

READINGS: INTERNATIONAL LAW SUMMARY

International Law System

- No institutional structure or organisation
- Unlike the municipal/domestic legal system, there is no body to enforce international law
- States are not accountable for violations of international law
- Operation of the ICJ to adjudicate international disputes is dependent upon the consent of states

State Consent

- Most fundamental principle in Int. law
- States are only bound by treaties to which they have given their consent by way of signature, ratification or accession
 - Art 34: 'A treaty does not create either obligations or rights for a third party without its consent' (VCLT)
 - A state can seek to 'opt out' of developing CIL if it can demonstrate that it has been a persistent objector to the development of that rule
 - States cannot be subject to the jurisdiction of the ICJ unless they have given their consent under art 36 of the ICJ statute.

Statehood

- *Montevideo Convention on the Rights and Duties of States* is accepted as reflecting the general principles of CIL as they apply to the recognition of states

Montevideo Convention Criteria

ARTICLE 1

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 the other states.

ARTICLE 2

The federal state shall constitute a sole person in the eyes of international law. (*this means that it is not possible for NSW to enter a treaty with NZ*)

ARTICLE 3

The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts. The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law.

ARTICLE 4

States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law

Self determination:

Secession

Def: is the process by which a particular group seeks to separate itself from the state and create a new state.

- This is different to *devolution* or *grant of independence* which is a consensual process by which the state confers independence on a particular territory and people through legislature. Secession is a unilateral process while devolution is bilateral and consensual.
- This stems from right of self determination
- However, it is argued that secession is unlawful under international law because it breached the territorial integrity of the predecessor state.
 - -> Abandoned in 2008 Assembly of Kosovo Advisory opinion
- Process of secession:
 - Begins with a *UDI*- unilateral declaration of independence (group declares that it is seceding and forming a new state.
 - UDI will not result in a state entity capable of meeting the MC criteria if boundaries are contested or no functioning government ie East Timor in 1975
 - The independence of the state is established by the process of effective control over territory and recognition by other states.

Sources of international Law

- No centralised structure or global government responsible for identifying and making policy
- Art 38(1) clearly states where international law is to be found for the purposes of proceedings before ICJ (*Rule creating structure*)
 - Jurisprudence of ICJ holds great weight within international law -> is the reference point
 - BUT art 38(1) is not saying that ICJ is responsible for enacting laws like a Commonwealth or state parliament
 - INTENTION is to guide litigants before the ICJ as opposed to where to look for sources of international law

Article 38 of ICJ Statute

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Formal and material Sources

- Formal source: treaty is a formal source for rules on a particular activity
- Material source: is the consent of states that is required for this agreement to come into force.

State Responsibility

Articles on Responsibility of States for internationally Wrongful Acts 2001

- Unlikely to be ever fully endorsed as part of a convention on state responsibility, however are widely accepted as reflecting CIL: *Gabcikovo-Nagymaros Project*

Basic Principles

- International law identifies certain acts as wrongful and that such acts may be attributed to the state
- An act deemed to be wrongful is defined as a breach of an international obligation owed by the state
 - Wrongful act is determined by international law, not domestic law: *Electrtronica Sricula SpA Case*
- Right to receive compensation

PART ONE

THE INTERNATIONALLY WRONGFUL ACT OF A STATE

CHAPTER I

General principles

Article 1

Responsibility of a State for its internationally wrongful acts

Every internationally wrongful act of a State entails the international responsibility of that State.

Article 2

Elements of an internationally wrongful act of a State

There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) Is attributable to the State under international law; and
- (b) Constitutes a breach of an international obligation of the State.

Article 3

Characterization of an act of a State as internationally wrongful

The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law.