
ARTICLES

An International Jurisprudence? The Operation of “Precedent” Across International Tribunals*

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Abstract. Amid the proliferation of international judicial and quasi-judicial bodies, worries about the possible fragmentation of international law are increasing. Such fears, however, may be misplaced. A close examination of the jurisprudence of nine international judicial bodies, looking specifically for instances of explicit reference to one another’s decisions, shows the practice to be widespread, of variable frequency and covering both procedural and substantive issues. Taken in conjunction with other scholarship about the similar treatment of important doctrines across all (or most) bodies, this study suggests that unity, not fragmentation, may emerge from the proliferation of international courts and tribunals.

1. INTRODUCTION

International law is in the midst of a period of explosive growth. Since the end of World War II, and especially in the last ten years, the number and diversity of international tribunals and quasi-judicial bodies charged with the interpretation of international law have increased beyond all prediction. In the last decade, we have seen the creation of the International Criminal Tribunal for the former Yugoslavia (‘ICTY’), the International Criminal Tribunal for Rwanda (‘ICTR’), the International Tribunal for the Law of the Sea (‘ITLOS’), the Dispute Settlement Panels of the World Trade Organization (‘WTO’), the Dispute Settlement Panels of the North American Free Trade Association (‘NAFTA’), the Court of Justice of the Common Market for Eastern and Southern Africa, the Common Court of Justice and Arbitration for the Harmonization of Corporate Law in Africa, the Organization for Security and Co-operation in Europe Court of Conciliation and Arbitration and, arguably, the full-time European Court

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of Human Rights ('ECHR').^{1,2} Most recently, the necessary 60th ratification of the Rome Statute of the International Criminal Court was deposited; the Statute will come into force on 1 July 2002, and the Court is expected to become operational in early 2003. Furthermore, the role of national courts in the enforcement of international law is rapidly expanding.³

The number and variety of those governed by international law have undergone a similar expansion. In the not-so-distant past, it was accepted doctrine that states were the sole subjects of international law; that distinction is no longer theirs alone. Private individuals, multinational corporations, and intergovernmental and nongovernmental organizations are now universally recognized as having rights and obligations under international law.

Celebrating the burgeoning complexity of international law, Thomas M. Franck noted that "[l]ike any maturing legal system, international law has entered its post-ontological era. Its lawyers no longer need to defend the very existence of international law."⁴ In the very next sentence, he argues that "[t]hus emancipated from the constraints of defensive ontology, international lawyers are now free to undertake a critical assessment of its content."⁵ Yet perhaps this jubilant sense of emancipation is premature; the very complexity which ushered in the post-ontological era of international law seems to have engendered a deep uncertainty about its structure and content. This uncertainty is evidenced by the number of developments in the past several years that have taken the international community completely by surprise. Who would have thought, before 1993, that the Security Council could exercise its Chapter VII powers to create *one* – much less two – independent international criminal tribunals? That one of them would indict a then-current head of state for war crimes and crimes against humanity, then actually manage to bring him to trial? Could anyone seriously have anticipated the strength of the support – even in the face of US opposition – for the Statute of the International Criminal Court? That aliens would have an increasingly well-settled right to bring claims in US courts for human rights violations committed abroad? That the House of Lords would be prepared to extradite Augusto Pinochet to Spain to stand trial for crimes against humanity?

Aside from the shocks delivered to the international community by the

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1. Although the Court itself has yet to be established, pending ratification of the Treaty, the passage of the 1998 Rome Statute of the International Criminal Court can be seen as another significant development in this vein.
 2. See The Project On International Courts and Tribunals, *The International Judiciary in Context*, available at <http://www.pict-pcti.org/publications/PICT.Synoptic.Chart.2.0.pdf> (last visited 15 April 2002).
 3. The effects of the Pinochet decision were quickly felt. Shortly thereafter, a Senegalese court indicted Hissein Habre on charges of torture. See, e.g., *Ex-Chad Dictator Indicted in Senegal*, available at <http://www.hrw.org/press/2000/02/hab023.htm> (last visited 15 April 2002).
 4. T.M. Franck, *Fairness in International Law and Institutions* 6 (1995).
 5. *Id.*

rapid development of international law, a sense of uncertainty can be seen in current scholarship. In a recent special issue of New York University's *Journal of International Law and Politics*,

the initial question confronted by the contributors [was] whether the proliferation of international courts and tribunals, in a horizontal legal arrangement lacking in hierarchy and sparse in any formal structure of relationships among these bodies, is fragmenting or system-building in its effects on international law.⁶

While most of the contributors to this issue, including Jonathan I. Charney,⁷ Pierre-Marie Dupuy⁸ and Georges Abi-Saab,⁹ agree that the effects of proliferation will be system-building, the urgency is if the question points to the lack of a clear understanding among legal scholars of the state (or the existence) of the international legal system. Nor is their positive view by any means universal. Many believe that a multiplicity of tribunals, "lacking in hierarchy and sparse in any formal structure of relationships," is a recipe for conflict, illegitimacy and fragmentation. As Judge Mohamed Shahabuddeen of the ICTY (formerly of the ICJ) noted:

The adjudicating machinery on the international plane consists of a number of tribunals, some instituted on a bilateral basis, others on a multilateral basis, but with nothing to hold them together in a coherent system. They all make decisions which influence the development of international law. If that influence can amount to law-making in the case of all of them, the absence of a hierarchical order is a prescription for conflicting precepts.¹⁰

Indeed, the International Law Commission, acting on the proposal of Prof. Gerhard Hafner of Austria, recently added to its long-term programme of

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6. B. Kingsbury, *Foreword: Is the Proliferation of International Courts and Tribunals a Systemic Problem?*, 31 N.Y.U. J. Int'l L. & Pol. 679, at 680 (1999).
 7. J.I. Charney, *The Impact on the International Legal System of the Growth of International Courts and Tribunals*, 31 N.Y.U. J. Int'l L. & Pol. 697 (1999) (arguing that a vast array of international tribunals have arrived at similar understandings of several areas of international law); see also J.I. Charney, *Is International Law Threatened by Multiple International Tribunals?*, 271 *Recueil des cours* 101 (1998).
 8. P.-M. Dupuy, *The Danger of Fragmentation or Unification of the international Legal System and the International Court of Justice*, 31 N.Y.U. J. Int'l L. & Pol. 791 (1999) (arguing that there is a unified international legal system, as "legal system" was understood by H.L.A. Hart, and calling for the International Court of Justice ('ICJ') to take a greater role in defining and managing international jurisprudence).
 9. G. Abi-Saab, *Fragmentation or Unification: Some Concluding Remarks*, 31 N.Y.U. J. Int'l L. & Pol. 919 (1999) (arguing that, even without a central organizing principle, unity may be found in diversity).
 10. M. Shahabuddeen, *Precedent in the World Court* 67 (1996). Jonathan Charney also noted the prevalence of this view, though he too is against it:

It is suggested that the development of a multitude of separate forums without a supreme international court to provide definitive interpretations of international law may place the entire system at risk. A wide diversity of opinions on international law by international dispute resolution panels would damage the credibility and legitimacy of this system of law.

work "The risk of fragmentation of international law."¹¹ In a similar vein, Judge Robert Guillaume, the President of the ICJ, recently spoke of the need for more coordination of jurisdictions.¹²

There will always be debate in international law, as in all other areas of concern to intelligent people with diverse perspectives; in this respect, silence would be a cause for worry. But the consistency with which international law surprises those most intimately involved in its development and the difficulty scholars are having coming to terms with its institutional arrangements are not merely polite disagreements about the correct analytical approach, or discussions of what court X *really* said in opinion Y. They evince a deep uncertainty about the basic features of international law.

The benefits of freedom from "defensive ontology" cannot be overstated, nor can the implications of international law's new status. It seems, however, that the very complexity that defines the post-ontological era of international law demands the answer to its own question every bit as urgently as the simplicity of the previous era demanded the answer to the question of whether international law really was "law": What does international law look like?¹³ More specifically, who are the new relevant players? What are their motivations; according to what principles do they organize their behavior? What are the dynamics of their interactions? Can a recognizable pattern, consistent over time, be discerned from the sum of those interactions? The answering of these questions has barely begun, and will require an intense, multidisciplinary and multinational effort.

This paper will attempt to address some of these questions in the context of the proliferation of international tribunals. Specifically, it will examine the dynamics of the interactions between a given subset of international actors – tribunals – and will try to tease a pattern out of those interactions. To that end, it will adopt a practical ("empirical" if the term is used loosely) approach similar – though more modest in scope – to the one used

11. See Report of the International Law Commission on its Fifty-second Session, UN Doc. A/55/10 (1 May–9 June and 10 July–18 August 2000), at 321.

12. See G. Guillaume, *The Proliferation of International Judicial Bodies: The Outlook for the International Legal Order*, Speech by His Excellency Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the General Assembly of the United Nations (27 October 2000), available at http://www.icj-cij.org/icjwww/ipresscom/SPEECHES/iSpeechPresident_Guillaume_SixthCommittee_20001027.htm (last visited 15 April 2002).

13. Prof. Franck acknowledged this, perhaps indirectly, in the same breath with which he praised the dawn of the new era:

With new opportunities come new challenges! The questions to which the international lawyer must now be prepared to respond, in this post-ontological era, are different from the traditional inquiry: whether international law is law. Instead, we are now asked: Is international law effective? Is it enforceable? *Is it understood?* And, the most important question, is international law fair?

Franck, *supra* note 4 (emphasis added).

by Jonathan I. Charney in his Hague Lectures.¹⁴ Looking for similarities in their approaches to international law, Prof. Charney surveyed the case law of the ICJ, the ECHR, the Court of Justice of the European Communities ('ECJ'), the Inter-American Court of Human Rights ('IACHR'), the WTO/General Agreement on Tariffs and Trade ('GATT') and NAFTA Dispute Settlement Panels, the Iran-U.S. Claims Tribunal, *ad hoc* and arbitral bodies, and the administrative tribunals of intergovernmental agencies. He found that these bodies agree (for the most part) in their understanding of the law of treaty interpretation and reservations, the sources of international law, state responsibility, compensation for violations of international legal obligations, exhaustion of domestic remedies, nationality and international maritime boundaries.¹⁵

This paper will survey the case law of the ICJ, the ECHR, the ECJ, the IACHR, the WTO Dispute Settlement Panels, the Iran-U.S. Claims Tribunal, the ITLOS, the ICTY and the ICTR looking, however, not for commonalities of result but for instances of one body referring to the decision of another.

