

## **PART II: INTERNATIONAL LEGAL PERSONALITY**

### **A. Legal Persons**

#### **1. States**

Requirements for statehood

- **Montevideo Convention on Rights and Duties of States (1933)**

The Montevideo Convention on the Rights and Duties of States (1933) outlines four essential criteria for statehood:

**a permanent population,**

**a defined territory,**

**an effective government,**

**and the capacity to enter into relations with other states.**

These criteria have been referenced in various international legal contexts to assess claims of statehood.

- **Austro-German Customs Union Case, Advisory Opinion, PCIJ Reports, Series A/B, No. 41 (1931);**

**include the Separate Opinion of Judge Anzilotti**

The **Austro-German Customs Union Case** (Advisory Opinion, PCIJ Reports, Series A/B, No. 41, 1931) addressed the legality of a proposed customs union between Austria and Germany under existing international agreements.

#### **Facts:**

On March 19, 1931, Austria and Germany signed a protocol agreeing to negotiate a treaty aimed at harmonizing their tariff and economic policies, effectively establishing a customs union. This initiative raised concerns among other European nations, particularly France, Italy, and Czechoslovakia, who argued that such a union might contravene Austria's international obligations. Specifically, Article 88 of the Treaty of Saint-Germain (1919) declared Austria's independence "inalienable" without the consent of the Council of the League of Nations. Additionally, Protocol No. I signed at Geneva on October 4, 1922, required Austria to abstain from any economic or financial engagements that could compromise its independence. In light of these concerns, the Council of the League of Nations sought an advisory opinion from the Permanent Court of International Justice (PCIJ) on whether the

proposed customs union would be compatible with these international commitments.

### **Issues:**

1. **Compatibility with Article 88 of the Treaty of Saint-Germain:** Would the establishment of the proposed customs union between Austria and Germany constitute an "alienation" of Austria's independence, thereby violating Article 88?
2. **Compliance with Protocol No. I of Geneva (1922):** Would the customs union represent an economic or financial engagement that compromises Austria's independence, in contravention of the 1922 Protocol?

### **Opinion of the Court:**

The PCIJ, in its advisory opinion delivered on September 5, 1931, concluded that the proposed customs union was incompatible with Austria's international obligations. The Court reasoned that, while the union did not constitute a direct alienation of Austria's independence, it could indirectly compromise it by creating significant economic dependence on Germany. This potential dependence was viewed as a threat to Austria's political autonomy, thereby conflicting with Article 88 of the Treaty of Saint-Germain and the Geneva Protocol of 1922.

### **Separate Opinion of Judge Anzilotti:**

Judge Dionisio Anzilotti concurred with the Court's conclusion but provided distinct reasoning in his separate opinion. He emphasized that, although the union did not amount to a direct alienation of Austria's independence, it could indirectly compromise it by creating significant economic dependence on Germany. Judge Anzilotti highlighted that such dependence might, over time, endanger Austria's political autonomy, thereby conflicting with the obligations outlined in Article 88 of the Treaty of Saint-Germain and the Geneva Protocol of 1922.

This case underscores the importance of evaluating not only the explicit terms of international agreements but also the potential implications of economic arrangements on a state's sovereignty and independence.

- **Tunis and Morocco Nationality Decrees (1923), PCIJ, Ser. B., No. 4**

The **Nationality Decrees Issued in Tunis and Morocco Case** (Advisory Opinion, PCIJ Series B, No. 4, 1923) addressed the scope of domestic jurisdiction concerning nationality laws within the context of international obligations.

### **Facts:**

In the early 1920s, France, as the protecting power over the protectorates of Tunis and Morocco, issued decrees unifying and modifying nationality laws in these territories. These decrees affected the status of nationals, including those of other states residing in the protectorates. The British government contested the applicability of these decrees to British subjects, arguing that such matters were not solely within France's domestic jurisdiction but were subject to international agreements and the rights of other states. The dispute was brought before the Permanent Court of International Justice (PCIJ) to determine whether the nationality decrees fell exclusively within France's domestic jurisdiction or if they were matters of international concern.

### **Issues:**

1. **Domestic Jurisdiction:** Whether the issuance of nationality decrees by France in the protectorates of Tunis and Morocco was solely a matter of France's domestic jurisdiction.
2. **International Obligations:** To what extent international agreements and the rights of other states, particularly Great Britain, limited France's authority to unilaterally modify nationality laws in the protectorates.

