International Institutions

Introduction on international law:
-Historically, International law addressed only relations between states, and in certain limited areas (war, diplomacy..). This law was dependent on the concept of state sovereignty and on territorial boundaries of distinct countries. Globalization has changed international law in numerous ways. For instance, as it as accelerated, international law has become a cause for state to cooperate in new areas, like for example international trade, human rights, climate change, terrorism… They all are international and require sovereign states to re-think this concept of sovereignty.

- Basic questions about international law:

-What is international law?

Basically defined, international law is the set of rules and principles that countries follow in dealing with each other.
There are 3 legal processes:
1- Public international law; responds to the basic definition, the relationship between sovereign states, and the relationships between them and international entities (NATO, IMF…)
2- Private international law; you must have an eternity. It's about private situations, not states or international entities. At least 2 national laws can apply to the situation (example a German woman marries an American, they married in Berlin but lived in NY, and they divorce. So which law is applicable? A set of national domestic rules applicable to private in international situations and dealing with conflicts of law or jurisdiction.)
3- Transnational law; It's a kind of mix of the 2 first. International law has to be applied to private firms and also to individuals, without observing national law. Considered as the future of international law.

-Is international law really law?

-> Applies to everyone; rules are given to a society
-> Enforcement of power; makes the law apply (executive power)
-> Legislator; acts the law (legislative power)
-> Judiciary; interpret and says the law (judiciary power)

In international relations, states decide the law but they are made against them as well. There is no central legislator. Treaties can make international rules, as well as the recognition (international costume).
The United Nations is a kind of legislator. The General Assembly and the Security Council have this kind of power. The Security Council's resolutions are mandatory, even if it is not supposed to legislate.
There is no central judiciary. Inside the UN, the ICJ (International Court Justice) could play that role, but the states are not forced to apply the ICJ's sanctions, because they don't have to recon their jurisdiction. Even though they are member, they can decline the jurisdiction of the ICJ if other states are bringing them before it.
It's impossible for a state to live outside the international community, because globalization makes them interdependent. Trade relations, national sovereignty, developing wealth of the people and of the country,

avoid wars… Stes are to dependent on globalization and international rules.

-What are the sources of this international law?

-The international treaties; it's a sort of contract between 2 (bilateral) or more (multilateral) states. There are also Funding treaties of International Organisations. They cover a very large scope of subjects (boundaries, World Trade Organisations…). The UN Charter is a universal international treaty, its subject is universal.

-The custom; It is not written, it's a behaviour that the majority of the states are reiterating over and over. You must have a form of conviction of the states that this custom is international law. Of course, some states may have the behaviour, and then change their mind.

- The General Principles of Law; like good faith for instance. In the article 38 of the ICJ Statute, (search internet). Doctrine considers that some principles are specific to in law (so you can create with the time new principles); the 2nd part considers that these General principles are the addition of all the principles that you can find in international law. The UE recognize the principle of precaution as being a General Principle.

These 3 are the primary sources of international

-The judicial decisions

-The doctrine

These 2 are secondary.

-How international is enforced (imposed)?

-> Conditions must be fulfilled for the sanctions to be legal. It's a reply to an illegal act of a state.

For economic sanctions, it must be temporary, and it must be proportionate.

There are 2 types of sanctions:

1-The Multilateral Sanctions, ruled by the Article 39-41 of the UN Charter

2-The Unilateral Sanctions, when the UE decides by itself to put sanctions on another country not through the Security Council.

- ➔ Coercive sanctions
- ➔ Self-Defence

International Organisations

All international organisations exist in the conceptual and legal frame of International Law standing between state sovereignty and legal obligations. International Organisations are created by the commitment made by sovereign states and their purposes is to bind those states to their commitments. We'll focus on 3 forces in world politics.

The 1st is the commitment states make to international organisations by following legal obligations.

The 2nd force is about their compliance to international organisations.

And the 3rd force is about the power of enforcement held by each international organisation.

All international org don't follow the same pattern, the enforcement power isn't the same. All the problems of international politics and economics are at some level problems dealt by international organisations. As interdependence increase, the importance of international organisations increases.

From international credit market to endangered species, to torture… Today's leading controversies imply the need of international organisations.
International security and international economics are the most 2 important international law.

