

# **International Law**

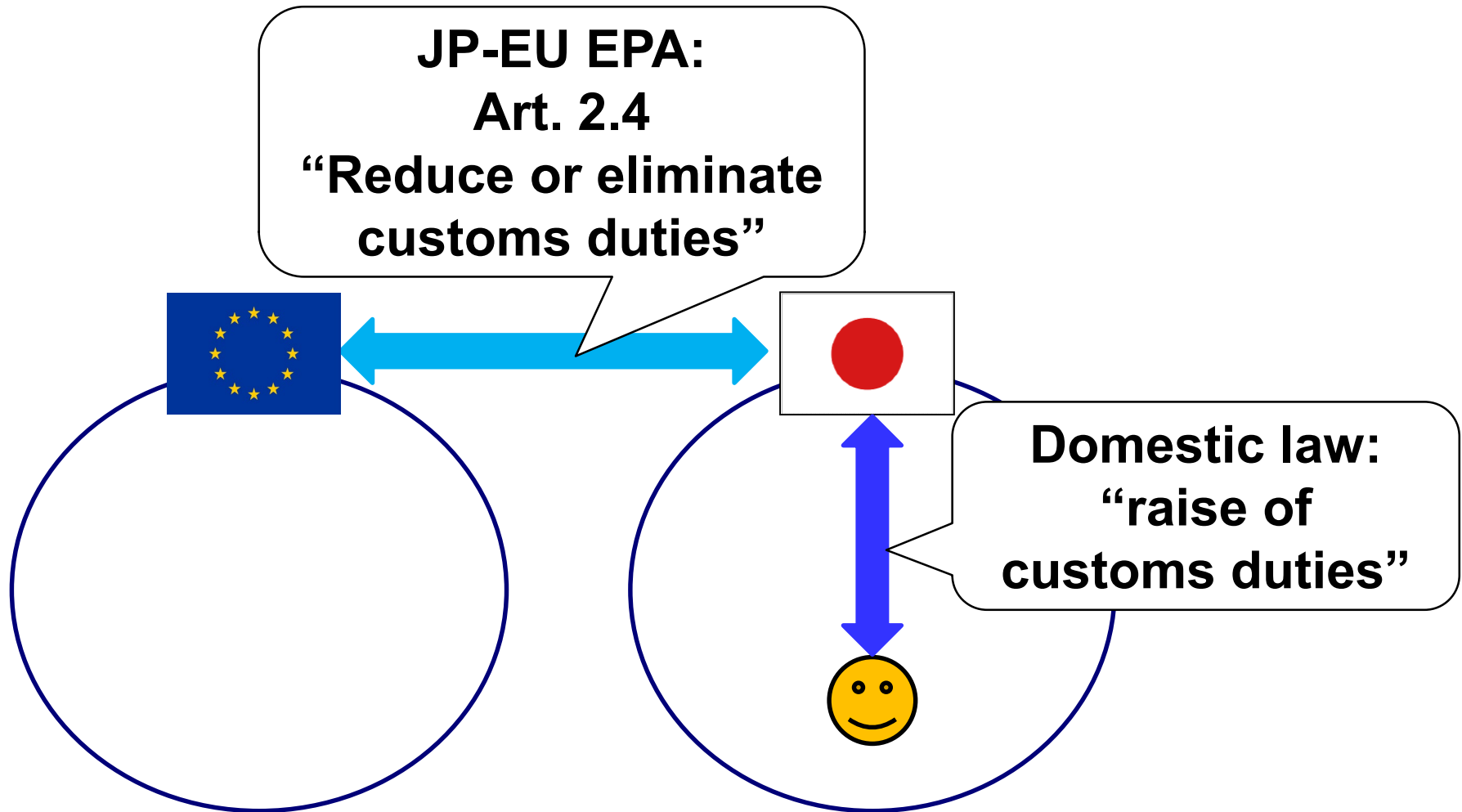
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## **Relationship between Domestic law and international law**

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# I Domestic law and international law: how are they implemented in states?



# **I Domestic law and international law: how are they implemented in states?**

**! Implementations of international treaties  
are left to individual contracting States.**

**→ Methodologies of implementation varies  
from one State to another:**

**① Reception**

**② Rank**

**③ Application**

# II Reception of international treaties

## ① Reception of international treaties:

### 1 Transformation

- • • Treaties are valid when transformed into domestic laws as domestic law

### 2 Validation by domestic law

- • • Treaties are valid when validated by domestic laws as domestic law/treaties

