

# International Law



# Introduction to International Law

States, not their peoples, are the subjects of international laws.

So long as the state remains the same, a succession of governments does not affect the states international legal rights and duties

While a “new” state in international law can avoid some of the international legal obligations of a predecessor state, new governments of the same state (think US elections) inherit the legal commitments of their predecessors.

How do we know if there has been a succession of government or a new state?

Usually, it is easy to tell:

### ➤ Succession of governments

- ↪ If a state's territory or population remains the same
- ↪ A new political party takes over
- ↪ A new constitution is put in place

### ➤ Succession of nation-states

- ↪ The question becomes: does the previous state cease to exist? Such discontinuities are common in the history of international relations.
- ↪ Some states simply disappear
  - ↪ as Poland did in 1772-1793. It was divided between Russia and the Austrian-Hungarian Empire
- ↪ Some states join unions
  - ↪ East and West Germany in 1990
  - ↪ Alpine kingdom-states once unaffiliated with one another became Switzerland
- ↪ New states may spring from the territory of old
  - ↪ United States broke away from England
- ↪ Multiple states may emerge from a sovereign state
  - ↪ The breakup of the Soviet Union in 1991

# Sources of International Law

Given the international political system of nation-states and the idea of state sovereignty, the sources of international law can not be equivalent to the sources of domestic law

## Sources of international law

### ➤ Treaty / conventional / written

↳ Treaties, agreements, conventions...they are legally binding contracts

### ➤ Customary

↳ In short, a state's behavior occurring long enough over time to represent a predictable pattern of behavior, and the practice creates justifiable expectations of future observance.

The above sources/origins of international law may be said to emulate from the consent of states.

- Conventional Int'l Law – states who are parties agree to certain rules
- Customary Int'l Law – states consent is implicit, based on their behavior

## Principle of Jurisdiction

- The Territorial Principle
- The Nationality Principle
- The Effects Principle
- Universal Jurisdiction

↳ International law recognizes that certain crimes are so serious that the duty to prosecute them transcends all borders, giving rise to “Universal Jurisdiction” over grave crimes in violation of international law – such as crimes against humanity, war crimes, genocide, and torture – whereupon any state in the world may prosecute and try international crimes even in the absence of any territorial, personal or national-interest link.

↳ The rationale of universal jurisdiction is to avoid impunity and to prevent those who committed serious crimes from finding a safe haven in third countries.



## “General Principles of Law”

- ↳ The idea is that if most of all nation-states observe certain rules as part of their domestic laws, then it may be presumed that the rules are as fundamental as to be more or less automatically a part of international law

## “Jus Cogens”

- ↳ The idea that there are some rules so fundamental that they prohibit acts by States even if such conduct is expressly sanctioned by the State country.
  - Guarantee is the sovereignty of States (UN Charter, articles 1 and 2)
  - Human rights (China case, 1934)
  - Torture (Siderman case, 1992)

Signed treaties are the highest part of international law.

- ↳ “Reservations” – When a nation signs on to the heart of the treaty, but to the exclusion (reservation) of some specific elements of it.
  - ↳ Reservations are far from being the normal practice, but even if infrequent they also are not unusual.

## Examples of International agreements...

- ✓ Promise trade and ward off foreign forces
- ✓ Assure international postal services
- ✓ Stabilize international monetary relations
- ✓ Set international standards for labor practices
- ✓ Protect patents
- ✓ Protect fundamental rights
- ✓ Given fisheries
- ✓ Empower diplomats
- ✓ Protect women

...and more!

Virtually every human activity is to some degree the object of some treaty.

The Vienna Convention distinguishes between an amendment and a modification of multilateral treaties

- ❖ “Amendment” – an amendment alters the entire treaty for all members
- ❖ “Modification” – a modification alters the agreement with only specific parties

## Examples of International Arbitration

### The Alabama Case, 1872

A tribunal of five judges – named by the US, Italy, England, Brazil and Switzerland – were empowered to decide the issue:

At issue: Did the United Kingdom violate rules of international law when it permitted British companies to build warships for the Confederacy during the American Civil War?

Ruling: the court determined that Britain had violated its obligation of neutrality. Ordered to pay \$15,500,000 in damages      *\*The US receipt still hangs today at 10 Downing Street!*

### Dodder Bank Case, 1904

A tribunal of commissioned admirals from Russia, England, US, France and Australia were put together.

At issue: Was the Russian fleet attack on English fishing vessels in the North Sea (mistaking them for Japanese torpedo boats) justifiable?

Ruling: No, it was not justifiable. Russia agrees to pay \$300,000 in compensatory damages

### Rainbow Warrior Case, 1986

At issue: A Greenpeace vessel (often used to disrupt and protest French nuclear tests) called the “Rainbow Warrior” is sunk in a New Zealand Port, presumably by French spies

Ruling: Arbitration concluded that France should pay New Zealand \$7 million and confine two French secret service personnel to prison for at least three years. (*When France released both agents early, it was ordered to pay another two million*)

# Key philosophers in formulating international law

Niccolo Machiavelli

- Wrote 'The Prince'
- 1<sup>st</sup> political realist

Hugo Grotius

- Secularized international law (no religious influences)
- Argued that rulers not only made international law, but were obliged to live under those rules

Jean-Jacque Rousseau

Desiderius Erasmus

Immanuel Kant

Thomas Moore

William Penn

Abbe de Saint Pierre

- Fashioned utopian regimes involving international law and organization

Thomas Hobbes

- Writings celebrated the sovereign nation-state
- Introduced the philosophical concept of State of Nature and said it applied to states argued men need a common power to guide them toward a common goal.

