

PUBLIC INTERNATIONAL LAW

UNIT – IV
State and the Individual
Extradition • Asylum • Diplomacy • Treaties

20 Slides | Expanded Explanatory Edition

ROADMAP

UNIT-IV Full Coverage

1. Nationality concept

2. Acquisition of nationality

3. Loss of nationality

4. Diplomatic protection

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6. Double criminality & specialty

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Nationality – Concept and Importance

Nationality is the legal relationship between an individual and a State that gives rise to rights and duties on both sides. It is the principal link through which individuals benefit from and are bound by international law.

Domestic Competence

Each State determines under its own law who are its nationals (Hague Convention 1930).

International Effects

Diplomatic protection, jurisdiction, treaty rights, immigration status.

Genuine Link

Nottebohm case – for opposability against other States a genuine connection may be required.

Human Rights

Arbitrary deprivation of nationality is restricted; right to a nationality is recognised.

Acquisition and Loss of Nationality

Jus Soli

Nationality by birth on the territory of the State.

Jus Sanguinis

Nationality by descent from a national parent.

Naturalisation

Grant of nationality upon application after fulfilling residence and other conditions.

Option / Election

Choice of nationality in cases of succession or dual nationality situations.

Loss

Renunciation, long residence abroad, acquisition of another nationality, deprivation (limited).

Statelessness

Avoided by international conventions; States should not create stateless persons.

Diplomatic Protection

Diplomatic protection is the procedure by which a State espouses the claim of its national against another State for an injury caused by an internationally wrongful act.

Nationality of Claims

The injured person must be a continuous national of the protecting State from injury to presentation of claim.

Exhaustion of Local Remedies

Local remedies must normally be exhausted before international claim.

Discretion

The State has discretion whether to exercise diplomatic protection; it is not a right of the individual against his own State.

Barcelona Traction

ICJ clarified rules on diplomatic protection of corporations and shareholders.

Extradition – Meaning and Conditions

Definition

Formal surrender of a person by one State to another for prosecution or punishment for an extraditable offence.

No General Duty

Absent a treaty or specific obligation, there is no duty to extradite.

Double Criminality

The conduct must be criminal under the laws of both the requesting and requested States.

Rule of Specialty

The person may be tried only for the offence for which extradition was granted (unless consent is given).

Political Offence Exception

Most treaties exclude pure political offences; violent crimes and terrorism are often excluded from the exception.

Non-Extradition of Nationals

Many civil-law States refuse to extradite their own nationals and prefer to prosecute them domestically.

Asylum – Territorial and Diplomatic

Territorial Asylum

State grants protection to a person on its own territory. This is an exercise of sovereignty and is widely accepted.

Diplomatic Asylum

Grant of protection within the premises of an embassy or mission. Not recognised as a general right under international law (Asylum Case, Colombia v Peru).

Refugee Definition

1951 Refugee Convention – well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Non-Refoulement

No expulsion or return to a territory where life or freedom would be threatened. Core principle of refugee law; also customary.

Indian Position

India is not a party to the 1951 Convention but follows non-refoulement in practice and has constitutional protections.

Temporary Protection

Used in situations of mass influx when individual status determination is impractical.

Diplomatic Agents – Vienna Convention 1961

The Vienna Convention on Diplomatic Relations 1961 codifies the law on diplomatic privileges and immunities. These immunities are not personal benefits but are given to ensure the efficient performance of diplomatic functions.

Inviolability of Person

Diplomatic agent is not liable to any form of arrest or detention.

Inviolability of Premises

Mission premises are inviolable; agents of the receiving State may not enter without consent.

Immunity from Jurisdiction

Complete immunity from criminal jurisdiction; immunity from civil and administrative jurisdiction with limited exceptions.

Waiver

Immunity may be waived by the sending State; waiver must be express.

Consuls and Other Representatives

Vienna Convention 1963

Codifies consular relations, privileges and immunities.

Functions

Protection of nationals, promotion of commercial and cultural relations, issuance of passports and visas, assistance to vessels and aircraft.

