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The Right of self-determination in Antilia: from independence referendum to international recognition

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Abstract

This article analyzes various legal aspects related to the sovereignty, self-determination, and international legal processes involving Antilia, Caladon, and Goron, focusing on the principles of territorial integrity and self-determination under international law. Antilia's claim to statehood is evaluated based on the Montevideo Convention, demonstrating that it meets the criteria of a permanent population, defined territory, established government, and international recognition. The article also discusses Caladon's claim to territorial integrity and its opposition to Antilia's independence, arguing that Caladon's rejection of Antilia's referendum is consistent with the principle of territorial integrity under international law. Furthermore, Goron's intervention in Antilia is assessed in light of the responsibility to protect principle and the potential violation of Article 2(4) of the UN Charter. The article also explores jurisdictional issues related to international crimes committed by Avi Jostein Sen, with a focus on the principles of universal jurisdiction and sovereign immunity. Finally, the article addresses the enforceability of arbitration clauses in international contracts, using a dispute between companies G and S as a case study, highlighting the application of the New York Convention and the Australian International Arbitration Act.

Keywords: Sovereignty, Self-determination, Arbitration.

To decide whether Antilia is a state, the Antilia should satisfy the elements of a state. According to Article I of the Montevideo Convention on the Rights and Duties of States outlines four essential qualifications for statehood under international law: a permanent population, a defined territory, an established government, and the capacity to engage in relations with other states. According to Article I of the Montevideo Convention on the Rights and Duties of States outlines four essential qualifications for statehood under international law: a permanent population, a defined territory, an established government, and the capacity to engage in relations with other states.¹

¹ Article I of the Montevideo Convention on Rights and Duties of States provides

In this case, Antilia has a stable permanent population, mainly of Antilies and can demonstrate Antilia's stable permanent population through the adoption of demographic data, participation rates in elections and referendums, etc.; a defined territory, facts in the title Antilia has a stable territory, as demonstrated by the referendum that confirmed its independence, maintained internal stability, gained international recognition, effectively defended its borders and managed its resources; a parliamentary system that can organise referendums, demonstrating its political function. It is recognised by several countries and has established international relations, including a gas agreement and military support from Goron (see A/HRC/13/63/Add.1, para. 6). It is recognized by several countries and has established international relations, including a gas agreement and military support from Goron.

Antilia therefore meets the national criteria set out in the Montevideo Convention. Therefore, from a legal point of view, Antilia can be considered a State. Therefore, from a legal point of view, Antilia can be considered a State.

The Aaland Islands Case outlines the criteria for statehood: a stable government, defined territory, and independent diplomatic capacity. While the case focuses on Finland, these criteria also apply to Antilia. Antilia's effective government and parliament align with the Aaland Case's statehood requirements. Antilia's effective government and parliament align with the Aaland Case's statehood requirements.²

- Caladon's claim to the integrity of its sovereignty is well founded.

Assessing Caladon's claim to sovereign integrity requires reliance on the principle of territorial integrity in international law, as well as the principle of the right of peoples to self-determination. According to United Nations General Assembly Resolution 1514 :The inalienable right of all peoples to self-determination, which advocates an end to colonialism, is essential to assessing the sovereign integrity of Caladon. Caladon's sovereign integrity is crucial as it clearly states that the sovereignty and territorial integrity of states should be respected³ United Nations Charter: The principle of the sovereignty and territorial integrity of states in Article 2(4) of

² Kirchner, Stefan. "Aaland Islands Case." *Global Encyclopedia of Territorial Rights*. Cham: Springer International Publishing, 2022. 1-8.

