

**Presentation on
International Conventions and Their Interaction
with National Law:
Different Approaches to the Integration of
Treaty Law into National Law
To the Atlas Corps Fellows**

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- “Convention” – Treaty among more than two countries.
- In common usage, a convention allows countries to “sign on” to a fixed agreement in contrast to the more traditional meaning of a “treaty” as an agreement between two countries.

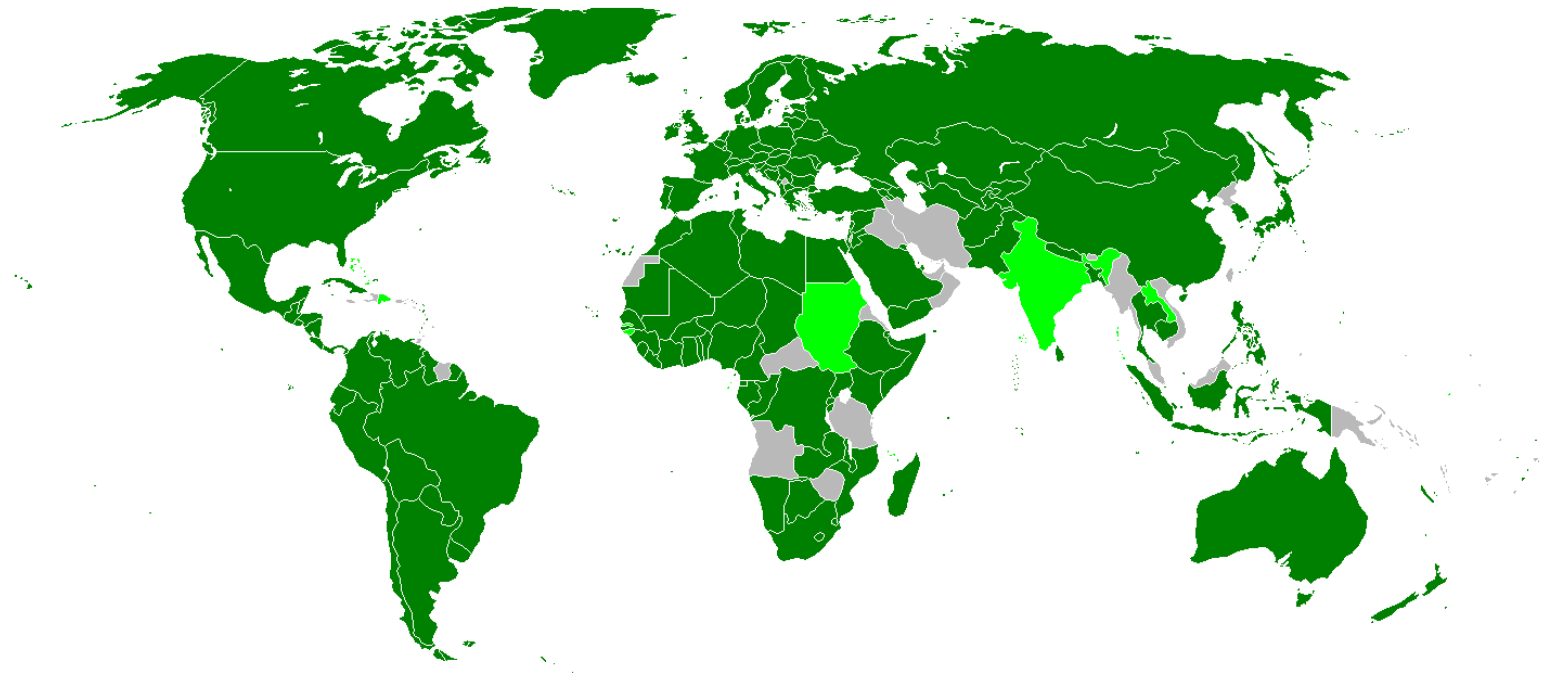
Is a Treaty/Convention Law?

It depends . . .

Why Does It Matter?

