

INTERNATIONAL LAW AND SMALL STATES

**POSTGRADUATE
COURSE**



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INTRODUCTION

This course is designed to introduce postgraduate students to the study of small states and international law. No previous knowledge of international law, international relations or small states studies has been assumed. The course has been designed so that course leaders may adapt elements of the course to the particular background and needs of the student body. A multi-disciplinary approach is encouraged. An attempt has also been made to explore the position of small states in different areas around the world such as Europe, the Pacific, and the Caribbean.

The course is divided into three parts. Part I introduces students to the key concepts of small state studies, international law and international relations. Part II examines specific topics particularly relevant to small states. Part III provides an opportunity for students to apply their knowledge in a practical way. The topics have been mapped onto a 12-week course comprising approximately 2 hours of lectures/seminars per week. However, course leaders should feel free to amend, extend, compress or omit sections to suit the background and needs of the student body.

At the conclusion of the course, students should:

- be equipped with the knowledge and ability to consider the particular challenges and opportunities faced by small states in the arena of international law;
- have an appreciation of how small states are affected by their experiences of the international legal system, climate change, migration and decolonisation;
- consider how small states may use law to address conflict with other states or address climate change and migration issues;
- consider how the legal systems of postcolonial small states are affected by this experience;
- understand how developments and events in international politics intersect with international law; and
- be able to apply this knowledge to a practical scenario.

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PART ONE: INTRODUCTION TO SMALL STATES, INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

1. What is the small state?

This section asks students to consider how we define small states. What are the criteria by which small states are defined? How important are geography, population, economy, material attributes, relative size or power? Can a state be considered "small" if it meets none or only a few of these criteria but none the less perceives itself as such? Why are small states worthy of consideration?

Readings

- A Alesina "The Size of Countries: Does It Matter?" (2009) 1(2-3) J of the European Economic Association 301-316
"Introduction", "The Size of Nations: A Historical Overview" and "Conclusion" in A Alesina and E Spolaore The Size Of Nations (MIT Press, Cambridge, MA, 2003)
- PR Baehr "Review: Small States: A Tool for Analysis" (1975) 27(3) World Politics 456-466
- T Crowards "Defining the Category of Small States" (2002) 14(2) J of Intl Development 143-179
- M Matthias "The Elusive Definition of the Small State" (2009) 46(1) Intl Politics 65-83
- IB Neumann and S Gstöhl "Introduction: Lilliputians in Gulliver's World?" in C Ingebritsen et al (eds) Small States in International Relations (University of Washington Press, Seattle, 2006) 3-36
- W Veenendaal and J Corbett "Why Small States offer Important Answers to Large Questions" (2015) 48(4) Comp Pol St 527

Discussion questions

In your view, which is the most important and/or useful measure for deciding whether a state is "small" or not? Are objective criteria to be preferred over subjective ones?

In what ways does the study of small states contribute to our understanding of global politics?

2. Challenges and Opportunities for small states

This section asks students to consider how and why specific challenges are thrown up for small states in various areas, such as governance, economics and environmental security. It discusses why small states are particularly vulnerable, but also highlights some of the potential advantages that small states possess.

Readings

- J Alford "Security Dilemmas of Small States" (1984) 4 World Today 8-9
- H Armstrong and R Read "The phantom of liberty?: Economic growth and the vulnerability of small states"(2002) 14(4) Journal of Intl Development 435-458
- GP Barton "Legal Resource Needs in Small States" (1999) 30(2) VUWLR 599-652
- L Briguglio "Small Island Developing States and their Economic Vulnerabilities" (1995) 23(9) World Development 1615-1632
- Commonwealth Secretariat Vulnerability. Small States in the global society (Commonwealth Secretariat, London, 1985)
- A Cooper and T Shaw "The Diplomacies of Small States at the Start of the Twenty-first Century: How Vulnerable? How Resilient?" in A Cooper and T Shaw (eds)
- The Diplomacies of Small States: Between Vulnerability and Resilience (Palgrave Macmillan, Basingstoke, 2009) 1-18
- R Espindola "Security Dilemmas" in C Clarke and T Payne (eds) Politics, Security, and Development in Small States (Allen & Unwin, London, 1987) 63-79
- J Hatchard "Some thoughts on Judicial Integrity, Corruption and Accountability in Small Commonwealth African States" (2016) 3 J Intl and Comp Law 55-72
- P Sutton and A Payne "Lilliput under threat: The security problems of small island and enclave developing states" (1993) 41(4) Political Studies 579-593
- J Smits "Do Small Jurisdictions Have a More Complex Law? A Numerical Experiment in Private and Constitutional Law" in A Albarian and O Moreteau (eds) Comparative Law and.... (Aix-Marseille University Press, Aix-en-Provence, 2016) 473-486
- ZM Vaicekauskaitė "Security Strategies of Small States in a Changing World" (2017) 3(2) J on Baltic Security 7-16