Immunity

Functional immunity – only for acts performed in the exercise of consular functions.

Premises

Consular premises enjoy inviolability, but the regime is slightly less absolute than for diplomatic missions.

Honorary Consuls

Limited privileges and immunities.

Persona Non Grata

Receiving State may declare a diplomat or consul persona non grata at any time and without explanation.

Law of Treaties – Definition and VCLT

A treaty is an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments (VCLT Art. 2).

Pacta Sunt Servanda

Art. 26 – Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Scope of VCLT

Applies to treaties between States; many rules reflect customary law and apply more broadly.

Treaty vs Political Commitment

Only agreements intended to create legal obligations are treaties.

Oral Agreements

Possible in principle but rare; VCLT deals only with written treaties.

Formation of Treaties

Negotiation

States negotiate the text through diplomatic conferences or bilateral talks.

Adoption

Text is adopted by consent of the participating States (often 2/3 majority at conferences).

Authentication

Text is established as authentic and definitive (signature, initialling, etc.).

Consent to be Bound

Signature, exchange of instruments, ratification, acceptance, approval, accession.

Entry into Force

As specified in the treaty – often after a number of ratifications.

Registration

Art. 102 UN Charter – treaties must be registered with the UN Secretariat.

Reservations to Treaties

Definition

Unilateral statement made by a State when signing, ratifying or acceding, whereby it purports to exclude or modify the legal effect of certain provisions.

VCLT Regime

Arts. 19–23 – reservations are possible unless prohibited by the treaty or incompatible with its object and purpose.

Acceptance / Objection

Other parties may accept or object; effects differ according to the nature of the objection.

Object and Purpose Test

Reservation must not defeat the essential bargain or core purpose of the treaty.

Human Rights Treaties

Special issues – reservations to non-derogable rights are often regarded as incompatible.

Interpretative Declarations

Statements that clarify meaning but do not modify legal effect – different from reservations.

Interpretation of Treaties

General Rule (Art. 31)

Interpreted in good faith in accordance with the ordinary meaning of the terms in their context and in the light of the object and purpose.

Context

Text, preamble, annexes, related agreements and instruments.

Subsequent Practice

Subsequent agreement or practice of the parties in the application of the treaty is taken into account.

Supplementary Means (Art. 32)

Preparatory work (travaux préparatoires) and circumstances of conclusion – used to confirm meaning or when meaning is ambiguous or absurd.

Multilingual Texts

All authentic texts are equally authoritative; reconciliation according to object and purpose.

Effective Interpretation

Preference for an interpretation that gives effect to the provisions rather than rendering them useless.

Invalidity and Termination of Treaties

Invalidity Grounds

Error, fraud, corruption of representative, coercion of representative or State, conflict with a peremptory norm (jus cogens).

Jus Cogens

Peremptory norms accepted and recognised by the international community as a whole; no derogation permitted.

Termination by Consent

Parties may terminate or withdraw by consent, or in accordance with the provisions of the treaty.

Material Breach

A material breach by one party entitles other parties to suspend or terminate (with procedural safeguards).

Supervening Impossibility

Permanent disappearance or destruction of an object indispensable for execution.

Fundamental Change (Rebus)

Art. 62 – narrow conditions; change must be fundamental, unforeseen, essential basis of consent, and radically transform obligations.

Key Cases – UNIT IV

Nottebohm (1955)	Genuine link required for nationality to be opposable in certain international claims.
Barcelona Traction (1970)	Diplomatic protection of corporations; shareholders' rights limited.
Asylum Case (1950)	Diplomatic asylum is not a right under general international law.
Tehran Hostages (1980)	Diplomatic inviolability is absolute; State responsibility for failure to protect mission.
Gabcikovo-Nagymaros (1997)	Treaty termination, necessity and countermeasures examined.
Recent Extradition Practice	Courts examine dual criminality, political offence, and human rights bars.

Key Takeaways – UNIT IV

01 Nationality

02 Extradition

03 Asylum

04 Diplomats

05 Treaties

06 Cases

End of UNIT – IV

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