

Public International Law

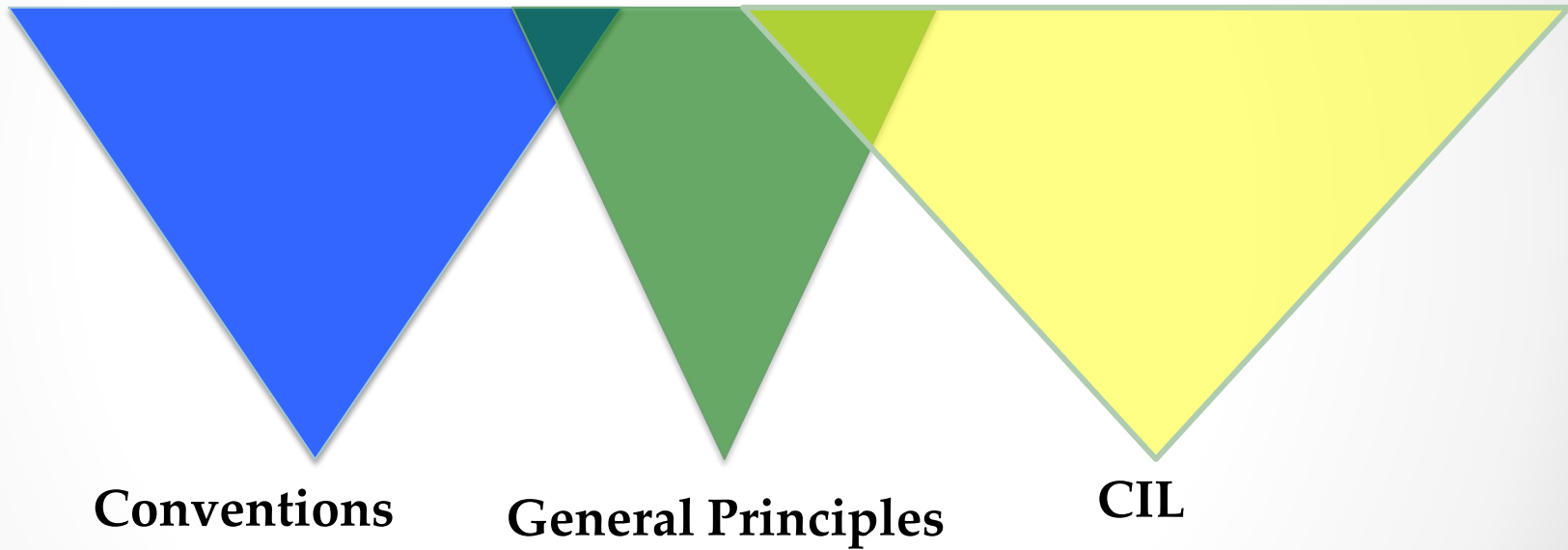
Santa Clara Geneva Summer Abroad Program

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Article 38 of the ICJ Statute

1. 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 recognised by the constituting states;
 - b. **international custom**, as evidence of a general practice accepted as law;
 - c. the **general principles of law** recognised by civilised 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 **subsidiary means** for the determination of rules of law.

Hierarchy of Sources ?



Customary International Law

ICJ, Continental Shelf (Libya / Malta), 1985, pp.29-30.

“ It is of course axiomatic that the material of customary international law is to be looked for primarily in the **actual practice** and *opinio juris* of States... »

Customary International Law

Practice must be:

- Constant: repetition over time
- Uniform: similarity of the acts
- General – reaction of other states
- Particularly Representative States

