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Public International Law

Q&A Exam Guide · Part A

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PIL | Unit 1 | Part A

Nature and Sources of International Law

Q1. What is International Law? Define its nature and scope.

PRIORITY: ★★★ | PART: A | FREQ: 6

What is International Law

International Law is the body of rules and principles governing the relations between sovereign states and other recognised subjects of the international community, derived from treaties, custom, and general principles recognised by civilised nations, as catalogued in Article 38(1) of the Statute of the International Court of Justice (ICJ Statute).

Legal Foundation

Article 38(1), ICJ Statute : authoritative enumeration of sources courts apply to resolve international disputes
Article 2(1), Charter of the United Nations (UN Charter) : sovereign equality of all member states as the foundational operating principle

[!tip] Mnemonic: "Old Students Never Skip Class"
Oppenheim | Starke | Nature | Subjects | Scope

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Oppenheim

International Law has been defined by Oppenheim as the body of customary and conventional rules which are considered legally binding by civilised states in their intercourse with each other. This definition anchors international law in consent and practice, treating obligation as its foundation rather than command.

Starke

Starke offers a broader definition, extending international law to include rules relating to international organisations and to individuals insofar as their rights and duties concern the international community. This expansion reflects the modern reality that states are no longer the sole actors in the international legal order.

Nature

As to its nature, international law is a horizontal legal order: there is no central legislature and no standing enforcement authority. States are bound through their consent, through the weight of custom, and through the principle of reciprocal obligation operating among sovereign equals.

Subjects

The subjects of international law are primarily states, though international organisations, individuals with limited standing, and non-state actors have found increasing recognition in modern practice. The traditional state-centric model has been progressively expanded by treaty regimes and judicial decisions.

Scope

The scope of international law now extends from the classical concerns of war, peace, and territory to diplomatic relations, the law of the sea, air and outer space, human rights, and international criminal responsibility. What began as a law between sovereigns now governs the global commons.

[!example]- Case Laws

S.S. Lotus Case (France v Turkey, Permanent Court of International Justice (PCIJ), 1927)

📋 Facts

A French mail steamer collided with a Turkish vessel on the high seas, killing Turkish nationals. Turkey arrested and prosecuted the French officer on board when the vessel docked in Constantinople.

🔨 Held

The PCIJ held Turkey's exercise of jurisdiction lawful, proceeding on the basis that international law sets binding limits on state conduct.

💡 Principle

States may act unless international law expressly prohibits; sovereignty is the default position.

West Rand Central Gold Mining Co v R (King's Bench (KB), 1905)

📋 Facts

A British company claimed the Crown, having annexed the Transvaal, was bound by the Boer government's debt obligations to the company.

🔨 Held

The KB rejected the claim and held the Crown was not bound, but acknowledged that established rules of international law may form part of English domestic law where sufficiently proved as settled custom accepted by the community of nations.

💡 Principle

International law is recognised by domestic courts but only where sufficiently proved as settled custom; the case is a restrictive authority limiting the scope of adoption.

International Law as a Binding Legal Order

International Law binds states through consent and custom in the absence of a central legislature, and its scope has expanded from interstate relations to encompass individuals, organisations, and the global commons.

Exam Minimum (never skip)

1. Definition: "body of rules governing relations between sovereign states" + Art. 38(1) ICJ Statute
2. Oppenheim definition + Starke expansion (organisations + individuals)
3. Nature: horizontal legal order, no central legislature, consent-based
4. One case: S.S. Lotus (1927) — states may act unless IL prohibits
5. Conclusion: binds through consent and custom

Q2. What is Custom in International Law?

PRIORITY: ★★★ | PART: A | FREQ: 5

What is Custom

Custom in international law is a binding source of legal obligation arising from consistent and general state practice combined with opinio juris, the conviction that the practice is legally required, as recognised under Article 38(1)(b) of the ICJ Statute.

Legal Foundation

Article 38(1)(b), ICJ Statute : "international custom, as evidence of a general practice accepted as law"

[!tip] Mnemonic: "POCGO"
Practice | Opinio | Coexist | Generality | Objector

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Practice

State practice is the objective element of custom: consistent, general conduct expressed through state legislation, diplomatic correspondence, treaties, domestic court decisions, and military manuals accumulated over time. The conduct must be widespread and representative, particularly among states whose interests are specially affected by the rule.

Opinio

Opinio juris is the subjective element: the belief held by states that the conduct is legally obligatory and not merely a matter of habit, courtesy, or political choice. Without this belief, even the most consistent practice remains usage rather than law.

Coexist

Both elements must coexist: practice without opinio juris is nothing more than usage, and opinio juris without corresponding practice is aspiration, not law. The International Court of Justice (ICJ) confirmed this twin requirement in the North Sea Continental Shelf Cases (ICJ, 1969).

Generality

The practice need not be universal; it is sufficient that the states most specially affected by the rule participate widely and consistently without persistent objection. A rule can crystallise into binding custom even without the participation of every state in the international community.

Objector

The persistent objector doctrine is the recognised exception: a state that consistently and openly objects to an emerging customary rule before it crystallises into law is not bound by that rule, even after it hardens into binding custom. The objection must be continuous and unambiguous.

[!example]- Case Laws

North Sea Continental Shelf Cases (ICJ, 1969)
📋 Facts
Germany disputed the method for delimiting the continental shelf boundary with Denmark and the Netherlands, which sought to apply the equidistance rule from the Geneva Convention on the Continental Shelf 1958. Germany had not ratified that Convention.

🔨 Held
The ICJ held that the equidistance rule was not binding custom on Germany; both state practice and opinio juris must be independently established.

💡 Principle
Practice alone does not constitute custom; the subjective element of opinio juris is equally required.

Asylum Case (Colombia v Peru, ICJ, 1950)
📋 Facts
Colombia claimed a regional Latin American custom of diplomatic asylum entitled it to unilaterally qualify the offence of a Peruvian national and grant him asylum in its embassy in Lima.

🔨 Held
The ICJ held that Colombia had not established a consistent and uniform practice sufficient to found a binding regional custom.

💡 Principle
Inconsistent and fluctuating practice cannot establish a binding customary rule; custom requires uniformity and generality.

Custom as a Binding Source Without Legislation

Custom binds all states through the twin requirements of general state practice and opinio juris, operating without legislative enactment, subject only to the persistent objector exception for states that reject a norm before it hardens.

Exam Minimum (never skip)

1. Definition: binding source from practice + opinio juris, Art. 38(1)(b) ICJ Statute
2. Practice (objective) + Opinio juris (subjective) — both must coexist
3. Persistent objector exception
4. One case: North Sea Continental Shelf (1969) — both elements needed independently
5. Conclusion: binds without legislation

Q3. What is Jus Cogens?

PRIORITY: ★★★ | PART: A | FREQ: 4

What is Jus Cogens

Jus cogens are peremptory norms of general international law accepted and recognised by the international community as a whole as norms from which no derogation is permitted, as defined in Article 53 of the Vienna Convention on the Law of Treaties (VCLT) 1969.

Legal Foundation

Article 53, VCLT 1969 : a treaty conflicting with an existing jus cogens norm is void ab initio
Article 64, VCLT 1969 : a new jus cogens norm renders existing conflicting treaties void prospectively

[!tip] Mnemonic: "CANNA"
Community | Absolute | Art.53 | Art.64 | No Exception

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Community

Jus cogens norms are accepted and recognised by the international community as a whole, meaning not merely by a majority of states but by the community as such. This universal acceptance is what distinguishes jus cogens from ordinary treaty or customary rules.

Absolute

Jus cogens norms are absolutely non-derogable: no treaty between any two or more states, no bilateral agreement, and no later custom can lawfully contract out of a jus cogens rule. This places them at the apex of the normative hierarchy of international law.

Art.53

Article 53 of the Vienna Convention on the Law of Treaties (VCLT) 1969 provides that any treaty which, at the time of its conclusion, conflicts with an existing peremptory norm is void in its entirety. The conflict renders the treaty void ab initio, from the beginning.

Art.64

Article 64 of the VCLT extends this further: if a new peremptory norm emerges after a treaty has been concluded, that treaty is voided prospectively from the date the new norm is accepted by the international community. Earlier treaties are not spared by their prior existence.

No Exception

There is no exception to jus cogens. The norms most firmly accepted in this category include the prohibition of genocide, slavery, torture, and aggression. These obligations are owed to the international community as a whole and cannot be traded away by any agreement between states.

[!example]- Case Laws

Barcelona Traction, Light and Power Co Ltd (Belgium v Spain, ICJ, 1970)
📋 Facts
A Canadian company operating in Spain went bankrupt. Belgium claimed on behalf of Belgian shareholders, arguing Spain had violated international law.

🔨 Held

The ICJ held Belgium lacked standing but articulated obligations erga omnes: obligations owed to the international community as a whole, linked in normative status to jus cogens.

💡 Principle

Jus cogens norms generate obligations owed to the international community as a whole, not merely to individual states bilaterally.

R v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet (No 3) (House of Lords (HL), United Kingdom, 1999)

📋 Facts

General Pinochet, former head of state of Chile, was arrested in the United Kingdom on a Spanish extradition warrant for acts of torture committed during his rule.

🔨 Held

The House of Lords held that the prohibition of torture is a jus cogens norm and that sovereign immunity could not shield an individual from extradition for jus cogens violations.

💡 Principle

Jus cogens overrides sovereign immunity; no state or individual can invoke immunity as a shield against accountability for peremptory norm violations.

Jus Cogens as the Apex of International Law

Jus cogens norms sit at the apex of international law's normative hierarchy: absolute, non-derogable, and capable of voiding any conflicting treaty or rule under Articles 53 and 64 of the VCLT 1969.

Exam Minimum (never skip)

1. Definition: peremptory norms, no derogation, Art. 53 VCLT 1969
2. Art. 53: treaty conflicting with jus cogens = void ab initio
3. Examples: prohibition of genocide, slavery, torture, aggression
4. One case: Barcelona Traction (1970) — obligations erga omnes
5. Conclusion: apex of normative hierarchy

Q4. What is Codification of International Law?

PRIORITY: ★★ | PART: A | FREQ: 3

What is Codification

Codification of international law is the process of converting established customary rules into precise written treaty form, carried out primarily through the International Law Commission (ILC) under the mandate of Article 13(1)(a) of the UN Charter.

Legal Foundation

Article 13(1)(a), UN Charter : General Assembly shall promote progressive development and codification of international law
Article 15, ILC Statute 1947 : distinguishes codification of existing custom from progressive development of new rules

[!tip] Mnemonic: "PCALE"
Process | Codification vs Progressive | Advantages | Limitation | Exception

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Process

Codification works through the International Law Commission (ILC), which drafts articles on a chosen topic, circulates them to states for comment, presents them to a diplomatic conference, and opens the resulting convention for signature and ratification. The ILC acts as the primary technical engine of international legal development under UN General Assembly (UNGA) authority.

Codification vs Progressive

A distinction must be drawn between codification and progressive development: codification records and clarifies rules that already exist in custom, while progressive development creates new rules in areas where state practice is thin or absent. Article 15 of the ILC Statute 1947 draws this distinction formally.

Advantages

The advantages of codification are certainty, accessibility, and uniformity: written text is more predictable than unwritten custom and equally available to all states, including those that had no hand in shaping it. Codified rules can be consulted, cited, and applied with precision that custom cannot always provide.

Limitation

Codification carries a significant limitation: states that do not ratify the convention are not bound by its text. However, many codified instruments simultaneously reflect customary law, and that customary dimension binds all states regardless of whether they have ratified the convention.

Exception

A further risk is that the negotiated compromise required to produce a convention may freeze the law at a particular moment, preventing custom from continuing to evolve naturally. Political bargaining can distort or dilute the rules that were meant to be recorded.

[!example]- Case Laws

North Sea Continental Shelf Cases (ICJ, 1969)
📋 Facts
Germany was not a party to the Geneva Convention on the Continental Shelf 1958. Denmark and the Netherlands sought to apply its equidistance rule against Germany as binding custom.

🔨 Held
The ICJ held that the equidistance rule in the Geneva Convention had not crystallised into binding custom; separate proof of opinio juris was required beyond the treaty text.

💡 Principle
A codified treaty rule is not automatically custom; codification and customary status are legally distinct questions.

Nicaragua v USA (ICJ, 1986)
📋 Facts
The United States argued that the ICJ lacked jurisdiction over claims grounded in the UN Charter. Nicaragua relied on parallel customary international law rules.

🔨 Held
The ICJ held that customary rules on non-intervention and non-use of force survive and operate independently of their codified treaty equivalents.

💡 Principle
Codification does not exhaust or replace the underlying customary rule; both operate in parallel and independently.

Gabčíkovo-Nagymaros Project (Hungary v Slovakia, ICJ, 1997)
📋 Facts
Hungary and Czechoslovakia concluded a treaty in 1977 for the construction of a dam system on the Danube. Hungary suspended and then abandoned its obligations under the treaty; Slovakia proceeded unilaterally with a provisional solution. Hungary claimed the treaty had lapsed; Slovakia maintained it remained in force.

🔨 Held
The ICJ held the 1977 treaty remained in force, that neither party had validly terminated it, and that the ILC Draft Articles on State Responsibility reflected customary international law applicable independently of the treaty.

💡 Principle
Codified ILC draft articles carry customary force independently of treaty ratification; codification and custom develop in parallel and one may outlive the other.

Codification as the Engine of International Legal Development

Codification converts custom into treaty text for certainty and uniformity, but the ILC process simultaneously records existing law and shapes new law, making it the central engine of international legal development.

Exam Minimum (never skip)

1. Definition: converting custom into written treaty form, ILC under Art. 13(1)(a) UN Charter
2. Codification vs Progressive Development (Art. 15 ILC Statute)
3. Advantage: certainty + accessibility; Limitation: non-ratifying states not bound
4. One case: North Sea Continental Shelf (1969) — codified rule not automatically custom
5. Conclusion: engine of legal development, custom and treaty operate in parallel

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Q5. What is Monism?

PRIORITY: ★★★ | PART: A | FREQ: 4

What is Monism

Monism is the theory that international law and municipal law form a single unified legal order in which international law is supreme, and its rules become part of domestic law automatically without the need for a separate legislative act of transformation.

Legal Foundation

Article 27, Vienna Convention on the Law of Treaties (VCLT) 1969 : a state may not invoke its internal law as justification for failure to perform a treaty obligation
Article 51, Constitution of India : directive principle requiring the state to foster respect for international law and treaty obligations

[!tip] Mnemonic: "SASPE"
Single | Automatic | Supremacy | Practical | Exception

Single | Automatic | Supremacy | Practical | Exception

Single

Monism holds that international law and municipal law are not two separate systems but one. Kelsen's pure theory of law places international law as the grundnorm, the basic norm from which all municipal law ultimately derives its validity.

Automatic

Because the two form parts of the same system, a treaty once ratified and a customary rule once formed become domestic law immediately, with no further legislative act required. Courts may apply international rules directly without waiting for implementing legislation.

Supremacy

In cases of conflict, international law prevails over inconsistent domestic legislation, leaving no room for domestic law to override an international obligation. Article 27 of the VCLT 1969 confirms this: a state cannot invoke internal law to justify non-performance of a treaty.

Practical

The practical consequence is that individuals may invoke international rules directly before domestic courts without waiting for a domestic implementing statute. This direct effect is the operational hallmark of a monist system.

Exception

Even states that describe themselves as monist in theory often retain some procedural requirement in practice, such as publication or parliamentary notification, before a treaty produces direct domestic legal effect. Pure monism in practice is rare; most monist states operate a qualified version.

[!example]- Case Laws

Triquet v Bath (King's Bench (KB), 1764)
📋 Facts
A servant of a foreign diplomat claimed immunity from civil process in England. There was no English statute covering the position of diplomatic servants.

🔨 Held
Lord Mansfield held that the law of nations is part of English law and that the servant was entitled to diplomatic immunity without any statutory basis.

💡 Principle
Foundational common law authority for the direct adoption of customary international law into domestic law without transformation.

Vishaka v State of Rajasthan (Supreme Court of India (SCI), 1997)
📋 Facts
A public interest litigation was filed following the gang rape of a social worker. There was no domestic statute governing sexual harassment at the workplace.

🔨 Held
The Supreme Court of India applied the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) directly as an interpretive standard and laid down binding guidelines pending legislation.

💡 Principle
In the absence of domestic legislation, Indian courts may apply international treaty standards directly; a form of judicial monism operating through constitutional interpretation.

Monism and the Unity of the Legal Order

Monism holds that international and domestic law form one system with international law supreme, but state practice reveals a pragmatic spectrum rather than a clean theoretical divide between monist and dualist approaches.

Exam Minimum (never skip)

1. Definition: single unified legal order, IL supreme, no transformation needed
2. Kelsen: IL as grundnorm; Art. 27 VCLT: internal law no excuse
3. Practical consequence: individuals invoke IL directly before domestic courts
4. One case: Vishaka v State of Rajasthan (1997) — CEDAW applied directly
5. Conclusion: pure monism rare; most states operate qualified version

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Q6. What is the Transformation Theory?

PRIORITY: ★★ | PART: A | FREQ: 3

What is the Transformation Theory

The Transformation Theory holds that rules of international law do not automatically form part of municipal law but must be expressly converted into domestic law through a specific legislative act before domestic courts and authorities are bound to apply them.

Legal Foundation

Article 253, Constitution of India : Parliament has power to legislate for implementing international treaties, agreements, and conventions
Article 27, VCLT 1969 : international obligation subsists regardless of domestic treatment; the two levels operate independently

[!tip] Mnemonic: "STIRE"
Separate | Transform | India | Rationale | Exception

Separate | Transform | India | Rationale | Exception

Separate

The Transformation Theory, associated with the dualist scholars Triepel and Anzilotti, proceeds from the premise that international law and municipal law are two entirely distinct legal orders, differing in their sources, their subjects, and their sanctions. What governs states internationally cannot automatically govern individuals domestically.

Transform

Because the two systems are separate, a rule of international law produces no legal effect inside the domestic order until it is expressly transformed through legislation. The domestic rule that courts apply is not the treaty itself but the statute that enacts it.

India

In India, this structure is reflected in Article 253 of the Constitution, which vests in Parliament the power to legislate for the purpose of implementing international treaties, agreements, and conventions. Without that implementing legislation, domestic courts cannot enforce the treaty as law.

Rationale

The rationale for the transformation requirement is the protection of parliamentary sovereignty: it prevents the executive from altering domestic legal rights and obligations through treaty-making without the consent of the legislature. The treaty binds the state internationally; only Parliament can bind citizens domestically.

Exception

One important exception is that in common law systems, established rules of customary international law are adopted directly into domestic law without requiring transformation. The transformation requirement operates most strictly in respect of treaties, not custom.

[!example]- Case Laws

Attorney General for Canada v Attorney General for Ontario (Privy Council (PC), 1937)
📋 Facts
Canada ratified several International Labour Organization (ILO) conventions. The provinces refused to implement the required legislation, arguing labour fell within provincial jurisdiction.

🔨 Held
The Privy Council held that ratification binds the state internationally but does not create domestic law; legislation is required for domestic effect.

💡 Principle
Transformation is not automatic; the international obligation and the domestic legal rule are produced by separate acts.

R v Keyn (The Franconia) (Court for Crown Cases Reserved, 1876)
📋 Facts
A German ship collided with a British vessel in English territorial waters, killing a passenger. The question was whether English courts had jurisdiction to try the German captain.

🔨 Held
The Court held that English courts had no jurisdiction without a statutory basis; international law alone could not confer jurisdiction on domestic courts. Parliament enacted the Territorial Waters Jurisdiction Act 1878 in direct response.

💡 Principle
Domestic courts cannot apply international law without a statutory foundation; transformation by Parliament is required.

Transformation and the Protection of Parliamentary Sovereignty

The Transformation Theory protects legislative sovereignty by requiring an express domestic act before international obligations bind courts, but Article 27 of the VCLT 1969 ensures the international obligation survives intact at the international level regardless of domestic treatment.

Exam Minimum (never skip)

1. Definition: IL must be expressly converted by legislation before domestic courts apply it
2. Triepel/Anzilotti: two separate systems; Art. 253 India Constitution
3. Rationale: protects parliamentary sovereignty
4. One case: AG Canada v AG Ontario (1937) — ratification does not create domestic law
5. Exception: custom adopted directly without transformation

Q7. What are General Principles of Law?

PRIORITY: ★★ | PART: A | FREQ: 3

What are General Principles of Law

General principles of law recognised by civilised nations are a primary source of international law under Article 38(1)(c) of the ICJ Statute, allowing courts to draw on principles common to major domestic legal systems to fill gaps where no applicable treaty or custom exists.

Legal Foundation

Article 38(1)(c), ICJ Statute : "general principles of law recognised by civilised nations" listed as a primary source the ICJ applies

[!tip] Mnemonic: "GSETS"
Gap | Source | Examples | Transposability | Subsidiary

Gap | Source | Examples | Transposability | Subsidiary

Gap

General principles of law serve a gap-filling function within the international legal system: they are invoked when a dispute is not covered by any applicable treaty provision and when no settled customary rule addresses the matter. They prevent the court from declaring a non liquet, that is, an inability to decide for lack of applicable law.

Source

The source of these principles is comparative domestic law: the court examines whether a principle is recognised across the major legal systems of the world, both civil law and common law traditions, and if so treats it as available at the international level. The principle must command widespread recognition, not merely exist in one domestic system.

Examples

Principles that have been applied in this way include good faith, res judicata (a matter already adjudged), estoppel, unjust enrichment, proportionality, and the fundamental rule that every legal wrong generates a right to a remedy. These are drawn from domestic law and transposed to the international plane.

Transposability

Not every domestic principle can be transposed to the international level; it must be capable of application in relations between states or other international actors. Principles too closely tied to domestic institutional structures, such as rules of civil procedure specific to one jurisdiction, do not transfer.

Subsidiary

General principles are subsidiary in nature and are displaced whenever a specific treaty provision or customary rule already governs the matter. They fill the gaps left by the primary sources; they do not compete with them.

[!example]- Case Laws

Chorzow Factory Case (Germany v Poland, PCIJ, 1928)

📋 Facts

Poland expropriated a factory at Chorzow that had been established under a German-Polish convention. Germany claimed full reparation for the expropriation.

🔨 Held

The PCIJ held that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would have existed if the act had not been committed.

