⇒ Looks good. Keep it up!
⇒ Structure for Critical Q^n
① You need exposure

(a) Asylum refers to refuge granted by a state to a non-national, either because of threat to their life or otherwise.

Evolution of Asylum

(i) During ancient times, kings had sovereign authority to protect / permit an outsider to seek protection within their territory (passive refuge)
Eg Humayun granted asylum by Shah of Persia.

(ii) In medieval era, mere refuge / permission to stay within territory evolved into 'active protection' from persecution.

De Facto IAS

(iii) Today, customary rules as well Convention on Territorial Asylum govern the grant of asylum.

↳ UDHR recognizes right to seek and enjoy asylum

↳ Convention of Refugees (1951) - right of those facing prosecution on racial, national, ethnic, religious grounds to not be returned.

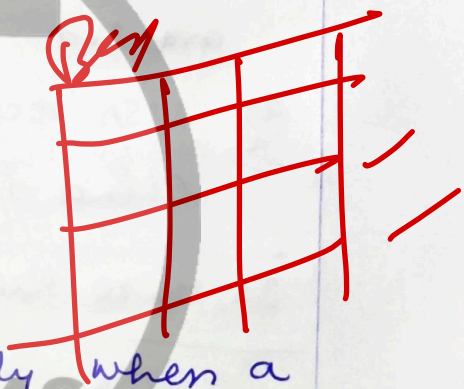
TYPES OF ASYLUM

Territorial	Extraterritorial or Diplomatic
① can be granted as a matter of right - extension of state sovereignty	① Can't be granted unless mob violence or threat to life
② granted in one's physical territory	② granted in national territory eg. Ships, diplomatic mission
③ UDHR recognizes right to enjoy asylum but not binding on states	③ International Law doesn't recognize right of diplomatic asylum

De Facto IAS

(b)

Oppenheim defines state recognition as act of one state which agrees to treat another state as a member of international community, capable of fulfilling its international obligations.



Types of Recognition

(i) De facto recognition

↳ granted temporarily when a new state appears on international scene

↳ however, since some instability and no surety of its capacity to fulfill obligations, may be withdrawn

De Facto IAS

Eg Britain first granted de facto recognition to Communist Russia in 1921, accorded full de jure recognition in 1924.

(ii) De jure recognition

↳ granted as a firm recognition of its sovereign status

↳ can't be withdrawn once granted.

Eg USA recognized Communist China in 1951.

Is there really a difference?

Anzilloti says "difference is only in form, not in effect". This is correct as all international effects are same in both cases

Eg can sue or be sued;
can enjoy diplomatic privilege,
enter into international treaties.

Lastly, it would be illogical to say once a state comes into existence that it ceases to exist if recognition withdrawn.

De Facto IAS

(c)

The principle of 'pacta sunt servanda' means "the pact executed between two parties must be served/ honoured".

Status in International Law

(a) the principle was recognised in Continental Shelf (Libya/Malta) case.

(b) Now, explicitly included in Vienna Convention on Law of Treaties (1969) whereby Art. 26 states "parties are bound to honour their treaty obligation"

Even violation/ inconsistent domestic law is no excuse to pacta sunt servanda.

De Facto IAS

Bedrock of Treaties

→ enforces treaty compliance
→ builds international faith in binding nature of treaties
→ applied by international courts arbitral tribunals too to enforce bilateral transactions / treaties.

Exceptions to pacta sunt servanda

Art 20-26 of the VCLT itself provide exceptions / justifications for not honouring obligations :

(i) Consent
(ii) material breach by the other
(iii) impossibility of performance
(iv) treaty invalid due to conflict with jus cogens. etc.

Thus, pacta sunt servanda is a principle of customary law now however it does admit some exceptions.

DeFacto IAS

(d)

"Inland waters" refer to the rivers, lakes, streams etc. found inward / landward of the baseline. Thus, inland waters lie to the inside of territorial sea.

A.2

Inland waters under UNCLOS

(i) Sovereignty over inland waters completely – as "land dominates the ~~sea~~ waters".

(ii) Right of the state to:
- → enforce domestic laws in inland waters
- → prevent passage of foreign ships / vessels as per own will – no right of ~~passage~~ innocent passage.
- → utilize inland water resources exclusively of inland fisheries.

