Public International Law

Core Principles, Treaties, Cases and Doctrines — a structured introduction and concise reference for study and revision

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Foundations · Sources · Treaties · Statehood · Jurisdiction · Responsibility · Courts · Use of Force · Human Rights · Humanitarian Law · International Criminal Law

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This guide is an educational resource. It does not constitute legal advice, and nothing in it creates a lawyer–client relationship. It states the law at a level of generality suited to study and revision; it cannot capture every qualification, reservation, or divergence in practice.

Before relying on any statement here in legal practice, litigation, academic submission, or professional decision-making, consult the official treaty texts, the judgments and advisory opinions themselves, current legislation, the rules of the relevant institution, and an up-to-date legal database. Treaty membership, reservations, institutional composition, and case law all change; a study guide does not.

Contents

How to Use This Guide

This guide is an introductory study guide and concise reference handbook on public international law, written at beginner to intermediate level — primarily for law and international relations students, examination candidates, and readers building their first serious knowledge of the field. It is not a comprehensive textbook and not a substitute for specialist research. Each chapter builds on the ones before it, and different readers can enter the guide in different ways.

Reader	Most effective use
First-time students	Read the chapters in order. Part I supplies the general structure that every later chapter assumes; skipping it is the most common cause of confusion in this subject.
Examination candidates	Work from the revision points at the end of each chapter, the "do not confuse" table in Chapter 12, and the issue-spotting checklists. Return to the full text only where a distinction remains unclear.
Policy researchers and legal professionals	Use the case tables, the citation registers, and the Bibliography and Authority Tables at the end of the guide to move quickly from a proposition to its primary authority, as a starting point for fuller research.
NGO, IO, diplomatic and civil-service candidates	Concentrate on institutional competence and legal authority: who may act, on what legal basis, and with what consequences. Chapters 4, 7, 8 and 11 carry most of that weight, with the practical-relevance notes throughout.

Abbreviations

ARSIWA — Articles on Responsibility of States for Internationally Wrongful Acts (ILC, 2001)
IAC — International armed conflict
ICC — International Criminal Court
ICJ — International Court of Justice
ICL — International criminal law
ICTR — International Criminal Tribunal for Rwanda
ICTY — International Criminal Tribunal for the former Yugoslavia
IHL — International humanitarian law
IHRL — International human rights law
ILC — International Law Commission
NIAC — Non-international armed conflict
PCIJ — Permanent Court of International Justice
UN — United Nations
UNGA — United Nations General Assembly
UNSC — United Nations Security Council
VCCR — Vienna Convention on Consular Relations (1963)
VCDR — Vienna Convention on Diplomatic Relations (1961)
VCLT — Vienna Convention on the Law of Treaties (1969)

Method Used Throughout the Guide

International legal analysis rewards discipline more than memory. Almost every question in this subject can be worked through the same sequence, and every chapter of this guide applies it. When an answer goes wrong, it is usually because one of these steps was skipped or two of them were merged.

1. Identify the legal issue.
2. Identify the source of the applicable rule — treaty, custom, general principle, or binding institutional decision.
3. Determine which actor is bound by it.
4. State the rule, test, or legal elements.
5. Identify any exception or limitation.
6. Apply the relevant authority to the facts.
7. Determine whether a breach has occurred.
8. Distinguish responsibility from enforcement.
9. Identify the competent institution, court, or procedure.

Steps eight and nine deserve emphasis. A state may plainly be responsible for a breach and yet no court may have jurisdiction over it; a court may have jurisdiction and yet lack the means to compel compliance. Keeping the existence of an obligation, its breach, and its enforcement apart is the single most useful habit this guide can teach.

PART I

Foundations and General International Law

Part I supplies the general legal structure on which the rest of the guide depends: the nature of international law, its sources, the law of treaties, legal personality and statehood, jurisdiction and immunity, state responsibility, and the peaceful settlement of disputes.

The later chapters on force, human rights, armed conflict, and international crimes cannot be analysed accurately without these foundations. Most legal errors in this field are not errors about exotic doctrine. They come from confusing sources with subjects, jurisdiction with immunity, attribution with breach, or responsibility with enforcement. Part I exists to make those confusions impossible.

CHAPTER 1

What Public International Law Is

LEARNING OBJECTIVE

To understand what kind of legal order international law is: who it binds, why it counts as law despite decentralized enforcement, how sovereignty and consent operate within it, and how it relates to domestic law and to non-binding instruments.

Public international law is a decentralized legal order. It governs relations among states and among the other actors — international organizations, and in defined respects individuals and further entities — that possess international rights, duties, powers, or responsibilities. There is no global legislature that enacts its rules, no world executive that polices them, and no court with compulsory jurisdiction over every dispute.

That absence is the central puzzle of the subject, and the reason it is so often misunderstood. International law nonetheless contains recognized sources, binding obligations, formal procedures, standing institutions, and consequences for breach. States invoke it, argue about it, litigate under it, and pay compensation when they lose. The task of this chapter is to explain how a legal system can work that way. What each of its parts contains — the sources, the subjects, responsibility, the courts — is the business of the chapters that follow, not of this one.

1.1 Definition and scope

Public international law is the body of rules and principles that binds states and other international legal persons in their mutual relations. Its subject matter now reaches well past diplomacy between governments: relations between states; the powers and duties of international organizations; the conclusion and operation of treaties; the allocation of jurisdiction; responsibility for wrongful acts; international peace and security; the protection of human rights; the conduct of armed conflict; and the punishment of international crimes.

States remain the primary subjects of the system. They make its rules, and most of its rules are addressed to them. But they are no longer the only actors it recognizes. The United Nations holds legal personality of its own; individuals bear rights under human rights treaties and criminal responsibility under the Rome Statute. Chapter 4 examines who counts as a subject and with what capacities.

1.2 Public and private international law

The two subjects share a name and little else. Private international law — the conflict of laws — concerns cross-border disputes between private parties: which national court has jurisdiction, which domestic law applies, and whether a foreign judgment will be recognized and enforced. Public international law concerns international legal obligations, powers, institutions, and responsibility. A contract dispute between a French seller and a Brazilian buyer raises private international law; a boundary dispute between France and Brazil would raise public international law. This guide deals only with the latter.

1.3 Why international law is law

The old objection, associated with Austin, is that rules without a sovereign enforcer are not law but positive morality. The objection assumes that law requires centralized coercion. International practice suggests otherwise. The system has recognized sources for identifying its rules (Chapter 2). Treaties in force create obligations their parties must perform in good faith, a rule the VCLT states in Article 26 and every foreign ministry treats as elementary. International courts and tribunals decide disputes and their judgments bind the parties. A state whose conduct breaches an obligation incurs responsibility and owes reparation (Chapter 6). Domestic legal systems implement international rules daily, in extradition, aviation, trade, taxation, and much else. Treaty bodies and international organizations supervise compliance. Injured states may take lawful countermeasures; the Security Council may impose sanctions. And behind all of this sits reputation: a state known to break its word pays for it in every later negotiation.

None of this makes enforcement even. It is uneven, and often shaped by political power; a permanent member of the Security Council is harder to coerce than a small state. The honest position is the middle one. International law is not enforced with the consistency of domestic law, and it is not a system of empty promises either. The great bulk of it — postal traffic, air routes, diplomatic relations, maritime delimitation — is observed routinely, precisely because states need it to be.

1.4 Sovereignty and sovereign equality

Sovereignty in international law has a definite content: authority over territory and population; independence from other states; formal legal equality, affirmed in Article 2(1) of the UN Charter; and the capacity to participate in international relations — to conclude treaties, exchange diplomats, and join organizations. Liechtenstein and China are equals in this formal sense, whatever their difference in power.

Sovereignty is also legally limited, and this is the point students most often miss. A sovereign state remains bound by the treaties it has accepted, by customary international law, by the UN Charter (which Article 103 gives priority over conflicting treaty obligations), and by peremptory norms from which no derogation is permitted. The PCIJ made the essential move in *The S.S. Wimbledon* (1923): entering into a treaty obligation is not an abandonment of sovereignty but an exercise of it. Sovereignty is the capacity to bind oneself, not a licence to act without limit.

TABLE 1.1 — SOVEREIGNTY AND LEGAL OBLIGATION

What sovereignty includes	What nonetheless binds the sovereign
Exclusive authority over territory and population	Treaties in force for the state (VCLT art. 26)
Independence from other states' authority	Customary international law, including rules the state never expressly accepted
Formal equality with all other states (Charter art. 2(1))	UN Charter obligations, with art. 103 priority over conflicting treaties
Capacity to conclude treaties and join institutions	Peremptory norms (jus cogens), from which no derogation is permitted

1.5 Consent

Consent does much of the system's work. Treaties bind only their parties. The ICJ can decide a contentious case only where the respondent has, in some form, accepted its jurisdiction — the PCIJ's dictum in *The S.S. Lotus* (1927) that restrictions upon the independence of states cannot be presumed captures the consensual starting point. Membership of an international organization, and the institutional powers that come with it, rest on the constituent treaty the member accepted.

Consent does not explain everything, and a purely consensual picture of the system is a distortion. A new state is bound by existing customary law it never had occasion to accept. Jus cogens norms bind states regardless of objection. Binding Security Council decisions under Chapter VII rest on Charter membership generally, not on the target state's agreement to the particular measure. Obligations that flow from membership of an organization can develop in ways no member specifically foresaw. Consent explains how most rules are made; it does not supply a veto over every rule's application in a given dispute.

1.6 International law and domestic law

Two theoretical models frame the relationship. Monism treats international and domestic law as one legal order in which international rules can apply directly; dualism treats them as separate orders, so that an international rule takes domestic effect only once national law incorporates it. Real constitutions mix the two, and the labels describe tendencies rather than systems. What matters in practice is a set of distinctions the labels obscure: whether a rule is internationally valid; whether it has been domestically incorporated; whether it is domestically enforceable; and whether it has direct effect, so that an individual can invoke it before a national court.

A rule may bind a state internationally even where no national court will apply it. The converse rule is just as important: a state cannot normally invoke its internal law — not even its constitution — to justify failing to perform a treaty. VCLT Article 27 states the principle, and it follows from Article 26. If domestic obstacles excused non-performance, every treaty would be conditional on the other party's legislature.

1.7 Binding law, soft law, policy, and morality

Not everything that influences state conduct is law, and lawyers are paid to keep the categories apart. Binding treaty rules, customary international law, general principles, and binding institutional decisions (above all Security Council decisions under Chapter VII) create legal obligations. Non-binding General Assembly resolutions, declarations, guidelines, political commitments, and moral or policy arguments do not — however weighty they may be.

The soft category still matters legally. A declaration may state existing custom, feed the development of new custom, guide the interpretation of a treaty, or shape institutional practice, all without itself becoming binding. The Universal Declaration of Human Rights is the standard illustration: adopted as a non-binding resolution in 1948, much of its content now binds as custom or through later treaties. The instrument stayed soft; the norms hardened by other routes. Chapter 2 returns to this.

TABLE 1.2 — BINDING LAW AND SOFT LAW

Instrument	Legal force	Typical legal relevance
Treaty in force	Binding on parties	Direct source of obligation; breach engages responsibility
Customary international law	Binding generally	Binds states independently of treaty participation
UNSC decision (Chapter VII)	Binding on members	Obligatory under Charter arts. 25 and 103
UNGA resolution	Generally non-binding	Evidence of opinio juris; may state or crystallize custom
Declarations, guidelines, codes	Non-binding	Interpretive aid; may feed later custom or treaty-making
Political commitments; moral claims	Not law	May motivate conduct or law-making; create no legal responsibility

1.8 The analytical method

The sequence set out in the front matter runs through every chapter: what is the legal issue; what is the source of the rule; who is bound; what is the applicable test; is there an exception; has the obligation been breached; what consequence follows; and which institution has jurisdiction or competence. The *Reparation for Injuries* advisory opinion (1949), *Nicaragua v United States* (1986), and the *Nuclear Weapons* advisory opinion (1996) each show the ICJ working through essentially this order, and they repay reading with the sequence in hand.

COMMON MISUNDERSTANDINGS

- **"International law is not really law because it cannot be enforced."** Enforcement is decentralized and uneven, not absent. Courts, countermeasures, sanctions, domestic implementation, and responsibility for breach are all enforcement in a legally meaningful sense.
- **"A sovereign state may do as it pleases."** Sovereignty includes the capacity to be bound. Treaties, custom, the Charter, and jus cogens all limit sovereign freedom, and accepting a treaty is an exercise of sovereignty, not its loss (*Wimbledon*).
- **"A state can rely on its constitution to escape a treaty."** Internally, perhaps; internationally, no. VCLT Article 27 bars invoking internal law to justify non-performance.

PRACTICAL RELEVANCE

Whether advising a foreign ministry, drafting for an NGO, or answering an examination problem, the first professional act is classification: is the claimed rule binding law, and from which source? Arguments that skip that step — treating a General Assembly resolution as if it were a treaty, or a moral claim as if it were custom — fail in practice exactly as they fail in examinations.

REVISION POINTS

1. International law is a decentralized legal order with recognized sources, binding obligations, institutions, and consequences for breach; uneven enforcement does not remove its legal character.
2. States are the primary but not the only subjects of international law.
3. Sovereignty means legal authority and equality within the law, not freedom from it; treaty-making is an exercise of sovereignty (*Wimbledon*).
4. Consent grounds treaties, adjudication, and membership, but custom, jus cogens, and Chapter VII decisions cannot be reduced to case-by-case consent.
5. Internal law is no excuse for non-performance of a treaty (VCLT arts. 26–27); a rule can bind a state internationally without being enforceable in its own courts.

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UN Charter, arts. 1, 2(1), 25, 103 · Statute of the ICJ, arts. 38, 59 · VCLT (1969), arts. 26–27 · *The S.S. Lotus (France v Turkey)*, PCIJ Ser. A No. 10 (1927) · *The S.S. Wimbledon*, PCIJ Ser. A No. 1 (1923) · *Reparation for Injuries Suffered in the Service of the United Nations*, ICJ Advisory Opinion (1949) · *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)*, ICJ (1986) · *Legality of the Threat or Use of Nuclear Weapons*, ICJ Advisory Opinion (1996) · Universal Declaration of Human Rights, UNGA Res 217 A (III) (1948) · J. Klabbers, *International Law* · A. Aust, *Handbook of International Law*.

CHAPTER 2

Sources of International Law

LEARNING OBJECTIVE

To identify where a rule of international law comes from, to establish customary law through practice and opinio juris, to place judicial decisions, scholarship, resolutions and soft law in their correct subsidiary roles, and to handle conflicts between norms, including jus cogens.

Every legal argument in this subject begins the same way: by identifying the source of the alleged rule. A claim that a state "must" do something is empty until one can say whether the obligation rests on a treaty, on custom, on a general principle, or on a binding institutional decision. The traditional framework is Article 38(1) of the ICJ Statute. It was drafted as a direction to one court about the law it should apply, and it has become the standard map of the sources for the whole discipline. It is a good map with known gaps: it says nothing about hierarchy among norms, about the acts of international organizations, about unilateral declarations, or about soft law. This chapter follows Article 38 and then fills in those gaps.

2.1 Article 38 of the ICJ Statute

Article 38(1) lists: international conventions, whether general or particular; international custom, as evidence of a general practice accepted as law; the general principles of law recognized by civilized nations (the phrase is dated; the category is not); and, as subsidiary means for determining rules of law, judicial decisions and the teachings of the most highly qualified publicists. The first three are sources properly so called — they generate rules. The fourth category identifies rules; it does not create them. Article 38 is not a constitutional code for international law, and nothing in it ranks treaty above custom or custom above general principles.

TABLE 2.1 — MAP OF THE SOURCES

Source	How the rule arises	Whom it binds
Treaty	Written agreement; consent to be bound (Ch. 3)	Parties only (subject to §2.11 and custom overlap)
Custom	General practice + opinio juris (§§2.3–2.4)	All states, save a valid persistent objector
General principles	Recognized across legal systems, or formed within the international order (§2.6)	All states; gap-filling role
Judicial decisions; scholarship	Subsidiary means of identification (§§2.7–2.8)	Judgments bind the parties in the case (ICJ Statute art. 59)
Institutional acts; soft law	Depends on competence and legal basis (§2.9)	UNSC Chapter VII decisions bind members; most else non-binding

2.2 Treaties as a source

Treaties create binding obligations for their parties, and only for their parties. Within the category sit instruments of very different character: bilateral treaties resembling contracts; multilateral treaties resembling legislation for those who join; constituent treaties that establish international organizations and give them powers. A treaty provision may also do double work as evidence of custom — either codifying a customary rule that already existed, or generating practice that hardens into new custom, as the ICJ contemplated in *North Sea Continental Shelf* (1969). How treaties are made, interpreted, and ended is the subject of Chapter 3; here they matter only as a source.

2.3 Customary international law

Custom has two elements, and both must be shown: a general practice of states, and acceptance of that practice as law (opinio juris). The ILC's Draft Conclusions on Identification of Customary International Law (2018) restate the two-element approach the ICJ has applied since *North Sea Continental Shelf*. Evidence of practice includes diplomatic statements and correspondence, legislation, military manuals, national judgments, executive conduct, treaty practice, and conduct within international organizations. Practice must be sufficiently general and consistent, including among the states whose interests are specially affected — but it need not be perfect. In *Nicaragua* (1986) the Court held that inconsistent conduct does not defeat a rule where states treat departures from it as breaches rather than as the exercise of a new right. The *Asylum* case (1950) shows the negative side: practice too uncertain and contradictory to found a regional custom. And *The Paquete Habana* (1900) remains the classic demonstration of a court assembling centuries of practice to find a customary rule exempting coastal fishing vessels from capture.

2.4 Opinio juris

Repetition alone makes habit, not law. States exchange new year's greetings and roll out red carpets with complete regularity, and no one thinks these obligatory. What converts practice into custom is the belief that the conduct is legally required, permitted, or prohibited. *North Sea Continental Shelf* put it plainly: the states concerned must feel that they are conforming to what amounts to a legal obligation. Courtesy, convenience, political preference, and moral approval are all motives for consistent conduct; none of them is opinio juris. In practice the two elements are proved from overlapping materials — a state's official statement both is practice and evidences its legal conviction — but they remain analytically distinct, and an examiner will expect them to be addressed separately.

2.5 Persistent objector; specially affected states

A state that objects to a customary rule clearly, consistently, and while the rule is still forming is not bound by it once it crystallizes. All three conditions matter: a late objection is ineffective, while silence or inaction may carry legal significance only where the state was in a position to react and the circumstances called for a response. The doctrine protects dissent during formation; it does not license exit afterwards, and it has no application against peremptory norms. The related idea that the practice of "specially affected" states carries particular weight — maritime states for the law of the sea, for instance — appears in *North Sea Continental Shelf* and has influenced

custom analysis since, but its scope remains debated and depends on context. It is a factor in weighing practice, not a veto held by powerful states.

2.6 General principles of law

General principles fill gaps and keep adjudication coherent where neither treaty nor custom supplies a rule. Two kinds should be distinguished: principles derived from domestic legal systems in general — good faith, res judicata, estoppel, the rule that no one may profit from their own wrong — and principles that may be formed within the international legal order itself. They are a genuine source, but a residual one. Invoking a general principle merely because the evidence for a treaty or customary rule is thin is a familiar advocate's move and a weak one; tribunals see through it.

2.7 Judicial decisions

Article 59 of the ICJ Statute confines the binding force of a judgment to the parties and the particular case. There is no doctrine of binding precedent. Yet the reasoning of international courts carries authority well beyond the case: it is cited, followed, and relied on as the best evidence of what custom requires and how treaties should be read. Four functions should be kept apart — binding force between the parties; persuasive authority beyond them; judicial identification of customary law; and judicial interpretation of treaties. International judgments are not legislation, and a court that departs from an earlier decision commits no wrong, though it will usually explain itself.

2.8 Scholarly writings

The "teachings of the most highly qualified publicists" are a subsidiary means only. Scholarship clarifies doctrine, maps competing interpretations, organizes scattered state practice, and exposes contested assumptions — services no court can do without. But a textbook is never a substitute for available primary authority. Cite the treaty, the judgment, or the practice; cite the professor for the analysis of them.

2.9 UN resolutions, ILC materials, and soft law

The legal effect of an institutional act is never read off its title. It depends on the competence of the adopting body, the legal basis invoked, the language used ("decides" against "recommends" or "urges"), the voting pattern, subsequent state practice, and the act's relationship with existing law. Security Council decisions under Chapter VII bind all members through Articles 25 and 103 of the Charter. General Assembly resolutions are generally recommendations — but a resolution adopted by consensus in normative language may state existing custom or supply evidence of opinio juris, as *Nicaragua* accepted of the Friendly Relations Declaration. ILC draft articles and conclusions have no binding force as such, yet several — ARSIWA above all — are treated by courts as reflecting custom in most respects. Declarations, principles, guidelines and codes of conduct sit at the soft end: not law, but capable of shaping interpretation and of feeding the development of law.

2.10 Hierarchy and conflict between norms

International law has no single comprehensive hierarchy of sources. What it has is a small set of priority rules and a larger set of techniques for managing conflict, examined at length in the ILC's fragmentation study (2006). Two true priority rules stand out: jus cogens, which invalidates conflicting treaties (VCLT arts. 53 and 64), and Article 103 of the Charter, which gives Charter obligations precedence over obligations under any other international agreement. Below these sit interpretative and conflict-management techniques: lex specialis (the more specific rule governs within its field), lex posterior (the later rule prevails between the same parties, VCLT art. 30), and harmonious interpretation, which reads potentially conflicting norms so that both can operate. Lex specialis and lex posterior are tools, not trumps; whether they apply depends on the parties, the subject matter, and the intention behind the rules. Treat them as presumptions to be argued, never as automatic answers.