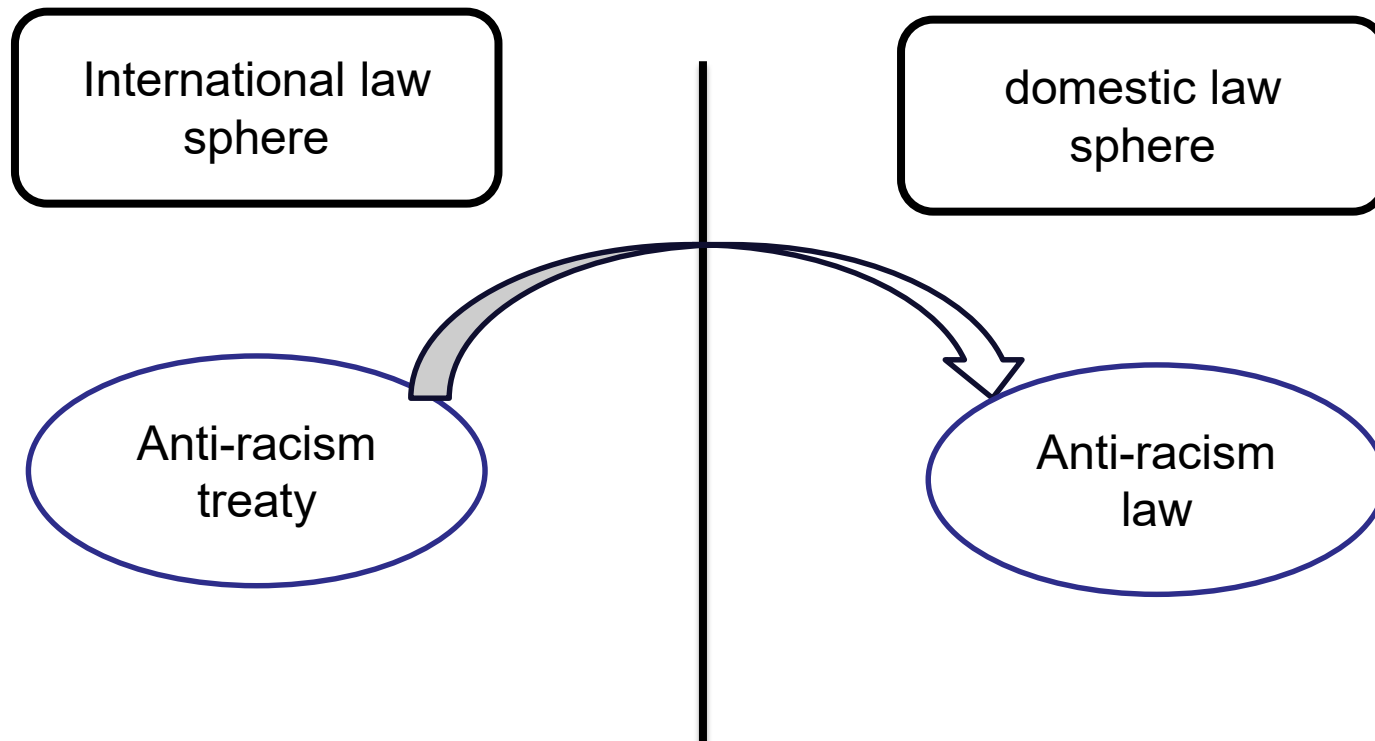
### 3 Automatic incorporation

- • • Treaties are valid as treaties as such

# II Reception of international treaties

## 1 Transformation

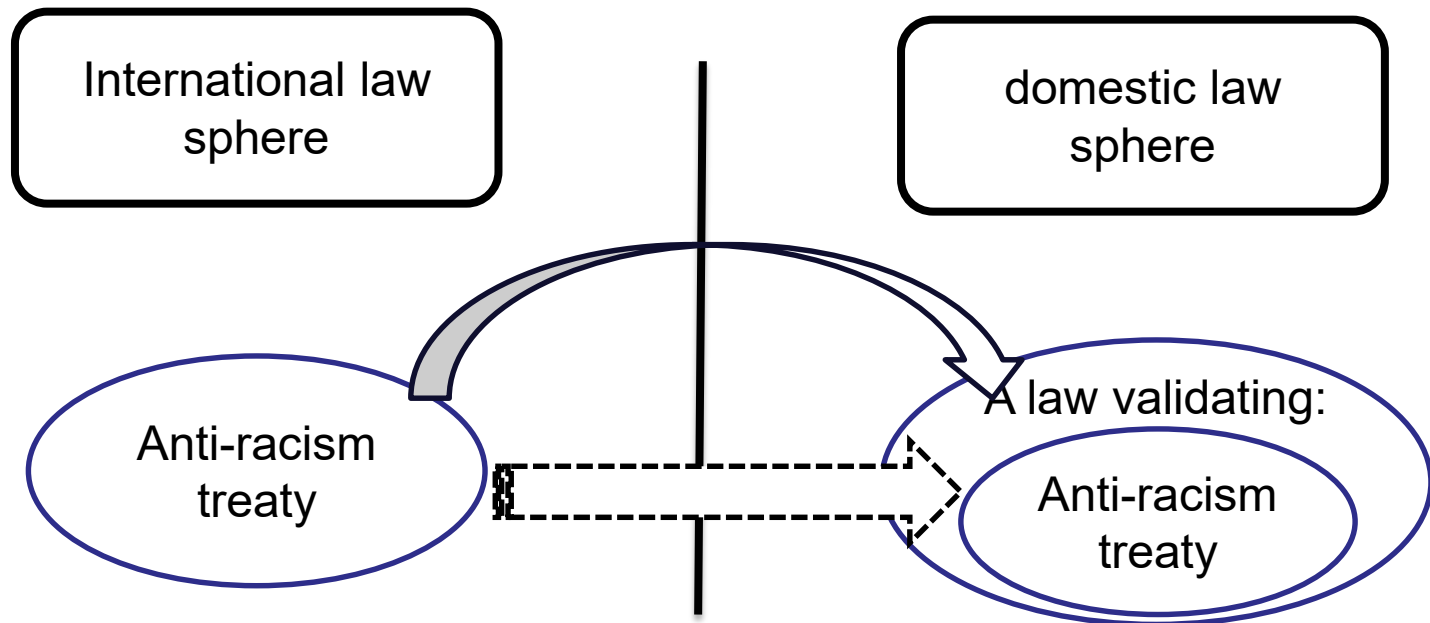
- Treaties are valid when transformed  
into domestic laws as domestic law



