

International Law ¹

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¹ The contents of this note were lifted from Justice Isagani Cruz's book [International law]; some are transcribed lectures of Atty. Eduardo Rillorta (SLU-Baguio) in International Law.

THESE PRINCIPLES PERMEATE THE BULK OF INTERNATIONAL LAW:

1. **Par in parem non habet imperium**
 - o Means: an equal cannot have dominion over an equal.
 - o In international law, all states are treated as equals, regardless of population, size of territory, and economic status.
2. **Pacta sunt servanda**
 - o Pacts are to be complied with in good faith.
 - o Once a state had entered into a pact with other states, both must comply with the pact in good faith. Breach of such pact may cause hostile relation between both states. It can also be a ground for a sanction under the United Nation’s Charter.

themselves or with their own states	persons
4. violations of municipal law are redressed through local administrative and judicial processes	5. Questions of public international law are resolved through state-to-state transactions ranging from peaceful methods like negotiations and arbitration to the hostile arbitrament of force like war
6. breaches of municipal law generally entail only individual responsibility	4. Responsibility for infractions of international law is usually collective in the sense that it attaches directly to the state and not to its nationals

PART ONE: DEFINITION OF INT’L LAW

Public International Law

- o Is the body of legal rules, which apply to sovereign states and such other entities that have been granted international personality.
- o Continuing process of authoritative decisions which include policy considerations forming an integral part of the decision making process.

[Jocelyn Higgins]

Private International Law contra Public International Law

Private International Law	Public International Law
1. issued by a political superior for observance by those under its authority	1. Is not imposed upon but simply adopted by states as a common rule of action among themselves.
2. consists mainly of enactments from the lawmaking authority of each state	2. Is derived not from any particular legislation but from such sources as international customs, international conventions and the general principles of law
3. regulates the relations of individuals among	3. Applies to the relations inter se of states and other international

Can international law be made part of municipal/domestic law? Yes pursuant to the following doctrines:

A. Doctrine of Incorporation

- o By mere constitutional declaration, international law is deemed to have the force of municipal or domestic law.
- o Applicable to customary rules accepted as binding to all states-has the character of *opinion juris sive necessitates* (opinion as to law or necessity).

Art. II, Sec. 2 1987 Phil. Const’n: The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. (JEF, PACo)

B. Doctrine of Transformation

- o The generally accepted rules of international law are not per se binding upon the state but must first be embodied in the legislation enacted by the lawmaking body and so transformed into municipal law. Only when so transformed will they become binding upon the state as part of its municipal law.

Art. VII, Sec. 21 of Phil. Const’n: No treaty or international agreement shall be valid and effective unless **concurred** in by at least two-thirds of all members of the senate.

Corollary to the two doctrines is the Principle of Pacta sunt servanda - In International law, treaties and executive agreements are equally binding commitments of the contracting states under the maxim *pacta sunt servanda*. Every state has the duty to carry out in good faith its obligations arising from treaties or other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty.

CONSTITUTIONAL PROVISIONS RELATED TO INTERNATIONAL LAW

- 1. Art. II, Sec. 2-** "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

Applied in Kuroda versus Jalandoni (83 P 171).

FACTS: Kuroda was a Japanese general stationed in the Philippines. He was being prosecuted for committing atrocities during World War II pursuant to the Geneva Convention. He interposed the defense that he cannot be tried because there is no Philippine law punishing war crimes and the Philippines was not a signatory to the said convention.

ISSUE: WON Kuroda can be tried in the Philippines.

HELD: Yes, pursuant to the doctrine of incorporation. It cannot be denied that the rules and regulations of The Hague and Geneva Conventions form part of Philippine law since it is wholly based on the generally accepted principles of international law. In fact these rules and principles were accepted by the two belligerent nations, the United States and Japan, who were signatories to the convention. Such rules and principles, therefore, form part of the law of our nation even if the Philippines was not a signatory to the convention embodying them, for our constitution has been deliberately general and extensive in its scope and is not confined to the recognition of rules and principles of international law as contained in treaties to which our government may have been or shall be a signatory.

2. Art. I- The National territory of the Philippines

- o The delineation of the Philippine territory was based on the Treaty of Paris where Spain had sold the Philippines to the US for the consideration of \$20,000.
- o It was also based on the UN Convention on the Law of the Seas (UNCLOS). Thus it adopts the ARCHIPELAGIC DOCTRINE.

Take Note!

- A.** The meaning of the word "internal waters" as used in the Philippine Constitution is different from that of the UNCLOS.

UNCLOS- internal waters means those waters from the baseline (seashore) landwards.

PHIL. CONST'N- Internal waters include those waters between two islands.

- B.** No international law that requires a state to delineate its territory. Thus, even if a state delineates its territory it cannot enforce it to other states.

EXCEPT, when such delineated territory is recognized by other states or such delineation was made in pursuance of a treaty with other states.

REASON: The one creating the territory is a municipal law which is not binding to international law.

3. Art. VII, Sec. 21- "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all members of the senate."

Tanada vs. Angara

Facts: The President had entered into a treaty regarding the free trade among countries as enunciated in the General Agreement on Tariffs and Trade. The treaty was concurred by the Senate. Subsequently it was challenged on the ground that it violates the constitutional provisions on national patrimony specifically the Filipino first concept. Moreover, the treaty was invalid because it was not ratified by the senate.

Issue: WON the treaty is invalid because it was not ratified by the senate.

Held: No! The constitutional requirements were complied. The treaty was ratified by the president in his treaty making capacity and it was concurred by the Senate. Ergo, it became a valid law in the Philippine jurisdiction. Ratification is reserve to the President of the Philippines and not to the Senate. The senate will only concur.

Note:

- o **In cases of treaties-** ratification is only made by the president; **while concurrence is for the senate.**
- o **In executive agreements-** the concurrence of the senate is not needed (*Commissioner of Custom vs. Eastern Trading, 3 SCRA 351*).

4. Art. VII, Sec. 4- Supreme Court can declare a treaty unconstitutional.

In case of irreconcilable conflict between a treaty and a municipal law, which should prevail?

- o **First,** an effort must be made to reconcile the differences so as to make the two conflicting laws applicable.
- o **Second,** if it cannot be harmonize, the law that should prevail depends on the forum where the case was filed. If it is filed in the **International Court of Justice, international law prevails; but if it is filed in municipal courts, municipal law prevails (Philip Morris vs. CA, 224 SCRA 576).**

Note: if filed in the municipal courts and a treaty contravene the Constitution and regulatory statutes that further police power, the latter prevails. Treaties and ordinary legislative statutes may repeal each other. Apply the principle of ***lex posterior derogat priori*** [which comes last shall prevail]

BASIS OF INTERNATIONAL LAW

Question: Is International Law a true law? It depends on the school of thought which one follow.

- A. Law of Nature-** There is a natural and universal principle of right and wrong, independent of any mutual intercourse or compact.
- B. Positivist Theory-** The binding force of international law is derived from the agreement of sovereign states to be bound by it. It is not a law of subordination but of coordination.
- C. Eclectic Theory-** Proposes that both the law of nature and the consent of States serve as basis of international law; to the effect that the system of international law is based on the dictate of right reason as well as the practice of states.

Why is Public International Law observed?
Answer: **States observed Public International Law because of their:**

1. Belief in the reasonableness of the Law of Nations.
2. Fear of being unconventional.
3. Fear of reprisal from other states.

What the functions of Public International Law?

- A.** The maintenance of international peace and order;
- B.** The protection of State rights and of fundamental human rights thru sanctions, both peaceful and coercive;
- C.** The economic, social, cultural and technological development of states and such other entities as may be possessed of an international personality.

SOURCES OF INTERNATIONAL LAW

A. Primary Sources:

1. **Treaties-** The general rule is that for a treaty to be considered a direct source of international law, **it must be concluded by sizable number of states** and thus reflect the will or at least the consensus of the family of nations.

Question: Are all treaties considered a direct source of international law? No! If the treaty was not concluded by great body of states, such as bilateral treaties. But a bilateral treaty is binding between the parties especially if a dispute arose between them.

2. **Custom-** A practice which has grown up between states and has come to be accepted as binding by the mere fact of persistent usage over a long period of time. Custom is distinguished from usage. The latter while also a long established way of doing things by states is not coupled with the conviction that it is obligatory and right.

Requisites/Elements of International Custom

1. Duration or long state practice.
 2. Consistency of the state practice or the widespread repetition by states of similar international acts over time.
 3. Generality of the state practice or that the acts are taken by a significant number of states and not rejected by a significant number of states.
 4. *Opinio juris sive necessitates* or the requirement that the acts must occur out of a sense of obligation.
3. **General Principles of Law-** Mostly derived from the law of nature and are observed by the majority of states because they are believed to be good and just (e.g. prescription, estoppel, consent, *res judicata* and *pacta sunt servanda*).

- B. **Secondary Sources:** These sources are not authorities in deciding a case but only have a persuasive effect because it only shows the interpretation of a state to a particular international law.
1. Decisions of international tribunals
 2. Writings and teachings of the most highly qualified publicists

THE UNITED NATIONS CHARTER

Amendments to the charter shall come into force for all members of the UN when they have been adopted by a vote of 2/3rds of the members of the General assembly and ratified in accordance with their respective constitutional processes by 2/3rds of the members of the UN, including all the permanent members of the Security Council.

Purposes of the UN [Article 1, UN Charter]:

1. To maintain international peace and security, and to that end: and to take effective collective measure for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice

and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.
4. To be center for harmonizing the actions of nations in the attainment of these common ends.

Principles of the UN [Article 2, UN Charter]

1. The organization is based on the principle of the sovereign equality of all its members.
2. All members in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present charter.
3. All members shall settle their international dispute by peaceful means in such manner that international peace and security, and justice, are not endangered.
4. All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN.
5. All members shall give the UN every assistance in any actions it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the UN is taking preventive or enforcement action.
6. The organization shall ensure that states which are not members of the UN act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present charter shall authorize the UN to intervene in matters which

are essentially within the domestic jurisdiction of any estate or shall require the members to submit such matters to settlement under the present charter, but this principle shall not prejudice the application of enforcement measure under Chapter VII [**Domestic Jurisdiction Clause**].

Rules on Membership in the UN

1. Membership

- o **Can the General Assembly admit an applicant for membership without the favorable recommendation of the Security Council? NO! Art. 4 par 2 of the UN charter states:** "The admission of any such state to membership in the UN will be effected by a decision of the General Assembly upon the recommendation of the Security Council."

2. Suspension of members- A member of the UN against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of its rights and privileges. It is effected by 2/3rds of those present and voting in the General Assembly upon the favorable recommendation of at least a member of the Security Council, including all its permanent members. The suspension may be lifted alone by the Security Council, also by a qualified majority vote.

3. Expulsion of members- A member which has persistently violated the principles contained in the charter may be expelled by 2/3rds of those present and voting in the General Assembly upon the recommendation of the Security Council by a qualified majority vote.

Organs of the United Nations

1. The General Assembly- is the most representative of the organs of the UN. It consists of all the members of the Organization, each of which is entitled to send not more than 5 representatives and 5 alternates as well as such technical staff as it may need.

What are the functions and powers of the General Assembly?

- o **Each member of the General Assembly has one vote.**
- o Decisions on "important questions," such as recommendations concerning international peace and security, election of members of the councils, admissions, suspensions and expulsion

of members, questions relating to the trusteeship system, and budgetary matters, are taken by 2/3rds of those present and voting. All other matters, including the determination of whether a question is important or not, are decided by a majority of those present and voting.

2. The Security Council

- o It consists of 5 permanent members and 10 elective members.
- o In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
- o It is task also for the regulation of armaments. As such it can provide four guidelines for the establishments and regulations of armaments.

Can the general Assembly on its own make recommendations to the Security Council with regard to dispute or situation? No! "The General assemble shall not make any recommendations with regard to that dispute or situation unless the Security Council so requests." [Article 12, UN Charter]

Regional Arrangements- to further international peace and security, the Security Council shall encourage the development of Regional Arrangements or agencies that deal with matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the purposes and principles of the UN.

What are the actions the Security Council may enforce to contain a situation or dispute? *In settling disputes, the Security Council will avail of the following methods successively:*

- 1. Pacific settlement of dispute [peaceful settlement]- Article 33, UN Charter-** The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall

first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement.

Mediation- means that third party states participate in the resolution of the conflicts. Third party states acts as mediator.

Judicial settlement- means that the disputing states agree to settle their disputes through elevating their issues in the ICJ.

2. Enforcement measure [Article 41, UN Charter]

- The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, and the severance of diplomatic relations.
- Isolate the state which does not succumb to the settlement of dispute. Cut all ties, especially economic and political affiliations. Tingnan mo kung mabubuhay pa ang bansang yan!