De Facto IAS

(iii) Rights of other States vis-a-vis inland waters & duties

↳ merchant vessels to seek permit for entry

↳ comply with all laws/regulation prescribed

↳ subject themselves to criminal/civil jurisdiction of riparian State.

SIGNIFICANCE FOR RIPARIAN STATES

(a) exploitation of resources eg inland fisheries, sand mining

(b) exploit hydropower potential eg construct dams, Barrage etc. like Three Gorges Dam of China

(c) enter into water-sharing arrangement with other lower riparian States eg Indus Waters Treaty (1960) between India and China

(d) divert waters eg. through inland interlinking of rivers/canals etc.

Thus, inland waters hold immense economic, legal and political significance

(e)

"Rebus sic stantibus" is a principle of customary as well as conventional international law which permits a state (which signed a treaty) to not perform its bound obligations.

Conditions for Rebus sic Stantibus)

International Law Commission through its ingenious approach struck a balance between pacta sunt servanda v/s Rebus sic stantibus. While drafting Vienna Convention On Law of Treaties (1963) incorporated Art 62 [conditions for Rebus sic stantibus] as under:

(i) material change of circumstances such that the

very basis of consent is perished.

(ii) such change of circumstance has transformative effect on bound obligation

In the aforesaid scenario, state is excused from performing its obligation.

CRITICISM

→ seeks to bring 'hardship' as an excuse to avoid treaty obligations

→ what is "material" is not defined properly.

Due to aforesaid reasons, international tribunals are hesitant to apply the Rebus sic stantibus, lest the very validity of treaty be eroded.

Do Fasto IAS

(3) (a)

International law and municipal law have historically shared a "complicated relationship". This controversy is grounded in the desire to prove supremacy of one over the other.

Various theories

(1) Monist theory (by Hegel, Kelsen)

↳ both international law and municipal law are cogs of the same wheel (Hall)

↳ both derive their content from natural and civilized law.

↳ ultimate subject of both is

DeFacto IAS

the individuals ie. the nationals of the states.

→ two sub theories

Theory of automatic incorporation ie. international law automatically becomes part of municipal law

Theory of delegation ie. the international law delegates power to each state to determine time and manner of implementation of international law within its territories.

Thus, monist view goes to the extent of recognising supremacy of international law over municipal law.

CRITICISM

→ not followed in practice eg. in Britain custom applied automatically but treaty only with Parliamentary approval

De Facto IAS

↳ it is unclear who and when in international law, the state became delegate of a supra-national authority.

(5) Dualist Theory (by Triepel, Anzilloti)

↳ national law is supreme and international law can't be enforced until specifically adopted by legislation or otherwise [Specific Adoption Theory]

↳ "consent" is the basis of all international law and international rules can't be enforced against will of a state / in conflict with municipal law

↳ international law amongst nations while national law between citizens.

Criticism → does not explain how customs bind without state consent

Indian Courts Foyst with International Laws

(a) Treaties: Treaty making and implementation found in Union List – Thus, in absence of Parliamentary Law, executive has full discretion to conclude treaties.

However, can't be directly applied unless specific ~~to~~ municipal legislation [ADM Jabalpur v/s Shivakant Shukla]

↳ In KS Puttuswamy v. Union of India, international bill of Rights applied for "right to privacy" – to expand scope of fundamental rights

↳ To fill gaps eg. in ~~state~~ of Visaka v/s State of Rajasthan, to prescribe anti-harassment guidelines as no law.

(b) Customs: if not in conflict with municipal law, directly applied eg. right of refugee to life and liberty.

8/2

3.(b)

State succession, according to D.P. O'Connell is the fact of substitution of one sovereign for another over a particular territory.

Consequences of succession in treaties

(a) bilateral: As per Vienna Convention on succession of States To Treaties, successor state are bound by prior bilateral treaties executed by predecessors.

However if a newly independent state (in context of decolonization), it ~~may~~ is not bound unless specifically adopts the bilateral treaty.

(b) Multilateral Treaty:

De Facto IAS

A successor state can become party to multilateral treaty only with consent of all other parties to the treaty – thus, no automatic succession.

If a newly independent state, can become automatic party along with existing reservations. This is "Moving Treaty Frontiers Rule".

