

Lecture outline:

- Concept of international public law
 - Sources
 - Subjects
 - Responsibility
 - Settlement of disputes
-
- Concept of international private law
 - Sources
 - Relations with crossborder element
 - Law applicable – clauses, collision norms

International public law - concept

Relations between independent states

Laws of international community

Basic teleology – peace, economy, environment, basic rights

No sovereign authority, specific legitimacy



International public law - sources

system of sources – Art. 38(1) of the Statute of ICJ



International public law - customs

- **usus longaevis** – use
- **opinio iuris (sive necessitatis)** – opinion of effectuality

usus longaevis → acting
→ non-acting – where it was possible/required

opinio iuris – opinion of the international society on existence of norm
(+ **sive necessitatis** – opinion the norm should be obeyed)

customs may be **declared** also in treaties

International public law - treaties

general principles of treaties – customary law
closer specification – Vienna convention

written
unwritten – gentleman agreements

public
secret - limited due to art. 102(1) of Charter

full-form treaties – by heads of state, prime ministers
limited-form treaties – by FA ministers, ambassadors – exchange of notes

presidential (+ratification of parliament)
governmental
departmental

political
economic

lawmaking
contractual

equal
unequal

open
semi-closed
closed

short-term
long-term
unlimited

peace
war



International public law - treaties

Published in UN Treaty Series - untreaty.un.org/English/access.asp (paid)

monist

adoption – treaty is adopted by anyone (incl. court)

incorporation – treaty directly incorporated (ratified, published)

dualist

transformation – transfer in authentic words into national law

adaptation – not authentic words – text is adapted

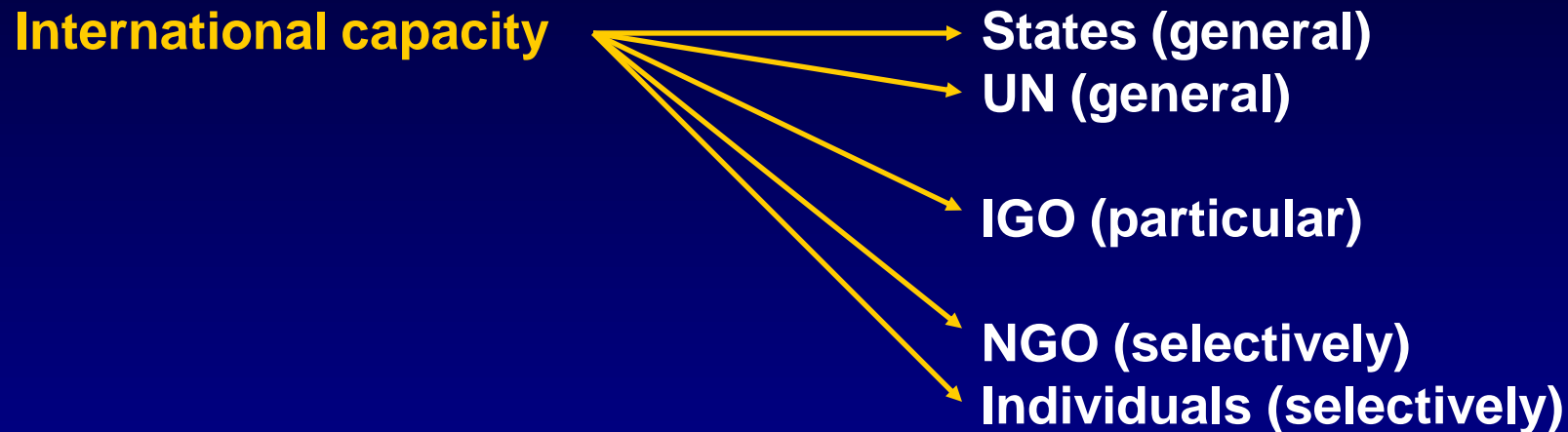
International public law - principles

mostly customary – definitions specified by treaties, declarations

UN declaration A/RES/2625/XXV - 40th anniversary of UNO:

- 
- no use or threat by force
 - peaceful settlement of disputes
 - no meddling (discretion)
 - cooperation between states
 - equal rights self-determination rights of peoples
 - sovereignty
 - pacta sunt servanda

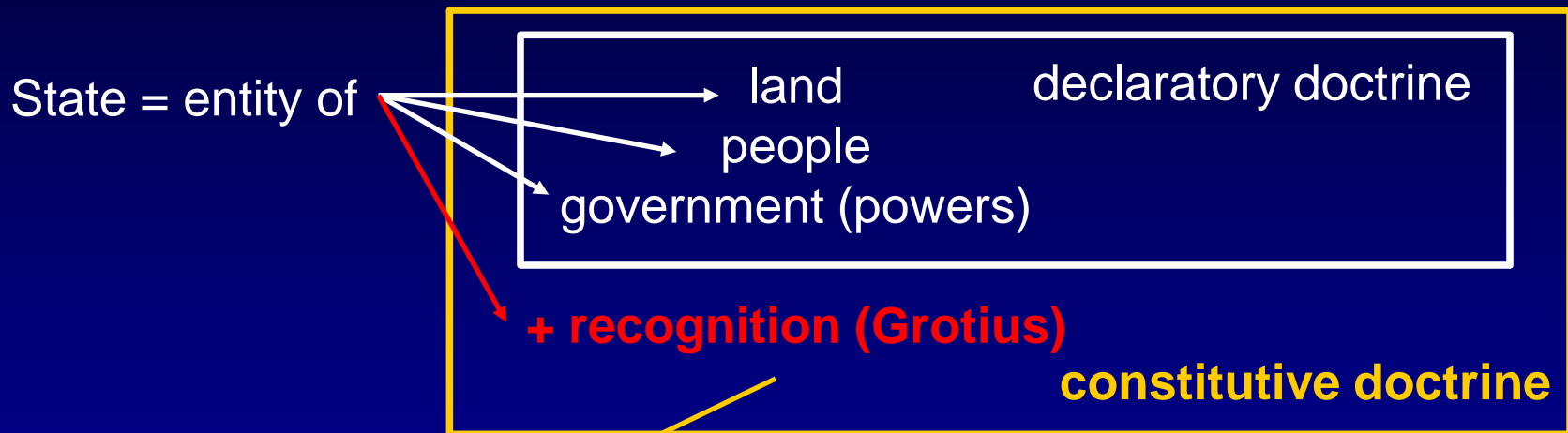
International public law - subjects



- Active – to act (conclude treaties, sue)
- Passive – to have rights and duties
- Procedural active – to sue
- Procedural passive – to be sued

International public law – subjects - States

(doctrines: what is the effect of recognition?)



recognition of state

X

recognition of government



International public law – subjects - IGO

= permanent organizations set up by states to carry on specific activities of common interest

set up – by treaty signed by capable subjects (mostly states)

legal capacity – set up, recognition (by nonmember states and IGOs)

internal definition of legal capacity – in treaty

typical structure

- assembly (representatives of all members)
- council/committee
- office

employees – specific position (immunities)

UNO – www.un.org

Founded on grounds of experience from WWII – 1945
(followed ideas of League of Nations)

Basic treaty – **UN Charter**

General capacity – Bernadotte case

Structure General Assembly (delegates of states + visiting delegates)

Security Council (5+10, primary responsibility)

International Court of Justice

Trusteeship Council

Economic and Social Council

Secretariat

UNO – sponsored agencies

- International Bank for Reconstruction and Development – IBRD – Washington
- International Monetary Fund – IMF – Washington
- International Civil Aviation Organization – ICAO – Montreal
- International maritime organization – IMO – London
- United Nations Industrial Development Organization – UNIDO – Vienna
- World Intellectual Property Organization – WIPO – Geneva
- General Agreement on Tariffs and Trade – GATT – Geneva
- Universal Postal Union – UPU – Bern
- International Telecommunication Union – ITU – Geneva
- International Atomic Energy Agency – IAEA – Vienna
- International Labour Organization – ILO – Geneva
- World Health Organization – WHO – Geneva
- United Nations Educational, Scientific and Cultural Organization – UNESCO – Paris

all – separate structure, powers

International public law - responsibilities

Responsibility – essentials

1) action (+harm)