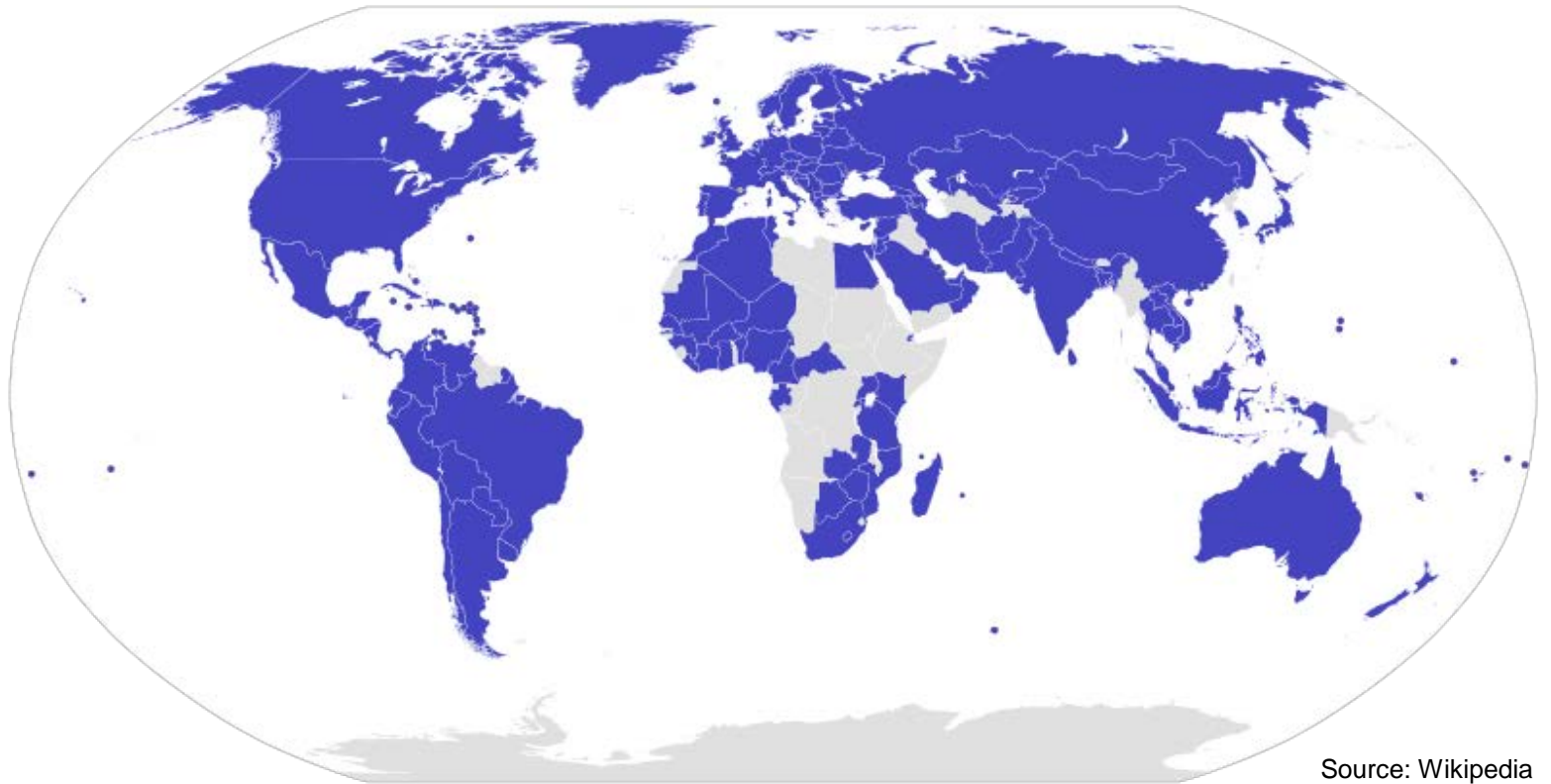
- Enforceable Rights
- Examples:
 - The Universal Declaration of Human Rights (1948)
 - Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
 - Convention on the Recognition and Enforcement of Foreign Arbitral Awards (a.k.a. New York Convention) (1958)

Convention Against Torture



Source: Wikipedia

New York Convention



Source: Wikipedia

So, it is Law?

