

Introduction to the International Law I

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Personal Introduction

Basics to IL

State and Recognition

IL and Municipal law

Who am I?

Graduated from Korea Maritime & Ocean
University
Joined Hyundai Merchant Marine
Company (currently HMM)



한국해양대학교
KOREA MARITIME AND OCEAN UNIVERSITY



Worked on board ships (5 years)



Civil servant & diplomat

Joined the Korean Government in 1985.

Took a variety of positions in the Korean Government.

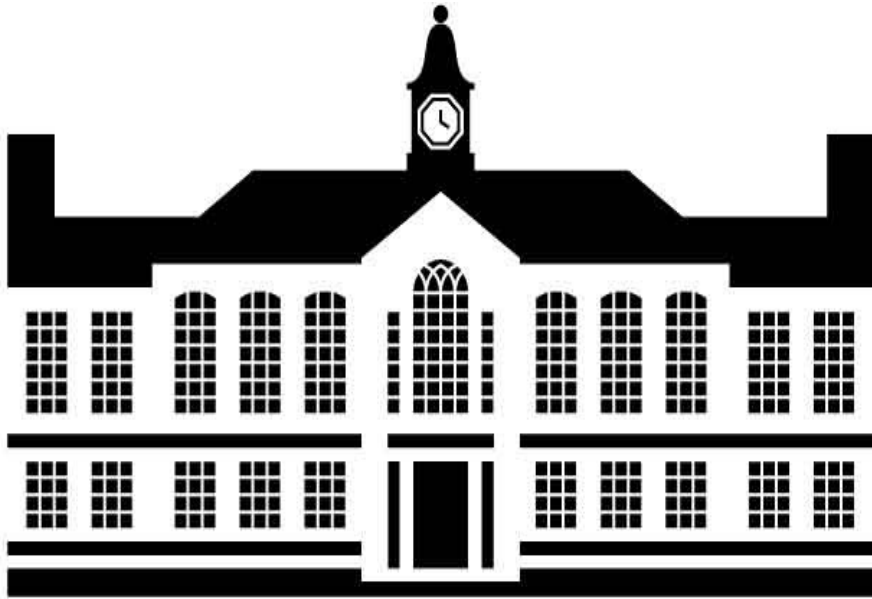


Study in the US

State University of New York Maritime College (2 yrs): MS in Maritime transportation



University of Rhode Islands(1998-2000)



UNIVERSITY OF
Rhode Island



Higher Education in Korea

Shipping Management, Graduate School of
Hankuk University for Foreign Studies (MBA)



Kyunghee University

Graduate School of Law (Master in law)



KMOU again

Ph.D. in law

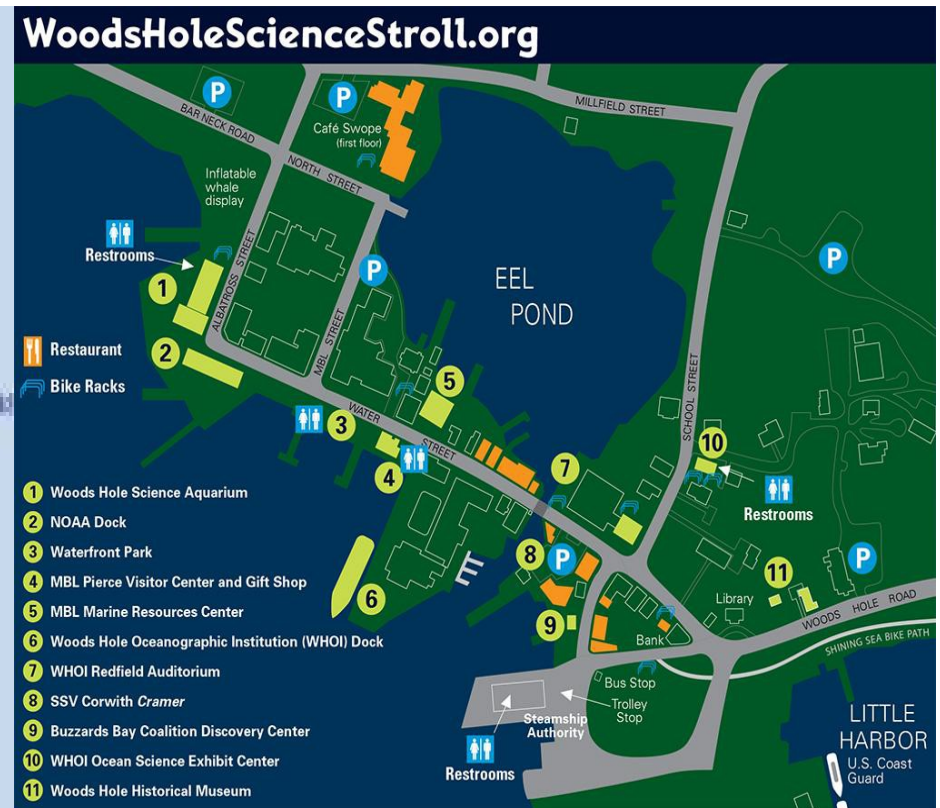


한국해양대학교
KOREA MARITIME AND OCEAN UNIVERSITY



WHOI

Maritime Policy Center, Woods Hole Oceanographic Institution, MA, USA (Visiting Scholar)