After a discussion of methodology and terminology, Section 2 focuses on the dynamics of those interactions, analyzing them for range, frequency and type. Section 3 attempts to elicit a pattern from the interactions studied, and draws some preliminary conclusions about the structure of relationships among tribunals.

1.1. Methodology and terminology

1.1.1. Methodology

In the Introduction, some fundamental questions facing scholars and practitioners in the new era of international law were identified. In the context of international tribunals, this paper will address two of those questions: Given a particular set of actors, what are the dynamics of their interactions, and can any patterns be discerned therein?

The tribunals discussed were selected to provide a broad cross-section of standing international dispute settlement mechanisms – global and regional, permanent and *ad hoc* – covering a wide range of subject matter. Their *majority decisions only* were surveyed for instances of one tribunal explicitly referring to the decision of another. All interlocutory, interim, preliminary, reparations, final and appeals judgments were considered.

It should be noted that the primary unit of analysis is instances of reference, as opposed to cases wherein such references occurred. Often, a given tribunal will refer to the decisions of more than one of its counterparts in a single case, or it will refer to the decisions of the same (other)

14. Charney, *Is International Law Threatened by Multiple International Tribunals?*, *supra* note 7.

15. *See id.*

tribunal more than once. In those situations, references to multiple tribunals were counted separately, while multiple references to the same tribunal were counted separately only where definite distinction could be drawn. In *Interpretation of the American Declaration*,¹⁶ for instance, the IACHR cited, *inter alia*, *Barcelona Traction*¹⁷ and *United States Diplomatic and Consular Staff in Tehran*¹⁸ in support of the conclusion that "the duty to respect certain essential human rights [...] is today considered to be an *erga omnes* obligation."¹⁹ Though several cases were cited, this was counted as a single instance of reference to the ICJ. In the preceding paragraph, the Court had referred to *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*²⁰ in support of the general proposition that treaties must be interpreted in light of the current, as opposed to historical, judicial context.²¹ Since it was in support of a distinct (albeit related) proposition, this reference was counted as a separate instance. Quantitative analyses, when provided, will reflect this counting system.

One of the primary aims of this project is to illuminate, at least in part, the structure of the relationships among international tribunals. To that end, three questions will be asked: Who refers to whom? How often? And in what manner? The former two questions will be answered quantitatively and, given the number of results (a bit less than 200), briefly. It is hoped, nonetheless, that they will provide some insight. The latter discussion will be qualitative, focusing on distinctions in the way the tribunals refer to one another.

1.1.2. Terminology

Many readers will no doubt have noticed that the word "precedent" has yet to be used in this paper. "Precedent" is a loaded term, especially in international law. It is understood by many to refer to the doctrine of *stare decisis* – explicitly prohibited by the Statute of the ICJ²² and not generally understood to be a feature of international law.²³ To the extent that it is understood to refer to other practices, the term is ambiguous; it means

16. Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/90 of 14 July 1989, 1989 Inter-Am.Ct. H.R. (Ser. A) No. 10.

17. *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain)*, Second Phase, Judgment of 5 February 1970, 1970 ICJ Rep. 3.

18. *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, Judgment of 28 May 1980, 1980 ICJ Rep. 3.

19. Interpretation of the American Declaration, *supra* note 16, at 38.

20. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, Advisory Opinion of 21 June 1971, 1971 ICJ Rep. 16.

21. *See id.*, at 36.

22. *See* Statute of the International Court of Justice, Art. 59.

23. *See* Shahabuddeen, *supra* note 10.

different things in different legal systems and can have multiple meanings even within the same system, depending on the context in which it is used. In order to avoid the baggage and ambiguity associated with “precedent,” this paper will use the relatively unencumbered phrase “to refer.”

2. THE DYNAMICS OF THE INTERACTION

It may come as a surprise to those familiar with international tribunals as bodies “in a horizontal legal arrangement lacking in hierarchy and sparse in any formal structure of relationships” that those bodies are engaged in robust interaction. In all, there are 184 instances of international tribunals referring to one another’s decisions. The following discussion will show that the practice is widespread, of variable frequency and exceedingly diverse with respect to both the form and content of the references.

2.1. Range and frequency of the practice

Even the ICJ, famous for its disinclination to engage with other tribunals, has cited to decisions from outside its own jurisprudence – though not to the decisions of any of the other tribunals under consideration. In total, the ICJ has referred to the decisions of other tribunals 3 times – twice to the Central American Court of Justice (‘CACJ’) and once to the 1977 Anglo-French Arbitration.²⁴ It has been cited by the other tribunals under consideration 111 times.

The ECJ rivals the ICJ in paucity of references. In its over 8,600 judgments, it has referred to the decisions of other tribunals on only 13 occasions. This is a frequency approaching zero. Of those 13 references, 8 were to the ECHR and 5 to the ICJ.²⁵ Its decisions have been referred to 3 times.

In the considerably smaller jurisprudence of the ECHR, there are 8 instances of reference. It has referred to the decisions of the ECJ 3 times, to the decisions of the ICJ 3 times, and once each to the ICTY and IACHR.²⁶ Other tribunals have referred to the ECHR in 61 instances.

The IACHR, on the other hand, refers to other tribunals quite often. In the course of issuing 102 judgments,²⁷ it has referred to the decisions of other tribunals on 45 occasions. 29 of those citations were to the ICJ, 16 to the ECHR.²⁸ It has, in turn, been cited six times.

The ICTY, as well, frequently cites other tribunals. In 32 judgments (including judgments for contempt but not dissenting or separate opinions), it has referred to the decisions of the other tribunals under consideration

24. See *infra* Appendix A, Table 3.1, at p. 500.

25. See *id.*, Table 3.2, at p. 501.

26. See *id.*, Table 3.3, at p. 503.

27. Including advisory opinions as well as judgments on preliminary objections, merits and reparations.

28. See *infra* Appendix A, Table 3.4, at p. 504.

32 times – to the ICJ 13 times, to the ECHR 15 times, to the IACHR 3 times and to the Iran-U.S. Claims Tribunal once.²⁹ It has been referred to once, by the ECHR.³⁰

The ICTR has cited to other tribunals at least 13 times: 7 to the ICJ, 4 to the ECHR and 2 to the IACHR.³¹ Its judgments have not been referred to.³²

In the 200 reports issued by the Dispute Settlement Panels and Appellate Body of the WTO there are 23 instances of reference to the decisions of other tribunals, all of them to the ICJ.³³ There are no instances of reference to the decisions of the Panels.

The Iran-U.S. Claims Tribunal, in its nearly 800 Awards and Decisions, has referred to the jurisprudence of the ICJ on 26 occasions, and to the decisions of the ECHR on 3 occasions.³⁴ Its own decisions were referred to on one occasion.

In its brief history, the ITLOS has issued judgments and or orders in 10 cases, 3 of which cite to the decisions of the ICJ.³⁵ Its judgments have yet to be referred to by other tribunals.

From the preceding discussion, it can be seen that the practice of referring to the decisions of other tribunals is widespread and of widely variable frequency. Placed on a rough continuum of frequency of reference, the ICJ, ECJ and ECHR come in at close to zero, the Iran-U.S. Claims Tribunal is on the low end, the WTO Panels in the low middle, with the IACHR, ICTY and ITLOS showing a very high frequency of reference.

2.2. The diversity of the practice – form

The tribunals under consideration show a remarkable flexibility in the way they refer to one another. While most references are positive – in support of the reasoning of the referring tribunal – there are nine examples of one tribunal distinguishing the decision of another and two instances of a tribunal explicitly disagreeing with another. Examples of these negative references will be examined before moving into a discussion of the different types of positive reference.

In *The Queen v. Minister of Agriculture ex parte Anastasiou*, the ECJ distinguished an opinion of the ICJ. The ECJ was called upon to decide whether movement certificates issued by Turkey (with whom the EC did

29. *See id.*, Table 3.5, at p. 510.

30. If the decisions – as opposed to the judgments – are included, the numbers shift somewhat. An incomplete survey of those decisions adds another 18 instances of reference, 15 to the ECHR and 3 to the ICJ.

31. For the ICTR alone, the author relied on a commercial database; it is therefore impossible to guarantee the completeness of the data.

32. Instances of the two international criminal tribunals' referring to one another were not counted, given their unified structure.

33. *See infra* Appendix A, Table 3.6, at p. 516.

34. *See id.*, Table 3.7, at p. 520.

35. *See id.*, Table 3.8, at p. 524.

not have an agreement) to the population of occupied northern Cyprus were of comparable validity to those issued by Cyprus (with whom the EC did have an agreement).³⁶ The Commission had for some time been accepting the certificates issued by Turkey, arguing that such acceptance was justified by the needs of the population as a whole of northern Cyprus and, furthermore, that such acceptance did not amount to recognition of the Turkish Republic of Northern Cyprus. It rested its decision, *inter alia*, on the ruling of the ICJ in *Legal Consequences for States of the Continued Presence of South Africa in Namibia*.³⁷ Holding that under no circumstances could the certificates issued by Turkey be accepted by member states, the Court noted that

the special situation of Namibia and that of Cyprus are not comparable from either the legal or the factual point of view. Consequently no interpretation can be based on an analogy between them.³⁸

In *Prosecutor v. Tadić (Trial)*, the ICTY was confronted with

the particular problem of applying general principles of international law relating to State responsibility for de facto organs or agents to the specific circumstance of rebel forces fighting a seemingly internal conflict against the recognized government of a State, but dependent on the support of a foreign Power in the continuation of that conflict.³⁹

The Trial Chamber, looking for evidence of such principles, noted that the question had been considered by the ICJ in *Nicaragua*.⁴⁰ On the Trial Chamber's reading of *Nicaragua*, the ICJ's test for state responsibility in such situations was that

it would in principle have to be proved that that State had effective control of the military or paramilitary operations in the course of which the alleged violations were committed.⁴¹

In the next paragraph, however, it noted that such a test was in part inapplicable to the situation in Bosnia prior to the withdrawal of Yugoslav forces (on or about 19 May 1992), holding that the Yugoslav army was an occupying force and thus in sufficient control of the territory that the activities of those within it could be imputed to the army and thus the state.⁴²

36. See Case C-432/92, *The Queen v. Minister of Agriculture, Fisheries and Food, ex parte S.P. Anastasiou (Pissouri) Ltd. and others*, 1994 ECR I-3807.