3. Defensive war [Article 42, UN Charter]

- Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the UN.
- **East Timor Situation-** where members of the UN interfered. Syria-Gaddafi case.

Big Five: (FUR CU)

- a. China
- b. France
- c. UK

- d. US
- e. Russia

The permanent members of the Security Council were given a preferred position because of the feeling that they were the states that, in view of their prestige and power, would be called upon to provide the leadership and physical force that might be needed to preserve the peace of the world.

Yalta Formula- voting in the Security Council is governed by the Yalta formula as devised at the Crimea Conference and subsequently incorporated in Art. 27 of the Charter. According to this formula, each member shall have one vote. But distinction is made between the Big Five and the non-permanent members in the resolution of substantive questions. Procedural matters are to be decided by the affirmative vote of any nine or more members. **Decision on non-procedural matters, on the other hand, requires the concurrence of also at least nine (9) members, but including all the permanent members. However, no member, permanent or not, is allowed to vote on questions concerning the pacific settlement of a dispute to which it is a party.**

“Characterization” of a question is considered a non-procedural matter in the Security Council.

3. The Economic and Social Council

- The economic and social council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the members of the UN, and to the specialized agencies concerned.
- It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.
- It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.
- It may call, in accordance with the rules prescribed by the UN, international

conferences on matters falling within its competence.

4. The **Trusteeship Council**

- o The UN shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.
- o The basic objective of the trusteeship system are the following:
 1. To further international peace and security;
 2. To promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement.
 3. To encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the independence of the peoples of the world; and
 4. To ensure equal treatment in social, economic, and commercial matters for all members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives.
- o The trusteeship system shall not apply to territories which have become members of the UN, relationship among which shall be based on respect for the principle of sovereign equality.

5. The **International Court of Justice**

6. The **Secretariat**- the chief administrative organ of the UN, headed by the Secretary-General. The Secretary-General is chosen by the General Assembly upon the recommendation of the

Security Council. One of his duties is to bring to the attention of the Security Council any matter, which in his opinion may threaten international peace and security.

Does the Charter of the UN allow war as a method of maintaining international peace? NO! war is to be employed only in the following instances:

1. **Article 42- Defensive War:** Should the Security Council consider that **Enforcement Actions** would be inadequate, it may take such action by sea, air, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operation by air, sea, or land forces of members of the UN.
2. **Article 51- Individual or Collective Self-defense:** Nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the UN, until the Security Council has taken measures necessary to maintain the international peace and security.

Requisites of Self-defense

1. There is an armed attack against any member of the UN
2. The Security Council initiated measures to prevent it but it failed.

INTERNATIONAL COURT OF JUSTICE

What is International Court of Justice? The ICJ is a judicial organ of the UN. The Court is composed of 15 members who are elected by absolute majority vote in the General Assembly and the Security Council. No two of them may be nationals of the same State. All questions are decided by a majority of the judges present, the quorum being nine when the full court is sitting.

What is the jurisdiction of the ICJ, is it only for adversarial cases?

- o No! The ICJ **is not only an adversarial/contentious court but also an advisory opinion court.** However not all states can ask for advisory opinion. As such issues concerning social, political, and economic are cognizable by the ICJ.
- o **Optional Jurisdiction Clause [Article 36(1) ICJ Statute]**- The jurisdiction of the Court comprises all cases that the parties refer to it

and all matters specially provided for in the Charter of the UN or in treaties and conventions in force.

What the inherent limitations to the ICJ in deciding a case?

1. If one of the parties did not consent to elevate the case to the ICJ. The ICJ **will have jurisdiction over the case only** if both the parties agree to elevate their case before it. The agreement is put in the "**compromis**" [*French word kaya pronounce it without "s"*].
2. **Art. 59 of ICJ Statute:** The decision of the court has no binding force except between the parties and in respect of that particular case. **No stare decisis** in international law. This is a limitation because the ICJ cannot apply their decision in a previous case to a present case which has similar facts and issues.

What is the process of deciding a case in the ICJ? [Article 38, ICJ Statute] In deciding a case the court will apply the following sources of international law in order:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states.

[**Priority:** Titingnan muna ng hukuman kung may applicable treaty na nilahokan ng dalawang magkatunngali. Kung wala, gamitin ang mga sumusunod]
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognized by civilized nations.
4. Judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for the determination of rules of law. [These sources have no binding effect but only persuasive to the court.]

Note: The ICJ has the power to decide a case **ex aequo et bono, if the parties agree thereto.**

- **Ex aequo et bono** – this is the basis for a decision by an international tribunal on the grounds of justice and fairness.
- The ICJ can disregard procedural matters in deciding a case and decide the case according to what is fair and equitable to the parties if the parties agree thereto.

What are the official languages of the ICJ?

- French and English
- If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.
- In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, is the language which it prefers; the decision of the court shall be given in French and English. In this case the court shall at the same time determine which of the two texts shall be considered as authoritative.
- The court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Do the members of the ICJ enjoy diplomatic immunity? Yes. The members of the court, when engaged in the business of the court, shall enjoy diplomatic privileges and immunities.

Who can be Parties to the ICJ? Only international persons can be parties before the ICJ. Private persons are not allowed.

Illustration: Santiago Wakas went to Mexico for a vacation. He was so inlove with the front desk clerk of the hotel where he stayed. He went directly to the clerk and said, "*Hola Senora, yo te amo con todo mi Corazon!*" (Hi! Miss, I love you with all my heart) the lady politely answered "*no senor, yo ya estoy comprometido a Guillermo Lawagan.....y yo estoy locamente elogiar a Francisco*" [No sir it cannot be I am engaged to Guillermo Lawagan and I am madly inlove to Francisco]. Santiago did not heed the plea, so he insisted on hugging the clerk. The *Policia* came and arrested Santiago. He was brought to the police station where he was tortured. He escaped and went back to the Philippines.

Questions:

1. Can Santiago file a case against the state of Mexico in Philippine courts?
2. Can Santiago file a case against the state of Mexico in Mexico?
3. Can he file a case against the state of Mexico before the ICJ?

Answer:

1. No. It is violative of the Principle of *par in panem non- habet imperium*. A state cannot be sued in the courts of another state. It is also violative of the territoriality principle of criminal law of the Philippines.
2. Kalokohan pag ginawa mo ito! Do you think the action will proper? Never!
3. No! Only international persons and states can be a party before the ICJ. The remedy of Santiago is to petition his government to file a case in his favor against the state of Mexico.

What then is the remedy of Santiago? Ask his government to represent him [under the principle of diplomatic protection], so that they can file a cases against Mexico before the ICJ. This is subject to the consent of Mexico, because if it does not consent to be sued in the ICJ, the case will not prosper.

Question: Who will determine the nationality of an individual?

- o As a **general rule**, it is the law of the state where the person is considered to be a national [**Hague Convention**].
- o **Exception: principle of effective nationality-** it provides that a person is bound by the state where he has habitual, usual, and principal social, political and economic affiliation.

Illustrative case: Liechtenstein v. Guatemala ICJ

FACTS: Pursuant to the principle of diplomatic protection this case was brought by Liechtenstein to the ICJ on behalf of Nottebohm as its alleged national which it ought to protect.

Nottebohm was born a German national in 1881. He received citizenship through naturalization from Liechtenstein (plaintiff) in 1939. Prior to this date, in 1905, Nottebohm lived and performed substantial business dealings in Guatemala (defendant), and returned frequently to Germany to visit family. Once Nottebohm received his citizenship from Liechtenstein, he returned to Guatemala and Guatemalan authorities updated his nationality in the Register of Aliens. On July 17, 1941, the United States blacklisted Nottebohm and froze all his assets which were located in the United States. War broke out between the United States and Germany, and between Guatemala and Germany, on December 11, 1941. Nottebohm was arrested in Guatemala in 1943 and deported to the United States, where he was held until 1946 as an

enemy alien. Once released, Nottebohm applied for readmission to Guatemala, but his application was refused. Nottebohm moved his residence to Liechtenstein (where he was a citizen), but Guatemala had already taken steps to confiscate Nottebohm's property in Liechtenstein. Guatemala succeeded in 1949. Liechtenstein instituted legal proceedings against Guatemala in the International Court of Justice (ICJ), requesting the court declare Guatemala had violated international law "in arresting, detaining, expelling and refusing to readmit Mr. Nottebohm and in seizing and retaining his property." Additionally, Liechtenstein requested the ICJ to order Guatemala to pay compensation as reparation. Guatemala defended by contesting Nottebohm's Liechtenstein nationality.

HELD: Applying the **principle of effective nationality**, Nottebohm has only a tenuous relationship with Lichtenstein. As such he is still a German national, considered an enemy of the US at that time. Lichtenstein cannot have diplomatic protection over his person.

INTERNATIONAL CRIMINAL COURT [Rome Statute]

The ICC shall have the power to exercise jurisdiction **over persons [take note!]** for the most serious crimes of international concerns, and shall be complementary to national criminal jurisdictions. [Art. 1, ICC Statute]

Organs of the Court [Article 34, Rome Statute]

- o The Presidency
- o An Appeals Division, A Trial Division and a Pre-trial Division
- o The Office of the Prosecutor
- o The Registry

Judges of ICC- 18 judges, but may be increased by the Presidency. [Article 36, Rome Statute].

Seat of the Court [Article 3, Rome Statute]

- o The seat of the court shall be established at The Hague in Netherlands [the host state]
- o The court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of the States Parties and thereafter concluded by the president of the Court on its behalf.
- o The Court may sit elsewhere, whenever it considers it desirable.

Legal Status and Powers of the Court [Article 4, Rome Statute]

- The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.
- The Court may exercise its functions and powers, as provided in this statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

Jurisdiction of the Court [Article 5, Rome Statute] - The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with respect to the following crimes:

1. Genocide
2. War crimes
3. Wars of aggression
4. Crimes against humanity

GENERAL PRINCIPLES OF CRIMINAL LAW APPLICABLE IN THE ICC [ARTICLES 22-33, ROME STATUTE]

1. Nullum crimen sine lege

- A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.
- The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favor of the person being investigated, prosecuted or convicted.
- This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

2. Nulla poena sine lege- A person convicted by the court may be punished only in accordance with the Rome Statute.

3. Non- retroactivity ratione personae

- No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
- In the event of a change in the law applicable to a given case prior to a final judgment, the law more favorable to the

person being investigated, prosecuted or convicted shall apply.

4. Individual criminal responsibility.

- The court shall have jurisdiction over natural persons.
- A person who commits a crime within the jurisdiction of the court shall be individually responsible and liable for punishment in accordance with the Rome Statute.

5. Exclusion of Jurisdiction over persons under eighteen- The court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

6. Irrelevance of official capacity

- This statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as Head of State or Government, a member of a Government or parliament, and elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
- Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such person.

7. Responsibility of commanders and other superiors for the act of their subordinates as long as they are under their effective authority and control.

8. Non- applicability of the statute of limitations- The crimes within the jurisdiction of the court shall not be subject to any statute of limitations.

9. Mental element

- Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the court only if the material elements are committed with intent and knowledge.

- o For purposes of this article, a person has intent where:
 - a. In relation to conduct, that person means to engage in the conduct;
 - b. In relation to consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
- o For purposes of this article, '**knowledge**' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly.

PRECONDITIONS TO THE EXERCISE OF JURISDICTION [ARTICLE 12, ROME STATUTE]

1. A state which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes under the jurisdiction of the ICC.
2. In the case of Article 13 paragraph [a] or [c], the court may exercise its jurisdiction if one or more of the following States are parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3.
 - [a] the state territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the state of registration of that vessel or aircraft.
 - [b] The state of which the person accused of the crime is a national.
3. If the acceptance of a state which is not a party to this statute is required under paragraph 2, the state may, by declaration lodged with the registrar; accept the exercise of jurisdiction by the court with respect to the crime in question. The accepting state shall cooperate with the court without any delay or exception.

EXERCISE OF JURISDICTION [ARTICLE 13, ROME STATUTE] - The court will have jurisdiction over the 5 aforementioned crimes if:

- a. A situation in which one or more of such crimes appears to have been committed is referred to the prosecutor by a State party.
- b. A situation in which one or more of such crimes appears to have been committed is referred to the prosecutor by the Security Council.
- c. The prosecutor has initiated an investigation in respect of such a crime.

REFERRAL OF A SITUATION BY A STATE PARTY [ARTICLE 14 OF ROME STATUTE]

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the court appear to have been committed requesting the prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.
2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

ISSUES OF ADMISSIBILITY [ARTICLE 17 OF ROME STATUTE]

- o The Court shall determine that a **case is inadmissible** where [Titingnan ng ICC kung admissible sa kanyang forum ang mga sumusunod o hindi]:
 - a. The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution.
 - b. The case has been investigated by a state which has jurisdiction over it and the state has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute.
 - c. The person concerned has already been tried for conduct which is the subject of the complaint and a trial by the court is not permitted.
 - d. The case is not of sufficient gravity to justify further action by the Court.
- o In order to determine unwillingness in a particular case, the court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exists, as applicable:
 1. The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court.
 2. There has been an unjustified delay in the proceedings which in the

circumstances is inconsistent with intent to bring the person concerned to justice.

