**University of Mohamed Lamine Debaghine – Setif 2**

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# Lectures on International Society Law

**Addressed to First Year Licence Students**

**Sections: A-B-C**

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## The Evolution of International Society

The concept of 'international society' has a historical dimension that is closely linked to the emergence of the modern European state system from the medieval period, but the Europeans were not the first ones who formed an international society. Actually, international societies have been in existence since the existence of communities in fixed territories before the medieval era. These communities had some degree of interaction and normative agreements among themselves, which could qualify them as international societies in a broad sense. Thus, one way to understand the concept of international society is to compare it with different historical stages.

### 1st Stage: The Ancient World

In the period from about 700 BC to the first century BC, the four most notable examples of international societies systems were to be found in China, India, Greece and Rome. In all cases, the countries were divided for much of the period into separate polities but, alongside often fierce competition and conflicts, they also retained a sense of their cultural unity:

**In Greece** the City-States formed a system of international society made of independent states, based on their common heritage and their collective resistance to the Persian threat. Despite their frequent conflicts and rivalries, they recognized their shared language, religion and culture as distinctive features of their civilization. Arbitration helped settle certain inter-city disputes. The *proxenia* was essentially an ancient version of the modern institution of the consulate, in which a *proxenia* was appointed to represent the interests of foreign communities in the larger states. Greeks had set of rules for diplomacy, the sanctity of treaties, entry into war and the treatment of dead enemy.

In Mauryan Empire of **India** the religious norms (Buddhism) played a significant role in shaping the Indian system of international society, especially in the domain of warfare. The notion of *Dharma*, which can be translated as duty, law, or righteousness, provided the basis for various rules and regulations that governed the conduct of war and diplomacy. Treaties, for instance, were not merely political agreements, but also sacred commitments that had to be honored and respected. The Indian system of international society was thus marked by a high degree of ethical and moral awareness that influenced its interactions with other states and actors.

In the case of **China**, cultural and intellectual considerations shaped the Chinese system of international community. In ancient China, there was no unified state, but rather a system of multiple kingdoms that interacted with each other. The culture and philosophy of these kingdoms shaped their views on issues such as peace, war and

international relations. Different schools of thought emerged, such as Confucianism and Legalism, each with their own ideas and principles. These schools of thought influenced the policies and strategies of the kingdoms, as well as their diplomatic and military relations.

For **Rome,** the international society was different than Greece, India or China because it dealt with rival powers on the basis of equality and employed diplomatic means to resolve conflicts with other states. The Romans used to perform religious rituals before declaring a war. Rome had a more developed judicial system than any other ancient society. Some of the terminology used in the roman judicial system was carried over to the area of international relations. As Rome's power grew, the principle of equality declined in its dealing with other states.

## 2nd Stage: Middle Ages International Society

Two orders can be distinguished at this stage: Christian order and Islamic order:

**The Christian order:** Rome's legacy in international relations can be seen in medieval Europe even after the formal division into Eastern and western parts. In the East, the Byzantine empire which was the center of orthodox Christianity was characterized by sophisticated diplomatic corps. In the West, the papacy inherited the supranational authority from ancient Rome. The Pope's authority was not always respected especially by secular rulers, even though the Catholic Church was a unifying force in medieval Europe international society. The church's main sanction was the threat of excommunication, but it could also order lesser punishments, such as fines or public penance. The structure as a whole was maintained by the priesthood. The Church also elaborated the most systematic doctrine to date of 'just war'.

**The Islamic order:** During early periods of Islam, the concept of "*Umma*", a unifying social entity, a community of believers, overshadowed all other social entities such as tribe, race, or state. The fast expansion of Islam and with it the Arabe peoples across the Middle East into Africa, Asia, and Europe created a new power in the world. In early Islamic theory, the world was divided into two entities: abode of Islam (*Dar Al-Silm*) and abode of war *(Dar Al-Harb*). Muslims made truces with the people of *Dar-Al-Harb*, Christians and Jews were allowed to live in Islamic state by paying a tax called *Jizya.* A permanent state of war existed between the two abodes except when there is a treaty. The importance of honoring treaties was emphasized in Islamic doctrine, and Muslims adhered strictly to the rules of treaties. Islam has many moral principles to be observed during the period of war.

## 3rd Stage: Emergence of Modern International Society (1500 *AD*-1914 *AD*)

The most prominent event of this stage was the Peace of Westphalia 1648, which ended the Thirty Years' War. It started as a civil and religious war between Protestants and Roman Catholics, then grew larger to become a struggle for power in Europe. The Peace of Westphalia, which is a series of peace treaties, is considered to be the beginning of a modern international system. Major outcomes of this treaty were:

- Put an end to the Thirty Years' War.
- To end the religious clashes: minority religions were allowed and religious tolerance was established.
- A new balance of power in Europe and the concept of state sovereignty were introduced.

The period from 1648 to 1776 saw the international society that had been taking shape over the previous 200 years come to fruition. Diplomacy and international law were seen as the two key institutions of international society, as long as the latter was based clearly on state consent. The main features of this international society were:

- The European superiority: dominant states located in Europe.
- Colonialism: a politico-economic phenomenon characterized by European nations dominating smaller states in Africa and Asia.
- Domination of the Christian faith, and thus international law was based on Christian principles.

