

A New Universal Human Right

Throughout most international conferences and summits this year, the underlying theme was the preservation of and the importance of the environment. To this effect, the United Nations General Assembly adopted a historic resolution which declared access to a clean, healthy and sustainable environment to be a universal human right.

The resolution, developing upon a resolution of the Human Rights Council, calls upon States, international organisations, and business enterprises to scale up efforts to ensure a healthy environment for all.

The UN introduced the 'Universal Human Rights' concept in 1948. Enshrined in the Universal Declaration of Human Rights, it refers to a set of rights enjoyed and accessible to everyone, everywhere. While the document is not enforceable, the rights enshrined formulate a cornerstone of customary international law and must be followed by all States.

The inclusion of this new right signifies a shift in legal battles

fought by environmentalists and others worldwide. Any exploitation of the environment must be done sustainably, ensuring the availability of resources for all future generations. In a world where the largest polluting States do not accept liability for their actions, the duty to provide their citizens with a clean and healthy environment helps stem the tide. The right is intrinsically connected to multiple sustainable development goals of the United Nations and strengthens the legal framework for achieving these goals.

However, the legal nature of this right still needs to be developed, especially concerning its limits; what classifies as clean, healthy, and sustainable needs to be established. One can only hope that 2023 will bring about a minimum standard under this right.

The Loss and Damage Fund

The United Nations Climate Change Conference COP27 in November successfully managed to pass a breakthrough agreement for funding for vulnerable countries hit by climate disasters.

News at a Glance

Brazil's Minister of Justice and Public Security said he would open an investigation with the Federal Police into the alleged genocide perpetrated against the Indigenous Yanomami people of the Amazon by right-wing government of former Brazilian President Jair Bolsonaro. For more information, see [here](#).

The International Criminal Court (ICC) decided to authorize an investigation into the deaths of civilians during the Philippine government's "war on drugs." The ICC stated that the government failed to provide adequate information and had not satisfied the ICC that the investigation could be deferred based on the principle of complementarity. For more information, see [here](#).

The Court of Justice of the European Union (CJEU) ruled to recognise the right of self-employed persons not to be discriminated against on the basis of their sexual orientation. For more information, see [here](#).



The “loss and damage” fund aims to help countries without their own developed infrastructure mitigate and recover from damage dealt by climate disasters. The acceptance of this fund, however, raises some crucial issues about liability and damages in international economic law.

The first question stems from the basis of the funding: Will the fund rely on contributions by states or be funded at least in part by other sources? Are the contributions mandatory or on a charity basis? One of the systems proposed is a compulsory contribution from all significant contributors to climate change, such as China. Not only would it help establish a uniform database of emissions, but it would also provide a focus for all future discussions of international environmental law - singling out the States which would need to bring in the most legislative changes to help the environment.

The second question is regarding the basis of contributions: Do contributions to the fund qualify as an acceptance of historical responsibility for climate damage? The establishment of liability for

climate damage would solve one of the biggest debates of international economic law, i.e. who is responsible for the damage caused by climate change to a nation? Would it just be the nation nearest to the affected state and a more significant contributor to climate change, or would the biggest offenders also carry the highest proportion of liability?

Unfortunately, this question is unlikely to be answered, as both the discussions during the conference and the preamble of the fund state that any contributions would not establish liability. However, the fund is sure to result in a new dimension of liability under international environmental law.