3. The proceedings were not or are being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with intent to bring the person concerned to justice.
- o In order to determine inability in a particular case, the court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry its proceedings.

INTERNATIONAL TRIBUNAL FOR RWANDA AND BOSNIA

- o Both the Bosnia and Rwandan war crimes tribunals were authorized by U.N. Security Council resolutions. Legal bases of jurisdiction include the U.N. Charter, and the Geneva, Hague and Genocide conventions. These are the first two international war crimes tribunals since Nuremberg.

PART TWO: SUBJECTS OF INTERNATIONAL LAW

A **SUBJECT** of international law is an entity that has rights and responsibilities under that law. It has an international personality in that it can directly assert rights and be held directly responsible under the law of nations.

An **OBJECT** of international law is merely indirectly vested with rights and obligations in the international sphere [e.g., a Filipino private citizen is generally regarded not as a subject but as an object]

Different Subjects of International Law:

I. State

A **STATE** may be defined as a group of people living together in a definite territory under an independent government organized for political ends and capable of entering into international relations.

The *state* is a legal concept; *nation* is only a racial or ethnic concept.

The term '*nation*', strictly speaking, as evidenced by its etymology (*nasci*, to be born),

indicates a relation of birth or origin and implies a common race, usually characterized by community of language and customs.

The **State** (or nation) should possess the following elements in order to be regarded as an international person: (**P GIST**)

1. A permanent **population**
2. A defined **territory**
3. **Government**
4. **Sovereignty or independence**

GOVERNMENT is defined as the agency through which the will of the state is formulated, expressed and realized.

II. International persons

- o **Belligerent communities** if recognized

Pending determination of whether or not the belligerent community should be fully recognized as a state, it is treated as an international person and becomes directly subject to the laws of war and neutrality.

- o **The Vatican/ Holy See**

Question: Is the Vatican or Holy See a State? Answer: **Yes.**

1. There are around 1,000 people, almost all of whom are individuals residing therein by virtue of their office;
2. There is a definite territory – approximately 100 acres;
3. There is a government – under the Pope himself;
4. There is independence. The State of the Vatican City was created by the Lateran Treaty of Feb. 1, 1922 between Italy and the Holy See. As of January 1, 1994, over 100 states maintain diplomatic relations with the Vatican, an undeniable proof of its wide acceptance

An independent state may be **neutralized** through agreement with other states by virtue of which the latter will guarantee its integrity and independence provided it refrains from taking any act that will involve it in war or other hostile activity except for defensive purposes.

III. International Administrative Bodies-

Certain Administrative Bodies created by agreement among states may be vested with international personality when two conditions concur, to wit:

1. That their purposes are mainly non-political;
2. That they are autonomous, i.e., not subject to the control of any state (e.g. ILO, IMF, FAO)

IV. The United Nations

PART THREE: STATES

The Principle of State Continuity - From the moment of its creation, the state continues as a juristic being notwithstanding changes in its circumstances, provided that they do not result in the loss of any of its essential elements (people, territory, government, sovereignty). Once its identity as an international person has been fixed and its position in the international community established, the state continues to be the same corporate person whatever changes may take place in its international operation and government. (Fenwick)

Succession of States- Takes place when one state assumes the rights and some of the obligations of another because of certain changes in the condition of the latter. The political laws of the former sovereign are automatically abrogated and may be restored only by a positive act on the part of the new sovereign. But non-political laws, such as those dealing with familial relations, are deemed continued unless they are changed by the new sovereign or are contrary to the institutions of the Successor State. All the rights of the predecessor state are inherited by the successor state but this is not so where liabilities are concerned. The Successor State, in fact, can determine which liabilities to assume and which to reject solely on the basis of its own discretion.

Succession of Governments- One government replaces another either peacefully or by violent methods. As far as the rights of the predecessor government are concerned, they are inherited *in toto* by the successor government. Regarding the obligations, distinction is made according to the manner of the establishment of the new government. The rule is that where the new government was organized by virtue of a constitutional reform duly ratified by a plebiscite, the obligations of the replaced government are also completely assumed by the former. Conversely, where the new government was established through violence, as by a revolution, it may lawfully reject the purely personal or political obligations of the predecessor government but not those contracted by it in the course of official business.

PART FOUR: RECOGNITION

Recognition- Is a **political act of the executive branch** of the government wherein acknowledgement of the claims to governmental authority of foreign entities is made and the legal consequences flowing from such acknowledgement is admitted.

Question: Who has the prerogative of making recognition? The president, as the architect of the foreign affairs and relations of the Philippines. Ergo, **recognition is an executive and not a legislative act!**

Objects of Recognition:

1. State
2. Government
3. Belligerent community

In every case, it is important that the act constituting recognition shall give a clear indication of an intention:

1. To treat the new state as such;
2. To accept the new government as having authority to represent the state it purports to govern and to maintain diplomatic relations with it;
3. To recognize in the case of insurgents that they are entitled to exercise belligerent rights.

Recognition of States - The recognition of a new state is the free act by which one or more states acknowledge the existence on a definite territory of a human society politically organized, independent of any existing state, and capable of observing the obligations of international law, and by which they manifest therefore their intention to consider it a member of the international community.

Recognition of Governments- De Jure or De Facto: The recognition of the new government of a State which has been already recognized is the free act by which one or several states acknowledge that a person or a group of persons is capable of binding the state which they claim to represent and witness their intention to enter into relations with them.

Recognition De Jure	Recognition De Facto
1. Relatively permanent.	1. Provisional.
2. Vests title in the government to its properties abroad.	2. Does not vest title in the government to its properties abroad.
3. Bring about full diplomatic relations.	3. Limited to certain juridical relations.

Three Kind of De Facto Government:

1. That which is established by the inhabitants who rise in revolt against and depose the legitimate regime;
2. That which is established in the course of war by the invading forces of one belligerent in the territory of the other belligerent, the government of which is also established;
3. That which is established by the inhabitants of a state who secede therefrom without overthrowing its government.

Under the **TOBAR** or **WILSON Principle**, which was expressed in a treaty of the Central American Republics in 1907 at the suggestion of Foreign minister Tobar of Ecuador and reiterated in 1913 by Pres. Woodrow Wilson of the US, recognition **shall not** be extended to any government established by revolution, civil war, coup d'état or other forms of internal violence until the freely elected representatives of the people have organized a constitutional government.

A similar inhibition was applied by the **STIMSON Principle** against governments established as a result of external aggression. It was incumbent upon the members of the League of Nations not to recognize any situation, treaty or agreement, which may be brought about by means contrary to the covenant of the League of Nations or to the Pact of Paris.

Under the **ESTRADA Doctrine**, the Mexican government declared that it would, as it saw fit, continue or terminate its relations with any country in which a political upheaval had taken place and in so doing it does not pronounce judgment, either precipitately or *a posteriori*, regarding the right of foreign nations to accept, maintain, or replace their governments or authorities.

EFFECTS OF RECOGNITION OF STATES AND GOVERNMENT

1. Full diplomatic relations are established **except** where the government recognized is *de facto*.
2. The recognized state or government acquires the right to sue **but not to be sued** in the courts of the recognizing state.
3. The recognized state or government has a right to the possession of the properties of its predecessor in the territory of the recognizing state.
4. All acts of the recognized state or government are validated retroactively, preventing the recognizing state from passing upon their legality in its own courts.

Recognition of Belligerency

- o **Belligerency** exists when the inhabitants of a state rise up in arms for the purpose of overthrowing the legitimate government.

Distinctions between Belligerency and Insurgency

Belligerency	Insurgency
1. more serious and widespread than insurgency	1. initial stage of belligerency
2. directed by a civil government	2. directed by military authorities
3. there are settled rules regarding its recognition	3. usually not recognized

CONDITIONS FOR THE RECOGNITION OF BELLIGERENCY

1. There must be an organized civil government directing the rebel forces;
2. The rebels must occupy a substantial portion of the territory of the state;
3. The conflict between the legitimate government and the rebels must be serious, making the outcome uncertain;
4. The rebels must be willing and able to observe the laws of war.

Upon recognition by the Parent State, the belligerent community is considered a separate state for the purposes of the conflict it is waging against the legitimate government. Their relations with each other shall, thenceforth and for the duration of the hostilities, be governed by the laws of war, and their relations with other states shall be subject to the laws of neutrality. The parent state shall no longer be liable for any damage that may be caused to third states by the rebel government.

Rights of a State- These rights attaches upon the recognition of a state.

1. Right of existence and self-defense
2. The right of sovereignty and independence
3. Right of equality
4. Right of property and jurisdiction
5. Right of legation or diplomatic intercourse

THE RIGHT OF EXISTENCE AND SELF-DEFENSE:

RIGHT TO EXISTENCE

Gen. Rule: Art 2, pars 3 & 4 (UN Charter) - All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

All members shall refrain in the international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN.

Exceptions: Art 51- Nothing shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the UN, until the Security Council has taken measures necessary to maintain international peace and security.

Art. 42- If pacific settlement methods are inadequate the Security Council "...may take action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of members of the UN. [**Enforcement Action**].

RIGHT TO SELF-DEFENSE: requisites

1. Presence of an armed attack – the mere apprehended danger or any direct threat to the state does not, by itself alone, warrants the employment by the state of any force against a suspected or potential enemy.
2. The right may be resorted to only upon a clear showing of a grave or actual danger to the security of the state.
3. The self-defensive measures must be limited by necessity and kept clearly within it.

AGGRESSION is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the charter of the UN.

Article 3, UN Charter- Any of the following acts, regardless of a declaration of war shall, subject to and in accordance with the provisions of Article 2, qualify as an **act of aggression**:

- a. The **invasion** or **attack** by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack or any annexation by the use of force of the territory of another State of part thereof;
- b. **Bombardment** by the armed forces of a State against the territory of another State;
- c. The **blockade** of the ports or coasts of a State by the armed forces of another State;

- d. An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- e. The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the condition provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
- f. The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
- g. The sending by or on behalf of a State of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

RIGHT TO SOVEREIGNTY

Principle: sovereign equality and internal sovereignty.

Gen. Rule: A state has the right to sovereignty and independence.

Exceptions:

1. **Principle of auto-limitation:** self-imposed limitation or the limiting of the state of its own self, such as entering into treaties.
2. **Membership in the UN.**
3. **Valid interventions-** an act by which a state interferes with the domestic or foreign affairs of another state or states through employment of force or threat of force. This includes:
 - o **Principle of Refoulement** [its French so pronounce it as "re-fo-me"] - refugees cannot be compelled to return to their own state if civil unrest did not subside.
 - o **Principle of Abatement-** where a civil war occurs and there is a spilling out of refugees in the boundaries of two states, the troops of the other state near the boundary may intrude to prevent the violations of human rights.
 - o **Principle of hot pursuit**
 - o **Principle of the right of visit**

- o When it is decreed by the Security Council as a **preventive or enforcement action** for the maintenance of international peace and security.
- o When **requested from sister states or from the UN by the parties** to a dispute or by a state beset by rebellion.

Drago Doctrine: This doctrine was embodied in the Hague Convention of 1907 through the provision that "the contracting powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its nationals."

Independence— freedom from external control in the conduct of external and internal affairs

Sovereignty— is the supreme power of the state to command and enforce obedience; it is the power to which, legally speaking, all interests are practically subject and all wills subordinate.

Principle of Contingent Sovereignty- sovereignty is dependent upon the fulfillment of the state of certain fundamental obligations particularly to its own people.

2 Aspects of Sovereignty

1. **Internal Sovereignty**— refers to the power of the state to direct its domestic affairs, as when it establishes its government, enacts laws for observance within its territory, or adopts economic policies.
2. **External Sovereignty**— signifies the freedom of the state to control its own foreign affairs, as when it concludes treaties, makes war or peace, and maintains diplomatic and commercial relations. (also referred to as independence)

RIGHT TO EQUALITY

Principle:

1. Sovereign Equality [**par in parem non habet imperium**]- All the rights of a state, regardless of their number, must be observed and respected by the international community in the same manner that the rights of other states are observed and respected.
2. **Principle of sovereign immunity**- A state is immune from the exercise of jurisdiction by another.