St. Augustine

- Introduced the idea of a 'Just War'

# Air Law

A basic principle of international air law is that every state has complete and exclusive sovereignty over the airspace above its territory, including its territorial sea.  
The international language of aviation is English.

Air law is a mix of international and domestic rules



# Outer Space Law

This became an issue with Sputnik (1<sup>st</sup> satellite), launched by the Soviet Union in 1957

Central to the law is the Outer Space Treaty of 1967:

- Treaty protects the moon and other space bodies from anything but “peaceful purposes”
- It prohibits parties from putting nuclear weapons or other high explosives in space

The treaty has been amended by four additional UN agreements, addressing:

- Liability for damage caused by space objects
- Agreements respecting astronauts
- Registration of objects launched into space
- The moon treaty
  - ↳ No mining; yet to be ratified by the US c.2023 (neither has China or Russia)

Taken holistically, the treaties making up the law for Outer Space provide for:

- The free exploration and use of space
- Prohibit the appropriation of space and celestial bodies by any nation
- Attempt to restrict military activity in space
- Establish that Outer Space is to be part of the common heritage of all humanity.



# International Environmental Law

The discipline of international law, as extended to the environment, is a relatively new phenomenon

US v Canada in the Trail Smelter decision, 1941

- ↳ Canadian pollution passed across the border into US; US sues
  - This is the first case in international law to address air pollution
  - Establishes the ‘harm principle’ in the environmental law of transboundary pollution’
    - ↳ Verdict: Canada should reduce particle pollution and pay the US and American farmers for damages.
    - ↳ The Trail Smelter decision has shaped the core principle underlying international environmental law: a country which creates transboundary pollution or some other environmentally hazardous effect is liable for the harm this causes, either directly or indirectly, to another country

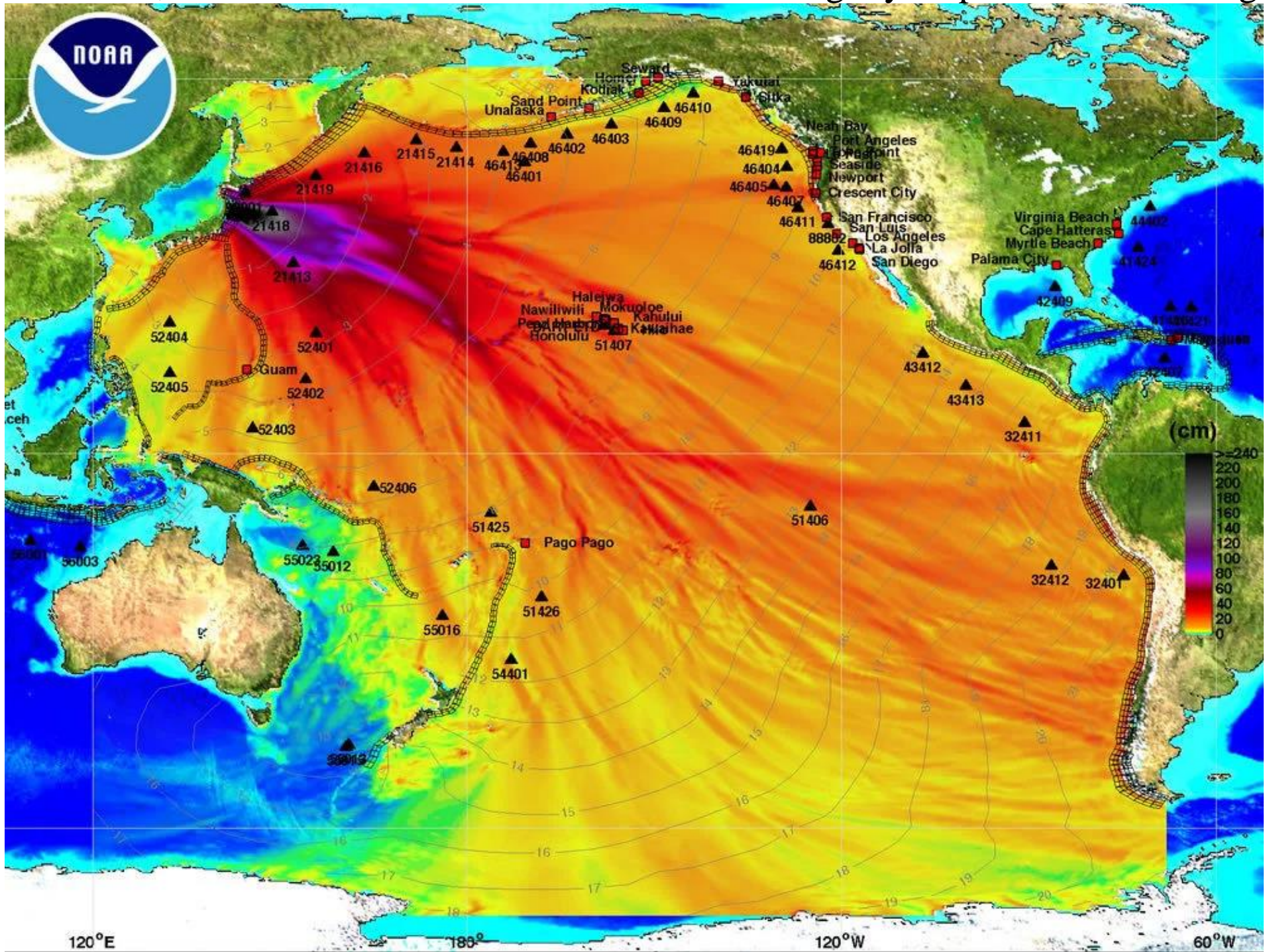
The chief responsibility for enforcement of international environmental law remains vested in the national governments