The Russia-Ukraine Conflict

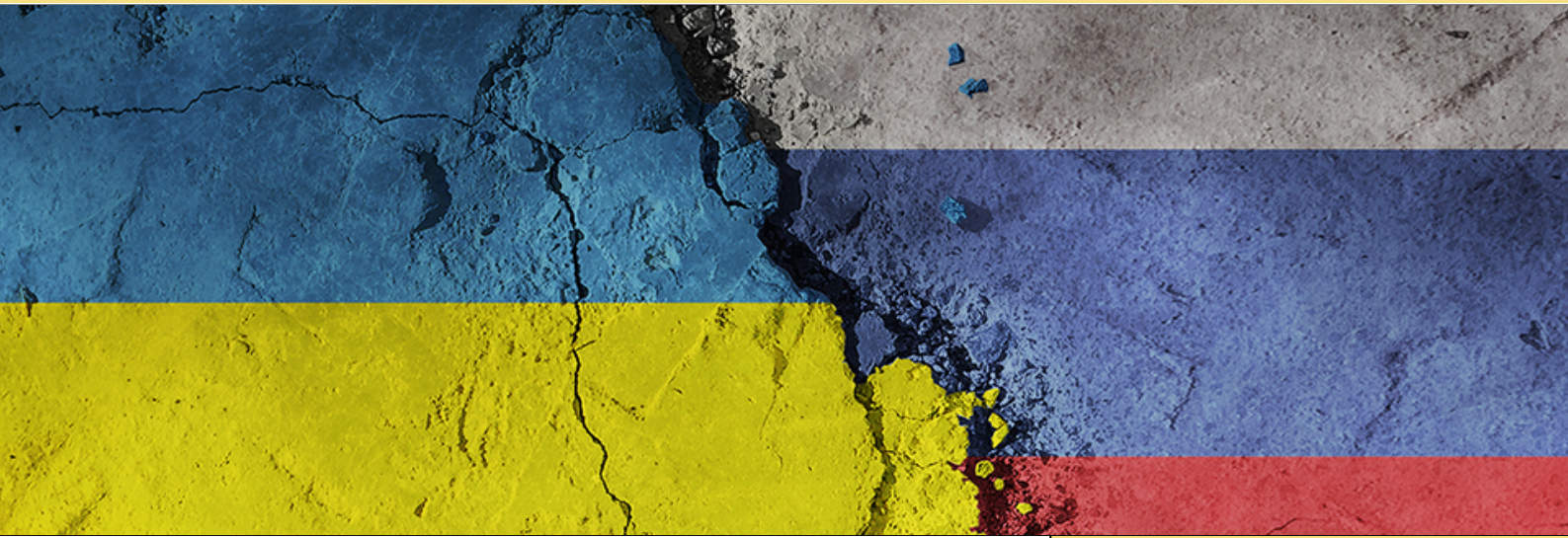
The conflict that began in early 2022 is part of the ongoing conflict between the countries that started in 2014. The invasion began upon Russian President Vladimir Putin's announcement of a "special military operation" seeking the "demilitarization" and "denazification" of Ukraine. It has since become Europe's largest refugee crisis since World War II.

News at a Glance

Human rights NGO, Fortify Rights, filed a criminal complaint against senior Myanmar military generals for genocide against the Rohingya peoples, war crimes and crimes against humanity. Under the principle of universal jurisdiction, the organization filed its claim in Germany. For more information, see [here](#).

European Union ministers agreed on a new set of sanctions against Iran. The sanctions follow a call by the European Parliament to add the Iranian Revolutionary Guard Corps (IRGC) and other Iranian officials to the EU terrorist list, as protests sparked by the death of Mahsa Amini continue. For more information, see [here](#).

Türkish President stated that Sweden and Finland must extradite 130 alleged Kurdish terrorists in order for the Turkish parliament to ratify their accession to the North Atlantic Treaty Organization (NATO). Türkiye and Hungary are the only NATO members yet to ratify their accession. For more information, see [here](#).



The Ukrainian Government lodged a case with the ICJ alleging violations of the 1948 Genocide Convention. The ICJ fast-tracked the procedure and ordered Russia to suspend military operations. The court decision is considered a 'near total' victory for Ukraine, while non-respect of the decision is expected to cause further reputational harm to Russia. Although the decision does not rebut all Russia's stated grounds for invasion, it marks an important step towards proving the illegality of the war under international law.

The International Criminal Court opened an investigation into crimes against humanity in Ukraine since 2013, including war crimes in the 2022 invasion. 43 State parties to the Rome Statute made a joint referral to the ICC. Russia's vocal hostility towards the Court poses the greatest obstacle in terms of evidence collection and compliance with arrest warrants, especially in the occupied territories under Russian control. Thus far, the Prosecutor has received "no response" from Russian authorities to his formal request to discuss the ongoing situation in Ukraine; it is doubtful whether he ever will.

The illegal invasion has been met with widespread international condemnation. The United Nations General Assembly passed a resolution condemning the invasion and demanding a full withdrawal of Russian forces. However, Russia blocked the UN Security Council's attempt to condemn the invasion. The Council of Europe expelled Russia. Many countries imposed sanctions on Russia, and on its ally Belarus, and provided humanitarian and military aid to Ukraine. Protests occurred around the world; those in Russia were met with mass arrests and increased media censorship. Over 1,000 companies left Russia and Belarus in response to the invasion. Ultimately, the international response has set about new pathways for the future of international law.