2) accountability

Harm on



International public law - responsibilities

Accountable are actions committed:

- By a state (Rainbow Warrior)
- On request of a state (mercenaries in Congo)
- Under state control (paramilitary in Bosnia)
- Under state supervision (due diligence - US Embassy in Tehran)

- Remedies**
- Court – damages, compensation, satisfaction (various)
 - Act peú amical
 - Retorsion
 - Repression (force)

International private law - concept

Law regulating private relations with crossborder element

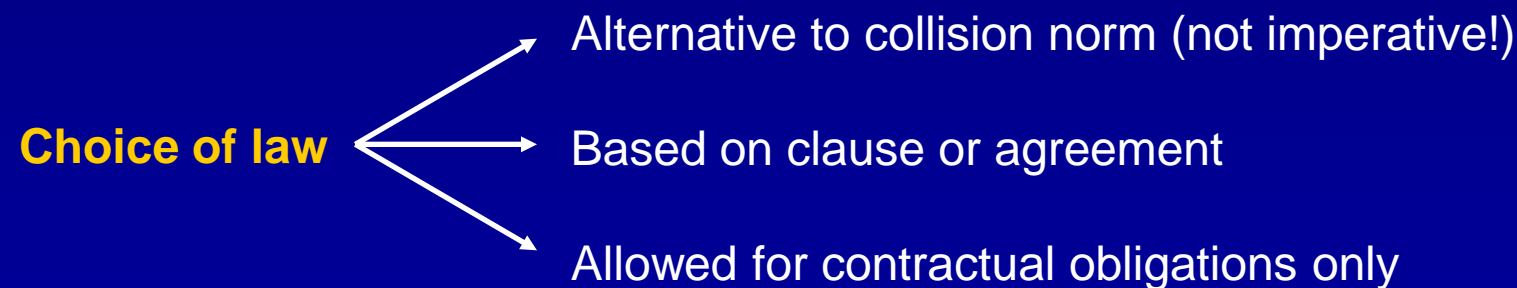
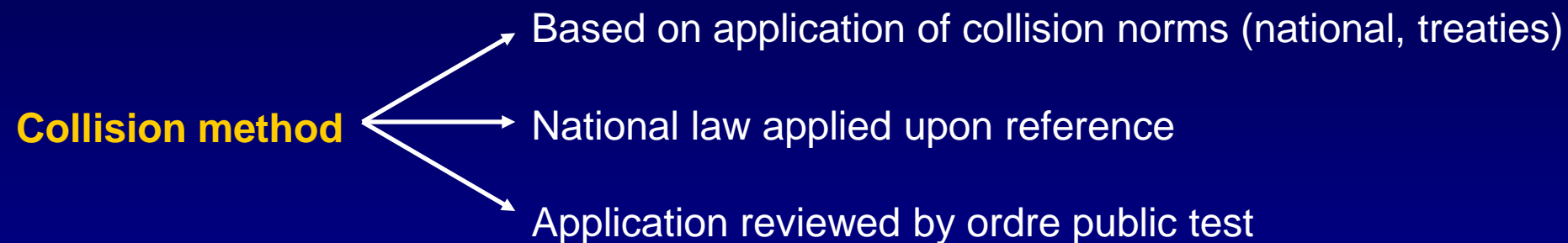
Civil law obligations

Subjects
Placement of object
Place of foundation
Place of performance
...