Discussion questions

What are the major challenges faced by small states, both domestically and internationally?

In what ways are small states advantaged by their size?

3. Small States and International Relations

This section introduces International Relations as a discipline with particular relevance to small states. Students will consider issues pertaining to small states, such as cross-border developments, whether it be diplomacy, war, migration, transnational religions or globalisation.

Readings

CH Grøn and A Wivel "Maximizing Influence in the European Union after the Lisbon Treaty: From Small State Policy to Smart State Strategy" (2011) 33(5) *J of European Integration* 523-539

BG Olafsson *Small States in The Global System. Analysis and Illustrations from the case Of Iceland* (Ashgate, Aldershot, UK, 1998)

RO Keohane "Lilliputians' Dilemmas: Small States in International Politics" in C Ingebritsen et al (eds) *Small States in International Relations* (University of Washington Press, Seattle, and University of Iceland Press, 2006) 55-76

D Vital *The Survival Of Small States: Studies In Small/Great Power Conflict* (Oxford, Oxford University Press, 1971)

D Vital "The Inequality of States: A Study of the Small Power in International Relations", in *Politics*" in C Ingebritsen et al (eds) *Small States in International Relations* (University of Washington Press, Seattle, and University of Iceland Press, 2006) 77-88

Discussion questions

Is the use of the concept of "small states" analytically useful in the study of international relations?

How do natural resources affect the role of individual small states in the global system?

4. Small State Theories

This section aims to introduce students to the concept of small states as used in international relations, enabling an understanding of how alliances are formed by small states in international relations and an ability to contextualise the challenges faced by small states in international politics. The theorisation of small states in international relations theory is also covered.

Readings

AJK Bailes, BA Thayer, and B Thorhallsson "Alliance Theory and Alliance 'Shelter': The Complexities of Small State Alliance Behaviour", (2016) 1(1) *Third World Thematics* 9-26

M Fendius Elman "The Foreign Policies of Small States: Challenging Neorealism in Its Own Backyard" (1995) 25(2) *British J of Political Science* 171-217

Giorgi Gvalia et al "Thinking Outside the Bloc: Explaining the Foreign Policies of Small States" (2013) 22(1) *Security Studies* 98-131

A Henrikson, "Diplomacy and Small States in Today's World," presentation to the Dr. Eric Williams Memorial Lecture Series, Central Bank of Trinidad and Tobago, May 22, 1998

Available at: <https://www.scribd.com/document/202414933/Diplomacy-and-Small-States-in-Today>

A Henrikson "A coming "Magnesian" age? Small states, the global system, and the international community" (2001) 6(3) *Geopolitics* 49-86

R Kagan "Power and Weakness" (2002) No 113 *Policy Review* 1-18

P Katzenstein "Small States and Small States Revisited" (2003) 8(1) *New Political Economy* 9-30

E Schmidl "Small States and International Operations" in E Reiter and H Gartner (eds) *Small States and Alliances* (Physica-Verlag, Heidelberg, 2001) 85-88

Discussion questions

Do small states face inequalities in international relations?

How can small states overcome power disparities in international politics?

5. Introduction to international law I: sources and subjects

This section introduces international law and its different sources as identified under art 38 of the Statute for the International Court of Justice. Students will also consider the role of politics in shaping international law and its institutions.

