Introduction to International and Comparative Law

Chapter 1

Chapter Outline

A. What Is International Law?
B. The Making of International Law
C. Sources of International Law
Treaties and Conventions
Custom
General Principles and *Jus Cogens*
D. The Scope of International Law in Actual Practice
The Practice in International Tribunals
The Practice in Municipal Courts
E. International Persons
States
Territorial Sovereignty
Negative Servitudes: Air and Water Pollution
International Organizations
The Institutions of the European Union
F. The Rights of Individuals Under International Law
G. Comparison of Municipal Legal Systems
The Romano-Germanic Civil Law System
The Anglo-American Common Law System
The Islamic Law System
Chapter Questions

A. What Is International Law?

International law deals with three kinds of international relationships: (1) those between states[1] and states, (2) those between states and persons, and (3) those between persons and persons. Traditionally, international law was all about the relationships between states. That is, the law of nations resolved issues between two or more states, and the legal relationships between and among states is what is generally called **public international law**. As transactions among private entities grew, the phrase **private international law** was applied to the laws governing conduct between people (and corporations) from different states. Examples of public and private international law are shown in Table 1.1.

For many, *international law* remains a contradiction in terms. There is no single world government to make and enforce laws, and no globally recognized forum in which to bring disputes between citizens of different nation-states. To those who see law as "the command of a sovereign," the more consensual nature of international law makes it "soft" law or no law at all. Moreover, the decline in the power of states relative to the private sector[2] poses new challenges to contemporary

[1]In international law, a country has traditionally been referred to as a *state, nation,* or *nation-state.* This book will generally use the word *state* to refer to nation-states.

[2]See Daniel Yergin and Joseph Stanlislaw, *The Commanding Heights: The Battle Between Government and Marketplace That Is Remaking the Modern World* (1998).

TABLE 1.1

Examples of public and private international law

Public International Law	Private International Law
Sources of international law	Torts
International personality	Inheritances
State territory	Money and banking
State succession	Intellectual property
State responsibility to aliens	Commercial
Law of the sea	Contracts and sales
International dispute settlement	Transportation
Law of war	Financing
	Securities regulations
	Antitrust
	Taxation

international law
The body of legal rules and norms that regulates activities carried on beyond the legal boundaries of a single state.

public international law
The division of international law that deals primarily with the rights and duties of states and intergovernmental organizations as between themselves.

private international law
The part of international law that deals primarily with the rights and duties of individuals and nongovernmental organizations in their international affairs.

comity
(From Latin *comitas:* "courteousness.") The practice or courtesy existing between states of treating each other with goodwill and civility.

international law. Today, the term *international law* applies to any conduct outside the boundaries of states, whether of a public or a private nature.

There are at least three ways of looking at international law. Cosmopolitans claim that international law is based on universal human rights. Thus, international law should restrain states from violating norms based on universal human rights, and the consent of a state is irrelevant. By contrast, Positivists focus on the sovereignty of states and their consent to limits on that sovereignty. Thus, Positivists claim that international law is based on (1) the sovereign equality of all states in the international system and (2) state consent to individual international laws, either through treaties or customs. Positivist international law can be seen as a series of contracts between states; international law becomes binding only through such explicit or implicit contracts. In contrast to either Cosmopolitans or Positivists, Hobbesians are more cynical, believing that states will make agreements and abide by international law only when it suits their self-interests.

Scholars, jurists, and politicians will rarely adopt one school or another with consistency, and combinations of these views can coexist among principal actors in the same nation-state. At a minimum, however, international law is understood to be more than just good manners or mutual respect between or among sovereign nation-states. **Comity**, for example, is the practice between states of treating each other with goodwill and civility. It is not law, however, because states do not regard it as something they are required to respect. For example, until it became a matter of legal obligation under Article 36 of the 1961 Vienna Convention on Diplomatic Relations, it was long considered to be a customary courtesy to allow foreign diplomats the privilege of importing goods they intended for their private use free of customs duties. This privilege was not a legal right guaranteed by international law, however, because states did not feel compelled to grant the privilege except as a courtesy.[3] Such courtesy can be seen as a kind of anticipatory reciprocity in which states do unto other states as they would hope to be treated in turn.

Comity is thus understood as an informal principle that nations will extend certain courtesies to other nations, particularly by recognizing the validity and effect of their executive, legislative, and judicial acts. This principle is most frequently invoked by courts, which will not act in a way that demeans the jurisdiction, laws, or judicial decisions of another country. In Case 1-1, the limits on a state's jurisdiction to make and enforce law are discussed in terms of the doctrine of comity.

Even where a state does not object to another state's taking jurisdiction of a dispute focusing on activities in the first state, self-imposed limitations abound. Courts in the United States, for example,

[3]Another example of comity is set out in *Republic of the Philippines v. Westinghouse Elec. Corp.*, *Federal Reporter, Third Series,* vol. 43, p. 65 (3rd Circuit Ct. of Appeals 1994). In this case, the appellate court overturned the U.S. trial court's order requiring the Philippine government to cease harassing witnesses in the Philippines. The appellate court held that the trial court could request compliance by a foreign sovereign as a matter of comity but that it could not order compliance as a matter of law.

CASE 1-1 Ignacio Sequihua v. Texaco Inc. et al.

United States District Court for the Southern District of Texas,
Houston Division, 847 F. Supp. 61 (1994)

MAP 1.1

Ecuador and the United States

Opinion of Judge Black

Plaintiffs, residents of Ecuador, filed this action in Texas state court asserting a variety of causes of action arising out of the alleged contamination of the air, ground, and water in Ecuador. In addition to monetary relief, Plaintiffs asked for an injunction requiring Defendants to return the land to its former condition and for a "trust fund" to be administered by the Court. The case was removed to federal court, and the Court finds that the removal was procedurally proper. In considering the defendants' motions to dismiss, the Court used "comity" to rule for defendants.

Under the doctrine known as comity of nations, a court should decline to exercise jurisdiction under certain circumstances in deference to the laws and interests of another foreign country. Section 403(3) of the Restatement (Third) of the Foreign Relations Law of the United States sets forth a number of factors to be considered in determining whether the comity of nations deference should be applied. The Ninth Circuit applied similar factors in *Timberlane Lumber Co. v. Bank of America National Trust and Savings Assn.*, 749 F.2d 1378 (9th Cir. 1984), to affirm a District Court's decision not to exercise jurisdiction. Consideration of these factors leads to the inescapable conclusion that the Court should decline to exercise jurisdiction over this case. The challenged activity and the alleged harm occurred entirely in Ecuador; Plaintiffs are all residents of Ecuador; Defendants are not residents of Texas; enforcement in Ecuador of any judgment issued by this Court is questionable at best; the challenged conduct is regulated by the Republic of Ecuador and exercise of jurisdiction by this Court would interfere with Ecuador's sovereign right to control its own environment and resources; and the Republic of Ecuador has expressed its strenuous objection to the exercise of jurisdiction by this Court. Indeed, none of the factors favor the exercise of jurisdiction. Accordingly, the case should be dismissed under the doctrine of comity of nations.

Casepoint

Under the doctrine known as comity, a court should decline to exercise jurisdiction under certain circumstances in deference to the laws and interests of another country.[4]

[4]The litigation over environmental damage to native lands in Ecuador has gone on for decades. For the latest developments, see Web sites from Chevron and also the NGO called Business and Human Rights at www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/TexacoChevronlawsuitsreEcuador. The Chevron Web site is www.chevron.com/ecuador/.

will often avoid taking jurisdiction of a case where the defendant is a sovereign state,[5] where the foreign defendants do not have sufficient "contacts" with the United States,[6] where there is another judicial forum that is "more convenient,"[7] where Congress did not intend a U.S. statute to apply extraterritorially, or where deciding a case would require the court to render a judgment that an act of a sovereign state on its own territory violated international law.[8]

Despite all these limitations, it has been customary for courts in many states to hear and decide cases with international aspects. If a business incorporated in one state operates a manufacturing facility in another state and violates the law of the other state, the other state will have the well-recognized power under customary international law to hear and decide a case against the foreign defendant. This is known as a state's *territorial* basis for taking jurisdiction over a case involving foreign actors. A second well-known basis for jurisdiction exists: If U.S. companies do certain acts in other states, they may still be held accountable in U.S. courts under the principle of *nationality* jurisdiction. If foreign companies act in ways that directly affect a state other than their own, they may be held accountable by the other state. But this *objective territoriality* jurisdiction is more problematic and has been the subject of many judicial decisions, such as the *Timberlane* case noted in Case 1-1. As the Restatement (Third) of the Foreign Relations Law is relied upon in Case 1-1, it is worth some consideration here.

Section 403 of the Restatement provides that even if a nation has a basis for jurisdiction, such as conduct outside of the nation that has intended and actual effects in the nation, the nation "may not exercise jurisdiction to prescribe law with respect to a person or activity having connections with another state when the exercise of such jurisdiction is unreasonable." The Restatement then sets out a set of factors relevant to evaluating whether the exercise of jurisdiction is reasonable:

a. The link of the activity to the territory of the regulating state, that is, the extent to which the activity takes place within the territory, or has substantial, direct, and foreseeable effect upon or in the territory;
b. The connections, such as nationality, residence, or economic activity, between the regulating state and the person principally responsible for the activity to be regulated, or between that state and those whom the regulation is designed to protect;
c. The character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted;
d. The existence of justified expectations that might be protected or hurt by the regulation;
e. The importance of the regulation to the international political, legal, or economic system;
f. The extent to which the regulation is consistent with the traditions of the international system;
g. The extent to which another state may have an interest in regulating the activity; and
h. The likelihood of conflict with regulation by another state.

Having one forum where all international civil cases could be resolved would eliminate the need for such balancing under the guise of reasonableness. There have been such proposals, but nothing of the kind is imminent. In the meantime, multilateral agreements such as the Hague Choice of Courts Agreements Convention are in place to minimize both the friction and the ambiguities that happen when state courts (often referred to as "municipal" courts) decide cases with parties from more than one state.[9]

---

[5]This is based on the historic recognition of the immunities of foreign sovereigns, codified in the United States in the Foreign Sovereign Immunities Act of 1976, which grants blanket immunity to foreign sovereigns, subject to a number of important exceptions. See Chapter 3, Section D, "Immunities of States from the Jurisdiction of Municipal Courts."

[6]See Chapter 3, Jurisdiction in Civil Cases (Jurisdiction Over Persons), and Chapter 4, Personal Jurisdiction Requirements of U.S. Products Liability Laws, at p. 129 and p.197.

[7]This is the doctrine known as *forum non conveniens.* See Chapter 3, Refusal to Exercise Jurisdiction, and Jorge Luis Machuca Gonazalez et al. v. *Chrysler Corporation et al.,*Case 3-8, p. 157.

[8]This is the Act of State Doctrine. See Chapter 3, p. 147.

[9]See 2005 Hague Choice of Court Agreements Convention at www.hcch.net/index_en.php?act=conventions.pdf&cid=98.

B. The Making of International Law

Within states, law is made by legislatures, courts, and other agencies of government. However, at the international level, no formal lawmaking machinery exists. In working together, the different states in the international community function in the roles of both lobbyists and legislators.

Under Positivist principles, international law comes into effect only when states consent to it. The general consent of the international community can be found in **state practice**, that is, in the conduct and practices of states in their dealings with each other. Statements or evidence of general consent can be found in the decisions of the International Court of Justice (ICJ) (or its predecessor, the Permanent Court of International Justice [PCIJ]), in resolutions passed by the General Assembly of the United Nations, in lawmaking **multilateral treaties**, and in the conclusions of international conferences. Sometimes, when a provision is repeated over and over in **bilateral treaties**, courts and law writers will regard the provision as having the general consent of the international community. In addition, legal writers often cite unratified treaties and reports of international agencies, such as those of the International Law Commission, as indicating a trend toward general consent.

The particular consent of a state to be bound by an international law can be found in the declarations of its government, in its domestic legislation, in its court decisions, and in the treaties (both bilateral and multilateral) to which it is a party.

state practice
The conduct and practices of states in their dealings with each other.

multilateral treaty
Treaty between more than two states.

bilateral treaty
Formal binding agreement between two states.

C. Sources of International Law

The sources of international law are what courts and other international tribunals rely on to determine the content of international law. Article 38(1) of the Statute of the ICJ lists the sources that the court is permitted to use. Most writers regard this list as being reasonably complete and one that other international courts should use as well. Article 38(1) provides that:

> 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;
> 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 a subsidiary means for the determination of rules of law.

This listing implies a **hierarchy**, or order, in which these sources are to be relied on (see Figure 1.1). That is, treaties or conventions are to be turned to before custom, custom before general principles of law, and general principles before judicial decisions or publicists' writings. Strictly speaking, Article 38(1) does not require a ranking or hierarchy; but in practice the ICJ and other tribunals turn first to treaties. This is appropriate because treaties (especially those ratified by the states' parties involved in a dispute) are clear-cut statements of the rules the court should apply. Also, customary law, which is based on practice, is often more specific than general principles of law, which are usually found inductively by legal writers who have examined the long-standing practices of states.

hierarchy
A group arranged according to rank or authority.

treaty
(From Latin *tractare:* "to treat.") Legally binding agreement between two or more states.

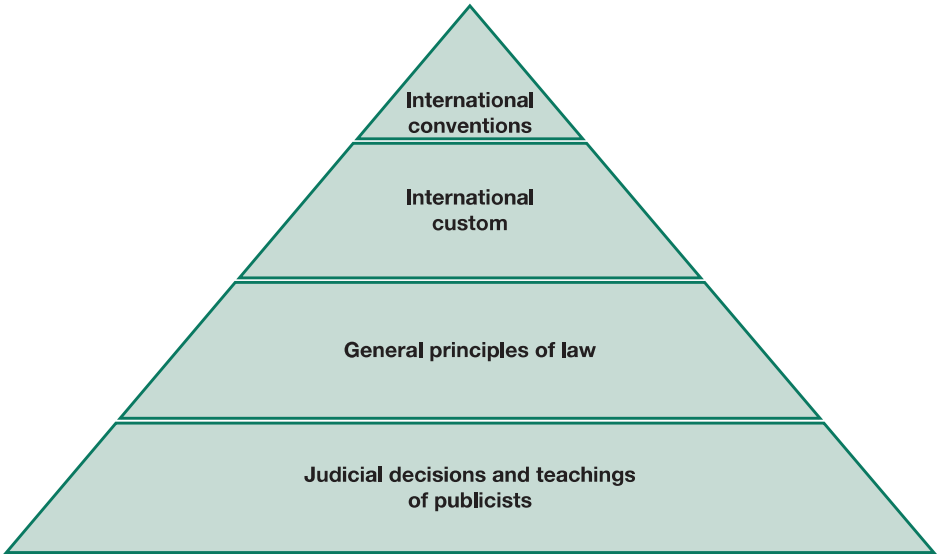
Treaties and Conventions

In international law the equivalents of legislation are treaties and conventions. **Treaties** are legally binding agreements between two or more states. **Conventions** are legally binding agreements between states sponsored by international organizations, such as the United Nations. Both are binding upon states because of a shared sense of commitment and because one state fears that if it does not respect its promises, other states will not respect their promises.

convention
(From Latin *convenire:* "to come together.") Legally binding agreement between states sponsored by an international organization.

FIGURE 1.1

The Hierarchy of the Sources Relied on by the International Court of Justice



Today, most of the customary rules that once governed treaties are contained in the Vienna Convention on the Law of Treaties,[10] which came into force in 1980. It only applies to treaties adopted after a party ratifies the agreement; nevertheless, its wide acceptance by states and its codification of customary rules have made it the usual standard for interpretation. Article 2(1)(a) of the Vienna Convention states that "'Treaty' means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or two or more related instruments and whatever its particular designation." This definition excludes certain agreements, such as oral promises, unilateral promises, agreements relating to international organizations, agreements governed by municipal law, and agreements that were clearly not intended to create a legal relationship.

Even so, the oral declaration of one state's government to an official of another state can potentially bind the declarant's state. This was seen in the case of *Denmark v. Norway,* decided by the PCIJ in 1933. (The PCIJ was the international judicial organ of the League of Nations.) In formal discussions leading up to the Paris Peace Talks, Denmark's ambassador told Norway's foreign minister that Denmark would not object to Norway's claim to Spitzbergen if Norway did not oppose Denmark's claim to the whole of Greenland at the Paris Peace Talks. After consulting with his government, the Norwegian foreign minister told the Danish ambassador "that the Norwegian Government would not make any difficulty in settling the question." In determining whether the oral commitment made by the foreign minister was binding on Norway, the PCIJ stated that Norway's foreign minister's declaration (even though it was expressed as a promise to do something in the future) concerned a matter within his competency and was binding on Norway. An authorized reply of a government minister to a request by the diplomatic representative of a foreign power, in regard to a question falling within his or her province, is binding upon the country to which the minister belongs. Norway, in short, had to give up its claims to Greenland.[11]

[10]Currently there are 111 states parties, including most of the developed world. See AudioVisual Library of International Law, available at http://untreaty.un.org/cod/avl/ha/vclt/vclt.html, "United Nations, Multilateral Treaties Deposited with the Secretary-General, Status as of 2006," posted at http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXXIII/treaty1.asp.

[11]*Denmark v. Norway* raises all kinds of interesting questions. It is not clear that the PCIJ decided that there was a treaty between the two states, or that written treaties could be unwritten by oral declarations of public officials. Nor is it clear that in all domestic (noninternational) settings an oral declaration would be sufficiently binding. The case has sent a message to diplomats who might be negotiating on behalf of their states; Dean Rusk, Secretary of State between 1961 and 1969, recalled that after "a highball or two" he suggested to the foreign minister of Honduras that they "toss a coin" for the Swan Islands in the Caribbean, islands claimed by both Honduras and the United States. "Fortunately, he refused because the International Court of Justice seemed to say in the Greenland case that a government has a right to rely upon the statement of a Foreign Minister with respect to a territorial matter." Dean Rusk, "The Role and Problems of Arbitration with Respect to Political Disputes," in *Resolving Transnational Disputes Through International Arbitration* (Thomas E. Carbonneau, ed., 1984) at pp. 15, 18.

Custom

Some rules have been around for such a long time or are so generally accepted that they are described as **customary law**. International customary law, however, is hardly static. Simply because certain practices were once followed in the international community does not mean that they are still followed today. For example, rules that govern the "art" of war are revised at the end of practically every major conflict to reflect the circumstances of a changed world. The present rule that requires a soldier to fight only with combatants is decidedly outdated in today's world of terrorism and guerrilla warfare and will likely be changed in the near future. The rate of change for international commercial law is just as rapid. Much of this reflects developments in modern technology. Laws governing the flow of data across international borders (such as messages sent by satellite or transoceanic cable) are presently in a state that might best be described as "confused." Many countries want to regulate the movement of such information, others demand free and undisturbed movement, and still others want guarantees against invasions of privacy. At present, the regulation is left up to each government, and little "common" law exists.

custom
A long-established tradition or usage that becomes customary law if it is (1) consistently and regularly observed and (2) recognized by those states observing it as a practice that they must obligatorily follow.

To show that a customary practice has become customary law, two elements must be established—one behavioral and one psychological. The first—called **usus** in Latin—requires consistent and recurring action (or lack of action if the custom is one of noninvolvement) by states. Evidence of such action can be found in the official statements of governments, including diplomatic correspondence, policy statements and press releases, the opinions of legal advisors, executive decrees, orders to military or naval forces, comments on draft treaties, national court decisions, and even legislation of a subordinate government.

usus
(From Latin: "usage.") A consistent and recurring practice.