# II Reception of international treaties

## 2 Validation by domestic law

- Treaties are valid when validated by domestic laws as “domestic” law/treaties

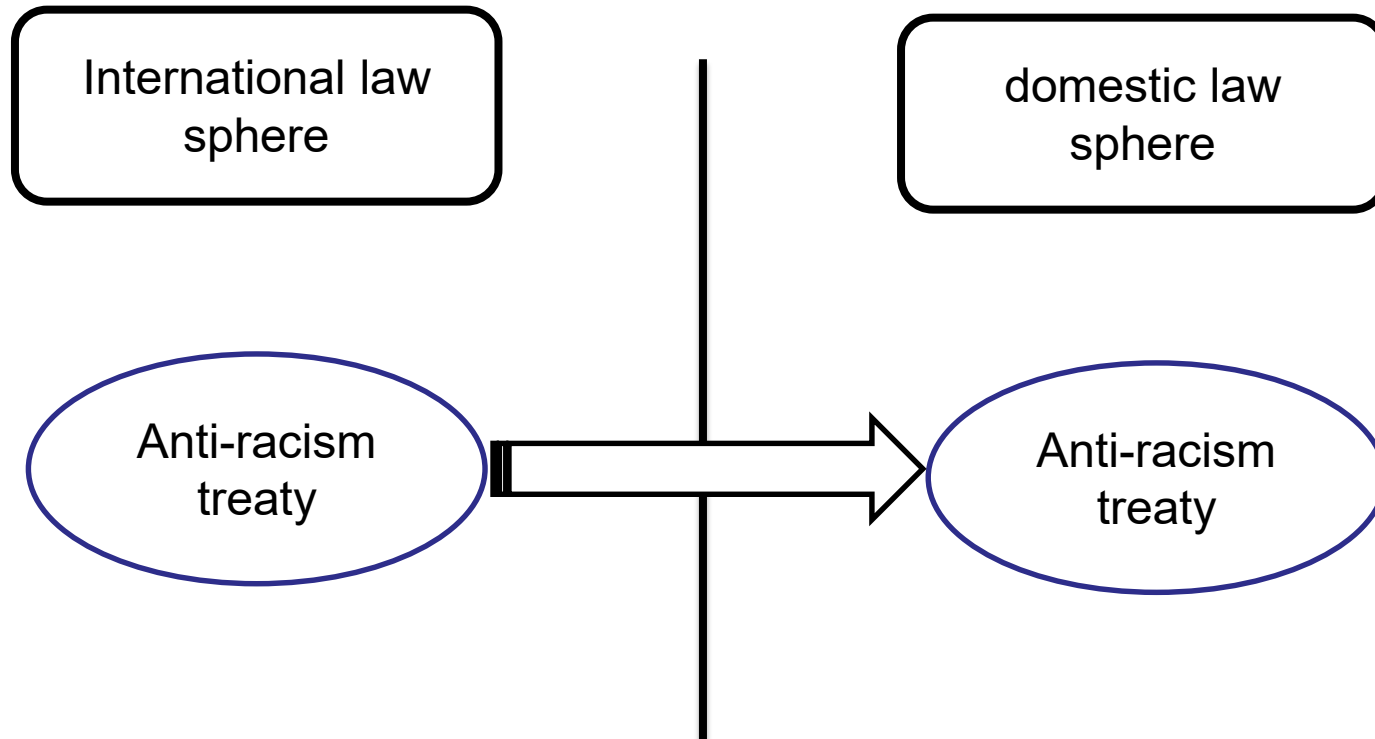


**Ex.: Article 80, Italian Constitution [Ratification of Treaties]** Chambers ratify by law international treaties that are of political nature, provide for arbitration or judicial regulation, imply modifications of the territory, impose financial burdens, or result in modifications of the laws.

# II Reception of international treaties

## 3 Automatic incorporation

- Treaties are valid as treaties as such



# **III Rank of international treaties**

## **②Rank of international treaties:**

**1 Constitution > Treaties > laws**

**2 Constitution > Treaties = laws**

# III Rank of international treaties

## **Ex.: Article 98(2), Japanese Constitution**

The treaties concluded by Japan and established law of nations shall be faithfully observed.

