

# **INTERNATIONAL LAW**

*(International Class)*

# ***Why do you want to study 'international law'?***



# The definition of 'nations' or 'states'

- Political bodies
- Societies of men
- Who have united together and combined their forces
- In order to procure their mutual welfare and security

# The meaning of international law

- Modern approach:  
“the body of law that regulates the activities of entities possessing international personality”
- Traditional approach:  
“the conduct and relationships of states”

# The division of international law

***PUBLIC  
INTERNATIONAL LAW  
(INTERNATIONAL LAW)***

***PRIVATE  
INTERNATIONAL LAW  
(CONFLICT OF LAWS)***

# What is “private international law”?

- The body of law that regulates the relations between persons and entities in different states
- Private international law = “conflict of laws”



# SOURCES OF INTERNATIONAL LAW

- ***Primary sources:***
  1. International treaties
  2. Custom
- ***Article 38 of the Statute of the International Court of Justice***

(your homework for the next meeting discussion)

# Article 38 of ICJ Statute

- International convention, whether general or particular, establishing rules expressly recognized by the contesting states;
- International custom, as evidence of a general practice accepted as law;
- The general principles of law recognized by civilized nations;
- Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.



# The meaning of the three primary sources of international law

- ***International treaty law*** is comprised of obligations states expressly and voluntarily accept between themselves in treaties.
- ***Customary international law*** is derived from the consistent practice of states accompanied by *opinio juris*, i.e. the conviction of states that the consistent practice is required by a legal obligation.
- ***General principles of law*** is the legal principles common to major legal systems.

# Interpretation of International Law



- Article 31(1) of the Vienna Convention on the Law of Treaties:

*“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”*

# The components of Art.31(1)

1. “Ordinary meaning”: a restrictive interpretation which bases on the actual text (the textual approach).
2. “In their context”: the idea behind the treaty; what the writers intended when they wrote the text (the subjective approach).
3. “in the light of its object and purposes”: the interpretation that best suits the goal of the treaty (the effective interpretation approach).

# SOME BRANCHES OF INTERNATIONAL LAW

- International criminal law
- The law pertaining to use of force
- International humanitarian law
- Law of the Sea
- Diplomatic Law
- Consular Law
- Law of State Responsibility
- International environmental law
- International space law

# Law and the International System (Session 3 & 4)



# What is required by the “International System”?

- A normative system (to achieve our common values)
- A process that regulates competing demands
- A framework for predictable and agreed community behaviour

***Please give your opinions and examples of the three requirements above.***

# Fundamental conflicts over international law

**The concept of “a nation-state” (nations controlled by a centralized system of government)**

- *Do you agree with “the supra-nationalism” under the ruling of NAZI?*

# Fundamental conflicts over international law

*Relations between nation-states were dictated by Treaty, unenforceable agreements to behave in a certain way towards another state*

- *What is your opinions regarding the concept of “Countries Blocks” (Western Block: NATO & Eastern Block: Warsawa Pact)?*

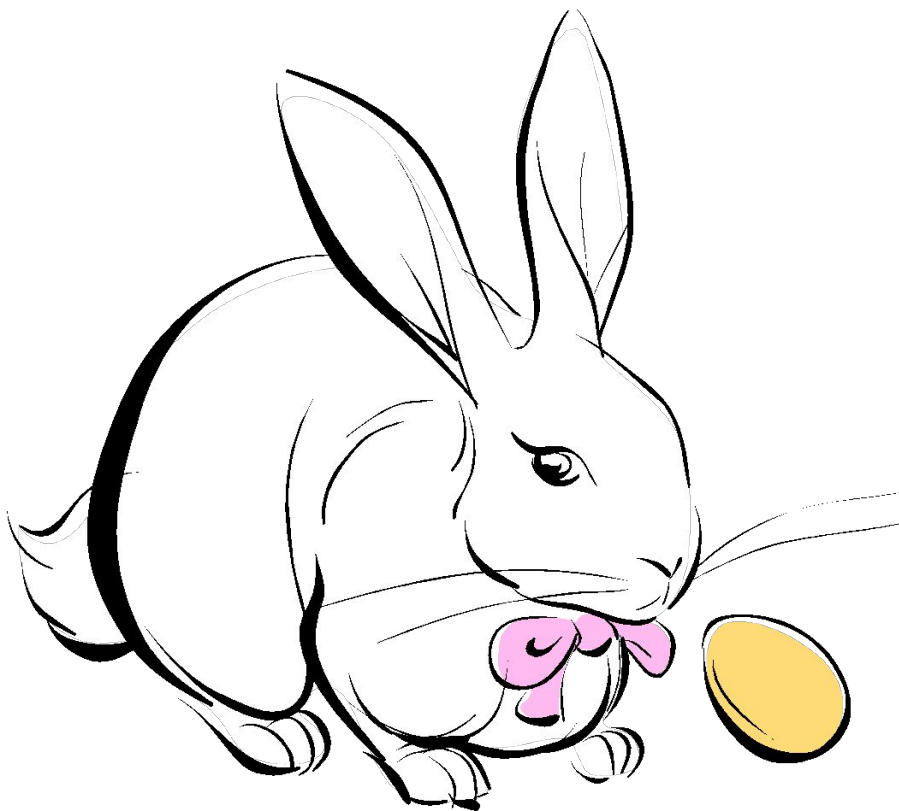


# Fundamental conflicts over international law

- The nation-state as the primary unit of international affairs
- State may choose voluntarily to enter into commitments under international law
- The creation of the United Nations as an international law making body

***Do you agree that the UN endanger nation states by taking power away from state government and ceding it to an international body?***

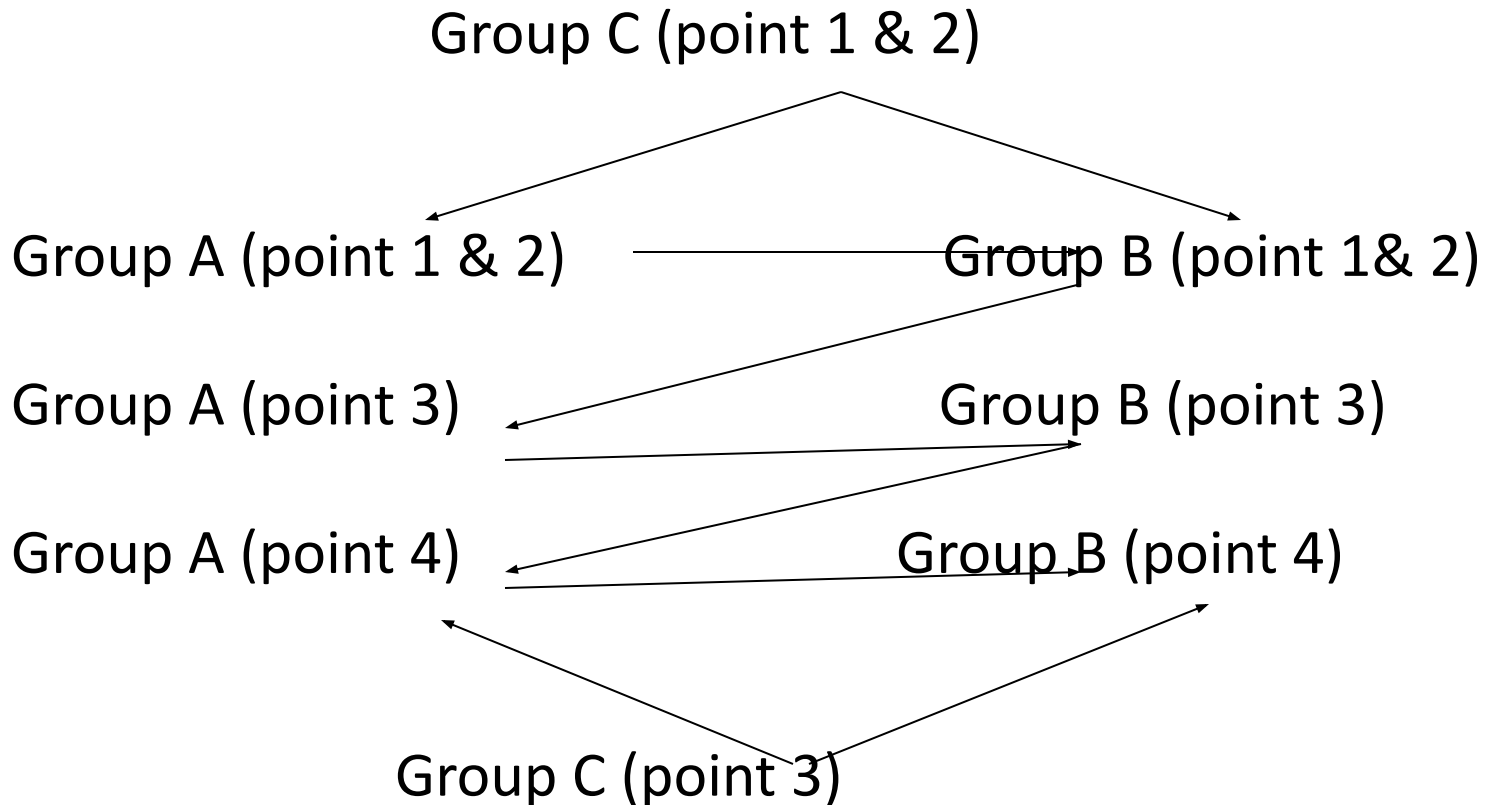
# *Moot Court (International Fruits Organization vs The Apple Republic )*



