NOTES ON PUBLIC INTERNATIONAL LAW

CHAPTER 1
GENERAL PRINCIPLES

Nature and Scope

Public International Law – It is the body of rules and principles that are recognized as legally binding and which govern the relations of states and other entities invested with international legal personality. Formerly known as "**law of nations**" coined by Jeremy Bentham in 1789.

Three Major Parts of Public International Law

1. **Laws of Peace** – normal relations between states in the absence of war.

2. **Laws of War** – relations between hostile or belligerent states during wartime.

3. **Laws of Neutrality** – relations between a non-participant state and a participant state during wartime. This also refers to the relations among non-participating states.

Sources of Public International Law

1. International conventions
2. International custom
3. The general principles of law recognized by civilized nations. (e.g. prescription, pacta sunt servanda, and estoppel).

Distinction of Public International Law with Municipal Law

Municipal Law	Public International Law
1. Issued by a political superior for observance by those under its authority;	1. Not imposed upon but simply adopted by states as a common rule of action among themselves;
2. Consists mainly of enactments from the law-making authority of each state;	2. derived not from any particular legislation but from such sources as international customs, international conventions and the general principles of law;
3. Regulates the relations of individuals among themselves or with their own states;	3. Applies to the relations inter se of states and other international persons;
4. Violations are redressed through local administrative and judicial processes; and,	4. Questions are resolved through state-to-state transactions ranging from peaceful methods like negotiation and arbitration to the hostile arbitrament of force like reprisals and even war; and,
5. breaches generally entail only individual responsibility.	5. responsibility of infractions is usually collective in the sense that it attaches directly to the state and not to its nationals.

Public International Law in Relation to Municipal Law

In the **paquete Habana**, Justice Gray said: "the law of nations, although not specially adopted by the Constitution or any municipal act, is essentially a part of the law of the land."

Doctrine of Incorporation – the rules of international law form part of the law of the land and no further legislative action is needed to make such rules applicable in the domestic sphere. **(Sec. of Justice v. Lantion GRN 139465, Jan. 18, 2000)**

This doctrine is followed in the Philippines as embodied in Art. II, Sec. 2 of the

1987 Constitution which provides that: "The Philippines…adopts the generally accepted principles of international law as part of the law of the land…" However, no primacy is implied.

It should be presumed that municipal law is always enacted by each state with due regard for and never in defiance of the generally accepted principles of international law. **(Co Kim Chan v. Valdez Tan Keh).**

It is a settled principle of international law that a sovereign cannot be permitted to set up his own municipal law as a bar to a claim by foreign sovereign for a wrong done to the latter's subject. (**US v Guatemala**).

Constitution v. Treaty

Generally, the treaty is rejected in the local forum but is upheld by international tribunals as ademandable obligation of the signatories under the principle of pacta sunt servanda.

Pacta Sunt Servanda – international agreements must be performed in Good Faith. A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties. A state which has contracted a valid international obligation is bound to make in its legislation such modifications as may be necessary to ensure the fulfillment of the obligations undertaken.

The Philippine Constitution however contains provisions empowering the judiciary to annul treaties thereby establishing the primacy of the local law over the international agreement.

Art. X, Sec. 2(2) provides that "all cases involving the constitutionality of any treaty, executive agreement or law shall be heard and decided by the Supreme Court en banc, and no treaty, executive agreement or law may be declared unconstitutional without the concurence of ten justices."

The Constitution authorizes the nullification of a treaty not only when it conflicts with the Constitution but also when it runs counter to an act of Congress. **(Gonzales v. Hechanova)**.

Basis of Public International Law

Three theories on this matter:

1. **The Naturalist** – under this theory, there is a natural and universal principle of right and wrong, independent of any mutual intercource or compact, which is supposed to be discovered and recognized by every individual through the use of his reason and his conscience.

2. **The Positivist** – under this theory, the binding force of international law is derived from the agreement of sovereign states to be bound by it. It is not a law of subordination but of coordination.

3. **The Eclectics or Groatians** – this theory offers both the law of nature and the consent of states as the basis of international law. It contends that the system of international law is based on the "dictate of right reason" as well as "the practice of states."

Sanctions of Public International Law

Sanctions – the compulsive force of reciprocal advantage and fear of retaliation.

1. The inherent reasonableness of international law that its observance will redound to the welfare of the whole society of nations;

2. The normal habits of obedience ingrained in the nature of man as a social being;

3. To project an agreeable public image in order to maintain the goodwill and favorable regard of the rest of the family of nations;

4. The constant and reasonable fear that violations of international law might visit upon the culprit the retaliation of other states; and,

5. The machinery of the United Nations which proves to be an effective deterrent to international disputes caused by disregard of the law of nations.

Enforcement of Public International Law

States are able to enforce international law among each other through international organizations or regional groups such as the United Nations and the Organization of American States. These bodies may adopt measures as may be necessary to compel compliance with international obligations or vindicate the wrong committed.

Functions of Public International Law

1. To establish peace and order in the community of nations and to prevent the employment of force, including war, in all international relations;

2. To promote world friendship by levelling the barriers, as of color or creed;

3. To encourage and ensure greater international cooperation in the solution of certain common problems of a political, economic, cultural or humanitarian character; and,

4. To provide for the orderly management of the relations of states on the basis of the substantive rules they have agreed to observe as members of the international community.

Distinctions with Other Concepts

International morality or ethics – embodies those principles which govern the relations of states from the higher standpoint of conscience, morality, justice and humanity.

International diplomacy – relates to the objects of national or international policy and the conduct of foreign affairs or international relations.