TABLE 2.2 — HANDLING CONFLICTS BETWEEN NORMS

Device	Effect	Character
Jus cogens (VCLT arts. 53, 64, 71)	Conflicting treaty is void (art. 53) or becomes void and terminates (art. 64)	True hierarchy
Charter art. 103	Charter obligations prevail over other treaty obligations	Priority rule
Lex specialis	More specific rule applies within its field	Interpretative technique, context-dependent
Lex posterior (VCLT art. 30)	Later treaty prevails between the same parties	Default rule, displaceable
Harmonious interpretation	Norms read together so both operate	First resort before finding conflict

2.11 Jus cogens and obligations erga omnes

A peremptory norm (jus cogens) is a norm accepted and recognized by the international community of states as a whole as one from which no derogation is permitted and which can be modified only by a later norm of the same character (VCLT art. 53). The prohibitions of aggression, genocide, slavery, and torture are standard examples in the ILC's 2022 Draft Conclusions. A treaty conflicting with an existing peremptory norm is void; one conflicting with a newly emerged peremptory norm becomes void and terminates (arts. 53, 64, 71).

Obligations erga omnes are obligations owed to the international community as a whole, so that every state has a legal interest in their performance. The ICJ introduced the category in *Barcelona Traction* (1970), giving as examples the outlawing of aggression and genocide and protection from slavery and racial discrimination. The two concepts overlap heavily in content but answer different questions. Jus cogens concerns a norm's status in the hierarchy: what happens to conflicting rules. Erga omnes concerns the structure of the obligation: who may invoke its breach (see Chapter 6, §6.7). Most jus cogens norms generate erga omnes obligations; the converse does not follow, and the terms are not interchangeable. *Jurisdictional Immunities (Germany v Italy)* (2012) shows the limits of both: even

a jus cogens violation did not displace state immunity, because immunity is procedural and the peremptory prohibition is substantive.

TABLE 2.3 — JUS COGENS AND ERGA OMNES

	Jus cogens	Erga omnes
Question answered	Normative status: may states derogate?	Structure of obligation: who holds a legal interest?
Key consequence	Conflicting treaties void or terminated (VCLT arts. 53, 64)	Any state may invoke responsibility (ARSIWA art. 48)
Leading authority	VCLT art. 53; ILC Draft Conclusions (2022)	*Barcelona Traction* (1970), paras. 33–34
Relationship	Heavy overlap in content; distinct in function. Neither overrides procedural rules such as immunity (*Jurisdictional Immunities*, 2012).	

CUSTOM-IDENTIFICATION CHECKLIST

1. State the alleged rule precisely — its content decides what practice is relevant.
2. Collect practice: statements, legislation, manuals, judgments, executive and institutional conduct.
3. Assess generality and consistency, weighting specially affected states where the context justifies it.
4. Establish opinio juris separately: is the conduct treated as legally required or permitted, or merely convenient?
5. Deal with contrary practice: breach of the rule, or evidence against it? (*Nicaragua*)
6. Check for a persistent objector, and whether the rule could be peremptory.

COMMON MISUNDERSTANDINGS

- Treating repeated conduct as custom without addressing opinio juris.
- Citing a General Assembly resolution as if it were itself binding law, rather than as possible evidence of custom.
- Using jus cogens and erga omnes as synonyms.
- Deploying lex specialis or lex posterior as if they ended the analysis, without asking whether the rules share parties and subject matter.

PRACTICAL RELEVANCE

Source analysis is the first page of every memorial, advisory opinion request, and legal brief in this field: before any argument on the merits, counsel must state where the rule comes from and why it binds this state. The custom-identification checklist above is, in substance, how foreign ministries and tribunals actually assemble and test a claimed customary rule.

REVISION POINTS

1. Every argument starts with a source; Article 38 is the map, not a hierarchy.
2. Custom = general practice + opinio juris; both elements, proved separately (*North Sea Continental Shelf*).
3. Judgments bind only the parties (art. 59) but carry authority as identification of law; scholarship is subsidiary.
4. Institutional acts bind only where the adopting body has the power to bind — Chapter VII decisions, yes; UNGA resolutions, generally no.
5. Jus cogens governs normative status; erga omnes governs standing to invoke. Neither displaces procedural rules like immunity.

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Statute of the ICJ, arts. 38, 59 · VCLT, arts. 30, 53, 64, 71 · UN Charter, arts. 25, 103 · ILC, Draft Conclusions on Identification of Customary International Law (2018) · ILC, Draft Conclusions on Peremptory Norms of General International Law (2022) · ILC, Fragmentation of International Law (2006) · *North Sea Continental Shelf (Germany v Denmark; Germany v Netherlands)*, ICJ (1969) · *Nicaragua v United States*, ICJ (1986) · *Asylum (Colombia v Peru)*, ICJ (1950) · *The Paquete Habana*, 175 US 677 (1900) · *Barcelona Traction (Belgium v Spain)*, ICJ (1970) · *Jurisdictional Immunities of the State (Germany v Italy)*, ICJ (2012) · Friendly Relations Declaration, UNGA Res 2625 (XXV) (1970).

CHAPTER 3

Treaty Law and the Vienna Convention

LEARNING OBJECTIVE

To follow a treaty through its life: what qualifies as a treaty, how consent to be bound is expressed, how reservations operate, how Articles 31–33 govern interpretation, what effect treaties have on third states, and on what grounds a treaty may be invalid, terminated, or suspended.

Treaties are the principal written instruments through which states and international organizations create legal obligations, and treaty questions arise in nearly every dispute a practitioner will meet. The governing framework is the Vienna Convention on the Law of Treaties (1969), which regulates formation, application, interpretation, reservations, invalidity, termination, and the position of third states. Much of the VCLT restates customary law, which is why courts apply its core rules even to treaties concluded before it and between non-parties. The distinctions that matter in this chapter are between existence and force (is this instrument a treaty at all, and is it in force for this state?), between interpretation and revision, and between the several ways a treaty relationship can end or pause.

3.1 What counts as a treaty

The VCLT defines a treaty as an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation (art. 2(1)(a)). Three things carry the weight: agreement between subjects capable of concluding treaties; an intention to create legal obligations; and governance by international law rather than by some national law. The title is not decisive — "convention," "protocol," "exchange of notes," "agreed minutes" can all be treaties. In *Qatar v Bahrain* (1994) the ICJ held that signed minutes of a meeting constituted a binding agreement because of what they recorded, not what they were called; in *Aegean Sea Continental Shelf* (1978) a joint communiqué was examined the same way, though on its terms it fell short. The contrast is with political declarations and non-binding memoranda of understanding, where the parties intend commitment without legal obligation. Drafters signal that intention through language ("will" rather than "shall"), form, and express disclaimers — and disputes about it end up decided on the text and circumstances.

3.2 Capacity, representation, and full powers

Every state possesses capacity to conclude treaties (art. 6). Who may act for the state is a separate question. A person must produce full powers — a formal authorization — unless practice or circumstances show the states concerned intended to dispense with them (art. 7). Three officials represent the state for treaty purposes without producing full powers: the head of state, the head of government, and the minister for foreign affairs. Heads of diplomatic missions and accredited delegates may adopt the text of a treaty within their accreditation. Acts performed by an unauthorized person are without legal effect unless later confirmed (art. 8).

3.3 Consent to be bound

Consent to be bound may be expressed by signature, exchange of instruments, ratification, acceptance, approval, accession, or any other agreed means (arts. 11–15). The stages must be kept apart. Signature may itself bind where the treaty so provides; more often it is a step toward ratification, the later formal act by which the state confirms consent. Accession is the route for states joining a treaty they did not sign. And none of this says when obligations begin: that is entry into force, governed by the treaty's own provisions (art. 24) — typically after a set number of ratifications. A state that has signed but not yet ratified is not bound by the treaty, but Article 18 obliges it in the interim to refrain from acts that would defeat the treaty's object and purpose, until it makes clear it does not intend to become a party. The same obligation applies where a state has expressed its consent to be bound but the treaty has not yet entered into force, provided that entry into force is not unduly delayed (art. 18(b)).

FIGURE 3.1 — THE TREATY LIFECYCLE

3.4 Pacta sunt servanda and good faith

Article 26 states the foundation of the whole edifice: every treaty in force is binding upon the parties and must be performed by them in good faith. Article 27 draws the corollary met in Chapter 1 — internal law is no justification for non-performance. Good faith governs how obligations are carried out; it does not add new obligations or subtract inconvenient ones. In *Gabčíkovo-Nagymaros* (1997) the ICJ invoked it to require the parties to apply their treaty reasonably and so that its purpose could be realized — while refusing to let either party treat the treaty as dead. A tribunal will not use good faith to rewrite a bargain.

3.5 Reservations

A reservation is a unilateral statement, however phrased or named, made when signing, ratifying, accepting, approving, or acceding to a treaty, by which a state purports to exclude or modify the legal effect of certain provisions in their application to itself (art. 2(1)(d)). If formulated when signing a treaty subject to ratification, acceptance, or approval, it must be formally confirmed when the state expresses its consent to be bound (art. 23(2)). The classical rule required acceptance by all parties. The ICJ changed the frame in *Reservations to the Genocide Convention* (1951): a reserving state can be a party if its reservation is compatible with the treaty's object and purpose. The VCLT codified that approach. A reservation is impermissible if the treaty prohibits it, if it falls outside those the treaty permits, or if it fails the object-and-purpose test (art. 19). Other parties may accept or object (art. 20); as between a reserving and an accepting state the treaty applies as modified, and an objection excludes the reserved provisions to the extent of the reservation unless the objector opposes the treaty's entry into

force between them entirely (art. 21). Interpretative declarations — statements of how a state understands a provision — are not reservations, though a "declaration" that actually modifies legal effect will be treated as one. Two cautions: human rights bodies have claimed the power to sever impermissible reservations, a practice not uniformly accepted; and specific treaty regimes may have their own reservation rules. The general regime is a default, not a universal description.

TABLE 3.1 — ANALYSING A RESERVATION

Question	Test and consequence
Is it a reservation at all?	Substance over label: does it purport to exclude or modify legal effect? If merely interpretative, arts. 19–23 do not apply.
Is it permissible?	Not prohibited by the treaty; within any permitted class; compatible with object and purpose (art. 19; *Genocide Reservations*).
Effect on accepting parties	Treaty applies between them as modified by the reservation, reciprocally (art. 21(1)).
Effect on objecting parties	Reserved provisions do not apply between the two states to the extent of the reservation; the whole treaty is excluded only if the objector definitely so intends (arts. 20–21).

3.6 Treaty interpretation

Article 31(1) contains one integrated rule, not a sequence of separate tests: a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Context includes the text, preamble and annexes, and related instruments (art. 31(2)). Together with context the interpreter takes into account subsequent agreements between the parties, subsequent practice establishing their agreement, and relevant rules of international law applicable between them (art. 31(3)). Article 32 admits supplementary means — above all the travaux préparatoires — to confirm a meaning or to resolve ambiguity or manifest absurdity. Article 33 governs treaties authenticated in several languages, each text being equally authoritative unless the treaty provides otherwise. The ICJ has applied this framework repeatedly: *Kasikili/Sedudu Island* (1999) worked through ordinary meaning, context, and subsequent practice on a nineteenth-century boundary treaty; *LaGrand* (2001) used Articles 31–33 to hold that provisional measures under Article 41 of its own Statute are binding, resolving a divergence between the English and French texts. One discipline above all: object and purpose informs the reading of the text; it is never a warrant for disregarding it.

INTERPRETATION CHECKLIST — VCLT ARTS. 31–33

1. Start with the ordinary meaning of the terms — in their context, not in a dictionary vacuum.
2. Read the whole text: preamble, annexes, related instruments (art. 31(2)).
3. Take into account subsequent agreements and subsequent practice of the parties (art. 31(3)(a)–(b)).
4. Take into account other applicable rules of international law (art. 31(3)(c)).
5. Test the reading against object and purpose, in good faith.
6. Use travaux and circumstances of conclusion to confirm, or to resolve ambiguity or absurdity (art. 32).
7. For plurilingual treaties, reconcile the authentic texts (art. 33).

3.7 Treaties and third states

Pacta tertiis nec nocent nec prosunt: a treaty creates neither obligations nor rights for a third state without its consent (art. 34). An obligation for a third state requires its acceptance in writing (art. 35); a right requires its assent, which is presumed where the treaty so intends and the third state does not object (art. 36). The important qualification is Article 38: nothing prevents a rule set out in a treaty from binding a non-party where the same rule exists independently as customary international law. Non-parties to the VCLT itself are bound by its customary core for exactly this reason.

3.8 Invalidity

Invalidity attacks the treaty at its root: consent was defective, or the treaty could never lawfully exist. The grounds are exhaustive (arts. 46–53). A state may invoke a violation of its internal law on competence to conclude treaties only where the violation was manifest and concerned a rule of fundamental importance (art. 46) — a deliberately narrow gate. Error must concern a fact forming an essential basis of consent, and is unavailable to a state that contributed to it (art. 48). Fraud and corruption of a representative vitiate consent (arts. 49–50). Coercion of a representative (art. 51) and coercion of the state by the threat or use of force in violation of the Charter (art. 52) make the treaty void, not merely voidable. So does conflict with an existing peremptory norm (art. 53). Invalidity is exceptional, and Articles 65–68 impose procedure: notification, a period for objection, and dispute-settlement steps. A state cannot simply announce in a crisis that its treaty was always void.

3.9 Termination and suspension

Termination ends a valid treaty for the future; suspension pauses it; withdrawal removes one party from a multilateral treaty that continues for the rest. A treaty ends in conformity with its own provisions or by consent of all parties (arts. 54, 57). Beyond consent, the VCLT recognizes a short list of grounds. A material breach — repudiation, or violation of a provision essential to the treaty's object and purpose — entitles the other party (or, in multilateral settings, defined groups of parties) to invoke termination or suspension (art. 60), though Article 60(5) carves out one class of treaty entirely: provisions protecting the human person in treaties of a humanitarian character — in particular, prohibitions on reprisals against protected persons — cannot be suspended or terminated for breach. Otherwise, breach never terminates a treaty automatically; it gives the injured party an option, to be exercised through the Convention's procedures. Supervening impossibility requires the permanent disappearance or destruction of an object indispensable for performance (art. 61). Fundamental change of circumstances (rebus sic stantibus) is available only where the change was not foreseen by the parties, the existence of the original circumstances constituted an essential basis of their consent, and the effect of the change radically transforms the extent of the obligations still to be performed—and never for boundary treaties or where the invoking state caused the change (art. 62). *Gabčíkovo-Nagymaros* rejected pleas of impossibility, fundamental change, and material breach on its facts, and is the standard illustration of how strictly these grounds are read. Finally, a treaty conflicting with a newly emerged peremptory norm becomes void and terminates (art. 64).

TABLE 3.2 — INVALIDITY, TERMINATION, SUSPENSION, WITHDRAWAL

	What it attacks	Main grounds	Effect
Invalidity	Consent, or the treaty's lawful existence	Arts. 46–53: manifest internal-law violation, error, fraud, corruption, coercion, existing jus cogens	Treaty void or voidable from the start
Termination	Continued operation of a valid treaty	Treaty terms, consent, material breach, impossibility, fundamental change, new jus cogens (arts. 54–64)	Obligations end for the future
Suspension	Operation, temporarily	Treaty terms, consent, material breach, temporary impossibility (arts. 57–62)	Obligations pause; treaty survives
Withdrawal	One party's participation	Treaty terms; implied right only if intended or inherent in the treaty's nature (art. 56)	Treaty continues for remaining parties

COMMON MISUNDERSTANDINGS

- **"It is only called a memorandum, so it cannot be binding."** Designation is irrelevant; intention and content decide (*Qatar v Bahrain*).
- **"The other side breached, so the treaty is over."** Material breach gives an option to invoke termination or suspension through the proper procedure; it terminates nothing by itself (art. 60; *Gabčíkovo-Nagymaros*).
- **"Object and purpose lets us read the treaty as it should have been written."** Article 31 is one rule anchored in the text; purpose guides meaning, it does not replace it.

PRACTICAL RELEVANCE

Treaty questions are drafting questions in reverse. Anyone negotiating an instrument — for a ministry, an NGO, or an international organization — chooses at every line between binding and non-binding language, and every choice will later be read through Articles 31–33. Knowing how a tribunal will interpret is knowing how to draft.

REVISION POINTS

1. A treaty is defined by agreement, intention to create legal obligations, and governance by international law — never by its title.
2. Distinguish signature, consent to be bound, and entry into force; between signature and ratification, art. 18's interim obligation applies.
3. Reservations stand or fall on the object-and-purpose test; objections change bilateral relations, they do not police the treaty for everyone.
4. Interpretation is one integrated rule (art. 31), supplemented by art. 32 — text first, purpose as light, travaux as confirmation.
5. Invalidity, termination, suspension, and withdrawal are distinct doctrines with distinct grounds and procedures; breach gives options, not automatic release.

CITATION REGISTER — CHAPTER 3

VCLT, arts. 2, 6–8, 11–18, 19–23, 24, 26–27, 30–38, 46–56, 57–68 · *Reservations to the Convention on Genocide*, ICJ Advisory Opinion (1951) · *Maritime Delimitation and Territorial Questions (Qatar v Bahrain)*, ICJ (1994) · *Aegean Sea Continental Shelf (Greece v Turkey)*, ICJ (1978) · *Gabčíkovo-Nagymaros Project (Hungary v Slovakia)*, ICJ (1997) · *Kasikili/Sedudu Island (Botswana v Namibia)*, ICJ (1999) · *LaGrand (Germany v United States)*, ICJ (2001).

CHAPTER 4

Subjects, Statehood, Recognition, and Sovereignty

LEARNING OBJECTIVE

To determine who possesses international legal personality and with what capacities: the criteria for statehood, the legal significance of recognition, the functional personality of international organizations, the position of individuals and other actors, and the scope of self-determination.

Before asking what the law requires, one must ask of whom it can require anything. Legal personality determines who may hold international rights, duties, powers, claims, and procedural capacity. The key point, easily lost, is that personality is not all-or-nothing. States possess general legal capacity — they can do everything the system allows. Every other actor holds personality that is partial, functional, or derived: enough for defined purposes and no more. The chapter's distinctions — statehood against recognition, subject against actor, self-determination against secession — are among the most examined in the field.

4.1 International legal personality

To have international legal personality is to be a bearer of international rights and duties, with some combination of further capacities: to conclude agreements, to bring international claims, to participate in international proceedings, and to incur responsibility. *Reparation for Injuries* (1949) is the foundational authority. Asked whether the UN could claim for injuries to its agent, the ICJ answered that the subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights; the UN possessed the personality its functions required, including the capacity to claim — without being a state or a "super-state." That sentence does most of the work in this chapter. Personality comes in degrees, cut to function.

4.2 Criteria for statehood

The traditional criteria appear in Article 1 of the Montevideo Convention (1933): a permanent population; a defined territory; government; and capacity to enter into relations with other states. Each is read generously in practice. No minimum population exists; boundaries need not be settled (Israel and many others were admitted to the UN with disputed borders); effective government is assessed with tolerance for civil war and even prolonged collapse once a state exists. The criteria bite harder at creation than at continuation: an established state does not lose statehood because its government fails, but an entity seeking statehood with no effective government will struggle.

The factual test is also overlaid by legality. An entity created through unlawful force or in violation of self-determination may satisfy Montevideo on the facts and still be denied statehood — the practice of collective non-recognition of Rhodesia and the Turkish Republic of Northern Cyprus illustrates the point. Foreign occupation, contested territory, and competing self-determination claims complicate the application of every criterion, which is why statehood disputes are rarely resolved by checklist alone.

TABLE 4.1 — STATEHOOD CRITERIA (MONTEVIDEO ART. 1)

Criterion	How it is applied	Complications
Permanent population	No minimum size; a settled community suffices	Displacement; nomadic populations
Defined territory	A core territory suffices; borders may be disputed	Occupation; contested or shifting territory
Government	Effective at creation; tolerance of failure afterwards	Civil war; "failed state" situations
Capacity for foreign relations	Independence in the conduct of external affairs	Dependence on a patron state; puppet entities
Overlay: legality	Creation through unlawful force or in breach of self-determination attracts collective non-recognition, whatever the facts	

4.3 Recognition of states

Two theories frame the debate. The declaratory theory holds that recognition acknowledges an existing fact: statehood depends on the criteria, and recognition adds nothing constitutive. The constitutive theory holds that an entity becomes a state for other states only through their recognition. The declaratory view dominates doctrine and is reflected in Montevideo Article 3, but practice is not so tidy. Recognition has real consequences: it opens diplomatic relations, treaty participation, and access to institutions; it affects immunities, standing to litigate in foreign courts, and control over state property and assets abroad. An entity recognized by almost no one may satisfy the criteria and still find its statehood practically unusable. The safe formulation: recognition neither creates statehood by itself nor, withheld, extinguishes it — but widespread recognition is strong evidence that the criteria are met, and collective non-recognition can seal an entity's exclusion.

4.4 Recognition of governments

Recognizing a government is a different act from recognizing a state: the state continues while governments change, lawfully or otherwise. Practice weighs effective control of territory against constitutional legitimacy, with democratic legitimacy and non-recognition policies playing growing roles after coups. Many states now avoid formal recognition of governments altogether, letting the question show itself in whom they deal with, who is accredited, and who controls embassies and assets. State practice varies enough that firm general rules should not be asserted.