The Incidental Downing of MH17

The downing of the Malaysian Airlines Flight 17 ('MH17') plane happened in 2014, when Russia and Ukraine were in conflict. Eight years later, the Hague District Court delivered a verdict against the four accused in the trial. The

News at a Glance

The European Parliament approved a resolution that demands the establishment of a tribunal for war crimes committed by Russia and Belarus in Ukraine. The resolution focuses on atrocities committed in Bucha, Irpin and other parts of Ukraine that "reveal the brutality of the war." For more information, see [here](#).

The Special Advisory Council for Myanmar (SAC-M) released a report identifying international companies which are helping the Myanmar military junta to commit atrocities by supplying them weapons it has used to repress the country's population. For more information, see [here](#).

The UN Security Council (UNSC) discussed the importance of the "rule of law" in international dispute resolution. The Council opined that an increased consensus among member states to yield to the compulsory jurisdiction of the International Court of Justice (ICJ) would be key to maintaining global peace. For more information, see [here](#).



first three were found guilty of murder of 298 people and intentionally causing the crash of an airplane, as indirect co-perpetrators. It also ruled on the State responsibility of the Russian Federation under the European Convention on Human Rights and other international conventions.

In order to determine whether the Dutch prosecutor had a right to start criminal proceedings against the accused in the trial, who were all foreign nationals, three questions were considered:

1. whether the Dutch Criminal Code establishes jurisdiction over the conduct in question;
2. whether international law provides any limitations, such as immunities, to prosecution; and
3. whether serious procedural defects in the investigation and prosecution can be identified which could extinguish the Prosecutor's right to prosecute this case.

This verdict sets a crucial precedent under international law. The Dutch Government has also pursued an inter-State application against the Russian Federation before the ECtHR. The Court held

the proceedings to be admissible as Russia had effective control over separatist areas in eastern Ukraine from 2014 until January 2022. The judges cited Russia's military presence in the region, its degree of influence over the separatists' military strategy, the supply of weapons and military equipment to them, as well as political support as causes for admissibility. The complaints will now go to trial.

Reparations to DRC

Democratic Republic of the Congo (DRC) and Uganda fought a violent conflict that started in the late 1990s. The ICJ ordered Uganda to pay \$325 million in reparations to the DRC, as a result of Uganda's infringement of its international responsibilities.

The reparation ruling was issued more than 15 years after the ICJ determined that Ugandan forces' involvement in the DRC violated international law. Uganda was previously ordered to pay reparations in 2005, but they were never paid.

The amount currently granted is far less than the more than \$11 billion in damages that DRC had

Upcoming Activities

Call for Papers: Comparative Constitutional Law in the Global South

Columbia Law School invites submissions for a works-in-progress workshop in comparative constitutional law. The workshop, convened with the support of the Dr. B.R. Ambedkar Fund at Columbia Law School, will focus on themes that are linked to the theory and practice of constitutionalism in the Global South. For more information, see [here](#).

Call for Papers: Journal of International Law of Peace and Armed Conflict

The Journal of International Law of Peace and Armed Conflict is inviting articles for its first issue of 2023. This issue focuses on "gender identity and sexual orientation in international law." Articles focusing on other topics are equally welcome. For more information, see [here](#) and [here](#).



sought as compensation for the colonisation of its tumultuous northern Ituri region. The recompense was divided up into many kinds of damages by the court. It estimated \$225 million for "loss of life and other harm to individuals," which included rape, the enlistment of children as combatants, and up to 500,000 people being displaced.

It assessed an additional \$60 million for harm to natural resources, including the theft of gold, diamonds, lumber, and other products by Ugandan soldiers or rebels they backed, and another \$40 million for harm to property.

Ultimately, the decision represented a setback for the DRC following a protracted legal fight for compensation for the deadly conflict that lasted from 1998 to 2003 and resulted in thousands of fatalities. The court held that there was insufficient evidence to support the DRC's claim of 180,000 civilian deaths for which Uganda owed reparation. Uganda has already paid the first installment of the reparation amount.

The Chile-Bolivia River Dispute

The International Court of Justice (ICJ) issued its judgement on the Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia). It declared the river "an international watercourse."

In the middle of a 13-year drought, Chile and Bolivia's relations have worsened over the past two decades with both laying claims over Silala. The Silala river originates in Bolivia's high-altitude wetlands before flowing into Chile's Atacama desert. Chile thus defines the Silala as a river imperative to Chilean mining operations while Bolivia describes it as a wetland, where the flow of water was deemed artificially created through channels and draining mechanisms.

