

# *monthly* NEWSLETTER

YOUTH BAR ASSOCIATION

APRIL 2025



## Message From our Founder

As we drift into the second edition of our newsletter, I reflect upon how sincerely and swiftly our society has adapted, with intellectual curiosity and engagement, our youthful initiative is thriving; this issue stands as a testament to the momentum with which we have built our society. Whether you are reading to sharpen your legal acumen, or to stay informed on our initiative, I hope you find something that challenges your knowledge and excites you. We appreciate you being apart of our community and journey.

***Bella Frewin, Founder and President of the Youth Bar Association***

## Message From the Editor

Welcome to the second edition of our newsletter—our biggest one yet! We've packed it with more articles than ever before, covering everything from sharp legal takes to society updates. You'll also find the long-awaited answer to our Cupcake Confusion challenge (did you guess right?) and a brand new puzzle that's already got people slipping up—literally. There's plenty to dig into, so dive in, test your wits, and enjoy the read.

***Ari Allana Blunt, Director of The Newsletter***

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## Upcoming *Events*



### **MOCK TRIAL**

29<sup>TH</sup> OF JUNE AT 12PM

***Taylor Reed vs West Vale Sixth Form***

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*Where we showcase the top articles submitted by you.*

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*Test your legal knowledge and capability!*



# FEATURED CONTENT

*Showcasing the top member-submitted articles on current legal events and conceptual insights in law, diplomacy, and politics.*

## Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia & Montenegro)

### **Introduction**

In the landmark Bosnia Genocide Case (2007), the International Court of Justice (ICJ) decided a landmark question of international responsibility under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Bosnia and Herzegovina sued Serbia and Montenegro (at the time the Federal Republic of Yugoslavia) for genocide in the Bosnian War, specifically the Srebrenica massacre in July 1995. The case is a milestone in international law because it was the first instance where the ICJ gave an opinion on the liability of a state under the Genocide Convention. The Court's nuanced judgement clarified and extended our understanding of state obligations under international humanitarian law. This note covers the facts, legal foundation, interpretive rationale, and broader implications of the decision.

### **Facts**

The conflict in Bosnia and Herzegovina following the dissolution of the Socialist Federal Republic of Yugoslavia was characterised by widespread ethnic cleansing. Bosnian Serb forces backed by Serbian troops assaulted Bosniak (Bosnian Muslim) civilians using ethnic cleansing, arrest, and genocidal mass killings. The Srebrenica massacre was the worst atrocity, during which over 7,000 Bosnian Muslim men and boys were rounded up and executed in a summary fashion by Bosnian Serb forces. The atrocity was later described as genocide by the International Criminal Tribunal for the former Yugoslavia (ICTY).

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## Issues

The Court resolved certain fundamental issues of law that affected international jurisprudence profoundly:

**Jurisdiction of the ICJ:** Whether the Court, under Article IX of the Genocide Convention, had jurisdiction to adjudicate claims for State responsibility.

**Definition of Genocide:** Whether the acts that took place, and more so in Srebrenica, constituted genocide under the terms of Article II of the Convention.

**Attribution of Conduct:** Whether the conduct of the Bosnian Serb forces is to be attributed to Serbia under international law.

**Obligation to Prevent and Punish:** The scope and character of the obligation of States under Article I of the Convention.

**Standard of Proof:** To what standard of proof recourse is had when holding a state responsible for acts of genocide or complicity?

## Arguments of the Parties

**Bosnia's Submissions:** Bosnia submitted that Serbia was directly and indirectly responsible for the genocide. Bosnia submitted that Serbia exercised effective control or full control over the Bosnian Serb army, provided financial, logistical, and political support, and failed to prevent and punish the perpetrators. Bosnia emphasised that Serbia was aware of the genocidal intent and scope of the crimes, especially at Srebrenica.

**Serbia's Defence:** Serbia disputed all allegations, stating that it did not commit genocide and had no intention of doing so nor command over Bosnian Serb armed forces. It averred that things done in the course of war did not constitute genocide and, even if so, the actors of those acts were non-state actors who acted on their own volition. Serbia also opposed the admissibility and jurisdiction of the case.

