The 9th Biennial Conference of the Asian Society of International Law (2023)

Reconstructing the Bandung Spirit for Asia to Lead in the New Era of International Law

Conference Programme Book

Depok-Bandung,
7 - 10 August 2023

FAKULTAS HUKUM
UNIVERSITAS INDONESIA

ASIANSIL
ASIAN SOCIETY OF INTERNATIONAL LAW

2023
AsianSIL
Biennial
Conference

FOREWORD

The Organizing Committee welcomes you to Bandung, Indonesia and the 9th Biennial Asian SIL Conference 2023.

The Bandung Conference in 1955 marked a significant progress in the development of international law globally, but especially in Asia. Under the leadership of the then Indonesian President Sukarno, the Bandung Conference represented a major leap in the history of international law and later shaped the new international legal order.

The relevance of the Bandung Conference's spirit endures today due to current geopolitical rivalries and the need for global peace. Despite equal standing under international law, Asian and African states still have limited influence in its development of international law.

Today, it welcomes not only Asian scholars, but also international legal scholars interested in issues pertaining to Asia. In this sense, it seeks to revisit the historical Bandung Conference and encourage reflection within Asia about its current and future participation in the international legal system.

We look forward to your participation and learning about your insights and perspectives on how we can stimulate Asia to contemplate its present and future role in the international legal framework.

Hikmahanto Juwana
7th President of Asian SIL

2023
AsianSIL
Biennial
Conference

FOREWORD

Distinguished participants, scholars, practitioners, and esteemed guests,

It is with immense pleasure and great honor that I extend my warmest welcome to all of you to the 9th Biennial Asian Society of International Law Conference. As the Dean of the Faculty of Law of Universitas Indonesia, I am thrilled to host this momentous event, which seeks to revisit the historical Bandung Conference and explore its enduring significance in shaping the international legal order.

The Bandung Conference of 1955 marked a pivotal moment in the history of international law, challenging the dominance of Western nations and providing a platform for Asian and African countries to assert their sovereignty and gain recognition at the global stage. The principles of non-alignment and mutual cooperation laid the foundation for an inclusive and equitable international order, transcending geographical and cultural boundaries. Today, as we gather to commemorate and build upon the legacy of Bandung, we are reminded of the enduring relevance and spirit of this historic conference.

This conference serves as a vital forum for the exchange of ideas, bringing together scholars, practitioners, and interested individuals of international law from Asia and beyond. It provides a platform for meaningful discussions and critical insights into the role of Asia in the current and future development of international law. Our aim is to foster constructive dialogues that will address the challenges and opportunities faced by Asian states in shaping the international legal landscape.

Welcome to the 9th Asian Society of International Law Biennial Conference. Let us embark on this intellectual journey with a renewed commitment to fostering understanding, cooperation, and progress in the realm of international law.

Dr. Parulian Paidi Aritonang, LL.M., MPP.
Dean of the Faculty of Law
Universitas Indonesia

HOSTS

Universitas Indonesia (UI) is a public university in Jakarta, Indonesia. It is one of the oldest Indonesian tertiary-level educational institutions and considered one of the most prestigious universities in Indonesia, along with Universitas Gadjah Mada and Institut Teknologi Bandung. In the 2023 QS World Universities Ranking, Universitas Indonesia was ranked 1st in Indonesia, 49th in Asia, and 237nd in the world.

Universitas Jenderal Achmad Yani (UNJANI) was first founded in 1974. UNJANI is the result of a merger of high schools managed by *Yayasan Kartika Eka Paksi* (YKEP). It currently has 10 faculties and 42 study programs. In 2021, UNJANI was awarded a B-accreditation by the Higher Education National Accreditation Board (*Badan Akreditasi Nasional Perguruan Tinggi*).

ORGANIZER

The Asian Society of International Law (AsianSIL) is an international non-partisan, non-profit, and non-governmental organization with the following objectives:

- To promote research, education and practice of international law by serving as a centre of activities among international law scholars and practitioners in Asia and elsewhere, in a spirit of partnership with other relevant international, regional and national societies and organizations;
- To foster and encourage Asian perspectives of international law; and
- To promote awareness of and respect for international law in Asia.

To these ends, the functions of the Society include organizing conferences, regional and subregional seminars, workshops and other meetings; undertaking publication for the Society, including the proceedings of the conference organized by the Society; and collecting and disseminating information relating to research, academic activities and other developments relevant to Asia in the field of international law.

CONFERENCE AGENDA

The 9th Biennial Conference of the Asian Society of International Law (2023)

DAY ONE
7th August 2023

Junior Workshop Panel (Depok)

09.00–12.00	The Workshop
12.00–13.30	Lunch break
13.30–16.30	Travel to Bandung
13.00–17.00	Presenter Registration @ Savoy-Homann

DAY TWO
8th August 2023

Conference Day One

07.00–08.00	Registration @ Savoy-Homann
08.00–09.45	Welcome Ceremony
09.45–10.15	Keynote Speech by **H.E. Laurentius Amrih Jinangkung**, Director-General for Legal Affairs and International Treaties, Ministry of Foreign Affaris of Indonesia
10.15–10.30	Preparation to Merdeka Building
10.30–11.30	Historical Visit to Merdeka Building
11.30–13.00	Lunch Break
13.00–15.00	**Plenary Session 1:** **Revisiting the Bandung Spirit and Outlook of International Law from Asian Perspective**

- **Prof. Luis Eslava** (Kent University)
- **Amb. Arif Havas Oegroseno** (Ambassador of the Republic of Indonesia to the Federal Republic of Germany)
- **Prof. Liu Huawen** (UN Committee against Torture)
- **Prof. Anne Orford** (University of Melbourne)

Moderated by: Hadi Rahmat Purnama, LL.M.

15.00-15.30 Coffee Break

15.30-17.00 **Parallel Chamber Panel 1A**

Panel 1A.1

"*History and Theory of International Law*"

(Consulate 1)

- **Moderated by Prof. Prabhakar Singh, BML Munjal University**
  - Asia Pacific States and the International Court of Justice. Where 'Despair Most Fits'? **(Ignacio de la Rasilla - Wuhan University)**
  - Questioning the Exclusive Legal Personality of States in East Asia **(Tetsuya Toyoda - Akita International University)**
  - Before TWAIL: Filipino Judge Gregorio Millari Perfecto's Dissenting Jurisprudence Against the 'Fulgour' of 'Cheap International Law' as Philippine Third Worldist Judicial Thought avant la letter **(Romel Bagares - Philippine Judicial Academy)**
  - TWAIL and Jingoism: Stories of Embracing and Evading the Threats **(Swati Singh Parmar - Dharmashastra National Law University)**

Panel 1A.2

"Foreign Investment & Commercial Law"

(Consulate 2)

- **Moderated by Prof. Yetty Komalasari Dewi, Universitas Indonesia**
  - The Development of the Social Dimension of Chinese Regulatory Measures for Outward Foreign Direct Investment **(Si Chen - Shenzhen University)**
  - Integrating Regional Needs into Multilateral ISDS Reform: Proposals for ASEAN **(Charalampos Giannakopoulos - National University of Singapore)**
  - Fostering the Status of Asia's Sovereign Wealth Funds as Responsible Foreign Investors: The Progressive Development of International Legal Personality as a 'Silver Bullet'? **(Karsten Nowrot - University of Hamburg)**
  - Problems in the Execution of Bankruptcy Asset in Cross Border Insolvency **(N. Pininta Ambuwaru - Universitas Achmad Yani)**

Panel 1A.3

"*Dispute Settlement*"

(Palace)

- **Moderated by Prof. Elizabeth Aguiling-pangalangan, University of Philippines**
  - The HCCH and Its Relevant for Asia **(Christophe Bernasconi - The Hague Conference on Private International Law)**
  - The PCA's Role in Climate Change-related Disputes **(Neil Nucup - Permanent Court of Arbitration)**
  - The ICJ Judgment in Certain Iranian Assets Case and its Implications on the International Law of Investment **(Pouria Askary - Allameh Tabataba'i University)**
  - International Conciliation and Mediation at the PCA **(Túlio Di Giacomo Toledo - Permanent Court of Arbitration)**

15.30–17.00	**Panel 1A.4**
	"Role of International Law (Special EC Panel)"
	(Sultan)
	• **Moderated by Prof. Simon Chesterman, National University of Singapore**
	  ◦ **Raul Pangalangan - University of Philippines**
	  ◦ **Shirley Scott - University of New South Wales**
	  ◦ **Miras Daulenov - Narxoz University**
	  ◦ **Lee Keun Gwan - Seoul National University**

17.00–18.30	Break
18.30–20.00	Welcoming Dinner (**Remarks by Prof. Hikmahanto Juwana and Prof. Antony Anghie**)

DAY THREE
9th August 2023

Conference Day Two

07.00–07.30	Participants Gather at Meeting Point Savoy-Homann Rear Parking Lot
07.30–08.30	Trip from Bandung to Cimahi
08.30–09.15	Re-Registration @ Universitas Ahmad Yani
9.30–11.30	**Plenary Session 2:** **(Re)Configuring New Multilateralism through the Asian-African Perspective** • **Prof. Dire Tladi** (University of Pretoria) • **Prof. Mohammad (Shahab) Shahabuddin** (University of Birmingham) • **Prof. Hikmahanto Juwana** (Universitas Indonesia /Universitas Ahmad Yani) • **Prof. Mavluda Sattorova** (University of Liverpool) Moderated by: Arie Afriansyah, Ph.D.
11.30–13.00	Lunch
13.00–14.30	**Parallel Chamber Panel 2A**

13.00–14.30

Parallel Chamber Panel 2A

Panel 2A.1

"International Criminal Law"

(Room 1)

- **Moderated by Ms. Chloryne Trie Isana Dewi, Universitas Padjajaran**
  - Arrest Warrants of the International Criminal Court for Putin and Lvova-Belova: A Comparative International Law Perspective **(Sergii Masol - University of Cologne)**
  - The Right to Development and its Responses to global forced displacement **(Luyi Hao - Chinese Academy of Social Sciences)**
  - Humanity v The Tatmadaw: The Case for the Prosecution in the Philippines under the Principle of Mandatory Universal Jurisdiction of the Alleged War Crimes Committed by the Military Junta Against the Chin People in Myanmar **(Romel Regalado Bagares & Gilbert Teruel Andres - Philippine Society of International Law)**

Panel 2A.2

"Foreign Investment"

(Room 2)

- **Moderated by Assoc. Prof. Jean Ho, National University of Singapore**
  - Oscillating Fairness in International Investment Law **(Mavluda Sattorova and Jean Ho National University of Singapore)**
  - Envisaging Principles For Belt And Road Initiative: Rule Of Law And Dispute Resolution Challenges For Indonesia **(Andrew Sutedja - Universitas Achmad Yani)**
  - Mediating with Chinese Characteristics: An Empirical Study of China's Approach to ADR in International Investment Disputes **(Huaxia Lai - Peking University)**
  - A Computer-assisted Empirical Analysis of Investment Treaty Arbitration Relating to Public Health **(Jianzhi Zeng - Shenzhen University)**

Panel 2A.3

"Law of The Sea"

(Room 3)

- **Moderated by Dr. A. Gusman Siswandi, Universitas Padjajaran**
  - Can Common Heritage of Mankind Principle be Applied Over Marine Genetic Resources? **(Dhiana Puspitawati - Universitas Brawijaya)**
  - Beyond UNCLOS, Developing Marine Environmental Protection Laws in Asia **(Liu Nengye - Singapore Management University)**
  - Freedom of Navigation in the Archipelagic Sea Lanes for Nuclear-Powered Submarine: Prospects and Challenges **(Philip Kristanto - Universitas Atma Jaya Yogyakarta)**

13.00-14.30

Panel 2A.4

"Environmental Law"

(Room 4)

- **Moderated by Dr. Tara Davenport, National University of Singapore**
  - Assessing the Local Impacts of Global Responses to Human Mobility in the Context of Climate Change **(Mostafa M. Naser - Edith Cowan University)**
  - Integrating Climate Change into Asia Transboundary Water Governance: Towards Enhanced Mechanisms on Water Allocation and Disaster Response **(Jin Gu - Wuhan University)**
  - Climate Change Mitigation Measures and the Protection of the Marine Environment in ASEAN: Opportunities and Challenges **(Dawoon Jung - University of Wollongong)**
  - The Utility of the United Nations Climate Change Conference on Youth' 17 vis a vis its impacts on the COP-27 Outcomes: an examination from the Lens of the Bandung Spirit **(Manini Syali - Vivekananda Institute of Professional Studies)**

Panel 2A.5

"*Human Rights*"

(Room 5)

- **Moderated by Dr. Diajeng Wulan Christianti, Universitas Padjajaran**
  - Abolishing Treason Laws: How Indonesian Criminal Laws Restrain Human Rights Decolonization **(Eka Putra - O.P. Jindal Global University)**
  - Novelty of Transitional Justice in South Asia: Reflections on the Transitional Justice Mechanism of the Maldives **(Batool Zahoor Qazi - The Maldives National University)**
  - Bridging the Gap between Islamic Human Rights and International Human Rights Law **(Raas Nabeel - Research Society of International Law (RSIL))**
  - On International Legal Regulation of "One Health" Assistance **(Yinling Zhou & Tongya Heng - Wuhan university)**

Panel 2A.6

"Cyberspace & International Law"

(Room 6)

- **Moderated by Prof. Miras Daulenov, Narxoz University**
  - On the Application of Collective Countermeasures of States in Cyberspace **(Liu Yu Qi - Wuhan University)**
  - The Indonesian jurisdiction' in Cyberspace: Reviewing government' blocking over the websites of companies **(Koesrianti - Universitas Airlangga)**
  - Ensuring Cybersecurity in the Maritime Industry: Legal and Regulatory Challenges with Reference to the Malaysian Position **(Su Wai Mon - University of Malaya)**
  - Artificial Intelligence, Cyberspace and International Law **(Tripti Bhushan - O.P. Jindal Global University)**

13.00-14.30

Panel 2A.7

"Human Rights"

(Room 7)

- **Moderated by Dr. Irawati Handayani, Universitas Padjajaran**
  - The Application of Interim Measures by the Committee Against Torture in Individual Communication Procedures **(Zhang Hao - University of Chinese Academy of Social Sciences)**
  - Can ASEAN Be Emancipatory? Tension In CSOs Participation In The Development Of Regional Human Rights Mechanisms **(Hadi Rahmat Purnama - Universitas Indonesia)**
  - Between Magnitsky's Edges: Confronting the Human Rights Constraints on Unilateral Targeted Sanctions **(Raphael Pangalangan - O.P. Jindal Global University)**
  - The Test of Human Rights in the Era of the COVID-19 Pandemic: An Evaluation of Australian Responses **(Tanzim Afroz - Edith Cowan University)**

Panel 2A.8

"International Trade and Commercial Law"

(Room 8)

- **Moderated by Dr. Tiurma MP Allagan, Universitas Indonesia**
  - Sino-West Conflict under the Rule by Treaty of Trade: Conquest, Rise and Cooperation **(Xuehong Liu - East China University of Political Science and Law)**
  - An ASEAN Way to Trade and Sustainable Development? **(Rizky Banyualam Permana - Universitas Indonesia)**
  - Fairness and the Status of the South Asian Countries in the WTO **(Ravindra Pratap - South Asian University)**
  - Striking a Balance: Analysing Indonesia's Raw Material Export Restrictions within the Context of International Trade Law and Development Rights **(Akmal Handi Ansari Nasution, Vita Cita Emia Tarigan, Mahmul Siregar & Annisa Hafizhah - O.P. Jindal Global University & Universitas Sumatera Utara)**
  - Bioscience Governance in Southeast Asia: Data, Open Science, and Sovereignty **(Sonja Van Wichelen - The University Of Sydney)**

