2023/609, 18 August 2023).

Iran further stated that: “the Islamic Republic of Iran reaffirms its commitment to the safety and security of innocent passage through the Strait

of Hormuz and its territorial waters. This resolute commitment is deeply ingrained in Iran's maritime long-standing policy, driven by a robust dedication to fulfilling international obligations and exemplified by the daily regular, safe and uneventful passage of countless commercial vessels and oil tankers through the Strait of Hormuz" (Ibid).

### *Iran and the Yemeni Houthis*

On 18 May 2023, the UK representative reported the Security Council that: "on 23 February 2023, in the Gulf of Oman, HMS Lancaster seized components for medium-range ballistic missiles that the United Kingdom assesses were being smuggled from Iran to the Houthis. The transfer of such missiles to the Houthis violates the arms embargo set out in paragraph 14 of Security Council resolution 2216 (2015) and the prohibition on the transfer of such items from Iran set out in paragraph 4 (a) of annex B to Council resolution 2231 (2015)" (S/2023/362, 18 May 2023).

This statement by the UK was faced with a reaction from Russia: "regarding so-called "evidence from HMS Lancaster maritime interdiction in the Gulf of Oman", we would like to underline that the accusations against Iran via their linkage to Security Council resolution 2216 (2015) are farfetched. The Russian Federation expresses its most serious concern over "interdictions", possibly staged, in the Gulf of Oman in January and February 2022 as well as in February 2023. There is no evidence of the affiliation of the vessels in question and their cargo with the Islamic Republic of Iran, as well as there is no clear indication that the missile components allegedly seized are of Iranian origin" (S/2023/373, 24 May 2023). Iran also reacted to this statement and rejected the accusations (S/2023/376, 25 May 2023).

Following the 7 October attacks, Israel in a letter to the Security Council, stated that: "another Iranian proxy terrorist organization, the Houthis, launched cruise missiles and unmanned aerial vehicles towards Israel. Rockets fired by the Houthis, Hamas, Palestinian Islamic Jihad (PIJ), Hezbollah and other terrorist groups frequently fall short, including hundreds of failed rocket launches fired by Hamas and PIJ, landing inside Gaza. These terror proxies of the Ayatollah regime implement a policy originating in Tehran, aiming to ignite a regional war" (S/2023/842, 7 November 2023. See also: S/2023/928, 30 November 2023).

Iran's response to this statement specified that: "these groundless accusations, as well as cynical efforts to link and attribute the actions of Palestinian resistance groups fighting against Israeli occupation and military aggression in occupied Palestine to the Islamic Republic of Iran, are categorically rejected as unfounded. As has been stated on numerous occasions, the decisions and

actions made by Palestinian resistance groups are independent, driven by their interests, and aligned with Palestinian aspirations. These actions are firmly grounded in their rights under international law, asserting their right to self-determination and self-defence against Israeli occupation and military aggression. Consequently, any attempt to shift blame or implicate Iran in these matters is unacceptable" (S/2023/869, 14 November 2023).

On another occasion the representative of Iran denied any delivery of weapons to Yemen: "my Government reiterates once more that it has not delivered any weaponry system to Yemen. Iran reaffirms its unwavering commitment to upholding its international obligations. This commitment is aimed at contributing to the restoration of peace and security in Yemen" (S/2023/987, 14 December 2023).

### *The War in Ukraine*

In 2023, the allegations against Iran with regards to Russian aggression against Ukraine continued by Ukraine and some members of the Security Council (See e.g.: S/2023/418, 9 June 2023; S/2023/581, 7 August 2023). Iran reacted to these statements and maintained that: "the accusations made against it regarding the use of unmanned aerial vehicles in the ongoing conflict in Ukraine are [...] completely unfounded" (See e.g.: S/2023/46, 18 January 2023; S/2023/362, 18 May 2023; S/2023/368, 23 May 2023; S/2023/376, 25 May 2023). Iran also declared that: "it is regrettable that Ukraine, at the behest of certain Western countries and the Israeli regime, continues to pursue a political agenda against Iran by making false claims that Iran is contributing to the conflict in Ukraine. Iran's impartial position on the conflict in Ukraine, as well as its principled opposition to war and destruction anywhere, remains unchanged. Iran strongly believes that the principles of international humanitarian law must be strictly observed anywhere and under any circumstances" (S/2023/429, 13 June 2023. See also: S/2023/683, 18 September 2023). Russia also denied the accusations and called them groundless (See e.g.: S/2023/628, 28 August 2023. See also: S/2023/736, 5 October 2023).

### *Iraqi Kurdistan Region*

Iran's military operations against the so-called "terrorist groups" in the Iraqi Kurdistan Region continued, facing objections from the State of Iraq, which accused Iran of violating its national sovereignty and territorial integrity (See Security Council Meeting Records, 2 February 2023, S/PV.9253). Iran rejected this allegation and observed that: "the Islamic Republic of Iran has exercised

its inherent right to self-defence under international law in order to protect its people, national security, sovereignty and territorial integrity from armed and terrorist attacks that were planned and backed by certain armed and terrorist groups based in the Iraqi Kurdistan region. The Islamic Republic of Iran acted in a manner that complied fully with international humanitarian law” (S/2023/90, 6 February 2023).

### *Terrorist Attacks against Iran*

On 8 July 2023, four members of the Jaish al-Adl group carried out an armed assault on Police Station 16 in the city of Zahedan. According to Iran: “the assailants terrorized the people present and tragically martyred two police officers, namely Lieutenant Ali Kikha and Private Mobin Rashidi. In an official statement, Jaish al-Adl has claimed responsibility for this heinous act” (A/77/964-S/2023/525, 14 July 2023). Iran called for the condemnation of the attack by the Security Council and declared that: “as a main victim of terrorism and a pioneer in the battle against terrorist groups in the region, remains resolute in its commitment to persevere in the fight against terrorism. This dedication stems from the crucial objective of safeguarding not only the security of the nations within the region but also the esteemed and illustrious nation of Iran from the imminent threats posed by these terrorist groups” (Ibid).

The Shah-e-Cheragh holy shrine in Shiraz was again attacked on August 13, 2023, by Daesh. Iran reported this attack to the Security Council and expressed regret that the Council remained silent regarding these incidents in Iran: “it is disheartening that the Security Council has chosen to remain silent in the face of this grievous incident. This silence is both disappointing and unacceptable, particularly considering the Security Council’s consistent recognition and reaffirmation of terrorism as a grave threat to international peace and security through its resolutions (Ibid).

On 15 December 2023, the Rasak police station in Sistan and Baluchestan Province was attacked by Jaish al-Adl group, resulting in the death of 11 Iranian police officers and the inflicting of critical injuries on 8 others. Iran in its letter to the Security Council condemned this attack and “calls on the Secretary-General and the Security Council to condemn the attack unequivocally and in the strongest terms possible” (S/2023/991, 15 December 2023).

*Pouria Askari*

## IRAN AND THE INTERNATIONAL LAW OF CYBERSPACE

### Iran and Principles of International Law of Cyberspace

The international law of cyberspace constitutes a particularly significant section of the State Practice Report, reflecting the growing relevance of this emerging area within the broader framework of international law. As a relatively recent topic, the legal dimensions of cyberspace have only recently begun to receive systematic attention in the practice of many States, including Iran. Given that this is the first time the subject is being addressed in Iran's Report, the section extends beyond the designated timeframe of 2023 to incorporate key developments from previous years.

#### *Statement of the General Staff of the Armed Forces of the Islamic Republic of Iran regarding the International Law of Cyberspace*

On 17 August 2020, the General Staff of the Armed Forces of the Islamic Republic of Iran issued a comprehensive statement addressing international law and cyberspace. This document, issued by the Cyber Command of the Armed Forces, serves as a strategic framework to safeguard Iran's sovereignty and counter multifaceted threats in the cyber domain. It emphasizes the necessity of aligning national policies with international legal principles to foster a just and secure cyberspace.

#### General Principles and Sovereignty in Cyberspace

The statement highlights the applicability of established international law to cyberspace, underscoring principles such as sovereign equality, prohibition of the use of force, and non-aggression. Iran advocates for a fair distribution of benefits and opportunities in cyberspace, emphasizing "access" and "equitable sovereignty" for all nations. Moreover, the document stresses the concept of shared but differentiated responsibilities, recognizing the varying technological capabilities of States while holding all accountable for responsible cyber practices. Central to Iran's position is the belief that territorial sovereignty extends to cyberspace, making any unauthorized intrusion into cyber infrastructure a violation of State sovereignty.

#### Non-intervention and Prohibition of Coercive Cyber Actions

Iran's Armed Forces strongly emphasize the prohibition of any form of interference in domestic affairs through cyber operations. This includes actions aimed at manipulating elections, disrupting critical infrastructures, or influencing public opinion to destabilize political, social, or economic order. Furthermore,

the statement categorically denounces coercive cyber measures – whether economic, political, or technical – as unlawful attempts to undermine a State’s sovereign rights. Such actions, it argues, contradict foundational principles of non-intervention and sovereign equality.

#### Cyber Attacks and the Use of Force

The statement provides a clear definition of cyber operations constituting the use of force. Any cyber activity causing physical damage to infrastructure, loss of life, or severe disruption to national security infrastructure is considered equivalent to conventional acts of aggression. It also sets a threshold for cyber-attacks to be classified as acts of war, asserting that when cyber activities against critical infrastructure reach the level of armed attacks, Iran retains its right to respond under international law through legitimate self-defence measures.

#### Capacity Building and Commitment to Peace

The statement concludes by addressing the importance of capacity-building initiatives in cyberspace, advocating for these efforts to be tailored to the socio-economic and cultural needs of individual States. Iran stresses that such programs should not be used as tools of intervention but rather as means to foster global cyber stability. While reiterating its commitment to peaceful coexistence in cyberspace, Iran asserts its determination to decisively counter any aggression or violation of its policies by States, groups, or individuals operating under State direction or support.

#### *Iran’s Contributions to the Open-Ended Working Group (OEWG)*

Iran has actively engaged in the Open-Ended Working Group (OEWG), offering numerous contributions throughout the process. These included formal statements on various dates in 2020 – 15 June, 17 June, 2 July, 1 October, 18 November, 19 November, 1 December, and 3 December – as well as feedback on the Zero and First drafts on 18 February 2021. Additionally, Iran submitted two working papers, one in September 2019 and the other in February 2020, which presented its comments on the initial pre-draft of the OEWG report.

#### International Law Applicable to the Use of Information and Communications Technologies (ICTs)

Iran emphasizes the need to adapt existing international law to the ICT environment, highlighting gaps that necessitate the development of new rules and norms. It criticizes the *status quo* maintained by countries prioritizing cyber dominance and calls for inclusive processes involving all States. Iran advocates

for clear, non-ambiguous legal frameworks respecting States' rights and responsibilities in ICT governance, aligned with UN Charter principles such as sovereign equality, peaceful dispute resolution, and non-interference. As a victim of cyberattacks, Iran underscores the urgency of preventing malicious ICT use through robust international legal mechanisms.

#### Rules, Norms and Principles for the Responsible Behaviour of States

Highlighting the significance of State sovereignty in the ICT domain, Iran emphasizes the rights and duties of member States in ensuring a secure and trustworthy digital landscape. It asserts that States bear the primary responsibility for ensuring a secure and trustworthy ICT environment. Accordingly, Iran underlines the principle of "State sovereignty" and the rights and duties flowing from it. Any agreements or regulations must align with the principles of the UN Charter, including respect for sovereign equality, peaceful settlement of disputes, prohibition of the use of force, and respect for human rights and fundamental freedoms. These principles must safeguard States' sovereignty, political stability, and socio-economic systems against external interference.

Iran stresses that the envisaged rules and norms should strengthen international security while preventing cyber conflicts and the legitimization of force within the ICT environment. Human rights in the ICT context should be balanced with societal values, public order, and State security, ensuring they are not misused to undermine sovereignty. Iran also advocates for balancing security and development, upholding the principle of "common but differentiated responsibilities" to enable equitable access to ICT-related technologies. Private sector actors and social media platforms should adhere to State rules, with mechanisms to hold them accountable. Serious international discussions are essential to create comprehensive and ethical rules to govern behaviour in the ICT domain.

In its February 2020 submission to the OEWG, Iran highlighted the importance of a comprehensive approach to establishing norms, rules, and principles for responsible State behaviour in the ICT environment. While the OEWG benefits from prior Group of Governmental Experts (GGE) groundwork, it has a mandate to refine and expand the existing 13 norms identified in Resolution 73/27. Iran proposed addressing ambiguities, refining terminology, and introducing changes to ensure inclusivity and address gaps. Iran insisted that no implementation efforts should begin until consensus is reached on a comprehensive list of norms.

Iran outlined specific norms to uphold State sovereignty and autonomy in ICT governance, including prohibiting the use of ICTs for coercive measures, intervention in internal affairs, or threats to territorial integrity. It advocated

holding private sector actors accountable for actions affecting national sovereignty and public order. Furthermore, Iran highlighted the need to prevent abuse of ICT supply chains and maintain a secure, development-oriented ICT environment.

Finally, Iran emphasized fostering a peaceful ICT environment by addressing issues such as the prohibition of cyber weaponization, offensive strategies, and misuse of ICTs for conflict. It called for States with offensive cyber capabilities to refrain from their use. Iran also stressed balancing human rights and fundamental freedoms with national security and public order in the ICT environment, arguing that this balance is essential for creating a fair, secure, and development-oriented ICT landscape that serves global peace objectives.

#### Confidence-Building Measures

Iran views confidence-building measures (CBMs) in the ICT environment as essential to fostering trust and enhancing international cooperation. The delegation emphasizes that CBMs should address the root causes of mistrust, particularly issues related to monopoly in internet governance and anonymity in cyberspace. Iran advocates for reforming the current internet governance system to establish a fair and inclusive framework that reflects the shared heritage of ICTs as the collective achievement of all nations. Moreover, Iran highlights the negative impact of restrictive and blocking measures imposed through ICTs, which not only hinder cooperation but also undermine the effectiveness of CBMs. Therefore, Iran calls for CBMs to target monopolization, prevent restrictive practices, and promote equitable access to ICTs while fostering mutual trust and transparency among States.

#### International Cooperation for Capacity-Building

Iran highlighted the critical role of collaboration in developing a secure, stable, and safe ICT environment. The delegation called for a level playing field where States can act responsibly, uphold their rights, and fulfill their obligations. Addressing technological, infrastructural, and informational gaps, Iran emphasized facilitating access to and transferring ICT-related knowledge and technologies. It criticized restrictive measures for undermining trust and security, posing challenges to capacity-building initiatives. Programs, it argued, must be demand-driven, aligned with the principle of “common but differentiated responsibilities” and tailored to meet States’ specific needs effectively.

#### *Iran’s Cybersecurity Sanctions as Response to U.S. and U.K. Cyber Interference*

In response to external cyber interference, Iran imposed recent sanctions targeting individuals and entities linked to cyber activities as a demonstration of

its commitment to defending its sovereignty. Under its law addressing U.S. violations of human rights and regional security, Iran sanctioned U.S. officials and institutions, including Anne Neuberger, the U.S. National Security Advisor for Cyber and Emerging Technologies, for alleged involvement in cyber operations against Iran on 27 October 2021. Similarly, on 19 October 2022, Iran imposed sanctions on British entities, such as the UK's National Cyber Security Centre, and individuals accused of supporting terrorism and cyber interference. These measures, including visa restrictions, asset freezes, and banking restrictions, reflect Iran's firm stance against foreign cyber aggression.

### *Contribution of the Islamic Republic of Iran to the Global Digital Compact*

#### Favourable Cyberspace as Described in Iran's View

Iran, in its contribution in April 2023, declared that it envisions a favourable cyberspace as one that respects State sovereignty within a regulated global ecosystem, supported by lawful and ethical principles under a fair and transparent legal framework. It emphasizes a just, multipolar, and multilateral governance structure that ensures equal participation of all nations and incorporates stakeholder consultations. Cyberspace should be secure, stable, peaceful, and development-oriented, free from violence and harm, while promoting inclusivity and equitable access to communication resources for all, ensuring connectivity and fostering global cooperation and peace.

#### State's Sovereignty

Iran's perspective on ensuring cyberspace sovereignty emphasizes the right of States to operate their digital environments in accordance with national laws, encompassing jurisdiction over infrastructures, data, and related activities within their territories. It highlights the need for protection against external threats, including cross-border attacks and foreign interference, to safeguard national values and interests. Iran advocates for frameworks to strengthen national sovereignty, independent and interoperable networks for cooperative governance, and accountability mechanisms for technology companies to respect user rights and national sovereignty. Additionally, it calls for reforms in internet governance to ensure equal participation of all nations and address cyber threats effectively.

#### Legal and Ethical Frameworks in Cyberspace

Iran prioritizes the creation of governance systems that reflect national values and laws, emphasizing the safeguarding of privacy, data protection, and

cultural diversity. It advocates for preventing monopolistic practices, promoting fair competition, and respecting cultural, ethical, and religious values in digital infrastructure and services. The framework also highlights user empowerment through education, accountability and transparency from all actors, particularly cross-border service providers, and the protection of family values, including safeguarding children's rights. These measures aim to create a balanced digital environment that respects national sovereignty and societal ethics.

#### Accountability of Technology Companies

From Iran's perspective, technology companies hold significant responsibility for the content they manage, including addressing issues like misinformation, harmful material, and incitement to violence. Companies must comply with national laws, respecting the sovereignty and legal frameworks of the countries where they operate. They are expected to protect user rights by safeguarding personal data and ensuring privacy, collaborate with governments to address cybersecurity threats, and maintain transparency in their operations, including data handling and algorithms. Ethical standards aligning with cultural and social values are emphasized, alongside a joint responsibility with governments to ensure a secure digital ecosystem and protect critical infrastructure.

#### Unilateral Coercive Measures

Iran strongly opposes unilateral coercive measures, labelling them as violations of international law and barriers to technological and economic progress. The country advocates for the removal of such measures, promoting multilateralism in internet governance and fostering international cooperation to support affected nations. Iran emphasizes the need for protective legal frameworks and capacity-building programs aligned with national development goals, ensuring resilience against these measures and enabling technological and economic advancement free from external pressures.

#### Human Rights in Cyberspace

In the realm of cyberspace, Iran underscores the necessity of aligning digital development with the protection of human rights and respect for State sovereignty. It underscores the importance of preserving cultural and linguistic diversity, safeguarding privacy and data protection through transparent regulations, and combating digital colonialism to ensure equitable access to digital resources. Iran promotes capacity-building initiatives to enhance digital literacy and highlights the adverse effects of unilateral coercive measures on human rights, calling for their removal to enable inclusive digital advancement.

### Data Protection

When it comes to data protection, Iran emphasizes the critical importance of national data sovereignty, advocating for localized data management under national legal frameworks. It highlights the need for clear legal frameworks to govern data processing, ensuring lawful handling and protecting privacy. The approach includes protecting digital assets, such as cultural heritage, promoting transparency and accountability in data practices, and supporting regulated cross-border data flows that safeguard privacy and security. Iran also stresses the importance of capacity-building initiatives to enhance data protection skills and opposes monopolization in the digital space to ensure fair access and user rights.

### Regulation of Artificial Intelligence

In its approach to regulating artificial intelligence (AI), Iran emphasizes adherence to international laws and the principles of the UN Charter, alongside respect for national sovereignty in controlling data for AI technologies. The country advocates for protecting users' rights, ensuring ethical and peaceful uses of AI, and prioritizing health and safety considerations. Iran underscores the importance of accountability, transparency, and explainability in AI systems, promoting fairness and preventing bias in AI processes and outcomes. This approach aims to align AI development with both national values and international standards to ensure responsible and beneficial deployment of the technology.

### Digital Commons as Public Goods

Iran's perspective on Digital Commons as Public Goods emphasizes the principles of fairness, justice, and equitable access to digital resources. It advocates for eliminating the digital divide to ensure equal opportunities and access to digital resources and services for all individuals and nations, regardless of background, within societal laws and values. Iran supports recognizing the public core of the internet as a global public good to promote shared benefits among nations. The country also underscores the importance of respecting national independence and digital self-determination, emphasizing the right of States to establish governance models aligned with their laws and public interests.

### Digital Security and Trust

Iran's approach to Digital Security and Trust focuses on creating a safe and reliable digital environment through key principles such as integrating safety and security by design in digital systems, ensuring transparency and traceability to enhance accountability and prevent misuse of anonymity, and fostering trust

in ICT infrastructure by adhering to accepted technical and security standards. It emphasizes establishing a fair and transparent accountability framework for all digital actors and respecting national laws and values in cyberspace governance. These principles reflect Iran's commitment to a secure, transparent, and accountable digital space that aligns with national sovereignty and promotes international cooperation.

## International Law of Cyberspace and Treaties

### *Iran's Cyber Diplomacy in Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes – Comments and Proposals on the Provisions of the Convention*

#### International Cooperation

On 30 June 2022, The Islamic Republic of Iran, in its document titled “Comments and proposals of the Islamic Republic of Iran on the provisions of the convention on countering the use of ICT for criminal purposes” emphasizes that international cooperation, a primary objective of the convention, should be approached by considering the specific challenges posed by the use of ICT for criminal purposes. Iran advocates for provisions that ensure reliable assistance and timely responses among State parties, recognizing the need for a secure and rapid-response international network to effectively combat crimes facilitated by technology. The country stresses the importance of adapting to the evolving methods of criminals and highlights the necessity of expeditious cooperation to address these challenges effectively.

#### Technical Assistance

The necessity of technical assistance is highlighted in Iran's comments and proposals as a fundamental aspect of the convention for addressing ICT-related crimes. The country advocates promoting, facilitating, and providing reliable technical assistance and capacity building, particularly for developing countries, to enhance their capabilities in addressing these crimes. Iran emphasizes that such assistance should be based on the specific needs and priorities of the requesting States and should

include material support and technology transfer. Additionally, Iran insists that the technical assistance provided must remain politically neutral to ensure its effectiveness in combating ICT-related crimes.

#### Preventive Measures

Iran calls for a holistic approach to crime prevention in its comments on preventive measures. This includes strengthening cooperation between law enforcement and private entities, such as service providers. Iran proposes that the convention should clearly outline the responsibilities of these service providers to implement appropriate measures aimed at preventing and reducing opportunities for ICT-related crimes. Moreover, it highlights that effective international cooperation, along with socio-economic development, is essential for enhancing crime prevention efforts. By fostering collaboration and sharing best practices, the convention can contribute to a safer environment and deter criminal activities, ensuring that justice is upheld.

*Habibeh Farajzadeh*

# State Practice of Asian Countries in International Law

*Japan*

*Kanami Ishibashi\**

## TERRITORY AND JURISDICTION

### Territorial Disputes – General and Specific Discussion of Particular Cases

#### *China-Japan Relations – China’s Moves in 2023 Aware of Effective Control and Signs of Partial Easing by 2025*

China’s stance on territorial issues remains very tough. Chief Cabinet Secretary Hirokazu Matsuno said at a press conference on 5 September that the 2023 edition of the “Standard Map” released by the Chinese government at the end of last month referred to the Senkaku Islands (Okinawa Prefecture) as the “Diaoyu Islands,” which China claims as its own territory, and added that Japan had lodged a protest through diplomatic channels and demanded the immediate withdrawal of the map.

China’s standard map claims almost all of the South China Sea. The Philippines and Vietnam, which are locked in disputes with China over territorial claims, have also criticized the map. In addition, since March 2023, Chinese coast guard vessels have been sailing in the territorial waters of the Senkaku Islands (part of Ishigaki City, Okinawa Prefecture), while activating their automatic identification system (AIS) to notify surrounding vessels of their presence. The Japanese Coast Guard has been on alert, suspecting that China is seeking to strengthen its effective control over the islands and increase its appeal to the international community.

Also in July 2023, a buoy was placed inside Japan’s exclusive economic zone (EEZ), which could also be seen as a demonstration of China’s effective control. However, this buoy was removed on 11 February 2025. By the end of 2024, efforts to improve relations between Japan and China, including the mutual easing of visa requirements, are progressing, and the removal of the buoys may be understandable in this context.

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Guo Jiajun, deputy director-general of the Chinese Foreign Ministry's Information Department, told a regular press briefing on the same day that the "oceanographic observation buoys" had "completed their operational tasks at their original locations." He justified their installation and removal of the buoys were "in accordance with Chinese domestic law and international law." While there has been some easing of tensions, such as the removal of the buoys, the fact remains that China continues to refer to the Senkaku Islands as the Diaoyu Islands and strongly asserts its sovereignty over them.