In 1914, the First World War broke out and brought an abrupt end to the Concert of Europe, which had dominated the European scene since its inception after the Vienna Congress in 1815. The Concert of Europe was an alliance of the four major European powers, namely, Russia, Britain, Austria, and Prussia (Germany). Later on, other states joined this alliance.

## 4thStage: The Globalization of International Society (1914 *AD*- 1990)

In 1917, revolutions took place in Russia and the Tsarist regime was overthrown. From a year later, the end of the First World War became a turning point in the history of international law. Shortly afterwards, the influence of the United States increased and the Soviet Union was born as a separate legal entity and a newcomer to the international scene. This meant that the European States were no longer the only key players in the international arena.

In 1920, a League of Nations was established as an intergovernmental organization with the primary aim of maintaining international peace and security. Its constitutive document was the Covenant of the League of Nations, and it also had its own judicial body called **the Permanent Court of International Justice**. Having a

permanent international court was a fundamental change in the legal thinking and a shift from the classical bilateral model towards multilateralism emerged. The world finally understood that: Wars shall be prevented; Disputes shall be settled in ways other than the use of force (i.e., negotiations /other diplomatic means).

In 1939, another war happened. The commitment to prevent another war had failed and, with it, the League of Nations. The credibility of the League of Nations was questioned because the United States was not a member of the League. The Soviet Union was expelled from the League, other States withdrew voluntarily and some institutional problems appeared. In 1945, another organization was established called the United Nations. This intergovernmental organizationwas established right after the Second World War because there was a clear and strong agreement that the use of force is completely unacceptable. With initially fifty members, it now has 193 full member states. It also has a principal judicial organ called the **International Court of Justice**.

Approximately 1947, the Cold War began. It was a period of strong geopolitical tension and political rivalry between the United States and the Soviet Union. Around that time, the process of decolonization began: former colonies gained independence, therefore the number of states increased. Approximately in the 1950's, many new international organizations appeared, such as the European Coal and Steel Community (later was transformed into the European Union) or the Council of Europe. The Late 1980's was a period of growing political instability in Central and Eastern Europe, and the culmination of that instability was the breakup of the Soviet Union.

### 5th Stage: The Post-Cold War until Today

In 1990, the Cold War ended. The period from the end of the Cold War until the present is characterized by

- Large number of actors: States, international organizations, corporations, even individuals play a big role.
- The balance of power has changed: the world is no longer bipolar and authors still argue about who is more powerful.
- Classical bilateralism was replaced with multilateralism.
- Trend of regionalization (regional problems are being solved on a regional level. Existing institutions and organizations are being criticized (recall Brexit for example).

New legal problems arise, such as international terrorism, cyber security, new challenges like pandemics and climate change. Consequently, new branches of law appear, law becomes more specialized because we need to adapt to these new developments.

## Subjects of International Law: Introductory Concepts

Subjects of international law are those persons or entities who possess international personality. In order to explain this definition, we need to define three concepts: Subject of law; b) Object of law; c) International legal personality.

a. **Subject of Law**: subject of law is an entity that has rights and duties under the law, and can act to enforce those rights or fulfill those duties. This includes individuals, corporations, states, and other entities recognized by the law.

b. **Object of Law:** an object of law is something that the law regulates but does not grant rights or duties to. These are typically things or issues that are governed by legal rules, but do not have the ability to act or make claims under the law. For example, a piece of property is an object of law because it is regulated by property laws but it does not have legal rights or duties itself.

c. **International legal personality**: There is no uniform or comprehensive definition of "international legal personality", but the most common one is: "International legal personality means that an entity is a subject of international law, and is capable of possessing international rights and duties, and has the capacity to maintain its rights by bringing international claims". This definition has three elements: **international rights**; **international duties**; and the **capacity to bring international claims**.

The first two elements together form the notion of legal personality and are relatively clear. Concerning the capacity to bring international claims, the International Court of Justice (ICJ), in the 1949 Case "Reparation of Injuries Suffered in the Service of the United Nations" provided that Competence to bring an international claim is "the capacity to resort to the customary methods recognized by international law for the establishment, the preservation and the settlement of claims". In other words, the capacity to enforce one's own rights and to compel other subjects to perform their duties under international law. This means that a subject of international law may be able to:

- Bring claims before international and national courts and tribunals to enforce their rights.
- Have the ability or power to come into agreements that are binding under international law (for example, treaties).
- Be subject to obligations under international law.

## Theories about Subjects of International Law

There are three main theories regarding subjects of international law presented by jurists:

**States as Subjects of International Law:** Professor Oppenheim opined that States are the only subjects of international law. Soviet international law experts are unanimous on this point. This theory fails to explain the case of slaves and pirates. Under international law, slaves have been conferred some rights by the community of States. Similarly, pirates are treated as enemies of mankind. Response to this criticism by Oppenheim is that he regards pirates and slaves as objects of international law.

**Individuals as Subjects of International Law:** Professor Kelsen and Westlake are the chief exponent of this concept that the duties and rights of the State are actually the duties and rights of men who compose it. Criticism on this theory is that the primary concern of international law is rights and duties of the State. However, the PCIJ adheres to the traditional view that only States can be party to international proceeding.