Consistent and recurring practice does not mean lengthy (as in "since time immemorial," which is sometimes given as the rule in municipal practice), nor does it mean that it must be followed by all states. On the other hand, it must be accepted by a reasonably large number of major states for a period long enough to be recognized by the courts as establishing constant and uniform conduct.

The second element in showing that a customary practice has become law is the requirement that states observing the custom must regard it as binding. That is, they must recognize the custom as being a practice that they must obligatorily follow, rather than one that they follow out of courtesy (i.e., comity) to other states. This is often referred to by the Latin phrase ***opinio juris sive necessitatis***. The PCIJ discussed this requirement in 1927 in the case of *The Lotus.* The case involved a collision on the high seas between a French steamer and a Turkish collier in which some Turkish crew members and passengers lost their lives. When the French ship docked in a Turkish port, the Turkish government began criminal proceedings against the French officers on watch at the time of the collision. The French appealed to the PCIJ, arguing that Turkey had violated international law because, France said, only the flag state has jurisdiction over criminal incidents on the high seas. The PCIJ said that the few cases France cited for this proposition "merely show that states had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstentions were based on their being conscious of a duty to abstain would it be possible to speak of an international custom."[12] Turkey was allowed to continue with its criminal prosecution.

opinio juris sive necessitatis
(From Latin: "of the opinion that it is a necessary law.") Maxim requiring a state to observe a customary practice only if it is one that international law requires the state to observe.

Even if the international community follows a practice and recognizes it as binding customary law, under some circumstances the rule will not apply to a particular state. This happens when a state **persistently objects** to a practice during its formative stages and thus never becomes a party to it.[13] This can also happen after a customary rule has become generally accepted, if a state is allowed by the international community to deviate from the general practice. In the *Anglo-Norwegian Fisheries Case,*[14] the United Kingdom sued Norway in the ICJ because Norway was not allowing British fishing vessels to enter what Norway claimed were its territorial waters and the British claimed were high seas. Norway was using a special rule for connecting rocks and islands in drawing its territorial boundaries that was contrary to the general rule followed by most countries. The ICJ endorsed Norway's action because Norway had been claiming the disputed waters since 1812 and because most

persistent objection
Active rejection of a customary practice from its first observance by other states.

[12]*Permanent Court of International Justice Reports,* vol. 1927, Series A, No. 10, p. 28 (1927).
[13]This view is succinctly set out in the concurring opinion of Judge Gross in the Nuclear Tests Cases, *International Court of Justice Reports,* vol. 1974, p. 286 (1974).
[14]*International Court of Justice Reports,* vol. 1951, p. 116 (1951).

Article 53

Treaties Conflicting with a Peremptory Norm of General International Law (*Jus Cogens*)

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

countries of the world had never objected. Thus, by the acquiescence of other countries, Norway was excused from following a generally accepted customary rule of international law.

General Principles and *Jus Cogens*

general principles Principles of law common to the world's legal systems.

When courts are required to decide international disputes, they frequently rely on the **general principles** of law that are common to the legal systems of the world. Indeed, although there are nearly 200 states in the world today,[15] there are, in practical terms, only two highly influential legal systems for international law: the Anglo-American common law system and the Romano-Germanic civil law system. The two are remarkably similar in their basic procedures and substantive rules. It is this similarity that provides courts with the general principles they can use in deciding many problems that arise in international disputes.

jus cogens A peremptory norm of general international law, recognized by the international community of states as a norm from which no derogation is permitted.

Jus Cogens The idea of international ***jus cogens*** as a body of higher law for the international community has achieved some currency in the late twentieth century. In Latin, *jus cogens* means "higher law." First embodied in the 1969 Vienna Convention on the Law of Treaties, it was confirmed in Article 53 of the 1986 Vienna Convention on the Law of Treaties (see the box on Article 53). In its judgment in the *Nicaragua Case* in 1984, the ICJ affirmed *jus cogens* as an accepted doctrine in international law. The ICJ relied on the prohibition on the use of force as being "a conspicuous example of a rule of international law having the character of *jus cogens.*"

The doctrine of international *jus cogens* was developed under the strong influence of natural law concepts. In contrast to Positivists, who base international law on freedom of contract, Cosmopolitans believe that states cannot be absolutely free in their contractual relations but must respect certain fundamental principles deeply rooted in the international community. At the 1969 Vienna Conference on the Law of Treaties, a number of states spoke of *jus cogens* having its origin in concepts of natural law. Natural law is the school of legal thought that emphasizes the need for statutes and constitutional laws to be based on universal principles.

At the same time, however, the contractual, consensual emphasis for international law is clearly seen in Article 38(1) of the Statute of the ICJ. Article 38(1) lists conventions, customary general practice, and general principles of law. In the case of conventions, Article 38(1) requires their express recognition by the contesting states. Article 38(1) holds that customary general practice should be "accepted as law." Moreover, "the general principles of law" should be "recognized" by civilized nations. This essentially contractual, consensual view of international law is confirmed and developed by abundant international practice and case law.

D. The Scope of International Law in Actual Practice

The Practice in International Tribunals

subservient (From Latin *subservire:* "to serve under.") Subordinate in capacity or function.

International tribunals generally regard municipal law as **subservient** to international law. For example, in the *Greco-Bulgarian Communities Case,* the PCIJ said that "it is a generally accepted principle of international law that in the relations between [states] who are contracting parties to a treaty, the provisions of their municipal law cannot prevail over those of the treaty."

[15]The U.S. Department of State recognizes 195 states. For political reasons, it recognizes the People's Republic of China rather than Taiwan. With the addition of South Sudan, there are at least 197 states. With the addition of the Vatican, there are 198 independent states. See www.state.gov/s/inr/rls/4250.htm.

Not only do international tribunals treat international law as the superior law, but they also regard states as having a general obligation to bring their municipal law into compliance with international norms. In the *Exchange of Greek and Turkish Populations Case,* the PCIJ was asked to interpret a clause in the 1923 Treaty of Lausanne that required the parties to modify their municipal law to ensure that the treaty would be carried out. It said: "This clause . . . merely lays stress on a principle which is self-evident according to which a state which has contracted valid international obligations is bound to make in its legislation such modification as may be necessary to ensure the fulfillment of the obligations undertaken."

Given the nature of sovereignty and nationalism, however, it must be admitted that municipal courts may chafe at the notion that there is a law that is higher than the sovereign state's own law. In the United States, there are disagreements about whether Supreme Court justices should take international law or standards into account in deciding cases involving only U.S. states and citizens.[16]

doctrine of incorporation
Customary international law is part of domestic law to the extent that it is not inconsistent.

The Practice in Municipal Courts

If a municipal court determines that a certain rule of international law could apply in a particular case, the major question for the court is whether the international law has been "received" into the local jurisprudence. How the court will answer this question depends on whether the law is based on customary practice or is contained in a treaty.

In most countries, customary international law is received in accordance with the **doctrine of incorporation**. That is, customary international law is treated as adopted to the extent that it is not inconsistent with prior municipal legislation or judicial decisions of final authority. A minority of courts (e.g., some courts in the United Kingdom and the British Commonwealth) apply the **doctrine of transformation**. This holds that customary international law is not applicable until clearly adopted by legislative action, judicial decision, or established local usage.

doctrine of transformation
Customary international law is applicable domestically only after it is adopted by legislation, court decision, or local usage.

The reception rules found in treaties depend on two factors. One is the nature of the treaty, and the other is the constitutional structure of the ratifying state. Treaties may be either self-executing or non-self-executing. A **self-executing treaty** is one that has a provision stating that the treaty will apply to the parties without their having to adopt any domestic enabling legislation; a **non-self-executing treaty** has no such provision. *Sei Fujii v. State of California,* Case 1-2, examines this difference.

self-executing treaty
A treaty containing a term that says that it is directly effective within the signatory states upon ratification.

Any state's constitution may grant the responsibility for entering into treaties to one or more of its branches. In many countries, responsibility for adopting treaties is shared by the executive and legislative branches. For example, in the United States, the federal Constitution gives the president responsibility for negotiating treaties and the Senate responsibility for ratifying them (i.e., for giving its "advice and consent" to their adoption). Over the years, however, this cumbersome arrangement[17] has led the United States to develop two kinds of treaties: **constitutional treaties** and **executive agreements**. The first are made according to the Constitution's provisions (i.e., they are negotiated by the president and ratified by the Senate); the second are agreements made solely by the president (i.e., without the advice and consent of the Senate). As to other nations, both of these have the same effect (i.e., they are commitments that impose binding international obligations on the United States), but as to internal matters, they are different. Constitutional treaties that are self-executing are effective domestically; nothing more needs to be done to implement them. Executive agreements—and constitutional treaties that are non-self-executing—have no effect domestically; to obtain effect, implementing legislation must be adopted.[18]

non-self-executing treaty
A treaty that requires state parties to enact enabling legislation before it becomes effective domestically.

constitutional treaty
A treaty adopted according to the constitutional provisions of the ratifying state.

Although the power to make treaties is shared by the executive and the legislature in the great majority of states, this is not the only model. In some countries—notably Britain and the British

executive agreement
A treaty or international agreement entered into by a state's executive without following the state's constitutionally required ratification procedure. It is not effective domestically.

[16]Justice Anthony M. Kennedy noted in *Roper v. Simmons,* 543 U.S. 551 (2005), that the conclusion that the death penalty is too harsh for offenders under age 18 is confirmed by the "stark reality" that the United States stands alone in executing juveniles. The case considered not only the death penalty but also the proper role of foreign and international law in interpreting the U.S. Constitution. Six justices now clearly embrace comparative and international law as relevant to the "evolving standards of decency" for informing judgments on what are "cruel and unusual" punishments forbidden by the Eighth Amendment. But Justice Antonin Scalia, joined by Chief Justice William H. Rehnquist and Justice Clarence Thomas in dissent, objected in *Roper v. Simmons* to the majority's taking "guidance from the views of foreign courts and legislatures."

[17]It is cumbersome because often the political party in opposition to the president controls the Senate, and the two may not share the same view of international relations.

[18]Examples of American executive agreements that have no domestic effect are the many overseas military-basing agreements made by the U.S. government during the Cold War era of 1945 to 1990. See *Status of Forces Agreements (SOFAs)* posted at www.globalsecurity.org/military/facility/sofa.htm.

Commonwealth countries—only the executive (i.e., the crown or government) is able to make treaties. In these countries, moreover, only the executive is regarded as bound by the treaty because only the executive was a party to it. Even if a treaty is self-executing, it is only self-executing as to the executive. Neither the parliament nor the courts nor the citizens of the state are directly affected by the treaty (i.e., they have neither rights granted nor obligations imposed) until domestic enabling legislation is adopted.[19] Case 1-2 examines whether certain provisions of the United Nations Charter are self-executing or not.

CASE 1-2 Sei Fujii v. State of California

United States, Supreme Court of California, 1952
California Reports, Second Series, vol. 38, p. 718 (1952)

MAP 1.2

California (1952)

Mr. Sei Fujii, a Japanese alien, purchased real estate in California shortly after World War II. Because he was ineligible for citizenship under U.S. naturalization laws, a trial court held that his ownership of the land violated California's alien land law and that the land escheated to the state. Mr. Sei Fujii appealed; an intermediate appellate court held that the alien land law violated the United Nations Charter's human rights provisions and it reversed the decision of the trial court. The state of California appealed to the state supreme court.

Opinion by Chief Justice Gibson

Plaintiff, an alien Japanese who is ineligible for citizenship under our naturalization laws, appeals from a judgment declaring that certain land purchased by him in 1948 had escheated to the state. There is no treaty between this country and Japan that confers upon plaintiff the right to own land, and the sole question presented on this appeal is the validity of the California alien land law.

[19]This rule does not apply in the United Kingdom to European Union (EU) legislation. EU legislation is treated in U.K. courts as being directly effective even though there is no U.K. implementing legislation.

United Nations Charter

It is first contended that the land law has been invalidated and superseded by the provisions of the United Nations Charter pledging the member nations to promote the observance of human rights and fundamental freedoms without distinction as to race. Plaintiff relies on statements in the preamble and in Articles 1, 55, and 56 of the Charter. . . .

It is not disputed that the Charter is a treaty, and our federal Constitution provides that treaties made under the authority of the United States are part of the supreme law of the land and that the judges in every state are bound thereby. A treaty, however, does not automatically supersede local laws which are inconsistent with it unless the treaty provisions are self-executing. In the words of Chief Justice Marshall: a treaty is "to be regarded in the courts of justice as equivalent to an act of the Legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the Legislature must execute the contract, before it can become a rule for the court."

In determining whether a treaty is self-executing, courts look to the intent of the signatory parties as manifested by the language of the instrument, and, if the instrument is uncertain, recourse may be had to the circumstances surrounding its execution. . . . In order for a treaty provision to be operative without the aid of implementing legislation and to have the force and effect of a statute, it must appear that the framers of the treaty intended to prescribe a rule that, standing alone, would be enforceable in the courts. . . .

It is clear that the provisions of the preamble and of Article 1 of the Charter which are claimed to be in conflict with the alien land law are not self-executing. They state general purposes and objectives of the United Nations Organization and do not purport to impose legal obligations on the individual member nations or to create rights in private persons. It is equally clear that none of the other provisions relied on by plaintiff is self-executing. Article 55 declares that the United Nations "shall promote . . . universal respect for all without distinction as to race, sex, language, or religion," and in Article 56, the member nations "pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55." Although the member nations have obligated themselves to cooperate with the international organization in promoting respect for, and observance of, human rights, it is plain that it was contemplated that future legislative action by the several nations would be required to accomplish the declared objectives, and there is nothing to indicate that these provisions were intended to become rules of law for the courts of this country upon the ratification of the Charter.

The language used in Articles 55 and 56 is not of the type customarily employed in treaties which have been held to be self-executing and to create rights and duties in individuals. For example, [in many cases considered by the U.S. Supreme Court] . . . treaty provisions were enforced without implementing legislation where they prescribed in detail the rules governing rights and obligations of individuals or specifically provided that citizens of one nation shall have the same rights while in the other country as are enjoyed by that country's own citizens. . . .

It is significant to note that when the framers of the Charter intended to make certain provisions effective without the aid of implementing legislation they employed language which is clear and definite and manifests that intention. For example, Article 104 provides: "The organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes." Article 105 provides: "1. The organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary for the fulfillment of its purposes. 2. Representatives of the members of the United Nations and officials of the organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the organization." In *Curran v. City of New York,* these articles were treated as being self-executory. . . .

The provisions in the Charter pledging cooperation in promoting observance of fundamental freedoms lack the mandatory quality and definiteness which would indicate an intent to create justiciable rights in private persons immediately upon ratification. Instead, they are framed as a promise of future action by the member nations. Secretary of State Stettinius, Chairman of the United States delegation at the San Francisco Conference where the Charter was drafted, stated in his report to President Truman that Article 56 "pledges the various countries to cooperate with the organization by joint and separate action in the achievement of the economic and social

objectives of the organization without infringing upon their right to order their national affairs according to their own best ability, in their own way, and in accordance with their own political and economic institutions and processes." The same view was repeatedly expressed by delegates of other nations in the debates attending the drafting of Article 56. . . .

The humane and enlightened objectives of the United Nations Charter are, of course, entitled to respectful consideration by the courts and Legislatures of every member nation, since that document expresses the universal desire of thinking men for peace and for equality of rights and opportunities. The Charter represents a moral commitment of foremost importance, and we must not permit the spirit of our pledge to be compromised or disparaged in either our domestic or foreign affairs. We are satisfied, however, that the Charter provisions relied on by Plaintiff were not intended to supersede existing domestic legislation, and we cannot hold that they operate to invalidate the alien land law.

Fourteenth Amendment of the Federal Constitution The next question is whether the alien land law violates the due process and equal protection clauses of the Fourteenth Amendment [of the United States Constitution]. . . .

. . . The California alien land law is obviously designed and administered as an instrument for effectuating racial discrimination, and the most searching examination discloses no circumstances justifying classification on that basis. There is nothing to indicate that those alien residents who are racially ineligible for citizenship possess characteristics which are dangerous to the legitimate interests of the state, or that they, as a class, might use the land for purposes injurious to public morals, safety or welfare. Accordingly, we hold that the alien land law is invalid as in violation of the Fourteenth Amendment.

The judgment of the intermediate appellate court was reversed in part and affirmed in part. Although the United Nations Charter established no rights that applied directly to the plaintiff, the due process and equal protection clauses of the Fourteenth Amendment of the U.S. Constitution forbade racial discrimination of the kind contained in the California alien land law.

Casepoint

(1) A U.S. state law that invalidates a land purchase by a noncitizen violates the goals and aspirations of the UN Charter (especially the principle of nondiscrimination based on national origin); but the UN Charter itself is not "self-executing"—that is, it does not automatically become part of U.S. law because it requires additional implementing legislation. (2) But the land does not become the property of the State of California through "escheat" because the California law is based on racial discrimination, and this violates the U. S. Constitution.

The text of the U.S. Constitution is posted at www.house.gov/house/Constitution/Constitution.html.

state
A political entity comprising a territory, a population, a government capable of entering into international relations, and a government capable of controlling its territory and peoples.

independent state
A state that is sovereign; one that operates independently internationally.

dependent state
A state that has surrendered its rights to conduct international affairs to another state. Dependencies of the United States include Puerto Rico, the Virgin Islands, Guam, and various other islands located in the Pacific Ocean.

inchoate
(From Latin *inchoare:* "to start work on.") Begun, but not completed; imperfectly formed or developed. For example, American Samoa is an unincorporated and unorganized territory of the United States, administered by the Office of Insular Affairs, U.S. Department of the Interior. Persons born in American Samoa are U.S. nationals but not U.S. citizens.

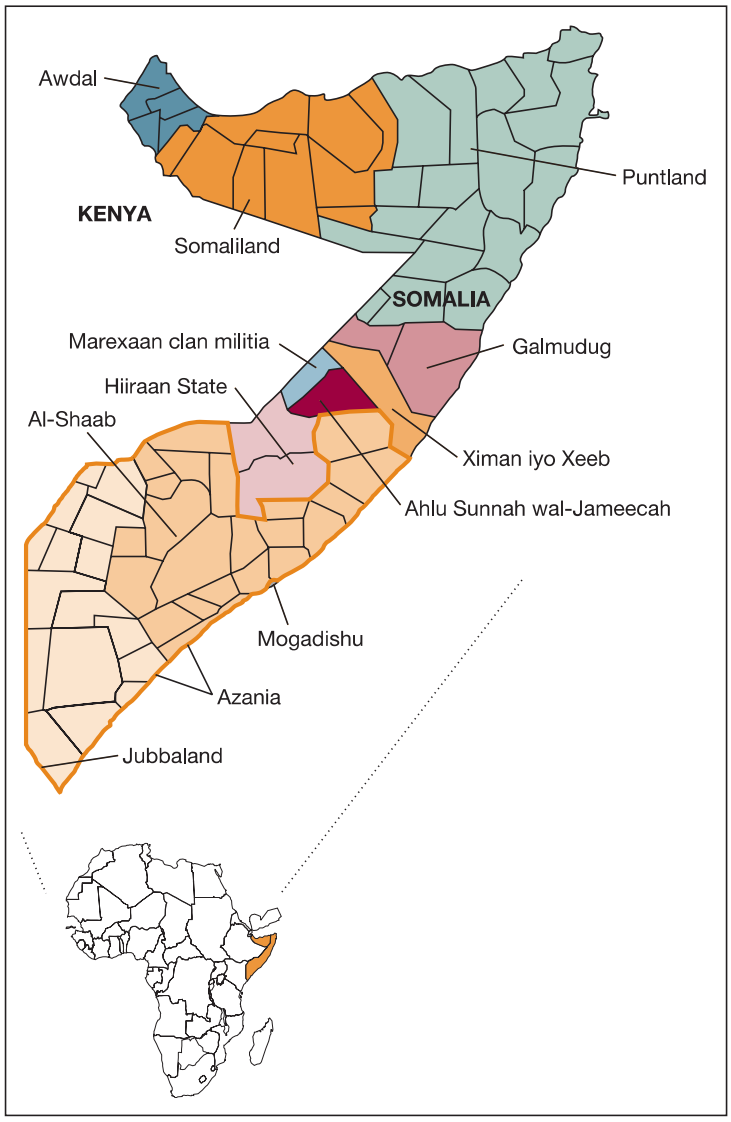
E. International Persons

The personalities of international law are states and their subdivisions, international organizations, businesses, and individuals.