*Japan-South Korea Relations: Members of Parliament Land on Takeshima*

On 2 May 2023, South Korean lawmakers landed on Takeshima in Shimane Prefecture. The Japanese government strongly protested to South Korea, calling the move "extremely regrettable." According to the Ministry of Foreign Affairs, this is the first time South Korean lawmakers have landed on Takeshima since August 2021. Those who landed on Takeshima are believed to include a member of South Korea's main opposition Democratic Party, as well as fourteen party officials. The lawmaker posted photos on social media that appear to have been taken during the landing.

According to the Ministry of Foreign Affairs, this is the first time South Korean lawmakers have landed on Takeshima since August 2021. Those who landed on Takeshima are believed to include a member of South Korea's main opposition Democratic Party, as well as fourteen party officials. The lawmaker posted photos on social media that appear to have been taken during the landing.

Meanwhile, the Japanese government confirmed the landing of South Korean lawmakers on Takeshima and strongly protested by phone to Kim Yong-Gil, deputy ambassador at the South Korean embassy in Tokyo, through Funakoshi, director-general of the Foreign Ministry's Asian and Oceanian Affairs Bureau. Funakoshi stated, "Takushima is clearly Japan's inherent territory both historically and under international law, and we cannot possibly accept this. This is extremely regrettable," and urged that such incidents not be repeated. Regarding Japan-South Korea relations, Prime Minister Kishida had just announced that he would visit South Korea on 7 May 2023, and efforts to improve relations, including the resumption of "shuttle diplomacy" between the leaders of the two countries, had been accelerated. The Takeshima landing is seen as an action against this direction. This is the first landing on Takeshima by a South Korean member of parliament since August 2021.

## SOVEREIGN/STATE IMMUNITY

### Immunity of States from Jurisdiction

#### *Japan-South Korea Relations – Court Orders Japanese Government to Pay Compensation in Lawsuit Filed by Former Comfort Women*

In a lawsuit filed by former comfort women and others against the Government of Japan, the Seoul High Court on 23 November 2023, following the judgment of the Seoul Central District Court on 8 January 2021, denied the application of the principle of sovereign immunity under international law and ordered the Government of Japan to pay compensation to the plaintiffs. Japan states as follows:

This judgment, like the judgment of 8 January 2021, clearly violates international law and the agreements between Japan and South Korea and is deeply regrettable and absolutely unacceptable. Japan again strongly urges South Korea to take appropriate measures as a sovereign state to immediately rectify the situation of violation of international law.

On the same day, 23 November, Deputy Foreign Minister Masataka Okano met with South Korean Ambassador Yoon Deok-min to Japan and strongly protested that the Seoul High Court's judgment rejecting the application of the principle of sovereign immunity under international law and upholding the plaintiffs' claims in the appeal trial of the lawsuit filed by former comfort women and others against the Japanese government is deeply regrettable, and that the Japanese government categorically rejects this judgment.

Japan reiterates that the issues of property and claims between Japan and South Korea, including the comfort women issue, have been “resolved finally and irreversibly” under the 1965 Japan-South Korea Claims Settlement and Economic Cooperation Agreement. Furthermore, the “final and irreversible settlement” of the comfort women issue between the governments of Japan and South Korea was confirmed in the 2015 Japan-South Korea Agreement. Japan urges the South Korean government to take appropriate measures to rectify its violation of international law. By reference, the Agreement on the Settlement of Property and Claims Issues and on Economic Cooperation between Japan and the Republic of Korea (excerpt) is as follows.

Article 11 1. The Parties confirm that the problem concerning the property, rights and interests of the two Parties and their nationals (including

legal persons), and concerning the claims between the Parties and their nationals, including those provided for in Article IV, paragraph (a) of the Peace Treaty with Japan signed in the city of San Francisco on September 8, 1951, has been fully and finally settled.

3. Subject to the provisions of paragraph 2 of this Article, there shall be no dispute with respect to measures affecting the property, rights and interests of either Party and its nationals which are within the jurisdiction of the other Party on the date of signature of this Agreement, or with respect to claims of either Party and its nationals against the other Party and its nationals arising out of causes occurring on or before that date.

## INTERNATIONAL ENVIRONMENTAL LAW

### Environmental Protection through Law/Regulation

#### *The Role of Evacuation Plans in Preparing for Nuclear Accidents: the Important Implications Revealed by the Onagawa Nuclear Power Plant Litigation (First Instance, Sendai District Court, 24 May 2023)*

Preparations for nuclear accidents are based on the concept of “defense in depth,” which involves five levels of protection. Evacuation plans are positioned as the final “fifth layer” of defense in the event of a release of radioactive material.

Plaintiffs residing in Ishinomaki City, Miyagi Prefecture, filed a lawsuit against Tohoku Electric Power Company’s Onagawa Nuclear Power Plant, arguing that the evacuation plans for surrounding residents in the event of an accident at the nuclear reactor facility, created by Miyagi Prefecture and Ishinomaki City, lack practical effectiveness. They sought an injunction to halt operations of Unit 2 of the Onagawa Nuclear Power Plant, claiming that there is a concrete danger that their personality rights would be violated in the event of an accident resulting in abnormal release of radioactive substances.

The court ruled that the plaintiffs bear the burden of proving the existence of a specific danger of infringement of their personality rights, but since they have not made specific claims or provided evidence to that effect, there is no need to adjudicate on the individual issues regarding the effectiveness of the evacuation plan, and therefore, the request for an injunction cannot be granted.

Currently, oral arguments are being held in the appellate court. Unit 2 was restarted in October 2024.

## Role of International Law in Addressing Environmental Issues

### *A Major Turning Point in the Treatment of Radioactive Waste Stored since the 2011 Fukushima Nuclear Accident: Release of ALPS-Treated Water into the Ocean*

ALPS stands for Advanced Liquid Processing System, a “multi-nuclide removal facility” that removes various radioactive substances and purifies water. ALPS-treated water is water that has been treated by ALPS to remove all radioactive materials except tritium to levels that meet safety standards. Tritium is also significantly diluted with seawater prior to release to ensure that it meets safety standards. After dilution, the concentration of tritium is less than one-fortieth of the safety standards set by the Nuclear Regulation Authority (about one-seventh of the drinking water standard set by the World Health Organization). The total amount released is managed to ensure that it does not exceed 22 trillion becquerels per year, even after safety standards are met, so there is no concern about environmental or human health impacts.

The concentration of radioactive substances in the ALPS-treated water prior to release will be analyzed by the Tokyo Electric Power Company, as well as by the Japan Atomic Energy Agency (JAEA) and the International Atomic Energy Agency (IAEA) as independent third parties to ensure the objectivity of the data.

On 4 July 2023, the IAEA released a comprehensive report on the treated water accumulated at the Tokyo Electric Power Company’s Fukushima Daiichi Nuclear Power Plant, concluding that the plan to release the ALPS-treated water into the ocean is “consistent with international safety standards” and that “the radiological impact on people and the environment is negligible.”

The IAEA is committed to ensuring the safety of the ocean release of ALPS-treated water not only before, but also during and after the release, and has established an IAEA office at the Fukushima Daiichi Nuclear Power Plant, continued on-site activities at the release site, provided real-time data on the release to the international community, and continued additional verification and monitoring to provide transparency and reassurance to the international community. IAEA Director General Rafael Grossi also stated that the IAEA will remain involved until the last drop is released.

The first release began on 24 August and ended on 11 September (19 days), releasing 7,788 cubic meters. The second release began on 5 October and ended on 23 October (19 days), releasing 7,810 cubic meters (cumulative total of 15,598 cubic meters for the year). The third release began on 2 November and ended on 20 November (19 days), releasing 7,753 cubic meters (annual cumulative

total of 23,351 cubic meters). The fourth release began on 28 February and ended on 17 March (19 days), releasing 7,794 cubic meters (annual cumulative total of 31,145 cubic meters).

Following the first release, protests erupted in the Asia-Pacific region, and China instantly suspended all imports of seafood (including edible aquatic animals) from Japan.

Hong Kong also banned imports of all aquatic products (including live, frozen, chilled, dried or otherwise preserved aquatic products), sea salt and seaweed (including processed products) from 10 prefectures (Fukushima, Miyagi, Ibaraki, Tochigi, Gunma, Saitama, Chiba, Tokyo, Nagano and Niigata). Macau also banned imports of fresh food, animal products, sea salt and seaweed from the same region. South Korea and Taiwan have not imposed import bans in response to the release of treated water, but they have continued import restrictions imposed after the 2011 Fukushima Daiichi nuclear power plant accident. For example, South Korea has imposed import restrictions on Japanese food products as part of measures related to the Tokyo Electric Power Company's Fukushima Daiichi nuclear power plant accident. All seafood products from the eight prefectures of Fukushima, Miyagi, Iwate, Aomori, Gunma, Tochigi, Ibaraki, and Chiba have been banned since 9 September 2013. On 16 October 2023, Russia adopted measures similar to that of China.

## HUMAN RIGHTS

### Implementation of Human Rights Treaties (e.g., Domestic Laws and Institutions)

#### *2023 Immigration Law Reform and the Response from the International Society*

The 2021 amendment of Japan's immigration law was repealed, but an almost identical amendment was passed on 9 June 2023, and the revised Immigration Law took effect on 10 June 2024.

On 9 June 2023, the 211th ordinary session of the Diet passed the "Act for Partial Revision of the Immigration Control and Refugee Recognition Act and the Act on Special Measures Concerning Immigration Control for Persons who Renounced Japanese Citizenship under the Peace Treaty with Japan," which was promulgated on 16 June 2023 (Act No. 56 of 2023).

The revised law creates exceptions to the suspension of repatriation, establishes a system of criminal deportation orders, establishes an alternative supervision system to detention, establishes a certification system for "persons

subject to complementary protection,” and establishes an application procedure for a special residence permit. The establishment of a system for recognizing “persons subject to complementary protection” will take effect on 1 December 2023, and the establishment of exceptions to the effect of suspension of repatriation, the establishment of a penal deportation order system, the establishment of a supervision system in lieu of detention, and the establishment of application procedures for special residence permits, etc., will take effect on 10 June 2024.

The UN Human Rights Committee, in its findings of 3 November 2022, expressed concerns about the well-being of persons deprived of their liberty, including in immigration detention facilities, where three detainees died between 2017 and 2021. It expressed its concern that “detainees have been denied their procedural rights and called on Japan to ensure that all persons arrested or detained enjoy all basic legal safeguards, including access to a lawyer, contact with family and adequate medical care. Japan should also refrain from the use of prolonged solitary confinement and take all appropriate measures to ensure that immigrants are not mistreated.” In response to these findings, Japan indeed revised the law.

However, a letter dated 18 April 2023, was received from the Special Rapporteur of the UN Human Rights Council on the human rights of migrants and others regarding the Immigration Control Act Amendment Bill. The letter raised the following points:

- (1) Japan maintains the principle of detention, which may violate the International Covenant on Civil and Political Rights, which Japan has ratified and which states that “detention shall be the exception and liberty the rule;”
- (2) Although a new system called “supervision measures” has been established, under which individuals are not detained in facilities but live under the supervision of “guardians” such as family members or supporters until they are deported, the implementation of this system is left to the discretion of the Immigration Services Agency;
- (3) There is no limit on the duration of detention, no prohibition on the detention of children, and no judicial review of detention;
- (4) Provisions that allow for the forced return of individuals who have applied for refugee status three or more times may violate the fundamental principle of refugee protection, the principle of non-refoulement, which prohibits the return of individuals to countries where they face a risk of persecution.

Based on these points, the letter stated that Japan’s 2023 Amended Law remains inadequate. Subsequently, on 3 May of the same year, the Japanese government

submitted a letter to the Office of the United Nations High Commissioner for Human Rights, stating that the Japanese government “believes that the revised Immigration Control Act is appropriate and fully respects the human rights of foreign nationals.” It stated that

The Immigration Control Act Revision Bill submitted to the current Diet session aims to comprehensively address the problems arising under the current Immigration Control Act, including the problems of refusal of repatriation and prolonged detention, and to establish a system to ensure the protection of those in genuine need of protection facing humanitarian crises.

This bill not only seeks to adequately address the current situation surrounding immigration control, such as the reception of refugees resulting from the Russian Federation’s invasion of Ukraine, but also sincerely incorporates various comments received on the previous bill submitted to the Diet two years ago, and revises the aspects of the previous bill that required amendment.

### Specific Human Rights Incidents or Cases

#### *The Supreme Court’s First Ruling on a Lawsuit concerning the Workplace Environment for Sexual Minorities: 11 July 2023, METI Case concerning Restriction on Transgender People’s Use of Restrooms*

In this case, the plaintiff (appellant), whose biological sex is male, requested the National Personnel Authority (NPA) to take administrative measures such as allowing the free use of women’s restrooms, but the request was not approved, and she sought to annul the decision and to claim damages for the government’s response.

The first instance court ruled that the National Personnel Authority’s response was unlawful, and that revocation of the decision was inevitable. The court also ruled that the supervisor’s comment that “if you don’t want to have the operation, why don’t you go back to being a man” was unlawful, and awarded damages totaling 1.2 million yen, including damages for the restriction on the use of women’s toilets.

The second court ruled that the National Personnel Authority’s response and decision were legal, and that the supervisor’s statement was illegal, but reduced the compensation to 100,000 yen.

This judgment reversed and declared that the part concerning the request for revocation of the National Personnel Authority’s decision regarding the use of the restroom was illegal and dismissed the other parts of the judgment as not appealable.

The Supreme Court explains as follows.

The plaintiff has been diagnosed by a doctor as having a gender identity disorder, and under the treatment in question, he is forced to use the men's restroom, which is different from his self-identified gender, or the women's restroom, which is located two or more floors away from his office, and it can be said that he suffers a substantial disadvantage on a daily basis.

On the other hand, since the week following the meeting held on 14 July 2010 to explain the complainant's gender dysphoria to the staff of the department in which he works, the complainant has been working dressed in women's clothing, and etc. In addition, it appeared only that a few female employees felt uncomfortable using the women's restroom on the office floor, and there was no indication that any employees clearly objected to using the women's restroom on the office floor. Furthermore, there is no indication that during the approximately 4 years and 10 months between the briefing and the decision in this case, any investigation was conducted to determine whether or not there were other employees who should be given special consideration regarding the complainant's use of the women's restroom in the office building, and that a review of this treatment was considered.

According to the above, at the time of the decision in this case at the latest, it was difficult to assume that there would be any problems with the appellant's free use of the women's restroom in the government building, and the existence of other employees who should be given special consideration had not been confirmed; therefore, it must be said that there were no concrete circumstances that would cause the appellant to suffer the above-mentioned disadvantages due to this treatment. Thus, it is said that the decision of the National Personnel Authority on the part of the judgment placed undue emphasis on the consideration of other employees without taking into account the specific circumstances of the case, unreasonably disregarded the disadvantages of the appellant, and failed to make a decision from the perspective of fairness to all parties and the exercise and promotion of the efficiency of employees, including the appellant.

Therefore, this part of the judgment is unlawful as a deviation or abuse of discretion.

For reference, the current status of Genderless Restrooms (All-Gender Restrooms) in Japan is as follows: They are actively installed in educational institutions (e.g., International Christian University), public facilities (e.g., Yokohama Station), and commercial facilities (e.g., AEON MALL Okinawa Lycom). In addition, unisex restrooms are becoming more common in convenience stores. Gender-neutral toilets were installed in Tokyu Kabukicho Tower in Shinjuku in April 2023 but were renovated four months later after protests arguing that they were unsafe to use and a breeding ground for sexual crimes. These toilets, however, had problems with the layout in the first place, such as the sharing of hand-washing stations and places to wait for your turn.

*A Significant Ruling That Marks the Beginning of Changes in Refugee Recognition in Japan: the Case of a Lesbian Woman, Osaka District Court, 15 March 2023*

The plaintiff is a foreign national of Ugandan nationality who identifies as a lesbian. On 25 February 2020, she arrived at Kansai International Airport and presented an entry record to an immigration officer at the Osaka Immigration Bureau Kansai Airport Branch, stating her purpose of travel as “business” and her intended duration of stay in Japan as “six days,” but the application was rejected. After an oral hearing and an appeal, the plaintiff was ordered to leave Japan on 29 March and 1 March. However, since the plaintiff did not depart promptly, after undergoing a review, oral hearing, and objection, the plaintiff was issued a deportation order on 8 April 2020, with Uganda as the destination (“deportation order”).

On 4 March 2020, the plaintiff submitted an application for refugee recognition pursuant to Article 61(2)(1) of the Immigration Control and Refugee Recognition Act (“Immigration Act”) to the Minister of Justice, but on 2 April 2020, the Director of the Osaka Regional Immigration Bureau denied the plaintiff’s application. The Director issued a decision denying refugee recognition. Therefore, the applicant filed a lawsuit challenging this decision.

The Court ruled to revoke the decision and order refugee recognition on the following grounds:

Article 2(3)(2) of the Immigration Control Act defines refugees subject to the provisions of Article 1 of the Convention relating to the Status of Refugees or Article 1 of the Protocol relating to the Status of Refugees as refugees subject to the provisions of the Immigration Control Act.

The term “refugee” under the Immigration Control Act means “a person who is outside the country of his nationality and is unable to avail

himself of the protection of that country or is unable or unwilling to return to that country owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”

“Persecution” refers to attacks or oppression that cause suffering that is intolerable to a reasonable person, and is interpreted to mean the deprivation or suppression of life or physical freedom. In order to have a well-founded fear of persecution, it is not sufficient for an individual to have only a subjective fear of persecution. There must also be objective circumstances that would cause a reasonable person in the same circumstances to share that fear.

Refugee status is granted only if the facts supporting the aforementioned “persecution” and “well-founded fear” are established with respect to the applicant. The burden of proof is on the applicant (claimant), and there is little legal basis for significantly relaxing the standard of proof compared to general cases.

Whether the applicant’s status as a lesbian constitutes “membership of a particular social group” is examined.

In Uganda, Article 145 of the Ugandan Penal Code provides that persons who engage in carnal intercourse against the laws of nature are guilty of a felony and liable to life imprisonment. In addition, there has been legislative activity against homosexuality itself. Therefore, same-sex sexual conduct, even if consensual, is considered illegal in Uganda, and this suggests that same-sex acts themselves are considered illegal. Under these circumstances, it is appropriate to interpret that being a lesbian constitutes “belonging to a particular social group” as mentioned above. In Uganda, discriminatory attitudes towards homosexuals are deeply rooted and persist within state institutions such as the police. There is a possibility that Article 145 of the Ugandan Penal Code could be used to arrest individuals or that other laws could be used to arbitrarily detain them. If the applicant were to return to Uganda, there is a risk that she would be arrested, detained and subjected to violence by police officers on the grounds that she is a lesbian. Therefore, it can be said that there are objective circumstances that would cause a reasonable person in the applicant’s position to fear such violence.

Therefore, the applicant can be found to have a well-founded fear of persecution for being a lesbian.

In Japan, there was another case in 2004 in which a male Iranian national recognized by UNHCR as a mandate refugee was found not to qualify as a

Convention refugee, with the court ruling that “the risk of criminal prosecution for engaging in same-sex sexual acts in public is relatively low, and it cannot be said that there is a risk of persecution” (Tokyo District Court Decision, 25 February 2004). The appeals court, the Tokyo High Court, rejected the man’s appeal on 20 January 2005). The government recognized a foreign national as a refugee for the first time in 2008 on the grounds that he was at risk of persecution in his home country because of his homosexuality. The applicant was arrested by the police in his home country for engaging in homosexual acts, imprisoned for two years, and came to Japan on bail. He applied for refugee status, claiming that he was in danger of being arrested if he returned.

The Immigration Bureau noted that homosexual orientation is “a characteristic closely related to personality or self-identity and difficult to change. It acknowledged the risk of arrest upon return and found that the applicant fell under the Refugee Convention’s “well-founded fear of persecution on account of membership of a particular social group” provision.

As in this Ugandan case, Japan is also seeing changes in the recognition of refugees on the basis of homosexuality, taking into account the current situation in the international community. However, according to the Immigration Bureau, there have only been three cases in Japan where individuals have been granted refugee status on the basis of persecution for homosexuality: one who was imprisoned in his home country for engaging in same-sex relations, another who was shot by relatives for being “dishonorable,” and a third who suffered sexual assault to correct his sexual orientation.

Although there were only three cases (as of March 2023), on 4 July 2024, an African man persecuted for his homosexuality was granted refugee status. The court ruled that “there is a real risk that he would be harmed by his family if he returned to his home country. The country also has provisions that punish homosexuals, and it has been recognized that he cannot receive protection from the state,” finding that the man qualified as a refugee and ordering the government to revoke its earlier decision denying him status.

*Constitutionality of the Requirement of Gonadectomy for Gender Reassignment Supreme Court Ruling on the Change of Precedent from 2019: Supreme Court Judgment of 25 October 2023*

The appellant, who is biologically male but psychologically female, filed a petition for a ruling on the change of gender treatment under the Special Measures Law for the Treatment of Gender Identity Disorder (“Special Measures Law”) pursuant to Article 3(1) of the Special Measures Law. In relation to international law, at the time of the enactment of the Special Measures Law,

the majority of countries that had established procedures for changing the legal treatment of gender required the loss of reproductive capacity as a prerequisite for such a change. However, in 2014, the World Health Organization and others issued a joint statement opposing the loss of reproductive capacity requirement, and in 2017, the European Court of Human Rights ruled that this requirement violated the European Convention on Human Rights. As a result, many countries, particularly in Europe and the United States, have abolished the loss of reproductive capacity requirement.

The court ruled that the provision in question violated Article 13 of the Constitution and was therefore invalid and amended its previous decision of 23 January 2019. In Japan, it is extremely rare for the Supreme Court to rule that “a law is unconstitutional,” and this is only the twelfth of such cases. The lower court’s decision to reject the petition was found to have misinterpreted Article 13, and therefore the original decision could not be upheld. The case was referred back to the lower court for further consideration of the appellant’s arguments regarding the provisions not addressed in the lower court’s decision. The reasons are as follows:

1. Freedom from bodily interference against one’s will is clearly guaranteed by Article 13 of the Constitution as an important right related to personal existence. Gonadectomy is a surgical procedure involving the removal of the testes or ovaries, which poses a risk to life or physical integrity and has irreversible consequences. Therefore, if such a gonadectomy is enforced, it constitutes a significant restriction of the right to privacy.

In the present case, the provision in question requires that persons with gender identity disorder who do not require genital removal surgery as part of their treatment must, as a general rule, undergo such surgery in order to undergo gender reassignment procedures.

On the other hand, the right of persons with gender dysphoria to be treated in accordance with their legal gender identity is an important legal interest closely linked to the personal identity of an individual, since legal gender is treated as one of the fundamental attributes of an individual in various aspects of social life. This does not depend on whether or not individuals with gender dysphoria require gonadectomy as part of their treatment.

Thus, the provision at issue, by compelling persons with gender dysphoria who do not require gonadectomy as a treatment to undergo such surgery in order to realize the important legal interest of being treated in accordance with their gender identity under the law, constitutes a

restriction on the freedom from bodily interference. Such a restriction is impermissible unless it is necessary and proportionate in the light of the importance of freedom from bodily intrusion.

Whether the provision in question imposes a necessary and reasonable restriction and is therefore in conformity with Article 13 of the Constitution should be determined by balancing the extent to which the restriction is necessary to achieve the purpose of the provision, the content and nature of the freedom restricted, and the specific form and extent of the restriction.

2. With regard to the purpose of the provision in question, it is understood that it is based on considerations such as the fact that if a person who has undergone gender reassignment procedures were to give birth to a child by means of the reproductive functions of his or her previous sex, problems could arise in relation to parent-child relationships and possibly cause social disorder, and the need to avoid sudden changes in a society where biological sex has been used for a long period of time as the basis for distinguishing between men and women.

Restrictions on bodily integrity in the light of the above-mentioned medical advances impose a stark choice ... Furthermore, given that an increasing number of countries do not require the loss of reproductive capacity as a precondition for changing legal gender status, the imposition of such medically unreasonable restrictions to achieve the purpose of the provision in question constitutes an excessive restriction. The provision in question should be regarded as contrary to Article 13 of the Constitution.

