

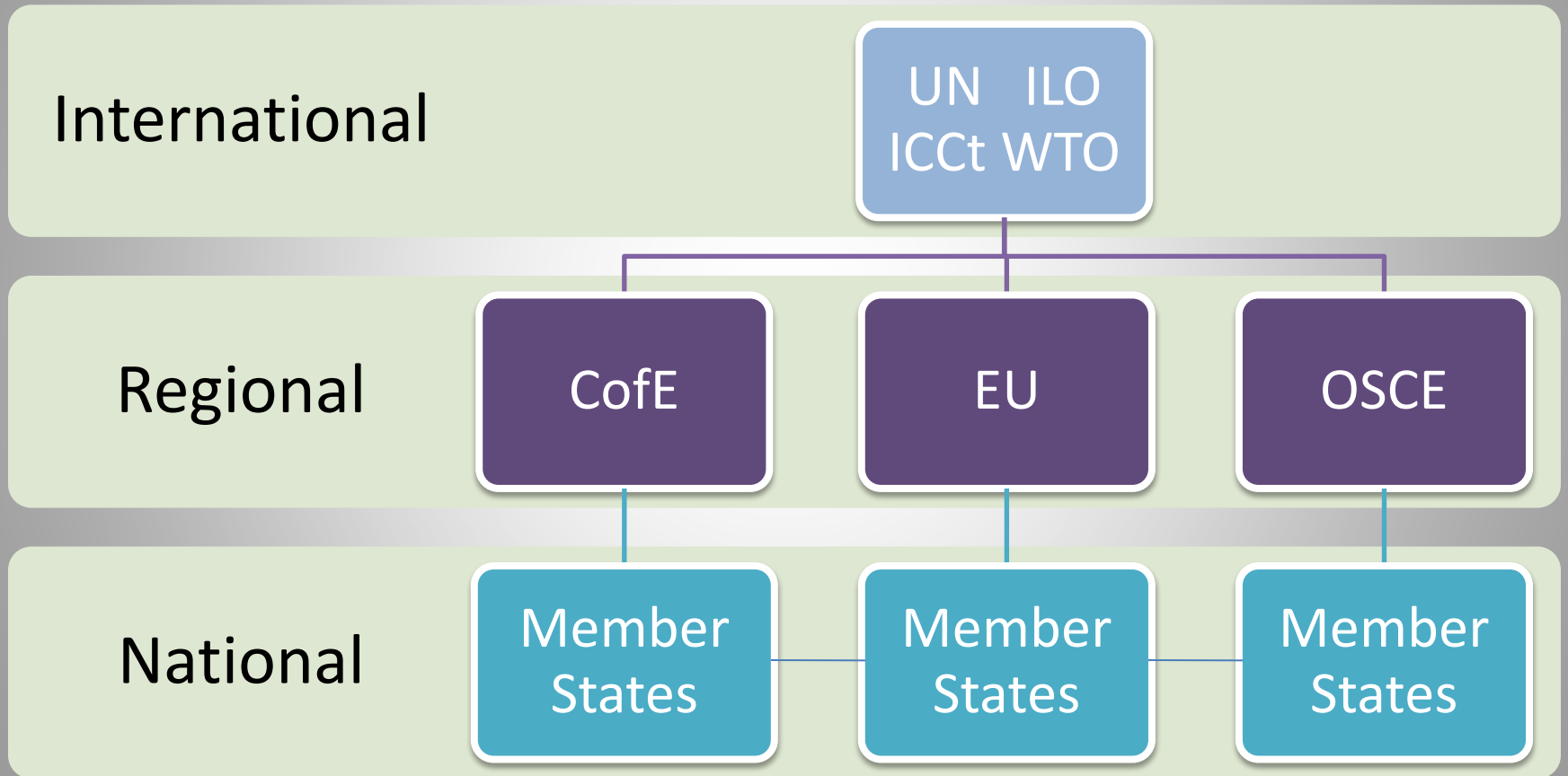
‘Up, Down, Round and Round’

Interaction between International
Human Rights Law and the European
Legal Framework

Strasbourg, 5 April 2013

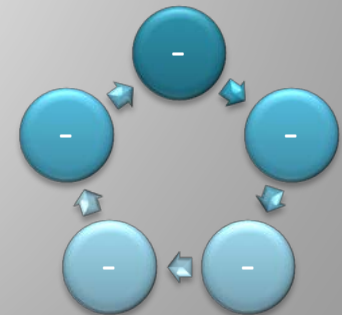
Professor Rhona Smith

European systems in context



Interaction opportunities

- ‘Looking up’
 - EU implementing International Law
 - European courts considering international law
- ‘Looking down’
 - International and regional human rights entities considering EU law
- ‘Going round and round’
 - Inter European organisations
 - Inconsistencies in practice



