

INU Global Citizenship Hiroshima Peace Seminar 2007

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United Nations

- Why doesn't UN do something about Global Warming, for example adopting a treaty ?
- UN as a world legislator?
 - Power of UN
 - Power of Security Council
 - Power of General Assembly

United Nations:SC

- Power of Security Council

Conclusions

- Power to make legally binding decisions
- Cannot be resorted to in the area of climate changes

- Power to make legally binding decisions

Article 25, UN Charter

“The Members of the United Nations agree to accept and carry out the **decisions of the Security Council** in accordance with the present Charter.”

United Nations:SC

“ decisions”?

UN Security Council Resolution 661

3. **Decides** that all States shall prevent:

(a) The import into their territories of all commodities and products originating in Iraq or Kuwait exported therefrom after the date of the present resolution;

(b).....

United Nations:SC

“ decisions”?

UN Security Council Resolution 678

2. **Authorizes** Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the foregoing resolutions, **to use all necessary means** to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area;

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United Nations:SC

- Cannot be resorted in the area of climate changes

Article 39, UN Charter

“The Security Council shall determine **the existence of any threat to the peace, breach of the peace, or act of aggression** and shall **make recommendations, or decide** what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”

- Negative definition of “peace”

United Nations:GA

- Power of General Assembly

Conclusion

No power to make legally binding decisions

Article 10, UN Charter

“The General Assembly **may discuss** any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, **may make recommendations** to the Members of the United Nations or to the Security Council or to both on any such questions or matters.”

United Nations:GA

UN General Assembly Resolution 217A(III) (1948)
Universal Declaration of Human Rights

“The General Assembly,
Proclaims this Universal Declaration of Human Rights as
a common standard of achievement for all peoples and
all nations,

United Nations:GA

UN General Assembly and Domestic Issues

Article 2

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the **domestic jurisdiction of any state** or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

United Nations: Conclusions

- Security Council

Power to make decisions

In relation to “the breach of the peace...”

- General Assembly

Power to discuss and recommend

But UN “adopts” a **treaty** by resolution

Treaty

Definition of the Treaty

- (a) “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**;

Treaty

“designation”