**States, Individuals and Certain non-state Entities as Subjects of International Law:** This theory not only combines the first two views but also includes international organizations and certain non-state entities as subjects of international law. Modern international law considers the individual and non-states entities along with states as its subjects and does not hold them as its objects merely. However, they do not enjoy the same quality of importance as States do. Mostly they lack the procedural capacity to initiate action in most cases.

## Distinction between Subjects and Actors of International Society

Throughout the 19th century, only states qualified as subjects of public international law, but this scenario completely changed after the conclusion of the Second World War with more and more new actors joining the international legal arena. Thus, one must distinguish between the subjects of international society and the actors of international society.

**The Actors of International Society** are all the entities and persons that in one way or another appear on the international stage; they interact in international relations, and they could be States or international organizations, like United Nations, or big transnational corporations, they could also be large NGOs like Amnesty international; they could as well be individuals or group of belligerents. The two types of actors involved in international relations include States and non- state actors. State actors represent a government while non- state actors do not. However, they have impact on the State actors.

**Being a Subject of International Law** means having a legal personality under international law in the concept mentioned earlier. Given that, States, and international organizations are considered to be subjects of international society, whereas the rest of the entities are just actors of international relations.

## States as Original and Primary Subjects of International Society

Despite the large number of actors in the international society system, States remain the most important entities because they satisfy all criteria required to obtain legal personality in international law. States have international rights, such as the right of self-defense, international obligations, such as the duty to respect sovereignty of other States. Also, one State can bring a claim against another state, for example, at International Court of Justice.

**Creation of Statehood:**

Statehood is the condition of being State, but as is well-known, there is no universal definition of State, legal scholars and political scientists view and interpret and define the notion of "State" differently. Furthermore, the State is an artificial entity, it is not just the land or just the government, but it is a whole system. Therefore, we should refer to the historical context in which the legal concept of statehood was defined.

In 1890, the Pan-American Union was formed to promote cooperation among the Latin American Countries and the United States of America. During the period 1890-1928, six international conferences of American states were held. In December 1933, the Seventh International Conference of America States was held, and this is precisely when the Montevideo Convention on the Rights and Duties of States was adopted. This Convention is the first document where the elements of statehood are listed in written form.

Article 1 of the Montevideo Convention on Rights and Duties of States, lays down the most widely accepted formulation of the criteria of statehood in international law. It notes that the state as an international person should possess the following qualifications: "(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states". It is worth noting that the form of internal political organization and constitutional provisions constituted `mere facts`, although it was necessary to take them into account to determine the government`s sway over the population and the territory. This provision is neither exhaustive nor immutable.

In this lecture, we will illustrate these elements one by one:

**Population**

Population is defined as a group of individuals residing in the territory of a particular State and abiding by its law. When individuals venture beyond their home borders, they often find themselves in a new legal landscape governed by the laws and regulations of a foreign state. At this point, we will explore the various categories of population and their legal status in foreign states:

**Nationals (Citizens):** Nationals belong to the state through their nationality and their loyalty to it. The matter is the same if nationality is original or acquired. Citizens hold the full rights and responsibilities granted by their State. Nationals are entitled to some specific rights and privileges which foreigners do not. They have the right to vote in national elections and engage in civic activities.

**Diplomats and Foreign Officials:** Diplomats and foreign officials have a unique legal status in foreign countries they are generally granted diplomatic immunity, which shields them from prosecution and certain local laws. This status is defined in international treaties and diplomatic agreements.

**Permanent Residents:** they are individuals who do not belong to the State's nationality but are present on the State's territory to work, study, receive long-term medical treatment, etc. They have been granted the right to reside in a foreign country on a long-time basis. They enjoy many of the same rights as citizens, such as the right to work and access public services. However, they may not have the right to vote in national elections. The criteria and processes for obtaining permanent residency vary widely from one State to another.

**Temporary Residents (Foreigners):** Citizens of states other than the State in which they are present are defined as foreigners. Temporary residents, often referred to as visa holders, are allowed to stay in a foreign country for a defined period and specific purposes, such as work, study, or tourism. The duration of their presence on the territory of that country is usually less than six months. Their legal status, rights, and responsibilities depend on the type of visa they hold and the regulations of the host country.

**Dual Citizens:** Dual citizens hold citizenship in more than one state. Their legal status can be complex and depends on the laws of both states. They may enjoy certain rights and responsibilities in each country of citizenship.

**Stateless persons:** Stateless individuals do not have the legal status of citizenship in any country. They are often protected by international conventions, but their specific rights and access to services can be limited.

**Undocumented Immigrants (Illegal Immigrants):** Undocumented immigrants are individuals who enter or stay in a foreign country without proper authorization. They may face deportation if discovered. Some statess offer pathways to regularization or amnesty for Undocumented immigrants.

