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PIL | Unit 1 | Part C

Scenario and Problem-Based Answers

Q1. A diplomat from State X is accused of committing a serious crime in State Y but claims diplomatic immunity under the Vienna Convention on Diplomatic Relations, 1961. State Y wants to prosecute the diplomat. Whether diplomatic immunity allows the diplomat to avoid prosecution in the host country? Discuss.

PRIORITY: ★★★ | PART: C | FREQ: 9

Issue

Whether a diplomatic agent accused of a serious crime in the receiving state can be prosecuted there, or whether immunity under the Vienna Convention on Diplomatic Relations (VCDR) 1961 operates as an absolute bar regardless of the gravity of the offence. The question turns on the interplay between functional immunity under Article 31 and the receiving state's sovereign interest in prosecuting offences committed on its territory. The practical significance lies in determining what remedies remain available to the receiving state when immunity bars prosecution.

Rule

Article 31, VCDR 1961 grants diplomatic agents complete immunity from the criminal jurisdiction of the receiving state. The immunity is absolute in criminal proceedings: no arrest, no detention, no prosecution, regardless of the gravity of the offence. Article 32(1), VCDR 1961 confirms the immunity belongs to the sending state, not the diplomat personally, and under Article 32(2) any waiver must be express. The rationale is functional: diplomatic immunity exists to secure the unimpeded performance of diplomatic functions, not to protect individuals from personal accountability.

Application

The diplomat qualifies as a diplomatic agent under Article 1, VCDR. State Y is the receiving state. Article 31 bars State Y from initiating criminal proceedings. The gravity of the crime does not create an exception: Article 31 draws no distinction between minor infractions and serious offences. State Y's desire to prosecute does not override a treaty obligation it accepted by ratifying the VCDR. The ICJ confirmed in the Arrest Warrant Case (Democratic Republic of Congo v Belgium, ICJ, 2002) that immunity applies regardless of the gravity of the offence, including international crimes such as war crimes and crimes against humanity.

Exception

Three routes exist, none of which State Y can trigger unilaterally.

First, Article 32 waiver: State X may expressly waive immunity, after which State Y may prosecute. The waiver must be express; a diplomat's voluntary appearance in court does not constitute waiver.
Second, Article 9 expulsion: State Y may declare the diplomat persona non grata, compelling recall to State X. Under Article 31(4), State X retains jurisdiction over its own diplomat and may prosecute domestically.
Third, post-tenure liability: once the diplomat's posting ends, immunity does not extend to private acts committed during the posting. Prosecution by State Y becomes available for acts outside official functions after the diplomat departs.

Conclusion

State Y cannot prosecute the diplomat while immunity subsists. Its lawful remedies are confined to requesting an express waiver from State X or declaring the diplomat persona non grata under Article 9. Immunity under the VCDR is a jurisdictional bar on the receiving state, not an absolution of the underlying conduct. Prosecution is available only with State X's consent or after the posting ends.

[!example]- Case Laws

Arrest Warrant Case (Democratic Republic of Congo v Belgium, International Court of Justice (ICJ), 2002)
📋 Facts
Belgium issued an international arrest warrant against the sitting Foreign Minister of the DRC for alleged war crimes and crimes against humanity. The DRC challenged the warrant as a violation of immunity rules under international law.

🔨 Held
The ICJ held the warrant violated international law: serving ministers and diplomats enjoy full immunity from criminal jurisdiction in foreign states regardless of the gravity of the alleged offence.

💡 Principle
Immunity is a jurisdictional bar that operates independently of the seriousness of the offence; the receiving state has no authority to prosecute even for international crimes while the diplomat is serving.

R v Bow Street Metropolitan Stipendiary Magistrate ex parte Pinochet (No 3) (House of Lords (HL), United Kingdom, 1999)
📋 Facts
General Pinochet was arrested in the United Kingdom on a Spanish extradition warrant for torture committed during his rule. He claimed immunity as a former head of state. The HL drew a distinction between serving and former officials.

🔨 Held
The HL held that former officials cannot claim immunity for acts constituting jus cogens violations such as torture, but confirmed that serving diplomats and ministers retain full immunity during their term.

💡 Principle
Immunity is status-based and operative during incumbency; the receiving state's prosecution window opens only after the posting concludes and only for acts outside official functions.

Diplomatic Immunity as a Jurisdictional Bar, Not an Absolution

Article 31 of the VCDR 1961 ties State Y's hands: no prosecution without State X's express waiver. The remedy is diplomatic, not judicial.

Q2. Mr. A, a member of a political group belonging to State of Nippon who is accused of having murdered the Head of the State, flew to the State of Indobal. State of Nippon has requested Indobal to extradite Mr. A. There exists a treaty of extradition between the States. Discuss whether Mr. A can be extradited.

PRIORITY: ★★★ | PART: C | FREQ: 8

Issue

Whether Mr. A can be extradited from Indobal to Nippon for the murder of a Head of State, where an extradition treaty exists between the two states, and whether the political offence exception applies to shield him from surrender.

Rule

Extradition is the formal surrender by one state of a person present in its territory to another state that seeks to prosecute or punish that person for an offence committed within the requesting state's jurisdiction. Where a bilateral treaty exists, its terms govern. The foundational conditions are: double criminality (the act must be an offence in both states), the offence must be listed as extraditable in the treaty, and the political offence exception must not apply. The political offence exception shields persons who commit offences of a political character, typically acts directed at overthrowing or destabilising a government, from compulsory surrender. However, the attentat clause, present in most modern extradition treaties including those modelled on the European Convention on Extradition 1957, expressly excludes the murder or attempted murder of a Head of State from the political offence exception.

