

Anglo- Iranian Oil Co Case – UK v Iran (1952)

- In 1951 the government of Iran attempted to nationalize the country's oil industry
- AIO brought Iran to ICJ
 - Iran only consented to ICJ in respect to treaties it was a part of
 - UK claimed in 1933 the company the two states signed a treaty that nationalizing violates
 - Argued that the agreement signed has a double character (being a concessionary contract and a treaty)
 - Even if the settlement reached is an implied agreement, it still counts under the definition of a treaty
- Judgement: the court cannot accept the that there is a double character – it's only a **concessionary contract** between government and a foreign corporation so the UK is not party to the contract
 - Iran cannot claim from the UK rights that it has against the company
 - Cannot regulate relations between the two countries

Maritime Delimitation and Territorial Questions between Qatar and Bahrain (1994)

- 1976 Qatar and Bahrain agreed to 3rd party mediation of a boundary dispute by King of Saudi Arabia who then sent it to the ICJ in '87
- 1990 still unsuccessful, Qatar said orally that it would accept previously proposed formulation by Bahrain
 - 3 parties signed minutes confirming that they would take it to the ICJ and if they cannot resolve after a certain amount of time then they would submit the dispute with Bahraini formula
- letters of '87 and the minutes of '90 were deemed binding
 - Bahrain disputes that '90 minutes were just a record of negotiations
 - VCLT 1969 Article 2, paragraph 1: international agreements may take a number of forms and given a diversity of names
 - The '90 minutes include a reaffirmation of obligations and address the circumstances that the court could be seized after '91 so they are an international agreement (detail commitments to which the parties have consented, creating rights and obligations)
 - Bahrain says that the minutes weren't treated as an international agreement in its procedures but non-registration does not change the validity of the agreement

Legal Status of Eastern Greenland – Denmark v Norway (1933 PCIJ)

- In 1931 Norway proclaimed sovereignty over Eastern Greenland while Denmark claimed over the whole of Greenland
- Greenland said that Norway had recognized Danish sovereignty
- Post WW1 Danish government had assured Norway that it would not object to Norwegian claim to Spitzbergen and in return the Danish government sought the assurance that Norway would not contest Denmark's claim over Greenland
- Decision: Denmark gets Greenland

Case Concerning Right of Passage over Indian Territory – Portugal v India (1960 ICJ)

- Portugal relying on an 18th century treaty to claim that India gave Portugal rights over certain enclaves as well as passage to and from the enclaves
- India claimed the agreement was not validly concluded
- India objects that the treaty of 1779 was entered into validly and never became in law a binding treaty
- The court looked at the different texts of the treaty and didn't find it necessary to deal with the procedure by which the agreement terms were reached
 - We cannot judge the procedures of the 18th century by our standards today
- Decision: the treaty is frequently referred to in later treaties and the Marathas felt it was binding so it continues to

Reservations to the Convention on Genocide, Advisory Opinion (1951 ICJ)

- UNGA sought advisory opinion from the court for ratifying or acceding to the Convention on the Prevention and Punishment of the Crime of Genocide
 1. Can the reserving state be regarded as being party to the convention while still maintaining its reservation if the reservation is objected to by one or more of the parties but not others
- State cannot be bound without consent so no reservation can be effective against a state without its agreement
- Multilateral treaties have flexibility as long as the *raison d'être* isn't compromised
- Yes, the reserving party is considered party to the treaty
- Majority vote makes it necessary for states to make reservations
 2. If the answer is yes, what is the effect of the reservation between the reserving state and the those who object to the reservation? And those who accept it?
- If a party objects to a reservation which it considers is incompatible with the object of the treaty, it can consider the reserving state not a party and vice versa
- ** object and purpose controls permissibility of reservations

Vienna Convention on the law of treaties, Advisory Opinion (1932 PCIJ)

- Danzig was a Free city established after a peace treaty post WW1
- Dispute arose between Poland and Danzig concerning Danzig treatment of Polish nationals so an opinion was requested on whether the treatment is justified under its constitution
- NOTE that usually state 1 cannot rely on state 2's constitution but only on international law and obligations
 - State cannot use its own constitution to evade obligations under international law
 - So, treatment of Polish nationals must be settled using international law and treaties
- Article 27 of VCLT makes it hard for federal states or states where there's a division of power
 - Executive makes laws or signs treaties and another enforces it so there may be situations where these 2 branches collide
- *Laura Barnett, Canada's Approach to the treaty-making process (2012)*
 - Canada cannot ratify a treaty until it's sure that it can be enforceable in Canadian law
 - If it's really clear that domestic legislation must be put in place to implement the terms
 - Ministers give instructions for implementation bill to be drafted
 - After cabinet approval, the bill is tabled in parliament and goes through legislative process (usually passes)
 - Some treaties don't need new domestic legislation (human rights, foreign investment promotion)
 - Ratification can proceed after review
 - Before obliging itself to an international treaty, the role of provinces is examined
 - Some matters fall under provincial authority