- o Immunity is only for purely governmental functions (*jure imperii*) and not for purely proprietary acts (*jure gestionis*).
- o Note also that the execution of contracts in furtherance of sovereign functions shall not result to an implied waiver of immunity from suit (**U.S. vs. Ruiz**) - The government of the US rented private properties for board and lodging of their armed forces.
- o Mere entering into a contract does not divest the state from its immunity. It is the nature of the contract that determines the liability of the state (**Syquia vs. Lopez, 84 SCRA 312**).

3. Act of state doctrine-

- o The courts of one country will not sit in judgment on the acts of the government of another country done within the latter's territory (*Underhill vs. Hernandez*).
- o It is considered as an act of state if these requisites concur: the act is public in nature, official in character, sovereign in purpose.
- o **EXCEPTION:** The **Sabatino amendment**- the Cuban government confiscated all properties of American nationals in Cuba without paying just compensation. The US court pronounced that when international laws are blatantly violated, a state may disregard the Act of State Doctrine and rule on the acts of another state.

THE RIGHT OF PROPERTY AND JURISDICTION

TERRITORY- The fixed portion of the surface of the earth inhabited by the people of the state. The territory must be permanent and indicated with precision because its limits generally define the jurisdiction of the state. The territory must be big enough to provide for the needs of the population but should not be so extensive as to be difficult to administer or defend from external aggression.

Territory may be acquired through:

1. Discovery and occupation
2. Prescription
3. Cession

4. Subjugation
5. Accretion

Territory may be lost through:

1. abandonment or dereliction
2. cession
3. subjugation
4. prescription
5. erosion
6. revolution
7. natural causes

Discovery and Occupation is an original mode of acquisition by which territory not belonging to any state, or *terra nullius*, is placed under the sovereignty of the discovering state. The territory need not be uninhabited provided it can be established that the natives are not sufficiently civilized and can be considered as possessing not the rights of sovereignty but only rights of habitation.

Requisites: (1.) Possession (2.) administration

Open seas and outer space are *res communes* and not susceptible to discovery and occupation.

The **Inchoate title of discovery** performs the function of barring other states from entering the territory until the lapse of a reasonable period within which the discovering state may establish a settlement thereon and commence to administer it;

Discovery alone, without any subsequent act, cannot at the present time suffice to prove sovereignty over the Island of Palmas, on Miangas (**Island of Palmas Case**).

Title was deemed acquired by France over an island it had formally claimed but had never administered. If a territory, by virtue of the fact that it was completely uninhabited, is, from the first moment when the occupying state makes its appearance there, at the absolute and undisputed possession of that state, from that moment the taking of possession is considered accomplished and the occupation is formally completed (**Clipperton Island Case**).

Dereliction— territory is lost by dereliction when the state exercising sovereignty over it physically withdraws from it with the intention of abandoning it altogether.

Two Conditions:

- a. Act of withdrawal
- b. Intention to abandon

Prescription— it requires long, continued and adverse possession to vest acquisitive title in the claimant. Significantly, however, there is as yet no rule in international law fixing the period of possession necessary to transfer title to the territory from the former to the subsequent sovereign.

Cession— is a method by which territory is transferred from one state to another by agreement between them. (Sale, donation, barter or exchange and testamentary disposition)

Subjugation— territory is deemed acquired by subjugation when, having been previously conquered or occupied in the course of war by the enemy, it is formally annexed to it at the end of that war.

Accretion— is a mode of acquiring territory based on the principle of *accessio cedat principali*. It is accomplished through both natural and artificial processes.

- a. gradual and imperceptible deposit of soil on the coasts of the country through the action of the water
- b. reclamation projects
- c. formation of islands

COMPONENTS OF TERRITORY:

1. **Terrestrial domain** – land mass
2. **Maritime and fluvial domain** – consists of the bodies of water within the land mass and the waters adjacent to the coasts of the state up to a specified limit.
 - o **Territorial Sea**— may be described as the belt of waters adjacent to the coasts of the state, excluding the internal waters in bays and gulfs, over which the state claims sovereignty and jurisdiction. Traditionally, the breadth of the territorial sea was reckoned at 3 nautical miles, or a marine league, from the low-water mark.
 - o **Internal waters**- all waters from the coastline landwards. It includes bays where the measurement of its mouth is 24 miles. **Historical bays** are not covered because international law considers them as internal waters regardless of its mouth's width.
 - o **Convention on the law of the Sea (1994)** – the new convention provides among others for a uniform breadth of **12 miles** for the territorial sea, a contiguous zone of 12 miles from the outer limits of the territorial sea, an economic zone or

patrimonial sea extending **200 miles** from the low-water mark of the coastal state.

- o The **Archipelagic Doctrine**: Draw baselines around islands to form one unit.

3. The aerial domain – is the airspace above the terrestrial domain and the maritime and fluvial domain of the state, to an unlimited altitude but not including outer space.

JURISDICTION- It is the authority exercised by a state over persons and things within or sometimes outside its territory, subject to certain exceptions.

Principles of Jurisdiction

1. Territorial Jurisdiction-

General Rule: As state has jurisdiction over property, persons and acts occurring within a state's territory.

- o **Subjective territorial principle-** a state has the jurisdiction to prosecute and punish crimes commenced within its territory but is completed in the territory of another state.
- o **Objective territorial principle-** a state has jurisdiction over acts commenced in another state and completed within the state asserting jurisdiction or producing substantial effects inside its territory.
- o **Personal Jurisdiction-** the power exercised by a state over its nationals. Rendered passé by territorial jurisdiction.

Exceptions: the state cannot have jurisdiction over the following even if within its territory [**Principle of Ex-territoriality**]:

1. Foreign states, heads of states, diplomatic representatives, and consuls to a certain degree.
2. Foreign state property, including embassies, consulates, and public vessels engaged in non-commercial activities.
3. Acts of state.
4. Foreign merchant vessels exercising the rights of innocent passage or arrival under stress.
5. Foreign armies passing through or stationed in its territories with its permission

6. Such other persons or property, including organizations like the UN, over which it may, by agreement waive jurisdiction.

2. Nationality Principle of Jurisdiction- a state has jurisdiction if a national resides in a foreign state.

- o **Nationality principle:** Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad [**Art 15 NCC**].

- o Also, intestate and testamentary succession, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions shall be regulated by the national law of the person whose succession is under consideration, whatever maybe the nature of the property and regardless of the country wherein said property may be found [**Art. 16, par.2 NCC**].

3. Protective Principle of Jurisdiction- a state has a significant interest in protecting itself against acts performed outside its territory by non-nationals that threaten the existence/functioning of the state.

4. Passive Personality Jurisdiction- a state assumes jurisdiction to protect its nationals from injury.

5. Universal Jurisdiction- a state assume criminal jurisdiction over a person for a crime even if it was committed outside the territory of the prosecuting state, regardless of the nationality, residence or other relationship of the accused with the prosecuting state.

In relation to Article 2 of the RPC: Article 2. *Application of its provisions.* - Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

1. Should commit an offense while on a Philippine ship or airship;
2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;

3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the preceding number;
4. While being public officers or employees, should commit an offense in the exercise of their functions; or
5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.

MARITIME AND FLUVIAL JURISDICTION

UNCLOS: Principles on maritime jurisdiction

1. Internal waters

- o Includes rivers, lakes, canals, bays (mouth's width of 24 miles and historical bays regardless of mouth's width), and gulfs. For archipelagic states their waters are all waters inside the baseline.
- o Coastal state has absolute jurisdiction. **No right of innocent passage.**
- o **Boundary rivers- Gen. Rule:** demarcation of boundary is the agreement of the parties. **Exception:** if no agreement, adopt **Thalweg doctrine:** it is the deepest part of the river where the demarcation of the boundary will be made and not at the center of the river itself.

2. Territorial Sea

- o 12 nautical miles from the low water mark or archipelagic baselines.
- o **General Rule:** Full jurisdiction.

Exception: Innocent Passage.

PASSAGE means navigation through the territorial sea for the purpose of:

1. Traversing that sea without entering internal waters or calling at a roadstead (used for loading, unloading, anchoring) or port facility outside;
2. Proceeding to or from internal waters as a call at such roadstead or port facility.

INNOCENT PASSAGE – not prejudicial to the peace, good order, or security of the coastal state. Passage shall be continuous and expeditious. However, passage includes stopping and anchoring

but only insofar as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or distress or for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress. **Not applicable to airplanes.**

Philippine situation- Philippine sovereignty extends to the archipelagic waters subject to the right of **innocent passage** and **archipelagic sealanes** and **air route passage**. Innocent passage through archipelagic waters may be suspended by the state but the same must first be published.

Archipelagic sealanes- As stipulated in **Part IV, Sec. 53, par 12 of UNCLOS**, an archipelagic state that fails to define sea lanes opens itself to archipelagic passage "through the routes normally used for international navigation". The absence of clear-cut parameters for what constitutes "normal" routes complicates territorial enforcement.

Question: Who has jurisdiction of a crime committed aboard a foreign vessel while traversing territorial waters?

Gen. Rule: flag state rule will apply.

Exceptions: coastal state law applies

- o When the vessel is involve in psychotropic activities.
- o When the crime committed disturbs or has the tendency of disturbing the peace and security of the coastal state.
- o When the captain of the ship ask for the assistance of the coastal state.

3. Contiguous zone- 24 nautical miles from the low water mark or archipelagic baselines. Limited jurisdiction (**only for enforcement of Customs, Immigration, Fiscal, and Sanitation Laws**).

4. Exclusive Economic Zone- 200 nautical miles from low water mark or archipelagic baselines. Only for exploitation of natural resources. Coastal state has exclusive jurisdiction.

Rights of other states- In the exclusive economic zone, all States, whether coastal or

land-locked, enjoy, subject to the relevant provisions of this Convention, the freedom of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

5. Continental Shelf/ Insular shelf- refers:

- a. the seabed and the subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; and
- b. To the seabed and subsoil of similar areas adjacent to the coasts of islands.

Rights of the coastal state- allowed to establish on the open seas immediately above the installations a safety zone with a radius of 500 meters over which it may exercise jurisdiction for the protection of its properties underneath. This right is exclusive.

Rights of third states- if the coastal state did not explore the continental shelf or exploit its natural resources, no one may undertake these activities or make a claim to the continental shelf without the consent of the coastal state.

6. Open Seas- Are *res communes* and available for the use of all states for purposes of navigation, flying over them, laying submarine cables or fishing.

No jurisdiction except for universal crimes, and crimes and events on board a ship which fly the flag of the state claiming jurisdiction.

Pirates are enemies of all mankind and may be captured on the open seas by the vessels of any state, to whose territory they may be brought for trial and punishment.

Under the laws of neutrality, the public vessels or aircraft of a belligerent state may visit and search any neutral merchant vessel on the open seas and capture it if it is found or suspected to be engaged in activities favorable to the other belligerent.

DOCTRINE OF HOT PURSUIT- If an offense is committed by a foreign merchant vessel within the territorial waters of the coastal state; its own vessels

may pursue the offending vessel into the open sea and upon capture bring it back to its territory for punishment. To be lawful, the pursuit must be begun before the offending vessel has left the territorial waters or the contiguous zone of the coastal state with respect to violation of rights enforceable thereon. Moreover, the pursuit must be continuous or unabated; otherwise, it will be deemed to have "cooled" and can no longer be resumed.

ILLUSTRATIVE CASE: MV Paula, a cargo ship sailing on the flag of France, while on the high seas collided with MB Athena. Who will have criminal jurisdiction over the person of X, a Filipino national?

Answer: Art 11 of the Geneva Convention on the High Seas: In the event of a collision or of any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceeding maybe instituted against such persons except before the judicial or administrative authorities either of the **flag state** or of **the state of which such person is a national.**

However, in the **Lotus Case,** a French steamer and a Turkish vessel collided in the Aegean Sea, the captain a French national was convicted by Turkish courts. France questioned that turkey has no jurisdiction.

But the ICJ decided that the negligence of the captain resulted in a damage to both states therefore it is a case of concurrent jurisdiction.

AERIAL JURISDICTION- No foreign aircraft, civil or military, may pass through the aerial domain a state, without its consent.

Five Air Freedoms:

1. the freedom to fly across foreign territory without landing;
2. the freedom to land for non-traffic purposes;
3. the freedom to put down traffic originating in the State of the aircraft;
4. the freedom to embark traffic destined for the State of the aircraft;
5. The freedom to embark traffic destined for or to put down traffic originating in a third State.

It is the State of registration of the aircraft that has jurisdiction over offenses and acts committed on board while it is in flight or over the high seas or any other area outside the territory of any state.

No other state may exercise jurisdiction over such aircraft except when:

1. the offense has effect on the territory of such state;
2. the offense has been committed by or against a national or permanent resident of such state;
3. the offense is against the security of such state;
4. the offense consists of a breach of any rules or regulations relating to the flight or maneuver of aircraft in force in such state;
5. The exercise of jurisdiction is necessary to ensure the observance of any obligation of such state under a multilateral international agreement.

