# **Public International Law: The United Nations and Statehood**

# **What is public international law** SS Lotus Case

# Nature of public international law

## Public international law is described as a **horizontal** system of law

### no State has sovereignty (control) over another state;

### International legal relations are entered into on voluntary basis.

## Public international law now regulates the actions of

### State entities

### Non-State entities.

# **State entity**

## States are the political institutions in which sovereignty is embodied.

## Sovereignty is the supreme political authority that a State can exercise within its territory.

## Sovereign states has power to make and enforce law within a defined territorial boundary.

## Sovereign states are not subject to the jurisdiction of other states, international bodies or tribunals unless they consent.

## 

# **Sovereignty**

## Concept of sovereignty involves rights and responsibilities.

## ***Sovereign rights***

### Right of state power to govern and control defined territory.

## ***Sovereign responsibilities***

### Responsible to upheld international commitments entered into.

### Responsible to avoid causing harm beyond state boundaries

## International law therefore recognises the sovereign rights of States – but in practice limits states rights by creating universal standards, approaches, goals.

# **Non-State entity**

## Non-state actors may in certain circumstances be considered subjects of international law: *Reparations Case*.

## ***Examples of bodies with international legal personality:***

### United Nations

### World Trade Organisation

## ***Bodies which influence international law:***

### Multinational corporations

### Non-governmental organisations

### Individuals

# **History of public international law**

## Evidence of treaties among states as early as 3100BC. Treaties dealing with dynastic and military alliances in Mesopotamia.

## 1648 Peace of Westphalia Treaty

### respect each other’s territorial integrity

### Not to intervene in other jurisdiction

### Treaty was concerned with right of sovereign to enforce own religious faith within its territory.

# ***League of Nations***

## Came about at the end of World War I.

## Arose from international interest in preventing repetition of war.

## 14 points for peace plan (USA) suggestion for a general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

## Treaty of Versailles signed in 1919 by 44 states.

## ***League’s primary goals:***

### Prevent war though collective security;

### Disarmament;

### Settling of international disputes through negotiation and arbitration.

## Scope to consider labor condition, just treatment of native inhabitants, trafficking in person, drugs, arms trade, global health, prisoners of war and protection of minorities in Europe.

# **Collapse of League of Nations**

## League lacked its own armed forces and depended on the great powers to enforce its resolutions, keep economic sanction or provide an army.

## Great powers reluctant to assist in enforcing covenants.

## Germany withdrew from league, causing a number of other powers to follow suit.

## Onset of World War II showed that the League had failed its primary purpose – avoiding world war.

# **Development of United Nations**

## In 1945 representatives of 50 countries met in San Francisco at the United Nations Conference on International Organisation to draw up the United Nations Charter.

## United Nations officially came into existence on 24 October 1945 when the Charter had been ratified by China, France, the Soviet Union and the United Kingdom.

## ***United Nations is committed to promoting social progress, better living standards and human rights.***

# **Role of United Nations**

## United Nations is committed to promoting social progress, better living standards and human rights.

## United Nations best known for peacekeeping, peace building, conflict prevention and humanitarian assistance

## Also works on sustainable development, environment, refugee protection, disaster relief, counter terrorism, disarmament, non-proliferation, promoting democracy, human rights, gender equality, advancement of women, governance, economic and social development, international health, clearing landmines and expanding food production.

# **United Nations Charter**

## Purpose of Charter found in Article 1

## Maintain international peace and security.

## Develop friendly relations among nations based on respect for the principle of equal rights and self determination.

## Achieve international co-operation in solving problems of economic, cultural, humanitarian character.

## To be the centre for harmonizing the actions of nations in the attainment of these common ends.

# **Supremacy of United Nations Charter**

## Article 103 provides that in the event of a conflict between the UN Charter and another international agreement, that the UN Charter is to prevail.

## ***Amendment of the Charter requires the consent of all five permanent members of the Security Council.***

## Historically has proved challenging to amend the Charter.

# **Organs of the United Nations**

# **General Assembly**

## Comprised of all member states of UN: article 9 (1)

## Principle policy-making and representative organ of the UN.

## Example of Programmes of General Assembly:

### United Nations Environment Program, United Nations Development Program, United Nations Children’s Fund, World Food Program.