14.30–15.00 Coffee Break

15.00–16.30 **Parallel Chamber Panel 2B**

Panel 2B.1

"*Foreign Investment*"

(Room 1)

- **Moderated by Prof. Liu Huawen. Chinese Academy of Social Sciences**
  - Geography has little impact: A Comparative Study on the Role of Judges in Singapore and Indonesia in the Taking of Evidence as Inspiration for Procedures in International Arbitration **(Junianto James Losari - City University of Hong Kong)**
  - "The 'Spirit of Bandung' and the Quest for a New Regional Investment Order **(Prabhash Ranjan - South Asian University)**
  - Restraining Investment Arbitrators' 'Judicial Power' through Comparative Public Law **(Fan (Ariel) Yang - Tsinghua University)**
  - A Reflection from The Ill Cousin Shouldn't the International Centre for the Settlement of Investment Dispute (ICSID) Learn from the World Trade Organization? **(Putu George Matthew Simbolon and Tiurma Mangihut Pitta Allagan - Universitas Indonesia)**

Panel 2B.2

"*AsianSIL Law of the Sea Interest Group*"

(Room 2)

- **Moderated by Prof Zhang Xinjun, Tsinghua University**
  - International Advisory Proceedings on Climate Change: To What Extent Can UNCLOS Change the Climate? **(Xidi Chen - Tsinghua University)**
  - Advisory Opinions and Discretion of the Courts **(Tara Davenport - National University of Singapore)**
  - Greenhouse Gas emissions through the UNCLOS **(Xiaolu Lei - Jinan University)**

Panel 2B.3

"*Law of the Sea*"

(Room 3)

- **Moderated by Assoc. Prof. Liu Nengye - Singapore Management University**
  - The Contribution of the BBNJ Agreement to a Just and Equitable Order of the Oceans **(Kentaro Nishimoto - Tohoku University)**
  - Using Uncrewed Maritime Vehicles for Scientific Research: Legal Challenges and Viable Solutions **(Yao Huang & Shuning Zhang - Sun Yat-sen University)**
  - International Tribunals Approach Toward Maritime Boundaries Delimitation Of An Archipelagic State **(Gulardi Nurbintoro - Universitas Achmad Yani)**
  - Protection of Climate Change Induced Migrants Out of Small Island Developing States: Revisiting the Bandung Spirit **(Dr. Benarji Chakka, Dr. Sudhir Verma, Ms. Saniya Khanna - VIT-AP School of Law & The Graduate Institute (Geneva))**

15.00–16.30

Parallel Chamber Panel 2B

Panel 2B.4

"Human Rights"

(Room 4)

- **Moderated by Prof Wasantha Seneviratne, University of Colombo**
  - Trend Of Supreme Court In Interpreting International Human Rights In Indian Context **(Ananya Das & Shuvro Sarker - Indian Institute of Technology)**
  - Malaysia's CEDAW Reservation and the Debate Over Gender Equality in Islamic Family Law **(Rahmawati bt Mohd. Yusoff - Universiti Teknologi MARA)**
  - Rethinking Kashmir's Claim to Self-determination under International Law: Demystifying Kashmir's Colonial History **(Arbaz Muzaffer - University of Birmingham)**
  - The International Law Implications of East Asia's Transnational War Redress Movement **(Timothy Webster - Western New England University)**

Panel 2B.5

"TWAIL, Sovereignty, and Critical Approaches"

(Room 5)

- **Moderated by Prof Elizabeth Aguiling-pangalangan, University of Philippines**
  - Indonesian IP Through TWAIL Lenses: A New Perspective To Achieve Country Sovereignty **(Sartika Nanda Lestari - University of Aberdeen)**
  - Islam and the International Law Discourse: Should the 'Ulama Jump on the TWAIL Bandwagon? **(Fajri M. Muhammadin and Muhammad Raihan Sjahputra - Universitas Gadjah Mada)**
  - A TWAIL Discourse on Power Dynamics of AI Appropriation and Climate Responsibilities **(Arunava Bannerjee - Amity University)**
  - International Agreements between Non-State Actors as a Source of International Law **(Melissa Loja - Hong Kong University)**

15.00–16.30 **Parallel Chamber Panel 2B**

Panel 2B.6

"Environmental Law"

(Room 6)

- **Moderated by Dr. Iing Nurdin, Universitas Achmad Yani**
  - Climate Change Advisory Cases: Why International Adjudication? How would the ITLOS and ICJ respond? **(Linlin Sun - Zhongnan University of Economics and Law)**
  - From the Common Heritage of Mankind to the Artemis Accords: The Perspective of Developing Countries in Southeast Asia **(Lalin Kovudhikulrungsri; Ridha Aditya Nugraha; Runggu Prilia Ardes - Thammasat University)**
  - Challenges And Opportunities Of Sustainable Business Environment In Indonesia: Safeguarding Indigenous Peoples' Cultural Heritage From Business-induced Climate Losses **(Fildza Nabila Avianti and Sri Purnama - Anggraeni and Partners)**
  - Rights Of Nature And Minimum Flow Of A River: A Socio-legal Study Of Kishenganga Hydro-electric Power Plant **(Ravneet Sandhu - Vivekananda School of Law and Legal Studies)**

Panel 2B.7

"Bandung and Contemporary International Law"

(Room 7)

- **Moderated by Assoc. Prof. Srinivas Burra, South Asian University**
  - "Colonialism has its modern dress": Regulating economic coercion, from Bandung to Today **(Jessica Whyte - University of New South Wales)**
  - Revisiting Legitimacy in International Law: An Asian-African Perspective **(Zhenni Li - Fudan University)**
  - Legacy of the Bandung Conference: Reflections on AALCO as a Forum of Asian and African Solidarity in International Law
  - **(Srinivas Burra - South Asian University)**
  - The Legacy of the Bandung Conference and the Trajectory of Self-determination in Palestine **(Ihab Shalbak - University of Sydney)**

16.30-17.00 Indonesian Journal of International Law Session

17.00-18.00 **Closing Ceremony**

18.00-19.00 Trip back to Bandung (Drop-off @ Savoy-Homann)

19.00-21.00 EC Members Dinner **(By Invitation Only)**

HOTEL & TRANSPORTATION SERVICES

Details of the designated hotels of recommendation are listed as follows:

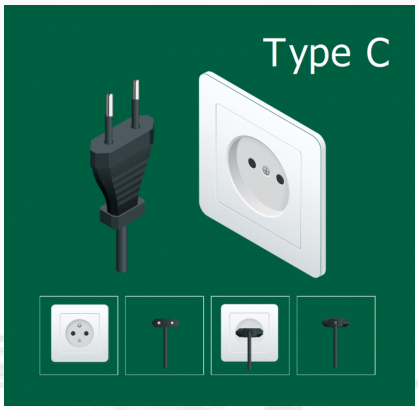
Savoy Homann Hotel Bandung
https:/savoyhomannbandung.com
Transport to and from venue will be provided
Address: Jl. Asia Afrika No.112
Cikawao, Kec. Lengkong
Kota Bandung, Jawa Barat 40261

Kimaya Hotel Bandung
https:/kimayabraga.com-bandung.com/en/
Transport to and from venue will be provided
Address: Jl. Braga No.8
Babakan Ciamis, Kec. Sumur Bandung
Kota Bandung, Jawa Barat 40111

Taxis are widely available in Bandung. Participants can go to the front desk of their hotel and order a taxi directly. Please note that we only recommend the BlueBird Group as the most reliable taxi provider.

ADDITIONAL INFORMATION

Electrical plugs



Please be mindful that Indonesia uses European-style two-pin round plugs ('C'-type is the most common variant found).

Voltage is at 220 V 50 Hz (as opposed to 110 V 60 Hz in US).

Currency

Rupiah is the currency of Indonesia. Rates at the airport are rather competitive compared to the rates in the city. It is recommended to change your money at the airport.

At the current exchange market:

- 1 USD = 15,000 IDR (Rupiah);
- 1 EUR = 16,900 IDR;
- 1 GBP = 19,650 IDR

Bank notes are available from 1000, 2000, 5000, 10000, 20000, 50000, and 100000.

Water

Tap water is not drinkable in Indonesia. Please opt for bottled, filtered, or boiled water instead. Bottled water is readily available, priced anywhere from 3,000 IDR to 15,000 IDR ($0.20 - $1 USD).

EMERGENCY CONTACTS

Police/General Emergencies
110 or 112 (From satellite and mobile phones)

Ambulance and Medical Emergencies
118 or 119

Firefighter
113

Search and Rescue (BASARNAS)
115

Natural Disaster Assistance
129

USEFUL CONTACTS

International Phone Number Information
102

Local Phone Number Information
108

Domestic Call Operator
100 and 106

International Call Operators
101 and 107

TOURISM INFORMATION

Bureau of Public Communication of the Ministry of Tourism
+62 21 3838899

ABSTRACTS
PANEL 1A.1

HISTORY AND THEORY OF INTERNATIONAL LAW

MODERATED BY
PROF. PRABHAKAR SINGH,
BML MUNJAL UNIVERSITY

The 9th Biennial Conference of the Asian Society of International Law (2023)

Asia Pacific States and the International Court of Justice. Where 'Despair Most Fits'?

Ignacio de la Rasilla - Wuhan University

Recent practice shows a marked rise in participation by members of 'The Group of Asia and the Pacific Small Island Developing States of the United Nations' (UNAPG) (or Asia Pacific states for short) in proceedings before the International Court of Justice. Section II provides a holistic view with consideration of these recent developments in the light of sub-regional variation regarding the ICJ in the Asia Pacific region providing furthermore five detailed tables and three maps to that effect. Section III follows on by providing a thematically ordered analytical survey of all fifteen recent contentious cases brought by, or involving, Asia Pacific states, in particular from the Middle-East and the East-Asian sub-regions, before the Court since 2011. Section IV examines a steady pattern in participation by Asia Pacific states in ICJ advisory proceedings over the last twenty-five years highlighting that this is bound to further rise in the wake of both the recent request of advisory opinion on the 'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem' and Vanuatu's successful initiative to request an advisory opinion on "the obligations of states in respect of climate change". Section V examines a number of factors underlying the increased jurisdictional appeal of the ICJ for Asia Pacific states in recent years highlighting the epistemological value of the regional and sub-regional lens in complementing country-specific analyses when studying the engagement of particular states with the ICJ. The conclusion considers the potential for and limitations of the future engagement by Asia Pacific States with the ICJ with attention to the role that an understanding of 'Asian-style' alternative international dispute resolution mechanisms as complementary, rather than as replacements, to the ICJ's traditional adversarial-style proceedings can play in further bolstering their engagement with the Court

Questioning the Exclusive Legal Personality of States in East Asia

Tetsuya Toyoda - Akita International University

One of the significance of the Bandung Conference was the down-to-earth realism. The People's Republic of China (PRC) was among the major promoters of the conference despite its mostly unrecognized status in the international community. For the Japanese government, for example, it became the first opportunity to have an official contact with the Beijing government, 17 years before the establishment of diplomatic relations. It is also noticeable that two Vietnams, the State of Vietnam (South) and the Democratic Republic of Vietnam (North), participated in the conference despite mutual non-recognition. The exclusive legal personality is the central tenet of the modern system of international law, where non-sovereign entities are strictly discriminated against sovereign ones. The introduction of international law in East Asia in the late-19th century was particularly troublesome with the eventual denial of legal personality of semi-sovereign entities, such as the kingdom of Lew Chew, the Joseon dynasty or the government of Tibet. East Asia today still sees the co-existence of mutually non-recognizing entities. To deal with such a reality, we have established the practice of regional security dialogue where DPRK is included since 2000. We have the Asia-Pacific Economic Cooperation (APEC) forum where both PRC and Chinese Taipei have been included since 1991, and both are included in the WTO since 2001, neither of which requires members to be states. The strict distinction between sovereign and non-sovereign entities is only a modern phenomenon even in Western Europe where the concept started to develop in the 17th century. The legacy of the Bandung Conference may be reappraised with its sense of realism and be a starter for a postmodern and non-Western conceptualization and configuration of a community of international law.

Before TWAIL: Filipino Judge Gregorio Millari Perfecto's Dissenting Jurisprudence Against the 'Fulgour' of 'Cheap International Law' as Philippine Third Worldist Judicial Thought avant la letter

Romel Bagares - Philippine Judicial Academy

Filipino judge Gregorio Miliari Perfecto (1891-1949), known as 'the Great Dissenter,'in the Philippine Supreme Court, came ofage in the transition of colonial powers in the Philippines from the Spanish to the American. In his brief judicial career (1945-1949), Mr Justice Perfecto developed jurisprudence that grappled with the challenges facing an emergent postwar postcolonial Filipino state. Drawing from his long if checkered labors as a Spanish-language journalist, political party leader, independence campaigner, litigator, legislator, and constitutional convention delegate, he pioneered a Philippine jurisprudential stream avant la lettre of what is nowknown as Third World Approaches to International Law (TWAIL). Analyzing his 1947 dissent in the landmark case of Tubb v Greiss (inrelation to his other relevant dissenting opinions), the paper argues that his judicial thought presciently anticipates by a few decades themes that are now central to TWAIL. Firstly, through forceful use of the American colonizer's language he learned only after his appointment to the bench, he eschewed embrace of 'cheap' international law skewed towards powerful states. Secondly, against contemporary scholarship, he committed the UN system early on to human rights as a founding principle, under which all member-states are accountable. Thirdly, he audaciously argued that a postcolonial state like the Philippines may contribute to international rule-making, through its own method and substantive material for developing sources of international law. Thus the paper highlights the importance of Third World national courts in the pre-TWAIL era to Third World international legal thought

TWAIL and Jingoism: Stories of Embracing and Evading the Threats

Swati Singh Parmar - Dharmashastra National Law University

TWAIL offers a springboard for the intellectual, political, and economic movement (against Eurocentricity in international law) to reimagine an egalitarian international legal order. This critical potential faces an impending threat from constitutional backsliding and the rise of jingoism in India. Jingoism, as a transmission of TWAIL, is not only a misrepresentation but also discredits the legitimacy of TWAIL's critical impulse. From a simplistic glance, scholars may find intersecting circles between TWAIL and Jingoism as significant banks to compensate for the lack of intellectual depth among the right wing in India. In the recent past in India, there have been attempts to oversimplify the history-awareness aspect of TWAIL and its (mis)use to give moral force to nationalism. History awareness quotient has been used to over-simplify, cherry pick and distort historical facts to create breeding grounds for a bigoted, partisan, and jingoistic milieu. Jingoism has also sabotaged the tribal issues in India and has been conditioning the 'scholarship' in Fourth World Approaches to International Law (FWAIL) from India. From their century-old marginalisation to the sudden celebration of the tribals as freedom fighters, the criticality of FWAIL has been sabotaged by nationalist forces. In this paper, I problematise the elusive ways of Indian jingoism (mis)using the vent for the grievance of the colonial past offered by TWAIL. To this end, first, I present an analysis of (not so) scholarly works produced in India in the recent past in the name of TWAIL and FWAIL on cultural nationalism and other such related aspects; second, I search the cherry-picking of the TWAIL concerns by these works and by the political debates outside the academic world in India.