States

States are political entities that have a territory, a population, a government capable of entering into international relations, and a government capable of controlling its territory and peoples. Included in this definition are three kinds of states: independent states, dependent states, and **inchoate states**.

Independent states are free from the political control of other states and free to enter into agreements with other international persons. **Dependent states** have formally surrendered some aspect of their political and governmental functions to another state. Some states that have achieved independence, and recognition by other states in the international community, may lose some control of substantial parts of its populace or parts of its territory. The concept of a "failed state" comes to mind with such nations as Somalia, where warring factions have long competed for control over substantial



MAP 1.3

Map of Somalia (as of July 2011)

parts of state that were formerly controlled by a central government (see Map 1.3). When no one is "in control" over a state's territory, the question of "recognizing" a government comes to the fore.

During the Arab uprisings of 2011, for example, the state of Libya became deeply fractured as armed insurrectionists demanded the ouster of Muammar el Qaddafi and his allies. States in the international community had to decide whether to maintain diplomatic relations with Qaddafi's government, to recall Ambassadors, or to withdraw recognition of his government entirely. One basic distinction is that a state may be recognized, but not its government; thus, while France might recognize the existence of Libya, it would not "recognize" Qaddafi's government as legitimate.

A formal definition of recognition posits that for a state to exist in the international community, it must be recognized by other states. **Recognition** comes about by a unilateral declaration, and it can be either explicit (express) or implicit (tacit). Once given, it implies that the recognized state or government is entitled to the rights and privileges granted by international law. Again, note that the recognition of a government is different from the recognition of a state. A state is recognized when an identifiable government, people, and territory first come into existence. If the government later changes, it may not be recognized as legitimate even though recognition of the state continues.

Two theories have been suggested as guidelines for when a government should be recognized: the **declaratory doctrine** and the **constitutive doctrine**. The first holds that the legal existence of a government happens automatically by operation of law whenever a government is capable of controlling a territory and its people. The second states that a government does not truly come into existence until such time as it is recognized by other states and participates in the international arena.

recognition
Formal acknowledgment or acceptance by a government of the independence and sovereignty of a newly created state or of a newly established government in another state, especially one established by revolution.

declaratory doctrine
The legal existence of a state or government happens automatically by operation of law.

constitutive doctrine
The legal existence of a state or government is dependent on recognition by other states.

It is important for a government to be recognized because recognition implies that the recognizing government wishes to have normal relations. And recognized governments are entitled, among other things, to diplomatic protection and sovereign immunity. Under the traditional view, states extended recognition only when a government exercised effective control over its territory, enjoyed the consent of its people, and was willing to fulfill its international legal obligations. Yet, some states have found that making distinctions about the "consent of the people" was difficult, especially when there were warring factions in a foreign country.

Estrada Doctrine
Doctrine that foreign governments will not be explicitly recognized.

In 1931, Mexico's Foreign Relations Secretary Genaro Estrada developed another important facet of nonintervention, eventually labeled the **Estrada Doctrine**. His objective was for Mexico to remain neutral in foreign controversies by rejecting the usual practice of states, namely "recognizing" foreign governments. Historically, European states and the United States used recognition to influence events in other states, so that domestic forces gained or lost influence in part because of another nation's recognition (or lack thereof). Mexico instead proclaimed that it would not judge or support any particular political actor in a foreign country.[20] The United States, by contrast, has often recognized governments on the basis that they exercise effective control over their territories, regardless of the consent of the people so governed.

Territorial Sovereignty

territorial sovereignty
The right of a government to exclusively exercise its powers within a particular territory.

For a state to exist, it must have **territorial sovereignty.** Sovereignty is the right to exercise the functions of a state within a territory. This right, however, may not be absolute. Other states may obtain **servitudes,** either by treaty or practice, to a limited use of certain territory. Commonly this is the exercise of rights-of-way, such as the rights of the ships of all nations to use the Suez and Panama canals.[21]

Negative Servitudes: Air and Water Pollution

servitude
(From Latin *servitudo:* "slavery.") A right to the use of another's property.

Servitudes can also be negative. That is, they may prevent one state from doing something within its territory that causes injury to a second state. Case 1-3 provides an example of a negative servitude based on air pollution affecting another state.

Transboundary pollution can also involve water pollution. Article X of the Helsinki rules adopted by the International Law Association at its Fifty-Second Conference espoused the principle of equitable utilization of the waters of an international drainage basin. The basic rule stipulates that a state:

a. must prevent any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State, and
b. should take all reasonable measures to abate existing water pollution in an international drainage basin to such an extent that no substantial damage is caused in the territory of a co-basin State.

"Water pollution" is defined as "any detrimental change resulting from human conduct in the natural composition, content, or quality of waters." Under the Helsinki rules, only material damage can be the basis of a state's liability in a case wherein activity lawful *per se* brings about the pollution of the waters of an international river basin.

The International Court of Justice has considered transboundary water pollution cases. See, for example, the dispute between Hungary and Slovakia (the Gabcíkovo-Nagymaros Project). This was a long-standing dispute about the construction and operation of a major system of dams on the river Danube, under a treaty signed in 1977 by Hungary and Czechoslovakia.

The ICJ's Web site about the case can be found at
www.icj-cij.org/docket/index.php?p1=3&p2=3&code=hs&case=92&k=8d.

[20]Ernesto Hernandez-Lopez, "International Migration and Sovereignty Reinterpretation in Mexico," *California Western Law Review,* vol. 43, pp. 203–233, at pp. 219–220.

[21]The 1888 Convention Respecting Free Navigation of the Suez Canal, also known as the Convention of Constantinople, declared the Suez Canal open to ships of all nations. The 1977 Panama Canal Treaty states that the canal "shall remain . . . open to peaceful transit by the vessels of all nations on terms of entire equality." Servitudes are usually created by treaty, but they can be created by custom as well.

CASE 1-3 The Trail Smelter Arbitration

United States v. Canada
American–Canadian Joint Commission, Arbitral Tribunal, 1938 and 1941
United Nations Reports of International Arbitral Awards, vol. 3, p. 1905

MAP 1.4

British Columbia and Washington (1941)

At the beginning of [the twentieth] century, a Canadian company built a lead and zinc smelting plant at Trail, British Columbia, about 10 miles north of the state of Washington border. Beginning in the 1920s, production was increased and by 1930 more than 300 tons of sulfur, including large quantities of sulfur dioxide, were being emitted daily. Some of the emissions were being carried down the Columbia River Valley and allegedly causing damage to land and other property in Washington. After negotiations between the United States and Canada, the latter agreed in 1928 to refer the matter to the American–Canadian Joint Commission that the two countries had established in the Boundary Waters Treaty of 1909. In 1931, the Commission's Arbitral Tribunal reported that damage had occurred in the amount of $350,000. Canada did not dispute its liability and agreed to pay this amount. The smelter continued to operate, however, and continued to emit pollutants into the air over Washington. In 1938, the United States claimed $2 million in damages for the years 1931 to 1937. The tribunal allowed the claim only in part, awarding damages of just $78,000. In 1941, the United States sought to have the operation of the smelter enjoined. The following question was submitted to the tribunal: "Whether the Trail Smelter should be required to refrain from causing damage in the state of Washington in the future and, if so, to what extent?"

1941 Report of the Tribunal

The first problem which arises is whether the question should be answered on the basis of the law followed in the United States or on the basis of international law. The Tribunal, however, finds that this problem need not be solved here as the law followed in the United States in dealing

with quasi-sovereign rights of the states of the Union, in the matter of air pollution, whilst more definite, is in conformity with the general rules of international law.

Particularly in reaching its conclusions as regards this question . . ., the Tribunal has given consideration to the desire of the high contracting parties "to reach a solution just to all parties concerned." As Professor Eagleton puts it: "A state owes at all times a duty to protect other states against injurious acts by individuals from within its jurisdiction." A great number of such general pronouncements by leading authorities concerning the duty of a state to respect other states and their territory have been presented to the Tribunal. . . . But the real difficulty often arises rather when it comes to determine what, *pro subjecta materie,*[22] is deemed to constitute an injurious act.

A case concerning, as the present one does, territorial relations, decided by the Federal Court of Switzerland between the Cantons of Soleure and Argovia, may serve to illustrate the relativity of the rule. Soleure brought a suit against her sister state to enjoin use of a shooting establishment which endangered her territory. The court, in granting the injunction, said: "This right (sovereignty) excludes . . . not only the usurpation and exercise of sovereign rights (of another state) . . . but also an actual encroachment which might prejudice the natural use of the territory and the free movement of its inhabitants." As a result of the decision, Argovia made plans for the improvement of the existing installations. These, however, were considered as insufficient protection by Soleure. The Canton of Argovia then moved the Federal Court to decree that the shooting be again permitted after completion of the projected improvements. This motion was granted. "The demand of the government of Soleure," said the court, "that all endangerment be absolutely abolished apparently goes too far." The court found that all risk whatever had not been eliminated, as the region was flat and absolutely safe shooting ranges were only found in mountain valleys; that there was a federal duty for the communes to provide facilities for military target practice and that "no more precautions may be demanded for shooting ranges near the boundaries of two Cantons than are required for shooting ranges in the interior of a Canton.". . . .

No case of air pollution dealt with by an international tribunal has been brought to the attention of the Tribunal nor does the Tribunal know of any such case. The nearest analogy is that of water pollution. But, here also, no decision of an international tribunal has been cited or has been found.

There are, however, as regards both air pollution and water pollution, certain decisions of the Supreme Court of the United States which may legitimately be taken as a guide in this field in international law, for it is reasonable to follow by analogy, in international cases, precedents established by that court in dealing with controversies between states of the Union or with other controversies concerning the quasi-sovereign rights of such states, where no contrary rule prevails in international law and no reason for rejecting such precedents can be adduced from the limitations of sovereignty inherent in the Constitution of the United States. . . .

The Tribunal, therefore, finds that the above decisions, taken as a whole, constitute an adequate basis for its conclusions, namely that, under the principles of international law, as well as the law of the United States, no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequences and the injury is established by clear and convincing evidence.

The decisions of the Supreme Court of the United States which are the basis of these conclusions are decisions in equity and a solution inspired by them, together with the régime hereinafter prescribed, will, in the opinion of the Tribunal, be "just to all parties concerned," as long, at least, as the present conditions in the Columbia River Valley continue to prevail.

Considering the circumstances of the case, the Tribunal holds that the Dominion of Canada is responsible in international law for the conduct of the Trail Smelter. Apart from the undertakings in the Convention, it is, therefore, the duty of the government of the Dominion of Canada to see to it that this conduct should be in conformity with the obligation of the Dominion under international law as herein determined.

The Tribunal, therefore, answers [the question submitted] as follows: . . . So long as the present conditions in the Colombia River Valley prevail, the Trail Smelter shall be required to refrain from causing any damage through fumes in the state of Washington; the damage herein referred to and its extent being such as would be recoverable under the decisions of the courts

[22]From Latin "for the subject matter"; concerning the subject matter at hand.

of the United States in suits between private individuals. The indemnity for such damage should be fixed in such manner as the governments, acting under Article XI of the Convention, should agree upon.

Casepoint

"A state owes at all times a duty to protect other states against injurious acts by individuals from within its jurisdiction." The holding of the Trail Smelter arbitration can also be seen in international agreements such as the Stockholm Declaration, Principle 21, and Principle 2 of the Report of the United Nations Conference (the Rio Declaration).[23]

Report of the United Nations Conference on Environment and Development

(Rio de Janeiro, 3–14 June 1992)

ANNEX I

Rio Declaration On Environment And Development

Principle 2

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

To have territorial sovereignty, a state must first acquire territory. This is done in several ways: (1) by the occupation of land not claimed by another sovereign, (2) by the voluntary transfer of territory from one sovereign to another, and (3) by the conquest and continued occupation of the territory of another sovereign.

The first situation noted above, seemingly the simplest, still has its ironies. When North and South America were populated by native tribes, Europeans used force of arms to displace or exterminate them. Christian churches were also engaged in bringing "civilization" and "religion" to the native peoples through missionary work; in South America, much of the missionary work was done by Catholics. There were no other sovereigns having significant military force that could effectively oppose this conquest, but there was opposition from Indian tribes in North America that were eventually given sovereignty over their reservation lands.

The third situation often results in continuing conflicts or resentments that may resurface years later or resolve into acceptance by the displaced sovereign.[24] In 1914, British troops occupied Basra after Turkey declared an alliance with Germany. In 1916, British and French officials secretly agreed that southern Mesopotamia, including Baghdad, would be handed over to Britain after World War I. In 1917, British troops occupied Baghdad and, in 1918, British troops occupied Mosul. In 1920, the San Remo conference granted Britain a mandate for governing Iraq, and the following months saw a widespread Iraqi revolt that was quelled by British troops and the Royal Air Force. What became of Iraq is now common knowledge, but the creation of modern Iraq (with its Shiite, Sunni, and Kurdish areas) has its origins in war and conquest.

[23]The decision in the Trail Smelter arbitration has had its share of critics. For example, see Gunther Handl, Territorial Sovereignty and the Problem of Transnational Pollution, 69 *American Journal of International Law* 50 (1975) and Karin Mickelson, Rereading Trail Smelter, 31 *Canadian Yearbook of International Law* 219 (1993).

[24]For example, between 1846 and 1848, two neighbors, the United States and Mexico, went to war. It was a defining event for both nations, By the war's end, Mexico had lost nearly half of its territory, the present American Southwest from Texas to California. History is replete with examples of empire (Roman, Ottoman, British) where territories of sovereign states were conquered and held for many years and, in some cases, centuries. India was under the rule of England for many years, though eventually Indian resentment became a full-fledged movement for independence led by Mahatma (Mohandas) Gandhi.

estoppel
(From Old French *estoupail:* "stopper" or "bung.") Legal rule that one cannot make an allegation or denial of fact that is contrary to one's previous actions or words.

Once territory is acquired, a state's title is affirmed either by the formal recognition of other states or by a process of **estoppel**. Estoppel arises when a state fails to speak up and object to another's exercise of sovereignty when it would be reasonable to do so. By failing to object, a state is tacitly recognizing the new status quo. This has the evident effect of making it difficult (but not impossible) for a state to change its position. To establish estoppel, some authorities (but not all) say that detrimental reliance must be shown. That is, the state claiming the territory must have made some improvement there (such as building roadways) that would be lost to it if recognition were denied. For example, a state that has, by its conduct, encouraged another state to believe in the existence of a certain legal or factual situation, and to rely upon that belief, may be estopped from asserting a contrary situation in its dealings.

dispositive treaty
A treaty concerned with rights over territory, such as boundaries and servitudes.

Changes in Territorial Sovereignty When there is a change in sovereignty over territory, several legal consequences arise. As to treaty rights and obligations, successor states must observe treaties that implement general rules of international law, and they are bound by **dispositive treaties**—that is, treaties concerned with rights over territory, such as boundaries and servitudes.

Merger Rule
Legal rule that the treaties in effect in a former state remain in effect in its territory when it becomes part of a new state.

The obligation of a successor state to observe other treaty commitments depends on whether it acquires a territory by a merger, partial absorption, or complete absorption or whether a seceding territory attains its independence through decolonization or dissolution. The **Merger Rule** governs the first of these cases. This rule presumes that when two states merge to form a new state (i.e., State A and State B merge and become State C), the preexisting treaties remain in force in the territories where they previously applied (i.e., State A treaties remain in force in the former territory of State A, and State B treaties remain in force in the former territory of State B). For example, when Egypt and Syria merged to form the United Arab Republic (1958–1961), the new republic declared that it was a single member of the United Nations, bound by the provisions of the UN Charter, and that all international treaties and agreements concluded by Egypt or Syria with other countries will remain valid where they were not in conflict.

Moving Boundaries Rule
Legal rule that the treaties of a state absorbing new territory become effective within the absorbed territory.

There are, however, two exceptions to the Merger Rule. First, the new successor state and other states that are parties to a treaty with one of the predecessor states can agree to either terminate the treaty or extend it to the whole territory of the new state. (For example, when Tanganyika and Zanzibar merged in 1964, Zanzibar's treaties were given force throughout the new state of Tanzania.) Second, a treaty will terminate if its object and purpose can no longer be accomplished or if the conditions necessary to accomplish its object and purpose have radically changed. (For example, after the formation of the United Netherlands in 1815, the Dutch argued the new state was so different from its predecessors that a treaty with the United States had to be terminated.)

If territory from one state shifts to another (i.e., a province in State A becomes a province in State B), the law of state succession applies the **Moving Boundaries Rule**. This holds that the treaties of the absorbing state displace the treaties of the receding state in the territory where sovereignty has changed. Thus, when France took over Alsace-Lorraine after World War I, France's treaties displaced those of Germany in the annexed territory. Similarly, the Federal Republic of Germany's treaties displaced those of France when it regained control of the Saarland in 1957 and, in 1969, when the Netherlands transferred West New Guinea to Indonesia, Indonesia's treaties were extended over its new territory.

Clean Slate Doctrine
Doctrine that a new state coming into existence through decolonization is under no obligation to succeed to the treaties of its former colonial power.

When a new state comes into being through decolonization, its obligation to observe the treaties made by its colonial parent state are determined by the **Clean Slate Doctrine**. That is, the ex-colony starts with no obligation to succeed to the treaties of its former colonial power.[25] Nevertheless, it is common practice for a newly independent ex-colony to announce its intention to continue to be bound by existing treaties.

Succession of States
Occurs when (1) two states agree to join and form a single state or (2) a state dissolves and its constituent states assume the role of independent states. Disputes between two sovereign states over state succession are not matters for municipal courts to decide.

When two states come into existence following the disintegration of a predecessor, the Clean Slate Doctrine does not apply. Rather, according to Article 34 of the Vienna Convention on the **Succession of States** in Respect of Treaties, both are bound by the predecessor's treaties to the extent that they are applicable within each of their territories. For example, when the Soviet Union broke

[25]Vienna Convention on the Succession of States in Respect of Treaties, Article 16. The Clean Slate Doctrine does not, however, affect the general rule that successor states are bound by dispositive treaties and treaties acknowledging a general rule of international law.

