

Scaffold for PIL Exam

Topics included

- A. State Jurisdiction
- B. State Responsibility
- C. Diplomatic protection (treatment of aliens)
- D. Diplomatic protection
- E. State immunity
- F. Diplomatic immunity
- G. Implementation, enforcement and accountability
- H. Use of force

A. State Jurisdiction

General Principle from UN Charter

→ article 2, 7. Nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under ch VII

1. Has the person committed an offence?

2. If the person has committed the offence, is the case in question concerning Civil or Criminal Jurisdiction?

3. If concerning Civil Jurisdiction:

- a. Varying judicial opinion as to whether int law sets limits on the exercise of civil jurisdiction
- b. Some connection with State is required. Possible connections can include:
 - i. Defendants presence within the jurisdiction at the time of service of writ
 - ii. Defendant has assets within the jurisdiction
 - iii. The P's nationality or domicile is that of the jurisdiction
 - iv. The subject matter is important to the state (i.e. the tort was committed in, or the contract formed in the state)

4. Criminal Jurisdiction

- a. Five basis for Jurisdiction within the *Harvard Research Draft Convention of 1935* that are now accepted as basis under int law

- i. **Territoriality Principle:** when a crime is committed in whole or in part on a state's territory (i.e. when any constituent element is completed there)

NOTE: contiguous zone of this not part of territory = Coastal State may exercise control necessary to prevent infringement of its **CUSTOMS, FISCAL, IMMIGRATION OR SANITARY LAWS** or to punish infringements of the above laws committed within the territorial sea: UNCLOS, Art 33(1)(a)-(b)

a. Lotus Case¹

2. **Subjective territoriality**

- a. Offence commenced within the state but completed elsewhere

3. **Objective territoriality**

- a. Offence commenced elsewhere but completed within the state

- i. *Ward v R*

→ In practice question: Marxica is exercising this because crash occurred outside territorial waters but having effects on Marixcan flagged vessel

4. **Effects Doctrine: extended territoriality principle**

- a. Notion that a state may have jurisdiction where the offence was not started nor finished on the territory, but they may experience the effects

- Ex. Thai national arrested in Hong Kong for trying to get to the USA to sell drugs. The USA wanted to prosecute him in the USA because they said they would feel the effects of his crime

→ Use this if effect is something like economic harm that is indirectly caused by an act

ii. **Nationality Principle**

- 1. A state will have jurisdiction over its nationals for crimes, wherever they are committed

- Unlike Notterbone there is no genuine link between persons and purported state. THIS IS DETERMINED ONLY BY THE NATIONAL LAW OF THE COUNTRY AND WHAT THEY COUNT AS CITIZENSHIP
- Hague Convention on Certain Questions Relating to the Conflict of Nationality laws: art 1-4 → basically says it is for each state to determine under its own law who is a national
- Usually only happens with serious crimes

iii. **Passive Personality Principle**

- 1. May exercise jurisdiction where its national is the victim

- i. Controversy of this because of “bubble effect” where alien surrounded by protective and invisible bubble of his or her own national laws

- ii. This will only be a thing if States consent to it by a treaty

¹ **Lotus Case:** collision occurred on high seas in Mediterranean between French boat Lotus and Turkish boat, in which latter was sunk with the loss of 8 Turkish sailors. Upon arrival of the Lotus in Turkish port, its French officer was arrested on crim charge of involuntary manslaughter. By social agreement the parties brought matter before the court, asking whether Turkey, by exercising its criminal jurisdiction in prosecuting the French citizen was acting contrary to int law, in particular art 15 of Convention of Lusanne.

Held: Turkey not acting contrary to int law

- Note: Lotus authority for flag states vessel being assimilated to territory for purpose of territorial jurisdiction

Ex. US v Yunis² → Aircraft from Morocco that was Hijacked with 2 Americans on board was put under US jurisdiction

Ex. United States v Neil³ → both territorial (objective) and passive personality were allowed (PP was based on statute interpretation)

iv. **Protective Principle**

1. A state may exercise jurisdiction where an act has threatened its national interest or security, even when committed outside their territory by non-nationals

a. In practice limited to infringement of vital state interests:

i. Joyce v DPP⁴ (Treason)

ii. Israel v Eichmann (Genocide)

1. Linking point doctrine: not limited to where vital interest of state are threatened, but in cases where the state may establish linking point (in this case link was Jewish people)

iii. US v Benitez (Murder) (conspiracy to murder US gov agent)

v. **Universality Principle**

1. A state may exercise jurisdiction without any other grounds because of the seriousness of the offence or because of impunity otherwise

a. Arrest Warrant Case⁵ 'only over crimes considered most heinous' (Note: in this case the Minister had immunity so the case did not hold)

i. Piracy

ii. Slavery

iii. Genocide

iv. War Crimes

v. Crimes against humanity

vi. Torture

Elements of piracy (comes under law of sea convention art 101)