Application

Murder satisfies double criminality: it is a serious criminal offence in both Nippon and Indobal. A treaty exists, removing the threshold objection that extradition requires a treaty basis. Mr. A's membership of a political group does not automatically make his act a political offence; the character of the act governs, not the character of the actor. The act directed against the Head of State personally falls squarely within the attentat clause: it is excluded from the political offence exception regardless of the political motivation behind it. The burden shifts to Mr. A to establish a ground for refusal; on the primary question of the political offence exception, the attentat clause resolves the matter against him.

Exception

Mr. A may resist extradition on three remaining grounds.

First, if the Nippon-Indobal treaty does not contain the attentat clause, Mr. A may argue the act was political in character and claim the exception. This turns on the treaty's text.
Second, if there is a real risk that Mr. A will not receive a fair trial or will face torture in Nippon, Indobal may refuse under the non-refoulement principle embedded in Article 3 of the United Nations Convention Against Torture (UNCAT) 1984.
Third, if Mr. A is a national of Indobal, some treaty regimes permit refusal of extradition of own nationals subject to an obligation to prosecute domestically under the aut dedere aut judicare principle.

Conclusion

Mr. A can be extradited. Double criminality is met, a treaty exists, and the murder of a Head of State is excluded from the political offence exception by the attentat clause. Extradition is available unless Indobal's specific treaty text lacks the attentat clause, or Mr. A can establish a non-refoulement ground. On the facts as given, Nippon's extradition request should succeed.

[!example]- Case Laws

Re Meunier (Queen's Bench Division (QBD), 1894)
📋 Facts
Meunier, an anarchist, sought refuge in England after committing bomb attacks in France. France requested extradition. He argued the offences were political in character.

🔨 Held
The QBD held the offences were not political: a political offence requires a struggle between two organised parties each seeking to impose its political will. Acts of pure destruction directed against persons of authority do not qualify.

💡 Principle
The political offence exception requires a genuine political contest between organised groups; indiscriminate violence against persons of authority does not attract the exception.

Factor v Laubenheimer (United States Supreme Court, 1933)
📋 Facts
Factor was held in the United States on a British extradition request for fraudulently receiving money in London. He challenged extradition arguing the specific offence charged was not a crime under Illinois law where he was found.

🔨 Held
The Supreme Court upheld extradition, holding that double criminality is satisfied where the underlying conduct is criminal in both states, applying a broad conduct-based test rather than requiring exact identity of the offence designation.

💡 Principle
Double criminality is assessed on the basis of the underlying conduct, not the technical label of the charge; the act need only be punishable in both jurisdictions for extradition to proceed.

The Attentat Clause as the Limit of the Political Offence Exception

Murder of a Head of State sits outside the political offence exception. The attentat clause draws that line expressly: political context does not immunise the killing of a sovereign.

Q3. State Z is split into two new States A and B. State Z was a Member of the United Nations Organisation. Discuss the UN membership status of the newly formed States.

PRIORITY: ★★★ | PART: C | FREQ: 5

Issue

Whether States A and B automatically inherit United Nations (UN) membership from predecessor State Z upon its dissolution into two separate successor states, or whether each must apply for fresh membership under Article 4 of the UN Charter. The question engages the broader principle of whether international organisational membership is a personal attribute of the predecessor state that perishes with it, or a territorial attribute that follows the successor. The practical consequence determines whether the newly formed states can immediately participate in UNGA proceedings or must first go through the admission process.

Rule

UN membership is governed by Articles 3 and 4 of the Charter of the United Nations (UN Charter) 1945. Article 3 recognises original members. Article 4(1) requires that new members be peace-loving states that accept the obligations of the Charter and are able and willing to carry them out. Admission under Article 4 requires a recommendation by the United Nations Security Council (UNSC) and a two-thirds vote of the United Nations General Assembly (UNGA). There is no automatic succession to UN membership: the UN treats each state as a separate legal personality, and the dissolution of a predecessor does not transfer membership to successor states as of right. The controlling precedent is the dissolution of the former USSR in 1991, where Russia was recognised as the continuator state and retained the USSR's seat, while the remaining fourteen republics each applied independently under Article 4.

Application

State Z has dissolved entirely into States A and B: it is not a case of partial secession where the predecessor survives. Neither State A nor State B is the continuator of State Z in the legal sense because Z ceases to exist. The USSR-Russia model is unavailable: that model applied only because Russia was recognised as the continuator, retaining Z's legal personality. Where dissolution is complete and no continuator is identified, both successors stand as new states. Both States A and B must apply under Article 4 and follow the standard admission procedure.

Exception

Two qualifications apply.

First, if the international community and the UNSC recognise one of the two states as the continuator of State Z's legal personality, that state may retain Z's seat without fresh application. This is a political determination, not an automatic legal entitlement, and it requires broad recognition. The remaining state still applies under Article 4.
Second, the practical admission process is not a blank slate: the UNSC and UNGA will consider whether the applicant state accepts the Charter obligations previously undertaken by State Z, including treaty obligations, and whether it meets the Article 4(1) criteria of being peace-loving and capable of performing Charter duties.

Conclusion

Neither State A nor State B inherits Z's UN membership automatically. Both must apply under Article 4, securing a UNSC recommendation and a two-thirds UNGA vote. If one is recognised as Z's legal continuator, it retains the seat; the other still applies independently. On the facts as given, where Z splits into two equal successors, both states must go through the Article 4 admission process.

[!example]- Case Laws

Conditions for Admission of a State to the United Nations (Advisory Opinion, International Court of Justice (ICJ), 1948)
📋 Facts
The UNGA requested an advisory opinion on whether a member state, when voting on an application for UN membership, is entitled to make admission conditional on factors beyond those in Article 4(1) of the UN Charter.

