

LOCAL CUSTOMARY INTERNATIONAL LAW

ASYLUM CASE (COLUMBIA VS PERU)

The discussions of the International Court of Justice (ICJ) regarding Local Customary International Law in the *Colombian-Peruvian Asylum Case (1949)* revolve around whether Colombia had the right to grant asylum to a Peruvian national and whether Peru was obligated to issue a safe-conduct for the individual to leave the country.

The key points related to Local Customary International Law in this case include:

1. **Application of American International Law:** Colombia argued that asylum was a recognized practice under American regional international law, referencing treaties such as the Bolivarian Agreement on Extradition (1911) and the Convention on the Right of Asylum (1928). The ICJ examined whether these treaties established a legal obligation that could be considered customary law.
2. **Qualification of the Offense:** A major issue was whether the state granting asylum (Colombia) had the right to unilaterally determine the nature of the offense committed by the asylum seeker. The Court analyzed whether this practice had become a customary rule binding on Peru.
3. **Lack of Uniform State Practice:** The ICJ ruled that there was no consistent and uniform state practice in Latin America to establish a customary rule granting the asylum-granting state the power to classify the offense. The Court emphasized that for a local custom to exist, there must be widespread and consistent practice accepted as law (*opinio juris*).
4. **Territorial Sovereignty vs. Diplomatic Asylum:** The Court upheld Peru's position that asylum could not be used to bypass the territorial state's legal process unless there was a clear customary or treaty-based obligation. Since no widespread and obligatory local custom was proven, the ICJ ruled in favor of Peru.

Conclusion:

The ICJ's ruling in the *Colombian-Peruvian Asylum Case* set a high threshold for proving Local Customary International Law. The Court held that mere regional practice is insufficient unless it is consistent, widespread, and accepted as law by the states concerned. Consequently, Colombia's claim

based on regional custom was rejected due to the lack of evidence of uniform and obligatory practice.

THE PERSISTENT OBJECTOR

ANGLO-NORWEGIAN FISHERIES CASE

The concept of the **persistent objector** was notably discussed in the *Anglo-Norwegian Fisheries Case (1951)* before the International Court of Justice (ICJ).

How the Persistent Objector Rule Was Discussed in the Case

1. Norway's Consistent Rejection of Certain International Rules:

- The United Kingdom argued that Norway's method of drawing baselines for territorial waters was inconsistent with general international law.
- Norway, however, countered that it had consistently **rejected** any rule that did not align with its historic practices regarding maritime delimitation.
- The ICJ took into account that Norway had **persistently objected** to contrary rules and had maintained a **consistent and long-standing practice** of applying its own system for determining fishing zones.

2. Recognition of a Persistent Objector in Customary Law:

- The Court ruled that even if a rule of customary international law existed regarding baseline measurements, Norway **was not bound by it** because it had consistently opposed its application within its territory.
- This ruling affirmed the **persistent objector doctrine**, which allows a state to avoid being bound by a customary international law rule if it **consistently and clearly objects** to it while that rule is developing.

3. Impact on Customary International Law:

- The case reinforced that customary international law is binding only on states that have not **persistently objected** during its formation.
- Norway's resistance to certain principles of maritime law was considered valid because it was consistent and recognized over time.

Conclusion

The *Anglo-Norwegian Fisheries Case* became a key precedent for the **persistent objector rule**, demonstrating that a state can opt out of a developing customary rule by **continuously and clearly objecting** to it. The ICJ's decision upheld Norway's claim, highlighting that persistent objection must be clear, consistent, and made before the rule becomes widely accepted.

NORTH SEA CONTINENTAL SHELF CASE

In the *North Sea Continental Shelf Case (1969)*, the **persistent objector** doctrine was discussed in the context of customary international law. The case involved a dispute between Germany, Denmark, and the Netherlands over the delimitation of the continental shelf in the North Sea.

How the Persistent Objector Rule Was Discussed:

1. Germany's Opposition to the Equidistance Principle:

- Denmark and the Netherlands argued that the **equidistance principle** (which determines maritime boundaries based on equal distance from the coasts) was a rule of customary international law.
- However, Germany **consistently objected** to this principle and refused to accept it as binding in its territorial delimitations.

2. ICJ's Recognition of the Persistent Objector Rule:

- The Court examined whether the **equidistance principle** had become a customary rule of international law.
- It held that even if such a rule existed, **Germany was not bound by it** because it had persistently objected to its application.

- The ruling confirmed that **a state that persistently objects to an emerging customary rule from the outset is not bound by it** once it is established.