Readings

Arts 34, 38 and 59, Statute of the International Court of Justice

MD Evans (ed) *International Law* (4th edn, Oxford University Press, Oxford, 2014) Ch1 and 2

R Higgins Problems and Process: International Law and How We Use it (Oxford University Press, Oxford, 1995) Ch 2

M Koskenniemi "The Politics of International Law" (1990) 1 European J of Intl Law 4

Available at: <http://ejil.org/pdfs/1/1/1144.pdf>

SV Scott "International Law and World Politics Entwined" in International Law in World Politics, An Introduction (Lynne Rienner Publishers, Boulder, CO, 2010) 1-19

H Thirlway "The sources of international law" in MD Evans (ed) International Law (4th edn, Oxford University Press 2014) Chapter 4

Discussion questions

How does international law differ from international relations as a system of control for state relations? Are these differences significant?

International law ostensibly treats all states the same, regardless of size. How might this disadvantage small states?

6. Introduction to international law II: Statehood, sovereignty and recognition

This section introduces students to the elements of statehood, the concept of sovereignty and the right to self-determination in international law with particular reference to the challenges faced by small states in satisfying the elements of statehood.

Students should consider when a declaration for statehood will be recognised and whether there are political factors affecting the legitimacy of a declaration of statehood.

Readings

(a) Requirements for Statehood

Arts 1, 3 and 4, Montevideo Convention on the Rights and Duties of States 1933

J Crawford and I Brownlie Brownlie's Principles Of Public International Law (Oxford University Press, Oxford, 2012) Chs 5 & 6

J Crawford The Creation of States In International Law (Oxford University Press, Oxford, 2007) pp 108-155

C Clapham "Degrees of Statehood" (1998) 24(2) Review of International Studies 75-92

M Evans (ed) International Law (4th edn, Oxford University Press, Oxford, 2014) Chapter 8 (Self-determination)

TD Grant, "Micro States" in R Wolfrum (ed) Max Planck Encyclopaedia of Public International Law (Oxford University Press, Oxford, 2013)

D Thurer and T Burri "Self-Determination" in R Wolfrum (ed) Max Planck Encyclopaedia of Public International Law (Oxford University Press, Oxford, 2008)

H Quane "The United Nations and Evolving Right to Self Determination" (1998) 47 (3) International & Comparative Law Quarterly 537

Discussion questions

At what point does a small territory or jurisdiction fail to meet international law's requirements for statehood? Is the concept of "associate" statehood a viable or attractive alternative for small would-be states?

Absent population or power, how useful is the statement that "the political existence of the state is independent of recognition by other states?" (art 3 Montevideo Convention)

Does the presumption of equality of states (art 4, Montevideo Convention) benefit or disadvantage small states?

(b) Case Study: Towards Statehood? Scotland and Catalonia

HJ Blanke and Y Abdelrehim "Catalonia and the Right to Self-Determination from the Perspective of International Law" (2014) 18(1) Max Planck YB of UN Law Online 532-564

A Eckert "Constructing States: The Role of International Community in the Creation of New States" (2002) 13 J Public And International Affairs 19- 39

Chatham House, Meeting Summary: Recognition of States: The Consequences of Recognition or Non-Recognition in UK and International Law, Summary of the International Law Discussion Group Press meeting held at Chatham House on 4th February 2010

Available at: https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/Meeting%20Summary%20Recognition%20of%20States.pdf

M Weller "Secession and Self-Determination in Western Europe: The Case of Catalonia" EJIL (18 Oct 2017)
Available at: <https://www.ejiltalk.org/secession-and-self-determination-in-western-europe-the-case-of-catalonia/>

S Douglas-Scott "Scotland, Secession and the European Union" in A McHarg, T Mullen and A Walker (eds) *The Scottish Independence Referendum: Constitutional and Political Implications* (Oxford University Press, Oxford, 2016)

A McHarg "The Constitutional Case for Independence" in A McHarg, T Mullen and A Walker (eds) *The Scottish Independence Referendum: Constitutional and Political Implications* (Oxford University Press, Oxford, 2016)

S Tierney "Legal Issues Surrounding the Referendum on Independence for Scotland" (2013) 9 *European Constitutional Law Rev* 359-90

Discussion questions

To what extent do each of these sub-national jurisdictions fulfill the criteria for statehood as established in the 1933 Montevideo Convention?

What are the differences and similarities between Scotland's and Catalonia's claims for independence? Is their difference in treatment justified in international law?

