

SUBJECTS OF INTERNATIONAL LAW

- 1. International legal capacity**
- 2. International capacity to act**
- 3. State**
- 4. International Organizations**
- 5. The Holy See**
- 6. The City of the Vatican**
- 7. The Sovereign Order of Jerusalem and Malta**
- 8. Committee of International Red Cross**
- 9. Individuals**
- 10. Intergovernmental Corporations**
- 11. *De facto* Governments**
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- 14. Liberation Movements**
- 15. Ethnic Minorities**
- 16. Indigenous People**

Literature:

Malanczuk 2010 8 edn., alternatively 7 edn. 79-80, /75-108/, 96-100, 100-104, 104-105, 105-108

Brownlie 2008 57-69

/Kiviorg et al 2010 55-66/

1. INTERNATIONAL LEGAL CAPACITY

- **WHAT IS LEGAL CAPACITY?**

Capability of a subject of the law of possessing rights and duties and having the capacity to maintain its rights by bringing claims.

- **WHAT IS INTERNATIONAL LEGAL CAPACITY?**

Capability of a subject of the law of possessing international rights and duties and having the capacity to maintain its rights by bringing international claims.

A State's passive and active legal capacity begins with its birth. **An international organization's** passive and active legal capacities depend on its establishment.

International legal capacity is connected with:

- **INTERNATIONAL LEGAL PERSONALITY**

An **entity** of a type recognized by customary law as capable of possessing rights and duties and of bringing international claims, and having these capacities conferred upon it, is a legal person.

If the first condition is not satisfied, an entity may still have legal personality, dependent on the agreement or acquiescence of recognized legal persons. Still, **minorities** within States who receive guarantees under international agreement, may have *limited legal personality (if they have a representative)*, or *solely protected status with no separate legal personality*.

2. INTERNATIONAL CAPACITY TO ACT

- **WHAT IS CAPACITY TO ACT?**

- **THE DIFFERENCE BETWEEN STATES' LEGAL CAPACITY AND LEGAL CAPACITY OF INTERNATIONAL ORGANIZATIONS IS THAT:**

- States are the primary subjects of law;
- International organizations are derivative or secondary subjects of law depending on establishment by other subjects of law.

Also other non-state actors, included non-self-governing peoples and the individual, have certain legal personality.

CLASSIFICATION OF LEGAL PERSONS

Kristi Land's Classification:

I BY ORIGIN

- a) **Primary** – States (they acquire legal personality with birth) - original;
- b) **Secondary or derivative** – other:
 - International organizations;
 - The Sovereign Order of Jerusalem and Malta;
 - The Holy See;
 - The Committee of International Red Cross.

II BY RELATIONS WITH OTHER SUBJECTS

- a) **General** – possess international legal capacity in relations with all other subjects of international law;
- b) **Particular** – possess international legal capacity only in relations with certain subjects of international law.

III BY THE FORM OF AN ORGANIZATION

- a) **Intergovernmental** – among States;
- b) **Non-governmental** – Non State Actors;
- c) **Mixed**.

Ian Brownlie's Classification:

I ESTABLISHED LEGAL PERSONS

- a) **States** – included dependent States. If the States are part of a Union (US), the Union *may* act as agent of the States.
- b) **Political entities legally proximate to States** – Free City of Danzig; Free Territory of Trieste.
- c) **Condominia** – *Condominium* is a joint exercise of State power within a particular territory by means of an autonomous local administration that can only act as an agency of the States participating in the *condominium*.
- d) **Internationalized territories** – a special status may be created by multilateral treaty and protected by international organization. E.g.: the Memel Territory in Lithuania (1924-1939) – an area within a sovereign State.
- e) **International organizations**
- f) **Agencies of States** – agents of States with delegated powers, incl. joint agencies of States.
- g) **Agencies of organizations** - subsidiary organs of international organizations with conferred own powers.