- ↳ Some of the governments may face pressures to abandon/sacrifice environmental concerns for the sake of perceived economic efficiencies.

Two phenomena characterize the contemporary international environment state of affairs:

1. 2<sup>nd</sup> Tier countries pose special problems for generalized international standards
  - ↳ Promotion their developmental needs go against international environmental concerns
  - ↳ 2<sup>nd</sup> Tier countries/governments have won preferential treatment in international environmental agreements
2. The emergence of private advocacy groups (special interests) at the national level and as non-governmental international organizations
  - ↳ Consider: Greenpeace International
  - World Wide Fund for Nature
  - Friends of the Earth

8.9 earthquake destabilized nuclear reactor in Japan March 2011. Radiation spreads into the ocean, Who is affected? Who is legally responsible for damages?



# Antarctica

Antarctica became of legal interest only once technology developed to make its terrain accessible c.1930s

By 1955, 7 countries had all made territorial claim to a part of the continent



↳ Argentina, Australia, China, France, New Zealand, Norway and the UK, and the US and USSR also had expressed territorial ambitions/interest!

➤ China now has three Antarctic bases, two field camps and three airfields, while three countries (Russia, US, UK) claim to have discovered the icy continent!

The potential conflict among these claims led to the negotiation of the Antarctic Treaty

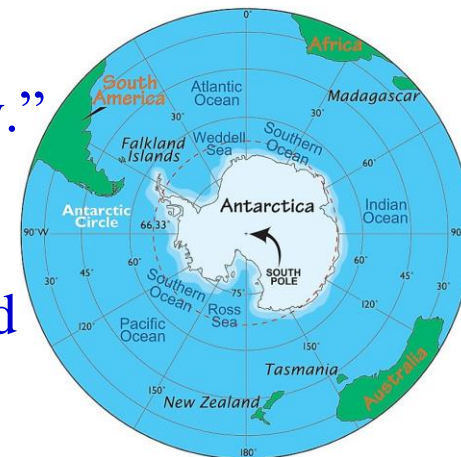
The treaty:

➤ Stresses that “Antarctica shall be used for peaceful purposes only.”

➤ There shall be “freedom of scientific investigation”

➤ The treaty “freezes” any national claims

↳ that is, it voids all territorial claims from that point forward (preexisting territorial claims are allowed to stand)



# Extradition

## What is Extradition?

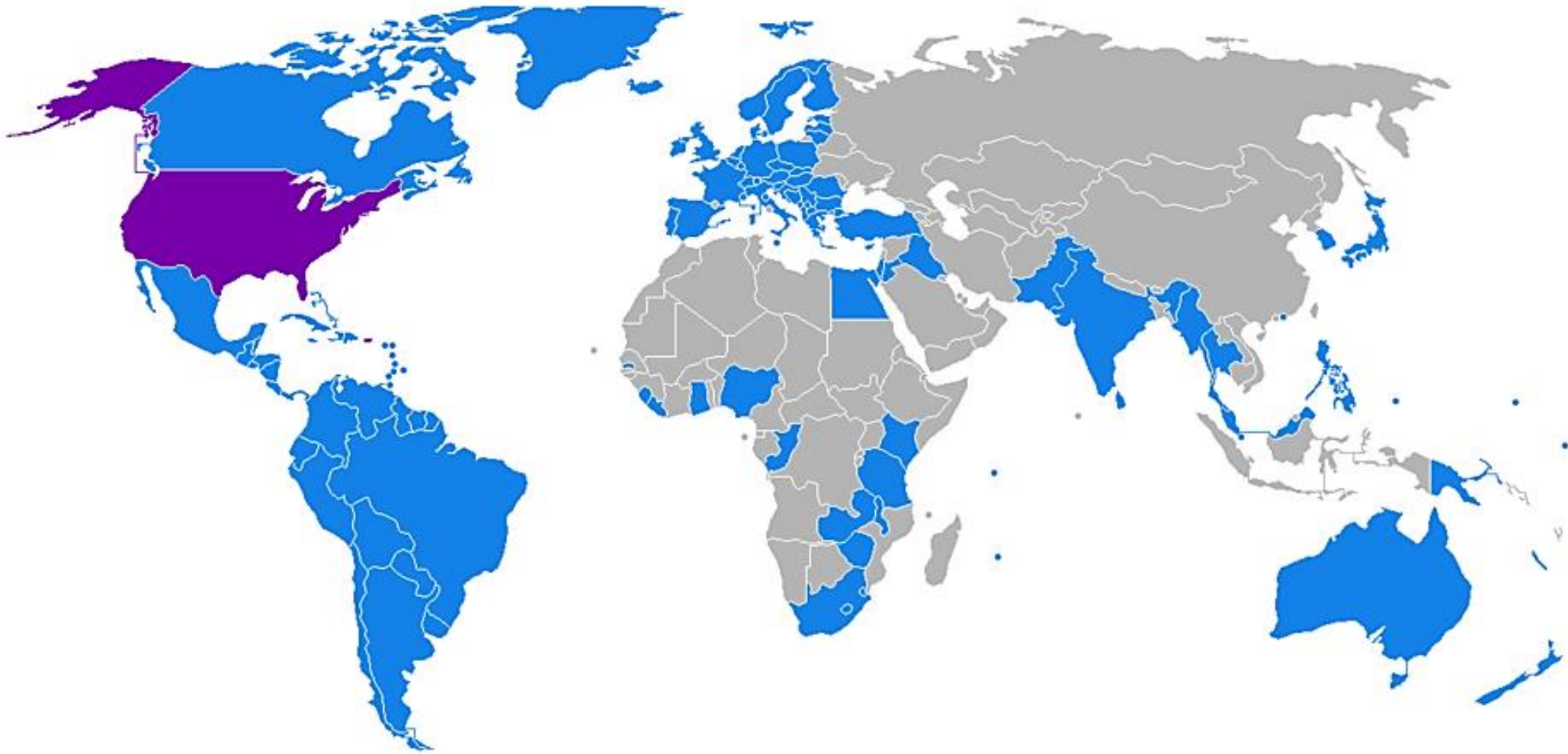
In international law, it is the process by which one state, upon the request of another, effects the return of a person for trial for a crime punishable by the laws of the requesting state and committed outside the state of refuge