# MOOT COURT REGULATIONS

- ***Group C (International Animals Organization):***
  1. Making an opening statement
  2. Describe briefly the facts of case
  3. Make a conclusion and decision (summarize the case & arguments)
- ***Group A (International Fruits Organization):***
  1. Restate the facts of case
  2. Advance problems raise from the Apple Republic
  3. Advance arguments
  4. Defend the arguments
- ***Group B (The Apple Republic)***
  1. Restate the facts
  2. Provide justification to the case
  3. Advance counter-arguments
  4. Defend the counter-arguments

# MOOT COURT SCENES



*Thank You  
&  
See You Again In The  
Next Sessions*



# SHARING INFORMATION ON INTERNATIONAL ISSUES

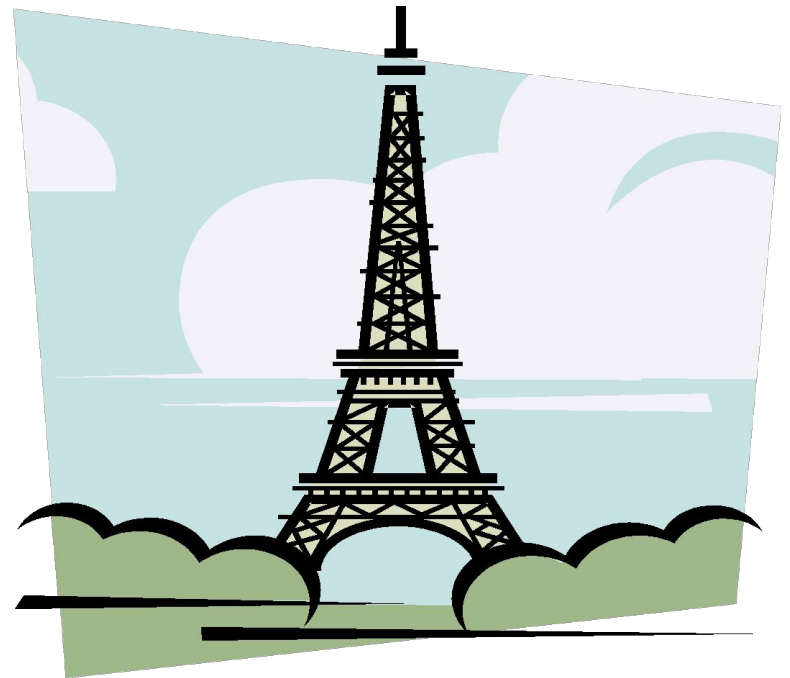
- Prior to the beginning of the class, one of you should stand up in front of the class and share your information on international issues around the world.
- You may get the information from TV, radio, newspaper, magazines, Internet, etc.



# INTERNATIONAL LAW WITHIN THE STATE

## (Session 5 & 6)

What is the  
function of  
international law  
in a state?



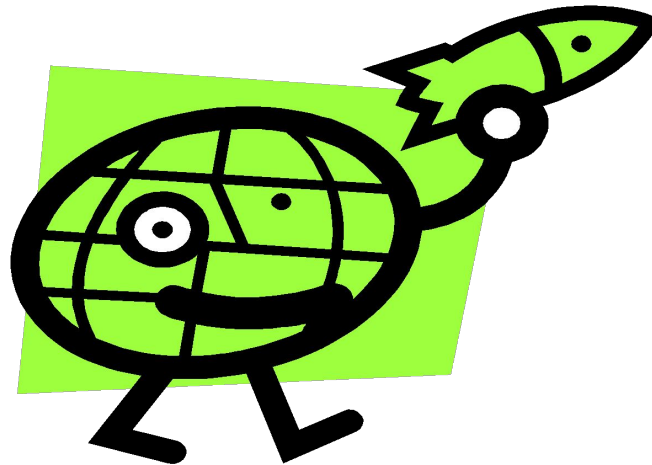
*Is there a relationship between  
international law and national law  
(municipal law)?*





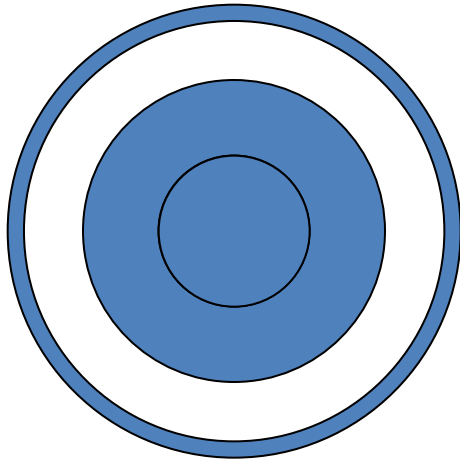
# ***THEORIES REGARDING THE RELATIONSHIP BETWEEN INTERNATIONAL AND NATIONAL LAW (MUNICIPAL LAW)***

***Monism  
Approach***



***DUALIS  
M  
Approach***

# MONISM APPROACH



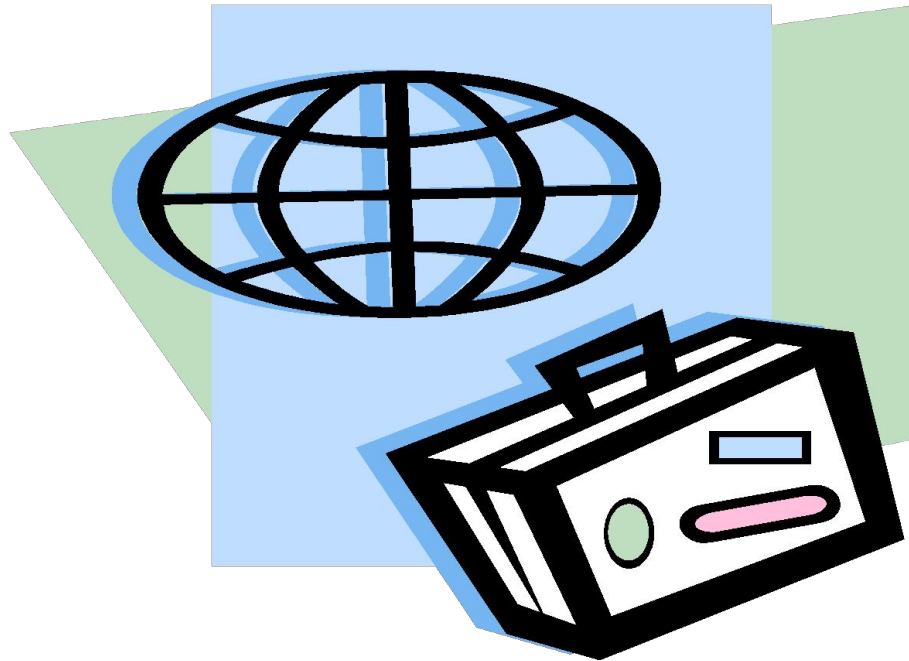
- International and municipal law as a single legal system.
- Legal regulations as a single legal system binds states and individuals.
- ***Do you agree with monism theory?***

# DUALISM APPROACH

- international and national law are distinct legal orders (they are not parts of a unified whole).
- Do you agree with dualism theory?