On 10 July 2024, the Hiroshima High Court, which was ordered by the Supreme Court to hear the case as a remanded court, recognized the validity of the provisions of Article 3(5), but stated that if gender reassignment surgery is always required, there is a suspicion of a constitutional violation. In this case, the court recognized and finalized the individual's legal gender change without requiring him to undergo gender reassignment surgery.

*Condemnation of Discrimination against Patients with Hansen's Disease and Other Diseases Based on National Policy: Case Law on the Former Eugenics Protection Law*

In 2023, three High Court rulings were issued recognizing the State's liability to compensate victims who were subjected to forced sterilization under the former Eugenics Protection Law.

*Sapporo High Court Ruling, 16 March 2023*

The court ruled that the forced sterilizations under the former Eugenics Protection Law violated Articles 13, 14 and 24(2) of the Constitution. Regarding the application of the statute of limitations, the Court held that if there are circumstances that objectively make it impossible or extremely difficult for the victims to exercise their rights, the perpetrators who created such circumstances cannot be exempted from their obligation to compensate for damages, as this would seriously violate the principles of justice and fairness. The Court therefore ordered the State to compensate the victims.

*Osaka High Court Decision, 23 March 2023*

The court ruled that the legislative purpose of the eugenics provisions, which aimed to prevent the birth of “inferior offspring” from a eugenic perspective, was extremely inhumane and clearly violated the principles of the Japanese Constitution, which upholds respect for the individual. Therefore, the court found that the eugenics provisions violated Articles 13 and 14(1) of the Constitution.

The court further ruled that the statute of limitations would not apply for a period of six months from the date on which the defendant acknowledged that the eugenics clause violated the constitutional provisions or from the date on which such violation was definitively established by a Supreme Court ruling, whichever was earlier, and ordered the state to pay compensation.

*Sendai High Court, 25 October 2023*

The court ruled that the provisions of the former Eugenics Protection Law regarding compulsory surgery violated Articles 13, 14 and 24(2) of the Constitution.

Regarding the latter part of Article 724 of the Civil Code prior to its amendment, the court interpreted it as establishing a statute of limitations. It held that the State's claim that the plaintiffs' right to claim damages had expired constituted an abuse of rights and was therefore inadmissible. Even if the statute of limitations were construed as having expired, the court held that it would be grossly contrary to the principles of justice and fairness to hold that the right to seek damages had expired, thereby limiting the application of the statute of limitations, and awarded damages.

On appeal, on 3 July 2024, the Grand Bench of the Supreme Court ruled that the provision was unconstitutional under Articles 13 and 14 (1) of the Constitution for the following reasons:

(1) Sterilization surgery is a significant intrusion into the body that results in the loss of reproductive capacity. Therefore, forcing an individual to undergo sterilization surgery constitutes a significant restriction on the freedom to avoid bodily interference against one's will, which is guaranteed by Article 13 of the Constitution as an important right related to personal existence. When the eugenic provisions of the Eugenics Protection Act (Articles 3(1)(i) to (iii), 10 and 13(2) of the same Act) are considered in the light of the provisions of Article 1 of the Eugenics Protection Act prior to the 1996 amendment, the legislative purpose of the provisions in question was based solely on eugenic considerations, namely, the elimination of inferior genetic traits and the preservation of superior genetic traits in order to improve the genetic quality of the entire population as a group. It was based on the premise that individuals with certain disabilities or conditions were considered inferior and aimed to prevent the birth of offspring with the same diseases or disabilities by forcing such individuals or their relatives within a certain degree of kinship to undergo sterilization surgery. However, Article 13 of the Constitution proclaims the dignity and respect of the individual, and the legislative purpose of the provision in question – that persons with certain disabilities are inferior and that it is necessary to prevent their birth – cannot be considered legitimate, even taking into account the social circumstances at the time of its enactment. Therefore, the provision in question, which requires the loss of reproductive capacity – a significant sacrifice – of certain persons under such a legislative purpose, cannot but be considered a serious violation of the spirit of respect for the dignity and personality of the individual.

Therefore, there is no valid reason to recognize that there is a legitimate basis for performing sterilization surgery under the provisions in question, and forcing individuals to undergo sterilization surgery under such provisions is contrary to Article 13 of the Constitution and should not be permitted. Furthermore, Article 14(1) of the Constitution guarantees equality before the law, and it is clear from the case law of the Supreme Court that this provision prohibits discriminatory treatment in law unless it is based on reasonable grounds commensurate with the nature of the matter. However, the provision at issue in this case designates as eligible for sterilization: (i) persons with certain disabilities or other conditions; (ii) persons whose spouse has certain disabilities or other conditions; and (iii) persons whose spouse or any blood relative within the fourth degree of consanguinity has certain disabilities or other conditions. As noted above, there is no valid reason to perform sterilization procedures

under this provision. Therefore, designating the persons in categories (i) to (iii) as subjects of sterilization procedures under this provision and distinguishing them from others constitutes discriminatory treatment without a reasonable basis. In view of the above, the provision in question violates Article 13 and Article 14(1) of the Constitution.

(2) The former Article 724 of the Civil Code was intended to ensure the speedy resolution of legal relationships arising from torts. In the present case, the clearly unconstitutional act of the State in the form of legislation has caused considerable damage to the people, and given the nature of the legislative act of the National Diet as a harmful act, the lapse of time may make it difficult for the defendant to prove the content or illegality of the act due to, among other things, the loss of evidence. Therefore, it must be concluded that the purpose of the provision is not appropriate in this case. For approximately 48 years, from 1948 to 1996, the Appellant implemented policies that imposed significant sacrifices on persons with certain disabilities and other conditions. In addition, the Appellant actively promoted eugenic surgery. As a result of these policies, at least approximately 25,000 persons suffered the substantial harm of losing their reproductive capacity. In the light of these circumstances, it is inescapable to conclude that the Appellant bears an extremely grave responsibility for the legislative act of the provisions in question.

In addition, the provisions in question strongly led the public to believe that they were in conformity with the Constitution. During the period in which the provisions in question remained in force, it was extremely difficult for those who had suffered damage as a result of sterilizations carried out under those provisions to exercise their right to claim compensation. Even after the provision in question was completely repealed in 1996, the complainant continued to maintain that sterilizations carried out under that provision were lawful. Therefore, the difficulty in expecting the exercise of the aforementioned right remained unchanged.

Furthermore, despite the fact that there was a strong expectation that the National Diet would promptly implement compensation measures after the provisions in question were recognized as problematic and repealed in 1996, the complainant continued to maintain the position that the sterilizations performed under the provisions in question were lawful and that no compensation would be provided, even after a long period of time. Although the One-Time Payment Act was enacted and implemented in April 2019, after the filing of the present lawsuit, its content merely provided for the payment of a one-time lump sum of

3.2 million yen to certain individuals, including those who underwent sterilization surgeries under the relevant provision, without recognizing the appellant's liability for damages.

In light of the foregoing, the mere fact that the present lawsuit was filed after the statute of limitations had expired cannot be a basis for considering the claim to be extinguished and thereby relieving the Appellant of liability for damages to the plaintiffs in the first instance. Such a conclusion would be grossly contrary to the principles of justice and fairness and cannot be tolerated.

(3) If it is deemed that the claim in question has been extinguished by the expiration of the statute of limitations, and such extinguishment would be grossly contrary to the principles of justice and fairness and cannot be tolerated, the court may rule that the assertion of the statute of limitations is contrary to the principle of good faith or constitutes an abuse of rights and therefore cannot be allowed.

Therefore, the appellant's assertion of the statute of limitations against the plaintiffs' exercise of their claims in this case is contrary to the principle of good faith and constitutes an abuse of rights that cannot be tolerated.

(4) Based on the above, the lower court's decision that the claims in this case are not barred by the statute of limitations is affirmed.

# State Practice of Asian Countries in International Law

*Korea*

*Buhm-Suk Baek\* and Hosung Ahn\*\**

## SOVEREIGN/STATE IMMUNITY

### Immunity of States from Jurisdiction

*Decision of Seoul High Court on the Rights of the Comfort Women Victims to Compensation and Exceptions to State Immunity (2021Na2017165, Decided on 23 November 2023)*

This case follows an appeals case of the Seoul District Court Decision 2016Ga-Hap580239, where the plaintiffs, consisting of comfort women victims and the bereaved families, brought claims against Japan for compensation to the Court. Whereas the lower court dismissed the case upholding the State immunity of Japan, the Seoul High Court found that it could review the merits of the case. The Court determined that the plaintiffs were entitled to compensation for the damages suffered as the Japanese Empire drafted them as comfort women.

Absent an international convention to which the Republic of Korea is a state party or where there is a legislation concerning the limits of the exercise of civil jurisdiction of a court against a foreign state, the rule to be applied in this case on State immunity is based on the custom that is established based on general practice of states accepted as law. Given that the acts in question were committed against Korean nationals and part of the said acts had taken place within the Korean peninsula, which the defendant had been illegally occupying at that time, the Court determined whether there was an established custom disallowing it to exercise jurisdiction against the defendant. Since that customary international law is neither static nor permanent, and the dynamic nature of the norm should be considered. However, it is difficult to pinpoint a specific period when such a change occurs, as was the shift from absolute immunity to restrictive immunity, and state practice that seemingly diverts from the

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general understanding inevitably co-exists during a transition. In this regard, the Court took note of various state practices denying the enjoyment of immunity of the perpetrating State for “tortious acts committed within the territory of the forum State against individuals causing death or injury.” Specifically, it referred to the United Nations Convention on Jurisdictional Immunities of States and Their Property (not yet entered into force, “UN Convention on State Immunity”) or the European Convention on State Immunity providing such an exception and the legislation of various states, all of which provide such an exception. Respective provisions do not manifestly prescribe any distinction between a sovereign act and a non-sovereign act, and it is difficult to find judicial practice where a court referred to such a distinction when determining the applicability of such provisions regarding tortious acts. The International Law Commission also has acknowledged in its commentary of the UN Convention on State Immunity that the scope of Article 12 is broad enough to be applied “to provide relief or possibility of recourse to justice for individuals who suffer personal injury, death or physical damage to or loss of property caused by an act or omission which might be intentional, accidental or caused by negligence attributable to a foreign State.”

Moreover, the recent judgment on the Changri-la case of the Brazilian Supreme Court (Extraordinary Appeal with Interlocutory Appeal 954.858 R10) and the decision of the Supreme Court of Ukraine on 14 April 2022 (Case No. 308/9708/19: Civil Cases from 1 January 2019) also suggest a shift in the existing custom that State immunity may be denied on such grounds even though the tortious acts committed by the foreign military in the territory of the forum State may be assessed as sovereign to a certain extent. Therefore, the Court determined that State immunity is exempted at least regarding tortious acts committed against the nationals within the territory of the forum State, notwithstanding whether the act in question is sovereign or not, and it can be assessed that State immunity has already developed to protect the rights of individuals to trial. Concerning the question of whether State immunity can be denied even when “a part of” such acts have been committed within the territory of the forum State, the Court expounded that there are no reasonable grounds to require the acts in question to be committed within the territory in full for the Court to exercise its jurisdiction.

As to whether a Korean court can exercise international jurisdiction over an external case under private international law, the Court found that the Republic of Korea has substantial relevance over the disputed acts and the parties to the case. The tortious acts concerning the drafting of comfort women by the defendant had been committed in part within Korea, which was then illegally occupied by the defendant. It constitutes special jurisdiction under

Article 18(1) of the Civil Procedure Act of Korea, which provides that when a tort claim is made against a court, the forum State can also exercise jurisdiction over the case. Also, most of the plaintiffs are Korean nationals living in Korea and brought claims against the defendant under the Civil Act of Korea to the court. Considering that the plaintiffs and the comfort women victims have already appealed against the courts of the defendant and the US courts on similar grounds, the Court determined there is no reason to believe that the defendant could not reasonably predict that the plaintiffs would make claims against the Korean courts. Lastly, it assessed that there is no reason to determine that evidence must be examined elsewhere since most material evidence has been lost, and the personal evidence is limited.

Having established the jurisdiction over the case, the Court determined whether the defendant was liable for the tortious acts. Under Article 98(2) of the defendant's Constitution, the defendant is obliged to conform to the treaties ratified by the defendant and established international custom. Even if the said acts occurred well before the enactment of the Constitution, it cannot be said that the Constitution creates a new obligation but merely declares the primary obligation of a state. Notwithstanding the various obligations under international conventions such as Article 3 of the 1907 Hague Convention with Respect to the Laws and Customs of War on Land and Article 46 of the Annexed Regulations, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, International Convention for the Suppression of the Traffic in Women and Children, the Slavery Convention, and the Force Labour Convention, the Court found that the civil servants had committed crimes under Article 226 of the 1907 Penal Code of Japan and the government of Japan had positively engaged in, fostered, or facilitated the violating of the said obligations stated therein. For this reason, the Court found that the acts in question constitute tortious acts under the Korean Civil Act and ruled that the defendant is liable for the damages against the plaintiffs.

After the first landmark decision in January 2021, the Korean court, once again, denied State immunity concerning tortious acts committed against its nationals and found that Japan is liable to pay compensation for damage caused to the plaintiffs who were victimized by the Japanese Empire by being drafted as comfort women. These practices may seem like outliers, and the states may even be accused of violating international law. However, it is worth noting that customary international law is neither permanent nor static, and states are at the center of law-making. Given that various states have rendered decisions denying State immunity when they are perpetrators against individuals, such practices should not be simply dismissed, especially when the

individuals are essentially barred from receiving adequate remedy, and appealing to their court of nationality is one of the few options remaining to them.

*\* Article 18(Special Forum for Locus Delicti) (1) of the Civil Procedure Act of Korea provides as follows: A lawsuit concerning a tort may be brought to the court in the place of an act.*

*\* Article 98(2) of the Constitution of Japan provides as follows: The treaties concluded by Japan and established laws of nations shall be faithfully observed.*

*\* Article 226 (Kidnapping for Transportation out of a Country) of the Penal Code of Japan provides as follows: A person who kidnaps another by force or enticement for the purpose of transporting another from one country to another country shall be punished by imprisonment with work for a definite term of not less than 2 years. The Court referred to this provision because when the acts were committed, Japan colonized Korea, and thereby, the Penal Code applied to the Korean peninsula.*

## TREATIES

### Interpretation of Treaties

#### *Decision of Seoul District Court on the Legal Status of the 1965 Agreement between the Republic of Korea and South Vietnam (2020GaDan5110659, Decided on 7 February 2023)*

In the 1960s and early 1970s, Korea sent troops to support the American military against communist North Vietnam during a two-decade conflict that ended with the fall of Saigon and the reunification of Vietnam in 1975. Korean marines were accused of killing some 70 civilians during a raid on 12 February 1968 in a case brought to court in Seoul by a Vietnamese woman who survived the massacre. Over the past three years, Vietnamese witnesses and journalists who covered the 1968 incident have appeared in court to testify.

In a landmark ruling, the Seoul District Court held the Korean government responsible for the massacre committed by its soldiers during the Vietnam War and ordered it to pay compensation. The Court ruled that the plaintiff should be compensated with 30 million won (\$23,800), plus interest, for the mass killings in the town of Phong Nhi in central Quang Nam province. The plaintiff, who was injured in the raid and lost his family, including her mother, filed the lawsuit in 2020 seeking compensation from the South Korean government. Rejecting the defendant's argument that it would be difficult to prove that Korean troops were the perpetrators, the Court ruled that the agreement concluded between the Republic of Korea and South Vietnam in 1965, which

the Korean government claims exempted its troops from legal liability, did not prevent individual Vietnamese victims from seeking compensation on the following grounds.

Representatives of the Republic of Korea Forces in Vietnam (“ROKfV”) and the South Vietnam Army co-signed a military working arrangement on 5 September 1965 (“Vietnam Arrangement”). On the following day, the ROKfV jointly agreed upon a military working arrangement with the United States Military Assistance Command, Vietnam (“US Arrangement”). Article 19 of the Vietnam Arrangement prescribes that “[c]ompensation for casualties or property damage of the Government or people of South Vietnam inflicted by agents of the ROKfV shall be negotiated separately between the authorities of the two countries.” Article 15 of the US Arrangement, however, provides that “compensation for casualties or property damage of the Government or people of South Vietnam inflicted by agents of the ROKfV, either engaging in combat or non-combat activities, shall be confirmed through a separate arrangement.”

The Court then reviewed the legal status of the arrangements on whether the abovementioned agreements are treaties duly adopted by the Korean government. Article 73 of the Constitution of the Republic of Korea (“ROK Constitution”) stipulates that the President has the authority to conclude treaties, and Article 7 of the Vienna Convention on the Law of Treaties prescribes a list of persons vested with the full powers to express consent representing a state. However, the Court found no reason to uphold that the military representatives who signed the arrangements were given the authority to conclude treaties on behalf of their states. In other words, military representatives neither had the power to conclude treaties nor were there grounds to believe they had been recognized as the competent authority to produce full powers. It is also to note that the arrangements in dispute do not appear on the list of treaties of the Ministry of Foreign Affairs. Therefore, the Court determined that they are Memoranda of Understanding (MOU) conducted between military representatives, which cannot be equated as treaties validly entered into by the Republic of Korea, and, therefore, do not give legal effect to exclude the individual’s right to claim compensation against the defendant.

Moreover, although Article 19 of the Vietnam Arrangement stipulates that compensation for the damage against the victims shall be determined between the government authorities through negotiations, it is difficult to find that such negotiations or agreements have taken place. Lastly, the Vietnam Arrangement cannot be said to establish the grounds that the Vietnamese government has surrendered the rights of compensation claims on behalf of their victims or the victims to make claims against the Korean court other than compensatory mechanisms through the diplomatic channels between the two 2s.

*Decision of the Supreme Court on a Damage Claim Suit  
(2021Da259510, Decided on 26 October 2023)*

The passengers who were the plaintiffs of this case sought compensation for mental distress caused by a 19-hour delay in their international flight from the defendant, the air carrier. The Court previously determined in 2018 that the Convention for the Unification of Certain Rules Relating to International Carriage by Air (“Montreal Convention,” Treaty No. 1876, entered into force on 4 November 2003 in Korea) takes precedence over the Civil Act or the Commercial Act of Korea governing legal relations on international carriage by air when the places of departure and destination are within the territory of a single party. (See Supreme Court of Korea Decision 2017Da240496, decided on 15 March 2018). The Montreal Convention does not cover all aspects of international carriage by air but was drafted for the purpose of unifying the interpretation and application of certain rules. Therefore, matters not regulated by the Montreal Convention should be determined based on the applicable law governing the legal relations of the parties involved in contracts for international carriage by air provided under the Act on Private International Law of the Republic of Korea, having territorial jurisdiction over this case.

Whereas Article 19 of the Montreal Convention prescribes that “the carrier is liable for damage caused by delays in the air carriage of passengers, baggage, or cargo,” it does not specify the meaning of damage provided therein. The term “damage” under Article 19, however, can be reasonably understood as referring to property damage and does not typically include mental damage unless there are exceptional circumstances based on a systemic interpretation in light of other provisions, such as Article 17 of the Convention that regulates liability for compensating for damage resulting from bodily injury and the death of a passenger. While the Montreal Convention does not explicitly include a provision that establishes the grounds to claim compensation for mental damage, the law may still allow for it. For instance, passengers who claim to have suffered mental distress due to flight delays may seek damages from airlines under the applicable supplementary laws. In such cases, the court would need to review the relevant laws governing the parties’ legal relations under the Act on Private International Law and determine accordingly the extent to which, if any, the party is liable for mental damage compensation.

The Supreme Court decided that it was not appropriate for the lower court to hold that the defendant could be held liable for mental damages by directly applying Article 19 of the Montreal Convention for the abovementioned reasons. However, the Court upheld the conclusion of the lower court, having found the defendant liable for the plaintiffs’ mental damages, is justified. The

misinterpretation of Article 19 of the Montreal Convention by the lower court did not affect the Court's decision to hold the defendant liable, which led it to dismiss the appeal.

## DIPLOMATIC AND CONSULAR RELATIONS

### Diplomatic and Consular Personnel and Immunity

#### *Decision of the Supreme Court on the Encroachment of the Adjacent Land Boundary of the Building of the Embassy (2019Da247903, Decided on 27 April 2023)*

Under customary international law, a state is, in principle, immune from the jurisdiction of another state for the acts committed within its sovereign capacity or *acta jure imperii*. However, it has been established that the courts of the Republic of Korea can exercise jurisdiction over private acts (*acta jure gestionis*) of a foreign State that was committed within the Korean territory unless there constitutes an exceptional circumstance where such acts had been committed in part of a sovereign act, or is closely related to such acts, thereby exercising jurisdiction of the court may unjustifiably interfere with the sovereign acts of the foreign State. (See Supreme Court of Korea en banc Decision 97Da39216, decided on 17 December 1998; Supreme Court of Korea Decision 2009Da16766, decided on 13 December 2011). In the present case, the Court found that the real estate is an object of territorial sovereignty and adjudged that it is difficult to deny the jurisdiction of the court of origin simply because the occupant is a foreign State. It further determined that there is no reason to consider the possession of real estate in Korea by a foreign State as part of a sovereign act or a private act closely related to a sovereign act, because there can be various causes, purposes, or forms of occupying the property.

Nevertheless, the Court did note that based on the nature and purpose, a foreign State possessing real estate as part of the premise of a diplomatic mission, which a foreign State has established as a representation of that State in a foreign territory to perform diplomatic activities, to protect its nationals, and to expedite consular matters, can be construed as closely related to a sovereign act of that State. The Court also provided that under international law, the premise of a diplomatic mission of a foreign State is principally inviolable, and the receiving State has a special duty to protect it. Therefore, if the lawsuit concerning the real estate located at the premise therein may obstruct the performance of the diplomatic mission of that State, it is the view of the

Court that exercising jurisdiction is restricted. Whether there is such a concern of obstructing the diplomatic performance of the state should be determined holistically based on the grounds of the claim and its content, the effect of the favorable judgment to the plaintiff, and the relevance of the official duties of such missions concerning the said claim or judgment.

An issue of jurisdictional immunity arises when a civil claim is brought to the court against the sending State concerning the premise of the mission. Whereas diplomatic immunity and State immunity can be considered grounds for granting immunity, they are distinct, and diplomatic immunity is to be reviewed first since it constitutes *lex specialis*. Not only does the Vienna Convention on Diplomatic Relations of 1961 provide an exception to immunity from execution regarding the premises of the diplomatic mission rather than a general provision on jurisdictional immunity, but it is also difficult to say that the provision on diplomatic immunities applies to the sending State. In other words, diplomatic immunity is inapplicable to the immovable property possessed by the sending State. A question arises as to State immunity since an exception over immovable property has been traditionally recognized. Reflecting on the theory of State immunity and the development of diplomatic law, this exception rule does not automatically apply to diplomatic premises. Instead, it can be evaluated as a flaw in the law. Accordingly, under the general supplementary gap-filling rule, jurisdictional immunity over the diplomatic premises can be upheld mainly based on whether an exercise of jurisdiction obstructs the performance of diplomatic functions, also considering the various circumstances surrounding the case. The Court concluded that the claims were admissible based on the abovementioned criteria and determined the claim concerning the premise of a diplomatic mission as falling under State immunity rather than diplomatic immunity, which is valid. Although it would have been better if it had elaborated on the specific grounds and reasoning for arriving at such a conclusion, it is evident that there needs to be more research on the domestic implementation of customary international law as an adjudicatory norm.

\* *Vienna Convention on Diplomatic Relations (Treaty No. 365, entered into force on 27 January 1971 in Korea) Article 22 stipulates that "The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."*

## INTERNATIONAL RELATIONS AND CO-OPERATION

### Specific Bilateral Relations Issues

#### *Decision of the Supreme Court on the Rights of the Forced Labor Victims and Their Bereaved Families to Compensation (2018Da303653 and 2019Da17485, Both Decided on 21 December 2023)*

These cases were damage claims brought by the plaintiffs against the Japanese companies Mitsubishi Heavy Industries and Nippon Steel, seeking compensation for their unlawful conduct. The plaintiffs were either the victims of Japanese forced labor or their families who succeeded in the rights resulting from the death of the victims. Initially, the victims filed lawsuits against Mitsubishi Heavy Industries and Nippon Steel in 2013 and 2014, respectively. The lower courts in both cases accepted the plaintiffs' claims and found the Japanese companies liable for compensation. However, both Mitsubishi and Nippon Steel appealed, resulting in an elongation of the trials for nearly a decade and the death of several victims.