- Different countries take different approaches.
- Examples:
 - United Kingdom
 - France
 - United States

United Kingdom

- Also generally applies the Commonwealth of Nations (*i.e.* former British Colonies excluding the U.S.)
- A treaty may only become law with appropriate legislation
- *Canada v. Attorney General of Ontario (1937)*:
Within the British Empire there is a well-established rule that the making of a treaty is an executive action, while the performance of its obligations . . . Requires legislative action.

- Also generally applies to other Civil Law countries.
- Authority to incorporate treaties into national law is common in the constitution.
- Article 55 of the French Constitution of 1958 provides for incorporation into national law via publication provided reciprocity is received from counterparties.

United States

- The U.S. Constitution references treaties in four places:
 - Article I, Section 10 on the power of Congress provides that “No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal . . .”
 - Article II, Section 2 on the powers of the President provides that “He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur . . .”

United States

- Article III, Section 2 on the power of the Supreme Court provides “The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made”
- Article VI, known as the “Supremacy Clause” provides “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

- Article VI it turns out is the key provision, “Treaties” are included as being “the Supreme Law of the Land.”
- Chief Justice John Marshall in *Foster & Elam v. Neilson*, 27 U.S. (2 Pet.) 253 (1829), “Our constitution declares a treaty to be the law of the land.”
- Note that the U.S. Constitution has many elements of a treaty.

Some Examples

It is a maxim founded on the universal experience of mankind that no nation is to be trusted farther than it is bound by its interest.

Gen. George Washington, Letter to Henry Laurens, November 14, 1778.