International administrative law – that body of laws and regulations created by the action of international conferences or commissions which regulate the relations and activities of national and international agencies with respect to those material and intellectual interests which have received an authoritative universal recognition.

CHAPTER 2
THE INTERNATIONAL COMMUNITY

International Community – the body of juridical entities which are governed by the law of nations.

Composition of International community:

1. State
2. United Nations
3. the Vatican City
4. Colonies and dependencies
5. Mandates and trust territories
6. International administrative bodies
7. Belligerent communities
8. Individuals

1. States

State – a group of people living together in a definite territory under an independent government organized for political ends and capable of entering into international relations.

Some writers no loner recognized the distinction between **state** and **nation**, pointing out that these two terms are now used in an identical sense. Nevertheless, a respectable number of jurists still hold that the **state is a legal concept**, the **nation is only a racial or ethnic concept**.

Elements of A State

1. People
2. Territory
3. Government
4. Sovereignty

A. People – the inhabitants of the State.

People must be numerous enough to be self-sufficing and to defend themselves, and small enough to be easily administered and sustained. They are aggregate

of individuals of both sexes who live together as a community despite racial or cultural differences.

- Groups of people which cannot comprise a State:
  - Amazons – not of both sexes; cannot perpetuate themselves
  - Pirates – considered as outside the pale of law, treated as an enemy of all mankind; "hostis humani generis"

B. Territory – the fixed portion of the surface of the earth inhabited by the people of the State.

The size is irrelevant. **(San Marino v. China)**. But, practically, must not be too big as to be difficult to administer and defend; but must not be too small as to unable to provide for people's needs.

C. Government – the agency or instrumentality through which the will of the State is formulated, expressed and realized.

D. Sovereignty – the power to direct its own external affairs without interference or dictation from other states.

Classification of States

1. **Independent states** – having full international personality.

- Sovereignty – connotes freedom in the direction by the state in its own internal and external affairs.

- However international law is concerned only with this freedom in so far as it relates to external affairs; hence, a state which is not subject to dictation from others in this respect is known as an independent state.

2. **Dependent states** – exemplified by the suzerainty and the protectorate and are so called because they do not have full control of their external relations.

- Dependent states fall into two general categories: **the protectorate** and **the suzerainty**. However, there is no unanimity as to their basic distinctions in terms of measure of control over its external affairs.

3. **Neutralized states** – an independent state, whether it be simple or composite, may be neutralized through agreement with other states by

virtue of which the latter will guarantee its integrity and independence provided it refrains from taking any act that will involve it in war or other hostile activity except for defensive purposes.

Classification or Types of An Independent State

1. **Simple state** – one which is placed under a single and centralized government exercising power over both its internal and external affairs (e.g. Philippines and Holland).

2. **Composite state** – one which consists two or more states, each with its own separate government but bound under central authority exercising, to a greater or less degree, control over their external relations.

   Kinds or Categories of Composite States:

   a) **Real Union** – created when two or more states are merged under a unified authority so that they form a single international person through which they act as one entity (e.g. Norway and Sweden from 18154 to 1905).

   b) **Federal Union** (or a federation) – is a combination of two or more sovereign states which upon merger cease to be states, resulting in the creation of a new state with full international personality to represent them in their external relations as well as a certain degree of power over the domestic affairs and their inhabitants (e.g. German Empire under the Constitution of 1871).

   c) **Confederation** – an organization of states which retain their internal sovereignty and, to some degree, their external sovereignty, while delegating to the collective body power to represent them as a whole for certain limited and specified purposes (e.g. German states in 1866 until they eventually developed into a more closely-knit federation).

   d) **Personal Union** – comes into being when two or more independent states are brought together under the rule of the same monarch, who nevertheless does not constitute one international person for the purpose of representing any or all of them. Strictly speaking therefore, the personal union is not a composite state because no new international person is created to represent it in international relations (e.g. Belgium and the Former Congo Free State from 1885 to 1905).

2. The United Nations

Although the United Nations is not a state or a super-state but a mere organization of states, it is regarded as an international person for certain purposes.

- **It enjoys certain privileges and immunities**, such as non-suability, inviolability of its premises and archives, and exemption from taxation.

- **It can assert a diplomatic claim on behalf of its officials, and treaties may also be concluded by it** through the General Assembly, the Security Council, and the Economic and Social Council.

- **Trust territories are** supposed to be **under its residual sovereignty**.

3. The Vatican City

In 1928, Italy and the Vatican concluded the Lateran Treaty “for the purpose of assuring to the Holy See absolute and visible independence and of guaranteeing to it absolute and indisputable sovereignty in the field of international relations.”

4. Colonies and Dependencies

From the viewpoint of international law, a colony or a depndency is part and parcel of the parent state, through which all its external relations are transacted with other states.

Nevertheless, **such entities have been allowed on occasion to participate in their own right in international undertakings** and granted practically the status of a sovereign state. It is when acting **in this capacity that colonies and dependencies are considered international persons**.

5. Mandates and Trust Territories

The system of mandates was established after the first World War in order to avoid outright annexation of the underdeveloped territories taken from the defeated powers and to place their administration under some form of international supervision.

Three Kinds of Trust Territories:

1. Those held under mandate under the League of Nations;

2. Those territories detached from the defeated states after World War II; and,

3. Those voluntarily placed under the system of the states responsible for their administration.

These territories enjoy certain rights directly available to them under the United Nations Charter that vest them with a degree of international personality. They are not however sovereign.

6. Belligerent Communities

When a portion of the population rises up in arms against the legitimate government of the state, and such conflict widens and aggravates, it may become necessary to accord the rebels recognition of belligerency.

