

INTERNATIONAL LAW

(International Class)

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

- **The Purposes of the United Nations are:**
- **To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;**
- **To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;**
- **To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and**
- **To be a centre for harmonizing the actions of nations in the attainment of these common ends.**



Article 14 – Vienna 1961

- 1. “Heads of mission are divided into **three classes**, namely:
 - (a) that of **ambassadors** accredited to Heads of State, and other heads of mission of equivalent rank;
 - (b) that of **envoys and ministers** accredited to Heads of State;
 - (c) that of **charges d'affaires** accredited to Ministers for Foreign Affairs.

All International law can be considered diplomatic law; and, on the contrary, all diplomatic law can be considered international law.

«Let us never negotiate out of fear.
But let us never fear to negotiate»

John Kennedy, 1961

Consular immunity

- Consuls like diplomats, represent their state in another state, but, unlike diplomats, they are not concerned with political relations between the two states. They perform a wide variety of non-political functions:
 - Issuing passports and visas,
 - Looking after the shipping and commercial interests of their states, and so on.

Consular immunity

- Consulates often are based in provincial towns as well as in capital cities.
- In 1963 the UN convened a conference at Vienna, which drew up the Vienna Convention on Consular Relations and many states became parties to the Convention.
- The Convention assimilates the status of consuls to that of diplomats.

VIENNA CONVENTION ON CONSULAR RELATIONS

Article 5 "CONSULAR FUNCTIONS"

- Consular functions consist in:
 - (a) **protecting** in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
 - (b) **furthering (favouring)** the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
 - (c) **ascertaining (inquiring)** by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, **reporting** thereon to the Government of the sending State and giving information to persons interested; (...)

- (*d*) Issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (*e*) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

APPOINTMENT AND ADMISSION OF Consul

- Article 12 “*THE EXEQUATUR*”
 - 1. The head of a consular post is admitted to the exercise of his functions by an **authorization** from the receiving State termed an *exequatur*, whatever the form of this authorization.
 - 2. A State which refuses to grant an *exequatur* **is not obliged to give to the sending State reasons for such refusal.**
 - 3. Subject to the provisions of Articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an *exequatur*.

STATE RESPONSIBILITY

Session 12 & 13



What do you know
about
responsibilities?

The meaning of responsibility under international law

- Responsibility is associated with “obligations”.
- State responsibility under international law means “obligations” of a state associated with its international status.
- Responsibility = liability

When a state responsibility/liability arises?

A state can incur liability for either “intentional” or “negligent” conduct.

What is the different between “intentional” and “negligent” conduct?

Give your examples

Fundamental Elements of State Responsibility

1. The existence of a legal obligation recognized by International Law.
2. An act or omission that violates that obligation
3. Some loss or articulable damage caused by the breach of the obligation.

State Responsibility vs State Sovereignty



SOVEREIGN IMMUNITY

- When sovereign immunity applies, one State's judge cannot assert jurisdiction over another state in its courts.
- *Example: Country A cannot be tried by the court of Country B without Country A's consent.*
- Reparations must be sought in some other forum, possibly via a diplomatic intervention.

Equality of States

- *Why does a country have immunity from suit in the courts of another country?*
- Article 2.1 of the United Nations Charter provides that “the organization is based on the principle of the sovereign equality of all its Members”

The scope of sovereign immunity



1. States
2. Heads of State
3. State government agencies that are conducting State business



Types of Immunity

- Absolute Immunity

A foreign head of State was not subject to any civil or criminal prosecution during and after leaving office

Total immunity from suit in other states, regardless of the nature or purpose of the sovereign's acts.

- Restrictive Immunity

Most states no longer extend absolute immunity to entities owned or operated by foreign governments.

An entity operated by a State, in its capacity as a trader competing with other private merchants, is not necessarily given immunity from suit.

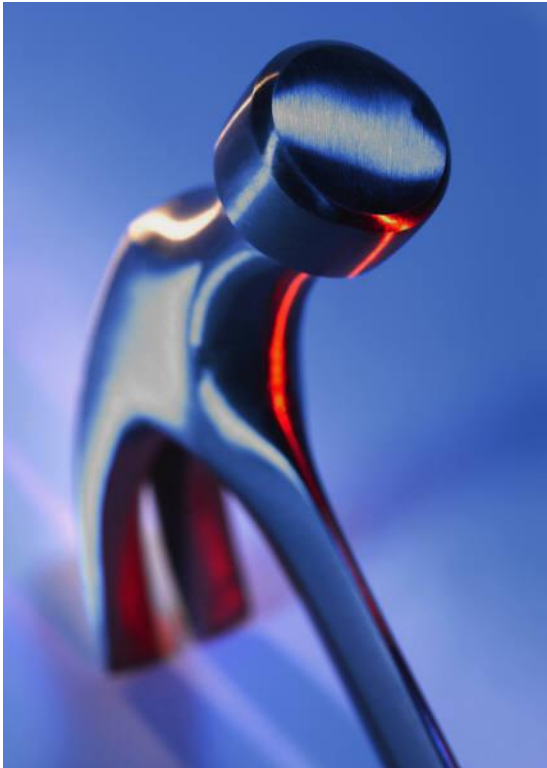
Restrictive Immunity

- Most States currently apply some form of the restrictive standard for resolving sovereign immunity questions
- How to distinguish the application of absolute immunity from restrictive immunity:
 1. sovereign versus private
 2. Public versus private
 3. Commercial versus non commercial
 4. Political versus trade-related

*Thank You
&
See You In
Mid Semester Exam*



Human Rights (Session 15 & 16)



What is the meaning of the term “human rights” according to you?