Charter Charter of the United Nations

Covenant Covenant of the League of Nations

Convention

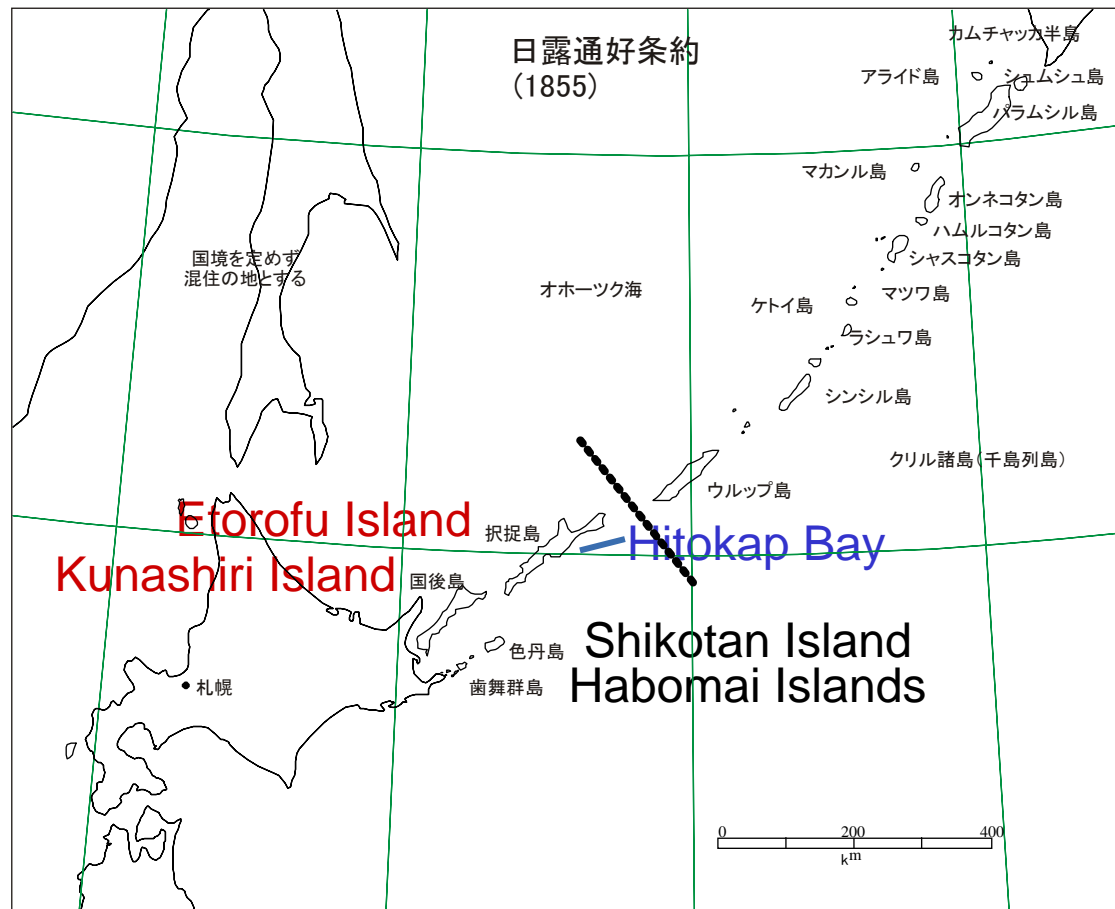
United Nations Framework Convention on Climate Change

Protocol

Kyoto Protocol to the United Nations Framework Convention on Climate Change

Treaty

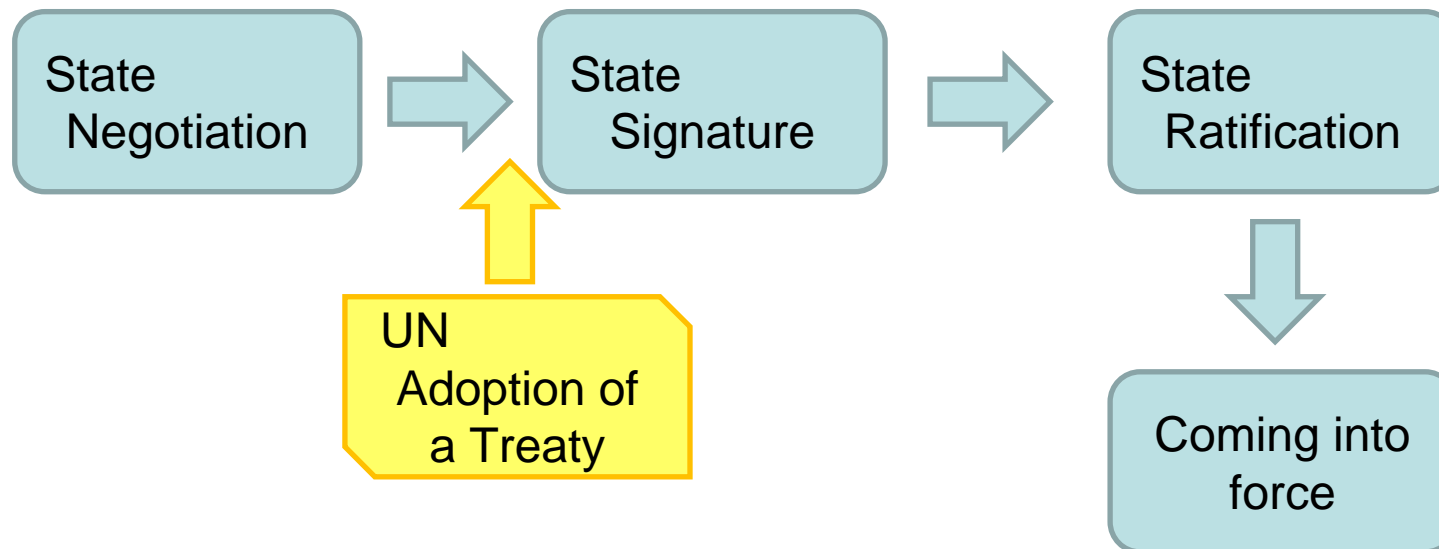
Joint Declaration by Japan and the Union of Soviet Socialist Republics