***How do a national court adopt an international law based on monism and dualism theories?***



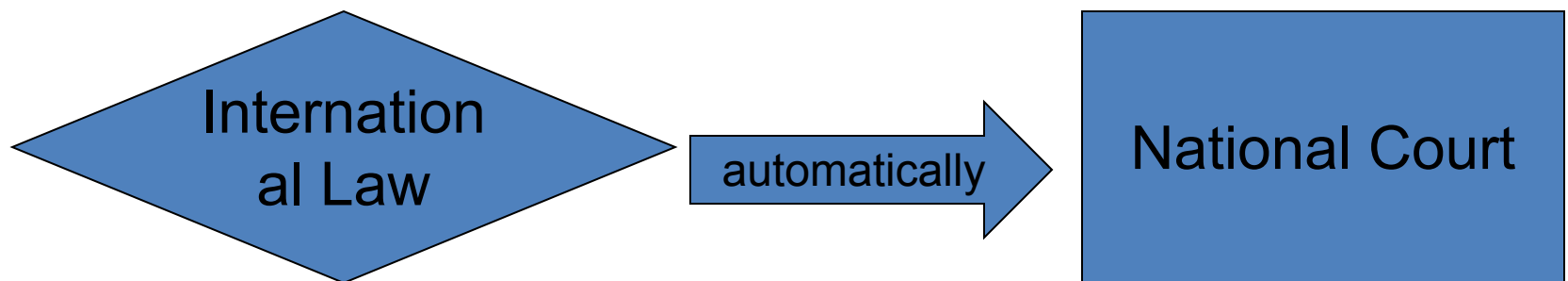
# Discuss With Your Partner

- The French Constitution provides that treaties are “law” that must be applied within the French legal system.

***Does France adopt monism or dualism approach?***

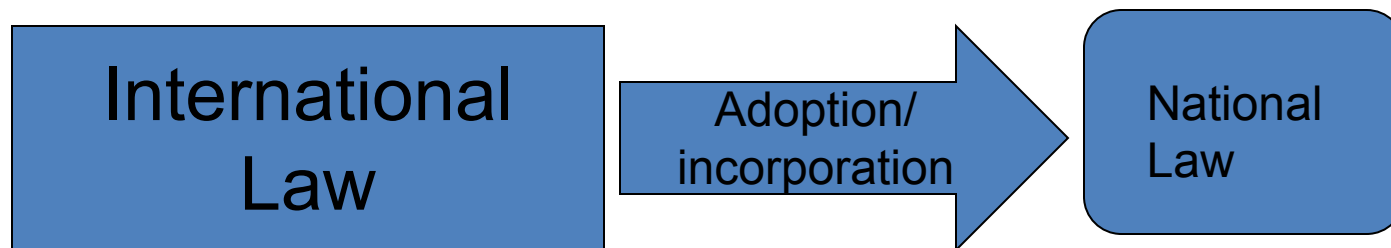
# *THE APPLICATION OF MONISM THEORY IN A NATIONAL COURT*

- Treaties (conventions) and the orders of international organizations are applicable/effective without any action being required to convert international law into municipal law.



# *THE APPLICATION OF DUALISM THEORY IN A NATIONAL COURT*

- National court may only apply international law when the law has been incorporated into national law or when the court incorporate international law on its own motion.



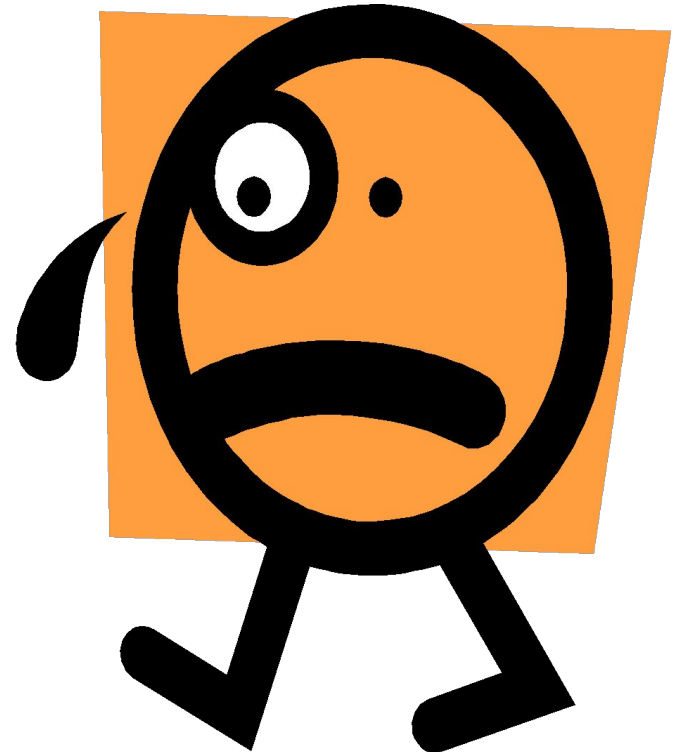
# Do You Think That International Law May Conflict With National Law?





# International Law vs National Law

*Can a state breach its  
obligation in  
international law on the  
ground that its national  
law prevails  
international law?*



# The statement of the Permanent Court of International Justice (ICJ)

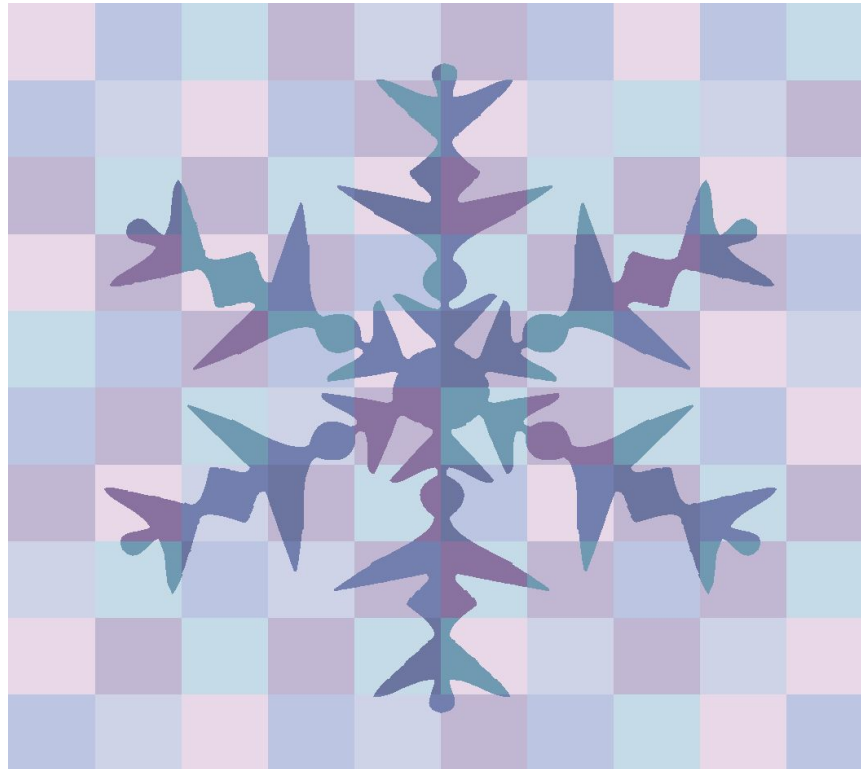
‘A state cannot adduce as against another state its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force’

