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Ireland and International Law 2021-22

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As Ireland took up its seat on the United Nations Security Council at the start of 2021, one could hardly have predicted the range of challenges that the international legal system would face over the next two years. These included the Taliban's return to power in Afghanistan, a brutal civil war in Ethiopia, mass protests in Iran, and, above all, Russia's unlawful invasion of Ukraine. Meanwhile, Ireland continued to grapple with the Covid-19 pandemic and the fall-out from Brexit. From its seat on the Security Council and during its six-month Presidency of the Committee of Ministers of the Council of Europe in 2022, Ireland found itself well positioned to emphasize an ethos of multilateralism, diplomacy, humanitarianism, and accountability in responding to these developments.

This overview of Ireland's engagement with international law during 2021-22 begins with the response to Russian aggression in Ukraine. It then surveys Ireland's accomplishments at the Security Council and the Council of Europe before turning to Brexit and Covid-19. This is followed by sections on new international agreements, engagement with the international human rights mechanisms, and Irish practice across a range of foreign conflicts that raised questions of international law. The report concludes with thematic sections on disarmament, climate change, and peacekeeping.

I. Russia's War of Aggression in Ukraine

As the threat of Russian military action in Ukraine came into focus in mid-February 2022, Ireland advised Irish citizens in Ukraine to leave the country.¹ On 21 February 2022, Ireland joined fellow EU member states to condemn Russia's recognition of the breakaway

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¹ DFA, 'Department of Foreign Affairs Statement on Ukraine Travel Advice', Statement (12 February 2022). The Department of Foreign Affairs and Trade was renamed the Department of Foreign Affairs as of 20 September 2020. Foreign Affairs and Trade (Alteration of Name and Title of Minister) Order 2020, SI 2020/382.

Ukrainian territories of Donetsk and Luhansk as a violation of Ukraine's territorial sovereignty.² Minister for Foreign Affairs Simon Coveney TD described Russia's actions as having left the EU 'with no choice but to introduce comprehensive and extensive sanctions', which the EU did two days later.³

On 24 February 2022, Russia commenced its 'special military operation' against Ukraine. Moscow implausibly claimed that this full-scale invasion sought the 'demilitarization' and 'denazification' of Ukraine and aimed to protect ethnic Russians in Ukraine from 'bullying and genocide'.⁴ Ireland condemned the invasion as a 'gross violation of international law and the UN Charter',⁵ supported further EU sanctions that included freezing assets belonging to Russian President Vladimir Putin and Foreign Minister Sergei Lavrov,⁶ evacuated the Irish embassy in Kyiv, and announced visa-free access to Ireland for Ukrainians fleeing the war.⁷ Shortly thereafter, the EU Council activated the Temporary Protective Directive for the first time in its history to provide immediate protection for refugees from Ukraine.⁸ Ireland also condemned Russia's decision to put its nuclear arsenal on high-alert status.⁹

² DFA, 'Statement by Minister Simon Coveney on the Decision of the Russian Federation', Statement (21 February 2022). See J Miklasová, 'Russia's Recognition of the DPR and LPR as Illegal Acts Under International Law' (*Völkerrechtsblog*, 24 February 2022) <https://voelkerrechtsblog.org/russias-recognition-of-the-dpr-and-lpr-as-illegal-acts-under-international-law/>.

³ DFA, 'EU Adopts Sanctions Against Russia', Press Release (24 February 2022).

⁴ A Osborn and P Nikolskaya, 'Russia's Putin Authorises "Special Military Operation" Against Ukraine', *Reuters* (24 February 2022).

⁵ DFA, 'Statement from Minister for Foreign Affairs Simon Coveney Following Today's Foreign Affairs Council', Statement (25 February 2022). EU member states decided collectively not to expel Russian ambassadors so as to maintain diplomatic channels. *ibid.*

⁶ *ibid.*

⁷ *ibid.*

⁸ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection [2022] OJ L71. Section 60 of the International Protection Act 2015 gives effect to the triggering of temporary protection under EU law. As of December 2022, Ireland had received approximately 67,000 refugees from Ukraine. Central Statistics Office, 'Arrivals From Ukraine in Ireland Series 8' (19 December 2022), <https://www.cso.ie/en/releasesandpublications/ftp/p-aui/arrivalsfromukraineinirelandseries8/>.

⁹ DFA, 'Statement by Minister Coveney in Response to Russia's Order Placing Nuclear Weapons on High-Alert Status', Statement (28 February 2022).

During the war's initial weeks and for the remainder of 2022, Ireland joined the multilateral effort to condemn and isolate Russia in multiple international forums:

- On 2 March 2022, 141 states voted to adopt a UN General Assembly Resolution that deplored 'in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the Charter', reaffirmed the territorial integrity of Ukraine within internationally recognized borders, and condemned all violations of international humanitarian law (IHL) and violations and abuses of human rights in the conflict.¹⁰ Ireland co-sponsored the resolution alongside 95 other states, and Irish diplomats worldwide lobbied for its adoption.¹¹ Ireland co-sponsored a similar resolution in the UN Security Council, a measure that Russia vetoed.¹²
- Ireland joined nearly 40 other states in referring the situation in Ukraine to the International Criminal Court (ICC) pursuant to Article 14 of the Rome Statute, an act taken in support of the ICC Prosecutor's announcement that he would seek to open an investigation.¹³
- At the Conference on Disarmament in Geneva, Ireland expressed 'abhorrence' at Russia's use of prohibited cluster munitions and 'grave concern' over civilian casualties caused by the use of 'explosive weapons in populated areas', and at the International Atomic Energy Agency, Ireland called for Russia to exercise 'maximum restraint' to ensure the safety of nuclear facilities in Ukraine.¹⁴
- At the UN Human Rights Council (HRC), Ireland expressed support for Resolution 49-1, which condemned human rights violations and abuses resulting from Russian aggression in Ukraine and called for the swift withdrawal of Russian forces from

¹⁰ GA Res ES-11/1 (2 March 2022) UN Doc A/RES/ES-11/1.

¹¹ DFA, 'Minister Simon Coveney on UN General Assembly Vote and Referral of Russia to the ICC', Statement (2 March 2022).

¹² *ibid.*

¹³ *ibid.* Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 art 14.

¹⁴ DFA, 'Referral of Russia to the ICC' (n 11).

Ukraine, safe and unhindered humanitarian access, and accountability for Russia's actions.¹⁵ To that end, the HRC established a new international commission of inquiry for the situation in Ukraine, a measure that Ireland endorsed.¹⁶

- On 16 March 2022, the Committee of Ministers of the Council of Europe (CoE) voted to expel Russia.¹⁷ This followed Russia's own announced plans to withdraw from and denounce the European Convention on Human Rights (ECHR).¹⁸ Minister Coveney described the unprecedented decision to expel a member as 'the strongest possible condemnation of Russia's unjustified and unprovoked aggression against Ukraine' and 'its disavowal of the values, principles, and legal obligations' of CoE membership.¹⁹ He also expressed regret that it would 'deprive the Russian people' of the human rights protection offered by the CoE system.²⁰ Russia ceased to be an ECHR party on 16 September 2022, following a six-month notice period.²¹
- In early April 2022, days after footage emerged of apparent war crimes by Russian forces at Bucha, near Kyiv, Ireland co-sponsored a UN General Assembly resolution to suspend Russia from the HRC for its gross and systematic human rights violations in Ukraine, with 93 states voting in favour, 24 against and 58 states abstaining.²²

¹⁵ *ibid.* See UNHRC Res 49-1 (4 March 2022) UN Doc A/HRC/Res/49/1.

¹⁶ DFA, 'Statement by Minister Coveney on Ireland's Third Party Intervention Before the European Court of Human Rights', Press Release (8 September 2022). On the Independent International Commission of Inquiry on Ukraine, see <https://www.ohchr.org/en/hr-bodies/hrc/iicir-ukraine/index>.

¹⁷ Council of Europe (Committee of Ministers) Res CM/Res (2022) (16 March 2022).

¹⁸ Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 222.

¹⁹ DFA, 'Statement by Minister Coveney on the Exclusion of the Russian Federation from the Council of Europe', Statement (16 March 2022).

²⁰ *ibid.*

²¹ ECHR (n 18) art 58.

²² GA Res ES-11/3 (8 April 2022) UN Doc A/RES/ES-11/3. This was only the second time that the General Assembly had suspended a HRC member. See R Freedman, 'Russia and the UN Human Rights Council: A Step in the Right Direction' (*EJIL:Talk!* 8 April 2022) <https://www.ejiltalk.org/russia-and-the-un-human-rights-council-a-step-in-the-right-direction/>. See also N O'Leary and J Horgan-Jones, 'Russia Accused of "Massacre of Civilians" After Bodies Found in Bucha', *Irish Times* (4 April 2022).

- Ireland sought leave to intervene as a third-party in interstate cases brought by Ukraine against Russia at the European Court of Human Rights (ECtHR)²³ and at the International Court of Justice (ICJ).²⁴ In the ICJ case, Ukraine alleged that Russia had used false accusations of genocide *against Ukraine* to create a pretext for the invasion, an act of bad faith that violated the 1948 Genocide Convention.²⁵ In its Declaration of Intervention, Ireland argued that (1) preventive action based on false allegations constitutes a serious breach of the treaty obligation to prevent genocide and (2) that the scope of consent to ICJ jurisdiction in Article IX of the Genocide Convention was ‘not limited to disputes in which acts prohibited by the Convention have been committed’.²⁶

In late-March 2022, Ireland expelled four senior Russian diplomats from Ireland for involvement in activities ‘not in accordance with international standards of diplomatic behaviour’.²⁷ Russia expelled two Irish diplomats from Moscow a week later.²⁸ In the

²³ *Ukraine v Russian Federation (X)*, App No 11055/22. See DFA, ‘Statement by Minister Coveney on Ireland’s Third Party Intervention Before the European Court of Human Rights’, Press Release (8 September 2022).

²⁴ The ICJ indicated provisional measures against Russia on 16 March 2022. *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russia) (Provisional Measures)*, Order of 16 March 2022.

²⁵ *ibid.* See also Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277.

²⁶ Declaration of Intervention by Ireland Pursuant to Article 63 of the Statute of the International Court of Justice (19 September 2022) <https://www.icj-cij.org/sites/default/files/case-related/182/182-20220919-WRI-01-00-EN.pdf>. Article 63 of the ICJ Statute provides that third states may intervene in case bearing on the construction of a multilateral treaty to which they are a party. Ireland acceded to the Genocide Convention in 1976. An unprecedented thirty-two states filed declarations of intervention in the case. See K Wigard, O Pomson and J McIntyre, ‘Keeping Score: An Empirical Analysis of the Interventions in *Ukraine v Russia*’ (2023) *Journal of International Dispute Settlement* (advance access).

²⁷ DFA, ‘Statement by the Minister for Foreign Affairs’, Statement (29 March 2022). Ireland acted under Article 9 of the Vienna Convention on Diplomatic Relations (VCDR) (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95.