3. Implications for Customary International Law:

- The case reinforced the idea that for a rule to be customary, **it must be accepted by states as binding (opinio juris) and followed in practice.**
- If a state persistently and clearly **objects** to a rule while it is still developing, it is not bound by that rule in the future.
- Germany's position was considered valid because its objection was **consistent, clear, and made at the time the rule was forming.**

Conclusion:

The *North Sea Continental Shelf Case* was a landmark ruling that confirmed the **persistent objector doctrine** as a valid principle in international law. It demonstrated that **states have the right to reject the formation of a customary rule if they object persistently and from the beginning.**

TREATIES

THE RELATIONSHIP OF CUSTOMARY INTERNATIONAL LAW AND TREATY LAW

NORTH SEA CONTINENTAL SHELF CASE

In the *North Sea Continental Shelf Case* (1969), the **International Court of Justice (ICJ)** addressed the relationship between **customary international law** and **treaty law**, particularly in the context of whether the equidistance principle, as outlined in Article 6 of the 1958 Geneva Convention on the Continental Shelf, had become a binding rule of customary international law.

ICJ's Explanation of the Relationship Between Customary International Law and Treaty Law:

1. Treaty Provisions Do Not Automatically Become Customary Law

- The Court emphasized that a rule contained in a treaty **does not automatically become a rule of customary international law** just because it is included in an international agreement.

- For a treaty rule to evolve into a **customary norm**, it must meet the requirements of customary international law: **widespread state practice and opinio juris (a belief that the rule is legally binding)**.

2. Customary Law Requires Consistent and General Practice

- The ICJ examined whether the **equidistance principle** (stated in Article 6 of the 1958 Geneva Convention) had become a customary rule.
- The Court ruled that the principle had **not** acquired the status of customary law because it had **not been followed by a sufficiently large number of states with the belief that it was a binding legal obligation (opinio juris)**.
- Some states, including Germany, had consistently **objected** to the equidistance principle, which prevented it from becoming a universal customary rule.

3. Treaty Law Can Influence Customary Law but Requires State Acceptance

- The Court acknowledged that treaty provisions **can contribute to the development of customary international law**, but only when they are widely and consistently followed by states **outside the treaty framework**.
- If states apply a treaty rule in practice, even when they are not legally obligated by the treaty itself, this can **help establish a new customary rule**.

4. Customary Law Applies Universally, While Treaties Bind Only Parties

- The Court highlighted that **treaties only bind the states that are parties to them**, whereas **customary international law applies universally**, including to states that have not signed a particular treaty.
- Since Germany was not a party to the **1958 Geneva Convention**, it could not be bound by Article 6 **unless it had become a rule of customary law**, which the Court found it had not.

ICJ's Conclusion on the Relationship:

- **Treaty law and customary international law are separate sources of international law.**

- **A treaty rule does not automatically become customary law**—it requires widespread state practice and **opinio juris**.
- **Customary law can influence treaty law, and vice versa**, but state consent and consistent practice are crucial for a treaty norm to become universally binding.

Impact of the Decision:

The ruling clarified that **not all treaty provisions create binding customary norms**, reinforcing the **importance of state practice and legal acceptance** in shaping customary international law.

MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA

The *Nicaragua v. United States* case (1986) before the **International Court of Justice (ICJ)** is a crucial decision regarding the relationship between **customary international law** and **treaty law**. The Court addressed this issue while determining whether the United States had violated international law through its military and paramilitary actions against Nicaragua.

ICJ's Explanation of the Relationship Between Customary International Law and Treaty Law

1. Customary Law Exists Independently of Treaty Law

The ICJ clarified that customary international law **exists separately from treaty law**. Even if a rule is written in a treaty, it can **still exist as customary international law**, binding on states that are not parties to the treaty.

- The Court examined **Article 2(4) of the UN Charter**, which prohibits the use of force, and **Article 51**, which recognizes the right to self-defense.
- It found that these principles had also **become customary law**, meaning they applied to all states, including the United States, even if the US disputed certain treaty obligations.

2. Customary Law Can Be Identified Through State Practice and Opinio Juris

- The Court emphasized that to determine whether a treaty rule has also become customary law, it must examine:
 1. **State Practice** – Whether states follow the rule consistently.

2. **Opinio Juris** – Whether states believe they are legally obligated to follow the rule.

- The ICJ ruled that the prohibition on the **use of force and intervention in other states' affairs** had become a customary rule because states broadly followed and recognized it as legally binding.

3. Treaties Can Reinforce or Reflect Customary Law

- The ICJ noted that treaties **can codify existing customary law or contribute to its development**.
- Even if a state does not sign a treaty, it may still be bound by the underlying customary rules if those rules have been **widely accepted and practiced**.
- In the *Nicaragua* case, the **prohibition on the use of force and non-intervention** was found to be binding as **customary international law**, even though the US argued that it was only bound by treaties like the UN Charter and the OAS Charter.

