**Cours 3 : how an entity qualifies for statehood**

Cours 3

State-Hood : State : matter of fact, matter of law

Approach of the Badinter commission :

Montevideo convention: 1933? Adoption of three criteria to objectively determine if a state was a state.

Even if states are not parties to the Montevideo criteria, the criteria are still relevant.

3 criterias to define a state:

* Territory
* Population
* Effective government

If an entity does not fulfil those criteria, an entity cannot be seen as a state.

* capacity to enter into international relations
  + all the modern conception of the state is territorial
    - need to rethink the Montevideo Criteria?
      * Published in 1933, only 51 states in the world…The world and the international community have evolved
      * So these the criteria may have evolved as well
        + For instance: Issue of climate change: territory submerged : what would be the status of that state ? is it still considered as a state ?

Statehood: “state vis à vis a state”=> recognition then could be a criteria for instance

* If the international community does not recognise a country: impossible to be a state
  + Objective laws: Kosovo case
    - Need of an objective body of law and an objective assertion to avoid unpredictability
  + Palestine is now a state: part of the UNESCO member
    - US stopped founding
* Need to have legal predictability in the system
* The capacity to enter in legal relations:
  + Refers to the international legal personality of the state:
    - Possibility to have rights and obligations ate the international level
      * Agreement between Marshall Islands, Micronesia and the US: consultancy of the US before any foreign affairs decisions
        + And still Marshall Islands and Micronesia are both two real independent states
    - An effective government: able to exercise the government activities
      * Ex: Vatican

Sovereignty: article 1 of the Montevideo Convention does not mention sovereignty as a criteria to statehood, but it is the sine qua non element: without sovereignty there is no state. A state is first and foremost a sovereign entity.

Sovereignty:

* Max Uber: great arbitrator, Suisse professor beginning 20th century, gave a definition of sovereignty in the Palamas case.
  + Island of Palmas case, 1928
    - “**Sovereignty in the relations between states signifies independence, independence in relations to a portion of the globe is the right to exercise there in, to the exclusion to any other state, the function of a state**”
      * right to adopt regulation, exercise jurisdiction over your people,… sovereignty is independence.
        + Within your borders, only authority that imposes its decisions
        + And no state is exercising these rights

No external pressure

However, possible to accept a reduction of the sovereignty: but independent decision

* Are you able to be independent?
  + Colonised: no independent
  + But if there is occupation: still independent
* Without sovereignty an entity cannot claim being a state
* These criteria are basics: but other criteria? Two new criteria

1. Legitimacy: today more and more states and scholars think that legitimacy should be a criteria for statehood
   * + Ex: Cyprus – creation of northern Cyprus, involved force
   * **Inter-temporal law**: the assessment of a legality of a situation has to be made in light of the applicable law when the situation occurred (Max Uber, in Island of Palmas Case)
     + Inter-temporal law apply for the creation: whether it was legally created, look at the law at that time, but, not the case of maintenance: discrimination in Australia for instance
       - Many states has been created on the use of force, but only prohibited since 1955
   * Crime against humanity: crimes that allow a retrospective condemnation
     + Exception to the inter-temporal law
   * Legitimacy criteria: more and more considered when tackling the questions of the state criterions

* Fundamental principles: cannot reject the rules, pillars
  + The social contract of the international community is based on fundamental laws
* Violations: legal framework but in international relations, different situations can occur
  + Lawless World, Philip Sands, made investigations with regards to the Iraqi World.

1. Recognition

* Basically 2 theory
  + The constitutive theory of recognition:
    - For a state to exist, need first to be recognized as a state:
      * Recognition has a constitutive effect
  + The declaratory theory of recognition:
    - Recognition has only a declaratory effect
      * Recognition does not mean that the entity has achieved statehood

Montevideo convention, article 3: recognition does not have any constitutive effect, only a declaratory. That you are recognized or not you can live as a state

* but is this the reality in the system ?
  + today if there is no recognition, you are not a state: if no recognition, you cannot accomplish the act of a state
    - “Being a state is a way of life”
    - if you are an entity and want to be a state, you have to live like a state, and then you need to be recognized
      * without recognition you cannot be a state
      * and it is also about who is recognizing you.
        + Ex: Kosovo is not a UN member
        + But does it mean it does not exist as a state?
      * Recognition is necessary to live as a state but you can live without
        + Just a political effects?
  + Dilemma recognition/capacity:

There is an objective legal definition of statehood: situation of uncertainty that can be abused, but if an entity has to demonstrate that an entity is not a state based on criteria: objectively the entity has the right to behave as a state.

The modes of acquisition of territorial sovereignty: a state is first a territory: how do you acquire that territory?