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## **Judgement**

**Jurisdictional Order:** The ICJ exercised jurisdiction pursuant to Article IX of the Convention, deeming the Genocide Convention to apply to disputes involving state responsibility. The Court further declared Serbia to be the successor state of the Federal Republic of Yugoslavia and hence subject to the provisions of the treaty.

**Definition and Commission of Genocide:** The Court reaffirmed the definition of genocide enshrined in Article II of the Convention—acts committed with intent to physical destruction, total or partial, of a national, ethnical, racial or religious group. It agreed with ICTY that the Srebrenica massacre was an act of genocide. But believed that there was no clear-cut evidence that Serbia directly committed, or conspired to commit, genocide or had genocidal intent.

**Attribution of Conduct:** The ICJ employed the "effective control" test (decided in the Nicaragua case) to determine whether or not the action of the Bosnian Serb troops should be attributed to Serbia. The court confirmed that Serbia had extensive meaningful control over the Republika Srpska authorities and the armed forces but did not have effective control of particular operations committing genocide. In this way, conduct could not be attributed directly to Serbia.

**Failure to Prevent Genocide:** Above all, the Court ruled Serbia in breach of its duty to prevent genocide. It ruled that by virtue of Serbia's control over the Bosnian Serb authorities, it was with foresight and a duty to prevent the massacre. Its inability to do so was equally a violation of Article I of the Convention. The ICJ reaffirmed that the preventive obligation of genocide applies when there is a power of influence and awareness by the State of serious risk.

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**Failure to Punish Genocide:** Serbia also failed to punish genocide by not extraditing and arresting key perpetrators, including Ratko Mladić, to the ICTY. The Court censured Serbia for refusing to cooperate with the Tribunal and not fulfilling international legal obligations under international law to prosecute or extradite individuals suspected of genocide.

**Standard of Proof:** The ICJ applied a very high standard, requiring "fully conclusive" evidence of state responsibility for genocide. While not identical to the criminal standard of "beyond reasonable doubt", it required a high level of certainty due to the seriousness of the charges. The Court concluded that atrocities had indeed occurred, but insufficient evidence existed to establish Serbia's specific intent or direct participation.

## **Legacy**

The ICJ's decision is historic in several respects:

It clarified that the Genocide Convention binds individuals and States alike, affirming that States can be held accountable for violations.

The ruling drew a clear distinction between individual responsibility (as ascertained by tribunals like the ICTY) and state responsibility, and it contributed to the development of international legal doctrine on attribution and complicity.

In holding that a state is responsible for failing to prevent genocide but not for the commission of the acts, the court extended the realm of preventive obligations in international law.

The case showed how the ICJ could cope with complex matrices of facts over a long span of time, illustrating the virtues and vices of international adjudication.

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## Conclusion

The 2007 case law of Bosnia and Herzegovina v. Serbia and Montenegro is a pillar in the international humanitarian law jurisprudence. Even though the Court did not find Serbia responsible for committing the crime of genocide per se, its finding of the Srebrenica massacre as an act of genocide and condemnation of the Serbian State for its inability to prevent and punish such an act highlighted the seriousness of State responsibility under the Genocide Convention. The decision made major legal precedents on the quantum of evidence, causation of conduct, and scope of obligation in international law. It also clearly sent the message to the world that states cannot remain inactive and watch atrocities being perpetrated. The principles set in this case will continue to inform the interpretation of law as well as state action towards the prevention of mass atrocities in the years ahead.

Bosnia had instituted proceedings against Serbia before the ICJ in 1993, alleging that Serbia had committed a breach of the Genocide Convention. The case had entailed allegations of direct and indirect complicity in genocide, failure to prevent genocide, and failure to punish genocide. Procedural delay and objections followed before the ICJ made its final judgement in February 2007, over ten years after the case had been Serbia's defence. Serbia disputed all allegations, stating that it did not commit genocide and had no intention of doing so nor command over Bosnian Serb armed forces. It averred that things done in the course of war did not constitute genocide and, even if so, the actors of those acts were non-state actors who acted on their own volition. Serbia also opposed the admissibility and jurisdiction of the case.