²⁸ DFA, ‘Statement by the Minister for Foreign Affairs’, Statement (7 April 2022). This tit-for-tat followed an earlier incident in which a private individual rammed his truck through the gates of the Russian embassy in Dublin as an act of political protest; the driver was arrested and charged. Russia initially accused Ireland of breaching its VCDR obligation as a receiving state ‘to take all appropriate steps to protect the premises of the mission’ (see VCDR (n 27), Art 22(2)) but later expressed appreciation for additional security measures that were put in place. C Gallagher and S Carswell, ‘Protective Barriers Erected at Russian Embassy After Truck Drives Through Gates’, *Irish Times* (7 March 2022).

meantime, Ukrainian President Volodymyr Zelenskyy was greeted with a standing ovation as he addressed a joint sitting of the Houses of the Oireachtas by video on 6 April 2022.²⁹

Over the remainder of 2022, Ireland supported further EU sanctions packages against Russia³⁰ and continued to use its position on the Security Council to denounce the ongoing aggression and ‘terror, conflict and hunger’ that Russia had inflicted upon Ukraine.³¹ Ireland also rejected the ‘sham referendums’ held in September 2022 as a precursor to Russia’s annexation of occupied Ukrainian territories. Minister Coveney characterized the referendums as contrary to the UN Charter and the law of occupation and reiterated that Ireland would ‘never recognise Russia’s claims to illegally-annexed parts of Ukraine’.³² Addressing the UN General Assembly in September 2022, Taoiseach Micheál Martin also stated that Russia’s actions—from waging an unjust war to its problematic exercise of the veto—called into question its permanent membership on the Security Council.³³

Finally, Russia’s aggression in Ukraine gave new life to debates within Ireland about the meaning and future of Irish neutrality, including whether Ireland joining the North Atlantic Treaty Organization (NATO) would require a constitutional referendum.³⁴ Disagreement extended to whether Irish neutrality was limited to non-membership in

²⁹ DFA, ‘Minister Brophy Welcomes President Zelenskyy Highlighting Global Food Security’, Press Release (6 April 2022).

³⁰ See DFA, ‘Statement on Adoption of the Fifth Sanctions Package’, Statement (8 April 2022); DFA, ‘EU Adopts 8th Sanctions Package’, Press Release (6 October 2022).

³¹ DFA, ‘Statement at the UNSC Briefing on Ukraine – Humanitarian’, Statement (6 December 2022).

³² DFA, ‘Statement by Minister Coveney on the sham referendums in Ukraine’, Statement (28 September 2022).

³³ D McConnell, ‘Taoiseach: Russia’s Place on United Nations Security Council Must Be Questioned’, *Irish Examiner* (23 September 2022). The legal obstacles to removing Russia from the Security Council are considerable. See J Van de Riet, ‘No, Russia Can (Still) Not Be Removed From the UN Security Council: A Response to Thomas Grant and Others: Part One’ (*Opinio Juris*, 11 February 2023) <http://opiniojuris.org/2023/02/11/no-russia-can-still-not-be-removed-from-the-un-security-council-a-response-to-thomas-grant-and-others-part-one/>.

³⁴ See N O’Leary, ‘Ireland Would Not Need Referendum to Join NATO, Says Taoiseach’, *Irish Times* (8 June 2022). For a contrary view: E Daly, ‘Neutrality and the Irish Constitution’ (*Verfassungblog* 13 April 2022) <https://verfassungsblog.de/neutrality-and-the-irish-constitution/>.

military alliances or required a broader notion of impartiality. Speaking in the Dáil, the Taoiseach stated that ‘militarily non-aligned’ does not mean ‘politically non-aligned’:

We are not politically neutral in respect of Ukraine. Russia has invaded Ukraine. How could we be neutral? . . . This is not a conflict between two countries. This was an invasion by one country with an imperialist 19th-century perspective that believes it has a right to say that its neighbour does not have a right to exist We cannot accept that premise.³⁵

The future of Irish neutrality promised to be a focus of continuing debate in 2023.

II. United Nations Security Council

On 17 June 2020, Ireland was elected to a two-year term on the 15-member UN Security Council, commencing 1 January 2021.³⁶ Ireland outlined three priorities at the start of its term: building peace, strengthening conflict prevention, and ensuring accountability.³⁷ Two of Ireland’s priorities included impressing upon the Council the need to engage with all parties to a conflict to ensure that peacebuilding efforts are inclusive and effective, as well as the need to recognize climate change and extreme weather, human rights violations, and social and economic inequality as contemporary threats to international peace and security.³⁸ Irish initiatives and achievements during its term included the following:

- Ireland served with Norway as co-penholders on the Syria Humanitarian file and successfully brokered a deal in July 2021 to ensure continuation of a humanitarian aid corridor in northwest Syria, a ‘crucial lifeline’ to millions of people.³⁹

³⁵ Dáil Deb 15 November 2022, vol 1029 no 3, <https://www.oireachtas.ie/en/debates/debate/dail/2022-11-15/11/#s12>

³⁶ DFA, ‘Ireland Wins Seat on United Nations Security Council’, Press Release (18 June 2020).

³⁷ DFA, ‘UN Security Council Open Debate on the “Challenges of Maintaining Peace and Security in Fragile Contexts”’, Statement (6 January 2021).

³⁸ *ibid.*

³⁹ Simon Coveney, Minister for Foreign Affairs, ‘Ireland on the UN Security Council’ (Speech at the Royal Irish Academy, Dublin, 23 November 2022). See also text at notes 165-168.

- Ireland acted as facilitator for Resolution 2231 and the Council’s efforts ‘to persuade all parties to return to full compliance’ with the Joint Comprehensive Plan of Action (JCPOA) (the Iran nuclear deal).⁴⁰
- Drawing on its long experience with UN peacekeeping, Ireland led the work on a unanimously-adopted resolution that set forth principles to govern the changeover from military peacekeeping operations to civilian-led operations,⁴¹ and Ireland also led on the renewal of authorisation for the EU peacekeeping force in Bosnia and Herzegovina.⁴²
- Based on its long-standing ties with Ethiopia (the largest recipient of Irish Aid funding), Ireland brokered two Security Council statements on the armed conflict in Tigray.⁴³
- Ireland co-chaired with Mexico the Informal Expert Group on Women, Peace and Security.⁴⁴
- Ireland co-chaired with Niger the Informal Expert Group on Climate and Security and led the initiative on a draft resolution on the role of climate change as a ‘threat multiplier’, which Russia vetoed in December 2021.⁴⁵
- While holding the Presidency of the Council in September 2021, Ireland led discussions on Afghanistan, Libya, Sudan, South Sudan, Syria, Yemen, and the Middle

⁴⁰ Ibid. The 2015 agreement was severely undermined by the unilateral withdrawal of the United States by the Trump administration in 2018. See DFA, ‘Min Coveney Speaks with DG of the International Atomic Energy Agency’, Press Release (18 March 2021).

⁴¹ UNSC Res 2594 (9 September 2021) UN Doc S/RES/2594.

⁴² UNSC Res 2604 (3 November 2021) UN Doc S/RES/2603.

⁴³ Coveney, ‘Ireland on the Security Council’ (n 39). See UNSC, ‘Security Council Press Statement on Ethiopia’ (22 April 2021) UN Doc SC/14501; UNSC, ‘Security Council Press Statement on Ethiopia’ (5 November 2021) UN Doc SC/14691. In October 2022, the Ethiopian government and the Tigray People’s Liberation Front entered into a peace agreement, and Ireland stated its intention to remain engaged with implementation efforts. Ibid. See also text at notes 124-130.

⁴⁴ Ibid.

⁴⁵ Simon Coveney, ‘Reflecting on Ireland’s First-Year on the Security Council’ (Speech at the Royal Irish Academy, Dublin, 15 December 2021).

East peace process, and open debates on climate and security, peacekeeping reform, and the Nuclear Test Ban Treaty.⁴⁶

- Ireland also addressed the Council on issues including armed conflict and hunger, land mines, and UN-African Union cooperation.⁴⁷
- Ireland convened an ‘Arria-formula’ meeting in June 2022 on the optimisation of the relationship between the Security Council and the ICC.⁴⁸
- Ireland worked with the United States on Resolution 2585, which created a safe harbour across UN sanctions regimes for humanitarian actors.⁴⁹ Minister for Foreign Affairs Simon Coveney TD explained that Ireland’s goal was to ensure that humanitarians can work ‘without fear of inadvertently falling foul of UN sanctions regimes’ and that the carve-out responded to the concern that ‘adverse impacts on humanitarian works’ can undermine the legitimacy of a sanctions regime.⁵⁰

Ireland also made no secret of its frustration with misuse of the veto and the need for Security Council reform. In April 2022, Ireland supported the Liechtenstein-led ‘veto initiative’ at the General Assembly, which culminated in the adoption of a resolution that mandated the President of the Assembly to ‘convene a formal meeting . . . within 10 working days of the casting of a veto by one or more permanent members of the Security Council’.⁵¹ Ireland described this as ‘a significant step towards increased scrutiny of veto use’ and also called upon all elected and permanent Security Council members ‘to refrain

⁴⁶ *ibid.* See also DFA, ‘Minister Byrne Chairs UN Security Council Meeting on Nuclear Test Ban Treaty’, Press Release (27 September 2021).

⁴⁷ DFA, ‘Statement by Minister Coveney at UN Security Council Debate on Food Security’, Statement (11 March 2001); DFA, ‘Minister Coveney Addresses the UN Security Council on the Issue of Mines’, Press Release (8 April 2021); DFA, ‘Minister Coveney Addresses UN Security Council Meeting on Cooperation Between UN and the AU’, Press Release (28 October 2021).

⁴⁸ Coveney, ‘Ireland on the Security Council’ (n 39). ‘Arria-formula’ refers to a mechanism by which Security Council members can organize informal meetings between the Security Council and individuals, organisations, or institutions on topics within the Security Council’s remit. See Security Council Report, ‘Arria-formula Meetings’ (16 December 2020), <https://www.securitycouncilreport.org/un-security-council-working-methods/arria-formula-meetings.php>.

⁴⁹ UNSC Res 2585 (9 July 2021) UN Doc S/RES/2585 (2021).

⁵⁰ DFA, ‘Ireland and US Lead on Landmark UN Security Council Resolution’, Press Release (9 December 2022).

⁵¹ UNGA Res 76/262, ‘Standing Mandate for a General Assembly Debate When a Veto is Cast in the Security Council’ (26 April 2022) UN Doc A/RES/72/262.

from blocking any draft resolution intended to prevent or stop mass atrocities'.⁵² Ireland also pressed for reform to address the 'historic and unjust underrepresentation of Africa on the Council' and to move past the tendency to allow 'narrow self-interest' to thwart the 'ambition and determination' required of the Council.⁵³

Reflecting on the Security Council's mixed record over the course of Ireland's term, Minister Coveney stated that Ireland took up its seat with a clear view of the Security Council's flaws and limitations—including the 'anachronism' of the veto.⁵⁴ Despite frustration with the Council's failures on some issues—from Russia's war in Ukraine to the Israeli-Palestinian conflict—Ireland maintained its view that the Council plays 'a pivotal role at the heart of the multilateral system' and remained capable of delivering outcomes 'that can have an immense impact on the ground'.⁵⁵

III. Presidency of the Committee of Ministers of the Council of Europe

Ireland held the Presidency of the CoE's Committee of Ministers from 20 May to 9 November 2022.⁵⁶ At the launch of Ireland's six-month term, Minister for Foreign Affairs Simon Coveney TD outlined Ireland's key priorities, including the need to bring together Heads of State and Government to reaffirm 'the conscience of Europe' in the wake of war, to protect the human rights of Ukrainians, and to hold Russia to account.⁵⁷ He further laid out plans to 'champion deliberative democracy' based on Ireland's experience with citizens'

⁵² DFA, 'Statement at the UNSC Open Debate on Reformed Multilateralism', Statement (15 December 2022). These statements echoed earlier remarks by Minister for Foreign Affairs, Simon Coveney TD, at the half-way point of Ireland's term, when he stated that '[n]o Member State, no matter how powerful, how large, should be able to override the will of the vast majority of Council members and the large majority of UN Members.' Coveney, 'Ireland's First-Year on the Security Council' (n 46).