🔨 Held
The ICJ held that the conditions in Article 4(1) are exhaustive: a member state cannot impose additional political conditions on an applicant beyond those specified in the Charter.

💡 Principle
Article 4 conditions are exhaustive and legally binding on all members voting on admission; UN membership is a legal status, not a political concession.

Competence of the General Assembly for the Admission of a State to the United Nations (Advisory Opinion, ICJ, 1950)
📋 Facts
The question arose whether the UNGA could admit a new member without a prior UNSC recommendation, where the UNSC had been blocked by a veto.

🔨 Held
The ICJ held that the UNGA cannot admit a new member without a prior UNSC recommendation; both organs must act and neither can substitute for the other.

💡 Principle
UN admission requires both UNSC recommendation and UNGA approval; a veto in the UNSC is a structural bar that the UNGA cannot bypass.

UN Membership as a Status Earned, Not Inherited

Dissolution of a predecessor state extinguishes its membership. Successor states earn UN membership through Article 4, not through succession. The continuator exception is narrow and politically determined, not legally automatic.

Q4. Country M launched an object into space. A portion of the object fell onto the territory of State N, causing loss of lives and property. Is Country M legally responsible for the losses suffered by State N?

PRIORITY: ★★★ | PART: C | FREQ: 5

Issue

Whether Country M bears international legal responsibility for damage caused by a space object falling onto the territory of State N, and on what standard of liability that responsibility is assessed. The question requires identification of the applicable liability regime and whether absolute or fault-based liability governs surface damage. The practical significance is that the choice of standard determines whether State N must prove negligence or merely establish causation.

Rule

Space liability is governed by the Convention on International Liability for Damage Caused by Space Objects (Liability Convention) 1972, which supplements the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space (Outer Space Treaty) 1967. Article II of the Liability Convention 1972 imposes absolute liability on a launching state for damage caused by its space object on the surface of the Earth or to aircraft in flight. Absolute liability means liability without proof of fault: the claimant state need only establish that the damage occurred and that the defendant state's space object caused it. Article I defines "launching state" to include the state that launches, procures the launch, or from whose territory the object is launched. Article III imposes a fault-based standard for damage caused in outer space rather than on the Earth's surface.

Application

The damage occurred on the surface of State N's territory. Article II applies directly: surface damage triggers absolute liability. Country M is the launching state. State N suffered loss of lives and damage to property. State N is not required to prove negligence or intent on Country M's part. The claim is established by proof of the causal link between Country M's space object and the damage on State N's territory. The Cosmos 954 incident (1978), where a Soviet nuclear-powered satellite fell on Canadian territory, confirmed that Article II absolute liability applies to surface damage regardless of the technical cause of the re-entry.

Exception

Two qualifications may limit or extinguish Country M's liability.

First, Article VI of the Liability Convention provides a complete defence where the damage results wholly from the gross negligence or intentional act of the claimant state. If State N contributed to or caused the damage, Country M's liability may be reduced or negated proportionally.
Second, the Liability Convention applies only where both states are parties to it or where the applicable customary rule is invoked. If Country M is not a party, State N must rely on the general customary obligation of state responsibility for internationally wrongful acts, which requires proof of fault rather than imposing absolute liability.

Conclusion

Country M is absolutely liable under Article II of the Liability Convention 1972 for the loss of lives and property damage caused by its space object on State N's territory. State N need not prove fault. Country M's liability is extinguished only if the damage was wholly caused by State N's own gross negligence or intentional conduct. On the facts, Country M owes reparation to State N for all surface damage caused.

[!example]- Case Laws

Cosmos 954 Claim (Canada v USSR, 1979)
📋 Facts
A Soviet nuclear-powered satellite, Cosmos 954, re-entered the atmosphere in 1978 and scattered radioactive debris across Canadian territory in the Northwest Territories. Canada filed a formal claim against the USSR under the Liability Convention 1972 for clean-up costs and damages.

🔨 Held
The USSR settled the claim by paying CAD 3 million to Canada, effectively acknowledging liability for surface damage under Article II without contesting the absolute liability standard.

💡 Principle
Article II absolute liability for surface damage caused by a space object is operative regardless of the technical cause of re-entry; the launching state pays without proof of fault.

Chorzow Factory Case (Germany v Poland, Permanent Court of International Justice (PCIJ), 1928)
📋 Facts
Poland expropriated a German-owned factory in breach of an international convention. Germany claimed full reparation before the PCIJ.

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

💡 Principle
The standard of full reparation applies to all internationally wrongful acts; Country M's reparation obligation to State N extends to the full value of lives lost and property destroyed.

Absolute Liability as the Ground Rule for Surface Damage from Space Objects

Article II of the Liability Convention 1972 removes fault from the equation for surface damage. Country M launched; the object fell; State N suffered. Liability follows without further inquiry.

Q5. X, a person, had been granted asylum in a warship by its captain. Decide the legal position.

PRIORITY: ★★ | PART: C | FREQ: 4

Issue

Whether a warship has the legal authority under international law to grant asylum to a civilian who seeks refuge aboard it, and whether that asylum is binding on the territorial state in whose waters the warship is located. The question engages the distinction between the warship's sovereign immunity, which protects the vessel from interference, and the legal status of persons who board it seeking protection from local authorities.