Why human rights are significant?

The Meaning of Human Rights

- Human rights are those rights possessed by an individual that cannot be withheld or withdrawn by a state”
- “The protection of individuals and groups against violations by governments of their internationally guaranteed rights”.

DEFINITION

HUMAN RIGHTS is defined as the supreme, inherent, and inalienable rights to life, to dignity, and to self-development. It is concerned with issues in both areas of civil and political rights and economic, social and cultural rights founded on internationally accepted human rights obligations

HUMAN RIGHTS

RIGHTS – moral power to hold (rights to life, nationality, own property, rest and leisure), to do (rights to marry, peaceful assembly, run for public office, education), to omit (freedom from torture and cruel, inhuman or degrading punishment, freedom from arbitrary arrest, detention or exile) or to exact something (equal protection of the law, equal access to public service, equal pay for equal work)

NATURE – Human rights are more than legal concepts: they are the essence of man. They are what make man human. That is why they are called human rights; deny them and you deny man's humanity (Jose Diokno)

History of H/R

- First the term <human rights> appeared in I/L in the period of France revolution.
- In state practice, as early as 1815 the United Kingdom tried to persuade states to make treaties for the suppression of the slave trade.
- A big step forward came with the peace treaties of 1919, which provided guarantees of fair treatment for the inhabitants, and which set up the International Labor Organization

Five categories of Human Rights

- Civil – the right to be treated as an equal to anyone else in society
- Political – the right to vote, to freedom of speech and to obtain information
- Economic – the right to participate in an economy that benefits all; and to desirable work
- Social – the right to education, health care, food, clothing, shelter and social security
- Cultural – the right to freedom of religion, and to speak the language, and to practice the culture of one's choice

Legal basis

- Human rights Treaties
- Conventions, Covenants
- Declarations
 - Contain detailed lists and definitions of human rights and obligations of the State

Legal basis - UN Charter

- Sets the promotion of and respect for human rights for all as one of the aims of the UN
- Establishes legal obligations for Member States to take action to achieve respect for human rights

Characteristics of Human Rights

- Universal
- Internationally guaranteed
- Legally protected
- Protects individuals and groups
- Cannot be taken away
- Equal and indivisible
- Obliges States and State actors

International Bill of Human Rights

1. The 1948 Universal Declaration of Human Rights (UDHR)
2. The 1966 International Covenant on Civil and Political Rights (ICCPR)
3. Its two optional protocols
4. The 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR).

The 1948 Universal Declaration of Human Rights (UDHR)

- **First Category covers “civil and political rights”:**
 1. The right to life, liberty, and security of the person
 2. The right to leave and enter one’s own country
 3. Freedom from slavery and torture
 4. Freedom from discrimination, arbitrary arrest, and interferences with privacy
 5. The right to vote
 6. Freedom of thought, peaceable assembly, religion and marriage

The 1948 Universal Declaration of Human Rights (UDHR)

- **Second category consists of economic, social, and cultural rights:**
 1. The right to own property
 2. The right to work
 3. The right to maintain an adequate standard of living and health, and
 4. The right to an education

The four freedoms

Franklin D. Roosevelt proposed four fundamental freedoms that people "everywhere in the world" ought to enjoy:

- Freedom of speech
- Freedom of religion
- Freedom from economic want
- Freedom from fear of aggression.

Definitions in the Charter

- **Human Rights**

- Basically Civil and Political Rights (ICCPR)
- Include any other right or freedom recognised by law
- Belong to people, not corporations

- **‘Public Authority’ must respect them, including:**

- Public servants and statutory officers, local government
- Statutory entity with functions ‘of a public nature’
- Any entity with functions of a public nature when exercising them on behalf of the state or a public authority

Human Rights Treaties in Europe

1. The European Human Rights Convention (ECHR) contains civil and political rights that are virtually identical to those set forth in the UN Covenant on Civil and Political Rights.
2. The European Social Charter contains the same economic and social rights set forth in the UN Covenant on Economic, Social and Cultural Rights.
 - The Executive Body is the Council of Ministers
 - The Judicial Body is the European Court of Human Rights.

Latin America's Human Rights Norms

1. The 1948 Charter of the Organization of American States (OAS).
2. The 1948 American Declaration of the Rights and Duties of Man.
3. The 1978 American Convention on Human Rights.
 - The norms are monitored by the Inter-American Commission on Human Rights.
 - The Commission may only study, report and recommend. It has no enforcement powers

Africa's Human Rights Program

- The 1986 African Charter on Human and People's Rights.
- The 1986 African Charter contains many of the human rights principles mentioned in the UN Charter and the UN Universal Declaration of Human Rights
- The 1986 African Charter established the African Commission on Human Rights, which monitors human rights enforcement on the African Continent.
- The Commission may only study, report and recommend. It has no enforcement powers

Your assignment (1500 words)

The Violations of Human Rights in Asia

(The analysis of the International Bill of Human Rights)

You may choose:

- 1. Any real case regarding the violation of human rights in a country in Asia (example, Indonesia, China, Myanmar, etc)**

*Thank You
&
See You Again In The
Next Sessions*



Citizenship

(Sessions 17 & 18)



***WHAT IS THE
MEANING OF
'CITIZENSHIP'?***

The Meaning of Citizenship

Citizenship (an individual's nationality) is a bond between an individual and a state that establishes reciprocal rights and duties between them.