Chile filed a lawsuit against Bolivia in the ICJ, demanding the court to declare the Silala an international waterway. A countersuit was filed in response by Bolivia where Bolivia claimed that Chile had stolen the Silala's water, through 'illegal' means. Bolivia also called upon the court to recognise its right to demand compensation for the delivery of water through those

Upcoming Activities

Call for Papers: Journal on the Use of Force and International Law

The Journal on the Use of Force and International Law attracts contributions both from scholars writing on the general nature of the law in the area of *jus ad bellum* and those examining particular uses of force or developments in this field of law. For more information, see [here](#).

Call for Papers: The European Union and Interpretation of Customary International Law Workshop

The TRICI-Law and EUDIPLA projects are organising a Workshop in Groningen on 28th April, 2023. The Workshop aims to examine the interpretation of customary international law within and by the EU. For more information, see [here](#) and [here](#).



'artificial' channels in an assertion of its sovereignty.

However, over the course of the six-year-long proceedings, the judges found that Bolivia acknowledged the qualification of Silala waters as an international watercourse under customary international law. Thereby, the court issued its judgement, or lack thereof, stating that there was no need for one since both "parties agree with respect to the legal status of the Silala River."

The ICJ's decision on Silala was welcomed by Chile. Meanwhile, Bolivia acknowledged the end of the controversy surrounding the nature and use of the Silala. Bolivia also stated that it shall exercise the rights it possesses over the Silala river according to the ruling of the ICJ.

Nicaragua v. Columbia

The ICJ issued its merits ruling in the Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea, brought by Nicaragua against Colombia. The Court upheld most of Nicaragua's claims, ruling that Colombia had violated Nicaragua's sovereign

rights and jurisdiction in Nicaragua's exclusive economic zone ("EEZ").

The case stems from the Court's 2012 ruling in Territorial and Maritime Dispute (Nicaragua v. Colombia), which awarded Colombia sovereignty over certain maritime features in the Caribbean Sea and delimited a single maritime boundary for the continental shelf and EEZ of both States up to 200 nautical miles. Following that decision, Colombia withdrew from the Pact of Bogotá, pursuant to which Colombia had recognised the jurisdiction of the ICJ. Then Nicaragua initiated proceedings in the present case in respect of certain conduct by Colombia in the area that had been delimited.

The ICJ ruled it had jurisdiction *ratione temporis* over Nicaragua's claims.

The Court held that Colombia had violated Nicaragua's sovereign rights and jurisdiction by:

- interfering with fishing and marine scientific research activities of Nicaraguan-flagged or Nicaraguan-licensed vessels;

Upcoming Activities

BIICL Training Programme: Spring 2023

The British Institute of International and Comparative Law (BIICL) has launched its programme of training courses for spring 2023. The programme will cover foundations of public international law, public international law in practice, law of the sea, climate change law, WTO Law, aviation law and business and human rights. For more information, see [here](#).

Rio School on Global Governance, Democracy and Human Rights

The lectures provide an understanding and critical analysis of such organizations and the European Union's institutions, their decision-making process, and challenges to their external action strategy and goals in Latin America. For more information, see [here](#).



- interfering with the operations of Nicaraguan naval vessels in Nicaragua's EEZ; and
- purporting to enforce conservation measures in Nicaragua's EEZ.

The ICJ ruled that Colombia had further violated Nicaragua's sovereign rights and jurisdiction by authorising fishing activities in Nicaragua's EEZ. Additionally, the ICJ ruled that Colombia's "integral contiguous zone" established by a 2013 Presidential Decree did not comply with customary international law.

The Contracting States of the Pact of Bogota are required to implement the ICJ's rulings, but it remains unclear whether Colombia will now comply, given its historic refusal to comply with the 2012 Ruling, alleging that only a bilateral treaty between Colombia and Nicaragua could modify the maritime borders. Following the 2022 Ruling, Colombia's President Ivan Duque stated that he will not allow Nicaragua to limit the rights of Colombia in the Caribbean Sea.

The End of the Whiskey War

In 2022, Canada, Denmark, and Greenland signed an agreement in Ottawa resolving outstanding boundary issues over Tartupaluk (Hans Island), delimiting territorial and maritime boundaries in the Arctic (the "Boundary Agreement"). The conflict over Hans Island has become known as the "Whisky War" since 1984, when Canadian troops planted a flag on the island, a sign saying "Welcome to Canada," and left a bottle of Canadian whisky. The Agreement meant the creation of a 3,962 km length maritime boundary, the longest in the world.

