



LAW OPTIONAL TEST PAPER NO: 03
UPSC CSE MAINS 2024

De Facto IAS

Subject : International Law - I

Time Allowed : Three Hours

Maximum Marks : 250

QUESTION PAPER SPECIFIC INSTRUCTIONS

Please read each of the following instructions carefully before attempting questions.

- There are Eight questions Divided in Two sections and the Candidate has to attempt five Questions in all.
- Question Nos. 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least one from each section.
- The number of marks carried by a question/part is indicated against it.
- Answers must be written in the medium authorised in the Admission Certificate which must be stated clearly on the cover of this Question-cum-Answer (QCA) Booklet in the space provided. No marks will be given for answers written in medium other than the authorised one.
- Word limit in questions, wherever specified, should be adhered to.
- Attempts of questions shall be counted in sequential order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the answer book must be clearly struck off

Name : Devansh Sarsawat

Test - 3

Date → 10-07-2024

Timing : 10:45 - 1:50

Section: A

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Question one and five contain Five parts of 10 marks each. Other questions consist of three Parts each with 20, 15 and 15 marks Respectively.

custom opp. neim sovereignty → Declan, 1967
Section - A
Q.1(a). Examine the evolution of the 'Right of Asylum' in international law. What are its different types of Asylum? (10 Marks, 150 words)

Q.1(b). Differentiate between De Facto and De Jure Recognition (10 Marks, 150 words)

Q.1(c). 'Pacta Sunt Srfanda' is the bedrock of the International Treaty. (10 Marks, 150 words) *Art. 26 - 26)*

Q.1(d). Examine the concept of 'Inland Waters' under the United Nations Convention on the Law of the Sea (UNCLOS) and its significance for riparian states. (10 Marks, 150 words)

Q.1(e). Write Short Notes on Rebus Sic Stantibus in the Vienna Convention 1969 on the law of treaties. (10 Marks, 150 words) *A. 62* *except → boundary tri* *own content*

3 min
→ Senja
Montenegro
Q.2(a). Describe the principle of 'Jus Cogens' in international law. Provide examples and explain their significance in International Law. (20 marks) *"compelling law"*

Q.2(b). Discuss the role of 'Customary International Law' as a source in International Law. Provide examples where customary law has influenced treaty law. (15 marks) *UNCLOS* *Hague*

Q.2(c). Differentiate between 'High Seas' and 'Exclusive Economic Zone' (EEZ), with emphasis on the freedoms and rights associated with each. (15 marks) *A. 55*

Q.3(a). What are the various theories prevalent for deciding the relationship between International Law and Domestic Law? How do the National Courts in India apply the International Law? (20 marks)

Q.3(b). Discuss the consequences of a state's succession regarding bilateral and multilateral treaties. How does state succession affect treaty obligations and memberships in international organisations? (15 marks)

Q.3(c). "A man's nationality is a continuing legal relationship between the sovereign state on the one hand and the citizen on the other." Explain the above statement. Also mention the difference between 'nationality', 'double nationality' and 'statelessness'. (15 marks)

Q.4(a). What are the major mechanisms for enforcement of International Human Right Treaties? (20 marks)

Q.4(b). What do you understand by 'Reservations' under VCLT. What is its utility in International Law? (15 marks)

Q.4(c). Analyse the principle of 'Aut dedere aut judicare' (extradite or prosecute) in international law. How does this principle apply to international crimes and the challenge of impunity? (15 marks)



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Section - B

Q.5(a). Define and distinguish between 'State Succession' and 'Government Succession', and discuss the legal effects of each on international obligations. (10 Marks, 150 words)

Q.5(b). "Every person is subject to the territorial jurisdiction of a state." Critically examine the statement. (10 Marks, 150 words)

Q.5(c) "Asylum ends where extradition begins". Comment. (10 Marks, 150 words)

Q.5(d). Explain the principles of 'Ratification of Treaty'. Also examine the consequences of non-ratification of a treaty. (10 Marks, 150 words)