Tokyo MOU

- Memorandum of Understanding on Port State Control in the Asia-Pacific Region (the Tokyo MOU) was concluded in December 1993 at its final preparatory meeting in Tokyo
- Served as the Chairman of the Tokyo MOU(2005-2007)

17th Tokyo MOU meeting



Korean Embassy in London & IMO



Head of Delegation to IMO



Meetings at IMO



Garden Party at Cyprus



Maritime Day in Istanbul, Turkey



Major Achievements

- Revision of Korean Ship Safety Act (2007)
- Technical Standards for voyage Data Recorder (VDR)
- Mandatory inspection system for ship bollards



Books



Visiting Professor at VMU (2017-20)

- The Law of the Sea
- Maritime Conventions
- International Law in general



최우수논문상 수상 (2020년 한국해법학회)



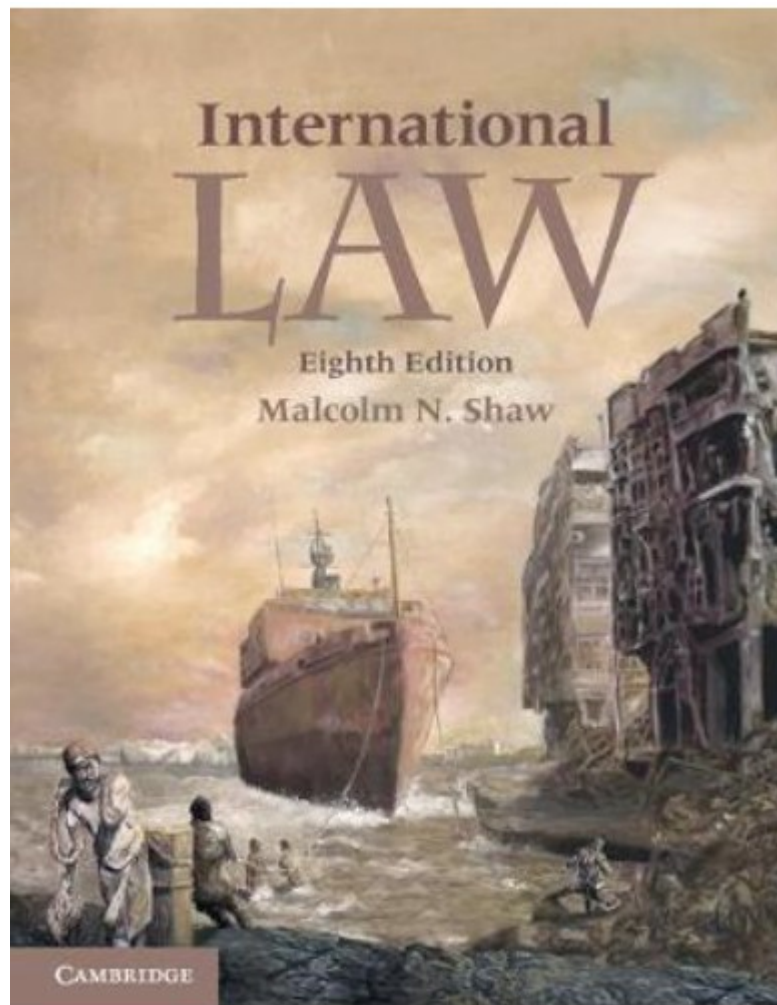
Basics to International Law

Definitions

History of IL

Basic Concepts

Sources of IL



What is Law?

A system of rules that are created and enforced through social or governmental institutions to regulate behaviors.

- Who makes law?
- What happens if you do not obey?

Public law: Government vs. Individual

Private law: Individual vs. Individual

What is international law?

The set of rules generally regarded and accepted as binding in relations between States and between nations.

- It serves as a framework for the practice of stable and organized international relations.



What is international law?

Inter + nation + al = 국제법

* Foreign laws: the national laws of foreign countries

Sometimes, thanks to the unification or harmonization,

National law = foreign laws = international law

Why do we have to study IL?

- To develop insights into the global legal system and its influence on both national and international policies.