Case of the Free Zones of Upper Savoy and the District of Gex – France v Switzerland (1932 PCIJ)

- Article 435 of the Treaty of Versailles where France was a party, France wanted to revoke certain custom-free zones along the French- Swiss border
 - The treaty does not involve the abolition of the free zones and nevertheless Swiss was not a party to it
- The Federal Council in 1919 stated that Switzerland agreed to article 435 unless it would agree to the suppression of a system intended to give neighboring territory the benefit of a special regime which is appropriate to the geographical and economic situation
 - The court concluded that article 435 does not abolish the free zones between France and Switzerland
 - The court also considered if the treaty of Paris 1814 gave Switzerland any rights over France concerning free-zones but it did not & Gex zones were created in favor of Switzerland (France was a party)
 - Article 6 of the Treaty of Paris declared that all powers acknowledge and guarantee the neutrality of Switzerland and the road which leads from Geneva into Switzerland shall at all times be free
 - Thus, zones stand and court need not consider legal nature of Gex

Rights of Nationals of the United States of America in Morocco – France v USA (1952 ICJ)

- A treaty between the two countries in 1836 stated any dispute between the citizens of the US and Morocco would be resolved by the American consul in Morocco rather than local authorities
 - France reps Morocco since it was a French protectorate
- The issue was that does dispute include civil and criminal or just civil (US believes both, France argues civil)
- France argues dispute refers to civil while crimes are offences against the state, not between private persons
- The treaty of 1836 replaced the treaty of 1787 so must take into account what ‘dispute’ meant in those times
 - Looking at other treaties by Morocco the word dispute means both civil and criminal
 - Also taking into account that at the time of these treaties there was no clear distinction between civil and criminal matters
- Decision: the word dispute refers to both civil and criminal

Aegean Sea Continental Shelf – Greece v Turkey (1979 ICJ)

- Do the parties have to submit their dispute over their respective continental shelves to the court.
- Greece relied upon the 1928 General Act for the Pacific Settlement of International Disputes where both Greece and Turkey were parties
- Turkey objected saying that Greece in acceding to the General Act had reserved itself from “disputes relating to the territorial status of Greece”
- Greece says that a restrictive view has to be taken concerning their reservation because of the historical context behind the expression
 - The court deemed insufficient evidence for the expression to be used in a specific sense but rather general
 - Greece states that the continental shelf was unknown in 1928 and in 1931
 - The court: Greece used the expression as a general term and so its intended to follow the evolution of the law and to correspond with the meaning attached to the expression by the law in force at any given time

Dispute regarding Navigational and Related Rights – Costa Rica v Nicaragua (2009 ICJ)

- Parties disagreed over the interpretation of an 1858 treaty between them that allowed Costa Rica to make navigational use for commerce, of a portion of the San Juan River (Nicaraguan territory)
- According to Nicaragua should the word commerce be limited to 1858 meaning of goods and not services such as transport of persons
- Terms must be interpreted in light of parties’ common intention and in their original meaning but does not mean that it’s never the meaning at the time when the treaty is being interpreted
- VCLT article 31: the meaning can depart from the original intent on basis of implied agreement between parties
 - Also, if parties intended on giving a meaning capable of evolving with developments in international law – we must respect the original intentions
- Decision: Costa Rica remains the right of free navigation since the treaty used the generic term comercio (meaning to a class of activity) and also the 1858 treaty had no end, meaning its understood that the treaty must be addressed for each occasion its applied to

Case Concerning the Temple of Preah Vihear – Cambodia v Thailand (1962 ICJ)

- 1904 a treaty decided the border between the countries was on the watershed. A map was made and given to Thailand where Preah Vihear was on Cambodia’s side but in reality, it should have been on Thailand’s. The court decided it belonged to Cambodia despite the error.
- Judge: usually when there’s an error that compromises its validity, the contract is no longer admissible
 - Thailand government requested French topographical officers and were not unaware of its origins. They accept the risks since they deliberately left it for the French.
 - It was done in good faith. They should have verified the results and since they did not they must abide by the results
 - The Siamese government accepted it at the time of its origin so it continues to be valid