*Thank You  
&  
See You Again In The  
Next Sessions*

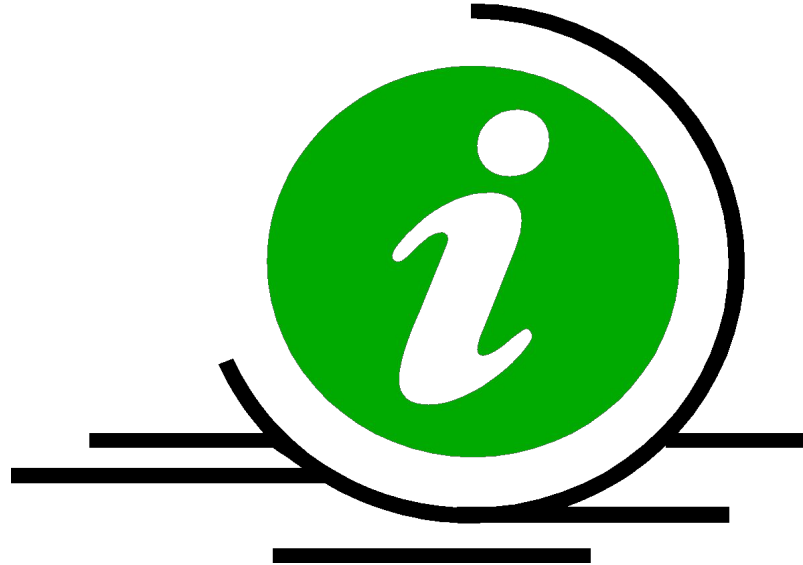


# SUBJECTS OF INTERNATIONAL LAW

## (Session 7 & 8)



WHAT IS THE MEANING OF “SUBJECT OF LAW”?



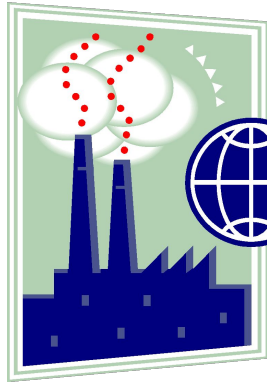
***Please discuss with your partner***

# SUBJECTS OF INTERNATIONAL LAW

- ENTITIES OR ELEMENTS;
- HAVE A CAPABILITY TO CONDUCT LEGAL ACTS IN THE FIELD OF INTERNATIONAL LAW.
- POSSESS RIGHTS AND OBLIGATION UNDER INTERNATIONAL LAW.



# SUBJECTS OF INTERNATIONAL LAW

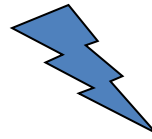


→ PEOPLE  
REPUBLIC  
OF CHINA



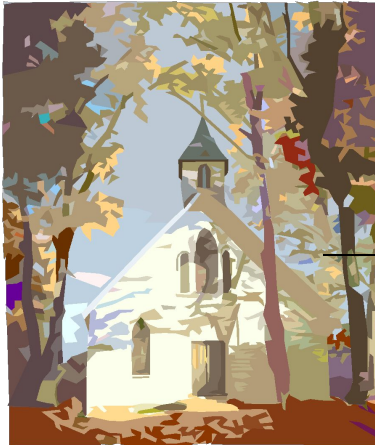
→ THE UNITED  
NATIONS

**Israel**



VS

**PLO**



→ VATICAN



MAN OR  
WOMAN

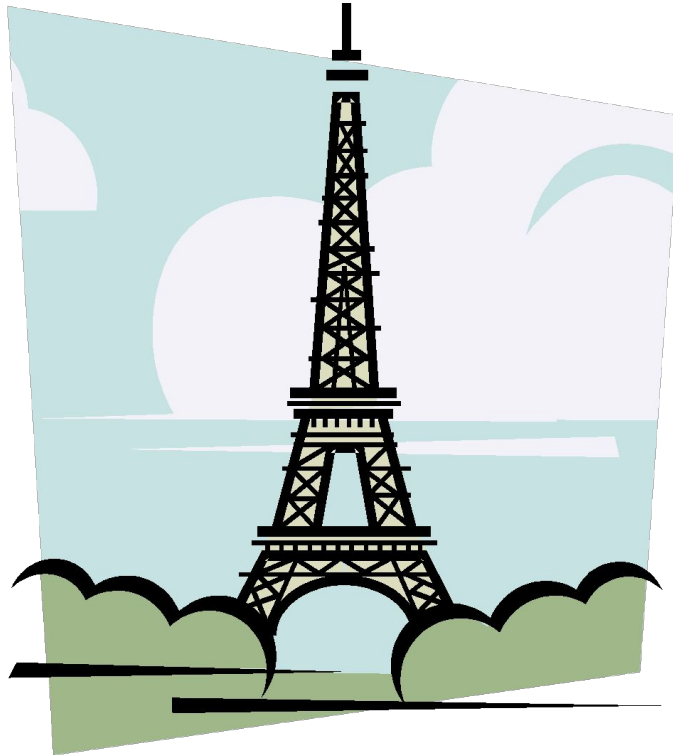
# SUBJECTS OF INTERNATIONAL LAW

1. STATE;
2. INTERNATIONAL ORGANIZATION;
3. INDIVIDUAL;
4. BELIGERENCY.

***Please give examples of each component of subjects of international law***



# A state should have legal personality in order to be a subject of international law



- PERMANENT POPULATION;
- DEFINED TERRITORY;
- GOVERNMENT;
- SOVEREIGNTY;
- THE CAPABILITY TO ENTER INTO THE RELATIONSHIP BETWEEN STATE;
- RECOGNITION BY OTHER STATES

# INTERNATIONAL ORGANIZATION



- ORGANIZATION WHOSE MEMBERS CONSIST OF STATES
- HAVE A SIGNIFICANT MEMBERSHIP
- HAVE A STRUCTURE OF ORGANIZATION

# INDIVIDUAL

- A person or citizen is a subject of international law.
- For example: Former Iraqi Presiden, Saddam Husein.

Analyze this case (what is the consequence of considering a person as a subject of international law?)

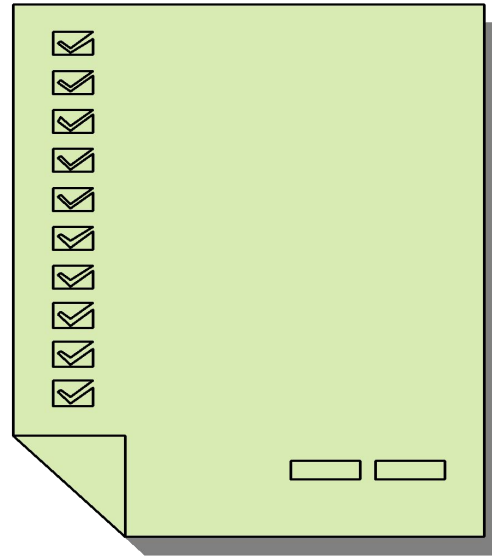
- Slobodan Milosevic, the Yugoslav leader blamed for starting four Balkan wars and impoverishing and isolating his country, was delivered to a prison cell and eventual trial by the UN war crimes tribunal