RIGHT TO LEGATION

- o The right to send and receive diplomatic representatives.

Active Right of Legation- the right to send envoys or establish diplomatic mission

Passive Right of Legation- the right to receive such envoys or missions.

Diplomatic relations are normally conducted through the head of state, the foreign secretary or minister and the members of the diplomatic service.

The head is the embodiment of or at least represents the sovereignty of his state. He is entitled to certain immunities and honors befitting his status.

The foreign secretary is the immediate representative of the head of state and directly under his control as such, he can make binding declarations on behalf of his state on any matter falling within his authority (e.g. recognition of states or governments and the settlement of international claims against the state).

Note:

- o The appointment of diplomats is not merely a matter of municipal law because the receiving state is not obliged to accept any representative who is *persona non-grata* to it.
- o *Persona non grata*- in International Law and diplomatic usage, a person not acceptable (for reasons peculiar to himself) to the court or government to, which it is proposed to accredit him in the character of an ambassador or minister.

- o **Agreation-** by means of which informal inquiries are addressed to the receiving state regarding a proposed diplomatic representative of the sending state. It is only when the receiving state manifests its *agrément* or consent, also informally, that the diplomatic representative is appointed and formally accredited.

Rationale: To avoid diplomatic *faux pas* [diplomatic embarrassment] [French ito kaya pronounce *pas* without 's'].

DIPLOMATS

DIPLOMATS-Ito ang kulay blue ang plate number ng sasakyan sa Pinas!

Diplomatic Envoys refers to-

1. Ambassadors or nuncios accredited to heads of state.
2. Envoys, ministers or internuncios accredited to heads of state.
3. *Chargés d'affaires* accredited to ministers for foreign affairs.

The diplomatic corps is a body consisting of the different diplomatic representatives who have been accredited to the same local or receiving state. It is headed by a *doyen du corps*, who, by tradition, is the oldest member with the highest rank or, in Catholic countries, the Papal Nuncio. The appointment of diplomats is not merely a matter of municipal law because the receiving state is not obliged to accept any representative who is *persona non grata* to it.

The envoy is generally armed with the following papers which they should show to Philippine Authorities:

1. **A Letter of Credence (*lettre de creance*)** - this gives the name of the representative, his rank, the character and general object of his mission; it also contains a request for favorable reception and full credence; it is sealed, but the ambassador is furnished several carbon copies (or photocopies thereof).
2. **A Diplomatic Passport** (this authorizes his travel and describes both his person and his office);
3. **Instructions-** special diplomatic agents receive a document of general full powers (*pleins*

pouvoirs) with authority to negotiate on extraordinary or special business;

4. **Cipher/Code/ Secret Key-** (for communication with his country).

DIPLOMATIC FUNCTIONS:

1. Representing the sending state in the receiving state.
2. Protecting in the receiving state the interests of the sending state and its nationals.
3. Negotiating with the government of the receiving state.
4. Ascertaining by all lawful means conditions and developments in the receiving state and reporting thereon to the government of the sending state.
5. Promoting friendly relations between the sending and receiving states and developing their economic, cultural and scientific relations.

Diplomatic Immunity- The customary international law granting immunity in favor of diplomatic persons to uphold their dignity and to allow the free and unhampered exercise of their functions [**Vienna Convention on Diplomatic Relations**].

Diplomatic Immunity	Diplomatic Protection
It is the immunity of diplomats from the jurisdiction of the receiving state.	It is the protection given by a state to its citizens living or sojourning in another state.

Diplomatic Protocols- The totality of norms and rules which determine the external forms of relations between states, of diplomatic intercourse; it is a political instrument of diplomacy and creates a framework within which diplomatic activities are realized.

Who recognizes diplomatic immunity? The President.

Principle of Suggestion

- o If the president recognizes the diplomatic immunity of an alien and he communicates the same to the court, the court should follow by dismissing cases filed against the diplomat, if any.
- o It is a recognized principle of international law and under our system of separation of powers that **diplomatic immunity is essentially a political question** and courts should refuse to look beyond a determination by the executive branch of the government, and where the plea

of diplomatic immunity is recognized and affirmed by the executive branch of the government, it is then the duty of the courts to accept the claim of immunity upon appropriate suggestion by the principal law officer of the government [**World Health organization vs. Aquino,48 SCRA 242**].

DIPLOMATIC IMMUNITIES AND PRIVILEGES

1. **Personal Inviolability-** the person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.
2. **Immunity from jurisdiction of receiving state-** the *Diplomatic Convention* provides: "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state. He shall also enjoy immunity from its civil and administrative jurisdiction, **except** in the case of:
 - a. a **real action** relating to private immovable property situated in the territory of the receiving state, unless he holds it on behalf of the sending state for the purposes of the mission;
 - b. an action relating to **succession** in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending state;
 - c. An action relating to any **professional or commercial activity** exercised by the diplomatic agent in the receiving state outside of his official functions.

Note:

- o Under our Constitution, it is the President who is empowered to appoint ambassadors, other public ministers and consuls, subject to the consent of the Commission on Appointments.
- o **Immunity from jurisdiction may be waived expressly or impliedly.** However for the waiver to be valid it must be **clear** and must be made by the **highest official** of the organization.
- o However, waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to **imply waiver of immunity in**

respect of the execution of the judgment, for which a separate waiver shall be necessary.

3. Inviolability of Diplomatic Premises

4. Inviolability of Archives

5. **Inviolability of Communication**-even the diplomatic courier carrying the diplomatic bag shall be protected by the receiving state in the performance of his functions.

6. Exemption from Testimonial Duties

7. **Exemption from taxation**- the diplomatic envoy is also exempt from taxes, customs duties, and other dues, subject to the exception listed in the *Diplomatic Convention* and as well as from social security requirements under certain conditions. His personal baggage is also free from inspection unless there are serious grounds for presuming that it contains articles not exempt from customs duties or not admissible into the receiving state.

8. Other Privileges

- a. Freedom of movement and travel in the territory of receiving state.
- b. Exemption from personal services, public services and from military obligation.
- c. The right to use the flag and emblem of the sending state on the premises of the mission.

TERMINATION OF DIPLOMATIC MISSION:

Usual methods:

1. Death
2. Resignation
3. Removal
4. Abolition of the office, etc.

Under International Law, the more important modes are **recall** and **dismissal**.

Note: The severance of diplomatic relations shall not ipso facto involve the severance of consular relations and vice versa.

Illustrative Case:

Situation #1: Santiago Wakas, an ambassador of Thailand to the Philippines committed the crime of rape while in the Philippines. Can the Philippines have jurisdiction over his person? What are the remedies available to the Philippines?

NO. The Philippines cannot have jurisdiction over his person because of diplomatic immunity. However the Philippines may declare him as **persona non grata** and shall communicate the same to the state of Thailand. If Thailand will not act on the matter within a reasonable time, the Philippines may arrest the ambassador as an ordinary alien.

Or the Philippines may just opt to **dismiss the diplomat**. The diplomat is asked to return to his own state.

The erring diplomat maybe prosecuted in his own state if the crime he committed is punishable under its laws.

Situation #2: Santiago Wakas, a Filipino citizen went to Thailand for a vacation. He was ganged up and was beaten to death by Thai nationals. The Thai government did not do anything to help Santiago either by arresting the culprits or others methods. What is the remedy of the Philippines to express its displeasure to the incidence?

Recall the Ambassador or the Philippines to Thailand. And if matters come to worst, close the Philippine embassy in Thailand.

CONSULS

- o They are State agents residing abroad for various purposes but mainly in the interest of commerce and navigation.
- o **They have limited immunity compared to diplomats because their immunity is usually covered by a treaty.**

2 Kinds of Consuls:

1. **Consules missi**- professional or career consuls who are nationals of the appointing state and are required to devote their full time to the discharge of their consular duties.
2. **Consules electi**- they may or may not be nationals of the appointing state and perform their consular functions only in addition to their regular callings.

Heads of consular posts are classified according to importance into:

1. consul-general
2. consul
3. vice-consul
4. consular agent

Consuls derive their authority from 2 principal sources:

1. **Letter Patent** or *lettre de provision* – the commission issued by the sending state.
2. **Exequatur**-the authority given to them by the receiving state to exercise their duties therein.

FUNCTIONS OF CONSULS:

1. Promote the commercial interests of their country in the receiving state and to observe commercial trends and developments therein for report to their home government.
2. They also perform duties relating to navigation, such as visiting and inspecting vessels of their own states which may be in the consular district, exercising a measure of supervision over such vessels, adjusting matters pertaining to their internal order and discipline, as well as visiting and inspecting foreign vessels destined for a port of the sending state.
3. Consuls are also empowered to issue passports to nationals of the sending state, & to issue documents relating to entry into and travel within the territory of the sending state, and to visa invoices and certificates of origin of goods destined for the territory of that state, and to visa invoices and certificates of origin of goods destined for the territory of that state.
4. It is likewise the responsibility of consuls to look after the interests of fellow nationals and to extend them official assistance whenever needed.

CONSUL'S IMMUNITIES AND PRIVILEGES:

1. Consuls have a right to official communication.
2. Consuls also enjoy inviolability of their archives.
3. Consuls are exempt from the local jurisdiction for crimes committed by them in the discharge of their official functions. But with regard to other offenses, they are fully subject to the local law and may be arrested, prosecuted and punished in proper proceedings.
4. Civil suits may be instituted against consuls in their personal or private capacity but not in matters connected with their official duties.
5. Consuls are also generally exempted from taxation, customs duties, service in the militia, and social security rules.

Termination of Consular Mission:

1. **removal**
2. **resignation**
3. **death**
4. **expiration of the term**
5. **outbreak of war between the sending and receiving state**
6. **withdrawal of the exequatur**

In the event of war, the consulate is closed and the archives are sealed and left in the custody of a caretaker, usually a consul from a neutral state. The consul from the belligerent state is allowed to depart for his own country as soon as possible and w/o unnecessary molestation.

Question: If a consul of Thailand to the Philippines committed a crime in the Philippines can he be prosecuted? Answer: It depends,

- o If the crime was committed while discharging his duties. If it is, he is immune from the jurisdiction of the receiving state.
- o If it was committed not in relation to his function he can be prosecuted. **However** he cannot be arrested and detained if the crime committed is not a serious offense. This is so because he has duties to perform such as giving passports.

ILLUSTRATIVE CASE:

Liang vs. People, Jan 28, 2000

Facts: Liang is a representative of the Asian Development Bank to the Philippines. The said organization is accorded sovereign immunity which extends to its officials as long as the erring official committed the acts in the discharge of his duties. Liang defamed his co-employee. He was sued.

Issue: WON Liang is immune from prosecution.

Held: No! To defame is not one of the duties of Liang. As such, he can be prosecuted. The immunity accorded to him pursuant to the treaty are acts done in the performance of his duty.

ASYLUM

- o The "right of asylum" is the authority of a State to allow an alien who has sought refuge from prosecution or persecution to remain within the territory and under its protection.
- o **It covers political or religious offenses.**

There are two (2) species of asylum:

1. **Territorial asylum**- refuge within the territory of the sheltering state; the protection which a

refugee obtains by escaping to, or remaining upon, the territory of a State other than the state that "wants" him, until the protection is terminated by his extradition.

2. **Exterritorial asylum**- asylum in what are considered the "extensions" of a state's jurisdiction. This includes:
 - a. asylum in foreign public ships;
 - b. Diplomatic asylum- the protection afforded by a State to a refugee by granting him an asylum in or upon its diplomatic buildings within the territory of the State that wants him.

The doctrine on asylum may be summarized in the following manner:

1. With reference to territorial asylum the right of a state to grant asylum within its territory exists only when it is so stipulated in a treaty or when it is justified by established usage. Of course, should a state rely on its "territorial supremacy" it can always justify the grant.
2. With reference to diplomatic asylum- asylum may be granted only if- **Requisites:**
 - A. there is a treaty granting this right;
 - B. established usage allows it but this should be confined "within its narrowest limits"
 - C. When the life, person, or liberty of the individual seeking is threatened by imminent violence; it is understood that asylum should be temporary and should exist only for the duration of the emergency.

EXTRADITION

- o Is the surrender of a person by one state to another state where he is wanted for prosecution or, if already convicted for punishment.
- o **It covers common crimes.**

Requisites of Extradition:

1. There must be an extradition treaty.
2. The crime committed must not be a political offense.
 - o **Exception:** presence of **Attendant Clause** [French kaya pronounce it without the 'nt'] in the extradition treaty- assassination of head of states or any member of his family is not regarded as political offense for purposes of extradition. Also for the crime of genocide.

3. A fugitive who is extradited may be tried only for the crime specified in the request for extradition and such crime is included in the list of extraditable offenses in the treaty [**Principle of Specialty**].