Q.5(e). What are the major provisions of International Moon treaty?(10 Marks, 150 words)

Q.6(a). Outline the process of 'Treaty Formation' under the Vienna Convention on the Law of Treaties, 1969, and discuss the significance of 'Reservations' to treaties. (20 marks)

Q.6(b). Discuss the significance of the 'Continental Shelf' under the UNCLOS, focusing on the rights it confers to coastal states and the dispute resolution mechanisms available. (15 marks)

Q.6(c). Examine the principles and challenges of 'Extradition' under international law, including the concepts of 'Double Criminality' and 'Political Offence Exception' (15 marks)

Q.7(a). Discuss the issue of 'Statelessness': its causes, the international legal framework to address it, and the role of the United Nations High Commissioner for Refugees (UNHCR) in protecting stateless individuals. (20 marks)

Q.7(b). What are the parameters of contentious jurisdiction exercisable by the International Court of Justice? (15 marks)

Q.7(c). Evaluate recent efforts towards the reform of the United Nations, with a focus on proposed changes to the structure and function of its principal organs. Discuss the challenges and prospects of these reforms. (15 marks)

Q.8(a). Discuss the Scope and significance of the UN in maintenance of International Peace and Security. (20 marks)

Q.8(b). What do you understand about the concept of 'Diplomatic Immunity'. What rules are provided under International Law in this respect. (15 marks)

Q.8(c). Discuss the status of individual in International Law especially with reference to human rights treaties (15 marks)

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Q. 1(a)

"Asylum" as per Starke is a principle of granting active protection to a person by giving refuge to such person.

[Evolution of 'Right of Asylum']

1. Originally, considered to be a part of state sovereignty to grant asylum (Starke)
2. 'local custom' (Colombia v. Peru) Certain regions have a local custom to grant asylum to political offenders
3. Universal Declaration of Human Rights (UDHR)
Article 14, 15 provides for right to seek asylum to every person facing persecution

4. Refugee Convention
Right of Non-Refoulement
i.e. non-expulsion at borders
when faced with danger of
persecution (Rohingyas case)

5. General Asylum
Within state territory, it's
an absolute sovereign right
of state to grant territorial
asylum (e.g. Julian Assange
asylum in UK)

6. Extra-territorial Asylum
In Foreign embassies, legations
etc. - traditionally recognised
by ICJ as local custom
only if consistent practice
(Colombia v. Peru)

Furthermore, UNGA's Draft Convention
on Territorial Asylum does recognise
extra-territorial asylum as a
temporary measure in order to
ensure protection of life and property.

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(b)

"Recognition" of state is the
cognition of a fact of its existence
coupled with acceptance of rights
and liabilities in relation to that
state (Judge laughterpant)

Differences between		
	De Facto	and De Jure
Basis		
1. <u>Definition</u> <u>/meaning</u>	"It is a <u>temporary</u> form of recognition given when a state is not sure of <u>complete existence</u> of a new <u>state</u>	It is a <u>permanent</u> form of ' <u>recognition</u> ' when <u>factual</u> <u>criteria of establishment</u> of a state is <u>clear</u> . (Art. 3 of Vienna <u>Convention on</u> <u>recognition</u>)
2. <u>Duration</u>	For a certain period of <u>time</u> after which can be <u>revoked</u> or converted to 'De Jure'	It is <u>permanent</u> and <u>cannot</u> be <u>revoked</u> .

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3. Rights of state

Has all the rights of a state except the claims on foreign property of predecessor state.

Has full claim over foreign property of predecessor state.

4. Relation with other states

Generally, full diplomatic relations are not established.

Full, diplomatic relations are established.

5. Revocation

Can be revoked at any time

cannot be revoked.

6. Conditions

Can be conditions

Is unconditional (Treaty on State Recognition and succession)

Precedes

It precedes De Jure recognition

It succeeds De facto Recognition

(c)

Article 26 of Vienna Convention of Law of Treaties, 1978 incorporates the principle of 'pacta sunt servanda' i.e. binding nature of treaty in good faith to ensure sanctity of international law.

