

## LAWS1023 – Tutorial

### Week 1: Introduction to Public International Law

- In this unit, you should keep up with International issues and what part of international law does this touch upon?
- **2017 – US recognition of Jerusalem**
  - December 2017 – Trump said US would recognise Jerusalem as Israel's capital
  - In 2018 – the State of Palestine commenced litigation against the US in the ICJ. Judgement coming soon?
  - Litigation is only between US and State of Palestine – but what about Israel
- **2016-2020**
  - Trump against the world – Trump has caused many issues
    - The TPPP and China ...
    - The Paris Agreement ...
    - NATO and collective security ...
    - Syria ...
    - Russia and the world ...
    - Trade wars with the world ...
    - A trade war with China ...
    - The Iran nuclear agreement ...
    - The Iran Amity Agreement ...
    - NAFTA and free trade ...
    - Immigrants into the US ...
    - Financial support to many causes ...
    - Recognition of Jerusalem ...
    - Intermediate-Range Nuclear Forces Treaty ...
    - Purchase of Greenland ...
    - Withdrawal from the WHC ...
    - Withdrawal from the WHO ...
  - Purchase of Greenland offer made by Trump to Denmark → can a country even be sold?
- **2018-2021 – Assassination and consular premises**
  - The murder of Jamal Khashoggi in Istanbul
  - Sanctions by the US?
- **2019-2021 – Deprivation of citizenship?**
  - Shamima Begum – born in UK
  - She went to Bangladesh and married a terrorist and had 3 children
  - Her citizenship was stripped by the UK – and did not allowed her to enter UK to defend her case
  - Can a person's citizenship be stripped by the State, and if so, under what circumstances
- **2019 – ICJ Chagos Islands advisory opinion**
  - 25 February 2019 the ICJ gave an advisory opinion – and General Assembly ordered the UK to return the Chagos Islands to Mauritius
  - Truly a world case!
  - UK refuses to follow ICJ
- **2015-2021 – The ongoing South China Sea dispute**
  - China claims it has claims on maritime sea in the South China Sea → and they prevent other States from entering and using the resources and fishing in these sea
  - Includes Vietnam, Philippines, Malaysia and many other Asian countries
  - 2016: Permanent Court of Arbitration – Philippines disputed with China – Court found that China was in the wrong – but China refuses to recognise that decision – Philippine has not tried to enforce it as government changed

national boundaries on the substance and application of international law by national courts as they approach the resolution of 'local' legal problems."

- Therefore, can argue, by relying on Kirby, that the minister ought to take into account international law in her decision-making
- And therefore, it is to be given legal effect

## **Week 4: International Legal Personality, Statehood and Self-Determination**

### **QUESTION 4:**

#### **Tutorial Question 4**

#### ***Topic: International Legal Personality, Statehood and Self-Determination***

Arnica, Borage and Catnip are neighbouring States and former colonies of Paprika. The two main ethnic groups in Arnica – the Odds and the Evens – are treated very differently. The Odds are given favoured positions in the government, while the Evens, who live mainly in the coastal Verbena province of Arnica, experience systematic discrimination. The Evens have rebelled against their treatment, leading to further acts of repression by Arnica, which passed laws restricting the right of the Evens to hold demonstrations or engage in public cultural activities.

To address what it calls 'the Verbena problem' Arnica concluded a treaty with Borage, ceding the province of Verbena to Borage. Catnip, the population of which is largely composed of Evens, issued a statement condemning the treaty, and complaining that Arnica and Borage were 'treating Verbena and its people as a commodity'.

Following a referendum by the Evens in Verbena in January 2020, the Verbena Provincial Council declared Verbena to be an independent State named the 'Republic of Verbena', with borders extending beyond the former province of Verbena to encompass several remote communities of Evens in Arnica and Borage.

The Republic of Verbena was immediately recognised by Catnip and a Catnip embassy was established in the capital of Verbena. Borage refused to recognise the independence of Verbena. By January 2021 some 125 States had recognised the Republic of Verbena as a State, but its applications to join the United Nations and other international organisations have so far been unsuccessful.

**Identify and analyse the issues of public international law that arise from these facts.**

- Presumption in international law, is that borders are fixed at colonisation (*uti possidetis juris*) → considered customary IL → these states were past colonies
- This appears to be informal discrimination against Evens (at first) → there is a very high threshold for proving that you have been so badly to gain external self-determination
- After Arnica passes law to limit Evens' rights → this is evidence of formal discrimination, so more likely to support Evens' claims to external self-determination
- For Evens to exercise external self-determination (*Quebec* → only when decolonisation occurs → Evens was not a colony, only a part of it → but the element of colonialization is important), they must not have had internal self-determination
  - Are they a people? → Yes, they have been formally discriminated against
  - Are they a self-determination unit? → This right is not applied to any people, only to a self-determination unit