4.5 International organizations

International organizations hold functional personality: the legal capacity their functions require, as conferred by their constituent treaty. The United Nations is the model. Its Charter confers express powers; *Reparation for Injuries* added that the organization also holds those implied powers essential to the performance of its duties. The limits matter as much as the powers. An organization can act only within its attributed competence; it is not a state, holds no territory or population of its own, and its personality — though opposable even to non-members in the UN's case — derives from the member states that created it. Distinguish always: the constituent instrument; the express powers; the implied powers; the organization's separate personality; and the sovereignty of the members, which the organization's existence qualifies but does not absorb.

4.6 Individuals and other actors

Individuals hold rights directly under human rights treaties, may petition international bodies where states have accepted such procedures, and bear international criminal responsibility for genocide, crimes against humanity, war crimes, and aggression. That is genuine, if partial, personality. Peoples hold the right of self-determination (§4.7); Indigenous peoples hold recognized collective rights, notably under the 2007 UN Declaration. Corporations can hold procedural rights under investment treaties and are the objects of growing regulation; NGOs participate, observe, and litigate where rules allow; armed groups bear obligations under common Article 3 of the Geneva Conventions. Participation, influence, or regulation does not make any of these a full subject. The examination trap is the inference from "X has some rights or duties" to "X is a subject like a state." Resist it; describe the specific capacities instead.

TABLE 4.2 — SUBJECTS AND ACTORS COMPARED

Actor	Capacities held	Basis
State	General capacity: treaties, claims, responsibility, membership	Statehood (Montevideo criteria)
International organization	Functional: what its tasks require, express and implied	Constituent treaty (*Reparation*)
Individual	Human rights; petition where accepted; criminal responsibility	Human rights treaties; ICL
Peoples	Self-determination	Charter art. 1(2); common art. 1 ICCPR/ICESCR
Corporations, NGOs, armed groups	Narrow, regime-specific rights or obligations	Specific treaties and rules (e.g. common art. 3)

4.7 Self-determination

Self-determination — the right of peoples freely to determine their political status and pursue their development — appears in the Charter (art. 1(2)), in common Article 1 of the two Covenants, and in the Friendly Relations Declaration, and the ICJ has described it as generating obligations erga omnes (*East Timor*, 1995). Its settled core is decolonization: peoples under colonial rule are entitled to independence or another freely chosen status. The Court has also applied the right of self-determination in situations of foreign occupation, including in *Wall* (2004) and the *Occupied Palestinian Territory* advisory opinion (2024). *Western Sahara* (1975) and *Chagos* (2019) apply the decolonization core; *Chagos* held that decolonization is not lawfully completed where part of the territory is detached against the people's will.

Outside the colonial context, the right operates mainly internally: participation, representation, and autonomy within the existing state. What it does not establish is a general right of unilateral secession. The *Kosovo* advisory opinion (2010) held only that the declaration of independence did not violate international law; it conspicuously declined to say a right to secede existed. The much-discussed idea of "remedial secession" for peoples facing extreme persecution remains contested and unendorsed by the ICJ. Self-determination questions should therefore be worked stepwise: is there a people; is the context colonial or occupation; if not, has internal self-determination been denied; and even then, no automatic external right follows.

4.8 Sovereignty and territorial title

Territorial sovereignty is the exclusive right to display the functions of a state within a territory. Huber's award in *Island of Palmas* (1928) supplies the classic propositions: sovereignty is demonstrated by the continuous and peaceful display of state authority, and title must be assessed under the law in force at the relevant time — the intertemporal rule — while its maintenance is judged by evolving law. Effectivités may confirm the exercise of a right derived from legal title, help clarify the extent of an uncertain title, or fill the gap where no legal title exists at all. What they cannot do is displace a conflicting legal title (*Frontier Dispute*, 1986). Uti possidetis converts former administrative boundaries into international ones at independence, privileging stability over ethnographic accuracy. Two Charter-era limits frame everything: territorial integrity (art. 2(4)) and the prohibition of acquiring territory by force, restated in the Friendly Relations Declaration and applied in the *Wall* opinion (2004). Conquest is no longer a mode of acquisition. Fuller treatment of boundaries and succession lies beyond this guide's scope; what matters here is the connection to statehood: territory defines the state, and title determines where sovereignty runs.

SELF-DETERMINATION DECISION MAP

1. Is the claimant a "people" for this purpose?
2. Colonial rule or foreign occupation? → right to independence or freely chosen status (*Western Sahara*, *Chagos*).
3. Otherwise → internal self-determination: participation, representation, autonomy within the state.
4. Denial of internal self-determination? Remedial secession is argued but contested; no ICJ endorsement (*Kosovo* decided less).
5. In every case: no automatic right of unilateral secession; territorial integrity and non-recognition of forcible acquisition constrain outcomes.

COMMON MISUNDERSTANDINGS

- **"Recognition makes the state."** Recognition is weighty evidence and practically indispensable, but the dominant view is declaratory: statehood rests on the criteria, subject to legality.
- **"The UN is a world government."** It is an organization of attributed, functional powers — real personality, bounded competence (*Reparation*).
- **"Self-determination entitles every people to its own state."** The external right belongs to the colonial and occupation contexts; elsewhere the right is primarily internal (*Kosovo* decided far less than is often claimed).

PRACTICAL RELEVANCE

Personality questions decide practical ones daily: whether an unrecognized entity's instruments are valid, who controls a state's embassy and central-bank assets after a contested change of government, whether an organization can be sued, and in whose name a territory's resources may be sold. The lawyer's contribution is precision about which capacity is actually in issue.

REVISION POINTS

1. Personality comes in degrees: states hold general capacity; all other actors hold functional or partial capacity (*Reparation*).
2. Statehood: population, territory, government, capacity for relations — applied flexibly, and overlaid by legality.
3. Recognition is declaratory in principle, constitutive in effect at the margins; recognition of governments is a separate, practice-driven question.
4. Self-determination: external in colonial/occupation contexts, internal elsewhere; no general right of unilateral secession.
5. Territorial title rests on display of authority and intertemporal law (*Island of Palmas*); acquisition by force is prohibited.

CITATION REGISTER — CHAPTER 4

Montevideo Convention on the Rights and Duties of States (1933), arts. 1, 3 · UN Charter, arts. 1(2), 2(1), 2(4), 2(7) · ICCPR and ICESCR, common art. 1 · Friendly Relations Declaration, UNGA Res 2625 (XXV) (1970) · UN Declaration on the Rights of Indigenous Peoples (2007) · *Reparation for Injuries*, ICJ Advisory Opinion (1949) · *Island of Palmas (Netherlands v United States)*, PCA (1928) · *Nottebohm (Liechtenstein v Guatemala)*, ICJ (1955) · *Western Sahara*, ICJ Advisory Opinion (1975) · *East Timor (Portugal v Australia)*, ICJ (1995) · *Frontier Dispute (Burkina Faso v Mali)*, ICJ (1986) · *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, ICJ Advisory Opinion (2010) · *Chagos Archipelago*, ICJ Advisory Opinion (2019) · *Legal Consequences of the Construction of a Wall*, ICJ Advisory Opinion (2004) · *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, ICJ Advisory Opinion (2024).

CHAPTER 5

Jurisdiction, Immunities, and Diplomatic Relations

LEARNING OBJECTIVE

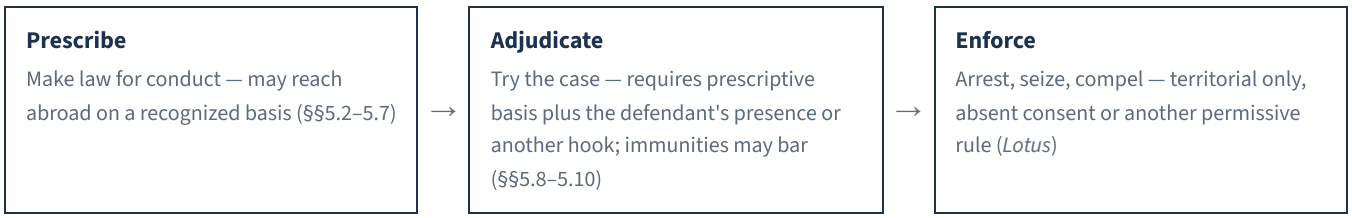
To identify when a state may lawfully regulate, adjudicate, or enforce; to apply the recognized bases of jurisdiction; and to determine when state immunity, official immunity, or diplomatic and consular protections bar the exercise of otherwise existing authority.

Jurisdiction concerns a state's authority to regulate, adjudicate, or enforce. Immunity limits the exercise of that authority against particular defendants — foreign states, their officials, diplomats — and particular property. They are separate legal questions and must be answered in order: does jurisdiction exist, and if so, does an immunity bar its exercise? *Arrest Warrant* (2002) is the standing warning against merging them: the ICJ found Belgium's warrant unlawful for violating immunity without ever deciding whether Belgium's expansive jurisdictional claim was itself valid. A court that has no jurisdiction never reaches immunity; a court that upholds immunity says nothing about the legality of the underlying act.

5.1 Prescriptive, adjudicative, and enforcement jurisdiction

Prescriptive jurisdiction is the authority to make rules applicable to persons, property, or conduct. Adjudicative jurisdiction is the authority of courts to try cases. Enforcement jurisdiction is the authority to compel — to arrest, seize, investigate on the ground. The three do not travel together: prescription may reach abroad on a recognized basis, but enforcement abroad requires consent or another permissive rule of international law, as Figure 5.1 sets out. *Lotus* (1927) drew the line in both directions — a state "may not exercise its power in any form in the territory of another State," while prescription over events abroad is not presumptively forbidden. Sending police into a neighbouring state to arrest a suspect violates sovereignty even where the prosecution itself would be perfectly lawful.

FIGURE 5.1 — PRESCRIPTION IS NOT ENFORCEMENT



5.2 Territorial jurisdiction

Territoriality is the primary basis: a state regulates what happens in its territory. Cross-border conduct is handled by two extensions. Subjective territoriality reaches conduct commenced within the territory and completed abroad; objective territoriality reaches conduct commenced abroad but completed, or taking effect, within it. The shot fired across a border is prosecutable at both ends. Nothing more elaborate is needed for most cases.

5.3 Nationality jurisdiction

A state may regulate the conduct of its nationals wherever they are — the active personality principle. Civil law states use it broadly in criminal law; common law states more selectively (bribery abroad, sexual offences against children abroad). Nationality here means the legal bond of nationality, not residence, domicile, or a corporation's mere market presence; for companies, incorporation and seat are the usual anchors.

5.4 Passive personality

Passive personality grounds jurisdiction on the victim's nationality. Once widely resisted, it has gained acceptance for terrorism and other serious transnational offences, and appears in several suppression conventions. It remains the most contested of the standard bases when pushed toward ordinary crimes: a rule that every state may punish any foreigner anywhere for harming its nationals would make criminal exposure unknowable. State practice supports it in a serious-crime core, not without limit.

5.5 Protective principle

The protective principle reaches foreign conduct that threatens essential state interests: counterfeiting the currency, forging official documents, espionage, attacks on core governmental functions. Its logic is self-defence of the state's institutions, and its limit follows: indirect political or economic effects are not enough. A state may punish the forger of its passports abroad; it may not use the principle to criminalize foreign journalism it dislikes.

5.6 Universal and treaty-based jurisdiction

Universal jurisdiction dispenses with the ordinary connecting links. Piracy is the classical example; for genocide, crimes against humanity, war crimes, and torture, the legal basis and conditions vary by offence and may rest on customary law, treaty obligations, or domestic legislation. Its precise scope and conditions remain contested, particularly trials in absentia and the immunity of serving officials (§5.9). Distinguish three neighbours often confused with it. Treaty-based aut dedere aut judicare obligations (as in the Torture Convention) require a party on whose territory a suspect is found to extradite or submit the case for prosecution — jurisdiction by treaty network, not true universality. ICC jurisdiction rests on the Rome Statute's own bases (Chapter 11), not on universal jurisdiction. And the protective principle requires a link to the forum's own interests, which universality by definition does not. The *Pinochet* litigation (1998–99) — a domestic decision, but a consequential one — combined the Torture Convention's scheme with the loss of functional immunity for torture.

5.7 Effects doctrine and extraterritorial regulation

The effects doctrine — objective territoriality's assertive cousin — grounds regulation of foreign conduct on its substantial effects within the regulating state. Competition law is the home ground: cartels formed abroad but raising prices at home. Data protection, sanctions, and securities regulation have followed. The friction is predictable: overlapping and conflicting regulatory demands, foreign "blocking statutes," and complaints of interference with sovereignty. The emerging discipline is reasonableness — requiring substantial, direct, foreseeable effects and weighing other states' interests — but this operates more as comity and self-restraint than as settled customary limitation.

TABLE 5.1 — BASES OF PRESCRIPTIVE JURISDICTION

Basis	Connecting factor	Strength / limits
Territoriality	Conduct or its completion in the territory	Primary and uncontroversial
Active personality	Offender's nationality	Well established
Passive personality	Victim's nationality	Accepted for serious transnational offences; contested beyond
Protective	Threat to essential state interests	Narrow core; indirect effects insufficient
Universality	Nature of the offence alone	Core international crimes; scope and conditions contested
Effects	Substantial domestic effects of foreign conduct	Established in competition law; reasonableness expected

5.8 State immunity

A foreign state is immune from the jurisdiction of national courts — no longer absolutely, but on the restrictive theory now reflected in the UN Convention on Jurisdictional Immunities (2004, not yet in force but widely treated as stating the modern law). The line runs between sovereign or public acts (acta jure imperii), which attract immunity, and commercial or private acts (acta jure gestionis), which do not. A state that charters a ship or buys cement litigates like anyone else; a state deploying its armed forces acts jure imperii. Immunity from execution against state property is separate and stricter still. The essential conceptual point comes from *Jurisdictional Immunities (Germany v Italy)* (2012): immunity is procedural. It determines whether a national court may exercise jurisdiction, not whether the underlying conduct was lawful — which is why even grave breaches, jus cogens violations included, did not displace Germany's immunity. Wrongfulness and forum are different questions.

5.9 Immunity of state officials

Two immunities protect officials, and they behave differently. Immunity ratione personae attaches to the office: serving heads of state, heads of government, and foreign ministers are immune from foreign criminal jurisdiction for all acts, official or private, while in office — *Arrest Warrant* held this without exception even for alleged war crimes. It ends with the office. Immunity ratione materiae attaches to acts performed in an official capacity and may protect serving and former officials; it does not cover private acts. Whether it is unavailable for international crimes before foreign national courts remains contested. *Pinochet* denied functional immunity for torture within the Convention against Torture framework, but it did not establish a settled exception for all core international crimes. Both immunities operate before foreign national courts; before international criminal tribunals the position differs, and Article 27 of the Rome Statute removes official-capacity immunity for states parties (Chapter 11). The interaction with non-party states remains contested; do not present it as settled.

TABLE 5.2 — PERSONAL AND FUNCTIONAL IMMUNITY

	Ratione personae (personal)	Ratione materiae (functional)
Who	Narrow circle: serving head of state, head of government, foreign minister; diplomats in post	Any state official, serving or former
What	All acts, official and private, while in office	Official acts only
Duration	Ends with the office	Survives leaving office
Limits	No international-crime exception before foreign courts (*Arrest Warrant*); international tribunals differ	No cover for private acts; any exception for international crimes remains contested, with *Pinochet* supporting a limited torture-based exception

5.10 Diplomatic and consular relations

The VCDR codifies a self-contained regime. Mission premises are inviolable: receiving-state agents may not enter without consent, and the receiving state owes a special duty to protect them (art. 22) — the obligation Iran breached, by inaction and then endorsement, in *Tehran Hostages* (1980). Archives and documents are inviolable wherever they are (art. 24). The diplomatic agent's person is inviolable (art. 29), with immunity from criminal jurisdiction and broad civil immunity (art. 31). None of this licenses the diplomat: Article 41 imposes the duty to respect the receiving state's laws, and the remedies for abuse are the regime's own — persona non grata, waiver by the sending state, expulsion — not arrest. Consular relations under the VCCR are more functional; the provision to know is Article 36, consular notification and access for detained foreign nationals, which the ICJ enforced in *LaGrand* (2001) and *Avena* (2004), holding that it creates individual rights. Keep three things distinct: diplomatic immunity (of the agent), state immunity (of the state itself, §5.8), and consular assistance (a service to nationals, not an immunity). Diplomatic protection — a state espousing its national's claim — is different again and is met in Chapter 7.

TABLE 5.3 — DIPLOMATIC AND CONSULAR REGIMES; NEIGHBOURING CONCEPTS

Concept	What it protects	Source
Diplomatic immunity	The agent and mission: inviolability, immunity from jurisdiction	VCDR arts. 22, 24, 29, 31, 41
Consular notification and access	Detained foreign nationals' contact with their consulate; individual right	VCCR art. 36; *LaGrand*, *Avena*
State immunity	The foreign state and its property before national courts	Custom; UN Convention (2004, not in force)
Diplomatic protection	A state's espousal of its national's claim against another state	Custom; see Ch. 7

COMMON MISUNDERSTANDINGS

- **"If the conduct is criminal under our law, we can go and arrest the offender."** Prescription may reach abroad; enforcement may not. Foreign territory is closed to a state's agents without consent (*Lotus*).
- **"Immunity means the state did nothing wrong."** Immunity is procedural — a bar to the forum, not a defence on the merits (*Jurisdictional Immunities*).
- **"Grave crimes override all immunity."** Personal immunity of serving high officials remains before foreign criminal courts (*Arrest Warrant*). Whether functional immunity is unavailable for international crimes remains contested; *Pinochet* concerned torture within the Convention against Torture framework.

PRACTICAL RELEVANCE

These doctrines are daily bread for prosecutors weighing charges against foreign officials, for ministries responding to the arrest of a national abroad (VCCR art. 36 is the first telephone call), and for anyone litigating against a state or its instrumentalities. The order of analysis — jurisdiction first, immunity second, always separately — is what distinguishes a usable opinion from a confused one.

REVISION POINTS

1. Separate prescription, adjudication, and enforcement; enforcement is territorial absent consent.
2. Six bases of prescriptive jurisdiction, of unequal solidity: territoriality and nationality firm; passive personality, protective, universality, effects each with limits.
3. State immunity is restrictive (imperii/gestionis) and procedural; execution immunity is stricter.
4. Personal immunity protects serving heads of state, heads of government, and foreign ministers from foreign criminal jurisdiction while in office; functional immunity covers official acts and survives office, while any international-crimes exception remains contested.
5. VCDR: inviolability plus the regime's own remedies; VCCR art. 36 creates individual rights (*LaGrand*).

CITATION REGISTER — CHAPTER 5

VCDR (1961), arts. 22, 24, 29, 31, 41 · VCCR (1963), art. 36 · UN Convention on Jurisdictional Immunities of States and Their Property (2004; not yet in force) · *The S.S. Lotus*, PCIJ (1927) · *Arrest Warrant of 11 April 2000 (DR Congo v Belgium)*, ICJ (2002) · *Jurisdictional Immunities of the State (Germany v Italy)*, ICJ (2012) · *United States Diplomatic and Consular Staff in Tehran (US v Iran)*, ICJ (1980) · *LaGrand*, ICJ (2001) · *Avena and Other Mexican Nationals (Mexico v US)*, ICJ (2004) · *R v Bow Street Magistrate, ex parte Pinochet (No 3)* [2000] 1 AC 147 (HL) (domestic decision) · Convention against Torture (1984), arts. 5–7.

CHAPTER 6

State Responsibility and Legal Consequences

LEARNING OBJECTIVE

To establish an internationally wrongful act through attribution and breach, to apply the circumstances precluding wrongfulness, to identify the consequences — cessation and reparation — and to determine who may invoke responsibility and by what lawful means.

The law of state responsibility is built on a distinction between primary and secondary rules. Primary rules define what states must do — the content of Chapters 3, 8, 9, and 10. Secondary rules determine what follows when conduct attributable to a state breaches a primary rule: who answers, with what defences, owing what remedies, to whom. The ILC's Articles on Responsibility of States for Internationally Wrongful Acts (2001) codify the secondary rules, and courts treat most of ARSIWA as customary law. The framework's power lies in its generality: the same analysis applies whether the primary rule broken concerns a boundary, a treaty, or a human right.

Internationally wrongful act = conduct attributable to the state + breach of an international obligation

ARSIWA art. 2 — two elements, each proved separately

6.1 The internationally wrongful act

Article 2 states the whole test: an internationally wrongful act exists when conduct consisting of an act or omission is attributable to the state under international law and constitutes a breach of an international obligation of the state. Nothing else is required as a general matter. Intention, fault, and damage are not independent universal elements; whether they matter depends on the primary rule. A due-diligence obligation builds fault into the breach question; a strict prohibition does not. Some obligations are breached without any material damage at all. The characterization of an act as wrongful is governed by international law alone — that the conduct was lawful, even required, under domestic law is irrelevant (art. 3).

