LEADING CASES ON PUBLIC INTERNATIONAL LAW

(1) NORTH SEA CONTINENTAL SHELF CASES (GERMANY v. DENMARK; GERMANY v. NETHERLANDS) [1969] ICJ Reports

Fact: Germany‘s coastline was concave, so the Dutch/Danish method of equidistant lines would have reduced German sea control drastically. Germany had actually signed an agreement to that effect at a party, but when it sobered up it decided not to ratify it. The agreement didn‘t say it was binding upon being signed, so it wasn‘t binding on Germany until it was ratified (Geneva Convention of 1958). That didn‘t mean Holland & Denmark couldn‘t argue that it was binding as customary international law, since everyone else was doing it. There are 3 ways the treaty could have become binding customary international law:

4. The treaty re-stated a pre-existing custom.
5. The treaty‘s rule crystallized customary law that had been in the process of formation.
6. The treaty‘s rule generated a new customary law following its adoption.

Significance: Holland & Denmark argued that this treaty had generated a new customary law, a new norm of international law binding on everyone. That wasn‘t such a good argument, because Germany had repudiated the treaty. Also, there had been very little time since the treaty [customary international law can be created in a short time, but the presumption is that it isn‘t].

Also, only a few countries were using this rule, and even then they had resorted to equidistance out of frustration, not because they felt it was a binding legal obligation. Also, it was not apparent that the provision was a norm-creating provision. It was a secondary provision only. Also, the treaty permitted reservations, and many countries had made their reservations known. That was hardly acceptance of a norm-creating law. The ICJ therefore held that there was no customary international law for the Dutch/Danish position. The ICJ stated that the custom-practice in question must have ―occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.‖

(2) ALABAMA CLAIMS ARBITRATION (1872)

Facts: During the American Civil War, certain commerce destroying vessels were constructed and fitted out in England for Confederate Navy, the Navy of the party opposing the legally constituted Government. The United States Government alleged a breach of neutrality on the part of the British Government; as it had failed to exercise due care to prevent the construction of the vessels and their dispatch to the Confederates. The United States Government put forth its claim for damages through the activities of the vessel in the Civil War. The Alabama was one of those vessels. The dispute was referred to arbitration. The arbitrators decided in favor of the United States Government.

Significance:
This case was a landmark in the history of international law, as it proved arbitration as a method of development of international law. It was held in this case that a breach of obligations by a neutral state will give rise to reparation in international law.

(3) THE AMBROSE LIGHT (1885)
Facts: An armed vessel, the Ambrose Light, commissioned by Colombian insurgents, was seized by the United States Government as a pirate, because there had been no express recognition of the insurgents as belligerents. The American Nonfederal Court held that the seizure was proper.

Significance: According to this case, all unrecognized insurgents, if they were to operate on the sea, will be pirates. However, it may be noted that the British view is different. According to that view, insurgent vessels cannot be British view is different. According to that view, insurgent vessels cannot be treated as pirates, so long as they abstain from repeated or willful acts of violence against the lives and properties of British subjects.

(4) ANGLO-IRANIAN OIL CO. (JURISDICTION 1962)
Facts: On April, 1933, the lanai Government granted a Concession to the Anglo-lain Oil Co. for a period of 60 years. All differences related to the Concession were to be submitted to arbitration by the three Arbitrators, one each to be appointed by the Company and by the Government and the Umpire by two Arbitrators jointly. If there was no agreement on this point, either party could apply to the President of the World Court to make the appointment. Similarly, if one of the parties failed to make an appointment, the other party could apply to the president of the World Court to appoint a sole Arbitrator. It was further agreed that the performance of the agreement would be based ‒on principles of mutual good-will and good faith whilst on a reasonable interpretation‖ of the agreement, and the Government of loran agreed that the Concession ‒shall not be annulled and the terms shall not be altered either by general and special Legislation in the future, or be administrative measures or any other Acts whatever of the Executive authority‖.

IN 1951, THE Iranian Government passed a Law nationalizing the oil industry in Loran. On the failure of the Iranian Government to appoint an Arbitrator, the Company asked the President of the World Court to appoint a Sole Arbitrator. The British Government, claiming to exercise its right of diplomatic protection, submitted an application to the World Court in the light of the Declaration under the _Optional Clause‘ of the Courts‘ state made by both the parties. Before hearing on the merits, the Court made an order for interim measures of protection. It was the contention of the Iranian government that it‘s of declaration under the _Optional Clause‘ naturally referred to treaties and conventions accepted by it after ratification of the Declaration. The agreement with the Anglo-Iranian Oil Company, not being a treaty or a Convention, the Court had no jurisdiction. The Court found, by a majority vote, that it had no jurisdiction.

Significance: The Contract signed between the Iranian Government and the Anglo-Iranian Oil Company, being in the nature of a concessionary contract between a Government and a Foreign Corporation, the United Kingdom was not a party to the contract. There were no privities of contract between the Government of Iran and the Government of the United Kingdom. An implied treaty between the two Governments could not be inferred, as weighty proof is required of such implied treaty. The International Court of Justice can exercise jurisdiction if there is voluntary submission to jurisdiction by either party. When a unilateral reference of a dispute is made to the Court by one party, assent by conduct consistently denies that the Court had jurisdiction.

(5) ANGLO-NORWEGIAN FISHERIES CASE (1951)

Facts: A decree of the Norwegian Government was promulgated in 1935, purporting to define its fisheries zone, by reference to base lines drawn through 48 selected points on the main land. The sea enclosed by these lines and the adjoining seaward belt of waters to a width of four miles was to constitute the zone. The result of the decree was to include large stretches of sea, including coastal indentation which normally would have been open sea in which other states would have been entitled to fish. Great Britain challenged the validity of the decree on the ground that it was contrary to international law. The dispute was referred to the International Court of Justice. The International Court of Justice gave its decision in 1951, holding that the method followed in the decree and the actual lines themselves did not contravene international law.

Significance: The decision of the International Court of Justice in this case is considered a landmark in the development of the law regarding territorial waters. The International Court of Justice held in this case-

- That if a littoral state defines its territorial waters by reference to base lines comprising of points on the main land and the islands and the rocks, it is not contrary to international law, provided such drawing of the line is not contrary to international law, provided such drawing of the line is reasonable, just and not arbitrary.

