

PUBLIC INTERNATIONAL LAW

UNIT – III

**State Jurisdiction • Law of the Sea
State Responsibility • Succession**

20 Slides | Expanded Explanatory Edition

ROADMAP

UNIT-III Full 20-Slide Coverage

1. Jurisdiction meaning

2. Prescriptive vs enforcement

3. Territorial principle

4. Nationality principle

5. Protective principle

6. Passive personality

7. Universal jurisdiction

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Meaning of State Jurisdiction

Jurisdiction is the authority of a State under international law to regulate the conduct of persons, natural or legal, and to enforce its laws. It is commonly divided into prescriptive, enforcement and adjudicative jurisdiction.

Prescriptive Jurisdiction

Power to make laws applicable to persons, property or events – even those occurring abroad in some cases.

Enforcement Jurisdiction

Power to compel compliance – arrest, investigation, seizure. Generally limited to the State's own territory.

Adjudicative Jurisdiction

Power of courts to hear and decide cases. Closely linked to the other two forms.

International Limits

A State may not exercise enforcement jurisdiction in the territory of another State without consent.

Territorial Principle

Subjective Territoriality

Jurisdiction over acts that are completed within the territory of the State.

Objective Territoriality

Jurisdiction over acts that produce substantial effects within the territory, even if initiated abroad (effects doctrine).

Ships and Aircraft

Vessels and aircraft are often treated as an extension of the flag State's territory for certain purposes.

Concurrent Jurisdiction

More than one State may have territorial claims over different aspects of the same conduct.

Lotus Case

PCIJ held that Turkey could exercise jurisdiction over a collision on the high seas because the effects were felt on a Turkish vessel.

Modern Limits

Effects doctrine is accepted in competition law and some economic crimes but remains controversial if applied too broadly.

Nationality and Protective Principles

Active Nationality

A State may regulate the conduct of its own nationals wherever they may be. Many criminal codes contain provisions for crimes committed by nationals abroad.

Limits on Nationality

Enforcement still normally requires the presence of the person on the State's territory or extradition.

Protective Principle

Jurisdiction over extraterritorial acts that threaten the security, integrity or vital governmental functions of the State (currency, immigration, official secrets).

Examples

Counterfeiting of currency, attacks on embassies, visa fraud.

Acceptance

Widely accepted for genuine security interests; may be questioned if used as a pretext for broad extraterritorial claims.

Combined Bases

In practice States often rely on more than one principle simultaneously.

Passive Personality and Universal Jurisdiction

Passive Personality

Jurisdiction based on the nationality of the victim. Historically controversial, now more accepted for terrorism and serious violent crimes.

Universal Jurisdiction

Jurisdiction over certain crimes under international law regardless of where they were committed and regardless of the nationality of the perpetrator or victim.

Classic Universal Crime

Piracy on the high seas – every State may arrest and try pirates.

Modern Expansion

Genocide, crimes against humanity, war crimes, torture – many treaties contain *aut dedere aut judicare* obligations.

Domestic Implementation

States must have enabling legislation to exercise universal jurisdiction.

Abuse Concerns

Some States have used universal jurisdiction in politically sensitive cases, leading to diplomatic friction.

Law of the Sea – Introduction to UNCLOS

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) is a comprehensive treaty that regulates virtually all aspects of the law of the sea. It is often described as a 'constitution for the oceans'.

Adoption

Opened for signature in 1982; entered into force in 1994.

Parties

More than 160 parties; major maritime constitution.

Balance

Balances the freedom of the seas with the resource and security interests of coastal States.

Institutions

International Tribunal for the Law of the Sea (ITLOS), International Seabed Authority (ISA), Commission on the Limits of the Continental Shelf.

Maritime Zones – Overview

Internal Waters

Waters on the landward side of the baseline. Complete sovereignty; no right of innocent passage.

Territorial Sea

Up to 12 nautical miles from the baseline. Sovereignty subject to the right of innocent passage.

Contiguous Zone

Up to 24 nm. Coastal State may exercise control to prevent and punish infringement of customs, fiscal, immigration and sanitary laws.

Exclusive Economic Zone

Up to 200 nm. Sovereign rights for the purpose of exploring and exploiting natural resources.

Continental Shelf

Seabed and subsoil of the submarine areas that form the natural prolongation of the land territory. Rights exist ipso facto.

High Seas & The Area

High seas – freedoms of navigation etc. The Area – seabed beyond national jurisdiction; common heritage of mankind.

Territorial Sea and Innocent Passage

Breadth

Maximum 12 nautical miles measured from the baselines.

Sovereignty

Coastal State sovereignty extends to the airspace above and the bed and subsoil below the territorial sea.

Innocent Passage

Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State.

Non-Innocent Activities

Threat or use of force, weapons exercises, spying, serious pollution, fishing, research without authorisation, etc.

Rights of Coastal State

May adopt laws relating to navigation, pollution, customs, immigration; may temporarily suspend innocent passage in specified areas.

Warships

Customary law and UNCLOS allow innocent passage of warships, though some States require prior notification or authorisation.

EEZ and Continental Shelf in Detail

EEZ Rights

Sovereign rights for exploring, exploiting, conserving and managing natural resources (living and non-living) of the waters, seabed and subsoil.

EEZ Jurisdiction

Jurisdiction with regard to artificial islands, marine scientific research, and protection of the marine environment.