³ United Nations General Assembly Resolution 1514

the Charter of the United Nations is an important legal basis, and any diminution of the unity and territorial integrity of a state is incompatible with the purposes and principles of the United Nations. 4and human rights and self-determination :Under international human rights law, all peoples have the right to determine their own political status and to freely pursue their economic, social and cultural development. These rights support Caladon's claim of sovereignty.⁵

In this case Caladon never recognised the result of Antilia's independence referendum, arguing that it lacked legitimacy. According to the principle of territorial integrity in international law, secession without the consent of the central government is null and void, and Caladon considered Antilia's application for independence to be a violation of its national sovereignty and territorial integrity. This is consistent with what is stated in Article 2(4) of the UN Charter⁶ . Caladon's claim to resources within its territory demonstrates its attempt to maintain effective control over the entire territory. This is consistent with the principles of state sovereignty and territorial integrity. And while supporting Antilia's right to self-determination, Caladon's unauthorised referendum and declaration of independence violated the principle of territorial integrity as emphasised in the UN Charter and the relevant jurisprudence of the International Court of Justice.

- Goron's support for Antilia's right to self-determination is legally sound.

To assess whether Goron's support for Antilia's right to self-determination has a legal basis, one needs to rely on the principles of international law on self-determination. According to Articles 1 and 55 of the Charter of the United Nations: "At the most recent election it held its own referendum, with an overwhelming majority of the population supporting independence. At the most recent election it held its own referendum, with an overwhelming majority of the population supporting independence."⁷ Declaration on International Human Rights Law, article 1 "Its population is dominated by the Antilies ethnic group, with some minority populations that generally

⁴ United Nations Charter

⁵ Title of Document, GA Res Number, UN GAOR, Session Number sess, Meeting Number plen mtg, UN Doc Number (Date) article.

⁶ United Nations Charter art 2(4).

⁷ United Nations Charter art 55.

live peacefully. Its population is dominated by the Antilies ethnic group, with some minority populations that generally live peacefully in the territory."⁸

The overwhelming popular support for Antilia's referendum in this case demonstrates that its quest for independence is consistent with the principles of self-determination and the promotion of human rights enshrined in the Charter of the United Nations. Moreover, Antilia's predominantly ethnic composition, reflecting the uniqueness of its culture and identity, is consistent with the right of peoples to self-determination as emphasised in the Declaration on International Human Rights Law, and supports Antilia's right to pursue independence as a distinct people.

- Whether Goron's intervention violated Article 2(4) of the UN Charter .

If the international community agrees that Arcadia's actions constituted serious international crimes and that Goron's intervention was necessary and justified as a humanitarian action, the intervention may be deemed lawful. However, under Article 2(4) of the United Nations Charter, any use of force by Goron, even for humanitarian reasons, could be seen as a violation unless authorized by the UN. Goron can argue their intervention was for humanitarian relief, meeting the conditions for such action under the International Covenant on Civil and Political Rights and Chapter VII of the UN Charter. The Arcadian government is accused of severe war crimes and crimes against humanity, suggesting a failure to protect its Goromo community, thus justifying Goron's intervention under the responsibility to protect (R2P) principle.

- According to several jurisdictional principles of international law, the Gölen Court could assert jurisdiction over Avi Jostein Sen and his alleged offences.

Avi Jostein Sen and his Armed Revolutionary Council (ARC) are accused of genocide, crimes against humanity and war crimes. The gravity and international nature of these crimes support Goren's reliance on the principle of universal jurisdiction, which allows States to assert jurisdiction over serious international crimes regardless of where they were committed or the nationality of the accused or victims. This principle is commonly applied to the prosecution of Avi for serious crimes such as genocide, war crimes and crimes against humanity.⁹ The actions of Avi and his forces have

⁸ Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) art 1.

⁹Criminal Code Act 1995 (Cth) sch ('Criminal Code') s 268.117.

had a direct and significant impact on the national security and social stability of the Golan. The Golan can claim that its national interests are threatened and thus prosecute Avi on the basis of the Protective Principle: which allows a State to assert jurisdiction over acts that threaten its national security, integrity or vital interests.¹⁰

- Avi Jostein Sen does not enjoy sovereign immunity

To determine whether Avi Jostein Sen does not enjoy sovereign immunity, the elements of sovereign immunity must not be satisfied. According to *Sovereign Immunity for Current and Former State Officials*: In international law, sitting Heads of State, Heads of Government and Ministers for Foreign Affairs generally enjoy sovereign immunity. However, this immunity does not apply to serious international crimes such as genocide, war crimes and crimes against humanity. ¹¹and *UN Convention on Jurisdictional Immunities of States and Their Property*: This convention sets out the scope of sovereign immunity and its limitations, particularly in relation to international crimes¹² .