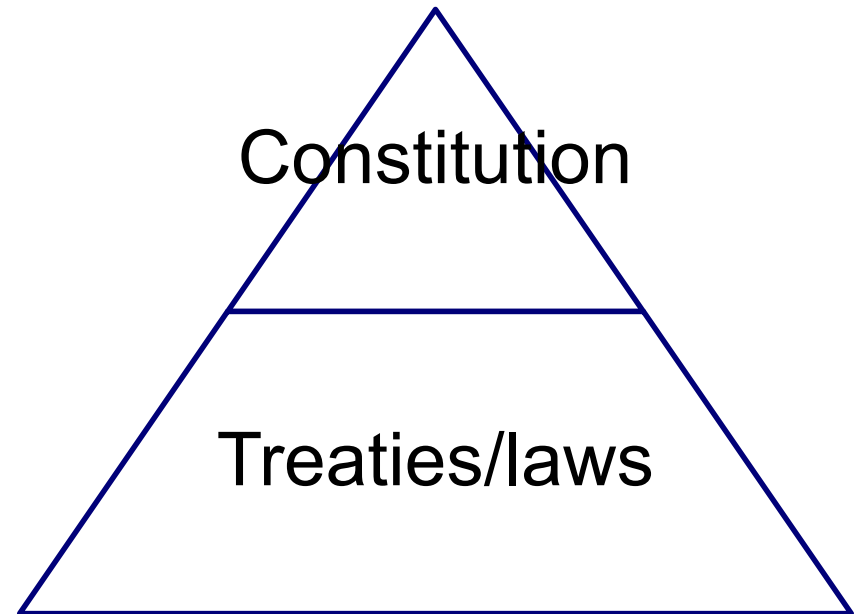
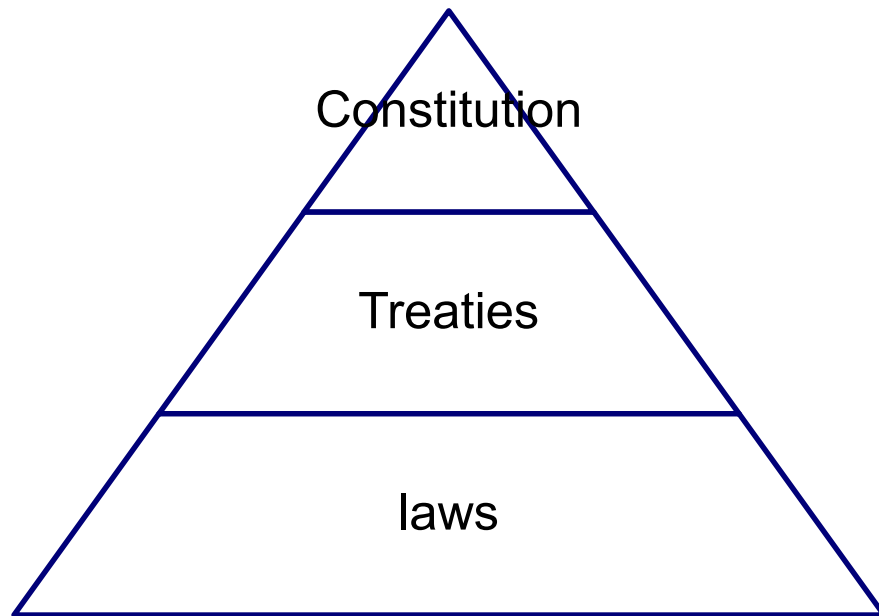
## **Ex.: Article 6(2), American Constitution**

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

⇔ **Case law (1920 Sup. Case Missouri v Holland):**

“laws ≐ treaties”

