

# Subjects of International Law

Cecilia M. Bailliet

# UN Charter Preamble

- WE THE PEOPLES OF THE UNITED NATIONS DETERMINED
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to promote social progress and better standards of life in larger freedom,

# UN Charter Article 1

- The Purposes of the United Nations are:
  - 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
  - 3. To achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;

# Martin Dixon

- A subject of international law is a body or entity that is capable of possessing and exercising rights and duties under international law
- ICJ Reparation for Injuries Suffered in the Service

# Martin Dixon

- International Legal Persons can:
- Make claims before tribunals
- Be subject to some or all of the obligations imposed by international law
- Have the power to make international agreements
- Enjoy some or all of the immunities from the jurisdiction of the national courts of other states

# Ian Brownlie

- A subject of international law is an entity possessing international rights and obligations and having the capacity to a) maintain its rights by bringing international claims, and b) to be responsible for its breaches of obligations by being subjected to such claims

# Sean Murphy

- States remain the central actors (subjects) in the field of international law, most international law is created, interpreted, complied with, or enforced by the governments of state.

# Montevideo Convention on the Rights and Duties of States, Art. 1

- A State should possess:
  - a) A **permanent population** (stable community, settled but not homogenous, inhabit a specific territory on a permanent basis (occupation alone not enough))
  - b) A **defined territory** (stable and permanent physical control over territory, but no precise delimitations needed, ICJ North Sea Continental Shelf, Nicaragua case, Namibia Case)
  - c) A **government** (effective control of the territory, coercive, centralized legal order, coherent, stable and effective political organization)
  - d) A **capacity to enter into relations with other states**
- Note: (geographic size does not matter, Liechtenstein & Monaco are states, California and Antarctica are not)



# Sean Murphy- Recognition of States

- 1. Existing State fragments into several new states (Break up of Yugoslavia- Bosnia-Herzegovina, Croatia, Macedonia, Slovenia, and Serbia-Montenegro)
- 2. Part of a State may secede to form a new state (Eritrea seceded from Ethiopia)
- 3. Two States may merge to form a new State (Egypt and Syria were united in 1958 to form the United Arab Republic)

# Sean Murphy

- Consider decolonization in Africa
- Consider unsuccessful autonomous movements in the Basque region of Spain, the Biafra in Nigeria, Katanga in Congo, Turkish dominated northern Cyprus, Chechnya in Russia, Tibet in China, and Kurdish peoples of Iran, Iraq, and Turkey.

# Sean Murphy- Why seek recognition as a State?

- Exert sovereign control over territory
- Right to non-intervention and interference from foreign states
- Can pursue treaties on trade and investment with other States
- Can receive foreign aid
- Can join IOs and pursue cases in international tribunals

# UN Charter Article 4

- 1. Membership in the United Nations is open to all other **peace-loving states** which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.
- 2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.
- See ICJ Advisory Opinion on the Conditions of Admission of a State to Membership in the United Nations (1948)

# UN Charter XIV. Admission of New Members to the United Nations

- Rule 134: Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. Such application shall contain a declaration, made in a formal instrument, that the State in question accepts the obligations contained in the Charter.
- Rule 135: The Secretary-General shall, for information, send a copy of the application to the General Assembly, or to the Members of the United Nations if the Assembly is not in session.
- Rule 136: If the Security Council recommends the applicant State for membership, the General Assembly shall consider whether the applicant is a **peace-loving State and is able and willing to carry out the obligations contained in the Charter** and shall decide, by a two-thirds majority of the members present and voting, upon its application for membership.
- Rule 137: If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, the General Assembly may, after full consideration of the special report of the Security Council, send the application back to the Council, together with a full record of the discussion in the Assembly, for further consideration and recommendation or report.
- Rule 138: The Secretary-General shall inform the applicant State of the decision of the General Assembly. If the application is approved, membership shall become effective on the date on which the General Assembly takes its decision on the application.

# Reasons to vote YES for an Independent Scotland-

## The Independent

- 1. Taking Responsibility by moving all Governing Powers to Scotland
- 2. Get the Government we choose
- 3. No more building Nuclear Weapons
- 4. Securing Oil Funds in North Sea

# Reasons to vote NO for an Independent Scotland

- 1. Taxation, Defense, Healthcare- Governance by Westminster
- 2. Happy with choices of government at Westminster
- 3. Believing in importance of Defence- Nuclear Weapons
- 4. Sharing Scottish Oil resources benefits us all
- 5. Doubtful about supporting EU
- 6. Doubtful about benefits for yourself as individual
- 7. Believing England and Scotland are better off together
- After countless of struggles, wars and disagreements between England and Scotland, both countries have finally been united since 1707 under the Acts of Union. Before that the two countries had already shared a monarch since the Union of the Crowns in 1603, when King James VI of Scotland inherited the English throne. Despite the cultural differences and different political views both countries should be kept united under 1 government.

