EVOLVING DOCTRINES IN PUBLIC INTERNATIONAL LAW: A CRITICAL REVIEW OF LANDMARK JURISPRUDENCE FROM GLOBAL TRIBUNALS

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ABSTRACT

This article undertakes a systematic analysis of pivotal cases that have shaped the modern landscape of public international law. Drawing from decisions of the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS), the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC), the study categorizes case law across core thematic areas such as state responsibility, the use of force, international legal personality, maritime delimitation, and international criminal law. Through an examination of these judgments, the article highlights the interpretative strategies used by international tribunals to clarify unsettled legal questions, reinforce foundational norms, and adapt the law to emergent global challenges. The analysis also explores the dynamic interplay between customary international law and treaty obligations, offering a comprehensive perspective on the doctrinal evolution of international law and its expanding scope of accountability.

Introduction

Public international law has experienced a profound transformation over the past century—from a state-centric, diplomatic framework to a rules-based legal order administered by specialized and generalist international tribunals. This legal evolution reflects an increased global commitment to resolving disputes through judicial mechanisms rather than coercion or unilateral action. The jurisprudence of the International Court of Justice (ICJ) and various specialized tribunals demonstrates not only the judicial articulation of legal norms but also their practical enforcement and development across a broad spectrum of issues.

The establishment of institutions such as the ICJ, ITLOS, ICC, ICTY, and ICTR signifies the international community's endeavor to build a coherent and authoritative system of dispute resolution. These bodies serve complementary roles in interpreting international law, developing principles such as state responsibility, sovereign immunity, and individual criminal accountability, and providing binding adjudications and advisory opinions that shape state conduct and institutional behavior. Notably, their decisions have contributed significantly to the codification of customary norms and clarified ambiguities in treaty interpretation.

This article offers a topic-wise examination of select landmark cases, identifying how each judgment has impacted core legal doctrines. These cases are not only illustrative of legal development but also serve as foundational texts for the practice of international law. They demonstrate how international tribunals have adapted legal reasoning to address emerging challenges such as transboundary environmental harm, the use of force by non-state actors, and the criminalization of sexual violence in conflict zones. The subsequent sections provide a thematic breakdown of the selected jurisprudence to trace doctrinal continuity, judicial innovation, and interpretative coherence in public international law.

I. State Responsibility and the Limits of Sovereignty

A. Corfu Channel Case (United Kingdom v. Albania), ICJ Rep. 1949

The *Corfu Channel Case* was the first contentious matter adjudicated by the International Court of Justice (ICJ) and has since become a cornerstone in the law of state responsibility. The dispute arose following incidents in October 1946, when British warships navigating the North Corfu Channel—situated within Albanian territorial waters—struck naval mines. These

explosions caused substantial damage and resulted in the death of 45 British naval personnel. In response, the United Kingdom conducted a subsequent minesweeping operation without Albania's consent and later brought a claim before the ICJ, alleging Albania's failure to warn of known dangers in its territorial waters. Albania, in turn, counterclaimed that the UK's unilateral operation violated its sovereignty.

The Court addressed three key legal questions: (1) whether Albania bore international responsibility for the damage caused by the mines, (2) whether British warships had the right of innocent passage through the channel, and (3) whether the UK's minesweeping operation was lawful under international law. The ICJ concluded that Albania was internationally responsible, reasoning that the minefield could not have been laid without the knowledge of Albanian authorities due to their established system of coastal surveillance. This ruling affirmed that a state can be held liable for omissions—particularly the failure to prevent or warn against hazards within its jurisdiction.

The Court also held that the British warships had exercised a lawful right of innocent passage through an international strait. However, it condemned the UK's subsequent minesweeping operation as a breach of Albania's sovereignty, rejecting the UK's invocation of "self-help" as a lawful justification. In doing so, the Court emphasized that even when a state has suffered injury, it must pursue remedies through lawful international processes rather than unilateral coercive action.

Doctrinally, the *Corfu Channel* case crystallized several foundational principles in international law. It affirmed the due diligence obligation of states to prevent foreseeable harm within their territory, particularly in maritime contexts. It also rejected the legitimacy of unauthorized enforcement actions by injured states—reinforcing the principle of non-intervention and respect for territorial sovereignty. Furthermore, the Court's reliance on circumstantial evidence to establish Albania's knowledge of the minefield set an important precedent on evidentiary standards in state responsibility cases.

As such, *Corfu Channel* remains a landmark decision not only for its articulation of the law on state omissions but also for establishing the delicate balance between navigational rights and sovereign prerogatives under customary international law.

Citation: *Corfu Channel Case (U.K. v. Alb.), Merits*, Judgment, 1949 I.C.J. 4 (Apr. 9).

B. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Rep. 1986

The decision in *Military and Paramilitary Activities in and against Nicaragua* stands as a seminal pronouncement on the prohibition of the use of force and the principle of non-intervention in international law. In this case, the Republic of Nicaragua instituted proceedings against the United States before the International Court of Justice (ICJ), alleging violations of international law through the provision of support to Contra rebel groups operating against the Nicaraguan government. Nicaragua contended that the United States had not only provided financial, logistical, and military assistance to the Contras but had also engaged in direct military actions, including mining Nicaragua's harbors and attacking coastal facilities.

The United States declined to participate in the merits phase of the proceedings, arguing that the ICJ lacked jurisdiction. Nevertheless, the Court proceeded under Article 53 of its Statute and rendered a judgment based on the evidence presented. The ICJ found that the United States had violated customary international law obligations by (1) using force against Nicaragua, (2) intervening in its internal affairs, and (3) breaching Nicaraguan sovereignty. The Court held that these actions were not justified under the doctrine of collective self-defense, as the purported victim states—El Salvador, Honduras, and Costa Rica—had neither suffered an armed attack nor made a formal request for U.S. intervention.

A central contribution of this case is the Court's articulation of the **"effective control"** standard for attributing the conduct of non-state actors to a state. The ICJ distinguished between general support and command-level control, holding that the United States' substantial assistance to the Contras did not suffice to impute all of their actions directly to the U.S. government. However, the U.S. was found directly responsible for its own actions, such as the mining of Nicaraguan ports, which constituted an unlawful use of force.

The *Nicaragua* judgment reaffirmed the **customary nature** of the prohibition on the use of force and non-intervention, even in the absence of binding treaty obligations. It further clarified the **requirements for collective self-defense**, emphasizing that such measures must be taken in response to an actual armed attack and upon formal request by the victim state. This threshold limited the discretionary invocation of self-defense and elevated the evidentiary and procedural standards for such claims under international law.

Doctrinally, the case solidified the legal separation between *armed attack* and *lesser uses of force*, influencing future interpretations of Article 51 of the United Nations Charter. It also underscored the illegality of proxy warfare and emphasized that indirect methods of intervention—through armed groups—are constrained by the same norms governing direct military actions.

Citation: *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Merits*, Judgment, 1986 I.C.J. 14 (June 27).

C. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Rep. 2004

The ICJ's 2004 advisory opinion on the **Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory** marks a pivotal intersection between international humanitarian law, human rights law, and the right to self-determination. The United Nations General Assembly, acting under Article 96 of the UN Charter, requested the ICJ to opine on the legality and consequences of Israel's construction of a security barrier (often referred to as "the wall") in the West Bank, including East Jerusalem—an area under prolonged occupation since 1967.

The Court's central findings were that the construction of the wall and the associated administrative regime violated multiple international legal obligations incumbent upon Israel. The ICJ ruled that the barrier severely impeded the exercise of the Palestinian people's right to self-determination, a peremptory norm under international law, and constituted a de facto annexation of occupied territory. Furthermore, the Court found that the wall's route, which extended deep into the West Bank rather than along the 1949 Armistice Line ("Green Line"), could not be justified solely on security grounds.

The ICJ reaffirmed that both international humanitarian law—specifically the **Fourth Geneva Convention of 1949**—and international human rights law applied concurrently in occupied territories. It found violations of several key provisions, including the prohibition against the destruction or appropriation of property (Art. 53, Fourth Geneva Convention) and fundamental human rights such as freedom of movement, work, education, and access to health care.

Notably, the Court rejected Israel's invocation of **Article 51 of the UN Charter** (self-defense),

reasoning that the threats emanated from within territory over which Israel exercised effective control, and thus could not constitute external armed attacks under the Charter. The Court also rejected Israel's argument of necessity as a ground for derogation from its obligations, emphasizing that the wall's placement was neither the only nor the least intrusive option to safeguard its security interests.

The Court held that Israel was under an obligation to cease construction, dismantle the existing sections of the wall, and make reparations for the harm caused. In a broader pronouncement, it declared that **third-party states** had an obligation not to recognize the illegal situation and not to render aid or assistance in maintaining it—affirming the **erga omnes** nature of the violated norms.

This opinion significantly developed the doctrine of **international legal consequences** flowing from serious breaches of peremptory norms. It also clarified that obligations under human rights law remain applicable during occupation and armed conflict, thus establishing a concurrent framework of accountability. The Court's articulation of the **right to self-determination** as a legally enforceable entitlement, and not merely a political aspiration, provided critical jurisprudential support for peoples under foreign occupation.

Despite the advisory nature of the opinion, and its limited enforcement potential, the judgment is frequently cited for its doctrinal clarity and its reinforcement of international legal norms concerning occupation, annexation, and the inviolability of fundamental rights under both humanitarian and human rights frameworks.

Citation: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136 (July 9).