Practice as Abstention

Customary International Law

Opinio Juris

- Legal Conviction
- Contextual Assessment

Relative Importance of Practice – Opinio Juris

Relationship Treaties - CIL

Treaty is a codification

- E.g. VCLT

Treaties as Catalyzers or Triggers for CIL

- E.g. human rights treaties

Treaties crystallize CIL

- E.g. Outer Space Treaty of 1967

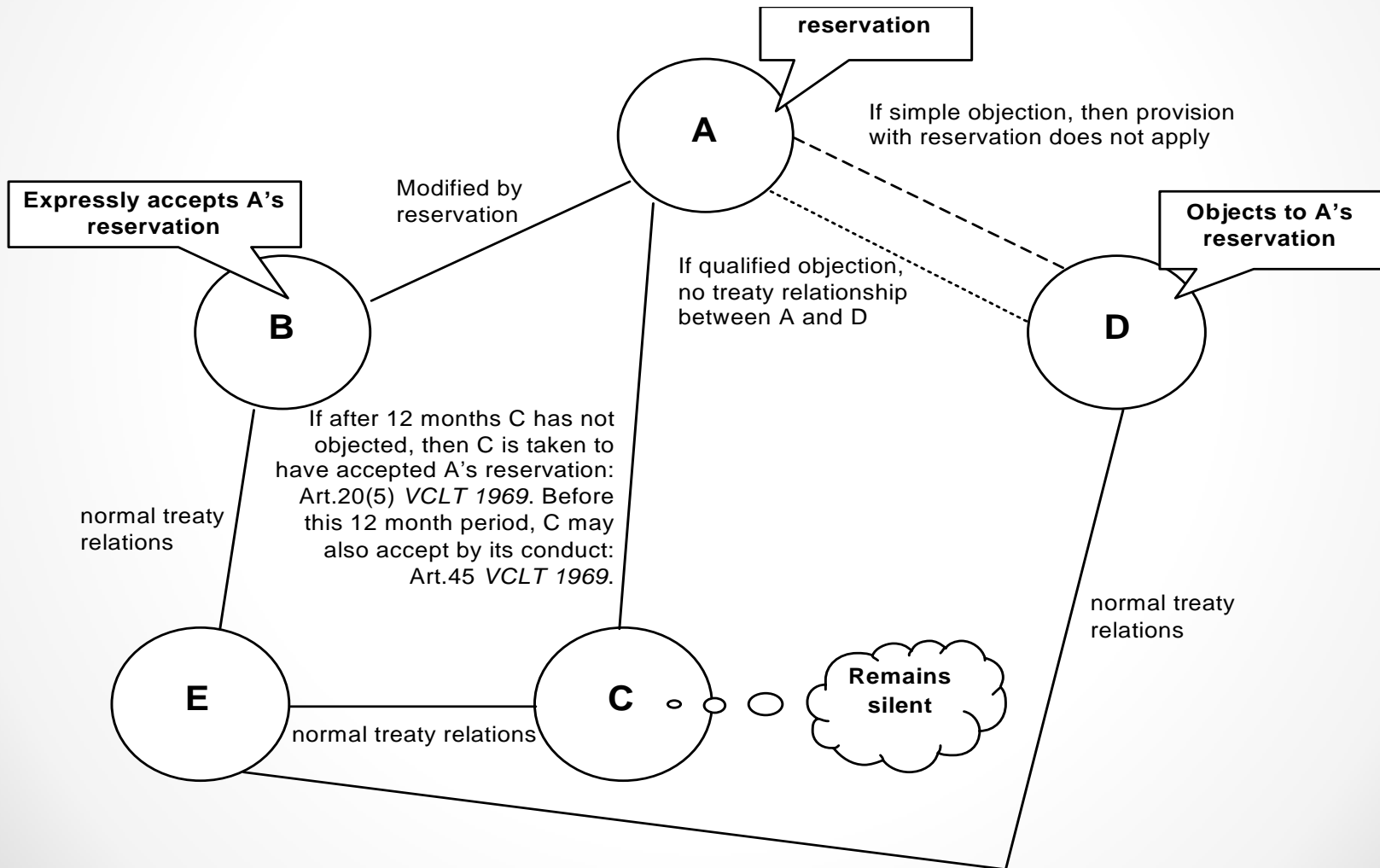
Law of Treaties

1969 Vienna Convention on the Law of Treaties

- Default regime
- Written treaties between States
 - Bilateral and multilateral
 - no formalism
 - expression of consent to be bound
- VCLT was adopted in May 1969 and entered into force on 27 January 1980
- VCLT applies if:
 - Date of conclusion of the treaty
 - Is after the date of entry into force of the VCLT for the States concerned
- ➤ Substantive parts of VCLT reflect CIL

Reservations

Effects of a reservation



Reservations

Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (1980):

- Article 2(2) prohibits ‘in all circumstances to make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons.’
- Article 2(3) prohibits the same by means of incendiary weapons other than air-delivered incendiary weapons ‘except when such military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimizing, incidental loss of civilian life...

US Reservation: ‘with reference to Article 2, paragraphs 2 and 3, reserves the right to use incendiary weapons against military objectives located in concentrations of civilians where it is judged that such use would cause fewer casualties and/or less collateral damage than alternative weapons, but in so doing will take all feasible precautions with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.’

Invalidity of Treaties

Relative Grounds of Invalidity

- **Article 46 VCLT 1969** : “Provisions of internal law regarding competence to conclude treaties” .
- **Article 47 VCLT 1969**: “Specific restrictions on authority to express the consent of a State”
- **Article 48 VCLT 1969** :“Error” .
- **Article 49 VCLT 1969**: “Fraud” .
- **Article 50 VCLT 1969**: Corruption of representative of State.

Consequences

- Voidable
- Separability
- Acquiescence

Invalidity of Treaties

Absolute Grounds of Invalidity

- **Article 51 VCLT 1969** : “Coercion of a representative of a State
- **Article 52 VCLT 1969**: Coercion of a State by the threat or use of force
- **Article 53 VCLT 1969** : “Treaties conflicting with a peremptory norm of general international law”

Consequences

- Void
- No Separability and acquiescence

Termination or Suspension

- **Internal Grounds: Provided for in Treaty**

- **External Grounds: Exhaustive List in VCLT**
 - **Article 60: Material Breach**
 - **Article 61: Supervening Impossibility of Performance**
 - **Article 62: Fundamental Change of Circumstances**
 - **Article 64: Emergence of a New Peremptory Norm of IL**