Nationality

- Nationality is a legal, political, and social link between the individual and the state
- Nationality establishes mutual expectations for both the state that confers it and the individual who acquires it
- Examples of the rights of a state: imposing taxes on an individual, serving military forces.
- Example of the rights of an individual: obtaining a state protection

STATE RESPONSIBILITY

Session 12 & 13



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“intentional” or “negligent” conduct.***

Fundamental Elements of State Responsibility

1. The existence of a legal obligation recognized by International Law.
2. An act or omission that violates that obligation
3. Some loss or articulable damage caused by the breach of the obligation.

How is citizenship acquired?

1. Passively by parentage
2. Passively, by being born in a state that considers a child born there its citizen
3. Actively, by naturalization of an individual who voluntarily changes allegiance from one state to another.

PARENTAGE

- The child's citizenship was that of the parents
- *Jus Sanguinis* or 'blood rule' for establishing citizenship.
- Applied in Europe, Latin America and many English speaking countries.



BIRTH



- A nationality by birth rule.
- *Jus soli* or “soil rule” for determining citizenship.

Naturalization

- Individuals may actively change their nationality through the process of naturalization.
- The national law of the country from which nationality is sought establishes its naturalization requirements.

**The Law of the Republic of
Kazakhstan
on Citizenship of the Republic of
Kazakhstan***

- **Article 12. Citizenship of Children whose Parents have Different Citizenship**
- One of the parents on the date of child's birth have different citizenship and the other be a citizen of the Republic of Kazakhstan, the child is a citizen of the Republic of Kazakhstan if:
 - 1) he/she is born in the Republic of Kazakhstan;
 - 2) he/she is born outside of the country but one of his/her parents or both of them have permanent residence in the Republic of Kazakhstan;
- Parents of a child on the date of his/her birth have different citizenship one of them being a citizen of the Republic of Kazakhstan but both parents at that period having a permanent residence outside of the Republic of Kazakhstan, the citizenship of the child born outside of the Republic of Kazakhstan is acquired upon written consent of both parents.
- A child of whom one parent on the day of birth of the child has citizenship of the Republic of Kazakhstan and the other is a stateless individual or his/her citizenship is unidentified, is a citizen of the Republic of Kazakhstan regardless of the place of birth.

Article 17. Basis of Refusal for Granting Citizenship of the Republic of Kazakhstan

- Applications for acquiring citizenship of the Republic of Kazakhstan will be refused if an applicant:
- 1) committed a crime against humanity as defined by international law or if he acts against the sovereignty or independence of the Republic of Kazakhstan;
- 2) is engaged in propaganda for infringement of unity and integrity of the territory of the Republic of Kazakhstan;
- 3) carries out illegal activity non conducive to the public security or public health;
- 4) creates interstate, international or religious hostility or acts against the operation of the official language of the Republic of Kazakhstan;
- 5) is arrested for terrorist activity;
- 6) is declared a dangerous recidivist by the court;
- 7) is a citizen of an other country.

Article 15. Granting of Citizenship of the Republic of Kazakhstan

Citizens of other states and stateless individuals can acquire the citizenship of the Republic of Kazakhstan on their application according to this Law. The President of the Republic of Kazakhstan makes decisions on the applications for acquiring citizenship of the Republic of Kazakhstan.

DUAL NATIONALITY

- A dual national possesses the citizenship of more than one nation
- An individual may acquire dual nationality because:
 1. He/she was born in a nation that applies the *jus soli* rule of automatic nationality by birth
 2. Simultaneously acquire the parents' citizenship when their home nation applies the *jus sanguinis* rule of parental nationality.

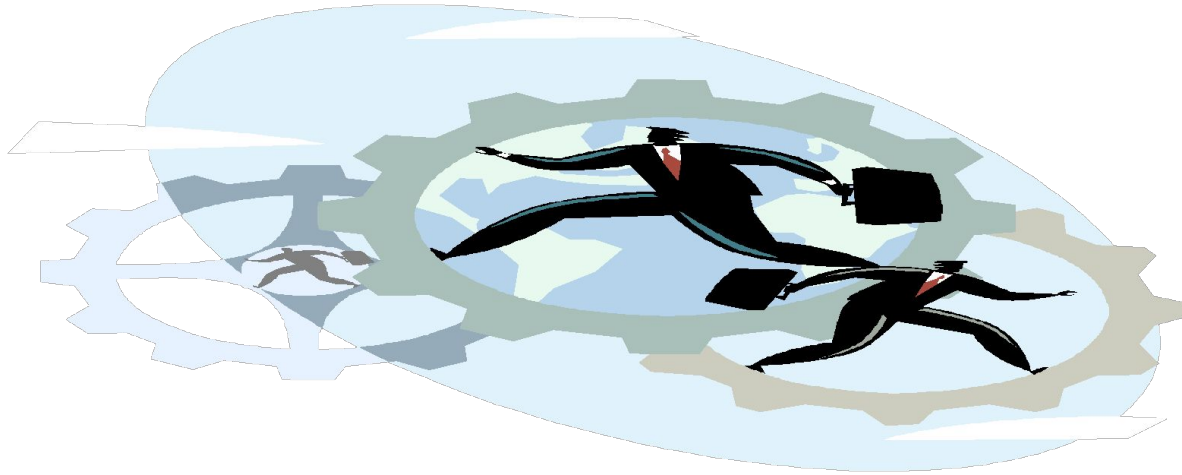
Unusual Burdens As A Results of Dual Nationality