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## India's First ICJ Case: How It All Went Down

### **Introduction**

India's journey in international law reached its historical moment as India made its first-ever entry into the International Court of Justice (ICJ). The UN's sole judicial organ, ICJ has witnessed all the greatest court cases around the world, and the first case for India was no exception. Besides proving India's legal diplomacy, it also provided a glimpse into its future international settlement of disputes.

In this essay, we'll explore the story behind India's first ICJ case  
Portugal vs. India: Right of Passage over Indian Territory

### **Facts**

In 1498, Vasco Da Gama discovered India, and in 1505, the Portuguese government colonized the modern state of Goa. The areas of Dadra and Nagar Haveli were also colonized by the Portuguese in 1779 under the treaty of Poona exchanging a military alliance for the territory and remained under Portuguese control until 1954. In August of 1954, Indian rebels and communists were able to depose their Portuguese overlords and take over the area. The Portuguese governor Captain Fidalgo needed to move his 329 units to assist the crackdown; he wanted to utilize a conclave located on the border with India. Contrary to the usual practice, India denied the Portuguese the right to use the conclaves. To address this issue, the Portuguese petitioned the International Court of Justice on 22nd December 1955.

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## **Arguments**

Portugal: the Republic of Portugal was represented by a counsel led by Mr. Innocent Galvao Teles, who argued that the treaty of Poona concluded in 1779 between Portugal and the Maratha Empire recognised the transfer of sovereignty from the Marathas to the Portuguese, whose terms allowed the Portuguese to collect taxes in return for a military alliance with the Marathas. This sovereignty was enjoyed uninterrupted even during the British times and even Indian independence until the government of India objected in 1954, which constituted a breach of the law, unjustified encroachment on free movement and a violation of international law.

India: The Republic of India, represented by a team led by Mr M C Setalwad, contended that India has and will maintain total sovereignty over its territories and that no foreign power can control India on its soil. The past treaties were based on political arrangements and diplomatic threats by the Portuguese. The nation of India has no obligation to follow agreements entered at the time of the British or before. They also argued that the right of passage was not a legal right; instead, it was dependent on the consent of the nation of India. The counsel highlighted the mass agitation against the Portuguese and contended that India is supporting the aspirations of the locals. The main argument viewed the Portuguese presence as a security risk to the Indian nation.

Since Portugal had already lost control of the majority of the conclaves, the council viewed the territory as not under Portuguese control and instead argued it as a new country, hence countering the Portuguese argument of sovereignty.

## **Judgement**

The court gave 2 judgements on 26 November 1957, which confirmed that the court had the jurisdiction required to adjudge this case. The final judgement came on 12 April 1960 and was decided by 14 permanent judges and 2 ad hoc judges led by ICJ President Helge Klaestad. The Court ruled in favour of Portugal on the right of passage for civilian purposes but ruled in favour of India regarding the movement of military and police forces. In the end, only allowing civilian movements and not military ones which doomed the Portuguese case.

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## **Conclusion**

Captain Fidalgo and his 150 men finally surrendered on 11 August 1954, and the rebels announced the formation of the Free State of Dadra and Nagar Haveli. An organisation called the Varishta Panchayat of Free Dadra and Nagar Haveli was formed to govern the new territory; it elected R. V. Mudras as its new head. The new state required help in administration, and India sent IAS K.G. Badlani as an aid to the new state. The new state adopted the Indian national flag and symbol as its new representatives. In June 1961 the Varishata Panchayat voted in unison to join the nation of India. As part of this plan, K.G. Badlani, who was the administrator, was declared the Prime Minister of Dadar and Nagar Haveli so he could sign the merger agreement with India. Free Dadar and Nagar Haveli were annexed by India on 11 August 1961 with K.G. Badlani as its first chief minister, and this was finalised by the 10th Amendment Act 1961, which came into effect 5 days later.