In these cases, the Supreme Court affirmed the rulings by the lower courts that decided in favor of the plaintiffs. The Court maintained that the victims of forced labor or their successors were faced with obstacles that prevented them from objectively exercising their rights against the defendants until the 2018 *en banc* judgment. (See Supreme Court of Korea *en banc* Decision 2013Da61381, decided on 30 October 2018). Since there have been impediments objectively preventing the plaintiffs from exercising their rights effectively, the Court concluded that the defendant's reference to the statute of limitations constituted an abuse of rights and was, therefore, impermissible. Having reaffirmed the preceding legal opinion of the Court in 2018 that the right of victims of forced labor to claim compensation from Japanese companies, premised on the illegal colonization of the Korean Peninsula and the conduct of wars of aggression by the Japanese government, was not covered by the 1965 Agreement between the Republic of Korea and Japan Concerning the Settlement of Problems in Regard to Property and Claims and Economic Cooperation, Mitsubishi and Nippon Steel will be required to pay compensation of 100 to 150 million Korean Won (KRW) per victim and delay damages to the survivors. The total compensation awarded amounts to 1.17 billion KRW.

These lawsuits are also referred to as "the second case" because the cases were brought by the emboldened victims seeking their rights to compensation only after the Supreme Court first recognized such a right for the victims who suffered from Japanese forced labor in the 2012 case against Nippon

Steel. (See Supreme Court of Korea Decision 2009Da22549 and 2009Da68620, decided on 24 May 2012) These two cases, decided on 21 December 2023 are particularly worth mentioning in that they are the first to explicitly state that the victims of forced labor in Japan were faced with obstacles that prevented them from objectively enforcing their rights against Japanese companies until the *en banc* ruling was handed down in 2018. It was for this reason that the Court rejected the statute of limitations defense, thereby recognizing that the plaintiffs could still claim alimony for forced labor against the defendant companies.

## SETTLEMENT OF DISPUTES

### Legal Solution of Disputes

#### *Decision of Daejeon High Court on the Litigation for the Return of Cultural Property (2017Na10570, Decided on 1 February 2023)*

This case concerns Seosan Buseoksa temple, the plaintiff, filing a claim against the Republic of Korea for the return of the “Gilt-bronze Seated Avalokitesvara Bodhisattva” of the Goryeo dynasty. However, the Court rejected the claim and recognized that the ownership belongs to the supplementary intervenor of the defendant (Kan'on-ji temple of Japan). The Court also reviewed the applicability of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (“the UNESCO 1970 Convention”) and the UNDRIT Convention on Stolen or Illegally Exported Objects (“the 1995 UNDRIT Convention”) in this case.

Firstly, the Court found that claiming acquisitive prescription over the subjected statue cannot be ruled out based on the 1970 UNESCO Convention, given the time at which the illegal exporting of the statue by the Japanese raiders (Wokou) had occurred well before the Convention entered into force in Korea as Article 7 only obliges the state party “... to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned.” Moreover, Article 5(1) of the 1995 UNDRIT Convention stipulates that “[a] Contracting State may request the court or other competent authority of another Contracting State to order the return of a cultural object illegally exported from the territory of the requesting State.” This article can be construed to pronounce that illegally exported cultural properties shall be returned to the State of origin, notwithstanding the acquisitive prescription principle under the Civil Act. It appears that although the Court agreed that the Buddha statue should be returned

to Korea if it was illegally exported to Japan, the main focus of the case at hand is different from what was stated in the 1995 UNDROIT Convention. The issue being disputed is related to a civil lawsuit concerning the ownership of the cultural property. Moreover, the Republic of Korea is not a state party to the Convention. Accordingly, the Court determined that the 1995 UNDROIT Convention does not affect the decision to which the statue's ownership belongs.

Whereas the Court rejected the claims of the plaintiff owing to insufficient evidence to prove ownership over the Buddha statue, it is meaningful in that the Court raised the question of how the return of the statue should be done by considering relevant international norms on cultural property protection.

## HUMAN RIGHTS

### Protection under International and Domestic Law (Refugees)

*Decision of the Supreme Court on the Question of  
Recognizing the Convention Relating to the Status of Refugees  
("Refugee Convention") as a Direct Adjudicatory Norm in the Trial  
(2021Do3652, Decided on 13 March 2023)*

The defendant is from Iran and was prosecuted mainly on two grounds: one is that the defendant interfered with the public official working at the Republic of Korea embassy in executing the duties when issuing a visa by deceiving one's status as if invited for business. The other is that the defendant fraudulently applied for a visa which constitutes an act of violation under the Korean Immigration Act. The original trial decided to exempt the penalty under Article 137 of the Criminal Act and former Korean Immigration Act since the defendant was approved and confirmed by the judgment decision as qualifying the conditions under Article 31(1) of the Refugee Convention. The Supreme Court confirmed the original verdict as follows.

Article 6 (1) of the ROK Constitution prescribes that "[t]reaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea." Accordingly, the Supreme Court found that all national bodies, not only the legislature and the executive but also the judiciary, need to work towards putting into effect international norms respecting the spirit of international cooperation. Moreover, the Refugee Convention has the same effect as a domestic law, which is equivalent to that of an 'Act', and in some cases, provisions can be directly applicable to adjudication dependent upon

the content and nature. As a state party ratified the Convention, the Court referred to Article 31(1), which obliges the state parties not to impose penalties against an individual qualified as a refugee, as the grounds to exempt penalty for the defendant in Korean criminal proceedings.

\* *Article 137 (Obstruction of Performance of Official Duties by Fraudulent Means) of the Criminal Act of Korea: A person who interferes with the execution of duties by a public official by fraudulent means, shall be punished by imprisonment for not more than five years, or five not exceeding ten million won.*

\* *Article 31 (1) of the Refugee Convention: "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."*

***Decision of Incheon District Court concerning a Case  
Involving a Group of Russians Who Came to South Korea to  
Escape Forced Conscription and Sought to Overturn a Decision  
Not to Recognize Them as Refugees (2022GuDan52109, Decided on  
14 February 2023)***

Having arrived at Incheon International Airport, three Russian nationals, the plaintiffs of this case, applied to be recognized as refugees under Article 6 of the Refugee Act. The plaintiffs brought a claim for cancellation to the Court, requesting to revoke the decision of the Incheon Airport Immigration and Alien Affairs Commissioner, the defendants of this case, not to refer to the refugee recognition review procedure under Article 5(1)(7) of the Enforcement Decree of the Refugee Act because it was unlawful. The Court found for the plaintiffs to be recognized as refugees since there were sufficient grounds for fear of being persecuted when the acts concerned, such as the refusal for conscription based on political motivations, can be assessed as expressing political opinions. Having reviewed the social background and the reason behind the refusal of conscription of plaintiffs 1 and 2, the Court ruled that the decision should be revoked since it was unlawful to assert that they fall under Article 5(1)(7) of the Decree. On the other hand, it found that the decision was lawful for plaintiff 3 since the plaintiff, a dual national of Russia and Kyrgyzstan, was not unable to receive protection from Kyrgyzstan, and it was evident that the conditions under the Decree had yet to be met.

\* *Refugee Act of Korea, Article 6 (Application Filed at Ports of Entry and Departure) provides as follows:*

(1) *Where a foreigner intends to apply for refugee status when undergoing an entry inspection, he or she shall submit an application for refugee status to the*

*head of the local immigration office or foreigner-related office having jurisdiction over the port of entry and departure prescribed by the Immigration Act.*

(2) *The head of a local immigration office or foreigner-related office may allow a person who has submitted an application for refugee status at the port of entry and departure under paragraph (1) at a specific place in the port of entry and departure within seven days.*

(3) *The Minister of Justice shall decide whether to refer to refugee status screening for a person who has submitted an application for refugee status under paragraph (1) within seven days from the date on which the application is submitted, and where he or she fails to decide within such period, he or she shall permit such applicant to enter.*

(4) *Basic food, clothing, and shelter shall be provided to refugee applicants at ports of entry and departure for the period prescribed in paragraph (2) as prescribed by Presidential Decree.*

(5) *Necessary matters, such as procedures for application for refugee status at ports of entry and departure, other than those provided for in paragraphs (1) through (4), shall be prescribed by Presidential Decree.*

*\* Article 5(1)(7) of the Enforcement Decree of the Refugee Act provides as follows: Where a refugee status application is incontestably groundless, such as applying for refugee status only for economic reasons.*

### **Protection under International and Domestic Law (Children)**

#### ***Decision of Seoul District Court on the Question of Whether Illegal Interstate Adoption Violates International Law (2019GaHap502520, Decided on 16 May 2023)***

The plaintiff, identified as an orphan despite having biological parents and having been sent for adoption, made claims against Holt Children's Services Inc. and the Republic of Korea. Whereas the Court held Holt Children's Services Inc. liable for failing to exercise its obligations to protect the plaintiff as a guardian and to confirm the acquisition of nationality, it rejected the compensation claims brought against the Korean government on the following grounds.

The plaintiff claimed that the defendant has an obligation to confirm whether the child adopted abroad has acquired nationality and to assist the subject child in acquiring nationality if such has not been duly done. The plaintiff derived such obligations from Article 2(2) and Article 10 of the ROK Constitution, Article 24 of the ICCPR, Article 7 of the Convention on the Rights of the Child, and Article 8 of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. The arguments

were that the defendant did not fulfil its obligations, either intentionally or with negligence, even though it could simply carry out the obligations by supervising and monitoring Holt Children's Service Inc. to identify and report whether the child being adopted abroad has acquired nationality. Also, the plaintiff claimed that the defendant had failed to intervene or offer adequate protection during the process of being adopted twice and while experiencing child abuse, despite the defendant having obligations to confirm whether the adopted child is taken adequate care of under the adoptive family and to take follow-up measures, if needed, under Article 9 of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

Nevertheless, the Court found that the international human rights norms that derive the defendant's obligations are mainly declaratory or instructive, which does not provide the standards for the provision to be applied in adjudication. Therefore, the rights claimed by the plaintiff are not said to be established enough on the grounds of law to claim an infringement of the rights or violation of obligations. Also, the Court added that the obligations as claimed by the plaintiff could not be derived from the said articles in the Constitution, such as Article 2(2) and Article 10, because although they may provide guidelines on how to utilize and formulate adoption policies of the defendant, adoption-related policies can only be actualized through domestic legislation such as Act on Special Cases Concerning Adoption.

*\* Article 2(2) of the Constitution of Korea stipulates that "It shall be the duty of the State to protect citizens residing abroad as prescribed by Act", and Article 10 provides that "All citizens shall be assured of human worth and dignity and have the right to pursuit of happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals."*

## LAW OF THE SEA

### State Litigation on Maritime Zones, Rights and Obligations

#### *Decision of Busan District Court on the Rights to Seek Remedies (2021GaHap43947, Decided on 17 August 2023)*

South Korean nationals living in Busan and Gimhae filed a lawsuit against Japan's Tokyo Electric Power Company Holdings, Inc. (TEPCO), seeking a ban on the discharge of the Fukushima radioactive contaminated water into the sea. The Busan District Court dismissed the primary claim and the first supplementary claim based on the 1996 Protocol to the Convention on the

Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, reasoning that the Republic of Korea and Japan are State parties to both multilateral treaties that provided for rights and duties under international law and international dispute settlement procedures, which did not create specific rights for nationals of a party to seek remedies, such as injunctive relief, against nationals of another party. Whereas the Court dismissed the claims because such treaties do not serve as adjudicatory norms, the case is currently pending on appeal (Busan High Court 2023Na55750).

# State Practice of Asian Countries in International Law

## *Mongolia*

*Battogtokh Javzandolgor\* and Sosorbaram Byambasuren\*\**

### TREATIES

#### **Making and Concluding Treaties – Negotiation, Accession, Ratification, Deposit, Registration, Internal Constitutional Arrangements**

Pursuant to Article 10.3 of the Constitution of Mongolia, the Parliament of Mongolia concurs with international treaties to which Mongolia accedes by enacting laws upon ratification or accession. They become effective as domestic legislation once the entry into force of the laws on their ratification or accession.

In 2023, the Parliament of Mongolia concurred with several important treaties that involved fields of (i) international aviation, (ii) maritime labour, (iii) transport and communication, and (iv) investment and finance.

#### **International Aviation Law**

##### *The Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Ratification Date: 7 July 2023)*

The Parliament of Mongolia adopted a law on the ratification of the Convention on Suppression of Unlawful Acts Relating to International Civil Aviation which came into force in July 2018. The Beijing Convention is an important achievement in international civil aviation security law and offers a legal basis for criminalizing counter-terrorism and other criminal acts that target civil aviation.

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*The Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Ratification Date: 9 June 2023)*

On 9 June 2023, the Parliament supported a bill ratifying the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft, which Mongolia ratified in 1990. On 4 April 2014, this Protocol was adopted at the International Air Law Conference held under the auspices of the International Civil Aviation Organization (ICAO) at Montréal from 26 March to 4 April 2014.

The Protocol addresses the issue of rising incidents of unruly and disruptive behavior on board aircraft by significantly improving the ability of States to expand jurisdiction over relevant offenses and acts to the State of landing and the State of the operator. The Protocol will also serve to enhance global aviation security provisions by expressly extending legal recognition and protections to in-flight security officers.

*The Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Ratification Date: 7 July 2023)*

On 7 July 2023, the Parliament passed a law ratifying the Protocol Supplementary to the Conventions for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970 (The Hague Convention, 1970). The Protocol expands the scope of the Hague Convention to cover different forms of aircraft hijackings, including those conducted through modern technological means.

Moreover, it specifically provides for the criminal liability of directors and organizers of an offense, as well as the liability of those who knowingly assist an offender to evade investigation, prosecution, or punishment. Any person making a threat to commit an offense may be criminally accountable when the circumstances indicate that the threat is credible. Under certain conditions, an agreement to contribute or a contribution to an offence, whether such an offence is committed or not, may be punishable. A legal entity may also be criminally liable if the applicable national law provides so.

The Protocol also expands the grounds of jurisdiction by requiring each State Party to establish jurisdiction when the offence is committed by its national, and by enabling each State Party to establish jurisdiction when the victim of the offence is its national. It also affirms the principles of fair treatment and non-discrimination. Moreover, the Protocol contains a clause that a State Party cannot refuse to extradite an offender on the sole grounds that the offence would be political in nature.

*The Protocol Relating to an Amendment to the Convention on International Civil Aviation Article 56 (Ratification Date: 23 March 2023)*

The Parliament of Mongolia enacted a law on the ratification of the Protocol Relating to an Amendment to the Convention on International Civil Aviation, Article 56, signed in Montreal on 6 October 2016, but not yet in force.

The Protocol amends Article 56 of the Convention on International Civil Aviation to increase the membership of the Air Navigation Commission (ANC) of ICAO from 19 to 21 members. The ANC is a purely technical body, providing advice on technical issues to the ICAO Council. The ANC members are nominated by specific ICAO members and appointed by the Council but do not represent the interest of any particular State Party or region.

The original Convention called for an ANC composed of 12 members. This was subsequently amended, in 1971, to provide for 15 members, and in 1989, for 19 members. The current protocol amends the Convention to provide for a further increase to 21 members with the expectation that an expanded ANC will increase the amount of technical expertise available to ICAO, which will have a positive impact on its work.

*The Protocol Relating to an Amendment to the Convention on International Civil Aviation Article 50 (a) (Ratification Date: 23 March 2023)*

The Parliament of Mongolia adopted a law on the ratification of the Protocol Relating to an Amendment to the Convention on International Civil Aviation Article 50 (a). The Protocol amends Article 50 (a) of the Convention to increase the membership of the ICAO Council from 36 to 40 members.

The ICAO Council is a permanent body of ICAO and is elected by the ICAO Assembly for a period of three years. It has a number of functions, among which are to administer the finances of ICAO, appoint and define the duties of the Air Transport Committee, appoint the members of the Air Navigation Commission, and adopt international Standards and Recommended Practices (SARPs) for incorporation into the Annexes to the Convention.

The original Convention called for a Council composed of 21 members. This was subsequently amended, in 1961, to provide for 27 members, in 1971, for 30 members, in 1974, for 33 members, and in 1990, for 36 members. The Protocol amends the Convention to provide for a further increase to 40 members for the purpose that an increase in the number of Council members will improve the representation and participation of ICAO members in guiding the work of ICAO, and reduce the concerns that the Council does not represent the wide spectrum of ICAO members.

## Maritime Labour Law

### *The 2016 and 2018 Amendments to the Code of the Maritime Labour Convention (Ratification Date: 15 December 2023)*

The Parliament of Mongolia approved a law on the ratification of the 2016 and 2018 Amendments to the Code of the Maritime Labour Convention, done by the International Labour Organization in 2006. These amendments address issues such as harassment, bullying, and the rights of seafarers who are held captive.

The 2016 amendments to the Code of the Maritime Labour Convention introduce provisions to better protect seafarers against shipboard harassment and bullying and to allow for the extension of the validity of full-term Maritime Labour Certificates.

The 2018 amendments enhance employment protection for seafarers held in captivity, where, in an unfortunate event, the seafarer(s) is held captive on or off a ship as a result of an act of piracy or armed robbery against the ship. During the period of captivity, the seafarer's employment agreement (SEA) shall continue to have effect, regardless of whether the date fixed for the expiry of the SEA has passed or either party to the SEA has given notice to suspend or terminate it. Further, a captive seafarer's wages and other entitlements under the SEA must continue to be paid during the period of captivity, until the day the seafarer is released and duly repatriated, or if the seafarer dies while in captivity, until the date of the seafarer's death. The seafarer's employer is also obliged to repatriate the seafarer upon release from captivity.

## Transportation and Connection

### *The Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicle, Equipment and Parts Which Can Be Fitted and/or Be Used on Wheeled Vehicles and the Conditions for Reciprocal of Approvals Granted on the Basis of These United Nations Regulations (Ratification Date: 3 March 2023)*

On 3 March 2023, the Parliament supported a bill ratifying the Agreement Concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicle, Equipment and Parts Which Can Be Fitted And/Or Be Used on Wheeled Vehicles and the Conditions for Reciprocal of Approvals Granted on the Basis of These United Nations Regulations (UN/ECE 1958 Agreement), which came into force 20 June 1959.

The UN/ECE 1958 Agreement was introduced by the United Nations Economic Commission for Europe concerning the technical harmonization of vehicles. The UN/ECE 1958 Agreement provides an administrative context for establishing international UN regulations with uniform (i) performance-oriented test provisions; (ii) administrative procedures for granting type approvals; (iii) conformity of production; and (iv) mutual recognition of the type approvals granted by contracting parties.

## **Investment and Financing**

### ***The Aimags and Soums Green Regional Development Investment Program (Ratification Date: 7 July 2023)***

The Parliament of Mongolia adopted a law on the ratification of the Financing Agreement for an Investment Program to Support Green and Inclusive Development of Mongolia's Aimags (provinces) and soums (subprovinces) (Aimags and Soums Green Regional Development Investment Program).

The purpose of the program is to promote a transformative model for green territorial development and green urban linkage. Mongolia's rangelands, which cover 82% of the country, are threatened due to livestock pressure on pastureland and unsustainable management practices. Climate change has reduced the productivity of fragile rangelands and has increasingly exposed herders to climate-related hazards.

The Aimags and Soums Green Regional Development Investment Program will implement climate-resilience, high-carbon sequestration, and sustainable rangeland management to support and empower the herder groups. It will promote renewable energy and low-carbon solutions through urban services, and build viable aimag and soum centers as anchors for a green agribusiness value chain.

### ***The Financing Agreement for the Smart Governance II Project (Ratification Date: 20 January 2023)***

On 20 January 2023, the Parliament of Mongolia approved a law ratifying the Smart Government II Project Financial Agreement between Mongolia and the International Development Association. The project aims at improving the quality and efficiency of online public services to citizens and businesses, and increasing skills and digital-enabled jobs in Mongolia. The project is funded by the World Bank for USD 40.7 million and would be implemented between 2023 and 2027.

The Smart Government I Project ensured the continuity and security of digital public services while digitalizing 112 public services provided by 12 government bodies for the public and businesses, saving enormous time and cost of MNT 48.4 billion.

***The Loan Agreement for Mongolian Transport Connectivity and Logistics Improvement Project (Ratification Date: 15 December 2023)***

A law was enacted for the Loan Agreement for Mongolian Transport Connectivity and Logistics Improvement Project made between the International Bank for Reconstruction and Development, the International Development Association, and the Government of Mongolia on 15 December 2023. The development objective of the project is to improve climate-resilient transport connectivity and logistics efficiency for the meat value chain in Mongolia.

***The Overall Financing Program for Loan Plan between 2022–2023 (Ratification Date: 9 June 2023)***

The Parliament of Mongolia adopted a law on ratifying the Overall Financing Program for the Loan Plan between 2022–2023, signed by the Government of Mongolia and the Asian Development Bank.

The Asian Development Bank is an important partner that supports sovereign and non-sovereign investment, policy reform, capacity building, and knowledge to help Mongolia recover from the COVID-19 crisis and lay resilient foundations for inclusive and sustainable growth. To achieve this, ADB will focus on three strategic priorities: (i) fostering inclusive social development and economic opportunity, (ii) climate-resilient infrastructure to drive competitiveness and diversification, and (iii) resilience for sustainable, green, and climate-conscious development.

# State Practice of Asian Countries in International Law

*Nepal*

*Ravi Prakash Vyas\* and Pranjali Kanel\*\**

## Statehood and Sovereignty

### Recognition of and by Nepal

Nepal continues to reconfirm its recognition of the one-China policy. In doing so, it recognizes China as the legal government representing the whole of China, including the territory of Taiwan. (The Kathmandu Post, National, 2023)

## Territory and Jurisdiction

### Territorial Disputes

Nepal stated that it stands firm and clear on its political and administrative map, unanimously approved by the Parliament of Nepal in 2020. (MOFA, Press Release, 2023) It has also remained committed to resolving the boundary matters through dialogue and diplomacy, owing to which the Government of India and the Government of Nepal stated to stay committed to finding alternative solutions to the dispute involving their continued position to maintain their claims over Kalapani, Limpiyadhura, and Lipulekh territories. (The Kathmandu Post, National, 2023)

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## International and Regional Organizations

### Admission, Membership, and Participation in International Organizations

#### *United Nations Conference on the Least Developed Countries*

Nepal took the chairmanship of the group of the Least Developed Countries (LDCs) in its participation in the Fifth United Nations Conference on the Least Developed Countries (LDC) held in Doha, the State of Qatar. (MOFA, Press Release, 2023)

#### *United Nations Secretary-General*

The Secretary-General of the United Nations addressed the Joint Sitting of the Parliament at the Federal Parliament of Nepal in October 2023. (MOFA, Press Release, 2023) He praised Nepal's contributions to UN peacekeeping operations, climate action, gender equality, and the transition from conflict to peace. He further expressed strong solidarity with Nepal, describing it as “a promoter of peace, a champion of multilateralism, and a staunch supporter of sustainable development and climate action.” (MOFA, Press Release, 2023) He emphasized the necessity for the international community to support countries like Nepal, which are at the forefront of challenges related to climate action.

#### *United Nations Human Rights Council*

Nepal served as a member of the Human Rights Council from 2018 to 2023 for two consecutive terms. (MOFA, Nepal's Multilateral Affairs, 2025)

#### *United Nations General Assembly*

Nepal casted a vote in support of a resolution denouncing Russia's endeavour to annex four territories of Ukraine through the conduct of a referendum within Ukrainian borders. (The Kathmandu Post, 2023)

### Admission, Membership, and Participation in Regional Organizations

#### *South Asian Association for Regional Cooperation (SAARC)*

The Rt. Hon. Prime Minister of Nepal marked the 39th Charter Day of SAARC by extending greetings to the people and the member states of SAARC. The Prime Minister underscored the need for closer cooperation to overcome the

challenges faced by the SAARC nations, including poverty, malnutrition, cybersecurity, and natural disasters. (MOFA, Press Release on Messages from Rt. Hon. Prime Minister and Hon. Minister for Foreign Affairs on the 39th SAARC Charter Day, 2023)

***Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC)***

The 19th Ministerial Meeting of the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) and the 23rd Session of the BIMSTEC Senior Officials' Meeting were held virtually in Bangkok, Thailand. The Nepali delegation to the meetings called for meaningful regional cooperation to deal with challenges such as climate change, energy crisis, food insecurity, and large-scale pandemics. (MOFA, Press Release, 2023)

Nepal organized the "BIMSTEC Tourism Fair 2023" in Lumbini on 11–13 May 2023 with the Buddhist International Travel Mart to commemorate the Silver Jubilee Celebration of the establishment of BIMSTEC. (MOFA, Press Release, 2023)

**Non-aligned Movement (NAM)**

Nepal participated in the Non-Aligned Movement (NAM) Ministerial Meeting of the NAM Coordinating Bureau held in Baku, Azerbaijan, under the theme "NAM: United and steadfast in confronting emerging challenges." (MOFA, Press Release, 2023) Nepal asserted its position in firmly believing in the principles of NAM and the power of unity in confronting the challenges of peaceful resolutions to conflicts.