- ***Give your opinions:***

1. Jurisdiction
2. Taxes
3. Military service
4. Protection when he/she is harmed in a third nation



STATELESS



- WHAT DO YOU KNOW ABOUT 'A STATELESS' PERSON?
- CAN YOU GIVE EXAMPLES WHAT CAUSES THE STATUS OF STATELESS ON AN INDIVIDUAL?

STATELESS

- Individuals are stateless when they lack the nationality of any state.
- Loss of one's original citizenship-typically conferred by birth or parentage, without obtaining a new citizenship-renders the individual stateless.
- The individuals cannot claim the bond of citizenship with any state to protect them.

- The [United Nations Charter](#) The United Nations Charter and [Universal Declaration of Human Rights](#) were approved on 10 December 1948. Of significance, the Declaration at [Article 15](#) affirms that:
 - Everyone has the right to a nationality.
 - No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

REFUGEES

- WHAT IS THE MEANING OF 'REFUGEES' ACCORDING TO YOU?
- Ahmad is a Palestinian who fought for the liberation of Palestine. Due to the suppression of Israel, he fled to Lebanon.
- **Is Ahmad a refugee?**
- Nguyen lived in South Vietnam, but since the civil war in Vietnam, he could not live comfortably anymore. He decided to run away from Vietnam in order to obtain a better life.
- **Is Nguyen a refugee?**

Refugees under International Law

- Article 1.A.(2) of the 1951 Geneva Convention on the Status of Refugees:

A refugee as any person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or, owing to such fear, is unwilling to avail himself of the protection of that country; or, who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or ... unwilling to return to it.

Refugees' Legal Status Under International Law

- Article 33.1 of the 1951 Convention:

A state may not return an individual to his or her homeland if 'his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'.

*Thank You
&
See You Again In The
Next Sessions*



Jurisdiction

(Session 19 & 20)



- **What is the meaning of 'jurisdiction' ?**

The Meaning of Jurisdiction

- Jurisdiction refers to the power of a state to:

1. Enact laws that proscribe certain criminal conduct
2. Apprehend offenders
3. Try them for violation of its internal laws.

It may be achieved by means of legislative, executive or judicial action.

- ***State sovereignty:***

The State can do what it wants within its own borders or: The State is not subject to the authority of others

- ***Equality of States:***

States cannot infringe on the sovereignty of other states and they must agree on how to relate to each other and how to solve problems

To give an instance

- if a man kills somebody in Britain and then manages to reach the Netherlands, the British courts have jurisdiction to try him, but they cannot enforce it by sending officers to the Netherlands to apprehend him. They must apply to the Dutch authorities for his arrest and dispatch to Britain. If, on the other hand, the murderer remains in Britain then he may be arrested and tried there, even if it becomes apparent that he is a German national.

- However, there are circumstances in which it may be possible to apprehend a suspected murderer, but the jurisdictional basis is lacking. For
- example, if a Frenchman has committed a murder in Germany he cannot be tried for it in Britain, notwithstanding his presence in the country, although, of course, both France and Germany may apply for his extradition and return to their respective countries from Britain.

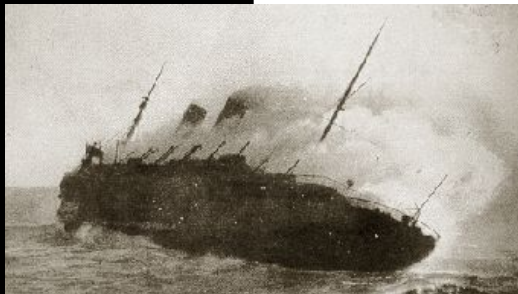
Types of criminal jurisdiction

- *Prescriptive / Legislative*
- The state's authority to make its own substantive criminal law and to decide its geographical reach.
- *Adjudicative / Judicial*
- The authority of the state's organs to investigate, prosecute and punish those who have breached its laws.
- *Enforcement / Executive*
- The authority of a state to enforce its laws – generally regarded as limited to within its territory.