1st force: Obligations. We'll focus on all founded by inter-state treaty. The treaties spell out inexplicit the goals and the powers of the organisations. Is usually begins with a preamble, where goals and purposes o the international organisations are found, followed by the core of the treaty and it's articles, with different legal obligations that the states are committing to follow.
When governments join international organisations by negotiating and signing these treaties, they promise to accept whatever rule included in these treaties. They may include rules that are explicitly set pout in this treaty.
-> Explicit rule for instance*: "Decisions of the court are final and binding for the states involved in the dispute".*
They are known in advance by states when they join the organisation.

-> They may also include indirect obligations, not explicit ones that will occur after in time. When the Un charter gives the Security Council the authority to create new laws on the Un institutions for instance. These ones are more open-handed and include some risks, that states were not expected.

In both cases, it is imperative to any understanding of these organisations, to pay attention to its founding treaty.

The legal terms are the authoritative source of the obligations that states owe to each other. These treaties such as **the UN Charter, THE IMF ARTICLES OF AGREEMENT, and the Rome statute of the ICC,** spell out the commitments their members are taking on, and the powers that are being granted to the organisations themselves.

2nd force: Compliance. Consider why, when, and how well states comply with those legal obligations. Compliance is always looked at as a choice of states. International Organisations shape the politics, beyond the idea of the choice of states. There are 2 moments when states consent is explicit.

The 1st is when joining the organisations, and the 2nd is at the point when states choose to follow or violate the international rules created by the treaty.
In the context of international crisis, the country often wants to violate the rules.
For instance, when the US invaded Iraq whereas the Security Council refused to allow them the authorisation for this military action.
Everything the state does, it is before the eyes of the international community, so when they make military attacks, we feel like international law is constantly violated.

3rd force: Enforcement. Only few international organisations are authorised to take enforcement actions against states that have failed to the legal international obligations of the founding treaty. Theses are the **UN** (security council, with the chapter 7 of the UN Charter), the **IMF** (can retire further loans from an incompliant state), and the **VTO** (if a state do not comply with the tradition entity decision of the VTO, the VTO can decide to authorize some trade sanctions against this state.) But there is very poor enforcement power; the biggest threat that is facing the violating state is the loss of reputation that may occur when you're a rule breaker. This absence of direct enforcement is often seen as evidence of the non-power of international organisations, but this is a false justification.

The question is: why would states comply them with international law with the threat of enforcement?

Because of their interest to sign the treaty, and to follow the rules they committed to follow after the signature. So the lack of enforcement is to put into balance. It raises also the question of state sovereignty.
State sovereignty is defined by the legal and normative brainwork that states are the final authority over their territory and he people within it. They are not subject to any political are legal higher authority. As a result, they have the exclusive right to make decisions over all domestic maters and this without any interference of the outside. The laws and practices of classical state sovereignty lead to clear differences between domestic and external affairs. **This concept of state sovereignty is considered as an international institution in the broadest sense of what institution can mean (a set of rules that organises social and political practices, it's different of international organisation).**

History of international organisations

I) Westphalia to Vienna

The notion of state sovereignty is born in 1648 with a piece of the Westphalia Treaty. The signing of the piece of Westphalia in 1648 reinforced by the treaty of Utrecht in 1713 established the principle of National Sovereignty. With this principle, it places the states of Europe in an equal legal footing. It goes with the concept of "Equality of sovereignty" between all states. This notion of sovereign equality gives all state territorial equality and the right to conduct domestic and foreign affairs without outside intervention. After Westphalia, the decentralized control by central states provided the bases for a ***horizontal international order.*** It's different of the national law, which is a vertical system. But it was not until the 19th century that international organisations appeared in significant numbers. The conditions for international organisations were not here in the 17th and 18th century (not enough connection and interdependence -> no need for institutionalised mechanism to mange international relations.)

This brings us to Vienna and the 19th Century. This 1st serious attempt of creating international organisations arose with the Congress of Vienna (1814-1815). It established diplomatic foundations for a new European Security after the Napoleonic wars devastation. It's considered as a fundamental turning point in the conduct of international relations. This Congress created a more systematic and institutionalized approach to mange war and peace in the international system. The principle innovation was that the representatives of the state had to meet often, and discuss about diplomatic issues. 4 major peace -time conferences were held between 1815 and 1882. It is called "**the Concert of Europe".** They held several gatherings during the 19th Century, the most important are the last 2 Conferences, which brings to the creation of a panel of arbitrators to settle international disputes and more, they brought about a convention about the pacific settlement of international dispute.
The result of the "concert of Europe" was a long period of peace in the great European powers relations.
The Industrial Revolution brings changes, the interdependences between states increase, and a new set of international organisations is needed to manage this international economic relation. States had to cooperate between each other**. To facilitate shipping and international trade, and to help regulating traffic, the Central Commission of Navigation is created in 1815.** Similar commissions were established for the Danube for instance. The Zollverein (custom between German States) was established in 1834. The questions held by all those conferences were more of practical concerns**. It really is the beginning of what international organisations were going to be further on. The ultimate purpose was to facilitate trade and economic relations.**

