

Legal English lessons for master 1 students,

Public International law – 2nd Semester

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I)- Understanding International Law

1. What is international law?

. International law is the law governing relations between States, it has traditionally been regarded as a system of principles and rules designed to govern relations between sovereign states.

International law (IL) emerged around the 1400s. The Roman Empire broke down and individual "nation states" developed, as did primary rules regulating their relationships. Each state was sovereign and autonomous

2. The benefits of international law

International law sets up a framework based on States as the principal actors in the international legal system, and it defines their legal responsibilities in their conduct with each other, and, within State boundaries, with their treatment of individuals. Its domain encompasses human rights, disarmament, international crime, refugees, migration, nationality problems, the treatment of prisoners, the use of force, and the conduct of war, among others. It also regulates the global commons, such as the environment, sustainable development, international waters, outer space, global communications and world trade.

II)- INTERNATIONAL LEGAL PERSONS

« The State »

Subjects of international public law: أشخاص القانون الدولي العام

Subjects of International law: are those actors possessing international legal personality.

Capacities of an international legal person:

- The ability to make claims in respect to breaches of international law before international and national tribunals
- Hold obligations under international law.
- Make valid international agreements

I) States and Statehood

1- What is a state?

States are considered primary subjects of international law with full legal capacity. Meaning that they can enjoy all the main capacities an international legal person can enjoy. International organizations enjoy.

Montevideo Convention on Rights and Duties of States (1936)

- Article 1 provides: "The state as a person of international law should possess the following qualifications:
 - (a) a permanent population;
 - (b) a defined territory;
 - (c) government; and
 - (d) capacity to enter into relations with other states."
- Treaty between U.S. and 15 Latin American states - This definition of "statehood" has become adopted definition.

2- Characteristics of states:

(a) *Permanent Population*

- required, but there is no minimum requirement

(b) *Defined Territory*

- no minimum requirement, no requirement of territorial unity

(c) *Government*

- central to candidature for statehood
- *Key is governmental capacity to exercise power over an area of territory and population.*
- Civil strife can act to obscure an entity's transformation into a state (e.g. Finland - difficult to determine exactly at what time it became a sovereign state.)
- Existing states can also lose their statehood by agreement to join another country. (e.g. Union of Scotland with England and Wales in the UK)

(d) *Capacity to Enter into International Relations*

- Prerequisite and consequence of statehood - until other states accept the existence of the new state, it is prevented from entering into diplomatic relations even if it is capable and willing to do so.
- Such capacity is necessarily dependent upon an effective, independent government.

(e) *Independence*

- also necessary for statehood
- Claimant must be able, through its government, to exercise self-determination, free of the authority, though not necessarily the influence, of any other state.
- Independence is often used interchangeably with the word "sovereignty". But independence is a necessary component for the attainment of statehood, whereas sovereignty is a legal right that flows from it

3- Sovereignty and Equality

Being sovereign and equal to others, a state has certain rights and corresponding duties.

Rights include:

- exclusive control over its territory
- exclusive control over its permanent population (with certain provisos concerning the int'l protection of human rights)
- exclusive control over other aspects of its domestic affairs

Duties include:

- not to intervene overtly or covertly in the affairs of other states
- not to interfere with other states' exclusive domestic jurisdiction

“ Does international treaty law impinge on a nation’s sovereignty?

To become party to a treaty, a State must express, through a concrete act, its willingness to undertake the

legal rights and obligations contained in the treaty – it must “consent to be bound” by the treaty. It can do

this in various ways, defined by the terms of the relevant treaty “

III)- INTERNATIONAL LEGAL PERSONS

“Other Legal Persons”

1- International organizations

International organizations enjoy different measures of international legal personality depending on their objectives and the terms of their constituent treaties. They can possess the capacity to conclude international treaties with states and other international organizations.

2- Individuals

Individuals hold rights under international law for example by human rights treaties. Individuals enjoy international legal personality but only to the extent that particular rights and duties have been conferred upon them by States.

3- Non-governmental Organizations

Non-governmental Organizations are independent private organizations with non-profit making aims. NGO's don't possess international legal personality. They play an important role though; they influence politics/negotiations and participate in conferences. They exercise considerable power in the international legal system which is why it would be justified to award some NGO's partial legal personality (but not the case yet).

- 4- **Multinational Corporations** do possess (some) international legal personality. However they can be granted certain rights by stated through bilateral treaties which give them rights to fight disputes between a multinational and a host state in front of an international court/institute So they do possess a limited degree of international legal personality.
- 5- **Special subjects:** for example national liberation movements, International Committee of the Red cross (ICRC), The Holy see.
- 6- **Secondary rules:** rules on how substantive rights and duties come into existence Primary/Substantive rules: contain rights and duties of International law.

V)- International Treaties

المعاهدات الدولية

1- Generally,

Treaties are the most important source of International Law as between states. Law-making treaties may codify, define, interpret, or abolish existing customary or conventional rules of international law or create new rules for future international conduct. They may also create international institutions. Treaty contracts, whether bilateral or multilateral, do not create general rules of international law. They create rights and obligations like private law contracts.

The basic principles of the law of treaties are set down in the 1969 Vienna Convention (below) which came into force internationally (including Canada) in 1980. Because of the paramount importance of treaties as a source of international legal obligations binding upon states and the diversity and comprehensiveness of the interlocking network of treaties which regulate transactions and relationships between states, the Convention must be viewed as the constitutional basis, 2nd in importance only to the UN Charter, of the international community of states..

[see Vienna Convention on the Law of Treaties, Articles 1, 2 (definition), 3, 5 and 6]

Articles 2 and 3 require that the parties be subjects of international law, intend to create binding obligations under international law, and agree to be governed by International Law

2- Requirements:

- (a) Agreement - meeting of the minds (not unilateral)
- (b) Must be between 2 or more states
- (c) Must be intended to create binding obligations
- (d) Must be governed by IL

Treaties are usually written, but there is nothing preventing an international engagement being made orally, provided that the representatives of the parties are duly qualified. May be evidentiary problems though.

Pursuant to article 1, the Convention applies to treaties between states. Treaties with or between international organizations are governed by the Convention on the Law of Treaties between States and International Organizations... which has not yet been adopted in Canada. The Vienna Convention is not applicable to treaties entered into between "non-states"

Non-Registered Agreements (NRAs) are not public. They are entered into by states for political or other reasons without publicity.

3- Form of Treaty

- There is no particular form for treaty

- Most are relatively informal (eg. exchange of notes / letters between two foreign ministers, etc.)
- Not necessarily a contract.
- May be bilateral or multilateral.
- Name - could be a treaty, statute, Act, accord, protocol, declaration, etc.
(Conventions are usually multilateral treaties; Protocols are usually optional agreements collateral to another treaty)