Treaty

“US withdraws from Kyoto Protocol”

Process of concluding a treaty



Treaty

“US withdraws from Kyoto Protocol”

US removes its signature from the Kyoto Protocol

US unsigns or rescinds the Kyoto Protocol

Article 18, Vienna Convention on the Law of Treaties

Obligation not to defeat the object and purpose of a treaty prior to its entry into force

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or

Treaty

Is there

Obligation to sign Kyoto Protocol?

Obligation to ratify Kyoto Protocol?

→ “treaty” means an international agreement

Treaty

Agreement and third States

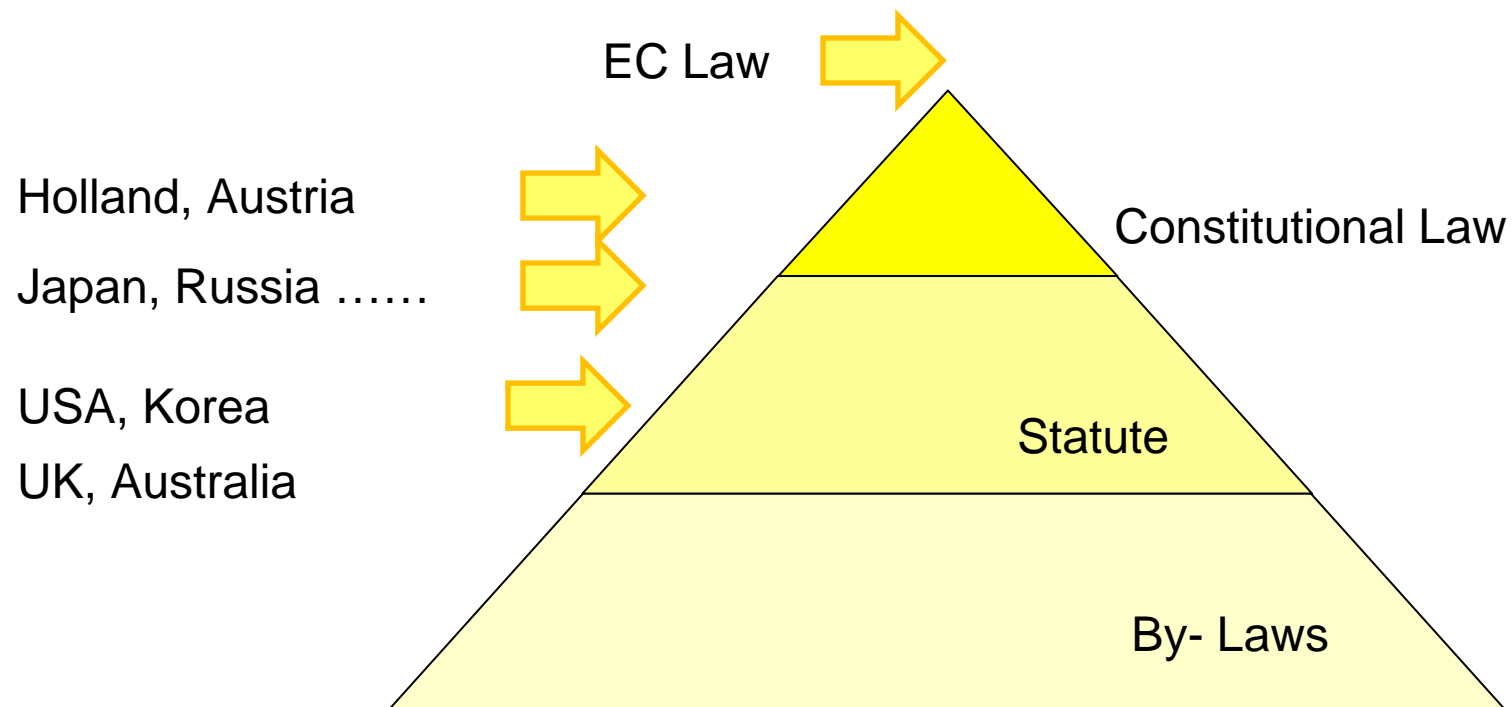
Article 34 , Vienna Convention on the Law of Treaties