For purposes of the conflict, and pending determination of whether or not the belligerent community should be fully recognized as a state, it is treated as an international person and becomes directly subject to the laws of war and neutrality.

7. International Administrative Bodies

Certain administrative bodies created by agreement among states may be vested with international personality (e.g. International Labor Organization, World Health Organization).

Two Requisites for International Administrative Bodies to be Vested with International Personality:

1. Their purposes are mainly non-political; and that
2. They are autonomous, i.e. not subject to the control of any state.

8. Individuals

Traditional concept regards the individual only as an object of international law who can act only through the instrumentality of his own state in matters involving other states.

Of late, however, the view has grown among many writers that the individual is not merely an object but a subject of international law. One argument is that the individual is the basic unit of society, national and international, and must therefore ultimately governed by the laws of this society.

CHAPTER 3
THE UNITED NATIONS

The United Nations emerged out of the travail of World war II as symbol of man's undismayed determination to establish for all nations a rule of law that would forever banish the terrible holocaust of war in the so9lution of international disputes.

The first formal step toward the creation of the United Nations was the Moscow Declaration, signed by the representatives of China, the Soviet Union, the United Kingdom, and the United States.

The U.N. Charter

The United Nations Charter – a lengthy document consisting of 111 articles besides the preamble and the concluding provisions. It also includes the Statute of the International Court of Justice which is annexed to and made an integral part of it.

In one sense, **the Charter** maybe considered **a treaty because it derives its binding force from the agreement of the parties** to it. In another sense, it may be regarded as **a constitution** in so far **as it provides** for the organization and operations of the different organs of the United Nations and for **the adoption of any change in its provisions through formal process of amendment**.

The Charter is intended to apply not only to the members of the Organization but also to non-member states so far as may be necessary for the maintenance of international peace and security.

Amendments to the Charter shall come into force by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations.

The Preamble to the Charter

The preamble introduces the Charter and sets the common intentions that moved the original members to unite their will and efforts to achieve their common purposes.

Purposes

The purposes of the Charter are expressed in Article 1 as follows:

1. Maintain international peace and security;
2. Develop friendly relations among nations;
3. Achieve international cooperation in solving international problems;
4. Be a center for harmonizing the actions of nations in the attainment of these common ends.

Principles

The Seven Cardinal Principles (as enumerated in Article 2):

1. The Organization is based on the principle of the **sovereign equality** of all its members;
2. All Members shall **fulfill in good faith the obligations assumed** by them in accordance with the present Charter;
3. All Members shall **settle** their **international disputes by peaceful means**;
4. All Members shall **refrain** in their international relations **from the threat or use of force against the territorial integrity or political independence of any state**;
5. All Members shall **give the United Nations every assistance** in any action it takes in accordance with the present Charter;
6. The Organization shall ensure that **states which are not Members of the United Nations act in accordance with these Principles**; and,
7. **Nothing** contained in the present Charter **shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state**.

Membership

Two Kinds of members in the United Nations

1. **Original** – those which, having participated in the United Nations Conference on International Organization at San Francisco or having previously signed the Declaration by the United Nations of January 1, 1942, signed and ratified the Charter of the United Nations.

    - Interestingly, the Philippines was included as original member although it was not yet a state at the time.

2. **Elective**

In addition to the original members, other members may be admitted to the United Nations by decision of the General Assembly upon the favorable recommendation of the Security Council.

Membership Qualifications to the United Nations

1. It must be a state;
2. It must be peace-loving;
3. It must accept the obligations of the Charter;
4. It must be able to carry out these obligations; and,
5. It must be willing to carry out these obligations;

Suspension of Members

As in the case of admission, suspension is effected by two-thirds of those present and voting in General Assembly upon the favorable recommendation of at least nine members of the Security Council, including all its permanent members.

The suspension may be lifted alone by the Security Council, also by a qualified majority vote.

Nationals of the suspended member may, however, continue serving in the Secretariat and the International Court of Justice as they are regarded as international officials or civil servants acting for the Organization itself.

Since suspension affects only its rights and privileges, the member is still subject to the discharge of its obligations under the Charter.

Expulsion of Members

A member which has persistently violated the principles contained in the Charter may be expelled by two-0thirds of those present and voting in the General Assembly upon the recommendation of the Security Council by a qualified majority vote.

Withdrawal of Members

No provision on withdrawal of membership was included in the Charter because of the fear that it might encourage successive withdrawals that would weaken the Organization.

Organs of the United Nations

1. The General Assembly
2. The Security Council
3. The Economic and Social Council
4. The Trusteeship Council
5. The International Court of Justice
6. The Secretariat

A. The General Assembly

It consists of all the members of the Organization, each of which is entitled to send not more than five representatives and five alternates as well as such technical staff as it may need.

- **Functions of the General Assembly**
    - **Deliberative** - such as initiating studies and making recommendations;
    - **Supervisory** – such as receiving and considering annual and special

reports from the other organs;

- **Financial** – such as consideration and approval of budget of the Organization;

- **Elective** – such as the election of non-permanent members of the Security Council;

- **Constituent** – such as the admission of members and the amendment of the Charter.

B. The Security Council

The key organ of the United Nations of international peace and security is the Security Council.

It consists of five permanent members and ten elective members. The elective members are elected for two-year terms.

C. The Economic and Social Council

The responsibility for the promotion of international economic and social cooperation is vested in the General Assembly, and under its authority, the Economic and Social Council. Specifically these organs should exert efforts toward:

- higher standards of living, full employment, and conditions of economic and social progress and development;
- solutions of international economic, social, health and related problems, and international, cultural and educational cooperation; and,
- universal respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

D. The Trusteeship Council

It is the organ charged with the duty of assisting the Security Council and the General Assembly in the administration of the international trusteeship system.