Basic Concept 1

Is international law really law?

- No easy sanctions
- No international police force

Why do they abide by the international law?

- Consent of states
 - National self-interest
- * International legal stability & foreseeability

Why do all States, weak and strong, mostly obey international law?

States already expressed their voluntary consent to be bound by the international law (*pacta sunt servanda*)

They believe obeying the international law would be beneficial to their national self-interest.

They want to stay in the international legal system.

They want to maintain their fame as highly respectable States in the world.

History of International Law 1

Basic concepts of international law such as treaties can be traced back thousands of years.

- Around 2100 BC an agreement Lagash and Umma in **Mesopotamia** setting a proscribed boundary between their two states.
- Around 1000 BC, an agreement was signed between Ramses II of Egypt and the king of the Hittites establishing "eternal peace and brotherhood" between their two nations:

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Egyptian–Hittite peace treaty (Treaty of Kadesh: BC 1259)



Hittite version



Egyptian version

History of International Law 2

De Jure (*De jure belli ac pacis* [On the Law of War and Peace]) by Hugo Grotius in 1625 is considered the starting point for modern international law.

- law was not imposed from above, but rather derived from principles.
- man-made laws became more important than religious doctrines and philosophies
- promises must be kept, and that harming another requires restitution.
- the importance of actual practices, customs and treaties —what "is" done— as opposed to normative rules of what "ought to be" done.

History of International Law 3

The Westphalian treaties of 1648

- A turning point in establishing the principle of state sovereignty as a cornerstone of the international order.
- Ended the Thirty Years' War (1618–1648) between the Habsburgs and their Catholic allies on one side, and the Protestant powers (Sweden, Denmark, Dutch, and Holy Roman principalities) and their Catholic (France) Anti-Habsburg allies on the other.

Peace of Westphalia

- 109 parties in the negotiation process
- Co-existing sovereign states
- Balance of power.
- Non-interference in another state's domestic affairs



History of International Law 4

League of Nation(1920)

Enact a treaty agreement providing for economic and military sanctions against member states that used "external aggression" to invade or conquer other member states.

- An international court was established, the Permanent Court of International Justice, to arbitrate disputes between nations without resorting to war.

United Nations (1948)

- Has been successful to prevent world wars so far!

Basic Concept 2

What is the general sources of law?

1. Legislation
2. Precedents
3. Customs



Why the sources of international law are very important to ICJ?

The ICJ has a mission to make fair and equitable decisions based on international law.

To prevent any dispute from its decisions, it has to make sure the sources of international law

- No States could challenge to its decisions.

Sources of IL (2:25)



International law explained | What are the sources of international law?

Art. 38(1) of Statute of ICJ

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. **international conventions**, whether general or particular, establishing rules expressly recognized by the contesting states ;

b. **international custom**, as evidence of a general practice accepted as law;

Art. 38(1)

c. **the general principles of law** recognized by civilized nations ;

d. 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

(a) Treaty (international Convention)

"Treaty" means an **international agreement** concluded **between States in written form** and **governed by international law**, whether embodied in a single instrument or in two or more related instruments and **whatever its particular designation** (Vienna Convention on the Law of Treaties, 1969, Art. 1.1. (a))

Cf: Party & non-party

(b) Customary International Law 1

Evidence of a general practice accepted as law

- Substantial uniformity of practice by the substantial number of States for a considerable time
- States are typically bound by customary international law **regardless of** whether the states have codified these laws domestically or through treaties.

(b) Customary International Law 2

Obligation *erga omnes*: certain obligations of a State are owed to all States (freedom of navigation, Antarctica)

Jus cogens (peremptory norm): a fundamental principle that is accepted by the international community of states as a norm from which no derogation is permitted,

Soft law : Non-treaty instruments such as declarations, guidelines, MOUs

Comity: Rules of politeness, convenience, and goodwill

(c) General Principles of Law

Good Faith (*bona fides*) : A sincere intention to be fair, open, and honest, regardless of the outcome of the interaction.

Estoppel: A rule of evidence whereby a person is barred from denying the truth of fact that has been already settled

Norms: a principle of right action binding upon the members of a group and serving to guide, control, or regulate proper and acceptable behaviour.

(d-1) Judicial Decisions

Judgements of courts and tribunals, international or domestic, are a subsidiary source of international law

- Careful consideration of particular facts and legal argument usually carry authority.

Major international courts and tribunals

- International Court of Justice (ICJ), International Tribunal for the Law of the Sea (ITLOS), Permanent Court of Arbitration (PCA), International Criminal Court (ICC), European Court of Justice (ECJ), etc

Stare decisis (precedent)

“Let the decision stand” in latin.