II. International Legal Personality of Organizations

A. Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Rep. 1949

The ICJ's advisory opinion in *Reparation for Injuries Suffered in the Service of the United Nations* remains a foundational authority on the international legal personality of intergovernmental organizations. Delivered in 1949, this opinion responded to a request by the UN General Assembly following the assassination of Count Folke Bernadotte, a UN mediator,

during his mission in Jerusalem in 1948. The central legal question was whether the United Nations, as a non-state entity, possessed the capacity under international law to bring an international claim against a state for injuries caused to its agents.

The Court affirmed, for the first time, that the United Nations has **international legal personality** independent of its member states. While this status was not expressly articulated in the UN Charter, the Court reasoned that the Charter implicitly conferred legal personality through the functions entrusted to the Organization. According to the ICJ, the UN must possess a degree of legal personality and capacity to fulfill its objectives, including the ability to protect its officials and hold other entities accountable for harm caused in the performance of official duties.

The Court also established the doctrine of **implied powers**, holding that international organizations may possess not only those powers expressly conferred by their founding instruments but also those powers which, while not explicitly stated, are essential for the organization to discharge its functions. This approach acknowledged that legal capacity flows not merely from enumerated competencies but also from the functional necessities of the organization's mission.

Additionally, the ICJ introduced the concept of **functional protection**, by which an organization may assert claims on behalf of its agents to preserve the integrity and efficacy of its operations. This marked a shift away from the traditional principle of **diplomatic protection**, which had previously been confined to state-to-state relationships, thereby expanding the legal framework for the protection of individuals serving under international mandates.

By recognizing the UN's legal standing to bring claims against states for injuries to its agents, the Court fundamentally broadened the scope of international legal actors and reshaped the legal order from a state-centric to a more institutionally diverse system. This decision laid the groundwork for modern doctrines concerning the rights and responsibilities of international organizations under general international law.

While some judges dissented—arguing that the capacity to exercise diplomatic protection remained an exclusively state prerogative—the majority's reasoning has since become widely

accepted and cited in the legal development of other institutions, including regional organizations such as the European Union and the African Union.

Citation: *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174 (Apr. 11).

III. The Law of the Sea and Maritime Delimitation

A. Fisheries Case (United Kingdom v. Norway), ICJ Rep. 1951

The *Fisheries Case* between the United Kingdom and Norway is widely regarded as a milestone in the evolution of maritime delimitation law. The case centered on Norway's 1935 Royal Decree, which delineated its territorial waters using a system of **straight baselines** that enclosed large sea areas off the complex and deeply indented Norwegian coastline. The United Kingdom challenged the legality of this method, asserting that it violated customary international law and claiming that certain of these baselines extended up to 44 nautical miles—far beyond the limits generally accepted at the time.

The principal legal issue before the International Court of Justice (ICJ) was whether Norway's use of straight baselines—rather than the conventional low-water mark along the mainland—was permissible under international law. The United Kingdom contended that such baselines deviated from the general direction of the coast and infringed upon the freedom of the seas. Norway, in contrast, defended the baselines as a long-standing and consistently applied method suitable to its unique geographical conditions, including its rugged coastline and the presence of a fringe of offshore islands.

In its judgment, the Court upheld the legality of Norway's delimitation method. It reasoned that the **straight baseline method**, though not universally adopted, was not per se contrary to international law. The Court emphasized that the geographic features of the Norwegian coast justified a departure from the normal low-water mark rule. It laid down three principal criteria for lawful delimitation: (1) the baselines must not depart appreciably from the general direction of the coast; (2) the sea areas enclosed must be sufficiently linked to the land domain; and (3) the method must reflect a long-standing and consistent practice accepted by other states.

Significantly, the Court recognized the importance of **historic rights** and **long-standing state practice**, indicating that consistent acquiescence by the international community could

reinforce the legitimacy of unconventional delimitation methods. The decision effectively acknowledged that customary law could accommodate regional or situational variations, especially where they had been peacefully and consistently applied without protest.

The *Fisheries Case* set the doctrinal groundwork for later codifications, including **Article 7 of the United Nations Convention on the Law of the Sea (UNCLOS), 1982**, which permits the use of straight baselines in the case of deeply indented coastlines or where fringing islands exist. The ruling has since served as a cornerstone in the jurisprudence of maritime boundary delimitation and continues to guide states with irregular coastlines in the articulation of their maritime zones.

The judgment also confirmed that **state practice**, if consistent and not objected to by other states, could crystallize into binding customary law. In doing so, the Court provided one of the clearest judicial articulations of the role of **opinio juris** and **acquiescence** in the formation of international norms.

Citation: *Fisheries Case (U.K. v. Nor.)*, Judgment, 1951 I.C.J. 116 (Dec. 18).

B. Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), ITLOS, Order of Aug. 27, 1999

The *Southern Bluefin Tuna Cases*, brought separately by New Zealand and Australia against Japan before the International Tribunal for the Law of the Sea (ITLOS), represent a pivotal moment in the application of international environmental law within the framework of the law of the sea. These proceedings marked the first time ITLOS was called upon to issue **provisional measures** under Article 290(5) of the United Nations Convention on the Law of the Sea (UNCLOS), demonstrating the Tribunal's role in urgent environmental protection.