IMPACT OF SUCCESSION ON TREATY OBLIGATIONS AND MEMBERSHIPS IN INTERNATIONAL ORGANIZATIONS

(a) Treaty obligations

- is clean state doctrine for newly independent states
- ie. can only be bound by expressly / implicitly accept the obligation

→ Other successor states are bound by obligation of predecessor.

DeFacto IAS

Eg Civil Air Transport Co. case, Communist China held bound by a treaty contract to sell 40 planes to American Co, even though executed by Nationalist China.

(b) Membership of international obligations:

↳ no automatic succession to United Nations eg. Pakistan had to apply afresh for membership of UN post-independence

↳ depends otherwise on the constituent instrument of the international organization.

Thus, state succession law is now more or less settled. Still controversy arise on distinct treatment to newly independent states eg- Robert Brown case where mining rights lost against colonial Britain.

De Facto IAS

3. (c)

Nationality, according to Brownlie, is a legal fact which binds an individual to the society to which he/she belongs.

LINK BETWEEN NATION AND CITIZEN

To avoid "nationality of convenience", International law requires existence of a genuine relationship between the sovereign state and the citizen.

Eg Nottebohm case where ICJ refused to allow Liechtenstein to file case on behalf of Nottebohm (alleged citizen) as all his business, residence etc. in another country.

No live and effective link noted the ICJ.

De Facto IAS

The effect of this link and continuing legal relationship between state and citizen is that:

↳ state can provide consular access/ help to citizen

↳ file case to protect national court in international courts

↳ act of citizen can be attributed to the state

Thus, it is justified to say "A person's nationality is a continuing legal relationship between sovereign and the citizen".

Difference between:

(a) Nationality -

In international law, a national is an individual having a legal part of social bond with a state.

In municipal law, the national is called "citizen".

DeFacto IAS

(b) Double Nationality

It is the fact of having two citizenships — eg. in Nottebohm case, effective nationality with Czechoslovakia but also passive citizenship of Liechtenstein.

(c) Statelessness:

when an individual is deprived of citizenship of any existing sovereign state eg. if the state ceases to exist, or forced expulsion etc.

Convention on Reduction of statelessness obliges parties to grant nationality to a child born in its territory. Not to deprive an adopted child of nationality till granted nationality of adopting state

Similarly, UDHR obliges states not to arbitrary deprive a person of nationality.

5.(a)

State succession is the fact of substitution of one sovereign for another over a pre-existing territory.

However, as per DP O'Connell "state succession" is a misnomer as no true succession of all rights and obligations possible under international law.

Government succession on the other hand refers to change of government in an existing state, by election or otherwise.

Thus, state continues to exist.

Distinction - International law only governs state succession. No legal effects produced by

De Facto IAS

Govt succession → Political Nature
→ Legal effect

government succession for purposes of international law.

Legal effect of state succession

(i) convention on State Property, Debt and Archives
- → ~~obliges successor~~ grants right to successor state to all international property of predecessor state without compensation
- → obliges predecessor state to preserve all state archives for successor

(ii) Convention on Succession of States to Treaties
- → clean slate doctrine for newly independent states
- → moving treaty frontiers rule to allow ~~state~~ newly independent state to become party to treaties

Thus, under international law only state succession matters, while government succession doesn't - latter continues to be bound by all obligations.

Q(b)

It is rightly that there can be no "non liquet" under international law ie. no vacuum is presumed. Thus, if there is an act done by an individual, having international ramifications, must be held accountable.

Thus, every person is subject to jurisdiction of a state.

Basis of jurisdiction

Not necessary that only "territorial jurisdiction is exercised" by a state. Other options are:

(a) Protective principle

To protect one state from harmful acts across the border eg. treason in Britain tied even if not on territory

DeFacto IAS

(b) Nationality principle

↳ Active nationality ie when national who is injured (victim) belongs to one's state

eg S S Lotus case (France v/s Turkey)

↳ Passive nationality - when the ~~victim~~ accused belongs to the state claiming jurisdiction

eg Edward Snowden v/s CIA

(c) universal jurisdiction

certain crimes recognized as offending the entire mankind - usually heinous crimes like slavery, piracy, trafficking etc. - can be tried by an member of international community.

Clearly it is true that "a person is subject to jurisdiction of a state" but it need not be "territorial jurisdiction".

