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# Statehood and Territory

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# STATES

- States are at the heart of the international legal system
- Important to understand what is a ‘State’
- Broadly speaking, a State is what we know to be a country (i.e. Australia, the US, UK)
- When we use the word ‘State,’ we capitalize the ‘S’ to indicate the special status it has within the international legal system

# CRITERIA FOR STATEHOOD

- The **1933 Montevideo Convention on the Rights and Duties of States** sets out four criteria for statehood.
- Article 1 of the Convention provides that the state as a person of international law should possess the following four qualifications:
  - (a) a permanent population;
  - (b) a defined territory;
  - (c) government; and
  - (d) capacity to enter relations with the other states.

# PERMANENT POPULATION

- A State needs to have a permanent population in order to exist, although what level of population it will need is not entirely clear
- Some States (e.g. China and India) have populations in the billions
- Other States (e.g. Nauru and Tuvalu) have a population of fewer than ten thousand people living within their territory

# DEFINED TERRITORY

A State needs some form of territory

- It is what defines them
- It is how they are represented physically on maps and in diagrams

Land is essential for a State to be viewed as a State

# GOVERNMENT

- All States must have a government
- This involves physical control, the physical administration of territory
- A State that is unable to control its territory; that cannot show that it is governing and administering lands under its sovereignty, is going to struggle to demonstrate the sovereignty over that territory as against other States

# CAPACITY TO ENTER INTO INTERNATIONAL RELATIONS

- Requires some degree of engagement with the international community
- The ability of a State to be able to carry on relations, discourse, exchange ambassadors with other States
- There needs to be some level of recognition of a State being a State by the rest of the international community

# SUBJECTS OF INTERNATIONAL LAW

## States

- Permanent population
- Defined territory
- Government
- Capacity to enter into relations with other States

## International Organisations

- UN, NATO, EU



# INTERNATIONAL LEGAL PERSONALITY

- If you have International Legal Personality (ILP) then you have rights and obligations under international law.

## States

- have ILP to the fullest degree
- International law applies primarily to/for States

## Non State Actors

- Individuals
  - Usually not directly impacted by international law
  - Limited ILP under human rights law

## Non State Actors

### International Organisations

- Limited ILP related to their functions
- Are typically allowed to make and enter into treaties (e.g. UN, NATO, EU)

## Non State Actors

### Multinational Companies

- Unclear whether or not they have ILP
- Are treated as individuals of the country they are incorporated in

# TERRITORIAL ASPECT OF STATEHOOD

- Title to Territory is all about how States assert rights over land
- Rights at sea are largely determined by rights over land, and so possession and title to territory is very important in the context of the law of the sea

# ACQUISITION OF TERRITORY

## Occupation

- State takes an area of territory and does the things necessary to assert title over that area (i.e. establishment and operation of a police force)
- Demonstrating that you have occupied territory and can assert your sovereignty over it, is a fundamental way of identifying title to territory

# ACQUISITION OF TERRITORY

## Annexation

- Historically, a State could acquire territory through annexation and States went to war on occasions to try and secure territory and to ultimately annexe it.
- No longer available – the international community decided that the use of force to conquer territory is no longer acceptable and it is now inconsistent with the UN Charter

# ACQUISITION OF TERRITORY

## Cession

- When one State gives part of its territory away to another
- Not common
- **Example:** The way Australia acquired sovereignty over its territory of Christmas Island in the Indian Ocean



# ACQUISITION OF TERRITORY

## Accretion

- Territory gradually builds up over time, literally accreting
- For example, the area in a river delta may produce new islands, may extend the coast further and further out to sea. The new territories created in this way are an example of accretion
- **Example:** Australian territory of McDonald Island

# ACQUISITION OF TERRITORY

## Prescription

- Example: If I occupy a piece of territory and no one objects, eventually that lack of objection means that I have acquired title to that territory
- Since most States are aware of the extent of their territory, prescription is something which is exceedingly rare

# ACQUISITION OF TERRITORY

## Discovery

- Old-fashioned way of acquiring territory
- Discovery does not give full title, rather inchoate title
- **Example:** If an explorer found an island that no one had been to before, that explorer could claim that island for their State, but their claim would not give them title. The State would have to 'perfect' the title with some form of occupation

# ESTABLISHING TITLE TO TERRITORY

- The different types of title have been described in some detail in international law cases stretching back to the beginning of the 20<sup>th</sup> century, right through to the present
- Occupation is the most important category in practice and the courts have provided guidance on a number of points

# OCCUPATION

- What you do in occupation needs to reflect the nature of the territory you are claiming
- **Example:** A busy territory with a population of millions:
  - Need to control law and order;
  - Need to regulate the transportation system;
  - Need to deal with ingress and egress of people in and out of the territory