⁵³ DFA, 'Statement at the UNSC Open Debate on Reformed Multilateralism', Statement (15 December 2022).

⁵⁴ Coveney, 'Ireland's First-Year on the Security Council' (n 45).

⁵⁵ Coveney, 'Ireland on the Security Council' (n 39).

⁵⁶ The Committee of Ministers is the CoE's principal intergovernmental decision-making body. Ireland last held the Presidency in 2000.

⁵⁷ DFA, 'Minister Coveney Launches Ireland's Presidency of the Council of Europe at Turin Ministerial', Press Release (20 May 2022). It was agreed during the Irish Presidency that Heads of State and Government would convene in Reykjavik in May 2023. CoE, 'Summit in Reykjavik to Renew "the Conscience of Europe"', Press Release (7 November 2022).

assemblies.⁵⁸ Finally, invoking the theme of ‘Fáilte’, Ireland sought to promote a message of ‘welcome, inclusion, and diversity’ within Europe that reflected Ireland’s own ‘experience of social change, which was spurred, in no small part, by the standards set by the Council’.⁵⁹ Ireland also described moving towards EU ratification of the ECHR as a priority item.⁶⁰

Over the course of the Irish Presidency, Ireland held over forty conferences, seminars, and roundtables focused on human rights and rule of law, including the Committee of Ministers’ first formal meeting with LGBTI+ activists.⁶¹ Following a two-day conference hosted by Minister for Justice Helen McEntee TD in September 2022, 38 of 46 CoE member states adopted the Dublin Declaration on the Prevention of Domestic, Sexual, and Gender-Based Violence, which set out commitments intended to complement the 2011 Istanbul Convention (which Ireland ratified in 2019).⁶² Other achievements included Ukraine’s accession to the CoE Development Bank and establishment of a Contact Group to support democratic forces in Belarus.⁶³ In October 2022, Dublin City University hosted delegations from the European Court of Human Rights and the Supreme Court of Ireland for a conference on ‘Human Rights in a Time of Change: Perspectives from Ireland and from Strasbourg’, which also provided an occasion to recognize the election of Judge Siofra O’Leary as the next President of the ECtHR.⁶⁴

IV. Brexit

⁵⁸ DFA, ‘Minister Coveney Launches Ireland’s Presidency’ (n 57).

⁵⁹ *ibid.*

⁶⁰ DFA, ‘Minister Coveney Addressed the Standing Committee of the Council of Europe’s Parliamentary Assembly’, Press Release (31 May 2022).

⁶¹ DFA, ‘Ireland Ends Presidency of the Council of Europe with Agreement on Historic Summit’, Press Release (7 November 2022). For further information on the Irish presidency, see <https://www.coe.int/en/web/presidency/ireland-presidency>.

⁶² CoE, ‘European Ministers Adopt “Dublin Declaration” on Preventing Violence Through Equality’, Press Release (30 September 2022). See Council of Europe (Istanbul) Convention on Preventing and Combating Violence Against Women and Domestic Violence (adopted 5 November 2011, entered into force 1 August 2014) 3010 UNTS 107.

⁶³ DFA, ‘Ireland Ends Presidency’ (n 61).

⁶⁴ CoE, ‘Dublin Conference on “Human Rights in a Time of Change”’, News (21 October 2022).

The aftershocks of the 2016 decision by the United Kingdom to leave the European Union continued to dominate Anglo-Irish relations during 2021-22. The Northern Ireland Protocol (a part of the EU-UK Withdrawal Agreement) entered into force on 1 January 2021.⁶⁵ The Protocol, which applied EU single market and customs rules to Northern Ireland, meant that goods entering Northern Ireland from the rest of the UK needed to demonstrate compliance with EU regulations in order to maintain no ‘hard border’ on the island of Ireland.⁶⁶

Because many details relating to the Protocol’s operation were decided only in December 2020,⁶⁷ the EU and UK agreed to simplify or suspend requirements for ‘grace periods’ relating to different categories of goods from the start of 2021.⁶⁸ In March 2021, the UK unilaterally extended the grace period applicable to ‘agri-food rules’, a step that Minister for Foreign Affairs Simon Coveney TD described as ‘deeply unhelpful’.⁶⁹ The EU responded by initiating infringement proceedings against the UK,⁷⁰ but these were halted in July 2021 to create the ‘necessary space’ to work towards ‘durable solutions’.⁷¹ At that time, the EU also extended certain grace periods—a development that Irish officials pointed to as evidence of the EU’s commitment to responding to UK concerns.⁷² Irish officials also praised

⁶⁵ DFA, ‘Minister Byrne on the NI Protocol at the Oireachtas Joint Committee’, Speech (9 February 2021).

⁶⁶ Implementation got off to a rocky start when the EU announced on 29 January 2021 that it planned to trigger emergency measures under Article 16 of the Protocol in relation to the export of Covid-19 vaccines. J Curtis, *Northern Ireland Protocol: Implementation, Grace Periods and EU-UK Discussions (2021-22)* (House of Commons Library 2022) at 13. The EU rescinded the decision following consultations with Ireland. DFA, ‘Minister Byrne on the NI Protocol at the Oireachtas Joint Committee’, Speech (9 February 2021); ‘Irish PM Expresses Concerns to EU Chief over Northern Ireland Protocol Move’, *Reuters* (29 January 2021).

⁶⁷ European Commission, ‘Joint Statement by the Co-Chairs of the EU–UK Joint Committee’ (8 December 2020) https://ec.europa.eu/commission/presscorner/detail/en/statement_20_2346.

⁶⁸ Curtis (n 66) at 6.

⁶⁹ DFA, ‘Statement by Simon Coveney on UK Announcement on Ireland and Northern Ireland Protocol’, Statement (3 March 2021).

⁷⁰ European Commission, ‘Withdrawal Agreement: Commission Sens Letter of Formal Notice to the United Kingdom for Breach of its Obligations Under the Protocol on Ireland and Northern Ireland’, Press Release (15 March 2021).

⁷¹ S Murray, ‘EU Halts Legal Action Against UK Over Northern Ireland Protocol Breaches’, *Euronews* (27 July 2021); see also Curtis (n 69) at 6-7.

⁷² DFA, ‘Minister Coveney Welcomes Significant Progress on Protocol Issues’, Press Release (30 June 2021).

the finalization of the EU-UK Trade and Cooperation Agreement.⁷³ That agreement set out arrangements for trade in goods and services and provisions on social security coordination, law enforcement cooperation, and continuing UK participation in some EU programmes.⁷⁴ Overall, as problems with the Protocol's implementation began to crystallize, EU-UK negotiations aimed at greater flexibility and reduced controls continued.⁷⁵ At the same time, UK threats to trigger emergency measures under Article 16 cast a pall over those talks, with the Taoiseach remarking that invoking Article 16 would be an 'irresponsible, unwise and reckless' act with 'far-reaching implications'.⁷⁶

A continuing theme was Democratic Unionist Party (DUP) opposition to the Northern Ireland Protocol, including the 'Irish Sea border' created by checks on goods moving from Great Britain to Northern Ireland.⁷⁷ On 9 September 2021, DUP leader Sir Jeffrey Donaldson declared the party's intention to frustrate any legislation aimed at keeping Northern Ireland aligned with the EU single market and to withdraw from the North-South Ministerial Council.⁷⁸ Minister for Foreign Affairs Simon Coveney TD responded that Ireland took unionist concerns seriously but that 'no positive agenda is served' by forcing the breakdown of Good Friday Agreement institutions.⁷⁹ In February 2022, Northern Ireland Agriculture

⁷³ DFA, 'Minister Coveney and Minister Byrne Welcome Final Steps in Ratifying the EU-UK Trade and Cooperation Agreement', Press Release (28 April 2021).

⁷⁴ UK in a Changing Europe, 'What is the Trade and Cooperation Agreement?' (20 July 2021) <https://ukandeu.ac.uk/the-facts/what-is-the-trade-and-cooperation-agreement/>.

⁷⁵ For an overview of proposals on both sides, see Curtis (n 70) at 20-32, 41-44. See also DFA, 'Minister Simon Coveney Welcomes Update on EU-UK Talks on NI Protocol', Press Release (17 December 2021).

⁷⁶ Dáil Deb 3 November 2021, vol 1013 no 3, <https://www.oireachtas.ie/en/debates/question/2021-11-03/?questionType=oral>.

⁷⁷ 'Brexit: DUP Vows to Send "Strong Message" to Irish Government Over NI Protocol' *BBC News* (2 February 2021); 'DUP Leadership Starts Legal Challenge Against Northern Ireland Protocol' *The Guardian* (21 February 2021). In June 2021, the High Court in Northern Ireland rejected applications for judicial review of the Protocol that alleged its incompatibility with the Act of Union 1800, the ECHR, and EU law. See Summary of Judgment, *In re Jim Allister and others (EU Exit)* (30 June 2021), <https://www.judiciaryni.uk/judicial-decisions/summary-judgment-re-jim-allister-and-others-eu-exit>. The challenges also failed on appeal. See Summary of Judgment, *In re Jim Allister and others (EU Exist) – CA* (14 March 2022), <https://www.judiciaryni.uk/judicial-decisions/summary-judgment-re-jim-allister-and-others-eu-exit-ca>.

⁷⁸ 'DUP Leader Sir Jeffrey Donaldson's Keynote Speech on the NI Protocol', *News Letter* (9 September 2021).

⁷⁹ DFA, 'Statement by Minister Simon Coveney in Response to Speech by DUP Leader Sir Jeffrey Donaldson', Statement (9 September 2021).

Minister Edwin Poots of the DUP escalated the situation by ordering a stop to controls at Northern Ireland ports—an order immediately blocked by the Belfast High Court.⁸⁰ Minister Coveney described stopping checks on goods entering Northern Ireland as ‘effectively a breach of international law’ and ‘playing politics with legal obligations’.⁸¹ After Sinn Féin won the largest number of seats in the May 2022 Northern Ireland Assembly elections the DUP announced that it would block the formation of a new Northern Ireland executive until the UK took ‘decisive action’ on the Protocol—a tactic the Taoiseach described as ‘unacceptable’.⁸²

Shortly thereafter, the UK announced plans to introduce legislation authorizing the unilateral disapplication of some Protocol provisions: the Northern Ireland Protocol Bill.⁸³ The European Commission responded by reactivating the infringement proceeding begun on 15 March 2021 and launching two new proceedings.⁸⁴ The Taoiseach described the proposed legislation as ‘economic vandalism’ and ‘unilateralism of the worst kind in terms of honouring and adhering to international agreements’.⁸⁵ In July 2022, the European Commission added four new infringement actions against the UK to those underway.⁸⁶ Notwithstanding these setbacks, the election of Liz Truss as the new British Prime Minister in September 2022 (and her replacement by Rishi Sunak six weeks later) offered the possibility of a post-Boris Johnson ‘reset’ in Brexit negotiations. Following talks with the

⁸⁰ ‘Brexit: Sea Border Checks Order Suspended by High Court’, *BBC News* (4 February 2022).

⁸¹ Seanad Deb 2 February 2022, vol 282 no 7, <https://www.oireachtas.ie/en/debates/debate/seanad/2022-02-02/16/>. In December 2022, the Belfast High Court held that the decision to halt checks was unlawful. [2022] NIKB 34.

⁸² L O’Carroll, ‘Unacceptable For One Party to Block Stormont, Says Irish PM’, *The Guardian* (20 May 2022).

⁸³ DFA, ‘Statement by Minister Coveney on Foreign Secretary Liz Truss’s Statement of Intentions to Table Legislation to Dis-apply Parts of the Protocol on Ireland/Northern Ireland’, Statement (17 May 2022). See generally A McCormick, *The Northern Ireland Protocol Bill* (IEEA 2022), <https://www.ieea.com/publications/the-northern-ireland-protocol-bill>.