37. *Supra* note 20.

38. *The Queen v. Minister of Agriculture, supra* note 36, at para. 49.

39. *Prosecutor v. Tadić, Opinion and Judgement, Case No. IT-94-1-T, T.Ch. II, 7 May 1997.*

40. *Case Concerning Military and Paramilitary Activities in and Against Nicaragua, (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, 1986 ICJ Rep. 14.*

41. *Prosecutor v. Tadić, supra* note 39, at para. 585.

42. See *id.*, at para. 586.

The Appeals Chamber, however, overruled the Trial Chamber and voiced its strong disagreement with the ICJ.⁴³ After a detailed discussion of its interpretation of *Nicaragua*⁴⁴ the Appeals Chamber declared that it did not find the ICJ's reasoning persuasive.⁴⁵ This decision was based on two grounds. First, that the "effective control" test failed to conform to the general logic of state responsibility,⁴⁶ and second, that it failed to reflect actual state and judicial practice.⁴⁷ The effects of this Judgment on the law of state responsibility remain to be seen; the fact stands, nonetheless, that the ICTY publicly departed from a judgment of the ICJ.

By a margin of 173 to 11, however, tribunals are much more likely to refer to one another in a positive or neutral way than to distinguish or overrule. In the following paragraphs, four types of reference will be discussed: neutral, dispositive, in support of a conclusion of law and as providing a framework of decision. Representative samples of each type will be given.

In four instances, the reference seemed to be neutral, neither confirming nor disconfirming the reasoning of the referring tribunal. In *European Communities – Regime for the Importation, Sale and Distribution of Bananas (Appeal)*, for instance, the Appellate Body of the WTO noted a decision of the ECJ fixing the level of duty-free imports of bananas from African, Caribbean and Pacific ('ACP') Group of states, holding that the level would serve as well as others could have to fulfil the EC's obligations under the Lomé Convention.⁴⁸ In *Sea-Land v. Iran* the Iran-U.S. Claims Tribunal cited a particularly adept turn of phrase in the *Oscar Chinn* case of the Permanent Court of International Justice ('PCIJ') as an analogy to the situation of the claimant, but made no mention of the PCIJ's disposition of that situation.⁴⁹

Rarely, a referring tribunal will treat the decision referred to as dispositive of some issue before it. There were four such instances in the data collected. Emblematic of these was the decision of the Iran-U.S. Claims Tribunal in *Amoco International Finance Corporation v. Iran*. The parties to the case substantially agreed as to the facts; the dispute was over the legal effect of those facts.⁵⁰ In particular, Iran disputed that the 1955 Treaty

43. See *Prosecutor v. Tadić*, Judgement, Case No. IT-94-1-A, A.Ch., 15 July 1999.

44. See *id.*, at paras. 108–114.

45. See *id.*, at para. 115.

46. See *id.*, at paras. 116–123.

47. See *id.*, at paras. 124–145.

48. See Appellate Report *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, 1997 WL 577784 (W.T.O.) (citing Case C-280/93, 1994 ECR I-4973, at para. 101).

49. See *Sea-Land Service, Inc. v. The Government of the Islamic Republic of Iran*, Ports and Shipping, Award No. 135-33-1, 22 June 184 (citing *Oscar Chinn* Case, 1934 PCIJ (Ser. A/B) No. 63, at 88).

50. See *Amoco International Finance Corporation v. Iran*, Partial Award, Award No. 310-56-3, 14 July 1987, 15 IRAN-U.S.C.T.R. 189 (1987).

of Amity, Economic Relations and Consular Rights had been in effect between the United States and Iran at the time of the alleged expropriation.⁵¹ Iran argued that its non-participation in *United States Diplomatic and Consular Staff in Tehran* rendered that Judgment without force. The Tribunal disagreed, holding that the ICJ's decision was authoritative and that the Treaty was therefore in force at the relevant time.⁵²

The ICJ found a decision of the CACJ to be, if not precisely dispositive, of overwhelming influence on the disposition of an issue before it in *Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*. In order to apply correctly the principle of *uti possidetis*, the Court had to determine the legal status of the waters of the Gulf of Fonseca at the time the parties achieved independence from the Spanish crown (1821); the issue has also been addressed in 1917 by the CACJ.⁵³ The ICJ was careful to note that the CACJ decision was neither *res judicata* between the parties nor binding on the Court; yet its final decision on the issue – arrived at after a lengthy examination of the 1917 Judgment⁵⁴ – nonetheless “parallel[ed] the opinion expressed in the 1917 Judgement of the Central American Court of Justice.”⁵⁵

Much more commonly, the referring tribunal, already having stated its understanding of the law, will cite the decision(s) of other tribunals in support of that understanding. 101 instances of this type of reference were counted. In one of them, “*Other Treaties*,” the IACHR took the opportunity to determine the extent of its advisory jurisdiction, taking particular note of the possibility of states using the advisory mechanism as a way to avoid or undermine the contentious mechanism. The Court held,

consistent with the jurisprudence of the International Court of Justice, that its advisory jurisdiction is permissive in character in the sense that it empowers the Court to decide whether the circumstances of a request for an advisory opinion justify a decision rejecting the request. (*See Interpretation of Peace Treaties*, 1950 ICJ 65.)⁵⁶

The advisory jurisdiction of the Court came under particular scrutiny in *Restrictions to the Death Penalty*, where Guatemala argued that the Court should decide jurisdictional issues in separate proceedings before issuing an opinion, and alleged that the Court was without jurisdiction to issue an opinion in the case at hand. The Court denied both allegations, relying,

51. *See id.*, at para. 87.

52. *See id.*, at paras. 92–93.

53. *See Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening)*, Merits, Judgment of 11 September 1992, 1992 ICJ Rep. 351, at paras. 386–387.

54. *See id.*, at paras. 387–403.

55. *Id.*, at para. 404; *see also* Shahabuddeen, *supra* note 10, at 38–39.

56. *Other Treaties Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights)*, Advisory Opinion of 24 September 1982, 1982 Inter-Am.Ct.H.R. (Ser. A) No. 1, at para. 28.

inter alia, on the ICJ's decisions in *Western Sahara* and *Interpretation of Peace Treaties* to support its conclusions.⁵⁷

The Appeals Chamber of the ICTY, in its Judgment on the *Tadić* appeal, cited a vast amount of evidence in support of its conclusion that the "effective control" test failed to conform to actual state and judicial practice, including the Iran-U.S. Claims Tribunal's Decision in the *Kenneth P. Yeager* case. The Appeals Chamber found it

notable [...] that the Iran-United States Claims Tribunal did not enquire as to whether specific instructions had been issued to the [individuals whose actions were imputed to Iran] with regard to the forced expulsion of Americans.⁵⁸

The WTO Appellate Body in *United States – Standard for Reformulated and Conventional Gasoline* found that Article 31(1) of the 1969 Vienna Convention on the Law of Treaties, providing that

[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose[,]

had attained the status of customary international law, citing in support of that conclusion the ICJ's Decision in *Territorial Dispute Case (Libyan Arab Jamahiriya v. Chad)*,⁵⁹ the ECHR's Judgment in *Golder v. United Kingdom* and the IACHR's opinion in *Restrictions on the Death Penalty*.⁶⁰

Finally, in 64 instances, the referring tribunal cited the decision of another tribunal for guidance, to help establish the boundaries within which the referring tribunal would make its decision. In *Racke GmbH & Co. v. Hauptzollamt*, for instance, Racke argued that the EC violated fundamental rules of customary international law regarding the suspension and termination of treaties – specifically with regard to the 'fundamental change of circumstances' rule – when it suspended trade concessions with Yugoslavia ('SFRY').⁶¹ Before reaching the conclusion that the hostilities in Yugoslavia did indeed constitute a fundamental change in circumstances, the ECJ cited the ICJ's Decision in *Gabčíkovo-Nagymaros* for the proposi-

57. See *Restrictions to the Death Penalty* (Arts. 4(2) and 4(4) of the American Convention on Human Rights), Advisory Opinion of 8 September 1983, 1983 Inter-Am.Ct.H.R. (Ser. A) No. 3, at paras. 25 and 40.

58. *Prosecutor v. Tadić*, *supra* note 43, at para. 127 (followed by a note citing several other cases of the Iran-U.S. Claims Tribunal).

59. See *Territorial Dispute Case (Libyan Arab Jamahiriya v. Chad)*, Merits, Judgment of 3 February 1994, 1994 ICJ Rep. 6.

60. See Appellate Report *United States – Standard for Reformulated and Conventional Gasoline*, 1996 WL 227476 (W.T.O.) 11, n. 34.

61. See Case C-162/96, *A. Racke GmbH & Co. v. Hauptzollamt Mainz*, 1998 ECJ CELEX LEXIS 6355.

tion that “the stability of treaty relations requires that the plea of fundamental change of circumstances be applied only in exceptional cases.”⁶²

The ITLOS also cited *Gabčíkovo-Nagymaros*, in “*Saiga*”. There, after deciding that Guinea had wrongfully applied its customs laws in the exclusive economic zone, it went on to consider whether the wrongfulness of the action was precluded by what Guinea claimed to be a state of necessity.⁶³ At the outset of that discussion, the ITLOS referred to *Gabčíkovo-Nagymaros* as establishing the status as customary international law of two conditions – contained in Article 33(1) of the International Law Commission’s Draft Articles on State Responsibility – both of which must be met for a claim of necessity to succeed.⁶⁴ It then summarily disposed of Guinea’s claim as failing to meet those conditions.⁶⁵

The Appellate Body of the WTO, too, cited *Gabčíkovo-Nagymaros*, in *EC Measures Concerning Meat and Meat Products (Hormones)* where the European Communities argued, *inter alia*, that its decision to restrict the importation of meat treated by hormones was a ‘risk assessment’ under certain articles of the Sanitary and Phytosanitary Measures Agreement (‘SPS Agreement’) if those provisions were interpreted according to the ‘precautionary principle’ customary international rule of interpretation.⁶⁶ Though it found on other grounds that the EC’s claim was untenable, the Appellate Body deemed it appropriate to elucidate the relationship of the precautionary principle to the SPS Agreement. As a prelude to that discussion, it referred to *Gabčíkovo-Nagymaros* as establishing the non-existence of such a principle in customary international law, allowing it to interpret the SPS Agreement on its own terms.⁶⁷

In *Kupreškić et al.* the ICTY was faced with an issue of first impression: how to treat single acts that could be construed as multiple offenses.⁶⁸ The Trial Chamber therefore had to determine the applicable law. In so doing, it decided that it “[would] rely on general principles of international criminal law and, if no such principle is found, on the principles common to the various legal systems of the world.”⁶⁹ The Chamber’s wide-ranging

62. *Id.*, at para. 50 (citing Case Concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia), 1997 ICJ Rep. 7, at para. 104)).