Rule

Diplomatic asylum, the grant of refuge by a state's official premises or vessels to persons fleeing the jurisdiction of the territorial state, is not recognised as a right under general international law. It exists only where a specific regional treaty or bilateral agreement expressly grants it. The Asylum Case (Colombia v Peru, International Court of Justice (ICJ), 1950) confirmed that no general customary right of diplomatic asylum exists. A warship, though entitled to sovereign immunity under customary international law and Article 32 of the United Nations Convention on the Law of the Sea (UNCLOS) 1982, exercises that immunity over its own internal affairs: it does not become a legal sanctuary that the territorial state is obliged to respect in relation to persons who board it to escape local law. The captain of a warship has no authority under international law to grant asylum on behalf of the state; asylum is a state-level act governed by treaty or executive decision, not a vessel-level operational decision.

Application

X sought refuge aboard the warship and the captain granted it. The warship enjoys sovereign immunity: the territorial state cannot board it without consent. However, sovereign immunity protects the warship from interference, it does not create a legally enforceable asylum status for X. The territorial state is entitled to demand that X be surrendered or that the warship depart. The captain's grant of asylum has no legal validity under general international law: no treaty confers this authority, and no customary rule supports it. If the warship is located in the territorial waters of the state from which X is fleeing, the territorial state may require the warship to leave, with X aboard, but acquires no right to board and extract X by force while sovereign immunity subsists.

Exception

Two limited qualifications exist.

First, if a specific regional treaty or bilateral agreement between the flag state of the warship and the territorial state expressly grants asylum rights to warships, the captain's act may be valid under that treaty framework. The Havana Convention on Asylum 1928 and the Montevideo Convention on Political Asylum 1933 establish such a framework among Latin American states: diplomatic asylum, including aboard warships, is recognised between signatory states.
Second, in extreme cases where X faces imminent persecution amounting to a risk to life, the flag state may invoke humanitarian grounds to retain X temporarily, though this is not a recognised legal entitlement and depends on diplomatic negotiation rather than legal right.

Conclusion

The captain's grant of asylum has no legal force under general international law. The warship's sovereign immunity protects it from forced boarding but does not compel the territorial state to recognise X's asylum status. The territorial state may demand X's surrender or require the warship to depart. If no regional treaty applies, X acquires no enforceable asylum right, and the flag state has no legal obligation to protect X beyond what diplomacy and humanitarian practice may produce.

[!example]- Case Laws

Asylum Case (Colombia v Peru, ICJ, 1950)
📋 Facts
Colombia granted diplomatic asylum in its embassy in Lima to a Peruvian national accused of political offences. Colombia claimed a regional Latin American custom entitled it to unilaterally qualify the offence and grant asylum. Peru denied this right and demanded surrender.

🔨 Held
The ICJ held that Colombia had not established a consistent and uniform regional custom conferring a unilateral right to qualify the offence and grant asylum; no general right of diplomatic asylum exists in international law.

💡 Principle
Diplomatic asylum, including aboard vessels, exists only where a specific treaty provides for it; no general customary right of diplomatic or warship asylum is recognised under international law.

Haya de la Torre Case (Colombia v Peru, ICJ, 1951)
📋 Facts
Following the Asylum Case ruling, Colombia asked the ICJ whether it was obliged to surrender Haya de la Torre to Peru despite having granted him asylum in its embassy.

🔨 Held
The ICJ held that Colombia was not obliged to surrender de la Torre but also had no legal right to continue the asylum indefinitely; the matter required a negotiated solution between the parties.

💡 Principle
Where no treaty governs, diplomatic asylum produces a diplomatic impasse rather than a legally enforceable right on either side; neither the asylum nor the demand for surrender has absolute legal force.

Warship Asylum as a Captain's Gesture, Not a Legal Entitlement

Sovereign immunity protects the vessel; it does not legalise the asylum. X's refuge aboard the warship is a diplomatic fact, not a legal right, unless a treaty between the two states says otherwise.

Q6. State A has entered into an agreement with State B relating to investment in oil in territory of C, which is a colony of State A. C became independent in

2019 and B insists that C must honour the treaty. C argues it is not bound. Discuss.

PRIORITY: ★★★ | PART: C | FREQ: 4

Issue

Whether newly independent State C is bound by a treaty concluded by its former colonial power State A with State B prior to C's independence, and whether State B can enforce that treaty against C. The question requires application of the clean slate doctrine under the Vienna Convention on Succession of States in Respect of Treaties (VCST) 1978 and its exceptions for territorial regimes and subsequent consent.

Rule

Treaty succession for newly independent states is governed by the Vienna Convention on Succession of States in Respect of Treaties (VCST) 1978. Article 16, VCST 1978 embeds the clean slate doctrine for newly independent states: a newly independent state is not bound by treaties concluded by the predecessor state in respect of its territory before independence. The rationale is decolonisation equity: a state that had no voice in negotiating the treaty should not be compelled to perform obligations it never consented to. The clean slate applies by default for newly independent states and distinguishes them from successor states arising from merger, dissolution, or separation of a non-colonial kind, where different rules of continuity apply.

Application

State C was a colony of State A. The investment treaty was concluded between State A and State B in respect of C's territory while C was under colonial rule. C had no legal personality at the time of conclusion and no role in negotiating or consenting to the treaty. Upon independence in 2019, C became a new state. Under Article 16 of the VCST, C is entitled to invoke the clean slate doctrine. The treaty was A's treaty, concluded for A's purposes over territory that is now C's sovereign domain. C is not bound by it as a matter of succession.

Exception

Three qualifications may require C to perform obligations despite the clean slate.