### **Opinion of the Court:**

The PCIJ opined that, while the regulation of nationality is primarily within the domestic jurisdiction of a state, this sovereignty can be limited by international agreements. In this case, existing treaties and agreements involving France, Great Britain, and the protectorates imposed certain obligations and limitations on France's ability to unilaterally alter nationality laws. Therefore, the Court concluded that the nationality decrees were not exclusively within France's domestic jurisdiction but were subject to international obligations.

### **Analysis on Requirements for Statehood:**

This case highlights the interplay between a state's sovereignty and its international obligations, particularly in the context of protectorates. While the regulation of nationality is a function of an effective government—a criterion for statehood—the presence of international agreements can constrain this function. The protectorates of Tunis and Morocco, under France's protection, did not possess full sovereignty, as their capacity to conduct foreign relations and govern certain internal matters was influenced by France and existing international agreements. This scenario underscores that entities lacking full control over their internal and external affairs, due to external influence or legal obligations, may not fully meet the criteria for statehood as outlined in the Montevideo Convention.

In summary, the PCIJ's advisory opinion in this case illustrates that while an effective government is a requirement for statehood, the extent of its authority can be limited by international obligations, affecting the entity's qualification as a sovereign state.

- **US Nationals in Morocco (1952), ICJ Reports**

The **Rights of Nationals of the United States of America in Morocco** case (Judgment of August 27, 1952, ICJ Reports 1952) primarily addressed issues concerning consular jurisdiction, import regulations, and taxation rights in the French Zone of Morocco. While the case did not directly discuss the requirements for statehood, it offers insights into the complexities of sovereignty and jurisdiction in a colonial and protectorate context.

**Facts:**

In 1950, France instituted proceedings against the United States before the International Court of Justice (ICJ), seeking clarification on the extent of rights and privileges of U.S. nationals in the French-administered zone of Morocco. The dispute centered on several key issues:

1. **Import Regulations:** France had implemented a decree on December 30, 1948, regulating imports into the French Zone of Morocco. The United States contended that this decree violated existing treaties by imposing discriminatory restrictions on American goods.

2. **Consular Jurisdiction:** The United States exercised consular jurisdiction over its nationals in Morocco, a practice rooted in historical treaties. France argued that such extraterritorial rights were outdated and incompatible with Morocco's status under French protection.
3. **Taxation and Fiscal Immunity:** The United States claimed that its nationals were exempt from certain Moroccan taxes based on treaty provisions, while France maintained that all residents, regardless of nationality, were subject to local taxation laws.

#### Issues:

1. **Applicability of Import Regulations:** Did the French import control measures violate treaty obligations by discriminating against U.S. goods?
2. **Scope of Consular Jurisdiction:** To what extent could the United States exercise consular jurisdiction over its nationals in Morocco under existing treaties?
3. **Taxation Rights:** Were U.S. nationals in Morocco entitled to fiscal immunity from local taxes based on treaty rights?

#### Opinion of the Court:

The ICJ's judgment addressed these issues as follows:

1. **Import Regulations:** The Court held that the French import control measures were inconsistent with the Treaty of 1836 between the United States and Morocco, as well as the General Act of Algeciras of 1906, because they discriminated in favor of French goods over those from the United States.  
[icj-cij.org](http://icj-cij.org)
2. **Consular Jurisdiction:** The Court recognized that the United States retained the right to exercise consular jurisdiction in the French Zone of Morocco for disputes between U.S. citizens or protégés. However, it rejected the U.S. claim to broader jurisdiction, particularly in cases where U.S. nationals were defendants against non-U.S. plaintiffs.  
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3. **Taxation Rights:** The Court found that U.S. nationals were not entitled to immunity from Moroccan taxes. It concluded that, in the absence of explicit treaty provisions granting such immunity, U.S. nationals were subject to the

same taxation laws as other residents in the French Zone of Morocco.

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### **Analysis Related to Statehood:**

While the case did not explicitly address the criteria for statehood, it sheds light on the complexities of sovereignty and jurisdiction in territories under colonial administration or protection. Morocco, during the period in question, was not fully sovereign; its foreign relations and certain internal matters were managed by France under the protectorate arrangement. This scenario illustrates how entities lacking full control over their internal and external affairs may not meet all the traditional criteria for statehood, such as full sovereignty and the capacity to enter into relations with other states independently.

In summary, the ICJ's judgment in this case highlights the intricate balance between treaty rights, consular practices, and the assertion of sovereignty in a context where the traditional attributes of statehood are distributed between a protectorate and its administering power.