ABSTRACTS PANEL 1A.2

FOREIGN INVESTMENT & COMMERCIAL LAW

MODERATED BY
PROF. YETTY KOMALASARI DEWI,
UNIVERSITAS INDONESIA

The 9th Biennial Conference of the Asian Society of International Law (2023)

The Development of the Social Dimension of Chinese Regulatory Measures for Outward Foreign Direct Investment

Si Chen - Shenzhen University

Home country measures play a critical role, in addition to host country measures, in fostering responsible foreign direct investment flows. Research interests in Chinese regulatory measures for outward foreign direct investment have been increasing recently, especially when China became the largest source of outward investment across the globe in 2020. This paper critically investigates the incrementally crafted social dimension of Chinese regulatory measures for outward foreign direct investment, focusing on corporate social responsibility considerations. The investigation examines five state agencies, five industry associations, and 20 documents developed by these actors. The paper showcases an ongoing regulatory shift toward enhanced corporate social responsibility in Chinese outward foreign direct investment and identifies directions for future improvements. Although corporate social responsibility considerations in state regulatory measures have increased in recent years, they tend to be general and abstract. In contrast, the conceptualization of corporate social responsibility in industry self-regulatory guidelines is detailed, accompanied by carefully crafted operational mechanisms for implementation. The paper emphasizes the need to move from fragmented regulatory arrangements to a more integrated regulatory framework to address the implementation and accountability gaps concerning corporate social responsibility in Chinese outward foreign direct investment. This paper suggests two research directions worth exploring considering the expansion of Chinese outward foreign direct investment through the Belt and Road Initiative and its increasing influence on the social rights of people and communities globally. First, investigating the effectiveness and impacts of various regulatory measures will inform us how different regulatory approaches can influence standard-setting and corporate behaviour change processes concerning corporate social responsibility in transnational business activities. Second, comparative investigations into Chinese corporate social responsibility considerations and such home-country measures from other countries will help identify the divergence and convergence in setting and implementing corporate social responsibility standards in a globalized economy.

Integrating Regional Needs into Multilateral ISDS Reform: Proposals for ASEAN

Charalampos Giannakopoulos - National University of Singapore

A key assumption behind the ongoing negotiations to reform investor-state dispute settlement (ISDS) at UNCITRAL'S Working Group III seems to be that any reform options ultimately decided by the Working Group should apply with the same content for each state that eventually adopts them. However, one could query whether exclusive reliance on multilateral solutions thus understood will adequately address the concerns raised by all stakeholders, especially when considered regionally or individually. This issue arises with greater force with respect to structural reforms of a multilateral character such as the proposed multilateral investment court (MIC) and the standing multilateral appellate mechanism. This intervention therefore argues that UNCITRAL's reform architecture should be such as to allow some regional needs to have some import in connection to multilateral ISDS reform generally. To substantiate this argument, this intervention will focus on the Association of Southeast Asian Nations (ASEAN) as a case in point. The diverse and overlapping investment treaty portfolios of ASEAN member states, as well as their varied experiences with ISDS disputes to date, mean that key concerns that ASEAN members states have actually expressed about the current regime of ISDS may be ultimately left largely unaddressed in a future MIC or an appellate mechanism. Given this assessment, the intervention proposes two ways for such regional concerns to be reflected in UNCITRAL's multilateral reform proposals, namely: (i) through the MIC's or the appellate mechanism's institutional design, notably as it relates to jurisdiction and representation; and (ii) by capitalizing on the opportunity afforded by the Regional Comprehensive Economic Partnership (RCEP) towards a greater consolidation of investment treaty rules among ASEAN member states, as well as between ASEAN member states and the ASEAN FTA partners.

Fostering the Status of Asia's Sovereign Wealth Funds as Responsible Foreign Investors: The Progressive Development of International Legal Personality as a 'Silver Bullet'?

Karsten Nowrot - University of Hamburg

Sovereign Wealth Funds (SWFs), broadly defined as government-sponsored investment entities that invest public capital in domestic as well as in particular also in foreign financial assets, have in particular more recently emerged as major actors in the international economic system. Although most certainly not confined to Asia, this type of institutional investors can nevertheless in many ways be regarded as a particularly Asian phenomenon. Not only was the first modern SWF created in Asia, with the Kuwait Investment Authority having been founded already in 1953. Rather, also a quite notable majority of the world's largest SWFs are currently based in Asia. In order to illustrate this perception, let it suffice here to draw attention to the fact that among the fifteen largest SWFs, thirteen of these investment entities are at present from Asian countries. Last, but not least, the political concerns about the investment activities of SWFs more recently arising among recipient countries in many parts of the world and the resulting perceived need to, among others, introduce and reinforce national security-related screening mechanisms for foreign investments seem to apply currently first and foremost also to the activities of SWFs from Asia. And indeed, it has already frequently been emphasized that it is in particular this last-mentioned issue that features very prominently on the research agenda concerning SWFs. Against this background, the present paper intends to identify and assess linkages between these political concerns on the one hand and another important research perspective in connection with Asia's SWFs that concerns the question how to foster their global status as what might be termed 'responsible foreign investors' on the other hand; an issue that has until now not gained something even close to comparable prominence in the international legal literature.

Problems in the Execution of Bankruptcy Asset in Cross Border Insolvency

N. Pininta Ambuwaru - Universitas Achmad Yani

Cross-border insolvency raises various legal issues, particularly concerning how a bankruptcy decision in one country can be enforced in another country due to differences in legal systems and bankruptcy laws. The UNCITRAL Model Law on Cross-Border Insolvency has been adopted by several countries to tackle cross-border insolvency issues. However, in practice, the Receiver (Kurator) seeking to execute bankruptcy assets in another country still needs to comply with the bankruptcy laws of that country. This difficulty in executing bankruptcy assets in foreign countries hinders the achievement of the intended goals of bankruptcy, as it fails to provide maximum legal protection for creditors and other relevant parties. Legal cooperation among ASEAN countries, aimed at harmonizing laws within the ASEAN region, including the ASEAN Law Harmonisation Efforts, which seeks to achieve legal harmonization in various fields such as trade, investment and intellectual property rights. In Indonesia, the Bankruptcy Law, Law Number 37 of 2004, does not specifically address the execution of assets abroad. This law only regulates the bankruptcy and liquidation processes of companies within the jurisdiction of Indonesia, due to the non-applicability of Indonesian Commercial Court decisions in other countries. If the Receiver (Kurator) intends to execute bankruptcy assets in foreign country, they must comply with the bankruptcy laws of that country. The difficultes in executing bankruptcy assets in foreign countries hampers the achievement of the intended goals of bankruptcy, as it fails to provide maximum legal protection for creditors and other relevant parties. To solve the problems in the execution of bankruptcy asset in Cross Border Insolvency, it should start from ASEAN countries. A regulation shall exist in order to address the existing legal disparities and enabling the execution of cross-border insolvency proceedings.

ABSTRACTS PANEL 1A.3

DISPUTE SETTLEMENT

MODERATED BY
AMB. J. EDUARDO MALAYA, PRESIDENT,
ADMINISTRATIVE COUNCIL,
PERMANENT COURT OF ARBITRATION

The 9th Biennial Conference of the
Asian Society of International Law (2023)

The ICJ Judgment in Certain Iranian Assets Case and its Implications on the International Law of Investment

Pouria Askary - Allameh Tabataba'i University

On 30 March 2023, the ICJ delivered its judgment in the Certain Iranian Assets Case between Iran and the United States. Like the other cases Iran brought to the ICJ against the US in this case the main arguments of the Applicant State were allegations concerning violations by the Respondent State of the Treaty of Amity, Economic Relations, and Consular Rights between Iran and the United States of America which was signed in Tehran on 15 August 1955.

In a controversial decision, the Court upholds the objection to jurisdiction raised by the US relating to the claims of Iran to the extent that they relate to the treatment accorded to the Iranian central bank (Bank Markazi) and, accordingly, finds that it has no jurisdiction to consider those claims. Yet, the Court with a substantial examination of the scope of the fair and equitable treatment, most constant protection and security provisions, and the prohibition on expropriation, as reflected in various articles of the Treaty of Amity, found that the US treatment with other Iranian companies and institutions resulted in the violation of the fair and equitable treatment standard and the prohibition of expropriation.

The proposed paper after a short review of the Case discusses how the arguments the ICJ elaborated on the scope of FET and FPS, as well as the issue of compensable expropriation may be used in the forthcoming awards of the investment tribunals

ABSTRACTS PANEL 1A.4

ROLE OF INTERNATIONAL LAW (SPECIAL EC PANEL)

MODERATED BY
PROF. SIMON CHESTERMAN,
NATIONAL UNIVERSITY OF SINGAPORE

The 9th Biennial Conference of the Asian Society of International Law (2023)

ABSTRACTS PANEL 2A.1

INTERNATIONAL CRIMINAL LAW

MODERATED BY
MS. CHLORYNE TRIE ISANA DEWI,
UNIVERSITAS PADJAJARAN

The 9th Biennial Conference of the Asian Society of International Law (2023)

Arrest Warrants of the International Criminal Court for Putin and Lvova-Belova: A Comparative International Law Perspective

Sergii Masol - University of Cologne

International law differs from place to place. Western scholars write mainly in Western languages (increasingly, in English) and cite mainly Western scholarship, working in relative isolation from their non-Western peers, whereas most of the literature in Russia and Ukraine has been published in Russian and Ukrainian respectively. Academic debates over the Russo-Ukrainian war have further divided Western, Russian and Ukrainian scholars, although all of them paradoxically underscore the universality of international law. Hence, it is necessary to explore their divergent understandings of international criminal law in order to problematise, if not reformulate, some of the core features of the discipline, notably the concept of fairness of international justice. Informed by the theoretical framework of comparative international law, the present paper focuses on the oft-neglected Russian and Ukrainian responses to the arrest warrants of the Interntional Criminal Court for Vladimir Putin and Maria Lvova-Belova and juxtaposes these reactions inter se and with various opinions, particularly whataboutism, in the anglophone literature. A panoply of mainstream, critical, forward-looking and dissident views, expressed in the political, law enforcement and academic circles of Russia and Ukraine, is scrutinised and contextualised within the broader framework of the national approaches to international criminal law in these states. More specifically, the present paper examines the heated debates about jurisdiction, immunity, arrest and surrender obligations, the speed and funding of investigations, allegations of double standards in the selection of situations, the presumption of innocence, historical justice, the peace versus justice dilemma, gendered stereotypes, the interests of victims and the absence of genocide charges. Thus, the present paper demonstrates how the arrest warrants in question have been used to delegitimise the International Criminal Court in Russia and reinforce the fairness of Ukraine's anti-imperial lawfare.

The Right to Development and its Responses to global forced displacement

Luyi Hao - Chinese Academy of Social Sciences

Armed conflict, widespread sexual violence, violations of human rights, poverty, climate change and disasters have made forced displacement a global challenge. It is important to understand displacement as a development issue, therefore prevention and durable solutions to forced displacement should be carried out in national, regional and international perspectives. By emphasizing the interdependence of individual rights and State obligations, the right to development helps to harmonize the roles and responsibilities of States, regional organizations and the international community in response to the global challenge of forced displacement, and promotes the integration of development, peace and human rights.

Humanity v The Tatmadaw: The Case for the Prosecution in the Philippines under the Principle of Mandatory Universal Jurisdiction of the Alleged War Crimes Committed by the Military Junta Against the Chin People in Myanmar

Romel Regalado Bagares & Gilbert Teruel Andres - Philippine Society of International Law

War crimes are penalized in Philippine law under Republic Act No. 9851 (the "IHL Act"). Per IHL Act's Section 17 the State "shall exercise jurisdiction" over suspects or accused, regardless of where the crime is committed, provided, any one of the following conditions is met: (a) The accused is a Filipino citizen; (b) The accused, regardless of citizenship or residence, is present in the Philippines; or (c) The accused has committed the said crime against a Filipino citizen. What follows are two exceptions clauses: The first concerns what has been termed as a mechanism for "reverse complementarity," in which 'in the interest of justice", Philippine authorities may dispense with the investigation or prosecution of war crimes if another court or international tribunal is already doing so. The second concerns the doctrine of ne bis in idem: "No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crimes … if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence." A literal reading of Section 17 (b) forges a Dworkinian hard case: read with Section 17(a) and the second exception clause, it leads to an absurd conclusion that the defense of double jeopardy is only available to a foreigner, and not to a similarly accused Filipino, against equal protection. Given the ambiguity, the restrictive sense of the proviso in the section's Chapeau is put to question in favor of an expanded jurisdictional scope under relevant canons of statutory construction. Tied to the Law of Humanity recognized early on in Philippine jurisprudence and fully developed in the later practice of international criminal tribunals, war crimes are now subject to mandatory universal jurisdiction of Philippine courts – including those allegedly perpetrated by the Tatmadaw against the Chin People of Myanmar –without the requirement of a Philippine nexus. The grave breaches regime in IHL has been absorbed into the concept of "serious violations of IHL" or "serious crimes of concern to the international community as a whole" that now encompasses war crimes committed in both inter-state armed conflicts and in non-international armed conflicts (NIAC). This merger is itself found in the IHL Act's war crimes provisions. Philippine jurisprudence– grafted into the IHL Act through its Declaration of Principles (Article 2) and its Hermeneutical Keys (Article 15) –considers these serious violations of IHL as subject to jus cogens prohibitions. The Philippine nexus mentioned in Section 17 (b) is actually an "express admissibility clause", which merely emphasizes the need for serious care to be exercised by Philippine authorities in investigating and prosecuting foreign nationals on Philippine soil suspected or accused of serious violations of IHL, given a customary international law obligation to protect the rights of foreign nationals within its territory.

ABSTRACTS PANEL 2A.2

FOREIGN INVESTMENT

MODERATED BY
ASSOC. PROF. JEAN HO, NATIONAL UNIVERSITY OF SINGAPORE

The 9th Biennial Conference of the Asian Society of International Law (2023)

Oscillating Fairness in International Investment Law

Mavluda Sattorova and Jean Ho National - University of Singapore

'Fairness' in the fair and equitable treatment (FET) standard is the traditional ideal of host state conduct towards foreign investors. Therefore, arbitral tribunals investigating alleged violations of the FET standard have traditionally focused on whether the state acted fairly. Over time, 'fairness' came to be understood as conduct towards foreign investors that is consistent, transparent, stable and predictable. More recently, however, a growing number of arbitral tribunals have been paying closer attention to investor conduct in FET claims, and, in particular, whether a claimant foreign investor has exercised due diligence in its dealings with the respondent host state. This emerging trend is especially discernible in FET claims triggered by changes in the regulatory framework, like those seen in renewable energy disputes involving Italy and Spain, and is likely to bear upon Asian renewable energy giants like China and India. We are witnessing a critical, paradigmatic shift in the understanding of 'fairness' in investor-state relations and in investor-state dispute settlement, one that refutes tradition through deliberate non-alignment with the incumbent legal order. The swing from state-conduct-centric 'fairness' to investor-conduct-centric 'fairness' did not take place overnight. Prior to the recent wave of cases where investor due diligence is central to the determination of whether the state had acted fairly, the relevance of investor behaviour was already, albeit sporadically, acknowledged by early, progressive arbitral tribunals. In those cases dating from the late 1990s, the tribunals stressed that a foreign investor must act as a prudent and responsible actor, including by undertaking reasonable assessment of investment risks in the host country and operate an investment in a reasonable manner. In his seminal 2006 article, 'Caveat Investor?', Peter Muchlinski fused the idea of equity and the doctrine of clean hands into an analytical framework that advocates the centrality of investor conduct to the success or failure of an FET claim. These initiatives laid the foundation for a broader understanding of 'fairness'. Yet for a long while, tribunals have been reluctant to zoom in on investor behaviour. The momentum for scrutinizing investor conduct in FET claims is new, though its trajectory has been long and mostly dormant. This paper introduces the notion of 'oscillating fairness' to explain and evaluate the new-found emphasis on investor conduct and the requirement of investor due diligence in arbitral jurisprudence on FET claims. By looking closely at arbitral reasoning in recent awards, it seeks to recalibrate the meaning of 'fairness' in the FET standard. We also examine the significance and implications of 'oscillating fairness' against the wider historical backdrop of developments in investment arbitration, the contribution of critical legal scholarship, and the broader corpus of international investment law. Our overarching argument is that the momentous shift in the understanding of 'fairness' in determining an FET violation is intricately intertwined with a burgeoning, cultivated recognition, both in international investment law and beyond, of the need for investors to act as responsible organs of society. And as the voices for responsible business conduct gain mainstream traction, 'oscillating fairness' in FET heralds an important turn to investor conduct that offers the opportunity to reshape the understanding of other key investment protection standards.