63. See The M/V “*Saiga*” (No. 2) Case (Saint Vincent and the Grenadines), Judgement, ITLOS Case No. 2, 1 July 1999, at para. 132.

64. See *id.*, at paras. 133–134.

65. See *id.*, at para. 135.

66. See Appellate Report EC Measures Concerning Meat and Meat Products (Hormones), 1998 WL 25520 (W.T.O.).

67. See *id.*, at para. 123, n. 93.

68. See Prosecutor v. Kupreškić *et al.*, Judgement, Case No. IT-95-16-T, T.Ch. II, 14 January 2000.

69. *Id.*, at para. 532.

survey of those issues included several judgments of the ECHR⁷⁰ and IACHR.⁷¹

2.3. The diversity of the practice – content

The interactions outlined above, when considered for content, are remarkable for admitting of no easy categorization. One would have been tempted to predict, before examining the case law, that tribunals would engage one another only on well-settled rules of customary international law such as the rules of treaty interpretation or the law of compensation. Indeed, those two issues are by far the most frequently cited, at nine instances apiece. A less than ten percent rate of occurrence, however, does not seem to be significant.

What is more significant than commonality in the present context is diversity. Tribunals cite to one another on a wide variety of issues, from procedural matters, to discrete propositions of law to statements of general principle. The boundaries of content – between procedure, substance and principle – are not as distinct as those of form; hence, the number of instances of each type of reference will not be provided. The following examples should, however, be sufficient to give a sense of the range of the practice.

To begin, tribunals cite to one another on procedural matters. In *Fairén Garbi and Solís Corrales (Preliminary Objections)*, for instance, the Government of Honduras challenged the admissibility of the case based, *inter alia*, on the failure of the petitioners to follow all of the procedural requirements under the 1969 Inter-American Convention on Human Rights. The IACHR cited the ICJ in support of its conclusion that procedural deficiencies are not always relevant so long as the rights of the parties and the integrity of the proceedings are preserved.⁷²

The Iran-U.S. Claims Tribunal, in *Lawrence v. Iran (Interlocutory Award)*, was called upon to determine the dominant or effective nationality of the claimant. Among the evidence before it was the claimant's alleged ownership of property in Iran. The Tribunal declined to consider that evidence, noting that the actual ownership of the property in question was part of the merits of the case, and citing the ICJ in support of its holding that the merits should not be addressed in preliminary proceedings.⁷³

70. Erkner and Hofauer, Decision of 23 April 1987, 1987 ECHR (Ser. A) No. 117, at para. 76; Poiss, Judgement of 23 April 1987, 1987 ECHR (Ser. A) No. 117, at para. 66; Venditelli v. Italy, Judgement of 18 July 1994, 1994 ECHR (Ser. A) No. 293-A, at para. 34.

71. Velásquez Rodríguez Case, Judgment of 29 July 1988, 1988 Inter-Am.Ct.H.R. (Ser. C) No. 4, at para. 155; Godínez Cruz Case, Judgment of 20 January 1989, 1989 Inter-Am.Ct.H.R. (Ser. C) No. 5, at paras. 163–166; Fairén Garbi and Solís Corrales Case, Judgment of 15 May 1989, 1989 Inter-Am.Ct.H.R. (Ser. C) No. 6, at paras. 147–150.

72. Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of 26 June 1987, 1987 Inter-Am.Ct.H.R. (Ser. C) No. 2, at para. 38 (citing Aegean Sea Continental Shelf, 1978 ICJ Rep., at para. 42).

73. Lily Mythra Fallah Lawrence v. Iran, Award No. ITL 77-390/391/392-1, 5 October 1990.

In the *Southern Bluefin Tuna Case*, Japan argued that its dispute with Australia was scientific rather than legal, and that the Tribunal was therefore precluded from exercising jurisdiction. The Tribunal disagreed, quoting both the PCIJ and the ICJ on the requirements for a legal dispute:

a dispute is a ‘disagreement on a point of law or fact, a conflict of legal views or of interests’ [citation omitted] and ‘[i]t must be shown that the claim of one party is positively opposed by the other’ [citation omitted].⁷⁴

International tribunals refer to one another on discrete propositions of law, as well. The ICTY, in *Prosecutor v. Furundžija (Trial)* considered at length whether, under some circumstances, rape could be a form of torture under international humanitarian law. In the course of that consideration, the Tribunal held that rape as part of interrogation “may amount to torture, as demonstrated by the finding of [...] the Inter-American Court of Human Rights.”⁷⁵

In *Argotexim v. Greece*, the ECHR was considering the admissibility of the case where the applicants were shareholders in a company and the harm complained of was suffered by the company. The Court determined that it could not pierce the corporate veil to consider the positions of individual shareholders – relying *inter alia* on the ICJ’s holding in *Barcelona Traction* – and that it therefore could not reach the merits of the case.⁷⁶

A claimant before the Iran-U.S. Claims Tribunal submitted various newspaper reports as evidence that Iran implemented certain land reform legislation, to the detriment of the claimant. The Tribunal, in deliberating on the relevance of the newspaper reports, quoted the Judgment of the ICJ in *Nicaragua*:

[S]tatements [by representatives of States made during press conferences or interviews and reported by the local or international press] [...] emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavorable to the State represented by the person who made them. They may then be construed as a form of admission.⁷⁷

Based on reports, the Tribunal found that Iran had indeed interfered in the property rights of the claimant.

74. *Southern Bluefin Tuna Cases*, Request for Provisional Measures, Order of 27 August 1999, ITLOS Cases Nos. 3 and 4, 27 August 1999, reprinted in 38 ILM 1624, at para. 44 (1999) (quoting, respectively, *Mavrommatis Palestine Concessions*, Judgment, 1924 PCIJ (Ser. A) No. 2, at 11; and *South West Africa, Preliminary Objections*, Judgment, 1962 ICJ Rep. 328).

75. *Prosecutor v. Furundžija*, Judgment, Case No. IT-95-17/1-T, T.Ch. II, 10 December 1998, at para. 163 (citing IACHR *Mejija*).

76. *Argotexim and Others v. Greece*, Judgment of 24 October 1995, 21 EHRR 250, at para. 66 (1995) (citing *Barcelona Light, Power and Traction Ltd.*, Judgment of 5 February 1970, 1970 ICJ Rep. 39 and 41, at paras. 56–58 and 66).

77. *Rouhollah Karubian v. Iran*, Award No. 569-419-2 of 6 March 1996, at para. 136.

Finally, tribunals will refer to one another on general principles. This occurred in *Solvay v. Commission of the European Communities*, where the ECJ held that the opinion issued by the Commission failed to meet the basic requirements for the statement of reasons for the decision, an obligation that the Court noted "arises directly from the adage 'Justice must not only be done, it must also be seen to be done', which, with regard to courts of law, has been reinforced by the European Court of Human Rights."⁷⁸

Aside from lesser included offenses, discussed above, one of the issues before the ICTY in *Kupreškić et al.* was the status in international law of collateral damage to civilians resulting from attacks on military objectives. The Tribunal found evidence of customary international law suggesting that reasonable care must be taken – even in attacking legitimate military objectives – to prevent civilian casualties. On the Tribunal's view, the law "leave[s] a wide margin of discretion to belligerents by using language that might be regarded as leaving the last word to the attacking party."⁷⁹ Nevertheless, the Tribunal held that in such situations apparently flexible international rules must be interpreted according to the "'elementary considerations of humanity' rightly emphasized by the International Court of Justice [...]."⁸⁰

3. PRELIMINARY CONCLUSIONS

It should be clear from the preceding discussion that international tribunals do interact with one another, if not at the robust level found in domestic legal systems. Each of the tribunals under consideration has referred to the jurisprudence of another. Moreover, the practice shows a high degree of diversity of both form and content. What remains to be seen is whether any patterns can be discerned from those interactions, and what conclusions may be drawn from them.

One pattern, briefly discussed earlier, is frequency of reference both by and to a tribunal. In terms of reference by, the ICJ, ECJ and ECHR almost never cite, the Iran-U.S. Claims Tribunal does so rarely, the WTO Panels about a quarter of the time and the IACHR slightly less than two thirds of the time; the ICTY and ITLOS do so in nearly all their cases. A strong pattern is apparent in tribunals' choice of referent. More than half of the references considered were to the ICJ; the next most cited, at less than a quarter of the instances, was the ECHR. The ECJ, IACHR and Iran-

78. Case T-12/89, *Solvay & Cie SA v. Commission of the European Communities*, 1992 ECJ CELEX LEXIS 1882, at para. 280.

79. *Prosecutor v. Kupreškić et al.*, *supra* note 68, at para. 524.

80. *Id.* (citing *Corfu Channel*, 1949 ICJ Rep., at 22, *Nicaragua* (*supra* note 40, at 112) and *Legality of the Threat or Use of Nuclear Weapons*, 1996 ICJ Rep., at 257).

U.S. Claims Tribunal have been cited only a handful of times each, the WTO Panels, ICTY and ITLOS not at all.

Another discernible pattern relates to the type of reference. International tribunals are shy about distinguishing or explicitly disagreeing with one another. Nor do they often treat previous decisions as dispositive of the issues before them. When they choose to refer, they much prefer to use the rulings of other bodies to support their own reasoning. On the other hand, they seem to have only a slight preference for citing in support of a conclusion as opposed to citing to provide a framework for decision.

What are the variables that influence these relationships? There does not seem to be an easy answer. One could suggest, for instance, that tendency to cite is influenced by the subject matter the tribunal is empowered to consider. This would seem to account for why the ECJ – whose cases almost never touch on public international law – so rarely refers to other tribunals; it does much less, however, to explain why the ECHR is vanishingly less likely to engage with other tribunals than the IACHR, given that both tribunals deal with similar subject matter.

