

70108

Public International Law

NOTES

Colour-coded

Cheat Sheet ♥

Contents

Basics	5
State Liability	5
Advice on Individual’s Act	5
Treaty Breaches	6
Customary Law Breaches	6
Evidence Admissibility	7
Use of Force	7
Recognition of Government	7
UN Security Council Resolution	8
Written Essay Assignment	8
Module 1: Sources of International Law and Relationship between International law and municipal law (Week 1 – Week 2)	9
Module 2: Personality and Recognition [Statehood] (Week 3 – Week 4)	16
Module 3: State Jurisdiction and Immunities (Week 5 – Week 6)	20
Module 4: Law of Treaties (Week 7 – Week 8)	28
Module 5: State responsibility (Week 9 – Week 10)	34
Module 6: Settlement of Disputes (Week 11)	40
Module 7: Use of Force (Week 12)	45
Cases	47
Lotus case [<i>France v Turkey</i> (1927)].....	47
Island of Palmas case (Netherlands v United States (1928) 2 RIAA 829)	47
Nottebohm case (Liechtenstein v. Guatemala) (Second Phase) ICJ Reports 1955	47
Barcelona Traction, Light and Power Company Case (Belgium v. Spain) ICJ Report 1970	47
<i>U.S. v Yunis (No.2)</i> 681 F. Supp 896 (1988).....	48
Attorney-General of the Government of Israel v Eichmann (1961) 36 ILR 5	48
<i>Arrest Warrant of 11 April 2000</i> (Democratic Republic of Congo v Belgium) ICJ Reports 2002... 49	49
<i>Austro-German Customs Union case (Advisory Opinion)</i> (1931) (H&S, pp 92-94).....	49
Arbitration Commission, EC Conference on Yugoslavia: Badinter, Chairman; Corosaniti, Herzog, Petry, Tomas y Valiente, members. January 11 1992.921.L.R.167.....	49
The Schooner Exchange v McFaddon, 7 Cranch 116 (1812)	50
<i>Pinochett case III: R v Bow Street Metropolitan Magistrate; ex parte Pinochet Ugarte (No.3)</i> [2000]	50
Al-Adsani v Government of Kuwait (1996) 107 ILR.....	51
Jurisdictional Immunities of the State (Germany v Italy, with Greece intervening)	51
Jones v Ministry of the Interior of the Kingdom of Saudi Arabia	52