💡 Principle

The domestic tort principle of full reparation for wrongful acts was elevated to a general principle of international law; every internationally wrongful act generates an obligation to make full reparation.

Mavrommatis Palestine Concessions (Greece v United Kingdom, PCIJ, 1924)

📋 Facts

Greece espoused the claim of its national Mavrommatis against the United Kingdom regarding concessions in Palestine. The United Kingdom challenged the Court's jurisdiction.

🔨 Held

The PCIJ applied the principle of res judicata and confirmed that it has standing as a general principle applicable at the international level.

💡 Principle

Res judicata, the rule that a matter once decided is not re-examined, operates as a general principle of international law drawn from domestic legal systems worldwide.

General Principles as the Safety Net of International Law

General principles of law fill gaps in the international legal system by drawing from domestic legal systems, ensuring courts are never without a governing rule in the absence of applicable treaty or custom.

Exam Minimum (never skip)

1. Definition: Art. 38(1)(c) ICJ Statute — principles from major domestic systems
2. Gap-filling function: prevents non liquet
3. Examples: good faith, res judicata, estoppel, full reparation
4. One case: Chorzow Factory (1928) — full reparation elevated to international principle
5. Subsidiary: displaced when treaty or custom already governs

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Q8. What is Opinio Juris?

PRIORITY: ★★ | PART: A | FREQ: 2

What is Opinio Juris

Opinio juris sive necessitatis is the subjective element of customary international law: the belief held by states that a particular practice is followed because it is legally obligatory, not merely out of habit, courtesy, or political convenience, as required under Article 38(1)(b) of the ICJ Statute alongside state practice.

Legal Foundation

Article 38(1)(b), ICJ Statute : "international custom, as evidence of a general practice accepted as law"
ILC Conclusion 9, Draft Conclusions on Identification of Customary International Law (2018) : opinio juris must be established separately from practice; the two elements are distinct

[!tip] Mnemonic: "BLCSP"
Belief | Legal obligation | Custom requires both | Separate proof | Practice alone insufficient

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Belief

Opinio juris is the conviction held by states that they are bound by a rule of law, not merely following a pattern of behaviour out of convenience or tradition. Without this belief, conduct is usage or comity, not custom. The distinction is between "we do this because we must" (opinio juris present) and "we do this because it is convenient" (opinio juris absent).

Legal obligation

The belief must be that the practice is legally required, meaning states perceive the conduct as obligatory under international law rather than discretionary. States may express opinio juris through official statements, diplomatic protests when the rule is violated, domestic legislation enacted in reliance on the rule, and votes on international resolutions that articulate the legal obligation.

Custom requires both

Custom crystallises only when both elements coexist: widespread and consistent state practice (the objective element) combined with opinio juris (the subjective element). The ICJ confirmed this twin requirement in the North Sea Continental Shelf Cases (ICJ, 1969), holding that even widespread practice does not become custom without the accompanying belief that the practice is legally obligatory.

Separate proof

Opinio juris must be proved separately and independently from practice. The ILC Draft Conclusions on Identification of Customary International Law (2018) confirm that the two elements are conceptually distinct and require distinct evidence. A state's participation in practice does not automatically establish that it regards the practice as law; the motivation behind the practice must be independently demonstrated.

Practice alone insufficient

Practice without opinio juris remains mere usage, habit, or comity. The ICJ in the Asylum Case (Colombia v Peru, ICJ, 1950) rejected Colombia's claim of a regional custom of diplomatic asylum precisely because the Latin American practice was inconsistent and not accompanied by uniform opinio juris that the practice was legally obligatory.

[!example]- Case Laws

North Sea Continental Shelf Cases (ICJ, 1969)
📋 Facts
Germany disputed the equidistance method for delimiting the continental shelf. Denmark and the Netherlands argued the method had crystallised into binding custom through widespread treaty practice.

🔨 Held
The ICJ held that state practice under the Geneva Convention did not establish opinio juris; the practice may have been motivated by convenience rather than legal conviction. Both elements must be independently proved.

💡 Principle
Practice alone does not constitute custom; the subjective element of opinio juris is independently required and must be separately established.

Asylum Case (Colombia v Peru, ICJ, 1950)
📋 Facts
Colombia claimed a regional custom of diplomatic asylum based on Latin American practice. Peru denied any binding custom existed.

🔨 Held
The ICJ held that the practice was too inconsistent and fluctuating to establish a binding regional custom; uniform opinio juris was absent.

💡 Principle
Inconsistent practice cannot ground custom; opinio juris requires uniform conviction across the relevant community of states.

Opinio Juris as the Dividing Line Between Custom and Habit

Opinio juris transforms state practice from mere habit into binding law; without it, even the most consistent conduct remains usage, and with it, a practice binding on all states crystallises into customary international law subject only to the persistent objector exception.

Exam Minimum (never skip)

1. Definition: subjective belief that practice is legally obligatory, Art. 38(1)(b) ICJ Statute
2. Custom = practice + opinio juris — both required independently
3. Without opinio juris, practice = mere usage/comity, not law
4. One case: North Sea Continental Shelf (ICJ, 1969) — both elements must be separately proved
5. Evidence: official statements, diplomatic protests, domestic legislation, GA votes

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Q9. What is Ex Aequo et Bono?

PRIORITY: ★ | PART: A | FREQ: 1

What is Ex Aequo et Bono

Ex aequo et bono is the power of the International Court of Justice under Article 38(2) of the ICJ Statute to decide a case according to principles of fairness and justice rather than by applying existing legal rules, exercisable only if both parties expressly agree to the Court deciding on this basis.

Legal Foundation

Article 38(2), ICJ Statute : "This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto"

[!tip] Mnemonic: "FENCE"

Fairness | Express consent | Not applied in practice | Contrast with equity | Exception to law-based adjudication

Fairness | Express consent | Not applied in practice | Contrast with equity | Exception to law-based adjudication

Fairness

Ex aequo et bono literally means "according to what is fair and good." It empowers the ICJ to decide a dispute on the basis of what is just and equitable in the specific circumstances, freed from the constraints of existing treaty, custom, or general principles. The Court in effect creates the applicable rule for the case rather than discovering or applying a pre-existing one.

Express consent

Article 38(2) makes the exercise of this power conditional on express agreement by both parties. No state can be subjected to an ex aequo et bono judgment without its consent. This requirement protects the predictability of the legal system: states submit disputes to courts expecting the application of known legal rules, not the creation of new ones by judicial fiat.

Not applied in practice

No parties have ever agreed to the ICJ deciding a contentious case ex aequo et bono. The power exists in theory but has never been exercised. States prefer the predictability of law-based adjudication to the uncertainty of justice-based decision-making where the outcome cannot be predicted from existing rules.

Contrast with equity

Ex aequo et bono must be distinguished from equity infra legem, which is equity operating within the framework of existing law. Courts routinely apply equitable principles (such as proportionality, unjust enrichment, and estoppel) as part of the legal sources under Article 38(1). These equitable considerations operate within the law and require no special consent. Ex aequo et bono operates outside the law and requires express consent because it replaces legal rules entirely.

Exception to law-based adjudication

Ex aequo et bono is the exception to the ICJ's normal function of applying law. Under Article 38(1), the Court applies treaties, custom, general principles, and subsidiary means. Under Article 38(2), it may depart from all of these — but only with consent. The provision confirms that international adjudication is fundamentally a law-applying function, and departure from that function requires the express agreement of the parties whose rights are being determined.

[!example]- Case Laws

North Sea Continental Shelf Cases (ICJ, 1969)
📋 Facts
The ICJ was asked to determine the principles applicable to delimitation of the continental shelf between Germany, Denmark, and the Netherlands. The Court applied equitable principles as part of the governing legal framework.

🔨 Held
The ICJ applied equitable principles within the framework of law (equity infra legem), not ex aequo et bono. The Court emphasised that equitable principles are part of international law, distinguishable from the ex aequo et bono power which requires party consent.

💡 Principle
Equitable principles operate within law (no consent needed); ex aequo et bono operates outside law (consent required under Art. 38(2)). The two are conceptually distinct.

Diversion of Water from the Meuse (PCIJ, 1937)
📋 Facts
The Netherlands and Belgium disputed diversions of water from the River Meuse. Judge Hudson's individual opinion discussed the role of equity in international adjudication.

🔨 Held
Judge Hudson observed that the Court may apply equitable principles as part of the applicable law without resort to the ex aequo et bono power, since equity is a general principle of law under Article 38(1)(c).

💡 Principle

Equity is a legal principle applicable under Article 38(1)(c); the ex aequo et bono power under Article 38(2) is a separate and unused authority to decide outside the law entirely.

Ex Aequo et Bono as the Unused Reserve Power of the ICJ

Ex aequo et bono exists as a theoretical reserve power of the ICJ that has never been exercised because no parties have consented to its use; it must be distinguished from equity infra legem which is a regular part of legal adjudication under Article 38(1) and requires no special consent.

Exam Minimum (never skip)

1. Definition: ICJ power to decide by fairness/justice instead of law, Art. 38(2) ICJ Statute
2. Requires express consent of both parties — never been used in practice
3. Distinguish from equity infra legem: equity within law (no consent) vs ex aequo et bono outside law (consent)
4. One case: North Sea Continental Shelf (1969) — Court applied equitable principles within law, NOT ex aequo et bono
5. Confirms ICJ is fundamentally a law-applying court; departure requires agreement

PIL | Unit 2 | Part A

States, Recognition, Succession, Territory, and Responsibility

Q1. What is De Facto Recognition?

PRIORITY: ★★★ | PART: A | FREQ: 5

What is De Facto Recognition

De facto recognition is the provisional and cautious acknowledgment by one state that another entity exercises effective control over territory and population, without full commitment to its permanence or legitimacy, distinguishable from de jure recognition by its revocability and limited legal consequences.

Legal Foundation

Article 1, Montevideo Convention on the Rights and Duties of States (Montevideo Convention) 1933 : four criteria for statehood: permanent population, defined territory, effective government, capacity for international relations
Article 3, Montevideo Convention 1933 : political existence of a state is independent of recognition by other states

[!tip] Mnemonic: "PLIDE"
Provisional | Limited | Internal | Domestic | Exception

Provisional | Limited | Internal | Domestic | Exception

Provisional

De facto recognition is provisional and revocable: it can be withdrawn if the entity loses effective control, or if the recognising state changes its political position. Because it carries no full political commitment, the recognising state retains freedom of action as the situation evolves.

Limited

The legal relations created by de facto recognition are limited: commercial and consular relations are typically established, but full diplomatic relations are not normally opened. This reflects deliberate caution about extending the complete suite of bilateral legal relations before legitimacy and stability are confirmed.

Internal

De facto recognition is grounded in effective control, not constitutional legitimacy: the government need not have come to power through lawful means. It is a pragmatic response to entities exercising effective territorial control that participate in international transactions regardless of whether other states endorse their origin.

Domestic

At the domestic legal level, de facto recognition has significant consequences: domestic courts of the recognising state give effect to the legislative and administrative acts of the de facto recognised government within its own territory. This prevents a legal vacuum in private law transactions that depend on the validity of foreign governmental acts.

Exception

De facto recognition does not estop the recognising state from later recognising a rival government, or from upgrading to de jure once legitimacy is confirmed. The recognition remains reversible, and the transition from de facto to de jure is one of degree rather than kind.

[!example]- Case Laws

Luther v Sagor (Court of Appeal (CA), 1921)
📋 Facts
UK courts were asked to enforce a Soviet decree nationalising timber belonging to a Russian company. The question was whether the Soviet government's decree had legal effect in English courts given UK's de facto recognition.

🔨 Held
The CA held that UK's de facto recognition required courts to give retroactive legal effect to Soviet legislative acts, including the nationalisation decree.

💡 Principle
De facto recognition obliges domestic courts to give legal effect to the recognised government's acts within its own territory, even for acts predating the recognition.

Carl Zeiss Stiftung v Rayner and Keeler Ltd (House of Lords (HL), 1967)

📋 Facts

A dispute arose over acts of East German authorities. The UK had not recognised East Germany; the question was whether its administrative acts could produce legal effect in English courts.

🔨 Held

The HL held that acts of a de facto government within its own territory could be given legal effect to avoid injustice to private parties, even absent full recognition.

💡 Principle

English courts extend limited legal effect to acts of unrecognised or de facto governments where private parties would otherwise suffer injustice from a legal vacuum.

De Facto Recognition as Pragmatic Acknowledgment

De facto recognition balances political caution against legal practicality: it extends minimum legal protection to entities exercising effective control without the full commitment of de jure recognition, and remains revocable until legitimacy and stability justify the upgrade.

> **Exam Minimum (never skip)**
>
> 1. Definition: provisional acknowledgment of effective control, revocable, limited legal consequences
> 2. Art. 1 Montevideo Convention: four criteria for statehood
> 3. Limited relations (commercial/consular, not full diplomatic); revocable
> 4. One case: Luther v Sagor (CA, 1921) — de facto recognition = retroactive legal effect to acts
> 5. Distinction from de jure: de jure is full, permanent, unconditional

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Q2. What is the Declaratory Theory of Recognition?

PRIORITY: ★★★ | PART: A | FREQ: 4

What is the Declaratory Theory of Recognition

The Declaratory Theory holds that statehood arises automatically when the legal criteria are satisfied, and recognition by other states merely acknowledges a pre-existing fact rather than creating international legal personality, as codified in Article 3 of the Montevideo Convention 1933.

Legal Foundation

Article 3, Montevideo Convention 1933 : "the political existence of the state is independent of recognition by the other states"
Article 1, Montevideo Convention 1933 : permanent population, defined territory, effective government, capacity for international relations

[!tip] Mnemonic: "SLOPE"
Statehood | Lauterpacht | Objective | Practical | Exception

Statehood | Lauterpacht | Objective | Practical | Exception

Statehood

Under the Declaratory Theory, statehood is objective: an entity satisfying the four Montevideo criteria is a state in international law regardless of whether other states choose to recognise it. Legal personality flows from facts on the ground, not from the political decisions of established states.

Lauterpacht

Hersch Lauterpacht and the Institut de Droit International support the Declaratory Theory as the dominant modern view, arguing that states have a legal duty to recognise entities satisfying the Montevideo criteria. This distinguishes it from the Constitutive Theory associated with Oppenheim, which makes legal personality dependent on the political act of recognition.

Objective

The Declaratory Theory explains why unrecognised states can still be held responsible for international law violations and why their nationals retain legal rights. If recognition were constitutive, an unrecognised state could neither bear obligations nor enjoy rights, a result inconsistent with state practice and international tribunal decisions.

Practical

Recognition retains significant practical consequences even under the Declaratory Theory: diplomatic relations, domestic court access, treaty capacity, and enforcement of state acts all depend on it. The Declaratory Theory clarifies what recognition is not, which is constitutive of legal personality, but cannot eliminate its practical importance in bilateral relations.

Exception

The Constitutive position survives as a minority view: Oppenheim argues that without recognition, an entity lacks international legal personality to make treaties, appear before international tribunals, or enjoy sovereign immunity. The gap between formal legal existence and operational exclusion from international life means the debate carries practical consequences beyond theory.

[!example]- Case Laws

Tinoco Arbitration (Costa Rica, 1923)

📋 Facts

The Tinoco regime controlled Costa Rica for two years and concluded contracts with foreign companies. After Tinoco fell, Costa Rica sought to repudiate those contracts on grounds that few states had recognised the Tinoco government.

🔨 Held

Arbitrator William Howard Taft held that effective control over territory and population, not recognition by other states, determines the existence of a government for international law purposes.

💡 Principle

Non-recognition by third states does not negate the existence or legal acts of a government exercising effective control; the Declaratory position confirmed in arbitral practice.

Montevideo Convention 1933 (Article 3)

📋 Facts

The Seventh International Conference of American States adopted the Montevideo Convention as a regional treaty codifying rules on statehood and recognition among Latin American states.

🔨 Held

Article 3 provides expressly that the political existence of a state is independent of recognition by other states; even before recognition, the state has the right to defend its integrity and independence.

💡 Principle

The Declaratory Theory is codified in treaty form; statehood and legal personality are grounded in objective criteria, not in the political will of recognising states.

Declaratory Theory and the Objective Basis of Statehood

The Declaratory Theory is the dominant modern view because it anchors statehood in objective legal criteria rather than political discretion, but recognition retains substantial practical importance as the gateway to diplomatic relations, domestic court access, and treaty capacity in the recognising state.

> **Exam Minimum (never skip)**
>
> 1. Definition: statehood arises when Montevideo criteria met; recognition merely acknowledges
> 2. Art. 3 Montevideo Convention: "political existence independent of recognition"
> 3. Contrast with Constitutive Theory (Oppenheim): recognition creates personality
> 4. One case: Tinoco Arbitration (1923) — effective control, not recognition, determines existence
> 5. Practical: recognition still needed for diplomatic relations and court access

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Q3. What is State Succession?

PRIORITY: ★★★ | PART: A | FREQ: 5

What is State Succession

State succession is the replacement of one state by another in the responsibility for the international relations of a territory, governed by the Vienna Convention on Succession of States in Respect of Treaties (VCST) 1978 and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts 1983.

Legal Foundation

Article 2, VCST 1978 : defines state succession, predecessor state, and successor state
Article 16, VCST 1978 : clean slate rule for newly independent states
Article 11, VCST 1978 : boundary treaties unaffected by any form of succession
Article 34, VCST 1978 : successor states of a dissolved predecessor inherit its treaties for the relevant territory

[!tip] Mnemonic: "TCSPE"
Triggers | Clean Slate | Exceptions | Property | Continuity

Triggers | Clean Slate | Exceptions | Property | Continuity

Triggers

Five events trigger state succession: annexation, merger, dissolution, secession, and decolonisation. Each generates a distinct legal regime under the VCST 1978 because the circumstances in which sovereignty changes hands determine the equitable allocation of rights and obligations between predecessor and successor.

Clean Slate

The clean slate rule under Article 16 of the VCST 1978 applies to newly independent states emerging from decolonisation: they are not bound by the treaties of the former colonial power unless they expressly accept them. Colonial treaties were imposed without the consent of the colonised people and should not automatically burden the newly sovereign state.

Exceptions

Three exceptions cut into the clean slate rule. Boundary treaties always pass to the successor under Article 11 of the VCST 1978, preserving the principle of uti possidetis and territorial stability. Localised obligations attached to specific territory follow that territory regardless of the clean slate, and the successor may opt in to any treaty by filing a notification of succession with the depositary.

Property

State property on the territory passes automatically to the successor. Archives indispensable to administration of the territory also pass; copies of other archives are to be provided. Odious debt, contracted against the interests of the population, does not pass; neutral debt is apportioned equitably between predecessor and successors.

Continuity

For dissolution and merger, Article 34 of the VCST 1978 applies continuity rules: each successor of a dissolved predecessor inherits the predecessor's treaties for the territory it now administers. This protects third states whose treaty rights would otherwise evaporate through no act of their own.

[!example]- Case Laws

Lighthouse Case (France v Greece, Arbitral Tribunal, 1956)
📋 Facts
Greece succeeded to Ottoman Empire territory. A lighthouse concession granted by the Ottoman government was in dispute, and France claimed the concession survived succession.

🔨 Held
The Tribunal held that localised territorial obligations, including concessions attached to specific territory, follow the territory to the successor state regardless of the clean slate rule.

💡 Principle
Obligations running with the land are an exception to clean slate; the successor state is bound by localised territorial obligations regardless of how sovereignty was transferred.

West Rand Central Gold Mining Co v R (King's Bench (KB), 1905)

📋 Facts

A British company claimed the Crown, having annexed the Transvaal, was bound by the Boer government's debt obligations under international law.

🔨 Held

The KB held the Crown was not automatically bound by the Boer Republic's obligations; proof of assumption of the specific obligation was required beyond mere territorial annexation.

💡 Principle

Annexation does not automatically transfer all predecessor obligations; succession to debt requires express proof of assumption, not merely territorial control.

Succession and the Balance Between Continuity and Clean Slate

State succession doctrine balances continuity of international obligations against the sovereign equality of new states: clean slate protects newly independent states while continuity rules for dissolution and merger preserve stability for third parties whose treaty rights would otherwise be extinguished.

> **Exam Minimum (never skip)**
>
> 1. Definition: replacement of one state by another in responsibility for territory, Art. 2 VCST 1978
> 2. Five triggers: annexation, merger, dissolution, secession, decolonisation
> 3. Clean slate (Art. 16) for newly independent states; exceptions: boundary (Art. 11) + localised (Art. 12)
> 4. One case: Lighthouse Case (1956) — localised obligations follow territory
> 5. Continuity for dissolution (Art. 34); clean slate for decolonisation

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Q4. What are the Modes of Acquisition of State Territory?

PRIORITY: ★★★ | PART: A | FREQ: 4

What are the Modes of Acquisition of State Territory

International law recognises five traditional modes by which a state may acquire sovereignty over territory: occupation, prescription, cession, conquest, and accretion. Conquest has been abolished as unlawful under Article 2(4) of the Charter of the United Nations (UN Charter) 1945, leaving effective continuous exercise of state authority as the decisive test across all remaining modes.

Legal Foundation

Article 2(4), UN Charter 1945 : prohibition on the threat or use of force against territorial integrity of any state; abolishes conquest as a valid mode

United Nations General Assembly (UNGA) Resolution 2625 (1970) : no territorial acquisition resulting from threat or use of force shall be recognised as legal

[!tip] Mnemonic: "OPCCA"

Occupation | Prescription | Cession | Conquest | Accretion

Occupation | Prescription | Cession | Conquest | Accretion

Occupation

Occupation is the acquisition of terra nullius, territory belonging to no state, through the effective and continuous exercise of state authority combined with the intention to act as sovereign. Discovery alone creates only an inchoate title that must be completed by effective occupation within a reasonable time, as the Permanent Court of Arbitration (PCA) confirmed in the Island of Palmas case (PCA, 1928).

Prescription

Prescription is the acquisition of sovereignty over territory previously belonging to another state through long, continuous, peaceful, and open possession in the absence of effective protest from the original sovereign. Modern administrative acts are more decisive than ancient historical claims, and consistent protest by the original sovereign interrupts the running of prescription before title matures.

Cession

Cession is the voluntary transfer of sovereignty by treaty: the preceding sovereign cedes title by agreement, by purchase, by exchange, or as a consequence of post-war settlement. A cession extracted under coercion is void under Article 52 of the Vienna Convention on the Law of Treaties (VCLT) 1969, and for populated territories, plebiscite is increasingly recognised as a legitimacy requirement.