⁸⁴ European Commission, ‘Commission Launches Commission Launches Infringement Proceedings Against the UK for Breaking International Law and Provides Further Details on Possible Solutions to Facilitate the Movement of Goods Between Great Britain and Northern Ireland’, Press Release (15 June 2022).

⁸⁵ O Kelleher, ‘UK Protocol Policy an Act of “Economic Vandalism” Against North, Says Taoiseach’, *Irish Times* (19 June 2022).

⁸⁶ European Commission, ‘Commission Launches Four New Infringement Procedures Against the UK’, Press Release (22 July 2022).

Taoiseach in November, Primer Minister Sunak expressed confidence that a ‘negotiated solution’ was in reach.⁸⁷ The year ended with Leo Varadkar TD re-assuming the mantle of Taoiseach and vowing to take a ‘flexible and reasonable’ approach to reforming an arrangement that had turned out to be perhaps ‘a little too strict’.⁸⁸ In February 2023, the UK and EU entered into the so-called ‘Windsor framework’ that included new procedures to deal with goods entering into Northern Ireland from Great Britain and the suspension of the Northern Ireland Protocol Bill.⁸⁹ At the time of writing, however, the implementation of the new framework and the fate of power-sharing in Stormont remained unresolved due to continued Unionist opposition. The Windsor framework will receive a fuller consideration in the next volume’s report.

V. COVID-19

At the start of 2021, Ireland remained firmly within the grips of Covid-19, the country under lockdown. By the end of 2022—after two years of restrictions, quarantines, the forced closure of schools, shops, pubs and restaurants, cancelled events, and one of the world’s most successful vaccine roll-outs—Ireland had largely returned to a state of normalcy.⁹⁰

Facing ‘the fastest and highest spike in cases in the world’ in January 2021 following the easing of restrictions in late-2020,⁹¹ Ireland extended requirements for pre-departure testing and mandatory 14-day periods of isolation or restricted movement.⁹² In March 2021, Ireland became the only EU member state to introduce mandatory hotel quarantine for

⁸⁷ ‘Rishi Sunak “Confident” of NI Protocol Talks Breakthrough’, *BBC News* (10 November 2022).

⁸⁸ L O’Carroll, ‘Brexit Northern Ireland Protocol “Perhaps a Bit Too Strict”, Says Varadkar’, *The Guardian* (3 January 2023).

⁸⁹ Prime Minister’s Office, ‘The Windsor Framework’ (27 February 2023), <https://www.gov.uk/government/publications/the-windsor-framework>.

⁹⁰ C MacCurry, ‘Taoiseach Hails Ireland’s “Most Successful” Vaccine Rollout in the World’, *Irish Independent* (27 September 2021).

⁹¹ L O’Neill, ‘How Ireland Turned Around One of the Biggest Spikes in COVID Cases in the World’, *The Conversation* (10 February 2021).

⁹² DFA, ‘Government Extends Requirement for Pre Departure Covid-19 Testing to All Countries’, Press Release (13 January 2021).

travellers from ‘high-risk’ countries—a list that initially covered all of South America, many African states, Austria, and United Arab Emirates, with Belgium, Canada, France, Italy, and the United States added shortly thereafter.⁹³ In July 2021, fully-vaccinated persons began to receive EU Digital Covid-19 certificates and travel restrictions were eased.⁹⁴ By the end of September, all remaining states were removed from the hotel quarantine list.⁹⁵ During 2022, international travel largely returned to normal, with the Department of Foreign Affairs eventually redesignating most countries at the lowest risk level.⁹⁶

Ireland’s Covid-19 response also extended to humanitarian assistance, with Taoiseach Micheál Martin describing vaccine inequity as ‘a moral test for our global community’ at the UN General Assembly.⁹⁷ In February 2021, Ireland announced €5 million in funding support for vaccine access by developing countries, including through the UN-led COVAX facility, and later sent a major shipment of vital supplies to India.⁹⁸ In the second half of 2021, Ireland donated over a million vaccine doses to Ghana, Indonesia, Nigeria and Uganda, and, at the start of 2022, pledged a further €5 million to COVAX.⁹⁹ These efforts complemented Ireland’s broader financial commitment to global health, which amounted to at least €200 million of Irish Aid funding in 2021. Yet despite Ireland’s commitment to

⁹³ S Pollak, et al, ‘Mandatory Hotel Quarantine Booking Portal Goes Live With 12-Night Stay Costing €1,875 Per Person’, *Irish Times* (23 March 2021); P Halpin, ‘Ireland Adds US, France, Italy to Tough Hotel Quarantine Regime’ *Reuters* (9 April 2021). On the compatibility of hotel quarantine rules with EU free movement rights, see T Lock, ‘Is Mandatory Hotel Quarantine Compatible with EU Law?’ (*Covid-19 Law and Human Rights Observatory*, 15 April 2021), <https://tcdlaw.blogspot.com/2021/04/is-mandatory-hotel-quarantine.html?spref=tw>.

⁹⁴ Department of the Taoiseach, ‘Resilience and Recovery: The Path Ahead’, Press Release (27 July 2021).

⁹⁵ R Black, ‘Mandatory Hotel Quarantine Ends as Final States Removed from List’, *Irish Independent* (25 September 2021).

⁹⁶ DFA, ‘Minister Coveney Welcomes the Department’s Restoration of “Normal Precautions” Security Rating’, News (26 October 2022).

⁹⁷ DFA, ‘Ireland – National Statement by Taoiseach Micheál Martin – UNGA 76’, Speech (27 September 2021).

⁹⁸ DFA, ‘Minister Brophy Announces Irish Aid Support for COVID-19 Vaccines in Developing Countries’, Press Release (19 February 2021); DFA, ‘Ireland Responds to COVID-19 Surge in India’, Press Release (5 May 2021).

⁹⁹ Department of Health, ‘500,000 COVID-19 Vaccines Donated by Ireland Arrive in Nigeria’, Press Release (29 November 2021); Irish Aid, ‘Minister Brophy Announces Irish Aid Funding of €5 m for COVID-19 Vaccines for Developing Countries, News (19 January 2022).

‘universal and fair access’ to Covid-19 vaccines,¹⁰⁰ the global failure to deliver on vaccine equity appeared likely to be one of the pandemic’s lasting legacies.¹⁰¹

VI. International Agreements

This section sets out the international agreements that entered into force for Ireland during 2020, the last year for which full information is available.

Table 1. List of Multilateral Agreements that Entered into Force during 2020

ITS number	Title of agreement
No 2 of 2020	Protocol of 2014 to the Forced Labour Convention, 1930 <i>Ireland’s Instrument of Ratification deposited on 30 January 2019, entered into force with respect to Ireland on 4 February 2020</i>
No 3 of 2020	Agreement establishing the African Development Fund <i>Signed by Ireland on 29 January 2020. Ireland’s Instrument of Ratification deposited on 4 March 2020, entered into force with respect to Ireland on 4 March 2020</i>
No 5 of 2020	Agreement establishing the enhanced partnership and cooperation between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part <i>Ireland’s notification of the completion of procedures necessary for the entry into force of this Agreement deposited on 22 November 2018, entered into force on 1 March 2020</i>

Table 2. List of Bilateral Agreements that Entered into Force during 2020

ITS number	Title of agreement
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¹⁰⁰ Dáil Deb 23 Nov 2021, vol 1014 no 4, <https://www.oireachtas.ie/en/debates/question/2021-11-23/315/>.

¹⁰¹ See R Oehler and V Vega, ‘Worldwide Vaccine Inequality Threatens to Unleash the Next COVID-19 Variant’ (2022) 123 *International Journal of Infectious Diseases* 133; M. Kavanagh and R Singh, ‘Vaccine Politics: Law and Inequality in the Pandemic Response to COVID-19’ (2023) 14 *Global Policy* 229.

No 1 of 2020	<p>Agreement between the Government of Ireland and the Government of the United Arab Emirates for Air Services between and beyond their respective territories</p> <p><i>Done at New York on 28 September 2018; notifications of completion of requirements for entry into force exchanged on 10 July 2019 and 13 January 2020; entered into force on 13 January 2020</i></p>
No 4 of 2020	<p>Convention between Ireland and the Kingdom of the Netherlands for the Elimination of Double Taxation with respect to Taxes on Income and Capital Gains and the Prevention of Tax Evasion and Avoidance</p> <p><i>Ireland's notification of the completion of the procedures necessary for the entry into force of this Agreement exchanged on 22 November 2019 and 30 January 2020, entered into force with respect to Ireland on 29 February 2020</i></p>

At least one agreement that Ireland did *not* enter into during 2021-22 also merits attention. Ireland's plans to ratify the EU-Canada Comprehensive Economic and Trade Agreement ('CETA') hit a significant speed bump in November 2022 when the Irish Supreme Court upheld a constitutional challenge to the proposed ratification. In *Costello v Ireland*, the Supreme Court, by a narrow 4-3 majority, determined that CETA's investor-state dispute settlement facility—an innovative standing tribunal rather than an ad hoc arbitral mechanism—was incompatible with the concept of 'juridical sovereignty' enshrined in the Irish Constitution.¹⁰² The reasoning turned on the fact that a CETA Tribunal award (based on a finding that Ireland had breached an investor's rights under CETA) would be almost automatically enforceable in Ireland pursuant to the Arbitration Act 2010, which governs the enforcement of arbitral awards under the 1958 New York Convention and the 1966 Washington (ICSID) Convention.¹⁰³ CETA ratification might therefore create a situation in which Irish courts could not decline to enforce an award that infringed upon Ireland's

¹⁰² *Costello v Ireland* [2022] IESC 44. See O Doyle, 'Trojan Horses and Constitutional Identity' (*Verfassungsblog*, 23 November 2022), <https://verfassungsblog.de/trojan-horses-and-constitutional-identity/>.

¹⁰³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3; Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (Washington Convention) (adopted 18 March 1965, entered into force 14 October 1966) 575 UNTS 159.

‘constitutional identity’.¹⁰⁴ Remarkably, a six-judge majority took the position that amending the Arbitration Act 2010 to provide Irish courts with new grounds to reject the enforcement of a foreign arbitral award provided a potential solution. However, this constitutional fix raised the prospect of Ireland becoming non-compliant with the New York and Washington Conventions. Overall, the invocation of ‘constitutional identity’ raised broader questions about the scope of Ireland’s capacity to enter into international legal agreements.¹⁰⁵

VII. Foreign Conflicts and Controversies

In addition to Russian aggression in Ukraine, Ireland engaged with many other foreign conflicts during 2021-22. This section highlights Irish state practice across a range of situations that raised questions of international law, including human rights, treaty obligations, and state responsibility,

Afghanistan. In August 2021, Taliban fighters seized control of Kabul and re-established Taliban rule, two decades after Operation Enduring Freedom removed the Taliban from power following the 11 September 2001 terrorist attacks.¹⁰⁶ This rapid turn of events, including the withdrawal of US and NATO forces, spiralled into crisis as desperate individuals searched for pathways to leave Afghanistan. Ireland condemned Taliban attacks against civilians and called for safe humanitarian access while announcing a modest number of additional refugee settlement places for Afghans under the Irish Refugee Protection Programme.¹⁰⁷ On 23 August 2021, Ireland took the unusual step of deploying an Emergency Consular Assistance Team to Kabul airport for a short period to assist Irish citizens seeking to evacuate.¹⁰⁸ Over a period of two months, Ireland helped as many as 104

¹⁰⁴ Doyle, ‘Trojan Horses’ (n 102).