## ***Suggestions for Reform***

### Process of agreement by consensus leads to the creation of rules reflecting the lowest common denominator

### Focus on process as oppose to substance when seeking consensus.

# **Security Council**

## Primary responsibility: maintain international peace and security by a means of collective security.

## 15 Members

### **5 permanent**: China, France, Russia, UK and USA

### 10 members elected for 2 year terms (seats allocated on geographical basis).

## ***Reform***

### Security Council membership be reformed so that it is more broadly representative of the realties of powers in today's world. See p102 of text for further detail.

# **The Economic and Social Council**

## 54 members elected for three-year terms by General Assembly (geographical allocation).

## Operates under General Assembly and responsible for discharging duties found in article 55 of charter

### Living and employment conditions

### Solutions of international economic, social, health and related problems

### Universal respect for human rights

## Number of functional commissions, regional commissions, other bodies and specialised agencies sit under ECOSOC.

# **The Trusteeship Council**

## **No longer in operation.**

## Established to ensure that non-self governing territories were administered in the best interest of the inhabitants and of international peace and security.

## Reform (would require amendment of UN Charter)

### Expansion of trusteeship council to promote environmental integrity of the global commons outside of national jurisdictions.

### Kofi Annan – complete restructure of UN and elimination of Trusteeship Council.

# **The International Court of Justice**

## Replaced the Permanent Court of International Justice in operation under the league of nations.

## Located in the Hague, Netherlands (all other organs in New York).

## ***Court’s role is to settle in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialised agencies.***

## Composed of 15 judges – elected for an office of nine years by General Assembly and Security Council.

# **The Secretariat**

## Headed by the United Nations Secretary- General

### Ban Ki-moon of South Korea Jan 2007 – December 2011.

### De facto spokesperson and leader of United Nations.

## 40, 000 staff members around the world – June 2009.

## ***Duties: helping resolve international disputes, administrating peacekeeping operations, organising international conferences, gathering information on the implementation of Security Council decisions and consulting with member governments.***

# **What is a State?**

## Defined by certain criteria.

## Once a state is recognised under international law

### Right to bring a claim under international law

### Can be made responsible for violating or harming other states or the global community

## Concept of nation and state different

## Textbook suggest that legal status or capacity of states is connected to larger questions about democratic representation in an international rule of law and ultimately international law’s legitimacy.

# **International Legal Personality**

## Legal personality allows:

### Power to enforce legal rights.

### Commence legal proceedings in international courts.

### Power to accept legal obligations.

## States are the main actors with international legal personality.

### What is the definition and requirements of State or Statehood at the international level?

# **Definition of State**

## No one definition.

## One examples comes from *UN Convention on Jurisdictional Immunities of States and their property*. State is defined here to mean

### State and its various organs of government;

### Political units exercising sovereign authority and acting in capacity

### Representative of the State acting in that capacity.

# **Montevideo Convention: Requirements of Statehood**

# ***Permanent Population***

## Population of state must be permanent

### Does not depend on the size of the population.

### But population must not be transient.

## **Examples**

### Vatican City is a State – permanent population around 1000.

### Antarctica is entirely transient population – of scientists and tourists – not a State.

# **Defined Territory**

## State must be entitled to exercise territorial sovereignty.

### Right to exercise official authority within a given territory to the exclusion of any State without the territorial State’s consent.

## Many territorial disputes in the world. This does not necessarily mean there is a lack of defined territory.

## Test of “sufficient consistency, even though its boundaries have not yet been accurately delimited ”*Deutsche Continental Gas-Gesellschaft v Polish State.*

# **Government**

## **Requirements of Government**

## Administering authority must exercise effective control over a defined territory

### Stable political organisation and public authorities able to assert themselves

### No requirement that order and normal life completely restored: *Aaland Islands Case*

### This requirement is more important when determining the existence of a new state then in deciding whether an existing State has disappeared.