Versailles and the "League of Nations". Heads of state and diplomats met at the Versailles peace conference in 1919 to create a global security international organisation in the "League of Nations**. It's the 1st attempt for collective security**. It's based on the Kantian project. Under article 16 of the founding treaty of the SDN "all member states are required to help any member who is victim of any military action". It's created not only to cooperate, but also to help each other. It was concerned in fostering peace through economic issues as well. They wanted to establish the permanent court of international justice. It's the predecessor of the International Court of Justice of today. There also was a General Assembly with all members in it, while Separate League Council was composed of 5 permanent members, and several rotating members.
For the 1st time national and supranational roots were represented. Yet, the major lack of the League of Nations was that the USA wasn't part of it. This lack of US participation brought the League to its death, also considering the fact that there wasn't any enforcement power. At the end, it wasn't able to survive, even though **it was a very important step in the idea of forging a new international order, based on the concept of peace, not only in the concept of managing wars.**

LESSON °2

The United Nations

It came into existence the 24th of October 1945. It's based on the UN Charter, the international treaty that founded it. It defines the UN as a formal institution with limited powers, but also as a generalized system of constitutional principles that govern all the interstates relations. The formal part of the UN (such as the General Assembly or the Security Council) has to work following those principles.
These principles are brought to life through the daily actions of the states and of other international institutions that use those principles.
The UN Charter is then the essential core of international law. It's so important that it's to be considered as the Constitution of the International order.
As a formal organisation, the UN is a system of many sub organisations having different degrees of authority and independence. The Charter describes 6 principles organs of the UN that are the core of the system:
-The General Assembly
-The Security Council
-The International Court of Justice
-The Economic and Social Council
-The Secretariat
-The Trusteeship Council

Beyond these 6 organs lies a huge based universe of specialized agencies and of related organisations of funds.

The Security Council is responsible for responding to threats in international peace or security. It has the authority to force states to change their policies even through military enforcement if necessary. It's the only organ that has the power to pass obligatory resolutions against all states => democratic problem.
The General Assembly has a bigger conceptual scope than the Security Council. But its authority extends only in making recommendations for states.

Member states of the UN take on general obligations under the UN Charter, as well as specific obligations to particular organs of the UN. Some resolutions of the General Assembly are so important that they became a codification of international law rules. So it can become binding for states.
The Charter spells out general obligations of UN members and the general powers and limits of the Un as an organisation. It defines the general parameters within which the UN exists as an organisation, and within which inter-relations are supposed to take place between the members. This makes the founder of the fundamental international treaty.

The preamble is marked by the first concerns of the writers, the concerns being to avoid "the demons of the war" that is not over when they wrote the Charter.
There are 2 principles ideas through it: at the end of this horrible conflict, the UN proclaims their priory concern to maintain peace and international security. 2) Because WW2 represented the battle of liberty and democracy against tyranny and racism, the founding fathers insist on the respect of human rights, going with economic and social progress.
The preamble introduces the concept of peoples in the international order for the 1st time. The founders of the UN insisted on their intend to erase every armed conflict again "armed force shall not be used". They didn't want to make the same mistakes as the SDN. The efficiency of the system defends on a common response to an aggression**: idea of an international coalition to maintain international peace and security.**
We have to keep in mind that the principle of collective security suffered an eclipse during the Cold War. It's the absence of an efficient system of a collective security that brought about WW2.
"To live as good neighbours" is written in the preamble. Using armed force inside the UN would be seen as a failure. The fundamental philosophy of the Charter is preventive though, it's not about preventing states from war, it's about preventing it, and wage war in a real final case. The idea of equality of rights is also pointed, and the right of people to self-determination appears crucial as well.

The respect of international law is not mentioned in the Charter. But the preamble underlines the fact that international treaties had to be followed: respect for the obligation arising from the treaties.