¹⁰⁵ *ibid.*

¹⁰⁶ A Kazmin, ‘Taliban Forces Pour Into Kabul as Afghan Government Collapses’, *Irish Times* (15 August 2021).

¹⁰⁷ DFA, ‘Government Calls for an End to the Violence in Afghanistan and Announces More Humanitarian Visas’, Statement (16 August 2021).

¹⁰⁸ DFA, ‘Minister Simon Coveney Approves Consular Mission to Kabul Airport’, Press Release (23 August 2021).

Irish citizens and their dependents leave Afghanistan.¹⁰⁹ Addressing the UN General Assembly, Taoiseach Micheál Martin underscored the threat posed by Taliban rule and the global community's responsibility to stand with Afghan women and girls, whose hard-won rights were 'non-negotiable'.¹¹⁰

Belarus. Following the fraudulent election and violent crackdown on political protest in Belarus in 2020, Ireland maintained close contact with Belarusian opposition leaders and called for the immediate release of political prisoners.¹¹¹ In May 2021, Belarus used the false pretext of a bomb threat to force the landing of a Ryanair jet transiting from Greece to Lithuania in order to arrest Belarusian dissident Roman Protasevich, a passenger on the flight.¹¹² The Taoiseach described the 'state-sponsored coercive act' as 'piracy in the skies'.¹¹³ When an International Civil Aviation Organisation report found that Belarus had violated international aviation law, Ireland addressed the UN Security Council to further rebuke Belarus for the incident and for its complicity in Russia's war in Ukraine.¹¹⁴ In November 2021, Belarus drew international condemnation once again after it induced large numbers of migrants to Belarus and then forcibly coerced those individuals to seek entry into the EU via Poland, Latvia, and Lithuania, provoking a border crisis.¹¹⁵ Minister of State

¹⁰⁹ DFA, 'Coveney—88 Irish Citizens and Dependents Now Evacuated from Afghanistan', Pres Release (7 October 2021); 'DFA, 'A Further 16 Irish Citizens and Dependents Evacuated from Afghanistan', Statement (21 October 2021).

¹¹⁰ DFA, 'Ireland – National Statement – UNGA 76' (n 97).

¹¹¹ DFA, 'Minister Coveney and Minister of State Mark Day of Solidarity With Belarus', Press Release (5 February 2021); DFA, 'Minister Byrne Statement on Belarusian Political Prisoners', Statement (29 May 2022).

¹¹² D McLaughlin et al, 'Forced Landing of Ryanair Plan in Belarus to Detain Activist "Unacceptable", Says EU', *Irish Times* (23 May 2021).

¹¹³ N O'Leary, et al, 'EU Agrees Sanctions on Belarus After Forced Landing of Ryanair Flight', *Irish Times* (24 May 2021).

¹¹⁴ UNSC, 'Belarus Improperly Diverted Passenger Flight, Endangered Lives, International Civil Aviation Organization Senior Official Tells Security Council', Press Release (31 October 2022) UN Doc SC/15088. On a potential claim by Ireland against Belarus, see M Jackson and A Tzanakopoulos, 'Aerial Incident of 23 May 2021: Belarus and the Ryanair Flight 4978' (*EJIL:Talk!*, 24 May 2021), <https://www.ejiltalk.org/aerial-incident-of-23-may-2021-belarus-and-the-ryanair-flight-4978/>.

¹¹⁵ See A Kleczkowska, 'What Does the "Hybrid Attack" Carried Out by Belarus Against the EU Borders Mean in Reality? An International Law Perspective' (*EJIL:Talk!* 13 December 2021), <https://www.ejiltalk.org/what-does-the-hybrid-attack-carried-out-by-belarus-against-the-eu-borders-mean-in-reality-an-international-law-perspective/>.

for European Affairs Thomas Byrne TD condemned the ‘cynical exploitation of migrants for political purposes’ and expressed Ireland’s solidarity with Poland, Lithuania, and Latvia for resisting these attempts ‘to provoke a violent confrontation on our external borders’.¹¹⁶

China. On 31 August 2022, the Office of the High Commissioner for Human Rights (OHCHR) released a long-awaited report on the situation of human rights in China’s Xinjiang region, where China already faced accusations of crimes against humanity and genocide for its treatment of the Uyghur minority.¹¹⁷ The OHCHR report pointed to credible evidence of serious human rights violations against Uyghurs, including conduct that might constitute international crimes.¹¹⁸ However, on 6 October 2022, the UN Human Rights Council— by a vote of 17 to 19, with 11 abstentions—rejected a draft resolution to open a debate on human rights violations in Xinjiang.¹¹⁹ Ireland took the view that this vote undermined the HRC’s responsibility to ‘fulfil its role in promoting respect for human rights, without any distinction of any kind’.¹²⁰ Also in October 2022, Ireland took action against a so-called Chinese overseas ‘police service station’ operating on Capel Street in Dublin.¹²¹ The ‘station’ was part of a global network of Chinese state-run outposts that faced accusations of surveilling, harassing and coercing Chinese nationals abroad (while also ostensibly assisting some Chinese nationals with basic administrative tasks).¹²² In directing the Chinese embassy to close the station, Irish authorities stated that Chinese officials had not sought permission to operate the facility and that ‘actions of all foreign states on Irish territory must be in

¹¹⁶ DFA, ‘Statement by Minister Byrne on Belarus’, Statement (11 November 2021).

¹¹⁷ OHCHR, ‘Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China’ (31 August 2022) <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region>; C Quinn, ‘Blinken Names and Shames Human Rights Abusers’, *Foreign Policy* (31 March 2021).

¹¹⁸ OHCHR, ‘Assessment of Human Rights Concerns’ (n 117).

¹¹⁹ E Farage, ‘UN Body Rejects Debate on China’s Treatment of Uyghur Muslims in Blow to West’ *Reuters* (7 October 2022).

¹²⁰ Ireland at UN in Geneva, <https://twitter.com/IrelandUNGeneva/status/1578006098891661312> (6 October 2022).

¹²¹ J Power and C Gallagher, ‘Chinese Overseas Police Station in Dublin Ordered to Shut’, *Irish Times* (27 October 2022).

¹²² See Safeguard Defenders, ‘110 Overseas: Chinese Transnational Policing Gone Wild’ (12 September 2022), <https://safeguarddefenders.com/sites/default/files/pdf/110%20Overseas%20%28v5%29.pdf>.

compliance with international law and domestic law requirements'.¹²³ This alluded to the basic rule that one state cannot seek to enforce its laws in another state's territory without the territorial state's consent.¹²⁴

Ethiopia. From November 2020 until a permanent ceasefire was agreed in November 2022, the Ethiopian government and rebels associated with the Tigray People's Liberation Front (supported by fighters from neighbouring Eritrea) engaged in an armed conflict that caused as many as 600,000 fatalities.¹²⁵ Ireland led the UN Security Council response.¹²⁶ Following a Security Council statement on 5 November 2021 that reiterated the need for full humanitarian access and open political dialogue,¹²⁷ Ethiopia expelled four of the six Irish diplomats at the Irish Embassy in Addis Ababa.¹²⁸ Minister for Foreign Affairs Simon Coveney TD expressed regret at that decision, especially given Ireland's 'deep commitment to the country' as reflected by the fact that Ethiopia had been the largest recipient of Irish Aid funding since 2016.¹²⁹ The Minister reiterated that Ireland would continue to support Ethiopia 'as the humanitarian crisis worsens'.¹³⁰ A year later, Minister Coveney commended the African Union and the panel of high-level mediators that helped to broker the November 2022 peace agreement.¹³¹

Iran. The death on 16 September 2022 of 22-year-old Mahsa Amini following her arrest by Iran's morality police sparked mass protests across Iran and a brutal crackdown on demonstrators by the security forces.¹³² Ireland condemned 'the disproportionate and

¹²³ Power and Gallagher, 'Chinese Overseas Police Stations' (n 121).

¹²⁴ See A Mills, 'Rethinking Jurisdiction in International Law' (2014) 84 *British Yearbook of International Law* 187, 195.

¹²⁵ S Hayden, 'Tigray Conflict: Ethiopia and Rebel Forces Agree Truce', *Irish Times* (2 November 2022).

¹²⁶ See text at note 43.

¹²⁷ UNSC, 'Security Council Press Statement on Ethiopia' (5 November 2021) (n 44).

¹²⁸ DFA, 'Statement by the Department of Foreign Affairs on Ethiopia', Press Release (24 November 2021).

¹²⁹ *ibid.*

¹³⁰ *ibid.*

¹³¹ DFA, 'Statement by Minister of Foreign Affairs Simon Coveney on Ethiopia', Statement (2 November 2022).

¹³² OHCHR, 'Iran: Crackdown on Peaceful Protests Since Death of Jina Mahsa Amini Needs Independent International Investigation, Say UN Experts', Press Release (26 October 2022).

unjustifiable response’ and drew attention to the fact that Iran is a signatory to the Universal Declaration of Human Rights and the Beijing Declaration and Platform for Action, which commits Iran to ensure the full implementation of the human rights of women and girls.¹³³ Ireland also criticized Iran’s decision ‘to severely restrict access to the internet’ in breach of its obligation to uphold the freedom of assembly and freedom of speech.¹³⁴ Ireland welcomed the UN Human Rights Council’s decision in November 2022 to establish the Independent International Fact-Finding Mission on the Islamic Republic of Iran.¹³⁵ Ireland also urged Iran to stop supplying weapons to Russia and ‘directly contributing’ to Russia’s gross violations of IHL in Ukraine.¹³⁶ Overall, these events threatened Ireland’s plans to reopen an embassy in Tehran in 2023, a decision that was put ‘under review’.¹³⁷

Israel/Palestine. Throughout 2021-22, Ireland reiterated its support for a negotiated two-state solution and expressed disappointment with Israeli plans to expand West Bank settlements, actions which Ireland viewed as contrary to international law,¹³⁸ as well as the demolition of Palestinian homes in violation of the Fourth Geneva Convention.¹³⁹ Ireland also expressed disappointment with the Palestinian Authority’s decision to postpone elections in April 2021.¹⁴⁰ A major escalation in violence in April and May 2021 culminated in armed conflict between Israel and Hamas from 10-21 May 2021.¹⁴¹ Addressing the UN

¹³³ DFA, ‘Statement from Minister Coveney on Iran’, Statement (3 October 2022).

¹³⁴ *ibid.*

¹³⁵ UNHRC Res S-35/1 (24 November 2022) UN Doc A/HRC/RES/S-35/1. See also Ireland at UN in Geneva, <https://twitter.com/IrelandUNGeneva/status/1595803402679861248> (24 November 2022).

¹³⁶ DFA, ‘Statement from Minister of Foreign Affairs Simon Coveney TD’, Statement (20 October 2022).

¹³⁷ See DFA, ‘Minister Coveney Announces Re-establishment of an Irish Diplomatic Presence in Iran’, Press Release (2 March 2021); J Horgan-Jones, ‘Backlash Grows Over Reopening of Irish Embassy in Iran as Ambassador Accused of “Propaganda”’, *Irish Times* (30 November 2022). Ireland closed its embassy in Tehran in 2012.

¹³⁸ DFA, ‘Minister Coveney Addresses UN Security Council at Debate on the Situation in the Middle East’, Press Release (26 January 2021).

¹³⁹ DFA, ‘Statement by Minister Simon Coveney on Israeli Actions at Humsa Al Bqai’a’, Statement (5 February 2021).

¹⁴⁰ DFA ‘Statement by Minister Coveney on Postponement of Palestinian Elections’, Statement (30 April 2021).