Tribunals' preferences with respect to type of reference could perhaps be explained as a function of their desire to maintain their independence and the integrity of their jurisprudence while respecting that of other tribunals. On this view, a given tribunal would be reluctant to show its disrespect for another by distinguishing or explicitly disagreeing with its decisions. A referring tribunal would nevertheless remain reluctant to accord *too* much respect to others by treating their decisions as dispositive, thereby limiting its own independence. Such an explanation, however, fails to account for tribunals' lack of preference as between citing in support of their conclusions and citing to provide a guideline. The latter would seem to cede substantial influence to the decision of another tribunal, constraining the reasoning of the referring tribunal.

However one construes the results of the present survey, two things are clear: There *is* interaction among international tribunals and there *are* patterns discernible in that interaction. Especially when read in conjunction with the conclusions of Prof. Charney, these results are suggestive of a complex, if not explicit or centrally organized, structure of relationships among international tribunals. This should to some extent allay the fears of those concerned with the fragmentation of international law. On the other hand, there is nothing to say that the 'system' as it stands is the best one possible, or that strong reasons cannot be found to change it. Much work remains to be done, however, to elucidate precise nature of existing relationships – especially the reasons underlying them. Until that work is done, the complacent and critical alike will be at a disadvantage.

APPENDIX A: TABLES OF CASES*

* In the following tables, multiple references to the same tribunal which were counted separately have been grouped together. Hence there will not be a one to one ratio with the numbers provided in Section 2.

Table 3.1. International Court of Justice

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Land, Island and Legal Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening)</i>	Central American Court of Justice	<i>Judgment of 9 March 1917</i>	Legal status of Gulf Maritime waters in 1821
<i>Case Concerning East Timor (Portugal v. Australia)</i>	Central American Court of Justice	<i>Judgment of 9 March 1917</i>	The rights of third parties and the limits of jurisdiction
<i>Case Concerning Maritime Delimitation in the Area Greenland and Jan Mayen (Denmark v. Norway)</i>	1977 Anglo-French Arbitral Award	<i>1977 Anglo-French Arbitral Award</i>	Special circumstances/ equidistance rule

Table 3.2. European Court of Justice

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>The Queen v. Minister of Agriculture, Fisheries and Food, ex parte S.P. Anastasiou (Pissouri) Ltd. and others</i>	International Court of Justice	<i>South West Africa</i>	Recognition of sub-statal actors as recognition of state
<i>Anklagemyndigheden v. Peter Michael Poulsen and Diva Navigation Corp.</i>	International Court of Justice	<i>Gulf of Maine</i>	UNCLOS as customary international law
<i>Opel Austria GmbH v. Council of the European Union</i>	International Court of Justice (PCIJ)	<i>Certain German Interests In Polish Upper Silesia</i>	Treaty interpretation – requirement of good faith
<i>A. Racke GmbH & Co. v. Hauptzollamt Mainz</i>	International Court of Justice	<i>Fisheries Jurisdiction; Gabčíkovo-Nagymaros Project</i>	Fundamental change of circumstances
<i>Weber (Reference for Preliminary Ruling)</i>	International Court of Justice	<i>North Sea Continental Shelf</i>	Sovereignty over continental shelf
<i>Connolly v. Commission</i>	European Court of Human Rights	<i>Handyside v. United Kingdom, Müller and Others; Vogt v. Germany; Wille v. Liechtenstein; Wingrove v. United Kingdom; Ahmed and Others v. United Kingdom</i>	Conditions for and extent of permissible limitations on freedom of expression
<i>Friedrich Kremzow v. Republik Osterreichs</i>	European Court of Human Rights	<i>Kremzow v. Austria</i>	

Table 3.2. Continued.

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>P v. S and Cornwall County Council</i>	European Court of Human Rights	<i>Rees v. United Kingdom</i>	Definition of "transsexual"
<i>Sobway & Cie SA v. Commission of the European Communities</i>	European Court of Human Rights	General reference	Principle that justice must be seen to be done
<i>Criminal proceedings against X (1996)</i>	European Court of Human Rights	<i>Kokkinakis v. Greece; S.W. v. United Kingdom; C.R. v. United Kingdom</i>	Requirement for specificity in criminal law
<i>SCK and FNK v. Commission of the European Communities</i>	European Court of Human Rights	<i>Erkner and Hofauer v. Austria; Milasi v. Italy; Schouten and Meldrum v. Netherlands</i>	What constitutes reasonable time
<i>Vereinigte Familienpress Zeitungsverlags- und vertriebs GmbH v. Heinrich Bauer Verlag</i>	European Court of Human Rights	<i>Informationsverein Lenita and Others v. Austria</i>	Derogation of free speech v. government interest
<i>Lisa Jacqueline Grant v. South-West Trains Ltd.</i>	European Court of Human Rights	<i>Rees v. United Kingdom; Cossey v. The United Kingdom</i>	Applicability of 'marriage' to homosexuals

Table 3.3. European Court of Human Rights

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Sheffield and Horsham v. United Kingdom</i>	Court of Justice of the European Communities	<i>P v. S and Cornwall County Council</i>	Status of transsexuals
<i>Funke v. France</i>	Court of Justice of the European Communities	<i>ORKEM SA v. EC Commission</i>	Right against self-incrimination
<i>Mathews v. United Kingdom</i>	Court of Justice of the European Communities	<i>Costa v. Enel; Amministrazione delle Finanze dello Stato v. Simmenthal SPA</i>	Supremacy of EC law
<i>Cyprus v. Turkey</i>	International Court of Justice	<i>Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)</i>	Status under international law of domestic legal institutions of illegitimate regimes
<i>Agrotexim and Others v. Greece</i>	International Court of Justice	<i>Barcelona Traction</i>	When to pierce the corporate veil
<i>Papamichalopoulos and others v. Greece</i>	International Court of Justice	<i>Factory at Chorzów</i>	Just compensation
<i>Al-Adsani v. the United Kingdom</i>	International Criminal Tribunal for the former Yugoslavia	<i>Prosecutor v. Furundžija; Prosecutor v. Delalić and Others; Prosecutor v. Kunarac</i>	Status as <i>jus cogens</i> of prohibition of torture
<i>Kurt v. Turkey</i>	Inter-American Court of Human Rights	<i>Velásquez Rodríguez v. Honduras; Godínez v. Honduras; Caballero Delgado y Santana v. Colombia</i>	Disappearance

Table 3.4. Inter-American Court of Human Rights

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Caso Hilaire v. Trinidad y Tobago (Excepciones Preliminares)</i>	European Court of Human Rights	<i>Ireland v. United Kingdom; Soering; Case of Loizidou v. Turkey (Preliminary Objections)</i>	Human rights treaties entail obligations beyond those of traditional multilateral treaties
<i>Caso Benjamin y Otros v. Trinidad y Tobago (Excepciones Preliminares)</i>	European Court of Human Rights	<i>Ireland v. United Kingdom; Soering; Case of Loizidou v. Turkey (Preliminary Objections)</i>	Human rights treaties entail obligations beyond those of traditional multilateral treaties
<i>Caso Constantine y Otros v. Trinidad y Tobago (Excepciones Preliminares)</i>	European Court of Human Rights	<i>Ireland v. United Kingdom; Soering; Case of Loizidou v. Turkey (Preliminary Objections)</i>	Human rights treaties entail obligations beyond those of traditional multilateral treaties
<i>Caso Paniagua Morales y Otros (Reparaciones)</i>	European Court of Human Rights	<i>String Cite</i>	Guilty verdict as sufficient compensation
<i>Caso Villagrán Morales y Otros (Reparaciones)</i>	European Court of Human Rights	<i>String Cite</i>	Guilty verdict as sufficient compensation
<i>Caso Cesti Hurtado (Reparaciones)</i>	European Court of Human Rights	<i>String Cite</i>	Guilty verdict as sufficient compensation
<i>Caso El Amparo (Reparaciones)</i>	European Court of Human Rights	<i>String Cite</i>	Guilty verdict as sufficient compensation
<i>International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention</i>	European Court of Human Rights	<i>Klass et al.; Marekx; Adolf</i>	Requirement of concrete violation
<i>Caso Velásquez Rodríguez (Interpretación de la Sentencia)</i>	European Court of Human Rights	<i>Ringisen case (Interpretation of the Judgment of 22 June 1972)</i>	Standards for interpreting a judgment

<i>Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica</i>	European Court of Human Rights	<i>Certain Aspects of the Laws on the Use of Languages in Education in Belgium</i>	Derogation of free speech v. government interest
<i>Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism</i>	European Court of Human Rights	<i>The Sunday Times Case</i>	
<i>Caso Genie Lacayo (Sentencia)</i>	European Court of Human Rights	<i>Motta; Ruiz Mateos v. Spain</i>	Definition of reasonable time
<i>Caso Loayza Tamayo (Sentencia)</i>	European Court of Human Rights	<i>Ireland v. the United Kingdom; Ribitsch v. Austria</i>	Relationship between personal integrity and torture
<i>Caso Suárez Rosero (Sentencia)</i>	European Court of Human Rights	<i>Guincho; Motta; Ruiz Mateos v. Spain</i>	Definition of reasonable time
<i>Caso Velásquez Rodríguez (Sentencia)</i>	European Court of Human Rights	<i>Handyside Case</i>	<i>Juris novit curia</i>
<i>Caso Godínez Cruz (Sentencia)</i>	European Court of Human Rights	<i>Handyside Case</i>	<i>Juris novit curia</i>
<i>Caso Las Palmeras (Excepciones Preliminares)</i>	International Court of Justice	<i>Barcelona Traction</i>	Obligations <i>erga omnes</i>
<i>Caso Hilaire v. Trinidad y Tobago (Excepciones Preliminares)</i>	International Court of Justice	<i>Reservations to the Convention on Genocide</i>	Human rights treaties entail obligations beyond those of traditional multilateral treaties
<i>Caso Benjamin y Otros v. Trinidad y Tobago (Excepciones Preliminares)</i>	International Court of Justice	<i>Reservations to the Convention on Genocide</i>	Human rights treaties entail obligations beyond those of traditional multilateral treaties
<i>Caso Constantine y Otros v. Trinidad y Tobago (Excepciones Preliminares)</i>	International Court of Justice	<i>Reservations to the Convention on Genocide</i>	Human rights treaties entail obligations beyond those of traditional multilateral treaties

Table 3.4. Continued.