State Jurisdiction Over People & Things

- Starting point: *S.S. Lotus*
 - States may not exercise power in the territory of another state
 - This is the notion of “enforcement” jurisdiction: states generally may not enforce their laws outside their territorial boundaries
 - But states may exercise jurisdiction in their own territory relating to acts that take place abroad
 - This is the notion of “prescriptive” jurisdiction: states in some instances may extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory





State Jurisdiction Over People & Things: Enforcement Jurisdiction

- Defined: State's jurisdiction to enforce its rules
- States clearly have the jurisdiction to enforce their laws in the zone over which they have territorial sovereignty
 - Generally, it would violate the sovereignty of other states for a state to enforce its rules in the territory of another state
 - A state whose sovereignty is offended in this way would have a claim against the offending state
 - Note, however, that national courts of many states take the view that even if the accused was apprehended in the territory of another state in violation of that state's sovereignty, the court is not deprived of jurisdiction



State Jurisdiction Over People & Things: Prescriptive Jurisdiction

2. Nationality Principle: a state may pass a law regulating the overseas conduct of its own nationals

- Notion of “nationality”: clearly the nationality principle depends on an understanding of “nationality”
 - Nationality of Individuals:
 - *jus soli* (birth of the state’s territory);
 - *jus sanguinis* (nationality by virtue of the nationality of one’s parents)
 - Naturalization: acquiring nationality after birth



State Jurisdiction Over People & Things: Prescriptive Jurisdiction

3. **Passive Personality Principle:** variant of the nationality principle, but here the state seeks to regulate an act committed abroad by a non-national in which the *victim* is a national



State Jurisdiction Over People & Things: Prescriptive Jurisdiction

4. **Protective Principle:** regulation of overseas conduct of the sort that jeopardizes the state's key interests
 - *E.g.* espionage, counterfeiting, conspiracy to violate immigration or customs laws

FIVE JURISDICTIONAL PRINCIPLES

1. Territorial principle
2. Universality principle
3. Nationality principle
4. Passive personality principle
5. Protective principle

Territorial

- A state is entitled to prosecute all persons irrespective of nationality who have committed a crime prescribed by its laws within its territory
- All crimes committed within a State's territory are within the legislative, executive and judicial jurisdiction of the state.
- A state can also apply its laws to ships flying its flag or aircraft registered with it and persons on board.
- Although a state has sovereignty over its airspace, acts committed on board foreign-registered aircraft are primarily subject to the jurisdiction of the state of registration.
- Exceptions: international agreements
- *(Exceptions: immunity (diplomatic, state, parliamentary))*

Territorial Principle

- Based on the location of the defendant's act.
- Two relevant applications are **the subjective form**-associated with conduct commencing within a state and **the objective form**-when the conduct commences outside but has its ultimate effect within the prosecuting state.
- **Subjective Form:**
 - Defendant's conduct violates State X law*
 - Conduct starts within State X*
 - Completed within State X*
- **Objective Form:**
 - Defendant's conduct violates State X law*
 - Conduct starts outside State X*
 - Completed or has "effect" within State X*

Universal jurisdiction

- **Universal jurisdiction is a principle of international law that allows a state's courts to prosecute individuals for international crimes (Examples of international crimes include genocide, crimes against humanity, war crimes and torture) committed anywhere in the world, even though neither the offender nor the victims are linked by nationality to the prosecuting state.**

Universality Principle

- Covers certain crimes that are considered to be committed against the entire community of nations.
- Any nation wherein the perpetrator of such a crime is found has the jurisdiction to arrest the criminal (who may be extradited).
- Universal crimes: piracy, slavery, war crimes, crimes against peace, crimes against humanity, genocide, torture.

- ***Universality Principle:***

Defendant's conduct sufficiently heinous to violate the laws of all states.

Conduct started and completed anywhere.

All states may prosecute (not just X)

Nationality Principle

- Based on the nationality of the defendant

- ***Nationality principle:***

Defendant's conduct violates State X law

Defendant is a citizen (national) of X

Conduct may start and end anywhere

Active personality (nationality of offender)

A state's entitlement to prosecute its own nationals for crimes committed outside its territory

Northern Sea

Moreland

Platia

Utopiville



Moreland Plastics

Misty Channel

Socran



Sea of Aristan

Lake Critius



Alexandra

Aristan



Passive personality (nationality of victim)

- *A state's entitlement to prosecute individuals who have harmed its own nationals even when such harm is committed outside its territory.*
- Jurisdiction over foreigners for acts committed abroad, which affects nationals of the state
- Become more accepted in recent decades following the development of international terrorism

Passive Personality Principle

- Based on the nationality of the victim
- ***Passive personality principle:***

Defendant's conduct violates State X law

Victim is a citizen (national) of X

Conduct may start and end anywhere

Nationality principle

- Nationality/citizenship is the link between the territory and its inhabitants
- Nationality/citizenship derives from:
 - Jus sanguinis (born of nationals)
 - Jus soli (born in the territory)
- Many States claim jurisdiction over crimes committed by their citizens

Protective Principle

- Authorizes a state to exercise jurisdiction over individuals when their criminal acts occur outside of its borders. Such acts must threaten the security, territorial integrity, or political independence of the state.
- ***Protective principle:***
 - Defendant's conduct violates state X law*
 - Conduct may start and end outside State X*
 - (Territorial must either start or end in X)*
 - (Protective need not have 'effect' in X)*

The protective principle

- Jurisdiction over foreigners for crimes committed abroad, when the vital interests of the State is threatened
- Reflected in many treaties

WORK IN PAIRS



- Make your own hypothetical cases relating to the application of the five jurisdictional principles.

Your Hypothetical Cases

- Principle of Territory:
- + Subjective Form:

Mr. Imberg, a Swiss citizen plotted the overthrow of the Italian Government. He was captured by the Italian Police in Rome where he planned this *coup d'etat*.
- + Italy has possesses the subjective territorial jurisdiction to prosecute and punish this defendant, although he is a foreign citizen.