Approaches of EU - competencies

EU within its key competences

supremacy

sovereignty

EU as a global player

one voice

CFSP

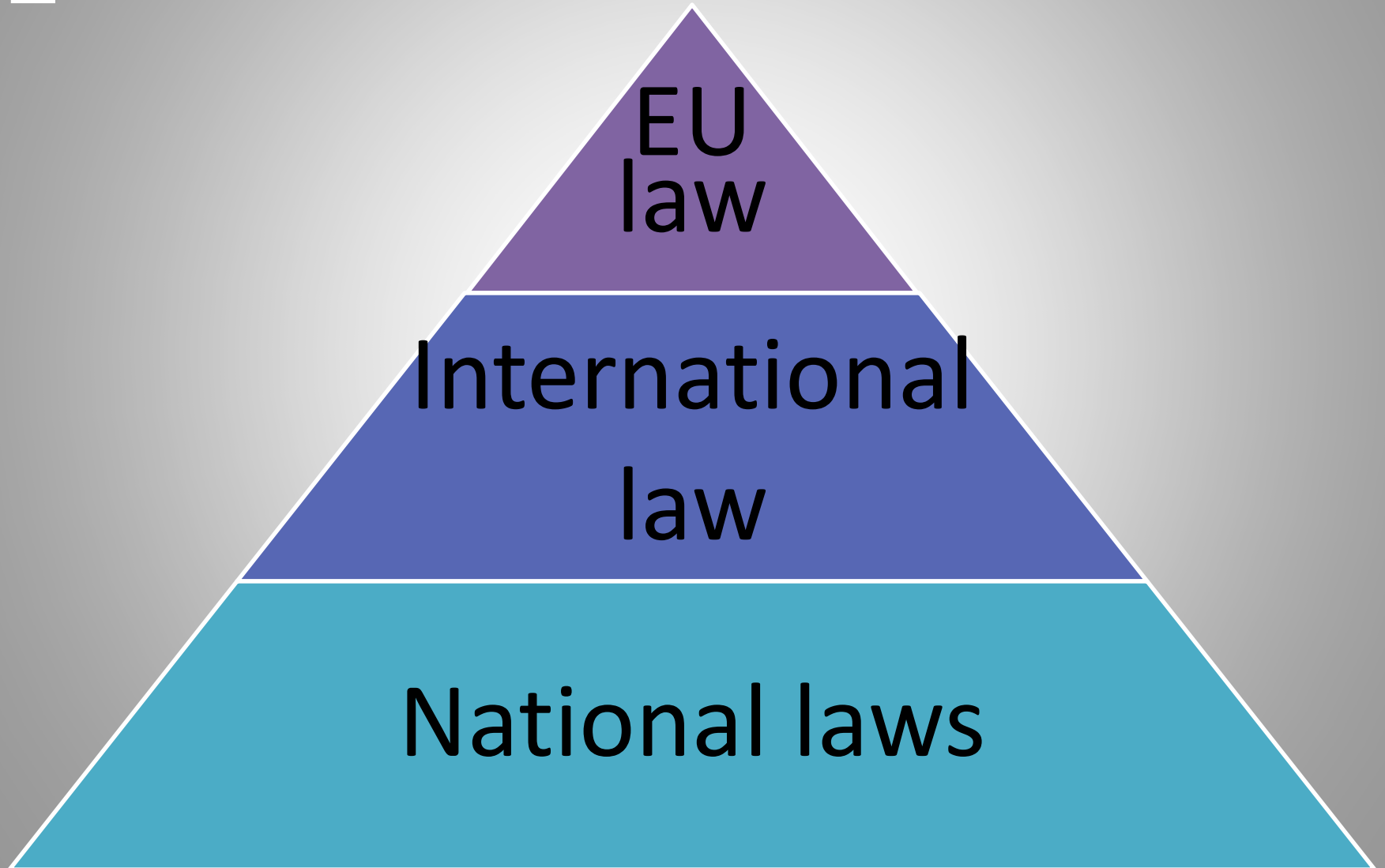
EU as disparate state actors

convergence?

WEOG?