- Portugal still maintained its claim over Goa, Daman and Diu, and Dadar and Nagar Haveli until finally recognising Indian sovereignty after the Carnation Revolution on 31 December, 1974. Interestingly Portugal continued to grant Portuguese citizenship to the Indian nationals until 2006.

*Both submitted by Shourya Singh*

# FEATURED CONTENT

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## The Politics of Friedrich Hayek and his effect on neoliberalism

Friedrich Hayek, an Austrian British philosopher and economist, asserted his political rationale against unlimited government in his appendix 'Why I am not a conservative', in his 1960 work *The constitution of Liberty*.

Margaret Thatcher herself held Hayek in high intellectual regard, his ideological work becoming a cornerstone of her economic philosophy. For this very reason, it is unusual that Hayek was so resolute in his non-conservative stance, but, to clear this political ambiguity, he has been labelled as a 'neoliberal', so how has Hayek revolutionised the term 'neoliberal'?

Hayek didn't invent neoliberalism; his influence on it was a transformative foundation for its structure. He had a vital role in reviving classical liberalism, post World War II, when Keynesian and state intervention economic structures dominated the frameworks of the Western democracies. With Hayek's ideas, neoliberalism was rearticulated as an organised form of spontaneous order, instead of the laissez-faire absolutist approach that had previously governed the composition of economic politics. This shift in ideas that had previously been so regimented prompted reconsideration as he shifted liberalism from economic minimalism to a normative project protecting people from domineering ideologies, such as fascism and socialism.

His work *The road to serfdom* (1944) was a political turning point in popular ideas. His assertion that central planning erodes individual freedoms and inevitably leads to authoritarian regimes constructed a compelling moral and political case against socialist rationales and reinventing the political economy itself.

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## Judicial Restraint v Judicial Activism

The debate between judicial restraint and activism lies at the very heart of legislative interpretation and jurisprudence. The two philosophies explore the contrast in approach to legal interpretation, in the larger legal political dimension.

### Judicial Restraint

Judicial restraint is the rationale that encourages respect of legislative primacy; those who adhere to this philosophy play a limited role in policy making and opt to follow the letter of law as closely as possible. Advocates for this method of practice conform to numerous principles of legal philosophy; courts refrain from overturning previous rulings and precedent, abiding by stare decisis. This practice encourages legal predictability and stability. Judges should be cautious, and follow all executive actions, in addition to the legislative frameworks that support their case. Those who do so are better suited to make policy decisions. Avoiding evolving interpretations, judges follow the plain text of the law, without applying any partisanship, to ensure it is applied with its original meaning.

### Judicial activism

Judicial activists champion justice through the court system; rulings are suspected to be substantiated by personal or political considerations, rather than a full basis of rigid law. Some view judicial activism as a necessary function in the organ of law, while others believe it hinders the development of legal values and fails to protect people's rights, due to the inherent partisanship one would have if they followed this method of ruling. However, judicial activists would assert that they extend the courts principles to ensure fair rights, especially in unprecedented circumstances, such as the current rise in AI use. Activists may ignore previous rulings that they consider to be unjust and outdated to ensure justice for people. In areas where legislation is slow to act, statutory interpretation is vital to maintain fair order and liberty for people.

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At the confluence; legal positivism

Legal positivism is a jurisprudential approach whereby the validity of law is predetermined by its sources, not as moral content. Positivist thinkers often think of law as a social fact or rule, as opposed to an ethical consideration. Naturally, legal positivism is closely related to, and even regulated by, judicial restraint. Judges would avoid injecting moral reasoning into their application of legislation and focus on upholding the law by proper factual procedure. Contrarily, judicial activists would argue that laws should be applied flexibly, going beyond legal text to do so.

Legal systems must balance the positivist need for certainty and legitimacy with the activist pursuit of justice and responsiveness. While judicial restraint reflects a deep positivist foundation—prioritising law as it is—judicial activism may be necessary when the law fails to protect marginalised rights.