Your Hypothetical Cases

- Principle of Territory:
- + Objective Form:

Mrs. Imberg, a Swiss citizen plotted the overthrow of the Italian Government. She began the plots in Belgium, then she went to Italy to join her husband. She was captured by the Italian Police in Rome where she planned this *coup d'état*.
- + Italy has possesses the objective territorial jurisdiction to prosecute and punish this defendant, although she is a foreign citizen.

Your Hypothetical Cases

+ Nationality Principle

The US government imposes a policy that “No US citizen is permitted to travel to Yugoslavia to comply with the UN Resolution”. US Chess master, Bobby Fischer defied the ban.

Although his conduct took place in foreign soil, the US could rely on the nationality principle to legitimize any ensuing prosecution for his prohibited travel.

Your Hypothetical Cases

- Passive Personality

Due to a negligence of a French ship's officer, the French ship struck a British ship and killed 10 British ship crews while the ship was passing the Black Sea.

British government relied on the passive personality principle to support its prosecution of the French ship's officer. The officer's conduct harmed British Citizens and British property interests.

Your Hypothetical Cases

- Protective Principle

A Canadian citizen made false statements while trying to obtain a visa from the US Consulate in Montreal.

The court relied on the protective principle because all the elements of the crime occur in the foreign country and jurisdiction exists because these actions have a 'potentially adverse effect' upon security or governmental function'.

Your Hypothetical Cases

- Universality Principle

Piracy was usually committed on the high seas rather than within the territorial waters of any nation. The pirates often fled to distant land or waters. Under the universal principle, all nations have the jurisdiction and the duty to apprehend pirates when they are present.

EXTRADITION

- Is the process whereby one nation surrenders someone accused of a crime to another nation.
- Extradition treaties are necessary because extradition is not automatic.
- There is no duty to surrender an individual to another nation.
- Example: a citizen of Peru committed a crime in his country, then he fled to Venezuela. Is it obliged for Venezuela to return the criminal to his own country?

The Extraditable Offenses



- Murder
- Kidnapping
- Rape
- Bigamy
- Robbery
- Inciting riots
- Piracy
- Drug law violation
- Bribery
- Evasion of taxes
- Unfair business transactions
- Violations of import-export laws.

“Irregular Alternatives”

- States do not always depend on extradition treaties when they seek to prosecute certain individuals. They may expel or deport wanted individuals without going through a formal extradition process, regardless of whether an applicable extradition treaty exists.

Avoiding Extradition

(Extradition Limitations)

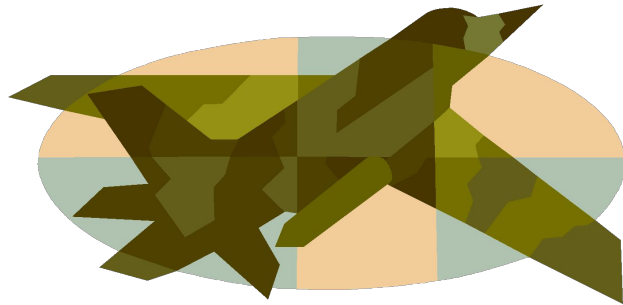
- Extradition treaties typically require the extraditable offenses be those that violate the laws of both parties to the treaty. The conduct charged may violate the laws of one country but not the other.
- **Hypothetical case:**

Country A does not apply the death penalty in criminal cases, but Country B does. A citizen of Country B was accused of the sex-torture slaying 13 people. May Country A refuse the extradition of Country B citizen?

Avoiding Extradition (Political Offense Exception)

- Most extradition treaties contain an escape clause that is characterized as a *political offense*.
- The requested state thereby retains the discretion to deny extradition.
- There are no clear standards for the exercise of this discretion.
- The amendment to the 1986 US-UK extradition treaty: “extradition shall not occur if...the request for extradition has in fact been made with a view to try punish him on account of...political opinions”.

Hypothetical Case



- The government of Country X has a trouble with a group of people who protests the performances of the government from time to time. One of the protesters hijacks the plane and forces the pilot to fly the aircraft to Country Y. May Country X request the extradition of the hijacker?

*Thank You
&
See You Again In The
Next Sessions*



Territory

(Session 21 & 22)



Why is it significant
to determine a
state's territory?

Categories Of Territory

- Territory owned by a sovereign state (sovereign territory)
- Territory not owned by any state because of its special status (trust territory)
- Territory capable of being owned but not yet under sovereign control (*terra nullius*)
- Territory that cannot be owned by any nation (*terra communis*)

Sovereign Territory

- States possess the right to control the land located within their territorial boundaries.
- The extend of that sovereignty is ordinarily defined by oceans, mountains, and other natural frontiers and barriers.
- ***Please determine the territorial boundaries of Indonesia (provide your map)***

Trust Territory

- The land which is not subject to the sovereignty of any state because some of special status.
- Example the United Nations trusts territories after World War II.
- Under the UN Charter, this category of territory is under a temporary disability to control its own area-which may occur because of a lack of political infrastructure.

Terra Nullius

- Areas that were deemed *terra nullius* belonged to no one.
- They were capable of acquisition.
- In the event of a sovereignty dispute, state that occupied or administered such areas usually established a legitimate claim by showing that the dispute territory was initially *terra nullius*.

Terra Nullius

Was Australia
prior to the arrival
of Europeans
“terra nullius”?