Envisaging Principles For Belt And Road Initiative: Rule Of Law And Dispute Resolution Challenges For Indonesia

Andrew Sutedja - Universitas Achmad Yani

The Belt and Road Initiative ("BRI") initiated by China, is the largest development ambition in the world now. The projects under the BRI's scheme will generate more than several trillion American Dollars and shall involve for more than 65 countries across the continents. From the BRI's inception, it has been indeed clear that Southeast Asia and its largest economy – Indonesia – are intended to serve as centerpiece of the mega project. From the legal perspective, the question arises as how the project disputes that arise with works carried out under the BRI will be settled particularly in Indonesia. It may be a great barrier for the country to enforce the International Arbitration awards whilst Indonesia has not fully adopted the international arbitration norms up to the date. This essay examines the increasing challenges facing by the investors and countries, particularly Indonesia considering the lack of legal instruments to protect the interests for both of investors and the states. One essential development will be the creation of a dispute resolution regime that responds to the array challenges posed by projects carried out under the BRI scheme, which may not be compatible with traditional dispute resolution (e.g. domestic court or litigation) mechanisms – which may bring more harmful to the investors when they involved in the dispute resolution. In addition to that, it is important for Indonesia to renew its current Arbitration Law and adapts with the current norms implemented by the International Arbitration communities.

Mediating with Chinese Characteristics: An Empirical Study of China's Approach to ADR in International Investment Disputes

Huaxia Lai - Peking University

Despite the salience of arbitration as the default mode of settling international investor-state disputes, alternative dispute resolution (ADR) means such as mediation and conciliation have gained renewed currency as reform proposals for investor-state dispute settlement (ISDS) are being heatedly debated. Given China's economic clout and its ambitious investment drive under the Belt and Road Initiative, it is imperative to examine China's position on ADR in the context of ISDS reform and evaluate its implication for the future of global economic law regime. Based on an original dataset of the UNCITRAL Working Group III negotiation transcripts, initial drafts, and national submissions compiled by the author, the paper examines where China stands on ADR as compared with other states within the context of UNCITRAL reform negotiations. This is to be complemented by analysis into China's treaty practice with regards to ADR provisions in investment agreements, with data drawn from UNCTAD's International Investment Agreement database. Methodologically, the paper applies natural language processing and data visualization methods to the negotiations data to develop an efficient and comprehensive analysis. Finally, the paper looks into various primary sources of China's official documents on ADR including its latest proposal of establishing an international organization for conciliation. By focusing on ADR in settling investment disputes, this data-based empirical analysis problematizes the narrative of judicialization and depoliticization in settling international economic disputes and uncovers competing visions deliberately discounted in the history of investment law. The paper also engages with scholarship on the authoritarian turn of international law in which China arguably seeks to undermine the neoliberal order of international economic law.

A Computer-assisted Empirical Analysis of Investment Treaty Arbitration Relating to Public Health

Jianzhi Zeng - Shenzhen University

There exist continuous tension or emergent conflicts caused by public health crises such as COVID-19 pandemic between the regulatory power of public health and international investment protection. However, neither public health exception provisions of international investment agreements (IIAs) nor customary international law (CIL) could provide satisfactory coordination mechanisms. Based on computational legal analysis, a dataset of all investor-state treaty arbitration cases relating to public health is formed, and descriptive statistical analysis of these cases is conducted from several dimensions including the time, parties, public purposes, defenses invoking and influence factors on outcomes. To understand parties' and tribunals' reasoning on application of regulatory powers defenses, the cases are manually studied in depth. It is found that the probability of successful defense had not been obviously increased by IIAs' exception provisions or CIL including the doctrine of police powers and necessity but was greatly influenced by the development degree of the respondent. It is suggested that police makers systematically incorporate public health exception provisions with different legal nature into IIAs, the tribunal bear in mind the basic requirements of legitimate regulatory powers performance, and the host state, especially the developing state, take regulatory measures in conformity with minimum legitimate regulation requirements.

ABSTRACTS PANEL 2A.3

LAW OF THE SEA

MODERATED BY
DR. A. GUSMAN SISWANDI
UNIVERSITAS PADJAJARAN

The 9th Biennial Conference of the Asian Society of International Law (2023)

Can Common Heritage of Mankind Principle be Applied Over Marine Genetic Resources?

Dhiana Puspitawati - Universitas Brawijaya

The protection of Marine Genetic Resources (MGRs) has drawn international community's attention in the past decade. This article aims to analyze whether the common heritage of mankind (CHM) principle can be applied over MGRs found in areas beyond national jurisdiction (ABNJ). While Law of the Sea Convention (LOSC) clearly provides the authority of both coastal States and user maritime States over ocean resources under the maritime zone arrangement, it is silent on the utilization of MGRs found in ABNJ. On the other hand, Convention on Biodiversity 1992 (CBD), only provides legal framework for marine biodiversity found within national jurisdiction. This article further recommends the model of such application which may differ from the application of CHM over the non-living resources found in ABNJ under the supervision of International Sea Bed Authority. While there are many supports in applying CHM principle over the MGRs similar to its application over the non-living resources found in the ABNJ, it is argued that it requires the application of Access of Benefit Sharing (ABS). Although international community has agreed on the draft agreement under the LOSC on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, within which the ABS has been included, it requires further guidelines, especially for States in applying it nationally, in particular relating to the mechanism for Access of Benefit Sharing (ABS). Different capacity of States should also be considered in this matter.

Beyond UNCLOS, Developing Marine Environmental Protection Laws in Asia

LIU Nengye - Singapore Management University

When the United Nations Convention on the Law of the Sea (UNCLOS) was negotiated, the maintenance of a healthy marine environment was clearly a significant concern for many delegations. The end result of a lengthy nine-years of negotiations (1973 – 1982) is the inclusion of a comprehensive Part XII of UNCLOS in the final text. Part XII deals specifically with "Protection and Preservation of the Marine Environment". Forty years have passed since the Convention was signed. The question at this junction is whether UNCLOS and its implementing agreements, including 1995 Fish Stocks Agreement and BBNJ Agreement is sufficient to cope with the interconnected global challenges of today's world – climate change, biodiversity loss and pollution, for thriving marine futures. This paper first provides a brief overview of Part XII of UNCLOS. It then engages with the current state of the world's ocean and draw on the findings of the Global Assessment of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) (2019) and the UNEP 2021 Synthesis Report "Making Peace with Nature". Engaging with the direct and indirect drivers of biodiversity loss set out in the IPBES Assessment, it evaluates the capacity of UNCLOS to effectively address marine environmental protection challenges in Asia, with focus on recent developments of state practice, such as the amendments of Marine Environmental Protection Law in China (2023).

Freedom of Navigation in the Archipelagic Sea Lanes for Nuclear-Powered Submarine: Prospects and Challenges

Philip Kristanto - Universitas Atma Jaya Yogyakarta

The procurement of Nuclear-Powered Submarine by Australia in the AUKUS partnership raises some concerns among its neighbour in the region. In the Australia's newest Defence Strategic Review, the acquisition of a conventionally-armed, nuclear-powered submarine capability in the shortest possible timeframe should be prioritised as part of AUKUS Pillar I. Indonesia contested its right and submitted the Nuclear Naval Propulsion Working Paper at the 10th NPT Review Conference in 2022. The Nuclear-Powered submarine raises tension and various technical and substantial issues. With a vast sea area, Indonesia has a responsibility to defend its territorial integrity and anticipate national security threats caused by the presence of Nuclear-Powered Submarines in the region as well as in their archipelagic sea lanes. In this paper, the author would like to elaborate the use of freedom of navigation in the Archipelagic Sea lanes by a Nuclear Powered Submarine, in light with paragraph 6 of Bandung Spirit which states "the abstention from the use of an arrangement of collective defence to serve the particular interest of any of the big powers"

ABSTRACTS
PANEL 2A.4

ENVIRONMENTAL LAW

MODERATED BY
DR. TARA DAVENPORT
NATIONAL UNIVERSITY OF SINGAPORE

The 9th Biennial Conference of the
Asian Society of International Law (2023)

Assessing the Local Impacts of Global Responses to Human Mobility in the Context of Climate Change

Mostafa M. Naser - Edith Cowan University

Climate change and human mobility is a complex nexus. International law was largely inadvertent to this nexus for a long time. However, in the last decade, the global community including states, the UN bodies, international organisations and civil societies has increasingly been engaged in policy making, negotiations, dialogues and initiatives at international setting. Reviewing the accumulating stock of international policies and initiatives relevant to climate change and human mobility, this paper explores the question - what are the value and local impacts in sensitive areas of these global agreements? This paper designs to use the example of Bangladesh to provide a nation-level analysis of amalgam of international law, climate change and human mobility. Bangladesh is a good 'scene-setter' because: it is highly vulnerable to climate change impacts; about 10 per cent of the country is barely one metre above the mean sea level and one-third is under tidal excursions; agriculture is key to the lives of the majority of its population; it is the sixth most densely-populated country in the world; it has low adaptive capacity, low resilience to respond to climatic change and faces significant risks of mass migration due to climate change. The case study begins by describing the historical lack of a coherent, effective approach to the human rights consequences of climate migration in Bangladesh. Then the paper analyses the UN and other international policies, particularly international soft law principles and initiatives regarding climate change, human mobility and planned relocations, and their impacts on local policies, regulations, programs, and projects in Bangladesh.

Integrating Climate Change into Asia Transboundary Water Governance: Towards Enhanced Mechanisms on Water Allocation and Disaster Response

Jin Gu - Wuhan University

"Climate change and its linkage with water scarcity have been recognized and addressed in recent years. The major impacts related to water crisis varys in different areas of Asia. In central Asia and the Middle East, the water crisis appears as a long, deteriorating process, with water scarcity and accumulated geopolitical tension. In Southeast Asia and South Asia, problems on extreme weather and floods are more acute, which occur more randomly, in a short period of time. In coastal area, sea level rise affects freshwater ecosystem due to the connectivity between rivers and oceans. However, the current international water law lacks mechanisms to combat climate change, which calls for demands towards integration and synergy between climate change law and transboundary water governance, particularly in mechanisms on water allocation and disaster response.

This article would discuss solutions and suggestions for such integration and synergy in three different aspects. Firstly, transboundary water allocation mechanism should take climate change into account when interpreting equitable and reasonable use. Secondly, improvements in emergency response should be established in bilateral or multilateral river agreements. Taking the Mekong River agreement as an example, additional enhancements could be made in art 10 to clarify emergency status, especially for the condition to declare emergency status, and the scope of remediation measures, as well as the obligations of other parties and the MRC Joint Committee. Thirdly, to adapt to the impacts of sea level rise, States could draw upon the global water conventions (for example, art 23 of the UN Watercourses Convention) and UNCLOS to explore and further develop international best practices and address issues of connectivity between climate change and water."

Climate Change Mitigation Measures and the Protection of the Marine Environment in ASEAN: Opportunities and Challenges

Dawoon Jung - University of Wollongong

"The latest Intergovernmental Panel on Climate Change (IPCC) in 2023 highlighted urgent climate actions to secure a liveable future for all. Climate change mitigation refers to actions to limit climate change by reducing or preventing emissions of greenhouse gases. There is a growing interest in the role of the oceans in climate change mitigation. Southeast Asia is one of the most vulnerable regions to the impact of climate change, having great potential for ocean-based climate change mitigation measures. Yet, they still rely on heavy fossil fuels because of an increase in energy demand. Given this context, marine renewable energy activities and carbon capture and storage can be considered to tackle climate change as well as to secure energy demand in a sustainable manner. However, these climate mitigation measures may have negative impacts on the marine environment.

This presentation will explore how to develop regulations for climate change mitigation measures in ASEAN, focusing on the balance between energy security and the protection of the marine environment. First, it will provide an overview of obligations specified in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and discuss the institutional framework for climate change and the marine environment in ASEAN. While UNCLOS provides a basic legal framework for activities in maritime areas, it will highlight regional development and cooperation in ASEAN in climate mitigation. Second, it will analyse relevant regulations and policy statements, focusing on offshore renewable energy activities and offshore carbon capture and storage. Finally, it will look at the interplay between UNCLOS and ASEAN documents, identifying opportunities and challenges for the development of climate change mitigation measures.

The Utility of the United Nations Climate Change Conference on Youth' 17 vis a vis its impacts on the COP-27 Outcomes: an examination from the Lens of the Bandung Spirit

Manini Syali - Vivekananda Institute of Professional Studies

"The United Nations Climate Change Conference on Youth (COY-17) was held in Sharm-el-Sheikh, Egypt, from November 2 to 4, 2022, as a prelude to the 27th Conference of the Parties (COP-27) to the United Nations Framework Convention on Climate Change (UNFCCC). The COY-17 aimed to provide a platform for young people from around the world to voice their concerns, demands and solutions for the climate crisis, as well as to engage with decision-makers and stakeholders. The Conference was organized by YOUNGO, the official youth constituency of the UNFCCC and was in furtherance of the Convention's recognition of the importance of engaging stakeholders in efforts to address climate change, including through partnerships between governments, civil society organizations, and other stakeholders. The Convention also provides for stakeholder involvement in its implementation, including, through public participation in decision making processes, access to information and access to justice. This paper examines the utility of the COY-17 in relation to its impacts on the COP-27 outcomes, using the lens of the Bandung Spirit, which refers to the principles of solidarity, cooperation and anti-imperialism that emerged from the 1955 Asian-African Conference in Bandung, Indonesia. The paper argues that the COY-17 embodied the Bandung Spirit by fostering a sense of global citizenship and collective action among youth, challenging the hegemony and inaction of developed countries, and advocating for climate justice and equity for the most vulnerable and marginalized communities. The paper also analyzes whether or not COY-17 influenced the COP-27 negotiations and outcomes, especially on the issues of adaptation, finance and loss and damage.

ABSTRACTS PANEL 2A.5

HUMAN RIGHTS

MODERATED BY
DR. DIAJENG WULAN CHRISTIANTI,
UNIVERSITAS PADJAJARAN

The 9th Biennial Conference of the Asian Society of International Law (2023)

Abolishing Treason Laws: How Indonesian Criminal Laws Restrain Human Rights Decolonization

Eka Putra - O.P. Jindal Global University

The act of opposing, overthrowing, or waging war on the ruling government, known as treason, has been called an obsolete crime. Treason laws have been criticized because the unclear scope of "treason" led to imminent human rights violations. Despite the global abolition of treason laws, Indonesia, unfortunately, still has treason laws. The current Criminal Code Act (KUHP) that became law in 1946 was a legacy of the Dutch colonization, regulating treason, or "makar," as a criminal offense. The new Criminal Code Act, which will be officially enforced in 2026, still has treason provisions. These new provisions become ironic, considering that the new Criminal Code Act was supposed to be an effort to decolonize Indonesian criminal law and be more respectful of human rights. In addition to the Criminal Code Acts, the Information and Electronic Transaction (IET) Act brings vague laws that criminalize opposed online expression against the government. This paper analyzes how Indonesian criminal laws do not align with the Indonesian Constitution and Bandung Spirit in promoting and guaranteeing human rights and against colonization. The current Indonesian criminal laws, through treason laws, show abuse of power and fail to liberate Indonesian laws from colonization values. Qualitative research will be conducted in this research through an analytical legal approach to statutes and cases. This paper will proceed in several parts: First, it analyzes the current legislation on treason and how those laws could stifle human rights obligations in international law by comparing other developing countries' experiences with their treason laws. Second, it analyzes cases of treason investigated offline and online, intending to reveal the law's abuse and the potential harm to freedom of expression. Finally, it describes how Indonesian law should comply with the international human rights framework through the obligations to respect, protect, and fulfill.