6.2 Attribution

States act only through people, so responsibility begins by connecting human conduct to the state. The conduct of any state organ — legislative, executive, judicial, central or local — is an act of the state (art. 4), even when the organ exceeds its authority or contravenes instructions, provided it acts in that official capacity rather than as a purely private person (art. 7). Beyond organs, ARSIWA attributes the conduct of entities empowered to exercise elements of governmental authority (art. 5 — the privatized prison), organs placed at the state's disposal by another state when exercising the receiving state's governmental authority (art. 6), and persons acting on the state's instructions or under its direction or control (art. 8). For article 8, *Nicaragua* set the demanding standard: "effective control" over the specific operations in which violations occurred, not general financing and support. The ICJ reaffirmed it in

Bosnian Genocide (2007), rejecting the ICTY's looser "overall control" test for responsibility purposes. Conduct of an insurrectional movement that becomes the new government is attributed to the existing state; conduct of a movement that succeeds in establishing a new state is attributed to that new state (art. 10). A state may also acknowledge and adopt previously non-attributable conduct as its own, to that extent (art. 11). In *Tehran Hostages*, Iran's official approval and decision to maintain the occupation transformed the continuing occupation and detention into acts of the state; responsibility for the earlier phase rested on Iran's failure to protect the mission. Attribution says nothing about breach; it answers only "whose conduct is this?"

TABLE 6.1 — GROUNDS OF ATTRIBUTION (ARSIWA ARTS. 4–11)

Conduct of	Article	Note
State organs	4, 7	All branches and levels; ultra vires acts included
Entities exercising governmental authority	5	Delegated public powers, however organized
Organs lent by another state	6	Attributed to the receiving state when exercising its governmental authority
Private persons under instruction, direction, or control	8	"Effective control" of specific operations (*Nicaragua*; *Bosnian Genocide*)
Successful insurrectional or other movements	10	Attribution to the state whose government they become, or to the new state they establish
Conduct acknowledged and adopted	11	Adoption after the event (*Tehran Hostages*)

6.3 Breach

Breach is a comparison: the state's actual conduct against what the obligation binding it at the time required (arts. 12–13). The obligation must have been in force for the state when the conduct occurred. Breaches extend in time in different ways: a continuing breach (an unlawful detention, or an occupation maintained in violation of international law) persists as long as the conduct does; a composite breach (a policy of disappearances) arises from a series of acts taken together (arts. 14–15). The content of the primary rule shapes the analysis. Obligations of result demand an outcome; obligations of conduct demand a specified course of behaviour; due-diligence obligations demand the effort a responsible state would make — *Corfu Channel* (1949) grounded Albania's responsibility on its failure to warn of mines it must have known about, every state being obliged not to allow knowingly its territory to be used contrary to the rights of other states.

6.4 Circumstances precluding wrongfulness

Six circumstances preclude the wrongfulness of conduct otherwise in breach (arts. 20–25): valid consent by the injured state, within its limits; self-defence in conformity with the Charter; lawful countermeasures (§6.8); force majeure — an irresistible force or unforeseen event making performance materially impossible; distress, where the author has no other reasonable way to save their own life or the lives of persons entrusted to their care, unless the situation is due to the invoking state's conduct or the act would create a comparable or greater peril; and necessity, the narrowest. Necessity is available only where the act is the sole means of safeguarding an essential interest against a grave and imminent peril; it does not seriously impair an essential interest of the state or states to which the obligation is owed, or of the international community as a whole; the obligation does not exclude reliance on necessity; and the invoking state has not contributed substantially to the situation — conditions applied cumulatively and strictly in *Gabčíkovo-Nagymaros* (art. 25). Two limits frame all six: none excuses conduct violating jus cogens (art. 26), and preclusion is temporary and contextual — the underlying obligation survives, and compensation for material loss may still be due (art. 27).

TABLE 6.2 — CIRCUMSTANCES PRECLUDING WRONGFULNESS (ARTS. 20–25)

Circumstance	Core conditions	Watch for
Consent (20)	Valid, freely given, within its limits	Who may consent for the state; scope
Self-defence (21)	Lawful under Charter art. 51	See Ch. 8; IHL still applies
Countermeasures (22)	Conditions of arts. 49–54 (§6.8)	No force; proportionality
Force majeure (23)	Irresistible force; performance materially impossible	Mere difficulty insufficient
Distress (24)	No other reasonable way to save the author's life or lives in their care	State contribution; comparable or greater peril; lives, not interests
Necessity (25)	Only means; essential interest; grave, imminent peril; no contribution	Strictly cumulative (*Gabčíkovo*)

6.5 Cessation and non-repetition

The first consequence of a continuing wrongful act is the duty to stop it (art. 30). Cessation is owed automatically; it is performance of the original obligation, not a remedy for its breach. Where circumstances justify — typically a risk of recurrence — the responsible state must also offer assurances and guarantees of non-repetition. The *Wall* opinion ordered cessation and dismantlement precisely because the breach was continuing.

6.6 Reparation

The PCIJ's *Chorzów Factory* (1928) formula still governs: reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if the act had not been committed. ARSIWA translates this into three forms (arts. 34–37). Restitution — re-establishing the prior situation — comes first where it is materially possible and not disproportionately burdensome: return the territory, release the detainee, hand back the archive. Compensation covers financially assessable damage, including loss of profits, where restitution cannot. Satisfaction — acknowledgment, expression of regret, formal apology, or a declaration of wrongfulness by a court — answers injuries not made good by the other two; declaratory relief is common in interstate cases. The appropriate form is driven by the injury, not chosen at the responsible state's convenience, and the forms combine.

6.7 Invocation of responsibility

Who may invoke responsibility? First, an injured state: one to which the obligation was owed individually; one specially affected by the breach of an obligation owed to a group of states or to the international community as a whole; or, for an interdependent obligation, any state to which the obligation is owed where the breach radically changes the position of all of them concerning further performance (art. 42). Article 48 also allows a state other than an injured state to invoke responsibility where the obligation protects a collective interest of a group of states or is owed to the international community as a whole — the latter reflecting the erga omnes structure recognized in *Barcelona Traction*. Such a state may claim cessation, assurances and guarantees of non-repetition, and performance of reparation in the interest of the injured state or the beneficiaries (art. 48(2)). ARSIWA regulates countermeasures by injured states and leaves open whether an Article 48 state may take countermeasures in the collective interest (art. 54). Not every state holds identical enforcement rights over every breach.

6.8 Countermeasures

A countermeasure is the injured state's non-performance of an obligation owed to the responsible state, taken to induce compliance (arts. 49–54). Its conditions are strict because its logic is dangerous. Countermeasures must aim at inducing performance, not punishment; they must be temporary and, as far as possible, permit resumption of performance; they must be proportionate to the injury suffered; and they must be preceded by a call on the responsible state to comply. The injured state must also notify its decision and offer to negotiate, although urgent countermeasures necessary to preserve its rights may precede those latter steps (arts. 49, 51–52). They end when the responsible state complies. Absolute limits apply: no use of force, no impairment of fundamental human rights, humanitarian prohibitions on reprisals, or jus cogens (art. 50). A state taking countermeasures must also continue to comply with any applicable dispute-settlement procedure and respect the inviolability of diplomatic and consular agents, premises, archives, and documents (art. 50(2)). Countermeasures are self-help by the injured state under legal conditions; they should not be confused with sanctions imposed by the Security Council, which rest on Charter authority, or with retorsion — unfriendly but lawful acts, like withdrawing an ambassador, which need no justification at all.

6.9 Serious breaches of peremptory norms

Where a breach of an obligation arising under a peremptory norm is serious — involving a gross or systematic failure to fulfil the obligation (art. 40(2)) — ARSIWA adds collective consequences (art. 41): states shall cooperate to bring the breach to an end through lawful means, shall not recognize as lawful a situation created by the breach, and shall not render aid or assistance in maintaining it. The *Wall* opinion applied this structure to the obligations breached by the wall's construction. A final boundary line: state responsibility is not criminal. The state owes cessation and reparation; individuals who committed crimes in the same events answer separately under Chapter 11, and neither form of responsibility absorbs the other — *Bosnian Genocide* proceeded on exactly that dual track.

TABLE 6.3 — RESPONSIBILITY AND ENFORCEMENT ARE DIFFERENT QUESTIONS

Responsibility asks	Enforcement asks
Is conduct attributable, and does it breach an obligation in force?	Which court, if any, has jurisdiction over the claim?
What is owed: cessation, restitution, compensation, satisfaction?	What pressure is lawful: countermeasures, UNSC measures, institutional processes?
Answered by ARSIWA and the primary rule	Answered by consent to jurisdiction, Charter powers, and politics
A state can be responsible with no forum available	A forum can exist for a claim that fails on the merits

COMMON MISUNDERSTANDINGS

- **"The state is not responsible — its soldiers disobeyed orders."** Ultra vires conduct of organs is still attributed (art. 7).
- **"Funding and arming a group makes the state responsible for everything the group does."** Article 8 requires effective control of the specific operations (*Nicaragua*; *Bosnian Genocide*). Support may breach other rules — non-intervention among them — without attribution.
- **"No damage, no responsibility."** Damage matters where the primary rule makes it matter; the general test is attribution plus breach, nothing more (art. 2).

PRACTICAL RELEVANCE

Every interstate claim, compensation commission, and investment arbitration runs on this chapter's machinery. In practice the battle is nearly always attribution — proving the link between the state and the hands that acted — and remedy — converting *Chorzów*'s principle into a number. Drafting a claim means pleading article by article.

REVISION POINTS

1. Wrongful act = attribution + breach (art. 2); fault and damage depend on the primary rule.
2. Attribution: organs (even ultra vires), delegated authority, effective control, adoption (arts. 4–11).
3. Six preclusions, strictly construed; none against jus cogens; the obligation itself survives.
4. Consequences: cessation first, then full reparation — restitution, compensation, satisfaction (*Chorzów*).
5. Invocation is graduated (arts. 42, 48); countermeasures are conditioned self-help, never forcible; serious jus cogens breaches trigger duties of cooperation, non-recognition, and non-assistance.

CITATION REGISTER — CHAPTER 6

ILC, ARSIWA (2001) with Commentaries, arts. 2–3, 4–11, 12–15, 20–27, 30–37, 40–42, 48–54 · *Factory at Chorzów (Germany v Poland)*, PCIJ Ser. A No. 17 (1928) · *Corfu Channel (UK v Albania)*, ICJ (1949) · *Nicaragua v United States*, ICJ (1986) · *Tehran Hostages*, ICJ (1980) · *Gabčíkovo-Nagymaros*, ICJ (1997) · *Application of the Genocide Convention (Bosnia and Herzegovina v Serbia and Montenegro)*, ICJ (2007) · *Barcelona Traction*, ICJ (1970) · *Wall*, ICJ Advisory Opinion (2004).

CHAPTER 7

Peaceful Settlement and International Courts

LEARNING OBJECTIVE

To map the methods of dispute settlement, to establish and test a basis of ICJ jurisdiction, to distinguish jurisdiction from admissibility, to understand how diplomatic protection brings a national's injury before an interstate forum, and to read an international judgment for what it actually decides.

International disputes travel through diplomatic, political, arbitral, and judicial channels, and most are settled without any tribunal at all. Where adjudication is sought, one principle controls everything: international courts require a valid jurisdictional basis. The gravity of a dispute confers no jurisdiction. States have died on this hill repeatedly, arriving at The Hague with a compelling grievance and no consent to point to; the Court's answer has never varied.

7.1 The duty of peaceful settlement

Charter Article 2(3) obliges members to settle their international disputes by peaceful means. Article 33 — addressed to disputes whose continuance is likely to endanger international peace and security — lists the standard means: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of the parties' choice. The duty is real; the choice is free. No state must arbitrate or litigate unless it has accepted a compulsory procedure somewhere — in a treaty clause, a declaration, or a compromis.

7.2 Diplomatic methods

Negotiation is direct dealing between the parties, and the default. Good offices bring the parties together through a third party who does not itself propose terms. Mediation goes further: the third party participates actively and advances proposals. Inquiry establishes disputed facts through an impartial commission. Conciliation combines fact-finding with non-binding settlement proposals from a standing or ad hoc commission. The common feature: none of these produces a binding decision. Their product is agreement, or failure.

7.3 Arbitration

Arbitration is adjudication the parties build themselves: consent defines the dispute; the parties choose the arbitrators, the applicable law, and the procedure; the award binds. Interstate arbitration (the PCA's home ground, from *Island of Palmas* onward) should be distinguished from investment arbitration (investor against state, under a treaty's standing offer) and commercial arbitration (private parties). The trade-off against standing courts is control and confidentiality against cost and the absence of a permanent bench.

TABLE 7.1 — METHODS OF DISPUTE SETTLEMENT

Method	Third party's role	Outcome
Negotiation	None	Agreement or impasse
Good offices	Brings parties together	Facilitated negotiation
Mediation	Active; proposes terms	Non-binding proposals
Inquiry	Finds facts	Report on facts
Conciliation	Facts + settlement proposals	Non-binding recommendation
Arbitration	Party-appointed tribunal decides	Binding award
Judicial settlement	Standing court decides	Binding judgment (ICJ Statute art. 59)

7.4 The International Court of Justice

The ICJ is the principal judicial organ of the United Nations (Charter art. 92); its Statute is annexed to the Charter and binds all UN members. It exercises two jurisdictions. In contentious cases it decides disputes between states — and only states may be parties (Statute art. 34). In advisory proceedings it gives legal opinions to authorized organs and agencies (§7.9). Individuals, companies, and NGOs cannot be parties to contentious proceedings or request an advisory opinion. An individual's treatment may nevertheless reach the Court through a state's diplomatic-protection claim, subject to the applicable nationality and local-remedies rules, or through an interstate claim based directly on a treaty or another international obligation.

7.5 Bases of ICJ jurisdiction

Consent may be given four ways. By special agreement (compromis), the parties jointly submit a defined dispute — the cleanest route. By compromissory clause, a treaty provides in advance that disputes over its interpretation or application go to the Court; hundreds of treaties contain one, and many recent cases arrive this way. By optional-clause declaration under Article 36(2), a state accepts compulsory jurisdiction toward other accepting states — subject to its reservations, and on the basis of reciprocity: a respondent may invoke the applicant's reservations as well as its own, a mechanic on full display in *Nicaragua*'s jurisdictional phase. By forum prorogatum, the respondent accepts the Court's jurisdiction for a particular case after an application has been filed; acceptance must be express or otherwise voluntary, indisputable, and unequivocal, and an application relying solely on consent yet to be given is not entered in the General List until that consent is supplied (Rules of Court art. 38(5)). Whatever the route, jurisdiction is assessed as a matter of law; the Court decides disputes over its own jurisdiction (art. 36(6)).

7.6 Jurisdiction and admissibility

Jurisdiction asks whether the Court has power to hear the case; admissibility asks whether it should decline to exercise a power it has, or whether the particular claim is properly presented. Familiar admissibility grounds: failure to exhaust local remedies in diplomatic-protection claims; defects in the nationality of claims; abuse of process; mootness. The most structural is the indispensable-third-party rule of *Monetary Gold*: the Court will not decide a case whose very subject matter requires it to rule on the legal position of a state not before it — the ground on which *East Timor* failed, since judging Australia required judging absent Indonesia. Keep the two questions in order; objections are pleaded, and decided, in that sequence.

TABLE 7.2 — JURISDICTION AND ADMISSIBILITY

Jurisdiction	Admissibility
Does consent cover these parties, this dispute, this time?	Should the Court hear a claim it has power over?
Sources: compromis, compromissory clause, optional clause, forum prorogatum	Grounds: local remedies, nationality of claims, abuse of process, indispensable third party, mootness
If absent: case ends, whatever its merits	If claim inadmissible: no decision on the merits of that claim

7.7 Nationality of claims and diplomatic protection

Diplomatic protection is the mechanism by which a state invokes the responsibility of another state for injury done to one of its nationals. The injury is the individual's or the company's; the claim is the state's own. In form, the state asserts its right to have international law respected in the person of its national, which is why the case appears as one state against another even when everything at stake belongs to a private party.

Diplomatic protection normally requires a valid bond of nationality and exhaustion of available and effective local remedies, giving the respondent state's own system the first opportunity to provide redress. For a natural person, nationality is determined in principle by the claimant state's law, provided its conferral is not inconsistent with international law, and must ordinarily be continuous from the date of injury to the official presentation of the claim. Here is where *Nottebohm* is often misread: the case did not establish a general genuine-link requirement, only the narrower point that Guatemala was not bound to treat an exceptional, thinly connected naturalization as opposable to it. For corporations, the equivalent rule looks to the corporation's state of nationality — ordinarily its state of incorporation — rather than to the shareholders' states, subject to limited exceptions, including direct injury to shareholders' own rights.

Keep the mechanism distinct from consular assistance (§5.10): consular officers give practical help to a national abroad, while diplomatic protection is a formal international claim. And the decision to espouse belongs to the state. A government may take up its national's claim, settle it, or decline it for reasons of policy; the national has no right under general international law to compel protection.

7.8 Provisional measures

Under Article 41 the Court may indicate provisional measures to preserve the parties' rights pending judgment. The settled requirements: prima facie jurisdiction; plausibility of the rights claimed; a link between those rights and the measures sought; and urgency, in the sense of a real and imminent risk of irreparable prejudice. Since *LaGrand* (2001) it is settled that provisional measures are binding — the point the United States learned after executing a national despite the Court's order.

7.9 Advisory opinions

The General Assembly and Security Council may request an opinion on any legal question; other UN organs and specialized agencies may do so, if authorized, on questions within their activities (Charter art. 96; Statute art. 65). The Court has discretion to decline but treats a request as in principle to be answered, refusing only for compelling reasons — none found in *Nuclear Weapons*, *Wall*, or *Chagos*, despite objections that contentious disputes lurked behind the questions. Advisory opinions bind no one as judgments do. Their authority is real nonetheless: *Reparation*, *Wall*, and *Chagos* shaped the law and the politics alike. The absence of contentious consent is the point — the opinion advises the requesting organ; it does not decide a case between states.

7.10 Other courts and tribunals

The judicial field is plural, and each institution differs in parties, subject matter, and remedies. ITLOS hears law-of-the-sea disputes under UNCLOS's dispute-settlement system. The ICC tries individuals, not states, for the core international crimes (Chapter 11). The regional human rights courts — European, Inter-American, African — hear complaints against states, including from individuals (Chapter 9). WTO dispute settlement addresses trade measures between members with its own remedies logic. Arbitral tribunals fill the gaps everywhere. Choosing a forum is choosing a jurisdiction, an applicable law, and a remedy at once; the ICJ is central, not exclusive.

7.11 How to read an international judgment

Judgments reward systematic reading. Find the procedural history (how the case arrived); the jurisdictional holding (what the Court may decide); admissibility; the material facts as found — not as alleged; the applicable law; the reasoning that connects them; the operative clause (dispositif), which is what the Court actually decides and what binds; and the separate and dissenting opinions, which often mark where the law is moving. Students who quote a dissent as "the ICJ held" have skipped the dispositif; it is a common and costly mistake.

ICJ JURISDICTION CHECKLIST

1. Are both parties states (Statute art. 34)?
2. Identify the consent basis: compromis, compromissory clause, optional clause, forum prorogatum.
3. Check its scope: does the dispute fall within the clause or declaration, ratione materiae and temporis?
4. Apply reservations — both parties' under reciprocity for optional-clause cases.
5. Test admissibility: local remedies, nationality of claims, indispensable third party (*Monetary Gold*), abuse, mootness.
6. For interim relief: prima facie jurisdiction, plausible rights, link, urgency and irreparable prejudice (art. 41; *LaGrand*).

COMMON MISUNDERSTANDINGS

- **"The dispute is serious, so the ICJ can hear it."** Gravity confers nothing; consent is everything.
- **"Advisory opinions are binding" / "advisory opinions are meaningless."** Neither. Non-binding in form, authoritative in effect.
- **"Provisional measures are mere requests."** Not since *LaGrand*: they bind.

PRACTICAL RELEVANCE

Forum questions come before merits questions in every dispute: whoever advises a government or drafts a treaty's dispute-settlement clause is choosing, in advance, which of this chapter's routes will be available when relations sour. The jurisdiction checklist above is the working sequence for assessing whether a claim can actually be brought — and the judgment-reading method in §7.11 is how to find out what a decision, once obtained, really holds.

REVISION POINTS

1. Peaceful settlement is obligatory (arts. 2(3), 33); the choice of means is free absent accepted compulsory procedure.
2. Only states litigate before the ICJ; four consent routes to jurisdiction, each with scope and reservations to check.
3. Jurisdiction then admissibility — two questions, that order (*Monetary Gold*, *East Timor*).
4. Diplomatic protection brings a national's injury into an interstate claim; it normally requires a valid nationality bond maintained from the date of injury to the official presentation of the claim, together with exhaustion of available and effective local remedies.
5. Provisional measures bind (*LaGrand*); their conditions are prima facie jurisdiction, plausibility, link, urgency.
6. Read judgments from the dispositif outward; a dissent is not a holding.

CITATION REGISTER — CHAPTER 7

UN Charter, arts. 2(3), 33, 92–96 · Statute of the ICJ, arts. 34, 36, 41, 59, 62–63, 65 · *Nicaragua v United States* (Jurisdiction and Admissibility), ICJ (1984) · *Monetary Gold Removed from Rome in 1943 (Italy v France, UK, US)*, ICJ (1954) · *East Timor*, ICJ (1995) · *Nottebohm*, ICJ (1955) · *Barcelona Traction (Belgium v Spain)*, ICJ (1970) · *LaGrand*, ICJ (2001) · *Avena*, ICJ (2004) · *Nuclear Weapons*, ICJ Advisory Opinion (1996) · *Wall*, ICJ Advisory Opinion (2004) · *Chagos*, ICJ Advisory Opinion (2019) · ICJ Rules of Court, art. 38(5) · ILC, Draft Articles on Diplomatic Protection with Commentaries (2006), arts. 4–5, 9, 11–12, 14–15.