- o **Exception: Principle of Double Criminality**- the crime though not listed in the treaty is punishable by both states.

Note:

- o The extradition of a person is required only if there is a treaty between the state of refuge and the state of origin. In the absence of such a treaty, the local state has every right to grant asylum to the fugitive and to refuse to deliver him back to the latter state even if he is its national.
- o The crime of genocide consists of any of the following acts, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:
 1. **Killing members of the group.**
 2. **Causing serious bodily or mental harm members of the group.**
 3. **Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.**
 4. **Imposing measures intended to prevent births within the group.**
 5. **Forcibly transferring children of the group to another group.**

Extradition contra Deportation

Extradition	Deportation
1. Effected at the request of the state of nation	1. Unilateral act of the local state
2. It is based on offense generally committed in the state of origin.	2. Based on causes in the local state.
3. Calls for the return of the fugitive to the state of origin.	3. An undesirable alien may be deported to a state other than his own or the state of origin.

PROCEDURE OF EXTRADITION:

1. Request through diplomatic representative.
2. DFA forwards the request to the DOJ.
3. DOJ files petition for extradition with the RTC.
4. RTC issues summons or warrant of arrest to compel the appearance of the individual.
5. Hearing (provide counsel de officio if necessary).

6. Appeal to the CA within 10 days whose decision shall be final and executory.
7. Decision forwarded to DFA through the DOJ.
8. Individual placed at the disposal of the authorities of requesting state- costs and expenses be shouldered by requesting state.

ILLUSTRATIVE CASE:

Gov't of US vs. Purganan, September 24, 2002

Facts: By virtue of an extradition treaty between the US and the Philippines, the US requested for the extradition of Mark Jimenez for violations of US tax and election laws. During the proceeding, Jimenez invokes his constitutional due process and his right to bail.

Issue: Won bail as a matter of right and due process shall be observed in extradition proceedings.

Held: NO! Bail is not allowed because the extraditee is a flight risk. There is a great possibility of flight after bail. However as an **EXCEPTION** bail is allowed if: (1) that, once granted bail, the applicant will not be a flight risk or a danger to the community; and (2) that there exist special, humanitarian and compelling circumstances including, as a matter of reciprocity, those cited by the highest court in the requesting state when it grants provisional liberty in extradition cases therein.

DUE PROCESS: Contrary to his contention, his detention prior to the conclusion of the extradition proceedings does not amount to a violation of his right to due process. We iterate the familiar doctrine that the essence of due process is the opportunity to be heard but, at the same time, point out that the doctrine does not always call for a *prior* opportunity to be heard. Where the circumstances -- such as those present in an extradition case -- call for it, a *subsequent* opportunity to be heard is enough. In the present case, respondent will be given full opportunity to be heard subsequently, when the extradition court hears the Petition for Extradition. Hence, there is no violation of his right to due process and fundamental fairness.

By nature then, extradition proceedings are not equivalent to a criminal case in which guilt or innocence is determined. Consequently, an extradition case is not one in which the constitutional rights of the accused are necessarily available. It is more akin, if at all, to a court's request to police authorities for the arrest of the accused who is at large or has escaped detention or jumped bail. Having once escaped the jurisdiction of the requesting state, the reasonable prima facie presumption is that the person would escape again if given the opportunity.

PART V: TREATIES

Treaty- A formal agreement, usually but not necessarily in writing, which is entered into by states or entities possessing the treaty-making capacity, for the purpose of regulating their mutual relations under the law of nations.

Executive Agreement- Is not a treaty insofar as the concurrence thereto of the Senate is not required under our Constitution.

Note: the distinction is purely municipal and has no international significance. From the viewpoint of international law, **"treatise and executive agreements are alike in that both constitute equally binding obligations upon the nation."**

VARIOUS APPELLATIONS GIVEN TO "TREATIES":

1. **Pact** – a special treaty which is formally sentimental;
2. **Convention**– this is more or less an informal treaty dealing with specific subjects: sometimes it does not even require ratification.
3. **"Agreement"/ "Arrangement"/ "Accord"** – conventions on administrative or technical matters;
4. **"Concordats"** – agreement entered into by the Pope (as head of the church) with various chiefs of States;
5. **Declarations** – these are formal reciprocal agreements which may deal with:
 - a) the rights and privileges of the national of a state;
 - b) principles in accordance with which states propose to act or
 - c) Grounds for mutual action on the part of states.
6. **Protocol** – this may refer either to a supplemental treaty or to an amendment to a treaty

FUNCTION OF TREATIES

1. Treaties enable parties to settle finally actual and potential conflicts.
2. Treaties make it possible for the parties to modify the rules of international customary law by means of optional principles or standards.
3. They may lead to a transformation of unorganized international society into one which may be organized on any chosen level of social integration.
4. They frequently provide the humus for the growth of international customary law.

ESSENTIAL REQUISITES OF A VALID TREATY

To be valid, a treaty must:

1. be entered into by parties with the treaty – making capacity;
2. through their authorized representatives;
3. without the attendance of duress, fraud, mistake or other vice of consent;
4. on any lawful subject – matter;
5. in accordance with their respective constitutional processes

The Constitution of the Philippines authorizes the President to make treaties, subject to the concurrence of two-thirds of all the members of the Senate.

TREATY – MAKING PROCESS

1. **Negotiation** - it is a standard practice for one of the parties to submit a draft of the proposed treaty, which, together with the counter – proposals, becomes the basis of the subsequent negotiations.
2. If and when the negotiators finally agree on the terms of the treaty, the same is opened for **signature**.
3. **Ratification** - is the formal act by which a state confirms and accepts the provisions of a treaty concluded by its representatives.
 - An unratified treaty cannot be a source of obligations between the parties.
4. **Exchange of the instruments of ratification** or deposit with the government of one of the contracting parties or with an organ of an international organization.
5. **Registration** with and publication by the Secretariat of the United Nations.

Under Art. 102 of the UN Charter, a treaty not registered with the Secretariat, by which it shall be published, cannot be invoked before any organ of the UN. Nevertheless, the treaty does not cease to be binding between the parties and may be the basis of litigation before some other arbitral or judicial body not connected with the UN.

BINDING EFFECT OF TREATIES

- o As a rule, a treaty is binding only on the contracting parties, including not only the original signatories but also other states which, although they may not have participated in the negotiation of the agreements, have been

allowed by its term to sign it later by a process known as accession.

Instances when Third States may be validly Held to the Observance of or Benefit from the Provisions of a Treaty where it is not a member

1. The treaty may be merely a formal expression of customary international law which, as such, is enforceable on all civilized states because of their membership in the family of nations.
2. Under Art. 2 of the UN Charter “The organization shall ensure that non-member States act in accordance with the principles of the Charter so far as may be necessary for the maintenance of international peace and security.”
3. The treaty itself may expressly extend its benefits to non-signatory states.

RULE ON OBSERVANCE OF TREATIES

General Rule: Pacta sunt servanda – performance in good faith of treaty obligations

Exception: Rebus sic stantibus– the doctrine constitutes an attempt to formulate a legal principle which would justify non-performance of a treaty obligation if the conditions with relation to which the parties contracted have changed so materially and so unexpectedly as to create a situation in which the exaction of performance would be unreasonable.

Requisites of rebus sic stantibus:

1. it applies only to treaties of indefinite duration;
2. the vital change must have been unforeseen or unforeseeable and should not have been caused by the party invoking the doctrine;
3. the doctrine must be invoked within a reasonable time; and
4. It cannot operate retroactively upon the provisions of the treaty already executed prior to the change of circumstances.

INTERPRETATION OF TREATIES (Vienna Convention Section 3)

General Rule of Interpretation (Art. 31):

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including preamble and annexes:
 - o Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty.
 - o Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the party.
3. There shall be taken into account, together with the context:
 - o Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provision.
 - o Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.
 - o Any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if its established that the parties so intended.
4. By **loss of the subject-matter**.
5. By **desistance of the parties**, through express mutual consent; *desuetude*, or the exercise of the right of denunciation (or withdrawal), when allowed.
6. By **novation**.
7. By **extinction of one of the parties if the treaty is bipartite**.
8. By vital change of circumstance under the doctrine of *rebus sic stantibus*.
9. By outbreak of war between the parties in most cases, except if the treaty was intended to regulate the conduct of the signatories during the hostilities, or to cede territory, or to fix boundaries. As held in **Techt v. Hedges**, provisions of a treaty compatible with a state of hostilities, unless expressly terminated, will be enforced, and those incompatible rejected.
10. By **voidance** of the treaty because of defects in its conclusion, violation of its provisions by one of the parties, or incompatibility with international law or the U.N. Charter.

SUPPLEMENTARY MEANS OF INTERPRETATION (ART. 32)

Recourse may be had to supplementary means of interpretation including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to Art. 31:

- Leaves the meaning ambiguous or obscure; or
- Leads to result which is manifestly absurd or unreasonable.

Note: Article 32 is not an alternative recourse in the interpretation of a treaty; rather it must be taken in relation to Article 31.

TERMINATION OF TREATIES

A treaty may be terminated in any of the following ways:

1. By **expiration of the term**, which may be fixed or subject to a resolutive condition.
2. By **accomplishment of the purpose**.
3. By Impossibility of performance.

Illustrative case: The constitutionality of the VFA was upheld in **Bayan vs. Zamora**, as it complied with the three requirements of Sec. 25, Art. XVII of the constitution- (a) there must be a treaty, (b) concurred by the senate, (c) recognized as a treaty by other contracting state. The third requirement was met notwithstanding that there was no concurrence by the US senate as in a case of a treaty. For as long as the US accepts or acknowledges the VFA as a treaty, and binds itself further to comply with its obligation under a treaty there is marked compliance with the mandate of the constitution. The distinction between a treaty and executive agreement is only for the purpose of determining compliance with internal rules. In international law, an executive agreement is as binding as a treaty.

PART VI: NATIONALITY, TREATMENT OF ALIENS, STATELESSNESS

Nationality

- o membership in a political community with all its concomitant rights and obligations
- o An individual acquires the nationality of the state where he is born *jure soli* or the nationality of his parents'-*jure sanguinis*.

DOCTRINE OF STATE RESPONSIBILITY/ IMPUTABILITY/ INTERNATIONAL DELINQUENCY

Hague Convention of 1930 on the Conflict of Nationality Laws:

Art. 1 – It is for each state to determine under its laws who are its nationals.

Art. 5 – Within a third state, a person having more than one nationality shall be treated as if he had only one.

Naturalization- Is a process by which a foreigner acquires, voluntarily or by operation of law, the nationality of another state.

Loss of Nationality

A. Voluntary:

1. renunciation
2. request for release

B. Involuntary:

1. forfeiture as a result of some disqualification or prohibited act like enlistment in a foreign army
2. substitution of one nationality for another following a change of sovereignty

Statelessness

- Is the condition or status of an individual who is born without any nationality or who loses his nationality without retaining or acquiring another.
- A **stateless individual** is, from the traditional viewpoint, powerless to assert any right that otherwise would be available to him under international law where he is a national of a particular state. Any wrong suffered by him through the act of omission of a state would be ***damnum absque injuria*** for in theory no other state had been offended and no international delinquency committed as a result of the damage caused upon him.
- It was in view of this difficulty that the **Hague Convention of 1930** adopted rules to avoid the condition of statelessness and all its attendant inconveniences. Briefly stated, these rules would **condition loss of nationality by an individual upon his retention or acquisition of another nationality, whether such loss be by expatriation, naturalization as to the wife and minor children or adoption.**

Under this doctrine, a state may be held responsible for:

1. an international delinquency
2. Directly or indirectly imputable to it.
3. Which causes injury to the national of another state. Liability will attach to the state where its treatment of the alien falls below the international standard of justice. Or where it is remiss in according him the protection or redresses that is warranted by the circumstances.

TYPES OF STATE RESPONSIBILITY

1. **Direct Responsibility-** Attaches to the state if the wrongful act/omission was effected through any of its superior organs acting on its behalf.
2. **Indirect Responsibility-** Acts of the following are attributable to the state:
 - State organs
 - Other persons exercising elements of governmental authority in the absence or default of the official authorities and in circumstances calling for the exercise of those elements of authority.
 - Insurrectional or other movement which becomes the new government.

Note: In case of injuries inflicted upon a foreigner in the course of **quelling rebellion**, state responsibility will attach only if the rebellion succeeds and the rebels will take control of the state, but not when the legitimate government remains in power as the act of quelling rebellion is a valid exercise of defense. State liability will attach only if it fails to observe the minimum international standard for the protection of aliens.

Instances of International Delinquency

- Violation of a treaty
- Denial of the injured alien to access the court
- The state where the injury happened did not institute measures to prevent the incident.
- The state concerned did not investigate the incident.

Principle of Diplomatic Protection- The state has the obligation to protect its nationals even though they are abroad.