- Some crimes which are commonly subject to extradition include murder, kidnapping, drug trafficking, terrorism, rape, sexual assault, burglary, embezzlement, counterfeiting, arson, or espionage.
- Some of the most common extradition cases involving the U.S. are between our neighboring countries of Mexico and Canada.

Seven countries have no extradition laws: Morocco, Indonesia, Hong Kong, Taiwan, UAE, Andorra, Qatar

# Extradition

The United States has extradition treaties with the countries in blue



# Asylum Law

Asylum seeks to provide a safe and secure living for individuals on the run from their home country in order to avoid political persecution.

Asylum is a protection granted to foreign nationals already in the United States or arriving at the border who meet the international law definition of a “refugee.”

- The United Nations 1951 Convention and 1967 Protocol define a refugee as a person who is unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted in the future “on account of race, religion, nationality, membership in a particular social group, or political opinion.” Congress incorporated this definition into US immigration law in the Refugee Act of 1980.
  - ↳ As a signatory to the 1967 Protocol, and through US immigration law, the United States has legal obligations to provide protection to those who qualify as refugees.
    - ↳ The Refugee Act established two paths to obtain refugee status – either from abroad as a resettled refugee or in the United States as an asylum seeker.
      - ✓ An asylum claimant must demonstrate persecution based on one of the five protected grounds (race, religion, nationality, membership in a particular social group or political opinion).

To help ensure that the United States does not violate international and domestic laws by returning individuals to countries where their life or liberty may be at risk, the 'Credible Fear' and 'Reasonable Fear' screening processes are utilized.