MAP 1.5

The Former Members of the Soviet Union

up into 12 republics in 1991, the international community insisted that each of the republics (shown in Map 1.5) acknowledge its obligation to observe the existing treaties of the Soviet Union, including arms control and human rights treaties, before it would be recognized. The United States, Great Britain, France, and China—the four remaining permanent members of the United Nations Security Council—relied on the same rule in announcing that Russia would automatically succeed to the Soviet seat on the Council.

Usually, the nationals of a territory that is acquired by a successor state will keep the nationality of the predecessor state. A different result, however, could be agreed to in a treaty of cession or by municipal legislation.

Public property located within a territory becomes the property of the successor state, while property located in a third state belongs to whichever government the third state recognizes. If a third state recognizes both states, however, the property will generally belong to whichever state is in actual possession.[26]

The private property rights of individuals do not lapse because of a change in government. A government, however, is always entitled to expropriate the property of its own nationals, so private property rights may well be adversely affected by a change in government. Similarly, a successor state is, as a general proposition, bound by the private contractual obligations of its predecessors; and to the extent that a successor acquires part or all of a territory, it is proportionately responsible for that territory's national debt.

International Organizations

According to the United Nations Charter, there are two kinds of international organizations: (1) public or intergovernmental organizations (IGOs) and (2) private or nongovernmental organizations (NGOs).[27]

Comprehensive information on IGOs is posted at
www.libsci.sc.edu/bob/IGOs.htm.

[26]See, e.g., *Arab Republic of Syria v. Arab Republic of Egypt,* Brazil Supreme Court, 1982, in *Revista Trimestral de Jurisprudenceia,* vol. 104, p. 889, and *International Law Reports,* vol. 91, p. 289 (1983).

[27]United Nations Charter, Article 71. The terminology used in the United Nations Charter assumes that the organizations are international and not domestic or municipal IGOs and NGOs. That same assumption is made here.

intergovernmental organization (IGO)
A permanent organization set up by two or more states to carry on activities of common interest.

Intergovernmental organizations (IGOs) are permanent organizations set up by two or more states to carry on activities of common interest.[28] Modern IGOs evolved from the European practice of convening conferences at the end of wars to draw new boundaries and sign peace treaties. Beginning in the nineteenth century, these conferences turned to sponsoring multilateral treaties and the setting up of organizations both to maintain the peace[29] and to carry on various other international activities of common interest, such as the delivery of mail[30] and the protection of industrial and literary property. The International Bureau of Industrial Property was set up in 1883 and the International Bureau of Literary Property in 1886. Both are now together known as the World Intellectual Property Organization.

The Web site of the World Intellectual Property Organization is www.wipo.int.

Following World War I, the League of Nations was founded as the first organization that was both general in scope and universal in its intended membership. After World War II, the activities of the League were taken over and greatly expanded by the United Nations.

Since World War II, the number of IGOs has increased dramatically. Today there are some 400. Most significantly, IGOs have evolved from the simple meeting or conference of states to entities that have permanent structures and staffs, carry on a variety of activities, and, at least in the case of one IGO, have supranational powers.

charter
A document outlining the principles, functions, and organization of a juridical entity.

Unlike states, an IGO is created much in the fashion of a corporation. Its aims and objectives, internal structure, resources, and express powers are set out in a "constituent instrument," or **charter**, which is drafted and adopted by the organization's member states. The United Nations Charter, for example, gives the organization its name, sets out its purposes and principles, defines its membership, names its structural elements or "organs," describes the makeup and powers of those organs, sets out the rights and duties of its members, endows the organization with international personality, and describes the procedures for the charter's ratification and amendment.

The text of the United Nations Charter is posted at www.un.org/aboutun/charter.

legal capacity
Qualification or authority, such as the qualification or authority to carry on international relations.

For an IGO to have the **legal capacity** to deal with other international persons—including the capacity to carry on diplomatic relations with a state or to sue or be sued in an international or municipal court—it must be recognized. With respect to its own state members, most authorities regard recognition as being implicit. In other words, by becoming a member of an IGO, a state automatically recognizes the IGO's international personality. This is not, however, the uniform rule. In the United Kingdom, the fact that the executive becomes a member of an IGO does not imply any internal recognition. Thus, the U.K. courts will not recognize the capacity of an IGO to sue or be sued in the United Kingdom unless the U.K. government specifically certifies that the IGO has such capacity.

As for establishing the legal capacity of an IGO vis-à-vis its nonmember states, recognition is also required. In some states, such as the United States, an IGO is essentially seen as an agency of its members and recognition of the IGO will be implied if its member states are recognized. In other countries, including the United Kingdom, recognition requires specific certification from the government.[31]

[28]Clive Archer defines an intergovernmental organization as "a formal continuous structure established by agreement between members (governmental and/or nongovernmental) from two or more sovereign states with the aim of pursuing the common interest of the membership." *International Organizations,* p. 35 (1983).

[29]The peace in nineteenth-century Europe was maintained informally through an arrangement known as the Concert of Europe. This arrangement involved regular consultations between the major powers (Austria, France, Great Britain, Prussia, and Russia), which acted together to recognize new states and to put down military uprisings in others.

[30]The Universal Postal Union was established in 1874. Its Web site is www.upu.int.

[31]See, e.g., *Arab Monetary Fund v. Hashim and Others (No. 3),* England, High Court, Chancery Division, 1989. *Weekly Law Reports,* vol. 1990, pt. 3 (1990); *International Law Reports,* vol. 83, p. 244 (1990).

The United Nations The most important IGO is the United Nations. Its charter, a multilateral treaty, came into force on October 24, 1945. (See Figure 1.2.) Its goals are the maintenance of peace and security in the world, the promotion of economic and social cooperation, and the protection of human rights. The drafters of the United Nations Charter had a philosophical belief in the efficacy of the rule of law to secure these rights. Several underlying principles underlie the charter's provisions. In particular, members are sovereign equals, disputes must be settled peacefully, and all members are obliged to fulfill their international obligations in good faith.

The United Nations Web site is at
www.un.org.

The **organs** of the United Nations are the General Assembly, the Security Council, the Secretariat, the International Court of Justice, the Trusteeship Council, and the Economic and Social Council (ECOSOC). The General Assembly is the main deliberative organ of the UN. It is a quasi-legislative body made up of representatives of all 193 member states. Its function is to discuss and vote on any question or matter within the scope of the charter. Decisions on important questions of peace and security, admission of new members, and budgetary matters require a two-thirds majority. Decisions on other matters are by simple majority. Each country has one vote.

organ
(From Greek *organon:* "tool" or "instrument.") An agency that carries on specific functions within a larger organization.

The Security Council is made up of representatives of 15 member states, 5 of which are permanent member states (China, the Russian Federation, the United States, France, and the United Kingdom). By election of the General Assembly, 10 nonpermanent states are given two-year terms. In 2011, the 10 nonpermanent members included Bosnia-Herzegovina, Brazil, Colombia, Gabon, Germany, India, Lebanon, Nigeria, Portugal, and South Africa. The Security Council is responsible for maintaining international peace and security, and it is the only United Nations organ with the authority to use armed force. Ten nonpermanent members are elected by the General Assembly for two-year terms and not eligible for immediate reelection.

Each Council member has one vote. Decisions on procedural matters are made by an affirmative vote of at least 9 of the 15 members. Decisions on substantive matters require nine votes, including the concurring votes of all five permanent members. This is the rule of "great Power unanimity," often referred to as the "veto" power.

Historically, the Security Council has often been deadlocked by the veto power. During the Cold War, the U.S.S.R. found it was in their strategic self-interest to veto proposed police actions. It was the absence of the U.S.S.R.—boycotting the Security Council—that led the Security Council to approve a UN "police action" in the Korean conflict of 1950–1953. Despite times of deadlock, the

FIGURE 1.2

The Inaugural Meeting of the Conference on Security Organization for Peace in Post-War World (the Dumbarton Oaks Conference), August 21, 1945.

Source: United Nations Photo Library

From August through October 1944, representatives of China, the Soviet Union, the United Kingdom, and the United States met at Dumbarton Oaks, a mansion in Georgetown, near Washington, D.C., to draft proposals for a United Nations Charter. In April of the next year, delegates from 50 countries met in San Francisco at the United Nations Conference on International Organization to debate and refine the proposals. A final Charter was adopted unanimously on June 25, 1946, and signed the next day by the representatives of all 50 countries. Poland, which was not represented at the Conference, signed it later and became one of the original 51 United Nations member states.

The United Nations officially came into existence on October 24, 1945, when the Charter had been ratified by China, France, the Soviet Union, the United Kingdom, the United States, and by a majority of the other signatories. October 24 is now celebrated each year as United Nations Day.

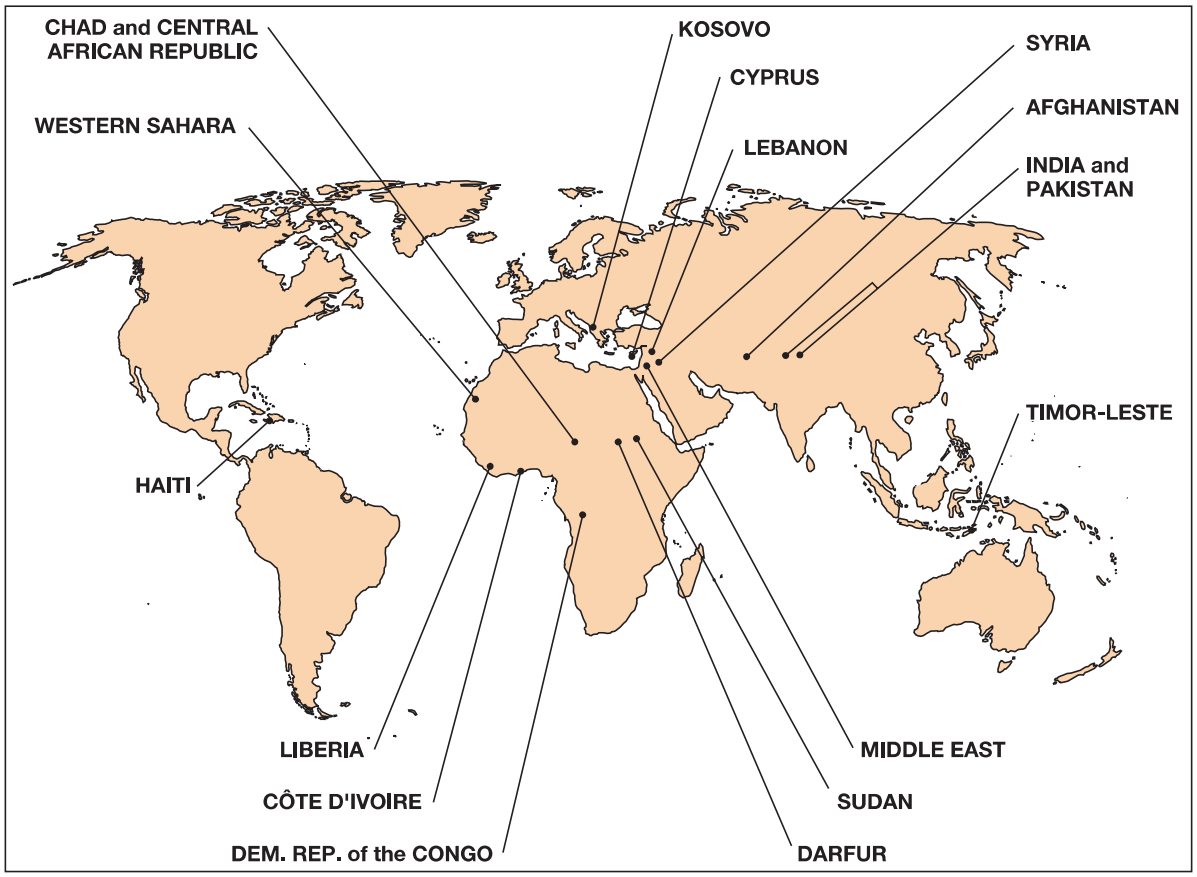


FIGURE 1.3

UN Peacekeeping Missions, as of July 2010

UN Web site notes that as of 2011 there were over 100,000 UN peacekeepers in various parts of the world (see Figure 1.3).

A secretary-general elected by the General Assembly heads up the United Nations Secretariat. The Secretariat is the administrative arm of the United Nations, responsible for making reports and recommendations to the General Assembly and the Security Council.

The International Court of Justice is the United Nations' principal judicial body. The Trusteeship Council, which no longer has a function, was set up at the end of World War II to supervise the world's non-self-governing territories. Finally, the Economic and Social Council, which comprises 54 member states elected by the General Assembly, is responsible for promoting economic, social, health, cultural, and educational progress as well as respect for human rights.

United Nations System A group of autonomous organizations affiliated with the United Nations.

The **United Nations System** is the name given to various autonomous agencies (themselves IGOs) concerned with a wide range of economic and social problems that have entered into agreements with the United Nations to become United Nations specialized agencies (see Table 1.2). Specialized agencies are autonomous organizations working with the United Nations and each other through the coordinating machinery of the ECOSOC at the intergovernmental level, and through the Chief Executives Board (CEB) for coordination at the intersecretariat level. Additionally, two other organizations—the World Trade Organization (WTO) and the International Atomic Energy Agency (IAEA)—although not specialized agencies, have entered into similar relationships with the United Nations.

During the past 15 years, the United Nations has tried to engage the business community in partnering for a better world. Indeed, a very large number of companies collaborate to some degree or another with the United Nations. The UN suggests a number of ways that businesses can serve as partners.

TABLE 1.2

The specialized agencies of the United Nations

	Nonbanking Agencies		World Bank Group
FAO	Food and Agriculture Organization	IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization		
		IDA	International Development Agency
IFAD	International Fund for Agricultural Development	IFC	International Finance Corporation
		MIGA	Multilateral Investment Guarantee Agency
ILO	International Labor Organization		
IMF	International Monetary Fund	ICSID	International Center for the Settlement of Investment Disputes
IMO	International Maritime Organization		
ITU	International Telecommunications Union		
UNESCO	United Nations Educational, Scientific and Cultural Organization		
UNIDO	United Nations International Development Organization		
UNWTO	United Nations World Tourism Organization		
UPU	Universal Postal Union		
WHO	World Health Organization		
WIPO	World Intellectual Property Organization		
WMO	World Meteorological Organization		

A printable version of the United Nations System can be found at www.un.org/aboutun/chart.html.

The UN has also sponsored a Global Compact for businesses to join in support of the Millenium Development Goals. Participation in the Global Compact is a means for many businesses to go "beyond the bottom line" and exercise social and environmental responsibility.

Partnering with the UN

Adapted from http://business.un.org/en/browse/collaboration.

Advocacy of global issues: Corporations and UN organizations can partner effectively to advance awareness of global issues (e.g., climate change, HIV/AIDS, poverty).

Business opportunities in low-income communities/countries: It is often assumed in the private sector that philanthropy is the only way of addressing global needs. And yet, there is a growing movement of businesses using their core competencies to support sustainable growth in developing nations. In this movement, those in developing countries are seen more as partners and clients, and less as recipients or aid beneficiaries.

Standards and guidelines de velopment: Certain industry sectors need more robust international guidelines to ensure responsible and good practice. For example, in the construction industry, building codes are under current discussion to prevent, or minimize, the risk of disaster damage. Earthquakes, hurricanes, and other disasters can cause much greater harm in areas where structures are built on a substandard basis.

Project funding: There will always remain a need for funding for UN programs.

Provision of ser vices/personnel: Increasingly, companies are strategically aligning their core competencies with global issues. The UN is interested in partnerships where corporate capacity is linked with key areas of interest.

Provision of goods: Donated goods may be utilized, with gratitude, by the UN. However, they can bring certain challenges to which all parties need to be sensitive.

Reading 1-1 Overview of the UN Global Compact and the Millennium Development Goals, and the Ten Principles

The UN Global Compact

The UN Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with 10 universally accepted principles in the areas of human rights, labor, environment, and anti-corruption. By doing so, business, as a primary driver of globalization, can help ensure that markets, commerce, technology, and finance advance in ways that benefit economies and societies everywhere.

As social, political, and economic challenges (and opportunities)—whether occurring at home or in other regions—affect business more than ever before, many companies recognize the need to collaborate and partner with governments, civil society, labor, and the United Nations.

This ever-increasing understanding is reflected in the Global Compact's rapid growth. With over 8,700 corporate participants and other stakeholders from over 130 countries, it is the largest voluntary corporate responsibility initiative in the world.

Endorsed by chief executives, the Global Compact is a practical framework for the development, implementation, and disclosure of sustainability policies and practices, offering participants a wide spectrum of workstreams, management tools, and resources—all designed to help advance sustainable business models and markets.

Overall, the Global Compact pursues two complementary objectives:

1. Mainstream the 10 principles in business activities around the world
2. Catalyze actions in support of broader UN goals, including the Millennium Development Goals (MDGs)

With these objectives in mind, the Global Compact has shaped an initiative that provides collaborative solutions to the most fundamental challenges facing both business and society. The initiative seeks to combine the best properties of the UN, such as moral authority and convening power, with the private sector's solution-finding strengths, and the expertise and capacities of a range of key stakeholders. The Global Compact is global and local; private and public; voluntary yet accountable.

The benefits of engagement include the following:

- Adopting an established and globally recognized policy framework for the development, implementation, and disclosure of environmental, social, and governance policies and practices.
- Sharing best and emerging practices to advance practical solutions and strategies to common challenges.
- Advancing sustainability solutions in partnership with a range of stakeholders, including UN agencies, governments, civil society, labor, and other nonbusiness interests.
- Linking business units and subsidiaries across the value chain with the Global Compact's Local Networks around the world—many of these in developing and emerging markets.
- Accessing the United Nations' extensive knowledge of and experience with sustainability and development issues.
- Utilizing UN Global Compact management tools and resources, and the opportunity to engage in specialized workstreams in the environmental, social, and governance realms.

A more detailed analysis of the benefits of participation in the Global Compact can be found in *The Importance of Voluntarism*—which also focuses on the importance of the Global Compact as a *complement* rather than substitute for regulatory regimes.

Finally, the Global Compact incorporates a transparency and accountability policy known as the Communication on Progress (COP). The annual posting of a COP is an important demonstration of a participant's commitment to the UN Global Compact and its principles. Participating companies are required to follow this policy, as a commitment to transparency and disclosure is critical to the success of the initiative. Failure to communicate will result in a change in participant status and possible expulsion.

In summary, the Global Compact exists to assist the private sector in the management of increasingly complex risks and opportunities in the environmental, social, and governance realms, seeking to embed markets and societies with universal principles and values for the benefit of all.

The Ten Principles

The UN Global Compact's 10 principles in the areas of human rights, labor, the environment, and anti-corruption enjoy universal consensus and are derived from:

- The Universal Declaration of Human Rights
- The International Labor Organization's Declaration on Fundamental Principles and Rights at Work
- The Rio Declaration on Environment and Development
- The United Nations Convention Against Corruption

The UN Global Compact asks companies to embrace, support, and enact, within their sphere of influence, a set of core values in the areas of human rights, labor standards, the environment, and anti-corruption:

Human Rights

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2: make sure that they are not complicit in human rights abuses.