Fisheries Jurisdiction – UK v Iceland (1973 ICJ)

- Iceland wants to increase fishery zone from 12 to 50 nautical miles but the UK objected and submitted the matter to ICJ after 1961 agreement with Iceland stating disputes go to the court
- Iceland states that in an official correspondence “the 1961 Exchange of Notes took place under difficult circumstances when the British Royal Navy had been using force to oppose the 12-mile fishery limit” constituting improper duress thus making the treaty invalid
- ICJ rejects saying: the statement could be indirect duress making the Exchange of Notes void, and it was dealt with as such by UK. The VCLT states that use of force makes it void
 - But such an accusation must be supported and history shows that these instruments were freely negotiated

**** Article 69 VCLT:** if the treaty is invalid, it has no legal force

- Acts performed in reliance to the treaty: each party may require the other to establish as far as possible in mutual relations that would have existed if the acts had not been performed
- Acts performed in good faith before the invalidity was invoked are not unlawful (does not apply for fraud, corruption, coercion)

Philippe Kirsch “Canadian Practice in International Law at the Department of Foreign Affairs (1997)

- Article 56 VCLT suggests that states can withdraw but in human rights its resisted
- The denunciation of the International Covenant on Civil and Political Rights by the DPRK is of no legal effect
- ICCPR cannot be denounced unilaterally and has to oblige by international law anyways

Legal Consequences for States of the Continued Presence of South Africa in Namibia Notwithstanding Security Council Resolution 276 (1970 ICJ Advisory Opinion)

- Post WW1 Namibia was deemed by LON incapable of governing itself. The LON granted South Africa mandate over South West Africa
- After LON dismantled, South Africa wanted to dispose of SW Africa as it wished
 - Court rejected in 1950 and '62 saying (like in Ethiopia and Liberia)
 - South Africa occupied Namibia and so UNGA adopted resolution terminating the mandate because it had breached its obligations
 - ICJ said the mandate is an international agreement and so breaching is grounds for termination
 - A repudiation of the treaty not sanctioned by the convention or a violation of a provision essential to the accomplishment of the object of the treaty (Article 60)

Gabcikovo- Nagymaros Project – Hungary v Slovakia (1997 ICJ)

- September 1977, the Hungarian Peoples Republic and the Czechoslovak People’s Republic (Slovakia) concerning the construction and operation of the G-N system of locks
- Joint investment for the construction and operation of the system of locks aimed at production of hydroelectricity, improvement of navigation and protection of areas against flooding
- By terms of treaty, must make sure water quality is not compromised
- Intense criticism led to suspension of project in Nagymaros from May to October 1989 and after failed negotiations, Hungarian government terminated the treaty in 1992
- Hungary claimed impossibility of performance (Article 61 VCLT: permanent disappearance, or destruction of an object indispensable for the execution) but it was not in conformity
 - Impossibility to make payments was suggested to be added but was not because could lead to preclusion of the wrongfulness of non-performance
 - Environmental reasons don’t hold because it’s not unforeseen and accounted for this change

The Case of the SS Lotus – France v Turkey (1927 PCIJ)

- Collision on the high seas between French and Turkey. The Turkish ship sank, killing 8 people while the French ship survived. Turkish authorities arrested and charged one of its officers with involuntary manslaughter, while a French officer was convicted of various offences under Turkish law
- France claimed Turkey's actions violated customary international law limitation on state jurisdiction
- France argues that collision cases are normally civil cases. So, prosecutions only occur before courts of the state whose flag is flown
 - Court states that this just means people rarely take it to criminal proceedings
 - No rule of international law regarding collision cases

Fisheries Case – UK v Norway (1951 ICJ)

- Based on historic practice, Norway contended that it was entitled to use straight baselines as the starting point for measuring territorial sea and so has certain coastal waters
- 1933 UK objected saying customary international law uses baseline that follows low water mark along highly indented coasts
- court points out several states use straight baselines along with Norway and the UK never contested
- UK claims that Norway's system of delimitation was not known to it and so lacks the notoriety essential for it to be historic
 - Court does not accept this since it's a great maritime Power

North Sea Continental Shelf (1969 ICJ)

- The Federal Republic of Germany (West Germany) along with Denmark and Netherlands previously agreed on a partial delimitation of their continental shelves but were unable to agree on certain remaining segments
- Denmark and Netherlands were parties to 1958 Convention on the Continental Shelf
- Denmark and Netherlands (Article 6) accept rule of general international law on the subject of delimitation but Germany was not a party since it did not ratify
 - Convention embodied already existing rules of law
 - Prior to convention, continental shelf law was forming yet the process of defining went through ILC
- Decision: Germany is not bound