# III Rank of international treaties

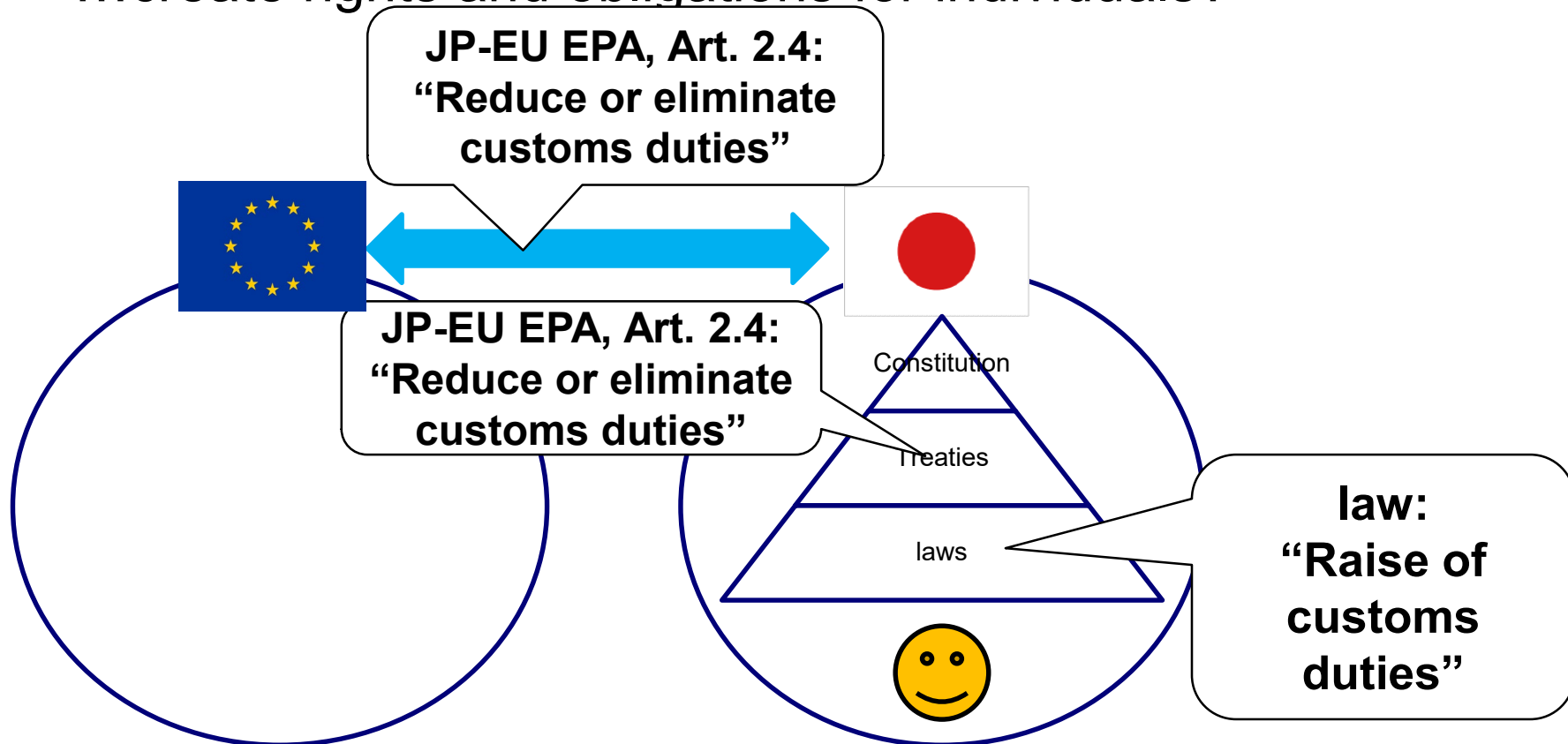


# IV Application of international treaties

## ③ Application of international treaties:

...how are they (not) applied in domestic courts?

...create rights and obligations for individuals?



# **IV Application of international treaties**

**...Application of international treaties:**

**1 Direct application**

**2 Indirect application**

**3 No application**

# **Case Shiomi (Japan)**

## **Fact:**

- Japanese law: denies foreigners' social welfare system enrollment.**
- Art. 2(2) ICESCR: prohibits discrimination in relation to social welfare.**