Hans island is uninhabited and without vegetation and wildlife. The 1973 Delimitation Agreement deliberately left the area between the geodetic points 122 and 123 where Hans Island is located without a determined boundary. The decades following the treaty triggered a rather political pseudo-confrontation regarding sovereignty over the island, with Canada and Denmark provoking each other by planting flags on the island, pursuing annual military visits, and exchanging bottles of whiskey and schnapps.

As per the 2022 Agreement, it will be divided along a natural ravine with about 60% of the area being allocated to Greenland and the remainder of the area to Canada.

The Agreement's provisions ensured rights for the Inuit and local people living in Avanersuaq, Kalaallit Nunaat, and in Nunavut, Canada to freedom of movement throughout the island for hunting, fishing, and other related activities since the island had a traditional, symbolic and historic significance to the local population. This is in consonance with international law's principle of continuity, which posits that existing traditions remain undisturbed by the change in the status of the ocean space.

The 2022 Agreement constitutes the very first step towards the acknowledgment of the entirety of the traditional territories of an Indigenous people spread among four Arctic sovereign states.



The Sri Lankan Political and Economic Crisis

The Sri Lankan political crisis led to a number of questions about the constitutionality and validity of the Sri Lankan government and ultimately led to economic collapse.

The crisis has its roots in October 2018, when President Maithripala Sirisena dismissed the Prime Minister Ranil Wickremesinghe and elected former President Mahinda Rajapaksa as the new Prime Minister. It deepened as Sirisena refused to recognize the parliament's vote of no-confidence against Rajapaksa and the Supreme Court ruled the appointment illegal. In August 2019, former Defense Secretary Gotabaya Rajapaksa, Mahinda's brother, was elected as president. The current political crisis in Sri Lanka can also be seen as part of a larger struggle for power and influence between China and India, with the Rajapaksas being seen as pro-China and Wickremesinghe as pro-India.

After the civil war ended in 2009, President Mahinda Rajapaksa took out massive foreign loans to pay for

war expenses and, more importantly, to start flashy infrastructure projects to attract tourism and reward cronies. In a vicious cycle, the government had to turn to foreign lenders, such as the Chinese, to help service already existing debt because they had limited foreign reserves. Several tax cuts were implemented. The 2019 Easter bombings and the COVID-19 pandemic ravaged tourism, Sri Lanka's main source of foreign revenue. The country's economy was devastated.

The IMF ultimately agreed to give the country a US \$2.9 billion bailout to support Sri Lanka's economic policies. The objectives of this program are to restore macroeconomic stability and debt sustainability, while safeguarding financial stability, protecting the vulnerable, and stepping up structural reforms to address corruption vulnerabilities and unlock Sri Lanka's growth potential. The resolution of the crisis will have significant implications for the future of the country and the region as a whole.

FIFA World Cup 2022 and Qatar's Migrant Worker Issue

Qatar embarked on an unprecedented expansion of infrastructure projects since FIFA chose it to host the 2022 world cup. Qatar then employed hundreds of workers from south-east Asian countries and questions were soon raised over the alleged abuse of human rights.

As this piece of news made headlines, it yet again brought into focus the Kafala system. The Kafala system legally binds the worker to their employer and is practiced across several gulf countries. It is often equated to bonded labour.

Dubbed as an issue of modern slavery, it emerged in the mid-20th century and operates as a sponsorship system wherein the State gives local individuals, companies, and other entities the permits to employ foreign labour. Thus, the local entity acts as the sponsor for the migrant worker, and covers things like travel and housing costs for the workers. This gives private citizens the right to dictate the terms of employment, entry to and exit from the host country, as well as all incidental



issues that may arise.

It was only when organizations like Amnesty International exposed the working conditions at World Cup sites that international attention intensified. Labor quickly became a two-fold problem for Qatar: First, many contractors were violating legal guidelines when it came to treatment of workers, and, second, the guidelines themselves did not provide workers with adequate wages and protections.

Despite laws aiming to dismantle the system being implemented in 2020, Amnesty International published an article in 2022, criticizing the reforms done by Qatar for migrant workers and stating that the reforms were unfinished and that there was still a great distance still to go.

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