### **• German Interests in Polish Upper Silesia (Merits), (1926), PCIJ, Ser. A, No. 7, supra.**

The **Certain German Interests in Polish Upper Silesia (Merits)** case (Judgment of May 25, 1926, PCIJ Series A, No. 7) primarily addressed issues of state succession, property rights, and treaty obligations following territorial changes after World War I. While the case did not directly discuss the requirements for statehood, it provides insights into the complexities of sovereignty, jurisdiction, and the protection of property rights in territories transitioning between state authorities.

### **Facts:**

Following World War I, the Treaty of Versailles resulted in the cession of parts of Upper Silesia from Germany to Poland. The German-Polish Convention concerning Upper Silesia, signed in Geneva on May 15, 1922, aimed to protect the rights of minorities and regulate economic relations in the region. A dispute arose when Poland sought to apply its nationalization laws to certain industrial enterprises previously owned by German nationals, leading Germany to file a case before the Permanent Court of International Justice (PCIJ).

## Issues:

1. **Property Rights and State Succession:** Whether Poland, as the successor state, could alter property rights established under German rule, particularly concerning industrial enterprises owned by German nationals.
2. **Interpretation of the Geneva Convention:** The extent to which the provisions of the 1922 Geneva Convention protected the property rights of German nationals in the ceded territories.

## Opinion of the Court:

The PCIJ held that Poland was obligated to respect the property rights of German nationals as stipulated in the Geneva Convention. The Court emphasized that the Convention aimed to ensure economic and legal continuity in the region, preventing unilateral alterations of property rights by the successor state. Thus, Poland's attempts to nationalize German-owned enterprises without appropriate compensation were found to be inconsistent with its international obligations under the Convention.

## Analysis Related to Statehood:

While the case did not explicitly address the criteria for statehood, it touches upon aspects relevant to the concept:

- **Sovereignty and Jurisdiction:** The transition of territorial control from Germany to Poland highlights issues of sovereignty and the exercise of jurisdiction by a successor state. The case illustrates how international agreements can constrain a state's actions within its territory, particularly concerning the protection of property rights and the treatment of minorities.
- **International Obligations:** The ruling underscores that newly established or reconstituted states are bound by international treaties governing the treatment of individuals and property within their territories. This reflects the principle that statehood entails adherence to international norms and agreements.

In summary, the PCIJ's judgment in this case highlights the importance of respecting international agreements and property rights during territorial transitions, aspects

that are integral to the exercise of effective governance and the fulfillment of international obligations by sovereign states.

## 2. Other political entities

- Free City of Danzig and the ILO (1930), PCIJ, Ser. B, no. 18

The **Free City of Danzig and the International Labour Organization (ILO)** case (Advisory Opinion of August 26, 1930, PCIJ Series B, No. 18) addressed the applicability of ILO conventions to the Free City of Danzig, a semi-autonomous city-state under the protection of the League of Nations, with Poland responsible for its foreign affairs.

### **Facts:**

The Free City of Danzig was established by the Treaty of Versailles (1919) as an autonomous city-state under the League of Nations' protection, with Poland overseeing its foreign relations. In 1920, Poland became a member of the International Labour Organization (ILO) and began extending ILO conventions to Danzig. The Danzig Senate contested this application, arguing that, as a distinct political entity, it was not automatically bound by treaties Poland entered into, including ILO conventions. The League of Nations Council sought an advisory opinion from the Permanent Court of International Justice (PCIJ) to clarify whether ILO conventions ratified by Poland applied to Danzig.

### **Issues:**

1. **Applicability of ILO Conventions:** Do ILO conventions ratified by Poland extend to the Free City of Danzig, considering its unique political status?
2. **Extent of Polish Authority:** What is the scope of Poland's authority over Danzig's international obligations, particularly concerning treaties and conventions?

### **Opinion of the Court:**

The PCIJ concluded that ILO conventions ratified by Poland did not automatically apply to the Free City of Danzig. The Court recognized Danzig's autonomy in domestic matters and stated that, despite Poland's responsibility for Danzig's foreign



affairs, any extension of international treaties to Danzig required the city's consent. Thus, for ILO conventions to be applicable in Danzig, both Polish ratification and Danzig's explicit consent were necessary.

### **Analysis Related to Other Political Entities:**

This case highlights the complexities faced by political entities that do not fit the traditional definition of sovereign states. The Free City of Danzig possessed a unique status: autonomous in internal governance but lacking full sovereignty, especially in foreign affairs managed by Poland. The PCIJ's opinion underscores that such entities may exercise a degree of self-governance, allowing them to consent to international obligations independently. Consequently, even when another state manages their external relations, the internal application of international treaties requires the explicit approval of the autonomous entity's governing bodies.