**Refugees and Asylum Seekers:** Refugees and Asylum Seekers are individuals who have fled their home countries due to persecution or a well-founded fear of harm. They often receive temporary or permanent protection in a foreign state, with the legal status varying depending on the terms of their protection

**Territory:**

Territory is the geographical area where people of the state live and where state practices its authorities. The concept of territory is fundamental to international law, as it is the basis of State sovereignty and jurisdiction. The international society consists of both very large States such as Canada and Russia and 'micro- States' such as Liechtenstein and San Marino. The existence of border disputes is not an obstacle to attaining statehood in international law. Territory of State consists of pieces of land (including water bodies), part of the contiguous sea called territorial waters (except landlocked countries) and the aerial space that covers both the land territory and the territorial waters. It is not a condition that land territory of a state to be connected (archipelagic states, for instance). It is imagined that State's land is the sum of land pieces. It follows from the above definition of territory that a state's territory includes land territory, territorial sea, and airspace.

**Land Territory**

It is the land area, including water bodies such as rivers and lakes, that constitutes the state. This territory of State is separated from other countries by boundaries which are unseen lines on surface of the land. There are three **types of boundaries**: Natural boundaries: which are based on features of the natural landmarks like: desert, hills, mountains crests, rivers, lakes or even woods. Artificial boundaries: which are made by humans as they are lines that connects between certain points decided based on longitude and altitudes or positions of cities, towns, villages, tribes and clans. Borders inherited from colonialism: These borders have been established in accordance with the legal principle of *uti possidetis* which dictates that colonial borders must be respected. The application of *uti possidetis* in the post-colonial world is rooted in the application of this principle in Latin American at the beginning of the 19$^{th}$ century.

**Maritime Territory**

The UNCLOS (United Nations Convention on the Law of the Sea) defines different maritime zones based on the distance from the coast. These zones are drawn using what this convention calls baselines and are measured using nautical miles. Unlike inland waters, coastal waters rise and fall in tides. Rather than having moving maritime boundaries, the baseline is fixed to begin at the low-water line along the coast. The low-water line is derived from the coastal state's charts. Coastal states have different rights and obligations over the resources, navigation, and environmental protection of the ocean depending on each zone. The following is a summary and an illustrative overview of these maritime zones:

**Internal Waters:** all the waters that fall landward of the baseline, such as lakes, rivers, and tide waters. States have the same sovereign jurisdiction over internal waters as

they do over other land territory. There is no right of innocent passage through internal waters.

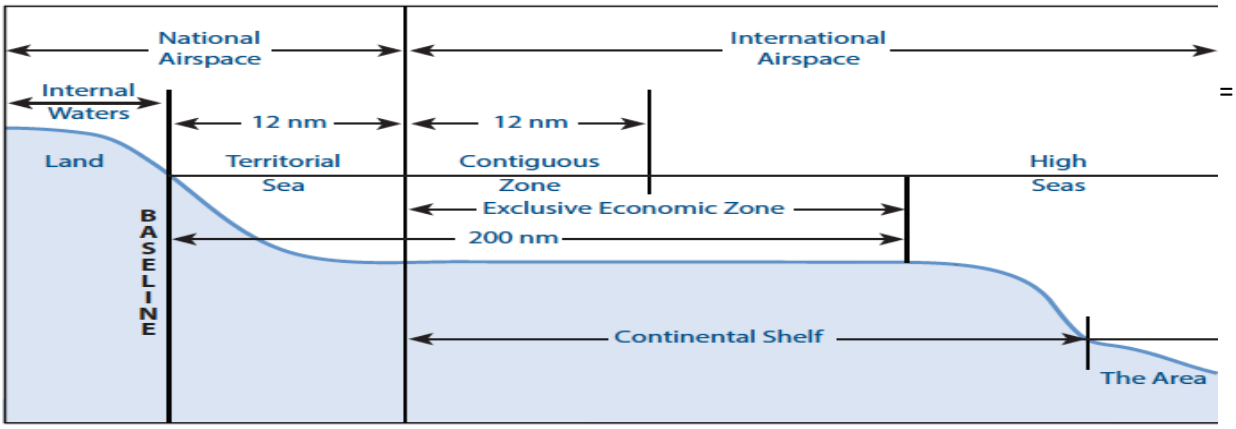
**Territorial Sea:** A coastal State may claim a territorial sea that extends seaward up to 12 nautical miles from its baselines. The coastal State exercises sovereignty over its territorial sea, the airspace above it, and the seabed and subsoil beneath it. While territorial seas are subject to the exclusive jurisdiction of the coastal states, the coastal states' rights are limited by the passage rights of other states, including innocent passage through the territorial sea and transit passage through international straits.

**Contiguous Zone**: States may also establish a contiguous zone from the outer edge of the territorial seas to a maximum of 24 nautical miles from the baseline. Within the contiguous zone, a state has the right to prevent and punish infringement of fiscal, immigration, sanitary, and customs laws within its territory and territorial sea.

**Exclusive Economic Zone (EEZ)**: States may claim an EEZ that extends 200 nautical miles from the baseline. In this zone, a coastal state has the exclusive right to exploit or conserve any resources found within the water, on the sea floor, or under the sea floor's subsoil. Article 56 of UNCLOS also allows states to establish and use artificial islands, installations and structures, conduct marine scientific research, and protect and preserve the marine environment.

**Continental Shelf**: it is a natural seaward extension of land boundary. The UNCLOS allows a state to conduct economic activities for a distance of 200 nm from the baseline, or to the continental margin where it extends beyond 200 nm.