Conquest

Conquest, the acquisition of territory by force after military victory, was historically recognised as a valid mode but has been abolished under Article 2(4) of the UN Charter. The non-recognition doctrine, confirmed in UNGA Resolution 2625 (1970), requires all states to refuse legal recognition to any territorial acquisition resulting from the threat or use of force.

Accretion

Accretion is the natural addition of territory through geological processes: alluvial deposits, delta formation, or volcanic island emergence. Title vests automatically in the coastal or riparian state without any formal act. Sudden catastrophic change, known as avulsion, does not shift established boundaries; only gradual and imperceptible accretion extends sovereignty.

[!example]- Case Laws

Island of Palmas (Netherlands v USA, PCA, 1928)
📋 Facts
The USA claimed the Island of Palmas by cession from Spain in 1898. The Netherlands claimed the same island based on centuries of continuous administration. Arbitrator Max Huber was appointed to resolve the competing claims.

🔨 Held
Arbitrator Huber held that the continuous and peaceful display of state authority by the Netherlands prevailed over the inchoate title acquired by Spain through discovery and ceded to the USA.

💡 Principle
Discovery creates only an inchoate title; effective continuous exercise of state authority is the decisive test of territorial sovereignty.

Eastern Greenland (Denmark v Norway, PCIJ, 1933)

📋 Facts

Norway claimed to occupy uninhabited eastern Greenland as terra nullius in 1931. Denmark challenged, citing legislation, treaties, and administrative acts referencing Greenland, and the Ihlen Declaration by Norway's own Foreign Minister.

🔨 Held

The PCIJ held that minimal exercise of state authority is sufficient in uninhabited territory, and that Denmark had established title through consistent legislative and treaty practice. Norway was also estopped by the Ihlen Declaration.

💡 Principle

The standard of effective occupation is calibrated to the nature and population of the territory; estoppel prevents a state from resiling from representations made by its official agents.

Effective Control as the Governing Test

Of the five traditional modes, only occupation, prescription, cession, and accretion remain lawful; conquest is abolished under the UN Charter. Effective and continuous exercise of state authority runs through all surviving modes as the operative test, confirmed across the leading cases and displacing historical claims not supported by actual administration.

Exam Minimum (never skip)

1. Five modes: occupation, prescription, cession, conquest (abolished), accretion
2. Art. 2(4) UN Charter: conquest prohibited; UNGA Res. 2625 (1970): non-recognition
3. Occupation requires: animus occupandi + corpus (effective continuous administration)
4. One case: Island of Palmas (1928) — continuous display prevails over inchoate title
5. Discovery alone insufficient; effective occupation is the decisive test

---

Q5. What is State Responsibility?

PRIORITY: ★★★ | PART: A | FREQ: 4

What is State Responsibility

State responsibility is the doctrine under which a state incurs international legal obligations to make reparation when conduct attributable to it constitutes a breach of an international obligation causing injury to another state or its nationals, as codified in the International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts 2001.

Legal Foundation

ILC Articles on State Responsibility 2001, Article 1 : every internationally wrongful act of a state entails its international responsibility
ILC Articles, Article 4 : conduct of any state organ is attributable to the state regardless of whether the organ acted within its competence
ILC Articles, Article 31 : obligation to make full reparation for injury caused by an internationally wrongful act
ILC Articles, Articles 35 to 37 : three forms of reparation: restitution, compensation, satisfaction

[!tip] Mnemonic: "ABIDE"
Attribution | Breach | Injury | Defences | Execute reparation

Attribution | Breach | Injury | Defences | Execute reparation

Attribution

Attribution is the first element: the internationally wrongful act must be attributable to the state. Article 4 of the ILC Articles attributes all conduct of state organs to the state regardless of whether the organ acted ultra vires; a state cannot escape responsibility by arguing the official exceeded authority if the official acted in an official capacity.

Breach

Breach is the second element: the attributed conduct must violate a binding international obligation owed to another state, arising from a treaty, customary international law, or a general principle of law. There is no requirement that the breach cause material harm for responsibility to arise; the violation of the obligation is itself wrongful.

Injury

Injury is the third element triggering the obligation to make reparation: harm to another state, to its nationals, or to the interests of the international community in the case of erga omnes obligations. The Permanent Court of International Justice (PCIJ) confirmed in the Chorzow Factory Case (PCIJ, 1928) that reparation must restore the position that would have existed had the wrongful act not been committed.

Defences

Six circumstances preclude wrongfulness under the ILC Articles: consent of the injured state, self-defence under Article 51 of the UN Charter, force majeure, distress, necessity, and countermeasures in response to a prior internationally wrongful act. These suspend legal consequences without extinguishing the underlying obligation; they are defences, not permanent excuses.

Execute reparation

Reparation takes three forms under Articles 35 to 37: restitution restores the original position and is the primary remedy; compensation provides the financial equivalent of harm including lost profits; and satisfaction addresses non-material harm through apology, acknowledgment, or assurance of non-repetition. The choice among forms depends on the nature of injury and the feasibility of restitution.

[!example]- Case Laws

Chorzow Factory Case (Germany v Poland, PCIJ, 1928)

📋 Facts

Poland expropriated a factory at Chorzow in breach of a German-Polish convention. Germany brought proceedings before the PCIJ seeking full reparation for the internationally wrongful expropriation.

🔨 Held

The PCIJ held that reparation must wipe out all consequences of the illegal act and re-establish the situation which would have existed had the wrongful act not been committed.

💡 Principle

Full reparation is the foundational remedy for internationally wrongful acts; restitution is primary, compensation secondary, and neither can be limited to less than the full measure of harm caused.

United States Diplomatic and Consular Staff in Tehran (USA v Iran, International Court of Justice (ICJ), 1980)

📋 Facts

Revolutionary students seized the US Embassy in Tehran and held diplomatic staff hostage. The Iranian government subsequently endorsed the occupation and refused to secure the release of the hostages.

🔨 Held

The ICJ held Iran responsible on two independent grounds: failure to protect the diplomatic mission as required by the Vienna Convention on Diplomatic Relations (VCDR) 1961, and subsequent endorsement converting private acts of the students into state conduct.

💡 Principle

State responsibility arises from failure to prevent foreseeable harm and from subsequent endorsement of private wrongful acts; both grounds operate independently and cumulatively.

State Responsibility as International Law's Enforcement Mechanism

State responsibility converts international obligations into actionable rules: attribution, breach, and injury trigger the obligation to make full reparation through restitution, compensation, or satisfaction, and the ILC Articles 2001 codify a comprehensive regime that applies across all categories of internationally wrongful acts.

Exam Minimum (never skip)

1. Definition: state incurs obligation to make reparation when attributable conduct breaches an international obligation
2. Three elements: attribution (Art. 4 ILC) + breach (Art. 12) + injury (Art. 31)
3. Three forms of reparation: restitution, compensation, satisfaction (Arts. 35-37)
4. One case: Chorzow Factory (1928) — reparation must wipe out all consequences
5. Six defences: consent, self-defence, force majeure, distress, necessity, countermeasures

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Q6. What is Subjugation?

PRIORITY: ★ | PART: A | FREQ: 1

What is Subjugation

Subjugation is the forcible acquisition of sovereignty over the territory of a defeated state following military conquest, where the defeated state is completely extinguished as an international entity through annexation by the victorious state, historically recognised as a valid mode of territorial acquisition but now prohibited under Article 2(4) of the Charter of the United Nations (UN Charter) 1945.

Legal Foundation

Article 2(4), UN Charter 1945 : all members shall refrain from the threat or use of force against the territorial integrity or political independence of any state
UNGA Resolution 2625 (1970) : "No territorial acquisition resulting from the threat or use of force shall be recognised as legal"

[!tip] Mnemonic: "CEAPN"
Conquest | Extinction | Abolished | Practice | Non-recognition

Conquest | Extinction | Abolished | Practice | Non-recognition

Conquest

Subjugation requires complete military defeat followed by the conqueror's annexation of the defeated state's entire territory. It is distinguished from mere military occupation, which does not transfer sovereignty: occupation is a temporary factual situation governed by the laws of armed conflict, whereas subjugation was historically treated as a permanent legal transfer of title through force.

Extinction

Subjugation extinguishes the defeated state entirely as a legal entity. The state ceases to exist as a subject of international law; its legal personality terminates, its treaties lapse, and its territory becomes part of the victorious state. This is what distinguishes subjugation from partial cession under duress: subjugation absorbs the entire state, not merely a portion of its territory.

Abolished

Subjugation has been abolished as a lawful mode of territorial acquisition under the modern law of the UN Charter. Article 2(4) prohibits the threat or use of force against the territorial integrity of any state, and UNGA Resolution 2625 (1970) declares that no territorial acquisition resulting from the threat or use of force shall be recognised as legal. The Stimson Doctrine (1932), originally a unilateral US policy in response to Japan's annexation of Manchuria, has been elevated to a binding legal principle of collective non-recognition.

Practice

Historical examples of subjugation include the annexation of the Transvaal by the United Kingdom in 1900, the annexation of Korea by Japan in 1910, and the absorption of the Baltic States by the Soviet Union in 1940. In each case, the defeated or coerced state was completely extinguished as an international entity. The post-1945 international order rejects all such acquisitions as unlawful, and states formed through subjugation prior to the UN Charter retain their independence under the principle of self-determination.

Non-recognition

The legal consequence of the abolition of subjugation is the duty of collective non-recognition. All states are obligated to refuse legal recognition to any territorial acquisition effected through force, regardless of how effective the military control may be. Russia's annexation of Crimea in 2014 and its attempted annexation of Ukrainian territories in 2022 have attracted near-universal non-recognition on precisely this basis: effective military control does not generate title under modern international law.

[!example]- Case Laws

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ Advisory Opinion, 2004)

📋 Facts

The UNGA requested an advisory opinion on the legal consequences of Israel's construction of a wall in the occupied Palestinian territory. The question engaged the prohibition on acquisition of territory by force.

🔨 Held

The ICJ affirmed that no territorial acquisition resulting from the threat or use of force is recognised as legal, and that self-determination of peoples cannot be defeated by forcible territorial arrangements.

💡 Principle

The prohibition on acquisition of territory by force is a rule of customary international law and the duty of non-recognition applies to all states; effective control through force does not generate legal title.

Namibia Advisory Opinion (ICJ, 1971)

📋 Facts

South Africa continued its occupation of Namibia (formerly South-West Africa) in defiance of UN resolutions terminating its mandate. The legal consequences for states were in question.

🔨 Held

The ICJ held that South Africa's continued presence was illegal and that all states were under an obligation not to recognise the legality of that presence and not to render assistance in maintaining it.

💡 Principle

The duty of collective non-recognition applies to all situations of unlawful territorial control; states must not assist or recognise as lawful any territorial arrangement imposed by force or maintained contrary to international law.

Subjugation as a Mode Abolished by the UN Charter

Subjugation was historically valid but is now absolutely prohibited under Article 2(4) of the UN Charter; the duty of collective non-recognition means that no effective military control, however complete, generates lawful territorial title in the post-Charter era.

> **Exam Minimum (never skip)**
>
> 1. Definition: forcible acquisition of territory through complete military conquest + extinction of defeated state
> 2. Distinguished from occupation (temporary, no sovereignty transfer) and cession (consensual)
> 3. Abolished: Art. 2(4) UN Charter + UNGA Res. 2625 (1970) + Stimson Doctrine
> 4. One case: Wall Advisory Opinion (ICJ, 2004) — no territorial acquisition by force recognised as legal
> 5. Modern consequence: collective non-recognition of all force-acquired territory (Crimea 2014, etc.)

Q7. What is Plebiscite?

PRIORITY: ★ | PART: A | FREQ: 1

What is Plebiscite

A plebiscite in international law is a direct vote by the inhabitants of a territory to determine whether that territory shall be transferred to another state, become independent, or retain its existing status, employed as a mechanism to give effect to the principle of self-determination in cases of territorial change.

Legal Foundation

Article 1(2), UN Charter 1945 : one of the purposes of the UN is to develop friendly relations based on the principle of equal rights and self-determination of peoples
UNGA Resolution 1514 (XV), 1960 (Declaration on the Granting of Independence to Colonial Countries and Peoples) : peoples have the right to freely determine their political status
Article 19, VCST 1978 : plebiscite relevant in decolonisation succession for determining the wishes of the people

[!tip] Mnemonic: "SLFCE"
Self-determination | Legitimacy | Forms | Conditions | Examples

Self-determination | Legitimacy | Forms | Conditions | Examples

Self-determination

Plebiscite is the primary operational mechanism for giving effect to the right of self-determination of peoples in the context of territorial change. The principle that peoples should freely determine their own political status, enshrined in Article 1(2) of the UN Charter and UNGA Resolution 1514 (1960), requires that the inhabitants of a territory have a voice in decisions about their sovereign future. A plebiscite provides that voice through a direct popular vote.

Legitimacy

A plebiscite confers democratic legitimacy on territorial transfers that might otherwise be contested as imposed or coerced. A cession of territory by treaty between two states, without consulting the population affected, may be technically valid as between the ceding and receiving states, but it lacks the legitimacy that modern international law increasingly requires. Plebiscites conducted under international supervision provide evidence that the transfer reflects the genuine will of the people.

Forms

Plebiscites take several forms depending on the context. In decolonisation, the population votes on independence, free association with another state, or integration with another state (the three options presented to colonial peoples under UNGA Resolution 1541 (1960)). In post-war settlements, populations in disputed territories vote on which state they wish to join, as occurred in the Saar plebiscite (1935) and Schleswig plebiscites (1920). In secession contexts, a plebiscite may confirm the wish of a population to separate from an existing state, though there is no general right of unilateral secession under international law.

Conditions

For a plebiscite to be valid and produce binding results under international law, four conditions must typically be satisfied. The vote must be conducted freely, without coercion or manipulation by the administering or interested state. The franchise must be appropriately defined to include the genuine inhabitants of the territory. International supervision or monitoring must ensure fairness and accuracy. The political options presented must be clear and genuine, not designed to predetermine the outcome.

Examples

Historical examples include the plebiscites conducted under League of Nations supervision in Upper Silesia (1921), the Saar (1935), and Schleswig (1920) following World War I. In the decolonisation era, UN-supervised plebiscites determined the future of Western Samoa (1961), the Trust Territory of the Pacific Islands, and East Timor (1999). The Kashmir plebiscite promised in UN Security Council Resolutions 47 (1948) and 80 (1950) has never been conducted, remaining one of the most prominent unfulfilled plebiscite obligations in international law.

[!example]- Case Laws

Western Sahara (ICJ Advisory Opinion, 1975)
📋 Facts
The UNGA requested an advisory opinion on whether Western Sahara was terra nullius at the time of Spanish colonisation and whether Morocco or Mauritania had legal ties to the territory. The underlying question was whether a plebiscite was required to determine the future status of the territory.

🔨 Held
The ICJ held that while both Morocco and Mauritania had historical legal ties, neither had sovereignty over Western Sahara. The Court confirmed that the right of self-determination of the people of Western Sahara required a free and genuine expression of their will, supporting the need for a plebiscite.

💡 Principle
Historical ties do not override the right of self-determination; a plebiscite is the proper mechanism for determining the wishes of the people of a territory whose sovereignty is contested.

Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (ICJ Advisory Opinion, 2010)

📋 Facts

The UNGA asked the ICJ whether Kosovo's unilateral declaration of independence from Serbia was in accordance with international law.

🔨 Held

The ICJ held that the declaration of independence did not violate any applicable rule of international law, but did not pronounce on whether Kosovo had a right to secede or whether a plebiscite was legally required.

💡 Principle

Self-determination and the mechanisms for its exercise, including plebiscite, remain contextual; international law does not prohibit declarations of independence but does not create a general right to unilateral secession outside the colonial context.

Plebiscite as the Operational Mechanism of Self-Determination

A plebiscite gives voice to the self-determination principle by allowing the inhabitants of a territory to determine their own sovereign future through a direct and free vote, conferring democratic legitimacy on territorial changes that might otherwise be imposed without popular consent.

Exam Minimum (never skip)

1. Definition: direct vote by inhabitants of territory to determine its sovereign future (independence/integration/association)
2. Gives effect to self-determination: Art. 1(2) UN Charter + UNGA Res. 1514 (1960)
3. Conditions: free vote, appropriate franchise, international supervision, genuine options
4. One case: Western Sahara (ICJ Advisory Opinion, 1975) — self-determination requires free expression of will; plebiscite proper mechanism
5. Examples: Saar 1935, East Timor 1999, Kashmir (unfulfilled UN promise)

PIL | Unit 3 | Part A

Individuals, Nationality, Extradition, Asylum, Diplomatic Immunity, Treaties

Q1. What is Extradition? Explain the political offence exception.

PRIORITY: ★★★ | PART: A | FREQ: 5

What is Extradition

Extradition is the formal process by which one state, the requested state, surrenders a person present on its territory to another state, the requesting state, for trial or punishment for an offence committed within the requesting state's jurisdiction, governed in India by the Extradition Act 1962.

Legal Foundation

Extradition Act 1962, Section 2(d) : defines extraditable offence as one punishable with imprisonment exceeding one year
Extradition Act 1962, Section 31 : political offence exception; extradition refused for offences of a political character
Article 7, United Nations Convention Against Torture (CAT) 1984 : aut dedere aut judicare; extradite or submit the case for prosecution

[!tip] Mnemonic: "BDSP E"
Basis | Dual criminality | Specialty | Political offence | Exception

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Basis

Extradition is not a customary international law obligation: it requires a bilateral treaty, and in the absence of treaty, a state is under no general duty to surrender a fugitive. The principle of aut dedere aut judicare, extradite or prosecute, applies as a binding obligation only for specific international crimes including torture, terrorism, and genocide under their respective multilateral conventions.

Dual criminality

Dual criminality requires that the act constituting the offence must be a crime in both the requesting and the requested state at the time of the surrender request. The test is conduct-based, not charge-based: what matters is whether the underlying conduct would be criminal in the requested state, not whether it carries the same label or charge category as in the requesting state.

Specialty

The specialty principle protects the surrendered person against prosecution for offences not specified in the extradition request: the requesting state may only try the person for the offence for which extradition was granted. Any expansion of charges beyond the agreed extradition offence requires the prior consent of the surrendering state, and a unilateral departure from the specialty rule is a breach of the extradition treaty.

Political offence

The political offence exception divides into two categories. Pure political offences, including treason, sedition, and espionage directed at the state itself, are absolutely protected. Relative political offences, meaning ordinary crimes committed in a political context such as killing during an uprising, are protected if the offence was committed as part of and in furtherance of a political event, applying the test from In re Castioni (Queen's Bench (QB), 1891).

Exception

The political offence exception has been progressively narrowed by multilateral conventions and jus cogens. Acts targeting the general public rather than the state directly are not political offences, as confirmed in In re Meunier (QB, 1894). Terrorism, genocide, war crimes, and torture are excluded from the exception entirely: the House of Lords (HL) confirmed in R v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet (No 3) (HL, 1999) that jus cogens crimes cannot shelter behind the political offence exception regardless of the perpetrator's former official status.

[!example]- Case Laws

In re Castioni (Queen's Bench (QB), 1891)

📋 Facts

A Swiss national killed a government official during a political uprising in Switzerland and subsequently fled to the UK. Switzerland sought his extradition from the UK for murder.

🔨 Held

The QB held that an offence committed as part of and in furtherance of a political rising is a political offence within the meaning of the extradition exception and refused extradition.

💡 Principle

The classic test for a relative political offence: the act must be committed as part of and in furtherance of a political event, not merely accompanied by political motivation.

R v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet (No 3) (HL, 1999)

📋 Facts

General Augusto Pinochet, former head of state of Chile, was arrested in the UK on a Spanish extradition warrant alleging torture and crimes against humanity committed during his rule. Pinochet claimed head of state immunity.

🔨 Held

The HL held that the prohibition of torture is a jus cogens norm and that former head of state immunity cannot shield an individual from extradition for systematic torture; the political offence exception was equally inapplicable.

💡 Principle

Jus cogens crimes are never political offences; immunity cannot be invoked against accountability for peremptory norm violations by former state officials.

Extradition and the Progressive Narrowing of the Political Offence Exception

Extradition operates on the pillars of dual criminality, specialty, and the political offence exception, but the last has been progressively stripped back by multilateral conventions and jus cogens, leaving terrorism and international crimes without its shelter and anchoring modern extradition law in individual criminal accountability.

Exam Minimum (never skip)

1. Definition: formal surrender of person for trial/punishment; requires bilateral treaty
2. Dual criminality + Specialty + Political offence exception
3. Attentat clause: murder of Head of State excluded from exception
4. One case: In re Castioni (QB, 1891) — act in furtherance of political rising
5. Narrowing: terrorism, torture, genocide excluded by multilateral conventions

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Q2. What is Nationality?

PRIORITY: ★★★ | PART: A | FREQ: 4

What is Nationality

Nationality is the legal bond between an individual and a state, conferring on the individual the protection of that state and determining the state entitled to exercise diplomatic protection, acquired by birth under jus soli or jus sanguinis, by naturalisation, or by marriage under municipal law.

Legal Foundation

Citizenship Act 1955, Section 3 : citizenship by birth, jus soli, in India
Citizenship Act 1955, Section 4 : citizenship by descent, jus sanguinis
Article 9, Constitution of India : no person shall be a citizen of India if they voluntarily acquire the citizenship of a foreign state

[!tip] Mnemonic: "AGNES"
Acquisition | Genuine link | Naturalisation | Effective nationality | Statelessness

Acquisition | Genuine link | Naturalisation | Effective nationality | Statelessness

Acquisition

Nationality is acquired by two primary modes at birth: jus soli, under which citizenship is acquired by being born on the territory of the state regardless of parental nationality, and jus sanguinis, under which citizenship is acquired through a national parent regardless of the place of birth. Both modes are recognised in Indian law under Sections 3 and 4 of the Citizenship Act 1955.

Genuine link

The genuine link principle, established by the International Court of Justice (ICJ) in the Nottebohm Case (ICJ, 1955), requires that for a state's nationality to be opposable to a third state in a diplomatic protection claim, the nationality must reflect a real and effective connection between the individual and the state: habitual residence, family ties, economic interests, and the centre of the person's life. Nationality acquired without this genuine connection cannot ground an international claim against a state with which the individual has a far closer connection.