LESSON N°3

The United Nations: International Peace and Security

We will focus a lot on the Security Council's power. **The general mandate of the UN is to end international war, to protect international peace and security, and to promote social and economic development.** The Security Council has got 15 members, 5 of them have the right of veto (the permanent members, article 23), and the 10 others are elected for a 2-yerms term. The Security Council is the key structure of international peace and security.

The Security Council's actions:
It responds to any threat to international peace and security (by taking actions, and including the use of force). To be passed, a resolution must be voted by at least 9 members (including the 5 permanent members).
The key obligations of the member states of the UN are not to use force except for self-defence, to follow the Security Council's resolutions, and to provide armed forces to the Security Council for its enforcement actions.

The key legal clauses of the UN Charter regarding international peace and security:
-Article 24 of the Charter within the chapter 7 (doc given).
-> Delegation of national sovereignty and responsibility given by the states to the Security Council
-> Limitation of powers of the Security Council, it cannot go out beyond the scope of the Charter

-Article 25: Member states have to follow the resolutions of the Security Council.

-Chapter 7: It governs the notion of enforcement. The Council is given the power to identify threats to international peace and security and can act when it's necessary (read document).
It has to make a determination of any threat to peace, breach of the peace, or act of aggression.
The coercive measures taken may include economic sanctions, embargoes, blockades, and other non-military means (article 41) as well as collective military force (article 42).
This power is making the Security Council one of the most powerful organs in the international scene. It's the executive power in a way. The UN has decisive authority to impose itself in any country or in any dispute in the world.
There are strict limits on how this authority may be used. They are responsible for the patchwork of activism and the censures since 1945.
The Security Council controls this authority and this decisions to intervene with the combination of the rules, and the political interests of the states.

Articles 24 and 39 define the organisation of international peace and security. It has the authority to decide what kind of respond may be given to any conflict or threat.

The Security Council has no generally fixed position.

I) States Obligations

The Security Council is the only body in the UN with the authority to makes actions in defence of the collective security and international peace. It includes the authority to take military actions. For that, the members of the UN concede a tremendous amount of their legal autonomy and sovereignty to the Security Council. They agree to accept and carry out the decisions of the Security Council. They agree to join mutual assistance in carrying out the measures decided upon the Security Council.

Even if states disagree with the Security Council's decisions, their commitment make that they are legally bind about what it decides, and that they can not escape that legal obligation.

Any matter that becomes a threat to international peace and security is by definition not a matter under the national jurisdiction of a state (that's fucking important). It's the Security Council's motherfucking business.

In the absence of a threat to international peace, the Security Council has no authority at all. All decisions that impose legal obligations on states must be premised on a finding by the Security Council of a breach of, or a threat to international peace and security. This means that states obligations depend on how the threats are interpreted; and the Charter has nothing to say on the subject, except that it is only in the resort of the Security Council to interpret threats.

Recent areas of high activity by the Security Council:
War crimes, peacekeeping, apartheid, civil wars, humanitarian crisis, international terrorism, restoring democracy.
Example in 1999: the Security Council issued the 1st inner series of resolutions to freeze the assets (goods) of individuals who where supporting Talibans in Afghanistan, it was a double-shift of interpretation in response to international terrorism. New forms of sanctions appeared: "the smart" or "targeted" sanctions. The object of this was to identify individuals rather than states as *"threats to international peace and security".*

9/11; act of war, of aggression. US wanted to react and used the argument of the self-defence. The Security Council judged it a breach and a threat to peace. So the US went to Afghanistan under the pretext of a UN mission.

II) Between peacekeeping and peace-enforcement

The Security Council is at the same time a legal actor and a political forum. It aims to produce compliance by states by political persuasion and by the threat of military enforcement. Even if military enforcement is rarely used, it remains a threat to non-compliant states. Sometimes the influence of the Security Council is effective as with the Iraq case in 1991. One of the Security Council's primary power is the ability to influence the choices of states.
It may be decisive and explicit, subtle, or it may just be one influence among many.

The 2 different modes of operations:

-Peace enforcement missions
->They are coercive invasions of countries by a UN authorized force.
->Intended on destroying or changing a threat to international peace and security.

-Peace keeping missions
->Negotiated between the UN and states or other parties.
->They often occur in the shadow of a threat from the Security Council.