In summary, the PCIJ's advisory opinion in this case illustrates that political entities with partial autonomy, like the Free City of Danzig, maintain the right to consent to international agreements affecting their internal affairs, despite not possessing full statehood.

### 3. Condominia

In **international law**, a **condominium** (plural: **condominia**) refers to a **territory or area jointly administered by two or more states** that share sovereignty over it. This means that multiple states exercise equal legal authority over the same territory, often through an agreed-upon arrangement.

### 4. Entities Sui Generis

In **international law**, **entities sui generis** refer to **unique political entities that do not fit traditional categories of statehood, protectorates, or territories**. The term **sui generis** (Latin for "of its own kind") describes entities that have special legal and political characteristics, often due to historical, political, or treaty-based arrangements.

#### a. The Holy See

- **Holy See vs. Starbright Sales, ILR, 102, 163**

The case of **The Holy See v. Starbright Sales Enterprises Inc.** (G.R. No. 101949, December 1, 1994) provides significant insights into the legal status and sovereign immunity of the Holy See as an **entity sui generis** in international law.

**Facts:**

Petitioner is the Holy See who exercises sovereignty over the Vatican City in Rome, Italy, and is represented in the Philippines by the Papal Nuncio. Private respondent, Starbright Sales Enterprises, Inc., is a domestic corporation engaged in the real estate business.

The petition arose from a controversy over a parcel of land consisting of 6,000 square meters (Lot 5-A, Transfer Certificate of Title No. 390440) located in the Municipality of Parañaque, Metro Manila and registered in the name of petitioner.

The three lots were sold to Ramon Licup, through Msgr. Domingo A. Cirilos, Jr., acting as agent to the sellers. Later, Licup assigned his rights to the sale to private respondent. In view of the refusal of the squatters to vacate the lots sold to private respondent, a dispute arose as to who of the parties has the responsibility of evicting and clearing the land of squatters. Complicating the relations of the parties was the sale by petitioner of Lot 5-A to Tropicana Properties and Development Corporation (Tropicana).

Respondent filed a complaint for the annulment of the sale of the land and damages against the petitioner, as represented by the Papal Nuncio and other defendants.

Petitioner answered, saying that the complaint should be dismissed for lack of jurisdiction based on sovereign immunity from suit. Respondent contended that the petitioner "shed off [its] sovereign immunity by entering into the business contract in question."

**Issue:**

Whether the petitioner Holy See is immune from suit from its act of entering into a contractual relations centering on the sale of lot to a private person.

**Held:**

Yes, Holy See is immune from suit in the case at hand.

The burden of the petition is that respondent trial court has no jurisdiction over petitioner, being a foreign state enjoying sovereign immunity. On the other hand, private respondent insists that the doctrine of non-suability is not anymore absolute and that petitioner has divested itself of such a cloak when, of its own free will, it entered into a commercial transaction for the sale of a parcel of land located in the Philippines.

The Republic of the Philippines has accorded the Holy See the status of a foreign sovereign. The Holy See, through its Ambassador, the Papal Nuncio, has had diplomatic representations with the Philippine government since 1957. This appears to be the universal practice in international relations.

In a community of national states, the Vatican City represents an entity organized not for political but for ecclesiastical purposes and international objects. Despite its size and object, the Vatican City has an independent government of its own, with the Pope, who is also head of the Roman Catholic Church, as the Holy See or Head of State, in conformity with its traditions, and the demands of its mission in the world. Indeed, the world-wide interests and activities of the Vatican City are such as to make it in a sense an "international state."

As expressed in Section 2 of Article II of the 1987 Constitution, the country has adopted the generally accepted principles of International Law. Even without this affirmation, such principles of International Law are deemed incorporated as part of the law of the land as a condition and consequence of our admission in the society of nations.

In the absence of legislation defining what activities and transactions shall be considered "commercial" and as constituting acts *jure gestionis*, we have to come out with our own guidelines, tentative they may be. Certainly, the mere entering into a contract by a foreign state with a private party cannot be the ultimate test. Such an act can only be the start of the inquiry. The logical question is whether the foreign state is engaged in the activity in the regular course of business. If the foreign state is not engaged regularly in a business or trade, the particular act or transaction must then be tested by its nature. If the act is in pursuit of a sovereign activity, or an incident thereof, then it is an act *jure imperii*, especially when it is not undertaken for gain or profit.

In the case at bench, if petitioner has bought and sold lands in the ordinary course of a real estate business, surely the said transaction can be categorized as an act *jure gestionis*. However, petitioner has denied that the acquisition and subsequent disposal of Lot 5-A were made for profit but claimed that it acquired said property

for the site of its mission or the Apostolic Nunciature in the Philippines. Private respondent failed to dispute said claim.