Labor

- Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4: the elimination of all forms of forced and compulsory labor;
- Principle 5: the effective abolition of child labor; and
- Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility; and
- Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

- Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

The Millennium Development Goals

Adopted by world leaders in 2000 and set to be achieved by 2015, the millennium development goals provide concrete, numerical benchmarks for tackling extreme poverty in its many dimensions. The MDGs also provide a framework for the entire international committee to work together toward a common end—making sure the human development reaches everyone, everywhere. If these goals are achieved, world poverty will be cut by half, tens of millions of lives will be saved, and billions more people will have the opportunity to benefit from the global economy.

The eight MDGs break down into 21 quantifiable targets that are measured by 60 indicators.

Goal 1: Eradicate extreme poverty and hunger

Goal 2: Achieve universal primary education

Goal 3: Promote gender equality and empower women

Goal 4: Reduce child mortality

Goal 5: Improve maternal health

Goal 6: Combat HIV/AIDS, malaria, and other diseases

Goal 7: Ensure environmental sustainability

Goal 8: Develop a global partnership for development

Global Reporting Initiative

The Global Reporting Initiative (GRI)[32] is a network-based organization that produces a comprehensive sustainability reporting framework that is widely used around the world. In 2006, the UN Global Compact and the GRI united in a strategic alliance aimed at providing the private sector with a means and an opportunity to embrace strategies that are comprehensive and sustainable. Both said that they would advocate various partnership efforts to encourage corporate responsibility and to support the complementary platforms of the Compact and the GRI.

GRI is committed to the Framework's continuous improvement and application worldwide. GRI's core goals include the mainstreaming of disclosure on environmental, social, and governance performance. GRI's Reporting Framework is developed through a consensus-seeking, multi-stakeholder process. Participants are drawn from global business, civil society, labor, academic, and professional institutions.

The Reporting Framework sets out the principles and Performance Indicators that organizations can use to measure and report their economic, environmental, and social performance. The cornerstone of the Framework is the Sustainability Reporting Guidelines. The third version of the Guidelines—known as the G3 Guidelines—was published in 2006, and is a free public good.

Each of the Millenium goals has a more detailed set of targets. For example, goal seven (ensure environmental sustainability) offers the following targets:

Target 7a: Integrate the principles of sustainable development into country policies and programs; reverse loss of environmental resources

Target 7b: Reduce biodiversity loss, achieving, by 2010, a significant reduction in the rate of loss

Target 7a and 7b Indicators:

- 7.1 Proportion of land area covered by forest
- 7.2 CO2 emissions, total, per capita, and per $1 GDP (PPP)
- 7.3 Consumption of ozone-depleting substances
- 7.4 Proportion of fish stocks within safe biological limits
- 7.5 Proportion of total water resources used
- 7.6 Proportion of terrestrial and marine areas protected
- 7.7 Proportion of species threatened with extinction

Target 7c: Reduce by half the proportion of people without sustainable access to safe drinking water and basic sanitation

- 7.8 Proportion of population using an improved drinking water source
- 7.9 Proportion of population using an improved sanitation facility

Target 7d: Achieve significant improvement in lives of at least 100 million slum dwellers by 2020

- 7.10 Proportion of urban population living in slums

The GRI can be instrumental in measuring both public and private accomplishment for the seventh Millennium Development Goal.

The MDGs and the GRI together forge a new partnership between the global public institutions (such as the UN) and global private enterprises.

The European Union Another important intergovernmental organization is the **European Union (EU)**. Founded in 1951 by 6 states (Belgium, France, Germany, Italy, Luxembourg, and the Netherlands), its member states increased to 9 in 1973 (with the addition of Denmark, Ireland, and the United Kingdom), to 10 in 1981 (when Greece joined), to 12 in 1986 (when Portugal and Spain became members), to 15 in 1995 (when Austria, Finland, and Sweden were admitted), to 25 in 2004 (with the addition of the Czech Republic, Cyprus, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia), to 27 in 2007 (when Bulgaria and Romania joined). The EU, with 27 member states, covers a large part of the continent of Europe. The EU already has a population of over half a billion, the largest population in the world after China and India.

European Union (EU) An IGO that has as its goals the elimination of internal frontiers and the establishment of a political, economic, and monetary union.

The Web site of the EU is
http://europa.eu/index_en.htm.

[32] www.globalreporting.org/AboutGRI/WhatIsGRI/.

The founding states created the EU in order to integrate their economies and political institutions. The process of integration began with the adoption of the European Coal and Steel Community (ECSC) Treaty, which the founding states signed in Paris in 1951. Although no longer in force—it expired in 2002—the ECSC created a common market for coal and steel and IGOs to oversee this original community. Building on the experience of the ECSC, the original member states adopted the Treaty Establishing the European Community (EC Treaty) and the European Atomic Energy Community (EAEC, or Euratom) Treaty, which they signed in Rome in 1957. Ten years later, the Merger Treaty of 1967 consolidated the separate institutional organizations that oversaw the three separate communities into a single structure. In 1992, in Maastricht, the member states signed the European Union (EU) Treaty.[33] The EU Treaty established a political union,[34] common citizenship for nationals of the member states, a Social Charter,[35] a monetary union, a Central Bank, and a common currency (the euro).[36] Then in 1997, the Treaty of Amsterdam eliminated all internal borders,[37] established a larger role for the European Parliament,[38] renamed the EEC Treaty as the Treaty Establishing the European Community (the EC Treaty), and consolidated and renumbered the articles of the EC and the EU treaties.

In 2000, the Intergovernmental Conference (IGC), in anticipation of the accession of new member states from Eastern and Southern Europe,[39] concluded a new treaty (the Treaty of Nice) that was signed in 2001 and ratified in 2002. The treaty established voting rights for new members and reallocated votes for existing members in the Council of Ministers.[40] The IGC postponed any decision on a new European Constitution, which was drafted in 2003 and signed in 2004. However, because it had to be ratified by all 27 member states before it could come into force, and because both France and the Netherlands voted "No" to the Constitution in 2005, EU leaders declared a "period of reflection" at that point. The Declaration on the opposite page (known as the Berlin Declaration) captured the EU—in 2007—at 50 years and in some uncertainty.

The text of the European treaties is posted at
http://europa.eu/abc/treaties/Index_en.htm.

Following the "period of reflection" that ended the stalled ratification process for the EU Constitution, the Lisbon Treaty amended the Maastricht Treaty (the Treaty on European Union) and the Treaty of Rome (the Treaty establishing the European Community). The effect was to reform the constitutional basis of the EU. Prominent changes included the move from required unanimity to *double majority* voting in several policy areas in the Council of Ministers, a more powerful European Parliament, a consolidated legal personality for the EU, and the creation of a long-term President of the European Council. The Treaty also made the Union's bill of rights, the Charter of Fundamental Rights, legally binding. The Lisbon Treaty was to have been ratified by the end of 2008, but a rejection in 2008 by the Irish electorate delayed ratification until 2009. More changes to the EU's legal arrangements may be coming, primarily because of the Eurozone crisis that began in 2011 (see Reading 1-2).

[33]The EU Treaty changed the names of the principal institutions of the EU to European Commission, European Council (formerly the Council of Ministers), European Parliament, European Court of Justice, European Economic and Social Committee, and European Court of Auditors.

[34]The EU's Commission is authorized to discuss both foreign policy and security issues.

[35]The Social Charter establishes uniform minimum social and economic standards for individuals.

[36]The United Kingdom, which objected to most of the changes in the Maastricht Treaty, obtained a special concession that allows it to avoid participating in the monetary union and that excuses it from the requirements of the Social Charter.

[37]Great Britain and Ireland will be temporarily exempted from this requirement.

[38]The treaty is posted at www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf.

[39]As of January 2012, there are 27 member states and six new applicants (Croatia, Turkey, Iceland, Montenegro, Serbia, and the former Yugoslav Republic of Macedonia).

[40]The Treaty of Nice can be found at http://eur-lex.europa.eu/en/treaties/dat/12001C/pdf/12001C_EN.pdf.

Declaration on the Occasion of the Fiftieth Anniversary of the Signature of the Treaties of Rome

For centuries Europe has been an idea, holding out hope of peace and understanding. That hope has been fulfilled. European unification has made peace and prosperity possible. It has brought about a sense of community and overcome differences. Each Member State has helped to unite Europe and to strengthen democracy and the rule of law. Thanks to the yearning for freedom of the peoples of Central and Eastern Europe the unnatural division of Europe is now consigned to the past. European integration shows that we have learnt the painful lessons of a history marked by bloody conflict. Today we live together as was never possible before. We, the citizens of the European Union, have united for the better.

I. In the European Union, we are turning our common ideals into reality: for us, the individual is paramount. His dignity is inviolable. His rights are inalienable. Women and men enjoy equal rights.

We are striving for peace and freedom, for democracy and the rule of law, for mutual respect and shared responsibility, for prosperity and security, for tolerance and participation, for justice and solidarity.

We have a unique way of living and working together in the European Union. This is expressed through the democratic interaction of the Member States and the European institutions. The European Union is founded on equal rights and mutually supportive cooperation. This enables us to strike a fair balance between Member States' interests.

We preserve in the European Union the identities and diverse traditions of its Member States. We are enriched by open borders and a lively variety of languages, cultures and regions. There are many goals which we cannot achieve on our own, but only in concert. Tasks are shared between the European Union, the Member States and their regions and local authorities.

II. We are facing major challenges which do not stop at national borders. The European Union is our response to these challenges. Only together can we continue to preserve our ideal of European society in future for the good of all European Union citizens. This European model combines economic success and social responsibility. The common market and the euro make us strong. We can thus shape the increasing interdependence of the global economy and ever-growing competition in international markets according to our values. Europe's wealth lies in the knowledge and ability of its people; that is the key to growth, employment and social cohesion.

We will fight terrorism, organised crime and illegal immigration together. We stand up for liberties and civil rights also in the struggle against those who oppose them. Racism and xenophobia must never again be given any rein.

We are committed to the peaceful resolution of conflicts in the world and to ensuring that people do not become victims of war, terrorism and violence. The European Union wants to promote freedom and development in the world. We want to drive back poverty, hunger and disease. We want to continue to take a leading role in that fight.

We intend jointly to lead the way in energy policy and climate protection and make our contribution to averting the global threat of climate change.

III. The European Union will continue to thrive both on openness and on the will of its Member States to consolidate the Union's internal development. The European Union will continue to promote democracy, stability and prosperity beyond its borders.

With European unification a dream of earlier generations has become a reality. Our history reminds us that we must protect this for the good of future generations. For that reason we must always renew the political shape of Europe in keeping with the times. That is why today, 50 years after the signing of the Treaties of Rome, we are united in our aim of placing the European Union on a renewed common basis before the European Parliament elections in 2009. For we know, Europe is our common future.

Supranational Powers Unlike most other intergovernmental organizations, the EU is endowed with **supranational powers**. That is, EU law within its scope of applicability is superior to the laws of the member states. This "supremacy principle" has two consequences: (1) the member states are required to bring their internal laws into compliance with EU law and (2) EU law is directly effective within the member states.

An example of the obligation of member states to bring their internal laws into compliance with the EU legal order is provided by the case of *Commission v. Belgium.* Taxes imposed by Belgium discriminated against lumber produced in other member states, contrary to Article 90 of the EC Treaty. In defending itself before the European Court of Justice in an action brought by the European Commission under Article 226, the government of Belgium said that it had introduced draft legislation in the Belgian Chamber of Representatives two years earlier but the legislation had not been passed. The government explained that the principle of separation of powers that applied in Belgium prevented the government from doing anything more. This excuse did not impress the Court of Justice. It said: "The obligations arising under Article 90 of the Treaty devolve upon states as such and the liability of a member state under Article 226 arises whatever the agency of the state whose action or inaction is the cause of the failure to fulfill its obligations, even in the case of a constitutionally independent institution."

supranational powers Powers surrendered by member states to an IGO. Such powers are superior to and preempt the laws and regulations of its member states. In exercising these powers, the organization may grant rights and privileges to the nationals of its member states, which those individuals may directly invoke.

Reading 1-2 The End of the Euro? Fears of Financial Contagion

From its inception as the European Economic Community to the European Union that we now know, the member nations have become more and more unified politically. The same cannot be said for its economic organization. The Euro, a common currency, was first introduced in 1999 but was only adopted by 17 EU member nations. Moreover, the currency's issuance was not matched by a corresponding set of common fiscal and monetary policies.

In the summer of 2009, the potential default of Greek "sovereign debt" deeply concerned other EU member nations, the European Central Bank, and investors worldwide. Subsequent fears of sovereign debt default by Ireland, Portugal, Spain, and Italy stoked fears of regional and even global "financial contagion." Banks and nations in the EU generally faced lingering recessions from the 2008 financial meltdown, and key banks in EU nations were also dealing with dubious balance sheets, often from real estate lending in "bubble" real estate economies (Spain, Ireland) or from holding sovereign debt from Portugal, Ireland, Italy, Greece, and Spain (the so-called PIIGS).

The Greek Debt Crisis

Although much attention was focused on Greece in 2011–2012, it is important to remember that economies of Italy and Spain are both far larger than Greece, and that national debt problems have plagued both Italy and Spain. During the first ten years of the Euro, the Greek government in Athens allowed its budgets to run unsustainable deficits. In part, the deficits were created by a failure to effectively collect taxes, especially on very wealthy Greek citizens, many of whom were happy to evade taxation. The accumulated debt amounted to upward of 150% of the nation's gross domestic product (GDP), almost twice the European average.

The fear has been that a Greek default on obligations to lenders would require it to exit the Euro and return to its national currency, the drachma. But the drachma would be a much devalued national currency. This could potentially lead to financial contagion because of the exposure of commercial banks in Germany, France, Netherlands, and the United Kingdom to Greek debt, as well as sovereign debt from Portugal, Ireland, Spain and Italy. On the other hand, Greek tourism would no doubt increase, as the price of a Greek vacation to Europeans would be far cheaper after the return to the drachma.

But propping up Greek or other sovereign debt by the more fiscally responsible nations in the EU is not politically popular; for example, the more fiscally prudent Germans are deeply averse to bailing out the perceived "profligacy" of Greece and others. Banks, investors, and the stronger Euro nations all were pushing the PIIGS to cut deficits and balance their budgets. But even the stronger European economies were in recessionary times, and credit ratings agencies like Standard and Poor's threatened France with a lower bond rating unless it restored budgetary balance. Cutbacks in many EU nations led to low growth and high unemployment, and by the spring of 2012 there was a lot of political pushback from polities tired of austerity, not only in Greece, but in France and even in Germany.

Balancing Risks and Benefits Between Greece and the Eurozone

At play in the Eurozone drama were the various member states of the "Eurozone," the 17 EU nations that had adopted the Euro, the European Central Bank (ECB), the IMF, and the banks that had high potential risks from holding Greek sovereign debt or non-performing real estate loans. The only economy given AAA credit during 2011 was Germany's, and the Germans were in no political mood to bail out its neighbors to the south.

By the summer of 2011, there was little doubt that Greece has failed economically in every sense of the word, except to in fact default. As a result, ratings agencies had downgraded Greece's bonds to a level just shy of default. The Greek economy ($310.3 billion) is about a fourth of the size of the Texas economy ($1.2 trillion). In August 2011, Greece was paying 15.5% on its 10-year bonds and 23% on its two-year notes. These borrowing costs worsened Greece's already difficult financial circumstances and prospects. By that time, all private lenders had headed for the exits, leaving only public institutions such as the ECB.

In May 2010 the ECB began buying sovereign debt (bonds) from Greece, Ireland, and Portugal. On August 8, 2011, it took the dramatic step of buying Italian and Spanish government bonds in the secondary market as global investors shied away from the risk. The move was dramatic on two counts. First, the Italian and Spanish economies are "whales" compared to the "minnows" of Greece, Ireland, and Portugal, and defaults there would be even more troublesome. The ECB intervened after Rome and Madrid promised accelerated austerity measures and policies to create more economic growth. Second, the intervention brought down yields on 10-year bonds, with uncertain effects on demand for further bond issues by both nations. Investors remained skeptical, especially after Italy's austerity program in early September 2011 avoided any tax increase on high earners and scaled back cuts to local authorities.

But the ECB was not originally designed to be involved in the fiscal policy of euro zone member states. The ECB wanted to transfer responsibility for bond purchases to the European Financial Stability Facility (EFSF), which is the chief emergency lending entity for Eurozone governments. By acquiring tens of billions of Euros of Italian and Spanish debt, on top of sovereign debt from Greece, Ireland, and Portugal, the ECB's rescue funds were stretched considerably.

Eurozone governments agreed on July 21, 2011, to let the EFSF acquire sovereign debt at a discount on the secondary market, to finance the recapitalization of banks, and to extend pre-emptive credit lines to countries under pressure in debt markets. These were intended as bold moves that would reassure low markets. Eurozone leaders agreed in late July 2011 to boost the effective size of the fund to €440 billion, or $635 billion. The German Finance Minister Wolfgang Schäuble said an expanded E.F.S.F. that would have powers to intervene in bond markets and provide precautionary credit lines to troubled member states would help the bloc "prevent contagion in good time."

During the latter half of 2011, various austerity plans were instituted, and the European Central Bank stepped in to make large loans to European banks who in turn bought sovereign debt while private investors sold. In summer of 2011, for example, the Greek government agreed to another deep round of spending cuts and tax increases and to sell off billions of dollars in public property, such as ports and other infrastructure. The Eurozone nations and banks then agreed to a $229 billion rescue package, cutting Greece's debt obligations. The moves included a "structured default," where bank bond holders agreed to extend the terms of loans, and at lower interest rates.

A Second Bailout, and Political Fallout in Greece and France

In March of 2012, Greece got a second (€130 billion) bailout program. Like the first, this bailout required Greece to get a grip on public spending and

tax collection while reforming a bloated bureaucracy and a tangle of laws that had rendered its economy globally uncompetitive.

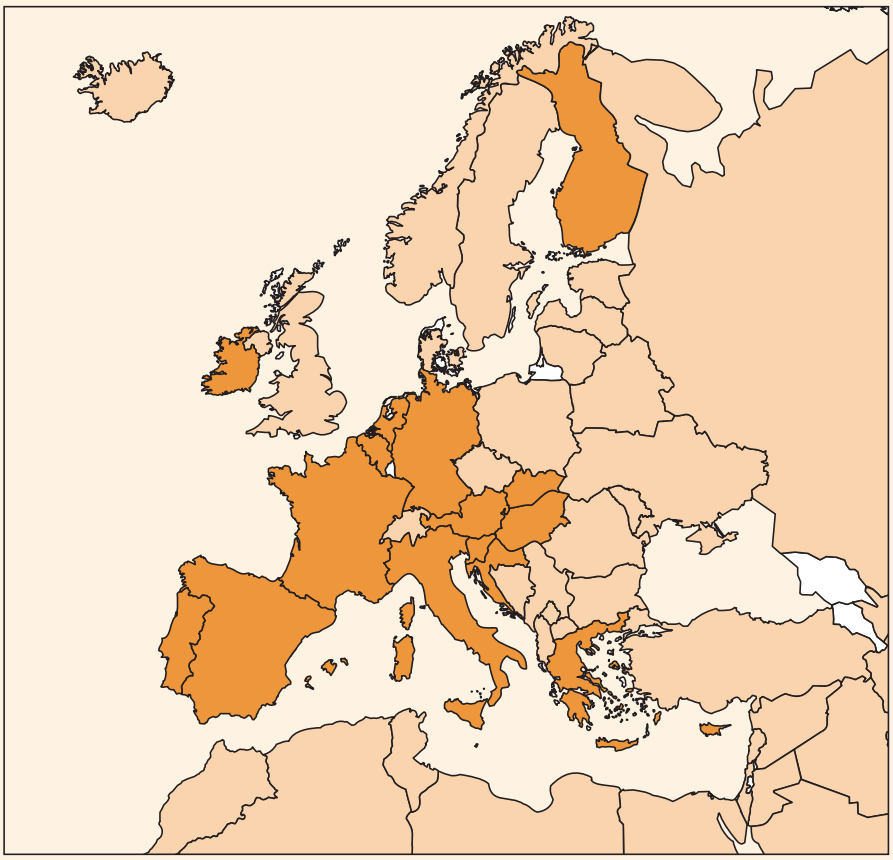
In May of 2012, elections in France and in Greece saw voters reject continued austerity measures. Under pressure of potentially losing its AAA credit rating, France (under Nicolas Sarkozy) had instituted two different austerity plans, cutting €112bn from its budget and imposing a 5% "super-tax" on big firms, a rise in VAT on restaurants and construction, and cuts on pensions, schools, health, and welfare. France was not the only nation to resort to fiscal belt-tightening. In general, public sector layoffs, cutbacks in pension payments and other austerity measures were helping to balance national budgets, but also served to further depress national economies, especially in Greece and Spain. Even the credits extended by the IMF and the ECB were still not sufficient to balance the budgets of Greece and Spain. And while that credit would not be extended without austerity measures, the citizenry's appetite for continued austerity was wearing thin by the spring of 2012.