- Those base lines need not be drawn parallel to the law water mark on the coast, so long as the general direction of the shore is followed.

- That the waters of bays and gulfs may be deemed part of the territorial waters, notwithstanding that the distance between the head lands is greater than ten miles.

Apart from this principle regarding the base line, the case has other far-reaching consequences: The International Court of Justice held, in this case, that the maritime belt is not so much a limited artificial extension of a state‘s territorial domain, but is a contiguous area wherein, for economic security and geographical reasons, the coastal state is entitled to exercise exclusive sovereign rights. According to this decision, a state might take even its economic interest into consideration while defining the maritime belt.

Another contribution of this case is that, by implication, it defined the seas or the open sea as all parts of the sea which are not-the territorial sea, or internal waters.

Further, this case shows that the International Court of Justice is free to develop international law, without being tied by the weight of practice and authority. But the decision has been criticized by many of the failure of the International Court of Justice to pay proper regard to the weight of practice and judicial precedence.

(6) CASE CONCERNING BARCELONA TRACTION LIGHT & POWER CO. (SECOND PHASE), (1970)

In the case concerning the Barcelona Traction Light and Power Co. Ltd. (Second Phase), an interesting question arose, as to whether the state is entitled to espouse the claim of companies and its shareholders. In this case, the Barcelona Traction Light & Power Co. Ltd. was incorporated in Canada, and it was operating in Spain. But a considerable investment in the Company was made by shareholders in Belgium. Certain action taken by the Government of Spain caused serious loss and damage to the Company. In the eyes of law, the company was of Canadian nationality, though the majority of the shareholders affected were Belgian nationals. The Government of Belgium espoused the cause of its citizens as shareholder.

The International Court of Justice came to the following conclusions:

- Only the national state of a Company concerned was entitled to exercise diplomatic proceedings for the purpose of seeking redress of the wrong done to the company.
- When a wrong is done to the Company, the wrongdoer is not libel to the shareholders. Therefore, the Spanish Started was not liable to the Belgian shareholders.
- As Canada had not espoused the cause, Belgium had no locus stand to espouses, before the Court of International of Justice, the claims of Belgian nationals who were shareholders in the Company.

7. CHUNG CHI CHEUNG v. R. (1939)

Facts: Chung Chi Cheung, a cabin boy on board Chinese armed public ship, shot and killed its Captain, while the vessel was in the Honking territorial waters. He also shot and wounded another officer of the ship. The ship proceeded to Honking, and Chung Chi Cheung was charged with murder –in the waters of their colony‖ and duly committed. Both he and the murdered Captain were British nationals. The Chinese authorities instituted extradition proceedings on the ground that the offence was committed in a Chinese public ship. The extradition was refused. The accused was convicted and sentenced to death. He went in appeal to the Privy Council. On the particular facts of the case, it was held that the Honking Court had jurisdiction.

Significance: This case held that international law was to be treated as incorporated into the domestic law, so far as it was not inconsistent with any rule enacted by statutes or finally declared by the Tribunals. The Privy Council rejected in this case the ‒Floating Island‖ Theory of a public ship, and it held that the territorial court accords to the ship and its crew immunity depending, not on an objective theory that the public ship is part of a foreign territory, but on an implication of an exemption granted by the local territorial law. The immunity conceded by local law is conditional, and can, in turn, be waived by the state to which the public ship belongs. But at the same time, it held that the public ship enjoys the jurisdictional immunity, only so far as it is necessary to enable such public vessel to function efficiently as an organ of the state and for the purposes of the state.

8. CORFU CHANNEL (MERITS) CASE (1949)

Facts: The Corfu Channel constitutes frontiers between Albania and Greece. The British warships passing through the same channel were seriously damaged by mines in the Albania territorial waters. This damage, done on 22nd October, 1946, not only caused damage to the warships, but also resulted in the death of and injuries to several persons in November, 1946, the Units of the British Navy. The matter was taken before the Security Council. Then, the dispute was referred to the International Court of Justice. Apart from this preliminary question, two questions were raised in this case:

a. Was Albania responsible under international law for the damage caused and loss of human life by explosions in its territorial waters? It so, was Albania liable to pay compensation to Great Britain?
b. Had Great Britain violated the sovereignty of Albania, by carrying on the mine sweeping operations in the territorial waters of Albania?

It was held that Albania was responsible for the damage caused as it was negligent in not giving warning to ships. It was also negligent in not trying to find out and punish those who were responsible for laying the mines.

On the second question, the International Court of Justice held that, by carrying on the mine sweeping operations in the territorial waters of Albania, without its consent, the United Kingdom had violated the sovereignty of Albania, and thereby was guilty of intervention not justifiable in international law.

Significance: The International Court of Justice stated in this case that: It was a ‒generally well-recognized principle that every state is under an obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states‖. Warships are, in times of peace, entitled to a right of inoffensive passage through such parts of the territorial sea as form an international highway, and cannot be prohibited from exercising this right. The decisive criterion of a strait as a highway was its geographical situations, as connecting two parts of the open sea and the fact of

its use for international navigation, and not whether there was considerable volume of traffic passing through it.

9. THE CORFU CHANNEL (PRELIMINARY OBJECTION) CASE (1948)

It was held that the Security council could not subject a member state to the compulsory jurisdiction of the International Court of Justice, by calling upon the parties to adjust their differences by judicial settlement, if either of the parties to the dispute had not accepted the compulsory jurisdiction of the Court either under a treaty or under a convention or by a declaration under Article 36 of the statute.

10. **THE CRISTINA (COMPANIA NAVIERS VASCONGADO v. CRISTINA S.S.) (1938)**

Facts: During the Spanish Civil War (1936-1939), General Franco's Army captured from the Republican Government, the Port of Bilbao. The Cristina was a ship registered at Bilbao. The Republican Government issued a decree a week later, requisitioning all ships registered at Bilbao. When the Cristina arrived in the British Port, she was taken charge of by the Spanish consul. The original owners of the vessels raised an action by a writ in ram and claimed possession of the vessel as sole owners. The Spanish Government entered a conditional appearance and contended that the action be dismissed as it imp leaded a foreign sovereign state. The House of Lords held, in appeal, that the contention of the Spanish government was good, and that a sovereign state could not be imp leaded, unless it consented. It was also held that as the Spanish Government took possession of Cristina under a requisition order, the vessel was brought within the description of public property of the state. Therefore, it was immune from the jurisdiction of the English Courts.