## It must be independent in the sense that it is not subject to control by any other State or external political power

### Key consideration is that entity is not legally subject to the authority of any other State.

## No formal requirements for government structures.

## Can be established according to any particular constitutional pattern

## Currently no requirement that government be democratically elected

# **Capacity to enter into relations with other States**

## Capacity has 2 possible meanings:

### Entity possess the political, technical, financial and other material resources necessary to establish and maintain diplomatic contact with other states; OR

### Other States are willing to deal with the entity as State on the plane of international relations.

## **Tinoco Arbitration** (Great Britain v Costa Rica)

## Tinoco overthrew government of Costa Rica- gave concessions to UK nationals.

## Costa Rica government overthrew Tinco and refused to recognise concessions given to UK nationals.

## *“The non-recognition by other nations of a government claiming to be a national personality, is usually appropriate evidence that it has not attained the independence and control entitling it be international law to be classes as such*”

## UK was ultimately unsuccessful as they had never formally recognised Tinoco government and hence were not able to rely upon concessions given by government to UK nationals.

# **Proving Capacity**

## Membership of international organisations

### Membership to international organisations will be strong evidence of Statehood. UN Charter – article 4

## Recognition of States

### Current approach

## Recognition of Government

### Current approach is for States to recognise other States, not governments at the international level.

### Demonstrates a willingness to have diplomatic dealing with other states on the basis that the controlling authority represents and binds the State.

# **Proving Capacity: Recognition of States**

### **Can occur through**: official announcement, formal declaration, diplomatic message, treaty provision or be implied by conduct.

### **Does not include**: entity attending international conference, trade missions, liaison office, non-diplomatic contact office.

### States are free to extend, withhold or withdraw recognition whenever they please – therefore recognition is a political and discretionary act **not a legal duty** (Customary Law).

### In some instances there is a **duty not to recognise**: territorial acquisition or special disadvantage resulting from aggression **OR** in instances where new State is being created to implement a policy of apartheid. (Customary Law).

# **Emerging issues in the Statehood context**

## ***Territory disappearing as a result of climate change***

### Can a state maintain its legal personality despite its lack of physical territory or if the territory is no longer inhabitable.

### Would a state that no longer has any land be able to invoke the legal rights of states, such as instituting proceedings before the ICJ?

### What are the various options for a disappearing state:

#### **Legal precedent for acquiring territory by treaty of cession**.

#### Merging into a host state.

# **Self Determination**

## Essential purpose is to ensure that all people are **represented** by a government without distinction to race, sex, language or religion.

### **Internal self determination**: right of people to exercise control over their political, economic, social and cultural welfare without having to secede from that state.

### **External self determination** : right exercised by prospective nation of people if they are denied the ability the exert internally their right to self-determination.

# **Self Determination considerations:**

## ***Declaration on the Granting of***

## ***Independence to Colonial Territories and People – GA Resolution 1514***

## Subjection of people to domination by others is denial of human rights

## All people have right to self- determination

## Inadequacy of capacity should serve as a pretext for delaying independence

## Armed action against repressed people should cease

## In Trust states immediate steps should be taken to transfer power

## Any attempt at partial or total disruption of national unity is incompatible with the purpose of the UN

## All states should observe the Charter of UN: non –interference in the internal affairs of all States, respect for sovereign rights of all people and territorial integrity.

# ***Western Sahara Case***

## Territory in northwest Africa, incorporated into Spain in 1884.

## Referendum for independence of Western Sahara proposed to GA 1974.

## Referendum opposed by Morocco and Mauritania claiming Western Sahara formed part of their sovereign territory under the **principle of territorial integrity** – which holds that states should not attempt to promote secessionist movement or changes to existing territorial state boundaries.

# Western Sahara...

## ICJ: previous sovereign rights did not prevent Saharawi people to self-determination.

## **Self determination is**

### Free and genuine expression of the will of the people concerned,

### Self determination is concerned with giving people the right to determine for themselves by democratic process, their relationship to particular sovereign,

### Right to self-determination does not necessarily mean right to be granted independence as a newly constituted sovereign state.