Res Communis

- Territory is incapable of ever being legally owned or controlled. It belongs to no one and must remain available for all to use.
- The clearest example of *res communis* are the high seas and outer space.
- ***Is Antarctica 'res communis'?***

New Modes of Territorial

- **Renunciation**
- **Joint Decision**
- **Adjudication**

Renunciation

- There is no transfer of title.
- In 1947, Italy renounced title (previously obtained by conquest) to its territories in northern Africa.
- A state may voluntarily relinquish its territorial sovereignty as well.
- This method of transferring sovereignty is sometimes referred to as *acquiescence*, *estoppel*, and even *prescription*

Make your Own Examples

- Explain the meaning of 'renunciation' by giving examples.

Joint Decision

- Victorious state claimed and exercised a right to dispose of certain property that the defeated state had obtained by forceful conquest.
- Make your examples to explain the meaning of 'joint decision'.

Adjudication

- Title disputes to state territory are often examined by judges or arbitrators.
- Adjudication is the result of an international agreement that authorizes a mutually acceptable tribunal to resolve a dispute between the participating states.
- Make your examples to explain the meaning of 'joint decision'.

*Thank You
&
See You Again In The
Next Sessions*



Dispute Resolution (Session 23 & 24)



Dispute Resolutions Under International Law

- **Arbitration**
- **Diplomacy**
- **Judicial Methods (Litigation)**
- **Alternative Dispute Resolution**

- **WHAT ARE THEIR DIFFERENCES?**

What is arbitration?

Please give your opinions

Arbitration (Non Litigation Dispute Resolution)

- Parties often determine who will decide what after the dispute arises



DIPLOMACY

- The national participants do not submit their disputes for resolution by an “outside” third-party entity.

Litigation

- The court composition and power to act are established before the dispute arises.

Alternative Dispute Resolution (ADR)

- Negotiation: is completely controlled by the immediate parties to the dispute. Negotiations between states are normally conducted through diplomatic channel.
- Inquiry: is conducted by someone who is not a party to the dispute and who attempts to provide an objective assessment of the respective positions.
- Mediation: involves the assistance of an outsider who is not a party to the dispute.
- Conciliation: is a third-party dispute resolution in a more formalized setting than negotiation or mediation.
- Mini-trial: the parties confront one another in a similar context, however, and must verify their positions before a neutral third party.

International Dispute Resolutions (Discussions)

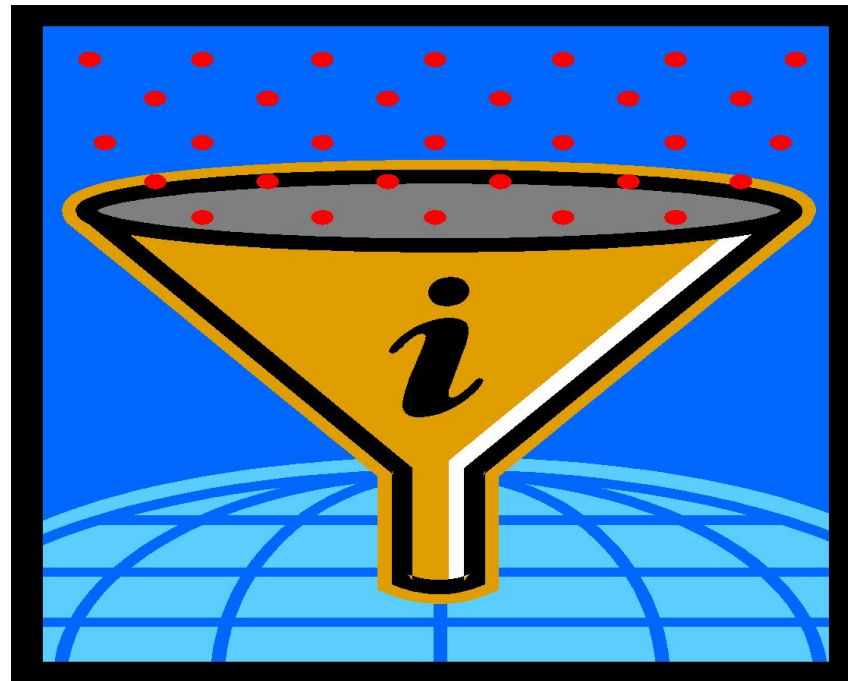


- Your country breaches International Law.
- Which dispute resolution methods you prefer?
- *Arbitration, ADR, Litigation, Diplomacy*

Arbitration

- Ad hoc Arbitration: there are no pre-established rules and procedures predating the agreement to arbitrate.
- Permanent Arbitral Entity, such as the Permanent Court of Arbitration: are immediately available with objective rules and procedures for resolving international disputes.

ARBITRAL ENTITIES AND TRIBUNALS



The Permanent Arbitral Entities

- The Permanent Court of Arbitration: is not a court. Its judges serve on small arbitration panels available for the arbitration of inter-State dispute.
- The International Chamber of Commerce Court of Arbitration: facilitates the arbitration of private business disputes.
- The International Centre for Settlement of Investment Dispute: refers mixed arbitration disputes (between a State and a private individual or corporation) to panels of legal and business experts who arbitrate claims submitted to it.