A doctrine or policy of following rules or principles laid down in earlier court decisions.

- A prior decision must have a similar question of law and factual situation.



(d-2) Teachings of the most highly qualified publicists

Writers on international law is also subsidiary.

- Their main value depends on the extent to which their books and articles cited are works of scholarship based on thorough research into what the law is.

Basic Concept 3: Actors of IL

- States (cf: National Liberation Movement)
- International Organizations
- Individuals
 - International human right law
- Transnational Corporations
 - Bilateral Investment Treaty (International Centre for Settlement of Investment Disputes)

State and Recognition

Criteria for Statehood

Theories of Recognition of States

Cases of Recognitions

Self-Determination

Cases of Self-Determination

States and recognition 1

4 Criteria for Statehood(Art. 1 of Montevideo Convention on the Rights and Duties of States)

(a)Permanent Population: Settled population

(b)Defined territory: Territory

(c)A government: Central government

(d)Capacity to enter into relations with other States: independent in external relations

Cf: government in exile, puppet government, failed State.

States and recognition 2

Theories of Recognition of States

- Declaratory theory: formal acceptance of existing State
- Constitutive theory: creation of States as a new international legal person

** In practice, **Political consideration** plays major role in State recognition

*** North & South Korea, East & West Germany

*** Kosovo case: No standard

Kosovo

Located in Balkan
Peninsular.

- About 11,000 Km²,
with 1.9 million people
Was part of Yugoslavia.
Kosovo war (1998-9)
Declared independence
in 2008

Now disputed status.
Recognized by 112 UN
Members



ICJ's Advisory opinion on Kosovo's Declaration of Independence(2010)

The court delivered its advisory opinion; by a vote of 10 to 4, it declared that "the adoption of the declaration of independence of the 17 February 2008 did not violate general international law because international law contains no 'prohibition on declarations of independence."