Novelty of Transitional Justice in South Asia: Reflections on the Transitional Justice Mechanism of the Maldives

Batool Zahoor Qazi - The Maldives National University

South Asia region is marred by varied conflicts, and variegated responses of post conflict justice to combat impunity for gross human rights violations. In the recent past with the exception of Bangladesh, truth and reconciliation commission appeared to be popular in the region as post conflict justice and peace building mechanism. Interestingly, the Maldives has also enacted the Transitional Justice Act, (28/2020) to provide redress to the gross and systematic human rights violations perpetrated from 1953 to 2018 by the state. For this purpose, the Act established the office of the Ombudsperson for Transitional Justice for a period of two years to be dissolved after fulfilling the mandate, which has once again been extended. The Maldives transition to democracy in 2008, was a fairly smooth process, and it is hard to characterize Maldives as post conflict as there was an absence of obvious violence. Despite this smooth transition Maldives chose to enact this legislation to investigate the gross human rights abuses during the aforementioned period. Thus, this paper aims to evaluate and review the enforcement of this legislation. This study adopted qualitative methodology and semi structured interviews with the members of the Office of Ombudsperson for Transitional justice, prominent lawyers, civil society members and academicians were conducted. The paper argues that the adopted approach is not the ideal mechanism to deal with the human rights abuses, which fail to fully satisfy the threshold of gross and systematic violations of human rights. An analysis of the interviews revealed that a number of cases are being investigated which do not squarely fall within the above domain. This not only makes it impractical to grant redress but results in a clash of mandates with the existing judicial and other redressal mechanisms including other procedural challenges. This could prove to be insalubrious for the administration of justice and stability of the country. It is opined that traditional justice mechanisms like courts and tribunals remain ideal to combat impunity in the Maldives. Lastly the paper concludes that Maldives must not loose sight of fundamental goals of transitional justice, i.e. promoting peace and reconciliation in its attempt to combat impunity. Rather for the past systematic human rights violations acknowledgement and public apologies by the state, in addition to prosecution would go a long way in satisfying the masses. Hence, this paper recommends that in order to avoid instability in the country, the office of the Ombudsperson for Transitional justice should cease to operate after fulfilling its mandate.

Bridging the Gap between Islamic Human Rights and International Human Rights Law

Raas Nabeel - Research Society of International Law (RSIL)

The Islamic shariah is a rich body with legal rules and obligations that aims to protect individuals from wrongs committed to each other and wrongs committed to God. However, Islamic law is often considered to be at odds with international human rights law, particularly in certain domains such as gender rights, the freedom of expression, the freedom of religion, and the right to dignity. Islamic states have been criticised for their human rights violations, while Western states have equally been criticized for their misplaced hypocrisy and virtue signalling. Criticisms have been launched against the Universal Declaration of Human Rights, the International Bill of Rights as well as other international human rights conventions for the seeming incompatibility of their obligations with the rules, practices and customs of different state societies. Already, Muslim states have lodged reservations and declarations against norms in certain conventions; however, in some cases this has resulted in the complete abrogation of these of these norms rather than a reserved application of them.

For the purposes of this paper, I will examine the clash between international human rights law and human rights under Islamic law with a particular focus on the aforementioned rights. I argue that the Islamic tradition should be respected for its development of a significant corpus of human rights jurisprudence which should not be condemned merely because of its seeming incompatibility with international human rights law, but rather should be respected as a flexible and meaningful source of human rights jurisprudence. Ultimately, the paper will end in questioning whether the 'universalism' of international human rights law as a façade for 'whatabouttery' and virtue-signalling as opposed to a genuine concern for consistent human rights law around the world."

On International Legal Regulation of "One Health" Assistance

Yinling Zhou & Tongya Heng - Wuhan university

Health inequity, under major epidemics in particular, has exerted an exponential impact on vulnerable populations, even affecting "international peace and security". Although “one health” assistance is an important way to promote health equity, there are still regulatory gap of “one health” assistance, such as the ambiguity of legal text, the limitation of legal status, and the effectiveness of incentive mechanism. To address these challenges, we first explore the bi-directional syndemic relationship between health and economy through case studies, and emphasize the very impact of “one health” assistance (especially financial assistance) on health equity. We then introduce two possible strategies under the WHO framework. The first strategy would be to apply or update existing International Health Regulations (IHR) more effectively regarding one health assistance. This strategy suggests creatively interpret general provisions on one health assistance of IHR, developing countries would thus benefit from one health assistance obligations for pandemic prevention. Alternatively, further modify relevant provisions of IHR to clarify the mandatory provisions or incentives related to the “one health” assistance. The second strategy would be clarify the conditions, standards and accountability of the one health assistance obligations and targeted sustainable financing mechanisms through the formulation of pandemic treaty, which could be envisaged as a long-term objective. Nevertheless, the IHR focuses essentially on the "downstream" detection and containment of disease spread, while the formulation of the pandemic treaty would be more conducive to regulating the "midstream" measures, that is preventing disease (re)emergence in humans though pathogen spillover. By enhancing capacity of “one health”approach, this research aims to address the inequity of health resources under dual crisis of pandemics and economics, and consequently enlighten future one health governance.

ABSTRACTS PANEL 2A.6

CYBERSPACE & INTERNATIONAL LAW

MODERATED BY
PROF. MIRAS DAULENOV,
NARXOZ UNIVERSITY

The 9th Biennial Conference of the Asian Society of International Law (2023)

On the Application of Collective Countermeasures of States in Cyberspace

Liu Yu Qi - Wuhan University

"Before the emergence of cyber operations, countermeasure rules had not yet attracted much attention in the cyberspace domain. With the rapid development of the Internet and information technology applications, cyber conflicts have become increasingly frequent. When illegal cyber operations do not reach the threshold of ""use of force,"" countermeasures can be used to induce the offending state (responsible state) to stop its illegal acts or provide the compensation due to the injured state, providing the injured state with a legal basis to ""fight back. Nowadays, the cyber capabilities of individual countries vary, and when an injured state is faced with a powerful enemy that launches a cyber attack but is unable to defend itself due to a lack of active defense technology, it may be able to request a third country to assist in its defense. However, there is no treaty that explicitly applies collective countermeasures, and the concept has never developed into an accepted doctrine.

In this paper, we define and sort out the concepts related to collective countermeasures in cyberspace, clarify the connotation as well as the extension of the relevant concepts, and then explore the current situation of the application of collective countermeasures in cyberspace through the analysis of state practices and positions, and the collation of relevant authoritative scholars as well as famous theories. On this basis, the inherent contradictions and application dilemmas of collective countermeasures in cyberspace are discussed, and the direction of the application of the rule under the UN framework is explored.

The Indonesian jurisdiction' in Cyberspace: Reviewing government' blocking over the websites of companies

Koesrianti - Universitas Airlangga

In 2022 a several websites of foreign virtual tech companies and search engine firms, including Yahoo, PayPal and some gaming websites have been blocked by Indonesia as they failed to comply with the Indonesian' rules on licensing. The new rule required tech firms to register as of November 2020. The rule allows authorities to access platform user data, as well as take them down unlawful content or classified as disturbs public order within 24 hours. Some said that this new rule posed a threat to privacy and freedom of expression. This article argues that Indonesia can impose its regulations based on the international law theory on full sovereignty in the cyberspace. Beside that the article reviews the role of the regulation in protecting the 191 million internet users in Indonesia by considering that the government as the highest authority to govern the cyberspace.

Ensuring Cybersecurity in the Maritime Industry: Legal and Regulatory Challenges with Reference to the Malaysian Position

Su Wai Mon - University of Malaya

"The global supply chain is heavily reliant on maritime transportation since more than 90% of world trade is carried by the shipping industry. Nowadays, more and more ships are using advanced Information Technology (IT) including electronic Operational Technology (OT) systems that physically control the ships and therefore becoming more vulnerable to cyberattacks. The operations of countering cybersecurity threats in the maritime industry will become more challenging due to rapid digital transformation which brings new threats in the future if there is no systematic and legal and risk management framework are in place. In addition, the global pandemic sped up the digitalizing progress of the maritime industry relying more heavily on the Internet than ever before. Cybersecurity is not limited to the digital domain. A cyber-attack can also have effects on things that we can see and feel in the physical world. The impact would be catastrophic in cases where criminals took control of the ports and vessels' operational network systems to disrupt cargo operations or disable the navigation of the vessel. Although it is not claimed as a cyber-attack, the maritime industry saw a taste of such devastation in early 2021, when a ship lodged itself in the Suez Canal blocking other ships from getting through which cost the world nearly $ 10 billion in trade each day it was stuck. Therefore, it is evident that the greatest cyber threat lies in the maritime industry. International Maritime Organization (IMO), realizing the urgent need to raise awareness of cyber risks and vulnerabilities, formulated the guidelines on maritime cyber risk management in 2017. This paper attempts to accentuate the importance of cybersecurity in the maritime industry and the relevant stakeholders including the Flag States are required to be proactive in addressing the emerging cybersecurity threats in the maritime industry.

Artificial Intelligence, Cyberspace and International Law

Tripti Bhushan - O.P. Jindal Global University

"The precarious importance of aesthetics in international law is hugely ignored by international lawyers and the coexistingly seriously lacking emotional studies in international legal terrain. This research paper argues and explores the new mixture of international legal philosophy in terms of self-critiques and simultaneously moves beyond international legal history. Both theoretically and practically, the increasing influence of artificial intelligence (AI), as a historiographical realm, on international legal research has critically been short of evaluated and investigated. It is an advancing and combining interdisciplinary between the progressive development of technological disruption, the evolving emotional science, and, interestingly, a decisive international legal domain in the meantime. Documentary research is essentially and methodologically conducted on this research project and, meanwhile, the exploration of the new field in international legal studies has systematically and concurrently been formulated. The area of international legal philosophy is antagonistically approaching in the sense of the shifting paradigm in the postrationalistic and human-centric world. Additionally, emotional studies are seemingly like the polarization against international legal rationalization, in contrast, the hyper-rationalization has been tightly mechanized by the systematic automation of so-called artificial intelligence (AI). International legal innovations and creations are inclusively in the fourth industrialization in particular to the international legal professions. Besides, the invention of emotion is a sign of an active part of the international legal frontier. The inclusiveness of artificial intelligence, emotionalism, and the proliferation of international judiciaries and organizations, for example, has vitally been created and innovated. Importantly, maintaining international peace and security is an absolute goal of the United Nations, for instance, the principal judicial organ including the International Court of Justice (ICJ). Anyone imagines that, shortly, artificial intelligence will be replacing the judges in this world's court, at the same time, replacing the reasonable with emotional integration. As a result, this antagonistic paper included the juxtaposition of disparate words into the contemporary ground of international legal philosophy and imagination. An ambiguous methodology therefore will be vitally creating a comprehensive understanding of global justice

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ABSTRACTS PANEL 2A.7

HUMAN RIGHTS

MODERATED BY
DR. IRAWATI HANDAYANI,
UNIVERSITAS PADJAJARAN

The 9th Biennial Conference of the Asian Society of International Law (2023)

The Application of Interim Measures by the Committee Against Torture in Individual Communication Procedures

Zhang Hao - University of Chinese Academy of Social Sciences

Article 22 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates the system of individual communications. And with the development of the practice of examining individual communications, the Committee has included interim measures in its Rules of Procedure. The Committee's Rules of Procedure do not have the same legally binding on States parties as the Convention, and States parties have no mandatory obligation to comply with requests for interim measures, relying only on "good faith" compliance. However, the Committee has excessive discretion in the procedure of making interim measures decisions and the substantive standards are unclear. There is also no uniform practice in judging the factual basis and legal consequences of the State party's violation of interim measures. These all reduce the incentive for States parties to implement interim measures, diminish the potential of interim measures to protect the rights of complainants and preserve the integrity of the complaint procedure. In order to ensure the effectiveness of the State party's implementation, the Committee requests interim measures should be guided by the achievement of the object and purpose of the Convention and be limited to the competence conferred by the Convention. And the standards for issuing interim measures and the State party's domestic implementation procedures should be further clarified.

Can ASEAN Be Emancipatory? Tension In CSOs Participation In The Development Of Regional Human Rights Mechanisms

Hadi Rahmat Purnama - Universitas Indonesia

CSOs participation has always been a contentious issue in the ASEAN decision-making process, especially in the field of human rights. Dominated by international relations scholarships, the lack of international legal approaches in existing literature seems to lose some of the tensions that partly influence, and are influenced by, the legal aspect of ASEAN. This research will describe that using Santos' theoretical framework. In this way, this research could escape from the static trap of cold formalism or become dismissive towards the role of CSOs in ASEAN. This research will try to answer the question: How has the participation of CSOs under the ASEAN Charter and the Guidelines transformed ASEAN into developing human rights mechanisms in ASEAN? This research also has pointed out that in the contextual background, CSOs participation in ASEAN decision-making processes is imbued with tension. This research contends that in order to provide a more nuanced explanation of this issue of CSOs' participation in ASEAN and its relationship with the development of the ASEAN human rights mechanism, one must first view it as it is, in its dynamism and tension. By examining the ASEAN human rights mechanism through the lens of the tension between CSOs and ASEAN, it is possible to view the human rights mechanism in ASEAN not as a failure of a utopian ideal but as a process of ongoing -and possibly unresolvable- struggle, which provides more optimism in its flaws while maintaining a critical perspective.

Between Magnitsky's Edges: Confronting the Human Rights Constraints on Unilateral Targeted Sanctions

Raphael Pangalangan - O.P. Jindal Global University

"While much has been written on the human rights impacts of coercive measures imposed upon states, the literature regarding sanctions directly targeting non-state actors are few and far between. This research project seeks to fill that gap by conducting a human rights analysis of what is commonly referred to as the Magnitsky Sanctions Regime—a unilateral sanctions system wherein states directly impose natural and juridical persons responsible for gross violations of human rights. The unilateral imposition of sanctions has long been censured in international legal order.1 History shows, however, that this plea has fallen on deaf ears. Half a century later, sanctions continue to be unilaterally imposed against states and non-state actors alike. With that shift in object from state to non-state actor comes a concomitant change in legal paradigm. While sanctions between states are generally governed by Public International Law, measures targeting non-state actors would specifically prompt the application of International Human Rights Law. The legality of sanctions today, therefore, is no longer solely a matter of sovereign rights but human rights. This research will be dedicated to assessing unilateral sanctions from this latter view. Significantly, the research will adopt a Third World Approach to International Law by engaging voices and views from the global south. While the Magnitsky regime has been openly celebrated as a stepforward for accountability, history has been no stranger to legal subterfuge and to the abuse of the well-meaning. The research will draw on these instances to dissect how the language of humanitarian interests, akin to the Responsibility to Protect, has been appropriated by sanctioning states, predominantly from the global north. In so doing, the research will strike a balance between Magnitsky's edges and acknowledge how targeted sanctions may offer new tools for remedies, but likewise new tools for wrongs. "

The Test of Human Rights in the Era of the COVID-19 Pandemic: An Evaluation of Australian Responses

Tanzim Afroz - Edith Cowan University

The COVID-19 pandemic is one of the most severe public health crises in modern history, with over 763 million cases and 6.9 million deaths globally as of April 2023. The pandemic has presented unprecedented challenges for governments worldwide, and Australia is no exception to this where the pandemic has raised questions about the government's response and its impact on human rights. It calls into question the most useful roles of many human rights mechanisms and requires scholars to reconsider their default approaches. Against this backdrop, this paper offers a comprehensive analysis of various human rights violations in Australia during the pandemic. The initial segment of the paper sheds light on the direct impact of the disease on the right to life and health. This part outlines some challenges posed to human rights by the repercussions of the virus itself. The subsequent segment outlines how the Australian government's diverse measures to contain the virus have impinged on a range of other human rights, such as freedom of movement, assembly, speech, employment, education, privacy, right to repatriation, and rights of vulnerable groups, among other things. This chapter also then evaluates the justifications in Australian jurisdictions to derogate from these human rights during a pandemic in line with the Siracusa Principles of human rights, considering the extent and the cost of such derogation particularly on disadvantaged and vulnerable communities within Australia. In sum, the chapter delineates a broad spectrum of human rights impacts of the pandemic, with the aim of assisting policymakers to identify transformative pathways forward to balance emergency government action with appropriate human rights protection in the face of ongoing and future outbreaks of Covid-19 and similar threats.

