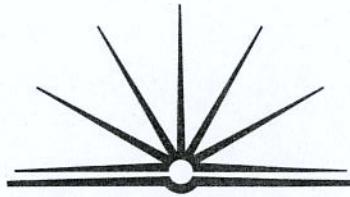


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2009

**HIGHER SCHOOL CERTIFICATE
EXAMINATION**

Examination

LEGAL STUDIES

8

WRITING BOOKLET

Section	Part	Question Number
III		25

Date

4th November 2009

Number of booklets used for this question

1

b

Instructions

- Write your Centre Number and Student Number at the top of this page and of each page that you use.
- In the boxes provided write the name and date of this examination, and the number(s) of the question(s) attempted in this booklet.
- If you have not attempted the question, you must still hand in the Writing Booklet, with the words 'NOT ATTEMPTED' written clearly on the front cover.
- Write the number of each question or part in the margin at the beginning of each answer.
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- Write on the ruled pages only. You may use the unruled pages for rough work.
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NOTES

- Monism / Dualism ✓✓
- State sovereignty
 - Peace of Westphalia
 - Montevideo
- Security Council reform

25b) In many ways, the actions of nation states limit the effectiveness of legal methods for achieving world order. The doctrine of state sovereignty, as outlined in documents such as the 1933 Montevideo Convention, allows states to act in ways contrary to the wishes of the international community and abstract world order.

The doctrine of state sovereignty developed during the 18th century, particularly through events such as the Peace of Westphalia. Initially, agreement on the doctrine led to the reduction of war due to acceptance of each nation's independence. However, over the years the notion of sovereignty has shifted from monarchies to the people, and democratic ideals have become the norm in the Western world. As the concept of inalienable human rights began to gather wider acceptance

through documents such as the French Declaration of the Rights of Man and the US Declaration of Independence, Constitution and Bill of Rights, the concept of world order changed with it. ~~Post World War I~~ Following World War I, it has become accepted that nations should cooperate to achieve world order and protect human rights.

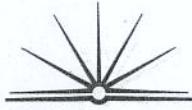
State sovereignty now is more of an obstruction to world order. International actions to prevent conflict and enforce human rights, such as United Nations missions, are often declined as states refuse to cooperate. The UN often relies on 'host state' cooperation for peacekeeping missions under Chapter VI of the ON Charter which deals with 'pacific settlement of disputes' rather than peace enforcement action under Chapter VII of the Charter. This means that governments and parties must voluntarily admit the peacekeepers. If the UN has to resort to Chapter VII action, many states become

wary of contributing troops, particularly after disastrous peace enforcement missions such as UNOSOM II, where dozens of UN soldiers were killed in battle. If the barriers of state sovereignty were removed, deployment of peace missions would be quicker and more effective.

The application and enforcement of international law (through international courts) is particularly affected by the doctrine of state sovereignty. The world's most important international judicial bodies, the UN's International Court of Justice (ICJ), and the non-UN International Criminal Court (ICC) both rely on states voluntarily accepting their jurisdiction. ~~Even~~ States often ignore ICJ rulings, e.g. Australia v. France (the Nuclear Tests case), and directly, blatantly violate international law. However, with no possible enforcement other than sanctions and military action, the UN is normally powerless to intervene. The reliance on voluntary acceptance of ICJ jurisdiction

has greatly hindered the development of international law. Fortunately, cases such as Benin v. Niger (a border dispute) have shown that when countries commit to using the law, it provides a good method of non-violent dispute resolution.

Beyond transnational disputes, international law such as the ICCPR, ICESCR and Convention on the Rights of the Child provide for human rights that need domestic enforcement. State sovereignty means that each country can choose whether they enforce treaties domestically. 'Monist' countries view 'treaties... as the supreme Law of the Land' (US Constitution), allowing citizens to directly have international law enforced through national courts. 'Dualist' systems, including Australia and Commonwealth countries require additional enactment of domestic legislation, leading to cases such as Al-Kateb v Godwin, where international and Toonen v. Australia.



law has been allegedly been broken and domestic courts have no power to intervene. This is another way in which state sovereignty obstructs the achievement of world order through International law.

~~Drafting~~ The emergence of strong regional organisations, particularly the European Union (EU) is arguably a sign that the notion of state sovereignty is beginning to breakdown. The EU, in particular, has a strong, directly elected legislative body which can pass binding directives. The EU also has a full executive and judicial structure, and is building defence structures such as the EU Battlegroup program and supporting the EUFOR rapid response team. While all EU programs are still voluntary, it is arguable that it represents a fundamental shift away from state sovereignty, a fact recognised by British domestic courts



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in the 'Metric Martyrs' case where it was held that Britain's EU implementation laws had a species 'constitutional' status. The increasing role played by the EU and other regional organisations such as the African Union is shifting power towards international organisations and international law.

The real obstacle to reform of the state sovereignty doctrine, the United Nations (in particular the Security Council) and the enforcement of international law is the desire for political power of some national leaders, and the inability to agree on key issues regarding human rights, trade and commerce, and other world problems. The solution to the ~~problems~~ barriers to world order and enforcement of international law will not come quickly but rather gradually, as populations and governments realise that international cooperation is needed to solve the problems faced by the world.