PART II

Core Substantive Regimes

Part II applies the general rules of Part I to four major substantive fields: the use of force, international human rights law, international humanitarian law, and international criminal law.

A single factual situation may engage more than one of these regimes at once — an invasion raises use-of-force questions, triggers humanitarian law, does not suspend human rights law, and may generate international crimes. But each field has its own sources, tests, institutions, and consequences, and the discipline of Part II is to analyse each on its own terms before asking how they interact.

CHAPTER 8

Use of Force and Collective Security

LEARNING OBJECTIVE

To apply the Charter system on interstate force: the Article 2(4) prohibition, self-defence under Article 51, Security Council enforcement, non-intervention, and the contested doctrines at the system's edge — and to keep the legality of resorting to force separate from the law governing its conduct.

The Charter's central bargain is Article 2(4): members shall refrain from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. Around that prohibition the Charter builds a system with two lawful exits: self-defence against armed attack (art. 51), and enforcement action authorized by the Security Council (Chapter VII). Everything else in this chapter is the working out of that structure. One boundary governs throughout: whether force was lawfully resorted to (jus ad bellum, this chapter) is a different question from how force is conducted once conflict exists (jus in bello, Chapter 10). A state acting in lawful self-defence remains fully bound by IHL; an aggressor's soldiers hold the same IHL obligations and protections as anyone else.

8.1 The prohibition of the threat or use of force

Article 2(4) prohibits force against territorial integrity, against political independence, and in any other manner inconsistent with UN purposes — a formulation the drafting history shows was meant to close gaps, not open them. The prohibition is also customary law, as *Nicaragua* held, and its core is generally regarded as jus cogens. "Force" means armed force, direct or indirect: sending regular troops, and also arming and organizing irregular forces for incursions into another state — conduct *Nicaragua* treated as a use of force by the supporting state itself. Political pressure and economic coercion, however severe, are not "force" within Article 2(4) — they are analysed under non-intervention (§8.6). Threats are prohibited on the same footing as uses: a threat is unlawful where the force threatened would be (*Nuclear Weapons*).

8.2 Use of force and armed attack

Nicaragua read the system as containing a threshold: every armed attack is a use of force, but not every use of force amounts to an "armed attack" for the purposes of Article 51. The Court distinguished the "most grave" forms of force (armed attacks) from "less grave" forms — a frontier incident may violate Article 2(4) without licensing full-scale defensive war. *Oil Platforms* (2003) applied the same structure, asking whether attacks on shipping reached the armed-attack threshold. The consequence: a state suffering low-level force may protest, take non-forcible countermeasures, and seise the Security Council, but self-defence requires an armed attack. The threshold is criticized — some states, notably the United States, treat any unlawful force as triggering proportionate defence — and an exam answer should note the debate while applying the Court's framework.

8.3 Individual self-defence

Article 51 preserves "the inherent right of individual or collective self-defence if an armed attack occurs," until the Security Council has taken necessary measures; measures taken must be reported to the Council immediately. The customary conditions travel with it: necessity — no reasonable non-forcible alternative — and proportionality, meaning the defensive response must be proportionate to repelling the attack, not to avenging it. Proportionality here concerns the overall scale of the defensive campaign; it must not be confused with IHL proportionality, which weighs incidental civilian harm against military advantage in individual attacks (Chapter 10). A temporal connection is also required: self-defence answers an ongoing armed attack or, on the contested anticipatory view, an imminent one, not a past grievance — force after the fact is reprisal, and armed reprisals are unlawful. Failure to report to the Council does not extinguish the right but weighs against a state's claim, as *Nicaragua* observed. Whether an armed attack by non-state actors, not attributable to any state, can trigger Article 51 remains contested. The Court's treatment in *Wall* and *Armed Activities* did not settle the broader question, while post-2001 practice — including reactions to the 11 September attacks and Security Council resolutions 1368 and 1373 — has been invoked in support of such claims.

8.4 Collective self-defence

Nicaragua set the conditions for defending another state: the victim must itself have suffered an armed attack; it must declare itself attacked; and it must request assistance. No state may appoint itself defender of another uninvited. The assisting state's force is then measured by the victim's necessity and proportionality, and the reporting duty applies. Alliance treaties such as NATO's Article 5 organize this right in advance; they do not enlarge it.

8.5 Security Council authorization

Chapter VII proceeds in sequence. Article 39: the Council determines the existence of a threat to the peace, breach of the peace, or act of aggression — the gateway finding, and a broadly discretionary one. Article 41: measures not involving armed force — sanctions, embargoes, asset freezes, tribunals. Article 42: where Article 41 measures would be or have proved inadequate, action by air, sea, or land forces. In practice the Council does not command its own army; it authorizes member states or coalitions to use "all necessary means," the delegated-enforcement model of Korea (1950) and Kuwait (1990). Members must accept and carry out the Council's decisions (art. 25), which prevail over conflicting treaty obligations (art. 103). Authorization must be distinguished from peacekeeping, which rests on host-state consent, impartiality, and force limited to defence of self and mandate — a Charter practice, not an Article 42 operation, though modern mandates blur at the edges.

8.6 Non-intervention

The customary principle of non-intervention prohibits coercive interference in matters each state is entitled to decide freely — its political, economic, social, and cultural system, and its foreign policy. The test from *Nicaragua* is coercion in respect of such choices: funding, arming, and directing an insurgency intervenes; criticism, diplomatic pressure, broadcasting disagreeable opinions, and lawful economic policy do not. Intervention overlaps with Article 2(4) where the coercion is forcible; below that line it remains wrongful without being "force." Assistance to a government at its request is generally lawful; assistance to rebels is not — an asymmetry the *Nicaragua* judgment and the Friendly Relations Declaration both reflect.

8.7 Humanitarian intervention and R2P

May states use force, without Council authorization, to stop atrocities in another state? As law, unilateral humanitarian intervention remains contested at best: it fits neither Charter exception, most states reject it, and its invocations (Kosovo 1999 most prominently) drew characterizations like "illegal but legitimate" precisely because the legal basis was missing. The Responsibility to Protect, endorsed at the 2005 World Summit, is best understood as a political and institutional framework, not a new legal basis for force. Its three pillars: each state's responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity; international assistance to states in meeting it; and timely collective action — through the Security Council — where a state manifestly fails. R2P channels atrocity response into the existing Charter machinery. It does not create a unilateral right to intervene, and answers that treat it as one misstate both the doctrine and the law.

8.8 Anticipatory self-defence and "unwilling or unable"

Two doctrines press against Article 51's text, and both must be presented as contested. Anticipatory self-defence claims a right to strike an imminent attack before it lands, invoking the *Caroline* formula — necessity "instant, overwhelming, leaving no choice of means, and no moment for deliberation." Supporters argue no state must absorb the first blow in a missile age; opponents answer that "if an armed attack occurs" means what it says, that imminence stretches into pretext, and that the Charter's design channels doubtful cases to the Council. Truly preventive force against distant, speculative threats finds little support anywhere. The "unwilling or unable" doctrine would permit force against non-state actors in a host state that cannot or will not suppress them. Invoked in practice (notably against ISIL in Syria), it divides states sharply: proponents cite necessity and the non-state-actor gap in §8.3; critics see an erosion of sovereignty resting on self-judged standards, thin practice, and obvious potential for abuse. Neither doctrine can honestly be stated as settled universal law; both must be argued, with the burden on the state using force.

8.9 Aggression

Four things called "aggression" must be kept apart. An unlawful state use of force breaches Article 2(4) and engages state responsibility (Chapter 6). The General Assembly's Definition of Aggression (Res 3314, 1974) lists typical acts — invasion, bombardment, blockade — as guidance. A Security Council characterization under Article 39 is a political-legal determination opening Chapter VII. And the individual crime of aggression under Rome Statute Article 8 bis attaches criminal responsibility to leaders who plan or execute a state act of aggression which by its character, gravity, and scale constitutes a manifest violation of the Charter (Chapter 11). A state can commit aggression without any individual being prosecutable, and the Council can act without using the word at all.

FIGURE 8.1 — USE-OF-FORCE DECISION TREE

1. Is the conduct a threat or use of *armed* force? — No → analyse under non-intervention (§8.6). Yes ↓

2. Valid consent of the territorial state? — Yes → not a breach of art. 2(4), within the consent's limits. No ↓

3. Security Council authorization under Chapter VII covering this action? — Yes → lawful within the mandate. No ↓

4. Armed attack (actual; imminent only on the contested anticipatory view)? — No → art. 2(4) breach. Yes ↓

5. Self-defence conditions: necessity, proportionality, temporal connection; for collective defence, the victim's declaration and request; report to the Council (art. 51).

6. Whatever the answer above — IHL governs the conduct of any hostilities that follow (Ch. 10).

TABLE 8.1 — SETTLED AND CONTESTED

Settled	Contested
Art. 2(4) prohibition; customary and (in core) peremptory status	Anticipatory self-defence against imminent attack
Self-defence requires armed attack + necessity + proportionality; measures reported to the Council	"Unwilling or unable" as a basis for force against non-state actors abroad
Collective self-defence needs the victim's declaration and request (*Nicaragua*)	Unilateral humanitarian intervention
UNSC may authorize force (arts. 39, 42); decisions bind (arts. 25, 103)	Self-defence against non-state actors without host-state attribution; the precise content of the armed-attack threshold

COMMON MISUNDERSTANDINGS

- **"Economic sanctions violate Article 2(4)."** Article 2(4) prohibits armed force; economic pressure is analysed under non-intervention and other rules.
- **"Any violation of Article 2(4) justifies self-defence."** On the *Nicaragua* framework, self-defence answers armed attacks — the gravest uses of force — not every incident.
- **"R2P authorizes intervention."** R2P routes collective action through the Security Council; it creates no unilateral right of force.

PRACTICAL RELEVANCE

Use-of-force analysis is the daily work of foreign-ministry legal advisers, and its structure is exactly the decision tree above: basis, conditions, limits, reporting. Legal advisers' published opinions — on Iraq, Syria, and elsewhere — are the best real-world specimens of this chapter's method, including its contested edges.

REVISION POINTS

1. Article 2(4) prohibits threat and use of armed force; two Charter exceptions — self-defence and Council authorization.
2. Armed attack is the gravest form of force; the threshold matters and is examinable (*Nicaragua*, *Oil Platforms*).
3. Self-defence: necessity, proportionality, temporal connection, report; collective defence adds declaration and request.
4. Chapter VII: art. 39 finding → art. 41 measures → art. 42 force, usually by authorization of member states; distinguish peacekeeping.
5. Humanitarian intervention, anticipatory defence, and "unwilling or unable" are contested; the crime of aggression is the individual, leadership-level counterpart of state aggression.

CITATION REGISTER — CHAPTER 8

UN Charter, arts. 2(4), 25, 39–42, 51, 103 · Security Council Resolution 1368 (2001) · Security Council Resolution 1373 (2001) · Friendly Relations Declaration, UNGA Res 2625 (XXV) (1970) · Definition of Aggression, UNGA Res 3314 (XXIX) (1974) · Rome Statute, art. 8 bis · 2005 World Summit Outcome, UNGA Res 60/1, paras. 138–139 · *Nicaragua v United States*, ICJ (1986) · *Oil Platforms (Iran v United States)*, ICJ (2003) · *Armed Activities on the Territory of the Congo (DRC v Uganda)*, ICJ (2005) · *Wall*, ICJ Advisory Opinion (2004) · *Nuclear Weapons*, ICJ Advisory Opinion (1996) · *Caroline* correspondence (1837–42).

CHAPTER 9

International Human Rights Law

LEARNING OBJECTIVE

To work within the human rights framework: the universal and regional instruments, the respect–protect–fulfil structure of obligations, the discipline of limitations and derogations, the supervision machinery, extraterritorial application, and the boundary with IHL and ICL.

Human rights law regulates the relationship between public authority and the individuals and groups subject to it. That reverses the classical direction of international law: the state's counterparty is not another state but everyone within its power. The field is built from a universal core — Charter, UDHR, the two Covenants, and the specialist treaties — and three regional systems with courts of their own. Its recurring analytical work is not reciting rights but testing state conduct: what exactly was the obligation, was the interference justified, and what supervision or remedy follows.

9.1 The framework

The Charter commits the UN and its members to promote respect for human rights (arts. 1(3), 55–56). The Universal Declaration (1948) gave the commitment content; adopted as a non-binding resolution, much of it now states custom or has passed into treaty. The binding treaty core of the universal (UN) system is the two Covenants of 1966, binding on their parties — the ICCPR for civil and political rights, the ICESCR for economic, social, and cultural rights — surrounded by specialist treaties: CERD (racial discrimination), CEDAW (women), CAT (torture), CRC (children), CRPD (persons with disabilities). Regional instruments — the ECHR, the ACHR, the African Charter — add enforceable systems (§9.8). The lawyer's first move is always the same: identify which instrument binds this state, with what reservations, and what the interpreting body has said. Treaty text binds; General Comments and declarations guide (§9.7).

9.2 Categories and characteristics of rights

Civil and political rights protect life, liberty, expression, fair trial, privacy, assembly, and political participation. Economic, social, and cultural rights protect work, social security, health, education, housing, and cultural life. Most rights are individual; some — self-determination, minority and Indigenous rights — are collective. The Vienna World Conference (1993) formula that all rights are universal, indivisible, interdependent, and interrelated is doctrine as well as rhetoric: the categories differ in implementation (§9.6), not in rank, and no strict hierarchy between them should be asserted. Non-derogable rights (§9.5) come closest to a privileged core, and a few norms — the torture prohibition above all — are peremptory.

9.3 Respect, protect, fulfil

Each right generates three layers of obligation. To respect: the state's own agents must not violate the right — no torture in its police stations. To protect: the state must prevent violations by third parties through law, regulation, and diligent response — the dimension established in *Velásquez Rodríguez* (1988), where Honduras answered for disappearances it had not been proved to order, because it failed to prevent, investigate, and punish. To fulfil: the state must take positive measures — institutions, budgets, services — to make the right effective. Protect is a due-diligence obligation: the state answers for its effort and seriousness, not for every private wrong on its territory. Fulfil obligations vary — many are duties of conduct and resources, but some require specific results, such as free and compulsory primary education. The precise content of each layer depends on the treaty, the right, the facts, and the interpreting body; the triad is a framework for analysis, not a substitute for it.

TABLE 9.1 — RESPECT, PROTECT, FULFIL

Layer	Demand on the state	Example (right to life)
Respect	Abstain from violation by state agents	No arbitrary killing by police
Protect	Due diligence against third-party violations: prevent, investigate, punish, redress	Effective investigation of killings (*Velásquez Rodríguez*)
Fulfil	Positive measures making the right effective	Emergency care, safety regulation

9.4 Limitations

Most rights are not absolute, and the law's real discipline lies in how interference is tested. Where a right is qualified — expression, assembly, religion, and movement carry express limitation clauses, while privacy under the ICCPR is protected against arbitrary or unlawful interference rather than through a listed clause — the same five elements test any interference. Legality requires the measure to rest on accessible, foreseeable law. Legitimate aim confines it to the purposes the treaty permits, such as national security, public order, health, or the rights of others. Necessity requires that the measure actually serve that aim and, under many formulations, that no clearly less intrusive effective means would do. Proportionality requires that the burden imposed not be excessive relative to the aim. And non-discrimination applies throughout. Each element is a separate hurdle, and a measure fails at the first one it cannot clear. Some rights contain no limitation clause at all — the torture prohibition admits no balancing whatever the emergency — so the first question is always what structure the particular right has.

9.5 Derogations

Derogation is the exceptional suspension of certain obligations in a public emergency threatening the life of the nation (ICCPR art. 4; ECHR art. 15). Under the ICCPR, its conditions are cumulative: a qualifying emergency, officially proclaimed; measures strictly required by the exigencies of the situation — a necessity test with teeth; consistency with the state's other international obligations; no discrimination solely on ground of race, colour, sex, language, religion, or social origin; and international notification. ECHR Article 15 is similar in structure but contains no express proclamation requirement or discrimination clause. Certain rights are non-derogable under the ICCPR whatever the emergency: life, freedom from torture, freedom from slavery and servitude, no imprisonment for contract debt, non-retroactivity of criminal law, recognition as a person, and freedom of thought, conscience, and religion. Distinguish carefully: a limitation is the ordinary operation of a qualified right; a derogation suspends obligations and exists only within Article 4's gate.

TABLE 9.2 — LIMITATION AND DEROGATION

	Limitation	Derogation
When	Ordinary times, qualified rights	Emergency threatening the life of the nation; official proclamation under the ICCPR
Test	Legality, legitimate aim, necessity, proportionality, non-discrimination	Strict necessity; consistency with other obligations; notification; ICCPR also bars discrimination on listed grounds
Effect	Right continues; interference justified or not	Obligations suspended pro tempore, except non-derogable rights

9.6 Economic, social, and cultural rights

ICESCR Article 2(1) obliges each party to take steps, to the maximum of its available resources, to achieve progressively the full realization of the Covenant's rights. Progressive realization acknowledges resource dependence; it is not a licence for inaction. Immediate obligations exist within it: non-discrimination applies at once; the duty to take deliberate, concrete, targeted steps begins immediately; minimum core obligations — essential foodstuffs, primary health care, basic shelter, basic education, on the Committee's General Comment 3 — demand priority; and deliberately retrogressive measures require the most careful justification against the totality of the rights and the maximum of available resources. Describing these rights as merely aspirational is analytically wrong and, in an examination, an error of law.

9.7 UN treaty bodies

Each core treaty has a committee of independent experts. Their tools: state reporting on a periodic cycle, answered by concluding observations; General Comments interpreting the treaty; individual communications, where the state has accepted the procedure, ending in "views"; and inquiry procedures for grave or systematic violations under some treaties. The legal status question recurs and should be answered precisely: the treaty binds; the committee's outputs are authoritative interpretations of it, which states must consider in good faith, but they are not judgments of a court. A state that ignores views owes an account of itself; it has not, without more, violated a judicial order.

9.8 Regional systems

The European system is the most judicialized: individuals apply directly to the European Court of Human Rights after exhausting domestic remedies, and judgments bind, supervised by the Committee of Ministers. The Inter-American system runs through two organs: the Commission screens petitions and may refer cases to the Inter-American Court, whose judgments bind states that have accepted its jurisdiction; its jurisprudence on disappearances, amnesties, and reparations has been formative. The African system pairs the African Commission with the African Court on Human and Peoples' Rights; direct individual access to the Court depends on a state's optional declaration, and the Charter's inclusion of peoples' rights and duties gives it a distinct character. The comparison to hold: access for individuals, the binding force of outcomes, and the strength of compliance supervision differ; the underlying logic — state answerability before an independent organ — is shared.

9.9 Extraterritorial application

Treaties protect those within a state's jurisdiction — and jurisdiction can travel. Two models dominate: effective control over territory (occupation, as the ICJ applied the Covenants to occupied territory in the *Wall* opinion) and authority or control over persons (detention or custody abroad, the Human Rights Committee's long-standing view). The instruments and their interpreters differ in reach — the European Court's case law has moved between restrictive and expansive readings — so the honest statement is conditional: extraterritorial obligation exists where the required control exists, and the required control is defined treaty by treaty, body by body. *Soering* (1989) adds a distinct route: a state violates its own obligations by removing a person to a real risk of prohibited treatment elsewhere — responsibility for the foreseeable consequence of its own act of transfer.

9.10 Relationship with IHL and ICL

Human rights law continues to apply in armed conflict; the ICJ said so in *Nuclear Weapons* and the *Wall* opinion, treating IHL as the lex specialis informing, for instance, what deprivation of life is "arbitrary" during hostilities. The regimes then generate distinct wrongs from the same event. A human rights violation engages state responsibility toward individuals under a human rights treaty. An IHL violation breaches the law of armed conflict, engaging state responsibility. A war crime is a serious IHL violation for which an individual is criminally responsible. A crime against humanity requires a widespread or systematic attack on a civilian population — no armed conflict needed. One death can be all four, or any subset; each label must be earned through its own elements, in its own forum.

HUMAN-RIGHTS ANALYSIS CHECKLIST

1. Which treaty binds this state — with what reservations and accepted procedures?
2. Is the person within the state's jurisdiction, territorially or through control (§9.9)?
3. Which right, and which obligation layer — respect, protect, or fulfil?
4. Is the right absolute, qualified, or subject to progressive realization?
5. If qualified: legality → legitimate aim → necessity → proportionality → non-discrimination.
6. Any valid derogation in force — and is the right derogable at all?
7. Forum and remedy: domestic remedies first, then committee or court as accepted.

COMMON MISUNDERSTANDINGS

- **"The state is only responsible for what its agents do."** The protect layer makes states answerable for due-diligence failures against private violence (*Velásquez Rodríguez*).
- **"In an emergency, rights are suspended."** Only by valid derogation, only as strictly required, and never the non-derogable core.
- **"Treaty-body views are binding judgments" / "are nothing."** Neither: authoritative interpretation owed good-faith consideration, short of res judicata.

PRACTICAL RELEVANCE

NGO submissions, asylum and non-refoulement work, and government compliance advice all run on this chapter's sequence — instrument, jurisdiction, layer, limitation test, forum. The five-step limitation analysis in §9.4 is the single most transferable piece of legal technique in the field.