The dispute arose from Japan's unilateral implementation of an "Experimental Fishing Program" (EFP) for southern bluefin tuna—an endangered species that had been historically managed under the 1993 Convention for the Conservation of Southern Bluefin Tuna (CCSBT). Australia and New Zealand contended that Japan's actions violated not only the CCSBT but also broader obligations under UNCLOS, particularly those relating to cooperation in the conservation of highly migratory species.

The applicants requested provisional measures to suspend Japan's EFP, arguing that continued unilateral fishing posed a serious and irreversible threat to the depleted tuna stock and prejudiced the procedural rights of the parties under UNCLOS. ITLOS determined that it had **prima facie jurisdiction** and agreed to prescribe provisional measures, despite the parallel existence of the CCSBT.

Crucially, the Tribunal ordered all parties to **"act with prudence and caution"** and **resume consultations without delay**, reflecting an implicit application of the **precautionary approach**—a hallmark of modern environmental governance. While ITLOS refrained from explicitly labeling it as such, the obligation to avoid actions that could result in serious harm without conclusive scientific evidence marked a clear judicial endorsement of precautionary principles.

The judgment also clarified that the existence of a specific regional fisheries treaty (CCSBT) did not preclude recourse to UNCLOS dispute settlement procedures. The Tribunal emphasized that UNCLOS obligations, especially those concerning environmental protection, remained applicable unless explicitly displaced, thus reinforcing the **integrated character** of ocean governance under UNCLOS.

Doctrinally, this case advanced several critical developments:

- It confirmed ITLOS's power to issue **urgent measures to prevent environmental harm**, even in the absence of conclusive scientific consensus.
- It strengthened the judicial enforceability of **cooperative obligations** among states sharing endangered resources.
- It underscored the compatibility of **sectoral treaties** with broader UNCLOS obligations, mitigating the risk of legal fragmentation.

The *Southern Bluefin Tuna* cases remain influential in reinforcing the legal infrastructure for marine environmental conservation, demonstrating that courts and tribunals are willing to intervene early to prevent irreversible ecological damage, even amid scientific uncertainty.

Citation: *Southern Bluefin Tuna Cases (N.Z. v. Japan; Austl. v. Japan)*, Provisional Measures, Order of Aug. 27, 1999, ITLOS Rep. 1999, at 280.

C. MOX Plant Case (Ireland v. United Kingdom), ITLOS, Order of Dec. 3, 2001

The *MOX Plant Case* presented before the International Tribunal for the Law of the Sea (ITLOS) addressed the intersection of environmental protection, transboundary cooperation, and jurisdictional coordination under international law. Initiated by Ireland against the United Kingdom in 2001, the case concerned the operation of the Mixed Oxide (MOX) fuel reprocessing facility at Sellafield, located on the Irish Sea coast. Ireland alleged that the facility posed risks of radioactive pollution and that the United Kingdom had failed to comply with its obligations under the United Nations Convention on the Law of the Sea (UNCLOS), particularly regarding the duty to protect and preserve the marine environment.

Ireland requested provisional measures under Article 290(5) of UNCLOS, seeking to halt the commissioning of the plant pending the constitution of an Annex VII arbitral tribunal. The request was grounded in the assertion that the United Kingdom had failed to engage in adequate environmental assessment and consultation prior to activating the MOX facility and that continued operation posed an imminent risk to the marine ecosystem shared by both states.

ITLOS affirmed its **prima facie jurisdiction** over the dispute and recognized the **urgency** of the environmental concerns raised. However, it declined to grant Ireland's full request to suspend plant operations. Instead, the Tribunal issued a limited but significant **provisional measure**, directing both parties to **cooperate in exchanging information** and **consult in good faith** to mitigate environmental risks. This order underscored the **procedural dimensions** of environmental obligations under UNCLOS—particularly the requirement of inter-state cooperation in managing shared marine resources.

Notably, this decision demonstrated ITLOS's judicial **restraint** in cases involving overlapping jurisdictions. Parallel proceedings concerning the MOX plant were pending before a European Community tribunal and an arbitral tribunal under the OSPAR Convention. Acknowledging the complexity of concurrent legal frameworks, ITLOS tailored its order to avoid prejudicing the authority of these alternative fora. This approach reinforced the principle of **judicial comity** and highlighted the need for coordination among international tribunals in legally dense disputes.

The *MOX Plant* case contributed to the evolving doctrine of **transboundary environmental cooperation**, recognizing that states have an obligation not only to prevent pollution but also

to **exchange relevant data, assess potential risks**, and engage in meaningful dialogue. The Tribunal's emphasis on procedural obligations—rather than substantive determinations—signaled that environmental governance increasingly depends on **collaborative decision-making processes**, not just outcome-based mandates.