Significance: The House of Lords observed in this case that, as a condition of obtaining immunity, the foreign Government needs only to produce evidence showing that –its claim is not merely illusory, nor founded on a title manifestly defective‖. Another problem discussed in this case was whether the state-owned commercial ships should enjoy immunity. Lord Maugham observed that as diplomatic representations made to foreign state would render a very uncertain remedy, the foreign state-owned commercial ships should not enjoy the immunity. However, it may be noted that the majority held that immunity would extend to state-owned commercial ships also.

11. DUFF DEVELOPMENT COMPANY v. KELANTAN GOVERNMENT (1924)

Facts: In 1912, the Government of Kelantan entered into an agreement with the Duff Development Co. Ltd. and granted it certain rights of mining, etc. an arbitration clause was added in the agreement. In 1921, a dispute was referred to arbitration, and an award was made in favor of the Duff Development Company. An attempt was made to enforce the award against the Government of Kelantan. The Court of Appeal held, reversing the judgment of the lower Court, that as the Government of Kelantan was a Sovereign Government, the English Court could not

exercise jurisdiction. This decision was confirmed by the House of Lords. The contortion of the plaintiff company was that Kelantan was not an independent state, as it was in the position of a protectorate of Great Britain. The House of Lords held that, although not completely independent, a protected state may enjoy sufficient measure of sovereignty to claim jurisdictional immunities in the territory of another state.

Significance: This case is also illustrative of the practice of the English Courts that regarding the nature of a foreign state, the British Courts seek the opinion of the executive and accept such opinion as the best evidence of the status of the concerned foreign state.
This case also lays down that a submission to arbitration proceeding, or evens a subsequent application to set aside these proceedings, does not amount to waiver or immunity or to a submission to the jurisdiction of the British Courts.

12. EASTERN GREENLAND CASE (1933)

Facts: The dispute in this case arose between Denmark and Norway regarding Denmark‘s claim of sovereignty over the whole of Greenland. The foreign ministers of these two Governments had discussed the matter, and the foreign minister for Norway had assured that the plans of the Danish Government respecting Danish sovereignty over the whole of Greenland would meet with no difficulties on the part of Norway. This assurance was regarding Norway‘s attitude at the Paris Peace Conference of 1919.

The question to be decided by the International Court of Justice was whether the declaration made by the foreign minister for Norway did not constitute an engagement, obliging Norway to refrain from occupying any part of the territory of Greenland. It was held that an oral declaration in the nature of a promise made by the minister for foreign affairs of one country on behalf of the country to the minister of foreign affairs of another, and in a matter within his competence and authority, may be as binding as a formal written treaty. International Law does not as yet require established forms of treaties.

Significance: The Court also lay down, in this case, that occupation, to be effective, requires, on the part of the appropriating state, two elements:

a. An intention or will or will to act as sovereign, and
b. The adequate exercise or display of sovereignty.

13. THE FRANCONIA CASE (R. v. KEYN) (1876)

Facts: The Franconia, a German Steamer, collided with Strathclyde, a British steam vessel, on the sea, at a distance of about two miles from Dover pear-head. Key, the Officer-in-Command of the Franconia, it was alleged, was negligent. On account of the collision, a person in Strathclyde died. Key was indicted for manslaughter and convicted by the lower Court. A question of law was reserved by the Court of Appeal had to decide whether the English Courts could exercise

jurisdiction over an offence committed within a distance of three miles from the English shore. It was held, by a majority, that the English Court had jurisdiction over such offence.

Significance: It was held in this case that International Law was not part of English law, unless adopted by legislation. This case also is interesting for the views of Lore Coleridge regarding the nature of international law. His Lordship observed, ‒Strictly speaking, International Law is an inexact expression and it is apt to mislead if its inexactness is not kept in mind. Law implies a law giver, a tribunal capable of enforcing it and coercing its transgressors. But there is no common law giver to sovereign state and no tribunal has the power to bind them by decrees or coerce them if they transgress‖.

14. THE CASE OF THE FREE ZONE‘S OF UPPER SAVOY AND GEX (1932)

Facts: The matter in dispute, is this case, was whether France had succeeded to Sardinia in the matter of an obligation to respect territorial arrangement between Sardinia and Switzerland. It was held that treaties which create obligations pertaining to, or for the benefit of, the territory, will pass in succession.

Significance: The Permanent Court of International Justice pointed out in this case that the operation of the right of a third state, which is not a party to the treaty, is not likely to be presumed: much depend on the circumstances of each case. But, if the parties intended to confer rights on a state which was not a party, this intention may be decisive. In this case, the Permanent Court of International Justice adopted the subjective theory of the doctrine of *rebus sic stantibus.*

15. CASE OF EXTRADITION TO HAYA DE LA TORRE (1951) (ASYLUM CASE)

Hay De La Torre, a political leader of Peru, had been accused of having instigated a military rebellion in Peru. He sought refuge in the Columbian Embassy, which was granted by the Columbian Ambassador. The Government of Peru refused to issue a safe conduct for the departure of Hay De La Torre. The Government of Columbia moved the International of Court Justice. The International of Court Justice held that the asylum granted to the accused by the Columbian Embassy was irregular, as there was no urgency though if there was urgency, the accused would be entitled to such asylum.

16. I‘M ALONE CASE (1929) (B. U. APR. 83)

Facts: The ship ‒I‘m Alone‖ was British Schooner of Canadian Registry. The ship was engaged in the smuggling of alcohol into the United States. This ship was sunk in 1929 by United States Coast Guard vessel, at a point on the high seas more than 200 miles from the United States course. The Canadian Government claimed damages. The matter was referred to arbitration. The award was in favor of Canada.