*Thank You  
&  
See You Again In The  
Next Sessions*



# Recognition of States and Governments (Session 10 & 11)

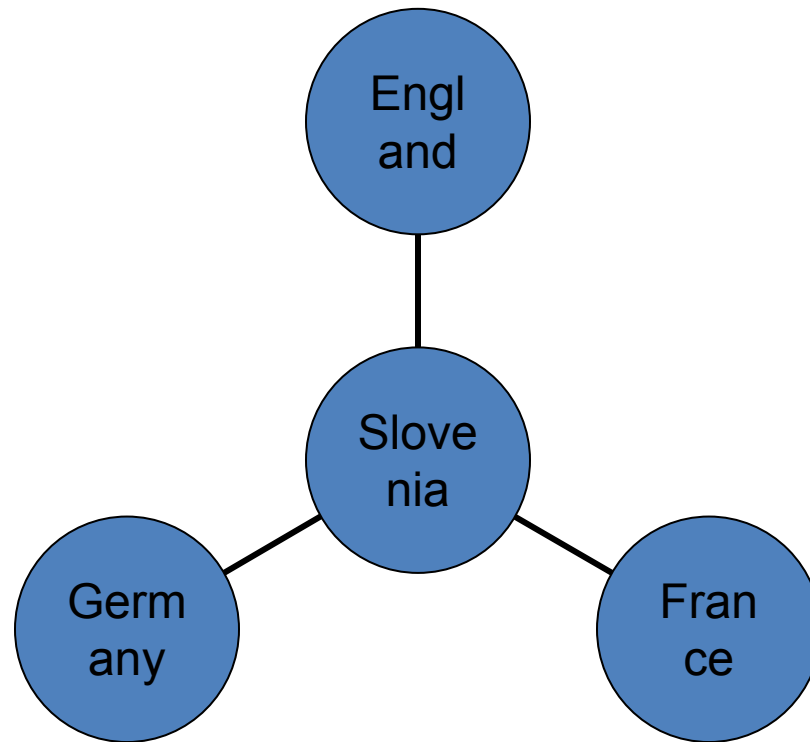


*WHAT IS THE MEANING OF “RECOGNITION”?*

# The Meaning of “Recognition”

Recognition generally refers to one state's willingness to establish or maintain official relations with another State or its government

Is it important for a state to obtain a recognition from  
another state?





# The significances of recognition for a state

1. To obtain equality status with other members of the international community
2. To acquire international rights and contracting international obligations
3. To engage in international relations

# Types of recognition

Recognition of  
States

Recognition of  
Government

# What is the difference between recognition of state and government?



- The tree is the state
- The leave is the government
- *Please analyze this illustration and relate it to the difference between the recognition of state and government*

# The difference between recognition of state and government

- ***Analogy:***

***The tree is the state. The leaves are various governments. While governments (leaves) may come and go, the state (the tree remains)***

- Once the recognition is given to a state, the recognition cannot be withdrawn.
- Recognition of a government may be lawfully withheld or withdrawn.

# The real case

- Saudi Arabia and the United Arab Emirates withdrew their recognition to Afghanistan Taliban government when it refused to surrender Osama bin Laden in the aftermath of the events of September 11, 2001.
- ***Is it permissible for the two state to withdraw their recognition to Taliban government?***
  - ***Can they also withdraw their recognition to the state of Afghanistan?***

# Types of Recognition of States



- Expressed recognition
- Implicit recognition
- Collective recognition
- Premature recognition

# Expressed Recognition

- Diplomatic letters/notes, statements, telegrams

Example: The statement of French President to recognize the independency of Algeria on 3 July 1963.

- International treaty

Example: Japan recognized Korea via article 12 of Peace Treaty on 8 September 1951.

# Implicit Recognition

- Sending a diplomatic agent
- Having a talk with an official or a head of state
- Making an agreement with the state

Example: Prime Minister of Israel, Shimon Perez, visited Morocco on 21 July 1986 and had a talk with King Hassan II to seek solutions for Middle East problems.



# Collective Recognition

- Via international treaty or multilateral conference

Example: 5 ASEAN countries  
on 18 April 1975 recognized  
Cambodia

# Premature Recognition

- Recognition is given to a state although the state does not have complete constitutive components (no constitution, territorial borders are not clear)

Example: recognition of a number of states to Palestinian.

# Types of Recognition of Government



- Similar to the types of recognition of state
- *De facto* and *de jure* recognition
- Recognition of belligerency
- Recognition of National Liberation Movements

# De Facto Recognition

- The government of a state is not constitutionally valid
- The ruling power has been effectively implemented in the entire territory of a state
- The government is usually established by a revolution

Example: Iranian revolution that has made Shah Reza Pahlevi step down.

# De jure recognition

- The ruling power has been recognized in the entire state
- The government is established by an election or the Constitution
- The government in power has no competing government

Example: Indonesia obtained its de facto recognition in 1945-1949 and it obtained its de jure recognition after recovering its sovereignty.

*Thank You  
&  
See You Again In The  
Next Sessions*



# **CHAPTER I**

## **PURPOSES AND PRINCIPLES**

### **Article 1**

- **The Purposes of the United Nations are:**
- **To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;**
- **To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;**
- **To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and**
- **To be a centre for harmonizing the actions of nations in the attainment of these common ends.**



## Article 14 – Vienna 1961

- 1. “Heads of mission are divided into **three classes**, namely:
  - (a) that of **ambassadors** accredited to Heads of State, and other heads of mission of equivalent rank;
  - (b) that of **envoys and** ministers accredited to Heads of State;
  - (c) that of **charges d'affaires** accredited to Ministers for Foreign Affairs.



All International law can be considered  
diplomatic law; and, on the contrary, all  
diplomatic law can be considered  
international law.

«Let us never negotiate out of fear.  
But let us never fear to negotiate»

John Kennedy, 1961

# Consular immunity

- Consuls like diplomats, represent their state in another state, but, unlike diplomats, they are not concerned with political relations between the two states. They perform a wide variety of non-political functions:
- Issuing passports and visas,
- Looking after the shipping and commercial interests of their states, and so on.

# Consular immunity

- Consulates often are based in provincial towns as well as in capital cities.
- In 1963 the UN convened a conference at Vienna, which drew up the Vienna Convention on Consular Relations and many states became parties to the Convention.
- The Convention assimilates the status of consuls to that of diplomats.

# VIENNA CONVENTION ON CONSULAR RELATIONS

## Article 5 "CONSULAR FUNCTIONS"

- Consular functions consist in:
- (a) **protecting** in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) **furthering (favouring)** the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) **ascertaining (inquiring)** by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, **reporting** thereon to the Government of the sending State and giving information to persons interested; (...)

- (*d*) Issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (*e*) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

# APPOINTMENT AND ADMISSION OF Consul

- Article 12 “*THE EXEQUATUR*”
  - 1. The head of a consular post is admitted to the exercise of his functions by an *authorization* from the receiving State termed an *exequatur*, whatever the form of this authorization.
  - 2. A State which refuses to grant an *exequatur* *is not obliged to give to the sending State reasons for such refusal.*
  - 3. Subject to the provisions of Articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an *exequatur*.

# STATE RESPONSIBILITY

## Session 12 & 13



What do you know  
about  
responsibilities?

# The meaning of responsibility under international law

- Responsibility is associated with “obligations”.
- State responsibility under international law means “obligations” of a state associated with its international status.
- Responsibility = liability



When a state responsibility/liability arises?

***A state can incur liability for either  
“intentional” or “negligent” conduct.***

***What is the different between “intentional”  
and “negligent” conduct?***

***Give your examples***

# **Fundamental Elements of State Responsibility**

1. The existence of a legal obligation recognized by International Law.
2. An act or omission that violates that obligation
3. Some loss or articulable damage caused by the breach of the obligation.

# State Responsibility vs State Sovereignty



# SOVEREIGN IMMUNITY

- When sovereign immunity applies, one State's judge cannot assert jurisdiction over another state in its courts.
- *Example: Country A cannot be tried by the court of Country B without Country A's consent.*
- Reparations must be sought in some other forum, possibly via a diplomatic intervention.

# Equality of States

- *Why does a country have immunity from suit in the courts of another country?*
- Article 2.1 of the United Nations Charter provides that “the organization is based on the principle of the sovereign equality of all its Members”

# The scope of sovereign immunity



1. States
2. Heads of State
3. State government agencies that are conducting State business

# Types of Immunity

- Absolute Immunity

A foreign head of State was not subject to any civil or criminal prosecution during and after leaving office

Total immunity from suit in other states, regardless of the nature or purpose of the sovereign's acts.