Definition

Article 26: Every International Treaty entered under UN Charter is binding on all states and they must perform its obligations in good faith.

No defence of opposite state law

Under Article 27, a claim by a state of a contrary law to treaty is invalid.

→ In Corfu Channel case, principle of neutrality was upheld as overriding a contrary state law.

Bedrock of International Treaty

1. ensures acceptance of a treaty uniform universally
2. helps in development of customary International law based on treaty principles

e.g. Hijacking treaty

Treaties on Nuclear Disarmament

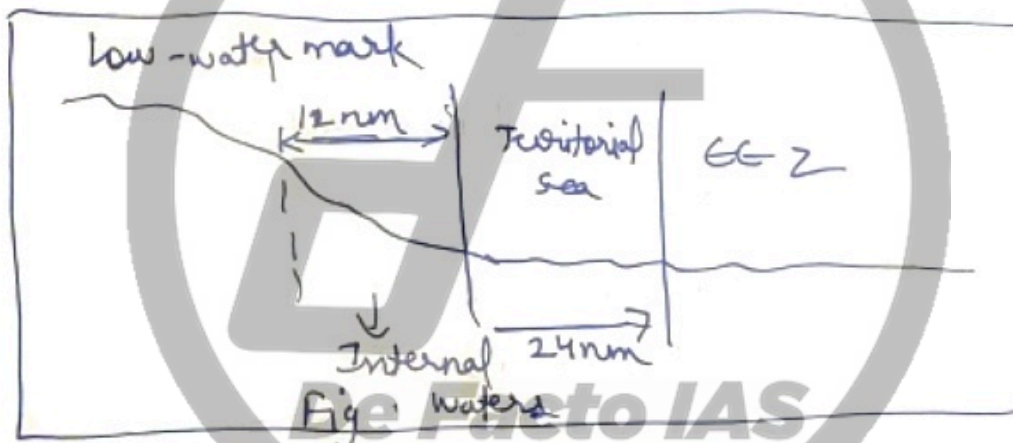
3. Warrants respect from Non-members

Art. 2(6) of UN charter warrants that even non-members must perform obligations in good faith without creating diverging practices.

hence, Art. 26 is a bedrock of Treaty law ensuring sanctity of Treaties as a source of Public International law.

(d) Inland waters

Inland waters are a zone of coast on the leeward side of coast starting from low-water mark with full territorial sovereignty of coastal state.



Incident of 'Internal waters'

1. appurtenance to state territory
i.e. considered to be a part
of state's territory (Art. 3)

2. Jurisdiction

Complete Jurisdiction to coastal
state for any crime committed

on board a ship or violation
of peace and good behaviour
(Wildenhaus case)

3. Rights of other states

No right to "innocent passage"
to any ship except in accordance
with UNCLOS like passage
to landlocked states, to and
fro, warships etc. based on
consent.

4. Coastal state has full control
over superjacent airspace
and water in inland parts.

5. constitutes a part of territorial
sea which extends upto
24 nm from baseline with
absolute sovereignty except
'Right to Innocent Passage'
under Art. 17.

(c)

A Treaty is made in light of certain political, geographical, economic or other circumstances, which if change, then it takes away the very basis of treaty hence to overcome such a change, Vienna Convention, 1969 includes 'Rebus Sic Stantibus'.

Meaning

Fundamental change of circumstances based on a supervening impossibility or situation not contemplated by the parties (Malcolm Shaw)

Requisites → Article 62

- 1) change of circumstances of treaty beyond the control of parties
e.g. islands get submerged in respect to a treaty on islands

2) beyond the control and unforeseen by two parties or multiple parties.

3) such a change must not be contributed by the voluntary act of states itself.

In Temple of Preah Vihear (Thailand v. Cambodia) case, a error in fact committed by one party led to rejection of claim under Art. 62 by ICJ.

4) Also, this principle is not applicable in case of boundary treaties.

Hence, the principle of Rebus Sic Stantibus recognises the contextual change of conditions forming a fundamental basis of a treaty.