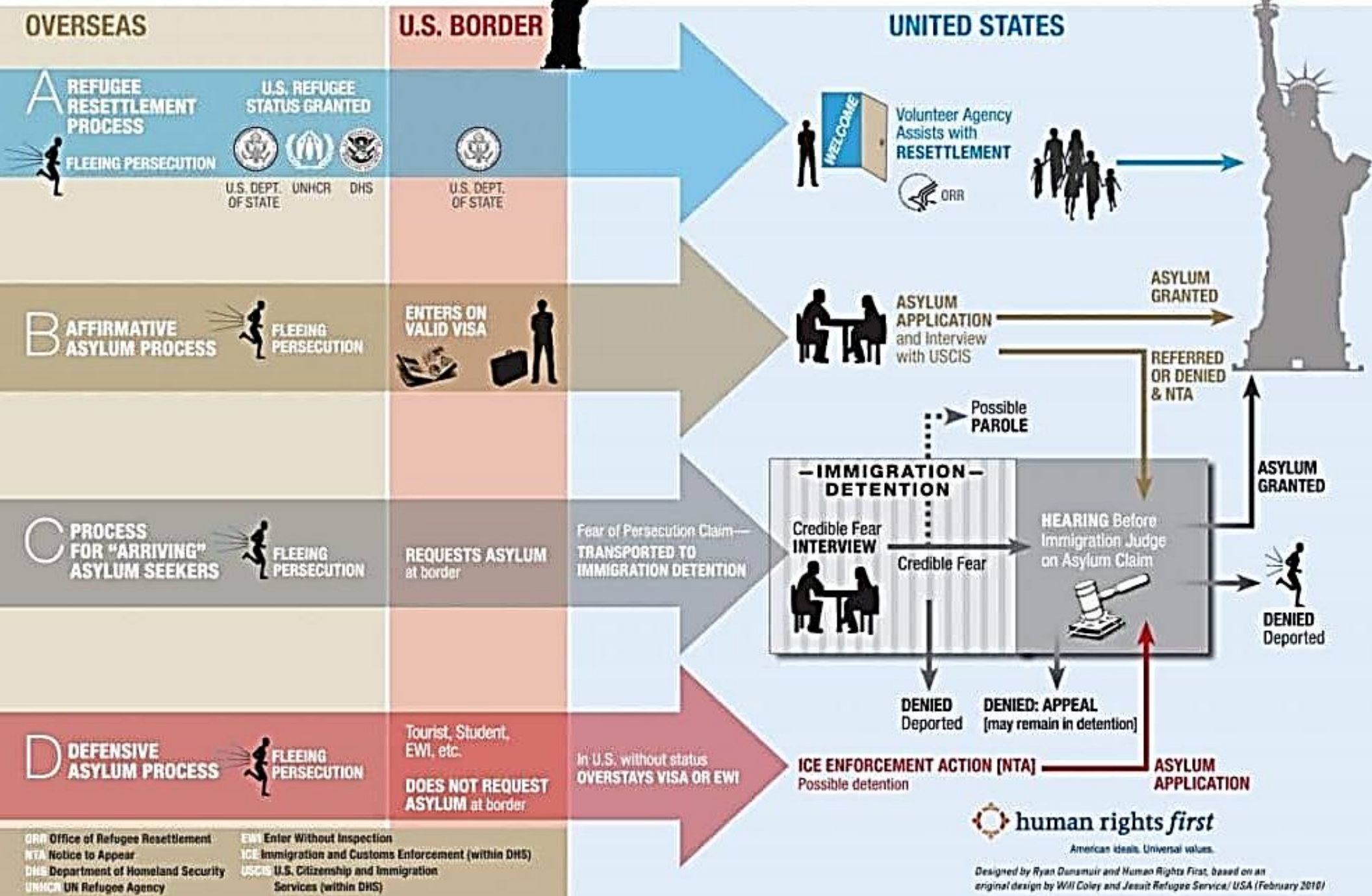
- ↳ You may apply for asylum if you are at a port of entry or in the United States.
- ↳ You may apply for asylum regardless of your immigration status and within one year of your arrival to the United States.

Is there an asylum law?

- ↳ That "Everyone has the right to seek and to enjoy in other countries asylum from persecution" is enshrined in the United Nations Universal Declaration of Human Rights of 1948 and supported by the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.



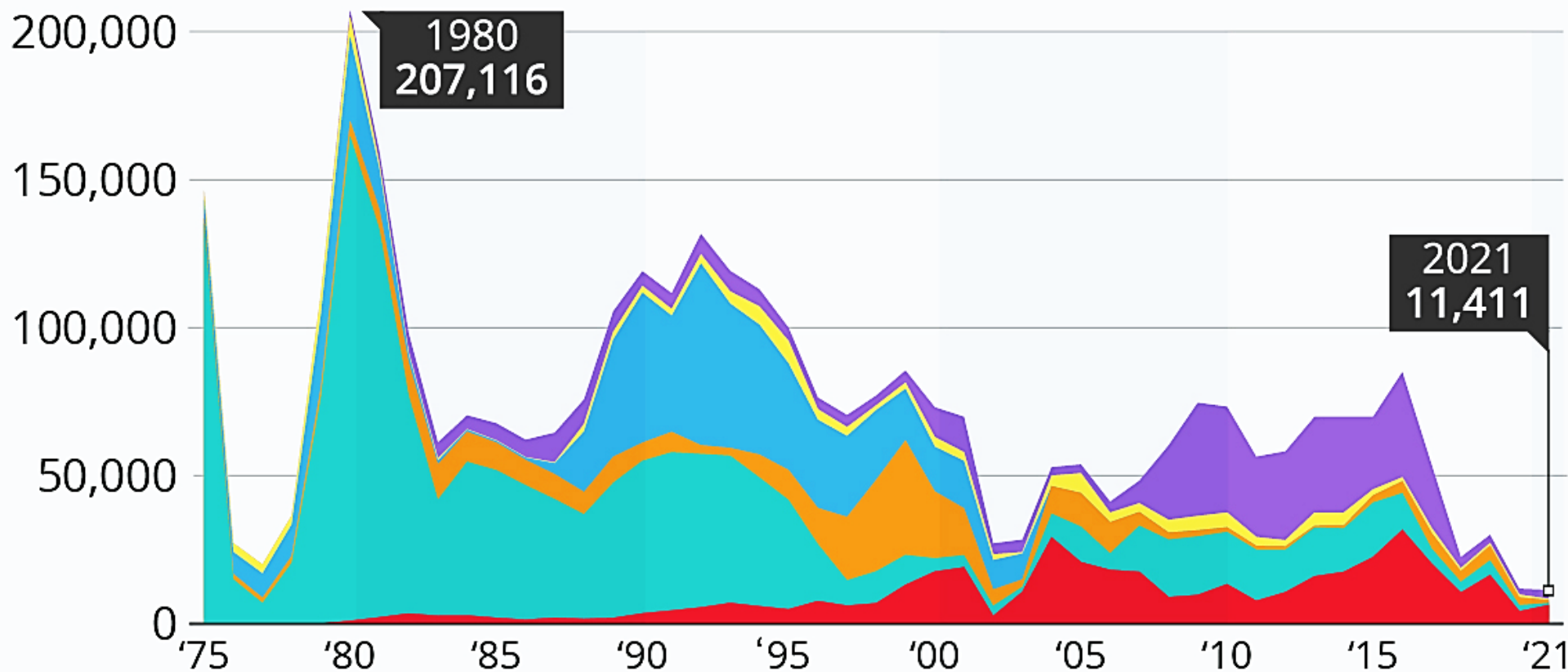
# How Refugees Get to the U.S.