- Restrictive Immunity

Most states no longer extend absolute immunity to entities owned or operated by foreign governments.

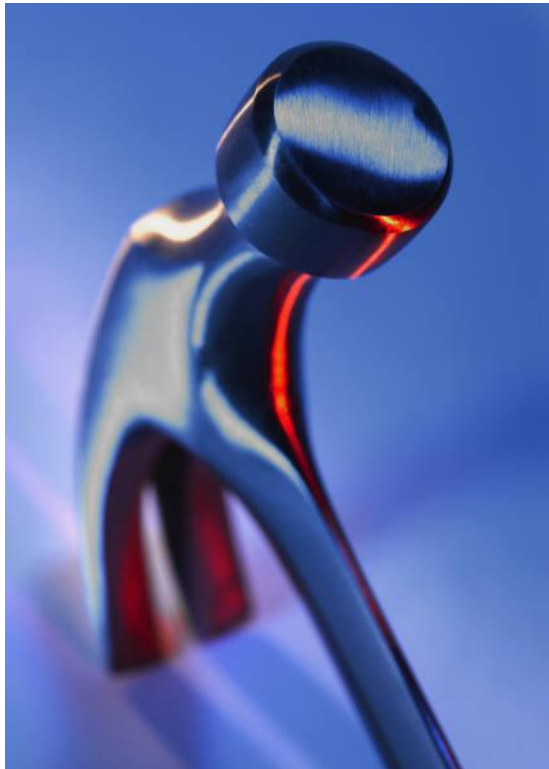
An entity operated by a State, in its capacity as a trader competing with other private merchants, is not necessarily given immunity from suit.

*Thank You  
&  
See You In  
Mid Semester Exam*





# Human Rights (Session 15 & 16)



What is the meaning of the term “human rights” according to you?

Why human rights are significant?

# The Meaning of Human Rights

- Human rights are those rights possessed by an individual that cannot be withheld or withdrawn by a state”
- “The protection of individuals and groups against violations by governments of their internationally guaranteed rights”.

# DEFINITION

**HUMAN RIGHTS** is defined as the supreme, inherent, and inalienable rights to life, to dignity, and to self-development. It is concerned with issues in both areas of civil and political rights and economic, social and cultural rights founded on internationally accepted human rights obligations

# HUMAN RIGHTS

RIGHTS – moral power to hold (rights to life, nationality, own property, rest and leisure), to do (rights to marry, peaceful assembly, run for public office, education), to omit (freedom from torture and cruel, inhuman or degrading punishment, freedom from arbitrary arrest, detention or exile) or to exact something (equal protection of the law, equal access to public service, equal pay for equal work)

NATURE – Human rights are more than legal concepts: they are the essence of man. They are what make man human. That is why they are called human rights; deny them and you deny man's humanity (Jose Diokno)

# History of H/R

- First the term <human rights> appeared in I/L in the period of France revolution.
- In state practice, as early as 1815 the United Kingdom tried to persuade states to make treaties for the suppression of the slave trade.
- A big step forward came with the peace treaties of 1919, which provided guarantees of fair treatment for the inhabitants, and which set up the International Labor Organization

# Five categories of Human Rights

- Civil – the right to be treated as an equal to anyone else in society
- Political – the right to vote, to freedom of speech and to obtain information
- Economic – the right to participate in an economy that benefits all; and to desirable work
- Social – the right to education, health care, food, clothing, shelter and social security
- Cultural – the right to freedom of religion, and to speak the language, and to practice the culture of one's choice

# Legal basis

- Human rights Treaties
- Conventions, Covenants
- Declarations
  - Contain detailed lists and definitions of human rights and obligations of the State

# Legal basis - UN Charter

- Sets the promotion of and respect for human rights for all as one of the aims of the UN
- Establishes legal obligations for Member States to take action to achieve respect for human rights



# Characteristics of Human Rights

- Universal
- Internationally guaranteed
- Legally protected
- Protects individuals and groups
- Cannot be taken away
- Equal and indivisible
- Obliges States and State actors

# International Bill of Human Rights

1. The 1948 Universal Declaration of Human Rights (UDHR)
2. The 1966 International Covenant on Civil and Political Rights (ICCPR)
3. Its two optional protocols
4. The 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR).

# The 1948 Universal Declaration of Human Rights (UDHR)

- **First Category covers “civil and political rights”:**
  1. The right to life, liberty, and security of the person
  2. The right to leave and enter one’s own country
  3. Freedom from slavery and torture
  4. Freedom from discrimination, arbitrary arrest, and interferences with privacy
  5. The right to vote
  6. Freedom of thought, peaceable assembly, religion and marriage

# The 1948 Universal Declaration of Human Rights (UDHR)

- **Second category consists of economic, social, and cultural rights:**
  1. The right to own property
  2. The right to work
  3. The right to maintain an adequate standard of living and health, and
  4. The right to an education

# The four freedoms

Franklin D. Roosevelt proposed four fundamental freedoms that people "everywhere in the world" ought to enjoy:

- Freedom of speech
- Freedom of religion
- Freedom from economic want
- Freedom from fear of aggression.

# Definitions in the Charter

- **Human Rights**

- Basically Civil and Political Rights (ICCPR)
- Include any other right or freedom recognised by law
- Belong to people, not corporations

- **‘Public Authority’ must respect them, including:**

- Public servants and statutory officers, local government
- Statutory entity with functions ‘of a public nature’
- Any entity with functions of a public nature when exercising them on behalf of the state or a public authority

# Human Rights Treaties in Europe

1. The European Human Rights Convention (ECHR) contains civil and political rights that are virtually identical to those set forth in the UN Covenant on Civil and Political Rights.
2. The European Social Charter contains the same economic and social rights set forth in the UN Covenant on Economic, Social and Cultural Rights.
  - The Executive Body is the Council of Ministers
  - The Judicial Body is the European Court of Human Rights.

# Latin America's Human Rights Norms

1. The 1948 Charter of the Organization of American States (OAS).
2. The 1948 American Declaration of the Rights and Duties of Man.
3. The 1978 American Convention on Human Rights.
  - The norms are monitored by the Inter-American Commission on Human Rights.
  - The Commission may only study, report and recommend. It has no enforcement powers



# Africa's Human Rights Program

- The 1986 African Charter on Human and People's Rights.
- The 1986 African Charter contains many of the human rights principles mentioned in the UN Charter and the UN Universal Declaration of Human Rights
- The 1986 African Charter established the African Commission on Human Rights, which monitors human rights enforcement on the African Continent.
- The Commission may only study, report and recommend. It has no enforcement powers

# ***Your assignment (1500 words)***

## ***The Violations of Human Rights in Asia***

**(The analysis of the International Bill of Human Rights)**

**You may choose:**

- 1. Any real case regarding the violation of human rights in a country in Asia (example, Indonesia, China, Myanmar, etc)**

*Thank You  
&  
See You Again In The  
Next Sessions*



# Citizenship

## (Sessions 17 & 18)



***WHAT IS THE  
MEANING OF  
'CITIZENSHIP'?***

# The Meaning of Citizenship

**Citizenship (an individual's nationality) is a bond between an individual and a state that establishes reciprocal rights and duties between them.**

# Nationality

- Nationality is a legal, political, and social link between the individual and the state
- Nationality establishes mutual expectations for both the state that confers it and the individual who acquires it
- Examples of the rights of a state: imposing taxes on an individual, serving military forces.
- Example of the rights of an individual: obtaining a state protection

# Jurisdiction

(Session 19 & 20)



- **What is the meaning of 'jurisdiction' ?**

# The Meaning of Jurisdiction

- Jurisdiction refers to the power of a state to:

1. Enact laws that proscribe certain criminal conduct
2. Apprehend offenders
3. Try them for violation of its internal laws.