<i>Arrest Warrant of 11 April 2000</i> (Democratic Republic of Congo v. Belgium) ICJ Reports 2002.	52
U.S. Diplomatic and Consular Staff in Tehran case (United States v. Iran) ICJ Reports 1980.	52
<i>Armed Activities case</i> (Congo v. Uganda) ICJ Reports 2005.	52
<i>Case concerning Avena and Other Mexican Nationals</i> (Mexico v. United States of America), Judgment of 31 March 2004, ICJ Reports 2004.	53
Armed Activities on Territory of the Congo (Democratic Republic of the Congo v Rwanda), ICJ Reports 2006.	53
Competence of General Assembly for Admission of a State to the UN (Advisory Opinion), ICJ Reports 1950.	54
Temple of Preach Vihear case (Cambodia v Thailand) (Merits) ICJ Reports 1962.	54
Legal Consequence for States of Continued Presence of South Africa in Namibia (South West Africa) (1970) ICJ Reports 1971.	55
Fisheries Jurisdiction Case (United Kingdom v Iceland) ICJ Reports 1973.	55
<i>Gabčíkovo-Nagymaros Project case</i> (Hungary v. Slovakia) ICJ Reports 1997.	55
<i>Caire Claim</i> (France v. United Mexican States) (1929) 5 RIAA 529-30.	56
Corfu Channel Case (UK v Albania), ICJ Reports 1949, p. 14.	56
<i>Eletronica Sicula SpA</i> (ELSI) (United States v. Italy), ICJ Reports 1989, p.15.	57
<i>Genocide I case</i> (Bosnia and Herzegovina v. Serbia and Montenegro) ICJ Reports 2007, p.43.	57
<i>Armed Activities on Territory of Congo</i> (Democratic Republic of the Congo v. Uganda) ICJ Reports 2005.	57
Behrami and Saramati v. France, Germany and Norway [2007] ECtHR (GC) 71412/01 and 78166/01.	58
<i>Al-Jedda v UK</i> [2011] ECtHR (GC) 27021/08, paras 83-85.	58
<i>LaGrand case</i> (Germany v. United States) (Provisional Measures) ICJ Reports 1999, p.9.	59
<i>Yeager v Iran</i> 17 Iran-USCTR (1987) 92, 104.	59
Case re Military & Paramilitary Activities in & Against Nicaragua (Nicaragua v. US) ICJ Reports 1986.	60
<i>Prosecutor v. Dusko Tadić</i> , ICTY Appeals Chamber, Judgment of 15 July 1999.	60
Spanish Zone of Morocco Claims (1925) RIAA 615.	61
<i>Certain Phosphate Lands in Nauru</i> (Nauru v. Australia) ICJ Reports 1992.	61
US Diplomatic and Consular Staff in Tehran (United States v Iran) ICJ Reports 1980 p.3.	62
<i>Arrest Warrant of 11 April 2000</i> (Democratic Republic of the Congo v. Belgium) ICJ Reports 2002, p.3.	62
<i>Gabčíkovo-Nagymaros Project case</i> (Hungary v. Slovakia) ICJ Reports 1997.	63
<i>Chorzow Factory</i> (Indemnity) (Merits) case (1928) PCIJ (Series A) No 17, 47.	63
<i>SS 'T'm Alone' Case</i> (Canada v. United States) (1935) 3 RIAA 1609.	64
<i>Rainbow Warrior case</i> (New Zealand v. France) (1990) RIAA Vol. XX, 217.	64

Barcelona Traction, Light and Power Company Ltd case (Belgium v. Spain), Second Phase, ICJ Reports 1970.	65
<i>Armed Activities (Republic of the Congo v Rwanda)</i> , Jurisdiction and Admissibility, ICJ Reports 2006.	66
Legal Consequence for States of Continued Presence of South Africa in Namibia (South West Africa) (1970) ICJ Reports 1971	66
Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion), ICJ Reports 1949.	66
<i>South West Africa case</i> (Liberia v South Africa) (Preliminary Objections) ICJ Reports 1962, p.319.	67
<i>East Timor case</i> (Portugal v. Australia) ICJ Reports 1995.	67
<i>The Rainbow Warrior Arbitrations</i> (New Zealand v. France) (1986) 74 ILR 241 and (1990) 82 ILR 499.	68
Corfu Channel Case (United Kingdom v Albania) (Preliminary Objections) ICJ Reports 1947	68
Avena and Other Mexican Nationals (Mexico v USA), ICJ Reports 2004.	69
Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v France) ICJ Reports 2008	70
<i>Cameroon v Nigeria</i> (Preliminary Objections) ICJ Reports (1998)	70
Interhandel case (Switzerland v USA) ICJ Reports 1959	71
Norwegian Loans Case (France v Norway) ICJ Reports 1957	71
<i>Nicaragua case (Nicaragua v USA)</i> (Jurisdiction and Admissibility) ICJ Reports 1984	72
<i>East Timor case</i> (Portugal v. Australia) ICJ Reports 1995.	72
Land, Island and Maritime Frontier Dispute (El Salvador v Honduras) ICJ Reports 1990	72
<i>LaGrand case</i> (Germany v. United States) (Judgment) ICJ Reports 2001	73
WHO Nuclear Weapons Case (Legality of the Use by a State of Nuclear Weapons in Armed Conflict Advisory Opinion) ICJ Reports 1996	73
Nicaragua Case (Nicaragua v USA) (Merits) ICJ Reports (1986).....	74
Caroline case 29 British and Foreign State Papers 1137-8.....	75
Oil Platforms case (Iran v USA) (Merits) ICJ Reports (2003)	75
Case concerning Armed Activities on the Territory of the Congo (Congo v Uganda), ICJ Reports (2005).....	76
Partial Award: Ius Ad Bellum: Ethiopia’s Claim 1-8, Eriteria-Ethipia Claims Commission (2005)77	
<i>Construction of a Wall in Occupied Palestinian Territories</i> , Advisory Opinion, ICJ Reports 1986, p. 136, at p. 194 and Separate Opinion of Judge Higgins, p. 215	77
<i>Legality of the Threat or Use of Nuclear Weapons case</i> , ICJ Reports 1996, 226; and Dissenting Opinion of Judge Higgins	78