# U.S. Refugee Admissions at All-Time Low in 2021

Number of individuals granted asylum in the United States, by region of origin (1975-2021)\*

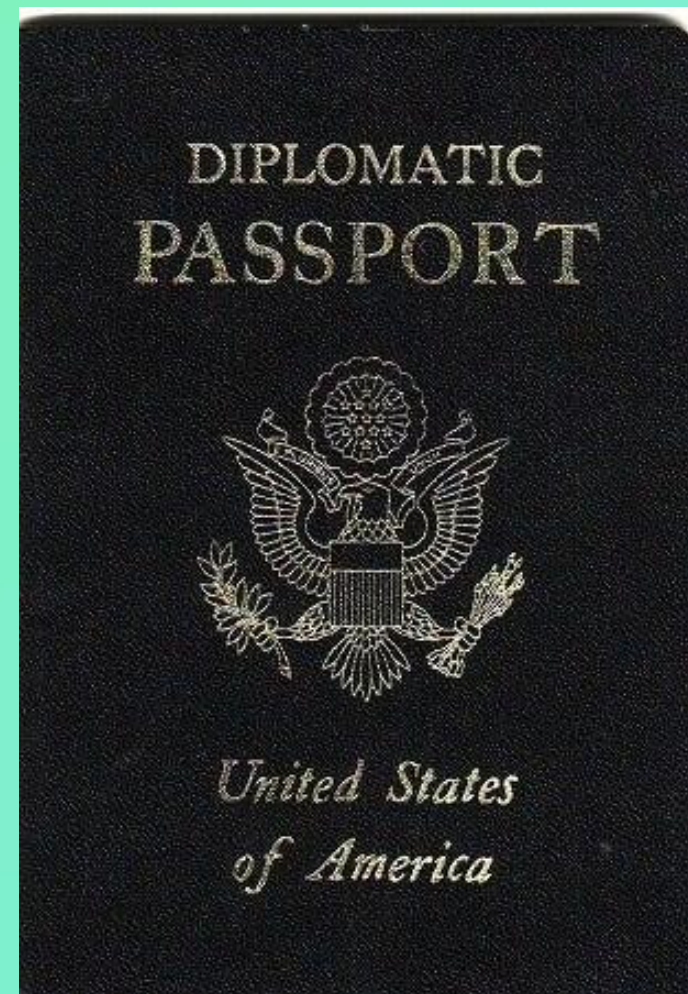
- Africa
- Asia
- Europe
- Former Soviet Union
- Latin America, Caribbean
- Near East, South Asia



# Diplomatic Immunity

Diplomatic immunity is a principle of international law that provides foreign diplomats with a degree of protection from criminal or civil prosecution under the laws of the countries hosting them.

- Diplomatic immunity was developed to allow for the maintenance of government relations, including during periods of difficulties and armed conflict.
- Modern diplomatic immunity was codified as international law in the Vienna Convention on Diplomatic Relations (1961).
- The concept and custom of diplomatic immunity dates back thousands of years. Many principles of diplomatic immunity are now considered to be customary law.



Top diplomatic officers have full immunity, as do their deputies and families.

- ↪ That means ambassadors can commit just about any crime – from jaywalking to murder – and still be immune from prosecution.
- ↪ They can't be arrested or forced to testify in court.
- ↪ They can, however, be expelled from the country

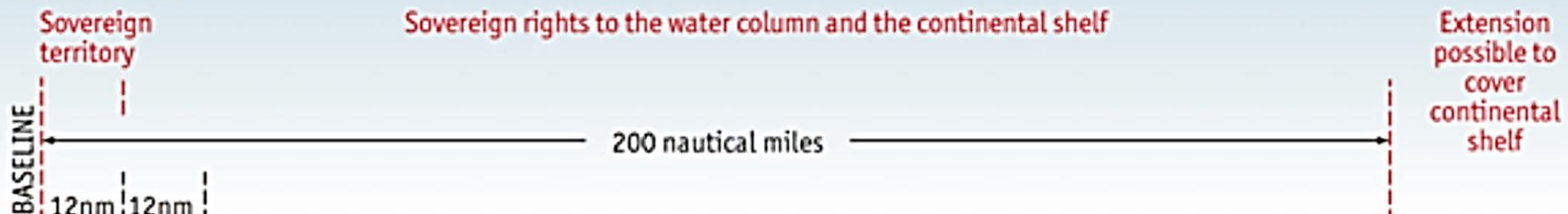
Violation of the law by diplomats is not unheard of.

↳ Since 1990 crimes committed by people under a diplomatic credential have included espionage, drink driving, smuggling, child custody law violations, money laundering, tax evasion, making terrorist threats, domestic slavery, preying on children over the internet for sex, and murder.

# Law of the Sea

While drawn from a number of international customs, treaties, and agreements, modern law of the sea derives largely from the United Nations Convention on the Law of the Sea (UNCLOS), effective since 1994

## All at sea



### **Territorial water:**

It usually begins at the mean low-water baseline.