In this case Avi Jostein Sen is the former Minister of Defence of Arcadia, and his crimes occurred while he was in that position. Although as Minister of Defence he enjoyed some immunity during his tenure, this immunity did not apply to the serious international crimes of genocide and war crimes with which he was charged. And while Arcadia may claim that Avi Jostein Sen enjoys sovereign immunity as a former Minister of Defence, the *United Nations Convention on Jurisdictional Immunities* suggests that such immunity is limited in relation to serious international crimes, and that Avi Jostein Sen's acts, which involve genocide, war crimes and crimes against humanity, go beyond the scope of immunity provided for in the Convention.

- Arcadia's submission on the jurisdiction of the International Court of Justice (ICJ) can be assessed in three main areas: jurisdictional issues, sovereign immunity, and timeliness.

To assess issues of jurisdiction, sovereign immunity, and timeliness, according to *Jurisdiction of the International Court of Justice*: Article 36 of the ICJ Statute establishes the jurisdiction of the ICJ.

¹⁰ Title of the Act Year (Jurisdiction) section.

¹¹ *Immunity for Current and Former State Officials*

¹² *UN Convention on Jurisdictional Immunities of States and Their Property*

Specifically, the jurisdiction of the ICJ is usually based on the consent of the state, possibly through a treaty, a special agreement, or a declaration of automatic acceptance of jurisdiction¹³ Sovereign Immunity: States and their high-ranking officials usually enjoy sovereign immunity in international law. However, this immunity may be limited in respect of serious international crimes such as genocide, war crimes and crimes against humanity¹⁴ . and Non-retroactivity of Criminal Law: According to Article 15 of the ICCPR¹⁵ and Article 22 of the Rome Statute, criminal law is in principle not retroactive. This means that criminal law cannot be applied retroactively after the fact if an act was not considered a crime at the time it was committed¹⁶ .

In this case, Arcadia challenged the jurisdiction of the International Court of Justice on the grounds that it had not signed any declaration accepting the compulsory jurisdiction of the International Court of Justice and had not consented to the Court's jurisdiction in any relevant treaty. Arcadia claimed that the prosecution of former Defence Minister Avi Jostein Sen was a violation of its sovereign immunity. This claim is based on the fact that States and their high-ranking officials enjoy sovereign immunity in the exercise of their functions. However, this immunity is limited when serious international crimes are involved. Arcadia also claimed that most of the alleged offences had not been recognised as crimes under international law at the time they were committed and therefore should not be applied retroactively.

- The determination of Arcadia's submission as to whether an alleged offence was not internationally recognised as an indictable offence at the time it was committed depends on whether the conditions for it to be internationally recognised as an indictable offence are met. According to Article 15 of the International Covenant on Civil and Political Rights (ICCPR)¹⁷ and Article 22 of the Rome Statute, criminal law is not retroactive unless the act, at the time it was committed, constituted an offence under Evolution of Customary and Codified International Law: Many international crimes, such as genocide, war crimes and crimes against humanity, were recognised in customary international law long before they were expressly provided for in codified law.¹⁸

¹³ International Court of Justice Statute art 36.

¹⁴ Sovereign Immunity

¹⁵ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 15.

¹⁶ Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) art 22.

¹⁷ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 15.

¹⁸ Evolution of Customary and Codified International Law

In this case, Arcadia claimed that the alleged crimes were not recognised as crimes under international law at the time they were committed and therefore should not be applied retroactively. And although Arcadia claims that the crimes were not recognised as indictable offences under international law at the time they were committed, in reality, many serious international crimes, such as genocide, war crimes and crimes against humanity, have long been recognised under customary international law. Arcadia's claim may ignore the existence and development of these crimes in customary international law.

In sum, the International Court of Justice might find that these alleged offences were already recognised in international law at the time they were committed, thus limiting the application of Arcadia's non-retroactivity claim.