Naturalisation

Naturalisation is the voluntary acquisition of nationality after fulfilling conditions set by the granting state, typically including a period of lawful residence, knowledge of the language, and an oath of allegiance or loyalty. It is an act of sovereign discretion: the state determines its own conditions and retains the right to refuse without giving reasons, subject to its international obligations on statelessness prevention.

Effective nationality

Where a person holds the nationality of two states simultaneously, the effective or dominant nationality rule determines which state may exercise diplomatic protection: the state with which the individual has the closer factual connection prevails. A state cannot exercise diplomatic protection on behalf of a dual national against that national's other state of nationality unless its own nationality is the dominant and effective one, as confirmed in the Merge Claim (United States v Italy, 1955).

Statelessness

Statelessness arises where conflicts between nationality laws leave a person with no nationality at all: the gap between jus soli and jus sanguinis systems, deprivation of nationality, renunciation, or succession events can each produce it. A stateless person has no state to exercise diplomatic protection on their behalf, no passport, and no right of return to any territory, confirming that nationality is the gateway to most international legal rights and protections.

[!example]- Case Laws

Nottebohm Case (Liechtenstein v Guatemala, ICJ, 1955)
📋 Facts
Friedrich Nottebohm, a German national with longstanding business ties to Guatemala, acquired Liechtenstein nationality rapidly in 1939 shortly before the outbreak of World War II. Liechtenstein sought to exercise diplomatic protection on his behalf against Guatemala.

🔨 Held
The ICJ held that Liechtenstein could not exercise diplomatic protection because Nottebohm lacked a genuine link with Liechtenstein; his habitual residence, economic interests, and centre of life were all in Guatemala.

💡 Principle
Nationality must reflect a genuine and effective link for it to be opposable to a third state in a diplomatic protection claim; formal legal nationality without factual connection is insufficient.

Merge Claim (USA v Italy, Italian-United States Conciliation Commission, 1955)
📋 Facts
Mrs Florence Merge held both US and Italian nationality. The United States sought to exercise diplomatic protection on her behalf against Italy for treatment of her property.

🔨 Held
The Commission held that the United States could not exercise diplomatic protection against Italy on behalf of a dual national whose dominant and effective nationality was Italian; the US nationality was not the operative link.

💡 Principle

A state cannot exercise diplomatic protection against a dual national's other state of nationality unless its own nationality is the dominant and effective one based on the factual connection of the individual's life.

Nationality as the Gateway to International Legal Protection

Nationality is the foundational bond that connects an individual to a state and activates the right of diplomatic protection, but the Nottebohm genuine link doctrine ensures it cannot be acquired as a forum-shopping device, and the effective nationality rule prevents dual nationals from being claimed by the weaker of their two nationalities against the stronger.

> **Exam Minimum (never skip)**
>
> 1. Definition: legal bond between individual and state; activates diplomatic protection
> 2. Jus soli (birth on territory) + Jus sanguinis (descent from national)
> 3. Genuine link: nationality must reflect real connection (habitual residence, economic ties)
> 4. One case: Nottebohm (ICJ, 1955) — no genuine link = cannot exercise diplomatic protection
> 5. Effective nationality rule for dual nationals: dominant connection prevails

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Q3. What is Asylum?

PRIORITY: ★★★ | PART: A | FREQ: 4

What is Asylum

Asylum is the protection granted by a state to a foreign national who has fled persecution, prosecution, or danger, and is a sovereign right of the granting state under international law, not an individual right of the person seeking it, as confirmed by the ICJ in the Asylum Case (Colombia v Peru, 1950).

Legal Foundation

Article 14, Universal Declaration of Human Rights (UDHR) 1948 : everyone has the right to seek and enjoy asylum from persecution; imposes no obligation on states to grant asylum
Article 33, Convention Relating to the Status of Refugees (1951 Refugee Convention) : non-refoulement; no expulsion or return of a refugee to territories where life or freedom is threatened
Article 3, United Nations Convention Against Torture (CAT) 1984 : absolute prohibition on return to face torture; no exceptions permitted

[!tip] Mnemonic: "STDEN"
Sovereign right | Territorial | Diplomatic | Extraterritorial | Non-refoulement

Sovereign right | Territorial | Diplomatic | Extraterritorial | Non-refoulement

Sovereign right

Asylum is a sovereign right of the granting state, not a right of the individual seeking protection. Article 14 of the UDHR 1948 provides the right to seek and enjoy asylum from persecution but imposes no corresponding obligation on any state to grant it. The decision to grant, refuse, or revoke asylum remains within the exclusive discretion of the territorial state and constitutes no unfriendly act toward the state of origin.

Territorial

Territorial asylum is the protection granted to a foreign national on the granting state's own territory. It is the most effective form of asylum and firmly established in customary international law: the state exercises full sovereign authority within its territory and can protect the individual from any external demand for surrender. Territorial asylum is distinct from extradition, and a state granting territorial asylum has no obligation to surrender the protected individual absent a treaty obligation specifically requiring it.

Diplomatic

Diplomatic asylum is the grant of protection within embassy or legation premises on foreign soil. It is not a general right under customary international law: the ICJ confirmed in the Asylum Case (Colombia v Peru, ICJ, 1950) that Colombia could not invoke a general customary right to grant diplomatic asylum to a Peruvian political figure in its embassy in Lima. Diplomatic asylum is recognised only among Latin American states through the Havana Convention 1928 and the Caracas Convention 1954, and even within that regional framework the granting state cannot unilaterally qualify the offence for which the asylum is sought.

Extraterritorial

Extraterritorial asylum extends the concept to state-controlled spaces outside national territory: warships in foreign ports and military camp premises are historically cited examples. This form of asylum rests on comity rather than any established customary right and is exceptional in both frequency and legal basis. It occupies a residual category between territorial and diplomatic asylum without generating recognised legal obligations on either the granting or the territorial state.

Non-refoulement

Non-refoulement under Article 33 of the 1951 Refugee Convention is the individual's only enforceable entitlement in international refugee law: the prohibition on returning a refugee or asylum seeker to any territory where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion. It applies at the border and within the territory, and extends to indirect return through chain deportation. Article 3 of the CAT 1984 provides an absolute prohibition on return to face torture with no exceptions whatsoever, stronger than Article 33 which carries two exceptions.

[!example]- Case Laws

Asylum Case (Colombia v Peru, ICJ, 1950)

📋 Facts

Colombia granted diplomatic asylum in its Bogota embassy to Victor Raul Haya de la Torre, a Peruvian national accused of leading a military rebellion. Colombia claimed the right to unilaterally qualify the offence as political and demanded safe conduct from Peru.

🔨 Held

The ICJ held that diplomatic asylum is not a right under general customary international law; inconsistent Latin American practice could not establish a binding regional custom; Colombia had no right to unilaterally qualify the offence and could not demand safe conduct from Peru.

💡 Principle

Diplomatic asylum is not general custom; even where a regional convention exists, the granting state cannot unilaterally qualify the offence to justify the grant against the objection of the territorial state.

R v Secretary of State for the Home Department ex parte Sivakumaran (HL, 1988)

📋 Facts

Tamil asylum seekers from Sri Lanka applied for refugee status in the United Kingdom. The UK refused on grounds that their fear of persecution was subjective only and not borne out by objective conditions in Sri Lanka.

🔨 Held

The HL held that well-founded fear requires an objective assessment: the standard is whether a reasonable person in the applicant's position, with knowledge of the conditions prevailing in the country of origin, would fear persecution.

💡 Principle

Non-refoulement protection requires well-founded fear assessed objectively; purely subjective fear without an objective basis does not trigger the protection under Article 33 of the 1951 Refugee Convention.

Asylum as Sovereign Right and Non-refoulement as Individual Entitlement

Asylum is a sovereign right of the state and a humanitarian institution of international law; the individual's enforceable entitlement is not asylum itself but non-refoulement under Article 33 of the 1951 Refugee Convention, which has hardened into customary international law, with the CAT's absolute prohibition on return to face torture providing the strongest individual protection without exception.

Exam Minimum (never skip)

1. Definition: protection by state to person fleeing persecution; sovereign right, not individual right
2. Art. 14 UDHR: right to seek, not receive; Art. 33 Refugee Convention: non-refoulement
3. Territorial (on own territory) vs Diplomatic (in embassy — not general custom)
4. One case: Asylum Case, Colombia v Peru (ICJ, 1950) — no general custom of diplomatic asylum
5. Non-refoulement = only enforceable individual right; CAT Art. 3 is absolute

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Q4. What are Diplomatic Privileges and Immunities?

PRIORITY: ★★★ | PART: A | FREQ: 6

What are Diplomatic Privileges and Immunities

Diplomatic privileges and immunities are the special rights, exemptions, and protections accorded to diplomatic missions and their personnel to enable the effective performance of their functions, codified in the Vienna Convention on Diplomatic Relations (VCDR) 1961.

Legal Foundation

VCDR 1961, Article 22 : inviolability of mission premises; receiving state agents cannot enter without consent of the head of mission
VCDR 1961, Article 29 : personal inviolability of the diplomatic agent; no arrest or detention
VCDR 1961, Article 31 : immunity from criminal jurisdiction (absolute); immunity from civil jurisdiction (general with three exceptions)
VCDR 1961, Article 32 : waiver of immunity by the sending state only, expressed; separate waiver required for execution

[!tip] Mnemonic: "TRIPLE"
Theories | Representation | Inviolability | Premises | Legal immunity | Exception

Theories | Representation | Inviolability | Premises | Legal immunity | Exception

Theories

Three theories explain the basis of diplomatic immunity. The extra-territoriality theory treats mission premises as the sending state's territory; it has been abandoned as a legal fiction with distorting consequences. The representative character theory grounds immunity in the dignity of the sovereign the diplomat represents. The functional necessity theory is the dominant modern basis: immunity is justified because it is necessary for the effective and independent performance of diplomatic functions, and any lesser protection would compromise diplomatic communication and negotiation.

Representation

The personal inviolability of the diplomatic agent under Article 29 of the VCDR 1961 is absolute: the diplomat's person may not be arrested, detained, or subjected to any physical interference of any kind. The receiving state is under a positive obligation to take all appropriate steps to prevent any attack on the person, freedom, or dignity of the diplomatic agent, not merely a negative obligation to refrain from interference itself.

Inviolability

The inviolability of official correspondence and the diplomatic bag under Article 27 of the VCDR 1961 protects all official communications between the mission and the sending state. The diplomatic bag cannot be opened or detained and is entitled to transit through third states without interference. This protection is an operational necessity: diplomatic communications depend on the absolute assurance that they will not be intercepted or examined by the receiving state.

Premises

Mission premises are absolutely inviolable under Article 22 of the VCDR 1961: agents of the receiving state may not enter the mission premises without the express consent of the head of mission. The receiving state carries a specific duty to protect the premises against intrusion, damage, or disturbance of the peace, and failure to discharge this duty engages state responsibility as confirmed by the ICJ in United States Diplomatic and Consular Staff in Tehran (USA v Iran, ICJ, 1980).

Legal immunity

Immunity from criminal jurisdiction under Article 31 of the VCDR 1961 is absolute for diplomatic agents: there are no exceptions, and no conduct of the diplomatic agent can be the subject of criminal proceedings in the receiving state. Immunity from civil and administrative jurisdiction is general but carries three express exceptions: proceedings relating to private immovable property in the receiving state; proceedings in which the diplomat is involved in an official succession matter in a private capacity; and proceedings relating to professional or commercial activity exercised outside official functions.

Exception

The receiving state's primary remedy against abuse of diplomatic privilege is the declaration of persona non grata under Article 9 of the VCDR 1961: any member of the mission may be declared persona non grata at any time and without any obligation to give reasons. The sending state must recall the person declared persona non grata, and if it fails to do so, the receiving state may refuse to recognise the person as a member of the mission. Waiver of immunity under Article 32 belongs exclusively to the sending state and must be express; a separate waiver is required for execution of any judgment even where waiver of the proceedings themselves has been given.

[!example]- Case Laws

United States Diplomatic and Consular Staff in Tehran (USA v Iran, ICJ, 1980)
📋 Facts
Revolutionary students seized the US Embassy in Tehran and took diplomatic and consular staff hostage. The Iranian government endorsed and maintained the occupation for months rather than securing the release of the hostages and the inviolability of the premises.

🔨 Held
The ICJ held Iran responsible for violation of Articles 22 and 29 of the VCDR 1961: the inviolability obligations are absolute and impose active protective duties on the receiving state; Iran's subsequent endorsement converted the students' private acts into state conduct.

💡 Principle
The receiving state's duty to protect mission premises and diplomatic personnel is active, not passive; failure to protect and subsequent endorsement of the violation both independently engage state responsibility.

R v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet (No 3) (HL, 1999)

📋 Facts

General Pinochet claimed head of state immunity to resist extradition from the UK to Spain for systematic torture. The question was whether functional immunity under international law protected a former head of state from extradition for acts of torture committed while in office.

🔨 Held

The HL held that functional immunity does not protect torture; jus cogens norms override immunity; a former head of state cannot claim that systematic torture was an official function attracting immunity under international law.

💡 Principle

Diplomatic and head of state immunity is grounded in functional necessity and therefore cannot shelter conduct that falls outside any legitimate official function; jus cogens crimes are never official acts for immunity purposes.

Diplomatic Immunity as Functional Protection, Not Personal Impunity

Diplomatic immunity exists to protect the function of diplomacy, not to create personal impunity: the VCDR balances absolute personal inviolability and premises protection with targeted civil jurisdiction exceptions, and persona non grata remains the receiving state's practical remedy against abuse while waiver by the sending state is the only mechanism for removing the immunity shield.

Exam Minimum (never skip)

1. Definition: special rights under VCDR 1961 to enable effective performance of diplomatic functions
2. Art. 29: personal inviolability (absolute); Art. 31: criminal immunity (absolute); Art. 22: premises inviolable
3. Functional necessity theory (dominant modern basis)
4. One case: Tehran Hostages (ICJ, 1980) — receiving state's active duty to protect
5. Remedies: persona non grata (Art. 9) + waiver by sending state (Art. 32)

Q5. What is a Reservation to a Treaty?

PRIORITY: ★★ | PART: A | FREQ: 4

What is a Reservation to a Treaty

A reservation is a unilateral statement made by a state when signing, ratifying, or acceding to a treaty whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that state, as defined in Article 2(1)(d) of the Vienna Convention on the Law of Treaties (VCLT) 1969.

Legal Foundation

Article 2(1)(d), VCLT 1969 : definition of a reservation
Article 19, VCLT 1969 : a state may formulate a reservation unless the treaty prohibits it, limits permitted reservations, or the reservation is incompatible with the object and purpose of the treaty
Article 20, VCLT 1969 : acceptance and objection to reservations; effect of each as between the parties

[!tip] Mnemonic: "PVEO J"
Purpose | Validity | Effect | Object and purpose | Jus cogens

Purpose | Validity | Effect | Object and purpose | Jus cogens

Purpose

Reservations allow a state to participate in a multilateral treaty while excluding specific obligations it is unwilling or unable to accept. This mechanism makes multilateral treaty-making politically viable: without it, states unwilling to accept every provision would simply refuse to ratify, reducing the treaty's membership and effectiveness. Reservations trade breadth of participation against uniformity of obligation.

Validity

Under Article 19 of the VCLT 1969 a reservation is valid unless the treaty expressly prohibits reservations entirely; the treaty permits only specified reservations and the proposed reservation is not among them; or the reservation is incompatible with the object and purpose of the treaty. The third ground is the most significant and least mechanical: it requires a substantive judgment about whether the reservation strikes at the core purpose the treaty was designed to serve.

Effect

Between the reserving state and an accepting state, the treaty operates with the modification the reservation introduces: both states are bound by the treaty minus or as modified by the reserved provision. Between the reserving state and an objecting state, the reserved provision does not operate between them at all; the remainder of the treaty applies unless the objecting state expresses a contrary intention. Other parties to the treaty are unaffected by the reservation in their mutual relations.

Object and purpose

The International Court of Justice (ICJ) established the object-and-purpose test in the Reservations to the Genocide Convention Advisory Opinion (ICJ, 1951): a reservation incompatible with the object and purpose of the treaty is inadmissible even where the treaty is silent on reservations. The flexibility of this test, as opposed to a strict rule requiring unanimous acceptance, was designed to maximise participation in humanitarian conventions while preventing reservations from gutting the treaty's core obligations.

Jus cogens

A reservation purporting to exclude or modify a jus cogens obligation is void: no state may contract out of a peremptory norm by reserving against it, because jus cogens norms are by definition non-derogable by agreement between any states. This limit is the apex constraint on the reservation mechanism and applies regardless of the terms of the particular treaty, confirming that the object-and-purpose test operates within a wider hierarchy capped by peremptory norms.

[!example]- Case Laws

Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (ICJ Advisory Opinion, 1951)

📋 Facts

Following the Genocide Convention's adoption in 1948, several states made reservations to specific articles. Other states objected. The United Nations General Assembly (UNGA) sought the ICJ's advisory opinion on the legal regime governing reservations to multilateral conventions.

🔨 Held

The ICJ held that a reservation incompatible with the object and purpose of the treaty is inadmissible, and that the flexible approach to reservations should be adopted for multilateral humanitarian conventions to maximise participation while protecting the core norms the convention was designed to secure.

💡 Principle

The object-and-purpose test governs the admissibility of reservations; flexibility is permitted to maximise treaty participation but cannot extend to reservations that hollow out the treaty's central purpose.

North Sea Continental Shelf Cases (ICJ, 1969)

📋 Facts

Germany had not ratified the Geneva Convention on the Continental Shelf 1958 and had in any event reserved against the equidistance rule. Denmark and the Netherlands sought to apply that rule against Germany as binding customary international law.

🔨 Held

The ICJ held that Germany's reservation prevented the equidistance rule from becoming binding custom as against it, and that the treaty rule and customary rule operate as independent legal sources.

💡 Principle

A valid reservation prevents a treaty provision from crystallising into binding custom for the reserving state; treaty and customary sources operate independently and neither automatically absorbs the other.

Reservations as the Price of Universal Participation

Reservations allow states to join multilateral treaties selectively, but Article 19 of the VCLT 1969 and the object-and-purpose test prevent reservations from dismantling the treaty's core obligations, as confirmed in the Genocide Convention Advisory Opinion, and jus cogens imposes a ceiling above which no reservation can reach.

Exam Minimum (never skip)

1. Definition: unilateral statement excluding/modifying treaty provisions, Art. 2(1)(d) VCLT 1969
2. Art. 19: valid unless treaty prohibits OR incompatible with object and purpose
3. Effect: between reserving + accepting state = treaty minus reserved provision
4. One case: Genocide Convention Advisory Opinion (ICJ, 1951) — object-and-purpose test
5. Jus cogens: no reservation can exclude a peremptory norm

Q6. What is Pacta Sunt Servanda?

PRIORITY: ★★★ | PART: A | FREQ: 3

What is Pacta Sunt Servanda

Pacta sunt servanda is the fundamental principle that every treaty in force is binding upon the parties to it and must be performed by them in good faith, codified in Article 26 of the Vienna Convention on the Law of Treaties (VCLT) 1969, forming the constitutional basis of the entire treaty regime.

Legal Foundation

Article 26, VCLT 1969 : every treaty in force is binding upon the parties and must be performed in good faith
Article 27, VCLT 1969 : a party may not invoke internal law as justification for failure to perform a treaty
Article 31, VCLT 1969 : treaties interpreted in good faith in accordance with ordinary meaning in context and in the light of object and purpose

[!tip] Mnemonic: "BIGFE"
Binding | Internal law | Good faith | Foundation | Exception

Binding | Internal law | Good faith | Foundation | Exception

Binding

The principle establishes that once a state has expressed its consent to be bound by a treaty through ratification, accession, or other means specified in the VCLT, the obligations arising from that treaty are legally binding and must be performed. This is not merely an aspiration: failure to perform constitutes a breach of international law engaging state responsibility under the ILC Articles on State Responsibility 2001.

Internal law

Article 27 of the VCLT reinforces pacta sunt servanda by providing that no state may invoke the provisions of its internal law as justification for failure to perform a treaty obligation. The international obligation subsists regardless of whether domestic legislation has been enacted to implement it or whether a conflicting domestic statute has been subsequently passed. This ensures that treaty obligations cannot be unilaterally defeated by domestic legislative action.

Good faith

Good faith is the qualitative standard governing performance: obligations must not merely be formally satisfied but must be carried out honestly, fairly, and consistently with the legitimate expectations created by the treaty. Good faith pervades the entire treaty regime: formation, interpretation under Article 31, performance under Article 26, and the duty not to defeat the object and purpose of a treaty pending its entry into force under Article 18.

Foundation

Pacta sunt servanda is the constitutional foundation of treaty law: without it, the entire structure of treaty-based international obligations would collapse. It is simultaneously a treaty rule (codified in Article 26 VCLT) and a customary rule predating the Convention. It provides the answer to the question "why are treaties binding?" — they bind because the international community has accepted, as a foundational norm, that agreements freely entered must be honoured.

Exception

The principle is not absolute: the VCLT itself provides narrow exceptions through the termination and suspension provisions. Material breach (Article 60), supervening impossibility of performance (Article 61), fundamental change of circumstances (Article 62), and conflict with a new jus cogens norm (Article 64) each provide grounds for release from treaty obligations. These exceptions are narrowly construed to prevent abuse, confirming that pacta sunt servanda remains the rule and escape from it is the closely guarded exception.

[!example]- Case Laws

Nuclear Tests Cases (Australia/New Zealand v France, ICJ, 1974)
📋 Facts
France conducted atmospheric nuclear tests in the South Pacific. Australia and New Zealand sought declarations that the tests violated international law. During proceedings, France unilaterally declared it would cease atmospheric testing.

🔨 Held
The ICJ held that France's unilateral declaration, made publicly and with intent to be bound, created a legal obligation; the principle of good faith required France to adhere to its undertaking.

💡 Principle
Good faith, the animating principle of pacta sunt servanda, extends beyond treaties to bind states to unilateral declarations made publicly with intent to create legal obligations.

Gabčíkovo-Nagymaros Project (Hungary v Slovakia, ICJ, 1997)
📋 Facts
Hungary sought to terminate a 1977 treaty with Czechoslovakia for the construction of a dam on the Danube, invoking changed circumstances and ecological necessity.