Sovereignty covers the airspace above and the seabed below.

### **Contiguous zone:**

States may exercise the control necessary to prevent others from infringing its customs, immigration and other laws.

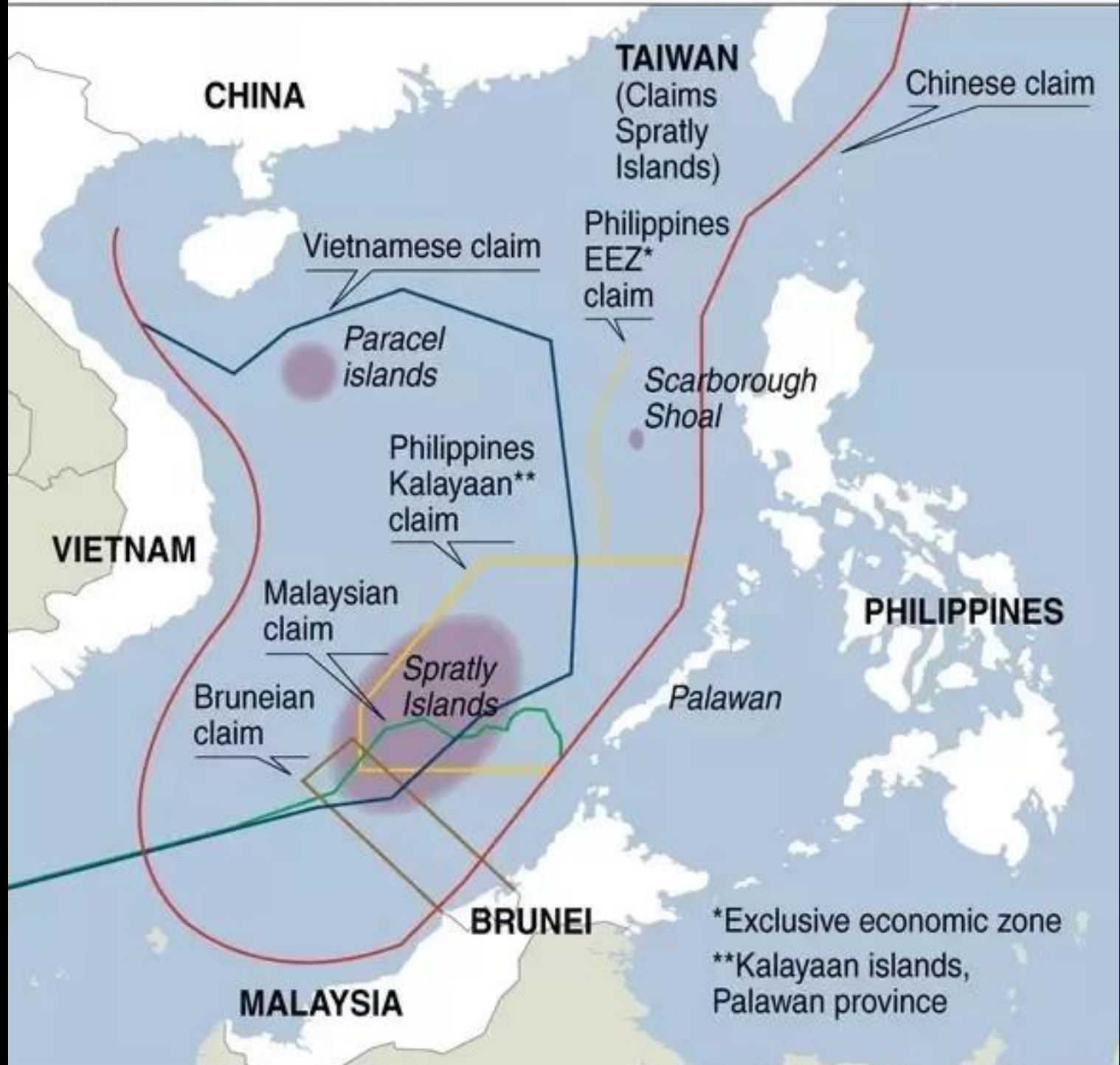
### **Exclusive economic zone:**

Within the EEZ, states have control of economic resources (including mining and oil explorations), but cannot prohibit legal passage and loitering. They can request an extension to their EEZ to cover part or all of the continental shelf.

### **The high seas:**

Also known as international waters, they are beyond national jurisdiction.