Regulation

- International treaties
- National laws
- International customs (lex mercatoria)

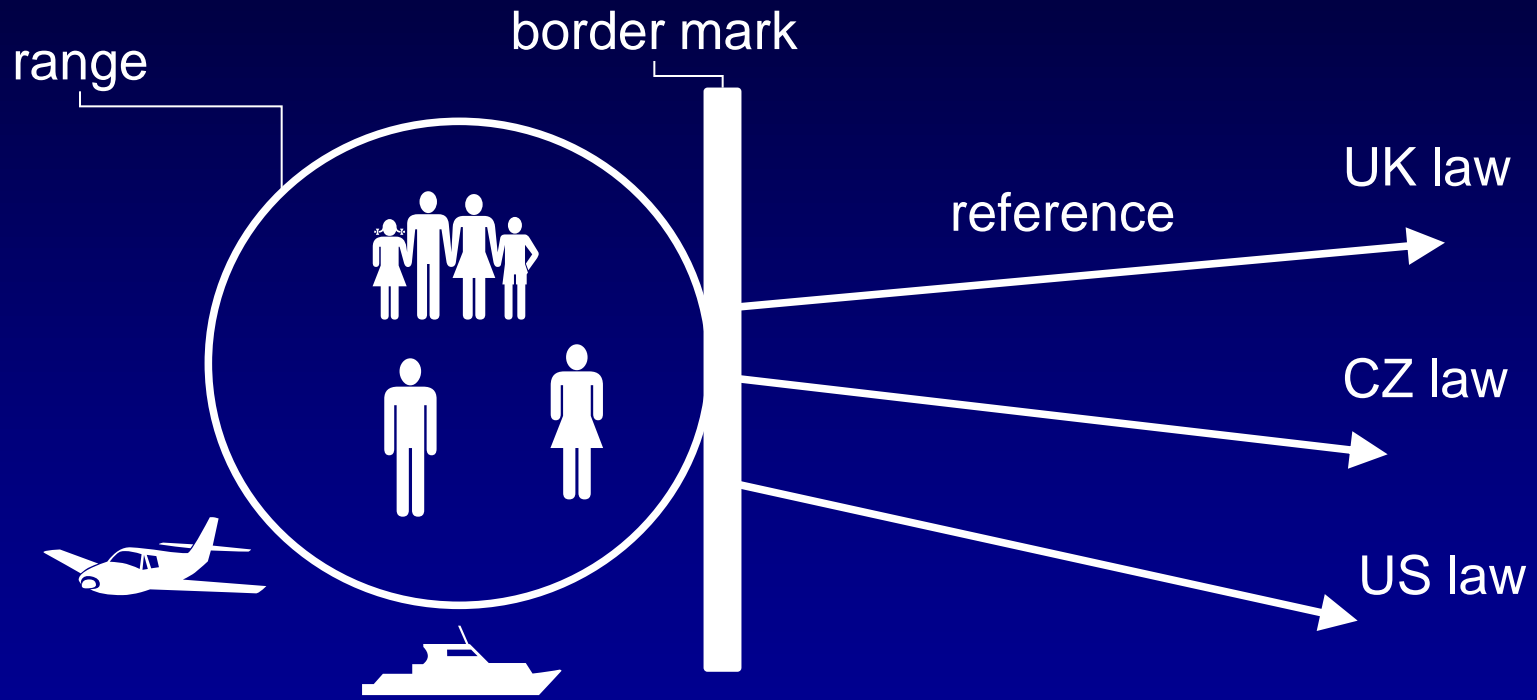
International private law – methods of regulation



International law

International private law – collision method

Collision norms – structure



General border mark = closest link
General principles – reference to substantive law (renvoi, remise)
- duty to find



International private law – collision method – border marks

type	explanation	typical use
lex fori	law of the state where the court is	process (always) non covered questions
lex patriae	law of the state of origin of subject	family matters personal status matters
lex rei sitae	law of the state where the object(2) is	immovable assets movable assets
lex causae	law by which the main contract is governed	process of contracting incidental questions



International private law – lex mercatoria

What is lex mercatoria

Not law (not originating in state – choice of law?)

Created by business community (experts)

Found mostly in recorded customs, restatements

Applied by arbiters and arbitrary panels

Forming part of national law if recognized as custom