Module 3: State Jurisdiction and Immunities (Week 5 – Week 6)**STEP 1: Intro – On what basis can a states court... (any question involving an individual)**

[Country A] wants to take legal action against [person from Country B and/or Country B] for [alleged wrongdoing]. To do this, [Country A] would need to establish that they have jurisdiction to bring this action. Jurisdiction is a basic attribute of sovereignty and the power of competence of a state to prescribe or enforce its laws, including where these laws have extraterritorial reach/effect on foreign persons, property or states (*Art 2(7) UN Charter*). Factually, there has been/will require a ___ (criminal/civil) ___ (prescriptive – law making/enforcement) use of jurisdiction.

If criminal enforcement

Enforcement jurisdiction is not generally permitted outside the territory of a State and certainly not in the territory of another State except where that other State consents (*Lotus Case*). In this case, enforcement jurisdiction will be needed for ___ (foreign state or home).

Types of jurisdictions

1. Prescriptive jurisdiction → power to make law – legislature, executive, courts
2. Enforcement jurisdiction → enforcement of judgment, usually of courts

[Country A] is seeking to exercise its [prescriptive and enforcement] jurisdiction to bring a [criminal] action against [person from Country B and/or Country B] under [Country A's] national law.

Prescriptive jurisdiction

1. Power of a state to enact laws in its own territory. Recognised that states have absolute and exclusive jurisdiction within its own territory (*Lotus case*)
2. Must be sufficient nexus between the legislating state & subject on whom the State is seeking to assert prescriptive jurisdiction (*Arrest Warrant case-Belgium v DRC*)

[Country A] can exercise its prescriptive jurisdiction in this dispute because [pick relevant]:

1. The alleged crime was committed on [Country A's] territory
2. The alleged crime was committed outside of [Country A] but [facts showing key element] being constitutive element of the crime was committed on [Country A's] territory

There is sufficient nexus between [Country A] and [subject accused of crime] because [facts].

Enforcement jurisdiction

Whilst [Country A] has prescriptive jurisdiction, it must be shown that [Country A] also has enforcement jurisdiction (*Lotus Case*). Enforcement jurisdiction describes the right of a State to enforce their laws, in this case [to arrest/investigate/prosecute/punish] [person from Country B] for their alleged crime.

For [Country A] to have enforcement jurisdiction, it must be shown that they can rely on a head or multiple heads of jurisdiction.

STEP 2: Bases of Jurisdiction

On the facts, __ (state/Country A) would be most successful if they rely upon the __ (Territorial, Nationality, Universality, Protective and Passive personality) principles as the basis of its jurisdiction.

- ✚ **Territorial** – matters occurring within state’s territory
 - because [Country A] was the place where the alleged crime was committed
- ✚ **Nationality** – State has jurisdiction over its own citizens (foreign terrorists etc)
 - because the person accused of committing the offence has [Country A’s] nationality (National has committed the harm/crime)
- ✚ **Universality** – *Jus cogens crimes* – genocide/war crimes/torture
 - because the alleged crime offends the international community as a whole
- ✚ **Protective** – matters which affects a nation’s vital security/integrity or economic interests
 - because it was the national interest of [Country A] that was injured by the offence
- ✚ **Passive Personality** – Gives jurisdiction to a state sharing the nationality of victims
 - because the person/people injured by the offence has/have [Country A’s] nationality (National has suffered the harm)

Territorial Principle (Most important)

The territorial principle is that a state may assert/exercise criminal jurisdiction when an element of a criminal offence takes place within its territory (*Lotus Case; Island of Palmas*). Here, ____ (facts) were committed on ____ (state’s territory). Therefore, ____ (state) may be able to rely upon this principle.