**High Seas and Deep Ocean Floor**: the ocean surface and the water column beyond EEZ are referred to as high seas in the UNCLOS. Seabed beyond a coastal State's EEZ and continental shelf claims is known under the UNCLOS as the Area. The UNCLOS states that the Area is considered "the common heritage of all mankind" and is beyond




= 1852 meters

any national jurisdiction.

**Airspace:**

Airspace is the space above a particular state's territory, treated as belonging to the government controlling the territory. The idea of sovereign airspace was enacted into international law through the Paris Convention for the Regulation of Aerial Navigation adopted in 1919. This Convention recognized the full sovereignty of States over the airspace above their land and territorial sea. In 1944, more detailed rules were enacted in the Chicago Convention. This essentially clarified rights concerning air traffic and transit. It prevents military, police, or customs aircrafts from entering another country's airspace without permission. It similarly requires an agreement between States to allow commercial cargo and passenger flights. However, for all other non-scheduled flights, no permission is needed to fly over a participating country; although, countries are allowed to demand that a foreign aircraft land on their territory if it enters their airspace. So, while countries do own the airspace above them, they do have to give civil and State aircrafts some level of access. It follows from the principle of airspace sovereignty that every state is entitled to regulate the entry of foreign aircraft into its territory and that persons within its territory are subject to its laws.

Unlike land and water, airspace is a relatively conceptual idea. The laws around airspace do not address any upper limits. The airspace does not include outer space, which, under the Outer Space Treaty of 1967, is declared to be free and not subject to national appropriation. The treaty, however, did not define the altitude at which outer space begins and airspace ends. Vertically, the end of airspace is where outer space begins. According to the United States Air Force, anyone who passes 50 vertical miles is considered an "astronaut", while NASA and the World Air Sports Federation establishes this border a little further at 62 miles.

**Government:**

The third constitutive element of Statehood is a government or the political organization of society, which must be independent and have the capacity to enter into relations with other subjects of international law. It should be pointed out that it is the capacity to enter into relations with other subjects of international law that should be considered part of the definition of government, rather than the actual establishment of such relations.

The element government must not be identified exclusively with the executive power of a state, but comprises also the other organs of the state, including the judiciary and parliament, the armed forces, etc. There is no rule of international law that requires the structure of a State to follow any particular pattern, as it is evident from the diversity of the forms of government found in the world today.

Since international law lacks a central executive body, with the power to enforce compliance with international obligations, must often be guaranteed by the States themselves. A State must therefore be able to effectively and independently exercise its authority within its borders.

**Effectiveness:** The government of a State must be in principle effective. Effective control over the population and territory of the State is necessary, so it must be able to carry out all governmental functions. The exercise of such State functions in the internal and external levels is, naturally, done through State organs, i.e., the element government. Effectiveness, to some extent, is evidence of the ability of the government to possess legal rights and to fulfill legal obligations. A government would, on the other hand, lack effectiveness when its exercise of power is not complete over the population and territory of the State. But in State practice the application of effectiveness seems to be considerably less strict. For instance, during the process of decolonization, numerous entities achieved statehood and were admitted to the UN, while their governments lacked effective authority over the territory. Some authors have argued that in these instances the principle of effectiveness was weighed against the right to self-determination of the colonized peoples and the widely held desire that former colonies could transform themselves into independents States.

**Independence:** In addition to the principle of effectiveness, the authority must be exercised independently of external interference. Independence is widely considered as one of the most important requirements for statehood; and it must be both 'formal' and 'functional'. Formal independence exists in cases where the powers to govern a territory are vested in the separate authorities of State. Functional independence exists when a certain minimum level of real power is exercised by the authorities of the State.

In specific cases, different legal consequences may be attached to the lack of independence. If there is a complete lack of independence, the affected entity might not be internationally considered a State, but may be regarded as an indistinguishable part of the dominant State.

It must be emphasized that the requirement of independence does not mean that governments are obliged to act completely independent from all forms of foreign influence. States largely rely for their decisions on the actions and decisions of other States and international organizations. International law permits States to freely handover a considerable portion of their formal powers to other States or international organizations such as the European Union for example.

In summary it may be said that the test of effective and independent authority is not always strictly applied and that the importance of effective authority seems to be sometimes weighed against other interests and values of the international community.

## Legal Characteristics of the State

It is worth noting that some authors in international law view legal characteristics of the State as moral elements in the statehood. These characteristics are international legal personality and sovereignty.

**International Legal Personality:** It means the State's capacity to acquire rights and assume obligations under international law on the one hand; and the ability to establish international legal norms by mutual consent with other international units to establish such norms on the other hand.

It's important to remember that a State is subject to both domestic and international laws, but each law determines its status according to its nature. In domestic law, the State is the supreme authority unless it relinquishes it and acts as a private person. Whereas international law stipulates that States have the same legal status as each other. The international legal personality is given to the entity when such entity has legal capacity to entitled rights and duties to enter into international relations, including international agreements with other entities. If the entity does not have such capacity, it cannot have an international legal personality.