Military and Paramilitary Activities in and against Nicaragua – Nicaragua v USA (1986 ICJ)

- Nicaragua claimed that the US unlawfully used force against it
- The US has excluded the court's jurisdiction under a multilateral treaty unless all affected parties to the treaty were also parties to the proceedings before court. Since they were not, the court considered if it was under customary international law
- Just because a bunch of states follow a rule doesn't make it CIL. States conduct must be consistent with rule
- **Opinio Juris:** action was carried out as a legal obligation
 - widespread and consistent state practice does not give rise to rules of customary international law
 - In customary international law, opinio juris is the second element with state practice necessary to establish legally binding custom
- The court finds US had no general right of intervention since all states have the right to conduct its affairs without interference

Colombian- Peruvian Asylum Case (1950 ICJ)

- Peruvian fugitive was granted asylum in Colombian embassy in Peru.
- Colombia claimed it had unilateral right to grant diplomatic asylum within Latin America but Peru argues it interfered with Peru's territorial jurisdiction
 - Colombian gov't invoked uncommon local custom
- The party which relies on this custom must prove its establishment so that it becomes binding on the other

- Colombia must prove its usage as general practice of law
- Colombia proved it had used diplomatic asylum but not of unilateral and definitive qualification
- So much use for political expediency makes it impossible to show uniformity
- Decision: court finds Colombian government cannot prove it's a custom
 - Also, even if it could, it cannot be invoked against Peru because it had refrained from signing Montevideo Conventions (diplomatic asylum)

Nuclear Tests – Australia v France (1974 ICJ)

- Australia and New Zealand in companion case wanted an order from the court requiring France to stop atmospheric nuclear testing in South Pacific
- France refused to recognize court's jurisdiction
- President of France said as soon as tests planned for this summer is completed they'll move underground
 - Public declarations are considered binding
 - Domestic contract law says that unilateral promise may be binding if it induces someone to rely upon it. Although some states may rely on their being effective, the court did not insist on evidence of actual reliance

“Guiding Principles Applicable to Unilateral Declarations of States Capable of creating Legal Obligations” in Report of the international Law Commission (2006 UN GAOR)

- Declarations publically made and manifesting will to be bound may be legally obliging
 - Good faith
- Any state can undertake legal obligation through unilateral declarations
- To determine legal effects, you must take into account their content and circumstances and reactions
- A unilateral declaration binds the state internationally only if it is made by an authority vested with the power
- May be oral or written
- May be addressed to international community, or to one or multiple states or entities
- Must be in clear and specific terms. Scope may be interpreted in a restrictive manner. Weight is given to the text of the declaration first
- Unilateral declaration against international law is void
- No obligation can be made for another state
- Declaration cannot be revoked arbitrarily. Take into consideration when deciding if cancellation is arbitrary
 - Any specific terms of the declaration relating to revocation
 - The extent to which those to whom the obligations are owed have relied on them
 - The extent to which there have been fundamental changes in circumstances

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004, ICJ)

- 2003 the UNGA asked the court for opinion for “what are the legal consequences arising from the construction of the wall being built by Israel in occupied Palestinian territory
- court concluded that it is contrary to international law and raises issues of erga omnes (concern of all states)
- Erga Omnes: Israel violated the obligation to respect the rights of the Palestinian people to self-determination and some obligations under international humanitarian law
 - Every state has the duty to promote realization of equal rights and self-determination of peoples in accordance with the charter
 - Other states must not aid in the situation in occupied Palestine or East Jerusalem

Status of Palestine in the UN (2013 UN GAOR)

- Observer state (intermediate step)
- State must possess permanent population, defined territory, government and capacity to enter relations
 - Palestine fulfilled criteria

- Questions raised regarding its control over territory since Hamas was in power in Gaza. Israeli occupation further prevented Palestine from exercising control over land
- Palestine fulfilled criteria for government. Except that Hamas controlled 40 percent of population so contradicted effective government control
- Palestine fulfilled criteria of entering into relations with other states

Aaland Islands Case (1920 LON)

- LON asked to assess the status and future of the Aaland Islands, which had historic ties to Finland, Sweden and Russia. Case went to ad hoc group, who had to determine the date Finland emerged independent
- Political and social life was disorganized, weak authority, civil war, government was chased from capital and could not carry out its duties, armed camps and police divided into opposing forces
- May 1918 civil war ended and foreign troops left
- Decision: Finland retains land

Customs Regime Between Germany and Austria (1931 PCIJ)