The right of a foreign sovereign to acquire property, real or personal, in a receiving state, necessary for the creation and maintenance of its diplomatic mission, is recognized in the 1961 Vienna Convention on Diplomatic Relations (Arts. 20-22). This treaty was concurred in by the Philippine Senate and entered into force in the Philippines on November 15, 1965.

In Article 31(a) of the Convention, a diplomatic envoy is granted immunity from the civil and administrative jurisdiction of the receiving state over any real action relating to private immovable property situated in the territory of the receiving state which the envoy holds on behalf of the sending state for the purposes of the mission. If this immunity is provided for a diplomatic envoy, with all the more reason should immunity be recognized as regards the sovereign itself, which in this case is the Holy See.

The decision to transfer the property and the subsequent disposal thereof are likewise clothed with a governmental character. Petitioner did not sell Lot 5-A for profit or gain. It merely wanted to dispose off the same because the squatters living thereon made it almost impossible for petitioner to use it for the purpose of the donation. The fact that squatters have occupied and are still occupying the lot, and that they stubbornly refuse to leave the premises, has been admitted by private respondent in its complaint.

b. The Sovereign Order of Malta

• **Nanni v. Pace and the Sovereign Order of Malta, Ann. Digest, 8 (1935-7);**

**Facts:** In this case, the plaintiffs, Nanni and others, sought legal action against Annibale Pace and the Sovereign Order of Malta concerning a property dispute. The contention revolved around the alienation of a benefice (a church benefice or ecclesiastical living) that had been granted to the Order. The plaintiffs challenged the validity of the alienation, leading to legal proceedings in Italian courts.

**Issues:**

- **Legal Personality:** Whether the Sovereign Order of Malta possesses international legal personality, granting it certain immunities and privileges under international law.
- **Jurisdiction:** Whether Italian courts have jurisdiction over legal matters involving the Order, considering its unique status.

**Ruling:** The Italian Court of Cassation, in its judgment on March 13, 1935, recognized the Sovereign Order of Malta as an entity with international legal personality. The Court held that the Order's sovereignty is a complex notion, primarily viewed from the perspective of its independence from other states. This recognition implies that the Order enjoys a degree of immunity from the jurisdiction of domestic courts, including those in Italy.

**Reasoning:** The Court reasoned that sovereignty, in international law, is often understood in terms of independence from other states. It acknowledged that while the concept of sovereignty is complex, entities other than states could possess a limited capacity to act internationally within the scope of their functions. The Sovereign Order of Malta, through its historical development and functions, has acquired such international juridical personality and capacity.

- Scarfo v. Sovereign Order of Malta, ILR 24 (1957)

**Facts:** In this case, an Italian national, Scarfo, entered into a contract with the Sovereign Order of Malta. A dispute arose regarding the execution of the contract, leading Scarfo to seek legal recourse in Italian courts. The central issue was whether the contract was subject to Italian domestic law or if the Order's unique status exempted it from such jurisdiction.

#### **Issues:**

- **Applicable Law:** Determination of whether Italian law governs contracts involving the Sovereign Order of Malta.
- **Jurisdiction and Immunity:** Assessment of the Order's immunity from domestic legal processes in contractual matters.

**Ruling:** The court held that the contract between Scarfo and the Sovereign Order of Malta was not subject to Italian law. This decision was based on the recognition

of the Order's unique international status, which grants it certain immunities from domestic jurisdiction.

**Reasoning:** The court recognized that the Sovereign Order of Malta, despite lacking a territorial base, maintains a form of sovereignty acknowledged by international law. This status provides the Order with immunity from domestic legal systems concerning its official acts and contracts. Therefore, the contractual relationship in question was governed by the internal regulations of the Order rather than Italian domestic law.

### **Analysis Related to Entities Sui Generis:**

These cases highlight the distinctive position of the Sovereign Order of Malta as an **entity sui generis**—a unique entity in international law that does not fit neatly into traditional categories of statehood or international organizations. Key aspects include:

- **Historical Sovereignty Without Territory:** The Order historically exercised territorial sovereignty but continues to be recognized as a sovereign entity despite lacking a territorial base since the loss of Malta in 1798.
- **International Legal Personality:** The Order engages in diplomatic relations, maintains embassies, and participates in international humanitarian activities, reflecting its capacity to operate on the international stage independently.
- **Functional Immunity:** The recognition of the Order's sovereignty grants it immunity from domestic legal jurisdictions concerning its official functions and contracts, as affirmed by the Italian courts in the aforementioned cases.