🔨 Held
The ICJ held the treaty remained in force; Hungary's purported termination was wrongful because the conditions for invoking exceptions to pacta sunt servanda under Articles 61 and 62 were not satisfied.

💡 Principle
Pacta sunt servanda is the rule; the exceptions in Articles 60–62 of the VCLT are narrowly construed and available only when their strict conditions are met. Political and economic changes do not release a state from its treaty obligations.

Pacta Sunt Servanda as the Constitutional Norm of Treaty Law

Pacta sunt servanda is the foundational principle of the entire treaty system: agreements freely entered must be performed in good faith, internal law cannot excuse non-performance, and the narrow exceptions in the VCLT are strictly construed to preserve the stability and predictability that the international legal order requires.

> **Exam Minimum (never skip)**
>
> 1. Definition: every treaty in force is binding and must be performed in good faith, Art. 26 VCLT 1969
> 2. Art. 27: internal law cannot justify failure to perform
> 3. Good faith pervades: formation, interpretation (Art. 31), performance
> 4. One case: Gabcikovo-Nagymaros (ICJ, 1997) — treaty remains in force; changed circumstances not enough
> 5. Exceptions narrow: material breach (Art. 60), rebus sic stantibus (Art. 62), jus cogens (Art. 64)

PIL | Unit 4 | Part A

Law of the Sea, Airspace, and Outer Space

Q1. What is Innocent Passage?

PRIORITY: ★★★ | PART: A | FREQ: 4

What is Innocent Passage

Innocent passage is the right of foreign ships to navigate through the territorial sea of a coastal state continuously and expeditiously without entering internal waters, provided the passage is not prejudicial to the peace, good order, or security of the coastal state, as codified in Articles 17 to 26 of the United Nations Convention on the Law of the Sea (UNCLOS) 1982.

Legal Foundation

Article 17, UNCLOS 1982 : all ships enjoy the right of innocent passage through the territorial sea
Article 19, UNCLOS 1982 : passage is innocent if not prejudicial to peace, good order, or security; Article 19(2) lists twelve categories of non-innocent activity
Article 25, UNCLOS 1982 : coastal state may take necessary steps to prevent non-innocent passage

[!tip] Mnemonic: "CSNWS"
Continuous | Submarine | Non-innocent | Warships | Suspension

Continuous | Submarine | Non-innocent | Warships | Suspension

Continuous

Passage must be continuous and expeditious: it may not be interrupted except by distress or force majeure. Loitering, hovering, or stopping without justification renders passage non-innocent and entitles the coastal state to take the necessary steps to prevent it under Article 25 of the UNCLOS 1982. The continuous character of passage is the operational feature that distinguishes the right from a generalised freedom of presence in the territorial sea.

Submarine

Submarines and other underwater vehicles must navigate on the surface and show their flag while exercising the right of innocent passage through the territorial sea. Submerged transit through the territorial sea is classified as non-innocent activity under the practice codified by UNCLOS 1982 because it removes the vessel from visual identification and prevents the coastal state from determining whether the passage is prejudicial to its peace, good order, or security.

Non-innocent

Article 19(2) of UNCLOS 1982 catalogues twelve categories of activity that render passage non-innocent: the threat or use of force against the coastal state; weapons exercises; intelligence gathering; interference with communications; loading or unloading contraband; serious pollution; fishing; research activities; launching or landing aircraft or military devices; and any other activity not directly related to passage. The list is exhaustive for the purposes of the convention and the coastal state cannot add to it unilaterally.

Warships

Warships enjoy the right of innocent passage through the territorial sea under UNCLOS 1982 without prior notification or authorisation as a matter of treaty law, though this position is contested in practice: states including India and China require prior notification or permission before warship passage through their territorial seas. This dispute between the coastal state notification position and the free warship passage position has not been definitively resolved by any international tribunal.

Suspension

The coastal state may temporarily suspend innocent passage in specific areas of its territorial sea for security reasons under Article 25(3) of UNCLOS 1982, but the suspension must be published in advance, may not be arbitrary, and may not discriminate among the ships of different states. Suspension for security reasons is the coastal state's primary measure short of taking steps to prevent passage under Article 25(1) against a vessel whose passage is or has become non-innocent.

[!example]- Case Laws

Corfu Channel Case (UK v Albania, International Court of Justice (ICJ), 1949)
📋 Facts
British warships exercising the right of innocent passage through the North Corfu Channel struck mines laid in Albanian territorial waters. Two ships were damaged and several sailors killed. The UK sought a declaration that Albania had violated international law.

🔨 Held

The ICJ held that the right of innocent passage through international straits used for international navigation is part of customary international law; Albania had a duty to notify of the danger and had violated that duty as well as the right of passage.

💡 Principle

Innocent passage through international straits is a rule of customary international law; the coastal state owes an active duty to notify mariners of dangers known to it within its territorial waters.

Anglo-Norwegian Fisheries Case (UK v Norway, ICJ, 1951)

📋 Facts

Norway drew straight baselines along its deeply indented and island-fringed coastline to delimit its territorial sea, enclosing areas the UK claimed were high seas. The UK challenged the straight baseline method as contrary to international law.

🔨 Held

The ICJ held that the straight baseline method is valid for deeply indented coastlines and coastlines fringed with islands; Norway's consistent use of straight baselines acquiesced in by other states had become binding.

💡 Principle

Baselines determine where the territorial sea and the right of innocent passage begin; straight baselines are permissible for irregular coastlines and their location directly shapes the scope of coastal state jurisdiction.

Innocent Passage as the Balance Between Sovereignty and Navigation

Innocent passage balances the coastal state's sovereignty over its territorial sea against the navigational freedom of all states; Article 19(2) of UNCLOS 1982 defines non-innocence exhaustively, and the coastal state's power to prevent non-innocent passage is the enforcement mechanism that gives the right its practical content.

Exam Minimum (never skip)

1. Definition: right of foreign ships to navigate through territorial sea, Art. 17 UNCLOS 1982
2. Must be continuous and expeditious; submarines on surface; Art. 19(2) lists non-innocent activities
3. Coastal state may prevent non-innocent passage (Art. 25); may temporarily suspend (Art. 25(3))
4. One case: Corfu Channel (ICJ, 1949) — right of passage through international straits confirmed
5. Warship passage: contested (some states require notification)

Q2. What is the Exclusive Economic Zone?

PRIORITY: ★★★ | PART: A | FREQ: 4

What is the Exclusive Economic Zone

The Exclusive Economic Zone (EEZ) is a maritime zone extending up to 200 nautical miles from the baseline in which the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the waters, seabed, and subsoil, as established under Articles 55 to 75 of UNCLOS 1982.

Legal Foundation

Article 55, UNCLOS 1982 : specific legal regime of the EEZ as distinct from territorial sea and high seas
Article 56, UNCLOS 1982 : sovereign rights, jurisdiction, and duties of the coastal state in the EEZ
Article 58, UNCLOS 1982 : rights and duties of other states in the EEZ; freedom of navigation, overflight, and submarine cables preserved

[!tip] Mnemonic: "SRJSL"
Sovereign rights | Resource | Jurisdiction | Sui generis | Landlocked

Sovereign rights | Resource | Jurisdiction | Sui generis | Landlocked

Sovereign rights

The coastal state holds sovereign rights in the EEZ, not territorial sovereignty: the distinction is fundamental. Sovereign rights are functional and purpose-specific, limited to exploring, exploiting, conserving, and managing the living and non-living natural resources of the waters, seabed, and subsoil. The coastal state does not own the zone; it holds exclusive rights over the resources within it, and other states retain navigational and other freedoms within the same space.

Resource

The resource scope of the EEZ covers all living resources including fisheries, all non-living resources including oil, gas, and minerals, and energy derived from the water, wind, and currents. Article 56 also grants the coastal state jurisdiction over artificial islands and installations, marine scientific research, and the protection and preservation of the marine environment within the EEZ. These are regulatory powers rather than sovereign territorial claims.

Jurisdiction

Other states retain significant rights within the EEZ under Article 58 of UNCLOS 1982: freedom of navigation, freedom of overflight, and the freedom to lay submarine cables and pipelines, all of which are preserved as high seas freedoms exercisable within the EEZ. The exercise of these freedoms is conditioned on due regard for the rights and duties of the coastal state, and the coastal state must in turn have due regard for the rights of other states in exercising its sovereign rights and jurisdiction.

Sui generis

The EEZ is a sui generis zone of international law: it is neither territorial sea nor high seas. It is a distinct legal creation of UNCLOS 1982 that distributes rights between the coastal state and all other states within the same geographical space. This dual-purpose character distinguishes the EEZ from all other maritime zones and has generated significant jurisprudence on how to resolve conflicts between coastal state resource rights and other states' navigational freedoms.

Landlocked

Landlocked and geographically disadvantaged states have rights of participation in the exploitation of the living resources of the EEZ of coastal states of the same subregion or region under Articles 69 and 70 of UNCLOS 1982, subject to the coastal state's assessment of its harvesting capacity. Under Part X of UNCLOS 1982, landlocked states also enjoy the right of access to and from the sea and freedom of transit through the territory of transit states.

[!example]- Case Laws

North Sea Continental Shelf Cases (ICJ, 1969)

📋 Facts

Germany, Denmark, and the Netherlands disputed the delimitation of their overlapping continental shelf areas in the North Sea. Denmark and the Netherlands sought application of the equidistance method; Germany argued this produced an inequitable result.

🔨 Held

The ICJ held that delimitation must be carried out by agreement on the basis of equitable principles taking into account all relevant circumstances; the equidistance method is not a rule of binding customary law.

💡 Principle

Equitable principles and relevant circumstances govern resource zone delimitation between opposite or adjacent states; the same principles apply to EEZ delimitation under UNCLOS 1982.

Anglo-Norwegian Fisheries Case (UK v Norway, ICJ, 1951)

📋 Facts

Norway applied straight baselines along its deeply indented coastline to define its territorial sea and fishery zones. The UK challenged the method, arguing it impermissibly extended Norwegian fishery jurisdiction into areas previously treated as high seas.

🔨 Held

The ICJ held that straight baselines are valid for deeply indented or island-fringed coastlines; the baseline method a state uses directly determines the seaward outer limit of its EEZ.

💡 Principle

Baseline determination is the foundational step for all maritime zone calculations; the method used fixes the extent of the coastal state's sovereign rights over resources in the EEZ.

The EEZ as a Sui Generis Resource Zone

The EEZ grants coastal states sovereign rights over living and non-living resources up to 200 nautical miles while preserving navigational and other high seas freedoms for all states, making it a sui generis zone that distributes rights functionally rather than territorially between the coastal state and the international community.

Exam Minimum (never skip)

1. Definition: zone up to 200nm from baselines; sovereign rights over resources (Art. 56 UNCLOS)
2. Not full sovereignty — only resource rights; navigation/overflight free for all states
3. Living resources: coastal state sets total allowable catch; non-living: exclusive exploitation
4. One case: North Sea Continental Shelf (ICJ, 1969) — equitable principles for delimitation
5. Sui generis: neither territorial sea nor high seas; functional distribution of rights

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Q3. What are the High Seas? State the freedoms of the high seas.

PRIORITY: ★★★ | PART: A | FREQ: 4

What are the High Seas

The high seas are all parts of the sea not included in the exclusive economic zone, the territorial sea, the internal waters, or the archipelagic waters of an archipelagic state, and are governed by six freedoms codified in Article 87 of UNCLOS 1982, open equally to all states whether coastal or landlocked.

Legal Foundation

Article 86, UNCLOS 1982 : definition of the high seas as residual zone beyond all national maritime zones
Article 87, UNCLOS 1982 : six freedoms of the high seas
Article 92, UNCLOS 1982 : exclusive jurisdiction of the flag state over ships on the high seas
Article 105, UNCLOS 1982 : universal jurisdiction over piracy on the high seas

[!tip] Mnemonic: "FFHPE"
Freedoms | Flag state | Hot pursuit | Piracy | Exceptions

Freedoms | Flag state | Hot pursuit | Piracy | Exceptions

Freedoms

Article 87 of UNCLOS 1982 lists six freedoms of the high seas: freedom of navigation; freedom of overflight; freedom to lay submarine cables and pipelines; freedom to construct artificial islands; freedom of fishing; and freedom of scientific research. All six are exercised with due regard for the interests of other states and must comply with the rules of international law governing activities on the high seas. The freedoms are available to all states equally, including landlocked states with no coastline.

Flag state

Ships on the high seas sail under the flag of one state and are subject to the exclusive jurisdiction of that flag state under Article 92 of UNCLOS 1982. No other state may exercise jurisdiction over a foreign-flagged vessel on the high seas except in the specific circumstances permitted by UNCLOS 1982 itself. The flag state bears full responsibility for the vessel's compliance with international law and must investigate maritime incidents involving its flagged vessels.

Hot pursuit

Hot pursuit under Article 111 of UNCLOS 1982 is the right of a coastal state to pursue a foreign vessel that has committed a violation of coastal state laws from the coastal state's internal waters, territorial sea, or EEZ onto the high seas. Three conditions must be satisfied: pursuit must commence while the vessel is still within the relevant zone; it must be continuous and uninterrupted; and it must cease the moment the vessel enters the territorial sea of any other state. Hot pursuit is the coastal state's primary enforcement mechanism against vessels that violate its laws and then seek refuge on the high seas.

Piracy

Piracy under Articles 101 and 105 of UNCLOS 1982 attracts universal jurisdiction: any state may seize a pirate ship on the high seas and try those responsible regardless of the flag state of the vessel or the nationality of the pirates. This is the most significant exception to the rule of exclusive flag state jurisdiction and reflects the historical treatment of pirates as hostes humani generis, enemies of all mankind, whose suppression is a matter of common interest to the entire international community.

Exceptions

Four situations permit interference with a foreign-flagged vessel on the high seas beyond hot pursuit and piracy: the right of visit under Article 110 where there is reasonable suspicion of piracy, slave trade, unauthorised broadcasting, statelessness, or that the vessel is of the same nationality as the visiting vessel; the right of seizure for slave trade under Article 110; hot pursuit under Article 111; and boarding under multilateral suppression treaties such as the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988. These are exhaustive exceptions; no other interference with a foreign-flagged vessel is permitted.

[!example]- Case Laws

Corfu Channel Case (UK v Albania, ICJ, 1949)

📋 Facts
British warships exercised the right of innocent passage through the North Corfu Channel, which Albania had mined without notification. Two ships were damaged; the UK later conducted a minesweeping operation in Albanian territorial waters to collect evidence.

🔨 Held
The ICJ confirmed freedom of navigation through international straits used for international navigation as customary law; it also held the UK's unilateral minesweeping operation violated Albanian sovereignty.

💡 Principle
Freedom of navigation on the high seas and through international straits is a customary rule; even a state vindicating a legitimate claim cannot use force unilaterally in another state's territorial waters.

The I'm Alone Case (Canada v USA, 1935)

📋 Facts
A Canadian-registered rum-running vessel was pursued by a US coast guard vessel from US territorial waters. The pursuit extended far onto the high seas before the US vessel sank the I'm Alone. Canada claimed the sinking violated international law.

🔨 Held

The arbitral commission held that the hot pursuit was not continuous and uninterrupted as required by international law; the sinking was therefore not justified; the US was required to apologise and pay compensation.

💡 Principle

Hot pursuit must be uninterrupted from the moment it begins within the coastal state's zone; a break in pursuit destroys the right and any use of force thereafter is unlawful.

High Seas Freedoms and the Flag State Jurisdiction Rule

The high seas regime balances the freedom of all states to use the global maritime commons against the duties to prevent piracy, slave trade, and environmental harm, with flag state exclusive jurisdiction as the default and universal jurisdiction over piracy as the most significant departure, reflecting the international community's common interest in suppressing conduct that threatens all states equally.

Exam Minimum (never skip)

1. Definition: all sea beyond EEZ/territorial sea; Art. 86-87 UNCLOS; six freedoms (Art. 87)
2. Six freedoms: navigation, overflight, cables/pipelines, artificial islands, fishing, research
3. Flag state exclusive jurisdiction (Art. 92); exceptions: piracy (Art. 105), hot pursuit (Art. 111)
4. One case: Corfu Channel (ICJ, 1949) — freedom of navigation in international straits
5. No state may claim sovereignty over any part of high seas (Art. 89)

Q4. What is the Continental Shelf?

PRIORITY: ★★ | PART: A | FREQ: 3

What is the Continental Shelf

The continental shelf comprises the seabed and subsoil of the submarine areas beyond the territorial sea throughout the natural prolongation of the coastal state's land territory, extending to 200 nautical miles minimum or to the outer edge of the continental margin, governed by Articles 76 to 85 of UNCLOS 1982.

Legal Foundation

Article 76, UNCLOS 1982 : definition and outer limits of the continental shelf; minimum 200 nautical miles; up to 350 nautical miles at outer edge of continental margin with Commission on the Limits of the Continental Shelf (CLCS) approval
Article 77, UNCLOS 1982 : sovereign rights of the coastal state over the continental shelf for exploration and exploitation
Article 83, UNCLOS 1982 : delimitation between opposite or adjacent states by agreement on the basis of international law

[!tip] Mnemonic: "SIOCDE"
Sovereign rights | Ipso jure | Outer limit | CLCS | Delimitation | Exception

Sovereign rights | Ipso jure | Outer limit | CLCS | Delimitation | Exception

Sovereign rights

The coastal state has exclusive sovereign rights over the continental shelf for the purpose of exploring and exploiting its natural resources: mineral and non-living resources and sedentary organisms. These are sovereign rights, not territorial sovereignty: the coastal state does not own the shelf area, but no other state may explore or exploit its resources without the coastal state's express consent.

Ipso jure

Continental shelf rights exist by operation of law, automatically upon statehood, without any proclamation, occupation, or express declaration being required. This principle, confirmed by the ICJ in the North Sea Continental Shelf Cases (ICJ, 1969), means no coastal state can lose its shelf rights by failure to proclaim them; nor can any other state acquire rights over the shelf by occupation or prior exploitation. The shelf is not terra nullius; it belongs to the coastal state as of right.

Outer limit

The outer limit of the continental shelf extends to a minimum of 200 nautical miles from the baseline regardless of whether the natural geological shelf extends that far: this ensures landlocked-coastline states are not disadvantaged by accidents of geology. Where the natural prolongation of the land territory extends beyond 200 nautical miles, the shelf may extend up to a maximum of 350 nautical miles from the baseline or 100 nautical miles from the 2,500-metre isobath, whichever is greater.

CLCS

Where a coastal state claims a continental shelf extending beyond 200 nautical miles, it must submit scientific and technical data to the Commission on the Limits of the Continental Shelf (CLCS) established under Annex II of UNCLOS 1982. The CLCS makes recommendations on the outer edge of the continental margin; limits established in conformity with those recommendations are final and binding. This mechanism provides an independent technical check on extended shelf claims and prevents coastal states from drawing their own outer limits without external validation.

Delimitation

Delimitation of the continental shelf between opposite or adjacent states is governed by Article 83 of UNCLOS 1982: agreement on the basis of international law, with resort to Article 38 of the ICJ Statute, to achieve an equitable solution. The ICJ confirmed in the North Sea Continental Shelf Cases (ICJ, 1969) that equidistance is not a binding customary rule; delimitation requires consideration of all relevant circumstances and equitable principles. The superjacent waters above the continental shelf retain their EEZ or high seas character: the coastal state's shelf rights do not affect the legal status of the water column above.

Exception

The coastal state's continental shelf rights do not affect the legal status of the superjacent waters as EEZ or high seas: other states retain full freedom of navigation and overflight above the continental shelf. The coastal state may not impede the laying or maintenance of submarine cables or pipelines by other states on the continental shelf beyond the territorial sea, subject only to its consent over the route of pipelines.

[!example]- Case Laws

North Sea Continental Shelf Cases (ICJ, 1969)

📋 Facts

Germany, Denmark, and the Netherlands disputed the delimitation of their overlapping continental shelf areas. Denmark and the Netherlands argued for equidistance; Germany, which had not ratified the Geneva Convention on the Continental Shelf 1958, argued for a delimitation producing a more equitable result.

🔨 Held

The ICJ held that the equidistance method is not a rule of customary international law; delimitation must be by agreement on equitable principles taking into account all relevant circumstances; and the continental shelf right exists by virtue of sovereignty over adjacent land territory, not by proclamation.

💡 Principle

Continental shelf rights exist ipso jure; equitable principles govern delimitation between states with overlapping claims; equidistance is one method among several, not the mandatory rule.

Anglo-Norwegian Fisheries Case (UK v Norway, ICJ, 1951)

📋 Facts

Norway's straight baseline system enclosed areas previously treated by the UK as high seas. The method also directly determined the outer seaward extent of Norway's continental shelf and fishery zone claims.

🔨 Held

The ICJ held the straight baseline method valid for Norway's deeply indented and island-fringed coastline; state practice acquiesced in by other states had made the method binding.

💡 Principle

The baseline method determines where the continental shelf and all other maritime zones begin; the choice of baseline method carries consequences across every seaward zone the coastal state claims.

Continental Shelf Rights as Automatic Legal Entitlements

The continental shelf regime grants coastal states sovereign rights over seabed resources as a matter of law from the moment of statehood, without proclamation; the minimum 200-nautical-mile guarantee protects states regardless of their natural geology; and delimitation between competing claims is governed by equitable principles rather than by any mandatory mathematical formula.

Exam Minimum (never skip)

1. Definition: seabed/subsoil beyond territorial sea; sovereign rights over resources (Art. 76-77 UNCLOS)
2. Rights are inherent and automatic — no proclamation needed (Art. 77(3))
3. Minimum 200nm; may extend to 350nm if natural prolongation proved
4. One case: North Sea Continental Shelf (ICJ, 1969) — equitable principles, not equidistance
5. Exclusive: no one may exploit without coastal state consent

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Q5. What are the Five Freedoms of the Air?

PRIORITY: ★★★ | PART: A | FREQ: 4

What are the Five Freedoms of the Air

The five freedoms of the air are the commercial air traffic rights exchangeable between states, derived from the principle of complete and exclusive sovereignty over national airspace codified in Article 1 of the Chicago Convention on International Civil Aviation 1944, and representing negotiated derogations from that sovereignty rather than inherent rights.