E. The International Court of Justice

It functions in accordance with the Statute. All members of the Organization are ipso facto parties to the Statute. A non-member may become a party on conditions to be determined in each case by the General Assembly upon the

recommendation of the security Council.

The principal functions of the Court are:

- to decide contentious cases; and,
- render advisory opinions.

The jurisdiction of the Court is based on the consent of the parties as manifested under the “optional jurisdiction clause” in Article 36 of the Statute.

Advisory opinions may be given by the Court upon request of the General Assembly or the Security Council, as well as other organs of the United Nations, when authorized by the General Assembly, on legal questions arising within the scope of their activities.

F. The Secretariat

It is the chief administrative organ of the United Nations which is headed by the Secretary-General.

The Secretary-General is chosen by the General Assembly upon the recommendation of the Security Council. His term is fixed at five years by resolution of the general Assembly, and he may be re-elected.

The Secretary-General is the highest representative of the United Nations and is authorized to act in its behalf. When acting in this capacity, he is entitled to full diplomatic immunities and privileges which only the Security Council may waive.

The Secretary-General also acts as secretary in all meetings of the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council and performs such other functions as may be assigned to him by these organs.

In addition, he prepares the budget of the United Nations for submission to the General Assembly, provides technical facilities to the different organs of the Organization, and in general coordinates its vast administrative machinery.

CHAPTER 4
THE CONCEPT OF THE STATE

As the basic unit of the international community, the state is the principal subject of international law.

Creation of the State

Four Essential Elements of the State

1. People
2. Territory
3. Government
4. Sovereignty

Methods by which Status of A State is Acquired

1. Revolution
2. Unification
3. Secession
4. Assertion of independence
5. AgreementsAttainment of civilization

The Principle of State Continuity

From the moment of its creation, the state cointinues as a juristic being notwithstanding changes in its circumstances, provided only that they do not result in loss of any of its essential elements.

Extinction of the State

Nevertheless, it is error to suppose that a state is immortal. There are instances when a radical impairment or actual loss of one or more of the essential elements of the state will result in its extinction.

Succession of States

State succession takes place when one state assumes the rights and some of the obligations of another because of certain changes in the condition of the latter.

Universal Succession – when a state is annexed to another state or is totally dismembered or merges with another state to form a new state.

Partial Succession – when a portion of the territory of a state secedes or is ceded to another or when an independent state becomes a protectorate or a suzerainty or when a dependent state acquires full sovereignty.

Consequences of State Succession

- The allegiance of the inhabitants of the predecessor state in the territory affected is transferred to the successor state.

- The political laws of the former sovereign are automatically abrogated and may be restored only by a positive act on the part of the new sovereign.

- Treaties of a political and even commercial nature are also discontinued, but the successor state is bound by treaties dealing with local rights and duties.

- All rights of the predecessor state are inherited by the successor state but this is not so where the liabilities are concerned.

Succession of Governments

One government replaces another either peacefully or by violent methods. In both instances, the integrity of the state is not affected; the state continues as the same international person except only that its lawful representative is changed.

The rule is that where the new government was organized by virtue of a constitutional reform, the obligations of the replaced government are also completely assumed by the former.

Conversely, where the new government was established through violence, it may lawfully reject the purely personal or political obligations of the predecessor

government but not those contracted by it in the ordinary course of official business.

CHAPTER 5
RECOGNITION

Even if an entity has already acquired the elements of international personality, it is not for this reason alone automatically entitled to membership in the family of nations. Its admission thereto is dependent on:

- as reflective of the majority theory, the acknowledgment of its status by those already within the fold and their willingness to enter into relations with it as a subject of international law **(declaratory)**;

- as reflective of the minority theory, the the acknowledgment is mandatory and legal and may be demanded as a matter of right by any entity that can establish its possession of the four essential elements of a state **(constitutive)**.

Objects of Recognition

Recognition may be extended to:

a. **State**, which is generally held to be irrevocable and imports the recognition of its government;

b. **Government**, which may be withdrawn and does not necessarily signify the existence of a state as the government may be that of a mere colony; and,

c. **Belligerency**, which does not produce the same effects as the recognition of states and governments because the rebels are accorded international personality only in connection with the hostilities they are waging.

Kinds of Recognition

1. Express recognition – may be verbal or in writing;

2. Implied recognition – when the recognizing state enters into official intercourse with the new member by exchanging diplomatic representatives with it, etc.

The Act of Recognition is Indicative of the Following Intentions

1. To treat with the new state as such;
2. To accept the new government as having authority to represent the state;
3. To recognize in the case of insurgents that they are entitled to exercise belligerent rights.

Recognition of State

The recognition of a new state is the free act by which one or more states acknowledge the existence on a definite territoryof a human society politically organized, independent of any other existing state, and capable of observing the obligations of international law, and by which they manifest therefore their intention to consider it a member of the international community.

Recognition of Governments

The recognition of the new government of a state which has been already recognized is the free act by which one or several states acknowledge that a person or a group of persons are capable of binding the state which they claim to represent and witness their intention to enter into relations with them.

Two Kinds of Governments

1. De Jure
2. De facto

Three Kinds of De Facto Government

1. That which is established by the inhabitants who rise in revolt against and depose the legitimate regime;

2. That which is established in the course of war by the invading forces of one belligerent in the territory of other belligerent, the government of which is also displaced; and,

3. That which is established by the inhabitants of a state who secede therefrom without overthrowing its government.

Tobar or Wilson Principle – recognition shall not be extended to any government established by revolution, civil war, coup d'etat or other forms of

internal violenceuntil the freely elected representatives of the people have organized a constitutional government.

