

**Open book Exam Public International Law**  
**27 November 2020**

a.Univ.-Prof. Dr.  
**Sigmar Stadlmeier, LL.M.**  
Head of the Institute of  
Public International Law,  
Air Law and  
International Relations

**Part I: Knowledge Test (free answer)**

Art 9 (1) B-VG in German reads: “Die allgemein anerkannten Regeln des Völkerrechts gelten als Bestandteile des Bundesrechts.“ **Discuss** the meaning of this provision.

**Part II: Legal Problem**

The *Banana Canal*, built from 1990 to 1998 by a British company (which went bankrupt when the canal was completed), is a waterway which runs across the territory of the *Republic of Banana* and serves as a maritime transit route between the American Ocean and the Absurdian Ocean. The 1995 *Treaty of Banana* (a multilateral treaty between some 50 states) entered into force in 1998 when the canal was opened and provides *inter alia*:

THE HIGH CONTRACTING PARTIES,

*Convinced* that free trade promotes general welfare and contributes to maintaining peace and security;

*Mindful* of their obligations under the UN Charter and under the UN Convention on the Law of the Sea;

*Determined* to contribute to fighting climate change by shortening naval transit routes, thereby reducing emissions of carbon dioxide;

Have agreed as follows:

**Article 1:** Ships and other naval craft of the High Contracting Parties shall enjoy free passage through the Banana Canal.

**Article 2:** The Banana Canal shall be administered by the Republic of Banana. Any traffic regulations shall be applicable to all ships passing the canal without any discrimination on grounds of nationality.

(...)

**Article 12:** Any dispute between any two parties arising under this Treaty shall be submitted to arbitration. Each party to the dispute shall within 4 weeks nominate one arbitrator. The arbitrators so nominated shall agree within another two weeks on the appointment of a chairperson. If no such agreement can be reached, the President of the International Court of Justice shall appoint the chairperson.

Both *Banana* and *Absurdia* are parties to the Banana Treaty (as well as to all of the major codification treaties in PIL, such as the UN Charter, UNCLOS, VCLT I etc. Neither *Banana* nor *Absurdia* have submitted a declaration according to Art 36 of the Statute of the ICJ.)

*Banana* buys a couple of high-performance speedboats (fast, but unarmed) for use by her police and coast guard from *Speedboat Inc.*, a manufacturer in *Absurdia*. Unsatisfied with the performance of the boats, *Banana* pays only 50% of the price. When *Speedboat Inc.* sues *Banana* before an *Absurdian* court, *Banana* claims jurisdictional immunity. Tensions between the two states rise.

So far, no State party to the Banana Treaty has ever sent a warship through the canal. When the *Absurdian* frigate “Speedy Gonzales” seeks to enter the canal, the *Banana canal company* (BCC, a private company empowered by the law of *Banana* to administer the Banana Canal) denies her the right of passage. *Absurdia* also complains about huge delays for her merchant ships, some of which had to wait for several days before being cleared to pass through the canal; *Banana* answers by issuing a press statement explaining the unusual delays by a shortage of BCC personnel due to CoViD-19 illness or quarantine.

*Absurdia* decides to invoke Article 12 of the Banana Treaty and nominates *Heribert Franz Köck*, Professor Emeritus of JKU Law School, as her arbitrator. *Banana* denies the existence of a dispute under the Banana Treaty and refuses to nominate an arbitrator.

**Advise on the legal situation under Public International Law!**