First, if C expressly agreed, after independence, to be bound by the treaty through a succession agreement or a devolution agreement with State A, C would be bound by that subsequent consent, not by succession.
Second, if the investment treaty created rights over territory or resources that amount to a territorial regime rather than a purely contractual obligation, those rights may attach to the territory itself and survive succession under Article 12 of the VCST, which preserves territorial regimes. This is a narrow exception.
Third, if C has conducted itself in a manner that evidences acceptance of the treaty obligations, such as accepting payments under it or invoking its terms, estoppel may prevent C from now repudiating it.

Conclusion

C is not bound by the treaty. The clean slate doctrine under Article 16 of the VCST 1978 shields newly independent states from being saddled with colonial-era treaty obligations they never consented to. State B cannot enforce the treaty against C unless C has subsequently and voluntarily assumed the obligations, or the treaty creates a territorial regime that survives under Article 12. On the facts, C's objection is well-founded.

[!example]- Case Laws

Namibia Advisory Opinion (Legal Consequences for States of the Continued Presence of South Africa in Namibia, ICJ, 1971)
📋 Facts
The ICJ was asked to determine the legal consequences of South Africa's continued presence in Namibia in defiance of a UN resolution terminating South Africa's mandate. The question of treaty obligations binding on Namibia arose in this context.

🔨 Held
The ICJ confirmed that the principle of self-determination and the right of peoples to control their own destiny underpins the clean slate doctrine; colonial arrangements cannot be perpetuated through treaty succession against a newly independent state's will.

💡 Principle
Newly independent states carry no automatic burden of colonial-era treaty obligations; the clean slate reflects the foundational principle that consent is the basis of treaty obligation.

Gabcikovo-Nagymaros Project (Hungary v Slovakia, ICJ, 1997)
📋 Facts
Hungary and Czechoslovakia concluded a treaty in 1977 for construction of a dam system. After Slovakia became an independent state upon Czechoslovakia's dissolution, the question arose whether Slovakia was bound by the 1977 treaty as a successor state.

🔨 Held
The ICJ held Slovakia was bound by the treaty as a successor to Czechoslovakia under the principle of treaty continuity applicable to states arising from dissolution, distinct from the clean slate rule for newly independent former colonies.

💡 Principle
The clean slate doctrine applies to decolonisation; the continuity principle applies to dissolution and separation of non-colonial states. The distinction between the two categories is legally determinative.

The Clean Slate as Decolonisation Equity

C entered the international order without consenting to A's treaty. The VCST 1978 builds that equity into law: independence means starting without another state's contractual legacy unless C chooses to accept it.

Q7. States Y and Z claim sovereignty over Island Q. State Y claims sovereignty as it has established the will to act as sovereign and has actually exercised sovereignty. State Z claims sovereignty based on a treaty through which it has acquired the island. Decide to whom Island Q belongs.

PRIORITY: ★★★ | PART: C | FREQ: 4

Issue

Whether sovereignty over Island Q belongs to State Y on the basis of effective occupation and exercise of sovereign authority, or to State Z on the basis of a treaty of cession, and which mode of acquiring territory takes precedence where the two claims conflict.

Rule

Acquisition of territory under international law is recognised through several modes: cession by treaty, occupation of terra nullius, prescription through long and unchallenged exercise of sovereignty, conquest (now prohibited under Article 2(4) of the UN Charter), and accretion. Cession is the transfer of sovereignty over territory by one state to another through a treaty; it is regarded as a clean and complete title when the ceding state held valid sovereignty at the time of transfer. Effective occupation requires actual, continuous, and peaceful exercise of state authority over the territory, coupled with the intention to act as sovereign (animus occupandi). The Island of Palmas Case (Permanent Court of Arbitration (PCA), 1928) established the controlling principle: where a conflict arises between an inchoate title based on discovery or treaty and a competing title grounded in continuous and peaceful exercise of sovereignty, the latter prevails. Title must be maintained, not merely acquired.

Application

State Z's claim rests on a treaty of cession. If the ceding party held valid sovereignty at the time of the treaty, Z acquired clean title. State Y's claim rests on effective occupation: the animus (will to act as sovereign) and the corpus (actual exercise). The decisive question is whether State Z's treaty title was followed by actual administration and exercise of authority, or whether the island was in practice governed and administered by State Y without Z's interference. If Z holds treaty title but Y has continuously and peacefully exercised actual sovereignty without challenge from Z, Y's effective occupation ripens into a superior title under the Island of Palmas principle: continuous and peaceful display of state authority is the hallmark of territorial sovereignty.

Exception

Two factors may shift the outcome toward State Z.

First, if State Z's treaty title is recent and Z has promptly asserted and exercised sovereignty following the treaty, the effective occupation doctrine does not extinguish fresh treaty title. The Palmas principle targets stale or unexercised title, not title that is being actively maintained.
Second, if the territory was not terra nullius at the time Y began exercising authority, and Y's acts were over land that Z already held by valid title, Y's occupation does not generate prescription: prescription requires uncontested possession against a state that has acquiesced. Active protest by Z interrupts prescription.

Conclusion

Island Q belongs to State Y if Y has continuously, peacefully, and actually exercised sovereign authority over the island while State Z's treaty title remained unexercised and uncontested. Under the Island of Palmas principle, effective and continuous sovereignty displaces an inchoate or dormant treaty title. If State Z has actively administered the island since acquiring treaty title and State Y's acts are recent or contested, State Z's title holds. On the facts as stated, where Y has demonstrated both the will and the actual exercise of sovereignty, the balance favours State Y.

[!example]- Case Laws

Island of Palmas Case (Netherlands v USA, Permanent Court of Arbitration (PCA), 1928)
📋 Facts
The USA claimed sovereignty over the Island of Palmas (Miangas) based on a treaty of cession from Spain in 1898. The Netherlands claimed sovereignty based on continuous and peaceful exercise of state authority since the seventeenth century.