ABSTRACTS PANEL 2A.8

INTERNATIONAL TRADE AND COMMERCIAL LAW

MODERATED BY
DR. TIURMA MP ALLAGAN,
UNIVERSITAS INDONESIA

The 9th Biennial Conference of the Asian Society of International Law (2023)

Sino-West Conflict under the Rule by Treaty of Trade: Conquest, Rise and Cooperation

Xuehong Liu - East China University of Political Science and Law

Nowadays, the world peace is being undermined by complex conflicts between nations, and the Bandung Spirit of"Unity, Friendship, Cooperation"is still highly relevant for good governance of international community.This paper attempts to explore why treaty-based governance cannot fundamentally solve conflicts between China and the West. Since the mid-19th century, the history of China to become a member of international community is closely related to trade treaties. During the period of late Qing Dynasty, China was colonized by the West through a series of unequal treaties. Surprisingly, since China joined the WTO in 2001, it frequently uses the tools of treaty to engage in world economy and thus quickly becomes the world's second largest economy. Therefore, some Western countries questioned that it was wrong to allow China to join the WTO because the "rule by treaty" promoted China's rise but did not achieve the expectation of "westernization" of China. Since it is the desire of the West to promote the rule by treaty to China, why is there still serious conflicts between China and the West? This article argues that the "rule by treaty" can help China to be integrated into the Westphalian system dominated by the West but cannot fundamentally eliminate the differences between China and the West. It is important to develop a new model for international governance based on positive law and rules in nature for substantive justice for all. There will be five parts of the article as follows: (a) introduction; (b) analysis of the trade treaties signed by China; (c) exploration of the suppression and rise of China due to the trade treaties; (d) elaboration of the main reasons of the conflicts between China and the West under the]"rule by treaty"and (e) suggestions for deepening international cooperation.

An ASEAN Way to Trade and Sustainable Development?

Rizky Banyualam Permana - Universitas Indonesia

Trade and sustainable development (TSD) is a recent emerging issue in regional trade arrangements. Contemporary regionalism follows the pattern of incorporation of the concept of trade and sustainable development in its framework. The EU for instance, explicitly issued its policy approach in negotiating trade and sustainable development chapter within its FTA with EU external trading partners. The newest USMCA incorporates TSD chapter with enforceable character. However, unlike EU and the North American practices, ASEAN and its Member States often criticised because of lack of binding and enforceable commitment of trade and sustainable development norms. This paper analyses current approach of ASEAN towards the issue of trade and sustainable development using the lens of interactional international law. Interactional international law is an analytical approach which derived from the constructivism paradigm of international relations. By using such approach, the discourse of ASEAN legal framework of economic integration moves beyond about legally binding/non-binding character of ASEAN instruments. This paper highlights some characteristics of ASEAN norm-making of sustainable development that are clearly unique and different from other region.

Fairness and the Status of the South Asian Countries in the WTO
(Ravindra Pratap - South Asian University)

The proposal seeks to empirically study the WTO idea of fairness for the South Asian Countries. South Asia comprises of eight developing and least-developed countries and of which seven are WTO Members. Their stakes in the WTO are no less, as the South Asian region is one of the poorest regions of the world with high population, poverty and low income and growth, not to speak of the untold miseries of Afghanistan and the lingering adverse human impact of the economic crisis of Sri Lanka. WTO must correct or rebalance itself for fairness (even if not mentioned in the WTO preamble) for the South Asian countries in at least three areas: trade in agriculture, non-agriculture market access and special and differential treatment. Specifically and minimally, the WTO must agree to eliminate all kinds of export subsidies for agricultural products, accept the principle of non-reciprocity for developing countries and accord highest priority to special and differential treatment negotiations. We are aware that these would arduously involve revision of more than one covered agreement of the WTO, such as the GATT and SCM Agreement and might realistically sound far-fetched. We still believe these to be worth pursuing for fairness to remain a legitimate claim on the WTO for the countries of the poorest region of the world and for exploring the alternative possibilities, such as waiver of commitments of the South Asian countries in such critical areas of international trade as agriculture and impermissibility of antidumping measures to the exports of these countries by way of special and differential treatment which has been continually recognized through the successive rounds of trade negotiations but which is yet to be fully accorded or realized by the South Asian countries and for which too the WTO dispute settlement system must accept a fair share of WTO responsibility.

Striking a Balance: Analysing Indonesia's Raw Material Export Restrictions within the Context of International Trade Law and Development Rights (Akmal Handi Ansari Nasution, Vita Cita Emia Tarigan, Mahmul Siregar & Annisa Hafizhah - O.P. Jindal Global University & Universitas Sumatera Utara)

The Indonesian President recently announced that the country is maintaining its export ban on nickel and will extend the ban to bauxite and copper ore in the coming years to expedite Indonesia's downstream programs for raw materials. Although the WTO Dispute Settlement Body (DSB) panel found that the Indonesia export ban through its Domestic Processing Requirement (DPR) policy violated its Article XI obligations on Quantitative Restrictions (DS592 Indonesia-Raw materials), President Jokowi instructed his corresponding ministers to carry on. Indonesia appealed the report; however, given the current situation of the Appellate Body and Indonesia's non-membership in the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), the dispute remains in limbo. Combining doctrinal and case study methodologies, this paper analyses Indonesia's raw material export restrictions and their implications within the context of international trade law and development rights through the critique which resonates with Third World Approach to International Law (TWAIL) that the trade law regime is merely a contract of distribution. The doctrinal research will analyse the relevant provisions of the GATT, particularly Article XI, while the case study approach will investigate the findings of the panel and claims from the complainants and Indonesia in the dispute. By examining Indonesia's economic leverage due to its possession of mineral resources that currently in high demand such as nickel, and its interpretation of Article XI of the GATT, this paper seeks to find a balance between Indonesia's conflicting domestic development rights and trade obligations. Finally, the paper proposes a possible evolutionary and contextually relevant interpretation of Article XI of the GATT. This study offers valuable insights for scholars and practitioners interested in international economic law, international trade law, and the TWAIL, as it demonstrates how Indonesia, as a third-world country applies critiques of the WTO regime.

Bioscience Governance in Southeast Asia: Data, Open Science, and Sovereignty

Sonja Van Wichelen - The University Of Sydney

The global Covid-19 pandemic has ushered in a new era of rapid sharing of bioinformation, such as Genetic Sequence Data (GSD). Increasingly, the transfer of tangible biological material is becoming obsolete. This situation poses new challenges to scientific exchange everywhere but has particularly profound implications for developing countries such as those in Southeast Asia where there is limited access to these high technologies. As data takes on significant social, economic, and political power, Southeast Asian countries are voicing their concerns over the extraction of GSDs without benefit to their states or economies. My paper examines these recent debates in the context of Southeast Asia, with particular focus on Indonesia. Prompting fresh debates about "data sovereignty," Southeast Asian countries demand a seat at the global governance table, pushing for genetic sequence data to be bound by the same international treaties that govern biological specimens. I argue that the shift from tangible to intangible matter further complicates the governance of bioscience in an unequal world. My analysis of the Indonesian case prefigures how "epistemic infrastructures of bioscience governance"—namely the assembling, organizing, documenting, and representing capacities of regulatory frameworks—are central to controlling, but also, to driving a wedge in existing power relations

ABSTRACTS PANEL 2B.1

FOREIGN INVESTMENT

MODERATED BY
BY PROF. LIU HUAWEN
CHINESE ACADEMY OF SOCIAL SCIENCES

The 9th Biennial Conference of the Asian Society of International Law (2023)

Geography has little impact: A Comparative Study on the Role of Judges in Singapore and Indonesia in the Taking of Evidence as Inspiration for Procedures in International Arbitration

Junianto James Losari - City University of Hong Kong

"The most influencing factor of a country's legal system is often its former colonial master rather than its geographical proximity to the neighbouring countries. For example, Singapore (a former British colony) adopted the common law legal system (Common Law). In contrast, Indonesia (a former Dutch colony) adopted the civil law legal system (Civil Law). Chan and van Rhee suggest that the differences between the two legal systems are often exaggerated, but differences remain. This paper seeks to highlight these differences with a focus on the judges' role in taking evidence in civil proceedings in Singapore and Indonesia. A comparative study of the two systems, particularly Indonesia, seems absent despite the countries' vibrant economic relations. In addition, arbitral rules (e.g. the Arbitration Rules of the Singapore International Arbitration Centre or the UNCITRAL Rules) do not contain detailed rules for the taking of evidence; hence domestic litigation procedures are often used to guide arbitral tribunals.

In this paper, I seek to contribute to the comparative literature of legal procedures in Singapore and Indonesia, and identify some values that can be incorporated into international dispute settlement, particularly international commercial arbitration, and some further potential enhancements. Through such exposition, I also hope to assist practitioners in choosing the appropriate dispute resolution forum for their commercial transactions.

Section A provides an overview of the legal systems of Singapore and Indonesia as a basis for further comparison. Section B compares the role of judges in taking evidence in Singapore and Indonesia, including insight into the law in practice. Section C identifies the values that may be intrinsic to each country's procedure that can further inspire rule-making at the international level. Section D concludes. "

The ‘Spirit of Bandung’ and the Quest for a New Regional Investment Order

Prabhash Ranjan - South Asian University

In the post-colonial history of developing countries, the 1955 Bandung Conference occupies a focal position. Several Asian and African countries joined hands to write new rules of international law to carve a new world order based on equality and mutual respect. However, the ‘spirit of Bandung’ has weakened considerably over the years. This is most evident in South Asia where countries have failed to cooperate with each other a develop an effective regional order that could bring prosperity to the region. Taking the example of international investment law (IIL), this paper will argue that by failing to cooperate, South Asian countries could not exploit massive economic benefits that would have flowed toward each other had they developed a cohesive regional investment order. The paper will argue that the ‘spirit of Bandung’ needs to infuse the development of a new regional investment order (NRIO) in South Asia. While South Asian countries have legalized their international investment relations with non-South Asian nations mainly the developed world, the intra-South Asian investment relations remain under-legalized. The IIL regime globally is undergoing a churn with the States trying to take back control of issues they delegated to the IIL institutions under neoliberal influence. In this context, it is imperative for South Asia to take the lead in re-writing the rules of IIL. The process of rewriting IIL rules could start by developing an NRIO in South Asia premised on values of the Bandung conference such as mutual respect for sovereignty and equality. Using the normativity of embedded liberalism, that is, economic liberalization is embedded in the social community, South Asian countries should develop an NRIO that would not only boost intra-South Asian foreign investment but also act as a template for re-writing IIL rules elsewhere. This will go a long way in revitalizing the ‘spirit of Bandung’

Restraining Investment Arbitrators' 'Judicial Power' through Comparative Public Law

Fan (Ariel) Yang - Tsinghua University

The investment treaty arbitration is emerging as a form of adjudicative governance, as investorstate arbitrators are playing a role of potential overseers of all other entities by which sovereign power is exercised. In the process of granting maximum protection to foreign investors and safeguarding host States' ability to regulate in the public interest, arbitrators are entitled to decide the legality of legislative, executive, or judicial acts and even the scope of their authority. In this case, arbitrators' "quasi-legislative authority" can be analogized through the lens of judicial review. The vagueness of the standards (fair and equitable treatment, full protection and security, indirect expropriation, etc.) of such judicial review grants virtually unfettered discretion to arbitrators and makes it more problematic in view of the uncertainty not only regarding the rules but also the methods for applying them. Against this backdrop, this research aims at certifying the necessity of restricting arbitrators' power of "judicial review" and figure out how. To this end, the research will firstly scrutinize whether and how did arbitrators review host States' conducts and the underlying public laws (especially constitutional law), as evidenced by arbitrators' s reasons for their awards and decisions. After confirming the existing excessive "judicial review" power of arbitrators, the research proceeds with measuring the current extent of self-restraint of arbitrators. It firstly focuses on how arbitrators make fundamental choices about how to constitute their role in relation to other decision makers, and then applies the "judicial review" conceptualization to specific issues dealing with the "scope" and "intensity" of substantive review carried out by investment arbitrators and analyzes its excessive intrusion into host States' sovereign choices. Basing on this, this research preliminary concludes that investment treaty arbitrators were reluctant to show deference in most cases, and the public law principles like proportionality are generally used to extend their power rather than being adopted as restrictive forms. Therefore, the research applies a comparative public law approach in exploring potential restraints that can be properly imposed. The author tries to conclude three comparative public law approaches in justifying arbitrators' seemingly endless discretion: a) to compare public concepts used by courts to show restraint under different jurisdictions (comity, forum non-conveniens, lis pendens, etc.) to see if they could be immersed into arbitrators' power system from a "public action perspective"; b) to compare constitutional concepts applied in substantive stage (proportionality, reasonableness, standard of review, etc.) to see if they could reshape arbitrators' patterns of discretion from a "public interest perspective"; c) to compare mechanisms of judicial review under different jurisdictions to see if they could clarify the function of arbitrators from a "functionalist approach". The analysis also considers how these public elements can feed international investment arbitration in a way of restricting arbitrators' power of judicial review to improve accountability, consistency, and predictability. This does not point to the establishment of public law principles or any uniformed value, but more as references to the drafting and interpretation of investment treaties leading to transnational legal pluralism.

A Reflection from The Ill Cousin Shouldn't the International Centre for the Settlement of Investment Dispute (ICSID) Learn from the World Trade Organization?

Putu George Matthew Simbolon and Tiurma Mangihut Pitta Allagan - Universitas Indonesia

This article is written to express the reason why the International Centre for the Settlement of Investment Dispute shall evaluate its annulment practice by learning from the World Trade Organization. This article is written based on the normative method through the application of conceptual approach and case approach by applying ICSID case laws. There are three discussions presented under this article. The first discussion explains the current issues faced by the international investment law that can be seen from the practice of ICSID arbitration. Meanwhile the second discussion explain the Appellate Body vacuum in showing the ill currently faced by the WTO. Finally, this article also explains the reason why ICSID shall adopt the appeal mechanism currently applied by the WTO. From the first discussion, this article views that the vague absolute standards applicable in the ISDS practice and the lack of coherence are the reasons why the international investment law is scrutinized by the public. Furthermore, the second discussion explains that Appellate Body Vacuum is caused by the judicial activism by the United States dan such issue shall not be viewed as the reason why ICSID shall not transpose the Appeal Mechanism applied by the WTO. Last but not least, this article views that the limitations in the Annulment Procedure under the ICSID Convention and the existence of doctrines explaining that ICSID shall adopt the WTO methods in evaluating its dispute settlement outcomes are the urgencies of ICSID in extending its annulment committee authorities.