7. Small states in International Organisations

This section looks at how small states interact with the machinery of international law, the structural and institutional barriers in international law for small states, the issues and challenges faced by small states within international institutions and the strategies utilised by small states to influence decision making in international bodies

Readings

Arts 38 and 59, Statute of the International Court of Justice

M Finck "The Impact of EU Law in Luxembourg: Does Size Matter?" in P Butler and C Morris (eds) *Small States in a Legal World* (Springer, Berlin, 2017) 65-85

AA Jacovides "International Tribunals: Do They Really Work for Small States?" (2001) *NYU Journal of Intl Law & Policy* 34 (2001) 253-262

Andrea Ó Súilleabháin "Small States at the United Nations: Diverse Perspectives, Shared Opportunities" *International Peace Institute* (2014)
available at: https://www.ipinst.org/wpcontent/uploads/publications/ipi_e_pub_small_states_at_un.pdf

D Panke "Small States in Multilateral Negotiations. What Have We Learned?" (2012) 25(3) *Cambridge Review of Intl Affairs* 387-398

MN Tarp and JOB Hansen "Size and Influence: How Small States Influence Policy-Making in Multilateral Arenas" (DIIS Working Paper, 2013)

B Thorhallsson "Small states in the UNSC and the EU: Structural weaknesses and ability to influence," in P Butler and C Morris (eds) *Small States in A Legal World* (Springer, Berlin, 2017) 35-64

B Thorhallsson "Small States in the UN Security Council: Means of Influence?" (2012) 7 *Hague Journal of Diplomacy* 135-160

Discussion questions

To what extent are small states able to influence the development of international law and/or practice? Must small states always work together to have any impact? Are small states limited to being receptors of international law, rather than influencers?

What sort of reforms do you consider might be necessary to assist small states in improving their position in international organisations?

PART TWO: A CLOSER LOOK AT SMALL STATES, INTERNATIONAL LAW, AND INTERNATIONAL POLITICS

8. Small states' use of the international legal system to resolve conflicts

This section examines the experience of two small states in using international tribunals to resolve conflict. The first considers a case brought by the former colonial power, Portugal, against Australia, on behalf of the East Timorese with respect to their self-determination rights. The second examines a four year dispute brought before the World Trade Organisation by the microjurisdiction of Antigua against the United States challenging its ban on remote gambling.

Readings

(a) ICJ case: Portugal v Australia

Summary of the Case concerning East Timor (Portugal v Australia), available at <http://www.un.org/law/icjsum/timor.htm>

C Chinkin "The East Timor Case (Portugal v Australia)" (1996) *Int & Comp L Qly* 712-725

E Posner and M Figueredo "Is the International Court of Justice Politically Biased?" (2005) 34(2) *J of Legal Studies* 599-630

GJ Simpson "Judging the East Timor Dispute: Self-Determination at the International Court of Justice" (1994) 17(2) *Hastings Intl & Comp L Rev* 323-348

UNSW - School of Humanities and Social Sciences "Companion to East Timor- The Case before the International Court of Justice"

Available at: <https://www.unsw.adfa.edu.au/school-of-humanities-and-social-sciences/timor-companion/icj-case>

(b) WTO case: Antigua v USA

K Bohl "Problems of developing country access to WTO Dispute Settlement" (2009) 9 *Chicago-Kent Journal of Intl & Comp Law* 1-71

A Cooper "'Remote' in the Eastern Caribbean: the Antigua-US WTO Internet Gambling Case (Caribbean Paper No 4, Centre for International Governance Innovation, April 2008)

Available at: https://www.cigionline.org/sites/default/files/4._remote_in_the_eastern_caribbean.pdf

A Cooper "Confronting Vulnerability through Resilient Diplomacy: Antigua and the WTO Internet Gambling Dispute with the US" in A Cooper and T Shaw (eds),

The Diplomacies of Small States: Between Vulnerability and Resilience (Palgrave Macmillan, Basingstoke, 2009) 2017-218

JB Darling "Gambling with our future: A call for needed WTO dispute resolution reform as illustrated by the US-Antigua conflict over online gambling" (2010) 42(2) *George Washington Intl L Rev* 381-406

S Jackson "Small states and compliance bargaining in the WTO: an analysis of the Antigua-US gambling services case" (2012) *Cambridge Review of Int Aff* 367-385

Discussion questions

How did issues of size and sovereignty affect Antigua's and/or East Timor's ability to be heard in the international legal system? Is smallness an advantage or a disadvantage?

What reforms are needed in international dispute resolution to provide a fairer platform for small states to air their grievances?

