



INTERNATIONAL LAW AND GLOBAL PERSPECTIVES

Exam Notes

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Hypothetical: Wk 4 Legal Personality, Statehood and Territory in International law

- Personality
 - Who is the 'person' under international law?
 - Who can the law regulate, and who can make the law?
 - Traditionally states, now others
 - Colonies or states within States, cannot have international personality, even if they can have international powers
- Subjects of international law
 - Traditionally just States
 - Contemporary
 - Individuals (international crimes)
 - *Nuremberg Trials*
 - *Rome Statute*
 - Corporations (*Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965*)
 - NGOs – eg red cross, amnesty international (may submit briefs to WTO dispute settlement)
 - Regional orders – the EU
 - The UN
 - Established as a legal personality in *Reparation for Injuries Suffered in the Service of the United Nations 1949*
 - International Organisations (founded on an agreement between two or more States)
- Elements of Statehood
 - *Montevideo Convention 1933* Art 1
 - Permanent population
 - Defined territory
 - Territorial disputes do not mean it is not defined (*North Sea Continental Shelf 1969*)
 - Includes the crust, below, air, waters
 - *Island of Palmas case* – sovereignty over territory is exclusive to the State
 - *UN Charter Art 2(4)* - 'members shall refrain in their international relations from threat or use of force against the territorial integrity or political independence of any state'
 - Government
 - Independent and Effective control: *Island of Palmas*

- *Aaland Islands case 1920* - Finland in the period after declaring independence went into chaos, was not a state until order was restored
 - Capacity to enter into relations with other States
 - The technical means
 - Other country's recognition to work with you as a Nation State
 - Eg Turkish Republic of Northern Cyprus has difficulty interacting with others because UN declared it illegal
 - Eg Taiwan recognised by many countries but not China, is it a State?
- Modes of acquiring titles of territory
 - Cession
 - Treaty
 - Prescription
 - When states took the land incorrectly, but it's been so long now that it doesn't matter
 - Prescription implies that the occupying state has been peaceful, there has been no force or protest by other states against the claim
 - Occupation
 - Terra nullius
 - *Western Sahara Advisory Opinion* – no people, nomadic or otherwise
 - Needs possession (flag, marks) and administration (exercising sovereignty)
 - *Clipperton Islands Case*
 - When no population, (coral reef) administration not needed as much
 - Discovery
 - *Island of Palmas Case*
 - Discovery is not sufficient to establish sovereignty
 - Conquest
 - In the case of permissible war, the spoils of war
 - *Uti Possidetis Juris*
 - Used in decolonisation
 - Following the colonial borders, unless in agreement with neighbours
- Sovereignty
 - Linked to territory
 - Ultimate jurisdiction within own territory

- ***Lotus Case 1927***
 - '[States] may not exercise its power in any form in the territory of another State'
- Self-Determination
 - **Art 55 UN Charter**
 - ***Declaration on the Granting of Independence to Colonial Territories and Peoples - Resolution 1514 (XV)***
 - 'All peoples have a right t self-determination'
 - External: separating from original state
 - Internal: different peoples within the same State
 - Suppression provides support for self-determination
- Secession
 - A self-declared State
 - ***ICJ Kosovo (Advisory Opinion) 2010***
 - International community admitted there was oppression and it was right for Kosovo to claim independence
 - Secession of Crimea
 - Referendum on independence was illegitimate as status quo was not offered as an option
 - South Sudan
 - Created a new state to stop a civil war
 - Did not rely on self-determination but did not violate or contradict it
- Recognition
 - Other States must be willing to work with a new State for it be part of the international community
 - Must be unconditional, de facto (shown through action), or de jure (legally expressed)
 - ***Tinoco Arbitration Case***
 - Great Britain v Costa Rica (1923)
 - States can refuse to recognise another State, and still bring legal action against them

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*** Other notes removed from this section so that there is a preview of what notes are like for both hypothetical and essay questions***

Essay: Wk 8 International Trade Law

Lecture

- Definition
 - Part of public international law, broad and complex
 - Trade in goods, services, intellectual property

- Adam Smith: Absolute advantage
- David Ricardo: Comparative advantage
- The US led order / Bretton Woods 1944 and Havana Conference 1948
 - IMF (1945)
 - 189 members
 - Monetary cooperation and sustainable growth
 - Keeping currencies stable
 - World Bank (1944)
 - 189 members
 - Provides grants and loans to developing countries
 - World Trade Organization (1995)
 - 164 members
 - Comparative advantage basis
 - Members sign an overarching agreement which includes Annexes, must sign Annex 1-3, optional 4
 - ***The Agreement Establishing the World Trade Agreement***
 - **Annex 1A (GATT)**
 - Tariffs
 - Non-discrimination
 - **Annex 2 Dispute Resolution System**
 - A panel system
 - Consultations, Panel, Appellate
 - Currently US is blocking appointment of appellate judges
 - Binding decisions – if not followed allowed to be economic retaliations
 - **Annex 3 Trade Policy Review**
 - Structure:
 - Ministerial Conference (legislator)
 - General Council
 - Goods council
 - Service council
 - IP council
 - GATT (1947-8)

Readings

- David Rothwell, Ch 12 International Trade Law in ‘International Law: Cases and Materials with Australian Perspectives’ 2018
 - Absolute/Comparative advantage

- Countries should specialise in the goods they can produce for the least labour, and then trade so everyone has more than what they could have made alone – absolute
- Using the above + a ratios system to determine worth – comparative
- This is the foundation of Free Trade – everyone should be better off vs traditional mercantilism (everyone hoarding wealth)
- Ministerial Council: **Art IV Agreement Establishing WTO**
 - Ministerial conference meets at least every two years
 - Power to make decision on matters under any of the multilateral trade agreements
- The WTO general council meets on an ad-hoc basis, same powers as ministerial, in charge of dispute resolution
- Special and differential treatment
 - WTO can positively discriminate for developing countries

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