Despite public's distaste for austerity, each country with severe debt problems was at risk of not being able to fully fund its operations, including all public sector jobs and pension payments. That is, the continued credit-worthiness of these governments was necessary in order to avoid a de-funding of the public sector. But that credit-worthiness could only be judged privately by the bond markets and publicly by institutions such as the IMF and the European Central Bank. The essence of any "bailout" by the public institutions is to provide credit where the private sector (the bond market) has withdrawn its trust. Thus, as of May of 2012, the main question was not what bondholders would do—they had already headed for the exits—but what the Eurozone nations were willing to do through the ECB, and, to a lesser extent, what the IMF was willing to do to keep Greek and Spanish debt viable.

Inherent Flaws in the Eurozone

Many observers have noted that the Euro project has been flawed from the start: there was monetary unio n but not fiscal union. That is, the institutions of the European Union were not empowered to impose fiscal discipline on Greece or Spain or Italy or Portugal to begin with. When easy credit for governments based on the strength of the euro came to an end in 2009–10, the ECB and the IMF had to come to the rescue, but with conditions reminiscent of many IMF loans. The role of Germany as a guarantor of further loans to Greece or Spain or Italy (the so-called "periphery") had become a delicate and difficult political matter within Germany. Most German voters are not especially keen on propping up "profligate" people and politicians in the "periphery," and German Prime Minister Angela Merkel has long insisted on austerity measures as a condition of bailouts by the ECB.

But after the Greek elections in May of 2012, it quickly became apparent that no effective governing coalition could be formed. This meant that new elections would have to take place, with no guarantees that those elections would form an effective governing coalition, either. Without a government that could actually agree on a plan for stabilizing government debt over time, neither the European Central Bank or the IMF would be willing to loan for the monies to Greece. Indeed, the ECB actually with-held some monies from Greece right after the May 2012 election in order to prod the



MAP 1.6

The Euro Zone Nations

Greek political parties to come to some agreement. Without an agreement, Greece would almost certainly default on its debts, would have to exit the euro zone, and would revert to using the drachma.

Classically, a sovereign state in Greece's situation would have its own currency, could print more, devalue it, and come to some sort of equilibrium with external buyers and investors. One of the reasons that credit flowed so easily to Greece before 2008 was that the indebtedness was denominated in Euros, which was regarded as a currency that would not be devalued in that way.

But even if Greece exits the Euro, it will have great difficulty getting credit on regional or global markets. In effect, Greece would still get the austerity that its population has become so tired of; leaving the euro would undermine Greece's banking sector, and it is unlikely that investors would buy Greek government bonds. The Greek default and exit from Euro but also lead investors to avoid any investments in Italy or Spain or Portugal. Finally, commercial contracts with companies now denominated in Euros would create further uncertainties, and fearing further devaluation, non-Greek companies might be less willing to conduct business in Greece unless payment was made in Euros.

The essence of the Greek problem, like Spain's problem, is that even if it stopped repaying all of its debt, the government would still be spending more than it takes in. The bailout money is now the only thing plugging that gap. Without a disciplined plan to reach budget equilibrium in the future, Greece will not attract further bailout money or private sector purchasers of its sovereign debt. Without such a plan, and with the restoration of the drachma, Greece's only option would be more painful cuts from the public sector.

After the election of François Hollande in May of 2012, it remained to be seen what kind of alliance could be struck between the French and German leaders. In response to elections in Greece and France in May of 2012 German Chancellor Angela Merkel reiterated that her government would not soften its demands for austerity, demands that were embodied in the Eurozone fiscal pact from March 2012. Mr. Hollande has advocated a revision to the European fiscal compact, which would move the country toward balanced budgets and less debt. However, Chancellor Merkel has expressed opposition to any changes in the compact.

It is possible that staying in most European countries (although not Greece) could tap financial markets for more money if they were to adopt constitutional pledges to run budget surpluses in good times. German borrowing costs are near record lows because Germany has already adopted such a constitutional amendment. But it does seem doubtful that political leaders would adopt truly binding debt limits. In the meantime, short-term remedies are likely to continue to come from European wide organizations such as the European bailout fund, the European Stability Mechanism or the European Central Bank.

After the fall of the Berlin wall, Eastern European nations that made painful changes to their labor codes and welfare protections were able to write size their budgets and allow the private sector to drive growth. Many observers believe that Mr. Hollande will come to that realization as well. But whether standing firm relative to the Euro periphery will prevent the breakup of the Eurozone remains to be seen.

The direct applicability of the supremacy principle is illustrated by the case of *Costa v. ENEL.* That case involved a challenge to Italy's decision in 1962 to nationalize its private electric generating companies. Mr. Costa, a shareholder in one of those companies, refused to pay his electric bill; and when he was sued by the National Electric Board (ENEL), he defended himself by arguing that the nationalization decree violated the European Community Treaty (then known as the European Economic Community Treaty). The trial court referred the matter to the European Court of Justice. There, ENEL argued that the Court of Justice's decision would be irrelevant because the trial court, being an Italian court, was obliged by Italian law to apply Italian law. The court disagreed, pointing out that some provisions of the EEC Treaty are directly effective and bestow rights on individuals that the agencies of the member states are obliged to respect. The court stated:

> By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the member states and which their courts are bound to apply.
>
> By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane, and, more particularly, real powers stemming from a limitation of sovereignty, or a transfer of powers from the states to the Community, the member states have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.[41]

Thus, not only Mr. Costa but any other individual is entitled to directly invoke the EC Treaty in the courts of the EU member states.

Case 1-4 examines both the obligation of member states to bring their laws into accord with the EU treaties (in particular the European Community Treaty—then known as the EEC Treaty) and the direct effect of those treaties.

[41]Case 6/64, *European Court Reports,* vol. 1964, p. 585 at p. 593 (1964).

CASE 1-4 Commission of the European Communities v. Federal Republic of Germany

Court of Justice of the European Communities Case 274/87

MAP 1.7

The European Union (2011)

The Court

Composed of O. Due, President, T. Koopmans and R. Joliet (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Díez de Velasco and M. Zuleeg, Judges.

Judgment

By application lodged at the Court Registry on 16 September 1987, the Commission of the European Communities brought an action before the Court under the second paragraph of Article 169 of the EEC Treaty for a declaration that by prohibiting the importation and marketing in its territory of meat products from other Member States which do not comply with Paragraphs 4 and 5 of the Fleisch-Verordnung (Meat Regulation) of 21 January 1982 the Federal Republic of Germany has failed to fulfill its obligations under Article 30 of the EEC Treaty.

The regulation in question prohibits the marketing of meat products which contain ingredients other than meat, subject to exceptions in respect of specified products the composition of which is defined, with a requirement, in certain cases, for specific information to be shown on the packaging or displayed on signs. The ban on marketing those products is supplemented by Paragraph 47, subparagraph 1, of the Lebensmittel und Bedarfsgegenstaendegesetz (Law on foodstuffs and necessities) of 15 August 1974, which prohibits the importation of foodstuffs

which do not comply with German standards. Compliance with those rules is ensured by means of criminal or administrative penalties.

It should be noted at the outset that it is undisputed that the contested rules have a restrictive effect on imports of meat products legally manufactured and marketed in other Member States. The issue between the parties is whether or not the measures in question are justified on the grounds put forward by the German Government, that is to say the protection of health and mandatory requirements relating to consumer protection, fair trading and the common agricultural policy.

It should also be noted at the outset that the contested rules prohibit the marketing of the products concerned in German territory regardless of whether they are national or foreign products.

Justification Based on the Protection of Health Within the Meaning of Article 36 of the Treaty

Before considering the arguments put forward by the defendant Government in this regard, it must be pointed out that the Court has consistently held that, whilst human life and health are among the matters protected by Article 36 and it is therefore for the Member States to decide within the limits set by the Treaty the degree of protection which they wish to ensure, national rules restricting imports are compatible with the Treaty only in so far as they are necessary for the effective protection of human life and health and only if that objective cannot be achieved by measures less restrictive of intra-Community trade (judgments of 20 May 1976 in Case 104/75, *De Peijper* (1976) ECR 613 and of 4 February 1988 in Case 261/85, *Commission v. United Kingdom* (1988) ECR 547).

The German Government maintains that the contested prohibition of importation is justified on grounds relating to the protection of health within the meaning of Article 36 of the Treaty because it is necessary to ensure a sufficient intake of certain essential nutrients contained in meat, especially proteins.

It must be pointed out at once that that argument is contradicted by information which appears in reports on nutrition published in 1980 and 1984 by the German Government itself. Those reports show that protein intake levels in Germany are in general more than adequate and that even in the case of certain groups of the population, particularly young people, whose protein intake is lower than the recommended level, the lower intake poses no threat to health in view of the safety margins incorporated in the relevant recommendations.

It is also clear from those reports that some meat ingredients contain harmful substances such as purine, cholesterol and saturated fatty acids; the reports therefore express some concern about any future increase in the consumption of meat and meat products.

Finally, with regard to the German Government's argument that vegetable proteins have a lower nutritional value than animal proteins, it must be stressed that, as the Court has already stated in its judgment of 23 February 1988 in Case 216/84, *Commission v. France* (1988) ECR 793, a Member State may not invoke public health grounds in order to prohibit the importation of a product by arguing that its nutritional value is lower than another product already available on the market in question, since it is plain that the choice of foodstuffs available to consumers in the Community is such that the mere fact that an imported product has a lower nutritional value does not pose a real threat to human health.

It follows from the foregoing that the contested prohibition of importation may not be justified on grounds relating to the protection of health within the meaning of Article 36 of the Treaty.

Justification Based on Imperative Requirements Relating to Consumer Protection

The German Government maintains that the contested prohibition of importation is necessary for the effective protection of German consumers who, as a result of eating habits which date back several decades, have a clear idea about what they expect from meat products, that is to say that they must be composed exclusively or essentially of meat and comply with the quality standards laid down in Paragraphs 4 and 5 of the Fleisch-Verordnung.

In that regard, it must be borne in mind that, as the Court has repeatedly stressed (in particular in its judgments of 12 March 1987 in Case 178/84 *Commission v. Germany* (1987) ECR 1227 and of 14 July 1988 in Case 407/85 *Drei Glocken GmbH and Another v. Unità sanitaria locale Centro-Sud and Another* (1988) (ECR 4233)), although it is admittedly legitimate to seek to enable consumers who attribute specific qualities to certain products to make their choice in the light of the criteria

they consider essential, that possibility may be ensured by means which do not prevent the importation of products which have been lawfully manufactured and marketed in other Member States and, in particular, by the compulsory affixing of suitable labels giving the nature of the product sold.

It is true that, where meat products are concerned, the indication of all the ingredients may cause difficulties when the products are sold in bulk or listed on restaurant menus. It must nevertheless be observed that it is clear from Council Directive 79/112 on the labelling and presentation of foodstuffs, and particularly Article 12 thereof, that Member States may lay down detailed rules for the labelling of foodstuffs offered for sale to the ultimate consumer without pre-packaging, in order to provide the consumer with the information which is essential for the exercise of his choice and to avoid confusing him with too detailed information.

Moreover, as the Commission has rightly pointed out, the problem of labelling in such situations has already been dealt with in the Fleisch-Verordnung, in particular in Paragraph 5(2) thereof, which lays down special labelling rules for products exempt from the marketing ban when sold in bulk, particularly in restaurants or mass-catering establishments.

It follows that the contested ban on importation may not be justified on the ground of mandatory requirements relating to consumer protection.

Justification Based on Mandatory Requirements Relating to Fair Trading

The German Government further argues that the contested ban on importation constitutes a measure which is necessary in order to protect producers and distributors of pure meat products against unfair competition. Such competition might arise from the fact that some traders or producers could acquire a competitive advantage by using less expensive ingredients of poorer quality without the differences in manufacture being apparent to consumers.

It is sufficient to point out that that argument, based on the consumer's lack of information, has already been dismissed above.

It follows that the contested ban on importation may not be justified on the ground of mandatory requirements relating to fair trading.

Justification Based on Mandatory Requirements Relating to the Common Agricultural Policy

The German Government maintains, finally, that the contested ban on importation is necessary in order to meet certain mandatory requirements relating to the common agricultural policy, and in particular to the aim of stabilizing the market pursued by the common organizations of the markets in beef and veal and pig meat.

That argument cannot be accepted either. As the Court stated in its judgments in Cases 216/84 and 407/85, cited above, once the Community has established a common market organization in a particular sector, the Member States must refrain from taking any unilateral measure, even if that measure is likely to support the common policy.

It is also clear from those judgments that, even if they support a common policy of the Community, national measures may not conflict with one of the fundamental principles of the Community—in this case that of the free movement of goods—unless they are justified by reasons recognized by Community law. As found above, this is not the position with the provisions at issue in the present case.

It follows from all of the foregoing that the alleged breach of obligations under the Treaty has been established. It must therefore be declared that, by prohibiting the importation and marketing in its territory of meat products from other Member States which do not comply with Paragraphs 4 and 5 of the Fleisch-Verordnung, the Federal Republic of Germany has failed to fulfill its obligations under Article 30 of the EEC Treaty.

Casepoint

Article 30 of the Treaty of Rome states that "Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States." That prohibition is here read broadly, as the German law dealt with qualitative differences. Still, German law must conform to EU law and to the principle of free movement of goods embraced in Article 30.

The Institutions of the European Union

The main institutions of the EU are (1) the Council of the European Union and the European Council, (2) the European Parliament, and (3) the European Commission. Other important EU bodies include the European Court of Justice, the European Central Bank, the European Economic and Social Committee, the Court of Auditors, and the European Investment Bank.[42]

The Council of the European Union and the European Council

Council of the European Union Representative of the member state governments and the co-legislative body (with Parliament) of the EU.

Council of the European Union[43] The **Council of the European Union** is the main decision-making body of the EU. It exercises co-decision with the European Parliament on a wide array of community issues. Its role is to (1) adopt legislation[44] in conjunction with the Parliament,[45] (2) adopt an annual budget, also in conjunction with Parliament, (3) adopt international agreements, and (4) coordinate the economic policies of the member states.

The Council of the EU is made up of ministers, one from each member state. Each minister is empowered to commit his or her government, and is (accordingly) accountable to that state government. Like the commission, it has a presidency, which is rotated among the member state governments every six months. Participants in the council's meetings change according to the agenda, as there are nine *configurations* of issues that may meet once a month or just two to four times a year. Ministers in General Affairs and External Relations meet monthly, as do Economic and Financial Affairs and Agriculture and Fisheries. Other configurations include Justice and Home Affairs, Employment/Social Policy/Health and Consumer Affairs, Competitiveness, and Transport/Telecommunications/Energy.

Each member state presides over the Council for six months. The minister from the designated state presides (as president) and serves as the organizing force in all legislative and political decisions. The president represents the council and member states in dealing with non-EU states, and represents the Council before the EU Parliament.

European Council The European Council, a different body than the Council of the EU, consists of the heads of state of the member states, along with its own president and the president of the European Commission (nonvoting). It meets at least four times a year, and is charged under the Treaty of Lisbon with defining "the general political directions and priorities" of the Union. It is chaired by the president or prime minister of the EU country holding the presidency of the Council of the European Union at the time. The European Council acts as the principal initiator of overall policy for the EU; under the Maastricht Treaty, it was empowered to settle issues that the Council of the European Union could not agree on.

Unlike the Council of the EU, which is responsible for EU rule making, the European Council focuses on establishing general policies and goals for the EU. It also deals with urgent foreign policy issues through the common foreign and security policy (CFSP), which aims to allow the EU to speak with one voice on diplomatic matters. For example, in March 2011, the European Council imposed sanctions on the regime of Muammar el Qaddafi in Libya; these sanctions included freezing assets

---

[42]http://europa.eu/abc/12lessons/lesson_4/index_en.htm.

[43]The council's Web site is at www.consilium.europa.eu./homepage.aspx?lang=en.

[44]EU legislation is given various names. It is called a *regulation* when it applies directly; a *decision* when it is binding only on the member states, companies, or individuals to whom it is addressed; a *directive* when it lays down compulsory objectives but leaves it to the member states to translate these into national legislation; and a *recommendation* or *opinion* when it is not binding.

[45]The decisions of the Council of the EU may be made by simple majority, qualified majority, or unanimity, depending on the action it is taking. Most legislation is adopted by a qualified majority vote. A minimum of 255 votes out of 345 (73.9 percent) is required to reach a qualified majority. In addition,

- a majority of member states (in some cases two thirds) must approve the decision, and
- any member state may ask for confirmation that the votes cast in favor represent at least 62 percent of the EU's total population.

France, Germany, Italy, and the United Kingdom each have 29 votes; Spain and Poland have 27; Romania has 14; Belgium, Greece, Czech Republic, Hungary, and Portugal have 12; the Netherlands has 13; Austria, Bulgaria, and Sweden have 10; Denmark, Finland, Ireland, Lithuania, and Slovakia have 7; Luxembourg, Estonia, Cyprus, Latvia, and Slovenia have 4; and Malta has 3 votes. The cases in which a qualified majority voting procedure may be used include decisions relating to admitting new members to the EU, to research and technology, to regional policy issues, and to improvement of the working environment.

of numerous Libyan entities. In September 2011, after rebel forces gained control of the nation's capitol, Tripoli, the Council rescinded that order, freeing assets for 28 specified Libyan entities.

The home page of the European Council is at
www.european-council.europa.eu/home-page.aspx?lang=en.

European Commission The **European Commission** is the EU's executive branch, but also has some legislative functions.[46] That is, it drafts legislation for submission to the Council and the Parliament, and once the legislation is adopted it is responsible for its implementation. The commission also is responsible for overseeing the implementation of the treaties that establish the EU. Additionally, it represents the EU internationally.

European Commission
The administrative and executive arm of the EU.