ABSTRACTS PANEL 2B.2

ASIANSIL LAW OF THE SEA INTEREST GROUP"

MODERATED BY
PROF ZHANG XINJUN,
TSINGHUA UNIVERSITY

The 9th Biennial Conference of the Asian Society of International Law (2023)

Greenhouse Gas emissions through the UNCLOS

Xiaolu Lei - Jinan University

On 12 December 2022, Commission of Small Island States on Climate Change and International Law (COSIS) submitted a request to International Tribunal for the Law of the Sea (ITLOS) for advisory opinion concerning climate change and marine environmental protection. Rather than the jurisdiction of ITLOS, this paper particularly highlights substantial issues relating to legal questions in the COSIS request. After introducing the definition of marine environmental pollution in UNCLOS, it goes on to analyze obligations of marine environmental protection relating to the impacts of climate change and ocean acidification under Part XII of UNCLOS. It argues that there are three means for facilitating the obligation of mitigating climate change into the obligation in Part VII. The first is to introduce climate change-related treaties through Article 237 of the Convention. The second is to invoke certain UNCLOS provisions that allow invoking external rules in Part VII. The third is to interpret the obligation of mitigating climate change as the obligation of due diligence under UNCLOS. It is emphasized that the emission reduction and adaptation measures for fisheries or shipping under FAO, RFMO and IMO, as well as ocean-based climate action under the framework of UNFCCC and Paris Agreement, has been gradually developed. The paper finally puts forward feasible paths for developing marine environmental problems caused by climate change and ocean acidification.

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ABSTRACTS PANEL 2B.3

LAW OF THE SEA

MODERATED BY
ASSOC. PROF. LIU NENGYE
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The 9th Biennial Conference of the Asian Society of International Law (2023)

The Contribution of the BBNJ Agreement to a Just and Equitable Order of the Oceans

Kentaro Nishimoto - Tohoku University

The international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ Agreement) was agreed in March 2023 and is expected to be adopted in June later this year. The Agreement will establish new rules and institutional frameworks to implement the provisions of UNCLOS. Consistent with UNCLOS, the preamble of the Agreement "[r]ecogniz[es] the importance of contributing to the realization of a just and equitable international economic order." In this sense, the BBNJ Agreement reflects the movement that began at the Bandung Conference. From this perspective, this paper will focus on the provisions of the BBNJ Agreement on marine genetic resources (MGRs) and consider what has been achieved in terms of the quest for a just and equitable order of the oceans. The paper will begin by revisiting how the calls for a New International Economic Order were reflected in UNCLOS, focusing on the concept of the common heritage of (hu)mankind (CHM) in its Part XI. Next, the paper will review the discussions on the benefit sharing of MGRs in the process towards the BBNJ Agreement, which was centered on the CHM concept. The paper will then address the relevant provisions of the Agreement, focusing on the implications of "the principle of the common heritage of humankind which is set out in the Convention" in the list of guiding principles and approaches for the Agreement and how the regime set out in Part II is intended to contribute to the objective of the fair and equitable sharing of benefits. Finally, the paper will assess what has been achieved so far and identify challenges in implementing the Agreement.

Using Uncrewed Maritime Vehicles for Scientific Research: Legal Challenges and Viable Solutions

Yao Huang & Shuning Zhang - Sun Yat-sen University

The advent of uncrewed maritime vehicles (UMV) expands the range of what it is possible to observe and discover in the oceans and are widely used for scientific research. However, the current legal framework is insufficient to regulate this kind of activities and causes the jurisdictional conflict between coastal States and researching States. Under this background, this article examines the legal challenges brought by the increasingly using UMV in marine scientific research (MSR) and proposes solutions for regulating it. These challenges in practice and in theory are as follows: the United Nations Convention on the Law of the Sea (UNCLOS) lacks definition of key concepts, such as “ship”, “scientific research installations and equipment” and “marine scientific research”, which limits the identification of legal status and activities of UMV; the new characteristic of UMV—uncontrolled drifting contradicts the specific requirement of UNCLOS and may cause conflict of jurisdiction. They are critical and should be dealt with because they may limit the regulation on the use of UMV in MSR and its development which may be harmful to both coastal States and researching States. The current academic literature has not yet analyzed and solved these issues sufficiently which is primarily focused on narrow regulatory questions centered around compliance with existing safety laws or whether UMV should be considered vessels. This article makes a substantial contribution by offering new interpretations of UNCLOS, conducting comparative law research on state practices to find the best domestic solutions and developing new legal framework as well as regional cooperation mechanism to respond these challenges. This article consists of three sections. Section 1 analyses the legal status of UMV in MSR but will focus on whether UMV may be regulated by UNCLOS as scientific research installations and equipment. Section 2 analyses the legal challenges arising from UMV’s uncontrolled drifting. It may not meet the requirements of UNCLOS and therefore has raised legal issues, especially when it enters waters subject to the jurisdiction of foreign states, UMV may cause conflict of jurisdiction. Section 3 puts forward suggestions on interpreting existing international rules, establishing new legal framework and cooperation mechanism to regulate the use of UMV in MSR.

International Tribunals Approach Toward Maritime Boundaries Delimitation Of An Archipelagic State

Gulardi Nurbintoro - Universitas Achmad Yani

One of the most prominent features of the United Nations Convention on the Law of the Sea (UNCLOS) is the recognition of the archipelagic State concept, embodied under Part IV of the Convention. Since the entry into force of the Convention, more than 20 countries have claimed archipelagic State status, all of which are developing countries. Hence, it is worth noting that the archipelagic State concept, from its inception, through its negotiation during the Third Law of the Sea Conference, until its implementation, was primarily driven by developing States. Despite the considerable number of archipelagic States and a universal recognition of the concept, judicial jurisprudence with respect to practices of archipelagic States, particularly pertaining to maritime boundaries delimitation remains very limited, if not non-existent. Up to the writing of this abstract, only two maritime boundary delimitation cases involving an archipelagic State were presented before an adjudication tribunal, namely the 2006 Barbados/Trinidad and Tobago Arbitration and the 2023 Mauritius/Maldives Delimitation of the Maritime Boundary in the Indian Ocean. This paper thus aims to review and analyse, in spite of the limited jurisprudence, how tribunal interpret and applies the provisions of maritime boundary delimitation to archipelagic State. Mindful of such limitation, this paper does not aim to provide a conclusive review of today's state of archipelagic State concept, but rather views the limited jurisprudence as evidence that issues pertaining to maritime boundary delimitation of archipelagic State are largely unexplored and require further sanctioning through State practices and, more importantly, through judicial decisions.

Protection of Climate Change Induced Migrants Out of Small Island Developing States: Revisiting the Bandung Spirit

Dr. Benarji Chakka, Dr. Sudhir Verma, Ms. Saniya Khanna - VIT-AP School of Law & The Graduate Institute (Geneva)

The gradual onset of natural disasters such as sea level rise are expected to cause permanent forced migration in the upcoming years, especially out of SIDCs. Consequences of sea level rise are already visible in the SIDC. Excessive siltation of soils and depletion of natural resources have caused serious livelihood problems in these territories. The ambivalence of mainstream international law towards climate change induced migration can lead to violations of fundamental human rights of millions of people. Regional instruments including soft laws seem to be insufficient as they mainly focus on mitigation and adaptation efforts while totally ignoring the relationship between human rights and climate change. Due to the very nature of slow onset disasters it is difficult to ascribe responsibility to one particular actor in the international community, which further complicates the problem. The reductivist approach adopted by the ICJ in its Advisory Opinions in the past have led to narrower interpretations of the doctrines of international law. The recently sought Advisory Opinion on Climate Change will also be cosmetic in nature if past trends of ICJ are to be believed. Climate litigations in the developing countries have made mockery of the concept of environmental rule of law by engaging into intellectual eclecticism without focussing on the core issue, that is, environmental protection that is victim centric. To undo the wrong and protect the rights of the victims of sea level rise, there is a need to mimic the efforts undertaken by the WTO to envision the rights of the Global South. There is thus a need to revisit the spirit of the Bandung and understand and elaborate the normativity inherent within international law. This will help to broaden the scope of obligations of the States and pose an onus upon them to protect the victims of forced migration. This will also fill the gap between the true intent of a truly inclusive international law and the deficient rulings of domestic courts in the global South.

ABSTRACTS PANEL 2B.4

HUMAN RIGHTS

MODERATED BY
PROF WASANTHA SENEVIRATNE,
UNIVERSITY OF COLOMBO

The 9th Biennial Conference of the Asian Society of International Law (2023)

Trend Of Supreme Court In Interpreting International Human Rights In Indian Context

Ananya Das & Shuvro Parker - Indian Institute of Technology

International Human Rights Law has been in the limelight for many years, more specifically from the time of adoption of Universal Declaration of Human Rights in 1948. After witnessing the two world wars and a failed League of Nations, human rights were at stake. Hence, Universal Declaration of Human Rights was drafted and adopted. Universal Declaration of Human Rights is a non-binding instrument which has inspired enactment of many legally binding laws. India did not have an exclusive human rights protection act until 1993. India though incorporated some provisions of Universal Declaration of Human Rights into Indian Constitution in Fundamental Rights and Directive Principles of State Policy chapter. Not all provisions of Universal Declaration of Human Rights are incorporated in the Constitution and here comes the interpretation done by Supreme Court in various cases dealing with human rights. The paper will throw light on the trend of Supreme Court in interpreting international human rights in Indian legal context. India follows the concept of dualism where there should be legislative enactment to give effect to international instruments. In certain cases, supreme court has directly applied international human rights law in the cases whereas in some, it has refrained from directly applying those. Also in certain circumstances, the supreme court has also referred to and interpreted treaties to which India was not a party to. Also, in some, the political environment of the country has also influenced the application of international human rights law. So the Supreme court has played a huge role in analyzing and interpreting international human rights law in Indian context.

Malaysia’s CEDAW Reservation and the Debate Over Gender Equality in Islamic Family Law

Rahmawati bt Mohd. Yusoff - Universiti Teknologi MARA

Malaysia ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995 but with a reservation on Article 16(1)(a) which guarantees women equal rights with men in marriage and family matters. Malaysia’s reservation allows for Islamic family law to continue to govern family matters for Muslims in the country. Islamic family law governs family matters for Muslims in Malaysia, including marriage, divorce, and inheritance. Some argue that Islamic family law is discriminatory towards women as it gives men more rights and privileges than women. For example, under Islamic family law, men can divorce their wives unilaterally, while women have to go through a more complicated process to obtain a divorce. Additionally, men are entitled to a larger share of inheritance than women. This has been a contentious issue as some argue that the reservation violates the spirit of CEDAW and is discriminatory towards women. However, several European countries, including Germany, Sweden, and the Netherlands, protested Malaysia’s CEDAW reservation at the United Nations Human Rights Council. They argued that Malaysia's reservation undermines the principles of gender equality and human rights. Therefore, this article examines the debate over whether Malaysia's reservation violates the spirit of CEDAW and is discriminatory towards women. It also discusses the protests by European nations against Malaysia's reservation and the larger issue of gender justice in Islamic family law, including the unequal rights and privileges afforded to men and women. We found that Malaysia’s CEDAW reservation is a complex issue that requires consideration of Malaysia's cultural and religious context in working towards gender justice and equality.

Rethinking Kashmir's Claim to Self-determination under International Law: Demystifying Kashmir's Colonial History

Arbaz Muzaffer - University of Birmingham

"Legalizing the continuation of colonial borders in newly established postcolonial states was partly successful, but it also led to numerous territorial disputes. Many new states often acquired the role of their former colonizers, resulting in diverse communities being forced to adhere to precolonial arrangements. The right to self-determination, despite being a major driver of decolonization was reshaped after decolonization and was allowed to be exercised within the parent state, conforming to the principles of territorial integrity and sovereignty. The problem arose when the parent state allowing internal self-determination to a subordinate territory assumed the role of its former coloniser and under the garb of internal self-determination aimed to annex and absorb the whole territory. One such example is Kashmir, a region situated between two postcolonial states of India and Pakistan, formerly an independent state, recently a semi-autonomous region within India, and now as per the Indian government, constitutionally incorporated union territory of India. Responding to secessionist claims by Kashmir, India initially allowed for internal self-determination to be exercised, but gradually eroded this status until 2019 when it was revoked altogether. This is alongside grave human rights violations that have been well documented. Based on my recent archival research, Kashmir was an independent state until 1947 but lost its rightful status and identity thereafter and was rendered to an India-Pakistan question. The aim here is to address international law's reluctance to think beyond internal self-determination as the sole means of resolving territorial conflicts rooted in colonialism like Kashmir. Furthermore, I intend to examine how international law has been used as a tool to shape violent conflicts that arose after decolonization and explore potential solutions for resolving the Kashmir conflict. This research, therefore, tries to further the reinterpretation and significant revision of the understanding of the right to self-determination.

The International Law Implications of East Asia's Transnational War Redress Movement

Timothy Webster - Western New England University

Over the past three decades, World War II redress movements have sprouted up, mobilized transnationally, and generated various state responses. In East Asia, war redress campaigns continue to demand state and private actors compensate, apologize, and commemorate victims of the Second World War. East Asian victims of Japanese war crimes have resorted to international institutions, national legislatures, local government bodies, embassies, and domestic courts to press their claims. Recent decisions from South Korea have added a new dimension to the debates, as these interpretations deviate from the prevailing opinions issuing from the West and Japan. This paper highlights the dynamic role of international law in Asia's war redress litigation, The focus is on South Korea and Japan —the countries where the largest number of lawsuits have been filed— though mention is also made of the Chinese experience. Given the Western origins of international law, and its role in justifying imperialist extraction, one might expect a minor role for international law in Asia's war redress movement.But the complete picture is more complex. On the one hand, government officials from China and South Korea have long cited international legal principles to prod Japan into offering compensation. On the other hand, Japanese officials cite bilateral treaties with Korea and China to reject individual claims to compensation. The jurisprudence is more mixed: Japanese courts rarely ruled on international humanitarian law and international human rights law claims in their decisions. But recent decisions from Korea have newly interpretated both multilateral human rights treaties and bilateral peace treaties to suggest that Japan committed "torts against humanity" against Korean citizens. All told, new interpretations of the international law implications of World War II are unfolding in East Asia. Asia's more active engagement with international law displaces the notion that international law is simply a Western tool or construct, but rather a set of ideas and principles that can be contested, opposed, reanimated, and reinterpreted by Asian countries, whatever their particular relationship to colonialism, western expansion and the international legal order.

ABSTRACTS PANEL 2B.5

TWAIL, SOVEREIGNTY, AND CRITICAL APPROACHES

MODERATED BY
PROF WASANTHA SENEVIRATNE,
UNIVERSITY OF COLOMBO

The 9th Biennial Conference of the Asian Society of International Law (2023)

Islam and the International Law Discourse: Should the 'Ulama Jump on the TWAIL Bandwagon?

Fajri M. Muhammadin and Muhammad Raihan Sjahputra - Universitas Gadjah Mada

In the spirit of decolonizing a very 'Eurocentric' international law, Third World Approaches to International Law (TWAIL) scholarship has been rapidly developing especially over the past decade. Part of the idea is so that the previously unheard and oppressed voices regarding international law can now be heard. Postcolonialism perspectives are at the core of this, with geo-regional voices rising such as from Africa and Indian scholars. Ideological and political voices, such as feminists and Marxists are also a big part of the bandwagon. Our research centers round Islamic contributions to the discourse.

Early and medieval classical Islamic scholars, hand-in-hand with the mighty Caliphates and Sultanates ruling a significantly more unified Muslim ummah, have contributed to the historical development of international law. Today, however, there appears to be barely any noticeable trace as Eurocentric hegemony has repressed all non-Western knowledges generally and international law specifically. Therefore, today, some TWAIL scholars have voiced Islamic contributions to the table as part of the international community in attempt of building a truly universal international law. Some major international institutions, such as the International Committee of the Red Cross and the International Criminal Court, have appealed to Islamic scholarship to carry out their mandates –the latter only very recently beginning to do so.