REVISION POINTS

1. Framework: Charter and UDHR; ICCPR and ICESCR as the binding treaty core of the universal system; specialist and regional treaties around them.
2. Every right has three layers — respect, protect, fulfil; protect is a due-diligence obligation, while fulfil obligations range from resource-dependent duties to specific results.
3. Qualified rights: legality, aim, necessity, proportionality, non-discrimination — in that order.
4. Derogation is gated (emergency, proclamation, strict necessity, notification) and never reaches the non-derogable core; ESC rights carry immediate duties within progressive realization.
5. IHRL applies in armed conflict alongside IHL; violation, war crime, and crime against humanity are separate legal conclusions.

CITATION REGISTER — CHAPTER 9

UN Charter, arts. 1(3), 55–56 · UDHR (1948) · ICCPR (1966), arts. 2, 4 · ICESCR (1966), art. 2(1) · CERD; CEDAW; CAT; CRC; CRPD · ECHR, arts. 1, 15; ACHR; African Charter · CESCR, General Comment 3 (1990) · *Velásquez Rodríguez v Honduras*, IACtHR (1988) · *Soering v United Kingdom*, ECtHR (1989) · *Barcelona Traction*, ICJ (1970) · *Wall*, ICJ Advisory Opinion (2004) · *Nuclear Weapons*, ICJ Advisory Opinion (1996).

CHAPTER 10

International Humanitarian Law

LEARNING OBJECTIVE

To determine when IHL applies and how a conflict is classified, to apply the conduct-of-hostilities rules — distinction, proportionality, precautions — and the protections for persons, detention, and occupation, and to separate IHL violations from war crimes.

International humanitarian law applies during armed conflict and regulates the conduct of hostilities, the treatment of persons in enemy hands, detention, occupation, and humanitarian protection. It accepts war as a fact and disciplines it — which is why it applies equally to aggressor and defender, and why its first legal task is always factual: does an armed conflict exist, and is it international or non-international? Everything downstream — which treaty rules apply, who counts as a combatant, what detention regime governs — turns on that classification.

10.1 Scope and trigger

IHL applies according to facts, not forms. Declarations of war are unnecessary and denials irrelevant: the Geneva Conventions apply to any armed conflict between parties whether or not a state of war is recognized. The *Tadić* jurisdiction decision (1995) supplies the working definition: an armed conflict exists whenever there is a resort to armed force between states, or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state. Two separations follow. The existence of conflict is independent of the legality of the resort to force — jus in bello does not care who started it lawfully (Chapter 8). And IHL's application ends with the general close of military operations, or of occupation — not with a press release — while persons still detained or otherwise protected remain covered by the relevant rules until their final release, repatriation, re-establishment, or the end of the relevant deprivation of liberty, as applicable.

10.2 International armed conflict

Common Article 2 makes the Conventions applicable to all cases of declared war or of any other armed conflict between two or more parties, and to partial or total occupation of a party's territory, even if the occupation meets no armed resistance. The threshold is low: any resort to armed force between states triggers IAC rules — no intensity requirement. Additional Protocol I extends IAC status to conflicts in which peoples fight colonial domination, alien occupation, or racist regimes in exercise of self-determination, for its parties. A NIAC can also internationalize: on the ICTY's *Tadić* appeal analysis, a foreign state's overall control over an organized armed group makes the conflict international for classification purposes — a test the ICJ has confined to classification, keeping *Nicaragua*'s stricter effective control for state responsibility (Chapter 6).

10.3 Non-international armed conflict

Common Article 3 applies to armed conflict not of an international character in the territory of a party, binding "each Party to the conflict" — states and armed groups alike. Two cumulative factual criteria distinguish NIAC from disorder: intensity of the violence — its duration, gravity, the weapons and forces engaged — and organization of the armed group — command structure, capacity to plan and carry out operations, discipline. Riots, isolated and sporadic violence, internal disturbances, and ordinary criminality fall below the line and remain governed by domestic law and human rights law alone. Additional Protocol II adds fuller rules for high-threshold NIACs between a state's armed forces and dissident armed forces or other organized armed groups that, under responsible command, control territory; it does not govern purely group-against-group conflicts. Customary IHL, as organized in the ICRC study, now supplies much of the NIAC law the treaties left thin.

10.4 Geneva law and Hague law

Tradition distinguishes Geneva law — protection of persons not or no longer fighting: the wounded, prisoners, civilians — from Hague law — the means and methods of warfare: weapons, targeting, ruses. The distinction organizes the sources (the four 1949 Conventions on one side, the 1907 Hague Regulations on the other) but no longer divides the applicable law: Additional Protocol I merged the streams, and the *Nuclear Weapons* opinion treated them as one complex system. Use the labels to navigate instruments, not to partition obligations.

10.5 Distinction

Distinction is IHL's cardinal principle — the *Nuclear Weapons* opinion's word. Parties must at all times distinguish between civilians and combatants and between civilian objects and military objectives, directing operations only against the latter (AP I arts. 48, 51–52). Civilians lose protection only for such time as they take a direct part in hostilities. A military objective is an object which by its nature, location, purpose, or use makes an effective contribution to military action, and whose destruction, capture, or neutralization in the circumstances ruling at the time offers a definite military advantage (art. 52(2)); in case of doubt, a person is presumed civilian, and an object normally dedicated to civilian purposes — a dwelling, a school, a place of worship — is presumed not to be a military objective. Indiscriminate attacks — those not directed at a specific military objective, those employing means or methods that cannot be so directed, and those whose effects cannot be limited as the law requires — are prohibited outright.

10.6 Proportionality in attack

An attack is prohibited if it may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated (AP I arts. 51(5)(b), 57). Read the test as written. It is prospective — judged on what was reasonably expected when the attack was decided, not on hindsight. It compares expected incidental harm with anticipated advantage; it does not prohibit civilian casualties as such, and casualties alone establish nothing. "Excessive" is not "extensive": the question is relational. This proportionality must never be confused with the ad bellum proportionality of self-defence (Chapter 8) — different rule, different question, different moment.

10.7 Precautions

Constant care must be taken to spare civilians, and Article 57 turns care into duties for those who plan and decide attacks: do everything feasible to verify that targets are military objectives; choose means and methods to avoid or minimize incidental harm; refrain from, and cancel or suspend, attacks that would be disproportionate; give effective advance warning of attacks affecting the civilian population, unless circumstances do not permit; and where a choice exists between military objectives yielding similar advantage, take the one expected to cause least civilian danger. The Article 57 duties fall on the attacker. Article 58 addresses the defender: to the maximum extent feasible, removing civilians and civilian objects under its control from the vicinity of military objectives and avoiding the placement of military objectives within or near densely populated areas. "Feasible" means practicable or practically possible in the circumstances ruling at the time, taking into account both humanitarian and military considerations; it does not mean convenient.

10.8 Humane treatment and detention

Common Article 3 states the floor for every conflict: persons taking no active part in hostilities shall in all circumstances be treated humanely, without adverse distinction; violence to life and person, torture, cruel treatment, hostage-taking, outrages upon personal dignity, and sentences without fair trial are prohibited absolutely. In IACs, combatants who fall into enemy hands are prisoners of war under Geneva Convention III: they may be detained until the end of active hostilities — detention as prevention, not punishment — may not be prosecuted for lawful acts of war, and are protected as to treatment, conditions, and repatriation; status doubts go to a competent tribunal (GC III art. 5). Civilians in enemy hands are protected by Geneva Convention IV, which permits internment only for imperative security reasons, with review. In NIACs there is no POW status; common Article 3, AP II where applicable, and human rights law govern treatment, and the fighter has no combatant immunity from domestic prosecution. The torture prohibition admits no exception in any conflict, anywhere.

10.9 Occupation

Territory is occupied when it is actually placed under the authority of the hostile army (Hague Regulations art. 42) — an effective-control test, applied by the ICJ in *Armed Activities* to Ugandan-administered Ituri. Occupation transfers authority in fact, never sovereignty in law, and it is temporary in legal character however long it lasts. The occupant must restore and ensure public order and civil life while respecting, unless absolutely prevented, the laws in force (art. 43); GC IV adds the protection of the population — prohibitions of forcible transfer and deportation, of transferring the occupant's own population into the territory (art. 49), and guarantees of food, medical supplies, and humane administration. Legislative and institutional change is confined to what security, the Convention, and orderly government genuinely require: occupation is administration in trust, not a franchise for transformation. The *Wall* opinion applied this body of law, together with human rights law, to conclude the wall's route breached both.

10.10 IHL violations and war crimes

Every war crime is an IHL violation; not every IHL violation is a war crime. The state whose forces breach IHL incurs state responsibility — cessation, reparation, on Chapter 6's ordinary machinery. Individual criminal responsibility attaches to the subset of serious violations: the grave breaches enumerated in the Conventions and AP I for IACs (wilful killing, torture, unlawful deportation, and more, with mandatory universal enforcement among parties), and the war crimes defined for both IACs and NIACs in Rome Statute Article 8. A targeting error made on reasonable information may breach nothing; a disproportionate attack may engage state responsibility without any individual satisfying the criminal elements; a wilful attack on civilians engages both state and individual responsibility at once. Chapter 11 takes up the criminal side.

TABLE 10.1 — IAC AND NIAC

	International armed conflict	Non-international armed conflict
Trigger	Any armed force between states; occupation (common art. 2)	Protracted violence + organized group(s): intensity and organization (*Tadić*)
Main law	Four GCs, AP I, Hague Regulations, custom	Common art. 3, AP II (where applicable), custom
Combatant status	Yes — POW protection and immunity for lawful acts of war	No POW status; no combatant immunity; humane treatment floor
Below the line	—	Riots, sporadic violence, disturbances: domestic law + IHRL only

CONFLICT-CLASSIFICATION CHECKLIST

1. Armed force between states, or occupation? → IAC (common art. 2), whatever anyone declares.
2. Violence within a state: intense enough, and is the group organized enough? → NIAC; otherwise not armed conflict at all.
3. Foreign state controlling an armed group (overall control)? → conflict internationalized for classification.
4. Classify each bilateral relationship separately — parallel IACs and NIACs can coexist in one territory.
5. From classification, read off: applicable treaties, status of fighters, detention regime, and the war-crimes list that applies.

COMMON MISUNDERSTANDINGS

- **"Civilian deaths prove a violation."** IHL prohibits attacks expected to cause excessive incidental harm, judged prospectively — not incidental harm as such (§10.6).
- **"The aggressor's soldiers have no rights."** Jus in bello applies equally to all parties; POW protection does not depend on the war's legality.
- **"Every IHL breach is a war crime."** Only serious violations attract individual criminal responsibility; the rest engage state responsibility (§10.10).

PRACTICAL RELEVANCE

Military legal advisers apply §§10.5–10.7 target by target; humanitarian organizations invoke classification and common Article 3 to negotiate access; and every accountability mechanism begins its work with the same two questions — what kind of conflict, and which rules attached. Classification is never pedantry; it decides who may be detained, tried, or targeted.

REVISION POINTS

1. IHL applies on the facts; classification (IAC/NIAC) is the first legal step and controls everything after (*Tadić*).
2. Distinction is the cardinal principle; military objectives are defined by contribution and advantage, with doubt favouring civilian character.
3. Proportionality is prospective and relational — expected harm against anticipated concrete and direct advantage.
4. Precautions bind attacker and defender: verify, choose means, warn, cancel.
5. Common Article 3 is the universal floor; occupation is temporary administration under law; war crimes are the serious subset of IHL violations.

CITATION REGISTER — CHAPTER 10

Geneva Conventions I–IV (1949), common arts. 2–3; GC III arts. 4–5, 118; GC IV arts. 42, 49, 78 · Hague Regulations (1907), arts. 42–43 · Additional Protocol I (1977), arts. 48, 51–52, 57–58 · Additional Protocol II (1977) · Rome Statute, art. 8 · ICRC, Customary IHL Study (2005) · *Prosecutor v Tadić* (Jurisdiction), ICTY (1995); (Appeal), ICTY (1999) · *Nuclear Weapons*, ICJ Advisory Opinion (1996) · *Wall*, ICJ Advisory Opinion (2004) · *Armed Activities (DRC v Uganda)*, ICJ (2005).

CHAPTER 11

International Criminal Law

LEARNING OBJECTIVE

To define the four core crimes by their legal elements, to apply the ICC's jurisdiction and admissibility rules including complementarity, and to attribute conduct to individuals through modes of liability and command responsibility — keeping individual guilt distinct from state responsibility.

International criminal law imposes personal criminal responsibility for defined international crimes. Its subject is the individual — the minister, the commander, the recruiter — not the state, and its logic is Nuremberg's: crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can its provisions be enforced. Two boundaries hold the chapter together. Individual criminal responsibility is not state responsibility: the two run in parallel from the same facts and neither absorbs the other. And legal characterization is not political description: "atrocity," "massacre," and even "genocide" in public usage assert nothing until the elements of a defined crime are proved.

11.1 Development

The line runs briefly: the Nuremberg and Tokyo tribunals (1945–48) established that aggressive war, war crimes, and crimes against humanity engage individual responsibility, official position notwithstanding; the ILC's Nuremberg Principles generalized the point. The Security Council's ad hoc tribunals for the former Yugoslavia (1993) and Rwanda (1994) revived the project and produced the modern case law — *Tadić*, *Akayesu*, *Kunarac*, *Krstić*. Hybrid courts (Sierra Leone, Cambodia, elsewhere) mixed international and national elements. The Rome Statute (1998, in force 2002) created the permanent International Criminal Court, on which the rest of this chapter concentrates.

11.2 Genocide

Genocide (Genocide Convention art. II; Rome Statute art. 6) consists of enumerated acts — killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about the group's physical destruction, preventing births, forcibly transferring the group's children to another group — committed against a national, ethnical, racial, or religious group, with intent to destroy that group, in whole or in part, as such. The specific intent (dolus specialis) is the crime's signature and its hardest element. *Akayesu* (1998) gave the first conviction and defined the contours, including rape as an act of genocide on the facts. *Krstić* (2004) held that "in part" means a substantial part, and that the Srebrenica killings met the standard. The definition's discipline cuts both ways: mass killing without the group-destruction intent is not genocide (it may be a crime against humanity), and "ethnic cleansing" — expulsion of a group from territory — is not genocide as such unless the destructive intent is proved, the line the ICJ maintained in *Bosnian Genocide*. The protected groups are closed: political and social groups fall outside the Convention.

11.3 Crimes against humanity

Crimes against humanity (Rome Statute art. 7) are enumerated acts — murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment, torture, rape and other sexual violence, persecution, enforced disappearance, apartheid, other inhumane acts — committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The chapeau does the work: widespread (scale) or systematic (organization) is disjunctive; "attack" means a course of conduct involving multiple acts pursuant to or in furtherance of a state or organizational policy (art. 7(2)(a)) — the policy element as the Rome Statute frames it, which not every tribunal's definition has required; and the individual act must form part of the attack, known to the perpetrator. No nexus with armed conflict is required under the Rome Statute — peacetime persecution qualifies. *Kunarac* (2002) supplies the standard chapeau analysis and convicted enslavement and rape as crimes against humanity.

11.4 War crimes

War crimes (art. 8) are serious violations of IHL entailing individual responsibility: grave breaches of the Geneva Conventions and other serious violations of the laws and customs of war, in parallel lists for IACs and NIACs. Two elements distinguish them from ordinary crime: the conduct must occur in and be associated with an armed conflict — the nexus requirement, meaning the conflict must play a substantial part in the perpetrator's ability or decision to commit the act, not merely coincide with it — and the victim or object must be protected under the applicable IHL (protected persons, civilians, fighters who are hors de combat—that is, out of the fight because they are wounded, sick, shipwrecked, surrendered, or captured—and protected objects). Classification from Chapter 10 therefore feeds directly into the charge sheet: the same killing may be charged differently in an IAC and a NIAC. *Lubanga* (2012), the ICC's first judgment, convicted the conscription, enlistment, and use of children under fifteen to participate actively in hostilities; *Ntaganda* (2019) confirmed that war crimes can be committed against members of the perpetrator's own forces (sexual violence against child recruits).

11.5 The crime of aggression

Aggression (art. 8 bis) is a leadership crime: the perpetrator must be in a position effectively to exercise control over or direct the political or military action of a state. The conduct — planning, preparation, initiation, or execution — must concern a state act of aggression which by its character, gravity, and scale constitutes a manifest violation of the Charter; the manifest-violation threshold deliberately excludes borderline cases from criminal adjudication. The Court's jurisdiction over the crime, activated in 2018, is narrower than for the other crimes: absent a Security Council referral, it excludes the nationals and territory of non-party states entirely, and states parties may lodge opt-out declarations. Know the structure; leave the details to the Statute.

11.6 ICC jurisdiction

Four dimensions, each necessary. Subject matter: the four core crimes only (art. 5). Temporal: conduct after 1 July 2002, and after entry into force for later parties (art. 11). Territorial and personal: crimes on a state party's territory or by its nationals (art. 12(2)). Three triggers open a situation: referral by a state party; referral by the Security Council under Chapter VII — which can reach any territory, party or not; and the Prosecutor's own investigation (proprio motu) with Pre-Trial Chamber authorization (arts. 13–15). A non-party may also accept jurisdiction ad hoc (art. 12(3)). The Court's jurisdiction is not universal: absent a Council referral, some link of territory or nationality to a party is indispensable.

11.7 Complementarity and admissibility

Jurisdiction found, admissibility follows as a separate question — the Rome system's structural deference to national justice. A case is inadmissible if it is being investigated or prosecuted by a state with jurisdiction, unless that state is unwilling or unable genuinely to carry out the proceedings (art. 17). Unwillingness looks to proceedings designed to shield the person, unjustified delay, or lack of independence and impartiality inconsistent with an intent to bring the person to justice; inability looks to the total or substantial collapse or unavailability of the national system. Inadmissibility also follows from ne bis in idem — no second trial for the same conduct after a genuine one (art. 20) — and from insufficient gravity (art. 17(1)(d)). The ICC is a court of last resort by design: complementarity is the opposite of primacy, which the ad hoc tribunals enjoyed.

FIGURE 11.1 — ICC JURISDICTION AND COMPLEMENTARITY, IN SEQUENCE

1. Crime within art. 5? (genocide, crimes against humanity, war crimes, aggression)

2. After 1 July 2002 and the relevant entry into force? (art. 11)

3. Territory or nationality of a state party — or Security Council referral — or art. 12(3) acceptance?

4. Trigger: state referral, Council referral, or proprio motu with authorization (arts. 13–15).

5. Admissibility: genuine national proceedings? → inadmissible, unless unwilling or unable (art. 17).

6. Ne bis in idem (art. 20) and sufficient gravity (art. 17(1)(d)) — then, and only then, the merits.

11.8 Modes of liability

Article 25 attributes crimes to individuals along a graded scale: commission — individually, jointly with another, or through another person (the basis of the ICC's control-over-the-crime doctrine, developed in *Lubanga* and *Katanga*); ordering, soliciting, or inducing; aiding and abetting or otherwise assisting, with purpose of facilitating; contributing in any other way to a crime by a group acting with a common purpose; direct and public incitement, for genocide; and attempt. The ICTY's judge-made joint criminal enterprise doctrine covered similar ground for the ad hoc tribunals; the Rome Statute's co-perpetration framework has largely replaced it at the ICC. For study purposes, the scale matters more than the doctrinal wars: identify what the accused personally did, and match it to the narrowest fitting mode.

11.9 Command responsibility

Article 28 makes superiors criminally responsible for subordinates' crimes they failed to prevent or punish — liability for omission in breach of a duty of control, not vicarious guilt. The elements: a superior–subordinate relationship with effective command (or authority) and control; the mental element — for military commanders, knew or, owing to the circumstances, should have known; for civilian superiors, knew or consciously disregarded clearly indicating information; failure to take all necessary and reasonable measures within their power to prevent or repress the crimes, or to submit the matter to the competent authorities for investigation and prosecution; and, for the ICC, causation in the sense that the crimes resulted from the failure of control. The prevent and punish duties are distinct: a commander who could not have stopped the crime may still be liable for burying it afterwards.

11.10 Immunities and official capacity

Article 27 removes the shield of office within the Rome system: official capacity — head of state included — neither exempts from responsibility nor reduces sentence (27(1)), and immunities attaching to official capacity do not bar the Court's exercise of jurisdiction (27(2)). For states parties, that is a treaty waiver among themselves. The hard cases sit at the system's edge, and remain legally debated: whether a non-party head of state retains personal immunity against arrest by states parties executing an ICC warrant; how far Article 98 preserves immunity-based cooperation obstacles; and what a Security Council referral does to a non-party's officials — the questions fought through the Al-Bashir litigation, where the Appeals Chamber (2019) held no head-of-state immunity applies before the Court itself, on reasoning that has persuaded some and not others. Chapter 5's grid still governs foreign national courts: *Arrest Warrant* personal immunity survives there. Present the settled core and the contested edge as exactly that.

TABLE 11.1 — THE FOUR CORE CRIMES

Crime	Defining contextual element	Distinctive mental element	Armed conflict required?
Genocide (art. 6)	Acts against a national, ethnical, racial, or religious group	Intent to destroy the group in whole or substantial part (*Krstić*)	No
Crimes against humanity (art. 7)	Widespread or systematic attack on a civilian population; policy element	Knowledge of the attack (*Kunarac*)	No (under the Rome Statute)
War crimes (art. 8)	Serious IHL violation; protected persons or objects	Intent and knowledge; awareness of conflict nexus	Yes — with nexus
Aggression (art. 8 bis)	State act of aggression manifestly violating the Charter	Leadership position: control or direction of state action	The state act itself

TABLE 11.2 — STATE AND INDIVIDUAL RESPONSIBILITY

State responsibility (Ch. 6)	Individual criminal responsibility (this chapter)
Attribution + breach of the state's obligation	Personal conduct satisfying a crime's elements, via a mode of liability
Consequences: cessation, reparation	Consequences: conviction, sentence, reparations to victims
Forum: ICJ, arbitration, other interstate procedures	Forum: national courts first (complementarity), then the ICC
No fault requirement unless the primary rule imposes one	Mens rea always required; guilt is personal, never collective
The same events can generate both — *Bosnian Genocide* (state) alongside *Krstić* (individual) — and neither verdict controls the other.	