The commission is currently composed of 27 individuals appointed by Parliament for five-year terms (see Figure 1.4). The president of the commission—currently José Manuel Barroso of Portugal—is nominated by the European Council and approved by the Council of the European Union. The other commissioners are nominated by the member states in consultation with the president. The large states—Germany, France, Italy, Spain, and the United Kingdom—nominate two commissioners each and the small states one each. All of the commissioners must act only in the interest of the EU, and they are forbidden to receive instructions from any national government. Parliament can force the commission to resign by adopting a motion of censure.[47]

Commission decisions are made collegially, even though each commissioner is given responsibility for specific activities. The tasks of the commission are to (1) ensure that EU rules are respected (to do this, the commission has investigative powers, and it can impose fines on individuals or companies it finds to be in breach of the rules; it can also take member states that fail to respect their obligations before the European Court of Justice), (2) propose to the European Council measures likely to advance the development of EU policies, (3) implement EU policies, and (4) manage the funds that make up most of the EU budget.

The commission has an administrative staff of some 25,000 officials divided between 23 directorates-general that are located primarily in Brussels and Luxembourg. Of these officials, more than one in five are employed as translators (a reflection of the EU's use of 11 equally authoritative languages to carry out its business).

The European Parliament The **European Parliament** has 786 members elected every five years by universal suffrage. The number of members (786) elected by each state is shown in Table 1.3.

European Parliament
The co-legislative body (with the Council of the EU) and the main supervisory institution of the EU.

Members are grouped by political affiliation rather than nationality. Nearly 100 political parties are represented in the Parliament, ranging from far left to far right. These are organized in a limited number of political groups. It holds most of its plenary sessions (session attended by all of its members) in Strasbourg, France. Other plenary sessions and committee meetings are held in Brussels, Belgium. Its staff, known as the General Secretariat, is located in Luxembourg.

FIGURE 1.4

The "Barroso II" Commission, February 2012

Source: Audiovisual Library of the European Commission, 2012

[46]Information about the commission is posted at http://ec.europa.eu/index_en.htm.

[47]The Parliament had never censured the commission, which requires the support of an absolute majority of members and two-thirds of the votes cast. In March 1999, however, following an investigation into allegations of mismanagement by a committee of independent experts mandated by Parliament, the commission chose to resign rather than face censure by Parliament.

TABLE 1.3

The number of members of the european parliament from each country

Germany	99	The Netherlands	27	Austria	18
France	78	Belgium	24	Denmark	14
Italy	78	Greece	24	Finland	14
United Kingdom	78	Portugal	24	Ireland	13
Spain	54	Sweden	19	Luxembourg	6
Bulgaria	18	Cyprus	6	Czech Republic	24
Estonia	6	Hungary	24	Latvia	9
Lithuania	13	Malta	5	Poland	54
Romania	36	Slovakia	14	Slovenia	7

Since its first election in 1979, Parliament has acquired increased powers. At first only a deliberative body, it now has three main roles: (1) it has oversight authority over all EU institutions, (2) it shares legislative power with the Council of the EU, and (3) it determines the EU's annual budget in conjunction with the Council of the EU.

Parliament's oversight authority extends beyond its power to appoint and censure the European Commission (discussed earlier). Most importantly, it has limited oversight authority over the Council of the EU. Its members may ask the council to respond to written and oral questions, and the president of the council attends the plenary sessions and takes part in important debates.

EU legislation is made jointly by Parliament and the Council of the EU. Prior to the adoption of the 1992 EU Treaty, the council could adopt legislation after consulting Parliament, regardless of Parliament's recommendations. Now most legislation is adopted through a process known as *co-decision.* This requires draft legislation prepared by the commission to be reviewed twice by Parliament and the council. If the two co-legislative bodies cannot agree, a *conciliation committee* made up of council and Parliament representatives, with the participation of the commission, attempts to reach a compromise draft. If a compromise draft is reached, it is submitted to Parliament and the council for a third review for its final adoption.

The co-decision process is used for adopting legislation governing the common internal market; the free movement of workers, research, and technological development; the environment; consumer protection; education; culture; and health.[48]

For certain kinds of legislation, Parliament only has a veto right: it may not amend or modify a commission proposal. This power, known as *assent,* applies to proposals for the accession of new members, to the adoption of certain international agreements, and to certain rules relating to the European Central Bank. If Parliament does not give its assent, the legislation cannot be adopted. For other legislation, notably for tax matters and the review of farm price supports, Parliament may only express an opinion.

The process by which the EU's annual budget is adopted is somewhat similar to the co-decision procedure. The commission submits a draft budget to Parliament and the council, each of which may review it twice. If they are unable to agree, the council makes the final decision on *compulsory expenditures* (mainly agricultural expenditures and expenditures related to international agreements with third countries). Parliament has the final say on *noncompulsory expenditures* and the final adoption of the budget in its entirety.

European Court of Justice
The supreme tribunal of the EU.

European Court of Justice The **Court of Justice**[49] is composed of 27 judges and 8 advocates-general. The judges and advocates-general are appointed from among lawyers whose independence is beyond question and who have the necessary qualifications for appointment in each of their countries to the highest judicial offices. The 27 judges elect a president for a renewable term of three years. The president directs the work of the staff and of the court and presides at hearings at the Full Court or the Grand Chamber.

Eight advocates-general assist the judges of the Court of Justice in carrying out their duties. An advocate-general is an official, commonly found in courts in civil law countries, who prepares a

[48]More details on the co-decision process may be found at http://ec.europa.eu/codecision/stepbystep/text/index_en.htm.
[49]The European Court of Justice's Web site is at http://europa.eu/about-eu/institutions-bodies/court-justice/index_en.htm.

detailed brief analyzing the arguments of the parties and suggesting how the court should decide the case. In many respects, an advocate-general's brief is similar to an opinion prepared by a judge in a common-law country. The reason is that the opinions handed down by civil law courts (including the European Court of Justice) generally do not engage in an extensive analysis of the issues; rather, they state a conclusion and a concise reason for their conclusion. Often, but not always, the court will adopt (sometimes in the fewest of words) the reasoning of the advocate-general.

The Court will sit as a full court, in a Grand Chamber of 13 judges or in Chambers of three or five judges. The Statute of the Court prescribes when a case must be considered by the full court, such as proceedings to dismiss the European Ombudsman or a member of the European Commission who has failed to fulfill his or her obligation, or where the Court considers that a case is of exceptional importance. The Court also sits in Grand Chamber when a member state or an institution that is a party to the proceedings so requests, and in particularly complex or important cases.

Other cases are heard by Chambers of three or five judges. The presidents of the Chambers of five judges are elected for three years, and those of the Chambers of three judges for one year.

The full Court will sit in "plenary sessions" for "contentious cases."[50] It hears four kinds of contentious cases: (1) appeals from the Court of First Instance; (2) complaints brought by the commission or by one member state against another member state for failure of the latter to meet its obligations under EU law; (3) complaints brought by a member state against an EU institution or its servants for failing to act or for injuries they may have caused; and (4) actions brought by a member state, the council, the commission, or Parliament seeking the annulment of an EU legal measure.[51] Preliminary rulings come about when a national court is hearing a case involving an EU law and the national court is in doubt as to the interpretation or validity of that law. In such a case, the national court may, and in some cases must, request a preliminary ruling from the Court of Justice.[52]

In addition to these four main institutions of the European Union are several other committees and bodies that influence the course of law and policy within the Union.

European Economic and Social Committee Before the Council of the EU can adopt a proposal, opinions first must be obtained from the Parliament and, in many cases, from the EU's **Economic and Social Committee.**[53] In essence, this consultative body is an institutionalized lobby. Its 222 members represent a wide range of special-interest groups, including employers, trade unions, consumers, farmers, and so on.

Economic and Social Committee
An EU consultative body made up of special-interest groups.

European Court of First Instance The **Court of First Instance**[54] is the EU's trial court for cases brought by member states against the European Commission, cases seeking compensation for damage caused by the European Community institutions or their staff, cases relating to community trademarks, cases where individuals challenge legislation or actions taken by the EU institutions or challenge an institution's failure to act,[55] and cases deciding employment disputes between EU institutions and their employees. The court consists of at least one judge from each member state (27 in 2007). The judges are appointed by agreement of the member state governments for a renewable term of six years. The judges appoint their president for a period of three years from among themselves. The court sits in chambers of three or five judges to decide most disputes, but it may sit in plenary session to decide important cases.

European Court of First Instance
The EU's trial court with jurisdiction over (1) disputes brought by private persons against an EU institution and (2) employment disputes between EU institutions and their employees.

[50]European Union Treaty, Article 165. Every three years there is a partial replacement of judges. Seven and eight are replaced alternatively. Id., Article 176.

[51]Articles 169–171 of the European Union Treaty provide for actions for infringement against a member state for failing to observe an EU treaty or a law derived from a treaty; Articles 173, 174, and 176 provide for an action to annul the acts taken by the Union's institutions in violation of the EU treaties; Articles 175 and 176 provide for action to compel an EU institution to take action; and Articles 178 and 215(2) provide for an action for damages arising from the noncontractual (i.e., tort) liability of the Union.

[52]The court will only hear requests (1) that involve a genuine issue of Union law and (2) that the referring court regards as being necessary to its ability to give a judgment.

[53]The European Economic and Social Committee's Web site is at http://eesc.europa.eu.

[54]For information on the European Court of First Instance, see www.eubusiness.com/topics/eulaw/court-first-instance/.

[55]Individuals may seek the annulment of a legal measure that is of direct and individual concern to them; they may bring actions to compel an EU institution to act; and they may seek damages for injuries caused by EU institutions or servants in the performance of their duties.

European Central Bank (ECB)
The central bank of the EU.

European Central Bank The **European Central Bank (ECB)**, which came into being on January 1, 1999, is responsible for carrying out the EU's monetary policy. The ECB's decision-making bodies are a governing council and an executive board. These oversee the European System of Central Banks (ESCB). The ESCB determines the amount of money in circulation, conducts foreign-exchange operations, holds and manages the member states' official foreign reserves, and ensures the smooth operation of payment systems. During 2011, the ECB experienced serious stress as the "Greek Debt Crisis" worsened (see Reading 1-2).

European Court of Auditors
The institution responsible for supervising the EU's budget.

European Court of Auditors The EU budget, which is funded from customs duties and agricultural levies on external imports and from a portion of the value-added tax (VAT) collected in the member states, is supervised by a **Court of Auditors**[56] made up of 15 individuals appointed by mutual agreement of the European Council for six-year terms. The Court of Auditors has wide-ranging powers to examine the legality and regularity of EU receipts and expenditures and to ensure the sound financial management of the budget.

Other IGOs IGOs can be categorized into two basic groups: (1) general IGOs that have competence in a wide variety of fields, including politics, security, culture, and economics, like the United Nations, and (2) specialized IGOs that limit their activities to a particular field.

General IGOs Three prominent regional general IGOs are devoted to political cooperation, security, and the promotion of economic, social, and cultural development. They are the Council of Europe,[57] the African Union (AU),[58] and the Organization of American States (OAS).[59] The oldest is the OAS, which was established in its present form in 1948. The Council of Europe was created in 1949, and the AU (which replaced the Organization of African Unity, founded in 1963) came into being in 2002. Each limits membership to states from its region. The Council of Europe further limits its membership to states committed to the rule of law and the enjoyment of human rights. Spain and Portugal, for example, were excluded from the council until the mid-1970s because they did not have democratic regimes. The OAS admits any independent American state except those involved in territorial disputes. Belize and Guyana were not admitted until 1993 because of this requirement. Any independent sovereign African state is eligible for membership in the AU with the exception of countries ruled by white minority regimes.

The institutional structure of all three of these organizations is quite similar. The Council of Europe is different in one important respect, however. It has a Parliamentary Assembly whose representatives are elected by the national parliaments of the member states and whose numbers vary in proportion to the population of each member. The representatives do not vote as a block representing

[56]The European Court of Auditors' Web site is at http://europa.eu/about-eu/institutions-bodies/court-auditors/index_en.htm

[57]As of August 2011, the Council of Europe had 48 members: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Monaco, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the former Yugoslav Republic of Macedonia. See the list of member states on the council's Web site at www.coe.int/lportal/web/coe-portal.

[58]The AU has as its goals the economic, political, and social integration and development of the African people. It is the successor to the Organization of African Union (OAU), which was founded in 1963 with the goals of eradicating all forms of colonialism in Africa and promoting the sovereignty, territorial integrity, and independence of its members. As of 2011, the AU had 53 members: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, the Central African Republic, Chad, Comoros, Republic of the Congo (Brazaville), Cote D'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, the Saharawi Arab Democratic Republic, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Republic of Sudan (Khartoum), Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, and Zimbabwe. The AU home page is at www.africa-union.org. For the history and structure of the AU, see the AU Summit 2002 page maintained by the South African Department of Foreign Affairs. The AU's Web site is at www.au.int/en/.

[59]The OAS has as its objectives "peace and justice, [and] promoting solidarity among the American states." It has 35 members: Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba (suspended from participating in OAS activities in 1962 but not from membership), Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Saint Kitts and Nevis, Trinidad and Tobago, the United States of America, Uruguay, and Venezuela. See the list of member states on the OAS's Web site at www.oas.org/en/member_states/default.asp.

their states, but individually or as part of political parties that have formed within the assembly. This means that individuals influence the deliberations more than governments.

All three organizations seek to promote cooperation between their members in a variety of fields. But because of differing circumstances, each has a slightly different agenda. The Council of Europe has stressed legal, social, and cultural matters; the OAS has emphasized issues of peace and security; and the newly established AU is concentrating on political cooperation. Human rights are an important interest of all three. Individuals within member states of the Council of Europe may bring human rights cases directly to a European Court of Human Rights.[60] Within the OAS, individuals may submit complaints to an Inter-American Commission on Human Rights. After carrying out an independent investigation, the commission will either submit a report to the OAS's Council or, if the member state concerned has recognized the court's jurisdiction, will forward the complaint to the Inter-American Court of Human Rights. In Africa, the AU has a Human Rights Commission with investigatory powers similar to those of the Inter-American Commission. Ironically, the current form of the AU was conceived by Muammar el Qaddafi, the ex-Libyan leader. The union has plans for the future that include the establishment of a central bank, with a single currency by 2023, and of a human rights court. In addition to these three regional general IGOs, there are three notable nonregional general IGOs: the Commonwealth of Nations,[61] the Arab League,[62] and the Commonwealth of Independent States.[63] At one time the Commonwealth of Nations limited its membership to countries that were formerly part of the British Empire; the Arab League is open only to Arab nations; and the Commonwealth of Independent States is made up of former republics of the Soviet Union. Unlike other general IGOs, the Commonwealth of Nations has no charter (or, at least, no written charter) and, beyond a secretariat, no organs other than a biennial meeting of heads of government, annual meetings of finance ministers, and regular meetings of other ministers (especially those of education, law, and health). The Arab League has a council made up of representatives of each member state, several committees that assist the council, and a secretariat. In addition, Arab kings and presidents meet at regular Arab League summit conferences. The Commonwealth of Independent States was originally set up to provide for the orderly dissolution of the former Soviet Union. It now seeks to promote cooperation among the former Soviet republics. Each of these organizations encourages cooperation among its members but, unlike the Council of Europe or the OAS, which perform many service functions, they are primarily forum organizations.

Specialized IGOs There is a whole range of specialized IGOs that deal with a wide variety of issues of mutual interest to their members. Examples are the European Space Agency,[64] the International

[60]See the court's home page at www.echr.coe.int/echr/homepage_EN. See also a video on the Court at www.echr.coe.int/ECHR/EN/Header/The+Court/Introduction/Video+on+the+Court/.

[61]The Commonwealth of Nations was established in 1931 to promote cooperation among states that were once part of the British Empire and that recognize the British monarchy as their heads of state. All but two of the current Commonwealth countries (Mozambique and Rwanda) were formerly part of the British Empire. The member states agree to work within common values and goals as outlined in the Singapore Declaration. These values include the promotion of democracy, human rights, good governance, the rule of law, individual liberty, egalitarianism, free trade, multilateralism, and world peace.

The Commonwealth of Nations has 54 members: Antigua and Barbuda, Australia, the Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Cameroon, Canada, Cyprus, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, the Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria (suspended in 1995), Pakistan, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, the United Kingdom, Uganda, Vanuatu, Western Samoa, Zambia, and Zimbabwe. The Republic of Ireland is associated with it for commercial purposes but is not a member. See the Commonwealth's home page at www.commonwealth-of-nations.org/Commonwealth-Home.

[62]Founded in 1945, the League of Arab States (Arab League) seeks to promote political, economic, cultural, and communication ties among its members and to mediate internal disputes. As of 2011 it had 22 members: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates, Yemen, and the Palestine Liberation Organization.

[63]Established in 1991, its members are Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. See the Commonwealth's home page at www.cisstat.com/eng/cis.htm.

[64]Founded in 1975, it has 19 state members. See the European Space Agency's home page at www.esa.int/esaCP.

TABLE 1.4

Customs unions in the developing world

ANCOM	Andean Common Market. Established in 1992 to create a free trade zone. A common external tariff was adopted in 1993. Members are Bolivia, Colombia, Ecuador, Peru, and Venezuela.
CACM	Central American Common Market. Established in 1997 to replace a common market of the same name that functioned from 1960 to 1969. Members are Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.
CARICOM	Caribbean Community. Established in 1973, it replaced the Caribbean Free Trade Association created in 1965. Members are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. In 1989, the community agreed to create a single market and economy (unofficially known as the Caribbean Common Market) by 1994.
COMESA	Common Market for Eastern and Southern Africa (formerly Preferential Trade Area for Eastern and Southern African States). Established in 1981 to create a common market. Members are Angola, Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe.
ECCAS	Economic Community of Central African States. Established in 1981 to gradually create a common market. Members are Burundi, Cameroon, Central African Republic, Chad, Democratic Republic of the Congo, Republic of the Congo, Equatorial Guinea, Gabon, Rwanda, and São Tomé and Príncipe.
ECOWAS	Economic Community of West African States. Established in 1975 to promote economic development and gradually create a common market. Members are Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo.
SACU	Southern African Customs Union. Established in 1969 to promote free trade and cooperation in customs matters. Members are Botswana, Lesotho, Namibia, South Africa, and Swaziland.
SADC	Southern African Development Community. Established in 1979, it seeks to establish an economic union among its members: Angola, Botswana, Congo (Kinshasa), Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.
UDEAC	Central African Customs and Economic Union. Established in 1964 to promote the gradual and progressive creation of a common market. Members are Cameroon, Central African Republic, Chad, Republic of the Congo, Equatorial Guinea, and Gabon.

customs union
A group of states that have reduced or eliminated trade barriers among themselves and have established a common external tariff.

free trade area (FTA)
A group of states that have reduced or eliminated trade barriers among themselves but maintain their individual tariffs in dealing with other states.

Coffee Organization,[65] the International Criminal Police Organization (INTERPOL),[66] and the International Institute for the Unification of Private Law (UNIDROIT).[67]

One important group of specialized IGOs promotes economic cooperation and development. This group is made up of several types of organizations, the most developed of which are the common markets or customs unions, such as the EU. Customs unions are intended to eliminate trade barriers between their members and to establish common external tariffs. Aside from the EU, the success of other **customs unions** (see Table 1.4) has been limited for several reasons. First, the economies of their member states—all developing countries—tend to compete with, rather than complement, each other. Second, many of the member states only recently gained independence, and they are reluctant to surrender that independence to a central authority. Third, the economic gains made within these unions have often been unequal, prompting those states that have not shared fully to become discouraged and withdraw.