**\*The International Covenant on Economic, Social and Cultural Rights**

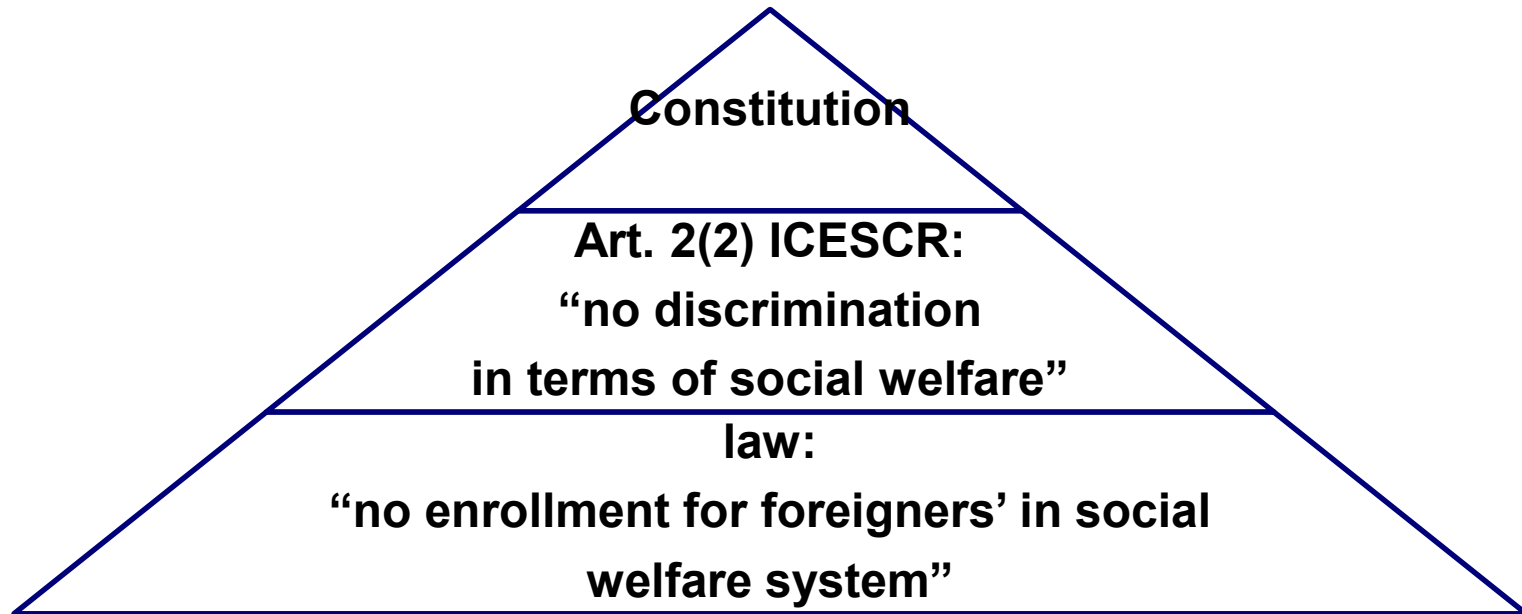
## **Question:**

**Does Japanese law violate Art. 2(2) ICESCR?**

# Case Shiomi (Japan)

## ☆Treaties in Japan:

- Reception: Automatic incorporation
- Rank: Constitution > Treaties > laws



# **Case Shiomi (Japan)**

**-If Art. 2(2) ICESCR is:**

**1 Directly applicable . . .**

**→ Art. 2(2) ICESCR is applied/JP law is invalid**

**2 Indirectly applicable . . .**

**→ JP law is applied, interpreted in conformity with Art. 2(2) ICESCR if possible**

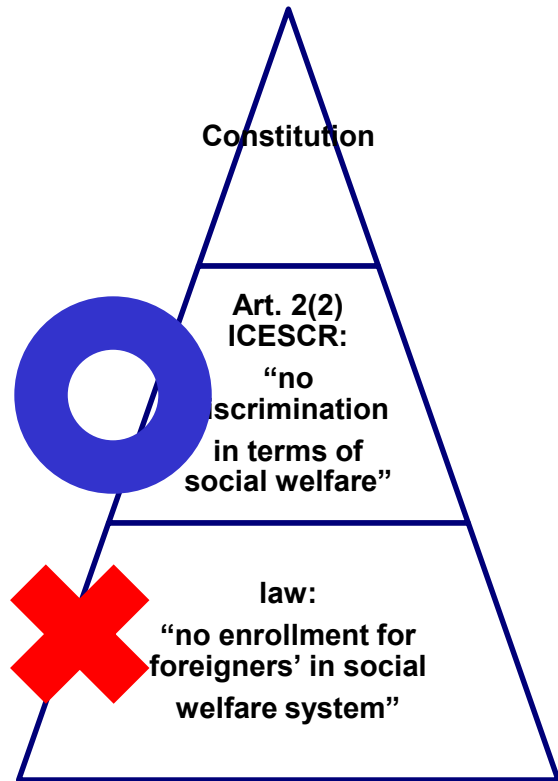
**3 Not applicable . . .**

**→ JP law is applied**

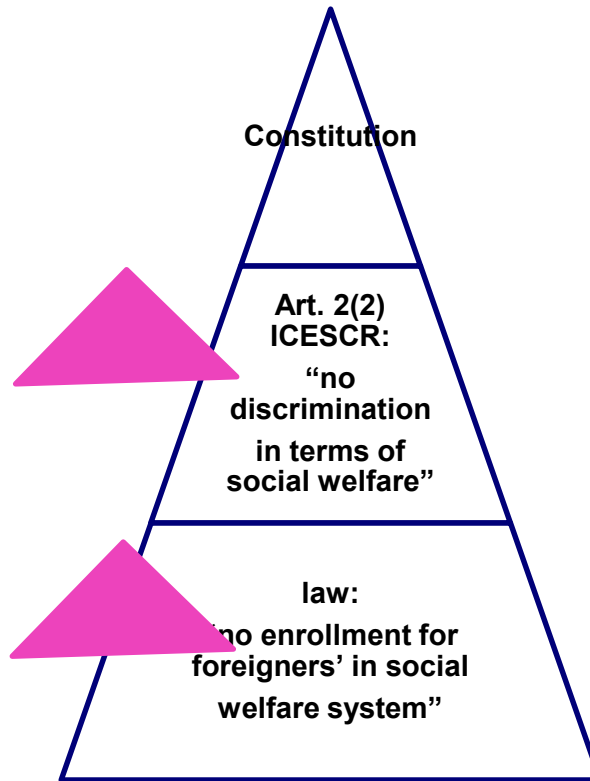
# Case Shiomi (Japan)

-Art. 2(2) ICESCR, applicable:

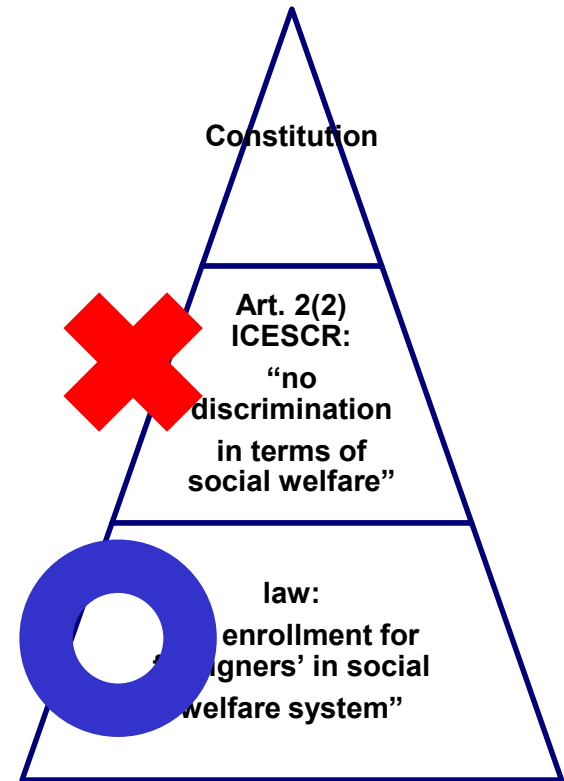
## 1 Directly



## 2 Indirectly



## 3 Not



# IV Application of international treaties

## ...International Law Principle:

how to apply (or othws) of international treaties is left to States parties to the treaties

→ domestic judges decide which treaties are applied how, according to their countries' legal systems (constitutions):

## ⇒Applied directly or not? ... criteria:

(!Treaties (international law) originally create rights/obligations between states, not on individuals)

-“Is the treaty (article) intended to create rights/obligations not only for states, but also for individuals?”