**International Relations and Cooperation**

**Bilateral/Multilateral Aid and Disaster Relief**

***Millennium Challenge Corporation (MCC)***

The Millennium Challenge Corporation (MCC) is a U.S. foreign assistance agency that provides time-limited grants promoting economic growth, reducing poverty, and strengthening institutions. (MCC, 2022). MCC came into full-fledged implementation starting in August 2023. (Republica, 2023)

### *Turkey*

Nepal sent relief materials containing medicines, medical equipment, warm clothing, and other essential items for the earthquake-affected people of Turkey as a gesture of solidarity in Turkey's relief and recovery efforts. (MOFA, Press Release, 2023)

### *Saudi Arabia, India, China*

The Ministry of Foreign Affairs, Nepal, along with the embassies in Riyadh and Jeddah, coordinated and facilitated the evacuation efforts of Nepali citizens in Sudan following the violent clashes that erupted between the Sudanese Armed Forces (SAF) and the paramilitary Rapid Support Forces (RSF) in Sudan. (MOFA, Press Release, 2023) The Government of Nepal extended gratitude to the nations of India, China, and Saudi Arabia for their assistance in the evacuation process. (MOFA, Press Release, 2023)

## **Specific Bilateral Relations Issues**

### *China*

The Prime Minister of Nepal visited China in September 2023 to attend the 19th Asian Games and engage in high-level discussions with Chinese leaders. The visit aimed to strengthen the China-Nepal relationship and focused on discussions about deepening traditional friendship and expanding mutually beneficial cooperation. (MOFA, Press Release, 2023, para 2)

### *Trade*

China granted zero-tariff treatment to 98% of taxable products from Nepal. (MOFA, Press Release, 2023, para 8.7)

### *Cultural and People Exchange*

The two nations emphasized the importance of cultural exchanges and tourism to strengthen ties between their peoples. Nepal was declared the theme country at the 7th China-South Asia Expo in August 2023. (MOFA, Press Release, 2023)

### *Global Cooperation*

China and Nepal reaffirmed their commitment to multilateral cooperation and shared development goals, focusing on global governance and economic globalization. Nepal supported China's Global Development Initiative and stated that it would consider joining the Group of Friends of the GDI.

### *India (MOFA, Press Release, 2023)*

The Foreign Secretary of India visited Nepal in February 2023, where the Nepal-India reviewed various aspects of Nepal-India relations, including connectivity, trade and transit, power sector cooperation, agriculture, education, culture, the health sector, and people-to-people relations.

### *Airway*

The Foreign Secretary of Nepal reiterated the Government of Nepal's request for additional air-entry routes and early concurrence of the near-border flight operation of the Gautam Buddha International Airport, Bhairahawa.

### *Territorial Disputes*

The two Foreign Secretaries also discussed boundary matters, and they exchanged views on completing boundary works in the remaining segments through established bilateral mechanisms.

### *Qatar*

The State of Qatar and Nepal discussed matters of mutual interest, including trade, investment, development cooperation, and employment of Nepali nationals in Qatar. Nepal took an appreciative stance on Qatar's mediation in the humanitarian pause in Gaza and the release of hostages. Nepal also sought the cooperation of the Government of Qatar in securing the release of a Nepali citizen from the captivity of Hamas. (MOFA, Press Release, 2023)

### *Russia (MOFA, Press Release, 2023)*

#### *Participation in the Military*

The Embassy of Nepal in Moscow requested the Russian government to swiftly bring home the remains of the Nepali citizens who tragically lost their lives while serving in the Russian army. The Nepal Government also urged for fair compensation to be provided to the injured and the families who have suffered such a loss, along with the request to immediately return any Nepali citizens currently serving in the Russian army and to refrain from recruiting any more. The Nepali Government was also proactive in asking the Russian authorities for official and timely information on the number of Nepali citizens serving, the number of those injured, and their conditions.

#### *No Objection Permit*

Additionally, following the Russia-Ukraine Crisis, except for those involved in government work, those working through official Russian government

contracts, or those engaged in recognized professions, ordinary Nepali citizens travelling to Russia are now required to obtain a No Objection Certificate (NOC) issued by the Consular Services Department under the Ministry of Foreign Affairs.

### *Sri Lanka*

The first meeting of the Nepal-Sri Lanka Joint Commission (JC) was held in Kathmandu to review the overall state of bilateral relations between the two countries. The two sides agreed to continue cooperation in areas of mutual interest, like trade, connectivity, investment, education, and tourism, at regional and multilateral forums, including SAARC, BIMSTEC, and the UN. A Memorandum of Understanding for cooperation in science, technology, and innovation between the two countries was also signed. (MOFA, Press Release, 2023)

### *United Kingdom*

Nepal commemorated the 100 years of the Nepal-United Kingdom Friendship Treaty 1923. (MOFA, Press Release, 2023)

### *United States of America*

The Government of Nepal complemented the diplomatic efforts of the United States of America leading to a humanitarian pause in Gaza. During the Administrator of the United States Agency for International Development (USAID) visit, views were exchanged on various aspects of Nepal-US relations and cooperation. (MOFA, Press Release, 2023)

## **Human Rights**

### **Specific Human Rights Incidents or Cases**

#### *Legalizing Same-Sex Marriage*

In a historic ruling, on 28 June, the Supreme Court ordered the government to register same-sex marriages. (Human Rights Watch, Nepal, 2023) With this ruling, Nepal has become one of the only two countries in Asia to allow same-sex marriage. (Fang Hannah, Jurist News, 2023)

#### *Freedom of Expression*

The Government of Nepal banned TikTok's social media platform, citing its content as detrimental to social harmony. (Online Khabar, 2023) The decision

came under scrutiny surrounding the ban curbing the freedom of expression of the people wishing to use the platform. (Oi Mariko, BBC, 2023)

### *Fake Refugee Scandal*

Nepal was shaken to the core when thirty people, including two former ministers, were involved in faking documents to enter the United Nations as Bhutanese refugees. (Al Jazeera, 2023) This case also sparked the debate on the level and scale of corruption and the involvement of legal mechanisms' loopholes to facilitate it. (Joshi R Pushpa, The Himalayan Times, 2023)

## **International Humanitarian Law**

### **Protection of Individuals under International Law**

Nepal also sought the cooperation of the Government of Qatar in securing the release of a Nepali citizen from the captivity of Hamas. Also, it called for the safety and security of other innocent missing civilians. (MOFA, Press Release, 2023)

### **Use or Threat of Force**

### **Responses to Threats and Attacks**

The Nepal Government reiterated that, apart from agreements with some traditional partner countries allowing limited service in their national armies, it does not permit Nepali citizens to enlist in foreign armies. This reiteration was made in the context of the enlistment of Nepali nationals in the Russian Army in Russia's attacks against Ukraine. (MOFA, Press Release, 2023) It has also urged Nepali nationals not to join the military of nations currently at war in response to threats and attacks against or made by it. (MOFA, Press Release, 2023)

# State Practice of Asian Countries in International Law

## *Philippines*

*Rommel J. Casis\**

In 2023, Philippine State practice consisted mainly of Supreme Court decisions covering varied issues and concerns discussing and reiterating fundamental international law doctrine. For instance, in *Macalintal v. Bersamin*, the Court addressed the incorporation and transformation modes of applying international law in domestic law. In this case, the Court clarified the distinction between “generally accepted principles of international law” and “general principles of law.” In *Bayan Muna v. President Arroyo*, the Court discussed the principle of *auto-limitation*, such that states may limit their sovereignty when entering into treaties. The Court also mentioned the power of the Philippine President to enter into treaties. This power was also discussed in *IDEALS, Inc. v. The Senate*, but the Court noted that this power was not absolute, noting the obligation of the President to make sure that treaties are in line with the Constitution and statutes. This case also discussed the concept of reservations under the Vienna Convention on the Law of Treaties (VCLT) and also reiterated that under Philippine law, international agreements can be in the form of treaties or executive agreements and that an exchange of notes is an example of the latter. The case also mentioned Article 31 of the VCLT as a mode of interpretation.

Moreover, the Supreme Court applied international law in tandem with domestic law to decide cases. In *Icebergs v. Filipino Society*, the Court applied the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) alongside the Intellectual Property Code of the Philippines in ruling that there was copyright infringement. In this case, the Court considered the Berne Convention as domestic law or at least equivalent to it in stature. In *Water for All v. Manila Waterworks*, the Court interpreted the precautionary principle in ruling against the petitioners.

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As in previous years, some cases discussed international human rights obligations. For example, in *Macalintal v. Bersamin*, the Court discussed the right of suffrage under Article 25 of the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). The Court also reiterated previous rulings identifying the entire UDHR as customary international law. In *Re: Disturbing Social Media Posts*, an administrative case was filed against some lawyers, and the Court invoked Article 26 of the ICCPR to rule against them. In *Baquirin v. Dela Rosa*, the Court explained the right-to-life provisions of the ICCPR, the Convention on the Rights of the Child, and the International Convention on the Protection of All Migrant Workers.

Regarding treaties, the most significant developments were in international economic law and multinational or regional cooperation. The most important development is perhaps the concurrence of the Philippine Senate with the ratification of the President of the Regional Comprehensive Partnership. Other significant developments include a treaty under the auspices of the International Labour Organization and bilateral treaties with the Republic of Korea and Brunei Darussalam. As for legislation, the most significant is an act that governs internet transactions and another that protects cultural heritage.

## Judicial Decisions

### Territory and Jurisdiction

#### International Cooperation in Adjudication and Enforcement (e.g., Obtaining Evidence from Abroad and Extradition Agreements)

*The Board of Commissioners of the Bureau of Immigration and the Jail Warden, Bureau of Immigration Detention Center, Petitioners, vs. YUAN WENLE, Respondent.* [G.R. No. 242957, 28 February 2023]

Through a letter, the Embassy of the People's Republic of China in the Philippines requested the Bureau of Immigration (Bureau) to arrest and deport three Chinese nationals, including the Respondent. The Board of Commissioners of the Bureau issued a summary deportation order (SDO). The Respondent was arrested and detained. The Respondent filed a petition for habeas corpus, which the Regional Trial Court granted.

In the process of discussing the validity of the SDO, the Court explained that “the temporary stay of aliens in the Philippines is but a privilege, not a

right, subject to the dictates of public policy and the appropriate determination by the authorities vested with that power under our Immigration Law.” It added, “[a]ny legislation aimed at preserving national security and protecting public safety through border control measures is considered a legitimate and compelling state interest.” It ruled that “SDOs satisfy the requirement of an existence of compelling state interest for them to be used in the enforcement of immigration laws.”

## Relationship between International and Domestic Law

### Theories of International and Domestic Law – Monism, Dualism

*Atty. Romulo B. Macalintal, Petitioner, Vs. Commission on Elections and the Office of the President, through Executive Secretary Lucas P. Bersamin, Respondents.* [G.R. No. 263590. 27 June 2023, and G.R. No. 263673. 27 June 2023]

Consolidated Petitions assailing the constitutionality of Republic Act No. (RA) 11935, which postponed the December 2022 Barangay and Sangguniang Kabataan Elections were filed with the Court. The Court argued the importance of the right of suffrage and, in the process, quoted portions of the Universal Declaration of Human Rights (UDHR) and Article 25 of the International Covenant on Civil and Political Rights (ICCPR).

Thereafter, the Court explained the binding effect of these instruments by reiterating how international law becomes binding in the Philippine jurisdiction. It began with the Philippine Constitution stating that “international law can become part of the sphere of Philippine law either by transformation or incorporation.”

The Court explained that “[t]he transformation method ‘requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation.’” This rule applies to treaties, which “become part of the law of the land through transformation pursuant to Article VII, Section 21 of the Constitution, which requires Senate concurrence. From then, they have the force and effect of a statute enacted by Congress.”

On the other hand, the Court discussed that incorporation “applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.” This rule is based on Article II, Section 2 of the Constitution, which “declares that *generally accepted principles of international law* are adopted as part of the law of the land.” It explained that the term *generally accepted principles of international law* “refer to norms of general or customary

international law that are binding on all states.” The Court also cited the case *Pangilinan v. Cayetano*, which “explained that the term ‘generally accepted principles of international law’ includes both ‘international custom’ and ‘general principles of law’ – both of which constitute distinct sources of international law under Article 38 of the Statute of the International Court of Justice.” The Court then quoted *Razon v. Tagitis*, which explained that “international custom pertains to ‘customary rules accepted as binding [and] result from the combination of two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the *opinion juris sive necessitates* (opinion as to law or necessity).”

Given these rules, the Court concluded that:

[W]hile the UDHR is not a treaty and may not have been originally intended to have legal binding force, it nonetheless has been recognized as reflecting customary international law or has gained binding character as customary law through the subsequent adoption of treaties and international instruments that reflect its various principles. Indeed, this Court has recognized the UDHR as part of the generally accepted principles of international law, and therefore, binding on the State.

Thus, this ruling is consistent with the Court’s other decisions wherein it decided that the entire UDHR is customary international law.

In contrast, the Court noted that “the Philippines ratified the ICCPR on 23 October 1986 [and] following Article VII, Section 21 of the Constitution, the ICCPR likewise has the force and effect of a statute enacted by Congress.” Thus, this case follows the line of cases that consider treaties with equal status as domestic law.

The Court concluded by stating that:

the recognition by the UDHR and the ICCPR of the people’s right to *take part in the conduct of public affairs, directly or through freely chosen representatives* and participate in *genuine and periodic elections*, subject only to such *conditions or restrictions established by law based on objective and reasonable criteria* are deemed to be binding on the State and have the force of domestic law.” (emphasis in the original)

### Treatment of International Law by Domestic Courts

*Bayan Muna Party-List Representatives Satur C. Ocampo and Teodoro A. Casiño, Anakpawis Representative Crispin B. Beltran, Gabriela Women's Party Representatives Liza L. Maza and Luzviminda C. Ilagan, Rep. Lorenzo R. Tañada III, and Rep. Teofisto L. Guingona III, Petitioners, Vs. President Gloria Macapagal-Arroyo, Executive Secretary Eduardo R. Ermita, Secretary of the Department of Foreign Affairs, Secretary of the Department of Energy, Philippine National Oil Company, and Philippine National Oil Company Exploration Corporation.*

[G.R. No. 182734. 10 January 2023]

This case deals with the following companies: PNOOC, the national oil company of the Republic of the Philippines (Republic); CNOOC, the state-owned oil company of the People's Republic of China; and PETROVIETNAM, the state-owned oil company of the Socialist Republic of Vietnam. The three companies, with the authorization of their respective Governments, signed the Joint Marine Seismic Undertaking (JMSU) in Manila, Philippines. The JMSU has a term of three years, and its execution is an expression of the Parties' desire "to engage in a joint research of petroleum resource potential of a certain area of the South China Sea as a pre-exploration activity." Moreover, the JMSU covers the portion of the South China Sea claimed by the Philippines, China, and Vietnam. In 2008, the petitioners sought to declare the JMSU as unconstitutional and void. The Philippine Supreme Court held that the JMSU was unconstitutional.

In the course of explaining why the JMSU was unconstitutional, the Court discussed "the State's power of auto-limitation or that property of a state-force due to which it has exclusive capacity of legal self-determination and self-restriction [pursuant to which] the State may, by its consent, express or implied, submit to a restriction of its sovereign rights." The Court held that "the consent of the State to the alleged restriction of its sovereign rights over the Agreement Area is wanting because the President did not personally sign the JMSU."

The Court also stated that the JMSU would not be valid even if treated as an international agreement. The Court explained, "This is because in our system of government, the President, being the head of the State, is the chief architect of our foreign policy. The JMSU was not also concurred in by at least two-thirds of all the members of the Senate." Thus, the Court considered the JMSU as a treaty that, under Philippine law, required ratification by the President and the concurrence of two-thirds of the members of the Philippine Senate for it to be valid.

## Treaties

### Making and Concluding Treaties – Negotiation, Accession, Ratification, Deposit, Registration, Internal Constitutional Arrangements

*Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. (IDEALS, Inc.), Represented by Its Executive Director, Mr. Edgardo Ligon, Alliance of Progressive Labor (Apl), Represented by Its Chairperson, Daniel L. Edralin, Ecological Waste Coalition of the Philippines, Inc., Represented by Its President/Executive Director, Riedo Panaligan; Mother Earth Foundation, Represented by Its President, Marietta Marciano; Concerned Citizens Against Pollution, Represented by Its President, Renato D. Pineda, Jr.; NGOs For Fisheries Reform, Represented by Its Executive Director, Dennis F. Calvan; Kilusan Para Sa Pagpapaunlad ng Industriya ng Pangisdaan, Represented by Its Executive Committee Member, Pablo R. Rosales, Jr.; Ana Theresia Hontiveros-Baraquel, as the Duly Elected Representative of the Akbayan Citizens' Action Party; and Philippine Workers Alliance, Represented by Its President Francisco P. Mero, Petitioners, Vs. the Senate of the Philippines, Represented by Senators Who Cast a Vote of Concurrence for the JPEPA; the Secretary of Trade and Industry; the Secretary of Foreign Affairs; the Executive Secretary; the Secretary of Finance; and the Commissioner of Bureau of Customs, Respondents. [G.R. Nos. 184635 and 185366, 13 June 2023]*

In 2006, the Philippines and Japan signed the Japan-Philippines Economic Partnership Agreement (JPEPA), the first bilateral free trade agreement entered into by the Philippines in over half a century. This case involves two petitions challenging the JPEPA's constitutionality.

After quoting Article (2) of the Vienna Convention on the Law of Treaties (VCLT), which defines what a treaty is, the Court stated that “[t]he authority to negotiate and enter into treaties is solely bestowed on the president, who represents the country in all external relations.” The Court also quoted from *Pimentel, Jr. v. Office of the Executive Secretary* where it stated that “As the chief architect of foreign policy, ... the [p]resident is vested with the authority to deal with foreign states and governments, extend or withhold recognition, maintain diplomatic relations, enter into treaties, and otherwise transact the business of foreign relations.” But it clarified that “[n]onetheless, this authority

is not absolute,” noting that the Philippine Constitution “limits this power by requiring the Senate’s concurrence for a treaty or international agreement to be valid and effective.” It added that “the president must ensure that ‘paramount importance [is given] to the sovereignty of the nation, the integrity of its territory, its interest, and the right of the sovereign Filipino people to self-determination.’” Thus, “[i]n the conduct of foreign relations, the president must guarantee that all treaties entered into are in line with the Constitution and statutes.” The Court quoted from *Pangilinan v. Cayetano*:

The Constitution is the fundamental law of the land. It mandates the President to “ensure that the laws be faithfully executed.” Both in negotiating and enforcing treaties, the President must ensure that all actions are in keeping with the Constitution and statutes. Accordingly, during negotiations, the President can insist on terms that are consistent with the Constitution and statutes, or refuse to pursue negotiations if those negotiations’ direction is such that the treaty will turn out to be repugnant to the Constitution and our statutes.

The Court also noted that Article VIII, Section 5(2)(a) of the Constitution vests this Court with the authority to declare a treaty unconstitutional. Thus, this case follows the line of cases that hold that domestic law has primacy over international law.

### Exceptions and Reservations

#### *Initiatives for Dialogue and Empowerment Through Alternative Legal Services, Inc. (IDEALS, Inc.), et al. Petitioners, Vs. the Senate of the Philippines et al.* [G.R. Nos. 184635 and 185366, 13 June 2023]

The Court noted that the VCLT defines “reservation” as “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving[,] or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State[.]” It added that “[i]ts purpose is to ensure that the national policymakers are not unduly constrained in advancing their countries’ national policy objectives amid efforts to enhance investment opportunities.”

The Court agreed with the “respondents that the limitation imposed by Article XII, Section 2 of the Constitution has been protected in the Philippine list of reservations.” It noted that “Annex 7 of the JPEPA lists the measures that Japan and the Philippines excluded from the coverage of their commitments.”

It reiterated that “all elements shall be considered in interpreting a reservation for existing measures.”

### Application of Treaties to the State

#### *Initiatives for Dialogue and Empowerment Through Alternative Legal Services, Inc. (Ideals, Inc.), et al. Petitioners, Vs. the Senate of the Philippines et al.* [G.R. Nos. 184635 and 185366, 13 June 2023]

On 22 August 22, Foreign Affairs Secretary Romulo sent former Japanese Prime Minister of Foreign Affairs Koumura (Minister Koumura) a letter containing the Philippines and Japan’s shared understanding of how the JPEPA would be implemented. Minister Koumura replied on 28 August 2008, confirming the shared understanding. This exchange of letters constitutes the Romulo-Koumura Exchange of Notes.

While discussing the binding nature of the Romulo-Koumura Exchange of Notes, the Court reiterated that under Philippine law, “[t]reaties and executive agreements are both international agreements. In the international sphere, they are both binding. However, unlike a treaty, which to be valid and effective requires Senate concurrence after executive ratification, an executive agreement does not.” Referring to *Bayan Muna v. Romulo*, the Court stated that it had “categorized an exchange of notes as an internationally accepted form of intergovernmental agreement.” It reiterated that “treaties and executive agreements are both legally binding in our jurisdiction” and thereafter quoted from its decision in *Pangilinan v. Cayetano*, which discussed the difference between an executive agreement and a treaty. Later, it clarified that “treaties and executive agreements are not wholly the same.” Citing *Saguisag v. Ochoa*, it added that “[a]n executive agreement can be distinguished from a treaty based on two essential features: (1) the existence of an executive agreement must be ‘traceable to an express or implied authorization under the Constitution, statutes, or treaties;’ and (2) treaties are regarded as ‘superior to executive agreements.’” It further explained that:

An exchange of notes, as an executive agreement, is concluded to implement existing policies, or to be considered in interpreting a treaty or applying its provisions. It is just as binding as a treaty but must yield in case of conflict with the Constitution, a statute, or a treaty. The obligations created by an executive agreement cannot go beyond what is explicitly allowed or reasonably implied by the mandate it seeks to implement.

An executive agreement that contains overbroad obligations renders its validity and effectivity questionable.

The Court also quoted the third paragraph of Article 31 of the VCLT. It stated that “the Vienna Convention expressly provides for the rule in interpreting a treaty in relation to any subsequently executed agreement between the parties.” It concluded that “the Vienna Convention allows the consideration of any subsequent agreement between the parties in interpreting the treaty or applying its provisions.”

The Court stated that “[t]he Romulo-Koumura Exchange of Notes shows that both countries confirmed their shared understanding that the JPEPA’s provisions shall be implemented in accordance with the Constitution of the Philippines and that of Japan.” The Court also noted that “[t]he Senate of the Fourteenth Congress, upon concurring in the JPEPA’s ratification, expressly recognized the Romulo-Koumura Exchange of Notes.” Thus, it held that “the Romulo-Koumura Exchange of Notes is a valid executive agreement. Therefore, as with the JPEPA, it is likewise binding.”

## International Economic Law

### Intellectual Property (WIPO)

#### *Icebergs Food Concepts, Inc. and Allan John T. Young, Petitioners, Vs. Filipino Society of Composers, Authors, and Publishers Inc.*

[G.R. NO. 256091. 12 April 2023]

The Respondent discovered that the Petitioner publicly played in its restaurants copyrighted musical works found in the former’s musical repertoire without the required public performance license. The Respondent filed a complaint for copyright infringement. The Regional Trial Court and the Court of Appeals ruled in favor of the Respondent, hence the petition. The Court affirmed the lower courts’ rulings and found the petitioner guilty of copyright infringement.

As to the applicable law, the Court said that “[i]ntellectual property right, being primarily a private right, is governed by the law of the country where its enforcement is being sought.” Thus, the Court held that the applicable law is the Intellectual Property Code of the Philippines “as well as the treaties on intellectual property rights, to which the Philippines is a party, such as the Berne Convention for the Protection of Literary and Artistic Works. Thus, in this case, the Berne Convention was considered as domestic law because the

Philippines was a party to it. This follows the line of cases that consider treaties the Philippines is a party to as domestic law.