¹⁴¹ See P Kingsley, ‘After Years of Quiet, Israeli-Palestinian Conflict Exploded. Why Now?’ *New York Times* (15 May 2021).

Security Council, Minister Coveney called this ‘the latest tragic cycle in a conflict whose recurrence shames all of us at the United Nations and as an international community’.¹⁴² The Minister called upon all sides to exercise restraint and to abide by core IHL principles, especially given troubling reports of over 50 child fatalities; he also singled out for condemnation the Israeli strike against a building in Gaza that housed several international media outlets.¹⁴³ The Irish government was also ‘deeply disturbed by the reported use of live ammunition by Israeli Security Forces in the context of protests and clashes,’ actions that undermined the right to peaceful protest.¹⁴⁴ Finally, Ireland also highlighted the need to uphold the rights of human rights defenders and civil society after Israel designated six Palestinian NGOs, including entities which receive support from Irish Aid, as terrorist organisations, without any substantiating evidence.¹⁴⁵ Ireland also continued to support the United Nations Relief and Works Agency, the UN agency that provides support to Palestinian refugees.¹⁴⁶

Myanmar. On 1 February 2021, Myanmar’s military overthrew the elected government and embarked on a chaotic and brutal campaign to subdue anti-regime groups throughout the multi-ethnic state.¹⁴⁷ Ireland condemned the coup and the detention of political leaders, including State Counsellor Aung San Suu Kyi, other political prisoners, and human rights defenders.¹⁴⁸ Ireland also raised concerns about the deteriorating situation in Myanmar repeatedly at the United Nations and pledged its support to ongoing accountability efforts at the Independent Investigative Mechanism for Myanmar, the

¹⁴² DFA, ‘Minister Coveney Statement to UNSC on the Situation in the Middle East’, Statement (16 May 2001).

¹⁴³ *ibid.* See B McKernan, ‘Israeli Strike Destroys Gaza Tower Housing Media Organisations’, *Guardian* (15 May 2021).

¹⁴⁴ DFA, ‘Situation in the Middle East’ (n 142).

¹⁴⁵ DFA, ‘Statement by Minister Coveney on the Designation of Palestinian NGOs as Terrorist Organisations’, Statement (27 October 2021).

¹⁴⁶ DFA, ‘Min Coveney Announces Funding of 6 Million to UN Agency for Palestine Refugees’, News (16 March 2021); DFA, ‘Minister Coveney Announces Additional Funding of €2 million to UN Agency for Palestine Refugees’, Press Release (18 September 2022).

¹⁴⁷ R Paddock, ‘A Year After Coup, Myanmar is Mired in Conflict and Chaos’, *Irish Times* (1 February 2022).

¹⁴⁸ DFA, ‘Statement by Minister Coveney on Reported Coup in Myanmar’, News (1 February 2021); DFA, ‘Statement by Minister for Foreign Affairs on Coup in Myanmar’, Statement (11 February 2021).

International Court of Justice, and the International Criminal Court.¹⁴⁹ It also backed EU sanctions against the coup's leaders and related economic entities.¹⁵⁰ In July 2022, Ireland condemned in the strongest possible terms the regime's execution of four pro-democracy figures.¹⁵¹ In December 2022, the Security Council adopted Resolution 2669 to demand an end to the violence in Myanmar, unhindered humanitarian access, and the creation of conditions for the voluntary, safe, and dignified return of the displaced Rohingya minority.¹⁵² Ireland voted for the resolution but criticized its failure to address continuing transfers of weaponry to Myanmar or to condemn widespread sexual and gender-based violence and grave violations against children in the conflict.¹⁵³ Ireland also criticized the Security Council generally for its failure to hold an open debate on the situation.¹⁵⁴

Russia. Prior to Russia's invasion of Ukraine in February 2022, Ireland actively called out Russia's detention and prosecution of opposition politician Alexi Navalny in violation of international human rights law, in addition to urging cooperation with an Organisation for the Prohibition of Chemical Weapons investigation into Mr. Navalny's apparent poisoning.¹⁵⁵ Two other Russia-related incidents also directly affected Ireland.

First, in May 2021, Ireland suffered 'the biggest attack on a health system anywhere in the world' when the Health Service Executive (HSE) fell victim to a ransomware attack

¹⁴⁹ In contrast to Ireland's decision to intervene in the ICJ case between Ukraine and Russia relating to the Genocide Convention (see text at notes 24-26), it did not express any plans to intervene in the pending ICJ case between The Gambia and Myanmar, also alleging violations of the 1948 Genocide Convention. In August 2022, the United Kingdom became the fourth state to declare its intention to intervene in that case (although none had done so by the end of 2022). FCO, 'Fifth Anniversary of the Rohingya Crisis in Myanmar: UK Statement', Press Release (25 August 2022).

¹⁵⁰ DFA, 'Statement by the Department of Foreign Affairs on the One-Year Anniversary of the Coup in Myanmar', Statement (1 February 2022).

¹⁵¹ DFA, 'Statement on the Execution of Pro-Democracy and Opposition Leaders in Myanmar', Statement (25 July 2022).

¹⁵² UNSC Res 2669 (21 December 2022) UN Doc S/RES/2669 (2022).

¹⁵³ DFA, 'Explanation of Vote – Myanmar Resolution', Statement (21 December 2022).

¹⁵⁴ *ibid.*

¹⁵⁵ DFA, 'Statement by Minister for Foreign Affairs Simon Coveney on the Detention of Alexei Navalny in Moscow', Statement (18 January 2021); DFA, 'Statement on the Sentencing of Alexei Navalny', Statement (3 February 2021).

perpetrated by the Russian-based Conti cybercrime group.¹⁵⁶ The attack forced the shutdown of the HSE computer network and caused a massive disruption of services amidst the Covid-19 pandemic. The Russian embassy in Dublin disclaimed responsibility and condemned the attack, expressing a willingness to cooperate with Irish authorities.¹⁵⁷ By the end of 2022, with the attack's estimated cost approaching at least €80 million, there were repeated calls within Ireland for increased funding to the National Cyber Security Centre.¹⁵⁸

Secondly, Russia's announced plans in January 2022 to hold live-fire military exercises within Ireland's 200-nautical mile Exclusive Economic Zone (EEZ)—approximately 160 nautical miles off Mizen Head—touched off a firestorm, with West Cork fishermen announcing plans to protest the activity by refusing to vacate the area.¹⁵⁹ Ireland took the position that international law permitted Russia to engage in freedom of navigation within the EEZ, including the conduct of military exercises, while having due regard to the rights of the coastal state.¹⁶⁰ However, Irish politicians, including the Taoiseach, raised concerns about potential ecological damage and threats to marine life,¹⁶¹ and Minister Coveney communicated to Russia that the exercises were 'not welcome'.¹⁶² On 29 January 2022, Russia announced that it would relocate the exercises beyond the EEZ as a 'gesture of

¹⁵⁶ C Gallagher, 'How the HSE Cyber Attack Changed the Face of Online Crime Globally', *Irish Times* (11 March 2023).

¹⁵⁷ V Clarke and C McQuinn, 'Coveney Discusses Health Service Cyberattack with Russian Foreign Minister', *Irish Times* (18 May 2021).

¹⁵⁸ J Bray, 'Cost of HSE Cyberattack Rises to €80, Letter Shows', *Irish Times* (12 December 2022).

¹⁵⁹ See S Mulcahy, 'The Law About Military Exercises in Irish Waters', *Law Society Gazette* (5 April 2022). If Irish fishing boats had intentionally interfered with Russian vessels, this would have raised questions about Ireland's compliance with its international obligation to ensure 'due regard' for vessels exercising high-seas freedoms within the EEZ. See United Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397, Arts 87, 92, 94. See also P Pedrozo, 'Fishing For Trouble? EEZs, Military Exercises, Due Regard, and More' (*Lawfire*, 4 February 2022), <https://sites.duke.edu/lawfire/2022/02/04/guest-post-professor-pete-pedrozo-on-fishing-for-trouble-eezs-military-exercises-due-regard-and-more/>.

¹⁶⁰ Dáil Deb 27 January 2022, vol 1017 no 1, <https://www.oireachtas.ie/en/debates/question/2022-01-27/220/>.

¹⁶¹ Dáil Deb 25 January 2022, vol 1016 no 6, <https://www.oireachtas.ie/en/debates/question/2022-01-25/section/8/>.

¹⁶² S Burns and S Carswell, 'Russia Moves Naval Exercises Outside Ireland's Exclusive Economic Zone', *Irish Times* (29 January 2022).

goodwill'.¹⁶³ Experts disagreed about whether Ireland had legal grounds to block the planned exercises in light of coastal state rights and obligations relating to the conservation and management of living resources within the EEZ.¹⁶⁴

Syria. As the Syrian civil war reached a grim ten-year anniversary, Ireland served as co-penholder with Norway at the UN Security Council on the Syria humanitarian file. Emphasising the staggering scale and severity of the humanitarian crisis, Ireland pledged further humanitarian aid and advocated for the renewal of the UN Monitoring Mission at the Turkish-Syria border crossing at Bab al Hawa.¹⁶⁵ On 9 July 2021, the Security Council extended that mandate for a further twelve months.¹⁶⁶ Ireland welcomed this agreement to secure 'vital humanitarian aid for 2.7 million people in North West Syria', and Minister Coveney described Ireland's work on the issue as 'possibly the most challenging and important role that Ireland was entrusted with on the Security Council'.¹⁶⁷ However, Ireland ended its term on the Security Council with a bleak assessment of the humanitarian situation in Syria. Underlining the acute food insecurity, poor living conditions, and ever-increasing tally of civilian casualties, Ireland called upon all parties to exercise restraint, abide by international law, and pursue a political solution.¹⁶⁸

VIII. International Human Rights Mechanisms

During 2021-22, Ireland's third cycle through the UN Human Rights Council's Universal Periodic Review (UPR) took place, and Ireland contributed to the review of other states within the UPR framework. Ireland also announced plans to seek a seat on the

¹⁶³ *ibid.*

¹⁶⁴ For an overview of legal perspectives, see Mulcahy (n 159).

¹⁶⁵ DFA, 'Minister Simon Coveney Addresses the UN Security Council on the Humanitarian Situation in Syria', Press Release (29 March 2021); DFA, 'Minister Coveney Announces Pledge of €23 Million to Syria Crisis', Press Release (30 March 2021).

¹⁶⁶ UNSC Res 2585 (2021) UN Doc S/RES/2585.

¹⁶⁷ DFA, 'Minister Coveney Welcomes Agreement on Syrian Cross Border Humanitarian Operations', Press Release (9 July 2021).

¹⁶⁸ DFA, 'Statement at the UNSC Briefing on Syria—Political & Humanitarian', Statement (21 December 2022).

Human Rights Council for the 2027-29 term.¹⁶⁹ In addition, the Human Rights Committee, the monitoring body of the 1966 International Covenant on Civil and Political Rights carried out a periodic review of Ireland.¹⁷⁰

Universal Periodic Review. Ireland's UPR took place on 10 November 2021, led by a Working Group consisting of rapporteurs from Germany, Sudan, and Ukraine.¹⁷¹ Ireland's national report and in-person presentation highlighted significant developments in Irish law since its 2016 review, including new legislation on access to abortion, recognition of Traveller ethnicity, and gender pay gap reporting, as well as Ireland's ratification of the 2006 Convention on the Rights of Persons with Disabilities (CRPD).¹⁷² Ireland also highlighted action on combatting domestic violence, hate crime, and human trafficking, and plans to end its much-maligned 'direct provision' scheme for asylum seekers.¹⁷³ During the interactive dialogue, Ireland also stated its intention to ratify the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (which Ireland signed in 2007).¹⁷⁴ The Working Group report contained 260 recommendations from state delegations, many of which concerned the ratification of additional human rights treaties and protocols or the adoption of further legislation aimed at the implementation of existing treaty obligations.¹⁷⁵ Ireland accepted 221 of the 260 recommendations.¹⁷⁶

¹⁶⁹ Coveney, 'Ireland on the Security Council' (n 39).

