Video Transcript

States as Subjects of International Law – Gleider Hernández

Hello. Welcome to our discussion of Chapter 5 of my book, *International Law*. Chapter 5 concentrates on the most important actors in the international legal system: they're called states.

As you probably saw from the previous videos, and you would have seen in reading chapters 1 through 4, states are the dominant (if not exclusively important actors) in a traditional conception of international law. And that's for a number of reasons: the most important reason is that they possess what is called international legal personality and that connotes a number of things in turn. It connotes both the formal capacity to enter into rights and obligations (it connotes effectively the nature of who you are), but also it brings with it capacity, and that capacity is substantive. It concerns what you as a legal person can and cannot do. So in Chapter 1 we discussed how international law was centred around the idea of the state as a sovereign entity that could not be interfered with by other actors. That very much is at the heart of how we understand the state today, and that is why states remain, what I fondly, or frequently, refer to as the plenary legal subjects. They are the subjects that hold the full complement of rights and obligations. They can create other legal persons, which they do, and which we'll discuss in the next chapter on international organisations, and they can endow rights and obligations on themselves, on each other and on any legal persons that they might choose to create. So states are very important indeed.

One of the important questions, in line with this, is what is a state, and how do we recognise a state when we see it? Well (and going back to Chapter 2 where we talked about how sometimes a treaty can become evidence of customary law), there is a convention, a treaty that's called the Montevideo Convention which was signed in 1933, primarily between Latin American states. However, the definition in that treaty of a ‘state’ has become recognised through practice, through the views of states over time, as being evidence of customary international law. And it poses four criteria for a state that are primarily objective and based in fact. And those are that a state must possess a defined territory, that a state must hold, or have jurisdiction over, a permanent population, thirdly, that that territory and control over the population be exercised by what is called an ‘effective government’, and finally (and this criterion departs from the other ones by being

somewhat more dependent on recognition by other states), is that a state must have the capacity to enter into legal relations with other states.

So, one example of that fourth criterion being put into practice was the example of Tibet, which claimed independence as an independent entity from the Chinese empire for about 30 years, until the end of World War II. However, Tibet was an entity that refused to enter into any legal relations with other states. It exchanged no ambassadors, it exchanged no legations, it signed no treaties. It was known as the ‘Hermit Kingdom’. That lack of exercise of legal relations with other states meant that when it was taken over by China, which had always claimed sovereignty over that (which is a different and sensitive political question, to be sure), but the fact is that, because it had never intended to exercise legal relations with other states, it would have failed on the Montevideo criteria and, as such, it could be regarded as never having claimed its independent statehood in the way that we understand it in today’s world.

So moving away from the sensitive politics of that, I'd like to discuss two possibly emerging criteria for statehood: one of them is that a state can only be constituted when its people have chosen to exercise their self-determination; and the second one is when that entity that aspires towards statehood has made a commitment towards human rights and democracy. These criteria can only be said to be emerging or contested. And various examples and practice are discussed within the main body of the text itself of the chapter. The prominent example is the dissolution of Yugoslavia into six constituent republics that all became set sovereign states over the decade from about 1992 to 2005. And there you saw some very interesting debates about whether a state must, in addition to controlling its population, its territory, and having an effective government, also have a commitment to human rights and democracy. And those remain contested, those remain up for debate, and that's very important to remember.

And finally, this chapter discusses something that is called the ‘recognition of governments’: a practice where we acknowledge that the state already exists, but where there's been a change of government perhaps to undemocratic or non-constitutional means, and where the new government is seeking recognition. In fact, after the finalisation of the text of this book, but just before I filmed this brief lecture, there was a claim for a new government in Venezuela, which is an unfolding situation as we speak. And in that situation, the United States is already claimed to recognise the new government of Guiado over that of Nicolas Maduro, and as the situation unfolds we will have to see the reaction of other states because the recognition of governments can be an equally important

practice in deciding who is the legitimate government over a given state and over that state's population.

Thank you.