9. Decolonisation, law and small states

This section introduces students to the international law instruments relating to decolonisation and the formation of new states, and the consequences of de-colonisation for the law and the legal systems of small states.

Readings

General Assembly Resolution 1514 (XV) The Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)

AH Angelo "Rule of Law - Role of Law in the South Pacific" (2010) 10 *Revue Juridique Polynesienne* 63-90

DS Berry "The Early Original Jurisdiction Jurisprudence of the Caribbean Court of Justice: Promoting Regional Integration" (2012) 61(2) *Social and Economic Studies* 27-49

J Corbett and W Veenendaal "Westminster in Small States: Comparing the Caribbean and Pacific Experience" (2016) 22(4) *Contemporary Politics* 432-449

J Corrin "Exploring the Deep: Looking for Deep Legal Pluralism in the South Pacific" (2017) 48(2) *VUWLR* 305-322

S Farran "The 'unnatural' legal framing of traditional knowledge and forms of cultural expression in the Pacific" (2013) 1 (2) *J of NZ and Pacific Studies* 181-197

R Fry "Political Legitimacy and the post-colonial state in the Pacific" (2000) 12(3) *Pacifica Review* 295

H Hills "Compact of Free Association for Micronesia: Constitutional and International Law Issues" (1984) 18(3) *Intl Lawyer* 583-608

D O'Brien "Small States, Colonial Rule and Democracy" in P Butler and C Morris (eds) *Small States In A Legal World* (Springer, Berlin, 2017)

D O'Brien "CARICOM: regional integration in a post-colonial world" (2011) 17(5) *European Law Journal* 630-648

Discussion questions

Why might some small jurisdictions prefer not to become independent states? Is this a justifiable position in international law?

What issues arise when transplanting the legal infrastructure, system and norms of the colonial power to newly-independent states?

What is the role of customary law in former colonies? Is legal plurality a realistic expectation?

10. Refugee and Migration Law and Small States

This section introduces students to some of the international legal instruments that apply to refugees and migrants. Also considered are the advantages and challenges faced by small states as a consequence of migration and refugee flows, both in terms of their size and geographical location.

Readings

(a) Introduction to International Refugee Law

1951 Convention Relating to the Status of Refugees

1967 Protocol relating to the Status of Refugees

E Feller "Asylum, Migration and Refugee Protection: Realities, Myths and the Promise of Things to Come" (2006) 18(3-4) *Intl J of Refugee Law* 509-536

G Loescher "UNHCR's origins and early history: agency, influence, and power in global refugee policy" (2017) 33(1) *Refugee* 77-86

K Long "When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection" (2013) 1(1) *Migration Studies* 4-26

(b) Law, Refugees and Migration in European small states

V Chetail "Looking beyond the Rhetoric of the Refugee Crisis: The Failed Reform of the Common European Asylum System" (2016) *European J of Human Rights* 584-602

C Mainwaring "Resisting Distalization? Malta and Cyprus' Influence on EU Migration and Asylum Policies" (2011) 31(4) *Refugee Survey Quarterly* 38-66

C Mainwaring "Small States and Nonmaterial Power: Creating Crises and Shaping Migration Policies in Malta, Cyprus, and the European Union" (2014) 12(2) *J of Immigrant and Refugee Studies* 103-122

V Moreno-Lax "Seeking Asylum in the Mediterranean: Against a Fragmentary Reading of EU Member States' Obligations Accruing at Sea" (2011) 23(2) *Intl J of Refugee Law* 174-220

V Moreno-Lax "The EU Regime on Interdiction, Search and Rescue, and Disembarkation: The Frontex Guidelines for Intervention at Sea" (2010) 25(4) *Intl J of Marine and Coastal Law* 621-635

M Thomson "Migrants on the Edge of Europe: Perspectives from Malta, Cyprus and Slovenia" (Working Paper No 35, Sussex Centre for Migration Research, University of Sussex, Falmer, 2006)

Available at: <https://www.sussex.ac.uk/webteam/gateway/file.php?name=mwp35.pdf&site=252>

Discussion Questions

What are the challenges posed by heavy outward migration flows for small states?

What are the implications for sovereignty of small states whose population has entirely migrated?

What is the scope of influence by southern EU member states in regional migration policies?

Should Mediterranean EU member states be entitled to a decision-making power proportionate to the impact of migration on their territories?