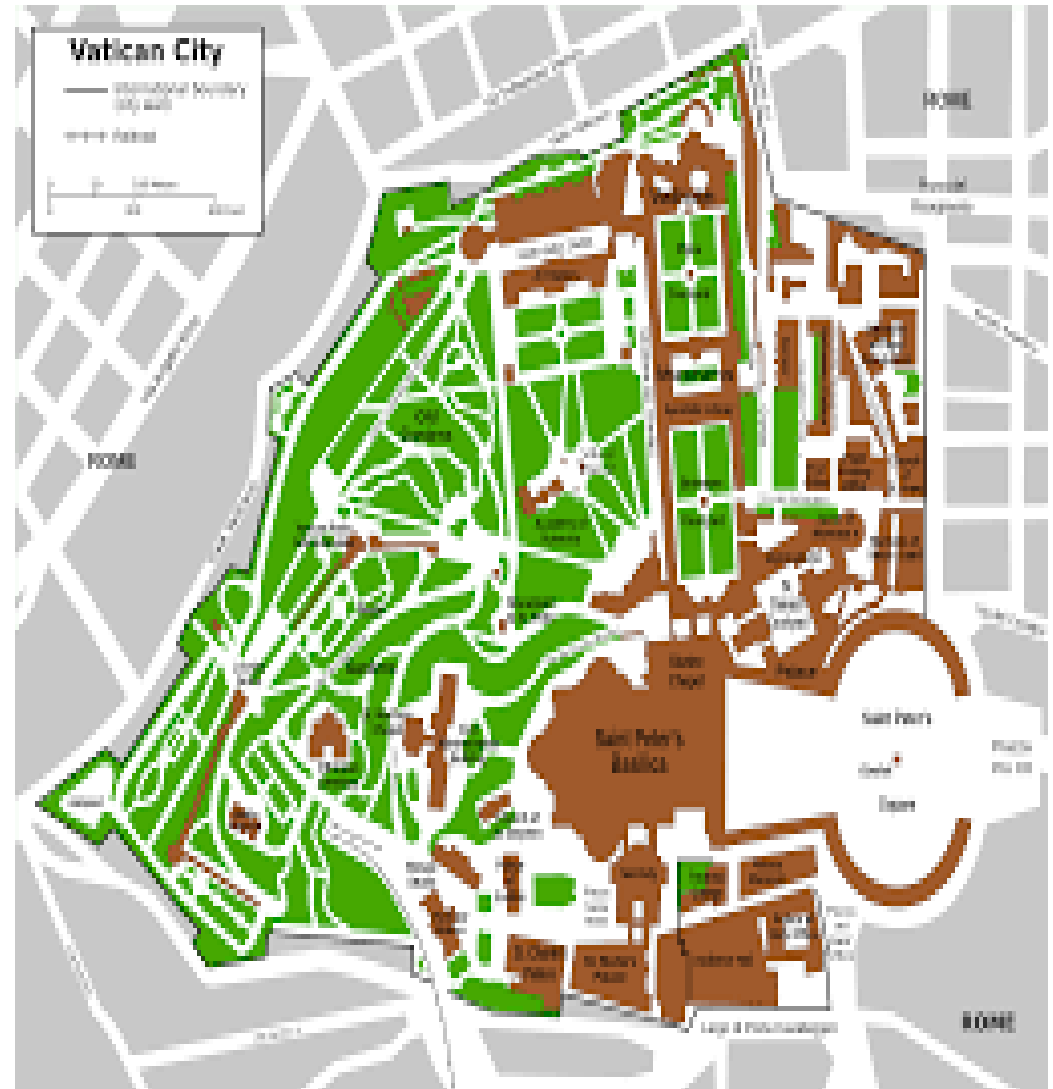
Vatican City

Lateran Pact 1929
between the **Holy See** and Italy

0.44 km²

With 1,000 people

Permanent
Observer Status
at UN.





Taiwan

Republic of China retreated to Formosa In 1949

UN Resolution 2758 (25 October 1971)
recognized the People's Republic of China (PRC)
as China's sole representative in the United
Nations.

The PRC refuses to have diplomatic relations
with any nation that recognizes the ROC, and
requires all nations with which it has diplomatic
relations to make a statement recognizing its
claims to Taiwan.

Taiwan



Turkish Republic of Northern Cyprus

A coup d'état in 1974, performed as part of an attempt to annex the island to Greece, prompted the Turkish invasion of Cyprus.

This resulted in the eviction of much of the north's Greek Cypriot population, the flight of Turkish Cypriots from the south, and the partitioning of the island, leading to a unilateral declaration of independence by the North in 1983.

Turkish Republic of Northern Cyprus

3,355 km² (1,295 sq mi) 313,626 people

Heavily dependent on Turkey for economic, political and military support



Abkhazia and South Ossetia

- are partially recognised republics in the Caucasus, claiming independence from Georgia in 1993.
- Acted as if they are *de facto* part of Russia.
- recognised by six and five UN member states respectively.

Georgia and the majority of countries of the world do not recognise them as independent.

Georgia officially considers them as sovereign territory of the Georgian state under Russian military occupation

Russia



Abkhazia

S. Ossetia
● Tskhinvali

Georgia

★ Tbilisi

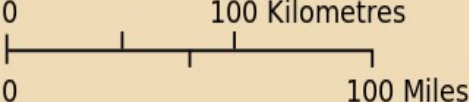
Caspian Sea

Black Sea

Turkey

Armenia

Azerbaijan



Transnistria

A landlocked self-proclaimed state in 1990.

Recognised only by three other non-United Nations (UN) states: Abkhazia, Republic of Artsakh and South Ossetia

The region is considered by the UN to be part of Moldova



Russian provinces in the Caucasus

Chechnya

Dagestan

Ingushetia

Karachaevo

Cherkessia

Kabardino Balkaria



Yugoslavia

The constituent six socialist republics of Socialist Federal Republic of Yugoslavia (SFRY) that made up the country were Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia. Serbia contained two Socialist Autonomous Provinces, Vojvodina and Kosovo.

After an economic and political crisis in the 1980s and the rise of nationalism, Yugoslavia broke up along its republics' borders, at first into five countries, leading to the Yugoslav Wars.

Yugoslavia

After the breakup, the republics of Serbia and Montenegro formed a reduced federation, the Federal Republic of Yugoslavia (FRY), which aspired to the status of sole legal successor to the SFRY, but those claims were opposed by the other former republics.

The United Nations also denied its request to automatically continue the membership of the former state.

Eventually, Serbia and Montenegro broke up in 2006 and became independent states. Kosovo declared independence in 2008.

Yugoslavia



Kurds

an ethnic group] in the Middle East, mostly inhabiting a contiguous area spanning adjacent parts of southeastern Turkey (Northern Kurdistan), northwestern Iran (Eastern Kurdistan), northern Iraq (Southern Kurdistan), and northern Syria (Western Kurdistan).

are estimated to number from a low of 30 million, to possibly as high as 45 million.

Not recognized as a State.

18m 

•• 2m 



WHERE ARE THE KURDS?

REF: • = 1 MILLION KURDISH PEOPLE
ON NORTH PACIFIC 2018

Self-Determination

The purpose of the UN: 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(Art. I(2))

Self-determination means the people can decide freely their political status.

The right of self-determination is recognized as a right of *ergo omnes* (towards all).

Self-Determination (2:19)



Gibraltar

Reclamation of the territory has been the policy of Spain.