In the course of explaining the difference between public performance and communication to the public, the Court explained that “the Berne Convention likewise distinguishes public performance from communication to the public.” The Court then quoted Articles 11 and 11*bis* of the Berne Convention. The Court further explained that “the Berne Convention deals with the protection of works and the rights of their authors, and also gives the creators a degree of control with regard to how their works are used, by whom, and on what terms” and that “[t]he Philippines became a party to the Berne Convention in 1951.”

## International Environmental Law

### Environmental Protection through Law/Regulation

*Water for All Refund Movement, Inc., Petitioner, Vs. Manila Waterworks and Sewerage System, Maynilad Water Systems, Inc., and Manila Water Company, Inc., Respondents.* [G.R. No. 212581, 28 March 2023]

The petitioner filed a suit against the respondents for allegedly operating a combined drainage-sewerage system without the necessary permits from the Department of Environment and Natural Resources and the Department of Health. The lower Court dismissed the petition, so the petitioner filed a Petition for *Certiorari* before the Supreme Court, invoking the precautionary principle as the basis for the issuance of a *Writ of Kalikasan*. It argued that the principle requires the Supreme Court to require evidence from the respondents that all environmental laws are complied with and that no environmental harm is caused.

The Court explained that “the extraordinary remedy of a *Writ of Kalikasan* is provided [for] under Section 1, Rule 7, Part III of the [Rules of Procedure for Environmental Cases (RPEC)]...[and] is categorized as a special civil action and conceptualized as an extraordinary remedy; it covers environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces.” The Court ruled that the petitioner did not meet the requirements for the *writ* and “sidestepped its obligation to substantiate its allegations by invoking the Precautionary Principle, specifically the stringent requirement to prove environmental damage.”

The Court quoted Section 1, Rule 20, Part V of the RPEC, on the Precautionary Principle, which provides that “[w]hen there is lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.” It added that “The precautionary principle likewise mandates that the constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.” Citing *West Tower Condominium Corp. v. First Phil. Industrial Corp.*, the Court said that “the precautionary principle only applies when the link, between the cause, that is the human activity sought to be inhibited, and the effect, that is the damage to the environment, cannot be established with full scientific certainty.” In this case, the Court found that the petitioner “not only failed to provide a link, it likewise did not provide the scientific basis for its particular objection to the operation of a combined sewerage-drainage system or submit any evidence of a resulting environmental damage.”

## Law of the Sea

### Exploring and Exploiting Living and Non-living Resources

*Bayan Muna Party-List Representatives Satur C. Ocampo and Teodoro A. Casiño, Anakpawis Representative Crispin B. Beltran, Gabriela Women’s Party Representatives Liza L. Maza and Luzviminda C. Ilagan, Rep. Lorenzo R. Tañada III, and Rep. Teofisto L. Guingona III, Petitioners, Vs. President Gloria Macapagal-Arroyo, Executive Secretary Eduardo R. Ermita, Secretary of the Department of Foreign Affairs, Secretary of the Department of Energy, Philippine National Oil Company, and Philippine National Oil Company Exploration Corporation.*

[G.R. No. 182734. 10 January 2023]

This case deals with the Joint Marine Seismic Undertaking (JMSU) aforementioned above, which was signed by the three companies – PNOOC, CNOOC, and PETROVIETNAM. The Court explained that while they could not assume that the area covered by the agreement in question included the West Philippine Sea due to the absence of an official map covering the agreement, the Court was certain that “the Agreement Area is within the Philippines’ [Exclusive Economic Zone (EEZ)]. Therefore, whatever natural resources found therein is owned by the Republic.” Thus, this case demonstrates the Philippines’ position

that it exercises ownership over the natural resources within the Philippine EEZ. After the statement, the Court discussed the constitutional and legal requirements for exploring natural resources. The Court did not seem to distinguish between natural resources found in the territory of the Philippines and within the EEZ.

## Human Rights

### Implementation of Human Rights Treaties (e.g., Domestic Laws and Institutions)

*Atty. Romulo B. Macalintal, Petitioner, Vs. Commission on Elections and the Office of the President, through Executive Secretary Lucas P. Bersamin, Respondents.* [G.R. No. 263590, 27 June 2023, and G.R. No. 263673, 27 June 2023]

Consolidated Petitions assailing the constitutionality of Republic Act No. (RA) 11935, which postponed the December 2022 Barangay and Sangguniang Kabataan Elections, were filed with the Court. The Court argued that “[b]ecause of the fundamental and indispensable role that the right of suffrage plays in the preservation and enjoyment of all other rights, it is protected in various international instruments.” It began by explaining that “[f]oremost of these instruments is the Universal Declaration of Human Rights” and quoted portions of Article 21 thereof. The Court also quoted portions of Article 25 of the ICCPR.

The Court further explained that “[t]o clarify the coverage and limitations of the rights guaranteed under Article 25 of the ICCPR, the United Nations Committee on Human Rights adopted General Comment No. 25.” After quoting the General Comment 25 (GC 25), the Court emphasized “that any conditions or restrictions to be imposed in the exercise of the rights protected by Article 25 should be based on ‘objective and reasonable criteria.’” It further explained that “the suspension or exclusion from the exercise thereof should be founded ‘only on grounds which are established by law and which are objective and reasonable.’” The Court further quoted from paragraphs 9 and 19 of GC 25. The use of GC 25 in making its arguments aligns with judicial decisions that make use of general comments without necessarily commenting on their binding or legal effects.

*Re: Disturbing Social Media Posts of Lawyers/Law Professors.*

[A.M. No. 21-06-20-SC. 11 April 2023]

This is an administrative case before the Supreme Court resulting from Facebook posts by Attys. Antay, Jr., Tabujara III, Calderon, Nicanor, and Navarrete that allegedly violate the Code of Professional Responsibility (CPR). The posts may be perceived as discriminating against or disparaging any member of the Lesbian, Gay, Bisexual, Transsexual, Queer or Questioning, Intersex, Asexual, and more (LGBTQIA+) community.

The Court reiterated that “the Philippines adheres to the internationally-recognized principle of non-discrimination and equality.” It quoted from *CBEAI v. Bangko Sentral ng Pilipinas*, which stated that:

The principle of equality has long been recognized under international law. **Article 1 of the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights.** Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitutes basic principles in the protection of human rights.

Most, if not all, **international human rights instruments** include some prohibition on discrimination and/or provisions about equality. The general international provisions pertinent to discrimination and/or equality are the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of all Forms of Racial Discrimination (CERD); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of the Child (CRC).

In the broader international context, **equality is also enshrined in regional instruments** such as the American Convention on Human Rights; the African Charter on Human and People’s Rights; the European Convention on Human Rights; the European Social Charter of 1961 and revised Social Charter of 1996; and the European Union Charter of Rights (of particular importance to European states). Even the Council of the League of Arab States has adopted the Arab Charter on Human Rights in 1994, although it has yet to be ratified by the Member States of the League.

**The equality provisions in these instruments do not merely function as traditional “first generation” rights, commonly viewed as concerned only with constraining rather than requiring State action.** Article 26

of the ICCPR requires “guarantee[s]” of “equal and effective protection against discrimination” while Articles 1 and 14 of the American and European Conventions oblige States Parties “to ensure ... the full and free exercise of [the rights guaranteed] ... without any discrimination” and to “secure without discrimination” the enjoyment of the rights guaranteed. These provisions impose a measure of **positive obligation** on States Parties to take steps to eradicate discrimination. (emphasis in the original)

In the light of this, the Court held that “the principles of non-discrimination and equality are deeply embedded in the Philippine system of laws. As such, every member of the legal profession is bound to observe and abide by them, especially when dealing with LGBTQIA+ individuals.”

*Anna May V. Baquirin, Mary Jane N. Real, Maria Lulu G. Reyes, Joan Dymphna G. Saniel, and Evalyn G. Ursua, Petitioners, Vs. Ronald M. Dela Rosa, In His Capacity as Director-General of the Philippine National Police, Jose Luis Martin C. Gascon, in His Capacity as Chairperson of the Commission on Human Rights, and Vitaliano Aguirre II, in His Capacity as the Secretary of the Department of Justice, Respondents.* [G.R. No. 233930. 11 July 2023]

Petitioners came before the Court asking for the issuance of a writ of continuing *mandamus* to compel the respondents to perform their duties under the Constitution, pertinent laws, and treaties pertaining to violations of the right to life and investigation and prosecution thereof, and to report to the Court the measures they will be taking in carrying out such duties. The Court ruled against the petitioners.

In the course of discussing the petition, the Court noted the following treaties guaranteeing the right to life:

- (a) the International Covenant on Civil and Political Rights (ICCPR),
- (b) the Convention on the Rights of the Child (CRC), and
- (c) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).

The Court stated that “[w]hile State parties, such as the Philippines, are bound to protect the right of every human being to life, they are allowed to do so in accordance with their national law and to the extent of their available resources.” It added:

In consideration thereof, State parties are essentially obligated to establish a system of accessible and effective remedies through judicial and

administrative mechanisms, which ensure that: (a) any person whose rights are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and (c) the competent authorities shall enforce such remedies when granted.

Thus, the Court held that “State parties to the ICCPR, CRC, and CMW are thus afforded a wide latitude in complying with their obligations thereunder, owing to their sovereignty.” Because of this, “the petitioners cannot impose on the respondents the standards and characteristics of investigation which they deem to be appropriate and sufficient through a *Mandamus* Petition, as it lies only to compel the performance of purely ministerial duties.”

## International Agreements

### International and Regional Organizations

#### Admission, Membership, and Participation in International Organizations

##### *International Labour Organization Convention – No. 190 or the “Convention Concerning the Elimination of Violence and Harassment in the World of Work”*

The International Labour Organization Convention No. 190 (ILO C190) or the “Convention Concerning the Elimination of Violence and Harassment in the World of Work” was signed and adopted by the International Labour Organization General Conference in Geneva, Switzerland on 21 June 2019. The President of the Philippines ratified the ILO C190 on 13 October 2023 and submitted it to the Senate for concurrence. On 11 December 2023, the Philippine Senate concurred in the ratification.

ILO C190 is the first common international framework that addresses violence and harassment in the world of work. It applies to all sectors, whether public or private, in urban or rural areas, both in the formal and informal economy. It protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns

and apprentices, workers whose employment has been terminated, volunteers, job seekers, and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.

ILO C190 provides that parties shall respect, promote, and realize everyone's right to a world of work free from violence and harassment. It further provides that

With a view to preventing and eliminating violence and harassment in the world of work, [parties] shall respect, promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation, as well as promote decent work.

It also provides that parties shall adopt laws, regulations, and policies ensuring the right to equality and non-discrimination in employment and occupation,

## **International Relations and Cooperation**

### **Specific Bilateral Relations Issues**

#### *The Agreement on Social Security between the Government of the Republic of the Philippines and the Government of the Republic of Korea*

The Agreement on Social Security Between the Government of the Republic of the Philippines and the Government of the Republic of Korea (Social Security Agreement) was signed on 25 November 2019 in Busan, Republic of Korea. The President of the Philippines ratified it on 20 February 2023 and submitted it to the Senate for concurrence. On 13 December 2023, the Philippine Senate concurred in the ratification.

The objective of the Social Security Agreement is to promote mutual cooperation between the two countries in the field of social security. It applies to the National Pension Act of Korea and to the following legislations of the Philippines:

- Republic Act No. 1199, also known as the “Social Security Act of 2018”, as it relates to retirement, disability, and death benefits;

- Republic Act No. 8291, also known as the “Government Service Insurance Act of 1997”, as it relates to retirement, disability, death, and survivorship; and
- Republic Act No. 7699, also known as the “Portability Law” and, as it relates to totalizing creditable period of contributions under the Acts specified in Republic Act No. 11199 and Republic Act No. 8291

The Social Security Agreement provides for equality of treatment, entitling a covered person, including the person’s dependents and survivors, to social security benefits under the same conditions as nationals of the other State. It also provides for the export of benefits enabling covered persons to continue receiving their benefits wherever they decide to reside, totalization of insurance periods, and mutual administrative assistance.

## International Economic Law

### International and Regional Trade Treaties and Bodies

#### *Regional Comprehensive Economic Partnership (RCEP)*

The President of the Philippines ratified the Agreement on 28 November 2022 and submitted it to the Senate for concurrence in accordance with the Constitution. On 21 February 2023, by virtue of Senate Resolution No. 42 (SR 42), the Philippine Senate concurred in the ratification by the President of the RCEP. The Senate explained that “the Philippines needs to harness international trade agreements, such as the RCEP, as a way towards a sustainable and inclusive economy.”

The RCEP was virtually signed during the 4th RCEP Leader’s Summit on 15 November 2020. The signatories included Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam, Australia, China, Japan, the Republic of Korea, and New Zealand.

As explained in SR 42, “the RCEP, currently the world’s largest trade and investment agreement, accounts for almost a third of the world’s gross domestic product (GDP), and a combined market that covers a third of the world’s population.” It further adds that “the Agreement builds upon existing economic linkages among the Parties to further broaden and deepen economic integration in the region, strengthen economic growth, promote equitable economic development, and establish clear and mutually advantageous rules to facilitate trade and investment, including participation in regional and global supply chains.” The objectives of the RCEP include:

- a) establishing a modern, comprehensive, high-quality, and mutually beneficial economic partnership framework;
- b) liberalize and facilitate trade in goods through the progressive elimination of tariff and non-tariff barriers;
- c) progressively liberalize trade in services to achieve substantial elimination of restrictions and discriminatory measures; and
- d) create a liberal, facilitative, and competitive investment environment in the region.

The RCEP entered into force for the Philippines on 2 June 2023.

### **Implementing International Economic Law – Business, Sale, Contract, Tax, Competition Law**

#### *Agreement between the Government of the Republic of the Philippines and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*

The Agreement between the Government of the Republic of the Philippines and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (Philippines Brunei Tax Treaty) was signed on 16 July 2021 in Bandar Seri Begawan, Brunei Darussalam. The President of the Philippines ratified the Philippines Brunei Tax Treaty on 20 February 2023 and submitted it to the Senate for concurrence. By virtue of Senate Resolution No. 100 (SR 100) issued on 13 December 2023, the Philippine Senate concurred with the ratification.

The Philippines Brunei Tax Treaty applies to persons who are residents of one or both of the Contracting States and to taxes on income imposed on behalf of a Contracting State irrespective of how they are levied.

The objectives of the Philippines-Brunei Tax Treaty include:

- a) strengthening the Philippines' commitment to the Association of Southeast Asian Nations (ASEAN) Forum on Taxation;
- b) mitigating the adverse effects of double taxation on the profits of business enterprises in cross-border transactions;
- c) enhancing bilateral trade relations between the Philippines and Brunei Darussalam;

- d) generating more employment for Filipinos in Brunei Darussalam;
- e) encouraging investors to invest in both countries; and
- f) promoting inbound transfer of technology and skills.

## Legislation and Administrative Regulations

### International Economic Law

#### Implementing International Economic Law

*Republic Act No. 11967 – an Act Protecting Online Consumers and Merchants Engaged in Internet Transactions, Creating for This Purpose the Electronic Commerce Bureau, Appropriating Funds Therefor, and for Other Purposes*

The law creates a regulatory framework for e-commerce in the Philippines, including foreign businesses operating online within its jurisdiction. The law to all “business-to-business and business-to-consumer internet transactions within the mandate of the Department of Trade and Industry ... where one (1) of the parties is situated in the Philippines or where the digital platform, e-retailer, or online merchant is availing of the Philippine market and has minimum contacts therein.” However, online media content, and consumer-to-consumer (C2C) transactions” are not covered by the law.

The law has an extra-territorial application as foreign entities engaging in e-commerce and targeting the Philippine market are subject to Philippine laws, ensuring accountability regardless of legal presence in the country. Specifically, the law provides that “[a] person who engages in e-commerce, who avails of the Philippine market to the extent of establishing minimum contacts herein, shall be subject to applicable Philippine laws and regulations and cannot evade legal liability in the Philippines despite lack of legal presence in the country.”

It also provides for equal treatment of online and offline commercial activities. Specifically, it provides that “[u]nless otherwise specified, [the law] shall be construed to ensure that those who engage in e-commerce shall not enjoy any beneficial treatment that is more favorable, nor be placed at a disadvantage, in relation to other enterprises that offer goods and services offline in the Philippines.” Furthermore, the law mandates compliance with international standards on consumer protection, data privacy, and intellectual property

rights. The law strengthens trust in online transactions, ensures accountability for digital platforms, and enhances the country's integration into the global digital economy. The law was approved on 5 December 2023, and became effective on 18 December 2023.

## **International Environmental Law**

### **Environmental Protection through Law/Regulation**

*Republic Act No. 11961 – an Act Strengthening the Conservation and Protection of Philippine Cultural Heritage through Cultural Mapping and an Enhanced Cultural Heritage Education Program, Amending for the Purpose Republic Act No. 10066, Otherwise Known as the “National Cultural Heritage Act of 2009”*

This law amends Republic Act No. 10066, otherwise known as the “National Cultural Heritage Act of 2009,” and provides for the categorization, designation, and maintenance of cultural resources. It reinforces the Philippines' commitment to cultural heritage conservation while aligning with international standards and agreements. Among others, it defines “ASEAN heritage parks,” which refers to “protected areas recognized by ASEAN to be of high conservation importance, preserving in total a complete spectrum of representative ecosystems of the ASEAN Region.”

The law was approved on 24 August 2023, and became effective on 26 September 2023.

## **Resolutions and Statements**

### **Settlement of Disputes**

#### **Legal Solution of Disputes**

*Statement Delivered by H.E. Enrique A. Manalo, Secretary for Foreign Affairs the Republic of the Philippines during the 78th Session of the United Nations General Assembly High-Level Week 23 September 2023 “Solidarity for SDGs and a Just, Equitable and Rules-Based Order”*

Secretary Manalo addressed the General Assembly on behalf of President Ferdinand R. Marcos Jr. In this Statement, the Secretary reiterated that “The

UN spirit calls upon us to respond decisively to existential threats such as global warming, degrading ecosystems, diseases, and food insecurity, and to reclaim the power of dialogue and diplomacy as we manage new complexions of conflict and strategic competition.” The Statement also reaffirmed the belief that “The preservation of a rules-based global order is our collective responsibility” and that “The UN is underwritten by a rules-based order governed by international law and informed by the principles of equity and justice.”

Regarding settlement of disputes, the Statement confirms that the Philippines “advocate[s] the peaceful settlement of disputes, in accordance with international law.” It adds, “[t]his has always been our position with respect to the disputes in the West Philippine Sea, inasmuch as we are prepared to defend our sovereignty, sovereign rights and territorial integrity.” The Statement adds, “[w]e advocate the peaceful uses of outer space, the elaboration of the principle of due regard in the space domain and greater responsibility among states to reduce space threats, including debris from rocket launches.”

# State Practice of Asian Countries in International Law

*Sri Lanka*

*Wasantha Seneviratne\**, *Darshana Sumanadasa\*\**,  
*Akalanka Thilakaratne\*\*\** and *Ranuli Senaratne\*\*\*\**

## Introduction

The Democratic Republic of Sri Lanka, commonly referred to as Sri Lanka, follows a dualist approach to the implementation of international law within its domestic jurisdiction. The 1978 Constitution of Sri Lanka provides the core legal framework, supplemented by various legislations and case law jurisprudence developed by the country's apex courts, the Court of Appeal and the Supreme Court of Sri Lanka. This legal system continues to reflect the colonial legacy inherited following independence from the United Kingdom.

The following sections highlight key legal developments in Sri Lanka during 2023 that hold significant implications for international law. As a state party to multiple international and regional legal instruments, Sri Lanka remains actively engaged in the evolving landscape. This State Practice section on Sri Lanka covers the period from 1 January to 31 December 2023. The year 2023 has been particularly significant as the country continued to grapple with the aftermath of the 2022 people's struggle, which arose due to democratic deficits and the resulting economic crisis.

This State Practice report examines Sri Lanka's international obligations, assessing both positive and negative outcomes in the areas of human rights, the relationship between domestic and international law, and the country's engagement with international organizations. Notably, it highlights Sri Lanka's cooperation with the International Monetary Fund (IMF) and the steps taken to fulfil its commitments in addressing the economic crisis, promoting good governance, and fostering economic growth.

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## Treatment of International Law by Domestic Courts

### *Madawatte Kammale Samel Sirisena and Others v. Madawatte Kammale Matheshamy*

Despite the above limitations, courts through their judicial activism, have given effect to norms of ratified international treaties, especially when they have dealt with issues relating to human rights. This fact was elaborated by the Court in *Madawatte Kammale Samel Sirisena and Others v. Madawatte Kammale Matheshamy* [SC APPEAL NO: SC/APPEAL/82/2010] where the Court stated that '[w]hile international law instruments may not be directly used to modify the domestic law, the importance of interpreting the law considering the international standards' is something permissible.

### *Commission to Investigate Allegations of Bribery or Corruption v. Indiketiya Hewage Kusumdasa Mahanam and Others*

In the case named *Commission to Investigate Allegations of Bribery or Corruption v. Indiketiya Hewage Kusumdasa Mahanam and Others* [SC TAB 1A and 1B/2020], among other things, the Court investigated the concept of fair trial. It referred to the Universal Declaration of Human Rights (UDHR) and how it has recognized the concept and made an analysis on how such has been defined under Article 14 of the International Covenant on Civil and Political Rights (ICCPR). The ICCPR was domesticated through the ICCPR Act No. 56 of 2007 where the substance of Article 14 of the ICCPR is found in section 4 of the Act. The Court also looked at the Article 6 of the European Convention on Human Rights (ECHR) in its analysis and pointed out that in neither of domestic legal provisions nor the international human rights based legal provisions has a clear answer as to whether there is an implicit right coming under the broader right of a fair trial to include within its ambit a 'need for a lawful investigation based upon which a criminal prosecution could be founded upon and for a lawful investigation to be a condition precedent for a fair trial' (at 115). The Court finding this lacuna then showed its activism by stating 'it is necessary to consider whether this lacuna in international treaty and domestic statutory law, needs to be filled by judicial pronouncements resulting in the development of the common law' (at 115).

The above judgment can be appreciated for its far-reaching desire to develop the law, especially on right to a fair trial by trying to fill in a gap which is not addressed in both international and domestic law. Starting with *Bulankulama v. Secretary, Ministry of Industrial Development and Others* [3 Sri L R 243(2000)] the Courts tried to divert from following a strict dualist approach which was

cut short by the decision in *Singarasa v. Attorney General* [Sri L R 245(2013)] where the Court went back to a stricter dualist approach. Despite this, the courts have often tried to move towards a monist approach and to utilize international law, especially international human rights norms in the interpretation of fundamental rights.

This shift towards monism was visible in *Mohamed Razik Mohamed Ramzy v. B.M.A.S.K. Senaratne Chief Inspector of Police Officer-in-Charge Computer and Forensic Training Unit* [SC / FR Application No. 135/2020] where the Court made the following observation,

This case concerned about a post that was posted on Facebook. According to the revealed facts, the post related to the applicant has requested the Muslim community to a '*ideological Jihad (ideological war) by using the mainstream media, social media and all other space*'. The issue which confronted the Court was whether such expression was allowed or prohibited under freedom of speech and expression. Looking at this issue from a broader perspective, the Court looked at Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), which was acceded to by Sri Lanka in 1980. It is important to note that Sri Lanka, while having made an enabling legislation to give effect to ICCPR by enacting the ICCPR Act No. 56 of 2007, did not give full effect to the ICCPR at the municipal level, including providing provisions for Article 19 of the ICCPR. Despite this, the Court, with its activism, devised a plan to interpret the ambit of Article 14 (1) (a) of the Constitution considering Article 19 of the ICCPR. The Court also referred to Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The Court did not try to justify such reference by pointing out the need to respect the obligations arising out of Article 27 (15) which requires the fostering of respect for international and treaty obligations undertaken by Sri Lanka. This case clearly illustrates the modern approach which has been taken by the Courts in moving away from a strict dualist approach to a more monist one.