A second type of cooperative economic IGO is the **free trade area (FTA)**. FTAs are set up to eliminate trade barriers between member states without establishing a common external tariff. Examples

[65]Founded in 1963, it has 33 exporting state members and 32 importing state members (27 from the EU). See its home page at www.ico.org.

[66]Founded in 1923, it has 186 state members. See INTERPOL's home page at www.interpol.int.

[67]Founded in 1926, it has 61 state members. See UNIDROIT's home page at www.unidroit.org.

include the Association of Southeast Asian Nations Free Trade Area (ASEAN-FTA),[68] the Central European Free Trade Area (CEFTA),[69] the European Free Trade Association (EFTA),[70] the Southern Cone Common Market (MERCOSUR),[71] and the North American Free Trade Agreement (NAFTA).[72]

Finally, a third type of IGO involved in economic cooperation and development is the **economic consultative association**. The functions of a consultative association are to gather and exchange statistics and information, to coordinate the economic policies of member states, and to promote mutual trade cooperation. Examples are the Organization for Economic Cooperation and Development (OECD),[73] the Colombo Plan for Cooperative Economic and Social Development in Asia and the Pacific (Colombo Plan),[74] the Group of 77 (G-77),[75] and the Organization of Petroleum Exporting Countries (OPEC).[76]

economic consultative association
A group of states that exchanges information, coordinates economic policy, and promotes trade cooperation.

Nongovernmental Organizations **Nongovernmental organizations (NGOs)** include nonprofit and for-profit NGOs. **Nonprofit NGOs** serve as coordinating agencies for private national groups in international affairs. Examples of nonprofit NGOs are the International Air Transport Association,[77] the International Bar Association,[78] Amnesty International,[79] the International Committee of the Red Cross,[80] Greenpeace,[81] and Transparency International.[82]

nongovernmental organization (NGO)
An international organization made up of organizations other than states.

nonprofit NGO
An international organization that draws its members from among individuals and domestic organizations (sometimes including local governments, such as municipalities) who reside in two or more states.

[68]Established in 1992 to facilitate the free exchange of goods in Southeast Asia within 15 years. Its members are Brunei, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Cambodia, and Vietnam. See the Association of Southeast Asian Nations' Web site at www.aseansec.org.

[69]Established in 1993 to progressively create a free trade area by January 1, 2001. Its members are Bulgaria, Croatia, the Czech Republic, Hungary, Poland, Romania, the Slovak Republic, and Slovenia. See its home page at www.cefta2006.com.

[70]Established in 1960, EFTA presently has only four members: Iceland, Liechtenstein, Norway, and Switzerland. In 1991, EFTA and the European Community (now the European Union) entered into a trade agreement (called the European Economic Area) that joined the EU and the three EFTA states to form the world's largest free trade area. See EFTA's home page at www.efta.int.

[71]MERCOSUR (the Mercado Común Sudamericano) was established in 1991. Its members are Argentina, Brazil, Paraguay, and Uruguay. Bolivia, Chile, Colombia, Ecuador, and Peru currently have associate member status. Venezuela signed a membership agreement on June 17, 2006. See the Uruguayan embassy Web site at www.sice.oas.org/trade/mrcsr/mrcsrtoc.asp for a description of MERCOSUR.

[72]Agreed to in 1993 by Canada, Mexico, and the United States, NAFTA came into effect January 1, 1994. See the U.S. Department of Commerce's NAFTA Web site at http://export.gov/FTA/nafta/index.asp. See also the NAFTA secretariat's home page at www.nafta-sec-alena.org.

[73]Established in 1961, OECD has 32 members: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The goals of OECD are to help "member countries promote economic growth, employment and improved standards of living through the coordination of policy" and to encourage "the sound and harmonious development of the world economy and improve the lot of developing countries, particularly the poorest." See the OECD home page at www.oecd.org.

[74]Established in 1959, the Colombo Plan for Cooperative Economic and Social Development in Asia and the Pacific seeks to aid the economic development of its Asian members. There are 26 members. Its Web site is at www.colombo-plan.org.

[75]Established in 1967 following the first meeting of the UN Conference on Trade and Development (UNCTAD). Originally, an ad hoc group of 77 developing countries that sought to coordinate their negotiating positions within UNCTAD, the Group of 77 now functions as a Third World negotiating block in its dealings with the developed world. The G-77 promotes mutual cooperation and the establishment of a "New Economic Order" (to give international negotiating power to the Third World). At present there are 133 members. See the Group of 77's home page at www.g77.org.

[76]Established in 1960, OPEC attempts to set world oil prices by coordinating the oil production of its member states. There are 12 OPEC members: Algeria, Angola, Ecuador, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates, and Venezuela. See the OPEC home page at www.opec.org.

[77]Founded in 1945, the International Air Transport Association represents 230 airlines in promoting an economically viable international air transport industry. See the IATA home page at www.iata.org.

[78]Founded in 1947, the International Bar Association promotes the exchange of information, the discussion of legal issues, and the independence of the profession. It represents 195 member organizations and 30,000 individual members in 183 countries. See its home page at www.ibanet.org.

[79]Founded in 1961, Amnesty International undertakes campaigns to free prisoners of conscience, ensure fair and prompt trials for political prisoners, abolish cruel and unusual punishment, and end extrajudicial executions. It is made up of more than 4,300 local groups and approximately 3 million members and supporters in 150 countries. See its home page at www.amnesty.org.

[80]Founded in 1863, the International Committee of the Red Cross seeks to help all victims of war and internal violence by coordinating the activities of 175 national Red Cross and Red Crescent societies. See the ICRC home page at www.icrc.org.

[81]Greenpeace International is a prominent NGO that confronts polluters and works with people, governments, and corporations for the long-term stability of Earth's ecosystems (forests, oceans, soils) and opposes all forms of nuclear energy. See the Greenpeace International Web site at www.greenpeace.org/international/en/.

[82]Transparency International works with business, governments, and citizens to oppose bribery and corruption worldwide. TI maintains an active and influential ranking of the most corrupt governments in the world. Its Web site is at www.transparency.org.

multinational enterprise (MNE) Business firm operating branches, subsidiaries, or joint ventures in two or more states.

For-profit NGOs, also known as *transnational corporations* or **multinational enterprises (MNEs)**, are businesses operating branches, subsidiaries, or joint ventures in two or more countries. The organizational structures of MNEs are as diverse as those of any national business. They may invest in other businesses abroad; they may establish physical plants with management, labor, and financing overseas; they may have a single central headquarters; or they may be loosely coordinated through contractual agreements.

States perceive MNEs both as necessities and as threats, and they have tried to work together to adopt international regulations both to control and to promote them. The International Chamber of Commerce, the Organization for Economic Cooperation and Development, the International Labor Organization, and the United Nations Commission on Transnational Corporations have each produced codes of conduct for MNEs. These codes' influence, however, has been limited because they are only suggested guidelines.

In particular, the MNEs have acquired the authority to enter into international agreements with states and to sue states in at least one international tribunal. The right to sue a state is granted in the Convention on the Settlement of International Disputes between States and Nationals of Other States, adopted in 1965. This Convention, sponsored by the World Bank,[83] is meant to encourage investment in developing countries. To do this, it allows MNEs to enter into agreements with developing countries, and it requires both the MNEs and the countries to resolve any disputes about their agreements using a mandatory mechanism of conciliation and **arbitration**. Currently, 126 states are parties to the convention.

arbitration (From Latin *arbitrari:* "to give judgment.") The process by which parties to a dispute submit their differences to the judgment of an impartial third person or group selected by mutual consent.

F. The Rights of Individuals Under International Law

International law looks upon individuals in two different ways: (1) it ignores them or (2) it treats them as its subjects. The traditional view is to ignore them. This is based on the idea that international law (or, more particularly, the *law of nations*) applies only to states. Some writers still believe that this is the only proper way for international law to treat individuals. For example, the Chinese international law writer K'ung Meng has this to say:

> [A]ccording to the fundamental characteristics of international law (it is the law among states), individuals can only be subjects of municipal law and cannot be subjects of international law. In international relations, individuals are represented by their own countries and if rights and interests (such as entry, residence, employment, and property) are violated in a foreign country, individuals should negotiate with the state concerned through the organs of their home country. Only their home country enjoys the rights of diplomatic protection in international law.[84]

Even though individuals have no direct rights according to this traditional view, they do have derivative rights. That is, as K'ung Meng points out in the preceding excerpt, the state of which an individual is a national can seek redress on behalf of that individual from any foreign state that causes the individual injury. The rationale for allowing such action by the individual's state of nationality is based on the notion that an injury to a national is an injury to the state.

state responsibility Liability of a state for the injuries that it causes to foreign persons.

The traditional international law concept that allows a state to seek compensation from other states for injuries done to its nationals is known as the law of **state responsibility**. Although it aims to protect individuals from virtually any kind of mistreatment by foreign states, the law of state responsibility gives individuals few rights to litigate in courts; generally, it does not give them the right to pursue their own claims or the right to protest the actions of their own national state. (The law of state responsibility is discussed more fully in Chapter 2.)

human rights Basic rights intended to protect all people from cruel and inhumane treatment, threats to their lives, and persecution.

The second way in which international law looks upon individuals is to treat them as its subjects. This view—one developed only over the last half-century—regards individuals as having basic **human rights** and, significantly, the right to assert claims on their own behalf against states, including

[83]The World Bank's Web site is at www.worldbank.org.

[84]K'ung Meng, "A Criticism of the Theories of Bourgeois International Law Concerning the Subjects of International Law and Recognition of States," *Kuo-chi wen-tt'i yen-chiu,* no. 2, p. 44 (1960), translated in Jerome Cohen and Hungdah Chiu, *People's China and International Law: A Documentary Study,* vol. 1, p. 97 (1974).

TABLE 1.5

Comparison of the law of state responsibility and international human rights law

	Law of State Responsibility	International Human Rights Law
Basis of a claim	Any loss of property or personal injury	Injuries defined by treaty or statutes such as the U.S. Alien Tort Statute
Claimant	The state of which the injured individual is a national	The injured individual
Defendant	A foreign state	Any state

the state of their nationality. In comparison with the law of state responsibility, however, the kinds of claims that individuals can raise are limited. Historically, they could only be based on rights granted in treaties or in widely recognized international declarations. However, recent developments in U.S. law under the Alien Tort Statute (ATS) have allowed individuals to sue foreign sovereigns for violations of "the law of nations." (See Chapter 8 for discussion of recent ATS cases such as *Kiobel v. Royal Dutch Petroleum* [2011]). Table 1.5 compares the scope and nature of the law of state responsibility with that of international human rights law.

Case 1-5 examines the differences between the traditional law of state responsibility and international human rights law.

CASE 1-5 De Sanchez v. Banco Central De Nicaragua

United States, Court of Appeals, Circuit, 1985. *Federal Reporter, Second Series,* vol. 770, p. 1385 (1985); *International Law Reports,* vol. 88, p. 76 (1992).

MAP 1.8

Nicaragua (1985)

Opinion by Judge Goldberg

In July 1979, the Nicaraguan government of General Anastasio Somoza fell to the Sandinista revolutionaries. As usually occurs, members of the old regime fled the country to escape the reach of "revolutionary justice." But where defeated aristocracies once emigrated to London or Paris, now they seem to wind up in Miami. One of the emigres—Mrs. Josefina Navarro de Sanchez, the wife of President Somoza's former Minister of Defense—brought the present suit

to collect on a check for $150,000 issued to her by the Nicaraguan Central Bank (Banco Central de Nicaragua) shortly before Somoza's fall. Mrs. Sanchez was unable to cash this check after the new government assumed power and placed a stop-payment order on it.

[Mrs. Sanchez then brought suit against the Banco Central in a United States court seeking an order to make it honor the check (which was drawn on a U.S. bank). The trial court instead granted Banco Central's motion for a summary judgment and dismissed the suit. Mrs. Sanchez appealed. The central issue on appeal was whether an individual (Mrs. Sanchez) who is a national of a state (Nicaragua) can sue an agency of that state (the Banco Central) in another state's courts for an alleged contractual breach.] . . .

International law, as its name suggests, deals with relations between sovereign states, not between states and individuals. Nations, not individuals, have been its traditional subjects. Injuries to individuals have been cognizable only where they implicate two or more different nations: if one state injures the national of another state, then this can give rise to a violation of international law since the individual's injury is viewed as an injury to his state. As long as a nation injures only its own nationals, however, then no other state's interest is involved; the injury is a purely domestic affair, to be resolved within the confines of the nation itself.[85]

Recently, this traditional dichotomy between injuries to states and to individuals—and between injuries to homegrown and to alien individuals—has begun to erode. The international human rights movement is premised on the belief that international law sets a minimum standard not only for the treatment of aliens but also for the treatment of human beings generally. Nevertheless, the standards of human rights that have been generally accepted—and hence incorporated into the law of nations—are still limited. They encompass only such basic rights as the right not to be murdered, tortured, or otherwise subjected to cruel, inhumane, or degrading punishment; the right not to be a slave; and the right not to be arbitrarily detained. At present, the taking by a state of its national's property does not contravene the international law of minimum human rights. This has been held to be true in much more egregious situations than the present, including cases where the plaintiff had had his property taken pursuant to Nazi racial decrees. It is certainly true here. As the court noted in *Jafari v. Islamic Republic of Iran:*

> It may be foreign to our way of life and thought, but the fact is that governmental expropriation is not so universally abhorred that its prohibition commands the "general assent of civilized nations" . . . —a prerequisite to incorporation in the "law of nations." . . . We cannot elevate our American-centered view of governmental taking of property without compensation into a rule that binds all "civilized nations."[86]

The doctrine that international law does not generally govern disputes between a state and its own nationals rests on fundamental principles. At base, it is what makes individuals subjects of one state rather than of the international community generally. If we could inquire into the legitimacy under international law of Nicaragua's actions here, then virtually no internal measure would be immune from our scrutiny. Concomitantly, actions of the United States affecting the property of American citizens would become subject to international norms and hence reviewable by the courts of other nations. In the field of international law, where no single sovereign reigns supreme, the Golden Rule[87] takes on added poignancy. Just as we would resent foreign

[85]Potentially, an injury by a state to its own nationals might implicate international law if the injury occurred within another state's territory. In that event, the state where the injury occurred might have an interest if the injury affected its territorial sovereignty. International law would become involved not because of the status of the injured party but because of the location of the injury. In the present case, Mrs. Sanchez claims that her injury occurred in the United States, because that is where Banco Central's check was made payable. We need not decide here whether Banco Central's contractual obligations were "located" in the United States. Even if they were, the breach of these obligations was not of such a nature as to affront the territorial sovereignty of the United States. The situation might be different if Nicaragua had attempted to expropriate a piece of real property owned by Mrs. Sanchez in the United States. Then, Nicaragua's actions could be seen as literally challenging the authority of the United States over its own territory. We decide here only that takings of intangible property rights—including breaches of contract—do not violate international law where the injured party is a national of the acting state, regardless of the property's location.

[86]*Id.,* at p. 215.

[87]The Golden Rule is "Do to others as you would have them do to you." It is not, as Judge Goldberg seems to suggest, "Leave others alone out of fear that they might not leave you alone." *Ed.* The topic of foreign sovereign immunities will be covered in Chapter 3; the decision here is similar in that U.S. courts (among many other federal court systems) will not allow U.S. citizens or foreign citizens to sue a foreign sovereign in U.S. courts unless the sovereign has waived immunity, engaged in private/commercial acts that form that basis for the lawsuit, or committed a tort in the United States.

courts from telling us how we can and cannot rule ourselves, we should be reluctant to tell other nations how to govern themselves. Only where a state has engaged in conduct against its citizens that outrages basic standards of human rights or that calls into question the territorial sovereignty of the United States is it appropriate for us to interfere. Since this is not such a case, we decline to apply international law to Nicaragua's conduct. . . .

Affirmed.

Casepoint

An individual who is a national of a foreign state may not sue an agency of that foreign state in another state's courts for an alleged contractual breach. As long as a state injures only its own nationals, no other state's interest is involved, and the matter is regarded in international law as a purely domestic affair.

G. Comparison of Municipal Legal Systems

There are nearly 200 nations in the world today, and each has a different set of laws that govern its people and its relations with the rest of the world. Whereas international law governs relations between states, institutions, and individuals across national boundaries, municipal law governs these same persons (including the private or commercial conduct of foreign states) within the boundaries of a particular state. Although it would be impossible to describe the legal system of every nation, it is possible to describe the basic systems or "family groupings." The study, analysis, and comparison of the different municipal law systems is known as **comparative law**.

comparative law
The study, analysis, and comparison of the world's municipal law systems.

Comparative lawyers classify countries into legal families. The two most widely distributed families are the Romano-Germanic civil law and the Anglo-American common law. Another family that has become important internationally in recent years is Islamic law.

Of course, each of these families has many subfamilies; for example, within the Romano-Germanic family one finds the Romanist, Germanic, and Latin American subfamilies. In addition, many legal systems are hybrids. The Japanese and South African legal systems thus have elements of both civil and common law. Finally, some legal practices are unique to a particular country. This is especially so in some African countries that use tribal customary law to varying degrees. Drawing a "family tree," as a consequence, can become very complicated, and Map 1.8 should be considered as only a generalization.

It is important to understand that the legal system in one country can vary greatly from that in another country, even if both belong to one of the major legal families. This is because the values underlying a legal system can vary greatly among countries, depending on a country's history, language, religion, ethics, and other cultural factors. The importance of cultural differences, the way those differences affect the community of nations, and the effect they can have on international law are discussed in Reading 1-1.

The Romano-Germanic Civil Law System

The oldest and most influential legal family is the Romano-Germanic legal system, commonly called the **civil law**. The civil law dates to 450 B.C., the traditional date when Rome adopted its Twelve Tables (a code of laws applicable to Romans). The most significant event in the historical development of the civil law, however, was the compilation and codification (i.e., the selection, arrangement, and simplification) of all Roman law under the direction of the Byzantine Emperor Justinian (483–565 A.D.). This code, known as the **Corpus Juris Civilis**, was compiled between 528 and 534 A.D. It was important because it preserved in written form the ancient legal system. The Roman law was displaced to some extent by the rules of the Germanic tribes when they overran the Western Roman Empire. Germanic tribal law, however, recognized the principle of personal (as opposed to territorial) law, so the former Roman subjects and their descendants were allowed to follow the Roman law. The medieval Roman Catholic Church also played an important role in preserving the ancient law. Canon law, the law used in the church's courts, was based on Roman law.

civil law
(1) The legal system derived from Roman and Germanic practice and set out in national law codes. (2) As distinguished from public law, the body of law dealing with the rights of private citizens.

Corpus Juris Civilis
(From Latin: "body of civil law.") Codification of Roman law completed about 534 A.D. at the order of Emperor Justinian that selected, arranged, and condensed the ancient laws.

With the revival of interest in classical culture in Western Europe in the eleventh and twelfth centuries, accompanied by the discovery of a copy of the long-lost Corpus Juris Civilis, active study of the ancient Roman law began in earnest. At universities in northern Italy—especially Bologna—the Corpus Juris Civilis was systematically analyzed, first by **glossators** (who added

glossator
One who makes a textual gloss or glossary (i.e., a brief note or explanation in the margins or between lines of a text as to the meaning of a difficult or obscure word or expression).