EU – dualist approach



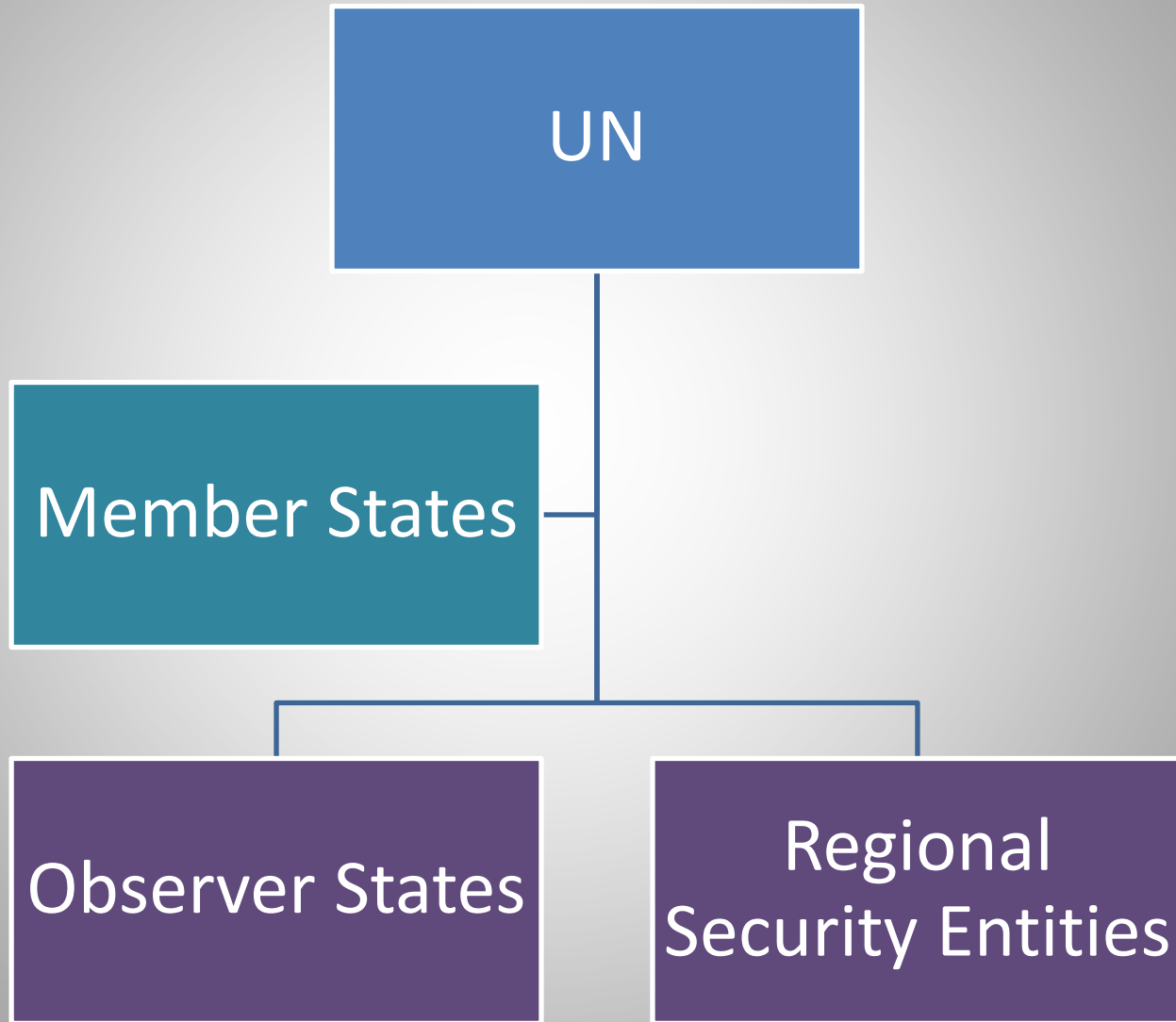


CJEU considering international law

- Traditional view: *Van Gend en Loos; Costa; Solange I+II*
- Cases C-402+415/05 *Kadi and Al Barakaat v Council* [2008]
 - No direct judicial review of international law – Art 105 UN Charter => review possible, rule of law
 - ‘the obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights’ (para 287)



UN's view of EU

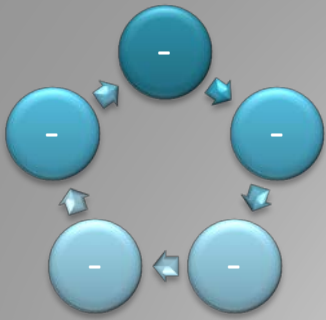




States are the primary obligees

- International human rights law is generally contained in treaties to which States are party.
- States are the primary obligees under international law
 - But note individuals, business (TNCs and MNEs), NGOs
- EU accepted the UN Convention on Rights of Persons with Disabilities (see Council decision 2010/48/EC on competencies)
- EU and European Convention on Human Rights
 - Treaty provisions, accession negotiations, MoU
 - Note also Copenhagen criteria for EU accession

Council of Europe and the European Union



- ECtHR considering EU and human rights
 - *Bosphorous Airways v Ireland* [2005]
 - *Matthews v UK* [1999]
 - *Ullens de Schooten and Rezabek v Belgium* [2011]
 - (cf *Saramati v France et al* [2007]; *Behrami v France* [2007])
- CJEU considering ECHR and international human rights
 - Case 11/70 *Internationale Handelsgesellschaft mbH* [1970]
 - Case 36/75 *Rutili v Minister for the Interior* [1975]
 - Case C-13/94 *P v S and Cornwall County Council* [1996]
 - (cf Case C-93/02 *Biret v Council of the EU* [2003])

'Up, down, round and round'



- EU respects international law but chooses to implement it through EC legislation and appears to reserve the right to consider/ review international law as it applies to EU



- EU provisions can be challenged before other bodies, assuming complaint admissible

- Evolving views of European courts on international law/ human rights and the extent to which they accept each other's approaches