11. Climate Change and Small States

This section examines how global warming and changes in the environment threaten small states. The obvious examples are small island states, whose very existence is now in doubt, but other small states also face serious problems with regard to the ecological threats now apparent as climate change occurs.

Readings

J Ashe, R Lierop and A Cherian "The role of the Alliance of Small Island States (AOSIS) in the negotiation of the United Nations Framework Convention on Climate Change (UNFCCC)" (1999) 23(3) UN Sustainable Development Journal 209-220

C Betzold "'Borrowing' Power to Influence International Negotiations: AOSIS in the Climate Change Regime 1990-1997" (2010) 30(3) Politics 131-148

A Costi and NJ Ross "The Ongoing Legal Status of Low-Lying States in the Climate-Changed Future" in P Butler and C Morris (eds) *Small States in A Legal World* (Springer, Berlin, 2017) 139-164

N Deitelhoff and L Wallbott "Beyond soft balancing: small states and coalition-building in the ICC and climate negotiations", (2012) 25(3) *Cambridge Review of Intl Affairs* 345-366

I Kelman "Difficult Decisions: Migration from Small Island Developing States Under Climate Change" (2015) 3(4) *Earth's Future* 133-142

R Leal-Arcas "Climate Migrants: Legal Options" (2012) 37 *Procedia* 86-96

JC Pernetta "Impacts of Climate Change and Sea-Level Rise on Small Island States: National and International Responses" (1992) 2(1) *Global Environmental Change* 19-31

L Yamamoto and M Esteban, "Vanishing Island States and Sovereignty" (2010) 53(1) *Ocean and Coastal Management* 1-9

Discussion questions

Should the international legal system introduce a category of "climate refugees"?

Can a state be a "state" if it has no territory?

Do you agree that the existing international processes and instruments protect vulnerable small states from the risks of climate change?

PART THREE: PRACTICAL EXERCISES

12. PRACTICAL EXERCISES

This section provides an opportunity for students to apply their knowledge to practical, real-life scenarios facing small states.

Exercise I

Considering a claim for statehood: Somaliland v Somalia

Exercise II

Legal brief for advisory opinion to ICJ on intergenerational justice and climate change

Exercise III

UN High Level Conference on Nuclear Disarmament

Exercise I: Considering a claim for statehood: Somaliland v Somalia

Background

Seth Kaplan "The Remarkable Story of Somaliland" (2008) 19 (3) Journal of Democracy 143-157
'History', <http://recognition.somalilandgov.com/history/>

Important documents

Somaliland and Somalia: The 1960 Act of Union, http://www.somalilandlaw.com/Somaliland_Act_of_Union.htm

Act of Union, January 1961

http://www.somalilandlaw.com/Act_of_Union_Law_No._5_of_31_January_1961.pdf

'The Union of Somaliland and Somalia Law', Somaliland Gazette, 5th July 1960,

http://www.somalilandlaw.com/The_Union_of_Somaliland_Somalia_Law_SL_Gazette1.pdf

Constitutional referendum 20 June 1961,

http://www.somalilandlaw.com/The_1961_Referendum_Table_1.pdf

Montevideo Convention on the Rights and Duties of States 1933, Arts 1, 3 and 4,

<https://www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf>

Cairo Resolution, 1964,

https://au.int/sites/default/files/decisions/9514-1964_ahg_res_1-24_i_e.pdf

Vienna Convention on the law of treaties, 1969,

<https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>

Constitutive Act of the African Union

https://au.int/sites/default/files/pages/32020-file-constitutiveact_en.pdf

Separate Opinion of Judge Yusuf (re: African Union and uti possidetis),

<https://www.legal-tools.org/doc/791385/pdf/>

Supplementary Reading

'The Legal case',

<http://recognition.somalilandgov.com/legal/>

'Somaliland: Time for African Union Leadership', Africa Report, No. 110, 23 May 2006.