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Q. 2 (A)

"Jus cogens" is a latin principle signifying a "compelling law". It is enshrined in Article 64 of VCLT, 1978 and signifies the importance of certain principles which are in the interest of international community as a whole and hence recognized by all to be binding.

[Principle of 'Jus cogens']

Definition: Art. 64

These are certain peremptory norms of international law which override any law or custom on same-subject matter and are recognized by the international community as a whole and from which no derogation is permitted.

[Constituents of 'Jus cogens']

Art. 52 read with A. 64 mention 'Jus cogens' in application rather than defining

i.e. declaratory effect is emphasised
(Application of Genocide Convention case)

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1. Certain 'Peremptory Norms'

- No Fixed definition
- Various principles which are Internationally accepted come under it :

(a) Principle of Prevention of Genocide

If a state fails to prevent genocide on its territory, then it is a violation of 'Jus Cogens' (→ Bosnia v. Serbia)

2. overrides any treaty / custom on the same subject-matter which is in contradiction

3. No derogation is permitted except in accordance with a new norm of peremptory international law (Genocide Convention case)

4. If any law is consistent with Jus Cogens, but is in contradiction to a peremptory norm of international law, then it becomes void from the date of such emergence.

(→ South West Africa 'Apartheid' case)

Significance

1. Recognises certain basic human rights and humanitarian principles which are in interest of mankind
e.g. Prohibition to crimes
2. Establishes supremacy of basic human rights and dignity of individuals irrespective of nationality
e.g. Apartheid principle struck down in South-west Africa case
3. Addresses any matter which is not given in any Treaty or there are conflicting practices on a principle of custom
e.g. abolition of slavery, human trafficking, child labour
4. No exception can be carved out of these principles under the garb of a new treaty

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or on ground of compelling interest

→ Bosnia Genocide case

Overriding Jus Cogens

It can only be done by development of a new jus cogens principle on same subject-matter defining a new-norm (Oppenheim)

Hence, Principles of Jus Cogens are humankind's safeguards for certain basic principles in the best interest of mankind as a whole.

Q. 2(b)

1. Customary International law (CIL)

is one of the fundamental
source of Public International law
recognized by Article 38 (1)(b) of
ICJ statute. Such principles
declare 'General Principles of
International law' as binding.

Role as a source of International
law

Definition: There are certain
practices of states followed over
a course of time with a belief
that such practices have the force
of law. - Oppenheim.

Significance

1. Recognizes certain state practices
which transcend territory and
jurisdiction as customary principles

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e.g. Diplomatic immunity is a principle that has been followed since time immemorial across the world, hence it constituted a customary international law

2. leads to 'Development of new Principles of International law'

e.g. sovereignty of airspace developed as a custom in a short period of time

3. Recognises certain state claims as customary

e.g. State Neutrality in corfu channel case

Similarly, unilateral declaration of France to not test nuclear weapons on high seas was recognised as a customary practice (→ France Nuclear weapons Testing case)

Furthermore, customary International

Laws have a bearing on development of Treaties is a source of International law:

1. Treaties on laws of warfare

→ Geneva Convention (1949)

→ Hague Convention (1907)

These were an extension of customary humanitarian law principles

2. Law of sea

Principles like Exclusive Economic Zone (Fisheries Jurisdiction case), High Seas etc. as customs were incorporated in UNCLOS, 1982.

3. International Environmental law

Sustainable development as a state practice in UNCLOS

(→ Small Islands Developing States case, ITLOS)

Hence, customary International law has a catalytic effect on development of International law.

Q. 2(c)

The UN Convention on law of seas (1982) [UNCLOS] under its purview demarcates various zones of ocean with respect to jurisdiction of littoral states.

Two of the important zones of sea are "Exclusive Economic Zone (EEZ)" and "High seas".

Differences

Basis	EEZ	High seas
Provision	Article 55 of UNCLOS	Article 82-106 of UNCLOS (Part VII)
Definition	Zone of sea beyond internal waters in which state exercise <u>exclusive economic sovereignty</u> and <u>control over resources</u> .	All such area beyond <u>territorial sea</u> , <u>contiguous zone</u> and <u>EEZ</u> which is not part of any <u>territory</u> is <u>High seas</u> .