II SPECIAL TYPES OF PERSONALITY

- a) **Non-self-governing peoples** – may claim to represent a non-self-governing people, incl. national liberation movement.
- b) **States in *statu nascendi*** – legal acts occurring before independence under the doctrine of continuity.
- c) **Legal constructions** – projection of a politically non-existent State's legal order on the plane of time.
- d) **Belligerent and insurgent communities** – bodies within a State, often representing political movements.
- e) **Entities *sui generis*** – entities with anomalous character.
 - The Holy See
 - The City of the Vatican
 - The Sovereign Order of Jerusalem and Malta
- f) **Individuals**

III CONTROVERSIAL CANDIDATURES

- a) **Corporations of municipal law (private or public)** – engaged in economic activity in one or more States.
- b) **Intergovernmental corporations (private or public)** – e.g.: Eurofirma.
- c) **Joint agencies of involved States** - with delegated powers effective on international plane.

3. STATE

Classical subject of international law.

LEGAL CRITERIA OF STATEHOOD:

Article I of the 1933 Montevideo Convention on Rights and Duties of States:

- a) a permanent population;
- b) a defined territory;
- c) government,
- d) capacity to enter into the relations with the other States.

Recognition as a general category – Some international lawyers consider acts of recognition necessary pre-condition of Statehood.

Distinguished are: *-de facto* recognition; and
-de jure recognition.

/A separate lecture on State follows./

4. INTERNATIONAL ORGANIZATIONS

Characteristics of international organizations:

- a) permanent association,
- b) of States or States and other subjects of international law;
- c) based on international law;
- d) with independently exercisable powers;
- e) capable of possessing independent legal personality.

An international organization has only these rights and obligations that have been conferred on it by its establishing treaties or other establishment documents. An international organization may have its own bodies for exercising its powers.

Examples of international organizations: **the United Nations** (that is not a successor of the League of Nations), **Council of Europe, European Union, World Trade Organization, OSCE, OECD, NATO, OPEC, ILO** etc.

/ A separate lecture on International Organizations follows./

There exist **intergovernmental** and **supranational** international organizations. What is the difference?

EUROPEAN UNION AS AN INTERNATIONAL ORGANIZATION – ITS STRUCTURE

EU Law

Euratom

Supranational activity

Jurisdiction of the Court of Justice of the European Union

5. THE HOLY SEE



The Holy See (in Latin: *Sancta Sedes*) embraces the Pope as a person and office and the Pope's entire administration. In a Treaty and Concordat in 1929, Italy recognized „the sovereignty and jurisdiction of the Holy See in the international domain“ and its exclusive sovereignty and jurisdiction over the City of the Vatican“. The Holy See is a religious entity apart from its territorial base in the Vatican City.

The Holy See maintains diplomatic relations with many States and international organizations and has been a party to multilateral conventions, included those of the law of the sea (1958). The Holy See is a member to some international organizations (IAEA - the International Atomic Energy Agency, and the UNWTO - the UN World Tourism Organization), and a permanent observer in other international organizations (FAO, UNESCO), one example of the latter being the UN General Assembly. On 1 July 2004, the General Assembly adopted a **Resolution**, by acclamation, confirming and strengthening the rights of the Holy See as a Permanent Observer in the UN. The Holy See now enjoys, *inter alia*, the right to participate in the general debate of the General Assembly; the right of reply; the right to have its communications issued and circulated directly as official documents of the Assembly; and the right to co-sponsor draft resolutions and decisions that make reference to the Holy See.

Some treaties of the Holy See are named **concordats**.

The permanent diplomatic representatives of the Holy See are **nuncios** (Latin: Nuntius).

Although both the Pope alone and with the Roman Curia (through the Roman Curia the Pope governs the Catholic Church) are named the Holy See, the Holy see is not identical with the Catholic Church that is a separate legal entity. The Catholic Church is not subject of international law; the Pope (the Holy See) as Head of the Catholic Church represents the Churches external and diplomatic interests.

See: <http://pope2you.net> ; <http://www.holyseemission.org>

6. THE CITY OF THE VATICAN



The City of the Vatican is proximate to a State legal person in Rome, under the Holy See's exclusive sovereignty and jurisdiction, with its own territory, population, and treaty making capacity with the sole purpose to support the Holy See as a religious entity. The population of the City of the Vatican consists of cardinals, the resident fonctionnaires and representatives of the Pope in foreign States. The Pope is the Head of both the City of the Vatican and the Holy See.