# Disputed claims in the South China Sea



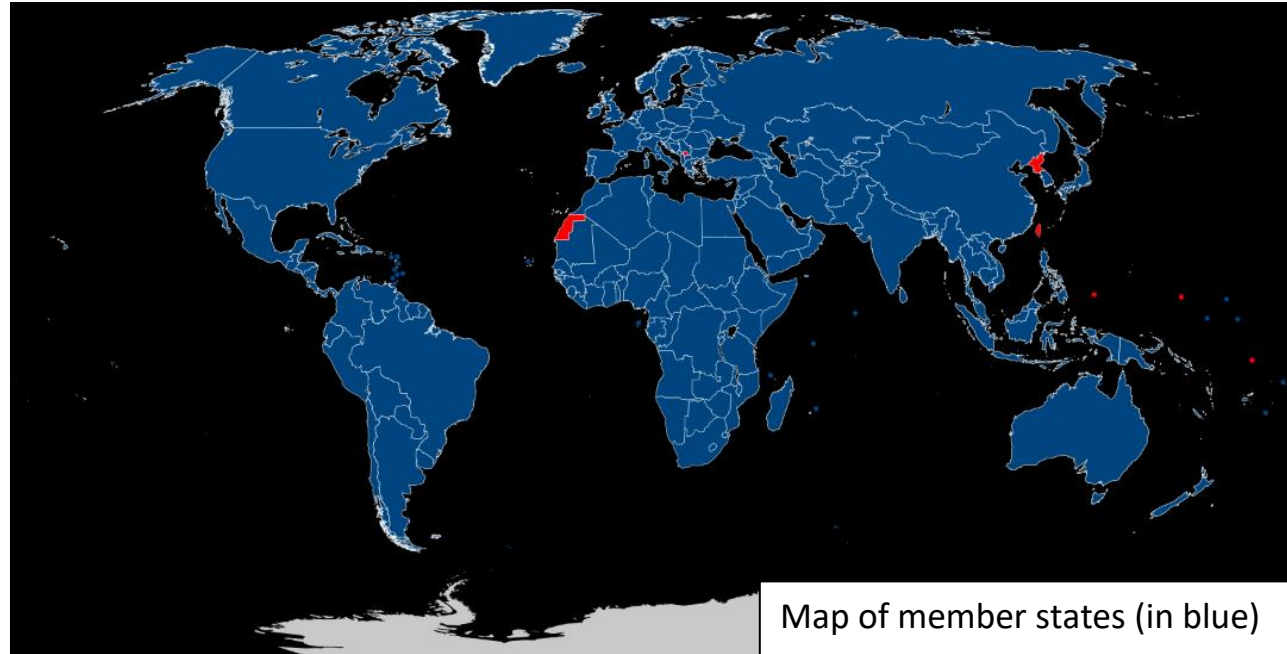
Law of the Sea does not necessarily resolve all issues, such as overlapping maritime disputes in the South China Sea

# Structures for International Law Enforcement

**Interpol** is an international organization that **facilitates worldwide police cooperation and crime control**.

Headquartered in France.

- Interpol founded in 1923
- Its broad mandate covers virtually every kind of crime, including crimes against humanity, child



pornography, drug trafficking and production, political corruption, intellectual property infringement, and white-collar crime. The agency also facilitates cooperation among national law enforcement institutions through criminal databases and communications networks.

- ↳ Contrary to popular belief, **Interpol is itself not a law enforcement agency**
- Pursuant to its charter, Interpol seeks to remain politically neutral in fulfilling its mandate, and is thus barred from interventions or activities that are political, military, religious, or racial in nature and from involving itself in disputes over such matters

**Europol** is the law enforcement agency of the European Union

- Formed in 1998 to handle criminal intelligence and combat serious international organized crime and terrorism through cooperation between legal authorities of EU member states.
- The Agency has no executive powers, and its officials are not entitled to arrest suspects or act without prior approval from legal authorities in the member states.



Members of Europol in yellow

# International Art Theft

A total of 50,000 to 100,000 works of art are taken by art thieves each year.

- ↳ 40 percent of all art thefts take place within the United Kingdom, while 19 percent of art thefts occur in the United States
  - ✓ 1990 in Boston: 13 works were stolen worth a combined \$500 million. The case remains unsolved
  - ✓ 2022 to present: Russia has stolen tens of thousands of art pieces since its invasion of Ukraine.

Stolen art is often (1) resold, (2) used by criminals as collateral to secure loans, or (3) hidden in private residences.

Only a small percentage – about 10% - are recovered.

- ❖ Under American law and the law of some (but not all) European countries, a thief cannot pass good title (no matter how many subsequent owners buy in good faith). Consequentially, American courts have invariably ordered the return of Nazi-looted art to the heirs of former Jewish owners.
- ❖ But what if the painting were never stolen, confiscated or looted by the Nazis? What if instead, the Jewish owner sold his painting to protect it from impending seizure by the Nazis or to generate income for his family because the Nazis stripped him of his livelihood? *Is this a "forced sale" amounting to theft?* The answer may well depend on which country's law applies to the "sale" -- the country where it took place 75 years ago, the current residence of the heirs or the residence of the original owners.
  - Swiss law – a good faith purchaser of stolen property acquired the title superior to that of the original owner
  - New York – protects the rights of the original owner



# International Court of Justice (“ICJ” or “World Court”)

The principal judicial organ of the United Nations

It is charged with settling legal disputes submitted to it by states and giving advisory opinions on legal questions from U.N. bodies and agencies.

What is the difference between the International Criminal Court (ICC) and the International Court of Justice (ICJ)?

- ↳ The International Court of Justice is a civil court that hears disputes between countries.
- ↳ The ICC is a criminal court that prosecutes individuals over age 18 accused of war crimes, crimes against humanity and genocide



U.S.-trained lawyers are often in high demand overseas due to America's oversized role in global trade and governance

## Common occupations with an International Law degree

- Mediator
- Law professor
- Judge
- Policy analyst
- Legal advisor
- Political advisor
- Attorney with international specialties
  - ↳ International regulatory law
  - ↳ International disputes
  - ↳ International transactions
- Diplomat
- Chief legal officers