* how can an existing state can expand its sovereignty ? or a state saying this is my territory?
* Comment acquiert on la souveraineté territorial ?
  + Conquest: For long time it was conquest: no longer possible
  + Discovery: outdated, but even at the time could only give you an inchoate title: meaning was not giving you title of the territory: still need to do several things for the territory to belong t you
  + The main way today is exercise of effective control : how you are proving you have a territory: you have been displaying peaceful and continuous authority (Max Uber)
    - Islands of Palmas: US v Netherlands:
      * Netherlands: continuously and peacefully exercising authorities other there
        + Most important thing to acquire sovereignty

Les effectivités

Cours 4

Legitimacy: a criteria of statehood?

* entity has to be created with regards to international law
  + However, is the Islamic State a state?
    - In this case, an entity based on racial discrimination, religion discrimination… even if we admit that the basic criteria are fulfilled: how can we accept that such an entity is a state with regards to all the un-legitimate elements of the Islamic State: a state created on the basis on the violation of international principles regarding human rights perhaps cannot and should not be recognized as a state
      * Brach of all the fundamental values of the system

The modes of acquisition of international sovereignty: it is seen as a territorial notion

* **Discovery**
  + But in quiet title: need effective control : evidence of continuous and peaceful display of sovereignty
* **Occupation**: can only happen in a terra nullus
  + The only type of occupation that can give you sovereignty would be an occupation of a territory occupied by nobody:
    - Ex of the occupation by the Brits of Australia
* **Cession**: a state can accept to cede some part of its territory
  + Ex: Louisiana against monetary compensation, HongKong and the Brits
* **Prescription**: also an occupation of a territory, but occupation of a territory that used to be
  + Occupation can only occurs when res nullus
  + Prescription: territory that used to belong to a sovereign but as your occupation has been peaceful, public and that it lasted for a certain time, you are then perceived as the new state
    - Falkland islands: Malvinas according to Argentina, Falkland
      * Implicit acquiescence
    - Referendum organized by the UK and people said they were Brits
* **Accretion**: when your territory is extended because of a natural phenomenon
  + Ex: river that has dried up
    - For instance : El Chamizol at the frontier between US and Mexico
  + Avultion: with volcano
  + Artificial Island: in your territorial sea: still on your territory
* **Uti possidetis juris**:
  + The principle of the intangibility of frontiers inherited from colonization
    - It came from Latin America: colonial powers drew artificial frontiers, but when independence came, they said that if they started to discuss the frontiers, there would be war everywhere.
  + *Self determination*: people under colonial colonisation should have the right to freely choose whether they want to become independent as a new state or whether they want to integrate the former colonial power
    - Ex: Comorres
  + Two types of self determination
    - *Internal self determination*
      * People leave under a state and pretend to have a self existence: they have a right to internal self determination:
        + The government needs to provide them for institutions, study in the language,

Quebec: not under colonisation, people are different but everything is made to grant you internal self determination

Already exercising self determination inside Canada

* + - *External self determination*
      * Under colonisation, and then the right to self determined
* **Secession**:
  + Is considered as a way of becoming a new sovereign state: you separate yourself from an existing state
    - Ex: South Sudan
    - Problem is the unilateral declaration of secession
* **Exercise of effective control**:

* Today, we do have more statehood problems than it appears.
  + Lex lata (hard law)/lex referenda (what it shoud be)

Cours 5

* Sahara
* Israël/Palestine
* Cyprus
* Vatican

1929: the Lateran Accords: recognizes the Holy See

180 diplomatic missions

Sui generis territorial entity

* Kosovo

Terrorist organisation, drugs

Legal advisement of 2010: silent meaning permission for the ICJ, and hope for a change

**International organizations**

They are derived subjects of international law: states are the first subjects of international law.

* Comparison with Frankenstein’s creature.

They are derived subjects.

What is an international organisation?

They can only be created by states

In the typology is the distinction between:

* Public and private international organizations
  + Private international organisations: NGO’s : they are not international organisations as with regards to international law
  + International organizations under international law can only be public international organization
* Open international organization and close international organisation
  + Open: to which potentially any state can become a member
    - Based on universal membership
      * But to what extent are they really “open”?
      * Conditions are set to become members
        + “semi-open”?
        + potentially any international subject can become a member

ex: IMF: to become member of the IMF you have to become member of the World Bank

* + Close:
    - Not opened to every state, set of criteria:
      * Functional organisations:
        + OECD: high level of development, capitalistic form of economy, promotion of capital markets…
        + OPEC: only countries that export oil can become oil
      * Regional :
        + Regional criteria, it is because of your links with a region, territorial link
        + EU, Asean, Mercosur,…
      * Based on a common background:
        + Share the same language, religion, culture,…

Commonwealth, Organisation de la Francophonie, league of Arab States, Organisation of the Islamic conference,