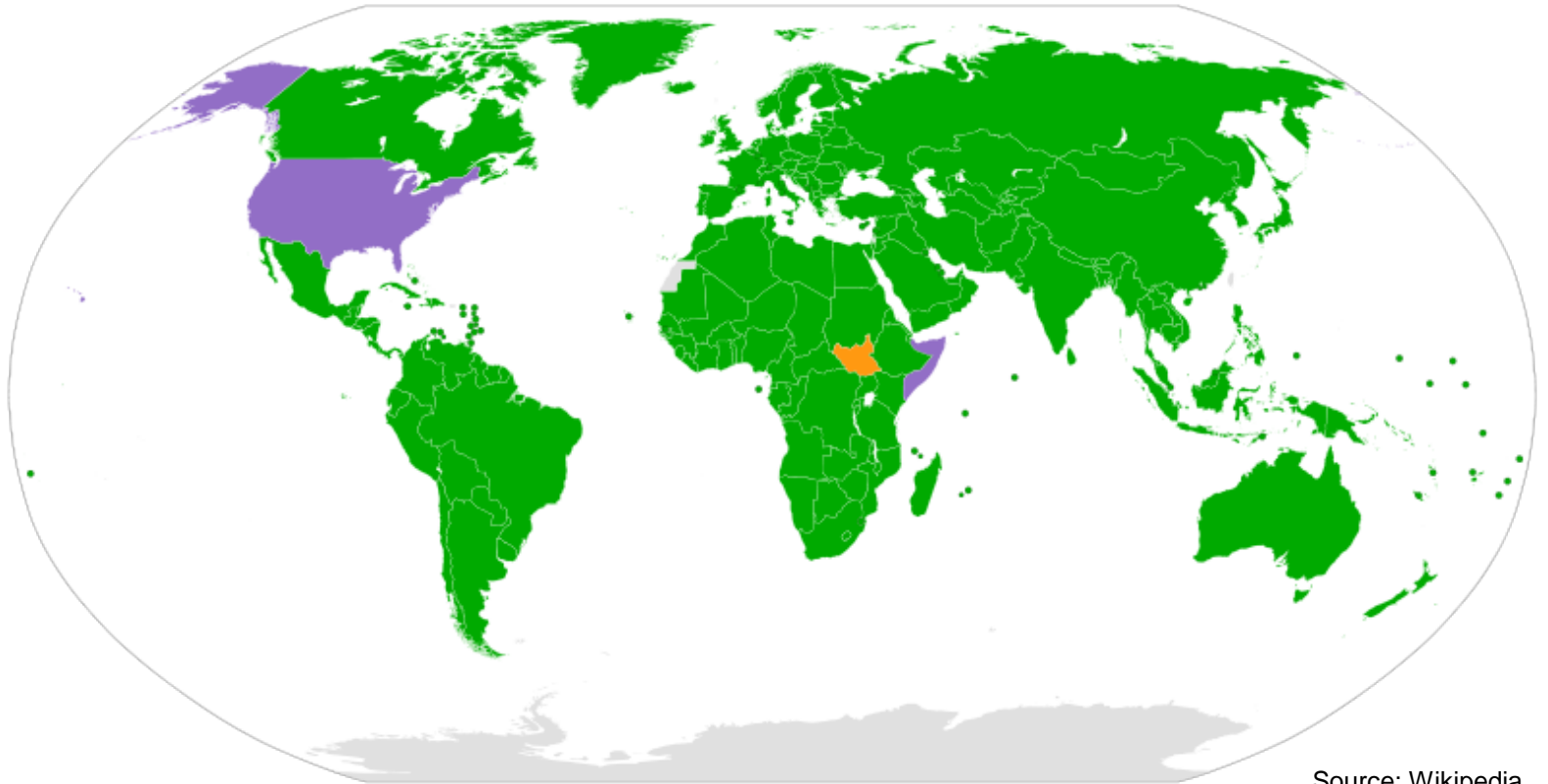
Some Examples

- Treaty of Bern (1874) – Established what is now the Universal Postal Union – 192 members
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (a.k.a New York Convention) (1958) – 147 parties
- European Union (various treaties) – 27 members

Some Examples

- United Nations Convention on the Rights of the Child (1989) (in force 1990) – 193 members
 - Optional Protocol on the Involvement of Children in Armed Conflict
 - Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
 - Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure

Rights of the Child

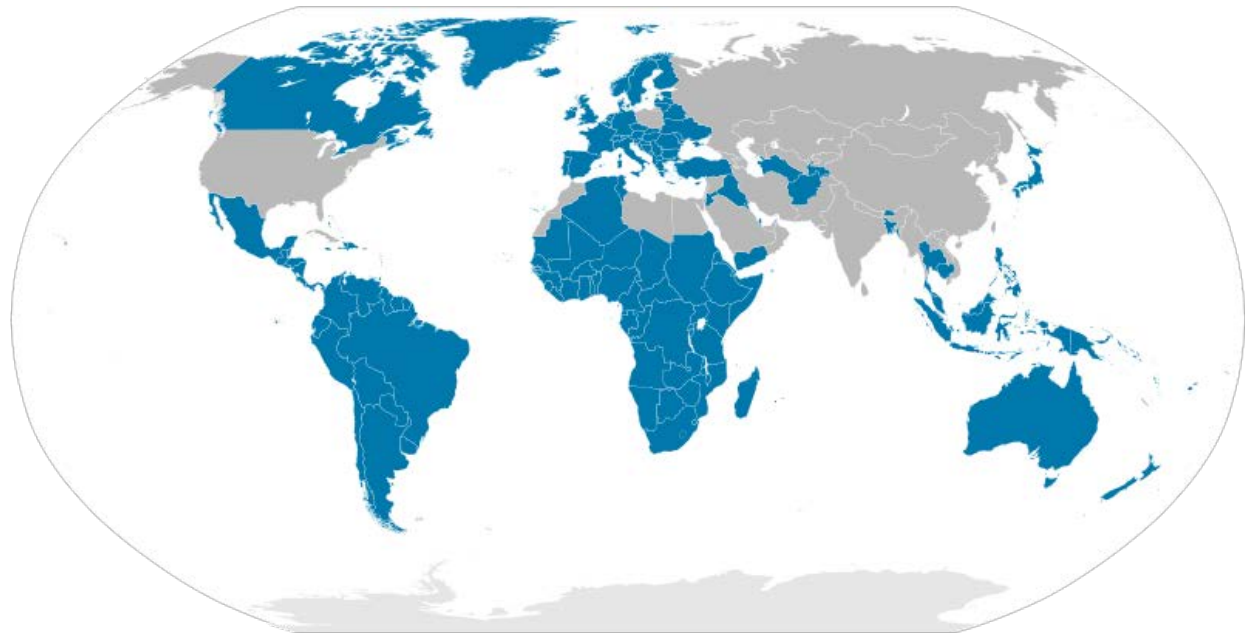


Source: Wikipedia

- Why is the United States not a party?

Ottawa Treaty

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction



Source: Wikipedia

- Why is the United States not a party?

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