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Basis	EEZ	High Seas
<u>Limits</u>	Upto <u>200 nm</u> From the baseline	Beyond <u>200 nm</u> of any state's <u>jurisdiction</u>
<u>Origin</u>	<ul style="list-style-type: none"> Based on '<u>Preferential</u> <u>Rights of fishing</u> for certain states (→ Fisheries <u>Jurisdiction</u> <u>Case</u>) 	<ul style="list-style-type: none"> Based on <u>Customary</u> principle of <u>Freedom of</u> <u>High seas</u> (Cratius's "<u>Mare liberum</u>")
<u>Jurisdiction</u>	limited <u>jurisdiction</u> of coastal state on matters like prevention of <u>infringement</u> of coastal state's <u>immigration</u> and other <u>laws</u> having a bearing on its <u>economic activities</u>	Generally, it is of <u>Flag state</u> except for certain <u>illegal activities</u> like <u>Piracy</u> (Art. 100- 110) [<u>Eichman</u> <u>case</u>]

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Rights

EEZ

High seas

↳

1. Freedom of exploitation of natural resources
2. Minerals exploration
3. laying of submarine cables
4. rights on construction of lighthouses, artificial islands
5. Freedom of marine scientific research;
Belongs exclusively to coastal state without disturbing rights of other state
(Mauritius v. Maldives)

Rights belong to all states (coastal or landlocked)

→ Common Heritage of mankind

→ Fisheries and Fishing Activities

→ marine scientific research

→ Exploration based on permission of International Seabed Authority

Overall, this region can't be claimed by any country exclusively.

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Q. 3 (a)

The concept of applicability of International law in the Domestic sphere is a contentious issue and is based on the relationship between International law and municipal law. This is defined by various theories on nature and basis of International law.

Theories on Relationship between International and Municipal Law

A. Dualist

Basis : on Positivist school of law

Proponents : Triepel and Stupp

Assumption : Both these laws are part of different legal systems completely different from each other.

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Conflict : In case of a conflict between the two, International law is superior than municipal law.

Scope : Individuals are not subjects of International law.

B) Monist

Basis : Naturalist school of law wherein both International law and municipal law ~~are~~ derive their authority from Natural law.

Proponents : Kelson, Anzilotti

Theory : Both the laws are part of same legal order and International law overrides municipal law.

Furthermore, some schools also highlight that it is the International law which becomes basis of certain municipal laws.

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c) Transformative (Dualist-Positivist School)

In this theory, both the systems are superior in their respective realm. In case of a violation of International law by a state, it bears responsibility under International realm.

(Basis of state liability
↳ Barcelona Traction case)

[Application of ^{Inter-}National Law in India]

Constitution through Art. 51(c), Art. 246 and Art. 73 does give powers to legislature and executive to ensure respect for International law also recognised by courts.

1. Clear conflict:

Domestic law overrides
(Tolly Verghese case)

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(2) Application of International Principles in absence of domestic statute

If such a law doesn't affect rights and liabilities of people, then no law is needed to interpret such principles as part of law (Maganbhai v. Union of India)

(3) Human Rights Principles

CEDAW convention of women was invoked to declare rights of married women

(→ Madhu Kishwar)

(4) Sexual harassment guidelines based on VHR, CEDAW (Vishakha v. State of Rajasthan)

(5) Environmental Principles

Polluter Pays as part of Art. 21
(In Re, TN Godavarman case 2024)

Hence, beneficial legislations and principles of International law follow monist route in India.

Provisional Value

(12)

Q. 3(b)

Succession is defined as the process of changing of one state through another under International law. Such a succession leads to creation of new rights and liabilities for the successor state based on previous obligations of its predecessor.