International Standard of Justice

- o The standard of the reasonable state, that is, as referring to the ordinary to the ordinary norms of official conduct observed in civilized jurisdictions.
- o But even assuming the liability of the state for an international delinquency, its enforcement cannot be claimed by the injured foreigner unless he first exhausts all available local remedies for the protection or vindication of his rights.

Deportation- Removal of an alien out of country, simply because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated either under the laws of the country out of which he is sent, or under those of the country to which he is taken.

Exclusion- denial of entry to an alien

Enforcement of Claim- An international claim for damages may be resolved through:

1. **negotiation**
2. **good offices**
3. **arbitration**
4. **judicial settlement**
5. **war**

Such reparation may take the form of:

1. restitution
2. satisfaction or compensation
3. restoration or replacement of the object of the offense
4. formal apology by the delinquent state
5. payment of damages

Calvo Clause- this is a stipulation by which the alien waives or restricts his right to appeal to his own state in connection with any claim arising from the contract and agrees to limit himself to the remedies available under the laws of the local state

Q: under the rules of international law, may an, alien lawfully make such a promise (as is embodied in the Calvo clause)?

A: The Commission holds that he may, but at the same time holds that he cannot deprive the government of his nation of its undoubted right of applying international remedies to violations of international law committed to his damage. Such government frequently has a larger interest in maintaining the principles of international law than in recovering damage for one of its citizens in a

particular case, and manifestly such citizen cannot by contract tie in this respect the hands of his government.

PART VII: INTERNATIONAL POSTLONINUM

WAR

- o Armed contention between the public forces of states or other belligerent communities, implying the employment of violence among the parties as a means of enforcing their respective demands upon each other.
- o War may also exist even without the use of force as when a state formally refuses to be governed by the laws of peace in its relations with another state even if actual hostilities have not taken place between them.

War is outlawed. In only two instances is the used of force allowed, to wit:

1. In the exercise of the inherent right of self-defense;
2. Enforcement action that may be decreed by the Security Council.

Commencement of War- The **Hague Convention of 1907** provide that hostilities "must not commence without a previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration. War is supposed to commence on the date specified in the declaration or on the date it is communicated to the enemy.

EFFECTS of War

- 1) The laws of peace cease to regulate the relations of the belligerents and are superseded by the laws of war. Third states are governed by the laws of neutrality in their dealings with the belligerents.
- 2) Diplomatic and consular relations between the belligerents are terminated and their respective representatives are allowed to return to their own countries.
 - o **Principle of Internment-** Nationals of the enemy state is quartered if they were not allowed to return to the mother state.
- 3) Treatise of a political nature, such as treaties of alliance are automatically cancelled, but those which are precisely intended to operate during war are activated. Multipartite treatise dealing with technical or administrative matters, like

postal conventions, are deemed merely suspended as between the belligerents.

- 4) Individuals are impressed with enemy character:
 - a. under the **nationality test**, if they are nationals of the other belligerent, wherever they may be;
 - b. under the **domiciliary test**, if they are domiciled aliens in the territory of the other belligerent, on the assumption that they contribute to its economic resources;
 - c. Under the **activities test**, if, being foreigners, they nevertheless participate in the hostilities in favor of the other belligerent.
- 5) Enemy public property found in the territory of the other belligerent at the outbreak of hostilities is, with certain exceptions, subject to confiscation. Enemy private property may be sequestered, subject to return, reimbursement or other disposition after the war in accordance with the treaty of peace.

Who are Combatants?

1. Are those engage directly in the hostilities while non-combatants are those who do not.
2. Only the non-combatants may lawfully wage war and are thus subject to direct attack from the enemy.

THE FOLLOWING ARE REGARDED AS COMBATANTS:

1. The members of the armed forces, whether pertaining to the army, the navy or the air force.
2. The irregular forces, such as the *francs tireurs* or guerillas, provided, that:
 - a. they are commanded by a person responsible for his subordinates;
 - b. they wear a fixed distinctive sign recognizable at a distance;
 - c. they carry arms openly; and
 - d. They conduct their operations in accordance with the laws and customs of war.
3. The inhabitants of unoccupied territory who, on approach of the enemy, spontaneously take arms to resist the invading troops without having had time to organize themselves, provide only that they carry arms openly and observe the laws and customs of war. This is often referred to as a *levee en masse*.

4. The officers and crew of merchant vessels who forcibly resist attack.

Note:

- o When captured, combatants are entitled to treatment as POWs, which includes *inter alia* the rights to be accorded the proper respect commensurate with their rank, to adequate food and clothing, to safe and sanitary quarters, to medical assistance, to refuse to give military information or render military service against their own state, and to communicate with their families.
- o Non-combatants do not enjoy identical rights when captured but are nevertheless protected from inhumane treatment.

THREE (3) BASIC PRINCIPLES UNDERLYING THE RULES OF WARFARE

1. **Principle of military necessity**- under this principle, the belligerents may, subject to the other two principles *infra*, employ any amount and kind of force to compel the complete submission of the enemy with the least possible loss of lives, time and money.
2. **Principle of humanity**- prohibits the use of any measure that is not absolutely necessary for the purposes of the war, such as the poisoning of wells and weapons, the employment of *dumdum* or expanding bullets and asphyxiating gases, the destruction of works of art and property devoted to religious or humanitarian purposes, the bombarding of undefended places and attack of hospital ships.
3. **Principle of Chivalry** – is the basis of such rules as those that require the belligerents to give proper warning before launching a bombardment. Ruses and stratagems of war are allowed provided they do not involve the employment of treacherous methods, such as the illegal use of Red Cross emblems to throw the enemy off guard prior to an attack.

Theatre of War- the place where the hostilities are actually conducted, as distinguished from the

Region of War- Which is the greater area where the belligerents may lawfully engaged each other. This would comprise their own territories and the open seas, excluding only neutral territories.

Note:

- o **Belligerent occupation** does not result in transfer or suspension of the sovereignty of the legitimate government although it may be at the moment unable to exercise it.
- o Private property of municipalities and of institutions dedicated to religion, charity and education, and the arts and sciences, even when state-owned, shall be treated as private property, and their destruction is expressly forbidden.

Jus Postliminium- Imports the reinstatement of the authority of the displaced government once control of the enemy is lost over the territory affected.

Uti Possiditis- Imports the control of a belligerent over the territory of its enemy which it acquired during the war.

Status Quo Ante Bellum- Imports the restoration of the condition of both belligerent states before the war.

DEFINITION OF TERMS:

A Flag of Truce- is a white flag carried by an individual authorized by one belligerent to enter into communications with the other. The bearer, or *parlementaire*, is entitled to inviolability as long as he does not take advantage of his privileged position to commit an act of treachery. However, the other belligerent is not obliged to receive a flag of truce.

Cartels- are agreements to regulate intercourse during war on such matters as postal and telegraphic communication, the reception of flags of truce, and the exchange of prisoners. A cartel ship is a vessel sailing under a safe-conduct for the purpose of carrying exchanged prisoners of war (POWs).

Passport- a written permission given by the belligerent government or its authorized agent to the subjects of the enemy state to travel generally in belligerent territory.

Safe-conduct- a pass given to an enemy subject or to an enemy vessel allowing passage between defined points. This is given either by the belligerent government or by the commander of the area within which it is effective.

Safeguard- a protection granted by a commanding officer either to enemy persons or property within its command.

License to Trade- a permission given by the competent authority to individuals to carry on trade even though there is a state of war.

Suspension of Arms- a temporary cessation of the hostilities by agreement of the local commanders for such purposes as gathering of the wounded and the burial of the dead.

Armistice- the suspension of all hostilities within a certain area (local) or in the entire region of the war (general) agreed upon by the belligerent governments, usually for the purpose of arranging the terms of the peace.

Armistice contra Suspension of Arms

Armistice	Suspension of Arms
1. the purpose is political	1. The purpose is military
2. may be concluded by the commanders-in-chief of the belligerent governments	2. May be agreed upon by the local commanders
3. it is usually in writing	3. it may be oral

Cease Fire- an unconditional stoppage of hostilities by order of an international body like the UN Security Council for the purpose of employing peaceful means of settling the differences between the belligerents.

Truce- sometimes used interchangeably with armistice but is now generally regarded as a cease-fire with conditions attached.

Capitulation- the surrender of military forces, places or districts in accordance with the rules of military honor.

CRIMES UNDER INTERNATIONAL LAW

[Excerpt from Principles of the Nuremberg Charter and Judgment]

a. Crimes against peace.

- i. planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
- ii. Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

b. War Crimes (e.g. ill-treatment of POWs, plunder of private or public property)

c. Crimes against humanity (e.g. persecution on political, racial or religious grounds)

Note: Complicity in the commission of a crime against peace, a war crime, or a crime against humanity is a crime under International law.

Questions: Are mercenaries entitled to be treated as POW when captured by enemy state?

Answer: No because they do not belong to the armed forces of the belligerent state but they conduct their activities for personal economic gain.

Question: A, B, C, former Filipino generals are having their vacation in Bosnia when it was invaded by Germany. They assisted the armed forces of Bosnia by providing combat strategies. In return they are paid good amount of money. They were captured by German troops. Are they entitled to the rights of POW?

Answer: No! They are not member of the armed forces of Bosnia but are mercenaries. They are not nationals of Bosnia nor domiciliary to the same.

NOTE: spies if captured are not accorded the rights of a POW unless they belong to the armed forces of the enemy state.

PART VIII: PACIFIC SETTLEMENT OF DISPUTES

International Dispute- An actual disagreement between states regarding the conduct to be taken by one of them for the protection or vindication of the interests of the other state.

Situation- initial stage of a dispute

A dispute is **legal** if it involves justiciable rights based on law or fact susceptible of adjudication by a judicial or arbitral tribunal.

It is **political** if it cannot be decided by legal processes on the basis of the substantive rules of international law because the differences of the parties spring from animosities in their mutual attitudes rather than antagonism of legal rights. The solution to such a dispute lies not in the councils of the courts but in the corridors of diplomacy.

Note:

- o Disputes are required to be settled, conformably to one of the basic principles of the UN, by peaceful means in such manners that international peace and security, and justice, are not endangered.

- o The jurisdiction of the International Court of Justice is not general or obligatory; its competence to act is dependent on the consent of the parties involved.

Amicable methods of Settling Disputes: (GIN MAC JR.)

1. good offices
2. inquiry
3. negotiation
4. mediation
5. arbitration
6. conciliation
7. judicial settlement
8. resort to regional and international organizations

Except for negotiation, they all involve the participation of a third party, such as a state or a prestigious statesman or jurist.

Negotiation- the discussion undertaken by the parties themselves of their respective claims and counterclaims with a view to their just and orderly adjustment.

Inquiry – an investigation of the points in question, on the theory that their elucidation will contribute to the solution of the differences between the parties. The findings of the party making the inquiry are not conclusive upon the disputing states but they nevertheless may exert a strong moral influence in the settlement of the conflict.

Good Offices – a method by which a third party attempts to bring the disputing states together in order to enable them to discuss the issues in contention and arrive at an agreement

Mediation – a third party does not merely provide the opportunity for the antagonists to negotiate but also actively participates in their discussions in order to reconcile their conflicting claims and appease their feelings of resentment. The suggestions of the mediator are merely persuasive, however, and may be rejected without offense by the parties to the dispute.

Conciliation- calls for the active participation of a third party in the attempt of the disputant to settle their conflict, and the recommendations made by it are likewise not binding. But unlike in mediation, the services of the conciliation are not offered by the third party but solicited by the parties in dispute.

Arbitration- the solution of a dispute by an impartial third party, usually a tribunal created by the parties

themselves. The proceedings are essentially judicial and the award is, by previous agreement, binding on the parties to the dispute.

Judicial settlement- substantially similar to arbitration. However, arbitration and judicial settlement differ in the following points

Arbitration	Judicial Settlement
1. The arbitral tribunal is an ad hoc body created and filled by the parties to the dispute themselves.	1. The judicial tribunal is generally speaking, a pre-existing and permanent body.
2. Submission to arbitration is voluntary	2. Jurisdiction is compulsory
3. In substitution proceedings the law may be limited by the parties.	3. The law applied by the tribunal is independent of the will of the Parties.

Another peaceful method of settling disputes is action by regional organizations, which may be resorted to by the parties on their own volition or taken by the body itself at its own instance if allowed by agreement of the members.

Art. 52 of the UN Charter, regional arrangements or agencies may be established to maintain international peace (thru regional action and to peacefully settle local disputes before referring them to the Security Council. Their activities ought to be reported to the Council. Parenthetically, it should be noted that the existence of these agencies will NOT prevent the Security Council from itself investigating and setting these disputes.