HM Adam "Formation and recognition of new states: Somaliland in contrast to Eritrea" (1994) 21(59) Review of African Political Economy 21-38

AJ Carroll and B Rajagopal "The case for the independent statehood of Somaliland" (1992-1993) 8(2) Am University of Intl Law & Policy 653-681

A Eggers "When Is a State a State - The Case for Recognition of Somaliland" (2007) Boston College Intl & Comp Law Rev 211-222

Michael Farrell "Manufacturing Territorial Integrity with the International Court of Justice: The Somaliland/Puntland Dispute and Uti Possidetis" (2012) 11(4) Washington University Global Studies LR 817-843

RD Griffiths "Admission to the sovereignty club: the past, present, and future of the international recognition regime" (2017) 5(2) Territory, Politics, Governance 177-189

A Kreuter "Self-Determination, Sovereignty, and the Failure of States: Somaliland and the Case for Justified Secession" (2010) 19(2) Minnesota J of Intl Law 363-397

IS Spears "Reflections on Somaliland and Africa's Territorial Order" (2003) 30(95) Review of African Political Economy 89-98

Instructions

Students will be assigned into three groups.

One team will represent Somaliland; the other team will represent Somalia. Two people are assigned to each team.

The rest of the class makes up the panel of judges/arbitrators and represent the African Union.

Each team is to draft a set of submissions outlining their respective positions on the status of Somaliland. Submissions are to be presented to the panel 24 hours in advance of the oral arguments. There may be multiple rounds.

Marks will be allocated as follows:

Written Submissions: 50%; Oral argument 50%

Exercise II: Writing of a Memorial for advisory opinion to ICJ: Clarifying Future Generations' Legal Interests in Relation to the Climate Crisis

Introduction: Climate Change Agreements

In December 2015, the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) met in Paris for their 21st Meeting, informally referred to as COP21, and adopted an ambitious climate agreement (Paris Agreement) that aims to ensure that Member-States continue to reduce their greenhouse gas (GHG) emissions while providing aid to those countries who would be unable to finance this new agenda on their own. Previously, the United Nations General Assembly (UNGA) adopted the Sustainable Development Goals (SDGs) at the beginning of its 70th Session in September 2015, creating a new framework by which Member States' progress toward poverty eradication, social and economic equality, and environmental sustainability may be evaluated. More recently, the 1st Session of the Preparatory Committee established by UNGA Resolution 69/292 began discussions concerning the development of an international legally binding instrument under the United Nations Convention on the Law of the Sea (UNCLOS) on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction.

International Court of Justice

Jurisdiction

The International Court of Justice (ICJ) was created as the judicial organ of the United Nations in 1945. It is located in The Hague, Netherlands, and has 15 sitting elected judges. The Court has two main functions: to resolve legal disputes

between States, and, when requested by authorised bodies (UN organs and specialised agencies) to issue advisory opinions on legal issues.

Advisory opinions are usually on general or specific questions of international law and custom that states are either unable to or struggling to resolve between themselves, or through other channels. The decisions are not binding on any party, but are customarily accepted as law, and at the very least, afforded the highest level of deference. For example, in 1995, the ICJ issued an opinion entitled

"Legality of the Threat or Use of Nuclear Weapons" a case in which it was asked to determine Member States' legal obligation to in good faith pursue total disarmament in relation to nuclear weapons (see: <http://www.icj-cij.org/en/case/95>).

In that case, the Court decided that there was indeed such an obligation. UN Member States began to work toward nuclear non-proliferation, a process that ultimately resulted in the drafting of the Treaty on the Non-Proliferation of Nuclear Weapons, or the Non-Proliferation Treaty (NPT).

To date, no advisory opinions have been released on topics relating to climate change and, more specifically, to preventing environmental harm through acknowledging future generations' legal interests.

Procedure

The Statute of the ICJ and the Rules of Court state that when a question of international law has been referred to the ICJ, it has the right to ask for oral arguments on the issue, and all states and organisations considered to be involved parties in the matter are entitled to weigh in on the question, presenting their positions in front of the court (ICJ Statute, Ch. IV, Art. 66; ICJ Rules, Pt. IV, Art. 105.6).

After the ICJ has concluded its deliberation of the issue, its opinion is presented in open court (ICJ Statute, Ch. IV, Art. 67).

Facts

Assume that UNGA adopted a resolution on 15 January 2018, requesting an advisory opinion on the following question:

"What is the responsibility under the international law of States to address the global climate crisis for the benefit of present and future generations of humankind?"