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Succession in case of Treaties

De Facto IAS

(A) Bilateral Treaties

Under 1983 Vienna Convention the successor state has the authority to decide upon the validity of such a treaty

(1) generally Not binding upon successor as held by Judge Laughterpacht

(2) Boundary Treaties are an exception and are binding on successor.

e.g. Sudan - South Sudan
bifurcation

(3) Human Rights Treaties

State practice differ on this issue.

Judge Weeramantry in legality of Nuclear weapons case held that Human Rights Treaties are so vital that it constitutes "erga omnes" obligation on successor state and make it binding on it.

However, based on state practice, many states do not observe such an obligation as binding

e.g. South Sudan not signatory to HR treaties of Sudan

(4) Multilateral Treaties

Based on the constitutive instrument of the treaty and provisions thereunder.

(b) Succession in respect to membership of International organizations

It is based on various factors :

- (i) the legal document constituting such an organisation
- (ii) consent of other member states
- (iii) type of succession
e.g. decolonised states like India was given an automatic membership of UN continuing in Independence.

However, the Law on Succession is still developing based on state practice and International theories - which are slowly getting concretised based on opinions and judgments.

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Q. 3(c)

Nationality is the concept of
socio-legal attachment of a
person with a state wherein
his/her allegiance lie.

Continuing legal Relationship

Nationality constitutes a reciprocal
relationship between 'state'
and 'individual' who have their
respective rights and duties
towards each other.

- 1) indicates a form of attachment
of individual with its state
— it is a fact
(Nattenbohm case)
- 2) imports allegiance
and ensures protection
(UDHR)
- 3) State claims jurisdiction
and bears international

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responsibility for the acts of
its citizens (DPP v. Jayee)

Nationality and Double Nationality

<p>↓</p>	
<u>Principle</u> : • allegiance towards a state	• 'Sujets mixtes' i.e. allegiance to more than one state
<u>Basis</u> : Jurisdiction	Fact of <u>migration</u> , honorary <u>citizenship</u> etc.
<u>legality</u> : Decided based on attachment with a state	Hague Convention on conflict of <u>Nationality</u> provides for mechanism of determining immediate nationality

Determining Jurisdiction

Hague convention:

1. check with which state greater attachment lies

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2. most apparent connection is
established

Based on that responsibility
of a state is decided.

LC
for
Syria

Statelessness

When, national of a state
loses her nationality without
having acquired another is
called to be stateless.

Reasons: 1. Disqualification/deprivation
2. state acquisition
3. migration

Protection: ILC's Draft convention
on statelessness, 1967 provides that
loss of nationality shall be
subject to grant of another.

Furthermore, until such time,
asylum status must be granted
to ensure protection.

⇒ This is highly relevant in case
of migrant and refugee crisis
around the world.

Q.5
(A)

Succession is defined as changing of one state into another leading to changes in right and obligations of successor state.

Basis	State Succession	Government Succession
<u>Meaning</u>	When there is creation of <u>new</u> <u>sovereign state</u> from an existing state \Rightarrow state succession	When one government replaces <u>another</u>
<u>Legality</u>	Based on <u>Facts</u> of succession in each state - decided by other state if criteria of <u>statehood</u> is fulfilled.	If <u>legality</u> is established in change of government and proof of ' <u>Effective control</u> ' is there, government is recognised
<u>Recognition</u>	Recognition of state entitled recognition of government	Not vice versa.

Legal effects on International obligations

State Succession

Except for boundary treaties and certain localised obligations, liabilities of new state are decided by itself.

(→ South Africa West Rand Authority v. Rex)

Government

Successor government is usually bound to obligation of state entered into by predecessor government.

However, claim over all state property, domestic or foreign is dependant upon legitimacy of government.

Usually, unconstitution change of regimes lead to non-recognition of a state e.g. Taliban.

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(b)

Territorial jurisdiction of a state has very wide implications and act of any person whether national or alien against sovereignty of a state, it gives jurisdiction to that state over that individual.