- As the legal representative of S Corporation, I will argue for the validity of the contract and its arbitration clause, which specifies that disputes should be resolved by the Singapore International Arbitration Centre (SIAC). I will request the Australian court to dismiss G Corporation's claim and refer the dispute to arbitration. To support this, I will cite the 1958 New York Convention and Australia's International Arbitration Act, ensuring the enforcement of the arbitration clause.

According to article II, paragraph 1, of the New York Convention: This provision states that Contracting States shall recognise written arbitration agreements. This suggests that a contract signed by both parties containing an arbitration clause should be considered valid.¹⁹ The contract between company G and company S expressly contained an arbitration clause stating that all disputes should be submitted to arbitration at the Singapore International Arbitration Centre (SIAC). According to Article II(3) NYC: This provision states that where a valid arbitration agreement exists, the court shall refer disputes to arbitration unless the agreement is found to be invalid, unenforceable or unenforceable²⁰ Company G sued Company S in the Australian courts claiming that Company S was in breach of contract and that the contract was null and void. According to Section 16 of the Australian International Arbitration Act: the arbitration clause shall

¹⁹ New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature 10 June 1958, 330 UNTS 38 (entered into force 7 June 1959) art II(1).

²⁰ New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature 10 June 1958, 330 UNTS 38 (entered into force 7 June 1959) art II(3).

be deemed to be independent of the other terms of the contract and shall remain in force even if the contract is alleged to be void. Even though G claimed that S had breached the contract, the arbitration clause remained independent.²¹

I would, for the above reasons, request that the Australian court dismiss G's action and enforce the arbitration clause in the contract between the parties by referring the dispute to the SIAC arbitral tribunal.

On the basis of the above arguments, I am of the view that the Australian court would have enforced the arbitration clause by dismissing G's action and directing that the dispute be referred to the Singapore International Arbitration Centre (SIAC) for arbitration.

Pursuant to article II, paragraph 1, of the New York Convention, company G and company S expressly agreed in the contract to submit all disputes to arbitration at the Singapore International Arbitration Centre (SIAC). ²²The text of the contract should be recognised as a written arbitration agreement. Pursuant to Article II(3) NYC and Section 16 of the Australian International Arbitration Act: the arbitration clause stood alone and was valid even though G claimed that S had breached the contract. The arbitration clause was separate from the other terms of the main contract and remained valid even if the rest of the contract was alleged to be invalid²³ . Pursuant to Section 16 of the Australian International Arbitration Act. Under the Kompetenz-Kompetenz principle, SIAC was entitled to determine its own jurisdiction, including any objections to the validity of the contract and the enforcement of the arbitration clause.

The first should be based on article II, paragraphs 1 and 2, of the New York Convention: an arbitration agreement is an agreement in writing by the parties to submit to arbitration for the settlement of disputes between them, including disputes arising out of any contractual or other legal relationship. the contract between company G and company S expressly provided for an arbitration clause and designated the Singapore International Arbitration Centre (SIAC) as the place of arbitration. The arbitration clause was therefore legally effective. and Article II, paragraph 3, of

²¹ International Arbitration Act 1974 (Cth) s 16.

²² New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature 10 June 1958, 330 UNTS 38 (entered into force 7 June 1959) art II(1).

²³ New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, opened for signature 10 June 1958, 330 UNTS 38 (entered into force 7 June 1959) art II(3).

the New York Convention: The courts of any Contracting State, when faced with an arbitration agreement, shall, at the request of the parties, recognise and give effect to the agreement unless it is found to be invalid, unenforceable or incapable of being carried out. Accordingly, the Australian court should have recognised and enforced the arbitration clause under the Convention when it received S's request, rather than proceeding with the case.

As a second step, under Article III of the New York Convention, each Contracting State shall recognise the arbitral award as binding and enforce it in accordance with its domestic rules of procedure . So in Australia, under its domestic International Arbitration Act, it is possible to apply to the court for recognition and enforcement of the arbitral award, and if G refuses to pay without justifiable reasons, the court has the right to take measures to enforce the award, including freezing G's assets or enforcing property to pay compensation. And the legality and validity of the arbitration clause in the contract was confirmed under the International Arbitration Act 1974 .