The order also reinforced the emerging **duty of due diligence** in environmental matters, suggesting that failure to consult and exchange information itself may constitute a breach of international law, regardless of the actual environmental harm caused.

Citation: *MOX Plant Case (Ir. v. U.K.)*, Provisional Measures, Order of Dec. 3, 2001, ITLOS Rep. 2001, at 95.

D. Maritime Delimitation in the Atlantic Ocean (Ghana v. Côte d'Ivoire), ITLOS, Judgment of Sept. 23, 2017

The *Ghana v. Côte d'Ivoire* case, decided by a Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) in 2017, is a landmark in the jurisprudence of maritime boundary delimitation. The dispute arose after Côte d'Ivoire challenged Ghana's oil exploration activities in a contested offshore area along their shared Atlantic coastline. At the heart of the case was the question of whether a tacit maritime boundary existed and, if not, how a new boundary should be drawn under the framework established by the United Nations Convention on the Law of the Sea (UNCLOS).

Côte d'Ivoire contended that no agreed boundary existed and proposed an **angle-bisector method** for delimitation. Ghana, in contrast, asserted that both parties had observed a **tacit equidistance-based boundary** through a long-standing pattern of mutual conduct, which had ripened into a legally binding maritime boundary under customary law.

The Tribunal rejected the claim of a pre-existing tacit agreement, holding that while there had been mutual tolerance and cooperative conduct, these did not constitute **legally binding acquiescence** sufficient to establish a boundary. Nonetheless, the Tribunal accepted Ghana's proposed **equidistance/relevant circumstances method**, which has become the standard approach under contemporary international law.

The Court applied a three-stage methodology:

1. **Drawing a provisional equidistance line**, based on the coastal geography;

2. **Assessing relevant circumstances** (such as coastal configuration) to determine whether adjustments were needed; and

3. **Conducting a disproportionality test** to ensure an equitable result in the allocation of maritime space.

The Chamber found no compelling reason to adjust the provisional equidistance line, concluding that both states had sufficiently regular coastlines and that no disproportionate outcome would result from its application. Thus, the final boundary followed the equidistance line as initially proposed by Ghana.

Significantly, the Tribunal also addressed allegations that Ghana had violated Côte d'Ivoire's sovereign rights by engaging in hydrocarbon exploration in the disputed area. It held that Ghana had not acted unlawfully, as there was no conclusive boundary, and its conduct had been carried out with transparency and without bad faith. This reaffirmed the **principle of non-retroactivity**, whereby activities lawfully undertaken in good faith before the resolution of a dispute do not become unlawful merely due to a subsequent judicial boundary determination.

Doctrinally, the case reinforced the **centrality of the equidistance/relevant circumstances methodology** and clarified the threshold for establishing tacit maritime boundaries under international law. It also underscored the importance of **procedural fairness** and **good faith conduct** in resource-rich boundary disputes.

Citation: *Maritime Delimitation in the Atlantic Ocean (Ghana v. Côte d'Ivoire)*, Judgment, Case No. 23, ITLOS Special Chamber, Sept. 23, 2017, ITLOS Rep. 2017, at 4.

IV. Nationality and Diplomatic Protection

A. Nottebohm Case (Liechtenstein v. Guatemala), ICJ Rep. 1955

The *Nottebohm Case* stands as a foundational decision in the jurisprudence of **nationality and diplomatic protection** under public international law. At issue was whether Liechtenstein could espouse the claim of Friedrich Nottebohm, a German-born businessman who had acquired Liechtenstein nationality through expedited naturalization in 1939—shortly before

the outbreak of World War II—after residing in Guatemala for several decades.

When Guatemala later classified Nottebohm as an enemy alien during the war, it seized his assets and deported him. Liechtenstein brought a claim before the International Court of Justice (ICJ), asserting that Guatemala had violated international law and that it was entitled to exercise diplomatic protection on behalf of its national.

The Court declined to adjudicate the merits of the claim, holding that Liechtenstein lacked **standing** to espouse Nottebohm's case. The ICJ reasoned that, although nationality is primarily governed by domestic law, the right to exercise diplomatic protection in international law requires the nationality to reflect a **"genuine connection"** between the individual and the state. In this case, Nottebohm's ties to Liechtenstein were deemed tenuous and artificial; his naturalization was seen as motivated by wartime expediency rather than a substantive link to the Liechtensteinian state.

This decision is often cited for its articulation of the **"effective nationality"** doctrine. According to the Court, mere formal conferment of nationality is insufficient; the person must maintain a real and effective relationship with the state asserting protection. This relationship may be demonstrated through habitual residence, familial ties, cultural affiliation, and participation in public life.

The ruling had far-reaching implications, challenging the long-standing principle of state sovereignty in nationality matters. It suggested that, in the context of international claims, **international law imposes qualitative limits** on the exercise of nationality-based protection. The Court thus introduced a **functional criterion** to assess the legitimacy of nationality in claims involving third-party states.