Pursuant to the **Lateran Pacts** (11 Feb. 1929, and 7 June 1929), the City of the Vatican is a State permanently neutral. In 1984, Vatican City was registered as a world cultural and natural heritage site in terms of the UNESCO Convention of November 16th 1972, which guarantees the protection of such sites. The whole area of Vatican City is under the protection of the Hague Convention of May 14th 1954 regarding the safeguarding of cultural heritage sites in the case of armed conflicts, which means **international protection of the territory**. Vatican City State is also internationally recognized as a moral, artistic and cultural heritage site that merits respect and protection as a treasure that belongs to the whole of humanity.

The Holy See and the City of the Vatican are two distinct legal persons, confirmed by the fact that after the City of the Vatican under the Pope's jurisdiction was annexed by the Kingdom of Italy in 1870, the Holy See was continuously recognized as independent subject of international law. States had diplomatic relations and concluded international conventions with the Holy See.

See: <http://www.vaticanstate.va/EN/homepage.htm>

7. THE SOVEREIGN ORDER OF JERUSALEM AND MALTA



The Sovereign Military Hospitaller Order of St. John of Jerusalem of Rhodes and of Malta (*Sovrano Militare Ordine Ospedaliero di San Giovanni di Gerusalemme di Rhodi e di Malta*) is a sovereign Catholic order that has diplomatic relations with 104 countries (many of which non-Catholic) and missions to major European countries and European and international organizations. The Order of Malta is neutral, impartial and non-political, which enables it to act as a mediator between States.

The Order of St John of Jerusalem is regarded as one of the oldest institutions of Western and Christian civilization dating back to 1050s originally military, chivalrous, noble nature. It has 13,000 members, included Professed Friars and others who have made vows of obedience, and lay members (the other Knights and Dames). As a specific feature of the Knights of Malta has been named their commitment to reaching their spiritual perfection within the Church and to serving the poor and the sick. Their motto is: “Tuitio Fidei et Obsequium Pauperum” (defence of the faith and assistance to the poor and the suffering). The Order performs these activities in more than 120 countries.

The Order has recently returned to Malta, having signed an agreement with the Maltese Government which granted the Order the exclusive use of Fort St. Angelo for a term of 99 years. Located in the town of Birgu, the Fort belonged to the Knights from 1530 until the island was occupied by Napoleon in 1798. Today, after restoration, the Fort hosts historical and cultural activities related to the Order of Malta.

See: <http://www.orderofmalta.org/?lang=en> h

- **What could be the status of freemasonry under international law?**

8. THE INTERNATIONAL COMMITTEE OF THE RED CROSS



The International Committee of the Red Cross (ICRC) was established in 1963 in Switzerland connected with the activities of Henry Dunant. Location: Geneva.

The ICRC is an impartial, neutral and independent organization with exclusively humanitarian mission to protect the lives and dignity of victims of armed conflict and other situations of violence and to assist those victims. The ICRC directs and coordinates the international relief activities in situations of conflict. The ICRC tries to prevent suffering by promoting and strengthening humanitarian law and its Principles, and implementation of those into national law.

The work of the ICRC bases on the Geneva Conventions of 1949 (which, in times of armed conflict, protect wounded, sick and shipwrecked members of the armed forces, prisoners of war and civilians), their Additional Protocols (Protocol I protects the victims of international armed conflicts, Protocol II the victims of non-international armed conflicts. These treaties have codified the rules protecting the civilian population against the effects of hostilities. Additional Protocol III of 2005 allows for the use of an additional emblem – the Red Crystal – by national societies in the Movement), the Statutes of the ICRC, and of the International Red Cross and Red Crescent Movement, and on the resolutions of the International Conferences of the Red Cross and Red Crescent. All States are bound by the four Geneva Conventions of 1949, more than 3/4 of all States are party to the two 1977 Additional Protocols.

The ICRC is governed by an Assembly, an Assembly Council (a subsidiary body with certain delegated powers) and a Directorate (the executive body).

See: <http://www.icrc.org>

9. INDIVIDUALS

Individuals as subjects of international law:

- natural persons (limited obligations under international law);
- legal persons (corporations).

A rule that an individual cannot be a „subject of international law“ is absent from international law. And both, natural and legal persons have certain rights and obligations under international law.