COMMON MISUNDERSTANDINGS

- **"Mass atrocity = genocide."** Without proof of intent to destroy a protected group as such, the correct label is usually crimes against humanity — a legal conclusion, not a demotion.
- **"The ICC has universal jurisdiction."** It does not: territory or nationality of a party, or a Security Council referral, is required.
- **"A commander is automatically guilty for troops' crimes."** Command responsibility requires effective control, a knowledge standard, and failure to prevent, repress, or refer (art. 28).

PRACTICAL RELEVANCE

Complementarity makes national systems the front line: prosecutors, defence counsel, and investigators applying these definitions domestically determine whether the ICC ever needs to act. For documentation work — NGO or UN — the elements tables above are the checklist evidence must be gathered against; testimony that proves killing but not context proves no international crime.

REVISION POINTS

1. Four core crimes, each defined by contextual + physical + mental elements; genocide's dolus specialis is the decisive filter.
2. Crimes against humanity need a widespread or systematic attack with knowledge — no armed conflict; war crimes need conflict plus nexus.
3. ICC jurisdiction: subject matter, time, territory/nationality, trigger — then admissibility: complementarity, ne bis in idem, gravity.
4. Modes of liability grade participation (art. 25); command responsibility punishes failure of control (art. 28).
5. Article 27 strips official-capacity immunity within the Rome system; the non-party question remains contested; state and individual responsibility run in parallel.

CITATION REGISTER — CHAPTER 11

Rome Statute (1998), arts. 5–8 bis, 11–17, 20, 25, 27–28, 98 · Genocide Convention (1948), art. II · Geneva Conventions (1949) · Nuremberg Principles (ILC, 1950) · *Prosecutor v Tadić*, ICTY (1995, 1999) · *Prosecutor v Akayesu*, ICTR (1998) · *Prosecutor v Kunarac*, ICTY (2002) · *Prosecutor v Krstić*, ICTY (2004) · *Prosecutor v Lubanga*, ICC (2012) · *Prosecutor v Katanga*, ICC (2014) · *Prosecutor v Ntaganda*, ICC (2019) · *Prosecutor v Al-Bashir* (Jordan Referral, Appeals Chamber), ICC (2019) · *Bosnian Genocide*, ICJ (2007) · *Arrest Warrant*, ICJ (2002).

PART III

Cases, Doctrines, and Revision Tools

Part III consolidates the guide without repeating it. Its purpose is to connect the major authorities to precise legal propositions and to give the reader rapid-reference tools for examinations, research, interviews, and professional work.

The case entries that follow are deliberately short and analytical. A case is worth remembering for the proposition it supports, and for the limit of that proposition — not as a story.

CHAPTER 12

Major Cases, Doctrines, and Revision Tables

Each entry states the issue, the contribution, and the limitation, with the chapter where the full context lives. Entries are keyed to this format throughout: **Case — issue · contribution · limitation · chapter.**

12.1 Sources and custom

The S.S. Lotus (PCIJ 1927) — scope of state freedom and jurisdiction. Restrictions on state independence are not presumed; prescription may reach foreign events, but enforcement abroad is barred. Limitation: its "freedom" presumption is dated and often qualified by later law. Chs. 1, 5.

The S.S. Wimbledon (PCIJ 1923) — sovereignty and treaty obligation. Concluding a treaty is an exercise of sovereignty, not its abandonment. Limitation: says nothing about invalid or coerced consent. Ch. 1.

North Sea Continental Shelf (ICJ 1969) — formation of custom. Both general practice and opinio juris are required; treaty rules may pass into custom; specially affected states' practice counts. Limitation: no fixed duration or numerical test supplied. Ch. 2.

Nicaragua v United States (ICJ 1986) — custom alongside treaty; force and intervention. Custom exists independently of the Charter; imperfect practice can still support a rule where departures are treated as breaches. Limitation: its effective-control and armed-attack thresholds remain debated. Chs. 2, 6, 8.

Asylum (ICJ 1950) — regional custom. A regional customary rule must be proved by constant, uniform practice accepted as law; contradictory practice defeats it. Limitation: does not exclude regional custom in principle. Ch. 2.

The Paquete Habana (US Sup. Ct. 1900) — custom in national courts. International custom, proved by long practice, is law applied by domestic courts. Limitation: a domestic decision, applying US doctrine on incorporation. Ch. 2.

12.2 Treaty law

Reservations to the Genocide Convention (ICJ 1951) — permissibility of reservations. Compatibility with object and purpose, not unanimous acceptance, is the test. Limitation: leaves who decides compatibility, and severance, unsettled. Ch. 3.

Qatar v Bahrain (ICJ 1994) — what counts as a treaty. Signed minutes recording commitments constituted a binding agreement; designation is irrelevant. Limitation: intention is still decisive — not every minute binds. Ch. 3.

Aegean Sea Continental Shelf (ICJ 1978) — informal instruments. A joint communiqué is examined on its terms and circumstances; this one created no jurisdictional commitment. Limitation: fact-specific. Ch. 3.

Gabčíkovo-Nagymaros (ICJ 1997) — termination and necessity. Material breach, impossibility, and fundamental change are read strictly; breach never terminates automatically; necessity is exceptional and cumulative. Limitation: good faith did not rewrite the treaty either. Chs. 3, 6.

Kasikili/Sedudu Island (ICJ 1999) — interpretation in practice. A worked application of VCLT arts. 31–32 to a boundary treaty, using ordinary meaning, context, and subsequent practice. Limitation: subsequent practice must show the parties' agreement. Ch. 3.

LaGrand (ICJ 2001) — interpretation and provisional measures. VCLT art. 33 resolved diverging texts: provisional measures bind; VCCR art. 36 creates individual rights. Limitation: remedies were left largely to the respondent's choice of means. Chs. 3, 5, 7.

12.3 Statehood, sovereignty, and self-determination

Reparation for Injuries (ICJ 1949) — legal personality. Subjects of law differ in nature and extent of rights; the UN holds functional personality including implied powers and the capacity to claim. Limitation: personality is tied to functions, not unlimited. Ch. 4.

Island of Palmas (PCA 1928) — territorial title. Continuous, peaceful display of state authority sustains title; intertemporal law governs its creation and maintenance. Limitation: an arbitral award, though universally followed. Ch. 4.

Nottebohm (ICJ 1955) — nationality of claims. A nationality lacking a genuine link was not opposable for diplomatic protection against Guatemala. Limitation: confined by later practice largely to its facts; states remain free to confer nationality. Chs. 4, 7.

Western Sahara (ICJ 1975) — colonial self-determination. Pre-colonial legal ties did not displace the people's right freely to determine their status. Limitation: advisory; the dispute's politics outlived the opinion. Ch. 4.

East Timor (ICJ 1995) — erga omnes and indispensable parties. Self-determination generates obligations erga omnes, yet the Court could not decide without Indonesia — erga omnes character does not create jurisdiction. Chs. 4, 7.

Kosovo (ICJ 2010) — declarations of independence. The declaration violated no general international law rule. Limitation: decided neither statehood, nor recognition, nor any right to secede. Ch. 4.

Chagos (ICJ 2019) — decolonization. Detaching part of a colonial territory against its people's will leaves decolonization legally incomplete; continued administration was unlawful. Limitation: advisory in form, though followed by UNGA and ITLOS practice. Ch. 4.

12.4 Jurisdiction and immunity

Arrest Warrant (ICJ 2002) — personal immunity. A serving foreign minister is immune from foreign criminal jurisdiction for all acts, war-crimes allegations included; immunity is not impunity — trial at home, after office, or before international tribunals remains open. Limitation: functional immunity and non-party ICC questions left open. Chs. 5, 11.

Jurisdictional Immunities (ICJ 2012) — state immunity and jus cogens. Immunity is procedural and survives even claims of grave IHL breaches; no conflict arises between a procedural bar and substantive peremptory norms. Limitation: it does not determine whether the underlying conduct was lawful. Chs. 2, 5.

Tehran Hostages (ICJ 1980) — diplomatic law and attribution. Inviolability obligations breached first by inaction, then by official approval and maintenance of the continuing occupation (ARSIWA art. 11's model). Limitation: the diplomatic regime is self-contained — its remedies, not reprisals. Chs. 5, 6.

Avena (ICJ 2004) — consular rights. Systematic failures of VCCR art. 36 notification required review and reconsideration of convictions. Limitation: implementation collided with US federalism — a lesson in enforcement. Ch. 5.

Pinochet (No 3) (UK HL 1999) — functional immunity and torture. A former head of state's functional immunity gave way for torture under the CAT scheme. Limitation: a domestic decision, resting heavily on treaty structure; personal immunity while in office was never in doubt. Chs. 5, 11.

12.5 State responsibility

Chorzów Factory (PCIJ 1928) — reparation. Breach entails an obligation to make full reparation: wipe out the consequences, restore the probable situation. Limitation: full reparation still requires proof of injury and causation. Ch. 6.

Corfu Channel (ICJ 1949) — due diligence. No state may knowingly allow its territory to be used contrary to other states' rights; knowledge can be inferred. Limitation: due diligence is effort-based, not absolute liability. Ch. 6.

Bosnian Genocide (ICJ 2007) — attribution and prevention. Effective control (not overall control) governs attribution of non-organ conduct; the duty to prevent genocide is a due-diligence obligation breached by inaction despite influence. Limitation: prevention duty tied to capacity to influence, case by case. Chs. 6, 11.

Wall (ICJ 2004) — consequences of serious breaches. Cessation, reparation, plus third-state duties of non-recognition and non-assistance; human rights and IHL apply together in occupied territory. Limitation: advisory. Chs. 6, 8, 9, 10.

12.6 Use of force

Oil Platforms (ICJ 2003) — self-defence thresholds. Attacks must reach the armed-attack threshold, be attributable, and the response necessary and proportionate; the US claims failed each stage. Limitation: decided under a treaty's freedom-of-commerce clause. Ch. 8.

Armed Activities (ICJ 2005) — force, consent, occupation. Consent withdrawn ends the lawfulness of foreign forces' presence; Uganda's operations violated art. 2(4); occupation duties applied in Ituri. Limitation: self-defence against non-state attacks left expressly open. Chs. 8, 10.

Nuclear Weapons (ICJ 1996) — force and IHL together. Threat and use of force law plus IHL's cardinal principles (distinction, unnecessary suffering) govern all weapons; human rights law continues in war. Limitation: the Court stated that it could not reach a definitive conclusion in the extreme self-defence scenario. Chs. 8, 9, 10.

12.7 Human rights, IHL, and ICL

Barcelona Traction (ICJ 1970) — obligations erga omnes. Some obligations are owed to the international community as a whole; all states hold a legal interest. Limitation: dictum; standing rules still apply (ARSIWA art. 48). Chs. 2, 6, 9.

Velásquez Rodríguez (IACtHR 1988) — due diligence in human rights. States answer for failure to prevent, investigate, and punish private violations. Limitation: obligation of means, judged on seriousness of effort. Ch. 9.

Soering (ECtHR 1989) — non-refoulement by extradition. Removing a person to a real risk of prohibited treatment violates the removing state's own obligations. Limitation: the risk assessment is forward-looking and evidentiary. Ch. 9.

Tadić (ICTY 1995/1999) — conflict definition and classification. Defined armed conflict; overall control internationalizes a NIAC for classification. Limitation: overall control governs classification, not state responsibility. Chs. 10, 11.

Akayesu (ICTR 1998) — genocide's first conviction. Elements of genocide articulated; sexual violence recognized as a genocidal act. Limitation: group definitions have evolved in later case law. Ch. 11.

Krstić (ICTY 2004) — "in part" means substantial part. Srebrenica constituted genocide; aiding-and-abetting distinctions refined on appeal. Ch. 11.

Lubanga (ICC 2012) — first ICC judgment. Child-soldier crimes; co-perpetration through control over the crime. Limitation: mode-of-liability doctrine still contested within the Court. Ch. 11.

Ntaganda (ICC 2019) — scope of war-crime protection. Sexual violence against a group's own child recruits is a war crime; no status gap. Ch. 11.

12.8 Core doctrines

Doctrine	Definition	Field	Principal authority	Main limitation
Pacta sunt servanda	Treaties in force bind and must be performed in good faith	Treaties	VCLT art. 26	Only treaties in force, for parties
Good faith	Honest, reasonable performance and interpretation	General	VCLT arts. 26, 31; *Gabčíkovo*	Does not rewrite obligations
Opinio juris	Belief that practice is legally required or permitted	Custom	*North Sea*	Hard to prove; inferred from practice
Persistent objector	Clear, consistent objection during formation exempts the objector	Custom	ILC Conclusions (2018)	Never against jus cogens
Jus cogens	Peremptory norms; no derogation permitted	Sources	VCLT arts. 53, 64	Does not override procedural bars (*Jurisdictional Immunities*)
Erga omnes	Obligations owed to the international community as a whole	Responsibility	*Barcelona Traction*	Interest ≠ jurisdiction (*East Timor*)
Lex specialis	The more specific rule governs within its field	Norm conflict	ILC Fragmentation (2006)	Technique, not absolute rule
Lex posterior	Later rule prevails between the same parties	Norm conflict	VCLT art. 30	Same parties, same subject matter
Article 103 priority	Charter obligations prevail over other agreements	Charter law	UN Charter art. 103	Obligations, not mere authorizations, on the strict view
Uti possidetis	Administrative boundaries become international at independence	Territory	*Frontier Dispute* (1986)	Stability over ethnography; grievances persist
Due diligence	Duty of serious effort to prevent and respond to harm	Responsibility; IHRL	*Corfu Channel*; *Velásquez*	Means, not result
Effective control	Control of specific operations, for attribution; of territory, for occupation and jurisdiction	Responsibility; IHL; IHRL	*Nicaragua*; *Bosnian Genocide*	Meaning shifts by field — match test to question
Overall control	State control over an organized group internationalizing a conflict	IHL classification	*Tadić* (Appeal)	Not a responsibility test
Necessity (defence)	No reasonable non-forcible alternative; only means, for ARSIWA art. 25	Force; responsibility	*Oil Platforms*; *Gabčíkovo*	Exceptional; strictly construed
Proportionality	Response measured against aim — repelling attack (ad bellum), advantage vs incidental harm (IHL), aim vs burden (IHRL)	Force; IHL; IHRL	*Nicaragua*; AP I art. 51(5)(b)	Three different tests share one name

Doctrine	Definition	Field	Principal authority	Main limitation
Complementarity	ICC acts only where states are unwilling or unable genuinely to proceed	ICL	Rome Statute art. 17	Admissibility, not jurisdiction
Command responsibility	Superior liable for failure to prevent, repress, or refer subordinates' crimes	ICL	Rome Statute art. 28	Effective control + knowledge standard required

12.9 Do not confuse

Pair	The difference in one line
Jurisdiction / enforcement	The power to make and apply rules can reach abroad; the power to compel stops at the border.
Jurisdiction / immunity	First whether authority exists; then whether a defendant is shielded from it.
Jurisdiction / admissibility	Whether a court can hear a case; whether it should, or the claim is properly presented.
Statehood / recognition	Criteria create the state; recognition acknowledges it and opens relations.
Self-determination / secession	A right of peoples to determine status; not a general right to leave a state unilaterally.
Treaty breach / termination	Breach gives an option under art. 60 procedure; it ends nothing by itself.
Repeated practice / custom	Habit becomes law only with opinio juris.
Jus cogens / erga omnes	Hierarchy of the norm; structure of the obligation and standing to invoke it.
State responsibility / criminal responsibility	The state owes cessation and reparation; the individual faces conviction — parallel, never merged.
Use of force / armed attack	All armed attacks are force; only the gravest force is an armed attack triggering art. 51.
Self-defence proportionality / IHL proportionality	Scale of the defensive campaign; incidental harm versus advantage in a single attack.
Countermeasures / sanctions	Injured state's conditioned self-help; collective measures on Charter authority.
Diplomatic protection / consular assistance	Espousal of a national's claim as the state's own; practical help to a detained national.
IHL violation / war crime	Every war crime breaches IHL; only serious violations with the criminal elements convict anyone.

12.10 Issue-spotting checklists

Source of law: alleged rule → treaty in force for this state? → custom (practice + opinio juris)? → general principle? → binding institutional act? → if none, no obligation.

Establishing custom: precise rule → practice evidence → generality and consistency → opinio juris separately → contrary practice as breach or counter-evidence → persistent objector → peremptory status.

Interpreting a treaty: ordinary meaning in context → object and purpose → subsequent agreements and practice → other applicable rules → art. 32 confirmation → art. 33 languages.

Statehood: population → territory → government → capacity for relations → legality of creation → recognition as evidence and practical access.

Jurisdiction: prescriptive basis (territory, nationality, passive personality, protective, universal, effects) → adjudicative hook → enforcement strictly territorial.

Immunity: who is sued — state, official, diplomat? → act jure imperii or gestionis? → personal or functional immunity? → forum national or international? → waiver?

State responsibility: attribution ground (arts. 4–11) → obligation in force → breach → circumstance precluding wrongfulness → cessation → reparation → who may invoke.

ICJ jurisdiction: states only → consent basis → scope and reservations (reciprocity) → admissibility (local remedies, nationality, third parties) → provisional measures conditions.

Self-defence: armed attack (threshold, attribution) → necessity → proportionality → temporal link → report to UNSC → collective: declaration + request.

Human rights limitation: right qualified? → legality → legitimate aim → necessity → proportionality → non-discrimination → any derogation validly in force?

Conflict classification: interstate force or occupation → IAC; internal violence: intensity + organization → NIAC; foreign overall control → internationalized; below threshold → not armed conflict.

International crime: which crime → contextual element → physical act → mental element (dolus specialis for genocide) → mode of liability or command responsibility.

ICC route: art. 5 crime → temporal → territory/nationality or UNSC referral → trigger → complementarity → ne bis in idem → gravity.

12.11 Final memory checklist

1. Every argument begins with a source; Article 38 is the map.
2. Custom is practice plus opinio juris — both, separately proved.
3. Treaties bind their parties and must be performed in good faith; internal law is no excuse.
4. Statehood is criteria plus legality; recognition is evidence and access, not creation.
5. Prescription may reach abroad; enforcement does not, absent consent or another permissive rule.
6. Immunity is procedural — it chooses the forum, not the merits.
7. A wrongful act is attribution plus breach; reparation wipes out the consequences.
8. International courts need consent; gravity confers no jurisdiction.
9. Force is prohibited; self-defence and Council authorization are the exits, on conditions.
10. IHRL, IHL, and ICL are distinct regimes: one event, separate analyses, separate labels.

CITATION REGISTER — CHAPTER 12

All authorities in this chapter are cited in their full form in the chapters indicated in each entry and in the Table of Cases and Table of Treaties and Instruments at the end of the guide. Additional authority cited here: *Frontier Dispute (Burkina Faso v Mali)*, ICJ (1986).

Glossary of Essential Terms

Working definitions, with the field in brackets and the chapter where the concept is treated. Where a term is easily confused with a neighbour, the entry says so. These are starting points for revision, not substitutes for the chapters.

Admissibility [procedure] — whether a court should decide a claim it has power over; distinct from jurisdiction. Chs. 7, 11.

Advisory opinion [courts] — non-binding but authoritative answer by the ICJ to a legal question from an authorized organ. Ch. 7.

Aggression [force; ICL] — as a state act, grave unlawful force; as a crime, its leadership-level planning or execution in manifest violation of the Charter. Chs. 8, 11.

Armed attack [force] — the gravest form of use of force, triggering the right of self-defence; not every use of force qualifies. Ch. 8.

Attribution [responsibility] — the legal connection of conduct to a state (organs, delegated authority, effective control, adoption). Ch. 6.

Aut dedere aut judicare [jurisdiction] — treaty obligation to extradite a suspect or submit the case for prosecution. Ch. 5.

Belligerent occupation [IHL] — territory actually under the authority of a hostile army; administration in fact, never sovereignty. Ch. 10.

Cessation [responsibility] — the duty to stop a continuing wrongful act; owed before and apart from reparation. Ch. 6.

Collective self-defence [force] — defence of an attacked state at its declaration and request. Ch. 8.

Command responsibility [ICL] — superior's liability for failing to prevent, repress, or refer subordinates' crimes despite effective control. Ch. 11.

Common Article 3 [IHL] — the humane-treatment floor for non-international armed conflict, binding states and armed groups alike; recognized as a customary minimum in all conflicts. Ch. 10.

Compensation [responsibility] — reparation in money for financially assessable damage. Ch. 6.

Complementarity [ICL] — ICC admissibility yields to genuine national proceedings; the Court is a last resort. Ch. 11.

Compromissory clause [courts] — treaty provision sending disputes over the treaty to the ICJ or arbitration. Ch. 7.

Countermeasure [responsibility] — an injured state's otherwise-unlawful, non-forcible measure to induce compliance; temporary, proportionate, reversible. Distinguish sanctions and retorsion. Ch. 6.