4. Customary Law Prevails Even If a State Withdraws from a Treaty

- The US had attempted to modify its declaration accepting ICJ jurisdiction. However, the Court ruled that this did **not affect the customary rules on the use of force**, which remained binding regardless of treaty commitments.
- Even though the US rejected ICJ jurisdiction over treaty-based claims, it was still bound by **customary international law prohibiting the use of force**.

Dissenting Opinion of Judge Jennings

Judge **Sir Robert Jennings** dissented, arguing that:

1. Customary Law and Treaty Law Should Be Kept Separate

- He questioned whether the Court could rely on the **same evidence** (such as state practice) to establish both a treaty obligation and a customary law obligation.
- He was concerned that **treaty rules were being automatically assumed to be customary law** without sufficient independent evidence.

2. State Practice Was Not Consistent Enough

- He doubted whether there was enough **uniform and consistent** state practice to prove that all elements of the UN Charter's use-of-force rules had become **customary law**.
- The inconsistent behavior of states, including Nicaragua itself, suggested that some rules were **not universally accepted in practice**.

3. The Court's Approach to Customary Law Was Too Broad

- He argued that the ICJ was **too flexible** in determining what constituted customary law, making it difficult to distinguish between **binding legal obligations and mere political statements**.

Conclusion

The ICJ's ruling in *Nicaragua v. United States* reinforced that **customary international law and treaty law are distinct but interconnected**. A treaty rule **can become customary law**, but it must be supported by widespread **state practice and opinio juris**. Even if a state **is not a party to a treaty or withdraws from it**, it can still be bound by **customary international law** if the rule has become universally accepted.

TREATY AS EVIDENCE OF CUSTOMARY NORM

NOTTEBOHM CASE

Digest of the *Nottebohm* Case

Facts:

- Friedrich Nottebohm was a **German national** who had lived in Guatemala for several decades.
 - In 1939, shortly before World War II, he applied for **Liechtenstein nationality**, which was granted **through naturalization**.
 - Guatemala, however, refused to recognize Nottebohm as a Liechtenstein national and **seized his property** during the war, treating him as a German enemy.
 - Liechtenstein filed a case before the **ICJ**, claiming **diplomatic protection** for Nottebohm against Guatemala's actions.
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ICJ's Ruling on Treaty Law as Evidence of Customary Law

1. Customary Law and Treaty Law Are Distinct

- The Court emphasized that **treaty law does not automatically become customary international law**.
- A treaty may **reflect existing customary rules**, but it must be shown that states **consistently follow it with a belief that it is legally binding (opinio juris)**.

2. Treaties as Evidence of Customary Law

- The ICJ **examined whether international agreements on nationality** (such as the Hague Convention on Nationality) had become **customary international law**.
- It ruled that **not all treaty rules have automatic customary status**—only those that are widely accepted and followed in practice.

3. No Automatic Recognition of Nationality by Other States

- The ICJ ruled that nationality, as a **legal bond**, must have a **genuine connection (real and effective link)** between the person and the state granting nationality.
- The Court found that **Nottebohm had no real connection to Liechtenstein**, so Guatemala was not required to recognize his nationality under customary international law.

Conclusion

The *Nottebohm* case reinforced that:

- **Treaty provisions do not automatically become customary international law.**
- **For a treaty rule to be customary, it must be widely accepted and followed by states with opinio juris.**
- **States are not obligated to recognize nationality granted in bad faith under customary international law.**

CONCLUSIONS OF INTERNATIONAL CONFERENCES

NAMIBIA OPINION, ICJ REPORTS (1971)

Digest of the *Namibia Advisory Opinion (1971)* (ICJ)

Facts:

- The case arose from South Africa's continued administration of **South West Africa (now Namibia)**, despite the United Nations revoking its mandate over the territory.
 - The **League of Nations** had given South Africa a **mandate** to govern Namibia, but after the **UN replaced the League**, South Africa refused to acknowledge UN authority over the region.
 - The UN Security Council passed **Resolution 276 (1970)**, declaring South Africa's presence **illegal** and requesting the ICJ's opinion on the matter.
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ICJ Ruling on the Conclusions of International Conferences

4. Legal Effect of International Conferences' Conclusions

- The ICJ ruled that **resolutions and declarations from international conferences can have legal significance**, especially when they reflect **widespread state practice and 10pinion juris**.
- The Court emphasized that **UN General Assembly and Security Council resolutions**—if widely accepted—can help interpret and develop **customary international law**.

2. Binding Nature of Certain UN Resolutions

- Although General Assembly resolutions are typically **non-binding**, the ICJ stated that when they reflect **consistent state practice**, they may contribute to customary law.
- Security Council **resolutions passed under Chapter VII of the UN Charter** are legally binding on member states.