De Facto IAS

5.(c)

Asylum is the fact of granting territorial refuge to an outsider within one's state eg. Tibetans granted territorial asylum by India.

However, if a person applied for asylum and rejected, what follows is either extradition, expulsion deportation.

Asylum ends when extradition begins

Extradition is to transfer an offender or other person requested by another state, on reciprocity or treaty basis.

Clearly, asylum involves permission to stay on while extradition is contrary to it - ie. not just refusal to permit

Defacto IAS

refuge but active measures taken to handover that individual to the requesting state.

EXTRADITION IN INDIA

India enacted Extradition Act 1962 to govern extradition where no bilateral treaty.

Eg Vijay Mallya sought from UK basis India UK Extradition Treaty.

India can however refuse extradition on grounds of non-recognition of crime alleged, specificity rule or fear of capital punishment.

IS END OF ASYLUM ALWAYS EXTRADITION?

No refusal to grant asylum can lead to uncertain status eg Rohingya refugees in India. Can also lead to deportation or expulsion.

Thus. Asylum ends where extradition begins but end of asylum ≠ extradition.

5.(d)

Vienna Convention on law of Treaty (1963) defines ratification as an act whereby the state signifies assent to be bound by and enforce treaty obligations (Art 2)

Principles of Ratification

As per VCLT:

- ratification is not necessary if the treaty specifies that signature is the end of the process. (1)
- if treaty silent on ratification, intent, object and purposes of the treaty to be considered. (1)

VCLT (1)

Consequences of non-ratification

↳ The treaty does not come into existence vis-à-vis that state

↳ if a certain minimum no. of ratifications required, then non-ratification by lesser numbers halts enforcement of the treaty

eg Comprehensive Nuclear Test Ban Treaty (1996) yet not into force

Thus, ratification of Treaty produces international effects and kick starts the application of state's rights and duties against other ratifying states.

De Facto IAS

5(c)

Outer space has appeared as the 5th dimension of warfare after land, sea, air and cyberspace. Thus, to ensure peaceful development and usage of outer space, certain principles evolved.

International moon Treaty

(a) Peaceful use of moon's surface

(b) Prohibition of nuclear testing explosions on the moon

(c) Moon declared as "common heritage of mankind" - thus incapable of appropriation by anyone

Sovereign rights

De Facto IAS

④ Benefits from exploration of moon to be shared with all parties in good faith.

⑤ Prohibition of weapons of mass destruction on moon. — i.e. no weaponization of moon.

⑥ Registers all moon directed crafts satellite with Committee on Peaceful Uses of Outer Space.

Recent Developments

↳ Artemis accords framed on same lines as Moon Treaty — India also joined this US-led initiative

↳ However, India ~~not~~ has signed but not ratified the Moon Treaty, thus, not bound by it.

5:2

8(a)

UN was borne out of Atlantic Charter (1941) signed between British PM and the American President on a ship.

Fast forward to 1945, San Francisco Conference adopted the United Nation Charter, serving as bible of todays international legal framework.

SCOPE OF UN - in Maintenance of peace

PM/PR (1) (2)

(a) Peacekeeping, making

eg. through conferences, preventive diplomacy like recognition of South West Africa's independence

(b) Peace keeping

eg. through deployment of blue

delimets as done in Israel-Palestine border, Indo-Pak order.
Even Enforcement measures of under "Uniting for Peace Resolution (1950) in North Korea - South Korea conflict.

(c) Peace building
by post-war reconstruction like in Rwanda, through disarmament, ~~blocked~~ blockades etc.

(d) Resolution of international disputes eg. through good offices, conciliation or even judicial mechanism of ICJ. like Kulbhushan Jadhav case (India v/s Pakistan)

De Facto IAS

significance of UN in International peace and security

(a) Successes of United Nations

↳ peace through raising standard of living eg. through ECOSOC done in South East Asian region

↳ resolution of economic-social issues eg. UNCTAD set up to help promote investment in developing world

↳ reducing poverty eg. through collaborative research on root causes, Human development Index (by UNDP)

(b) failures of the United Nations

↳ scourge of war continues eg Israel-Palestine despite

De Facto IAS

UNGA Resolutions calling (require

↳ regional disparities in action eg. Africa still routinely faces civil wars.