**Sovereignty:** The most crucial feature of the State is sovereignty because no other organization, entity, or institution can claim sovereignty. The term sovereignty has a variety of uses. In its origin, it referred to supreme power within the state, an issue of constitutional rather than international law, and one that in many countries would be regarded as a nonissue. But all that has changed and the basic concept remains that States are political entities equal in law, similar in form, and the direct subjects of international law.

Sovereignty is the legal value that defines the State's authority and independence in its territory and over its population. International law recognizes the sovereignty of states but also imposes some limits and obligations on them. The content of sovereignty and its relationship with different legal situations can be determined as follows:

**Sovereignty within the State and amongst States:** Sovereignty within the State and amongst States are different but interrelated aspects of political authority and legitimacy. They are both subject to change and adaptation in response to internal and external dynamics. Understanding the similarities and differences between them can help us better analyze and evaluate the current and future challenges and opportunities in domestic and international politics:

- **Within the State:** Sovereignty is usually exercised by a central government that has the monopoly of legitimate use of force and the power to make and enforce laws. The government is expected to protect the rights and interests of

its citizens, and to maintain order and stability. However, sovereignty within the State can be challenged or shared by various actors, such as subnational entities, civil society groups, or external actors. For example, federalism, devolution, or secession can grant some degree of autonomy to regional or local governments. Similarly, social movements, NGOs, or international organizations can pressure or influence the State on certain issues or policies.

- **Amongst States**: Sovereignty is based on the principle of non-interference and the recognition of each State's independence and equality. States are free to pursue their own interests and goals, as long as they do not violate the rights and obligations of other states. However, sovereignty amongst states is also limited and contested by various factors, such as interdependence, cooperation, or conflict. For example, globalization, trade, or migration can create mutual benefits or challenges that require coordination and compromise among states. Likewise, war or human rights violations can pose threats or dilemmas that demand collective action or intervention among states.

**Sovereignty and International Obligations:** Sovereignty is the principle that States have the right to govern themselves and determine their own foreign policy. However, sovereignty does not imply that States can act without regard for the rules and norms of the international community. Rather, sovereignty implies that states can voluntarily consent to be bound by international law and cooperate with other States on matters of common interest. International law is not imposed on sovereign States but rather interpreted and enforced through mutual agreement and respect.

**Sovereignty and Treaty-making:** States are free to decide whether or not to become parties to treaties and to make reservations qualifying their acceptance. However, once they enter into treaty relations, they may face difficulties withdrawing from them unless the treaty allows it.

**Sovereignty and Enforcement:** When states breach their international obligations and infringe on the rights of other States, they are accountable for their actions. However, there is no simple or automatic way to enforce international law. States have various options to seek redress, such as diplomatic negotiations, counter-measures, or litigation, but all these require the consent or cooperation of the States involved. Domestic courts may enforce some areas of international law against private persons, but they have limited power to enforce it against foreign States. Foreign states enjoy sovereign immunity for their acts of public authority and from measures of execution or enforcement of judgments.

# Recognition in International Law

International society is a changing entity, with new States emerging and old units disappearing. Each event generates new facts, and the question is how much legal impact should result from these occurrences. Each State must determine whether to recognize the specific situation and its legal status. Recognition has global and local impacts. Recognition of an entity as a State leads to the inclusion of specific rights and obligations.

**Definition of Recognition**

Recognition is a statement by an international legal person regarding the international legal status of another person or a particular situation. After recognition, the new situation is considered valid and enforceable by the recognizing State, leading to legal consequences. Recognition involves legal consequences both internally and internationally.

It should be pointed out that **recognition of a new government** is different from **recognition of a new State**. Recognition of a government is only relevant when the change in government is unconstitutional. Recognition of a government is often influenced by political considerations and may depend on certain criteria, such as effective control, stability legitimacy.

**Nature of Recognition:**

Recognition is, as the practice of States shows, much more a question of politics than of law. The act of the recognizing State is conditioned principally by the necessity of protecting its own national interests, which lie in maintaining proper relations with new State or the new government. Basically, there are two theories as to the nature, functions and effects of recognition:

1. **Constitutive Theory:** For the constitutive theorist, the heart of the matter is that fundamentally an unrecognized ‘state’ can have no rights or obligations in international law. Therefore, new states are fully recognized in the international community through the will and consent of existing states. Another complication would occur if a 'state' is recognized by some but not all other states.

2. **Declaratory Theory:** The declaratory theory holds that recognition is merely an acceptance of an already existing situation. Recognition is merely a formal acknowledgement of an already existing state. The Charter of the Organization of American States adopted at Bogota´ in 1948 notes in its survey of the fundamental rights and duties of states that: “the political existence of the state is independent of recognition by other states”.

Declaratory theory maintains that recognition is merely an acceptance by states of an already existing situation. The United Kingdom has often tended to extend

recognition once it is satisfied that the authorities of the state in question have complied with the minimum requirements of international law, and have effective control which seems likely to continue over the country.