This is on the basis of different principles on the basis of which Jurisdiction is established:

1) Extra-Territorial Jurisdiction

(a) Subjective

↓
If crime ulminates in one and effluates in another state

e.g. Sec: 4 IPC gives jurisdiction over foreigners when committed offence against India

(b) Objective

↓
Based on effect of the crime in a state

e.g. conspiracy cases

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2) Passive Personality

If the victims are nationals of a state, that state has jurisdiction over the offender irrespective of his nationality.
(Leichman case)

3) Protective Principle

When the effects of a crime or intention is to cause damage to a state even by non-citizens
e.g. seizure of property of Canadian Khalistani terrorists in India

4) Universal Jurisdiction

Some individuals committing crimes like slavery, genocide, piracy etc. are 'hostis humani generis' i.e. enemies of mankind - hence every state has jurisdiction i.e. proving

territorial jurisdiction of a state is unlimited and extends to every person.

(c)

Starke propounded the principle that "Asylum ends where extradition begins".

Basis

It is based on the contrasting nature of Extradition and Asylum.

Asylum

1. active protection /

2. refuge

granted to a person by a state who is facing persecution

(Every person has the right to seek asylum - UDHR-A.14)

Extradition

It is the process of transferring a person to another state under a treaty or reciprocity to be

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tried by that particular
state.

Inter-relationship

Asylum

↓
Refuge and
protection

Extradition

↓
Handing over

In cases where an offender wanted
in a particular case is given
asylum by another state
→ the moment extradition request
is approved, asylum status
of that person ends.

Illustration: Julian Assange was
given asylum by UK. He was
sought by USA under extradition.
The request was approved by
UK courts. Hence, after such
an approval "Asylum for Assange
stopped as it were, when
extradition began".

(d)

Ratification of a treaty is a pre-condition for a treaty to be binding upon the signatory mandated in Vienna Convention on Law of Treaties, 1978 (VCLT).

'Ratification' Principles

1. signing by an authorised representative of a state ✓
2. Submitting that treaty for approval by National legislature.
e.g. USA - a treaty has to be approved by Senate with a 2/3rd majority. ✓

Once, such an approval is done, treaty stands ratified.

3. Increase awareness and publicize the treaty.
It is the responsibility of the

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signatory to publicise the treaty in national arena.

Consequences of Non-Ratification

1. It may not override conflicting national law
2. The treaty may not come into force (when it is subject to ratification of certain number of states e.g. Rome statute)
3. State can't violate treaty provisions even in meantime until ratification of it is achieved. →

once ratified, treaty becomes binding on the signatories in letter and spirit.

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6/10

Moon Treaty was adopted in continuation of Outer Space Treaty, 1967 so as to incorporate its principles for the moon.

Provisions

1. moon and other celestial bodies are "common heritage of mankind"
2. It can't be appropriated or claimed by any particular state
3. No Nuclear weapons testing on moon
4. Private Parties / States can establish their research station base for exploration on moon by informing the UN Outer Space Agency.

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5. Only peaceful exploration
of moon is allowed for
research

6. minerals and other resources
extracted by a particular party
belongs to that party only.

Significance

In view of increasing state
activities on moon, it is
pertinent to ensure that
moon remains a common
resource. Cooperation through
international route e.g. recent
Abraham Accords is essential
to ensure that principles
of Moon Treaty do not remain
mere paper directions.

Significance

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Q. 6(a)

The Vienna convention on Law of Treaty (VCLT, 1969) is an all encompassing regime regulating formation of treaty as a source of International law.

Process of 'Treaty' Formation

1. Negotiation

various states sit together to decide the agenda, subject matter and other modalities of a treaty.

2. Forming a 'Draft Treaty'

Draft treaty is circulated among the participants to seek suggestions and changes to the treaty.