🔨 Held
The arbitrator held in favour of the Netherlands: continuous and peaceful display of state authority is the hallmark of territorial sovereignty, and it prevails over an inchoate title based on treaty cession from a state that did not exercise actual authority over the island.

💡 Principle
Treaty title must be backed by effective and continuous exercise of sovereignty; where a competing state has actually and peacefully administered the territory, that effective occupation prevails over dormant treaty title.

Clipperton Island Arbitration (France v Mexico, 1931)
📋 Facts
France and Mexico disputed sovereignty over the uninhabited Clipperton Island in the Pacific. France claimed on the basis of a formal declaration of sovereignty and Mexico on the basis of proximity and historical connection.

🔨 Held
The arbitrator held in favour of France: a formal act of taking possession accompanied by public notification is sufficient to establish title over an uninhabited island without continuous physical presence being required.

💡 Principle
Effective occupation does not always require continuous physical administration; for uninhabited territory, a clear act of appropriation with intent to hold is sufficient to establish and maintain title.

Effective Occupation as the Living Test of Sovereignty

Treaty title is the starting point, not the finishing line. Island Q's sovereignty belongs to the state that has continuously and peacefully exercised it in fact. Palmas settled that principle in 1928; it has not shifted since.

PIL | Part C | Problem Scenarios

All Units Combined | IRAC Format

UNIT 2 PROBLEMS

C-2.1 An island equidistant from two states — which state has better title?

PRIORITY: ★★★ | **UNIT:** 2 | **FREQ:** 4

ISSUE: Which state has valid territorial title over the island — the state that discovered it or the state that has continuously administered it?

RULE:
Occupation of terra nullius requires effective and continuous display of state authority, not merely discovery. Island of Palmas (PCA, 1928): discovery creates only inchoate title which must be completed by effective occupation within a reasonable time. UNCLOS 1982, Article 121: islands generate the same maritime zones as other land territory.

APPLICATION:
If State A discovered the island but exercised no administrative authority thereafter, its title is inchoate only. If State B subsequently exercised continuous and peaceful administrative functions — legislation, tax collection, judicial proceedings, policing — over the island for a substantial period without protest from State A, State B will have displaced State A's inchoate title through effective occupation or acquisitive prescription. Timely and consistent protest by State A would interrupt prescription. Absence of protest equals acquiescence.

CONCLUSION:
State B has the stronger title if it can prove continuous and peaceful exercise of state authority. State A's title by discovery, unsupported by effective occupation, is insufficient under international law as confirmed in Island of Palmas.

C-2.2 Colony becomes independent — is it bound by predecessor's treaties?

PRIORITY: ★★★ | **UNIT:** 2 | **FREQ:** 4

ISSUE: Whether a newly independent state emerging from decolonisation is bound by the treaties concluded by the colonial predecessor state.

RULE:
Vienna Convention on Succession of States in Respect of Treaties 1978, Article 16: a newly independent state is not bound by any treaty of the predecessor state unless it expressly accepts it by notification of succession. Three exceptions: (1) boundary treaties pass automatically (Article 11); (2) localised obligations attached to territory pass automatically (Article 12); (3) successor may opt in by notification.

APPLICATION:
The newly independent state begins with a clean slate. It is not bound by political, economic, or military treaties of the colonial power. However, if the treaty in question is a boundary treaty or creates localised obligations attached to the territory (such as transit rights or servitudes), those obligations pass automatically regardless of clean slate. The newly independent state may voluntarily accept any predecessor treaty by notifying the other parties of its succession.

CONCLUSION:
Newly independent state is not bound by predecessor's treaties under the clean slate rule (Article 16 VCST 1978), subject to the exceptions for boundary treaties (Article 11) and localised territorial obligations (Article 12).

C-2.3 Alien killed in mob violence — is the state responsible?

PRIORITY: ★★★ | **UNIT:** 2 | **FREQ:** 4

ISSUE: Whether the state bears international responsibility for a foreign national killed by private persons in mob violence on its territory.

RULE:
ILC Articles on State Responsibility 2001, Article 1: every internationally wrongful act of a state entails responsibility. State is not automatically responsible for acts of private persons. Responsibility for private acts arises from: failure to prevent foreseeable harm (due diligence), failure to punish offenders (denial of justice), or subsequent endorsement. Neer Claim (1926): treatment of alien must amount to outrage, bad faith, or wilful neglect far short of international standards.

APPLICATION:
If the state had prior warning of imminent mob violence and failed to take reasonable preventive measures available to it, it is responsible for its own failure of due diligence — not for the mob's acts directly. If the state's investigation and prosecution of the perpetrators was perfunctory or deliberately inadequate, it incurs additional responsibility for denial of justice. The Neer threshold must be met: mere inadequacy is not enough; the failure must be egregious and readily apparent to any reasonable observer.

CONCLUSION:
The state is responsible if it failed to exercise due diligence to prevent foreseeable harm or failed to adequately investigate and punish the perpetrators; the standard is set by Neer — treatment falling far short of what the international community would regard as minimally acceptable.

C-3.1 Diplomat commits a crime in the receiving state — can they be prosecuted?

PRIORITY: ★★★ | **UNIT:** 3 | **FREQ:** 6

ISSUE: Whether the receiving state can arrest, detain, or prosecute a diplomatic agent who commits a criminal offence on its territory.