**The Legal Effects of Recognition:**

Recognition may legitimately be regarded as a political tool but it nevertheless entails important consequences in the legal field. Recognition of a state or government is a legal acknowledgement of a factual State of affairs. An unrecognized State must be deemed subject to the rules of international law. It cannot consider itself free from restraints as to aggressive behavior, nor its territory is regarded as *terra nullius*. Non-recognition may affect rights and duties under international law, but will not affect the existence of those rights. The position is, however, different under municipal law. The courts cannot recognize a State. They can only accept and enforce the legal consequences which flow from the executive's political decision, although this situation has become more complex with the change in policy from express recognition of governments to acceptance of dealings with such entities. For example, the United Kingdom treated the German Democratic Republic as bound by its signature of the 1963 Nuclear Test Ban Treaty even when the State was not recognized by the UK.

**Forms of Recognition:** There are several distinct forms of recognition as detailed bellow:

- ***De facto* and *de jure* Recognition**: Recognition of a government may be *de facto* or *de jure*. De facto recognition means that the recognizing State accepts the factual situation of the new government, but reserves its final judgment. *De jure* recognition means that the recognizing state fully and permanently accepts the legal status and consequences of the new government.

- **Premature Recognition:** De facto Recognition implies that there is some doubt as to the long-term viability of the government in question. The recognition of Bosnia Herzegovina was premature, particularly since the government effectively controlled less than one-half of its territory, a situation that continued until the Dayton Peace Agreement of November 1995. There is often a difficult and unclear dividing line between the recognition of a new State, particularly one that has emerged or is emerging as a result of secession, and intervention in the domestic affairs of another State.

- **Implied Recognition:** Recognition itself need not be express, that is in the form of an open, unambiguous and formal communication, but may be implied in certain circumstances. Because this facility of indirect or implied recognition is available, States may make an express declaration in the form of a declaration. Recognition is

not normally to be inferred from the fact that both States have taken part in negotiations and signed a multilateral treaty.

- **Collective Recognition:** Collective recognition shows the importance of the international community asserting control over membership, but it has not been widely accepted yet and may take a while. The concept has been discussed since the League of Nations and emphasized with the United Nations. Member States retained the right to recognize their own executive authorities and were reluctant to delegate it to any international institution. Membership in the United Nations serves as strong proof of statehood. However, other member states are not obligated to recognize any other UN member State or government, remaining free to refuse.
- **Conditional Recognition:** States like to retain control of such an important political instrument as recognition and are usually not keen to allow this to be inferred from the way they behave. The status of any conditions will depend upon agreements specifically made by the particular parties. Breach of the particular condition does not invalidate the recognition. It may give rise to a breach of international law and political repercussions but the law appears not to accept the notion of a conditional recognition as such.

In this context, we can mention the European Community that adopted a Declaration on 16 December 1991 entitled 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union' in which a common position on the process of recognition of the new states was adopted. This Declaration cited some **factors and criteria for recognition**. It was noted in particular that recognition required: respect for the rule of law, democracy and human rights, respect for international treaties, guarantees for the rights of ethnic and national groups and minorities, respect for territorial integrity, commitment to peaceful coexistence, Promotion of security and stability.

**Withdrawal of Recognition:**

Withdrawal of recognition in other circumstances is not a very general occurrence but in exceptional conditions it remains a possibility. This is more easily achieved with respect to *de facto* recognition, as that is by its nature a cautious and temporary assessment of a particular situation. *De jure* recognition, on the other hand, is intended to be more of a definitive step and is more difficult to withdraw. The usual method of expressing disapproval with the actions of a particular government is to break diplomatic relations. But one must not confuse the ending of diplomatic relations with a withdrawal of recognition.

## Intergovernmental Organizations as Derived Subjects of International Law

The emergence and development of international organizations depended on historical factors that were essential for social development. The primary factors are the need to prevent widespread or regional conflicts that affect the population and interstate relations, prevent conflicts and resolve international disputes peacefully; solutions to new social issues are only possible through global international policies not at the State level. The States have made significant changes to their approach to conflicts, negotiations and diplomacy which are now the core values of international organizations.

The term "international organizations" is relatively recent. The League of Nations Convention, signed in 1919, indirectly acknowledges the existence of international organizations. Thus, Article 23 suggests the creation of specialized international organizations to promote international cooperation. After the Second World War, in the Preamble of the Charter of the United Nations the existence of an actual international organization was acknowledged: the signatories "establish in this way an international organization called United Nations". Since the late '70s and early '80s, there has been a significant increase in the development of international organizations. In these circumstances, the States were forced to give up their hegemony on the international arena and accept the emergence of these new subjects of public international law.

**Definition of Intergovernmental Organization:**

The intergovernmental organization is an association of States, determined by and based on a treaty aimed at common goals and which has its own special bodies, performing specific functions within the organization.

**Essential Elements of International Organizations:**

The definition mentioned above can be used to determine the key elements of an organization as follows:

1. Establishment by international agreement among States: international organization established through a formal international document, which is a “writing agreement”, concluded between States that wishing to create this organization. The names given to this document are different (Status, Covenant, Charter, Convention, etc…), but they have the same meaning.
2. States membership
3. Self- independent or Self-will: After the States signed the document which established the organization; it begins to exercise its function and makes decisions and recommendations as new international legal person, with complete independence from the States that established it.

4. Possession of organs separate from its members; this means the organization should not be temporary international entity (as in the case of international conference).