In summary, the Sovereign Order of Malta exemplifies an entity sui generis in international law, possessing a unique legal status that confers certain sovereign privileges and immunities, despite the absence of a territorial domain.

### c. Governments in Exile, Liberation Movements

The Southern Rhodesian Question

- **Security Council (S.C.) Res. No. 216 (1965)**
- **S.C. Res. No. 217 (1965)**

In November 1965, the United Nations Security Council addressed the situation in Southern Rhodesia (now Zimbabwe) following its Unilateral Declaration of Independence (UDI) by a minority-led government. The Council adopted two significant resolutions:

### 1. Security Council Resolution 216 (1965):

- **Date Adopted:** November 12, 1965
- **Key Provisions:**
  - **Condemnation of UDI:** The Council condemned the unilateral declaration of independence made by a "racist minority" in Southern Rhodesia.
  - **Non-Recognition:** It called upon all states to refrain from recognizing the illegal regime and from rendering any assistance to it.

This resolution was adopted with 10 votes in favor and one abstention (France).

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### 2. Security Council Resolution 217 (1965):

- **Date Adopted:** November 20, 1965
- **Key Provisions:**
  - **Grave Concern:** The Council expressed deep concern over the proclamation of independence by the illegal authorities in Southern Rhodesia, considering it a threat to international peace and security.
  - **Call to the UK:** As the administering power, the United Kingdom was urged to end the rebellion and restore lawful authority.
  - **International Measures:** The resolution called upon all states to:
    - **Non-Recognition:** Refrain from recognizing the illegal regime or maintaining diplomatic relations with it.
    - **Economic Sanctions:** Avoid any economic relations, particularly abstaining from providing arms, military equipment, and oil to Southern Rhodesia.

This resolution was also adopted with 10 votes in favor and one abstention (France).

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These resolutions underscored the international community's rejection of the minority-led unilateral declaration of independence in Southern Rhodesia and initiated measures to isolate the illegal regime diplomatically and economically.

Cf. Portuguese Guinea Question

- **G.A. Res. 3061 (XXVIII), G.A.O.R., 28th Session, Supp.**
- **S.C. Resolution No. 356 (1974), S.C.O.R., 29th Year, Resolutions and Decisions**

In the early 1970s, the United Nations addressed the issue of **Portuguese Guinea** (now **Guinea-Bissau**) as it sought independence from Portuguese colonial rule. Two significant resolutions were adopted during this period:

### **1. General Assembly Resolution 3061 (XXVIII):**

- **Date Adopted:** November 2, 1973
- **Key Provisions:**
  - **Condemnation of Portuguese Actions:** The General Assembly condemned the illegal occupation by Portuguese military forces of certain sectors of the Republic of Guinea-Bissau and acts of aggression committed against its people.
  - **Recognition of Independence:** The resolution took note of the unilateral declaration of independence by Guinea-Bissau and considered the territory as having attained a status of independence.
  - **Call for Support:** Member States and international organizations were urged to provide assistance to the people of Guinea-Bissau in their struggle against Portuguese colonialism.

This resolution marked a significant step in the international recognition of Guinea-Bissau's independence, despite ongoing Portuguese military presence in parts of the territory.

### **2. Security Council Resolution 356 (1974):**

- **Date Adopted:** August 12, 1974
- **Key Provision:**



- **Admission to the United Nations:** The Security Council recommended to the General Assembly that the Republic of Guinea-Bissau be admitted to membership in the United Nations.

Following this recommendation, the General Assembly admitted Guinea-Bissau as a member state on September 17, 1974. This action solidified Guinea-Bissau's status as an independent nation within the international community.

These resolutions reflect the United Nations' commitment to supporting decolonization efforts and the recognition of self-determination for territories under colonial rule.

d. Belligerent communities; people's movements

• **Right of Passage Case (Merits), ICJ Reports (1960), (Judge Spiropoulos, Judge Armand Ugón)**

The **Right of Passage over Indian Territory (Portugal v. India)** case, adjudicated by the International Court of Justice (ICJ) in 1960, primarily addressed Portugal's claim to a right of passage through Indian territory to access its enclaves of Dadra and Nagar-Aveli. While the case did not directly pertain to belligerent communities or people's movements, it offers insights into issues of sovereignty, territorial rights, and the implications of colonial legacies on local populations.