However, the *Nottebohm* doctrine has not gone unchallenged. Many scholars and some subsequent tribunals have questioned whether the "genuine link" requirement unduly intrudes upon a state's sovereign right to define its own nationals. In particular, the **International Law Commission (ILC)**, in its Draft Articles on Diplomatic Protection (2006), ultimately did not incorporate the *Nottebohm* test as a universal rule, though it acknowledged its relevance in exceptional circumstances.

Despite its limited subsequent application, *Nottebohm* remains a leading case for situations

involving **dual nationality**, **forum shopping**, and **strategic naturalization**, and continues to influence how tribunals evaluate the authenticity of nationality in diplomatic protection cases.

Citation: *Nottebohm Case (Liech. v. Guat.)*, Second Phase, Judgment, 1955 I.C.J. 4 (Apr. 6).

B. Barcelona Traction Case (Belgium v. Spain), ICJ Rep. 1970

The *Barcelona Traction* case is a cornerstone of international law on the doctrine of diplomatic protection and the legal personality of corporations. Decided by the International Court of Justice (ICJ) in 1970, the case involved a dispute brought by Belgium on behalf of its nationals—shareholders of a Canadian-incorporated company, Barcelona Traction, Light and Power Company, Limited—against Spain. The company had operated extensively in Spain's energy sector but was subjected to judicial measures that led to its bankruptcy and asset seizure by Spanish authorities.

Belgium alleged that Spain's conduct constituted a denial of justice and violated international law, seeking reparations on behalf of its nationals who held the majority of shares in the company. The central legal question was whether a state could exercise diplomatic protection of **shareholders** in a foreign company, where the alleged injury had been inflicted upon the **corporate entity**, not directly upon the shareholders themselves.

The Court concluded that Belgium did **not have standing** to bring the claim. It held that the right to diplomatic protection in cases of corporate injury belongs primarily to the state of **incorporation**—in this case, Canada. Since Canada had not espoused the claim, and the injury was suffered by the company itself (not directly by the shareholders), Belgium's claim was deemed inadmissible.

The Court's decision rested on several key principles:

1. A **corporation has an independent legal personality** distinct from its shareholders.

2. Only the **national state of the corporation**—not the national states of its shareholders—has standing to bring a claim for injury to the corporation.

3. An exception to this rule may arise in exceptional circumstances, such as when the corporation is defunct and no longer able to pursue its own claims, but those conditions

did not apply here.

Importantly, the ICJ used the opportunity to elaborate on **obligations erga omnes**, observing that while diplomatic protection is typically discretionary and bilateral in nature, certain obligations—such as those prohibiting genocide, slavery, and racial discrimination—are owed to the **international community as a whole**. This was the first time the ICJ expressly articulated the concept of erga omnes obligations, giving rise to an important normative distinction between **bilateral rights** and **universal norms**.

Doctrinally, the case reaffirmed the principle that **nationality of claims** in international law requires a close legal connection between the injured party and the claimant state. It also highlighted the **limits of shareholder protection** under international law, drawing a firm distinction between direct and indirect injuries.

The *Barcelona Traction* judgment continues to serve as a primary authority in investment arbitration, state responsibility, and international business law. It clarifies when and how states may invoke claims for economic injuries suffered by legal persons under their protection, and it underscores the primacy of **corporate nationality** over shareholder interests in public international law.

Citation: *Barcelona Traction, Light and Power Co. (Belg. v. Spain)*, Second Phase, Judgment, 1970 I.C.J. 3 (Feb. 5).

V. International Criminal Law and Humanitarian Accountability

A. Prosecutor v. Tadić (International Criminal Tribunal for the former Yugoslavia), 1995–1999

The *Tadić* case, prosecuted by the **International Criminal Tribunal for the former Yugoslavia (ICTY)**, is a watershed moment in the development of modern international criminal jurisprudence. It marked the first trial of an individual for war crimes by an international tribunal since the Nuremberg and Tokyo trials and established vital precedents on issues ranging from individual criminal responsibility to the classification of armed conflict.

Duško Tadić, a Bosnian Serb, was charged with multiple counts of war crimes and crimes against humanity arising from his involvement in the persecution of non-Serb civilians in the

Prijedor region of Bosnia and Herzegovina during the 1992 conflict. The charges included murder, torture, and inhumane acts, all committed in the context of the ethnic cleansing campaign.

The case was groundbreaking for several reasons:

1. **Jurisdiction and the Nature of the Conflict**:

   In its **1995 Decision on Jurisdiction**, the ICTY held that the tribunal had authority to adjudicate both **international and non-international armed conflicts**. The Appeals Chamber ruled that violations of **common Article 3 of the Geneva Conventions**, which applies to internal armed conflicts, fell within its jurisdiction. This interpretation extended international criminal accountability into intra-state conflicts, which had previously remained largely unregulated under penal law.