5. Carry out some specialization, this element is the main reason for existence of the organization; *i.e.* to achieve some common goals or general interests of member states.

**International Legal Personality of International Organizations:**

In the beginning of the 19th century, the number of international organizations was increasing, that situation raised many questions, particularly the legal personality for international organization. Even with the establishment of the United Nations in 1945, this issue has not been solved. Although the provisions of the Charter of the UN has founded text in Art. 104 that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes. The *ICJ* considered this issue in its Advisory Opinion, issued in 1949, when decided that States are not the only subject of international law, and the UN organization has the international legal personal, as much as making of its functioning, especially its right to litigation and reparation any infect or damage affects its employees.

The most important effects that results from international legal personality of international organizations are:

1. Conclude international treaties and invite other states or other international organizations to conclude such treaties, according to the rules of international law applicable.

2. The right to litigation: the international organizations have the right to sue in national or international courts to protect their interests.

3. Privileges and Immunities: International organisations enjoy absolute jurisdictional immunity. This privilege arises from the purposes and functions assigned to them. They can only carry out their tasks if they are beyond the censure of the courts of member States. The European Court declared that the attribution of privileges and immunities to international organisations was an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments. The question of the privileges and immunities of representatives however is invariably addressed in headquarters agreements between international organisations and host States. Experts performing missions for the UN are also granted a range of privileges and immunities such as are necessary for the independent exercise of their functions during the period of their missions.

4. Responsibilities of International Organisations: The ICJ noted in the Reparation case (1949) that when an infringement occurs the organisation should be able to call upon the responsible State to remedy its default. Responsibility is a necessary consequence of international personality and the resulting possession of international rights and duties. The precise nature of responsibility will depend upon the circumstances of the case and analogies will be drawn from the law of State responsibility with regard to the conditions under which responsibility is imposed.

## Powers or Competences of international organizations:

The organization is always created in order to facilitate international cooperation in a field between member States. But it is necessary to determine how the powers of an international organization are determined?

There are three fundamental principles on the powers of international organizations; they are alternative in the sense that each of them can form the basis for power, a capacity for action: principle of specialization of competences; implicit/involvement powers and subsequent practice.

**1/ Principle of Specialty:** This principle means that the international organization possesses only the powers or competences conferred on it by member States in principle in the constituent instrument. In other words, the organization has no original powers that it would hold by itself under its own law. The principle of specialty is a principle to which the Member States are committed, because it ensures that the organization will remain controllable. States are susceptible in this regard. This principle is recognized in practice, but also in case law:

In 1996, the United Nations General Assembly on the one hand and the World Health Organization on the other requested two separate advisory opinions from the International Court of Justice on an identical subject formulated very slightly differently, namely whether the use of nuclear weapons or the threat of their use is in all circumstances contrary to international law?

The Court has responded on the merits to the General Assembly's request, and reasoned as follows: “the World Health Organization has jurisdiction in health matters, it may be interested in the effects of nuclear weapons on health, but the World Health Organization has no political jurisdiction to deal with the legality or non-legality of the use of its weapons because its constituent instrument does not have any assigned jurisdiction in this area.”.

2/ **Implicit/Involvement powers:** Implicit or additional implied power can be used to achieve a competency. This principle draws in the opposite direction that the previous argument, the principle of specialization restricts the competence of the

international organization, which benefits member States, because any power that has not been attributed to the organization remains within the competence of member States. Sometimes, we try to establish additional skills through involvement. This means that the powers involved are often used by the organs of the organization themselves when they wish to broaden their competences or act in a field where the organs think that there is an urgent need for action, but at the same time there is no explicit competence so we try to "tinker" with implicit competences, in the absence of an express provision we try to apply a competence, the tendency is therefore here to widen the powers of the organization.

It is important to have this principle and to have implicit powers, because: one cannot describe all the powers of the organization in the constitution; flexibility is required for the organization to act in the current necessity; the instruments of international organizations are living instruments, they are instruments that look a little bit like constitutions, so they must be interpreted with a certain flexibility because they affect political phenomena.

3/ **Subsequent practice:** Subsequent practice is the last means by which the power of an international organization can be consolidated; this subsequent practice is often concomitant with the power involved. If the member states accept the competence is to whom we will legally say that the organization has acquired additional competence through the subsequent practice of the member states which is based on a customary process within the organization. There is a custom within the organization through widespread practice and *opinio iuris*, if member States endorse either by voting for the texts providing for this custom or by abstaining from protesting, by those means of no protest or direct endorsement, in this case if there is a generalized practice the competence is acquired and on the contrary the competence will not be acquired if this is not the case.

Not only can skills be acquired through subsequent practice, the provisions of the United Nations Charter or other instruments constituting international organizations can be modified through subsequent practice. The most famous example is Article 27.3 of the Charter, namely that according to the text of the Charter, voting in the Security Council on matters that are not procedural is done with the 5 affirmative votes of the permanent members, whereas according to the subsequent practice started from the crisis in Persia in the late 1940s, abstention is no longer counted as preventing the resolution from passing. What is necessary is not a negative vote, the "affirmative" has been changed to "no negative vote", by abstention nothing is blocked. This was endorsed in the 1971 Advisory Opinion on Namibia.