/ A separate lecture on Individuals follows./

10. INTERGOVERNMENTAL CORPORATIONS

Intergovernmental corporations are created by States by treaty private law or public law bodies the status of which bodies is regulated by the national law of one or more of the parties. The relevant treaty may contain obligations to create a privileged status within the national law or laws to which the corporation is subjected. Where there is, in addition to independence from national law, a considerable amount of conferred powers and the existence of organs with autonomy in decision and rule making, then the body concerned has the characteristics of international organization. An example of *private law intergovernmental corporation* is Eurofirma – a *treaty-based* company between 14 States, with the object of improving the resources of railway rolling stock. Whereas *public law intergovernmental corporation* is the product of careful interlocking of the national and international legal orders on a *treaty basis*.

Intergovernmental corporations differ from private or public **corporations of municipal law** that engage in economic activity in one or more States other than the State under the law of which they were „incorporated“ or in which they have their economic seat. When such corporations conclude agreements, included agreements with foreign governments, but those agreements do not fall under the Vienna Conventions on the Law of Treaties, because as a rule, corporations of municipal law do not have international legal personality.

Some corporations of municipal law are so closely controlled by governments as to be **State agencies**. In addition, international law recognizes **joint agencies of the States involved**.

11. DE FACTO GOVERNMENTS

A State cannot exist for long (or at least it cannot come into existence), unless it has a government. At the same time, State cannot be identified with its government, and a State's international rights and obligations are not affected by change of government.

„*De jure* recognition“ means recognition of a *de jure* government, not the act of recognition. The terminology implies that a *de facto* government does not have the same legal basis as a *de jure* government. At the same time, Malanczuk states that it is difficult to find any body of legal rules by which to determine the relevant legal basis.

As a rule, a State is recognized *de jure*, but there are few examples of States being recognized *de facto* – for instance, in 1940, the United Kingdom granted only *de facto* recognition to the Soviet annexation of Estonia, Latvia and Lithuania.

In addition to governments, *de facto* can be recognized also States and territorial claims, subject to the same principles:

De jure recognition – recognition by an express statement;

De facto recognition – recognition is not express, but implied (e.g.: from trading).

Since 1945, the UN and other international organizations influence recognition of States and governments.

As recognition is not considered pre-condition *sine qua non* for international personality, international lawyers support the view that *de facto* governments are subjects of international law despite recognition. (Kristi Land)

12. NON-GOVERNMENTAL ORGANIZATIONS

Non-governmental organizations (NGOs) are private international organizations, not established by government or by an agreement between States, and their members are private citizens or bodies corporate.

NGOs differ from international organizations, because the members of the firstly named organizations are private citizens or bodies corporate.

These persons may come from different States.

Examples of NGOs:

- Amnesty International
- Human Rights Watch
- Prison Fellowship International
- Danish Helsinki Committee
- International Helsinki Federation for Human Rights
- Greenpeace International
- etc.

Influence of NGOs is essential, because, for instance, under Article 71 of the Charter of the UN, the UN Economic and Social Council may make suitable arrangements for consultation with NGOs.

Communication between the UN and NGOs is determined by Resolution No. 1996/31 of the UN Economic and Social Council.

13. BELLIGERENT OR INSURGENT COMMUNITIES

Belligerent and insurgent bodies within a State may enter into legal relations and conclude agreements on the international plane with States and other belligerents and insurgents. Such communication with the belligerents and insurgents is considered *de facto* recognition of them under international law. That way, they may acquire *de facto* authority in control of a specific territory.

A belligerent community often represents a political movement aiming at independence and secession. But belligerents may be connected with self-determination, or personality of non-self-governing peoples.

14. LIBERATION MOVEMENTS

History knows several liberation movements in States. For instance, the Palestine Liberation Organization (PLO), that was recognized by the UN as liberation movement; the Basque liberation movement ETA (rather rebellion?) for its rights. Such liberation movements are under certain circumstances (recognition) also regarded as subjects of international law.

15. ETHNIC MINORITIES

For instance, the Basques, Chechens whose international status depends on different aspects. For instance, conclusion of a treaty with an ethnic minority, or their responsibility before an international court may amount *de facto* recognition of them.

16. INDIGENOUS PEOPLE