## Treaties

### Making and Concluding Treaties

Pursuant to the Constitution of Sri Lanka, under Article 33(h), treaty ratification is the domain of the executive and does not require consultation with the

legislature. According to the information provided by the treaty section of the Ministry of Foreign Affairs in Sri Lanka for the year 2023, Sri Lanka has signed 36 agreements, including Memoranda of Understanding (MOUs). Among these, Sri Lanka has signed MOUs between the Kingdom of Saudi Arabia and the Czech Republic for the Elimination of Double Taxation with respect to Taxes on Income and for the elimination of double taxation with respect to income, and the prevention of tax evasion and avoidance. These MOUs were signed in January and February of 2023, respectively. In July 2023, a Joint Declaration of Intent between the Ministry of Agriculture of the Democratic Socialist Republic of Sri Lanka and the Department of Animal Husbandry and Dairying of the Ministry of Fisheries, Animal Husbandry and Dairying of the Republic of India was signed for Cooperation in the field of Animal Husbandry and Dairying. Additionally, Sri Lanka deposited the instrument of ratification of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) with the UN Office of Legal Affairs (UNOLA) on 25 July 2023 at the UN Headquarters in New York, becoming the 178th State to ratify the CTBT. By depositing CTBT instrument of ratification, Sri Lanka's status as a signatory is elevated to a complete State Party to the Treaty. On 19 September 2023, Sri Lanka acceded to the Treaty on the Prohibition of Nuclear Weapons (TPNW). The Minister of Foreign Affairs, M.U.M. Ali Sabry, deposited the instrument of accession with the UN Secretary-General during a high-level ceremony in New York, reaffirming Sri Lanka's dedication to nuclear disarmament and international peace.

## Settlement of Disputes

### Legal Solution of Disputes

#### *Economic Crisis Case*

Sri Lanka faced a severe economic crisis in 2022, consisting *inter alia* a rapid depreciation of the currency, critical fuel shortages, frequent power cuts, depletion of foreign reserves, essential medicine and food. In 2022, petitions were filed in the Supreme Court of Sri Lanka as public interest litigations, stating that several key figures of the government caused the said economic crisis. The judgment was made in 2023. The Court found that the former President Gotabaya Rajapakse, former Prime Minister Mahinda Rajapakse, former Finance Minister Basil Rajapakse, the former Governors of the Central Bank of Sri Lanka, former Secretary to the President, and former Secretary to the Treasury caused the economic crisis by violating Article 12(1) of the Constitution of Sri Lanka and the public trust doctrine, in the administration of the country's economy.

The Court, in its determination, acknowledged that the events that led to the said economic crisis were directly and significantly influenced by the Respondents' conduct and actions. It was noted that the Respondents had a duty to acknowledge the potential economic consequences of their choices owing to their positions within the state, which necessitated action to be taken to prevent or lessen such negative effects. In spite of the overwhelming duty to protect the state's best interests, they instead chose not to take such action and exacerbated the issue. The Court also emphasised that public officers have a fundamental responsibility to fulfil their duties with a dedication to the public good whilst ensuring that their actions are in line with the well-being of the populace. In furtherance of this, the Court highlighted that the Respondents were bestowed with such high power in order to uphold the public trust doctrine, and are therefore obligated to perform their duties per the Constitution. Therefore, the Respondents cannot circumvent their responsibilities by merely presenting that the decisions they took were policy decisions. The determination found that the Respondents had the necessary authority and capability to prevent the development of the disastrous crisis, but they chose not to, despite having complete knowledge of the possible repercussions of their actions. Therefore, despite the urgent need for intervention, the Respondents' failure to move decisively and effectively to address the worsening situation depicts a glaring lack of action in the public interest. Thus, it was held that the cumulative effect of both actions and inactions on the part of the Respondents resulted in the crisis. It was further illuminated upon that the idea of public trust is a basic expectation made of all public officials, not a special or high standard that is only applied to the Respondents, and consequently, they had an apposite obligation to act with responsibility and care.

An issue that was raised by the Respondents in this case was that a parliamentary select committee had been established in order to ascertain the causes of the said crisis, and as it should be considered as an ongoing inquiry by the legislative branch of the state, the judiciary should refrain from hearing the case. However, the majority of the bench reaffirmed the supremacy of the judiciary within its designated sphere and emphasised that the Court retained full jurisdiction to exercise its powers in relation to fundamental rights cases. The only exception to this principle, as noted by the Court, was the specific instance in which the legislature itself was permitted to exercise judicial power directly in matters concerning breaches of parliamentary privilege. Furthermore, the Court explicitly held that any alteration to this established arrangement could only be effectuated through a constitutional amendment.

The majority proceeded to refer to British parliamentary practice, a framework that the Sri Lankan Parliament may draw upon, and underscored the fact that, in such instances, it is the Parliament that must yield to the judiciary when litigation is pending, in accordance with the “*sub judice*” rule. In its final observations on this issue, the Court noted that the parliamentary select committee had only been constituted several months after the Court had already granted leave to proceed with the petitions, and therefore, consequently, the Court rejected the argument that it should abstain from exercising its jurisdiction. It is noteworthy that the dissenting opinion did not challenge the majority’s reasoning on this particular point.

### **International Economic Law**

Sri Lanka has been a member of the International Monetary Fund since 1950 and the year 2023 signifies how the country was immensely benefited by its IMF membership. The year 2023 marked a significant turning point in the country’s economic recovery, following a severe crisis in 2022 that led to its declaration of bankruptcy. The debt restructuring programme was subject to both praise and criticism.

### **International Financial Institutions**

#### ***The IMF and Other Entities Involved in Debt Restructuring***

In March 2023, the IMF’s Executive Board approved a 48-month Extended Fund Facility (EFF) arrangement, granting access to USD 3 billion. This programme aimed to support Sri Lanka’s fiscal consolidation and debt restructuring, stabilize prices, rebuild reserves with flexible exchange rates, safeguard financial sector stability, and address corruption vulnerabilities. Under the EFF program, \$670 million was disbursed in two tranches in March and December 2023, reflecting progress in its implementation. The Sri Lankan Government also held a key forum with the Heads of Mission from Paris Club member countries and India to seek support for the IMF process while awaiting China’s assurances.

## International and Regional Trade Treaties and Bodies

### Free Trade Agreements, Preferential Trade Agreements and Memorandum of Understanding

The Singapore-Sri Lanka Free Trade Agreement (FTA), effective since 1 May 2018, faced delays in implementation due to domestic opposition in Sri Lanka but resumed progress on 1 January 2023. The FTA encompasses investment, goods, services, trade facilitation, government procurement, telecommunications, e-commerce, and dispute resolution. As per the FTA, Sri Lanka eliminated customs duties on 50% of tariff lines, with plans to increase this to 80% over 14 years, while maintaining duties on the remaining 20%.

In 2023, Sri Lanka finalized the Sri Lanka-Thailand FTA, resumed negotiations for FTAs and Preferential Trade Agreements (PTAs) with India, Bangladesh, and Indonesia, and began the process of joining the Regional Comprehensive Economic Partnership (RCEP). In October 2023, Sri Lanka renewed its Trade and Investment Framework Arrangement (TIFA) with Australia. Additionally, it signed several Memoranda of Understanding (MOUs) with China, including a key agreement on cooperation under the Belt and Road Initiative. As part of its “Look Africa Policy,” Sri Lanka hosted business forums in February and March 2023, led by the Foreign Minister and attended by business leaders. Meanwhile, negotiations progressed on Bilateral Investment Promotion and Protection Agreements with Turkey, the UAE, Lebanon, Belarus, and Oman.

#### *Agreements on Avoidance of Double Taxation*

Sri Lanka actively engaged in negotiations on Double Taxation Avoidance Agreements (DTAAs) in 2023. The DTAA and its protocol with Saudi Arabia were signed in January, while discussions with Austria and a second round of virtual negotiations with the Maldives progressed during the year. Additionally, Sri Lanka finalized DTAAs with Cyprus, Hungary, Malta, Ukraine, the Czech Republic, Denmark, and India.

## Foreign Investment Law

### *Finalization of a Fair and Just Investor-State Dispute Settlement Mechanism under the United Nations Commission on International Trade Law (UNCITRAL) Working Group III*

In 2023, Sri Lanka actively participated in discussions under the United Nations Commission on International Trade Law (UNCITRAL) Working Group III to

reform the Investor-State Dispute Settlement (ISDS) mechanism. These efforts focused on creating a fair and just system by addressing issues such as the lack of independence and impartiality of arbitrators, third-party funding, and the excessive duration and costs of proceedings.

## **Air Law and Law of Outer Space**

### **Sri Lanka's Aviation or Space Policy and Legislation**

#### ***Carriage by Air (Amendment) Act, No. 8 of 2023***

The Carriage by Air Act, No. 29 of 2018, was enacted to implement the provisions of the Convention for the Unification of Certain Rules for International Carriage by Air, commonly known as the Montreal Convention. In 2023, an important amendment to this Act was introduced, empowering the Minister to periodically determine and specify the applicable limits of liability for non-international carriage by air. These limits, which may vary depending on the circumstances, can now be established through orders published in the Government Gazette. This amendment provides greater flexibility and ensures that the liability framework for domestic air carriage is kept up-to-date and consistent with evolving standards and needs.

## **Human Rights**

The human rights situation in Sri Lanka remained highly challenging in 2023, as the country continued to grapple with the aftermath of the 2022 people's uprising, which was driven by widespread discontent over undemocratic governance and economic hardships. Despite the significant events of the previous year, the government persisted in suppressing dissent by introducing new legislation that faced strong criticism from human rights activists and the general public.

Freedom of expression, particularly on social media, was subjected to stringent controls, further exacerbating concerns about shrinking democratic space and the erosion of fundamental rights.

## Protection under International and Domestic Law

### *Online Safety Bill and Determination*

The Legislature of Sri Lanka drafted the “Online Safety Bill”, which was subsequently published in the Gazette on 18 September 2023. The Bill sought to introduce a legal regime to regulate online activities performed within and outside Sri Lanka to protect the abuse of children and adults on internet platforms, and to establish an “Online Safety Commission”. Propelled by criticisms on the alleged draconian nature of the Bill, petitions were filed in the Supreme Court, invoking its jurisdiction to determine the constitutionality of the Bill, and the hearing commenced on 18 October 2023. However, at the commencement of the hearing, the learned Additional Solicitor General, who appeared for the Attorney General, submitted a draft of the proposed amendments of the Bill to the Court, stating it was already approved and agreed upon by the Ministry of Law and Order. The main issue submitted by the petitioners was the alleged violation of their fundamental rights by the Bill, specifically their freedom of expression.

The Court noted that the International Covenant on Civil and Political Rights (ICCPR) guarantees the freedom of expression. Sri Lanka, following the dualist tradition, enacted an enabling legislation subsequent to the accession to the Covenant, the International Covenant on Civil and Political Rights Act, No. 56 of 2007, and is therefore bound to fulfil its obligations. The diluted nature of the Act and its alleged draconian application, specifically regarding minorities, is expanded on below. The ICCPR General Comment No. 34 clarifies that the protection of freedom of expression applies online in the same way as it applies offline. The Court noted that it also requires state parties to consider the rapid development of information technology, and the consequent dramatic changes in communication practices, especially on the internet. Therefore, it noted how “tailored” approaches for responding to illegal practices on the internet should be developed within the state parties’ legal frameworks.

The Court recognised that the freedom of expression is not an absolute right both per the ICCPR and the Constitution of Sri Lanka. Article 14(1) of the Constitution guarantees every citizen of Sri Lanka the freedom of expression as a fundamental right. However, Article 15(2) of the Constitution states that it could be restricted in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence. Furthermore, the Court also noted that the Bill contained provisions relating to the regulation of the internet in respect of racial and religious harmony, contempt of court, defamation or incitement to an offence.

Article 19(3) of the ICCPR allowing the restriction for the respect of the rights and reputation of others; and or the protection of national security or of public order, or of public health or morals, was also noted. However, it must be emphasized that the ICCPR General Comment No. 34 explicitly highlighted that in the event state parties enforce restrictions on this right, those may not jeopardize the right itself; and that “the relation between right and restriction and between norm and exception must not be reversed”.

Another issue that was raised was the independency of the Online Safety Commission. The Commission is to be appointed at the sole discretion of the President, which raises concerns as to the possible unfettered discretion held by the President regarding the appointment and removal of its members. Even the proposed amendments during the hearing which included the phrase “approval of the Constitutional Council” is questionable, as recommendations and approvals remains within the exclusive jurisdiction of the President, which in the President having full control over who is recommended for “approval”. This would result in the inability to consider suitable candidates outside the President’s recommendations, which undermines the role of the Constitutional Council, thus violating Article 12(1) of the Constitution.

The Court however held that the Bill delineates criteria for appointing members, thus preventing the President from acting arbitrarily in their appointment. It also held that making appointments based on the recommendation of the Commission or enacting legislation without any reference to the Constitutional Council is a policy matter of the Government. It further expounded that the law requires criteria to be specified to prevent inconsistencies with Article 12(1), and therefore the impugned clause of the Bill does not infringe Article 12(1) of the Constitution.

Another issue submitted was that certain provisions of the Bill are vague and overbroad, which would lead to the arbitrary exercise of powers by the authorities, which would be inconsistent with Article 12(1) of the Constitution that provides that all persons are equal before the law and are entitled to the equal protection of the law. The Court noted that the intention of the Bill is to prevent offences committed on the internet, which are exacerbated using rapidly advancing technology. The Court therefore held that it is sensible to use existing words in the statutes of Sri Lanka and other jurisdictions, as jurisprudence also exists as to the interpretation of such words. The Court then specifically held that the impugned words and/or provisions and their context are not ambiguous, and therefore do not violate Article 12(1).

It is, however, appreciated that the Bill introduces a specific legal framework to regulate the protection of children and adults from being abused on the internet through activities carried out online within and outside Sri Lanka,

which was a lacuna that existed within the legal system of Sri Lanka until this point.

The Court concluded its determination stating that over thirty clauses in the Bill and certain omissions in the Bill were inconsistent with Article 12(1), and in some cases, Article 14(1)(a) of the Constitution, and therefore it could only be enacted by Parliament with a special majority, unless the recommended amendments by Court were introduced to the Bill in Parliament, in which case it could be enacted by Parliament with a simple majority.

### **National Policy and Action Plan for Migration for Employment**

Amid the economic crisis, Sri Lanka has witnessed a surge in migration, with nearly 300,000 Sri Lankans leaving the country for employment abroad in 2023 alone. In response, the government launched the National Policy and Action Plan for Migration for Employment (2023–2027) in October 2023 – a pivotal initiative aimed at enhancing migration governance. The policy underscores Sri Lanka’s commitment to developing a globally competent workforce while safeguarding migrant workers’ rights, freedoms, and dignity, ensuring their meaningful contribution to national and global development. Aligned with the Global Compact for Safe, Orderly, and Regular Migration (A/RES/73/195), this framework reinforces Sri Lanka’s dedication to sustainable development and the protection of migrant workers, with continued support from international stakeholders to strengthen national migration policies.

### **Specific Human Rights Incidents or Cases**

#### ***Cases Decided in Relation to the ICCPR Act of Sri Lanka***

The ICCPR Act of Sri Lanka has been a subject of contention since its enactment. Sri Lanka acceded to the ICCPR in 1980, but despite the requirement of an enabling legislation to give effect to its international obligations, owing to its following the dualist tradition, an Act was enacted only in 2007. The Act has been widely criticized for its diluted nature, as it contains only seven Sections, compared to the Convention, which has fifty-three articles. Additionally, in 2023, two significant events took place vis-à-vis the Act, re-prompting the argument that the Act has been selectively used as a weapon against minorities in the name of blasphemy, or rather expressions “against” Buddhism, and thereby distorting the purposes of the ICCPR. Therefore, the criticism that the ICCPR

Act, or its application, suppresses civil and political rights rather than protects them has come under renewed focus.

*Case concerning Nathasha Edirisooriya*

Nathasha Edirisooriya, a Sri Lankan comedienne, was arrested on 27 May 2023, and charged under Section 3(1) of the ICCPR Act, which provides that “no person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”, due to her allegedly defaming Buddhism, the religion followed by the majority of the country, during her comedy show. The Colombo High Court delivered the judgement on this matter. It noted that Section 3 of the Act aligns with Article 20(2) of the ICCPR, and should be interpreted in light of Article 19 of the ICCPR, which guarantees the freedom of expression. The Court then emphasised on the United Nations Strategy and Plan of Action on Hate Speech, which categorizes hate speech into three tiers, and that for a statement to be considered as hate speech, there must be (1) incitement to discriminate, (2) a hate speaker, (3) an audience, and (4) a target group facing an imminent threat of hostility. In light of this, the Court held that no evidence existed of the presence of such an imminent threat of hostility towards a targeted group by Edirisooriya. The Court also made reference to the “Rabat Plan of Action”, which specifies that hate speech should be considered in the context of the remark made, the speaker’s social standing, intent, substance, extent, and likelihood of incitement when ruling on the issue, and noted that in the present case, the “original information report” made no reference to a conflict regarding or concerning Buddhists during the period Edirisooriya allegedly made her statement. The Court strongly emphasised that, despite certain statements having the capacity to offend certain groups of people or communities, mere hurt or insult caused by a careless or irresponsibly made statement does not allow such a statement to be brought within the ambit of Section 3(1) of the ICCPR Act. The Court reminded the importance placed by the then Minister of Home Affairs who presented the Bill of the ICCPR Act to the Parliament, namely that law enforcement and justice agencies must act in a way that satisfies the legislature’s intent while taking international accountability into account, whilst parallelly emphasising the duties of the judiciary and investigating officers in the pursuit of justice.

*Mohamed Razeek Mohamed Ramzy Case*

In the case named Mohamed Razik Mohamed Ramzy v. B.M.A.S.K. Senaratne Chief Inspector of Police Officer-in-Charge Computer and Forensic Training

Unit [SC/FR Application No. 135/2020], Mohamed Razeek Mohamed Ramzy, a social media activist, based on his opinion that a vicious campaign against the Muslim community is being spread on the incorrect notion of them being responsible for spreading the COVID-19 pandemic, posted a text on Facebook that sparked controversy. It said Sri Lankan Muslims should prepare for an “ideological jihad” through social and mainstream media by taking up the pen and keyboard as arms. He was subsequently arrested under the ICCPR Act, and a fundamental rights petition was filed in the Supreme Court on his behalf, and its determination was delivered on 14 November 2023. The Court, stating that in the determination of whether an expression falls within Section 3(1) of the ICCPR Act, police officers/prosecutors must consider several factors, provided the following guidelines:

- i. whether the speech, in its entirety and with reference to specific words, constitutes advocacy of national, racial, or religious hatred manifesting as incitement to discrimination, hostility, or violence;
- ii. the attendant circumstances, including the context in which the speech was made;
- iii. the associated conduct of the person, including prior and subsequent statements linked to the impugned utterance;
- iv. the relationship between the speaker and the target audience, particularly the influence the speaker had over them;
- v. the overall motive and specific intent of the speaker, and whether they sought to incite discrimination, hostility, or violence;
- vi. whether such acts occurred as a result of the speech and whether a causal link exists; and
- vii. even if no harm occurred, whether the speech posed an imminent danger of inciting such consequences.

The Court then determined that there exists no basis to conclude the petitioner’s intent to cause any incitement to harm to the society, and that his advocacy was for a counter-campaign by the Muslim community against a vilification campaign alleging their responsibility for the COVID-19 pandemic. His encouragement was to use the “pen and the keyboard” for an “ideological Jihad”, and not to incite discrimination, hostility, or violence. Therefore, the Court concluded that there was no factual or legal basis that he violated Section 3(1) of the ICCPR Act, ergo, no action could justifiably be taken against him on the grounds that he had committed an offence under such Section

## Conclusion

As discussed above, the year 2023 marked a crucial period in Sri Lanka's legal and political landscape, reflecting both progress and challenges in fulfilling its international obligations. As examined in this report, the country's engagement with international law, particularly in the areas of human rights, economic governance, and institutional reforms, has been shaped by domestic political dynamics and the broader global context.

While Sri Lanka has demonstrated efforts to align its legal and policy framework with international commitments, persistent challenges remain, particularly in balancing national interests with international expectations. The government's cooperation with international organizations such as the IMF signals a commitment to economic recovery and governance reforms. However, the effectiveness of these measures will depend on sustained implementation and adherence to legal and democratic principles.

As Sri Lanka continues to navigate the post-crisis recovery process, its approach to international law will be a key determinant of its legal and economic trajectory. The developments of 2023 serve as a pivotal reference point in assessing the country's evolving state practice, offering insights into both progress achieved and areas requiring further attention in the years ahead.

# State Practice of Asian Countries in International Law

## *Thailand*

*Kitti Jayangakula\**, *Punyawaj Traijutakarn\*\** and  
*Nattawat Krittayanawat\*\*\**

### Treaties

**MAKING AND CONCLUDING TREATIES – NEGOTIATION –  
ACCESSION – RATIFICATION – DEPOSIT – REGISTRATION –  
INTERNAL CONSTITUTIONAL ARRANGEMENTS**

### Conventions

On 24 November 1997, Thailand became a party to the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal (Basel Convention). This multilateral treaty aims to protect human health and the environment against the adverse effects of hazardous and other wastes requiring special consideration. The scope of the Basel Convention covers a wide range of wastes defined as “hazardous wastes” based on their origin and/or composition and characteristics, as well as four types of wastes defined as “other wastes”: household waste, incinerator ash, certain plastic wastes, and certain electronic and electrical wastes.

Later, on 7 June 2023, Thailand ratified the Ban Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal (the Ban Amendment). The Amendment bans the export of hazardous wastes of all kinds from developed countries (Organisation for Economic Co-operation and Development – OECD, EU, and Liechtenstein) to developing countries. This prohibition is rooted in the principle that all countries, regardless of their economic status, have the right to protect their

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environments and citizens from the harmful effects of hazardous wastes. The Ban Amendment is a response to decades of concern over the practice of wealthy nations exporting their hazardous wastes to poorer countries, often under the guise of recycling or recovery. Many developing nations lack the infrastructure, technology, and regulatory frameworks to manage such wastes safely, leading to severe environmental degradation, public health crises, and social inequities. Thailand's ratification makes it clear that imports of such hazardous waste shall no longer be tolerated, while sending a strong and unequivocal message that Thailand will not tolerate any imports of hazardous waste from developed countries.

*Kitti Jayanakula*

### **Interpretation of Treaties**

#### ***Withdrawal of Interpretative Declaration to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***

On 2 October 2007, Thailand ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and at the time of ratification, the country attached an Interpretative Declaration. This declaration clarified Thailand's understanding of certain provisions of the Convention and how it intended to implement them: "The Royal Thai Government understands that the term 'cruel, inhuman or degrading treatment or punishment' in Article 16 of the Convention refers to such treatment or punishment as is prohibited by the Constitution of the Kingdom of Thailand and Thai laws." It essentially limits Thailand's understanding of Article 16 of the CAT (which prohibits cruel, inhuman, or degrading treatment or punishment) to what is already prohibited under its Constitution and domestic laws. With this, Thailand had not directly fulfilled the obligation under this convention because of the interpretative declaration it has made.

In this interpretative declaration, Thailand insisted on interpreting the comparable provisions in the Thai Penal Code B.E. 2499 (AD 1956) in conformity to the CAT rather than enacting the separate law providing torture as a specific offence because the Penal Code has no offence according to the definition of torture in the article 1 of this convention. Then, the jurisdiction over the offence of torture should also be established in accordance with similar provisions of the penal code. This mode of implementation of the CAT has been criticized by the human rights mechanisms under the framework of the United Nations.

The concluding observations of the Committee against Torture, launched on 20 June 2014, and of the Human Rights Committee, launched on 25 April 2017, demand that Thailand should enact specific laws providing for the specific offence of torture in conformity with the CAT.

In 2022, Thailand enacted the Prevention and Suppression of Torture and Enforced Disappearance Act, which criminalizes torture and enforced disappearances. This was a significant step forward, though concerns remain about the law's enforcement and alignment with international standards. The Act came into force on 22 February 2023, and it serves as an important tool for Thailand to that effect. The Prevention and Suppression of Torture and Enforced Disappearance Act B.E. 2565 (AD 2022) was enacted on 25 October 2022 and has come into force since 22 February 2023. Section 5 of this Act stipulates the offence of torture with the same definition as in the CAT. The content of this law has been specifically applied to torture, accordingly, there is no justification for Thailand to remain with this interpretative declaration.