In any event, the practice of most states now is to extend recognition to a new government only if it is shown that it has control of the administrative machinery of the state with popular acquiesence and that it is willing to comply with its international obligations.

Distinctions between the two kinds of recognition

De Jure	De Facto
• Relatively permanent; • Vests title in the government to its properties abroad; • Brings about full diplomatic relations.	• Provisional; • Does not; • Limited to certain juridical relations.

Effects of Recognition of State and Governments

1. Full diplomatic relations are established except where the government recognized is de facto;

2. The recognized state or government acquired right to sue in the courts of the recognizing state.

It is error, however, to suppose that non-suability of the foreign state or government is also an effect of recognition, as this is an attribute it can claim whether or not it has been recognized by the local state. The applicable rule is the doctrine of state immunity. It has been held that to cite “a foreign sovereign in the municipal courts of another state” would be “an insult which he is entitled to resent” and would certainly “vex the peace of nations.”

3. The recognized state or government has a right to the possession of the properties of its predecessor in the territory of the recognizing state.

4. All acts of the recognized state or government are validated retroactively, preventing the recognizing state from passing upon their legality in its own

courts.

Recognition of Belligerency

A belligerency exists when the inhabitants of a state rise up in arms for the purpose of overthrowing the legitimate government.

Conditions for A Belligerent Community to Be Recognized

1. There must be an organized civil government directing the rebel forces;

2. The rebels must occupy a substantial portion of the territory of the state;

3. The conflict between the legitimate government and the rebels must be serious, making the outcome uncertain; and,

4. The rebels must be willing and able to observe the laws of war.

Consequences of Recognition of Belligerency

Upon recognition by the parents state, the belligerent community is considered a separate state for purposes of the conflict it is waging against the legitimate government. Their relations with each other will, thenceforth and for the duration of the hostilities, be governed by the laws of war, and their relations with other states will be subject to the laws of neutrality.

CHAPTER 6
THE RIGHT OF EXISTENCE AND SELF-DEFENSE

Once a state comes into being, it is invested with certain rights described as fundamental.

Fundamental Rights of A State

1. The right to national existence and national defense;
2. The right of sovereignty and independence;
3. The right of equality;
4. The right of property and jurisdiction; and,
5. The right of legation or diplomatic intercourse.

The most important of these rights is the right of existence and self-defense, because all other rights are supposed to flow or be derived from it. By virtue of this right, the state may take measures, including the use of force, as may be necessary to counteract any danger to its existence.

Requisites of Right

In Art. 51 of the Charter of the United Nations, it is provided that -

> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if any armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary for the maintenance of international peace and security. xxx"

The presence of an "armed attack" to justify the exercise of the right of the self-defense under this article suggests that forcible measures may be taken by a state only in the face of "necessity of self-defense, instant, overwhelming and leaving no choice of means and no moment for deliberation."

Regional Arrangements

Collective self-defense is recognized not only in Article 51 of the Charter of the United Nations but also in Art. VII on Regional Arrangements "... provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations (Art. 52, Sec. 1 of the Charter of

the United Nations)."

The Balance of Power

One reason for the organization of regional arrangements is to provide for the balance of power, which Vattel described as "an arrangement of affairs so that no state shall be in position to have absolute mastery and dominion over others."

The maintenance of this balance of power has in a very real way contributed to international peace although, being an "armed peace," it is far from the ideal sought in the articles of faith of the United Nations.

Aggression Defined

Definition of agression as adopted by the U.N. General Assembly on December 14, 1974:

Article 1

Aggression – is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations.

Article 3

Any of the following acts qualify as an act of agression

a. The invasion or attack by the armed forces of a state of the territory of another state;

b. bombardment by the armed forces of a state against the territory of another state;

c. The blackade of the ports or coasts of a state by the armed forces of another state;

d. An attack by the armed forces on land, sea or air forces, or marine or air fleets of another state;

e. The use of armed forces of one state in the territory of another state with the agreement of the receiving state, in contravention of the conditions provided for

in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

f. The action of the state in allowing its territory, which it has placed at the disposal of another state, to be used by that other state perpetrating an act of agression against a third state; and,

g. The sending by or on behalf of a state of armed force against another state of such gravity as to amount to the acts listed above, or its substantial involvement therein.

CHAPTER 7
THE RIGHT OF INDEPENDENCE

Sovereignty is the supreme, uncontrollable power inherent in a state by which that state is governed. It is "the supreme power of the State to command and enforce obedience, the power to which, legally speaking, all interests are practically subject and all wills subordinate.

Two Aspects of Sovereignty

1. **Internal Sovereignty** – refers to the power of the state to direct its domestic affairs, as when it establishes its government, enacts laws for observance within its territory.

2. **External Sovereignty** – signifies the freedom of the state to control its own foreign affairs, as when it concludes treaties, makes war or peace, and maintains diplomatic and commercial relations. It is often refered as ***independence***.

Nature of Independence

Independence cannot be regarded as importing absolute freedom. It only means freedom from control by any other state or group of states and not freedom from restrictions that are binding on all states forming the family of nations.

Thus, a state may not employ force or even the threat of force in its relations with other states because this is prohibited by Article 2 of the Charter of the United Nations. It may adhere to the maxim of Pacta Sunt Servanda. **The principle of mare liberum** will prevent it from arrogating to itself the exclusive use of the open seas to the detriment of other states. Under the laws of neutrality, it must acquisce in the exercise of certain belligerent rights even if this might impair its own interests or those of its nationals.

Pacta Sunt Servanda – the observance of a state to treaties with other state in good faith.