- Post WW1 peace treaty with Austria stated that the independence of Austria is unchallengeable other than with the consent of the LON
- Austria also agreed to abstain from granting to any state a regime that would compromise economic independence
 - 1931 Austria and Germany enter treaty to free trade which may violate the treaty
- as long as the new agreement does not compromise its independence it is not in violation
 - no change in independent, sovereignty, state is not under legal authority of another

Parent v Singapore Airlines (2003 SC)

- the island of Taiwan is a defined territory, the island of Taiwan is occupied by a permanent population, an effective government exists in Taiwan and the government of Taiwan enters into relations with other states
- Canada stated that Taiwan is a political reality
- Court concludes that Taiwan has the right to benefit from the immunity anticipated by the law

Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in Soviet Union (1991-92)

- Respect for the provisions of the UN charter and commitments in Final Act of Helsinki and Charter of Paris
 - Specifically rule of law, democracy and human rights
- Guarantees for the rights of ethnic and national groups and minorities in accordance with CSCE
- Respect for the frontiers which can only be changed by means of peaceful agreements
- Acceptance of all relevant commitments with regard to disarmament and nuclear np
- Commitment to settle by agreement
 - Community will not recognize states which result from aggression
- Estrada Doctrine of Recognition: governments should not judge other governments or changes in governments of other states as it implies a breach of sovereignty
 - Nonintervention, peaceful resolution of disputes, and self determination

Aguilar- Amory and Royal Bank of Canada Claims – Great Britain v Costa Rica (1923)

- In January 1917 government of Costa Rica was overthrown and fled. Tinoco made a new constitution and in 1919 he left and the provisional government reinstated old constitution.
- 1922 government passed a law of Nullities which invalidated all contracts made without approval between 1917 and 1919
- GB's Royal Bank of Canada and central Costa Rica Petroleum Company are British corporations. The Costa Rican bank and government owes GB almost a million colones
 - GB says that for the duration of Tinoco government there was no disputes
 - Governments can't just avoid responsibility for acts that its predecessors have done

- Government denies liabilities and validity of claims
 - Tinoco was not de jure government
 - Since Tinoco was in violation of the constitution of Costa Rica, his acts are not legally binding
- Court Decision: the banking transactions cannot be proved to be for legitimate governmental use so fails
 - The concession was granted by a body without power to grant it. According to the constitution obtaining at the time of the Tinoco government, power to grant exemption was with Congress not president. So, the contract is not valid

Velasquez Rodriguez Case (1988)

- Claims against Honduran government after several students disappeared by men in armed clothing
- Were they state agents?
- The court is convinced the disappearance of M. Velasquez was carried out by agents under cover of public authority
 - Even if not true, failure of state to act is a failure of its duties
 - Article 1 of American Convention on Human Rights obligates Honduras to ensure MV to exercise human rights
- The court recognizes that such acts are illegal under law and not all levels of government were aware of the acts but Honduras is still responsible under international law concerning practice of disappearances
- Thus, the state is responsible for the involuntary disappearance of VR

Reparation for Injuries Suffered in the Service of the United Nations (1949 ICJ)

- Several UN personnel were killed in newly established state of Israel.
- What reparations for damage caused to UN and to victim?
- The organization is an international person (without rights and duties of a state)
 - When the state is not a member of the organization

Prosecutor v Dusko Tadic (1995)

- The tribunal was established by UNSC to try war crimes, crimes against humanity and genocide committed in former Yugoslavia since 1991
- Tadic challenged authority of judicial body saying that this power did not flow from Chapter 7
- Article 39: although it has a lot of power, the UNSC cannot go past its jurisdiction
 - Because of armed conflict it is determined that there is threat to peace
 - Has a margin of discretion in choosing course of action

Charter of the UN

25: members of UN accept and carry out decisions of UNSC

48: actions required to carry out the decisions of SC must be taken by all members or some, as determined

49: members of UN shall join in affording mutual assistance in carrying out measures

103: if conflict between obligations of members, UN charter prevails

Corfu Channel Case – Great Britain v Albania (1949 ICJ)

- 2 British ships struck mines in Albanian territorial waters
- Albania argued that the unilateral application of the UK was not in conformity with UNSC, charter, IL or statute
- Court held Albania responsible for the explosions which occurred in 1946 causing the loss and damage of human life
- Albania held that the court has only the right to determine if compensation is required, not of how much
- Compensation for the replacement of the Saumarez, for the damage to the Volage and for the deaths and injuries
 - For the first two there is an exact amount. And for the personnel the documents given by UK is suffice