

Chapter 3 | Lesson 1

Public Int'l Law | Historical development

Historical development

15th & 16th century

- increasing number of independent states
- relations to other states (usages, treaties, practices)
- **customary rules of public international law**

19th century

- expansion of European civilisations
- rise of new powerful states
- greater destructiveness of modern warfare
- Industrial Revolution (new inventions)
- **need for a new system of rules**

Historical development

20th century

- Permanent Court of Arbitration (Hague Conference of 1899 and 1907)
- Permanent Court of Int. Justice in The Hague (1921)
- **League of Nations, UNO (1945)**

Dogmatic Views of Public Int'l Law

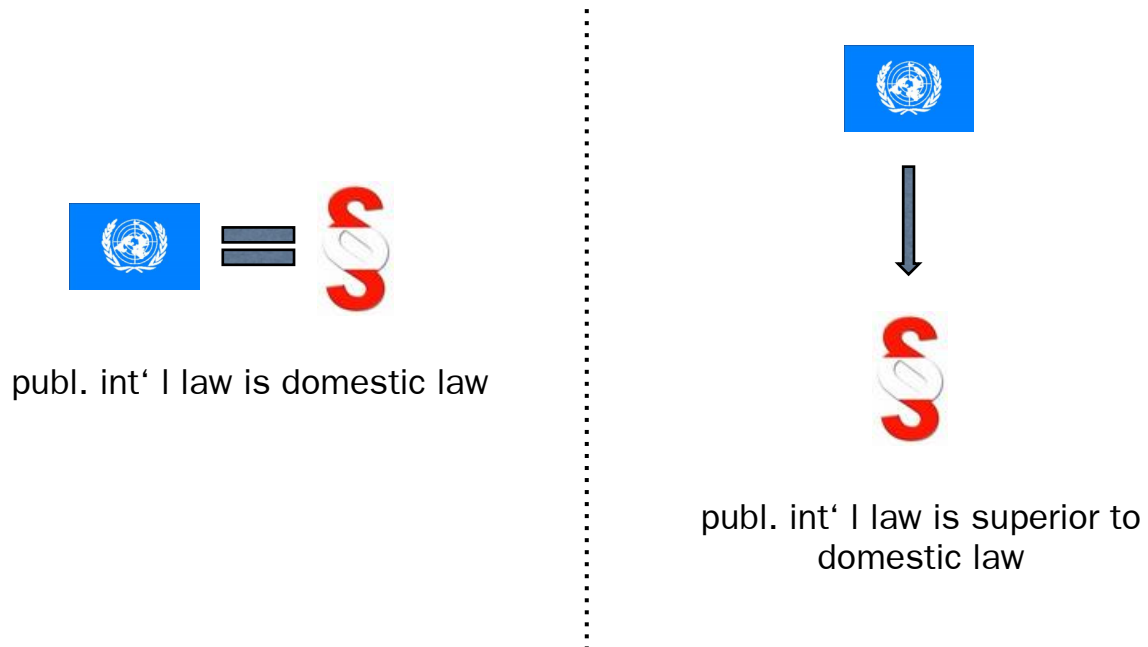
Positivists

- primary weight to customary and treaty rules
- states consented to be bound by public int'l law

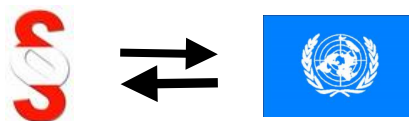
Adherents of natural law

- pre-existence of a set of rule (demands of reason)
- states are bound to public int'l law by reasons of mankind / force of nature

Relationship to Domestic Law | Monism



Relationship to Austrian Domestic Law | Dualism



- Two separate legal systems
- Co-exist in the realm of law

Relationship to Domestic Law

How can public int'l law become valid under the domestic legal system ?

- Act of transformation
- Adoption (automatically incorporated)
- public int'l law becomes domestic law
- can be changed or removed by domestic law

Order of application

- rule remains a rule of public int. law
- cannot be changed by domestic law

Customary public int'l law

- Diplomatic relations between states (duties of neutral states, sovereign immunity)
- Practice of international organs (status and powers of int. organizations)
- State law, decision of state courts, state military or administrative practices

example Art 9 para 1 Austrian Constitution

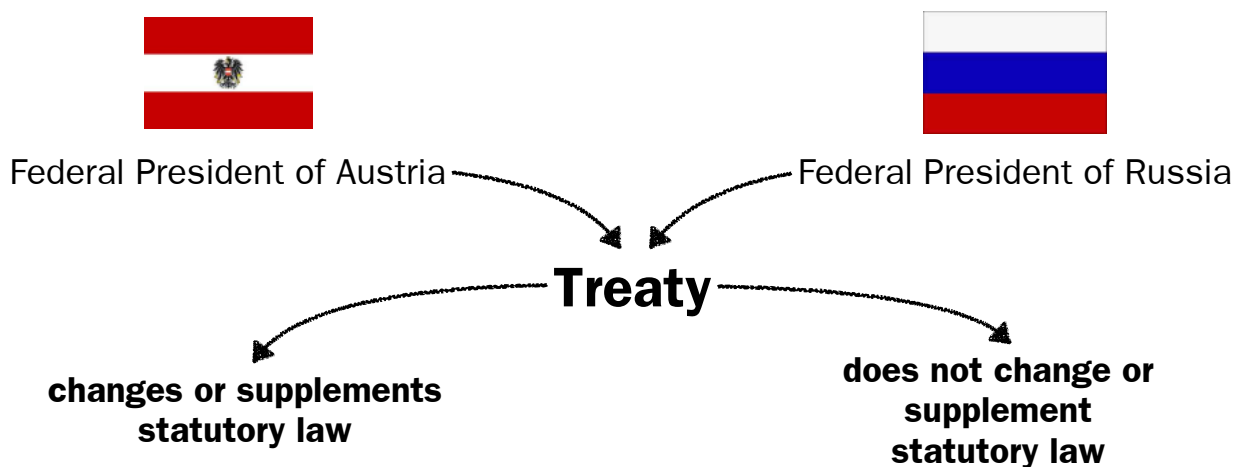
'Die allgemein anerkannten Regeln des Völkerrechtes gelten als Bestandteile des Bundesrechtes.'

- **Customary** public int'l law is declared **part of Austrian federal law**
- **no** special act of transformation is **necessary**

International treaties

- Most important source of public international law
- Obliges states to create directly enforceable rights and duties of private persons in their own legal systems
- Creates uniform (public or private) law, e.g. the Vienna Sales Convention (CISG)

International Treaties



- consent of the Austrian parliament is necessary
- 'ordinary' statutory law: majority decision
- constitutional law: 2/3 majority

- no consent necessary
- president can delegate his competence to federal government or federal minister