¹⁷⁰ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. Art 40 provides for the periodic reporting requirement.

¹⁷¹ UNHRC, 'Report of the Working Group on the Universal Periodic Review—Ireland' (14 December 2021) UN Doc A/HRC/49/18, paras 1-2. All submissions relating to Ireland's UPR are at <https://www.ohchr.org/en/hr-bodies/upr/ie-index>.

¹⁷² *ibid*, paras 6-8, 32. See Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

¹⁷³ *ibid*, paras 9-20.

¹⁷⁴ *ibid*, para 145. See International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3.

¹⁷⁵ *ibid*, para 157.

¹⁷⁶ UNHRC, 'Report of the Working Group on the Universal Periodic Review—Ireland: Addendum' (4 January 2022) UN Doc A/HRC/49/18/Add.1.

Review by the Human Rights Committee. Ireland submitted its fifth periodic report to the Human Rights Committee in September 2019.¹⁷⁷ Following Covid-19-related delays, Ireland appeared before the Human Rights Committee on 4-5 July 2022,¹⁷⁸ and the Committee adopted concluding observations on 22 July 2022.¹⁷⁹ The Committee welcomed Ireland's adoption of legislation since 2015 relating to abortion access, adoption, the gender pay gap, same-sex marriage, and anti-corruption.¹⁸⁰ It also highlighted Ireland's ratification of the CRPD and the Optional Protocol to the Convention on the Rights of the Child relating to a communications procedure.¹⁸¹ However, areas of concern included:

- the shortcomings of the Commission of Inquiry into Mother and Baby Homes and other investigations into historical abuses (including the practice of symphysiotomy), including failures to investigate all allegations of abuse, the absence of prosecutions, and obstacles to effective remedies;¹⁸²
- the persistence of hate speech and discrimination directed against vulnerable groups, including women, people of African descent, LGBTI individuals, and members of the Traveller community;¹⁸³
- the continuing insufficiency of anti-corruption measures, including inadequate whistle-blower protections;¹⁸⁴ and

¹⁷⁷ CCPR, 'Fifth Periodic Report Submitted by Ireland Under Article 40 of the Covenant, Due in 2019' (23 September 2019) UN Doc CCPR/C/IRL/5.

¹⁷⁸ See UN Doc CCPR/C/SR.86 and UN Doc CCPR/C/SR.3887.

¹⁷⁹ CCPR, 'Concluding Observations on the Fifth Periodic Report of Ireland' (26 January 2023) UN Doc CCPR/C/IRL/CO/5.

¹⁸⁰ *ibid*, para 3.

¹⁸¹ *ibid*, para 4. See Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (adopted 19 December 2011, entered into force 14 April 2014).

¹⁸² *ibid*, paras 11-14. The Committee recommended that Ireland reform the redress scheme by removing overly burdensome standards of proof, limited timeframes to apply, and the requirement that applicants waive further legal recourse. *ibid*, para 12(c).

¹⁸³ *ibid*, paras 15-20.

¹⁸⁴ *ibid*, paras 9-10

- continuing barriers to obtaining safe and legal abortion services, notwithstanding the repeal of the Eighth Amendment.¹⁸⁵

The Committee also noted that Ireland (like many states) introduced emergency measures in response to the Covid-19 pandemic and that some restrictions (such as those relating to freedom of movement and peaceful assembly) might have disproportionately curtailed fundamental freedoms.¹⁸⁶ Further observations and recommendations concerned human trafficking, coercive measures in psychiatric institutions, conditions of detention, the status of refugees and asylum-seekers, religious freedom in education, religious oaths for public office, and privacy rights and data collection.¹⁸⁷

Upcoming Treaty Body Reviews. During 2021-22, Ireland submitted reports to the Committee on the Rights of the Child¹⁸⁸ and to the Committee on the Rights of Persons with Disabilities.¹⁸⁹ The interactive dialogues between Ireland and these committees were scheduled to take place during 2023.

Ireland's Participation in the UN Human Rights Council. Although not a member of the 47-member state Human Rights Council, Ireland took part in the five regular sessions held in 2021-22. This included interactive dialogues with country-specific and thematic special rapporteurs, commissions of inquiry, and fact-finding missions.¹⁹⁰ As in past years, Ireland also submitted recommendations to the other 64 states subject to the UPR during

¹⁸⁵ *ibid*, paras 25-26.

¹⁸⁶ *ibid*, paras 27-28.

¹⁸⁷ *ibid*, paras 29-38, 41-46.

¹⁸⁸ CRC, 'Combined Fifth and Sixth Periodic Reports Submitted by Ireland Under Article 44 of the Convention, Due in 2021' (15 February 2022) UN Doc CRC/C/IRL/5-6.

¹⁸⁹ CRPD, 'Initial Report of Ireland under the Convention on the Rights of Persons with Disabilities' (8 November 2021) UN Doc CRPD/C/IRL/1.

¹⁹⁰ Ireland's submissions to the 46th through 51st sessions of the Human Rights Council are compiled at <https://www.dfa.ie/our-role-policies/international-priorities/human-rights/ireland-and-the-human-rights-council/irelandsstatementatthehrc/>.

2021-22.¹⁹¹ Those recommendations highlighted human rights priorities in Irish foreign policy, including:

- the adoption or implementation of legislation to combat sexual- and gender-based violence (mentioned in 18 recommendations);
- the adoption or implementation of anti-discrimination measures for gender and/or sexual orientation (mentioned in 22 recommendations), including decriminalisation of consensual same-sex conduct (mentioned in 5 recommendations);
- the rights of human rights defenders (mentioned in 21 recommendations); and
- freedom of assembly, association and expression (mentioned in 11 statements).

Ireland's submission to the UPR of the United Kingdom focused on concerns with the Northern Ireland Troubles (Legacy and Reconciliation) Bill introduced on 17 May 2022, including provisions on amnesties for gross human rights violations, and recommended that any UK legislation relating to the Troubles ensure independent and effective investigations.¹⁹²

Other notable international human-rights related developments in 2021-22 included:

- Ireland's nomination in February 2021 of Judge Fergal Gaynor for election to the position of Prosecutor of the ICC (a position that ultimately went to British lawyer Karim Khan)¹⁹³ and Ireland's continuing support for the ICC;¹⁹⁴

¹⁹¹ Ireland's UPR statements are available at www.dfa.ie/our-role-policies/international-priorities/human-rights/ireland-and-the-human-rights-council/irelandsstatementsattheupr/.

¹⁹² Statement of Ireland, 41st Session of the UPR Working Group, 'Review of the UK' (10 November 2022). See also DFA, 'Ireland Welcomes Decision by Council of Europe on Northern Ireland Legacy Issues', Press Release (10 June 2022).

¹⁹³ DFA, 'Ireland Nominates Fergal Gaynor for Election as ICC Prosecutor', Press Release (9 February 2021).

¹⁹⁴ DFA, 'Min Coveney Announces Ireland's 2021 Contribution to the Trust Fund for Victims', News (12 May 2021); DFA, 'Minister for Foreign Affairs Simon Coveney Announces Voluntary Contribution to ICC Prosecutor', Announcement (31 March 2022); DFA, 'Minister Coveney Announces Contribution of €1.5 million to the International Criminal Court's Trust Fund', Press Release (5 December 2022).

- Unanimous adoption by the Human Rights Council of an Irish-led resolution on the role and importance of civil society;¹⁹⁵
- Ireland’s intervention in October 2021 in cases brought by Hungary and Poland at the Court of Justice of the European Union (CJEU) in which those states sought unsuccessfully to annul the EU Regulation on a General Regime of Conditionality for the Protection of the Union Budget,¹⁹⁶ a measure that allows the EU to use budgetary measures ‘to respond to rule of law challenges in Member States’;¹⁹⁷ and
- Ireland’s expression of support at the Sixth Committee of the UN General Assembly for the elaboration of a new treaty on crimes against humanity based upon draft articles produced by the International Law Commission, as well as Ireland’s support for a new multilateral treaty under negotiation on mutual legal assistance and extradition for atrocity crimes.¹⁹⁸

IX. International Disarmament

In November 2022, over 80 state delegations met at Dublin Castle to adopt a political declaration on the use of explosive weapons in populated areas.¹⁹⁹ This Irish-led initiative represented a ‘major milestone for Irish foreign policy’ in line with Ireland’s ‘strong humanitarian disarmament tradition’.²⁰⁰ The declaration underscored the humanitarian consequences of using heavy weapons in urban areas and sought to ensure that military

¹⁹⁵ UNHRC Res 47/L.1 (5 July 2021) UN Doc A/HRC/47/L.1; DFA, ‘UN Human Rights Council Unanimously Adopts Irish-led Resolution on Civil Society Space’, Press Release (12 July 2021).

¹⁹⁶ Case C-156/21, *Hungary v Parliament and Council* [2022]; Case C-157/21, *Poland v Parliament and Council* [2022].

¹⁹⁷ DFA, ‘Minister Byrne Welcomes Court of Justice Decision Upholding Budget Conditionality Regulation’, Press Release (16 February 2022).

¹⁹⁸ DFA, ‘Statement by Ambassador Flynn at the UNGA 6th Committee on Crimes Against Humanity’, Statement (15 October 2021). See UN Doc A/C.6/77/L.4; Report of the International Law Commission, 71st Session (2019), UN Doc A/74/10, paras 44-45.

¹⁹⁹ Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising From the Use of Explosive Weapons in Populated Areas (18 November 2022) <https://www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/EWIPA-Political-Declaration-Final-Rev-25052022.pdf>.

²⁰⁰ DFA, ‘Conference Adopts Declaration on Protecting Civilians from Explosive Weapons in Populated Areas’, Press Release (18 November 2022).

planners take into account the effect of such weapons ‘on homes, hospitals, schools and vital resources such as food and energy systems’.²⁰¹

On nuclear disarmament, Ireland welcomed in January 2021 the entry into force of the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW), which Ireland ratified in 2020.²⁰² Pursuant to the treaty’s terms, Ireland declared formally to the UN Secretary-General that it did not own, possess, or control nuclear weapons and that nuclear weapons are not present on Irish territory.²⁰³ Minister for Foreign Affairs Simon Coveney TD described the treaty as ‘an important step’ towards implementing the 1968 Nuclear Non-Proliferation Treaty (NPT) and remarked that ‘scientific and medical evidence clearly shows that we will never be remotely equipped to deal with the consequences of a nuclear weapon’s detonation’.²⁰⁴ Ireland attended the First Meeting of States Parties to the TPNW in Vienna in June 2022, where it co-facilitated a session on complementarity between the TPNW and NPT.²⁰⁵

Earlier, in January 2022, Ireland and its partners in the New Agenda Coalition (Brazil, Egypt, Mexico, New Zealand, and South Africa) issued a statement of concern regarding recent policy statements by nuclear-weapons states on ‘the modernisation of their nuclear programmes’, which ‘undermine their commitment to nuclear disarmament and increase the risk of the use of nuclear weapons and of a new arms race’.²⁰⁶ At the Tenth Review Conference of the NPT in August 2022, Ireland highlighted the ‘heightened nuclear danger’

²⁰¹ DFA, ‘Minister Coveney Welcomes the Conclusion of Negotiations on a Political Declaration on Explosive Weapons in Populated Areas’, Press Release (17 June 2022).