General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

Treaty-Domestic Law

Kyoto Protocol(=treaty) and Domestic Legal System



Treaty-Domestic Law

Conflicts between treaty and domestic law

- domestic level
 - according to the constitutional system
- international law level

State may not resort to domestic law



treaty prevails over domestic law

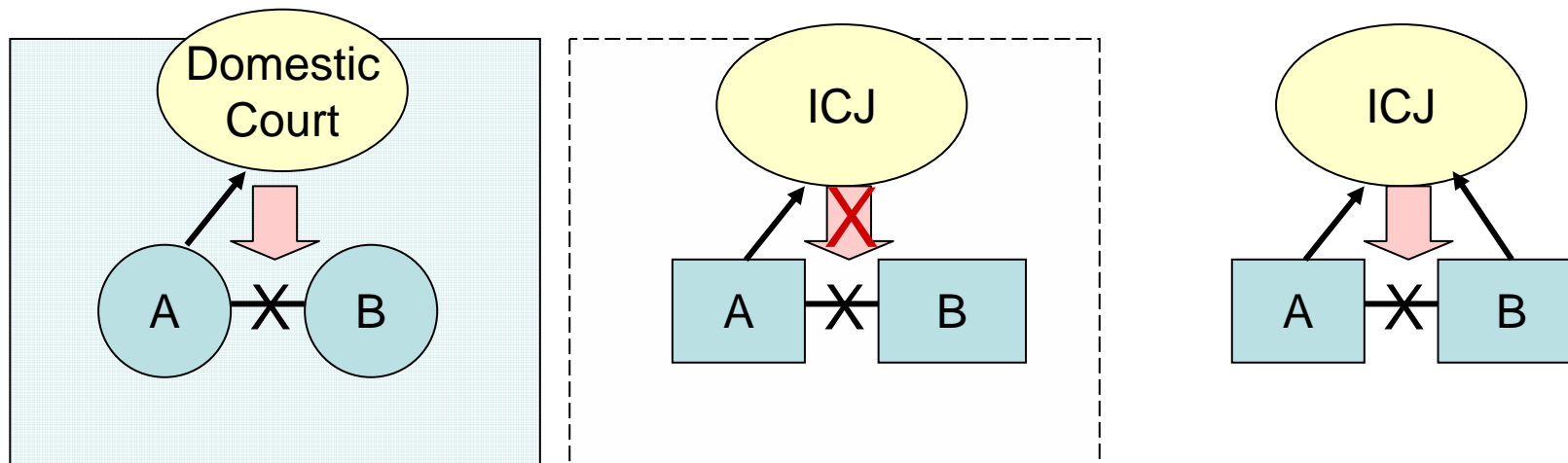
Kyoto Protocol

Litigation

Let's sue developed countries in ICJ?

Jurisdiction of ICJ

→ “treaty” means an international agreement



Political Solution

- Legal approach
 - Treaty
 - Litigation, Advisory Opinion in ICJ

- Political approach under UN
 - ~~-Security Council~~
 - General Assembly