↳ No proper enforcement measures under Art. 39 (Use of collective self-defence) or Art. 41 (Non-use of force eg. economic blockades, sanctions etc)

↳ Partisan voting eg not intervened in areas not of interest to the West eg. Vietnam War.

Deep dive

The current need is to reform the UNO with multilateral approach — reform veto system, empower security council to act in time with majority support from UNGA. However, despite security failures, UN did commendable work in socio-economic spheres

8(b)

Diplomatic immunity has existed since ancient times when ambassadors were sent from one king to the other.

The concept

Rationale of Diplomatic immunity is that the foreign ambassadors are present on a states territory with its consent.

Once such consensual presence, they must be allowed to work without fear of harm to their life or property.

Thus, the diplomatic agents are granted protection

De Facto IAS

and privileges under international law of inviolability of their person, property etc.

RULES OF DIPLOMATIC IMMUNITY UNDER INTERNATIONAL LAW

ⓐ Hague Conference 1899 and 1906 first discussed codification but no agreement

ⓑ International Law Commission in 1949 tasked with codification

- Vienna Convention on Diplomatic Relations (Applicable to embassies and staff working therein; work for official government communication with the host state)
- Vienna convention on Consular Relations (Applicable to consular premises and officers who work for welfare of own migrants eg. registration of birth, visa etc.)

De Facto IAS

Important immunities under VCDR

↳ inviolability of diplomatic mission premises - even local citizens who attack the mission attributed to host state
eg Consular staff in Tehran case

↳ inviolability of diplomatic staff's person and property
eg cannot be attached or arrested or any civil/criminal jurisdiction enforceable against them

↳ security of communications with sending state
eg posts, telegraph, etc. can't be tapped.
No search or seizure of official documents except without consent.

However, if a person in diplomatic mission acts inconsistent with their diplomatic functions eg. spies, traffics etc, can be declared persona non grata and be asked to leave.

De Facto IAS

8(c)

Brownlie says "individuals are subjects of international law in that they enjoy rights and fulfil duties mediately through the state".

CONTROVERSY ON STATUS OF INDIVIDUALS

Not a subject as:

- ↳ Can't enforce rights on international plane
- ↳ can't execute treaties
- ↳ Art. 30 of IC] statute state only state can be parties before it.

are subject of international law as:

- ↳ International law ultimately exists for their benefit
- ↳ States are dependent on their popular will
- ↳ States enforce rights on their behalf.

De Facto IAS

Position today:

Development of international human rights and international humanitarian law shows the dividuals have direct rights under international law.

HUMAN RIGHTS TREATIES AND INDIVIDUALS

(a) European Convention on Human Rights
↳ amended in 1990 to confer direct right of filing petition for violation of their rights in European Court of Human Rights.

(b) International Bill of Rights (i.e. ICCPR and ICESCR)
↳ Human Rights Committee (under 1966 Protocols)

can hear human rights violation complaints from individuals or their organization.

© Rome Statute of international criminal court

↳ provides for individual criminal responsibility for crimes against humanity, war crimes etc.

expand

Thus, today individuals are recognized as subjects of international law not just holding rights but also owing some duties.

Human rights Treaties have played an immense role in granting the status of subject to the individual

De Facto IAS

2(a)

Jus Cogens is defined under Art 53 of Vienna Convention on Laws of Treaties. The term used for it is "peremptory norm".

Peremptory Norm or Jus Cogens

It is a norm which collectively recognized by the international community as a norm from which no derogation is permitted.

Examples:

(i) Crime of Genocide - recognized in Advisory Opinion on Reservation to the Genocide Convention (1951)

(ii) Right against Torture now codified as jus cogens in the Convention Against Torture.

De Facto IAS

(iii) right to life
- recognised by UDHR as non-derogable right

(iv) Crime of piracy jure gentium
↳ a heinous crime, not excusable.
↳ UNCLOS obliges states to exercise universal jurisdiction and enact municipal legislation.

(v) Prohibition on slavery
↳ universal jurisdiction exercisable on its perpetrators

De Facto IAS

SIGNIFICANCE OF JUS COGENS NORMS

(a) On Treaties.
VCLT states a treaty in violation of a jus cogens norm is void ab initio (Art. 53)
↳ if dates a jus cogens norm

evolves, then a treaty existing is violation of it becomes void

↳ any acts done already will not be affected if treaty existed before jus cogens developed. But if jus cogens preceded treaty, all subsequent acts to be ineffective, eliminate their effects.