Legal Foundation

Article 1, Chicago Convention 1944 : complete and exclusive sovereignty of every state over its airspace
Article 6, Chicago Convention 1944 : scheduled international air services require special permission or other authorisation of the state
International Air Services Transit Agreement 1944 : first and second freedoms exchanged multilaterally

[!tip] Mnemonic: "SOTIF"
Sovereignty | Over | Technical | In | Fifth

Sovereignty | Over | Technical | In | Fifth

Sovereignty

Article 1 of the Chicago Convention 1944 establishes the foundational principle: every state has complete and exclusive sovereignty over the airspace above its territory. Unlike the high seas or outer space, national airspace is sovereign territory. There is no right of innocent passage for foreign aircraft equivalent to the maritime right, and every entry into a state's airspace requires specific permission or authorisation from that state.

Over

The first freedom is the right of a state's aircraft to fly over another state's territory without landing. It is a transit right, the most basic of the five freedoms, and is exchanged multilaterally under the International Air Services Transit Agreement 1944, making it the most widely available of the commercial air rights. Without the first freedom, international aviation routes would require landing permission at every state whose territory was overflown.

Technical

The second freedom is the right to land in another state for non-traffic purposes: refuelling, technical maintenance, or crew change, without embarking or disembarking passengers or cargo. It is also exchanged multilaterally under the International Air Services Transit Agreement 1944. The first and second freedoms together form the technical overflight and landing rights package that underpins all scheduled international air services.

In

The third and fourth freedoms are the core commercial rights. The third freedom is the right to carry passengers, mail, and cargo from the home state to a foreign state. The fourth freedom is the right to carry passengers, mail, and cargo from that foreign state back to the home state. Together the third and fourth freedoms constitute the round-trip commercial basis of bilateral air services: they are negotiated bilaterally through air services agreements between states, not exchanged multilaterally.

Fifth

The fifth freedom is the right to carry traffic between two foreign states on a service that originates in the home state. It is the most commercially significant and the most contested: it allows an airline to pick up passengers in a foreign state and carry them to a third state, competing with the airlines of both those states on their own domestic and international routes. The fifth freedom is negotiated exclusively through bilateral air services agreements and is subject to the most restrictive exchange conditions of the five freedoms.

[!example]- Case Laws

Chicago Convention 1944, Articles 1 and 6

📋 Facts

The International Civil Aviation Conference in Chicago in November and December 1944 produced the Chicago Convention, the International Air Services Transit Agreement, and the International Air Transport Agreement as the foundational instruments of international civil aviation law.

🔨 Held

Article 1 establishes complete and exclusive sovereignty over national airspace as the foundational principle; Article 6 confirms that scheduled international air services require special permission; the five freedoms are derogations from sovereignty, not rights inherent in the aircraft's flag.

💡 Principle

All five freedoms of the air are derogations from the principle of complete and exclusive sovereignty over airspace; they must be negotiated and granted; they are never assumed.

U-2 Incident (United States v Soviet Union, 1960)

📋 Facts

A United States U-2 reconnaissance aircraft was shot down over Soviet territory while conducting unauthorised aerial surveillance. The Soviet Union protested the overflights as violations of its sovereign airspace and tried the American pilot.

🔨 Held

The Soviet Union's protest and the subsequent diplomatic exchange confirmed that overflights of sovereign airspace without permission constitute a violation of international law regardless of altitude.

💡 Principle

Complete and exclusive sovereignty over airspace means no aircraft may overfly state territory without permission; this applies at all altitudes within national airspace and distinguishes the airspace regime from the non-sovereign outer space regime above.

Five Freedoms as Negotiated Derogations from Sovereignty

The five freedoms of the air are derogations from the principle of complete and exclusive sovereignty over airspace under Article 1 of the Chicago Convention 1944; the first and second freedoms are exchanged multilaterally while the third, fourth, and fifth are negotiated bilaterally in air services agreements, making access to foreign airspace always a product of reciprocal political agreement rather than legal entitlement.

Exam Minimum (never skip)

1. Art. 1 Chicago Convention: complete and exclusive sovereignty over airspace
2. Five freedoms: (1) overfly (2) technical stop (3) set down from home (4) pick up to home (5) between third states
3. 1st + 2nd = IASTA (multilateral); 3rd-5th = bilateral ASAs
4. No innocent passage in airspace (unlike territorial sea)
5. Art. 6: no scheduled service without special permission

Q6. What is the Outer Space Treaty, 1967?

PRIORITY: ★★★ | PART: A | FREQ: 4

What is the Outer Space Treaty, 1967

The Outer Space Treaty 1967 is the foundational instrument of international space law, establishing that outer space and celestial bodies are free for exploration and use by all states, not subject to national appropriation, and that states bear international responsibility for all national space activities including those of private entities.

Legal Foundation

Article I, Outer Space Treaty (OST) 1967 : exploration and use of outer space for the benefit and in the interests of all countries; free for all states on a basis of equality
Article II, OST 1967 : outer space and celestial bodies not subject to national appropriation by claim of sovereignty, use, occupation, or any other means
Article VI, OST 1967 : state bears international responsibility for national activities; private activities require authorisation and continuous supervision
Article VII, OST 1967 : launching state internationally liable for damage caused by space objects

[!tip] Mnemonic: "NFPSR"
Non-appropriation | Freedom | Peaceful | State responsibility | Rescue

Non-appropriation | Freedom | Peaceful | State responsibility | Rescue

Non-appropriation

Article II of the OST 1967 prohibits national appropriation of outer space, the Moon, and other celestial bodies by any means: sovereignty, use, occupation, or otherwise. Outer space is res communis, belonging to no state and available to all; it cannot be claimed, owned, or partitioned regardless of the extent of a state's presence or investment. The Apollo moon landings by the United States and the Luna missions by the Soviet Union resulted in national flags being planted on the lunar surface, but neither state made a territorial claim, confirming the non-appropriation principle in practice.

Freedom

Article I of the OST 1967 establishes that outer space is free for exploration and use by all states on a basis of equality and in accordance with international law, for the benefit and in the interests of all countries regardless of their degree of development. No state may monopolise access, establish exclusive zones, or restrict other states from using outer space. The freedom of exploration applies to all states including developing and landlocked states that lack independent launch capability.

Peaceful

Article IV of the OST 1967 prohibits placing nuclear weapons or any other weapons of mass destruction in orbit around Earth, on celestial bodies, or in outer space in any other manner. The Moon and other celestial bodies are reserved exclusively for peaceful purposes: no military installations, weapons testing, or manoeuvres are permitted on celestial bodies. A pertinent distinction applies to Earth orbit: Article IV prohibits weapons of mass destruction in orbit but does not prohibit military satellites used for communications, navigation, and observation, which are lawful under the OST regime.

State responsibility

Article VI of the OST 1967 imposes international responsibility on states for all national space activities whether carried out by governmental agencies or non-governmental entities. Private commercial space activities require authorisation and continuing supervision by the appropriate state; the state cannot escape international responsibility by pointing to the private character of the entity conducting the activity. Article VII makes the launching state internationally liable for damage caused by its space objects, and the Liability Convention on International Liability for Damage Caused by Space Objects 1972 implements this by imposing absolute liability for damage on Earth's surface and fault-based liability for damage in outer space.

Rescue

The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space 1968 complements the OST by treating astronauts as envoys of mankind: states must assist distressed astronauts regardless of nationality and return them promptly to their launching state. Space objects that return to Earth must also be returned to the launching state on request. The Registration Convention 1976 requires states to register space objects with the United Nations Secretary-General, and the state of registry retains jurisdiction and control over the registered object.

[!example]- Case Laws

Cosmos 954 Incident (Canada v USSR, 1978)

📋 Facts

The Soviet nuclear-powered satellite Cosmos 954 re-entered the atmosphere and disintegrated, scattering radioactive debris over 124,000 square kilometres of Canadian territory. Canada incurred substantial costs in the clean-up operation.

🔨 Held

Canada invoked absolute liability under Article II of the Liability Convention 1972, which requires no proof of fault for damage caused on Earth's surface. The USSR ultimately settled the claim for C$3 million in 1981.

💡 Principle

The launching state bears absolute liability for damage caused by its space objects on Earth's surface regardless of fault; the Cosmos 954 settlement is the first and most significant application of the space liability regime.

OST 1967, Article II: Apollo and Luna Practice

📋 Facts

The United States conducted six successful lunar landing missions between 1969 and 1972, planting national flags on the lunar surface. The Soviet Union conducted multiple uncrewed Luna missions. Neither state claimed sovereignty over any portion of the Moon.

🔨 Held

The consistent practice of both space powers of planting flags without asserting territorial claims confirmed the operative scope of Article II: symbolic presence creates no sovereign right over lunar territory.

💡 Principle

Non-appropriation under Article II of the OST 1967 is observed in practice; no physical presence on a celestial body, however extensive, creates any claim of sovereignty or territorial right.

The Outer Space Treaty as the Constitution of Space Law

The Outer Space Treaty 1967 establishes the legal constitution of outer space on three pillars: non-appropriation, freedom of exploration, and state responsibility for all national activities. Its provisions on non-appropriation and peaceful use have hardened into customary international law, and the liability regime under the Liability Convention 1972 completes the framework by giving the state responsibility principle concrete financial consequences.

Exam Minimum (never skip)

1. Definition: foundational instrument of space law (1967); Art. I: free for exploration by all states
2. Art. II: no national appropriation (sovereignty, use, occupation)
3. Art. IV: no WMDs in orbit; Moon for peaceful purposes only
4. Art. VI: state responsible for all national activities (including private)
5. Liability Convention 1972: absolute liability for surface damage (Art. II)

Q7. What is UNISPACE?

PRIORITY: ★★★ | PART: A | FREQ: 5

What is UNISPACE

UNISPACE refers to the series of United Nations Conferences on the Exploration and Peaceful Uses of Outer Space, convened by the UN General Assembly to develop international cooperation in outer space activities, review the legal framework governing space exploration, and address the needs of developing states in accessing the benefits of space technology.

Legal Foundation

UNGA Resolution 1472 (XIV), 1959 : established the Committee on the Peaceful Uses of Outer Space (COPUOS) as the permanent UN body for outer space governance
Outer Space Treaty 1967, Article I : exploration and use of outer space for the benefit and in the interests of all countries
UNGA Resolution 72/79, 2017 : endorsed UNISPACE+50 outcomes on long-term sustainability of outer space activities

[!tip] Mnemonic: "THREE"
Three conferences | Themes | Review | Equity | Evolution

Three conferences | Themes | Review | Equity | Evolution

Three conferences

Three UNISPACE conferences have been held, each building upon the outcomes of the previous one. UNISPACE I (Vienna, 1968) focused on the practical benefits of space exploration and technology for developing nations. UNISPACE II (Vienna, 1982) addressed the prevention of an arms race in outer space and the expansion of space technology benefits to all states, while UNISPACE III (Vienna, 1999) adopted the Vienna Declaration on Space and Human Development, establishing a framework for international cooperation in space science, technology, and applications.

Themes

The recurring themes across all three conferences are the peaceful use of outer space, equitable access to space technology for developing states, and the prevention of militarisation beyond the Article IV Outer Space Treaty (OST) constraints. Additionally, the conferences have consistently addressed the protection of the space environment from debris and harmful contamination, and the deployment of space-based systems for sustainable development, disaster management, and global communication.

Review

UNISPACE conferences serve as a comprehensive review mechanism for the legal, scientific, and technological aspects of outer space governance. They assess the adequacy of existing treaties including the Outer Space Treaty 1967, the Rescue Agreement 1968, the Liability Convention 1972, the Registration Convention 1975, and the Moon Agreement 1979, and they identify gaps requiring new legal instruments or soft law guidelines.

Equity

A central concern of UNISPACE, particularly from UNISPACE II onwards, is the equitable sharing of space benefits with developing states that lack independent launch capability. Space technology applications in remote sensing, telecommunications, meteorology, and navigation serve development needs, but the concentration of space capability among a small number of technologically advanced states creates an access gap that UNISPACE has consistently sought to address through capacity-building and technology transfer recommendations.

Evolution

UNISPACE+50 (2018) marked the 50th anniversary of the first UNISPACE conference and produced guidelines on the long-term sustainability of outer space activities, addressing space debris mitigation, space weather, and the sustainable management of the orbital environment as a shared resource. COPUOS remains the permanent institutional mechanism between conferences, with its Legal Subcommittee and Scientific and Technical Subcommittee meeting annually to develop the international legal framework governing outer space.

[!example]- Case Laws

UNGA Resolution 1962 (XVIII), Declaration of Legal Principles Governing Activities in Outer Space (1963)

📋 Facts
The UN General Assembly adopted by consensus a declaration of nine legal principles governing the exploration and use of outer space prior to the negotiation of the Outer Space Treaty.

🔨 Held
The Declaration confirmed that outer space is free for exploration and use by all states, cannot be subject to national appropriation, and that states bear international responsibility for national activities in outer space.

💡 Principle
UNGA declarations on outer space, adopted by consensus, contributed to the crystallisation of customary law principles subsequently codified in the Outer Space Treaty 1967; UNISPACE conferences build upon this foundation.

UNISPACE as the Engine of Outer Space Governance

UNISPACE conferences are the primary mechanism through which the international community reviews, develops, and strengthens the legal and institutional framework for peaceful outer space activities, with COPUOS providing continuous institutional support between conferences and UNISPACE+50 extending the agenda to long-term sustainability of the orbital environment.

Exam Minimum (never skip)

1. Definition: UN Conferences on Exploration and Peaceful Uses of Outer Space
2. Three conferences: I (1968, benefits for developing nations), II (1982, arms prevention), III (1999, Vienna Declaration)
3. COPUOS: permanent UN body for space governance (Legal + Scientific subcommittees)
4. Themes: peaceful use, equitable access, debris mitigation, sustainable development
5. UNISPACE+50 (2018): long-term sustainability guidelines for orbital environment

PIL | Unit 5 | Part A

International Organisations, United Nations, ICJ, ICC, Specialised Agencies

Q1. What is the League of Nations?

PRIORITY: ★★★ | PART: A | FREQ: 4

What is the League of Nations

The League of Nations was the first permanent universal international organisation for the maintenance of international peace and security, established by Part I of the Treaty of Versailles 1919, entering into force in January 1920 with 42 founding members and headquartered at Geneva, Switzerland.

Legal Foundation

Article 10, Covenant of the League of Nations : members undertake to respect and preserve territorial integrity against external aggression
Article 16, Covenant : a member resorting to war in breach of the Covenant is deemed to have committed an act of war against all members, triggering automatic economic sanctions

[!tip] Mnemonic: "SCAFW"
Structure | Collective security | Absence | Failure | What survived

Structure | Collective security | Absence | Failure | What survived

Structure

The League operated through three principal organs: the Assembly, in which all member states participated with a unanimity requirement; the Council, composed of permanent and non-permanent members also operating on unanimity; and the Secretariat, a permanent international civil service based in Geneva. The unanimity requirement applied to substantive decisions in both the Assembly and the Council, meaning any single dissenting state could prevent collective action, a design flaw that proved fatal to the League's enforcement capacity.

Collective security

Articles 10 and 16 of the Covenant of the League of Nations formed the collective security architecture: Article 10 committed members to respect and preserve each other's territorial integrity against external aggression, and Article 16 provided that a member resorting to war in breach of the Covenant was automatically treated as having committed an act of war against all members, triggering collective economic sanctions. The collective security mechanism represented the first attempt in history to make aggressive war a matter of international legal accountability rather than a purely sovereign political choice.

Absence

The League's collective security system was critically weakened by the absence of major powers at critical periods. The United States, whose President Woodrow Wilson had been the driving force behind the League's creation, never joined because the US Senate rejected the Treaty of Versailles in 1919 and 1920. Germany was excluded until 1926 and expelled in 1933 when Hitler withdrew; the Soviet Union joined only in 1934 and was expelled in 1939 after invading Finland. The absence of the United States and the intermittent presence of Germany and the USSR meant the League never had the participation of all major powers simultaneously.

Failure

Four structural causes produced the League's failure as a peace-maintenance mechanism: the unanimity rule paralysed decision-making in the Assembly and the Council whenever any significant state objected; major powers were absent at critical moments leaving the system dependent on middle powers; Article 16 economic sanctions were applied selectively and were not compulsory in practice as demonstrated by the half-hearted response to Italy's invasion of Abyssinia in 1935; and the League had no standing military force to back collective security commitments, meaning enforcement depended entirely on the voluntary military contributions of member states. The League's institutional design created the appearance of collective security without the enforcement mechanisms to make it real.

What survived

Despite its failure as a peace-maintenance body, the League made lasting contributions that survived its dissolution. The International Labour Organization (ILO) and the Permanent Court of International Justice (PCIJ), both affiliated bodies of the League, continued operating and were absorbed into the United Nations system after 1945. The League's mandate system for administering former German and Ottoman territories became the model for the UN trusteeship system. Its work on minority protection, drug control, refugee assistance, and public health standards established institutional precedents that the UN specialised agencies carried forward.

[!example]- Case Laws

Reparation for Injuries Suffered in the Service of the United Nations (ICJ Advisory Opinion, 1949)

📋 Facts

The United Nations sought to bring a claim for reparation for the assassination of Count Folke Bernadotte, a UN mediator killed in Jerusalem in 1948. The question was whether the UN, as an international organisation, had the international legal personality to bring such a claim against a state.

🔨 Held

The ICJ held that the United Nations has objective international legal personality and the capacity to bring international claims against states including non-members. This principle of institutional personality applies to all international organisations including those created before the UN, confirming the legal standing the League of Nations also possessed.

💡 Principle

International organisations established by treaty with broad international responsibilities possess objective international legal personality; the ICJ's reasoning in Reparation for Injuries applies equally to the League's institutional successor organisations and their substantive legal functions.

Corfu Channel Case (UK v Albania, ICJ, 1949)

📋 Facts

The first contentious case decided by the International Court of Justice arose from incidents in the North Corfu Channel in 1946 when British warships struck mines in Albanian territorial waters. The case was brought under the new UN judicial system that replaced the League's Permanent Court of International Justice.

🔨 Held

The ICJ held Albania internationally responsible for the mines and the failure to notify of the danger, awarding compensation to the United Kingdom. The case confirmed the ICJ's operational authority as the League's judicial successor.

💡 Principle

The institutional continuity from the League's PCIJ to the UN's ICJ confirms that the League's legacy extended through its judicial organs; the League's foundational work in establishing international adjudication as a normal means of dispute settlement was carried into the post-1945 system.

The League as the Institutional Template for the United Nations

The League of Nations was the first institutional attempt to organise collective security on a permanent universal basis; it failed because unanimity paralysed enforcement, major powers were absent at critical periods, and sanctions were voluntary rather than compulsory, but it created the institutional template: collective security, a permanent court, a secretariat, and specialised agencies, which the United Nations refined, strengthened, and made the foundation of the post-1945 international order.

Exam Minimum (never skip)

1. Definition: first permanent universal international organisation for peace, est. Treaty of Versailles 1919
2. Unanimity rule in Assembly and Council paralysed enforcement
3. Absence of major powers (US never joined; Germany/USSR intermittent)
4. One case: Reparation for Injuries (ICJ, 1949) — international organisations possess objective legal personality
5. Failed as enforcement body but created the institutional template the UN inherited

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Q2. What is the Security Council?

PRIORITY: ★★★ | PART: A | FREQ: 5

What is the Security Council

The Security Council is the principal organ of the United Nations with primary responsibility for the maintenance of international peace and security under Article 24 of the UN Charter, consisting of five permanent members with veto power and ten non-permanent members, with binding enforcement powers under Chapter VII that no other UN organ possesses.

Legal Foundation

Article 23, UN Charter : composition of the Security Council; five permanent members (United States, United Kingdom, France, Russia, China) and ten elected non-permanent members
Article 24, UN Charter : primary responsibility for the maintenance of international peace and security conferred on the Security Council
Article 27, UN Charter : substantive decisions require nine affirmative votes including the concurring votes of all five permanent members
Article 25, UN Charter : all member states agree to accept and carry out Security Council decisions

[!tip] Mnemonic: "CVPBC"
Composition | Voting | Pacific settlement | Binding enforcement | Critique

Composition | Voting | Pacific settlement | Binding enforcement | Critique

Composition

The Security Council consists of 15 members: five permanent members, the United States, the United Kingdom, France, Russia, and China, collectively known as the P5, who hold their seats permanently; and ten non-permanent members elected by the General Assembly for two-year terms on the basis of equitable geographic distribution. The permanent membership reflects the distribution of power among the victorious Allied powers at the end of World War II in 1945. Each member has one representative and one vote; permanent members attend all sessions while non-permanent members rotate out after their two-year terms.

Voting

Voting under Article 27 of the UN Charter follows a two-track system. Procedural matters require nine affirmative votes with no veto available to permanent members. Substantive matters require nine affirmative votes including the concurring votes of all five permanent members: a negative vote by any permanent member on a substantive matter blocks the resolution entirely. This is the veto power. Abstention by a permanent member on a substantive matter is not treated as a veto under the practice of the Council; only an affirmative negative vote constitutes a veto. A double veto arises where a permanent member first vetoes a ruling that a matter is procedural in order to preserve the veto on the substance.

Pacific settlement

Under Chapter VI of the UN Charter, the Security Council may investigate any dispute or situation that might lead to international friction, and may recommend appropriate procedures or methods of adjustment under Article 36. Chapter VI decisions are recommendations, not binding decisions: they invite but cannot compel parties to negotiate, mediate, or seek arbitration. The distinction between Chapter VI recommendations and Chapter VII binding decisions is fundamental to the Council's legal authority; it determines whether member states are legally obligated to comply.

Binding enforcement

Under Chapter VII, Article 39 authorises the Security Council to determine the existence of a threat to the peace, a breach of the peace, or an act of aggression. Once such a determination is made, the Council may call for provisional measures under Article 40, impose non-military measures such as economic sanctions and severance of diplomatic relations under Article 41, and authorise military action under Article 42 if Article 41 measures prove inadequate. Chapter VII decisions are binding on all member states under Article 25, and Article 103 of the UN Charter ensures they prevail over conflicting obligations under any other treaty. This gives the Security Council a law-making and enforcement authority unique in the entire international system.