Intervention

In addition, the state must abstain from intervention. Even as it expects its independence to be respected by other states, so too must it be prepared to respect their own independence.

Intervention – an act by which a state interferes with the domestic or foreign affairs of another state or states through the employment of force or the threat of force.

The use of force is only allowed under the Charter of the United Nations when it is exercised as an act of self-defense, or when it is decreed by the Security Council as a preventive or enforcement action for the maintenance of international peace and security.

The Drago Doctrine

This doctrine was embodied in the Hague Convention of 1907 through the provision that " the Contracting Powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government by the government of another country as being due to its nationals.

This rule was, however, dissipated by the Porter Resolution.

Porter Resolution – intervention was permitted if the debtor state refused an offer to arbitrate, prevented agreement on the *compromis*, or having agreed thereto, refused to abide by the award of the arbitrator.

CHAPTER 8
THE RIGHT OF EQUALITY

In Article 2 of the Charter of the United Nations, it is announced that "the Organization is based on the principle of the sovereign equality of all its Members."

In the provision of the Montevideo Convention of 1933, "states are juridically equal, enjoy the same rights, and have equal capacity in their exercise."

Essence of Equality

In international law, equality among states does not signify parity in physical power, political influence or economic status or prestige.

The Principle of Equality – all the rights of state, regardless of their number, must be obsreved or respected by the international community in the same manner as rights of other states are observed and respected.

Accordingly, all members of the United Nations have each one vote in the General Assembly, all votes having equal weight, and are generally eligible for positions in the various organs of the United Nations. Every state has the right to the protection of its nationals, to make use of the open seas, or to acquire or dispose territory.

Under the ***rule of par in parem, non habet imperium***, even the strongest state state cannot assume jurisidction over another state, no matter how weak.

Legal Equality v. Factual Inequality

But even from the viewpoint of strictly legal rules, it is apparent that absolute equality among states is still a distant and well nigh impossible aspiration. Under the Charter of the United Nations, for example, non-procedural questions are decided by the Security Council only with the concurrence of the Big Five, any of which may defeat a pproposal through the exercise of the veto. This is true also with respect to the ratification of any proposal to amend the Charter.

But this rule of equality itself sometime poses seriouys questions of inequality. This is so because it does not take into account the realities of international life,

including the greater stakes of the more populous states in the decision of questions involving the entire community of nations. Such decisions may affect the interests, not of individual states as such, but of the whole of humanity itself without distinctions as to color, nationality or creed.

CHAPTER 9
TERRITORY

Territory – the fixed portion of the surface of the earth inhabited by the people of the state.

As previously observed, the territory must be big enough to provide for the needs of the population but should not be so extensive as to be difficult to administer or defend from external aggression.

Acquisition and Loss of Territory

Mode in the Acquisition of Territory

1. by discovery and occupation
2. by prescription
3. by cession
4. by subjugation and
5. by accretion

Mode of Losing Territory

1. by abandonment or dereliction
2. by cession
3. by subjugation
4. by revolution and
5. by natural causes

Discovery and Occupation

Discovery and occupation is an original mode of acquisitionby which territory not belonging to any state, or *terra nullius*, is placed under the sovereignty of the discovering state. The territory need not be uninhabited provided it can be established that the natives are not sufficiently civilized and can be considered as possessing not rights of sovereignty but only rights of habitation.

Like the open seas, outer space is res communis and not susceptible to discovery and occupation.

Requisites of Valid Discovery and Occupation

1. Possession, and
2. Administration

Mere possession will not suffice, as only an inchoate title of discovery is acquired by the claimant state pending compliance with the second requirement, which is the administration of the territory. Otherwise, the title will lapse and the territory will become *res nullius* again.

- "Discovery alone, without any subsequent act, cannot at the present time suffice to prove sovereignty over the Island of Palmas...." (Island of Palmas Case)

- "Besides the *animus occupandi*, the actual and not the nominal taking of possession is necessary condition of occupation. This taking of possession consists... steps to exercise exclusive authority there." (Clipperton Island Case)

Dereliction

Requisites of Valid Dereliction

1. act of withdrawal, and
2. the intention to abandon

Hence, where the forces of the state are driven away from the territory by the natives, title is not thereby necessarily forfeited, as it may be that they intend to to return with the necessary reinforcements to suppress the resistance.

If such intention is not present, the territory itself becomes *res nullius* or *terra nullius*, becoming open once again to the territorial ambitions of other states.

Prescription

There is as yet no rule in international law fixing the period of possession necessary to transfer title to the territory from the former to the subsequent sovereign.

Cession

Cession – is a method by which territory is transferred by one state to another by voluntary agreement between them.

Cession may be in the form of sale, donation, barter or exchange, and even by testamentary disposition.

Subjugation

Subjugation – is when, having been previously conquered or occupied in the course of war by the enemy, it is formally annexed to it at the end of the war.

Requisites of Valid Subjugation

1. conquest
2. annexation

Accretion

Accretion – is a mode of acquiring territory based on the principle of *accessio cedat principal*i. It is accomplished through both or natural or artificial processes.

Components of Territory

Territtory of the State Consists of the Following:

1. Terrestrial Domain
2. Maritime and Fluvial Domain
3. Aerial Domain

A. The Terrestrial Domain

Terrestrial Domain – refers to the land mass which may integrate, or dismembered, or partly bounded by water, or consists of one whole island. It may also be composed of several islands, like the Philippines and Indonesia, which are known as mid-ocean archipelagoes, as distinguished from the coastal

archipelagoes like Greece.

B. The Maritime and Fluvial Domain

Maritime and Fluvial Domain – consists off the bodies of water within the land mass and the waters adjacent to the coasts of the state up to a specified limit.