- Includes maritime ports
- Exercise jurisdiction over your territory to the exclusion of any other state (*Island of Palmas case (Netherlands v US)*)
- Applies to foreign citizens (*Ex Parte Pinochet* → Note: Universal jurisdiction not granted in this case)
- Any element of a crime committed in an embassy is taken to have occurred in the territory of the hosting state - *R v Turnbull; ex parte Petroff*

Nationality Principle (Most important)

The nationality principle affords jurisdiction to the national state of an offender to try them for a crime, regardless of where the crime itself was committed (*Nottebohm*). Whether a person is a 'national' of a state is determined by municipal law in accordance with sovereign right of state to determine own citizenry (*Nottebohm*). Here, ____ (criminal) was classified as a national under the law of ____ (state), therefore this principle may be relied upon.

- Useful for crimes such as child sex tourism – where the crime is committed offshore
- Issue is that each state define nationality differently and has its own mechanisms of recognition (*Nationality Decrees in Tunis and Morocco*)
- Real and effective nationality (*Nottebohm case*)
- Ability to enforce against own citizens (*Lotus case*)

- Companies = where registered rather than *Nottebohm rule* (*Barcelona Traction*)

Universality Principle

The Universality Principle allows any state to assert criminal jurisdiction over a criminal for particularly heinous or *jus cogens* crimes of an international character (*Arrest Warrants case*). Furthermore, no nexus or connection between the conduct of the offender and the prosecuting state is required. Therefore, as _____ (individual) has committed the crime of _____ (see below and use authority) it is likely that _____ (state) will be able to rely upon the universality principle.

- Piracy - *Convention of the Law of the Sea*
- Genocide - *AG of Israel v Eichmann; Krstic; Milosevic*
- War Crimes - *AG of Israel v Eichmann*
- Torture - *Convention against Torture case; Ex parte Pinochet*

**PINOCHET → Punishable by only state and double criminality (case was on for torture).

** ARREST WARRANT CASE → National govt gets 1st shot at prosecution, another state can join, hence, limiting PINOCHET

Note: **Reluctance of court to recognise universal jurisdiction** → evinced from *Arrest Warrant*. The court in *Arrest Warrant case* acknowledged that there were conventions and treaties that recognised the obligations of States to actively engage in holding States to account for breaching those conventions or treaties. Nevertheless, States should defer to States with a stronger claim to jurisdiction, e.g. nationality personality

[Country A] should only rely on this head of jurisdiction as an auxiliary one. The arguments for [other heads relied on] are more likely to be accepted by the court.

NOTE: In *Ex Parte Pinochet*, Spain sought to have Pinochet extradited from UK for crimes of torture. Although **UK was a party to *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*** that provided measures for establishing jurisdiction where offences were committed in any territory, the **UK had not implemented the Convention under UK law**. It was held by the English courts that torture committed outside UK was not a crime punishable until England implemented Convention under UK law – so **only acts that occurred after domestic legislation came into place could be subject to extradition order**. The Convention **did not give universal jurisdiction**.

Protective Principle

The protective principle allows states to exercise criminal jurisdiction over non-nationals who have committed an act abroad prejudicial to the national interests and security of the state exercising jurisdiction (*Joyce v DPP; Arrest Warrant Case; AG of Israel v Eichman; US v Yunis*). Factually, _____ (individual) committed _____ (crime) which impacted the _____ (security/interests) of _____ (state) by _____ (facts). Therefore, _____ (state) will likely be able to rely upon this principle.

- *Joyce v DPP* - treasonous acts while abroad.
- *AG of Israel v Eichmann* – genocide of Jews

[Country A] should argue this head of jurisdiction concurrently with other heads of jurisdiction as it is generally regarded as one of auxiliary competence (*Lotus Case; US v Yunis*).

Passive Personality Principle (weakest & controversial)

The Passive Personality principle allows the national state of the victim of an offence to assert jurisdiction over the offender (*Lotus; Cutting; Article 5(1)(d) International Convention against the Taking of Hostages; US v Yunis*). Factually, _____ (victim) was a national of _____ (state), therefore this principle may be invoked.