(b) On customs:

↳ if a jus cogens norm succeeded by a conflicting jus cogens norm then later one supersedes the former, unless expressly stated otherwise

(c) On jurisdiction:

↳ parties acquire universal jurisdiction to try an individual who derogates / violates jus cogen

De Facto IAS

(d) Right to enforce with all
↳ a universal crime (jus cogens) can be enforced by any state on the international plane

eg South Africa v/s Israel in ICJ over acts of genocide allegedly committed by Israel against Palestinians.

Thus, jus cogens as a principle hold immense significance in international law. Its universal recognition enables easier enforcement. However, slowly evolves, not easily created via conventional methods

(1) Nature of other conflicts A, civil

2(b)

Art 36(1) of the Statute of International Court of Justice recognizes customs ~~general or special~~ as a source of law that can be applied by it while deciding disputes.

[Definition of Customs]

North Sea Continental Shelf case recognized two principal elements:

- ↳ State practice - must be virtually uniform with very few deviations + such deviations treated as breach
- ↳ Opinion juris - the subjective element whereby state act out of belief that a certain act is obligatory

Eg. Portugal v/s India - Portuguese cars/vessels using Indian territory for passage and India permitted thinking legally obliged.

ROLE OF CUSTOMARY INTERNATIONAL LAW

(a) Crystallizing long-established usages into law
eg right of sovereignty over territorial sea now customary

(b) Regional customs:
may evolve between states in a region
eg Asylum case (Colombia v/s Peru)
however, diplomatic asylum rejected as a regional custom

(c) helps later codification
eg in treaties of VCDR customs

De Facto IAS

of diplomatic immunity codified.

INFLUENCE ON TREATY LAW

(a) Human rights treaties
↳ UDHR codified customary right of life, property, dignity
↳ ICCPR recognised custom of right against torture.

(b) Humanitarian law treaties
↳ Geneva Conventions recognise custom of war & Jus Ad Bellum.
↳ Principle of distinction, military objective etc. all evolved from customs, now part of treaties.

(c) Law of the seas
↳ common heritage of mankind concept by Hugo Grotius as a custom
↳ now incorporated in UNCLOS.

Thus, customs have not only helped in codification but also progressive development of treaty law.

De Facto IAS

2(c)

The Geneva Convention 1958 recognized the rights of states beyond their land border in the form of fisheries zone, territorial sea, inland waters and High seas.

Going a step further, UNCLOS (1982) introduced the concept of Exclusive Economic Zone; while also recognizing other maritime zone under 1958 Convention.

De Facto IAS

DIFFERENCE BETWEEN THE ~~FOOD~~ EEZ and HIGH SEAS

(a) High Seas:

UNCLOS defines high seas as areas beyond the exclusive economic zone (if EEZ is claimed) or beyond

the contiguous zone (if EEZ is not claimed).

Freedoms of the High Seas

↳ Mare Liberum - common heritage of mankind - free for use by all but can't be appropriated by one.

↳ free exploration and exploitation of natural resources by all.

↳ freedom of scientific research and surveys.

↳ set up artificial structures / islands.

↳ free for navigation.

De Facto IAS

(b) Exclusive economic zone:

EEZ is the area upto 200 nautical miles from the baseline used to measure territorial sea. No specific criteria provided to delimit EEZ except that parties can decide by agreement their

respective EEZs in an equitable manner.

Eg. Gulf of Maine (Canada v/s US) - ~~Court~~ ICJ held no custom that EEZ to be determined by straight baseline method.

Important freedoms / rights in the EEZ of:

Coastal state
- ↳ exclusive right to exploit fisheries
- ↳ exclusive drilling rights for minerals
- ↳ right to set up artificial structures
- ↳ if unable to exploit, may share surplus with neighbours by agreement

Other states
- ↳ right to freedom of navigation
- ↳ Research or survey but with coastal state's consent
- ↳ freedom of overflight

Recently, even freedom with less relating to exploitation limited by need of sustainability. Thus Treaty on Sustainable use of Biodiversity Beyond National Jurisdiction adopted.