1. Rivers

Rivers may be classified into:

- national – situated completely in the territory of one state,
- multi-national – that flow through the territories of several states,
- international – that is navigable from the open sea and is open to the use of vessels from all states, and
- boundary – divides the territories of riparian states.

Thalweg Doctrine – the boundary line is laid on the river, that is, on the center, not of the river itself, but of its main channel.

Where the boundary river changes its course by a gradual and normal process, such as accretion or erosion, the dividing line follows the new course; but if the deviation is violent is abrupt, as by avulsion, the boundary line will continue to be laid on the old bed of the river, in the absence of contrary agreement.

As for the dividing line on a bridge across a boundary river, the same is laid on the middle of the bridge regardless of the location of the channel underneath, unless otherwise provided by the riparian state.

2. Bays

Bay – is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a curvature of the coasts.

An indentation shall not, however, be regarded as a bay unless its area is as large as or larger than that of a semi-circle whose diameter is a line drawn across the mouth of that indentation.

The above rules do not apply to the so-called historic bays.

3. The Territorial Sea

Territorial Sea – described as the belt of waters adjacent to the coasts of the state, excluding the internal waters in bays and gulfs, over which the state claims sovereignty and jurisdiction.

Traditionally, the breadth of the territorial sea is reckoned at three nautical miles, or a marine league, from the low-water mark.

However, many states have since extended their territorial seas, so that no uniform rule can be regarded as established at present in this regard.

4. The UN Conferences of the Law of the Sea

Three international conferences had been called so far to formulate a new law of the sea.

The first was held in 1958 at Geneva, Switzerland, and resulted in the adoption of the Convention on the Territorial Sea and the Contiguous Zone, the Convention of the High Seas, and the Convention on Fishing and the Living Resources of the High Seas, and the Convention on the Continental Shelf. It failed however to define the breadth of the territorial sea. The Philippines did not ratify it because of the absence of provisions recognizing the archipelago doctrine it was advocating.

The second conference, which was held in 1960, also at Geneva, likewise left unresolved the question on the breadth of the territorial sea.

The third conference, called in 1970 by the United Nations is still in progress.

5. The Philippine Territorial Sea

The claim of the Philippines to its territorial sea is based on historic right or title or as it is often called **the treaty limits theory**.

6. The Archipelago Doctrine

The Philippine position on the definition of its internal waters is commonly known as the archipelago doctrine. This is articulated in the second sentence of Article I of the 1987 Constitution, which follows:

"***The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein***, and all the other territories belonging to

the Philippines by historic right or legal title..."
Our position is that all these islands should be considered one integrated whole instead of being fragmented into separate units each with its own territorial sea. Otherwise, the water outside each of these territorial seas will be regarded as high seas and thus be open to all foreign vessels to the prejudice of our economy and national security.

An **archipelago** is a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic, and political entity, or which historically have been regarded as such.

Hence, in defining the internal waters of the archipelago, **straight baselines** should be ***drawn to connect appropriate points of the outermost islands without departing radically from the general direction of the coast so that the entire archipelago shall be encompassed as one whole territory.*** The waters inside these baselines shall be considered internal and thus not subject to entry by foreign vessels without the consent of the local state.

7. Basis of the Article I of the 1987 Constitution

Article I of the 1987 Constitution was based on R.A. 3046 as amended by R.A. No. 5446 declaring the Philippine territorial sea.

8. Methods of defining the Territorial Sea

Two Methods Defining the Territorial Sea

(a) **Normal baseline method** – the territorial sea is simply drawn from the low-water mark of the coast, to the breadth claimed, following its sinuosities and curvatures but excluding the the internal waters in bays and gulfs.

(b) **Straight baseline method** – straight lines are made to connect appropriate points on the coast without departing radically from its general direction.

C. The Aerial Domain

The aerial domain – the airspace above the terristrial domain and the maritime and fluvial domain of the state, to an unlimited altitude but not including the outer space.

CHAPTER 10
JURISDICTION

Jurisdiction is the authority exercised by the state over persons and things within or sometimes outside its territory, subject to certain exceptions.

General Classifications of Jurisdiction

1. Personal Jurisdiction
2. Territorial Jurisdiction

Subjects of State Jurisdiction

1. its nationals
2. the terrestrial domain
3. the maritime and fluvial domain
4. the continental shelf
5. the open seas
6. the aerial domain
7. outer space
8. other territories

Personal Jurisdiction

Personal jurisdiction – is the power exercised by the state over its nationals. It is based on the theory that a national is entitled to the protection of his state wherever he may be and is, therefore, bound to it by a duty of obedience and allegiance.

- Article 15 of the Civil Code: "laws relating to family rights and duties, or to the status, condition and legal capacity of persons, are binding upon citizens of the Philippines, even though living abroad."

- Under Article 16 of the Civil Code: "intestate and testamentary succession, both with respect to the other of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found."

- Jurisdiction to tax our citizens, even if not residing in the Philippines, is also provided for in our Internal Revenue Code for income received by them "from all sources."

Indeed, even an alien may be held subject to the laws of a state whose national interest he has violated, and notwithstanding that the offense was committed outside its territory.

- Article 2 of the Revised Penal Code, for instance, punishes any person who, whether in or outside our territory, should forge or counterfeit Philippine currency, utter such spurious securities or commit any crime against our national security or the law of the nations.

Territorial Jurisdiction

General rule: a state has jurisdiction over all persons and property within its territory.

The jurisdiction of the nation within its own territory is necessary, exclusive and absolute. It is susceptible of no limitation not imposed by itself (The Schooner Exchange v McFaddon).