**Facts:**

Portugal held sovereignty over the enclaves of Dadra and Nagar-Aveli, which were entirely surrounded by Indian territory. Historically, Portugal exercised passage rights through the intervening Indian land to administer these enclaves. In 1954, local movements within the enclaves led to the overthrow of Portuguese authority, resulting in the establishment of self-governing administrations. Subsequently, India restricted Portugal's passage through its territory, prompting Portugal to seek legal redress from the ICJ, asserting its right to passage necessary for exercising sovereignty over the enclaves.

**Issues:**

1. **Right of Passage:** Did Portugal possess a legal right to passage over Indian territory to access its enclaves, facilitating the exercise of its sovereignty?
2. **Scope of Passage Rights:** If such a right existed, did it extend to the movement of armed forces and military supplies?

### **Judgment:**

On April 12, 1960, the ICJ delivered its judgment:

1. **Existence of Right of Passage:** The Court recognized that Portugal had a customary right of passage over Indian territory to access its enclaves, applicable to private individuals, civil officials, and goods necessary for administrative functions. This right was established through consistent practice between Portugal and the preceding British colonial administration, and later with independent India.
2. **Limitations on Passage:** The Court determined that this right did not extend to the movement of armed forces, armed police, or military equipment. The historical evidence did not support an established practice permitting such military passage.

### **Analysis Related to Belligerent Communities and People's Movements:**

While the case centered on legal rights of passage and sovereignty, it indirectly touched upon the dynamics of local populations and their movements:

- **Local Uprisings:** The 1954 events in Dadra and Nagar-Aveli involved local populations actively opposing Portuguese colonial rule, leading to the establishment of self-governing entities. These movements reflect the agency of local communities in challenging colonial authorities and asserting self-determination.
- **Impact on Sovereignty Claims:** The successful local movements effectively altered the control and governance of the enclaves, complicating Portugal's claims of sovereignty and rights of passage. The ICJ's judgment acknowledged the de facto changes in governance resulting from these local actions.

### **Opinions of Judges Spiropoulos and Armand-Ugon:**

Both judges provided dissenting opinions, offering perspectives relevant to the discussion of local movements and sovereignty:

- **Judge Spiropoulos:** He emphasized that the establishment of new autonomous administrations in the enclaves, resulting from local uprisings, effectively terminated Portugal's right of passage. He argued that the right of passage was inherently linked to Portugal's administrative control over the enclaves; once that control ceased due to local actions, the corresponding right of passage was nullified.
- **Judge Armand-Ugon:** He highlighted the significance of the local population's will in determining the legitimacy of territorial control. He suggested that the emergence of self-governing administrations, born from the local populace's efforts, undermined Portugal's claims to sovereignty and, by extension, its asserted rights of passage.

### **Conclusion:**

The **Right of Passage over Indian Territory** case illustrates how local movements and the actions of belligerent communities can influence and redefine questions of sovereignty and territorial rights. The ICJ's deliberations and the dissenting opinions underscore the importance of considering the will and actions of local populations in resolving international legal disputes concerning territorial control and access rights.

### • **US Diplomatic and Consular Staff in Iran Case (United States v. Tehran), ICJ Rep 1980,** **ICJ**

The **United States Diplomatic and Consular Staff in Tehran** case (United States of America v. Iran) addressed the seizure of the U.S. Embassy in Tehran and the detention of American diplomatic and consular personnel by Iranian militants in 1979. While the case primarily focused on violations of diplomatic immunity and state responsibility, it also sheds light on the role of belligerent communities and people's movements in international legal disputes.

### **Facts:**

On November 4, 1979, a group of Iranian militants, identifying themselves as the "Muslim Student Followers of the Imam's Line," forcibly entered the U.S. Embassy in Tehran. They took 52 American diplomats and citizens hostage, an event that extended over 444 days. The militants claimed their actions were in response to U.S. interference in Iran's internal affairs and the admission of the deposed Shah into the United States for medical treatment. The Iranian government did not intervene to prevent the takeover or secure the release of the hostages. Instead, it endorsed the militants' actions, leading to a significant international crisis.

### **Issues:**

1. **State Responsibility:** Whether the Iranian government could be held internationally responsible for the actions of the militants who seized the U.S. Embassy and detained diplomatic personnel.
2. **Violation of International Law:** Whether Iran breached its obligations under international conventions, particularly the Vienna Convention on Diplomatic Relations, by failing to protect the embassy and its staff.