2. **Attribution and the "Overall Control" Test**:

   The ICTY Appeals Chamber developed the **"overall control" test** to determine when the acts of paramilitary groups could be attributed to a state, departing from the stricter "effective control" test used by the ICJ in *Nicaragua*. It held that if a state exercises overall control over an organized group—providing financing, training, or operational planning—the acts of that group could be imputed to the state. This expanded the circumstances under which international armed conflict could be found and had implications for state responsibility and belligerent accountability.

3. **Recognition of Individual Criminal Responsibility for Serious Violations of IHL**:

   The *Tadić* trial established that individuals, not just state actors, can be held **criminally liable for grave breaches of international humanitarian law**, including crimes against humanity and war crimes. Importantly, the tribunal clarified that the systematic nature of such crimes and their perpetration as part of a wider policy were not necessary for establishing liability under customary international law—though they remained relevant for crimes against humanity.

4. **Due Process and Fair Trial Rights**:

   The Tribunal also set procedural standards for international criminal trials, including

rules on evidence, witness protection, and the rights of the accused. These safeguards balanced the need for accountability with the necessity of ensuring judicial fairness.

The *Tadić* case thus served as a **template for the structure and functioning** of later international criminal institutions, including the International Criminal Court (ICC). It reaffirmed that accountability for atrocities is no longer confined to states or high-ranking officials but extends to individuals who participate in the commission of grave violations of humanitarian norms.

Citation: *Prosecutor v. Tadić*, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995); Judgment (May 7, 1997); Appeals Chamber Judgment (July 15, 1999).

B. Prosecutor v. Akayesu (International Criminal Tribunal for Rwanda), 1998

The *Prosecutor v. Jean-Paul Akayesu* case, decided by the **International Criminal Tribunal for Rwanda (ICTR)** in 1998, was the first conviction for **genocide** by an international tribunal and marked a watershed in the legal recognition of **sexual violence as a constituent act of genocide and crimes against humanity**.

Jean-Paul Akayesu, the former mayor (*bourgmestre*) of Taba commune in Rwanda, was charged with direct and command responsibility for atrocities committed during the 1994 genocide against the Tutsi population. As a local government official, Akayesu wielded both administrative and military authority during the mass killings that unfolded under his watch.

The tribunal found that Akayesu had knowledge of, and in several instances actively encouraged, acts of violence including **murder, rape, and torture** perpetrated against civilians. Importantly, the ICTR interpreted the **Genocide Convention of 1948** in a progressive and expansive manner, applying its provisions to include **systematic sexual violence** as an instrument of genocide.

Key contributions of the Akayesu judgment include:

1. **First Conviction for Genocide**:

   The Trial Chamber convicted Akayesu under Article 2 of the ICTR Statute for genocide,

defining the crime in terms consistent with Article II of the Genocide Convention. The Court emphasized that intent to destroy a protected group in whole or in part could be inferred from patterns of conduct and the context of mass atrocities.

2. **Recognition of Rape as Genocide**:

   Perhaps the most groundbreaking feature of the decision was the judicial recognition of **rape and other forms of sexual violence** as acts of genocide when committed with the intent to destroy a protected group. The Court acknowledged that sexual violence was not merely incidental but often used deliberately to destabilize, humiliate, and destroy communities. The judgment defined rape broadly, moving beyond physical penetration to encompass coercive circumstances and degradation of the victim.

3. **Crimes Against Humanity and Individual Criminal Responsibility**:

   Akayesu was also convicted for crimes against humanity, including extermination and inhumane acts under Article 3 of the ICTR Statute. The Court established that crimes against humanity need not be linked to an armed conflict but must be part of a widespread or systematic attack against civilians, which was clearly the case in Rwanda's ethnic violence.

4. **Command Responsibility**:

   The judgment elaborated on the doctrine of **command responsibility**, holding Akayesu liable not only for acts he directly committed but also for those perpetrated by subordinates under his effective authority. The Tribunal stressed that failure to prevent or punish such acts amounted to criminal liability under international law.

The *Akayesu* judgment fundamentally expanded the jurisprudence of international criminal law by recognizing the **gendered dimensions of mass atrocity**. It offered a framework for holding perpetrators accountable for acts of sexual violence as crimes of the highest gravity, elevating the understanding of rape from a by-product of war to a **weapon of genocide**.

This case has since been cited by numerous tribunals and in the development of the **Rome Statute of the International Criminal Court**, which explicitly includes rape, sexual slavery, and enforced prostitution as crimes against humanity and war crimes.

Citation: *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998).

C. Prosecutor v. Thomas Lubanga Dyilo (International Criminal Court), 2012

The case of *Prosecutor v. Thomas Lubanga Dyilo* was the **first completed trial and conviction by the International Criminal Court (ICC)**, rendering it a landmark in the institutional development of international criminal justice. The judgment, delivered in 2012, set critical precedents on the recruitment and use of child soldiers in armed conflict and clarified the procedural and evidentiary thresholds for conviction under the **Rome Statute**.