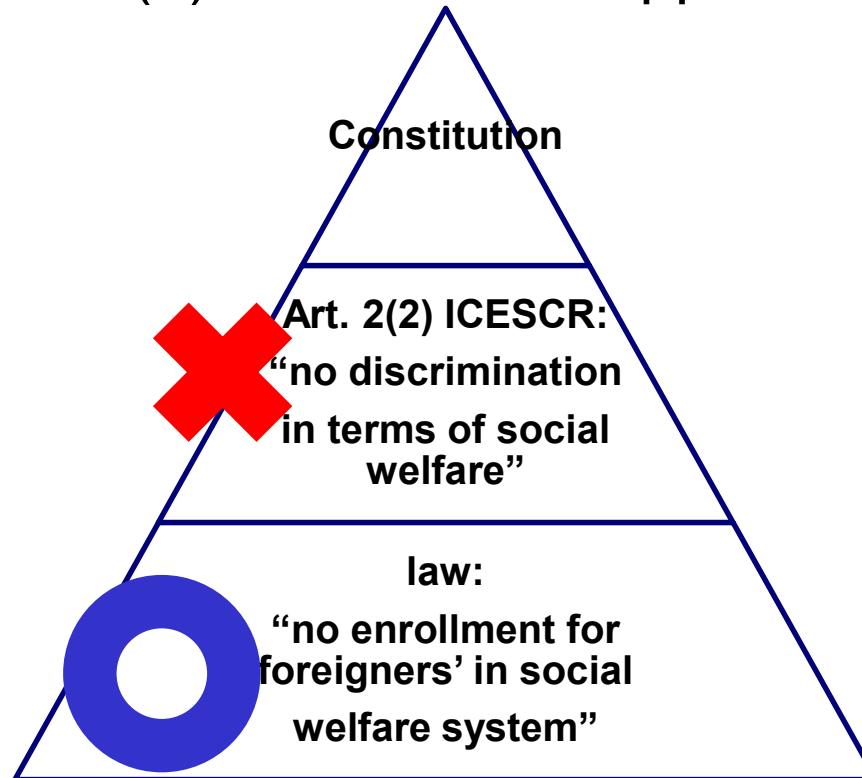
-“Individuals' rights are clearly defined?”

→Yes⇒more direct application

→No ⇒less or no application ... more common

# Case Shiomi (Japan)

**Conclusion:** Art. 2(2) ICESCR Not applicable/JP law applied



**Reasoning:** Art. 2(1) ICESCR provides “Each State Party undertakes to take steps with a view to achieving progressively the full realization of the rights recognized in the Covenant ...”  
= states are not required to protect rights of individuals (Art. 2(2)) immediately

# Nibudani Valley Case (Japan)

## Fact:

### -JP regional government's order:

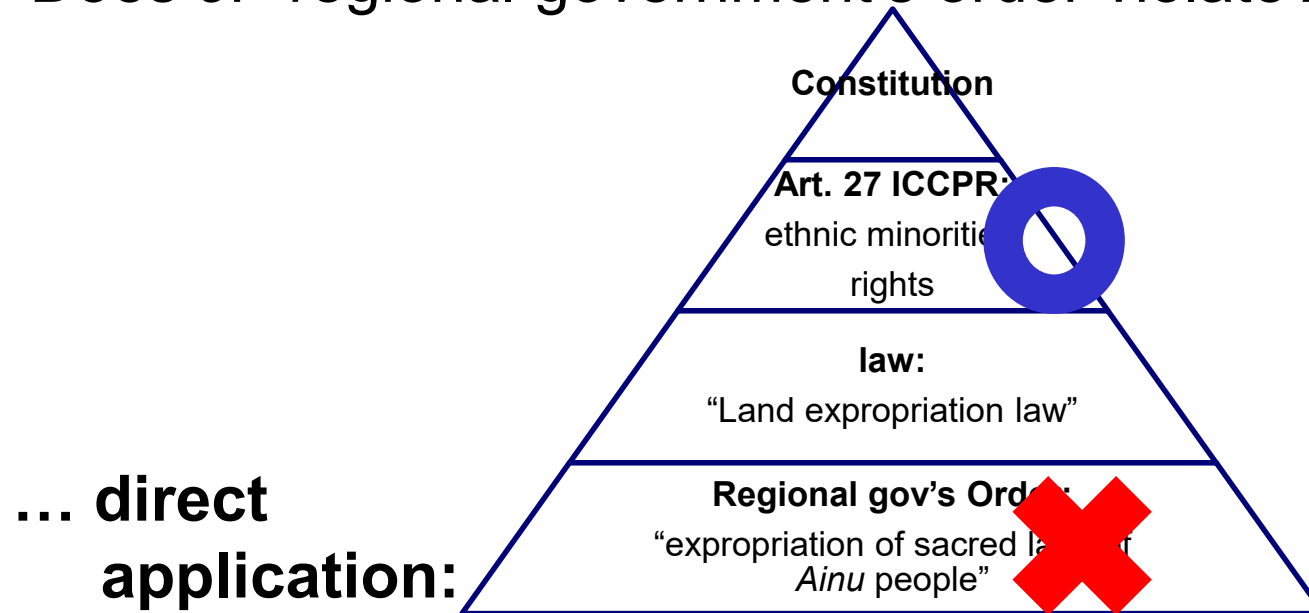
expropriation of land (sacred land of *Ainu* people)

### -Art. 27 ICCPR\*: ethnic minorities shall not be denied rights to their own culture, religion and language.

\*The International Covenant on Civil and Political Rights

## Question:

Does JP regional government's order violate Art. 27 ICCPR?