Art 101: any illegal acts of violence or detention, or any act of depredation, committed for private ends. (piracy can only be committed on high seas or any other place outside the jurisdiction of any state)

1. Act of violence

2. Committed for private ends

3. Two ship rule: only piracy if its attack by one ship upon another

² **US v Yunis:** Yunis hijacked a Jordanian plane while on ground in Beirut. Plane flew to several locations before flying back to Beirut where hijackers blew up into plane and escaped into hills. Only connection to USA was several Americans were on board

³ **US v Neil:** Neil was citizen of St. Vincent who was employed on ship departing from America. He was accused of child sex. Victim was a US citizen and crime took place in Mexican territorial waters

⁴ **Joyce v DPP:** in 1933 A, an American citizen, who had resided in Britain for 24 years applied and obtained British passport, describing himself as British by birth and saying he needed it for purpose of holiday touring Europe. After outbreak of war he was proved to have been employed by German radio company. He was convicted of treason

⁵ **Arrest Warrant:** Int arrest warrant issued by a Belgian investigating judge against Congo Foreign Minister, charging him with offences constituting war crimes amounting to grave breaches of Geneva Convention. Accused was not in Belgium and no Belgian national was a victim of the alleged offence. Nor was there any other link between Belgium and the accused

art 105: on High Seas or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft or a ship or aircraft taken by piracy and under the control of pirates and arrest the person and seize the property on board

US v Dire- actual robbery not an essential element (attempted and frustrated count)

Elements of state torture

Defined under *Convention Against Torture* Article 1

1. Any act inflicted by which severe pain or suffering, whether physical or mental
2. For such purposes as: obtaining info/confession, punishing him for act committed, intimidating or coercing him, or discrimination based reason
3. Done by a public official

Elements of genocide

- Crime of specific intent
- Crime of double intent (intent to kill and then another intent to kill in whole or in part of a national, ethnic, racial or religious group)

Note: a state contemplating claims under universal jurisdiction must first offer to the national state the option to bring charges

- b. In practice custody is necessary
- c. More contentious is whether there is 'pure universal jurisdiction' → questioned in Arrest Warrant
 - i. No case law exists in which pure universal jurisdiction exists
 - ii. Inconsistency of practice indicates that being within the territory of the state is not a precondition to exercising it
 - iii. You also don't have to actually have custody of the person being charged

5. Are there restrictions on the exercise of jurisdiction?

- a. Double Jeopardy
- b. Foreign Sovereign Compulsion
 - i. i.e. cannot be punished for doing something they were required to do by law in the jurisdiction they were in

B. State Responsibility

Article 1: every internationally wrongful act of a State entails the international responsibility of that state.

- Internationally wrongful act of a State when conduct consisting of an action or omission:
- a. is attributable to the State under international law; and
 - b. constitutes a breach of an international obligation of the State

1. Has there been a breach of international obligation: **article 2(b)**

a. Breach occurs if the act or omission is not in conformity with what is required by an international obligation: article 12

- i. The international obligation must have been in force at the time of the breach **(article 13)**
- ii. To be determined objectively, do not need to demonstrate fault
- iii. Lawfulness or otherwise under domestic law is irrelevant: **article 3**
- iv. origin of the obligation also irrelevant (i.e. treaty, custom): **article 12**

b. When did the breach occur?

- i. Occurs at the point the breach is performed, but may also be an ongoing breach if it is a continuing obligation: **(article 14)**
 - 1. Rainbow warrior **(gets facts of this case)**

c. Breach may consist of composite acts that are defined in aggregate to be wrongful (article 15)

d. TIP: say that you should apply the law of the relevant subject matter to determine that there has been a breach

2. Is the conduct attributable to the state? (start at article 4 and move out)

a. State Organs: conduct of an organ of a state who is empowered to exercise elements of governmental authority

(article 4)

- i. Conduct of any state organ will be considered an act of that state under international law, whether legislative, executive, judicial or other (art 4)
- ii. This is a question of FACT
- iii. Examples of state organs acting directly that would count as article 4

ii. Corfu Channel (mines exploding): British vessels damaged by mines in Albanian waters, no evidence Albania laid mines; knowledge of mines cannot be imputed to Albania merely because they were found in its waters but the “laying of the minefield” could not have been accomplished without “Albania’s knowledge” due to the state’s exclusive territorial control → state has obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states