- Key case: *US v Yunis*
- Application of Doctrine: No doubt to apply to hostage taking but does not apply to all crime but applies to serious universally condemn crimes.

Conclusion

_____ (state) will therefore be able to rely upon the _____ (bases) principles for jurisdiction over _____ (action).

STEP 3: IMMUNITIES

An immunity is where a state has jurisdiction but is not permitted to exercise it for legal reasons (*UN Convention on Jurisdictional Immunities*). The following immunities may apply to these circumstances: _____ (State/Sovereign, Political figures, Diplomatic and consular).

Sovereign - a State enjoys immunity from civil suit in the courts of another State.

- Sovereign – a State enjoys immunity from civil suit in the courts of another State
- Political figures – Heads of Government and State/Foreign Ministers
- Diplomatic – Diplomatic relations
- Consular – consular staff

As [Country A] has established they have jurisdiction to bring a case against [Country B/person from Country B], [Country B/person from Country B] may argue that they are immune from [Country A's] jurisdiction.

If [Country B/person from Country B] successfully establishes that they are immune from [Country A's] jurisdiction, such immunity would act a procedural bar to proceedings (*Schooner Exchange*).

Sovereign/State Immunity

Sovereign immunity is the principle of customary international law that one sovereign state **cannot adjudicate** the conduct of another. A foreign state is entitled to procedural immunity from the processes of the forum state for criminal and civil proceedings (**Art.5 UN Convention on Jurisdictional Immunities – A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention**).

Electronica Sicula SpA (ELSI) (United States v. Italy), ICJ Reports 1989, p.15.

Area: State Responsibility

F	US went against Italy for taking over assets of Italian company, ELSI, solely owned by two US companies.
J	<ul style="list-style-type: none"> - Jurisdiction arose under US-Italy Treaty of Friendship and Commerce. <ul style="list-style-type: none"> o US argued that Italy violated substantive and procedural rights under Treaty by unlawfully taking over ELSI. They deprived shareholders of their right to liquidate company assets. o Italy caused company's bankruptcy and sold it at price well below true market value. - Govt. of Italy not responsible to pay compensation to US – did not breach Treaty or Treaty's Agreement.

Genocide I case (Bosnia and Herzegovina v. Serbia and Montenegro) ICJ Reports 2007, p.43.

Area: State Responsibility

- Serbia tried to exterminate Bosnian Muslim population.
 - o Court had jurisdiction: in Genocide Convention, fundamental principle of *res judicata* guarantees 'the stability of legal relations'. In interest of each Party 'that an issue adjudicated in favour of that party be not argued again'.
- Srebrenica massacre was genocide.
 - o Committed w specific intent to destroy in part the group of Bosnian Muslims in that area.
- Acts of Army could not be attributed to Serbia.
 - o Serbia violated Genocide Convention by not preventing Srebrenica genocide. States that are aware, or should be aware, of serious danger that acts of genocide will be committed, should take all steps reasonably available to prevent genocide within limits of law.
 - o Serbia did not hand over perpetrators to Yugoslavian Tribunal for trial.
- Reparation.
 - o Could not prove that Serbia's lack of intervention would prevent genocide therefore financial compensation not appropriate.
 - o Declaration that Serbia failed to prevent genocide and violated obligations under Convention. It must hand over accused to Tribunal and cooperate fully with Tribunal.

Armed Activities on Territory of Congo (Democratic Republic of the Congo v. Uganda) ICJ Reports 2005.

Area: State Responsibility

- Congo had consented to Ugandan military presence but intended for Ugandans to stay within their geographical limits and to stop rebels on common border.
 - o Ugandan military forces looted, plundered and exploited Congo's resources.
 - o Congo referred to Conventions against torture and cruelty.
- Jurisdiction of Court: two states accepted to compulsory jurisdiction of court.
- Uganda held responsible for conduct of its military forces, even if soldiers and officers opposed instructions given or exceeded authority.