Crime against humanity [ICL] — enumerated acts within a widespread or systematic attack on a civilian population, with knowledge; no armed-conflict nexus required. Ch. 11.

Customary international law [sources] — law formed by general state practice accepted as law (opinio juris). Ch. 2.

Derogation [IHRL] — emergency departure from certain treaty obligations, gated by strict necessity and notification; the ICCPR also requires official proclamation. Distinct from an ordinary limitation. Ch. 9.

Diplomatic protection [claims] — a state's espousal of its national's claim as its own; conditioned on nationality and exhausted local remedies. Chs. 5, 7.

Distinction [IHL] — the cardinal duty to separate civilians and civilian objects from combatants and military objectives. Ch. 10.

Distress [responsibility] — preclusion of wrongfulness where no other reasonable way exists to save lives in the author's care. Ch. 6.

Dualism / monism [foundations] — models of the international–domestic relationship: separate orders needing incorporation, or one order with direct application. Ch. 1.

Due diligence [responsibility; IHRL] — obligation of serious effort to prevent and respond to harm; judged by conduct, not outcome. Chs. 6, 9.

Effective control [several] — for attribution: control of specific operations; for occupation and extraterritorial IHRL: control of territory. Match the test to the question. Chs. 6, 9, 10.

Effects doctrine [jurisdiction] — regulation of foreign conduct on the basis of its substantial domestic effects. Ch. 5.

Erga omnes [responsibility] — obligations owed to the international community as a whole; every state has a legal interest in performance. Distinguish jus cogens. Chs. 2, 6.

Force majeure [responsibility] — irresistible force or unforeseen event making performance materially impossible. Ch. 6.

Forum prorogatum [courts] — consent to ICJ jurisdiction given after proceedings begin, expressly or by conduct. Ch. 7.

Full powers [treaties] — formal authorization to perform treaty acts for a state; dispensed with for heads of state and government and foreign ministers. Ch. 3.

General principles of law [sources] — gap-filling principles recognized across legal systems or formed within the international order. Ch. 2.

Genocide [ICL] — enumerated acts against a national, ethnical, racial, or religious group with intent to destroy it, in whole or substantial part, as such. Ch. 11.

Good faith [general] — honest, reasonable performance and interpretation of obligations; guides, never rewrites. Chs. 1, 3.

Grave breaches [IHL; ICL] — enumerated serious violations of the Geneva Conventions in IACs, with mandatory prosecute-or-extradite enforcement. Ch. 10.

Immunity ratione materiae [immunities] — functional immunity for official acts; survives office. Whether it is unavailable for international crimes remains contested, with *Pinochet* supporting a limited exception for torture. Ch. 5.

Immunity ratione personae [immunities] — personal immunity of serving high officials and diplomats for all acts; ends with the office. Ch. 5.

International armed conflict (IAC) [IHL] — armed force between states, or occupation; no intensity threshold. Ch. 10.

International legal personality [subjects] — capacity to hold international rights, duties, powers, and claims; general for states, functional for others. Ch. 4.

Internationally wrongful act [responsibility] — conduct attributable to a state that breaches its international obligation. Ch. 6.

Interpretative declaration [treaties] — statement of understanding that does not modify legal effect; if it does, it is a reservation whatever its label. Ch. 3.

Jurisdiction [jurisdiction] — a state's lawful authority to prescribe, adjudicate, or enforce; also, a court's power to decide. Chs. 5, 7.

Jus ad bellum / jus in bello [force; IHL] — the law on resorting to force; the law governing conduct within conflict. Independent of each other. Chs. 8, 10.

Jus cogens (peremptory norm) [sources] — norm from which no derogation is permitted; voids conflicting treaties. Distinguish erga omnes. Ch. 2.

Lex posterior [norm conflict] — later rule prevails between the same parties on the same matter. Ch. 2.

Lex specialis [norm conflict] — the more specific rule governs within its field; a technique, not a trump. Ch. 2.

Material breach [treaties] — repudiation, or violation of a provision essential to object and purpose; grounds an option to terminate or suspend. Ch. 3.

Military objective [IHL] — object whose nature, location, purpose, or use effectively contributes to military action and whose neutralization offers a definite military advantage. Ch. 10.

Ne bis in idem [ICL] — no second trial for the same conduct after a genuine one. Ch. 11.

Necessity [responsibility; force] — under ARSIWA art. 25, the only means of safeguarding an essential interest against grave, imminent peril; in self-defence, the absence of reasonable non-forcible alternatives. Chs. 6, 8.

Non-intervention [foundations; force] — prohibition of coercive interference in matters a state may decide freely. Ch. 8.

Non-international armed conflict (NIAC) [IHL] — protracted violence between a state and organized armed groups, or between such groups; requires intensity and organization. Ch. 10.

Non-refoulement [IHRL] — prohibition of transferring a person to a real risk of persecution or prohibited treatment. Ch. 9.

Opinio juris [sources] — the conviction that conduct is legally required or permitted; converts practice into custom. Ch. 2.

Optional clause [courts] — declaration under ICJ Statute art. 36(2) accepting compulsory jurisdiction toward other accepting states, with reservations and reciprocity. Ch. 7.

Pacta sunt servanda [treaties] — treaties in force bind their parties and must be performed in good faith. Ch. 3.

Passive personality [jurisdiction] — jurisdiction based on the victim's nationality; accepted mainly for serious transnational offences. Ch. 5.

Persistent objector [sources] — state exempted from a customary rule by clear, consistent objection during its formation; unavailable against jus cogens. Ch. 2.

Precautions [IHL] — feasible measures in planning and conducting attacks, and against their effects, to spare civilians. Ch. 10.

Prisoner of war [IHL] — captured combatant in an IAC; preventive detention, humane treatment, immunity for lawful acts of war. Ch. 10.

Progressive realization [IHRL] — ICESCR structure: steps to the maximum of available resources, with immediate non-discrimination duties and, on the Committee's interpretation, minimum-core obligations. Ch. 9.

Proportionality [several] — three tests under one name: scale of defensive force (ad bellum); incidental harm against advantage (IHL); burden against aim (IHRL). Chs. 8–10.

Provisional measures [courts] — binding interim orders preserving rights pending judgment (*LaGrand*). Ch. 7.

Ratification [treaties] — the formal act confirming consent to be bound; distinct from signature and entry into force. Ch. 3.

Recognition [statehood] — acknowledgment of a state or government; declaratory in principle, consequential in practice. Ch. 4.

Reparation [responsibility] — wiping out the consequences of a wrongful act: restitution, compensation, satisfaction (*Chorzów*). Ch. 6.

Reservation [treaties] — unilateral statement excluding or modifying provisions' legal effect for the reserving state; tested against object and purpose. Ch. 3.

Responsibility to Protect (R2P) [force] — political framework channelling atrocity response through state duty and collective UN action; no unilateral right of force. Ch. 8.

Restitution [responsibility] — re-establishing the situation before the wrongful act, where possible and not disproportionate. Ch. 6.

Retorsion [responsibility] — unfriendly but lawful act (e.g. recalling an ambassador); needs no legal justification. Ch. 6.

Satisfaction [responsibility] — acknowledgment, apology, or declaration answering injury not made good by restitution or compensation. Ch. 6.

Self-defence [force] — force answering an armed attack, under necessity, proportionality, and Charter art. 51's reporting duty. Ch. 8.

Self-determination [subjects] — peoples' right freely to determine political status; external in colonial and occupation contexts, otherwise primarily internal. Distinguish secession. Ch. 4.

Soft law [sources] — non-binding instruments (declarations, guidelines) with legal relevance short of obligation. Chs. 1, 2.

Sovereignty [foundations] — territorial authority, independence, and equality within the law — including the capacity to be bound. Ch. 1.

Specially affected states [sources] — states whose interests a rule particularly touches; their practice weighs heavily in custom analysis, within limits. Ch. 2.

State immunity [immunities] — procedural bar on national-court jurisdiction over foreign states; restrictive (imperii/gestionis). Ch. 5.

State practice [sources] — what states do and say: statements, legislation, manuals, judgments, votes, conduct. Ch. 2.

Statehood [subjects] — population, territory, government, capacity for relations — read with legality of creation. Ch. 4.

Travaux préparatoires [treaties] — the negotiating record; supplementary means of interpretation under VCLT art. 32. Ch. 3.

Treaty [treaties] — international agreement in writing between states (or IOs), governed by international law, whatever its designation. Ch. 3.

Universal jurisdiction [jurisdiction] — prosecution of certain offences with no territorial or national link, by reason of the offence's nature alone; scope contested. Ch. 5.

Use of force [force] — armed force between states, prohibited by Charter art. 2(4); excludes economic and political pressure. Ch. 8.

Uti possidetis [territory] — former administrative boundaries become international frontiers at independence. Ch. 4.

War crime [ICL] — serious IHL violation, committed in and associated with an armed conflict, engaging individual criminal responsibility. Chs. 10, 11.

Recommended Reading and Official Resources

This list is selective and organized by purpose. It contains the sources consulted or relied upon in drafting this guide, together with the official databases a reader needs for primary materials. Always work from the current edition and the official text. Institutional web addresses change over time; if a domain listed here no longer resolves, search the institution's name directly.

Core textbooks

- J. Klabbers, *International Law* (4th ed., Cambridge University Press, 2023) — a compact, analytical general course.
- A. Aust, *Handbook of International Law* (2nd ed., Cambridge University Press, 2010) — practice-oriented, especially strong on treaties and diplomacy.
- S. González Hauck, R. Kunz and M. Milas (eds), *Public International Law: A Multi-Perspective Approach* (1st ed., Routledge, 2024) — an open-access textbook pairing doctrine with critical perspectives.
- B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012) — for the discipline's development and its contested past.

Collections of primary materials

- United Nations, *International Law Handbook* (collection of instruments) — the core treaties in one place.
- UN Treaty Collection (treaties.un.org) — authentic texts, status, reservations, and depositary notifications.
- ILC texts and commentaries (legal.un.org/ilc) — ARSIWA, the Draft Conclusions on custom and on peremptory norms, and the fragmentation study.
- Official court databases (below) for judgments, opinions, and pleadings.

International courts and tribunals

- International Court of Justice (icj-cij.org), including the PCIJ archive series.
- International Criminal Court (icc-cpi.int) — situations, cases, and the Elements of Crimes.
- International Tribunal for the Law of the Sea (itlos.org).
- IRMCT Unified Court Records (ucr.irmct.org) — ICTY and ICTR archives.
- Regional human rights courts: ECtHR (HUDOC), Inter-American Court, African Court.

UN and ILC resources

- UN Audiovisual Library of International Law (legal.un.org/avl) — lectures and instrument histories by leading scholars, free.
- ILC Yearbooks and annual reports — the drafting history behind the codifications.
- Security Council resolutions and General Assembly documents (documents.un.org; undocs.org).

Specialist reading, by field

- **Sources and treaty law:** the ILC Draft Conclusions on Identification of Customary International Law (2018) with commentaries; the VCLT itself, read whole.
- **State responsibility:** ARSIWA with the ILC Commentaries (2001) — the indispensable text.
- **Use of force:** the *Nicaragua*, *Oil Platforms*, and *Armed Activities* judgments, read in full with their separate opinions.
- **Human rights:** the treaty texts with the relevant committees' General Comments, via the OHCHR treaty-body database.
- **Humanitarian law:** the ICRC Customary IHL Study and the ICRC's updated Commentaries on the Geneva Conventions (icrc.org).
- **International criminal law:** the Rome Statute with the Elements of Crimes; the judgments in §12.7.
- **Fields not treated in this guide:** for the law of the sea, begin with UNCLOS itself and the ITLOS website; for state succession, the ILC's work on succession of states. Both follow naturally from Chapters 4 and 7.
- **History and critical approaches:** the Oxford Handbook above, and the multi-perspective textbook's critical chapters.

Bibliography and Authority Tables

The chapter Citation Registers identify the authorities supporting each chapter. This final section consolidates those authorities for publication. Pinpoint paragraph or page references are used selectively only where a passage quotes an authority, states a narrow holding, or directs the reader to a specific official source; the guide remains an introductory study aid, not a footnoted legal opinion.

Cases and Advisory Opinions

Aegean Sea Continental Shelf (Greece v Turkey), ICJ 1978 — Ch. 3

Akayesu, Prosecutor v, ICTR 1998 — Chs. 11, 12

Al-Bashir (Jordan Referral), Prosecutor v, ICC App. Ch. 2019 — Ch. 11

Armed Activities on the Territory of the Congo (DRC v Uganda), ICJ 2005 — Chs. 8, 10, 12

Arrest Warrant of 11 April 2000 (DR Congo v Belgium), ICJ 2002 — Chs. 5, 11, 12

Asylum (Colombia v Peru), ICJ 1950 — Chs. 2, 12

Avena and Other Mexican Nationals (Mexico v US), ICJ 2004 — Chs. 5, 7, 12

Barcelona Traction (Belgium v Spain), ICJ 1970 — Chs. 2, 6, 7, 9, 12

Bosnian Genocide (Bosnia and Herzegovina v Serbia and Montenegro), ICJ 2007 — Chs. 6, 11, 12

Chagos Archipelago (Advisory Opinion), ICJ 2019 — Chs. 4, 7, 12

Chorzów Factory (Germany v Poland), PCIJ 1928 — Chs. 6, 12

Corfu Channel (UK v Albania), ICJ 1949 — Chs. 6, 12

East Timor (Portugal v Australia), ICJ 1995 — Chs. 4, 7, 12

Frontier Dispute (Burkina Faso v Mali), ICJ 1986 — Chs. 4, 12

Gabčíkovo-Nagymaros Project (Hungary v Slovakia), ICJ 1997 — Chs. 3, 6, 12

Island of Palmas (Netherlands v US), PCA 1928 — Chs. 4, 12

Jurisdictional Immunities of the State (Germany v Italy), ICJ 2012 — Chs. 2, 5, 12

Kasikili/Sedudu Island (Botswana v Namibia), ICJ 1999 — Chs. 3, 12

Katanga, Prosecutor v, ICC 2014 — Ch. 11

Kosovo (Unilateral Declaration of Independence, Advisory Opinion), ICJ 2010 — Chs. 4, 12

Krstić, Prosecutor v, ICTY 2004 — Chs. 11, 12

Kunarac, Prosecutor v, ICTY 2002 — Ch. 11

LaGrand (Germany v US), ICJ 2001 — Chs. 3, 5, 7, 12

Lotus, The S.S. (France v Turkey), PCIJ 1927 — Chs. 1, 5, 12

Lubanga, Prosecutor v, ICC 2012 — Chs. 11, 12

Monetary Gold Removed from Rome in 1943, ICJ 1954 — Chs. 7, 12

Nicaragua, Military and Paramilitary Activities (Nicaragua v US), ICJ 1984 (jurisdiction), 1986 (merits) — Chs. 1, 2, 6, 7, 8, 12

North Sea Continental Shelf (Germany v Denmark; Germany v Netherlands), ICJ 1969 — Chs. 2, 12

Nottebohm (Liechtenstein v Guatemala), ICJ 1955 — Chs. 4, 7, 12

Ntaganda, Prosecutor v, ICC 2019 — Chs. 11, 12

Nuclear Weapons, Legality of the Threat or Use of (Advisory Opinion), ICJ 1996 — Chs. 1, 7, 8, 9, 10, 12

Occupied Palestinian Territory, Legal Consequences arising from the Policies and Practices of Israel in the (Advisory Opinion), ICJ 2024 — Ch. 4

Oil Platforms (Iran v US), ICJ 2003 — Chs. 8, 12

Paquete Habana, The, US Supreme Court 1900 — Chs. 2, 12

Pinochet (No 3), R v Bow Street Magistrate, ex parte, UK House of Lords 1999 — Chs. 5, 11, 12

Qatar v Bahrain, Maritime Delimitation and Territorial Questions, ICJ 1994 — Chs. 3, 12

Reparation for Injuries (Advisory Opinion), ICJ 1949 — Chs. 1, 4, 12

Reservations to the Genocide Convention (Advisory Opinion), ICJ 1951 — Chs. 3, 12

Soering v United Kingdom, ECtHR 1989 — Chs. 9, 12

Tadić, Prosecutor v, ICTY 1995 (jurisdiction), 1999 (appeal) — Chs. 10, 11, 12

Tehran Hostages, US Diplomatic and Consular Staff in Tehran (US v Iran), ICJ 1980 — Chs. 5, 6, 12

Velásquez Rodríguez v Honduras, IACtHR 1988 — Chs. 9, 12

Wall, Legal Consequences of the Construction of a (Advisory Opinion), ICJ 2004 — Chs. 4, 6, 7, 8, 9, 10, 12

Western Sahara (Advisory Opinion), ICJ 1975 — Chs. 4, 12

Wimbledon, The S.S., PCIJ 1923 — Chs. 1, 12

Treaties and Instruments

Additional Protocols I and II to the Geneva Conventions, 1977 — Ch. 10

African Charter on Human and Peoples' Rights, 1981 — Ch. 9

American Convention on Human Rights, 1969 — Ch. 9

Convention against Torture (CAT), 1984 — Chs. 5, 9

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 — Ch. 9

Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965 — Ch. 9

Convention on the Rights of Persons with Disabilities (CRPD), 2006 — Ch. 9

Convention on the Rights of the Child (CRC), 1989 — Ch. 9

European Convention on Human Rights (ECHR), 1950 — Ch. 9

Geneva Conventions I–IV, 1949 — Chs. 10, 11

Genocide Convention, 1948 — Chs. 3, 11

Hague Regulations, 1907 — Ch. 10

ICJ Rules of Court, art. 38(5) — Ch. 7

International Covenant on Civil and Political Rights (ICCPR), 1966 — Chs. 4, 9

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 — Chs. 4, 9

Montevideo Convention on the Rights and Duties of States, 1933 — Ch. 4

Rome Statute of the International Criminal Court, 1998 — Chs. 8, 10, 11

Statute of the International Court of Justice, 1945 — Chs. 1, 2, 7

UN Charter, 1945 — throughout; esp. Chs. 1, 2, 7, 8

UN Convention on Jurisdictional Immunities of States and Their Property, 2004 (not yet in force) — Ch. 5

Vienna Convention on Consular Relations (VCCR), 1963 — Ch. 5

Vienna Convention on Diplomatic Relations (VCDR), 1961 — Ch. 5

Vienna Convention on the Law of Treaties (VCLT), 1969 — Chs. 1, 2, 3

UN Resolutions, Declarations, and Institutional Materials

Definition of Aggression, UNGA Res 3314 (XXIX), 1974 — Ch. 8

Friendly Relations Declaration, UNGA Res 2625 (XXV), 1970 — Chs. 2, 4, 8

Security Council Resolution 1368 (2001) — Ch. 8

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UN Declaration on the Rights of Indigenous Peoples, 2007 — Ch. 4

Universal Declaration of Human Rights, UNGA Res 217 A (III), 1948 — Chs. 1, 9

World Summit Outcome, UNGA Res 60/1, 2005 — Ch. 8

ILC Materials

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ILC, Draft Articles on Diplomatic Protection, with Commentaries, 2006 — Ch. 7

ILC, Draft Conclusions on Identification of Customary International Law, 2018 — Ch. 2

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Nuremberg Principles (ILC), 1950 — Ch. 11

ICRC Materials

ICRC, Customary International Humanitarian Law Study, 2005 — Ch. 10

ICRC, updated Commentaries on the Geneva Conventions — Recommended resource

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A. Aust, *Handbook of International Law* (2nd ed., Cambridge University Press, 2010)

S. González Hauck, R. Kunz and M. Milas (eds), *Public International Law: A Multi-Perspective Approach* (1st ed., Routledge, 2024)

B. Fassbender and A. Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012)

Official Databases and Research Tools

UN Treaty Collection — treaties.un.org

International Law Commission texts and commentaries — legal.un.org/ilc

UN Audiovisual Library of International Law — legal.un.org/avl

UN documents — documents.un.org; undocs.org

International Court of Justice and PCIJ archive — icj-cij.org

International Criminal Court — icc-cpi.int

International Tribunal for the Law of the Sea — itlos.org

IRMCT Unified Court Records — ucr.irmct.org

European Court of Human Rights, HUDOC — hudoc.echr.coe.int

Inter-American Court of Human Rights — corteidh.or.cr

African Court on Human and Peoples' Rights — african-court.org

Office of the United Nations High Commissioner for Human Rights, treaty bodies — ohchr.org

International Committee of the Red Cross — icrc.org

Final revision checklist

You are ready when you can, without opening the guide:

1. identify the source of a legal rule;
2. distinguish treaty law from custom;
3. identify state practice and opinio juris;
4. interpret a treaty using Articles 31–33;
5. distinguish statehood from recognition;
6. distinguish jurisdiction from enforcement;
7. distinguish jurisdiction from immunity;
8. establish attribution and breach;
9. distinguish responsibility from enforcement;
10. identify a basis of ICJ jurisdiction;
11. analyse a self-defence claim;
12. distinguish IHRL, IHL, and ICL;
13. classify an armed conflict;
14. distinguish an IHL breach from a war crime;
15. apply ICC jurisdiction and complementarity;
16. separate state responsibility from individual criminal responsibility.

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DiplomacyandLaw.com is a website on public international law and international relations, written for students, diplomats, and professionals working with the legal frameworks that govern relations between states. It covers many of the subjects introduced in this guide — treaties, courts, state responsibility, and the law of force, human rights, and armed conflict — in more detail and with continuing updates as the law develops. Readers who want to go further than this guide's introductory scope, or who are researching a specific current question, will find longer-form articles and analysis there. Visit DiplomacyandLaw.com.

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