Thomas Lubanga Dyilo was the founder and leader of the **Union of Congolese Patriots (UPC)** and commander-in-chief of its military wing, the **Forces Patriotiques pour la Libération du Congo (FPLC)**. The charges against him arose from his role in the **Ituri conflict** in the eastern Democratic Republic of the Congo (DRC), where the FPLC had conscripted, enlisted, and used children under the age of 15 in hostilities between 2002 and 2003.

Lubanga was charged under **Article 8(2)(e)(vii)** of the Rome Statute with three war crimes: (1) conscripting children under the age of 15 into armed groups, (2) enlisting them voluntarily, and (3) using them actively in hostilities. The Trial Chamber found that Lubanga bore individual criminal responsibility under **Article 25(3)(a)** for directly contributing to the enlistment policy and for his failure to prevent or punish such acts.

Key legal and doctrinal contributions of the *Lubanga* case include:

1. **Clarification of the Crime of Child Recruitment**:

   The Court affirmed that the prohibition against the use of child soldiers is **customary international law** and reiterated that both **conscription** and **enlistment**—whether by force or voluntary means—violate international humanitarian law when the individuals are under 15 years of age. The definition of "active participation" was interpreted broadly to include combat roles as well as support roles such as porters and bodyguards in the line of conflict.

2. **First Application of Individual Criminal Responsibility under the Rome Statute**:

   The case was the first instance in which the ICC implemented **modes of liability**

outlined in the Statute. The Court emphasized that Lubanga's role in designing, directing, and perpetuating the child recruitment system satisfied the threshold of "co-perpetration."

3. **Victim Participation and Reparations**:

   The *Lubanga* proceedings were also the first to operationalize the Rome Statute's **victim participation regime** under Article 68. Victims were allowed to present their views and concerns, significantly shaping the narrative of harm and influencing reparations. The judgment paved the way for **reparative justice** by directing the Trust Fund for Victims to develop a reparations plan, including symbolic and collective measures of redress.

4. **Due Process and Fair Trial Challenges**:

   The trial faced substantial procedural difficulties, including delays in disclosure of exculpatory evidence and issues regarding witness credibility. These led the Trial Chamber to warn of potential mistrial. Nonetheless, the proceedings ultimately reinforced the ICC's **commitment to fair trial standards**, even while establishing its first precedent on core international crimes.

Although criticized for the narrow scope of charges (which excluded other alleged crimes such as sexual violence), the *Lubanga* judgment remains pivotal for crystallizing the ICC's legal foundations. It affirmed the Court's role in enforcing **international humanitarian norms** and delivering justice for **vulnerable populations**, particularly children, in the context of non-international armed conflicts.

Citation: *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Judgment Pursuant to Article 74 of the Statute (Mar. 14, 2012).

References

A. Cases – International Court of Justice (ICJ)

1. *Corfu Channel (U.K. v. Alb.)*, Merits, Judgment, 1949 I.C.J. 4 (Apr. 9).

2. *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.)*, Merits, Judgment, 1986 I.C.J. 14 (June 27).

3. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136 (July 9).

4. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174 (Apr. 11).

5. *Fisheries Case (U.K. v. Nor.)*, Judgment, 1951 I.C.J. 116 (Dec. 18).

6. *Nottebohm Case (Liech. v. Guat.)*, Second Phase, Judgment, 1955 I.C.J. 4 (Apr. 6).

7. *Barcelona Traction, Light and Power Co. (Belg. v. Spain)*, Second Phase, Judgment, 1970 I.C.J. 3 (Feb. 5).

B. Cases – International Tribunal for the Law of the Sea (ITLOS)

8. *Southern Bluefin Tuna Cases (N.Z. v. Japan; Austl. v. Japan)*, Provisional Measures, Order of Aug. 27, 1999, ITLOS Rep. 1999, at 280.

9. *MOX Plant Case (Ir. v. U.K.)*, Provisional Measures, Order of Dec. 3, 2001, ITLOS Rep. 2001, at 95.

10. *Maritime Delimitation in the Atlantic Ocean (Ghana v. Côte d'Ivoire)*, Judgment, Case No. 23, ITLOS Special Chamber, Sept. 23, 2017, ITLOS Rep. 2017, at 4.

C. Cases – International Criminal Tribunals & Court (ICTY, ICTR, ICC)

11. *Prosecutor v. Tadić*, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995); Trial Judgment (May 7, 1997); Appeals Chamber Judgment (July 15, 1999).

12. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment (Int'l Crim. Trib. for Rwanda Sept. 2, 1998).

13. *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Judgment Pursuant to Article 74 of the Statute (Int'l Crim. Ct. Mar. 14, 2012).

D. Treaties and Legal Instruments (Cited in Case Law)

14. Charter of the United Nations, June 26, 1945, 1 U.N.T.S. XVI.

15. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

16. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

17. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3.