HOSTILE METHODS:

1. retorsions
2. reprisals
3. intervention

Retrosion- any action taken in retaliation where the acts complaint of do not constitute a legal ground of offense but are rather in the nature of unfriendly acts but indirectly hurtful to other states. The act of retaliation is also unfriendly but not illegal and may be in kind or of a different nature than the act that provoked it.

E.g. severance of diplomatic or consular relations

Reprisals- are arts of self-help on the part of the injured state, responding after an unsatisfied demand to an act contrary to international law on the part of the offending state. (e.g. display of force, occupation of territory, embargo and pacific blockade)

Embargo- detention by the state seeking redress of the vessels of the offending state or its nationals, whether such vessels are formed in the territory of the former or the high seas.

THE SECURITY COUNCIL SHALL HAVE JURISDICTION TO INTERVENE IN: All disputes affecting international peace and security all dispute which, although coming under the "**domestic jurisdiction clause**", have been submitted to it by the parties for settlement. Such disputes may be brought to it by:

1. The Security Council itself, on its own motion.
2. The General Assembly
3. The Secretary-General
4. Any member of the UN
5. Any party to the dispute, provided that in the case of non-members of the UN, they should accept in advance, for the purpose of the dispute, the obligations of pacific settlement under the charter.

UNITING FOR PEACE RESOLUTION (1950)- it provides that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of peace and security in any case where there appears to be threat to the peace, breach of peace, or act of aggression, the General Assembly shall consider the matter immediately.

PART IX: NEUTRALITY

A state is said to be neutral if it does not take part, directly or indirectly, in a war between other states.

Neutrality contra Neutralization

Neutrality	Neutralization
1. Dependent solely on the attitude of the neutral state, which is free to join any belligerent any time it sees fit.	1. It is the result of a treaty wherein the duration and other conditions of the neutralization conditions are agreed upon by the neutralized state and other powers.
2. Neutrality is governed by the general law of nations.	2. The agreement governs the conduct of the signatories.
3. Neutrality obtains only during war.	

4. Only states may become neutral.	3. It is intended to operate in time. 4. Portions of states. Like islands, rivers, and canals. May be neutralized.
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RELATIONS OF BELLIGERENT STATES AND NEUTRAL STATES:

1. A neutral state has the right and duty to abstain from taking part in the hostilities and from giving assistance to either belligerent;
2. to prevent its territory and other resources from being used in the conduct of hostilities by the belligerents;
3. to acquiesce in certain restriction and limitations that the belligerents may find necessary to impose, especially in connection with international commerce;
4. The belligerents, on the other hand, are bound to respect the status of the neutral state, avoiding any act that will directly or indirectly involve it in their conflict, and to submit to any lawful measures it may take to maintain or protect its neutrality.

General Rule: War activities by or on behalf of any of the belligerents may not be undertaken in the territory of the neutral state without infringement of its neutrality. Neutral territory is inviolable.

Exceptions:

1. passage of sick and wounded troops is allowed through a neutral state provided personnel and materials of war are not also carried;
2. persons bound for enlistment in the belligerent armies may cross the neutral frontiers if they do so individually or separately and not as a body;
3. The neutral state itself may give refuge to troops from the belligerent forces but must intern them as far as possible, at a distance from the theater of war;
4. Escaped prisoners of war need not be detained by the neutral state but must be assigned a place of residence if they are allowed to remain;
5. Warships belonging to belligerents may enter neutral ports, harbors and roadsteads only in cases of unseaworthiness, lack of fuel or

provisions, or stress of weather. The vessel must leave as soon as it has been re-provisioned; it can take only so much fuel or supplies as it will need until it reaches the nearest of its own parts.

6. Repairs should be permitted so long as they are not intended to increase the fighting force of the vessel. Neutral states are free to allow their nationals to deal, in their private capacity, with any of the belligerents. International law considers the relationship [in the absence of special rules imposing upon the neutral state the duty of intervening in the transaction] as strictly between the individual and the belligerent states and whatever hardships may be suffered by its nationals as a result thereof must, as a rule, be acquiesced in the neutral state.

Belligerent warships and aircraft have the right to visit and search neutral merchant vessels on the high seas for the purpose of determining whether they are in any way connected with the hostilities. These vessels may be captured as prize if 1) **they are liable engaged in hostile activities;** 2) **if they resist visit and search;** or 3. **if there is reasonable suspicion that they are liable to confiscation.**

Prize is not confiscated summarily but must be brought to a prize court for adjudication.

TREATMENT OF SEA-BORNE GOODS IN TIME OF WAR

[Declaration of Paris of 1856]

1. Enemy goods under a neutral flag are not subject to capture, except contraband of war.
2. Neutral goods under an enemy flag are not subject to capture, except contraband of war.
 - o **Contraband-** the term applied to goods which, although neutral property, may be seized by a belligerent because they are useful for war and are bound for a hostile destination.
 - o **Doctrine of Ultimate Consumption-** goods intended for civilian use which may ultimately find their way to and be consumed by the belligerent forces are also liable to seizure on the way.
 - o Contraband are subject to condemnation. If they are shipped together with innocent goods belonging to the same owner, the

latter may also be confiscated under the **doctrine of infection**.

As for the disposition of the vessel carrying the contraband, some states consider it confiscable if the contraband are more than ½ of the total cargo by weight, value, freight or volume.

- o **Absolute Contraband**-consists of articles of war (arms, munitions) destined for belligerent territory.
- o **Conditional/Relative Contraband**-consists of materials useful both in war and in peace (food, clothing) and is destined for the military authorities of the belligerent territory. Under the doctrine of *usus anticipitis*, articles of ambiguous use may sometimes be regarded as contraband if used for war purposes.
- o **"Free List"**- includes goods useful for war and bound for the belligerents but exempted from the law on contraband for humanitarian reasons (medicines, medical supplies).
- o Under the **Doctrine of Ultimate Destination**, the liability of contraband to capture is determined not by their ostensible but by their real destination.

This doctrine is called the **doctrine of continuous voyage** when the goods are reloaded at the intermediate port on the SAME vessel and the **doctrine of continuous transport** when they are reloaded on ANOTHER vessel or other form of transportation.

- o **Blockade**- is a hostile operation by means of which the vessels and aircraft of one belligerent prevent all other vessels, including those of neutral states, from entering or leaving the ports or coasts of the other belligerent, the purpose being to shut off the place from international commerce and communication with other states.

To be valid, a blockade must be:

1. binding, i.e., duly communicated to the neutral states;
2. effective, meaning that it is maintained by adequate force so as to make ingress to or egress from the port dangerous;

3. established by the proper authorities of the belligerent government, generally the head of state;
4. limited only to the territory of the enemy and not extended to neutral places or international rivers; and
5. Impartially applied to all states alike.

The liability of a neutral vessel to capture for breach of blockade is contingent on its knowledge, actual or presumptive, of the blockade and continues as long as it is pursued by the ships of the blockading force after it has left or tried to enter the blockaded port.

A vessel found guilty of breach of blockade is liable to condemnation, and so is the cargo unless it is proved that at the time it was shipped the owner neither knew nor could have known of the intention to violate the blockade.

Unneutral Service- consists of acts, of a more hostile character than carriage of contraband or breach of blockade, which are undertaken by merchant vessels of a neutral state in aid of any of the belligerents.

According to the **Declaration of London**, and as generally accepted, a neutral vessel is liable to condemnation for unneutral service:

1. if it is making a voyage special with a view to the transport of individual passengers who are embodied in the armed forces of the enemy or with a view to the transmission of information in the interest of the enemy;
2. If with the knowledge of the owner, or the one who charts the entire vessel, or of the master, it is transporting a military detachment of the enemy or one or more persons who, during the voyage, lend direct assistance to the operations of the enemy. The cargo, if belonging to the owner of the vessels, is likewise confiscable.

A neutral vessel is also liable to condemnation and to be treated as a merchant vessel of the enemy:

1. if it takes a direct part of the hostilities;
2. if it is under the orders or control of an agent placed on board by the enemy government;

3. it is chartered entirely by the enemy government; or
4. If it is at the time and exclusively either devoted to the transport of enemy troops or the transmission of information in the interest of the enemy.

Angary- By the right of angary, a belligerent may, upon payment of just compensation, seize, use or destroy, in case of urgent necessity for purposes of offense or defense, neutral property found in its territory, in enemy territory, or on the high seas.

As will be noted, the exercise of the right is conditioned upon three requisites, to wit:

1. that the property is in the territory under the control or jurisdiction of the belligerent;
2. that there is urgent necessity for the taking; and
3. That just compensation is paid to the owner.

While some authorities are of the opinion that the same purpose can be achieved through the exercise of the right of eminent domain, it is claimed that expropriation cannot be exercised over property that is only temporarily and usually over the owner's objection, under the control of the belligerent. Moreover, the expropriated property is never taken for the purpose of destroying it.

TERMINATION OF NEUTRALITY

1. when the neutral state itself joins the war;
2. Upon the conclusion of peace.

In the first case, the hitherto neutral state will be governed by the laws of war in its relations with the other belligerents and by the laws of neutrality in its relations with all other states; and in the second, all states will again be governed by the laws of peace.

This article is an offshoot of the incident which happened on April 23 2004, where a member of the Panamanian diplomatic envoy to the Philippines allegedly forced a Filipina to sniff a drug causing her to be unconscious and thereafter, raped her in his apartment. The issue is whether or not Erick Schcks Bairnals, a technical officer of the Panama Maritime Authority, enjoys protection under the 1961 Vienna Convention.

RAPE! **Rev. Fr. Ranhilio Callagan Aquino**

A Panamanian diplomat, it has been alleged, raped a Filipina — and in the aftermath of that dastardly incident, international law has been “raped” by irate but hardly informed legislators, each with his or her own version of diplomatic immunity. We did not invent diplomatic immunity. States, for centuries, have always recognized that immunities attend the representatives of other States and history records the fact that breach of these immunities has, in several cases, been “casus belli” —a cause of a war. The proposition advanced by one female senator was therefore not accurate: that diplomatic immunities only go so far as to allow a diplomat to perform his or her duties. The privilege of liberty from arrest, apprehension, prosecution and trial also have to do with the very dignity of the entity represented by a diplomat —an elite in the world-stage (where elite is a matter neither of wealth nor of size but of international juridical personality)!

The present law on diplomatic immunity is the Vienna Convention on Diplomatic Relations. In fact, it did not create the law. In many respects, it only codified customary international law. The immunity of diplomats has long been part of general international law, or international common law. In respect to diplomats, the immunity from criminal jurisdiction is absolute: no ifs, no buts. All the rhetoric then about rape never being part of one’s official functions and therefore lying beyond the shield of immunity should be reserved for sophomoric declamation contests. That simply is not the law. An ambassador is a diplomat, but one need not be an ambassador to be a diplomat. The determination of diplomatic status is a matter that, by constitutional allocation of powers, belongs to the Executive, since it is the latter that conducts foreign relations in behalf of the Republic of the Philippines. However, in **Liang v. People of the Philippines (2001)**, the Supreme Court maintained that Executive determinations did not necessarily preclude courts from inquiring into the status of one who pleads his diplomatic immunity as an exempting circumstance. It is for the person who claims immunity to prove it, and for the courts to examine the proof. But it is one thing to demand proof of immunity, and it is quite another to misstate the law, no matter that done so with unctiousness and fervor! In fact, the same full immunity from criminal jurisdiction can rightly be claimed by members of the administrative and technical staff of a diplomatic mission!

Some who spoke first and researched later must have mixed up the rules on diplomatic immunity with the immunities of agents representing international organizations: the International Red Cross, the World Health Organization or even such entities as the World Bank and the Asian Development Bank. Most of the time, the scope of immunity will be the result of treaty provisions. (International law provides for treaties between States and international organizations.) In their regard, immunity is “functional”, meaning principally that the breadth of immunity is determined by the functions they perform—and only to that extent.

So, what happens when a diplomat goes berserk and hurts and maims indiscriminately? Such restraint as may be necessary to prevent him from visiting more harm and injury may, as dictated by reason, be used on him. However, this should not result in detention or apprehension. And amid demands of militants that the diplomat concerned waive his immunity, it will be well to remind the delirious mob that diplomatic immunity, enjoyed not for the diplomat’s sake, but for the sake of the State he represents, can be waived only by the sending State. It cannot be presumed; it must be express, and a waiver of immunity from prosecution is a different thing from a waiver of immunity from the execution of whatever penalty may be imposed.

Things have turned out as they should—the Philippines has declared the person concerned “persona non grata” (unacceptable, we are not happy [non grata] to have him), which is a diplomatic-speak for “shoo, shoo!” The sending State then has the obligation to recall him or risk his apprehension by Philippine authorities after the government declares that it no longer recognizes his diplomatic status.

Rape is always a terrible crime, but ignorance displayed in high places is despicable, indeed!