Other States in EEZ

Freedoms of navigation and overflight, laying of submarine cables and pipelines (subject to coastal State rights).

Continental Shelf

Natural prolongation concept. Rights do not depend on occupation or proclamation.

Outer Limit

May extend beyond 200 nm if the geological criteria are met; subject to CLCS recommendations.

Overlap

Where EEZ and continental shelf coexist, the regime of the shelf prevails for sedentary species and seabed resources.

High Seas and The Area

High Seas Freedoms

Navigation, overflight, laying cables and pipelines, construction of artificial islands, fishing, scientific research (Art. 87).

Reservation

Freedoms must be exercised with due regard for the interests of other States.

Flag State Jurisdiction

Primary jurisdiction over ships on the high seas belongs to the flag State.

Exceptions

Piracy, slave trade, unauthorised broadcasting, hot pursuit, right of visit in limited cases.

The Area

Seabed and ocean floor beyond national jurisdiction. Common heritage of mankind.

ISA

International Seabed Authority organises and controls activities in the Area, particularly mining of mineral resources.

State Responsibility – Basic Concept

The law of State responsibility determines the consequences of a breach of an international obligation by a State. The ILC Articles on Responsibility of States for Internationally Wrongful Acts (2001) are the most authoritative restatement.

Internationally Wrongful Act

Conduct that is attributable to the State under international law and constitutes a breach of an international obligation of the State.

Two Elements

Attribution + Breach. Both must be present.

Secondary Rules

Responsibility rules are secondary – they operate once a primary obligation has been breached.

Erga Omnes / Jus Cogens

Certain breaches engage responsibility toward the international community as a whole.

Attribution of Conduct to the State

Organs of the State

Conduct of any State organ (legislative, executive, judicial) is acts of the State, whatever its position in the organisation.

Persons Exercising Governmental Authority

Entities empowered by internal law to exercise elements of governmental authority.

Directed or Controlled

Conduct of persons or groups acting under the instructions of, or under the direction or control of, the State.

Ultra Vires Acts

Conduct of an organ is still attributable even if it exceeds authority or contravenes instructions.

Insurrectional Movements

If the movement becomes the new government, its earlier conduct may be attributed to the State.

Private Conduct

Generally not attributable unless the State acknowledges and adopts it as its own.

Circumstances Precluding Wrongfulness

Consent

Valid consent by the injured State to the commission of the act.

Self-Defence

Lawful measure of self-defence taken in conformity with the UN Charter.

Countermeasures

Lawful countermeasures taken in response to an internationally wrongful act of another State.

Force Majeure

Occurrence of an irresistible force or unforeseen event beyond the control of the State, making performance materially impossible.

Distress

Author of the act had no other reasonable way of saving life.

Necessity

Only way for the State to safeguard an essential interest against a grave and imminent peril (very strict conditions).

Content of State Responsibility – Reparations

Cessation

If the wrongful act is continuing, the State must cease it.

Guarantees of Non-Repetition

Appropriate assurances and guarantees if circumstances so require.

Restitution

Re-establish the situation that existed before the wrongful act was committed.

Compensation

Any financially assessable damage, including loss of profits, insofar as restitution is not possible.

Satisfaction

Acknowledgement of the breach, expression of regret, formal apology, or another appropriate modality.

Chorzów Factory Principle

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

State Succession – Overview

State succession occurs when one State replaces another in the responsibility for the international relations of a territory. The rules differ according to the subject-matter (treaties, debts, property, nationality).

Treaties

Clean-slate principle for newly independent States; continuity more common in other cases; boundary regimes usually survive.

Public Debt

Equitable distribution; no automatic universal succession to all debts.

State Property

Generally passes to the successor State, subject to agreement and equity.

Nationality

Persons may acquire the nationality of the successor; arbitrary deprivation is restricted by human rights norms.

Landmark Cases – UNIT III

SS Lotus (1927)	Residual liberty of States; concurrent jurisdiction possible over the same incident.
North Sea Continental Shelf (1969)	Custom requires both State practice and opinio juris; equidistance is not a mandatory rule of custom.
Gabcikovo-Nagymaros (1997)	State responsibility, necessity, and the law of treaties examined together.
Chorzów Factory (1928)	Classic statement of the principle of full reparation.
Island of Palmas (1928)	Effective display of sovereignty as the basis of title to territory.
Recent ITLOS / ICJ	Maritime delimitation and responsibility cases continue to refine the law.

Key Distinctions for Exams

Prescriptive vs Enforcement

Making law vs compelling compliance.
Enforcement is far more territorially limited.

Territorial Sea vs EEZ

Full sovereignty (subject to innocent passage) vs sovereign rights for resources only.

EEZ vs Continental Shelf

EEZ is optional and declaration-based; shelf rights exist ipso facto and ab initio.

High Seas vs The Area

Water column freedoms vs seabed common heritage regime.

Attribution vs Breach

Who did the act vs whether the act violated an obligation.

Restitution vs Compensation

Restore the prior situation vs pay money for damage that cannot be restored.

Key Takeaways – UNIT III

01 Jurisdiction

02 Maritime Zones

03 Responsibility

04 Defences

05 Succession

06 Cases

End of UNIT – III

Jurisdiction • Law of the Sea • Responsibility • Succession

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