# Recognition of State

- **Declaratory Theory-** Recognition is mere acknowledgement of pre-existing legal capacity (See OAS charter)
- **Constitutive Theory-** Recognition is precondition to the existence of the capacities of statehood
- Political Recognition
- Non-Recognition as a sanction or punishment for breach of international law



# Quasi-States

- Taiwan
- Kosovo
- Palestine
- Certain autonomy is granted, but full recognition is politically difficult

# Crimea and Self-Determination-

## Milena Sterio, IntLawGrrls2 blog

- International law proposes a distinction between so-called **internal self-determination and external self-determination**. The former signifies that groups or peoples are entitled to a form of **self-government or autonomy within the confines of their mother state**. This type of autonomy may translate into a free exercise of cultural or linguistic rights, or into the creation of a regional parliament, at best. As long as the mother state respects the people's right to internal self-determination, the analysis should stop there (see the Canadian Supreme Court in its advisory opinion on the proposed secession of Quebec). The latter, more drastic form of self-determination, so-called external self-determination, gets triggered by the mother state's utmost lack of respect for the relevant people. If the mother state's central government is so abusive toward the people that its rights are not properly represented, then international law may suggest that such a people should have a right to external self-determination, which would lead to its **separation from the mother state**. Most states, unsurprisingly, are extremely reluctant to recognize a right to external self-determination for any minority group, and the International Court of Justice, in the recent advisory opinion on Kosovo, failed to develop any sort of a useful normative framework on self-determination (the court instead found that the Kosovar declaration of independence was legal, but did not proclaim that external self-determination or secession would ever be legal). This state of affairs has led some scholars to note that international law "tolerates" external self-determination and secession, but that no positive right to secession exists within international law.

# Crimea- Milena Sterio

- Since Crimea used to be a part of Russia until 1954, since the legitimacy/rationale of its transfer to Ukraine in 1954 is dubious, and since the majority of its population is Russian and may truly wish to re-join Russia, what is so bad about the referendum and its result?
- The biggest obvious issue related to the referendum has to do with its own **fairness** – were the people of Crimea truly able to vote and express their wishes, or was the referendum influenced by the presence of Russian forces? Were the results properly tallied?

- Look at willingness of state to observe international law
- Trend to recognize governments which favor democracy and human rights-
- Consider coups in Haiti and Pakistan

# Other Subjects

- International Organizations
- NGOs
- Individuals- ICL, Human Rights
- Groups of Persons
- MNCs (Corporations)

# The Individual as Subject of International Law

- Cancado Trindade: «The consolidation of the legal personality and capacity of the individual as subject of international law constitutes the most precious legacy of the international legal thinking of the second half of the XXth century.»
- The right of **individual petition** is a fundamental clause of the human rights treaties that provide for it, upon which is erected the juridical mechanism of the **emancipation of the human being vis-a-vis his own State** for the protection of human rights . . .

# Cancado Trindade

- Inter American Court of Human Rights case law recognizing juridical personality of individuals
- Advisory Opinion 16 on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law
- Advisory Opinion 17 on the Juridical Condition and Human Rights of the Child
- Advisory Opinion n. 18 on the Juridical Condition and Rights of Undocumented Migrants
- Individuals may petition regional human rights courts and international committees, they may be allowed to give testimony in some regional forums

# Individuals

- Protection of diplomatic envoys
- Protection of human rights- Humanization of International Law
- Protection of IHL
- Trade and Investment treaties create rights for individuals and corporations to sue before international and national courts and tribunals



# Groups of Persons

- **Minority Rights**- UN Declaration on the Rights of Persons belonging to National, Ethnic, Religious and Linguistic Minorities- Look at non-dominance, culture, traditions, language- claim for self-determination
- **Indigenous Rights** ILO Convention 169, UN Declaration on Indigenous Rights- property rights, self-determination
- IOs and States determine access to international system- participate in negotiations on their future

# Duties of Individuals

- International Criminal Law holds individuals accountable for war crimes, crimes against humanity, and genocide
- International Criminal Court, ad hoc tribunals, national courts pursuing universal jurisdiction

# Duties of IOs

- UN peacekeepers prompted cholera outbreak in Haiti. Can the UN be held responsible?
- 1) The International Law Commission Draft Articles on the Responsibility of International Organizations
- 2) UN Resolution 52/247: RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY: Third-party liability: temporal and financial limitations
- 3) The Convention on the Privileges and Immunities of the United Nations (1946)

# Duties of NGOS

- Read INGO Accountability Charter
- 1. Respect for Human Rights
- 2. Independence
- 3. Transparency
- 4. Good Governance
- 5. Responsible Advocacy
- 6. Participation
- 7. Diversity/Inclusion
- 8. Environmental Responsibility
- 9. Ethical Fundraising
- 10. Professional Management

# NGOs

- Groups of persons voluntarily created to act independently of governments on a non-profit basis.
- Often pursue transnational issues- human rights, climate change, trafficking, fair trade, labor, etc.
- Participate as observers in multilateral treaty negotiation
- May offer comments on draft treaties, may offer amicus curiae to international tribunals, may issue shadow human rights reports to UN committees
- May promote too much focus on particular issues, to the detriment of other concerns which lack an NGO voice
- They are created under national law
- Council of Europe Convention on the Legal Recognition of Personality of International Non-Governmental Organizations
- Problems in Central and Eastern Europe- NGO activists deemed persona non grata

# Duties of MNCs

- Ruggie Framework Guiding Principles on Business and Human Rights
- “Protect, Respect, and Remedy Framework,” is the first authoritative text for addressing, and preventing, adverse human rights impacts resulting from corporate activity. They were unanimously endorsed by the UN Human Rights Council in June 2011 and are centered around three main themes or “pillars”:
  - 1.The state’s responsibility to **protect** the human rights of those under its jurisdiction;
  - 2.The company’s responsibility to **respect** human rights and avoid causing or contributing to adverse human rights impacts through their operations, products, or services, or by their business relationships;
  - 3.People’s right to have access to a **remedy** – be it judicial or non-judicial – should their human rights be violated.