The argument of the Unites states was that the ship was in fact owned by the American nationals, though de jure, the ship was of Canadian nationality. It was also urged that the damages awarded would ultimately go to the pockets of American citizens. But these contentions, on behalf of the United States of America, were of no avail. The Canadian Government was entitled to claim, as injury was caused to a ship of its nationality.

The other significance of the case is that the Arbitral tribunal awarded two separate heads of damages, the other being in respect of injury to the claimant state.
It may be noted here that such an award made in the I'm Alone case is consistent with the views expressed by the International Court of Justice in its Advisory Opinion on Reparation for injury suffered in the service of the United Nations (1949).

17. JUDGMENTS OF ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL LABOUR ORGANISATION UPON COMPLAINTS MADE AGAINST UNESCO (1956)

The facts: Certain employees of the UNESCO were appointed with UNESCO on a fixed term. Subsequently, the appointments were renewed. Such renewed appointments were due to expire on 31st December, 1954. These employees were asked from the representative of their national state for UNESCO to furnish certain information, to answer a questionnaire and to appear before the Loyalty Board of their state Embassy in Paris. All these were executive orders. The concerned employees informed the Director General of UNESCO of their decision not to appear before the Board and of the reason of conscience which caused them to take such decision. Consequently, the Director General issued an Administrative Memorandum on the subject of nonrenewal of appointments expiring at the end of 1954, while the appointment of others were renewed, to which the concerned employees complained to the Administrative Tribunal of the International Labor Organization. The Tribunal declared its competence to entertain the complaint and gave a decision on the merits of the complaint.

The Executive Board of the UNESCO sought an advisory opinion of the International of Court Justice on the competence of the Tribunal and the validity of its judgment. Under Article 11 of the statute of the tribunal, advisory opinion of the International Court could be sought complaining against the judgment of the Tribunal by the following:

a. A member's state;
b. The secretary-general; or
c. The person in respect of whom a judgment was made (including any person who had succeeded to that person's right on his death), and the statute further provided that the challenge may be made on the following grounds:
    i. That the tribunal has ‒exceeded its jurisdiction or competence‖;
    ii. That the tribunal had ‒failed to exercise jurisdiction vested in it‖;
    iii. That it has ‒erred on a question of law relating to the provisions‖ of the U. N. Charter; or

iv. That it has committed ‒a fundamental error in procedure which has occasioned a failure of justice‖.

The Executive Board raised the following issues, and the court answered them accordingly: Was the Administrative Tribunal competent under Article 11 of the statute to hear the complaints against UNESCO?. The Court, after examining the problem in detail, gave a positive answer. The competence of the Administrative Tribunal to determine the power of the Director General to renew fixed term appointment was also challenged. The ICJ did not think it necessary to answer this question, as it accepted the judgment of the Tribunal.

18. LIANDOVER CASTLE (1923-24)

During the Fits World War, a German killed a defenseless person in a life-boat, and when he was accused, he pleaded the order of the superiors as a defense. His plea was rejected on the ground that such an order was ‒universally known to be against the law‖. It was also held that such order might be an extenuating circumstance, but it does not absolve a person from the crime committed by him.

19. THE LOTUS CASE (1927)

Facts: The French mail steamer, the Lotus, collided on the high seas with a Turkish ship. It was alleged that the collision was due to the gross negligence of the officer of the watch on board the Lotus. The result was that the Turkish ship sank, and eight Turkish nationals on board died. The collision took place on the high seas. Subsequently, the crew members of the Lotus were taken to Constantinople. The Turkish authorities instituted proceedings against the officer of the watch, basing their claim to jurisdiction on the ground that the act of negligence on board the Lotus had produced effects on the Turkish ship, and according to the objective territorial principle, the Turkish authorities were justified in exercising the jurisdiction. France protested against this exercise of jurisdiction by the Turkish authorities. The dispute was referred to the Permanent Court of International Justice. By a majority decision, the Permanent Court held that the action of Turkish authorities was not inconsistent with international law.

Significance: This case is also an authority on the _floating island‘ theory of a ship. The International Court of Justice considered the effect of the negligence on the Turkish ship to be an effect on an operation of Turkish authority, and therefore, the objective territorial principle was applicable. It was also pointed out in this case that no presumption of immunity arises from the fact that the person against whom the proceedings are taken is a foreigner. However, one of the judges in this case pointed out that an article of the Turkish Penal Code, whereby jurisdiction was asserted over foreigners committing offences abroad ‒to the prejudice‖ of a Turkish subject, was contrary to international law. According to him, the passive nationality principle of jurisdiction was not to be generally accepted. The same view is also supported in the cutting case.

It may be noted that the objective territorial principle of jurisdiction as laid down in the Lotus case was not generally acceptable to mariners, and it has been disapproved by the Conference at Brussels in 1962, which adopted the Convention for the unification of certain rules relating to Penal jurisdiction in matters of collision and other incidents of navigation. It may also be noted that the International Law commission has disapproved of the rule laid down in the Lotus case.

This case is also significant in that the Permanent Court of International Justice had recourse to juristic opinion for ascertaining the existence or non-existence of a customary rule. This is also significant in view of the fact that the court refused to deduce a customary rule where state judicial decisions on the point were divided.

It must be noted; however, that the principle lay down in the Lotus Case has not been approved by the International Law Commission. The Brussels Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision and other incidents of Navigation, now provides for the exclusive jurisdiction of the flag state in penal or disciplinary proceedings out of collision cases, subject to penal and disciplinary jurisdiction being conceded to a non-flag state over an accused person of its nationality.

20. LATHER v. SAGOR

Fact: In June 1918, the Russian Socialist Federal Soviet Republic passed a decree nationalizing mechanical saw mills and wood working establishments belonging to private and limited Companies, and took over the plaintiffs‘ mill and certain manufacturing goods belonging to them in Russia.

