

LawExpress

NO. 1 BESTSELLING REVISION SERIES

STEPHEN ALLEN

INTERNATIONAL LAW

4TH EDITION

 **Pearson**

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INTERNATIONAL LAW

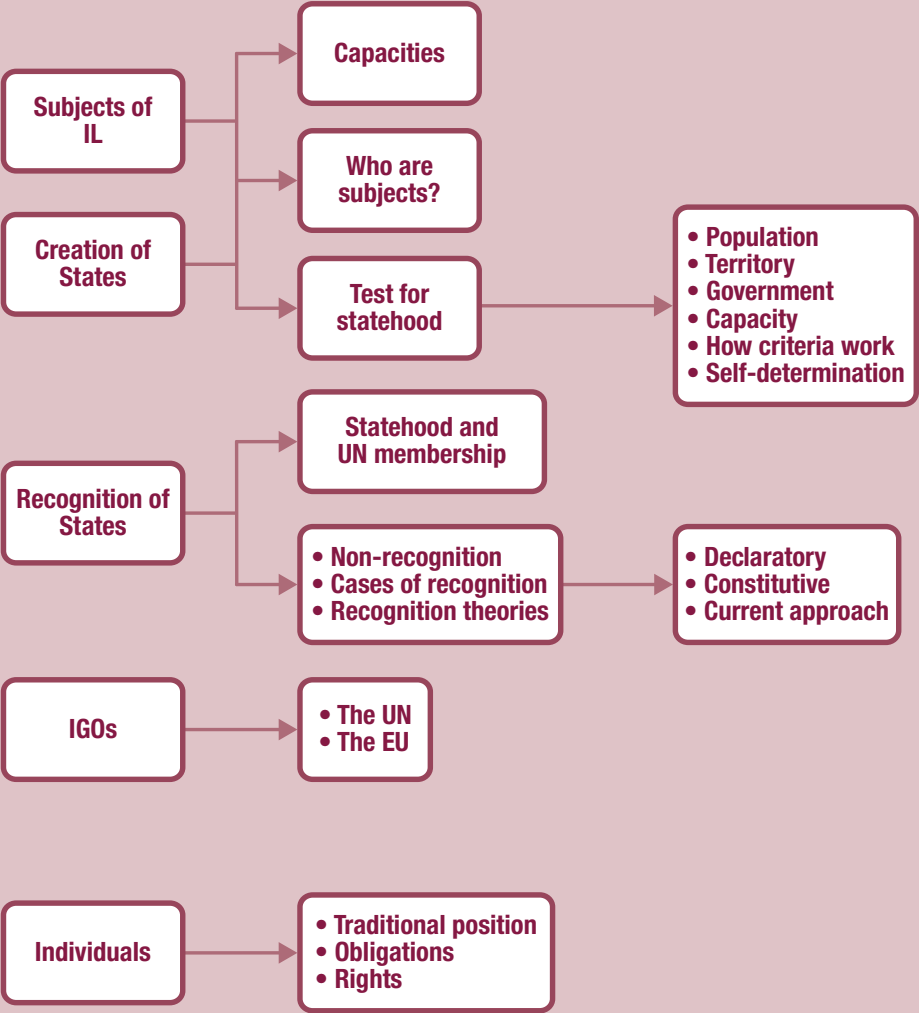
International legal personality

Revision checklist

Essential points you should know:

- ☐ Nature of international legal personality
- ☐ Subjects of international law
- ☐ Creation of States in international law
- ☐ Role of recognition in the creation of States
- ☐ International legal personality of IGOs and individuals

■ Topic map



■ Introduction

Legal personality is a concept shared by all legal systems. It is necessary for legal 'persons' to be able to enforce legal rights and for them to be subject to legal obligations. National legal systems typically recognise the legal personality of individuals – both natural and artificial persons (companies). States are the principal legal persons within the international legal system. But how do political entities achieve statehood? And do only States enjoy legal personality within this system?

ASSESSMENT ADVICE

Essay questions

Essay questions are popular in relation to particular issues such as the creation of States in international law or the doctrines concerning recognition. They often focus on the differences between legal theory and practice. They require students to have a good level of understanding of the relevant legal doctrines and the various case examples.

Problem questions

These questions typically provide a scenario in which a new State has been created. You need to understand the legal rules governing statehood and recognition. There are plenty of case examples in this area. However, the relationship between statehood and recognition is complicated and so you should take care not to confuse these doctrines with one another.

■ Sample question

Could you answer this question? Below is a typical problem question that could arise on this topic. Guidelines on answering the question are included at the end of this chapter, whilst a sample essay question and guidance on tackling it can be found on the companion website.

PROBLEM QUESTION

Arcadia, a powerful federal State, is in the process of breaking up. A region of Arcadia, known as Beta, is inhabited by ethnic Betans. Betans have long claimed that they have been oppressed by the central government of Arcadia. The Betan political leadership proclaimed itself to be the legitimate government of the new State of Beta. ►

4 INTERNATIONAL LEGAL PERSONALITY

The government of Arcadia refused to accept the existence of the Betan State. It launched a military offensive against Beta. Fifty small States have decided to recognise the State of Beta. They tabled a UN General Assembly resolution condemning what they regarded as Arcadia's invasion of Beta. The resolution claimed that such action constitutes a violation of the Betan people's right to self-determination. The resolution was controversial but it was adopted by a narrow margin. Beta is preparing to make an application to become a member of the UN. The Arcadian government has resolved to complete its military campaign to regain 'Arcadian territory'. It has announced that it now controls at least half of Betan territory. Further, the Arcadian government signals that it will use its veto power in the UN Security Council to prevent Beta from becoming a UN member. Advise the Betan government whether Beta has become a State under international law.

■ The subjects of international law

KEY DEFINITION: International legal personality

'A subject of the law is an entity capable of possessing international rights and duties and having the capacity to maintain its rights by bringing international claims.' *Reparations Case* (1949) ICJ Rep 174.

Capacities of international legal persons

International legal personality may entitle **subjects of international law** to:

- bring legal claims to enforce international legal rights;
- have the power to make international agreements/treaties;
- enjoy various immunities and privileges;
- be under certain international legal obligations.

Who are the subjects of international law?

KEY DEFINITION: Subjects of international law

'The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community ...' *Reparations Case* (1949) ICJ Rep 174.

All States possess international legal personality as a result of the principle of sovereign equality. It is often said that they possess 'original' personality. States were considered to be the only subjects of international law during the nineteenth century.

A number of IGOs also possess international legal personality for certain purposes. In addition, individuals have been recognised as having limited forms of international legal personality in certain situations (see below).

■ The creation of States in international law

International legal personality is a highly valued consequence of the achievement of statehood but how does a political entity become a State?

The test for statehood

KEY INSTRUMENT

Article 1 Montevideo Convention on the Rights and Duties of States (1933)

'The State as a person of international law should possess the following qualification:

- (a) permanent population;
- (b) defined territory;
- (c) government; and
- (d) the capacity to enter into relations with other States.'

The Montevideo Convention was a treaty concluded between member States of the Pan-American Union. However, its central provisions have acquired the status of general CIL. Article 1 is indicative of the requirements for the attainment of statehood.

Population

The notion of a permanent population does not indicate that it must be settled. Nomadic populations can count for the purpose of a claim of statehood (see the *Western Sahara Advisory Opinion* (1975) ICJ Rep 12). The important thing is that the population can demonstrate meaningful territorial ties to the political entity in question.