RULE:
VCDR 1961, Article 29: the person of a diplomatic agent is inviolable; no arrest or detention of any kind.
VCDR 1961, Article 31: diplomatic agent enjoys immunity from criminal jurisdiction of the receiving state; immunity is absolute with no exceptions for serious crimes.
VCDR 1961, Article 9: receiving state may declare the diplomat persona non grata; sending state must then recall the agent.
VCDR 1961, Article 32: only the sending state can waive immunity; waiver must be express.

APPLICATION:
The receiving state cannot arrest, detain, or prosecute the diplomat regardless of the gravity of the offence — murder, rape, or any other crime. Article 31 immunity is absolute. The receiving state's legal remedies are: (1) request the sending state to waive immunity expressly; (2) declare the diplomat persona non grata under Article 9 and require recall; (3) after recall, request that the sending state prosecute the diplomat in its own courts. If the sending state waives immunity, the diplomat may then be prosecuted. If the diplomat is recalled without prosecution, the only remaining mechanism is political pressure.

CONCLUSION:
The receiving state cannot prosecute a diplomatic agent; absolute criminal immunity under Article 31 VCDR applies regardless of the offence; the receiving state's remedies are limited to requesting waiver (Article 32), declaring persona non grata (Article 9), or seeking prosecution by the sending state.

C-3.2 Person flees to foreign embassy seeking refuge — must embassy surrender them?

PRIORITY: ★★★ | **UNIT:** 3 | **FREQ:** 5

ISSUE: Whether the sending state's embassy is entitled to grant asylum to a person fleeing the host state's authorities, and whether the host state may enter the embassy to recover the person.

RULE:
VCDR 1961, Article 22: embassy premises are inviolable; receiving state's agents may not enter without consent of the head of mission.
Diplomatic asylum (asylum in embassy premises) is not a right under general customary international law: Asylum Case (ICJ, 1950). It is recognised only in Latin America under the Havana Convention 1928 and Caracas Convention 1954.
Article 33, 1951 Refugee Convention: non-refoulement — does not apply to diplomatic asylum.

APPLICATION:
The embassy cannot be entered by the host state's authorities without the head of mission's consent — inviolability under Article 22 VCDR is absolute. However, this does not mean the person inside has a legal right to remain. Outside Latin America, there is no general legal right to diplomatic asylum. The sending state may choose to shelter the person as a humanitarian gesture but has no legal obligation to do so. The host state may demand that the embassy not be used for purposes incompatible with diplomatic functions (Article 41 VCDR) and may require the sending state to hand over the person. The host state cannot forcibly enter to remove them.

CONCLUSION:
The host state cannot forcibly enter the embassy (absolute inviolability under Article 22 VCDR), but diplomatic asylum is not a right under general international law; outside Latin America, the sending state has no legal obligation to shelter the person and the host state may require them to cease doing so.

C-3.3 State refuses to extradite claiming political offence — is the refusal valid?

PRIORITY: ★★★ | **UNIT:** 3 | **FREQ:** 4

ISSUE: Whether an offence can qualify as a political offence barring extradition, and whether the requested state's refusal is legally justified.

RULE:
Political offence exception: pure political offences (treason, sedition) and relative political offences (ordinary crimes committed as part of and in furtherance of a political rising) are not extraditable.
In re Castioni (1891): killing during political uprising is a relative political offence if directly connected to the political event.
In re Meunier (1894): acts against the general public are not political offences.
Multilateral conventions: terrorism, torture, genocide, and crimes against humanity are expressly excluded from the political offence exception.

APPLICATION:
If the offence was committed as part of an organised political uprising and is directly connected to that political event, it may qualify as a relative political offence under the Castioni test. If the acts targeted civilians indiscriminately or were disproportionate to any political objective, they fall outside the exception under Meunier. If the offence falls within the Rome Statute crimes or anti-terrorism conventions, the exception cannot be claimed regardless of political motivation. The dual criminality test must also be satisfied independently.

CONCLUSION:
Refusal is valid if the offence satisfies the Castioni test for a relative political offence; it is invalid if the acts targeted the general public (Meunier), if the offence is excluded by multilateral convention (terrorism, torture, genocide), or if the political character is a pretext rather than the genuine motive.

UNIT 4 PROBLEMS

C-4.1 Foreign warship in territorial sea without permission — can the coastal state stop it?

PRIORITY: ★★★ | **UNIT:** 4 | **FREQ:** 3

ISSUE: Whether a foreign warship has the right of innocent passage through the territorial sea and what the coastal state may do if the passage is non-innocent.

RULE:
UNCLOS 1982, Article 17: all ships, including warships, enjoy the right of innocent passage through the territorial sea.
Article 19: passage is innocent if not prejudicial to peace, good order, or security. Non-innocent activities include: threat or use of force, weapons exercises, intelligence gathering, interference with communications, loading or unloading contraband, launching or landing aircraft.
Article 25: coastal state may take necessary steps to prevent non-innocent passage.

APPLICATION:
If the warship is navigating continuously and expeditiously without engaging in any activity listed in Article 19(2), its passage is innocent and the coastal state may not stop it. If the warship is conducting weapons exercises, gathering intelligence, or engaging in any other non-innocent activity, the coastal state may require it to leave and take necessary steps (including interception and escort out of territorial sea) to prevent the non-innocent passage. Submarines must navigate on the surface. Some states require prior notification for warships; this is contested under UNCLOS.

CONCLUSION:
A foreign warship enjoys innocent passage under Article 17 UNCLOS; the coastal state may stop and require departure only if the passage is non-innocent under Article 19(2); taking necessary steps under Article 25 is the coastal state's remedy for non-innocent passage.

C-4.2 Satellite from State A crashes on State B's territory — who is liable?

PRIORITY: ★★★ | **UNIT:** 4 | **FREQ:** 3

ISSUE: Which liability regime applies when a space object from State A's space programme causes damage on State B's territory, and what must State B prove to recover compensation.