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Caso Cantos v. Argentina</i>	International Court of Justice	<i>Barcelona Traction</i>	Principle that shareholders have different rights and duties than the corporation itself
"Other Treaties" Subject to the Consultative Jurisdiction of the Court	International Court of Justice	<i>Interpretation of Peace Treaties; South-West Africa, International Status of; Certain Expenses of the United Nations; Legal Consequences for States of the Continued Presence of South Africa in Namibia</i>	Advisory jurisdiction
<i>Caso Cantoral Benavides (Sentencia de Fondo)</i>	International Court of Justice	<i>Western Sahara</i>	Respect for the dead
<i>Restrictions to the Death Penalty (Articles 4(2) and 4(4) of the American Convention on Human Rights)</i>	International Court of Justice	<i>Interpretation of Peace Treaties; Reservations to the Convention on Genocide; Legal Consequences for States of the Continued Presence of South Africa in Namibia; Western Sahara</i>	Advisory jurisdiction
<i>The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights</i>	International Court of Justice	<i>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide</i>	Universal character of human rights treaties
<i>Caso Aloeboetoe y Otros (Sentencia)</i>	Permanent Court of International Justice	<i>Jurisdiction of the Courts of Danzig</i>	Reparations

<i>Caso Fairén Garbí y Solís Corrales (Excepciones Preliminares)</i>	Permanent Court of International Justice, International Court of Justice	<i>Free Zones of Upper Savoy and the District of Gex; Mavrommatis Palestine Concessions; Aegean Sea Continental Shelf</i>	Strict procedure less important than in domestic courts
<i>Caso Neira Alegría y Otros (Sentencia)</i>	Permanent Court of International Justice	<i>Legal Status of Eastern Greenland</i>	Communications of state actor as binding
<i>Caso Paniagua Morales y Otros (Reparaciones)</i>	Permanent Court of International Justice, International Court of Justice	<i>Factory at Chorzów (Jurisdiction); Reparation for Injuries Suffered in the Service of the United Nations</i>	Reparations
<i>Caso Villagrán Morales y Otros (Reparaciones)</i>	Permanent Court of International Justice, International Court of Justice	<i>Factory at Chorzów (Jurisdiction); Reparation for Injuries Suffered in the Service of the United Nations</i>	Reparations
<i>Caso Comunidad Mayagna (Sumo) Awas Tingni (Sentencia)</i>	Permanent Court of International Justice, International Court of Justice	<i>Factory at Chorzów (Jurisdiction); Reparation for Injuries Suffered in the Service of the United Nations</i>	Reparations
<i>Caso El Amparo (Sentencia)</i>	Permanent Court of International Justice, International Court of Justice	<i>Factory at Chorzów (Jurisdiction); Reparation for Injuries Suffered in the Service of the United Nations</i>	Reparations
<i>Caso Neira Alegría y Otros (Reparaciones)</i>	Permanent Court of International Justice, International Court of Justice	<i>Factory at Chorzów (Jurisdiction); Reparation for Injuries Suffered in the Service of the United Nations</i>	Reparations

Table 3.4. Continued.

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Caso Godínez Cruz (Excepciones Preliminares)</i>	Permanent Court of International Justice, International Court of Justice	<i>Free Zones of Upper Savoy and the District of Gex; Mavrommatis Palestine Concessions; Aegean Sea Continental Shelf</i>	
<i>Caso Caballero Delgado y Santana (Reparaciones)</i>	Permanent Court of International Justice, International Court of Justice	<i>Factory at Chorzów (Jurisdiction); Reparation for Injuries Suffered in the Service of the United Nations</i>	Reparations
<i>Caso Velásquez Rodríguez (Indemnización Compensatoria)</i>	Permanent Court of International Justice, International Court of Justice	<i>Factory at Chorzów (Jurisdiction); Reparation for Injuries Suffered in the Service of the United Nations</i>	Reparations
<i>Caso Godínez Cruz (Indemnización Compensatoria)</i>	Permanent Court of International Justice, International Court of Justice	<i>Factory at Chorzów (Jurisdiction); Reparation for Injuries Suffered in the Service of the United Nations</i>	Reparations
<i>Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica</i>	International Court of Justice	<i>Competence of the General Assembly for the Admission of a State to the United Nations; Nottebohm</i>	Treaty interpretation in light of context and purpose
<i>Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights</i>	International Court of Justice	<i>Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276</i>	Evolving interpretation of treaties

<i>Caso Cesti Hurtado (Reparaciones)</i>	International Court of Justice	<i>Factory at Chorzów (Jurisdiction); Reparation for Injuries Suffered in the Service of the United Nations</i>	Standard of proof; reparations
<i>Caso Velásquez Rodríguez (Sentencia)</i>	International Court of Justice	<i>Corfu Channel; Military and Paramilitary Activities in and against Nicaragua</i>	Standard of proof
<i>Caso Velásquez Rodríguez (Sentencia)</i>	Permanent Court of International Justice	<i>Lotus Case</i>	
<i>Caso Godínez Cruz (Sentencia)</i>	Permanent Court of International Justice	<i>Lotus Case</i>	<i>Juris novit curia</i>
<i>Caso Fairén Garbí y Solís Corrales (Sentencia)</i>	International Court of Justice	<i>Corfu Channel; Military and Paramilitary Activities in and against Nicaragua</i>	Standard of proof

Table 3.5. International Criminal Tribunal for the former Yugoslavia

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Prosecutor v. Krstić (Trial)</i>	International Court of Justice	<i>Reservations to the Convention on the Prevention and Punishment of Genocide; Legality of the Threat or Use of Nuclear Weapons; Application of the Convention of the Prevention and Punishment of the Crime of Genocide (Order on further Requests for the Indication of Provisional Measures) (Separate Opinion of Judge Lauterpacht)</i>	Prohibition of genocide as <i>jus cogens</i> ; requirement of specific intent; meaning of "in part" under Genocide Convention
<i>Prosecutor v. Tadić (Trial)</i>	International Court of Justice	<i>Military and Paramilitary Activities in and against Nicaragua</i>	Effective control test
<i>Prosecutor v. Tadić (Appeal)</i>	International Court of Justice	<i>Military and Paramilitary Activities in and against Nicaragua; United States Diplomatic and Consular Staff in Tehran; Competence of the General Assembly for the Admission of a State to the United Nations</i>	Effective control test
<i>Prosecutor v. Tadić (Judgment of Appeals Chamber on Allegations of Contempt Against Prior Counsel)</i>	International Court of Justice	<i>Nuclear Tests Case; Northern Cameroons Case</i>	Inherent power of court to safeguard the exercise of its judicial function

<i>Prosecutor v. Furundžija (Trial)</i>	International Court of Justice	<i>Military and Paramilitary Activities in and against Nicaragua</i>	Geneva Convention as customary international law
<i>Prosecutor v. Delalić et al. (Appeal)</i>	Permanent Court of International Justice, International Court of Justice	<i>Certain German Interests in Polish Upper Silesia; Nottebohm; Military and Paramilitary Activities in and against Nicaragua</i>	Effect of domestic laws in the international plane is determined by international law; Common Article 3 of Geneva Conventions as customary international law
<i>Prosecutor v. Aleksovski (Appeal)</i>	International Court of Justice	<i>Interpretation of Peace Treaties (Judge Zoricic, Dissenting Opinion); Barcelona Tracton; Light and Power Company, Limited (Preliminary Objections) (Separate Opinion of Judge Tanaka)</i>	Weight given by ICJ to its previous decisions
<i>Prosecutor v. Aleksovski (Trial)</i>	International Court of Justice	<i>Military and Paramilitary Activities in and against Nicaragua</i>	Geneva Convention as customary international law
<i>Prosecutor v. Jelisić (Trial)</i>	International Court of Justice	<i>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide; Barcelona Tracton</i>	Prohibition on genocide as customary international law
<i>Prosecutor v. Kupreškić et al. (Trial)</i>	International Court of Justice	<i>Barcelona Tracton; Corfu Channel; Military and Paramilitary Activities in and against Nicaragua; Legality of the Threat or Use of Nuclear Weapons</i>	Prohibition on targeting civilians as customary international law
<i>Prosecutor v. Kvočka et al. (Trial)</i>	European Court of Human Rights	<i>Ireland v. United Kingdom; Aksoy v. Turkey</i>	Definition of torture

Table 3.5. Continued.

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Prosecutor v. Krnojelac (Trial)</i>	European Court of Human Rights	<i>Cakici v. Turkey</i>	Circumstances under which victim of disappearance may be considered dead
<i>Prosecutor v. Kunarac et al. (Trial)</i>	European Court of Human Rights	<i>Van der Mussele v. Belgium; Ireland v. UK; Costello-Roberts v. UK; HLR v. France; A v. UK</i>	Definition of slavery; definition of torture (as possibly including perpetrators who are not State agents)
<i>Prosecutor v. Delalić et al. (Appeal)</i>	European Court of Human Rights	<i>Funke v. France; John Murray v. The United Kingdom; Condron v. The United Kingdom; SW v. The United Kingdom; CR v. The United Kingdom</i>	Extent of right to remain silent; requirement of <i>nulla poena sine lege</i>
<i>Prosecutor v. Aleksovski (Appeal)</i>	European Court of Human Rights	<i>Cossey Judgement of 27 September 1990</i>	Weight given by ECHR to its previous decisions
<i>Prosecutor v. Tadić (Judgment of Appeals Chamber on Allegations of Contempt Against Prior Counsel)</i>	European Court of Human Rights	<i>Sunday Times v. United Kingdom</i>	Scope of law of contempt
<i>Prosecutor v. Furundžija (Appeal)</i>	European Court of Human Rights	<i>Ruiz Torija v. Spain; Van de Hurk v. The Netherlands; Piersack v. Belgium; De Cubber v. Belgium; Hauschildt v. Denmark; Bulut v. Austria; Castillo Algar v. Spain; Incal v. Turkey, Le Compte, Van Leuven and de Meyere</i>	Extent of right of accused to a reasoned opinion; two-prong test for impartiality of judges