The Gibraltarians themselves reject any such claim and no political party or pressure group in Gibraltar supports union with Spain..

In 2000, Gibraltar Parliament declared: "In essence the declaration stated that the people of Gibraltar will never compromise, give up or trade their sovereignty or their **right to self-determination**; that Gibraltar wants good, neighbourly, European relations with Spain; and that Gibraltar belongs to the people of Gibraltar and is neither Spain's to claim or Britain's to give away."

Greenland

In 2008, Greenlanders voted in favour of the Self-Government Act, which transferred more power from the Danish government to the local Greenlandic government.

- Inuit are 50,000 among 57,000 inhabitants.

From June 2009, Greenland assume general function of the government, while the Danish government retains control of foreign affairs and defence. The Danish government also retains control of monetary policy, providing an initial annual subsidy of DKK 3.4 billion, which is planned to diminish gradually over time.

Secession

National self-determination appears to challenge the principle of territorial integrity (or sovereignty) of states.

- people should be free to choose their own state and its territorial boundaries.

There is no legal process to redraw state boundaries according to the will of these peoples.

- only one successful case of secession by force (Bangladesh).

Bangladesh case

During the Bangladesh Liberation War in 1971, neighboring India provided crucial support to the Bangladesh Forces and intervened in support of the provisional government on 3 December 1971.

The nine-month war ended with the surrender of Pakistan's military to the Bangladesh-India Allied Forces on 16 December 1971.

The cause of Bangladeshi self-determination was recognized around the world. By the time of its admission to UN membership in August 1972, the new state was recognized by 86 countries. Pakistan recognized Bangladesh in 1974 after pressure from most of the Muslim world