Critique

The veto power that gives the Security Council its binding authority is also its most significant structural limitation. Each of the five permanent members can block any substantive decision on any matter engaging its interests, and the practice of the Council since 1945 confirms that enforcement has been blocked wherever P5 interests were directly at stake. The Nicaragua v USA (ICJ, 1986) litigation illustrated the structural consequence: the United States used its veto to block Security Council enforcement of the ICJ judgment against it, demonstrating that the enforcement mechanism designed for Article 94 of the UN Charter is inoperative wherever a permanent member is the state against whom enforcement is sought.

[!example]- Case Laws

Certain Expenses of the United Nations (ICJ Advisory Opinion, 1962)

📋 Facts

The United Nations incurred substantial expenses for the United Nations Emergency Force (UNEF) in the Suez and the United Nations Operation in the Congo (ONUC). France and the USSR refused to contribute on the ground that the General Assembly lacked authority to authorise peacekeeping operations; that power belonged exclusively to the Security Council.

🔨 Held
The ICJ held that peacekeeping expenses authorised by the General Assembly are legitimate expenses of the United Nations; the General Assembly has authority to authorise and finance peacekeeping operations; the Security Council does not hold an exclusive monopoly on all UN action for the maintenance of peace.

💡 Principle
The Security Council has primary but not exclusive responsibility for international peace and security; the General Assembly may authorise and finance peacekeeping operations under Article 17, and Chapter VII binding enforcement powers do not exhaust the UN's authority to act.

Nicaragua v USA (ICJ, 1984 and 1986)

📋 Facts
The United States mined Nicaraguan harbours and supported the Contras in operations against the Nicaraguan government. Nicaragua brought proceedings before the ICJ. The United States challenged jurisdiction and then withdrew from the proceedings. When the ICJ delivered judgment against the United States, Nicaragua sought Security Council enforcement under Article 94; the United States vetoed the resolution.

🔨 Held
The ICJ upheld jurisdiction under Nicaragua's optional clause declaration and the United States-Nicaragua Treaty of Friendship; delivered judgment on the merits finding the United States in breach of customary international law; the United States veto blocked Security Council enforcement of the judgment.

💡 Principle
The Security Council veto and the ICJ operate as parallel not hierarchical systems; the Security Council's inability to enforce an ICJ judgment due to a P5 veto is a structural gap in the UN enforcement architecture, not a defect in the ICJ's jurisdiction.

Security Council Primary Responsibility and the Veto Paradox

The Security Council is the UN's sole enforcement organ with binding Chapter VII powers over all member states, making it the apex of international institutional authority; the P5 veto, designed to keep great powers inside the system rather than outside it, has structurally paralysed enforcement wherever permanent member interests are engaged, replicating in a different form the unanimity paralysis that destroyed the League.

Exam Minimum (never skip)

1. Definition: principal UN organ with primary responsibility for peace and security under Art. 24 UN Charter
2. Chapter VII binding powers: Art. 39 determination → Art. 41 sanctions → Art. 42 force
3. P5 veto under Art. 27(3) blocks substantive decisions; abstention ≠ veto
4. One case: Nicaragua v USA (ICJ, 1986) — US vetoed SC enforcement of ICJ judgment, exposing enforcement gap
5. Veto ensures great power participation but structurally paralyses enforcement against P5 interests

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Q3. What is the International Court of Justice?

PRIORITY: ★★★ | PART: A | FREQ: 5

What is the International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations, established under Article 92 of the UN Charter and the Statute of the International Court of Justice 1945, consisting of 15 independent judges elected by the General Assembly and Security Council, with jurisdiction to settle legal disputes between states and to give advisory opinions on legal questions.

Legal Foundation

Article 92, UN Charter : the ICJ is the principal judicial organ of the United Nations; its Statute is an integral part of the Charter
Article 34, ICJ Statute : only states may be parties in contentious cases before the Court
Article 36, ICJ Statute : four bases on which the Court has jurisdiction in contentious cases
Article 38, ICJ Statute : sources of international law the Court applies
Article 59, ICJ Statute : decisions of the Court are binding only between the parties and in respect of that particular case
Article 65, ICJ Statute : advisory opinion jurisdiction

[!tip] Mnemonic: "CJSAE"
Composition | Jurisdiction bases | Sources | Advisory | Enforcement gap

Composition | Jurisdiction bases | Sources | Advisory | Enforcement gap

Composition

The ICJ consists of 15 judges elected by concurrent vote of the General Assembly and the Security Council for staggered nine-year terms, renewable once. Judges sit in their personal capacity as independent jurists, not as representatives of their states; no two judges may be nationals of the same state. Where a party to a contentious case has no national among the 15 sitting judges, it may appoint an ad hoc judge to sit for that case only. The concurrent election mechanism, requiring approval by both the GA and the SC, ensures the bench reflects broad international legal traditions and geographic representation without making judges accountable to any state.

Jurisdiction bases

The ICJ has no compulsory jurisdiction: states must consent before the Court can hear a contentious dispute involving them. Article 36 of the ICJ Statute identifies four bases of jurisdiction. A special agreement, or compromis, where both states agree after a dispute has arisen to submit it to the Court. A treaty clause conferring jurisdiction on the ICJ over disputes arising from the treaty. An optional clause declaration under Article 36(2) whereby a state unilaterally accepts compulsory jurisdiction reciprocally in relation to any other state accepting the same obligation, subject to reservations. Forum prorogatum, where a state not party to a compromis participates in proceedings without contesting jurisdiction, thereby implicitly consenting. The optional clause system is the most significant basis: over 70 states have made declarations, though many carry reservations that significantly limit their scope.

Sources

Article 38 of the ICJ Statute lists the sources of international law the Court applies in deciding contentious cases: international conventions establishing rules expressly recognised by the contesting states; international custom as evidence of a general practice accepted as law; general principles of law recognised by civilised nations; and, as subsidiary means for the determination of rules of law, judicial decisions and the teachings of the most highly qualified publicists. Jus cogens norms, though not listed in Article 38, are recognised as peremptory norms that override all other sources including treaties and customary law. Article 38 is the authoritative enumeration of the sources of international law and is cited across all branches of the subject.

Advisory

The ICJ has advisory jurisdiction under Article 65 of the Statute. The General Assembly, the Security Council, and UN organs and specialised agencies specifically authorised by the General Assembly may request advisory opinions on legal questions. Advisory opinions are not binding: they carry no obligation of compliance. However, in practice they carry substantial legal authority and are routinely treated as authoritative statements of international law by states, courts, and tribunals. The advisory opinion jurisdiction gives the ICJ a law-clarifying role that extends beyond the resolution of bilateral disputes to the development of general international law.

Enforcement gap

Judgments of the ICJ in contentious cases are binding on the parties to that case under Article 59 of the Statute, and Article 94 of the UN Charter requires member states to comply with ICJ judgments. Where a state fails to comply, the other party may have recourse to the Security Council, which may make recommendations or binding decisions on measures to give effect to the judgment. The critical structural gap is that the Security Council enforcement mechanism under Article 94 is subject to the P5 veto: where the non-complying state is a permanent member or is shielded by one, Security Council enforcement is blocked. The United States demonstrated this gap directly when it vetoed Security Council enforcement of the 1986 Nicaragua judgment against it.

[!example]- Case Laws

Corfu Channel Case (UK v Albania, ICJ, 1949)

📋 Facts

Albania and the United Kingdom had a dispute over mines laid in the North Corfu Channel in Albanian territorial waters that damaged British warships. The Security Council recommended that the parties submit the dispute to the ICJ; this was the first contentious case the ICJ decided on the merits.

🔨 Held

The ICJ found Albania internationally responsible for failing to notify of mines in its territorial waters and awarded the United Kingdom compensation of approximately £843,947. Albania did not comply with the judgment for decades, confirming the enforcement gap at the Court's first major test.

💡 Principle

The ICJ has full authority to determine state responsibility and award compensation in contentious proceedings; compliance with judgments depends on state cooperation and Security Council enforcement, not on any direct compulsory mechanism available to the Court itself.

Nicaragua v USA (ICJ, 1986)

📋 Facts

Nicaragua filed an application against the United States alleging violations of customary international law and treaty obligations arising from US support for the Contras and the mining of Nicaraguan harbours. The United States challenged jurisdiction and withdrew from the proceedings before the merits phase.

🔨 Held

The ICJ upheld jurisdiction on the basis of Nicaragua's optional clause declaration and the bilateral Treaty of Friendship; it found the United States in violation of customary international law on the non-use of force, non-intervention, and sovereignty; the United States did not comply with the judgment.

💡 Principle

Optional clause jurisdiction under Article 36(2) is valid and reciprocal; the Court may proceed to judgment even where the respondent withdraws from proceedings; non-compliance with the judgment and the US veto of Security Council enforcement confirmed that the ICJ's authority rests on judicial legitimacy rather than coercive enforcement.

ICJ Jurisdiction as Consent-Based Interstate Adjudication

The ICJ is the UN's principal judicial organ with contentious jurisdiction over interstate disputes requiring state consent and advisory jurisdiction on legal questions; it applies the Article 38 sources catalogue; its judgments are binding inter partes and advisory opinions carry substantial persuasive authority; its structural limitation is the absence of compulsory jurisdiction and the veto-constrained enforcement mechanism under Article 94 of the UN Charter.

Exam Minimum (never skip)

1. Definition: principal judicial organ of the UN under Art. 92 UN Charter, 15 judges, consent-based jurisdiction
2. Four jurisdiction bases: compromis, treaty clause, optional clause Art. 36(2), forum prorogatum
3. Art. 38 sources: treaties, custom, general principles, subsidiary means (judicial decisions + publicists)
4. One case: Nicaragua v USA (ICJ, 1986) — optional clause jurisdiction valid; non-compliance exposed Art. 94 enforcement gap
5. Authority rests on judicial legitimacy, not coercive enforcement; veto blocks Art. 94 compliance mechanism

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Q4. What is the ICC?

PRIORITY: ★★★ | PART: A | FREQ: 3

What is the ICC

The International Criminal Court (ICC) is the world's first permanent international criminal tribunal, established by the Rome Statute 1998 which entered into force in 2002, seated at The Hague, with jurisdiction over genocide, crimes against humanity, war crimes, and the crime of aggression as defined in Articles 5 to 8 of the Rome Statute.

Legal Foundation

Article 5, Rome Statute 1998 : four crimes within the jurisdiction of the ICC
Article 17, Rome Statute 1998 : complementarity principle; ICC acts only when national courts are unwilling or unable to genuinely investigate or prosecute
Article 27, Rome Statute 1998 : irrelevance of official capacity; heads of state and government officials are not immune from ICC jurisdiction
Article 13, Rome Statute 1998 : three trigger mechanisms for ICC jurisdiction

[!tip] Mnemonic: "CTNIA"
Complementarity | Trigger mechanisms | No immunity | Individual | Absent states

Complementarity | Trigger mechanisms | No immunity | Individual | Absent states

Complementarity

Article 17 of the Rome Statute 1998 establishes the ICC as a court of last resort rather than a court of first instance. The ICC may only exercise jurisdiction when the state with primary jurisdiction over the matter is unwilling or unable to genuinely investigate or prosecute. Unwillingness covers situations where the state is shielding the accused from accountability or conducting sham proceedings designed to produce acquittals. Inability covers situations of state collapse, judicial system unavailability, or the absence of a functioning legal infrastructure. Complementarity means that the ICC does not displace national criminal justice systems; it stands behind them as a backstop that activates when they fail or refuse to function.

Trigger mechanisms

Article 13 of the Rome Statute provides three mechanisms by which the ICC's jurisdiction may be triggered. A state party to the Rome Statute may refer a situation on its own territory or involving its nationals to the Prosecutor. The United Nations Security Council may refer a situation under Chapter VII of the UN Charter, which extends ICC jurisdiction to nationals and territory of non-party states, as occurred with the referrals of Darfur in 2005 and Libya in 2011. The Prosecutor may initiate an investigation proprio motu, on the Prosecutor's own initiative, subject to authorisation by a Pre-Trial Chamber. The Security Council referral mechanism gives the ICC reach beyond its treaty membership, though it is subject to the P5 veto.

No immunity

Article 27 of the Rome Statute provides that official capacity is entirely irrelevant to the ICC's jurisdiction: heads of state, heads of government, members of government, parliamentarians, elected representatives, and government officials are all subject to ICC jurisdiction without any exception for official acts or official position. This provision directly reverses the customary international law principle of head of state immunity that historically shielded sitting leaders from foreign criminal prosecution. The principle was confirmed in the ICC's arrest warrant for President Omar Al-Bashir of Sudan, and it places every individual within the ICC's jurisdiction on an equal legal footing regardless of political rank.

Individual

The ICC exercises criminal jurisdiction over natural persons, not states: it prosecutes and sentences individuals. This distinguishes it fundamentally from the ICJ, which adjudicates disputes between states. Conviction requires proof of guilt beyond reasonable doubt of one of the four core crimes. Sentences range up to 30 years imprisonment and may extend to life imprisonment where justified by the extreme gravity of the crime and the individual circumstances of the convicted person. The ICC's focus on individual criminal responsibility embeds the principle that international law reaches through states to hold their agents and officers personally accountable for the most serious crimes known to international law.

Absent states

The ICC's jurisdictional reach is limited by the non-participation of major states. The United States signed the Rome Statute in 2000 but President George W. Bush unsigned it in 2002. Russia signed but withdrew its signature in 2016. China, India, and Israel have not ratified. The absence of these states from the ICC's membership significantly constrains its practical reach: it cannot exercise jurisdiction over nationals of non-party states unless the Security Council refers the situation, and Security Council referrals are subject to the veto power of permanent members including the United States, Russia, and China.

[!example]- Case Laws

Prosecutor v Thomas Lubanga Dyilo (ICC, 2012)
📋 Facts
Thomas Lubanga Dyilo, a militia leader from the Democratic Republic of Congo, was charged with the war crime of conscripting and enlisting children under 15 years of age and using them to participate actively in hostilities between 2002 and 2003. The Democratic Republic of Congo referred the situation to the ICC in 2004 and was found unable to prosecute, satisfying the complementarity threshold.

🔨 Held
The ICC Trial Chamber convicted Lubanga of the war crime of conscripting and enlisting child soldiers under 15, sentencing him to 14 years imprisonment. This was the first conviction delivered by the ICC and confirmed its operational capacity and the complementarity principle in practice.

💡 Principle
The ICC's complementarity principle activates when a state with primary jurisdiction is unable to genuinely prosecute; the first ICC conviction confirmed that the Court functions as an effective backstop to national criminal justice systems when state incapacity is demonstrated.

Pinochet No 3 (R v Bow Street Stipendiary Magistrate ex parte Pinochet Ugarte, House of Lords, 1999)
📋 Facts
Former Chilean head of state Augusto Pinochet was arrested in London on a Spanish extradition request for torture and crimes against humanity committed during his presidency. Pinochet claimed head of state immunity as a former sovereign, arguing his official acts attracted immunity under customary international law.

🔨 Held
The House of Lords held that a former head of state cannot claim immunity for acts of torture that are international crimes under the United Nations Convention Against Torture 1984; torture when used as an instrument of state policy is not a protected official act attracting immunity.

💡 Principle
The principle that heads of state and former officials cannot claim immunity for international crimes predates and is codified by Article 27 of the Rome Statute 1998; Pinochet established in national law what the Rome Statute entrenched at the international level.

ICC as the Apex of Individual Criminal Accountability

The ICC embeds individual criminal accountability at the apex of international law through the complementarity principle, activating as a backstop of last resort when national systems refuse or are unable to genuinely prosecute; Article 27 ensures no official position shields any person from its jurisdiction; and the three trigger mechanisms including Security Council referral give the Court reach that extends beyond its treaty membership, constrained only by the political realities of P5 veto power and non-party state absence.

Exam Minimum (never skip)

1. Definition: first permanent international criminal tribunal, Rome Statute 1998 (in force 2002), four core crimes under Art. 5
2. Complementarity under Art. 17: ICC acts only when states are unwilling or unable to genuinely prosecute
3. Art. 27: official capacity irrelevant — no immunity for heads of state
4. One case: Prosecutor v Lubanga (ICC, 2012) — first ICC conviction; child soldier recruitment as war crime
5. Structural limit: major powers (US, Russia, China, India) absent from membership

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Q5. What is the General Assembly?

PRIORITY: ★★ | PART: A | FREQ: 3

What is the General Assembly

The General Assembly is the principal deliberative organ of the United Nations under Articles 9 to 22 of the UN Charter, composed of all 193 member states each with one vote, with the power to discuss and make recommendations on any matter within the scope of the Charter, subject to the constraint that it may not make recommendations on matters before the Security Council without the Council's request.

Legal Foundation

Article 9, UN Charter : all members of the United Nations are members of the General Assembly; each has one vote
Article 10, UN Charter : the General Assembly may discuss any questions or matters within the scope of the Charter and make recommendations
Article 12, UN Charter : the General Assembly may not make recommendations on a dispute or situation while the Security Council is exercising its functions over it
Article 18, UN Charter : important questions decided by two-thirds majority; other questions by simple majority

[!tip] Mnemonic: "DVRNU"
Democratic principle | Voting | Recommendations | Nature of resolutions | Uniting for Peace

Democratic principle | Voting | Recommendations | Nature of resolutions | Uniting for Peace

Democratic principle

The General Assembly is the most democratically constituted organ of the United Nations: each of the 193 member states has exactly one vote regardless of size, population, territory, or economic power. This one-state-one-vote equality gives the same voting weight to Nauru and China, to San Marino and the United States. The Assembly is the only principal UN organ in which every member state has an equal voice. It functions as the parliament of nations, the global forum in which all member states can deliberate on any matter within the scope of the Charter including questions of international peace, security, development, human rights, and international law.

Voting

Article 18 of the UN Charter divides questions before the General Assembly into two categories. Important questions, which include recommendations on the maintenance of international peace and security, the election of members of other organs, the admission of new members, and the budget, require a two-thirds majority of members present and voting. All other questions are decided by simple majority. There is no veto in the General Assembly: every member votes and the majority prevails. This contrasts sharply with the Security Council where five states hold a structural veto over all substantive decisions.

Recommendations

The General Assembly's power under Article 10 is a power of discussion and recommendation: it may consider any question within the scope of the Charter and make recommendations to members or to the Security Council. It may not make binding decisions except on internal organisational matters such as the budget, the election of members of other organs, and the admission of new members. On substantive matters of international relations, peace, and security, the Assembly's authority is persuasive rather than coercive. This limitation reflects the deliberate design of the Charter: binding enforcement authority was concentrated in the Security Council, not distributed to the plenary body.

Nature of resolutions

General Assembly resolutions are not legally binding on member states as a matter of treaty law. They are recommendations that member states are invited but not required to follow. Their legal significance depends on the subject matter and the circumstances of their adoption. Resolutions adopted by large majorities, consistently over time, and on matters of legal principle can serve as evidence of the formation of customary international law or the authoritative interpretation of Charter obligations. The ICJ in the Nicaragua case drew on General Assembly resolutions on the non-use of force as evidence of customary law, confirming that consistent and representative GA practice carries legal weight even without binding force.

Uniting for Peace

The Uniting for Peace Resolution (Resolution 377, 1950) was adopted during the Korean War as a mechanism for the General Assembly to act when Security Council enforcement is paralysed by a P5 veto. Under the resolution, if the Security Council fails to exercise its primary responsibility due to lack of unanimity among the permanent members in a case where there appears to be a threat to the peace, breach of peace, or act of aggression, the General Assembly may meet in emergency special session within 24 hours and make recommendations including for collective measures up to and including the use of armed force. The resolution has been invoked on several occasions including the Suez Crisis in 1956 and the Congo in 1960.

[!example]- Case Laws

Certain Expenses of the United Nations (ICJ Advisory Opinion, 1962)

📋 Facts

The General Assembly authorised and sought to finance the United Nations Emergency Force in Suez and the United Nations Operation in the Congo through the regular UN budget. France and the Soviet Union refused to contribute, arguing the Assembly lacked authority to authorise peacekeeping operations without Security Council approval.

🔨 Held

The ICJ held that the General Assembly has authority under Article 17 to authorise and finance peacekeeping operations; such expenses are legitimate expenses of the United Nations; the Security Council does not hold exclusive authority over all UN activity relating to peace.

💡 Principle

The General Assembly's authority under Articles 10 and 17 encompasses peacekeeping operations; primary Security Council responsibility does not exhaust UN capacity to act; the GA can exercise concurrent authority in the peace and security field where the SC is unable to act.

Legality of the Threat or Use of Nuclear Weapons (ICJ Advisory Opinion, 1996)

📋 Facts

The General Assembly submitted a question to the ICJ under Article 65 of the ICJ Statute asking whether the threat or use of nuclear weapons is permitted in any circumstance under international law. The request was challenged as falling outside the scope of the Assembly's authorisation to seek advisory opinions.

🔨 Held

The ICJ held the request was within the General Assembly's authority to seek advisory opinions on legal questions and proceeded to give the opinion. The Court found there was no general permission for nuclear weapons use and no comprehensive prohibition, but that their use would generally be contrary to international humanitarian law.

💡 Principle

The General Assembly's authority to request advisory opinions extends to questions of general international law on matters within its competence; the GA plays an active role in developing international law through advisory opinion requests even where its own resolutions on the subject are not binding.

The General Assembly as the UN's Deliberative Forum

The General Assembly is the UN's principal forum for deliberation and norm-setting with one-state-one-vote equality reflecting the sovereign equality of all members, but its resolutions are recommendations rather than binding decisions; the Uniting for Peace Resolution provides a limited procedural bypass when Security Council veto prevents enforcement action, and consistent GA practice on legal questions contributes to the formation of customary international law even without binding force.

Exam Minimum (never skip)

1. Definition: principal deliberative organ of UN under Arts. 9–22, all 193 members, one-state-one-vote
2. Resolutions are recommendations, not binding (except internal matters: budget, elections, admission)
3. Uniting for Peace (Res. 377, 1950): GA may recommend collective measures when SC is paralysed by veto
4. One case: Certain Expenses (ICJ, 1962) — GA has authority to authorise and finance peacekeeping under Art. 17
5. Consistent GA resolutions contribute to formation of customary international law

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Q6. What is the ILO?

PRIORITY: ★★ | PART: A | FREQ: 3

What is the ILO

The International Labour Organization (ILO) is the oldest surviving international organisation, established in 1919 alongside the League of Nations and now a United Nations specialised agency, distinguished by its unique tripartite structure under which governments, employers, and workers each participate directly in standard-setting and governance.