<i>Prosecutor v. Furundžija (Trial)</i>	European Court of Human Rights	<i>Soering, Ireland v. United Kingdom; Greek Case; Aydın</i>	Rape as torture
<i>Prosecutor v. Tadić (Appeal)</i>	European Court of Human Rights	<i>Loizidou v. Turkey; Delcourt v. Belgium</i>	Effective control test
<i>Prosecutor v. Kupreškić et al. (Appeal)</i>	European Court of Human Rights	<i>Ruiz Torija v. Spain; Van de Hurk v. The Netherlands</i>	Extent of right of accused to a reasoned opinion
<i>Prosecutor v. Kupreškić et al. (Trial)</i>	European Court of Human Rights	<i>Ahmed v. Austria; Altun v. Federal Republic of Germany D & R; A v. Switzerland D & R; Erkner and Hofauer; Poiss; Venditelli v. Italy; Aksoy v. Turkey</i>	<i>Lex specialis-lex generalis</i> ; Single act as multiple offenses
<i>Prosecutor v. Furundžija (Trial)</i>	Inter-American Court of Human Rights	<i>Mejia</i>	Rape as torture
<i>Prosecutor v. Kordić & Čerkez (Decision of the Appeals Chamber of 18 September 2000)</i>	International Court of Justice	<i>Interpretation of Peace Treaties (second phase)</i>	Adherence to principle of 'effective interpretation' cannot lead to reading contrary to letter and spirit of provision
<i>Prosecutor v. Kvočka et al. (Decision of the Trial Chamber of 1 April 1999)</i>	International Court of Justice	<i>Military and Paramilitary Activities in and against Nicaragua; Legality of the Threat or Use of Nuclear Weapons</i>	Common Article 3 of Geneva Conventions, and other provisions of international humanitarian law, as customary international law
<i>Prosecutor v. Kordić & Čerkez (Decision of the Trial Chamber of 2 March 1999)</i>	International Court of Justice	<i>Military and Paramilitary Activities in and against Nicaragua; Legality of the Threat or Use of Nuclear Weapons</i>	Common Article 3 of Geneva Conventions, and other provisions of international humanitarian law, as customary international law

Table 3.5. Continued.

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Prosecutor v. Brđanin & Talić</i> (Decision of the Trial Chamber of 28 March 2001)	European Court of Human Rights	'Neumeister' Case (Judgment of 27 June 1968); <i>Stogmüller Case</i> (10 November 1969)	Factors relevant to the justification of continued pretrial detention
<i>Prosecutor v. Brđanin & Talić</i> (Decision of the Trial Chamber of 25 July 2000)	European Court of Human Rights	<i>Handyside Case</i>	Margin of appreciation
<i>Prosecutor v. Korđić & Čerkez</i> (Decision of the Appeals Chamber of 21 July 2000)	European Court of Human Rights	<i>Farrantelli and Santangelo</i>	Corroboration as factor in weighing admission of out-of-court statements
<i>Prosecutor v. Brđanin & Talić</i> (Decision of the Trial Chamber of 3 July 2000)	European Court of Human Rights	<i>Kostovski v. Netherlands</i>	Right to a fair trial must not be sacrificed to expediency
<i>Prosecutor v. Brđanin & Talić</i> (Decision of the Trial Chamber of 18 May 2000)	European Court of Human Rights	<i>Piersac v. Belgium; Hauschildt v. Denmark; Bulut v. Austria</i>	Two-prong test for impartiality of judge
<i>Prosecutor v. Talić</i> (Decision of the Trial Chamber of 10 December 1999)	European Court of Human Rights	<i>Case of Brogan & Ors</i>	Standard for judicial review of lawfulness of detention
<i>Prosecutor v. Aleksovski</i> (Decision of the Appeals Chamber of 16 February 1999)	European Court of Human Rights	<i>Ekbatani v. Sweden; Barber v. Spain; Brandsetter v. Austria; Beheer BV v. The Netherlands</i>	Interpretation of 'equality of arms' requirement
<i>Prosecutor v. Delalić et al.</i> (Decision of the Trial Chamber of 19 January 1998)	European Court of Human Rights	<i>Murray v. U.K.</i>	Extent of right against self-incrimination

<i>Prosecutor v. Delalić et al. (Decision of the Trial Chamber of 2 September 1997)</i>	European Court of Human Rights	<i>Imbrioscia v. Switzerland</i>	Scope of right to counsel
<i>Prosecutor v. Delalić et al. (Decision of the Trial Chamber of 28 April 1997)</i>	European Court of Human Rights	<i>Pretto & Ors v. Italy; Unterperinger v. Austria</i>	Publicity as a means to ensure fair trial; extent of right of accused to face accuser
<i>Prosecutor v. Blaškić (Decision of the Trial Chamber of 4 April 1997)</i>	European Court of Human Rights	<i>Kamasinsky v. Austria; De Salvador Torres v. Spain</i>	Right of accused to be informed of charges
<i>Prosecutor v. Tadić (Decision of the Trial Chamber of 10 August 1995)</i>	European Court of Human Rights	<i>Sutter v. Switzerland; Axen v. Federal Republic of Germany; Le Compte, Van Leuven and De Meyere v. Belgium; Kostovski</i>	Benefits of a public hearing; conditions justifying denial of public hearing; guidelines for procedural safeguards to ensure fair trial in absence of publicity
<i>Prosecutor v. Krnojelac (Trial)</i>	Inter-American Court of Human Rights	<i>Godínez Cruz v. Honduras</i>	Circumstances under which victim of disappearance may be considered dead
<i>Prosecutor v. Kupreškić et al. (Trial)</i>	Inter-American Court of Human Rights	<i>Velásquez Rodríguez (Judgment); Godínez Cruz (Judgment); Fairén Garbi and Caballero Delgado Solís Corrales (Judgment); and Santana (Judgment)</i>	Single act as multiple offenses
<i>Prosecutor v. Tadić (Appeal)</i>	Iran-U.S. Claims Tribunal	<i>Kenneth P. Yeager v. Iran; William L. Pereira Associates v. Iran; Arthur Young and Company v. Iran et al.; Schott v. Iran; Daley v. Iran</i>	Effective control test

Table 3.6. World Trade Organization Dispute Settlement Panels

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>United States v. Section 211 Omnibus Appropriations Act of 1998</i>	International Court of Justice	<i>Corfu Channel; Territorial Dispute Case (Libyan Arab Jamahiriya v. Chad)</i>	Effective interpretation
<i>United States v. Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea (Appeal)</i>	International Court of Justice	<i>Military and Paramilitary Activities in and against Nicaragua (Merits); Gabčíkovo-Nagymaros Project</i>	Proportionality of countermeasures
<i>United States v. Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan</i>	Permanent Court of International Justice	<i>Lighthouse Case</i>	Principle of good faith
<i>Argentina v. Measures Affecting the Export of Bovine Hides and the Import of Finished Leather</i>	International Court of Justice	<i>Corfu Channel Case (Merits)</i>	Weight to be given to circumstantial evidence
<i>European Communities v. Measures Affecting Asbestos and Asbestos v. Containing Products</i>	International Court of Justice	<i>North Sea Continental Shelf</i>	Procedural aspects of use of the word "estoppel"
<i>United States v. Anti-Dumping Act of 1916 (Appeal)</i>	Permanent Court of International Justice; International Court of Justice	<i>Administration of the Prince von Pless (Preliminary Objection); Individual Opinion of President Sir A. McNair, Anglo-Iranian Oil Co. Case (Preliminary Objection); Separate Opinion of Judge Sir H. Lauterpacht in Case of Certain Norwegian Loans;</i>	Rule that international tribunal can consider its own jurisdiction on its own initiative

<i>United States v. Section 110(5) of the US Copyright Act</i>	International Court of Justice; Permanent Court of International Justice	<i>Dissenting Opinion of Judge Sir H. Lauterpacht in the Interhandel Case (Preliminary Objections)</i>	Treaty provisions must be interpreted in light of object and purpose
<i>United States v. Anti-Dumping Act of 1916 (Japan)</i>	Permanent Court of International Justice	<i>Competence of Assembly regarding admission to the United Nations (Arbitral Award of 31 July 1989); Polish Postal Service in Danzig</i>	Ability of international tribunal to choose among different interpretations of municipal law where instant case turns on such interpretation; treaty provisions prevail over norms of customary international law
<i>Canada v. Term of Patent Protection</i>	International Court of Justice	<i>Brazilian Loans, Elettronica Sicula S.p.A.; Military and Paramilitary Activities in and against Nicaragua</i>	Effective interpretation; interpretation must be based on full text of the treaty
<i>Korea v. Measures Affecting Government Procurement</i>	International Court of Justice; Permanent Court of International Justice	<i>Corfu Channel; Territorial Dispute Case (Libyan Arab Jamahiriya v. Chad); Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Jurisdiction and Admissibility, Judgment of 15 February 1995)</i> <i>Legal Status of Eastern Greenland; Temple of Preah Vihear</i>	Error as reason for invalidating a treaty

Table 3.6. Continued.

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>United States v. Anti-Dumping Act of 1916 (EC)</i>	Permanent Court of International Justice; International Court of Justice	<i>Brazilian Loans, Elettronica Sicula S.p.A.; Nuclear Tests</i>	Ability of international tribunal to choose among different interpretations of municipal law where instant case turns on such interpretation; conditions under which statement by representative of state generate international legal obligations
<i>United States v. Sections 301-310 of the Trade Act of 1974</i>	Permanent Court of International Justice; International Court of Justice	<i>Brazilian Loans, Elettronica Sicula S.p.A.</i>	Ability of international tribunal to choose among different interpretations of municipal law
<i>European Communities v. Regime for the Importation, Sale and Distribution of Bananas (Appeal)</i>	International Court of Justice	<i>South West Africa Cases (Second Phase); Barcelona Traction; Mavrommatis Palestine Concessions; S.S. "Wimbledon" Case; Northern Cameroons</i>	Legal interest sufficient for dispute
<i>Japan v. Taxes on Alcoholic Beverages</i>	International Court of Justice	<i>Competence of the General Assembly for the Admission of a State to the United Nations (Second Admissions Case)</i>	Treaty interpretation in light of context and purpose
<i>European Communities v. Regime for the Importation, Sale and Distribution of Bananas</i>	International Court of Justice	<i>Wimbledon; Northern Cameroons (Preliminary Objections)</i>	Legal interest sufficient for dispute