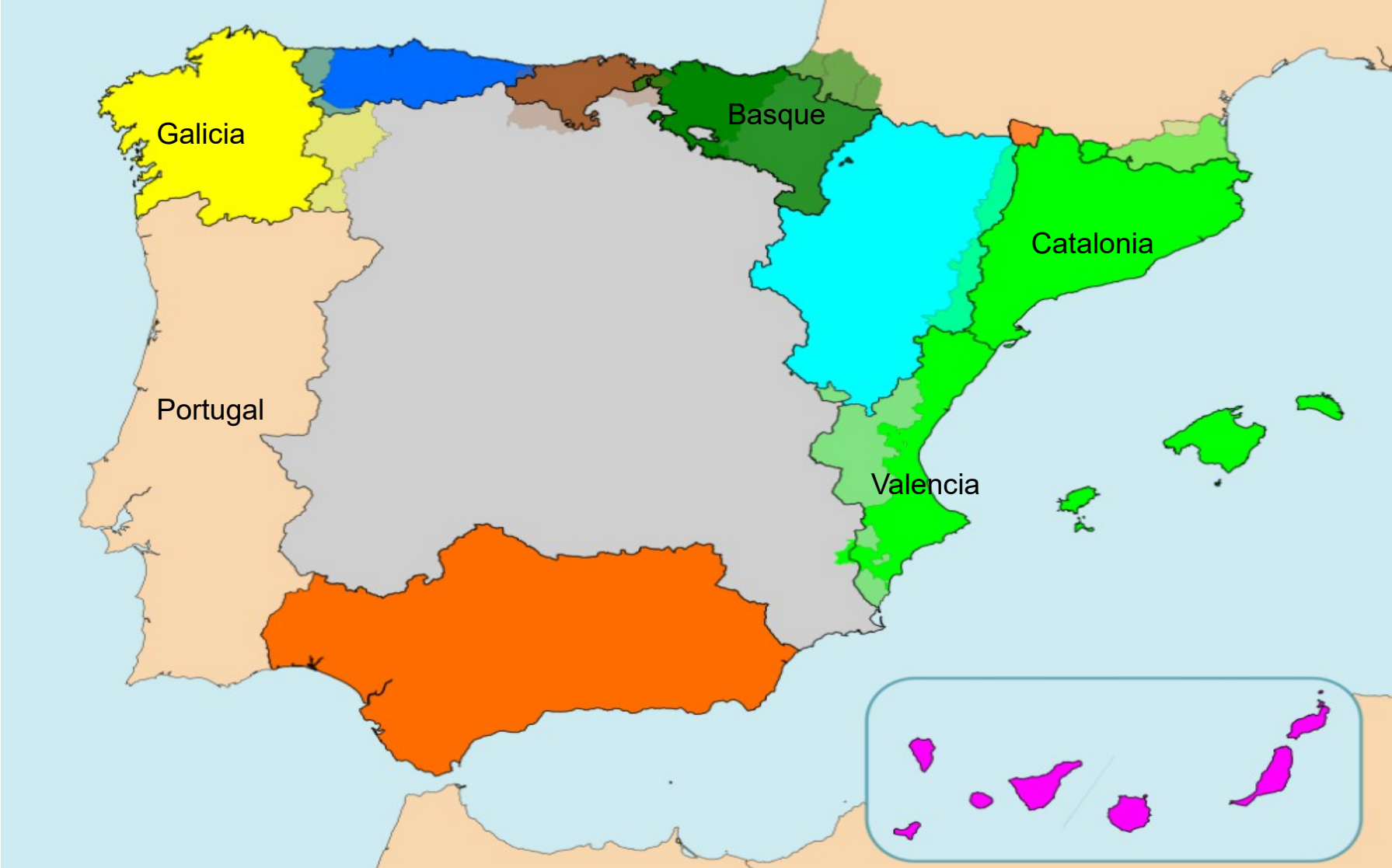
Secession

Since international law does not prohibit the secession, there are many secession movement in the world:

- Quebec sovereignty movement in Canada
- The Scottish National Party (SNP) campaigns for Scottish independence and direct Scottish membership of the European Union.
- Catalonia and the Basque Country In Spain

* Between 1967 and 1970, the unrecognised Republic of Biafra seceded from Nigeria, resulting in a civil war that ended with the reunion.

Secession Movements in Spain



Catalonia's fight for independence (2:25)



Recognition of governments

Recognition of States & Recognition of governments:

- A change of government does not change the State.
- a question arises when a new government come to power by unconstitutional or violent means.

At first, Recognition de facto \longrightarrow international law recognises new realities.

Government in exile enjoys the same legal status as it had before.

De jure and de facto recognition

Recognition de jure: the entity fully satisfy the applicable legal criteria.

Recognition de facto: only of the current position of the entity.

* Many States refused to recognize the annexation by the Soviet Union 1940 of 3 Baltic States as de jure: they recognized as de facto.

* When the Baltic States become independent in 1991, they were recognized de jure by many States.

Palestine

The de jure sovereign state in the Middle East claiming the West Bank (bordering Israel and Jordan) and Gaza Strip (bordering Israel and Egypt) with East Jerusalem as the designated capital although its administrative center is located in Ramallah.

The State of Palestine is recognized by 136 UN members and since 2012 has a status of a non-member observer state in the United Nations – which amounts to a *de facto*, or implicit, recognition of statehood.

DISAPPEARING PALESTINE



5 million Palestinians are classified as refugees by the UN

Means of recognition

Express recognition, as in a diplomatic note or formal public announcement.

Implied recognition: Supporting an application for UN membership, establishment of diplomatic relations, the conclusions of bilateral treaty.

Cf: A visit by a high-level official or a meeting with a senior official of the purported may NOT amount to recognition.

Overseas Territories

A territory which is under the sovereignty of a State(parent State) but which is not governed as part of its metropolitan territory.

Today, most of the OTs enjoys considerable internal self-government, with mainly defence and foreign affairs remaining the responsibility of the parent State.

After 2nd World War, over 100 OTs gained their independence and became UN members.

Some notable OTs

The US and the UK have many OTs (13 and 12, respectively)

China has 2 special administrative regions (Hong Kong & Macau)

New Zealand has two self-governing states in free association with New Zealand (Cook Island and Niue)

Denmark contains 2 self-governing countries (Faroe Island and Greenland).

Condominiums

A political territory (state or border area) in or over which multiple sovereign powers formally agree to share equal *dominium* (in the sense of sovereignty) and exercise their rights jointly, without dividing it into "national" zones.

Condominia have been rare in practice.

- difficulty of ensuring co-operation between the sovereign powers.

Pheasant Island



Brčko District

(Federation of Bosnia and Herzegovina and Republika Srpska)



IL & Municipal law

International Law

- In principle, international law operates only at the international level and not within domestic legal systems.

Municipal Law

- Is the **national, domestic, or internal law** of a sovereign state
- includes many levels of law: not only national law but also state, provincial, territorial, regional, or local law.

Theories regarding the relationship between International and Municipal law

*Monism
Approach*



*DUALISM
Approach*

Monism Approach

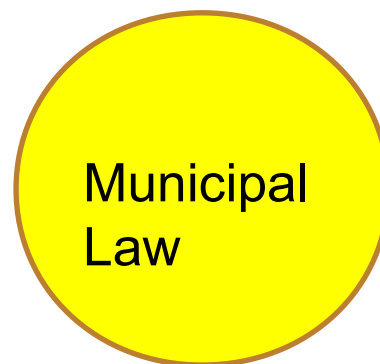


The domestic and international legal systems form a single legal system that binds States and individuals.
ex) the Netherlands, France

Dualism Approach

International & Municipal law are distinct legal orders
(They are not the unified whole).