The representative of the Russian Commercial Delegation in London made a contract with the defendants in August 1920, for the sale and delivery of a quantity of timber, including some of them seized from the plaintiffs. The plaintiffs sought a declaration that these goods were their property, an injunction restraining the defendants from selling, and damages for conversion and detention. The defendants argued that the decree of June 1918 was the Act of a sovereign Government and was valid to deprive the plaintiffs of the title and convey it to the defendants. In the Court of First Instance, the following letters from the Foreign Office were admitted:

a. To the solicitor of the Russian Commercial representative, that he was regarded as a foreign representative for certain purposes and should be exempt from the process of the Court.

b. To the defendants‘ Solicitors, recognizing the claim of the Delegation to represent in this country a state Government of Russia.

c. To the plaintiffs‘ solicitors, pointing out that the representative received privileged treatment for certain limited purposes, but his Majesty‘s Government had never officially recognized the soviet Government in any way.

The Court of First Instance gave judgment for the plaintiff, on the basis that the Russian Government had not been recognized. In the Appellate Court, the defendants produced further letters from the Foreign Office- one of which stated that His Majesty‘s Government recognized the Soviet Government as the de fact Government of Russia. The Court of Appeal allowed the appeal.

Significance: Recognition is retroactive to such duty as the recognizing Government might accept. For the present purpose, there is no difference between a Government recognized de jure and one recognized de fact. The Court of England will recognize and give effect to the Acts of a de facto Government in relation to person and property in the Government territory, and will disregard and treat as annulled the Acts of a de jure Government.

(21) MIGHEL v. SULTAN OF JOHRE [(1894) Q.B. 149]

Facts: The Sultan of Johor, whilst staying in Great Britain, introduced himself by the assumed name of ‒Albert Baker‖. He did not reveal that he was a foreign sovereign. He promised to marry the plaintiff. He did not carry out his promise. It was contended on his behalf that the Court had no jurisdiction, as he was a sovereign, independent ruler and he had not submitted to the jurisdiction of the Court. It was contended, on behalf of the plaintiff that since the Sultan lived as private citizen under a false name, if would amount to waiver of immunity, and therefore, the English Courts could exercise jurisdiction over him. The Court of Appeal, as well as the Court of First Instance, held that jurisdiction could not be exercised over the Sultan of the state of Johor, as living in cogito did not amount to voluntary submission to the jurisdiction of the English Court.

The significance of this case is that the immunity given to foreign sovereign prevents a Court from exercising jurisdiction, unless such foreign sovereign waives his immunity and voluntarily submits himself to the jurisdiction of the Court at the date of institution of proceedings. His conductor agreement, implied or express, to submit himself to the law of a Country does not amount to submission.

22. THE ISLAND OF PALMAS ARBITRATION

FACTS: The Palmas Island is situated half-way between the Philippine Islands and the former Netherland East Indies. In 1906, there was a dispute between the U.S.A. and the Netherlands regarding sovereignty over this Island. The contention of the American Government was that the Island was ceded to the U.S. by the treaty of 1808 by Spain. The Dutch Government maintained that the Island was a part of its territory, and the Spain, from whom the U.S.A. claimed to have acquired sovereignty over the island, never had any right over the same. The dispute was referred to the Permanent Court of Arbitration. It was held that, though Spain was responsible for the discovery of island, it was not in effective control of the Island. On the other hand, the

Netherland‘s East India Company was in possession of the Island and exercised sovereignty over the same since 1677.

Significance:

(a) In his Award, Max Huber, the Arbitrator, described sovereignty in these terms- ‒Sovereignty, in the relation between states, signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state‖.
(b) It was also held in this case that if a state were to occupy a territory, there must be display of effective control and authority either by the claiming sovereignty or by a state from which the state claiming sovereignty can prove that the title has been derived.
(c) It is claimed by some writers that the award in the Island of Palmas case is an authority to support the doctrine of acquisitive prescription in International Law.

23. PAQUETE HABANA (1900)

FACTS: The Paquet Habana, a fishing boat, and another fishing boat, Lola, flying the Spanish flag, and belonging to the Spanish subjects, were captured by a United States warship engaged in the North coast on Cuba. They were brought before the Court for condemnation. The question that was to be decided was whether, under customary International Law, fishing boats were exempt from capture. The Supreme Court of the U.S.A. reversing the other of the lower Court held that they were free from capture.

Significance:

(a) This case is illustrative of the attitude of the American Courts toward International Law. During the course of the judgment, Gray. J. made the following remarks: ‒International Law is part of outlaw, and must be ascertained and administered by the Courts of Justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination‖.
(b) This case is also illustrative of the judicial method in the application of custom. The Supreme Court, after a detailed investigation of state laws and practice, treaties, writings of publicists evidencing usage and decisions of courts, found that they uniformly proved the existence of a valid customary rule giving immunity to small fishing vessels from belligerent action in times of war.
(c) This case is also illustrative of the function of state judicial decisions in clarifying an international nature of custom and law.

In this case, Gray, J. also pointed out that the juristic works have the value of being, on many occasions, the evidence of International law. He observes, ‒Such works are resorted to by judicial tribunals, not for the speculation of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is‖.

24. *PARLEMENT BELGE* (1679)

Facts: The Parliament Bilge was a Belgian mail vessel belonging to the King of Belgium. In addition to mil duties, it was also used for trading purposes. The vessel collided against a British ship in the Dover Harbor. Proceedings against the Parliament Bilge were started to recover damages. It was held by the Court of Appeal that the British Courts had no jurisdiction over the Parliament Bilge, as it was the property of the King of Belgium.

Significance: This case supports the doctoring of the immunity of state-owned trading vessels. [A reference may be made to the Cristina case, where this doctrine was approved by the British Courts.]

25. PREACH VIHER CASE (1962)

In the case, concerning the Temple of Preach Vinegar (Merits) (Cambodia-Thailand) I.C.J. Reports (1962) 9, the disputed area was the region of a certain Temple sanctuary (Preach Vinegar), and there was a conflict between the frontier according to a Treaty of 1904, whereby it was to follow a watershed line, and the frontiers according to boundary maps competed in 1907 and communicated in 1908 to the Siamese (now Thai) Government. As the Siamese Government, and later the Thai Government, had, by their conduct, apparently accepted the map frontier line, the court held that the map line should be preferred, and that the Temple area was under the Sovereignty of Cambodia.