<i>United States v. Standards for Reformulated and Conventional Gasoline</i>	International Court of Justice	<i>Territorial Dispute Case (Libyan Arab Jamahiriya v. Chad)</i>	Treaty interpretation in good faith and in light of context and purpose
<i>United States v. Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i>	International Court of Justice	<i>Competence of the General Assembly for the Admission of a State to the United Nations (Second Admissions Case)</i>	Treaty interpretation in light of context and purpose
<i>Korea v. Definitive Safeguard Measure on Imports of Certain Dairy Products (Appeal)</i>	International Court of Justice	<i>Competence of the I.L.O. to Regulate Agricultural Labour; Ambatielos; Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide; Rights of United States Nationals in Morocco</i>	Treaty interpretation in light of context and purpose
<i>Korea v. Definitive Safeguard Measure on Imports of Certain Dairy Products</i>	International Court of Justice	<i>Corfu Channel; Territorial Dispute Case (Libyan Arab Jamahiriya v. Chad)</i>	Requirement to interpret treaty as a whole
<i>EC Measures Concerning Meat and Meat Products (Hormones)</i>	International Court of Justice	<i>Gabčíkovo-Nagymaros Project</i>	Non-existence of precautionary principle

Table 3.7. Iran-U.S. Claims Tribunal

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Foremost Tehran Inc. et al. v. Iran et al.</i>	European Court of Human Rights	<i>Sporrong and Lonnroth; James and Others</i>	Expropriations
<i>Starrett Housing Corporation et al. v. Iran</i>	European Court of Human Rights	<i>Lithgow and Others</i>	Standard of valuation
<i>Kodak v. Iran</i>	European Court of Human Rights	<i>Sporrong and Lonnroth</i>	Interference with ownership not amounting to expropriation
<i>INA Corporation v. Iran</i>	Permanent Court of International Justice	<i>Factory at Chorzów</i>	Compensation
<i>United States v. Iran (Case No. A28)</i>	International Court of Justice	<i>Admissibility of Hearings of Petitioners by the Committee on South West Africa (Separate Opinion of Judge Sir H. Lauterpacht); Gabčíkovo-Nagymaros Project</i>	Non-existence of principle of 'approximate performance'
<i>Aram Sabet et al. v. Iran</i>	International Court of Justice	<i>Case Concerning Oil Platforms</i>	Continued force of Treaty of Amity
<i>Iran v. United States (Case No. A11, Partial Award)</i>	International Court of Justice	<i>Territorial Dispute (Libyan Arab Jamahiriya v. Chad); South West Africa Cases (Second Phase), Certain Expenses of the United Nations</i>	Duty to interpret treaties based on full text; rights cannot be read into a treaty merely because it seems they should
<i>Decision I-A2-FT</i>	International Court of Justice	<i>Ambatielos</i>	Special v. general provisions
<i>Phelps Dodge Corp. v. Iran</i>	International Court of Justice	<i>United States Diplomatic and Consular Staff in Tehran</i>	Status of Treaty of Amity

<i>Alfred R. Short v. Iran</i>	International Court of Justice	<i>United States Diplomatic and Consular Staff in Tehran</i>	Attributability to state
<i>Starrett Housing Corporation et al. v. Iran</i>	International Court of Justice, Permanent Court of International Justice	<i>Corfu Channel; Factory at Chorzów</i>	Use of experts; expropriation
<i>Bendone-Derossi v. Iran (Interim Award)</i>	International Court of Justice	<i>Military and Paramilitary Activities in and against Nicaragua</i>	Jurisdiction; interim measures
<i>Phillips Petroleum Company Iran v. Iran (Interim Award)</i>	International Court of Justice	<i>Temple of Preah Vihear; United States Diplomatic and Consular Staff in Tehran</i>	Status of Treaty of Amity
<i>Vernie Rodney Pointon v. Iran</i>	Permanent Court of International Justice	<i>Certain German Interests in Polish Upper Silesia; The Electricity Company of Sofia and Bulgaria</i>	Interim measures
<i>Behring International v. Iran (Interim and Interlocutory Award)</i>	International Court of Justice, Permanent Court of International Justice	<i>Legal Status of the South-Eastern Territory of Greenland; Factory at Chorzów; United States Diplomatic and Consular Staff in Tehran; Fisheries Jurisdiction (Interim Protection Order); Nuclear Tests Cases (Interim Protection Orders); Anglo-Iranian Oil Co. (Interim Protection Order); Northern Cameroons (Preliminary Objections)</i>	Interim measures

Table 3.7. Continued.

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Lilly Mythra Fallah Lawrence v. Iran</i>	Permanent Court of International Justice	<i>Certain German Interests in Polish Upper Silesia (Jurisdiction); The Electricity Company of Sofia and Bulgaria (Jurisdiction)</i>	Impermissibility of addressing merits in preliminary proceedings
<i>Nasser Esphahanian v. Bank Tejarat</i>	International Court of Justice	<i>Nottebohm</i>	Effective nationality
<i>Case No. A-18</i>	International Court of Justice, Permanent Court of International Justice	<i>Panevezys-Saldutiskis Railway; Nottebohm</i>	Effective nationality
<i>Flexi-Van Leasing, Inc. v. Iran</i>	International Court of Justice	<i>Certain Norwegian Loans</i>	Standard of proof
<i>Ford Aerospace and Communications Corporation v. Air Force et al.</i>	International Court of Justice	<i>Military and Paramilitary Activities in and against Nicaragua (Interim Protection Order)</i>	Interim measures
<i>Phillips Petroleum Company Iran v. Iran</i>	International Court of Justice, Permanent Court of International Justice	<i>Diversion of Water from the River Meuse; Factory at Chorzów; United States Diplomatic and Consular Staff in Tehran; Temple of Preah Vihear</i>	

<i>United Technologies International v. Iran</i>	International Court of Justice	<i>Anglo Iranian Oil Co. C; Fisheries Jurisdiction Case; Nuclear Test Case</i>	Interim measures
<i>Rouhollah Karubian v. Iran</i>	International Court of Justice	<i>Military and Paramilitary Activities in and against Nicaragua</i>	Relationship of press reports to state responsibility
<i>Thomas K. Khosravi v. Iran</i>	International Court of Justice	<i>Nottebohm</i>	Effective nationality
<i>SEDCO, Inc. v. Iran (Interlocutory Award)</i>	International Court of Justice	<i>Barcelona Traction</i>	Settlements agreements as not constituting <i>opinio juris</i>
<i>Amoco International Finance Corporation</i>	International Court of Justice	<i>United States Diplomatic and Consular Staff in Tehran; Nuclear Tests Case (Australia v. France)</i>	Effect of judgment in <i>Tehran</i>

Table 3.8. International Tribunal for the Law of the Sea

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>The M/V "Saiga" Case</i>	International Court of Justice	<i>Gabčikovo-Nagymaros Project</i>	Necessity
<i>Southern Bluefin Tuna Cases</i>	International Court of Justice, Permanent Court of International Justice	<i>Mavromatis Palestine Concessions; South West Africa (Preliminary Objections)</i>	Existence of legitimate dispute
<i>The "Grand Prince" Case (Belize v. France), Prompt Release</i>	International Court of Justice	<i>Appeal Relating to the Jurisdiction of the ICAO Council (Judgment)</i>	Ability of court to examine its jurisdiction <i>proprio motu</i>

Table 3.9. International Criminal Tribunal for Rwanda

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Prosecutor v. Ignace Baglishema (Judgement of 7 June 2001)</i>	International Court of Justice	<i>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide</i>	Genocide Convention as customary international law
<i>Jean Bosco Barayagwiza v. Prosecutor (Decision of the Appellate Chamber on Prosecutor's Request for Review or Reconsideration)</i>	International Court of Justice	<i>Application for Revision and Interpretation of the Judgement of 24 February 1982 in the Case concerning the Continental Shelf</i>	Standards for reviewing previous decisions
<i>Prosecutor v. Alfred Musema (Judgement and Sentence)</i>	International Court of Justice	<i>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide</i>	Genocide Convention as customary international law
<i>Prosecutor v. Rutaganda (Judgement and Sentence)</i>	International Court of Justice	<i>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide</i>	Genocide Convention as customary international law
<i>Prosecutor v. Akayesu</i>	International Court of Justice	<i>Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide; Nottebohm</i>	Genocide Convention as customary international law; definition of 'national group' under Genocide Convention
<i>Jean Bosco Barayagwiza v. Prosecutor (Decision of 3 November 1999)</i>	Permanent Court of International Justice	<i>Corfu Channel</i>	'Effective interpretation' as general principle of international law

Table 3.9. Continued.

Reference	Tribunal Referred to	Decision(s) Referred to	Issue(s)
<i>Jean Bosco Barayagwiza v. Prosecutor</i> (Decision of 3 November 1999)	European Court of Human Rights	<i>Fox, Campbell and Hartley v. United Kingdom</i> ; <i>Nielsen v. Denmark</i> ; <i>X v. Denmark</i> ; <i>Delcourt v. Belgium</i> ; <i>Winterwerp v. Netherlands</i> ; <i>De Wilde, Ooms and Versyp v. Belgium</i> ; <i>Van Der Leer v. Netherlands</i> ; <i>Koendjiharie v. Netherlands</i>	Time limits for detainee to be informed of legal grounds for her detention; Right of detainee to have detention reviewed
<i>Prosecutor v. Kanyababashi</i> (Decision of the Trial Chamber of 23 May 2000)	European Court of Human Rights	<i>De Jong Baijet and van den Brink</i> ; <i>Van der Sluijs, Zuiderveld and Klappe</i> ; <i>Brogan and Others</i> ; <i>Zimmermann and Steiner</i>	Time limits for initial appearance of detainees, definition of 'reasonable length' of proceedings
<i>Prosecutor v. Ntakirutimana</i> (Decision of the Trial Chamber of 11 June 1997)	European Court of Human Rights	<i>Croissant v. Germany</i>	Extent of right of defendant to counsel of her own choosing
<i>Prosecutor v. Joseph Kanyabashi</i> (Decision of the Trial Chamber of 23 May 2000)	Inter-American Court of Human Rights	<i>Habeas Corpus in Emergency Situations</i> (Advisory Opinion of 30 January 1987)	Definition of 'habeas corpus' in international law
<i>Jean Bosco Barayagwiza v. Prosecutor</i> (Decision of 3 November 1999)	Inter-American Court of Human Rights	<i>Habeas Corpus in Emergency Situations</i> (Advisory Opinion of 30 January 1987)	Definition of 'habeas corpus' in international law