

Subjects of International Law

States

Statehood

- Montevideo Convention on Rights and Duties of States (1933)
 - territory
 - population
 - government
 - relations with other states

- UN General Assembly Resolution 2625 (1970)
 - Friendly Relations Declaration
 - “The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal.”

Territory

Territorial Dispute case (ICJ, 1994) – Libya v. Chad

A boundary established by treaty thus achieves a permanence which the treaty itself does not necessarily enjoy. When a boundary has been the subject of agreement, the continued existence of that **boundary is not dependent upon the continuing life of the treaty** under which the boundary is agreed.

Frontier Dispute case (ICJ, 1986) – Burkina Faso v. Mali

The principle of *uti possidetis juris*.... Its primary aim is to secure **respect for the territorial boundaries which existed at the time when independence was achieved**.... This principle of *uti possidetis* appears to **conflict outright with the right of peoples to self-determination**. In fact, however, the maintenance of the territorial status quo in Africa is often seen as the wisest course.... If the principle of *uti possidetis* has kept its place among the most important legal principles, this is by **a deliberate choice on the part of African States**.



Government

Island of Palmas case (Permanent Court of Arbitration, 1928)

The continuous and peaceful **display of territorial sovereignty** (peaceful in relation to other States) is **as good as a title**.... Territorial sovereignty... involves exclusive right to **display activities of the State**. This right has as a corollary a duty: the obligation to **protect within the territory the rights of other States**.... Territorial sovereignty cannot limit itself to its negative side, i.e., to excluding the activities of other States.

Discovery alone, **without any subsequent act**, cannot at the present time suffice to prove sovereignty over the Island of Palmas.



Recognition

Doctrine of effectiveness

Mexico (1930)

The Mexican Government is issuing no declarations in the sense of grants of recognition, since that nation considers that such course is an insulting practice. (Estrada Doctrine)

United Kingdom (1980)

We have... concluded that there are practical advantages in following the policy of many other countries in not according recognition to governments. We shall continue to decide the nature of our dealings with regimes which come to power unconstitutionally in light of our assessment of whether they are able... to exercise **effective control** of the territory of the state concerned, and seem likely to continue to do so.

Statehood?



“Quasi-states” (Jackson)

The major difference between the new rules and the old, therefore, is that they apply to many political entities which have not met **traditional tests of empirical statehood** and probably would not exist as sovereign states otherwise.... This regime... presupposes a new type of sovereign state which is **independent in law but insubstantial in reality and materially dependent** on other states for its welfare.... (p. 42-43)

Contemporary international society is therefore expected to be not only a civil association for all states but in addition a joint enterprise association to assist its poorer members. (p. 48)

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International Organizations

Legal Personality

Reparations for Injuries opinion (ICJ, 1949)

The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community.... [I]n June 1945 [states established] an international organization whose purposes and principles are specified in the Charter of the United Nations. But **to achieve these ends the attribution of international personality is indispensable.**

[T]he Organization **is an international person.** That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State.... What it does mean is that **it is a subject of international law...** and that it has the **capacity to maintain its rights by bringing international claims.**

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Groups

Insurgents

U. S. Grant on Cuban Insurgents (Statement to Congress, 1870)

The question of belligerency is one of fact, not to be decided by sympathies for or prejudices against either party. The relations between the parent state and the insurgents must amount, in fact, to **war in the sense of international law**.... There must be military forces acting in accordance with the rules and customs of war... [and] above all, a *de facto political organization of the insurgents* sufficient in character and resources **to constitute, if left to itself, a state among nations capable of discharging the duties of a state**...

National liberation movements

Protocol I to the Geneva Conventions of 1949, Article 1

The situations referred to... include armed conflicts in which **peoples are fighting** against colonial domination and alien occupation and against racist régimes in the exercise of **their right of self-determination**.

UNGA Resolution 2918 (1972)

Affirms that the national liberation movements of Angola, Guinea (Bissau) and Cape Verde and Mozambique are the **authentic representatives of the true aspirations of the peoples** of those Territories and recommends that... all Governments... and other organizations... **ensure the representation of those Territories by the liberation movements** concerned in an appropriate capacity and in consultation with the Organization of African Unity.

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Individuals

Danzig Railway Officials opinion (PCIJ, 1928)

It may be readily admitted that, according to a well established principle of international law, the [official agreement], being **an international agreement, cannot, as such, create direct rights and obligations for private individuals**. But it cannot be disputed that the very object of an international agreement, according to the intention of the contracting Parties, may be the adoption by the Parties of **some definite rules creating individual rights and obligations and enforceable by the national courts**.

Nuremberg judgment (1945)

That International Law **imposes duties and liabilities upon individuals** as well as upon States has long been recognized.... Crimes against International Law are **committed by men, not by abstract entities**, and only by punishing individuals who commit such crimes can the provisions of International Law be enforced.