# Self-determination and territorial integrity

# **Principle uni possidetis iruis- stability of borders**

## Boundaries of colonial territories ought to become the international boundaries when those territories attained independence unless altered by agreement.

## **Purpose of principle** is to prevent the independence and stability of new States being endangered by fratricidal struggles: *Froniter Dispute.*

## Objective of establishing border is to achieve stability and finality. This will be made impossible if the border can be consistently called in question: *Temple of Preah Vihear*.

# ***Practical consideration – stability of borders doctrine***

## Borders often made rather artificially – often do not accurately represent ethnic, cultural or religious divides.

### “The west decided what a nation was, determining the boundaries of new nations” – Easterly p 82 text

## Questionable whether the principle has minimised threats to peace and security.

## Suggestions that the principle of self-determination should be concerned with people and not territory.

# **Use of self- determination**

## **Original use (external)**

### Process of decolonisation

## **More recent use (internal)**

### Since the end of the Cold War – more attention focused on the position of racial ethic and religious minorities located inside States.

### Used by separatist movements claiming statehood for people who are victims of discriminatory human rights abuses in a State where they are not part of the majority.

# **Internal Self –Determination** Final Report: Rights of People SNS89/cONF602

## People with following characteristics have right to S.D.

## Group sharing common features

### Historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territory connection, common economic life.

## Certain number – need not be large but must be more then mere association of individuals

## Groups has the will to be identified as a people or the consciousness of being a people

## The group possibly have institutions or other means of expressing its common characteristics and will for identity.

# ***Case Study: Southern Sudan***

## January 2011 – people in South Sudan will vote in a referendum

### Confirm unity of Sudan by voting to sustain the system of government under the Comprehensive Peace Agreement (internal self-determination).

### Vote to secession (independent statehood).

## Long history of civil war in Sudan since gaining independence in 1956.

## In 2005: Comprehensive Peace Agreement (CPA) signed between

### Sudan People’s Liberation Movement (South former rebels)

### National Congress Party (ruling Islamic party)

# ***Issues in Sudan***

## Religion

### North – Islam

### South- Christian

## Oil

### Around 80% of oil reserves in the South.

### Currently the South shares oil revenue with the north.

### North does not share revenue with the south.

## Water

### Nile- source of conflict within Sudan and external conflict with other countries (Egypt).

## Pastoralism

### Many Northern pastoralists depend on Southern pasture.

## Legal System

### North – Islamic Shari’a law

### South – customary law

### International: rule of law programmes also in operation

# ***Defining Sudanese***

## “Many Sudanese are asking a serious question, whether the present Sudanese State as inherited from 1956 at independence represents their interests in their various grouping and regions. The present crisis and wars in the Sudan spring from the fact that many Sudanese do not associate with the present Sudanese State, although many identify with a Sudanese entity or homeland”.

## Source: John Garang, SPLM Chairman Address on the Occasion of the Third Conference on Federalism, Brussels, 5 March 2005.

# **Comprehensive Peace Agreement**

## Wealth and power shared between SPLM and NCP.

## Set up an autonomous government in the South, with its own army financed from Southern oil revenues.

## Purpose of agreement:

### Address the historical dominance of the centre of Sudan over the South of Sudan;

### Make Sudan a fairer and freer place – thereby encouraging unity of Sudan ;

### Creation of Government of National Unity – 1/3 of posts held by those from South of Sudan;

# ***Factors in support of Unity***

## Southern living in Northern Sudan – may lose citizenship rights if separate state is created.

### Southerners came to Northern Sudan under terrifying circumstances and now make up a large part of the workforce in Khartoum.

## Number of issues which we need to be addressed if secession was to occur

### Dividing of assets, oil, water, national infrastructure, nationality, new currency.

### Secession will not lead to peace unless these issues addressed – experience of Somaliland and Eritrea.

# **Factors in support of cession - Statehood**

## Widespread southern perception that central government has failed to take the opportunity to transform itself (equitable opportunities for the South).

# **Example of Statehood Question**

## **Good example of practice exam style question on Statehood available in**

### **Stephen Hall, *International Law* (2006 2nd ed) p 154 -160.**

### **This will be made available on CMD.**