5. South Africa's Presence in Namibia Was Illegal

- The ICJ ruled that **South Africa had no right to continue governing Namibia**, as the UN had **legally revoked** its mandate.
 - The Court held that **states were obligated not to recognize or assist South Africa's rule in Namibia**.
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Conclusion

The *Namibia Opinion* (1971) reinforced that:

- **Resolutions and conclusions of international conferences can have legal significance**, especially when they reflect **widespread acceptance and opinion juris**.
- **Security Council resolutions under Chapter VII are binding**, while General Assembly resolutions may contribute to **customary law**.
- **States must not recognize illegal situations** created by violations of international law.

RESOLUTIONS OF THE UNITED NATIONS GENERAL ASSEMBLY

SOUTH WEST AFRICA CASES (SECOND PHASE) ICJ REPORTS (1966); SEE DISSENTING OPINIONS OF TANAKA AND JESSUP

Digest of the South West Africa Cases (Second Phase) (ICJ Reports, 1966)

Case Overview:

The *South West Africa Cases (Second Phase)* (1966) were brought before the **International Court of Justice (ICJ)** by **Ethiopia** and **Liberia** against **South Africa** regarding its administration of **South West Africa** (now Namibia), which was a former German colony. Following the **end of World War I**, the League of Nations granted **South Africa a mandate** to administer South West Africa. However, after World War II, the United Nations (UN) replaced the League of Nations, and South Africa refused to accept the United Nations' authority over the territory.

The case focused on whether South Africa was violating its international obligations under the mandate and whether its administration of South West Africa was illegal. Ethiopia and Liberia argued that South Africa's continued occupation and administration of South West Africa were unlawful, while South Africa contended that it had the right to administer the territory according to its own discretion.

Issues at Stake:

1. Whether South Africa was violating its obligations under the **League of Nations Mandate** and later the **UN Charter**.
2. Whether the **UN General Assembly resolutions** on South West Africa had any legal effect.
3. Whether Ethiopia and Liberia had the legal standing to bring the case before the ICJ.

ICJ's Decision Regarding Resolutions of the United Nations General Assembly:

Resolutions of the UN General Assembly and Their Legal Significance:

In its decision, the ICJ addressed the **legal effect** of **UN General Assembly resolutions**:

- The **ICJ ruled that resolutions of the UN General Assembly**, while important, are **non-binding**. General Assembly resolutions do not have the force of law like **Security Council resolutions**.
- However, the Court emphasized that **General Assembly resolutions can still be highly influential**, especially in shaping **customary international law**. In this case, the ICJ noted that **the General Assembly's resolution on South West Africa** reflected the international community's **opinion** that South Africa's administration of the territory was **illegal** under international law.
- The **ICJ found that while these resolutions are not legally binding, they provide a clear indicator of the prevailing legal position and can influence the development of customary international law**.

Findings on the Application of the UN Charter:

- The **ICJ ruled that South Africa's actions were in violation of international law**, as it was not complying with the **obligations under the UN Charter** and the **trusteeship system** that replaced the League of Nations mandate.
- **The Court found that the UN General Assembly's repeated resolutions condemning South Africa's policies toward South West Africa were a reflection of international opinion** but were not legally enforceable by themselves. They did, however, influence the **ICJ's interpretation of customary law**.

Dissenting Opinions:

Judge Tanaka's Dissenting Opinion:

- **Judge Tanaka** dissented from the majority opinion, **arguing that the ICJ should have found South Africa in violation of the law, even in the absence of a binding legal framework.**
- He believed that the case presented an issue of **international law concerning the administration of territories** and that **South Africa's policies had already been effectively condemned by the UN General Assembly** and other international bodies, making further legal analysis unnecessary.

Judge Jessup's Dissenting Opinion:

- **Judge Jessup** also dissented, disagreeing with the Court's approach to the **non-binding nature of the UN General Assembly's resolutions.** He argued that the **resolutions carried significant legal weight**, especially when the **UN had already recognized the illegality of South Africa's actions** in South West Africa.
- Jessup contended that **the Court had failed to fully consider the broader political and legal implications of the resolutions** and their role in international law.

Conclusion:

The *South West Africa Cases (Second Phase)* reinforced the idea that while **UN General Assembly resolutions** are not legally binding, they carry **political weight** and contribute to the formation of **customary international law**. The ICJ did not hold South Africa accountable solely on the basis of these resolutions, but they provided important context for the Court's interpretation of **international law** regarding the administration of territories under foreign control.

The **ICJ's ruling** underscored that **General Assembly resolutions are crucial in expressing the collective will of the international community** but do not carry the **binding force of law** in the same way as Security Council resolutions or international treaties.