However, is this really what Islam aspires to? There seems to be two main goals of TWAIL scholars: (i) untangle international law from 'Eurocentric' domination, and (ii) to build a more inclusive-participative global and plural international law. Islam is surely against Eurocentric domination, but is Islam against all kinds of domination? Islam is not against taking knowledge from non-Islamic civilizations, but is Islam in favor of all kinds of inclusivity in knowledge?

Our research critically examines the way TWAIL scholarship treats the 'previously unheard voices' (including Islam) in its endeavor to constructs a 'universal' international law, as well as the dialectics between the 'Ulama and Muslim Scholars with international law. It is our hypothesis that the 'Ulama and Muslim international law scholars can take some advantage of the TWAIL movement but only from a safe distance. There are benefits for Islam to have its teachings shared to help solve world problems, but caution must be taken because the current trend of TWAIL scholarship may be directed towards a new kind of hegemony against Islamic scholarship.

A TWAIL Discourse on Power Dynamics of AI Appropriation and Climate Responsibilities

Arunava Bannerjee - Amity University

It is imperative to note 'Artificial Intelligence' or AI is not just a technological vogue but an inalienable reality that has drawn serious debates about its appropriation towards a smarter sustainable reality by the global north. This paper criticizes this growing global north view of AI and argues that like Hegelian idealism transposed into Feuerbachian humanism and then realized by Marx's material realism, where the dynamics of power are realized through the alienation of the producer from the produced.Similarly rapid growth AI, which is primarily a global north construct appropriated and run through the appropriation of resources from the global south such as the use of Kenyan works to filter traumatic content from ChatGPT.Still, the global south countries continue to be deprived of their produce in AI due to the significant cost of the same. Whilst they further continue to bear the hidden cost of these AI machines which mostly result in serious carbon emissions the narrative of appropriation of AI towards a sustainable future by the global north fails to denote. Consequently, this paper tries to read this relation of power from a Third World Approaches to International Law in this context towards answering the vulnerability of weaker nations and highlights how AI appropriation adds to environmental unsustainability. Where the solution may not lie fully in the international rule of law but in the moral sentiments attached to the recognition of the principle of solidarity and fuller appropriation of common but differentiated responsibility in international law.

ABSTRACTS PANEL 2B.6

ENVIRONMENTAL LAW

MODERATED BY
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UNIVERSITAS ACHMAD YANI

The 9th Biennial Conference of the Asian Society of International Law (2023)

Climate Change Advisory Cases: Why International Adjudication? How would the ITLOS and ICJ respond?

Linlin Sun - Zhongnan University of Economics and Law

"The parallel requests for advisory opinion from the ITLOS (12 December 2022) and ICJ (12 April 2023) respectively on similar questions of States' legal obligations (and State liability question before the ICJ only) in relation to climate change mitigation and adaptation were unprecedented international judicial events. This paper focuses on two major questions relating to these events: First, what led to the requests? Second, how would the ITLOS and ICJ respond to the requests, thereby contributing to addressing the global concern of climate change?

For the first question, it is to argue that (1) the requests are the direct result of persistent diplomatic efforts of Small Islands Developing States (SIDs). (2) The requests are closed linked to the 2015 Paris Agreement which set clear goals for climate change mitigation serve as the benchmark against which international judicial bodies could further clarify and/or develop legal requirements of States. (3) The requests may be a spillover effect at the international level of the upsurge in climate litigations at national courts during the past two decades. And (4) the ultimate driving force for the requests would be the enhanced scientific consensus and global consciousness of the significant risks and damages arising out of climate change.

For the second question, it is to argue that (1) both the ITLOS and ICJ would choose to accept the cases. (2) While the ITLOS will give its advisory opinion on the basis of the law of the sea, the ICJ on broader legal bases; their interpretations of States' obligations may be overlapped or diverging. (3) Even if the ICJ may ascertain state liability for damages caused by climate change due to failure of a State to take preventive measures in theory, it would face enormous difficulties in the establishment and implementation of State liability in practice. And (4) international adjudication would play a limited role in addressing the global crisis of climate change in practical term, yet, it would have far-reaching implications in global public spheres owing to the authoritative effect of advisory opinion.

From the Common Heritage of Mankind to the Artemis Accords: The Perspective of Developing Countries in Southeast Asia

Lalin Kovudhikulrungsri; Ridha Aditya Nugraha; Runggu Prilia Ardes - Thammasat University

The Agreement Governing the Activities of States on the Moon and Other Celestial Bodies of 1979 (The Moon Agreement) enshrines that the moon's natural resources are the common heritage of mankind (CHM) which highlights equitable sharing. This concept is considered a reason why the number of state parties is only around 17 countries. To return to the moon by 2025, the United States arranged the Artemis Accords. This non-binding arrangement discusses the utilization of space resources and the non-appropriation principle under international space law. The Artemis Accords can be interpreted as a subsequent practice to related space law treaties. However, the accord excludes the Moon Agreement in its provisions, thus gaining a major criticism that the accord subtly enables the full commercialization of space resources. In 2023 the Artemis Accords has around 24 member States with various economic statuses, exceeding the Moon Agreement. Among the Member States of the Association of South East Asian Nations (ASEAN), Singapore joined the Artemis Accords, while the rest is yet to take actions, and the Philippines has been a party to the Moon Agreement since 1981. There is no study of this accord from the Southeast Asian developing countries perspectives, thus making it interesting to dive into this topic. This paper focuses on two main aspects namely international law and perspectives from developing nations - taking Indonesia and Thailand as examples. In the international law part, the historical development of the CHM under the Moon Agreement, the role of the UN Committee on the Peaceful Uses of Outer Space (UNCOPUOS), and the provision of space resources under the Artemis Accords are examined. Then it discusses the position of non-space-faring nations like Indonesia and Thailand – both as ASEAN Member States – to reflect on the challenges and opportunities in light of this upcoming space mining era.

Challenges And Opportunities Of Sustainable Business Environment In Indonesia: Safeguarding Indigenous Peoples' Cultural Heritage From Business-induced Climate Losses

Fildza Nabila Avianti and Sri Purnama - Anggraeni and Partners

TAs climate change disproportionately and adversely affects the most vulnerable communities, indigenous peoples in Indonesia are in danger of no longer enjoying their cultural heritage. The Talang Mamak Tribe's forest is one of the tangible examples of how climate change affects cultural heritage. The entire area of this tribe's customary forest was initially 451,411 hectares, but as of 2013, only 2,300 hectares remained. The loss of most of these customary forests due to the exploitations of private corporations to oil palm plantations has indirectly caused changes in the culture of indigenous peoples, including economic devastation, environmental degradation, contamination of pure water sources, and the extinction of their traditional wealth and way of life. This starkly contrasts to Indonesia's participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage and the Convention for The Safeguarding of Intangible Cultural Heritage. Those conventions highlight the commitment to preserving cultural heritage while addressing the challenges of climate change. These legal instruments guide sustainable business practices in Indonesia and ensure compliance with environmental standards to minimise the impact on sites of cultural significance. This paper examines the challenges and opportunities of sustainable business practices and pertinent legal frameworks in protecting Indonesia's indigenous peoples' cultural heritage from climate change. The study will examine the implementation of Indonesian national laws such as Law Number 11 of 2010 on Cultural Heritage Conservation and Law Number 32 of 2009 on Environmental Protection and Management. This study concludes by emphasising the importance of legal frameworks and sustainable business practices in safeguarding the cultural heritage of Indonesia in the face of climate change. It highlights the significance of a collaborative approach between the government, the private sector, and the international community to preserve these irreplaceable treasures for future generations.

Rights Of Nature And Minimum Flow Of A River: A Socio-legal Study Of Kishenganga Hydro-electric Power Plant

Ravneet Sandhu - Vivekananda School of Law and Legal Studies

Kishenganga Hydro-electric Power Plant (KHEPP) is being built on the tributary of a transboundary river Jhelum shared between India and Pakistan. This Power Plant has been a bone of contention between India and Pakistan and the matter has even gone to the Court of Arbitration which has given India the green signal to carry on with the construction of the KHEPP. The waters of the tributary are being diverted to build this power plant while maintaining only 9 cumecs of minimum flow impacting the ecology of the basin. This article examines the impact of KHEPP upon the environmental and the human needs of the Indus river basin. The question that the author tries to answer through this article is that what legal implication would granting of international legal personality to the rivers have upon the hydro-electric power plants especially the determination of minimum flow? In the traditional times only States were considered as the subjects of international law, however this international legal personality was devolved upon International Organisations and even Individuals. States like New Zealand have passed a legislation granting legal personality to rivers. The article thus examines the legal personality granted to rivers by different domestic jurisdictions and then tries to analyse the impact such international legal personality would have upon the hydro-electric power plants. The article argues that the hydro-electric power plants being built upon transboundary rivers should be managed through joint river mechanisms and the principles of reasonable and equitable utilization of resources should be taken into account while determining the minimum flow of a river keeping in mind the health of the basin as a whole.

ABSTRACTS PANEL 2B.7

BANDUNG AND CONTEMPORARY INTERNATIONAL LAW

MODERATED BY
ASSOC. PROF. SRINIVAS BURRA,
SOUTH ASIAN UNIVERSITY

The 9th Biennial Conference of the Asian Society of International Law (2023)

“Colonialism has its modern dress”: Regulating economic coercion, from Bandung to Today

Jessica Whyte - University of New South Wales

In his opening address to the Asian-African conference in 1955, Indonesian President Sukarno implored those assembled not to regard colonialism only in the “classic form” to which his own country had been subjected by the Netherlands, but to recognise that “colonialism also has its modern dress, in the form of economic control”. In the period following Bandung, non-aligned and socialist States increasingly focused their attention on the attempt to characterize economic coercion as a threat to the independence and sovereignty of post-colonial States. Their efforts initially bore fruit: in 1965, UNGA Resolution 2131 on the Inadmissibility of Intervention declared that no state could use economic measures to coerce another state in order to subordinate its sovereign rights or secure advantages from it; in 1970, the Declaration of Friendly Relations (Resolution 2625) incorporated this language into its own account of the duty not to intervene; and in 1974, this position was repeated in the Charter of the Economic Rights and Duties and States, if in a somewhat abridged form. Reflecting on these developments in his 1979, Manifesto Towards a New International Economic Order, the Algerian jurist Mohammed Bedjaoui “confidently predicted” that progress towards a new international economic order (NIEO) would “depend on a more substantial development of standards aimed at prohibiting economic aggression.” Instead, alongside the rise of neoliberalism, international attention increasingly shifted from economic coercion to the abuse of individual human rights. As Bedjaoui predicted, the failure to impose strong limits on economic coercion made unilateral sanctions a key weapon wielded against the agenda of independence, economic cooperation and development that was pioneered at Bandung and consolidated in the NIEO. Today, as questions of economic coercion and unilateral sanctions are again at the centre of legal and political debate, this paper revisits the attempt to restrain such coercion in international law, from Bandung to the present.

Revisiting Legitimacy in International Law: An Asian-African Perspective

Zhenni Li - Fudan University

"Legitimacy as a core notion in political theory is intrinsically a post-society concept––it does not arise in lack of a society with certain structure of public authority. Hence, the question of legitimacy in international law––justification for the authority and acceptance from its participants––was rarely discussed for centuries in the anarchical international arena whilst in the post-WWII era with an international society in the true sense under formation, legitimacy has become a central quest. Nevertheless, similar to other canonical notions, the defining power of legitimacy has been monopolized by the West, partly because of the West-dominated intellectual genealogy where the notion has grown, and partly for the West-oriented construction of international legal order which has already exposed its fatal flaws in the shadow of liberal hegemony, global capitalism, neo-colonialism, Western subjectivity and exclusiveness––an epitome of the crisis of modernity in a broader context. Based on the analysis of the origins and deficiencies in the current understanding of legitimacy in international law, this Article calls for a revisit of the notion––or more radically, decolonizing the notion––from an Asian-African perspective. In particular, the legacy of the Bandung Conference may help deal with the two main puzzles in transition of legitimacy from the domestic political life to the international one––first, the complexities in the pluralistic subjects and their divergence in the cognition of the objects; and second, the distortion of the historicalpolitical context as part of the moral judgements. In the international arena with a construction of international public domain in progress, legitimacy is no longer an intellectual interference to examine an existing authority. Instead, it is the raison d'être of any arrangements. Such existential-functional reciprocal nature must be understood in the process of self-legitimation alongside that of self-empowerment of the international public domain, to which Asian and African States tend to play a significant role under the spirit of the Bandung Conference."

Legacy of the Bandung Conference: Reflections on AALCO as a Forum of Asian and African Solidarity in International Law

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Asian African Legal Consultative Organisation (AALCO), initially known as Asian Legal Consultative Committee (ALCC) was established on 15 November 1956. Seven Asian states, namely Burma (now Myanmar), Ceylon (now Sri Lanka), India, Indonesia, Iraq, Japan, and the United Arab Republic were the original member states. In 1958, in order to include Africa states, its name was changed to Asian-African Legal Consultative Committee (AALCC). In 2001, the name of the Committee was changed to Asian-African Legal Consultative Organization. AALCO is considered as a tangible outcome of the Bandung Conference. The purposes and objectives of the Organization include, that it serves as 'an advisory body to its Member States in the field of international law and as a forum for Asian-African co-operation in legal matters of common concern'. Biased role of the emerging international institutions was aptly captured by the newly emerging political ruling elite of the post-colonial states in Asia and Africa during the period of decolonization. They did not take much time to realize the role of international law in the legitimation of decisions that were of extreme significance to their existence as states. They sought to have an alternative institutional arrangement specifically in the field of international law, which led to the establishment of AALCO. It was established with a view to articulating a counter narrative to the dominant views of international law. In this respect AALCO can arguably be considered as succeeded in certain respects, as it came out with alternative views in the fields like law of the sea and refugee law.While evaluating the origin and functioning of AALCO the proposed paper would address the following questions: Is it possible for AALCO now to perform the same task as did during its initial years in coordinating the Asian African solidarity in formulating an alternative legal agenda? Is there a possibility of putting forth a robust international legal agenda based on geographical solidarity like Asian African or Asian solidarity.

The Legacy of the Bandung Conference and the Trajectory of Self-determination in Palestine

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Palestinian legal scholar Nahed Samour argues that 'Palestine at Bandung was central and marginal at the same time. It was central in the discussions, yet marginal in the wording of the Final Communiqué.' Indeed, Palestine was not included in the Communiqué's Section C. devoted to "Human Rights and Self-Determination" but was rather relegated to Section E. "Other Problems". Yet, in the subsequent Non-Aligned Movement meetings that carried the spirit of Bandung forward throughout the 1970s, Palestine became a principle contender of the struggle for self-determination. And the Bandung Communiqué's assertion that self-determination was "a prerequisite of the full enjoyment of all fundamental human rights" animated the political and normative practices of the Palestine Liberation Organisation (PLO) throughout that period. In contrast, I argue that the 1993 Oslo Accords overlapped with the spread of a version of human rights that disavowed self-determination, marking a break with the Bandung legacy. Nonetheless, Palestine remains the exemplary site of the contestation between the legacy of colonial legalism and anticolonial legalism in international law. And in this capacity, it stands as a test case of two versions of human rights—one, deriving from Bandung, which sees self-determination as the prerequisite of human rights, and the other, which broke with that legacy by subordinating self-determination to individual rights. This paper draws on the legacy of Bandung to compares and contrast the anticolonial approach to human rights, adopted by PLO, with the more recent approaches that emphasise the denial of individual rights while relegating self-determination to secondary status. Palestine, as the focus of this paper, supplies a distinctive vantage point for evaluating the failures and the successes of the two versions of human rights.