The resolution was shortly thereafter sent to the ICJ by the Secretary-General. Upon reviewing the referral, the ICJ decided that it would invoke its right to hear oral arguments and invited all interested State parties to submit written statements

(Memorials) through regional intergovernmental organisations as an efficient way to represent the multiplicity of State interests in the proceedings. The ICJ suggested further that Memorials submitted through these regional intergovernmental organisations should specially address general principles of international law

relating to the interests of succeeding generations that pertain to the implementation of the Paris Agreement, the SDGs and UNCLOS.

Instructions

You are the representative of the independent island state of Tuvalu in the Pacific (pop 11 000) to AOSIS (Association of Small Island States). You have been asked to draft the memorial of AOSIS to the ICJ on the question.

Memorials submitted to the ICJ for consideration will have to weigh the benefits of legal precedent in the fight against the negative impacts of climate change, against the potential costs to individual States as a result of subsequent clarification of the ability to litigate non-compliance with environmental accords and agreements.

Word length: 5000 (not including references).

Exercise III: Writing of submissions for UN High Level Conference discussion

Introduction: Nuclear Non-proliferation Agreements

In 1996, the International Court of Justice (“ICJ”) issued an advisory opinion on the Legality of the Threat or Use of Nuclear Weapons through an Advisory Opinion. It was through this decision that the ICJ pronounced the existence of an obligation of states to pursue total nuclear disarmament of nuclear weapons in good faith. As a result of negotiations of member states, the Treaty on the Non-Proliferation of Nuclear Weapons, or the Non-Proliferation Treaty (NPT) came into existence. However, the extent of the obligation pertaining to nuclear weapons among states remains vague and unclear to this day.

In 2013, the UN General Assembly (“UNGA”) decided under Resolution 68/32 to convene a UN High Level Conference on Nuclear Disarmament no later than 2018 in order to support the total elimination of nuclear weapons, including through negotiations for a nuclear weapons convention. On 3 December 2016, the UNGA adopted Resolution 71/71, which called for the start of negotiations on an international treaty to prohibit and eliminate nuclear weapons. With the support of over 140 countries, it also affirmed the 2013 decision to hold a High Level Conference on Nuclear Disarmament no later than 2018 to review progress on such a treaty.

UN High Level Conferences (“UNHLC”) aim to bring about discussions on key global and political issues before the international community and gather the attention of the media, government leaders and agencies, and provide opportunities for states promote concrete goals such issues. Previous UNHLCs include the 2015 Sustainable Development Goals, the Paris Agreement and the New York Declaration on Migrants and Refugees in 2016.

Instructions

You are an international lawyer and a member of the legal team that represented the Marshall Islands in its unsuccessful challenge before the ICJ to nuclear testing in the Pacific (<http://www.icj-cij.org/en/case/160/judgments>).

You have been asked to provide the submissions of the Marshall Islands to the UNHLC, taking into account implementation of the ICJ’s 1996 Advisory Opinion (<http://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-BI.pdf>), the Nuclear Tests Cases in 1974 (<http://www.icj-cij.org/files/case-related/59/6161.pdf>) and 1995 (<http://www.icj-cij.org/en/case/97/orders>), the 2016 Marshall Islands v. UK case, and states’ obligations under the Non-Proliferation Treaty (<https://www.un.org/disarmament/wmd/nuclear/npt/>).

Participating states may use the UN Secretary General’s Five Point Proposal as reference for their submissions:

- I. All parties to the Nuclear Non-Proliferation Treaty, especially the nuclear-weapon States, should fulfil its requirement to enter into negotiations on nuclear disarmament, which could focus on either a convention or framework of agreements banning nuclear-weapons.
- II. The nuclear-weapon States could assure non-nuclear-weapon States that they will not be the subject of the use or threat of use of nuclear weapons.
- III. Existing nuclear arrangements and agreements (e.g. a ban on testing, nuclear-weapon-free zones, and strengthened safeguards) need to be accepted by States and brought into force.
- IV. The nuclear Powers could also expand the amount of information they publish about the size of their arsenals, stocks of fissile material, and specific disarmament achievements.
- V. Complementary measures are needed such as the elimination of other types of WMD; new efforts against WMD terrorism; limits on conventional arms; and new weapons bans, including of missiles and space weapons.

World Limit: 5000 (not including references)

Modification: To extend this assignment, the course leader(s) may assign students to other interested states and convene a mock UN High Level Discussion where those states’ submissions are presented and subject to discussion.

FURTHER READING

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