²⁰² Treaty on the Prohibition of Nuclear Weapons (adopted 7 July 2017, entered into force 22 January 2021).

²⁰³ Declaration Pursuant to Article 2, Paragraph 1 of the Treaty on the Prohibition of Nuclear Weapons (22 January 2021), <https://front.un-arm.org/wp-content/uploads/2021/01/20-036nve-Annex-2-Ireland-public-received-2021-01-22.pdf>.

²⁰⁴ DFA, ‘Minister Coveney Welcomes the Entry into Force of the Treaty on the Prohibition of Nuclear Weapons’, Press Release (22 January 2021).

²⁰⁵ ICAN, ‘Complementarity of the TPNW With Other Nuclear Weapons Treaties’, https://www.icanw.org/tpnw_intersessional_work_complementarity.

²⁰⁶ DFA, ‘Statement by Minister for Foreign Affairs, Simon Coveney TD’, Statement (27 January 2022). The New Agenda Coalition was established in Dublin in 1998 by certain non-nuclear weapons states following the indefinite extension of the NPT. *ibid*.

facing the world because of Russia's 'nuclear rhetoric' and 'reckless military actions in and near civilian defence facilities'.²⁰⁷ Ireland also expressed alarm that nuclear weapons states were increasing their arsenals 'in numbers and diversity' and reducing transparency measures.²⁰⁸ Ireland reiterated to the Conference its view that the TPNW was 'fully compatible with and complements the NPT'.²⁰⁹ At the end of the four-week conference, Russia blocked the adoption of any final agreement.²¹⁰ Its objections appeared mainly to concern five paragraphs (in a 140-paragraph document) relating to the Zaporizhzhia nuclear power plant in Ukraine.²¹¹ Ireland expressed profound regret that 'Russia, alone, prevented agreement on a balanced draft outcome document that was acceptable to all other states'.²¹²

X. Climate Change

Major climate change-related developments in 2021-22 included the EU's adoption of the European Climate Law in July 2021, setting a goal of EU 'climate neutrality' by 2050,²¹³ the release of harrowing new working group reports from the Intergovernmental Panel on Climate Change (IPCC),²¹⁴ and the global climate summits held in Glasgow (COP26) in 2021 and Sharm el-Sheikh (COP27) in 2022. Addressing the UN Security Council in February 2021, Ireland called for 'urgent and collective action' to meet 'the defining challenge of our generation', while emphasizing the 'linkages between climate, insecurity,

²⁰⁷ DFA, 'National Statement at 10th NPT Review Conference', News (1 August 2022).

²⁰⁸ *ibid.*

²⁰⁹ *ibid.*

²¹⁰ NPT Review Conference, 'Non-Proliferation Treaty Review Conference Ends Without Adopting Substantive Outcome Document Due to Opposition by One Member State', Press Release (26 August 2022) UN Doc DC/3850.

²¹¹ *ibid.*

²¹² DFA, 'Minister Coveney Statement on the Review Conference of the Nuclear Non-Proliferation Treaty', Statement (29 August 2022).

²¹³ Regulation (EU) 2021/1119 of 30 June 2021 Establishing the Framework for Achieving Climate Neutrality [2021] OJ L243/1.

²¹⁴ IPCC Working Group reports are at <https://www.ipcc.ch/library/>.

and peace’.²¹⁵ As noted above, an Irish-led draft Security Council resolution on that issue was vetoed by Russia in December 2021.²¹⁶ Minister for Foreign Affairs Simon Coveney TD expressed disappointment with that outcome but said the process confirmed that a broad majority of states agreed that the Security Council ‘should factor the security risks of climate change into its decision-making’.²¹⁷

Ireland continued its support for the LIFE-AR initiative, which funds climate action at the local level in Least Developed Countries (LDC), and endorsed the Locally Led Adaptation Principles, another mechanism aimed at providing access for climate finance to LDCs.²¹⁸ At COP27 in Egypt in November 2022, Ireland was actively involved in contentious negotiations over ‘loss and damage’—a broad concept that includes responsibility and compensation for past failures to prevent or mitigate climate change harms. Ireland’s Minister for Climate Eamon Ryan TD led negotiations on the EU side.²¹⁹ The Conference closed with a breakthrough agreement to provide ‘loss and damage’ funding to vulnerable countries, although details were left for further negotiation.²²⁰ Minister Ryan described the final compromise as a ‘historic and progressive’ agreement that meant that ‘millions of people, whose land, water sources, and livelihoods are being eroded every day because of the impacts of climate change, can begin to look forward to targeted and strengthened support and protection from the global community’.²²¹ He also highlighted the need for innovative approaches to funding those commitments, including by looking to the aviation, shipping,

²¹⁵ DFA, ‘United Nations Security Council Open Debate on Addressing Climate Related Risks’, Statement (23 February 2021).

²¹⁶ See text at note 45.

²¹⁷ DFA, ‘Resolution on Climate Not Adopted by the UN Security Council—Statement by Minister Coveney’, Statement (13 December 2021).

²¹⁸ DFA, ‘Ireland Plays Leadership Role to Ensure Climate Funds Reach Those Most in Need’, Press Release (26 January 2021).

²¹⁹ K O’Sullivan, ‘COP27 Deadlocked Over Loss and Damage Issue With Developing Countries Digging In’, *Irish Times* (17 November 2022).

²²⁰ Department of the Taoiseach, ‘Statement by Minister Eamon Ryan, EU Led Negotiator on Loss and Damage at COP27’, Press Release (21 November 2022).

²²¹ *ibid.*

and fossil fuel sectors.²²² Ireland also pledged €5 million at COP27 to support climate adaptation measures in developing states, building upon a €2.1 million pledge to Small Island Developing States at COP26.²²³

Finally, Ireland’s application for Observer Status at the Arctic Council (submitted in December 2020) remained pending at the end of 2022.²²⁴ The impact of climate change on the Arctic provided a central reason for Ireland’s decision to seek a formal status with the inter-governmental body, including the opportunity to bring Irish scientific and technical expertise to its work.²²⁵

XI. Peace Support Operations

During 2021-22, the Irish Defence Forces (IDF) contributed nearly 600 personnel to overseas missions, mainly across Africa, the Middle East and the Balkans.²²⁶ As of 31 December 2021, Ireland’s largest commitments remained with the UN Interim Force in Lebanon (UNIFIL) (346 personnel) and the UN Disengagement Observer Force (UNDOF) in the Golan Heights (133 personnel).²²⁷ Table 3 shows the number of IDF personnel deployed overseas annually since 2017. Table 4 shows the breakdown of IDF personnel across UN and UN-mandated missions in 2021, accounting for 95 per cent of overseas deployment.

Table 3. Participation in Peace Support Operations (2017–22) (as of 1 January of each year)

	Year
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²²² *ibid.*

²²³ DFA, ‘Minister Brophy Announces €5 Million to Support Climate Adaptation in Developing Countries’, Press Release (11 November 2022); DFA, ‘Minister Coveney Announces a Series of Actions to Address Climate Adaptation in Developing Countries’, Press Release (10 November 2021).

²²⁴ See DFA, ‘Ireland’s Bid to Become an Observer to the Arctic Council’, Speech (1 March 2021).

²²⁵ *ibid.*

²²⁶ Department of Defence and Defence Forces, Annual Report 2021, 101 <https://assets.gov.ie/231103/6e7d1fa5-6fd6-4d6a-b77e-3f63df11bbf8.pdf>. See also Deb Dáil 26 January 2022, vol 1016 no 7, <https://www.oireachtas.ie/en/debates/question/2022-01-26/101/>; Deb Dáil 23 March 2023, vol 1035 no 6, <https://www.oireachtas.ie/en/debates/question/2023-03-23/28/>

²²⁷ DOD, Annual Report 2021 (n 226), at 101.

	2017	2018	2019	2020	2021	2022
Numbers deployed overseas	609	594	683	595	592	582

Table 4. Personnel Serving Overseas in UN and UN-Mandated Missions (as of 31 December 2021)

Mission	IDF personnel
UNIFIL (UN Interim Force in Lebanon)	346
UNTSO (UN Treaty Supervision Organisation) (Israel/Syria)	12
MINUSMA (UN Mission in Mali)	14
MONUSCO (UN Stabilisation Mission in the DRC)	3
UNDOF (UN Disengagement Observer Force) (Syria)	134
EUFOR (EU-Led Operation in Bosnia and Herzegovina)	5
EUTM Mali (EU-Led Training Mission)	20
KFOR (NATO-Led Security Presence in Kosovo)	13
EU Naval Service (Operation Iriini) (Libya arms embargo)	3
Total	550

In December 2022, an armoured vehicle manned by four IDF members deployed to UNIFIL in Lebanon came under attack after leaving an approved route and entering the village of Al-Aqbieh. Private Seán Rooney was killed and trooper Shane Karney was seriously injured.²²⁸ President Michael D. Higgins and other political leaders offered their deepest

²²⁸ C Gallagher, 'Irish Peacekeeper Killed in Lebanon by Locals "Angry at UN Presence"' *Irish Times* (16 December 2022).

condolences to Private Rooney’s family, friends, and colleagues.²²⁹ Irish officials noted that UNIFIL peacekeepers were encountering ‘increasing numbers of obstacles and confrontations while on patrol’ due to the political vacuum in Lebanon and that Ireland’s ‘first priority’ was to protect Irish personnel serving on the mission.²³⁰

There was also an increased focus during 2021-22 on the future of the Defence Forces, especially in light of Russia’s invasion of Ukraine.²³¹ In February 2022, a Government-appointed Commission on the Defence Forces issued a detailed report outlining weaknesses and capability limitations, alongside an extensive list of recommended reforms.²³² Among its conclusions, the report found that the IDF ‘would be unable to conduct a meaningful defence of the State against a sustained act of aggression by a military force with its current capability’.²³³ In July 2022, the Government announced the largest increase in defence funding in Ireland’s history, as well as a High Level Action Plan and Strategic Defence Review aimed at facilitating debate going forward.²³⁴ These issues were likely to be tied up closely with ongoing discussions about the future of Irish neutrality and Ireland’s engagement with the broad range of issues—from climate change and food insecurity to nuclear proliferation, pandemic preparedness, and democratic backsliding—that pose ever-greater challenges to the international legal order. As these conversations continue in 2023 and beyond, the leadership and guidance of James Kingston, the long-time

²²⁹ President of Ireland, ‘Statement by President Higgins on the Death of a Member of the Defence Forces Serving on a UN Peacekeeping Mission in Lebanon’, Press Release (15 December 2022).

²³⁰ H McCarthy, ‘Tánaiste Pays Tribute to Pte Seán Rooney at Memorial for Fallen Irish Solders in South Lebanon’, *Irish Times* (26 January 2023).

²³¹ See EM McNamara, ‘Ireland’s Defence Deficit’ (RUSI, 21 December 2022) <https://www.rusi.org/explore-our-research/publications/commentary/irelands-defence-deficit>.

²³² Report of the Commission on the Defence Forces (9 February 2022) <https://assets.gov.ie/221085/6a8d1ccb-9cd1-4612-b109-2387c3369b1a.pdf>.

²³³ Deb Seanad 23 March 2023, vol 288 no 9, <https://www.oireachtas.ie/en/debates/debate/seanad/2022-10-04/10/>.

²³⁴ Department of the Taoiseach, ‘Government Announces Move to Transform the Defence Forces and the Largest Increase in the Defence Budget in the History of the State’, Press Release (13 July 2022).

Legal Advisor to Department of Foreign Affairs who passed away in April 2022, will very much be missed.²³⁵

²³⁵ DFA, 'Statement on the Passing of James Kingston', Statement (20 April 2022).