Hence why legal positivism provides the framework for understanding why judges may choose restraint, which emphasises legitimacy and the rule of law, or choose activism, invoking the law's spirit when its letter falls short by interpretation.

Legal positivism sheds light on the divide between judicial restraint and activism, explaining the caution of restrained judges and critiques the moral reasoning of activist courts. In practice, neither philosophy operates in a vacuum, therefore courts must interpret laws in a complex world, where the legitimacy of authority and the demands of justice are often in tension. By adhering to a blend of both principles, issues can be pinpointed and laws adapted to maintain just governance.

*Anonymous Submission*

# SOCIETY UPDATES

*What has happened this month in the YBA?*



## Our First Debate!

This month, we held our very first debate here at the Youth Bar Association, exploring whether international law should be able to override a nation's sovereignty for humanitarian reasons. Arguing for the proposition, William Ericson and Jacob Neal made a strong case for global responsibility and the need to protect human rights. Representing the opposition, our own Bella Frewin delivered a powerful defence of national autonomy. Both sides impressed the judges, with William and Jacob being named the overall winners. The debate ran smoothly, sparked meaningful discussion, and set a high standard for what's to come.

## We Are Hiring!

***Interested in working for the YBA?*** We're hiring a Social Media Manager! Ideally, candidates will have experience in social media management, a background in debate, and a basic understanding and interest in law or politics (or both!). This is an exciting opportunity to contribute to a dynamic community and help shape our online presence.

# MINI LEGAL CHALLENGE

*Test your legal knowledge here!*



## The Cupcake Confusion Answer

### **Background:**

Max asks for 12 cupcakes “same price as usual,” Lily agrees, bakes them, Max picks them up but doesn't pay, claiming he thought they were a gift.

### **Was there an agreement?**

Yes, there was an agreement.

Max made an offer: "I'll buy 12 cupcakes for my party next Friday—same price as usual?"

Lily accepted: “Sure, I'll have them ready.”

That creates a mutual understanding. They've bought and sold cupcakes before ("same price as usual"), so Max knew it usually costs money.

### **What makes something a contract?**

Under English contract law, a valid contract usually needs:

1. Offer – Max offered to buy cupcakes.
2. Acceptance – Lily agreed to make them.
3. Consideration – This means something of value is exchanged. Max gets cupcakes, Lily expects money.
4. Intention to create legal relations – In business situations (like selling goods), the law assumes people do mean to make legally binding agreements.

So, this likely was a valid contract.



# MINI LEGAL CHALLENGE

*Test your legal knowledge here!*



## The Cupcake Confusion Answer

### **Should Max have to pay?**

#### ***If you were Lily's lawyer, you'd argue:***

- There was a clear offer and acceptance.
- There was past business (so Max knew it wasn't a gift).
- Lily made the cupcakes with the expectation of payment.
- Max picked them up and didn't say anything at the time.

#### ***If you were Max's lawyer, you'd argue:***

- Lily didn't say a price this time.
- Maybe there was no clear intention to create a formal agreement this time.
- He genuinely thought they were a friendly gesture (but this is weaker if they've done business before).

### **In Conclusion**

The court would likely side with Lily. There was a clear agreement, and both parties knew there was usually payment involved. Max accepted the goods without saying otherwise.

So yes, Max probably has to pay.

# MINI LEGAL CHALLENGE

*Test your legal knowledge here!*



## The Slippery Shop Floor

### **Scenario:**

Amira walks into a local supermarket. Just inside the door, there's a wet patch on the floor with no warning sign. She slips, falls, and injures her wrist. The manager says, "We were short-staffed, and someone was just about to clean it up."

Amira wants to claim compensation for her injury.

### **Questions to Answer:**

1. What type of legal claim could Amira make?
2. What would Amira need to prove to win her case? (Hint: Think 'duty of care')
3. Do you think the supermarket is responsible? Why or why not?

# DISCLAIMER

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