Exceptions:

1. Foreign states, heads of states, diplomatic representatives, and consuls to a certain degree;

    - Foreign states and their heads are exempt because of the sovereign equality of states and on the theory that a contrary rule would disturb the peace of nations. Diplomats and consuls enjoy the exemption in order that they may have full freedom in the discharge of their official functions.

2. Foreign state property engaged in non-commercial activities;

    - By fiction of law, public vessels are regarded as extensions of the territory of the foreign state.

3. Acts of state;

- Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory.

4. Foreign merchant vessels exercising the rights of innocent passage or arrival under stress;

    - **Innocent passage** – navigation through the territorial sea of the state for the purpose of traversing that sea without entering internal waters, or of proceeding to internal waters, as long as it is not prejudicial to the peace, good order or security of the coastal state.

    - **Arrival under stress** – entrance to another state due to lack of provisions, unseawothiness of the vessel, inclement weather, or other force majeure, like pursuit by pirates.

5. Foreign armies passing through or stationed in its territory with its permission;

6. Such other persons or property over which it may, by agreement, waive jurisdiction.

Land Jurisdiction

Everything found within the territorial domain of the state is under its jurisdiction. Nationals and aliens, including non-residents, are bound by its laws, and no process from a foreign government can take effect for or against them within the territory of the local state without its permission.

Also, as against all other states, the local state has exclusive title to all property within its territory which it may own in its own corporate capacity or regulate when under private ownership through its police power for forcibly acquire through the power of eminent domain. Such property is also subject to its taxing power.

Maritime and Fluvial Jurisdiction

General rule: the internal waters of a state are assimilated to the land mass and subjected to the same degree of jurisdiction exercised over the terrestrial

domain.

Civil, criminal and administrative jurisdiction is exercised by the flag state over its public vessels wherever they may be, provided they are not engaged in commerce.

Foreign merchant vessels docked in a local port or bay, jurisdiction is exercised over them by the coastal state in civil matters.

Criminal jurisdiction is determined according to either the English rule or the French Rule.

English rule – the coastal state shall have jurisdiction over all offenses committed on board, except only where they do not compromise the peace of the port.

French rule – the flag state shall have jurisdiction over all offenses committed on board such vessel, except only where they compromise the peace of the port.

The Contiguous Zone

Contiguous Zone – a protective jurisdiction extending beyond the territorial sea, but not more than 12 miles from the coast of the state. It is necessary to:

1. prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea; and,

2. punish infringement of the above regulations within its territory or territorial sea.

The Continental Shelf

Continental Shelf – refers to a) the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters, or beyond that limit, to where the depth of superjacent waters admits the of the exploitation of the natural resources of the said areas; and, b) to the seabed and subsoil of similar areas adjacent to the coasts of islands.

The coastal state has the sovereign right to explore the continental shelf and to exploit its natural resources and for this purpose it may erect on it such installations and equipment as may be necessary.

But this right shall not affect the legal nature of the superjacent waters as open seas or of the airspace above such waters and their use as such by other states shall not be impaired or disturbed.

The Patrimonial Sea

The Exclusive Economic Zone (EEZ) or Patrimonial Sea – extends 200 nautical miles from the coast or the baselines. All living and non-living resources found therein are claimed to belong exclusively to the coastal state.

However, it has not yet been recognized as a rule of international law.

The Open Seas

General rule: The open seas or the high seas are *res communis* and available to the use of all states for purposes of navigation, flying over them, laying submarine cables or fishing.

Exceptions:

1. **Over its vessels.** The flag state has jurisdiction over its public vessels at all times, whether they be in its own territory, in the territory of other states or on the open seas. Merchant vessels, on the other hand, are under its jurisdiction when they are within its territory, when jurisdiction is waived or cannot be exercised by the territorial sovereign, or when such vessels are on the open seas.

2. **Over pirates.** Pirates are enemies of all mankind and may be captured on the open seas by the vessels of any state, to whose territory they may be brought for trial and punishment. Where a pirate vessel attempts to escape into territorial waters of another state, the pursuing vessel may continue the chase but is under the obligation of turning over the pirates, when captured, to the authorities of the coastal state.

3. **In the exercise of the right of visit and search.** Under the laws of neutrality, the public vessels or aircraft of a belligerent state may visit and search any neutral merchant vessel on the open seas and capture it or its cargo if it is found or suspected to be engaged or to have engaged in activities favorable to the other belligerent.

4. **Under the doctrine of hot pursuit.** If an offense is committed by a foreign merchant vessel within the territorial waters of the coastal state, its own vessels may pursue the offending vessel into the open seas and upon capture bring it back to its territory. The pursuit must be continuous or unabated; otherwise, it will be deemed to have "cooled" and can no longer be resumed.

Aerial Jurisdiction

There are no traditional rules in international law regarding the rights of the subjacent state to its aerial domain.

Nonetheless, it may be said that the consensus appears to be that the local state has jurisdiction over the airspace above it to an unlimited height, or at the most up to where outer space begins. Accordingly, and as a corollary to this rule, no foreign aircraft, civil or military, may pass through the aerial domain of a state without its consent.

General rule: Under the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, it is the state of registration of the aircraft that has jurisdiction over offenses and acts committed on board while it is in flight or over the high seas or any other area outside the territory of any state.

Exceptions: Other state may exercise jurisdiction when---

1. The offense has effect on the territory of such state;

2. The offense has been committed by or against a national or permanent resident of such state;

3. The offense is against the security of such state;

4. The offense consists of a breach of any rules or regulations relating to the flight or maneuver of aircraft in force in such state; and,

5. The exercise of jurisdiction is necessary to ensure the observance of any obligation of such state under a multilateral intenational agreement.