- Switzerland = 7 people → 7 Heads of State representing one of its provinces
- These groups of people have personal immunity
  - In recent years, there is an extension of that to new persons → have immunity where they are not a member of TROIKA, but are performing some of the functions of the TROIKA → i.e. extends to high ranking official of governments
  - Here, Hassium was a Defence Secretary → equivalent of the Defence Minister
  - But, he is a former defence secretary → he does not have immunity as a former defence minister → but has immunity (functional) in regard to acts done in his official capacity
  - But the particular act was not part of the ordinary act of the state as it was a war crime
  - Certain conducts should strip immunity → *Pinochet case* regarding torture → *Pinochet* is not authority for all jus cogens crimes or torture itself → it is a suggestion by a national court that in certain narrow circumstances, a former national state could be deprived of immunity for particular crime of torture where both parties were parties to Convention on Torture
  - NO TORTORUE here, but *Pinochet* can be discussed by saying that a former defence secretary should not have immunity in regard to war crimes (maybe)
- BUT, he is an Ambassador → an internationally protected persons (on crimes against Ambassadors)
  - He will have immunity as an ambassador
  - If he was in Gallium, he has immunity in Gallium → he is in Strontium, a third party → Article 40 states they only have immunity if he is passing → here, he is not passing, so no immunity
  - Thus, Strontium can prosecute him
- BUT, he is in the Strontium Ambassador's home → which is inviolable per **Article 30 and Article 22** → cannot enter unless there is consent
  - Journalist entered Saudi Arabia Ambassador home, that journalist did not come out alive → he was murdered → Turkey (receiving state) was listening in and found out → but Saudi Arabia Ambassador had left, and 10 days later, Turkey allowed to enter
  - Hassium is thus protected as long as he is in the Ambassador's house
  - *Libyan case* → somebody fired a gun inside embassy at protesters outside, killing Fletcher (a police) → UK did not enter the embassy → someone commented that if there was danger, then they may enter
  - **MUST SAY THAT STRONTIUM HAS A REAL DUTY TO PROTECT THE PREMISES**
  - E.G. SEND police to guard premises
- Facts do make a distinction between criminal and civil proceedings
  - The family is asking for criminal and cvil proceedings → mainly civil
  - They are dealt with on different basis
  - *Jones v Saudi Arabia* = civil for torture → by analogy from *Jones*, the law is not yet in the position that civil proceedings can be bought against officials that abuse their power
  - *Pinochet* = criminal proceedings

- Combusta may request a provisional measure made from the ICJ that orders Incendia to refrain from further bombing near the Oxida River, and any other acts near the Oxida River to prevent further damage to the River
- **Article 41 of UN Charter** provides ICJ the power to order provisional measures if it is needed to “preserve the rights of either party”
- In **Nicaragua case**, the court held provisional measures are only provided when there is urgency and a real risk that rights of either party may be affected before the court’s final judgement
- Here, given that further bombing or activities by Incendia near the Oxida river will impact Combusta’s rights to trade and resources from the river, and that there was a persisting fire near Oxida River which would require further action to be undertaken → there was a real risk that further damage to the River would be done
- However, provisional measures would also infringe on Incendia’s rights to protect themselves and put out the fire
- Thus, it is unlikely that provisional measures would be ordered, but if they were to be ordered, they are legally binding (as explained in **La Grand case**)

### Question asks you to discuss the advantages and disadvantages of dispute settlement

- Start off by noting that States have an obligation to settle their dispute peacefully (**Article 2(3) & 33(1)**)
- **Option 1: Conciliation**
  - Is it compulsory or optional?
  - Incendia caused a transboundary harm
  - Potential for a dispute, there is grounds for Combusta to make claims that there was a dispute
  - The statement by Combusta is not a real evidence of a dispute
  - There has to be a dispute before Article 10 can be triggered → if there is no dispute, then Article 10 cannot apply
  - If there is a dispute, and Article 10 has application, then this conciliation is **COMPULSORY** → it will apply if another means of dispute settlement has not been agreed to
  - Conciliation does not lead to a legally binding decision → so conciliation is typically useless → that is why consent is not really required
  - Advantages = friendlier way to proceed, less public, keep good means
  - Disadvantages = no legally binding decision
- **Option 2: Arbitration**
  - Requires a breach of the 1978 Treaty → arbitration under Article 20 is only triggered if Article 3 were breached
  - Incendia may argue that Article 3 does not apply since this was a physical effect (indirect effect) on trade → there was no direct effect on trade, so may use this argument to not appear
  - **South China Sea Case** → china agreed to compulsory arbitration under UNCLOS, china tried to avoid appearing as the matter of the dispute did not fall under UNCLOS → China claimed it concerned only ownership, which was not under UNCLOS → arbitrator found that the issue concerned more than ownership
  - Incendia may take china’s approach to not appear → but threat of an adverse decision made against incendia
  - Advantages: legally binding effect
  - Disadvantages: not as much judged as ICJ, lose the friendly means of conciliation
  - Arbitration and conciliation only determination of the breach of the treaties → arbitration = 1978 treaty, Conciliation = 1975 treaty → so can proceed with both arbitration and conciliation
- **Option 3: ICJ**
  - Breach of general customary law → duty to not cause damage to territory of other state
  - Parties to the ICJ statute = 193 parties → only 74 parties made those declarations under Article 36(2)
  - Many states also accept ICJ jurisdiction via compromissory clauses in a treaty for breaches of that particular treaty