3. Analysing suggestions and recommendation and negotiating over these changes

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4. Drawing up of final treaty open for signing
5. Signing of treaty under conditions given in VCLT:

- (i). by authorised representatives
- (ii) in accordance with law and procedure of that state

6. Ratification

It entails the process of transformation of treaty into law by authorization of state ^{'s} Parliament in accordance with national laws

In this meantime, VCLT puts responsibility on states to give publicity and awareness on the treaty

7. Registration under Art. 80 with the UN Secretariat

8. Entering into Force

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based on conditions laid down
in treaty

e.g. Rome Statute entered in
force in 2002 based on ratification
of certain number of states

→ ~~De Facto~~

Reservation to Treaties

meaning : Under Art. 2(1)(d) :

1. it is a unilateral declaration
by any state
2. seeking to modify the application
/ effect of a particular statute
3. in accordance with Article 19
of VCLT ;

e.g. India's reservation to UN
Charter in respect to arbitration

Significance of Reservation

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1. ensures wider participation
of treaties

e.g. UN charter, UNCLOS,

ILO Treaty on child labourer have
almost universal membership

2. upholds sovereignty of
states

e.g. India, Israel, USA not accepted
Rome statute arguing sovereignty

3. ensures wider implementation
of treaty provisions

e.g. some Non-Proliferation
treaties do not allow for
reservation, hence it is often
violated by member states.

hence, Reservation to Treaties
is an inevitable construct of
International Politics and is in
best interest of sanctity and
reach of International law.

12

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Q. 6 (b)

Continental Shelf is one of the most economically significant zones of sea bearing various marine living resources and hence making it a sought-after and contentious subject-matter under law of seas.

Significance of Continental Shelf

1. Provision - Under Art. 76 of UNCLOS, continental shelf (CS) is that part of submerged landmass which is an extension of state's coastal landmass and territorial sea till the outside margin limit of continental margin.

2. It has a high economic potential - various minerals and fishery resources are found

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in this region making it a
prospect for state claims

3. Rights

(1) claims by state : if it is ~~claim~~
Exclusive Economic zone (EEZ)

is claimed by a state, the Continental
shelf forms part of EEZ
till 200nm from baseline.

(2) if it extends beyond 200nm
then maximum claim can be
upto 350nm from baseline.

(This is only in exceptional cases
when state is able to establish
its right beyond 200nm as held
by ICJ in Mauritius v. Maldives
and Nicaragua v. Colombia)

So, the rights of a state in a
EEZ are the rights in
the shelf as well:

(4) to appropriate all economic
resources

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- (2) to undertake fishing activities
- (3) marine scientific research
- (4) to lay submarine cables and pipelines

In this regard, state can form laws and rules for prevention of breaches of sanitary law, immigration law etc.

However, it is pertinent to mention that only economic rights are granted to state over continental shelf.

Rights of other states in regard to passage, airspace and protection of marine environment remains unaffected even in continental shelf zone.

(Fisheries Jurisdiction case)

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(C)

Extradition is a contentious subject in International law as is seen in recent context of Julian Assange case which became a hotly contested matter in International law and Relations.

Extradition

Meaning:

It is the surrendering of a person by a state to another under treaty or reciprocity to be tried in that state wherein he is sought in relation to a crime.

Principles of Extradition

1) Extraditable Person

It can be national of a state or a third state.

Except: Political, religious offenders

2) Extraditable offence

State practice around the world shows that extradition is done only in offences which have certain minimum prescribed punishment.

(a) Principle of Double Criminality
i.e. the offence for which a person is sought must be a crime in both states.

[US v. Rauscher]

→ States like France, India follow this rule. (Extradition Act, 1962)

(b) considerations of fair treatment and Human Rights

In Soering case of ECtHR, extradition was refused owing to risk of death penalty.

Extradition

(c) Principle of Speciality

i.e. the person can be extradited

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and tried only for the specific
charges that he is sought and
not for any other offence -
(US v. Rauscher)

Challenges in Extradition

- 1) usually done only in cases of Bilateral Treaties between states.
- 2) ~~states~~ states usually refuse to extradite their own nationals
(e.g. Italian marines shooting case)
- 3) Excessive emphasis on Prisoner Rights
e.g. objections in extradition of Vijay Malya, Nirav Modi in UK courts regarding concern for ~~breach~~ of human rights.

lastly, extradition is a political issue between states and until absolute reciprocity is there, such an act is an exception in International Relations.