Later, on 15 September 2023, Thailand deposited the instrument of withdrawal of Interpretative Declaration to the CAT with respect to Article 1 (definition of torture), Article 4 (criminalization of torture, attempt to commit torture as well as complicity), and Article 5 (jurisdiction over torture). The Office of the Legal Affairs of the United Nations has then circulated the instrument of withdrawal, which came into effect on 15 September 2023.

The interpretative declaration to the CAT made by Thailand reflects, with regard to the Thai legal context, an inconvenience for direct implementation. However, Thailand has fulfilled its commitment to the United Nations by successfully enacting the law specifically penalizing torture. In this regard, the CAT can be directly and fully implemented by Thailand.

*Nattawat Krittayanawat*

## Implementation of Treaties

### *Marine Department Notification – Flag State Supplementary Survey*

On 28 August 2023, the Royal Gazette announced the publication of Marine Department Notification No.205/2566 on Flag State Supplementary Survey According to Regulations, Procedures, and Guidelines under International Conventions and Instruments in which Thailand is a Party to (the MD Notification). Thailand is a Party to the International Maritime Organization (IMO), which requires Thailand to fulfill its duty and responsibility to oversee all Thai ships, whether engaged in international or domestic voyages, to ensure their safety and compliance with the standards set by the IMO.

To achieve effective and efficient implementation of these duties, the Director-General of the Marine Department has issued this announcement based on the authority granted under Sections 139, 158, 160, and 170 of the Thai Maritime Act, B.E. 2456 (AD 1913) and its amendments. The announcement establishes a system for the inspection and certification of ships, whether conducted by the Marine Department's inspectors or by Recognized Organizations (ROs) authorized by the Department. This is to ensure compliance with the Code for Recognized Organizations (RO Code) under the MSC Resolution 349(92) and MEPC Resolution 237(65), as amended, as well as the IMO Instruments Implementation Code (IHI Code) as amended under Resolution A.1070 (28).

According to Article 2 of this MD Notification applies to Thai ships under the Marine Department Regulations on Flag State Supplementary Survey, specifically international and near-coastal vessels, including all Thai ships subject to international conventions and instruments to which Thailand is a party, namely: International Convention for the Safety of Life at Sea (SOLAS) 1974, as amended; International Convention on Load Lines (LL) 1966, as amended; International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), as amended by the 1978 and 1997 Protocols; International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978, as amended; International Convention on Tonnage Measurement of Ships (TONNAGE 1969), as amended; Convention on the International Regulations for Preventing Collisions at Sea (COLREG) 1972, as amended; International Convention on Civil Liability for Oil Pollution Damage (CLC 1992); Maritime Labour Convention (MLC 2006); and any other international conventions to which Thailand becomes a party after this notice is enacted.

*Kitti Jayangakula*

## HUMAN RIGHTS

### Implementation of Human Rights Treaties

#### *Act on Preventive Measures for Recidivism in Sexual or Violent Offences, B.E. 2565*

Thailand is a party to the International Covenant on Civil and Political Rights (ICCPR), a key international human rights treaty providing a range of protections for civil and political rights. This includes the right to liberty and security of person as stipulated in Article 9 of the ICCPR. This provision protects individuals from arbitrary arrest and detention by ensuring that any deprivation of

liberty must be based on grounds and procedures established by law. In addition, this applies to all forms of detention, including criminal, mental health, immigration, and other administrative detentions.

Recidivism, which refers to the tendency of a convicted criminal to re-offend, is a significant concern in criminal justice systems worldwide. While the ICCPR General Comment No. 35 does not explicitly address recidivism, its principles – particularly those related to liberty, security, and the treatment of detainees – can be applied to issues surrounding recidivism. The principles of General Comment No. 35 may relate to recidivism, including the right to rehabilitation and reintegration, judicial oversight and proportionality, non-discrimination and vulnerable groups, access to legal remedies and fair treatment, prevention measures, and alternatives to detention. Focusing on these, states can reduce recidivism rates and promote the successful reintegration of offenders into society. This broadens the goals of the ICCPR to protect individual rights and dignity while maintaining public safety.

On 25 October 2022, the Royal Gazette published the new Act entitled “The Act on Preventive Measures for Recidivism in Sexual or Violent Offences, B.E. 2565.” This act was enacted to address the growing concern over recidivism committed by individuals who have previously been convicted of serious crimes, particularly those involving sexual violence or physical harm. The law aims to enhance public safety by implementing preventive measures to reduce the likelihood of recidivism among offenders who have served their sentences. It came into effect on 23 January 2023.

The Act was introduced to address the recurrent problem of repeat offenses, particularly those involving sexual and violent crimes, such as rape, sexual abuse of minors, and murder, which have deeply impacted Thai society. Historically, the legal framework lacked sufficient measures to effectively monitor and control released offenders, leading to recidivism (frequent repeat offenses). This inadequacy undermined public trust in the justice system.

The primary objective of this Act is to establish a legal framework for preventing recidivism committed by individuals convicted of serious crimes, such as rape, sexual offences against children, murder, severe physical assault, and kidnapping for ransom. This law introduces four main measures for those persons in this regard, namely:

- (1) *rehabilitation measures* – medical and psychological interventions to reform offenders during their incarceration (Section 19(1));
- (2) *post-release surveillance* – monitoring high-risk offenders after their release to prevent reoffending by applying thirteen surveillance measures after the release namely: not approaching an injured person from the offense; not engaging in activities that risk committing an offense; not

- entering the designated area; not leaving the country unless authorized by the court; not causing harm to the neighborhood of the community in which he lives; staying in a designated place; staying in a designated infirmary or being under supervision in an infirmary operated by various agencies certified by the Ministry of Public Health as the court deems appropriate; complying with orders of officials or caretakers of accommodation or infirmary; reporting to a probation official or receiving a visit from the probation official or a probation volunteer or other officials for a specified period of time; taking medical measures or coming to see or receive treatment from a doctor or any other persons determined by the court or the probation official; undergoing treatment, rehabilitation or participating in activities as determined by the court or the probation official; notifying the probation official of the change of workplace or job; and applying electronic tracking devices for surveillance (Section 22).
- (3) *post-release detention* – allowing to detain offenders after their release if they are deemed a significant threat to public safety (Section 28); and
  - (4) *emergency detention* – allowing the temporary detention of offenders for up to 7 days in urgent situations where there is a credible threat of reoffending (Section 37).

The Act requires coordination among various government agencies, including the Department of Corrections, the Probation Department, the Royal Thai Police, and the Office of the Attorney General. The law also mandates the development of supporting regulations and guidelines to ensure effective implementation. However, challenges remain, particularly in terms of resource allocation, training for personnel, and ensuring that the rights of offenders are balanced with public safety concerns.

This Act is expected to enhance public safety by reducing the risk of recidivism. It also aims to promote the rehabilitation of offenders, helping them reintegrate into society while minimizing the threat they pose to others. By addressing the root causes of criminal behaviour and providing a structured framework for post-release monitoring, the Act seeks to create a safer and more secure environment for all people which the ultimate goal of this Act is to strike a balance between protecting society and promoting the reintegration of offenders.

The enactment of this Act reflects a significant step forward in Thailand's efforts to combat recidivism and enhance public safety by combining rehabilitation, surveillance, and detention measures.

## Specific Human Rights Incidents or Cases

### *Forced Repatriation of Refugees to Myanmar*

Immigration officers of Thailand forcibly repatriated refugees to Myanmar, risking their lives to torture and disappearances. Thai officers applied their immigration law with no regard for the grave breaches of human rights that the refugees would experience.

Thailand's immigration officers arrested and deported refugees from Myanmar who fled to seek asylum in Thailand. Thiha, Htet Nay Wun, and Saw Pyo Lay were arrested in Tak province on 1 April 2023. They were members of the Lion Battalion Commando, which is one of the People's Defense Forces (PDFs) fighting against the Myanmar junta government. The battalion has operated separately from the Karen National Union (KNU). The three refugees fled from fighting to Tak province of Thailand for asylum and sought medical treatment, but they were arrested by Thai police and detained at the immigration custody in Mae Sot, opposite to Myawaddy of Myanmar. Then, on 4 April 2023, they were sent back to Myanmar by embarking on a boat crossing the Moei River to Myawaddy. They were shot and abducted by the officers of the Border Guard Forces (BGF) as soon as they reached Myanmar.

Thailand's repatriation of Myanmar refugees, through the application of the Immigration Act B.E. 2522 (AD 1979), to the risk of grave breach of human rights violates international legal standards of human rights binding this State. It violates the non-refoulement rule prohibiting the state from sending a person to the risk of severe human rights violations. This rule has been an international customary law developing into a peremptory norm (*jus cogens*) binding all states and prevailing over other conflicting norms. This norm has been integrated into Article 3 of the 1984 Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment (CAT), which Thailand has already acceded to be a state party since 2007, and Article 16 of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), in which Thailand has been a signatory State since 2012. The two rules prohibit a State party not to surrendering or extraditing a person to another State in which one will be at risk of torture and enforced disappearance. Moreover, Section 13 of the Prevention of Torture and Enforced Disappearance Act B.E. 2565 (2022), enacted by Thailand to implement both Conventions, also prohibits pushing and extraditing persons to the risk of torture and enforced disappearance.

In addition, the non-refoulement principle has been integrated into the rule of Article 33 of the 1951 Convention relating to the Status of Refugees, which prohibits returning a refugee to any country in which he may be persecuted.

Although Thailand is not a party to this Convention, the rule of Article 33 has bound Thailand as a customary international law. The repatriation of refugees to Myanmar has constituted a violation of the rules of international law to which Thailand has an obligation.

Thailand's forced repatriation of refugees to Myanmar has been a grave breach of international human rights law to which it is obliged. Although Thailand applied the Immigration Act B.E. 2522 (AD 1979) to return them to Myanmar, it violated the peremptory norm (non-refoulement) and rules of the conventions which have bound her. It may later entail a responsibility for violating these rules of international law.

*Nattawat Kittayanawat*

# State Practice of Asian Countries in International Law

*Viet Nam*

*Trinh Hai Yen\**, *Pham Thanh Tung\*\** and *Nguyen Thuy Nguyen\*\*\**

## Treaties

### **Making and Concluding Treaties – Negotiation, Accession, Ratification, Deposit, Registration, Internal Constitutional Arrangements**

#### ***Bilateral Treaties to Enhance Cooperation in Civil and Criminal Proceedings***

In 2023, Viet Nam became a party to treaties on mutual legal assistance in civil and criminal matters and extradition to strengthen international cooperation with States. Below are the details of these agreements:

#### ***Mutual Legal Assistance and Extradition Agreement with the UAE***

On 2 December 2023, in Dubai, on behalf of the Socialist Republic of Viet Nam, the Ministry of Public Security and the Supreme People's Procuracy signed:

- (i) The Extradition Agreement,
- (ii) The Agreement on the Transfer of Sentenced Persons, and
- (iii) The Agreement on Mutual Legal Assistance in Criminal Matters with the Ministry of Justice of the United Arab Emirates (UAE).

These agreements establish a comprehensive and essential legal framework for judicial authorities in both countries to provide mutual assistance in combating various forms of crime, particularly transnational organized crime.

#### ***Mutual Legal Assistance Agreement in Civil Matters with Laos***

On 22 December 2023, the Ministry of Foreign Affairs issued Notification No. 51/2023/TB-LPQT regarding the Agreement on Mutual Legal Assistance in

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Civil Matters between the Socialist Republic of Viet Nam and the Lao People's Democratic Republic, signed in Vientiane on 11 January 2023, which took effect on 1 January 2024.

This Agreement, consisting of 37 articles, aims to enhance cooperation between Viet Nam and Laos in civil legal proceedings. The scope of mutual legal assistance includes: service of judicial and extrajudicial documents; collection and provision of evidence; summoning of witnesses and experts; recognition and enforcement of decisions by competent authorities and arbitral awards; exchange of legal information and documentation on civil matters; transfer of civil status documents; and other legal assistance requests in accordance with the laws of both parties.

## **International Economic Law**

### **Implementing International Economic Law**

#### *Technical Standards in International Trade*

Viet Nam is currently working on amending the 2006 Law on Standards and Technical Regulations (Resolution No. 89/2023/QH15 dated 2 June 2023 on the Law and Ordinance Development Program for 2024). This Law establishes principles for developing standards and international cooperation in commensurate with its accession to the WTO in that year. More specifically, Decision No. 805/QĐ-TTg dated 6 July 2023 entrusts the Ministry of Science and Technology with the leading role in the drafting of a new Law amending and supplementing several articles of the Law on Technical Standards and Regulations. It is expected to incorporate Viet Nam's obligations relating to standards and technical regulations in international trade under its recent free trade agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the European Union-Viet Nam Free Trade Agreement (EVFTA), and the Regional Comprehensive Economic Partnership (RCEP). For example, the current Draft Law, which is scheduled to be discussed and approved by the National Assembly in 2025, revises Article 3 of the 2006 Law to define technical standards, conformity assessment, and accreditation in accordance with those under the WTO/TBT, ISO, IEC, and ITU frameworks. The revision aims at enhancing the clarity, uniformity, and consistency in Viet Nam's imposition of technical standards. Additionally, it sets forth new regulations on the National Standards Body (NSB) to ensure the NSB's mandate aligns with such treaties as the WTO Agreement on Technical Barriers to Trade, EVFTA, CPTPP, and RCEP.

### *Concluding New Free Trade Agreements*

The Viet Nam-Israel Free Trade Agreement (VIFTA) was signed on 25 July 2023, after over seven years of negotiations with twelve negotiation rounds. The Agreement comprises 15 chapters and several appendices, covering areas such as trade in goods, services, investment, rules of origin, technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS), customs, trade remedies, government procurement, and institutional and legal provisions. The Agreement is expected to take effect in early 2024. VIFTA Chapter 9 on Investment provides for a foreign investment promotion and protection framework similar to investment treaties.

After a comprehensive feasibility study and impact assessment of a potential FTA between Viet Nam and the United Arab Emirates (UAE) in 2022, on 6 April 2023, the two countries signed a Joint Ministerial Statement on the Intent to pursue the Comprehensive Economic Partnership Agreement (CEPA). As stated in this declaration to launch negotiations, the UAE-VN CEPA is expected to “cover trade in goods and services, investment facilitation, other areas to be agreed upon, and cooperation in related matters, so as to serve the economic objectives set by the two parties of substantially increasing the volume of bilateral trade and investment”.

The CEPA negotiations officially started in June 2023 against the backdrop of deepening bilateral relations, particularly in the economic and trade sectors. A wide range of topics has been discussed, including trade in goods and services, investment facilitation, rules of origin, intellectual property rights, digital trade, trade remedies, sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT), customs procedures and trade facilitation, government procurement, legal and institutional frameworks, economic cooperation, and the promotion of small and medium-sized enterprises. By the end of the year, both sides were optimistic that a new CEPA would be concluded in 2024.

### **International Environmental Law**

In 2023, Viet Nam has taken concrete legislative and administrative measures to further develop its legal framework of environmental protection in commensurate with its treaty commitments.

## **Environmental Protection through Law/Regulation**

### ***Imposing Environmental Protection Fees for Mineral Exploitation***

In 2023, the Government of Viet Nam issued Decree No. 27/2023/ND-CP, dated 31 May 2023, on environmental protection fees for mineral exploitation (hereinafter referred to as Decree 27), replacing Decree No. 164/2016/ND-CP, dated 24 December 2016 (hereinafter referred to as Decree 164). The Decree aims to reduce greenhouse gas emissions through controlling resource exploitation. Its Appendix imposes detailed environmental protection fees for mineral exploitation, which are higher compared to those in the replaced Decree 164, especially for the exploitation of resources having significant environmental impacts, such as sand, gravel, and metallic ores. It is considered consistent with the polluter-pays principle, which requires that those responsible for environmental pollution bear the costs of addressing it.

### ***National Technical Standards on Environmental Quality***

As part of continued efforts to implement the provisions of Part XII (Protection and Preservation of the Marine Environment) of the United Nations Convention on the Law of the Sea (UNCLOS), the Ministry of Natural Resources and Environment issued Circular No. 01/2023/TT-BTNMT dated 13 March 2023, establishing national technical regulations on environmental quality. A national seawater standard (QCVN 10:2023/BTNMT) was introduced to ensure a safe marine environment in alignment with UNCLOS provisions on marine resource protection (Article 1).

Moreover, two other national standards (QCVN 03:2023/BTNMT: National Technical Regulation on Soil Quality and QCVN 08:2023/BTNMT: National Technical Regulation on Surface Water Quality) came into force which contributed to the control of persistent organic pollutants in the environment as committed by Viet Nam under the Stockholm Convention on Persistent Organic Pollutants.

Under this Circular, with a view to controlling and reducing the use and emissions of mercury across products, production processes, and industrial activities, the Ministry of Natural Resources and Environment, as the lead governmental agency for implementing the Minamata Convention on Mercury, introduces two relevant national standards, namely QCVN 08:2023/BTNMT (National Technical Regulation on Surface Water Quality) and QCVN 09:2023/BTNMT (National Technical Regulation on Groundwater Quality).

***Publication of the Updated List of Endangered Wild Fauna and Flora Species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)***

On 17 February 2023, the CITES Management Authority of Viet Nam (an affiliation of Viet Nam's General Department of Forestry, as assigned by Decree No. 06/2019/ND-CP (Article 33(3)(d)), issued Notice No. 25/TB-CTVN, announcing the List of Endangered Wild Fauna and Flora species amended and supplemented at the 19th Conference of the Parties to CITES (CoP19). The Notice provides a Vietnamese translation of the CITES appendix published on the website of the CITES Secretariat, promulgating the list and facilitating the implementation of relevant CITES obligations in Viet Nam in combating illegal wildlife trade and conserving biodiversity.

## *Literature*





# International Law in Asia: A Bibliographic Survey – 2023

*Angela Semee Kim\**

## Introduction

This bibliographic survey provides information on books, articles, notes, and other materials dealing with international law in Asia. For this survey, only English language publications that were newly published in 2023 or previously published but had updated editions and were republished in 2023 are listed in this survey. Please refer to earlier editions of the Asian Yearbook of International Law for earlier bibliographies.

Most, if not all, of the materials can be listed under multiple categories, but each item is listed under a single primary category. However, edited books may appear more than once if multiple chapters from the book are listed under different categories. Readers are advised to refer to all categories relevant to their research. The headings used in this year's bibliography are as follows:

1. General Theories and Asian Culture
2. Sovereignty and Decolonization and Territorial Jurisdiction
3. International Dispute Settlement and Arbitration
4. International Trade Law, Economic & Commercial Law
5. Investment Law and Insolvency Law
6. Laws on Intellectual Property and Technology
7. Environmental Law and Energy Law
8. Human Rights
9. Migration and Refugees
10. International Humanitarian Law, Criminal Law, and Transnational Crime
11. Law of the Sea
12. Cyber Crime and Security
13. Air & Space Law and Nuclear Law

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## *DILA Events*





# 2023 DILA International Conferences and Academy and Workshop

In 2023, DILA hosted two international conferences: one in Mongolia and another in Taiwan. The 2023 DILA International Conference took place on June 26, 2023, in a hybrid format at the National University of Mongolia in Ulaanbaatar, Mongolia, for in-person attendees, and online for overseas participants. The conference, titled “Refugee Protection and Border Control: Asian State Practice,” commenced with welcome addresses from Badarch Dendev (President, National University of Mongolia), Dustin Kuan-Hsiung Wang (Chairman, Foundation for the Development of International Law in Asia (DILA); Professor, Graduate Institute of Political Science, National Taiwan Normal University), Seokwoo Lee (Chairman, The Development of International Law in Asia-Korea (DILA-KOREA); Professor of International Law, Inha University Law School; Co-Editor-in-Chief, *Asian Yearbook of International Law*), and Battogtokh Javzandolgor (Dean and Professor, School of International Relations and Public Administration, National University of Mongolia).

Session 1 focused on Northeast Asia and was chaired by Seokwoo Lee. Presentations were given by Xue Guifang (Distinguished Professor, KoGuan Law School, Shanghai Jiao Tong University; Director, Center for Rule of Ocean Law Studies; Center for Polar and Deep Ocean Development), Kanami Ishibashi (Professor, Tokyo University of Foreign Studies), Seryon Lee (Professor, Jeonbuk National University School of Law), and Dustin Kuan-Hsiung Wang.

Session 2 covered Southeast Asia and was chaired by Warwick Gullett (Professor, University of Wollongong, School of Law). Presentations were made by Arie Afriansyah (Associate Professor, Universitas Indonesia, Faculty of Law), Rommel J. Casis (Professor, University of the Philippines College of Law), and Kitti Jayangkula (Assistant Professor, Faculty of Social Administration, Thammasat University).

Session 3 addressed South and Central Asia and was chaired by Dustin Kuan-Hsiung Wang. Presentations were made by Muhammad Ekramul Haque (Professor, University of Dhaka), Rajesh Babu Ravindran (Professor, Indian Institute of Management Calcutta), and Wasantha Seneviratne (Professor, Faculty of Law, University of Colombo; Director, Centre for the Study of Human Rights).

A Special Session on Mongolia was chaired by Seokwoo Lee. Presentations were delivered by Battogtokh Javzandolgor, Oyunsuren Damdinsuren (Senior Lecturer, School of International Relations and Public Administration, National University of Mongolia), and Baasankhuu Ganbaatar (Senior Lecturer, School of International Relations and Public Administration, National University of Mongolia).

The overall discussion session was chaired by Hee Eun Lee (Associate Dean and Professor of Law, Handong International Law School, Korea; Co-Editor-in-Chief, *Asian Yearbook of International Law*). Commentators included Daley J. Birkett (Macquarie University Law School), Eon Kyung Park (Professor, Kyunghee University, School of Law), Angela Semeo Kim (Assistant Professor, School of Law, Handong Global University), Wendy Ho (Assistant Professor, School of Law, Soochow University), and Trinh Hai Yen (Professor, Diplomatic Academy of Vietnam).

The conference concluded with a wrap-up by Dustin Kuan-Hsiung Wang and Seokwoo Lee.

The following day, on June 27, the 2023 DILA Academy and Workshop was held in a hybrid format at the Mirage Tourist Camp. The event focused on “DILA’s New Book Series on International Law in Asia: Asian States Potential Leadership in International Law”. It began with an overall discussion chaired by Seokwoo Lee.

The 2023 DILA+APOLIA International Conference in Taiwan was held on December 5, 2023 in Taipei, Taiwan. The conference theme was “Asian States Potential Leadership in International Law”. It was co-hosted by The Foundation for the Development of International Law in Asia (DILA), The Development of International Law in Asia-Korea (DILA-KOREA), and The Center for International Studies (CIS), Inha University.

The Opening Session was led by Dustin Kuan-Hsiung Wang, Chairman of DILA; Professor at National Taiwan Normal University. Session 1, titled “10 Years After the Initiation of the South China Sea Arbitration and Its Impact on Territorial and Maritime Disputes in Asia,” was chaired by Jean Young Lee (Director, The Center for International Studies (CIS); Professor, The Department of Political Science and International Relations, Inha University). Presentations were made by: Yann-Huei Song (Research Fellow (ret.), Academia Sinica); Rommel J. Casis (Professor, University of the Philippines College of Law) on “International Environmental Law Issues and Implications of the SCS Arbitration Ruling”; Sangtu Ko (Professor, Area Studies, Yonsei University) on “Political and Security Aspects of Taiwan Crisis in South China Sea”; Fu-Kuo Liu (Research Fellow, The Institute of International Relations (IIR); Executive Director, The Taiwan Center for Security Studies, National Taiwan Chengchi University).

Session 2, titled “Developing International Norms Addressing the Disposal of Nuclear Waste and Nuclear Governance at the International and Domestic Levels,” was chaired by Seokwoo Lee. Presentations were made by Denise Cheong (Head, Nuclear Law & Policy Programme, Centre for International Law, National University of Singapore); Yen-Chiang Chang (Professor, School of Law, Dalian Maritime University, China; Director, Institute of Bohai and Yellow Sea Studies); Hitoshi Ushijima (Professor, Faculty of Law, Chuo University) on “Nuclear Power Plant Regulation in Japan”; Eri Osaka (Professor, Faculty of Law, Toyo University) on “Legal Response to Radioactive Contamination Derived from the Fukushima Nuclear Accident”; Chie Kojima (Professor, Faculty of Law, Chuo University) on “Nuclear Waste Disposal and the Law of the Sea”.

The conference concluded with a wrap-up by Hee Eun Lee.

*Seokwoo Lee*

Co-Editor-in-Chief

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