26. REPARATION FOR INJURIES SUFFERED IN THE SERVICE OF THE UN, ICJ REPORTS (1942) 174

In 1948, certain agents and officers of the United Nations suffered injuries in Palestine, and Count Folk Bernadotte, United Nations Mediator, was assassinated. There arose a question as to whether the United Nations could claim compensation as against a de jure or de facto Government, even though such Government was not a member state of the organization. In this connection, the following questions arose:

(1) As a state could claim damages against injuries caused to it diplomatic agents, could the United Nations Organization also claim damages for injuries caused to its agents or servants? This, in turn, raised the question as to whether it enjoyed international personality.
(2) If such agents or secants were nationals of another state, could the United Nations also claim damages?

This matter was referred for an advisory opinion of the intonation Court of Justice. The International Court of Justice gave its advisory opinion in 1949. It laid down the following principles:

(1) Though the United Nations is not a state and does not have all the attributes of a state, it his international personality and it is an international person.

(2) Therefore, if an agent of the United Nations, in the performance of his duties, suffered the injury in circumstances involving the responsibility of a Member state, the United Nations has the capacity to bring an international claim against the responsible de jure or de facto government, the claim being with a view to obtain the reparation due in respect of the damage caused to the United Nations; such claim can also be brought against the state, even though it is not a member of the United nations.
(3) Such a claim could also be in respect of the damage caused to the victims or to persons entitled through such persons.
(4) Such claim in respect of damage caused to the victim or to person entitled through him may be claimed, whether the responsible state is a Members state or not.
(5) These claims, being based upon a breach of obligations due to the United Nations, there will not be a conflict between the action of the United Nations and such rights as the individual national state may possess. The claims can be reconciled as there is no conflict. The claims of the individual national state and the United Nations Organization are based on different grounds. However, there may be need for reconciliation these claims on the basis of agreements to be made between the organizations and individual states, either generally or in each case.

27. THE SCHOONER EXCHANGE v. MCFADDEN (1812)

Facts: The Schooner Exchange, which was at Philadelphia, was an armed ship under the control of France. McFadden and another alleged that they were the sole owners of the Schooner Exchange which sailed from Baltimore for a port in Spain on October 27, 1809, that the vessel was seized under the decrees and orders of Napoleon, and it was disposed of, though no sentence of condemnation had been passed by a court of competent jurisdiction. The contention of the American Government was that, as there was peace between the united stares and Napoleon, the public vessels of France could freely enter the ports of the United Sets and depart there from. Even though the ship had been captured, it had become vested in His Majesty Napoleon according to the laws of France, and therefore, the American Courts could not exercise jurisdiction over such a ship. Marshall C.J. of the Supreme Court of the U.S.A. held, ‑The national ships of war entering the port of a friendly power open for their reception are to be considered as exempted by the consent of the power from its jurisdiction‖.

Significance:

a. In this case the immunity of public vessels was based on ‑an implied license‖ to enter a port, the license containing an exemption from jurisdiction of the state which granted the right of hospitality.
b. It was also held in this case that a state which admits to its territory armed forces of a friendly foreign power, impliedly undertakes not to exercise any jurisdiction over the force any jurisdiction over the force which would be inconsistent with its continuing to exist as an efficient force. In brief, it was held that no jurisdiction could be exercised over members of the visiting force in such a way as to impair the integrity and efficiency of the force.

28. SOUTH-WEST AFRICA CASES

South-West Africa was administered by South Africa under a mandate agreement with the League of Nations supervision of the carrying out of the mandate was vested in the council of the League, to which annual reports had to be submitted by South Africa, in accordance with Article 22 of the Covenant of the League and Article 6 of the mandate. In a resolution of 18th April, 1946, the Assembly of the League has recognized that, –on the termination of the League's existence, its function with respect to the mandated territories will come to an end‖; it had noted that U.N. charter embodied –principles corresponding to those declared in Article 22 of the Covenant‖; and it had also taken note of the expressed intentions of the members of the League now administering territories under the mandate, to continue to administer them for the well-being and development of the peoples concerned in accordance with the obligations contained in the respective Mandates, until other arrangements have been made between the United Nations and the respective mandatory Powers‖. But there was no express transfer of functions to the United Nations.

South Africa was the only administering power which refused to enter into a trusteeship agreement with the United Nations to supersede its mandate. Disputes had arisen had arisen with regard to South Africa's obligations under the mandate, and these controversies were the subject-matter of a number of a number of advisory opinions by the International Court. In the first case (Status of South-West Africa. ICJ Reports, (1950), 128), the Court was asked three questions:

(1) About the continued existence of the mandate;
(2) About the applicability of Chapter 12 the Charter dealing with supervision of trusteeship agreements of mandate; and
(3) About the competence of South Africa acting alone to modify the status of South-West Africa.

The Court had no difficulty in answering the first and third questions. It had been obvious to all concerned that the mandates envisaged that they should be replaced by trusteeship agreements, but there was no obligation upon a mandatory state to enter into such an agreement. On the other hand, the fact that the mandatory state continued to be bound by the mandate implied that it could not unilaterally alter the status of the mandated territory.

In its advisory opinion of 1962 (South-West Africa cases, I.e., Reports, (1962), 154), the International Court of Justice reaffirmed that a Mandate constituted a new international institution, the primary overriding purpose of which is to promote the well-being and development of the people of the territory under the Mandate. It also affirmed that a mandate was a treaty between the League and the Mandatory state.

In the South-West Africa cases, Second phase (1966), the International Court of Justice dealing with the League of Nations, ruled that an individual members state, had with reference to a

mandate, no separate sled-contained right to assert before the court, over and above the League‘s collective institutional activity.

This opinion appears to be consistent with the opinion expressed in the Reparation case regarding the international personality of international organizations. Therefore, the court held the individual member states of the League had no legal claim or stating, by themselves, to enforce the terms of a mandate, this being a matter for organic or institutional action. Consequently, the court held that plaintiffs, Liberia and Ethiopia, had no legal right or interest in the matter of apartheid in South-West Africa.