**It may be achieved by means of legislative, executive or judicial action.**



- ***State sovereignty:***

*The State can do what it wants within its own borders or: The State is not subject to the authority of others*

- ***Equality of States:***

*States cannot infringe on the sovereignty of other states and they must agree on how to relate to each other and how to solve problems*

# To give an instance

- if a man kills somebody in Britain and then manages to reach the Netherlands, the British courts have jurisdiction to try him, but they cannot enforce it by sending officers to the Netherlands to apprehend him. They must apply to the Dutch authorities for his arrest and dispatch to Britain. If, on the other hand, the murderer remains in Britain then he may be arrested and tried there, even if it becomes apparent that he is a German national.

- However, there are circumstances in which it may be possible to apprehend a suspected murderer, but the jurisdictional basis is lacking. For
- example, if a Frenchman has committed a murder in Germany he cannot be tried for it in Britain, notwithstanding his presence in the country, although, of course, both France and Germany may apply for his extradition and return to their respective countries from Britain.

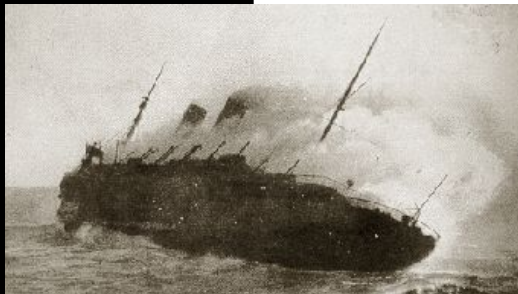
# Types of criminal jurisdiction

- *Prescriptive / Legislative*
- The state's authority to make its own substantive criminal law and to decide its geographical reach.
- *Adjudicative / Judicial*
- The authority of the state's organs to investigate, prosecute and punish those who have breached its laws.
- *Enforcement / Executive*
- The authority of a state to enforce its laws – generally regarded as limited to within its territory.



## State Jurisdiction Over People & Things

- Starting point: *S.S. Lotus*
  - States may not exercise power in the territory of another state
    - This is the notion of “enforcement” jurisdiction: states generally may not enforce their laws outside their territorial boundaries
  - But states may exercise jurisdiction in their own territory relating to acts that take place abroad
    - This is the notion of “prescriptive” jurisdiction: states in some instances may extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory





## State Jurisdiction Over People & Things: Enforcement Jurisdiction

- Defined: State's jurisdiction to enforce its rules
- States clearly have the jurisdiction to enforce their laws in the zone over which they have territorial sovereignty
  - Generally, it would violate the sovereignty of other states for a state to enforce its rules in the territory of another state
    - A state whose sovereignty is offended in this way would have a claim against the offending state
- Note, however, that national courts of many states take the view that even if the accused was apprehended in the territory of another state in violation of that state's sovereignty, the court is not deprived of jurisdiction



## State Jurisdiction Over People & Things: Prescriptive Jurisdiction

**2. Nationality Principle:** a state may pass a law regulating the overseas conduct of its own nationals

- Notion of “nationality”: clearly the nationality principle depends on an understanding of “nationality”
  - Nationality of Individuals:
    - *jus soli* (birth of the state’s territory);
    - *jus sanguinis* (nationality by virtue of the nationality of one’s parents)
    - Naturalization: acquiring nationality after birth



## State Jurisdiction Over People & Things: Prescriptive Jurisdiction

3. **Passive Personality Principle:** variant of the nationality principle, but here the state seeks to regulate an act committed abroad by a non-national in which the *victim* is a national





## State Jurisdiction Over People & Things: Prescriptive Jurisdiction

4. **Protective Principle:** regulation of overseas conduct of the sort that jeopardizes the state's key interests
  - *E.g.* espionage, counterfeiting, conspiracy to violate immigration or customs laws

# FIVE JURISDICTIONAL PRINCIPLES

1. Territorial principle
2. Universality principle
3. Nationality principle
4. Passive personality principle
5. Protective principle

# *Territorial*

- A state is entitled to prosecute all persons irrespective of nationality who have committed a crime prescribed by its laws within its territory
- All crimes committed within a State's territory are within the legislative, executive and judicial jurisdiction of the state.
- A state can also apply its laws to ships flying its flag or aircraft registered with it and persons on board.
- Although a state has sovereignty over its airspace, acts committed on board foreign-registered aircraft are primarily subject to the jurisdiction of the state of registration.
- Exceptions: international agreements
- *(Exceptions: immunity (diplomatic, state, parliamentary))*

# Territorial Principle

- Based on the location of the defendant's act.
- Two relevant applications are **the subjective form**-associated with conduct commencing within a state and **the objective form**-when the conduct commences outside but has its ultimate effect within the prosecuting state.
- ***Subjective Form:***
  - Defendant's conduct violates State X law*
  - Conduct starts within State X*
  - Completed within State X*
- ***Objective Form:***
  - Defendant's conduct violates State X law*
  - Conduct starts outside State X*
  - Completed or has "effect" within State X*

# Universal jurisdiction

- **Universal jurisdiction is a principle of international law that allows a state's courts to prosecute individuals for international crimes (Examples of international crimes include genocide, crimes against humanity, war crimes and torture) committed anywhere in the world, even though neither the offender nor the victims are linked by nationality to the prosecuting state.**

# Universality Principle

- Covers certain crimes that are considered to be committed against the entire community of nations.
- Any nation wherein the perpetrator of such a crime is found has the jurisdiction to arrest the criminal (who may be extradited).
- Universal crimes: piracy, slavery, war crimes, crimes against peace, crimes against humanity, genocide, torture.

- ***Universality Principle:***

*Defendant's conduct sufficiently heinous to violate the laws of all states.*

*Conduct started and completed anywhere.*

*All states may prosecute (not just X)*

# Nationality Principle

- Based on the nationality of the defendant

- ***Nationality principle:***

*Defendant's conduct violates State X law*

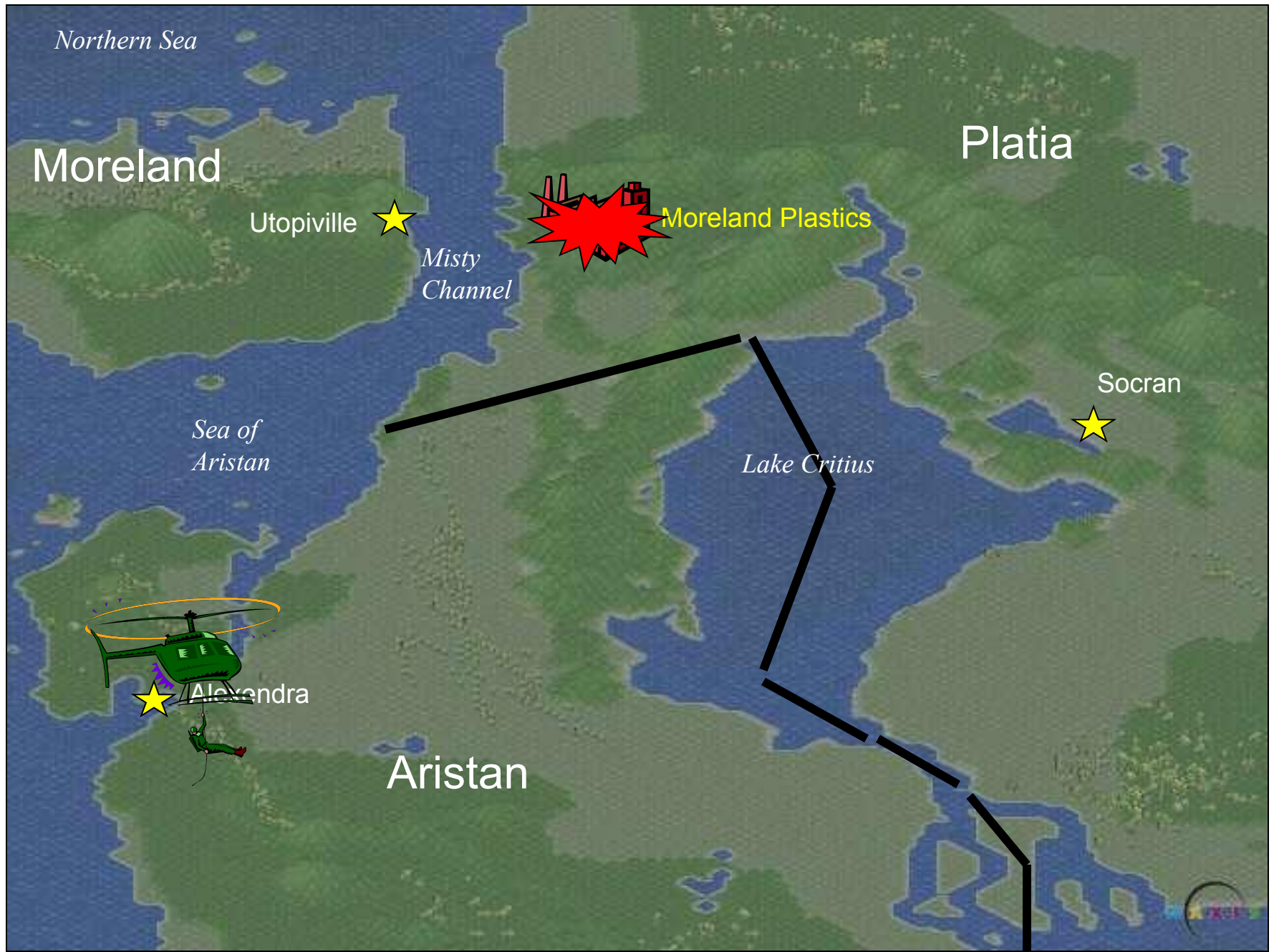
***Defendant*** *is a citizen (national) of X*