### **Judgment:**

On May 24, 1980, the International Court of Justice (ICJ) delivered its judgment:

1. **Attribution of Actions:** The ICJ determined that while the initial seizure of the embassy by the militants could not be directly attributed to the Iranian state due to insufficient evidence of prior authorization, the subsequent endorsement and continued detention of hostages by Iranian authorities transformed these actions into acts of the state. The Court stated that Iran's failure to prevent the attack and its decision to perpetuate the situation constituted clear violations of international obligations.
2. **Breach of International Obligations:** The Court found that Iran violated obligations owed to the United States under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and the 1955 Treaty of Amity, Economic Relations, and Consular Rights between the two countries. These violations included failing to protect the embassy premises, diplomatic staff, and consular personnel, and not ensuring their freedom and security.

## **Analysis Related to Belligerent Communities and People's Movements:**

This case highlights the impact that non-state actors, such as belligerent communities and people's movements, can have on international relations and legal responsibilities:

- **Non-State Actors Influencing State Responsibility:** The actions of the militants, a non-state group, led to significant international legal consequences when the Iranian government endorsed their activities. This demonstrates how the conduct of belligerent communities can implicate state responsibility, especially when the state adopts or supports such actions.
- **State Endorsement of People's Movements:** The Iranian government's support for the militants' actions transformed a non-state movement into a matter of state action, thereby attracting international accountability. This underscores the principle that states may be held liable for the actions of private groups if they endorse or fail to prevent such actions, particularly when they violate international norms.

## **Conclusion:**

The **United States Diplomatic and Consular Staff in Tehran** case illustrates the complex interplay between non-state actors' actions and state responsibility in international law. It emphasizes that while belligerent communities and people's movements can initiate actions independently, state endorsement or failure to prevent such actions can result in the state being held accountable for breaches of international obligations.

## **5. International Organizations and Individuals**

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

The **Reparation for Injuries Suffered in the Service of the United Nations** case (Advisory Opinion of April 11, 1949) is a landmark decision by the International Court of Justice (ICJ) that addresses the legal standing of international organizations, particularly the United Nations (UN), to seek reparations for injuries sustained by their

agents during official duties. This case significantly clarified the capacities and rights of international organizations and their personnel under international law.

### **Background:**

In September 1948, Count Folke Bernadotte, the UN Mediator in Palestine, was assassinated in Jerusalem while performing his official duties. This incident raised critical questions about the UN's ability to claim reparations for injuries to its agents, especially when such injuries resulted from actions attributable to a state.

Consequently, the UN General Assembly requested an advisory opinion from the ICJ on whether the UN, as an international organization, possesses the capacity to bring an international claim against a responsible state to obtain reparation for damages caused to the organization and to the victim or their beneficiaries.

### **Key Issues:**

1. **International Legal Personality of the UN:** Does the United Nations have the legal standing to bring international claims against sovereign states for injuries suffered by its agents?
2. **Right to Seek Reparation for Individuals:** Can the UN claim reparations not only for damages incurred by the organization itself but also on behalf of the injured individual or their beneficiaries?

### **Findings of the Court:**

1. **International Legal Personality:** The ICJ affirmed that the United Nations possesses international legal personality. The Court reasoned that the UN was established to exercise functions and rights that necessitate a significant degree of international personality and the capacity to operate on the international stage. This status enables the UN to bring international claims to safeguard its interests and ensure the effective performance of its functions.
2. **Right to Seek Reparation for Individuals:** The Court concluded that the UN has the capacity to claim reparation not only for damages suffered by the organization but also for injuries sustained by its agents or their beneficiaries. This capacity is essential for the UN to fulfill its duties effectively, as it must be able to ensure adequate protection and support for its personnel, especially those deployed on critical missions in volatile regions.

## **Implications for International Organizations and Individuals:**

- **Protection of Agents:** This advisory opinion underscores the responsibility of international organizations to protect their agents. By recognizing the UN's capacity to seek reparations for injuries to its personnel, the ICJ reinforced the notion that organizations must ensure the safety and well-being of their staff, who often operate in challenging and dangerous environments.
- **Enhanced Operational Capacity:** The decision affirms that international organizations like the UN have the legal tools necessary to address grievances arising from harm to their agents. This capacity is vital for maintaining the morale and trust of personnel, thereby enhancing the organization's ability to carry out its mandates effectively.
- **Clarification of Legal Status:** The recognition of the UN's international legal personality and its right to bring claims on behalf of its agents provides clarity regarding the legal standing of international organizations. This clarification is crucial for delineating the rights and obligations of such entities and their interactions with member states under international law.

In summary, the ICJ's advisory opinion in the **Reparation for Injuries Suffered in the Service of the United Nations** case significantly advanced the understanding of the legal capacities of international organizations. It established that the UN has both the international legal personality and the right to seek reparations for injuries to its agents, thereby reinforcing the mechanisms available to protect individuals serving under its auspices.