29. ADVISORY OPINION ON THE LEGAL CONSEQUENCES FOR STATE OF THE CONTINUED PRESENCE OF SOUGH AFRICA IN NAMIBIA (SOUTH-WEST AFRICA) (I.C.J. REPORTS (1971), p16

In its opinion, the Court upheld and reaffirmed its views expressed in its advisory opinion of 1950. The court ruled, in addition, that the failure of South Africa to comply with its obligation to submit to the supervision of the United Nations organs made its continued presence in South-West Africa illegal. The court also reaffirmed the obligation of non-recognition on the part of the member‘s states in pursuance of the directives of the Security Council. The court was of the opinion that –Members states, in compliance with the duty of non-recognition imposed by paragraphs 2 and 5 of the covenant, re under an obligation to abstain from sending diplomatic or special missions to south Africa, including in their jurisdiction the territory- of Namibia, it abstain from sending consular agents to Namibia, and to withdraw any such agents already there‖.

30. STOECK v. PUBLIC TRUSTEE (1921)

Facts: Stock was both in Prussia in 1972. In 1895, he went to Belgium to live there. In 1896, he was deprived of his Prussian nationality. After that, he did not apply for any nationality, and consequently obtained none. In 1896, he went over to England and made that country his permanent home. However, he did not apply for British nationality. During the First World War, he was interned and deported to Holland. From there he shifted to Germany. He had certain shares in a limited company of England and the Public Trustee proposed to attach his property on the ground that he was an enemy. Stock contended that his property could not be attached, as he was not a German national. On the basis of the evidence before him, Lord Russell came to the conclusion that Stock had lost his German nationality. Therefore, he was a stateless person.

Significance: Russell J. observed in this case – –The question to what state a person belongs must ultimately be decided by the municipal law of the state of which he claims to belong or to which it is alleged that he belongs‖. It was also held in this case that a person who seeks to establish loss of nationality of a particular state must prove that nationality has been lost for all purposes and with all incidence, and any possibility that a right of protection or a chance of

resumption of nationality still exists will prevent the onus being discharged. It was also observed, in this case, that state-lessens is a condition recognized by both municipal law and by International Law.

31. **CASE CONCERNING THE BARCELONA TRACTION, LIGHT AND POWERCOMPANY, LIMITED (PRELIMINARY OBJECTIONS)** Judgment of 24 July 1964 Proceedings in the case concerning the Barcelona Traction, Light and Power Company, Limited(Belgium v. Spain) were instituted by an Application of 19 June 1962 in which the BelgianGovernment sought reparation for damage claimed to have been caused to Belgian nationals,shareholders in the Canadian Barcelona Traction Company, by the conduct of various organs ofthe Spanish State. The Spanish Government raised four Preliminary Objections. The Courtrejected the first Preliminary Objection by 12 votes to 4, and the second by 10 votes to 6. Itjoined the third Objection to the merits by 9 votes to 7 and the fourth by 10 votes to 6. PresidentSir Percy Spender and Judges Spiropoulos, Koretsky and Jessup appended Declarations to theJudgment.Vice-President Wellington Koo and Judges Tanaka and Bustamante y Riveroappended Separate Opinions. Judge Morelli and Judge ad hoc Armand-Ugon appendedDissenting Opinions.

First Preliminary Objection

In its Judgment, the Court recalled that Belgium had on 23 September 1958 filed with the Court an earlier Application against Spain in respect of the same facts, and Spain had then raised three Preliminary Objections. On 23 March 1961 the Applicant, availing itself of the right conferred upon it by Article 69, paragraph 2, of the Rules of Court, had informed the Court that it was not going on with the proceedings; notification having been received from the Respondent that it had no objection, the Court had removed the case from its List (10 April 1961). In its first Preliminary Objection, the Respondent contended that this discontinuance precluded the Applicant from bringing the present proceedings and advanced five arguments in support of its contention.

The Court accepted the first argument, to the effect that discontinuance is a purely procedural act the real significance of which must be sought in the attendant circumstances. On the other hand, the Court was unable to accept the second argument namely that discontinuance must always be taken as signifying a renunciation of any further right of action unless the right to start new proceedings is expressly reserved. As the Applicant's notice of discontinuance contained no motivation and was very clearly confined to the proceedings instituted by the first Application, the Court considered that the onus of establishing that the discontinuance meant something more than a decision to terminate those proceedings was placed upon the Respondent.

The Respondent, as its third argument, asserted that there had been an understanding between the Parties; it recalled that the representatives of the private Belgian interests concerned had made an

approach with a view to opening negotiations and that the representatives of the Spanish interests had laid down as a prior condition the final withdrawal of the claim. According to the Respondent what was meant by this was that the discontinuance would put an end to any further right of action, but the Applicant denied that anything more was intended than the termination of the then current proceedings. The Court was unable to find at the governmental level any evidence of any such understanding as was alleged by the Respondent; it seemed that the problem had been deliberately avoided lest the foundation of the interchanges be shattered. Nor had the Respondent, on who lay the onus of making its position clear, expressed any condition when it indicated that it did not object to the discontinuance.

The Respondent Government then advanced a fourth argument, having the character of a plea of estoppel, to the effect that, independently of the existence of any understanding, the Applicant had by its conduct misled the Respondent about the import of the discontinuance, but for which the Respondent would not have agreed to it, and would not thereby have suffered prejudice. The Court did not consider that the alleged misleading Belgian misrepresentations had been established and could not see what the Respondent stood to lose by agreeing to negotiate on the basis of a simple discontinuance; if it had not agreed to the discontinuance, the previous proceedings would simply have continued, whereas negotiations offered a possibility of finally settling the dispute. Moreover, if the negotiations were not successful and the case started again, it would still be possible once more to put forward the previous Preliminary Objections. Certainly the Applicant had framed its second Application with a foreknowledge of the probable nature of the Respondent's reply and taking it into account but, if the original proceedings had continued, the Applicant could likewise always have modified its submissions.

The final argument was of a different order. The Respondent alleged that the present proceedings were contrary to the spirit of the Hispano-Belgian Treaty of Conciliation, Judicial Settlement and Arbitration of 19 July 1927 which, according to the Applicant, conferred competence on the Court. The preliminary stages provided for by the Treaty having already been gone through in connection with the original proceedings, the Treaty could not be invoked a second time to seise the Court of the same complaints. The Court considered that the Treaty processes could not be regarded as exhausted so long as the right to bring new proceedings otherwise existed and until the case had been prosecuted to judgment. For these reasons, the Court rejected the first Preliminary Objection.