Without incorporation, international law does not
become part of municipal law.



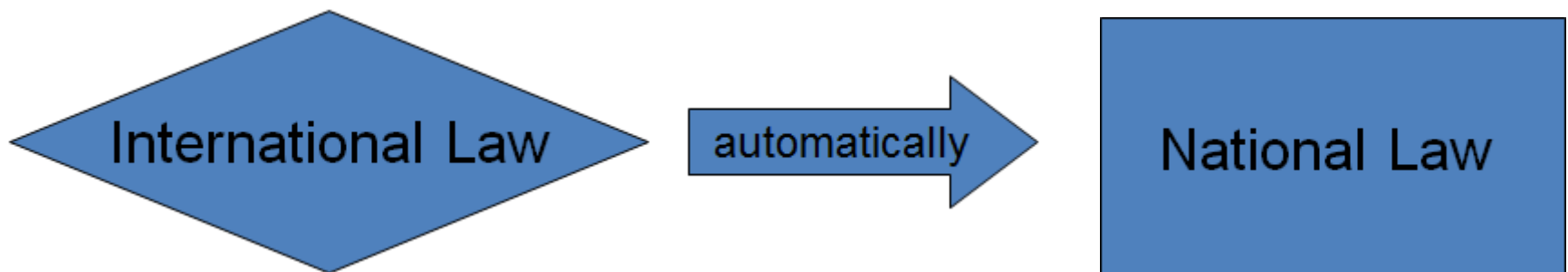
How do a national court adopt an international law based on monism and dualism theories?

According to its national constitution.



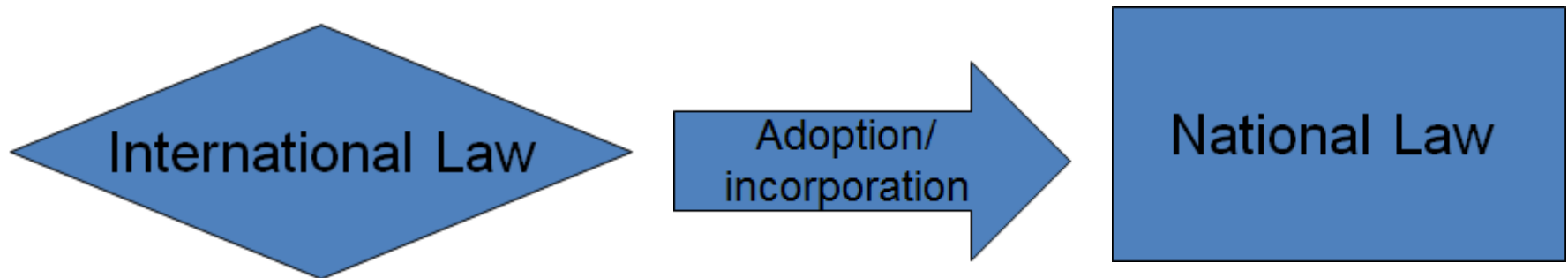
Monism

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



Dualism

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.



The Netherlands (Monist)

Provisions of treaties and of resolutions by international institutions which may be binding on all persons... shall become binding after they have been published (Art. 93)

Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties or of resolutions by international institutions that are binding on all persons (Art. 94).

The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts (Art. 120)

The United Kingdom (dualist)

International law is only part of British national law once it is accepted in national law.

A treaty is not part of English law unless and until it has been incorporated into the law by legislation (Macaine Watson v. Dept. of Trade, [1990] 2 AC 418 at 500, HL.)

There would be **no conflict** between a treaty and a Municipal law.

The United States (mixed)

International law applies directly in US courts in some instances but not others.

Treaties ratified in accordance with the Constitution automatically become part of the municipal law of the USA.

- Self-executing treaty: national implementing legislation is not necessary
- Non-self-executing treaty: no legal effect until legislation.

Japan (mixed)

The treaties concluded by Japan and established laws of nations shall be faithfully observed (Art. 98-2, the Constitution of Japan).

It is generally agreed that treaties have domestic legal effect in Japan.

Japanese have such a similar practice of treaty application in its courts as the US (self- and non-self-executing treaty)

Korea (Monist)

헌법에 의하여 체결 · 공포된 조약과 일반적으로 승인된 국제법규는 국내법과 같은 효력을 가진다(대한민국 헌법 제6조 제1항).

- 국내법 제정이 없어도 조약의 국내적 효력을 인정
- 헌법재판소는 조약과 국내법의 효력관계에 대하여 동위설 인정

THANK

YOU