RULE:
Outer Space Treaty 1967, Article VII: the launching state is internationally liable for damage caused by its space objects.
Liability Convention 1972, Article II: the launching state is absolutely liable to pay compensation for damage caused by its space object on the surface of the earth or to aircraft in flight. No proof of fault required.
Article III, Liability Convention: fault-based liability for damage in outer space.
Cosmos 954 (1978): Canada claimed C$3 million under absolute liability regime without proving fault; settled.

APPLICATION:
This is surface damage (satellite crashed on State B's territory). Article II of the Liability Convention applies. State B need not prove that State A was negligent, reckless, or at fault in any way. Absolute liability means the fact of the damage and the identification of State A as the launching state are sufficient. State B presents its claim through diplomatic channels under Article VIII of the Liability Convention. If no settlement is reached within one year, a Claims Commission may be established. There is no cap on compensation.

CONCLUSION:
State A bears absolute liability under Article II of the Liability Convention 1972; State B need only prove the damage and that State A is the launching state; no proof of fault required; precedent established in Cosmos 954 where USSR paid Canada without fault being established.

C-4.3 Foreign aircraft flies over state territory without authorisation — what can the state do?

PRIORITY: ★★ | **UNIT:** 4 | **FREQ:** 3

ISSUE: Whether the overflying state has violated international law and what remedies are available to the territorial state.

RULE:
Chicago Convention 1944, Article 1: every state has complete and exclusive sovereignty over the airspace above its territory.
Article 6: no scheduled international air service may be operated over or into the territory of another state except with the special permission or other authorisation of that state.
There is no right of innocent passage in airspace; foreign aircraft have no automatic right of entry.

APPLICATION:
Unauthorised overflight violates Article 1 of the Chicago Convention and the customary rule of complete and exclusive airspace sovereignty. The territorial state may: require the aircraft to land at a designated airport; if the aircraft does not comply, may dispatch interceptor aircraft; may use force to compel landing only as a last resort and subject to proportionality — destruction of a civil aircraft is prohibited under Article 3 bis Chicago Convention. Military aircraft without permission may be shot down subject to proportionality.

CONCLUSION:
Unauthorised overflight is a violation of Article 1 Chicago Convention; the territorial state may require landing and intercept the aircraft; destruction of a civil aircraft is prohibited under Article 3 bis Chicago Convention even where it violates airspace sovereignty.

UNIT 5 PROBLEMS

C-5.1 Security Council veto blocks action — what alternatives exist?

PRIORITY: ★★★ | **UNIT:** 5 | **FREQ:** 3

ISSUE: When a P5 state vetoes Security Council action on a breach of peace or aggression, what legal mechanisms remain available for the international community to respond.

RULE:
UN Charter, Article 27(3): substantive SC decisions require all five P5 votes; veto of any one P5 member blocks action.
UN Charter, Article 10 and 14: GA may consider any matter and make recommendations.
Uniting for Peace Resolution 377(V) 1950: if SC fails to discharge its responsibility due to lack of unanimity among P5, GA may meet in emergency special session within 24 hours on vote of 9 SC members or majority of GA members; GA may recommend collective measures including use of force.
Regional organisations (UN Charter, Chapter VIII, Article 52-53): regional bodies may take enforcement action with SC authorisation; without SC authorisation, limited to pacific settlement.

APPLICATION:
The GA can be convened in emergency special session under the Uniting for Peace Resolution and may recommend collective measures. GA recommendations are not binding but carry political weight and may authorise member states to act. Regional organisations (NATO, AU, ECOWAS) may take enforcement action with SC authorisation; without it their action is legally contestable. Individual states may invoke collective self-defence under Article 51 if an armed attack has occurred. No mechanism exists to override the veto procedurally; it is a structural feature of the Charter not subject to GA override.

CONCLUSION:
A P5 veto cannot be procedurally overridden; the Uniting for Peace Resolution enables GA emergency sessions and non-binding recommendations; collective self-defence under Article 51 remains available for armed attack situations; but no mechanism compels the P5 to withdraw a veto.

C-5.2 State challenges ICC admissibility — when can it succeed?

PRIORITY: ★★★ | **UNIT:** 5 | **FREQ:** 3

ISSUE: On what grounds may a state challenge the admissibility of a case before the ICC, and what must it prove to succeed.

RULE:
Rome Statute 1998, Article 17: a case is inadmissible where it is being investigated or prosecuted by a state with jurisdiction, or has been investigated and the state decided not to prosecute, or the person has already been tried, or the case is not of sufficient gravity.
Exception: investigation or prosecution must be genuine — unwillingness or inability negates the admissibility challenge.
Unwillingness (Article 17(2)): proceedings designed to shield, unjustified delay, lack of impartiality or independence.
Inability (Article 17(3)): total or substantial collapse of national judicial system; inability to obtain accused, evidence, or testimony.

APPLICATION:
If the state is genuinely investigating or prosecuting the same person for substantially the same conduct, the ICC must defer under Article 17. The Prosecutor or Chamber examines whether the national proceedings are genuine. If there is evidence that proceedings are designed to shield the person from criminal responsibility, involve unjustified delay inconsistent with intent to bring to justice, or are conducted without independence, the admissibility challenge fails. State must show a real, concrete investigation — not just an announcement of one.

CONCLUSION:
A state's admissibility challenge succeeds only if it demonstrates genuine investigation or prosecution of the same person for the same conduct; proceedings that are a sham, are unduly delayed, or lack independence will not satisfy Article 17, and the ICC will retain jurisdiction.

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