Legal Foundation

ILO Constitution 1919, Preamble : "labour is not a commodity" and universal and lasting peace requires social justice as its foundation
ILO Declaration on Fundamental Principles and Rights at Work 1998 : four core standards binding on all member states regardless of ratification of specific Conventions

[!tip] Mnemonic: "TSFDE"
Tripartite structure | Standards | Four fundamental rights | Declaration | Enforcement

Tripartite structure | Standards | Four fundamental rights | Declaration | Enforcement

Tripartite structure

The ILO's tripartite structure is unique in the entire international system. The International Labour Conference, the ILO's supreme body, includes four delegates from each member state: two government delegates, one employers' delegate, and one workers' delegate. Each delegate votes independently: the workers' and employers' delegates are not bound by the positions of their government delegates, and vice versa. This structure gives both employer organisations and trade unions a direct constitutional voice in the making of international labour standards, distinguishing the ILO from every other international organisation where only governments hold seats at the table.

Standards

The ILO develops international labour standards through two instruments. Conventions are international treaties that are binding on member states that ratify them; ratification creates a legal obligation to bring national law and practice into conformity with the Convention's provisions. Recommendations are non-binding guidelines that provide supplementary direction to member states on policy, legislation, and practice. The ILO has adopted over 190 Conventions and 200 Recommendations since its founding in 1919, covering every aspect of working conditions from hours of work and wages to occupational safety, social security, and migrant workers' rights.

Four fundamental rights

The ILO Declaration on Fundamental Principles and Rights at Work 1998 establishes four fundamental labour rights that are binding on all 187 member states regardless of whether they have ratified the corresponding Conventions. The four rights are: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. By making these four rights binding through membership rather than through ratification, the 1998 Declaration created a floor of minimum labour rights enforceable against all ILO members as a matter of institutional commitment rather than treaty ratification.

Declaration

The Philadelphia Declaration of 1944 redefined the ILO's mandate at the end of World War II, affirming that "labour is not a commodity," that freedom of expression and of association are essential to sustained progress, that poverty anywhere constitutes a danger to prosperity everywhere, and that all human beings have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, economic security, and equal opportunity. The Philadelphia Declaration expanded the ILO's mandate from labour standards into broader social security, employment, and human rights in employment, laying the foundation for the ILO's subsequent work in sustainable development and decent work.

Enforcement

The ILO supervises compliance with its Conventions through a supervisory system that operates through expert review, dialogue, and public scrutiny rather than through coercive enforcement. The Committee of Experts on the Application of Conventions and Recommendations reviews state reports annually. The Conference Committee on the Application of Standards examines specific cases of non-compliance in public sessions at the International Labour Conference. Formal complaints procedures under Articles 24 and 26 of the ILO Constitution permit workers' organisations, employers' organisations, and member states to bring complaints against states for failing to implement ratified Conventions. The ILO has no power to impose sanctions; compliance ultimately depends on political pressure, technical assistance, and the reputational consequences of public identification as a non-compliant state.

[!example]- Case Laws

Attorney General for Canada v Attorney General for Ontario (Privy Council, 1937)

📋 Facts

The Government of Canada ratified several ILO Conventions relating to hours of work and weekly rest in industry. The Provinces of Ontario and others refused to implement the Conventions through provincial legislation, arguing that the subject matter fell within provincial jurisdiction under the British North America Act 1867.

🔨 Held

The Privy Council held that while Canada was internationally bound by the ratified Conventions, implementation in respect of matters of provincial competence required provincial legislation; the federal government could not unilaterally legislate on matters within provincial jurisdiction merely because of an international treaty obligation.

💡 Principle

ILO Conventions create binding international obligations on the ratifying state as a whole; domestic implementation requires legislation in the constitutionally appropriate legislature; in federal states this may require provincial or state action and ratification alone does not transform an ILO Convention into domestic law.

The ILO's Tripartite Architecture and the Limits of Labour Standard Enforcement

The ILO's tripartite structure makes it unique among international organisations by giving workers and employers direct constitutional representation alongside governments in standard-setting; its 1998 Declaration locks four fundamental labour rights into membership obligations binding on all states regardless of ratification; but its enforcement depends on expert review, public scrutiny, and political pressure rather than coercive sanctions, making technical persuasion the primary instrument of compliance.

Exam Minimum (never skip)

1. Definition: oldest surviving international organisation (1919), UN specialised agency, unique tripartite structure
2. Tripartite: government + employers + workers each represented independently in the International Labour Conference
3. 1998 Declaration: four fundamental rights binding on all members regardless of Convention ratification
4. One case: AG Canada v AG Ontario (Privy Council, 1937) — ratification creates international obligation but domestic implementation requires constitutionally appropriate legislature
5. Enforcement through expert review and political pressure, not coercive sanctions

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Q7. What is the WHO?

PRIORITY: ★★ | PART: A | FREQ: 3

What is the WHO

The World Health Organization (WHO) is the directing and coordinating authority on international health within the United Nations system, established by its Constitution which entered into force on 7 April 1948, with 194 member states, headquartered in Geneva, and mandated to attain for all peoples the highest possible level of health.

Legal Foundation

WHO Constitution 1948, Article 1 : the objective of the WHO is the attainment by all peoples of the highest possible level of health
International Health Regulations (IHR) 2005 : binding instrument requiring states to report public health emergencies of international concern and develop core surveillance and response capacities

[!tip] Mnemonic: "MDSAC"
Mandate | Definition of health | Structure | Achievements | Constraints

Mandate | Definition of health | Structure | Achievements | Constraints

Mandate

The WHO's mandate under its Constitution is to act as the directing and coordinating authority on international health work, to assist governments in strengthening health services, to promote health standards, to stimulate the eradication of epidemic and endemic diseases, and to promote mental health. The breadth of the mandate reflects the WHO Constitution's foundational premise that the health of all peoples is fundamental to the attainment of peace and security and depends on the fullest cooperation of individuals and states. Health in the WHO Constitution is not merely a technical or biomedical concept but a prerequisite for international stability and human development.

Definition of health

The WHO Constitution 1948 defines health as a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity. This definition is broader than any clinical or epidemiological definition in use before 1948: it encompasses mental health, social conditions, and positive well-being rather than simply the absence of identifiable pathology. The definition has been both praised as aspirational and criticised as definitionally overreaching, but it has shaped the WHO's mandate to extend beyond disease control into social determinants of health, mental health policy, and the structural conditions that affect population health outcomes globally.

Structure

The WHO operates through three governing bodies. The World Health Assembly is the supreme decision-making body, meeting annually in Geneva with all 194 member states each having one vote; it approves the budget, determines policies, and appoints the Director-General. The Executive Board consists of 34 members technically qualified in the field of health, meeting at least twice a year; it implements Assembly decisions and advises the Assembly. The Secretariat, headed by the Director-General, carries out the organisation's programme of work and is supported by six regional offices covering Africa, the Americas, South-East Asia, Europe, the Eastern Mediterranean, and the Western Pacific.

Achievements

The WHO's most significant achievement is the global eradication of smallpox, certified by the World Health Assembly in 1980, the first and to date only time a human infectious disease has been eradicated through international coordinated action. The WHO developed the International Health Regulations 2005, the binding international framework that requires all member states to report public health emergencies of international concern, develop minimum core surveillance and response capacities, and cooperate with WHO in emergency responses. The IHR 2005 replaced the earlier International Sanitary Regulations 1969 and expanded both the scope of reportable events and the obligations on member states to develop public health infrastructure.

Constraints

The WHO has no coercive authority over sovereign member states. Its directives, guidelines, and normative instruments are authoritative but cannot compel state compliance: the International Health Regulations 2005 are legally binding under Article 22 of the WHO Constitution, which makes regulations adopted by the World Health Assembly binding on members unless they opt out, but enforcement depends on state cooperation. The WHO cannot impose sanctions, conduct independent inspections without invitation, or override sovereign decisions on public health policy. The COVID-19 pandemic exposed the structural gap between the WHO's coordinating mandate and its absence of coercive enforcement authority, particularly in relation to early reporting obligations.

[!example]- Case Laws

Reparation for Injuries Suffered in the Service of the United Nations (ICJ Advisory Opinion, 1949)

📋 Facts

The ICJ was asked whether the United Nations possessed the capacity to bring an international claim against a state responsible for injury to a UN agent. The question required the Court to determine whether an international organisation could hold legal personality under international law independently of its member states.

🔨 Held

The ICJ held that the United Nations is an international person with objective legal personality; it possesses international rights and duties and has capacity to maintain its rights by bringing international claims. This reasoning applies equally to all international organisations including the WHO, confirming their capacity to enter treaties, hold property, and act independently in the international legal order.

💡 Principle

Specialised agencies of the United Nations including the WHO possess objective international legal personality by virtue of their founding treaties, their international responsibilities, and the conduct of their member states; their legal capacity to act in the international legal order is independent of and not reducible to the personality of their individual member states.

WHO as the Directing Authority on Global Health Without Coercive Power

The WHO is the global coordinating and directing authority on international health with a constitutionally mandated objective of the highest possible level of health for all peoples and achievements ranging from smallpox eradication to the binding International Health Regulations 2005; its structural constraint is the absence of coercive enforcement authority over sovereign members, making political will and technical persuasion the instruments on which global health governance ultimately depends.

Exam Minimum (never skip)

1. Definition: UN specialised agency (Constitution 1948), directing authority on international health, 194 members
2. Health defined as "complete physical, mental, and social well-being" — broader than absence of disease
3. IHR 2005 binding under Art. 22 WHO Constitution; states must report public health emergencies of international concern
4. One case: Reparation for Injuries (ICJ, 1949) — specialised agencies like WHO possess objective international legal personality
5. No coercive enforcement: compliance depends on political will and technical cooperation

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Q8. What is UNESCO?

PRIORITY: ★★★ | PART: A | FREQ: 5

What is UNESCO

UNESCO (United Nations Educational, Scientific and Cultural Organization) is a specialised agency of the United Nations established in 1945 to promote international collaboration through education, science, culture, and communication in order to further universal respect for justice, the rule of law, and human rights, with its constitution entering into force on 4 November 1946.

Legal Foundation

Constitution of UNESCO, 1945 : establishes the organisation and its mandate for peace through intellectual cooperation
Article 57, UN Charter : specialised agencies established by intergovernmental agreement with wide international responsibilities in economic, social, cultural, educational, and health fields
Article 63, UN Charter : ECOSOC may coordinate activities of specialised agencies through consultation and recommendations

[!tip] Mnemonic: "SCOPE"
Structure | Culture | Operations | Peace | Education

Structure | Culture | Operations | Peace | Education

Structure

UNESCO operates through three principal organs: the General Conference, which meets biennially and comprises all member states with each having one vote; the Executive Board, consisting of 58 members elected by the General Conference, which supervises programme implementation between conferences; and the Secretariat, headed by the Director-General appointed for a four-year term. UNESCO's headquarters are in Paris, and it maintains field offices and national commissions in member states to implement programmes locally.

Culture

UNESCO's cultural mandate encompasses the protection of cultural heritage through the World Heritage Convention 1972, which establishes a list of natural and cultural sites of outstanding universal value; the Convention for the Safeguarding of Intangible Cultural Heritage 2003; and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005. These instruments impose obligations on states to identify, protect, conserve, and transmit cultural heritage to future generations, creating an international legal framework for heritage protection.

Operations

UNESCO's operational programmes cover five principal sectors: education, including the Education for All initiative and literacy programmes; natural sciences, including the Man and the Biosphere Programme and oceanographic research; social and human sciences, including bioethics and human rights philosophy; culture, including heritage protection and cultural diversity; and communication and information, including press freedom and media development. UNESCO designates biosphere reserves, geoparks, and creative cities in addition to World Heritage sites.

Peace

UNESCO's founding premise, stated in the preamble to its Constitution, is that "since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed." This intellectual foundation distinguishes UNESCO from other specialised agencies: its mandate is to build peace through education, science, and culture rather than through economic development or health intervention. The organisation promotes intercultural dialogue, freedom of expression, and the free flow of ideas as foundations of lasting peace.

Education

Education is UNESCO's largest programme sector. The organisation led the Education for All movement, coordinates the Sustainable Development Goal 4 (quality education), monitors global education progress through the Global Education Monitoring Report, and establishes international standards through recommendations and conventions on the recognition of qualifications, academic mobility, and the status of teachers. UNESCO's education work extends from early childhood to higher education and includes technical and vocational education, literacy, and adult learning.

[!example]- Case Laws

Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of Genocide (ICJ, 1951)

📋 Facts

The Genocide Convention 1948, developed through international cooperation facilitated by the UN system including its specialised agencies, generated questions about the permissibility of reservations. UNESCO's intellectual cooperation mandate influenced the normative environment in which such multilateral conventions developed.

🔨 Held

The ICJ established the object-and-purpose test for treaty reservations, confirming that international organisations and their conventions operate within a legal framework that maximises participation while protecting core norms.

💡 Principle

Specialised agencies like UNESCO contribute to the normative framework of international law through convention development and standard-setting; the legal regime governing such conventions reflects the object-and-purpose principle.

UNESCO as the Intellectual Foundation of the UN System

UNESCO is the specialised agency responsible for building peace through intellectual cooperation: education, science, culture, and communication. Its World Heritage Convention and education programmes represent its most visible operational contributions, while its founding principle that peace must be built in the minds of people through knowledge and cultural exchange distinguishes it as the normative and intellectual agency within the broader UN system.

Exam Minimum (never skip)

1. Definition: UN specialised agency (1945, in force 1946), promotes peace through education, science, culture, and communication
2. "Wars begin in the minds of men" — peace built through intellectual cooperation, not enforcement
3. World Heritage Convention 1972 + Intangible Cultural Heritage Convention 2003 create binding heritage obligations
4. One case: Reservations to Genocide Convention (ICJ, 1951) — object-and-purpose test for treaty reservations developed in normative environment shaped by specialised agencies
5. Largest programme sector is education; coordinates SDG 4 (quality education)

Q9. What is the IMF?

PRIORITY: ★★ | PART: A | FREQ: 2

What is the IMF

The International Monetary Fund (IMF) is a specialised agency of the United Nations system established by the Bretton Woods Agreement of 1944, operational from 1945, to promote international monetary cooperation, exchange rate stability, balanced growth of international trade, and to provide financial assistance to member states facing balance of payments difficulties.

Legal Foundation

Articles of Agreement of the IMF, 1944 : constitutive treaty establishing the fund's purposes, governance, and operations
Article 57, UN Charter : specialised agencies connected with the UN by agreement
Bretton Woods Agreements Act (various domestic implementing statutes)

[!tip] Mnemonic: "SQSCL"
Stability | Quota | Surveillance | Conditionality | Lending

Stability | Quota | Surveillance | Conditionality | Lending

Stability

The IMF's primary purpose is the promotion of exchange rate stability and orderly exchange arrangements among its member states to avoid competitive currency depreciation. The fixed exchange rate system originally established at Bretton Woods collapsed in 1971, but the IMF continues to exercise surveillance over exchange rate policies to prevent manipulation and to maintain the stability necessary for international trade and investment.

Quota

Each member state is assigned a quota based on its relative position in the world economy, determining its financial contribution to the Fund, its voting power in Fund governance, and its access to Fund resources in times of need. Quotas are reviewed periodically and adjusted to reflect changes in the global economy. The quota system means the IMF is not a one-state-one-vote institution: voting power is weighted toward the largest contributors, with the United States holding the largest single share.

Surveillance

The IMF exercises bilateral surveillance over the economic and financial policies of each member state through annual Article IV consultations, and multilateral surveillance over the global economic system through publications including the World Economic Outlook. Surveillance is the IMF's non-lending function: it provides policy advice, identifies vulnerabilities, and recommends corrective measures without requiring the member to borrow from the Fund.

Conditionality

When a member state borrows from the IMF, the lending is subject to conditionality: the borrower commits to implementing specific policy reforms designed to address the underlying balance of payments problem and restore the member's capacity to repay. Conditionality programmes typically require fiscal adjustment, monetary tightening, structural reforms, and trade liberalisation. The conditionality requirement has been extensively criticised for imposing austerity measures that harm developing populations, but the IMF maintains it is necessary to ensure repayment capacity and prevent moral hazard.

Lending

IMF lending facilities include Stand-By Arrangements for short-term balance of payments crises, Extended Fund Facilities for longer-term structural problems, the Poverty Reduction and Growth Trust for low-income countries, and emergency financing facilities. The IMF lends from its pool of member contributions rather than from capital markets, making it a cooperative institution rather than a commercial bank. Repayment is expected within specified timeframes and carries interest (surcharges for large borrowings).

[!example]- Case Laws

Bretton Woods System Practice
📋 Facts
The Bretton Woods conference of 1944 established the IMF alongside the World Bank to govern the post-war international monetary system. The system operated a fixed exchange rate regime pegged to the US dollar, which was itself convertible to gold at $35 per ounce.

🔨 Held
The fixed exchange rate system collapsed in 1971 when the United States unilaterally suspended gold convertibility (the Nixon Shock), leading to the current system of managed floating exchange rates overseen by IMF surveillance.

💡 Principle
The IMF's role evolved from managing a fixed exchange rate system to exercising surveillance over a floating rate system; the institution adapted its functions to changed circumstances while retaining its core mandate of monetary stability and crisis lending.

IMF as the Guardian of International Monetary Stability

The IMF promotes exchange rate stability, provides balance of payments support through conditional lending, and exercises surveillance over global economic policies. Its weighted voting structure reflects economic power rather than sovereign equality, distinguishing it from one-state-one-vote organisations, and its conditionality requirement remains its most controversial operational feature.

Exam Minimum (never skip)

1. Definition: UN specialised agency, Bretton Woods Agreement 1944, promotes monetary cooperation and exchange rate stability
2. Weighted voting based on quota (economic power), not one-state-one-vote sovereign equality
3. Conditionality: borrowers must implement policy reforms (fiscal adjustment, structural reform) as condition of lending
4. One case: Bretton Woods system practice — fixed rate collapsed 1971 (Nixon Shock); IMF adapted to surveillance of floating rates
5. Lender of last resort for balance of payments crises; conditionality remains most controversial feature

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Q10. What is the Veto? Explain the Double Veto.

PRIORITY: ★★ | PART: A | FREQ: 3

What is the Veto

The veto is the power of any of the five permanent members of the United Nations Security Council (P5: USA, UK, France, Russia, China) to block any substantive resolution by casting a negative vote, regardless of the support of the other fourteen Council members, as provided in Article 27(3) of the UN Charter.

Legal Foundation

Article 27(3), UN Charter : decisions on non-procedural matters require nine affirmative votes including the concurring votes of all permanent members
Article 27(2), UN Charter : decisions on procedural matters require nine affirmative votes only; no veto available

[!tip] Mnemonic: "VAPDA"
Veto power | Abstention | Procedural | Double veto | Abuse

Veto power | Abstention | Procedural | Double veto | Abuse

Veto power

The veto power under Article 27(3) of the UN Charter requires that all substantive decisions of the Security Council receive the concurring votes of all five permanent members. A single negative vote by any permanent member on a substantive matter defeats the resolution regardless of how many other members support it. This power was the price demanded by the great powers at the San Francisco Conference in 1945 for their participation in the United Nations; without it, they would not have joined.

Abstention

Abstention by a permanent member does not constitute a veto. The practice has been settled since the early years of the UN that a permanent member may abstain on a substantive vote without blocking its adoption. The Legal Consequences for States of the Continued Presence of South Africa in Namibia Advisory Opinion (ICJ, 1971) confirmed that abstention is not treated as a negative vote for purposes of Article 27(3). This settled practice means permanent members can signal disapproval without blocking action.

Procedural

Article 27(2) of the UN Charter governs procedural decisions: these require only nine affirmative votes with no veto power available. No permanent member can block a procedural decision. The critical question is therefore whether a matter is procedural or substantive, because the classification determines whether the veto applies.

Double veto

The double veto arises because the preliminary question — whether a matter is procedural or substantive — is itself treated as a substantive question subject to the veto. A permanent member can first veto the classification of a matter as procedural (thereby preventing it from being decided by simple majority), and then veto the substantive resolution itself. The effect is that a permanent member exercises the veto twice: once to prevent the procedural classification and once to block the substantive decision. This practice, confirmed at the San Francisco Conference through the Statement of the Four Sponsoring Governments (1945), significantly expands the blocking power of permanent members beyond the text of Article 27.

Abuse

The veto has been exercised over 300 times since 1945, frequently in circumstances where the Security Council might otherwise have acted to prevent or respond to serious threats to international peace. The most significant examples include the US veto of enforcement of the Nicaragua v USA judgment (1986), multiple Russian vetoes on Syria (2011–2020), and US vetoes on resolutions concerning Palestine. UNGA Resolution 76/262 (2022) now requires the General Assembly to meet whenever a veto is cast, creating a political accountability mechanism without formally limiting the veto itself.

[!example]- Case Laws

Legal Consequences for States of the Continued Presence of South Africa in Namibia (Advisory Opinion, ICJ, 1971)

📋 Facts

The Security Council adopted Resolution 276 (1970) declaring South Africa's continued presence in Namibia illegal. The resolution was adopted despite the abstention of permanent members France and the UK, raising the question whether abstention by a permanent member constitutes a veto.

🔨 Held

The ICJ confirmed that the consistent practice of the Security Council treated abstention by a permanent member as not constituting a veto; the resolution was validly adopted.

💡 Principle

Abstention by a permanent member does not constitute a negative vote under Article 27(3); this settled practice confirms that the veto requires an express negative vote, not mere non-participation.

Veto and Double Veto: The Price of Great Power Participation

The veto is the mechanism that ensures no enforcement action is taken against the interests of any permanent member, making it simultaneously the Security Council's most powerful feature and its greatest structural limitation. The double veto extends this power by subjecting the preliminary procedural/substantive classification to the veto itself, and no reform proposal to date has secured the political consensus needed to amend Article 27.

Exam Minimum (never skip)

1. Definition: P5 power to block any substantive SC resolution by negative vote under Art. 27(3) UN Charter
2. Double veto: preliminary question (procedural vs substantive) is itself substantive and subject to veto
3. Abstention ≠ veto — settled practice since early UN years; confirmed by ICJ in Namibia advisory opinion
4. One case: Namibia Advisory Opinion (ICJ, 1971) — abstention by permanent member does not constitute a negative vote under Art. 27(3)
5. Veto exercised 300+ times; UNGA Res. 76/262 (2022) creates political accountability but no formal limit

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