... treaty is applied, invalidating JP regional gov's order

# Prisoner Interview Restriction Case (Japan)

**Fact:**

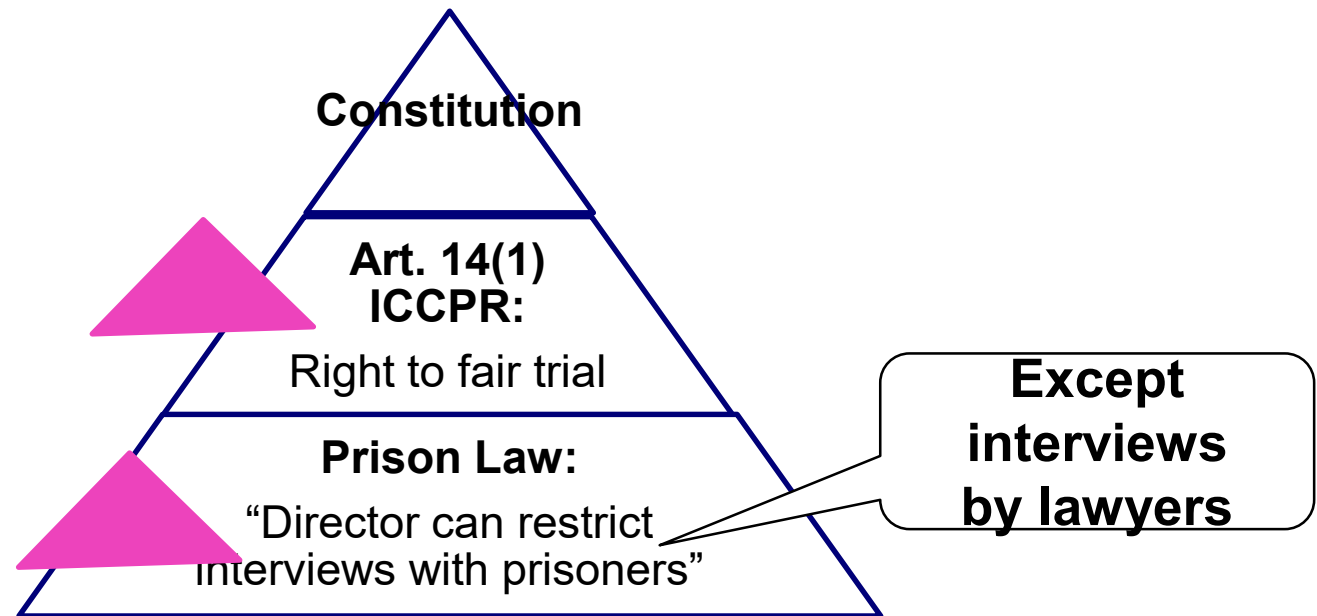
**-JP Prison Law:**

Prison director can restrict visitors' interviews with prisoners

**-Art. 14(1) ICCPR\*:** right to fair trial

\*The International Covenant on Civil and Political Rights

**Question:** ... Does JP Prison Law violate Art. 14(1) ICCPR?



**... indirect application:** JP law is applied, interpreted in conformity with an international treaty

# Japan-EU EPA

## (Economic Partnership Agreement)

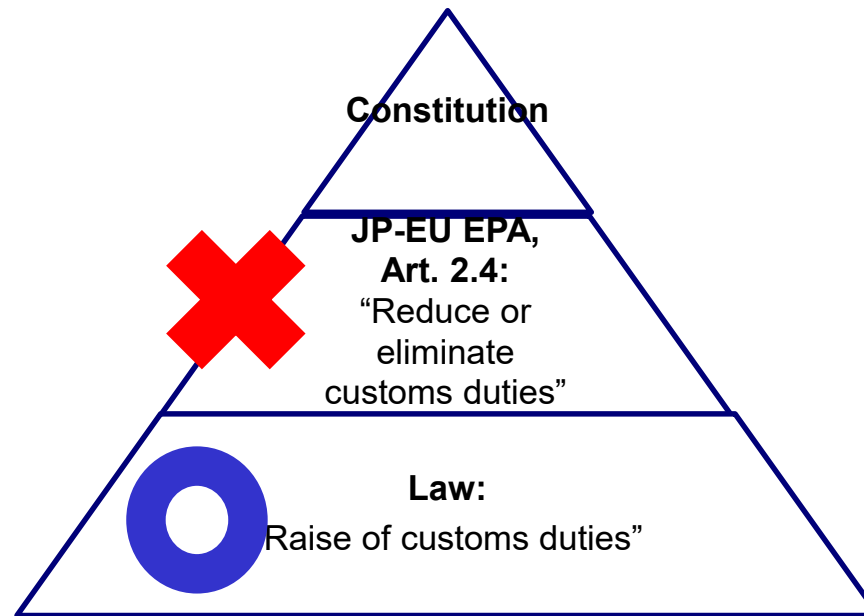
(Hypothetical) Fact:

-JP Law:

Raise of customs duties

-JP-EU EPA, Art. 2.4: “Reduce or eliminate customs duties”

Question: ... Does Law violate Art. 2.4 JP-EU EPA?



... **no application:** JP law is applied, not the treaty

... Reason:

... Art. 23.5: “JP-EU EPA does not give rights to individuals”