Courts

1. The Permanent Court of International Justice (the first World Court): resolves disputes between states materialized after World War I.
2. In 1945, the United Nations created a new world Court and the companion Statute of the International Court of Justice

The International Court of Justice (ICJ)

- The ICJ hears cases referred to it as follows:
 1. As specifically provided in the UN Charter
 2. As provided in the ICJ Statute
 3. Under special international agreements between nations

International Criminal Court (ICC)

- The ICC try individuals accused of the following:
 1. Genocide, as defined in the 1949 Genocide Convention
 2. International and internal war crimes, “committed as part of a plan or policy or as part of a large-scale commission of such crimes”
 3. Crimes against humanity, which are “widespread or systematic” part of a plan or policy directed against civilians.

Ad Hoc International Criminal Tribunals

- The Nuremberg and Tokyo Tribunals in 1945 (Germany and Japanese war crimes)
- The International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Former Yugoslavia (ICTY) in 1992 (war crimes in Bosnia)
- The International Criminal Tribunal for the Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 – 31 December 1994 (ICTR).

REVIEW MATERIALS

15 - 24

- Sessions 15 & 16: Human Rights
- Sessions 17 & 18: Citizenship
- Sessions 19 & 20: Jurisdiction
- Sessions 21 & 22: Territory
- Sessions 23 & 24: Dispute Resolutions

FINAL EXAM CLUES

- The concept of jus soli and jus sanguinis
- How to determine that someone is a refugee
- May a country force a refugee to go back to the country in which he is being suppressed?
- The concept of extradition
- The concept of territory and jurisdiction
- The concept of res communis
- The existence of ICJ

*Thank You
&
See You In Final
Semester Exam
Good luck!!!*



MID SEMESTER EXAM

- Anggora is a new independent State located in Zip Continent. There are 5 other States sharing the Continent with Anggora. One of the State is Siam. This State is bordered by a long wide river with Anggora. Zeto is also the neighbouring State of Anggora. The border between Anggora and Zeto is a mountain. All States in this Continent have entered into a military agreement. The situation in Zeto is not peaceful since there is a certain group of people demanding an independent from Zeto. As the part of Military Agreement, Siam sends its troops to Zeto via Anggora. The ship which loads Siam's troops is having troubles when entering the territorial sea of Anggora. In order to reach the land of Anggora safely, the ship has to dump a number of its supplies into the sea. Just a few days after the passing of the Siam ship, Anggora naval officers notice that lots of fishes are floating and dying due to some of the chemical liquids. Anggora is going to sue Siam for the pollution.

MID SEMESTER EXAM

Questions:

1. Has this case to be decided under a State national law or international law? Why
2. Which branch of international law does deal with this case? Why?
3. What are the main issues in this case?
4. What would you advise Anggora if you were appointed to be its counselor?
5. Please advise Siam what to do to settle this case.

FINAL SEMESTER EXAM

- CASE I:
- Gallan was born in Alpha country which applying *'jus soli'* rule, but his parents are from Betha country in which *'jus sanguinis'* rule applied. Ahmad is already 20 years old when he finds out that the government in Charlie country where he lives is ruled by racist group. He feels afraid, therefore he decides to run away and seek protection in the neighboring country. He arrives in Delta, the poorest country in the region. This country wants him to leave because there is no enough food supply for people anymore. In order to survive, Gallan steals some wheat flour from a store. The Delta court has found him guilty and punish him life sentence. Alpha and Betha country consider that Gallan is their citizen, therefore ask Delta Country for extradition. Delta refuses the extradition requests on the ground that Delta still disputes with the two countries over the small island called "Echo". All of these countries claim that Echo is "Res Communis", yet since 100 years ago , a study has found fossil in Echo which the figure is similar to people of Delta. Galla has become frustrated and all of these counties are in dispute regarding Gallan.

FINAL SEMESTER EXAM

- Questions:
 1. Mention all of the issues and analyze them based on International Law approaches (30%)
 2. If you were Gallan, what would you do? (20%)
 3. How to settle the dispute among the three countries? (20%)

FINAL SEMESTER EXAM

- The ICJ has been criticized for its effectiveness. It was formed within a political arena, however. The State participants did not really want it to decide all international disputes. In the absence of a true world government, they did not want the World Court to function like their national courts. ***Analyze and comment the statement from different angles, eg. Individual state, the united nations, national and international law approaches. (30%)***

Final Test Exam (make up exam)

- Sudan has the largest number of Internally Displaced People in the world. Many live in appalling conditions, particularly in the Darfur region, and continue to be subject of military attack, rape and kidnap. ***What should international community do regarding this circumstance? (analyze it based on the related international conventions) (30%)***
- Ebrahim, a citizen of South Africa, had previously completed 15 year-jail term in South Africa. In 1980, he left South Africa for Swaziland because he was a leading member of the African National Congress. He was forcibly abducted from Swaziland in 1986 by unidentified persons and taken to the Republic of South Africa where he was formally arrested, tried, convicted of treason, and sentenced to twenty more years of imprisonment. ***Is a person abducted by State agents amenable to the criminal jurisdiction of the courts of the State to which he is abducted? (40%)***

FINAL TEST EXAM (Make Up Exam)

- There is no territory on earth that is totally incapable of exploitation. ***Argue this statement by adopting Res Communis approach. Give also example of res communis area. (30%)***

THANK YOU VERY MUCH

*for your participation in
international class*