*Conduct may start and end anywhere*

# *Active personality (nationality of offender)*

A state's entitlement to prosecute its own nationals for crimes committed outside its territory





# *Passive personality (nationality of victim)*

- *A state's entitlement to prosecute individuals who have harmed its own nationals even when such harm is committed outside its territory.*
- Jurisdiction over foreigners for acts committed abroad, which affects nationals of the state
- Become more accepted in recent decades following the development of international terrorism

# Passive Personality Principle

- Based on the nationality of the victim
- ***Passive personality principle:***

*Defendant's conduct violates State X law*

***Victim*** *is a citizen (national) of X*

*Conduct may start and end anywhere*

# Nationality principle

- Nationality/citizenship is the link between the territory and its inhabitants
- Nationality/citizenship derives from:
  - Jus sanguinis (born of nationals)
  - Jus soli (born in the territory)
- Many States claim jurisdiction over crimes committed by their citizens

# Protective Principle

- Authorizes a state to exercise jurisdiction over individuals when their criminal acts occur outside of its borders. Such acts must threaten the security, territorial integrity, or political independence of the state.
- ***Protective principle:***
  - Defendant's conduct violates state X law*
  - Conduct may start and end outside State X*
  - (Territorial must either start or end in X)*
  - (Protective need not have 'effect' in X)*

# The protective principle

- Jurisdiction over foreigners for crimes committed abroad, when the vital interests of the State is threatened
- Reflected in many treaties

# WORK IN PAIRS



- Make your own hypothetical cases relating to the application of the five jurisdictional principles.

# Your Hypothetical Cases

- Principle of Territory:
- + Subjective Form:

Mr. Imberg, a Swiss citizen plotted the overthrow of the Italian Government. He was captured by the Italian Police in Rome where he planned this *coup d'etat*.
- + Italy has possesses the subjective territorial jurisdiction to prosecute and punish this defendant, although he is a foreign citizen.



# Your Hypothetical Cases

- Principle of Territory:
- + Objective Form:

Mrs. Imberg, a Swiss citizen plotted the overthrow of the Italian Government. She began the plots in Belgium, then she went to Italy to join her husband. She was captured by the Italian Police in Rome where she planned this *coup d'état*.
- + Italy has possesses the objective territorial jurisdiction to prosecute and punish this defendant, although she is a foreign citizen.

# Your Hypothetical Cases

## + Nationality Principle

The US government imposes a policy that “No US citizen is permitted to travel to Yugoslavia to comply with the UN Resolution”. US Chess master, Bobby Fischer defied the ban.

Although his conduct took place in foreign soil, the US could rely on the nationality principle to legitimize any ensuing prosecution for his prohibited travel.

# Your Hypothetical Cases

- Passive Personality

Due to a negligence of a French ship's officer, the French ship struck a British ship and killed 10 British ship crews while the ship was passing the Black Sea.

British government relied on the passive personality principle to support its prosecution of the French ship's officer. The officer's conduct harmed British Citizens and British property interests.

# Your Hypothetical Cases

- Protective Principle

A Canadian citizen made false statements while trying to obtain a visa from the US Consulate in Montreal.

The court relied on the protective principle because all the elements of the crime occur in the foreign country and jurisdiction exists because these actions have a 'potentially adverse effect' upon security or governmental function'.

# Your Hypothetical Cases

- Universality Principle

Piracy was usually committed on the high seas rather than within the territorial waters of any nation. The pirates often fled to distant land or waters. Under the universal principle, all nations have the jurisdiction and the duty to apprehend pirates when they are present.

# EXTRADITION

- Is the process whereby one nation surrenders someone accused of a crime to another nation.
- Extradition treaties are necessary because extradition is not automatic.
- There is no duty to surrender an individual to another nation.
- Example: a citizen of Peru committed a crime in his country, then he fled to Venezuela. Is it obliged for Venezuela to return the criminal to his own country?

# The Extraditable Offenses



- Murder
- Kidnapping
- Rape
- Bigamy
- Robbery
- Inciting riots
- Piracy
- Drug law violation
- Bribery
- Evasion of taxes
- Unfair business transactions
- Violations of import-export laws.

# “Irregular Alternatives”

- States do not always depend on extradition treaties when they seek to prosecute certain individuals. They may expel or deport wanted individuals without going through a formal extradition process, regardless of whether an applicable extradition treaty exists.



# Avoiding Extradition

## (Extradition Limitations)

- Extradition treaties typically require the extraditable offenses be those that violate the laws of both parties to the treaty. The conduct charged may violate the laws of one country but not the other.
- **Hypothetical case:**

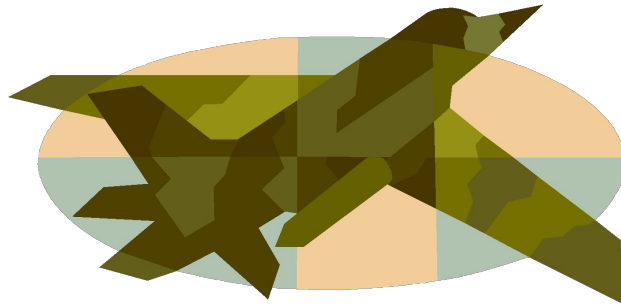
Country A does not apply the death penalty in criminal cases, but Country B does. A citizen of Country B was accused of the sex-torture slaying 13 people. May Country A refuse the extradition of Country B citizen?

# Avoiding Extradition

## (Political Offense Exception)

- Most extradition treaties contain an escape clause that is characterized as a *political offense*.
- The requested state thereby retains the discretion to deny extradition.
- There are no clear standards for the exercise of this discretion.
- The amendment to the 1986 US-UK extradition treaty: “extradition shall not occur if...the request for extradition has in fact been made with a view to try punish him on account of...political opinions”.

# Hypothetical Case



- The government of Country X has a trouble with a group of people who protests the performances of the government from time to time. One of the protesters hijacks the plane and forces the pilot to fly the aircraft to Country Y. May Country X request the extradition of the hijacker?

*Thank You  
&  
See You Again In The  
Next Sessions*



THANK YOU VERY MUCH

*for your participation in  
international class*