Second Preliminary Objection

To found the jurisdiction of the Court the Applicant relied on the combined effect of Article 17 (4) of the 1927 Treaty between Belgium and Spain, according to which if the other methods of settlement provided for in that Treaty failed either party could bring any dispute of a legal nature before the Permanent Court of International Justice, and Article 37 of the Statute of the International Court of Justice, which reads as follows: "Whenever a treaty or convention in force

provides for reference of a matter . . . to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice."

As the principal aspect of its objection, the Respondent maintained that although the 1927 Treaty might still be in force, Article 17 (4) had lapsed in April 1946 on the dissolution of the Permanent Court to which that article referred. No substitution of the present for the former Court had been effected in that article before the dissolution, Spain not being then a party to the Statute; in consequence, the 1927 Treaty had ceased to contain any valid jurisdictional clause when Spain was admitted to the United Nations and became ipso facto a party to the Statute (December 1955). In other words Article 37 applied only between States which had become parties to the Statute previous to the dissolution of the Permanent Court, and that dissolution had brought about the extinction of jurisdictional clauses providing for recourse to the Permanent Court unless they had previously been transformed by the operation of Article 37 into clauses providing for recourse to the present Court.

The Court found that this line of reasoning had first been advanced by the Respondent after the decision given by the Court on 26 May 1959 in the case concerning the Aerial Incident of 27 July 1955 (Israel v. Bulgaria). But that case had been concerned with a unilateral declaration in acceptance of the compulsory jurisdiction of the Permanent Court and not with a treaty. It thus had reference not to Article 37 but to Article 36, paragraph 5, of the Statute. As regards Article 37, the Court recalled that in 1945 its drafters had intended to preserve as many jurisdictional clauses as possible from becoming inoperative by reason of the prospective dissolution of the Permanent Court. It was thus difficult to suppose that they would willingly have contemplated that the nullification of the jurisdictional clauses whose continuation it was desired to preserve would be brought about by the very event the effects of which Article 37 was intended to parry.

Only three conditions were actually stated in Article 37. They were that there should be a treaty in force; that it should contain a provision for the reference of a matter to the Permanent Court; and that the dispute should be between States parties to the Statute. In the present case the conclusion must be that the 1927 Treaty being in force and containing a provision for reference to the Permanent Court, and the parties to the dispute being parties to the Statute, the matter was one to be referred to the International Court of Justice, which was the competent forum.

It was objected that this view led to a situation in which the jurisdictional clause concerned was inoperative and then after a gap of years became operative again, and it was asked whether in those circumstances any true consent could have been given by the Respondent to the Court's jurisdiction. The Court observed that the notion of rights and obligations that are in abeyance but not extinguished was common; States becoming parties to the Statute after the dissolution of the Permanent Court must be taken to have known that one of the results of their admission would

be the reactivation by reason of Article 37 of certain jurisdictional clauses. The contrary position maintained by the Respondent would create discrimination between States according as to whether they became parties to the Statute before or after the dissolution of the Permanent Court. As regards Article 17 (4) more particularly, the Court considered that it was an integral part of the 1927 Treaty. It would be difficult to assert that the basic obligation to submit to compulsory adjudication provided for in the Treaty was exclusively dependent on the existence of a particular forum. If it happened that the forum went out of existence, the obligation became inoperative but remained substantively in existence and could be rendered operative once more if a new tribunal was supplied by the automatic operation of some other instrument. Article 37 of the Statute had precisely that effect.

As a subsidiary plea, the Respondent contended that if Article 37 of the Statute operated to reactivate Article 17 (4) of the Treaty in December 1955, what came into existence at that date was a new obligation between the Parties; and that just as the original applied only to disputes arising after the Treaty date, so the new obligation could apply only to disputes arising after December 1955. The dispute was accordingly not covered since it had arisen previous to December 1955. In the opinion of the Court, when the obligation to submit to compulsory adjudication was revived as to its operation, it could only function in accordance with the Treaty providing for it and it continued to relate to any disputes arising after the Treaty date. For these reasons the Court rejected the second Preliminary Objection both in its principal and in its subsidiary aspects.

Third and Fourth Preliminary Objections

The Respondent's third and fourth Preliminary Objections involved the question of whether the claim was admissible. The Applicant had submitted alternative pleas that these objections, unless rejected by the Court, should be joined to the merits. By its third Preliminary Objection the Respondent denied the legal capacity of the Applicant to protect the Belgian interests on behalf of which it had submitted its claim. The acts complained of had taken place not in relation to any Belgian natural or juristic person but in relation to the Barcelona Traction Company, a juristic entity registered in Canada, the Belgian interests concerned being in the nature of shareholding interests in that company. The Respondent contended that international law does not recognize, in respect of injury caused by a State to the foreign company, any diplomatic protection of shareholders exercised by a State other than the national State of the company. The Applicant contested this view.

The Court found that the question of the *jus standi* of a government to protect the interests of shareholders raised an antecedent question of what was the juridical situation in respect of shareholding interests, as recognized by international law. The Applicant thus necessarily invoked rights which, so it contended, were conferred on it in respect of its nationals by the rules of international law concerning the treatment of foreigners. Hence a finding by the Court that it

had no *jus standi* would be tantamount to a finding that those rights did not exist and that the claim was not well-founded in substance.

The third Objection had certain aspects which were of a preliminary character, but involved a number of closely interwoven strands of mixed law, fact and status to a degree such that the Court could not pronounce upon it at the present stage in full confidence that it was in possession of all the elements that might have a bearing on its decisions. The proceedings on the merits would thus place the Court in a better position to adjudicate with a full knowledge of the facts.
The foregoing considerations applied a fortiori to the fourth Preliminary Objection, wherein the Respondent alleged failure to exhaust local remedies. This allegation was in fact inextricably interwoven with the issues of denial of justice which constituted the major part of the merits of the case.

Accordingly, the Court joined the third and fourth Preliminary Objections to the merits.[178]

[178] Source::: http://www.icj-cij.org/icjwww/idecisions/isummaries/ibtsummary640724.htm