LESSON N°4

International Tribunals

International tribunals differ from national courts and fundamental respects. Unlike national courts, they do not possess mandatory jurisdiction. Their decisions can't be enforced against sates or their assets. They have no coercive means to enforce tribunal decisions against states.

Theses tribunals were established in multilateral treaties, and they were often inspired by high political or religious ideas. They aspire for universal mandatory (obligatory) jurisdiction over broad categories of public international law disputes.
The Permanent Court of International Justice and the ***International Court of Justice*** are examples of these tribunals.

None of these 1st generation tribunals have been empowered to bring enforceable (éxécutoire) decisions. So they have no enforcement power.

The States started in the 60's to establish new generation tribunals. They did so by progressively concluding a big number of multilateral treaties and other instruments.
These new generation tribunals include arbitral tribunals pursuant to:

- ➔ Bilateral investments treaties (such as the NAFTA)
- ➔ International Commercial Arbitration Agreements between states and private parties
- ➔ Dispute Resolution Mechanisms of the WTO
- ➔ Claims-Settlement Tribunals such as the Iran-US.

They have been created to be able to render enforceable decisions. And they did so.
They enjoy a relatively high compliance with their decisions.

But we will focus on the 1st generation tribunals:

I) The Permanent court of Arbitration was established to instaure peace. It only concerns states. It's a child of the Kantian Project. The idea was to prevent conflicts between states, and to resolve all the conflicts. States had to bring themselves before the Court. This ambitious proposal was refused by most states. In 1899, the Hague convention for the pacific settlement of international disputes was adopted. Arbitration is then encouraged. There was no obligation to pursue arbitration. But if states choose to arbitrate, they will have to comply with the rendered decisions. So without this consent, the PCA had no enforcement obligation. This court was then rarely used. The notions of "commissions of inquiry", "good offices" and "mediation" appeared. Yet, the PCA is neither a court, neither permanent, and has no mandatory jurisdiction. Is was only a list of arbitrators in which the states could chose if they wanted to create an arbitrated trial. The PCA had only few cases during the first 70 years of its creation (35 cases). But between 1995 and 2009, they were 86 cases (mostly on commercial and investments questions).

II) The Permanent Court of International Justice. Following WW1, proponents of an international court followed their efforts. It was created to solve international disputes. It is a permanent court, with jurisdiction over significant range of disputes between contracting States of the League of Nations. It is composed of 15 permanent judges, and was established by a status, which gave it the model of a domestic appellate court (court d'appel). Yet, it had no mandatory jurisdiction. States refused it. So the court's jurisdiction is limited to the disputes that the states consent to bring before it. **Like the PCA, it knows difficulties, because there is no enforcement power**. Like the PCA, the court enjoyed only few cases. Between 1922 and 1939, only 38 contentious were made.

III) International Court of Justice. The end of WW2 saw the replacement of the PCIJ with the ICJ. It was identified by the UN Charter as the principle organ of the UN. The primary purpose here lies in its function as one of the instrument of instauring as so far as this aim can be achieved threw law. Similarly, the ICJ largely replied the PCIJ's structures and functions. The ICJ is the preliminant judicial body existing to resolve disputes rising between states. The ICJ can provide a decisive and binding judgement to any conflict presented to it.
The ICJ is the legal body of the United Nations. All states that join the UN automatically become members of the ICJ (article 93.1). Its headquarters are in The Hague. Its mandate is to settle inter-states legal disputes with the consent of both parties. It is composed of 15 international judges. States agree to follow the decisions of the court in cases to which they are a party. States that aren't satisfied with the performance of the losing party in a case may refer the matter to the UN Security Council.
The 15 judges are elected by the UN General Assembly and the UN Security Council (they here operate without veto).
For a contentious case to be heard by the ICJ, 3 elements are necessary:
-There must be a legal dispute
-It must be between states
-The states must consent to the jurisdiction of the Court

Consenting to the Court's Jurisdiction:

➔ Case-by-case referral
°Parties to a case explicitly refer a particular dispute to the Court
-Explicit statement of their consent to the case (a letter made by the foreign minister)
°Example: the difficulties between Benin and Niger in 2002. They were unable to draw the frontiers between them. So they send a joint letter to the Registrar of the Court.

➔ Treaty-based consent
°When an international treaty includes a clause of jurisdiction of the ICJ:
- Signing the Treaty indicates consenting to automatic jurisdiction of the ICJ over any legal dispute arising between the contracting states regarding the interpretation of the treaty can be a cause
°Examples: the Montreal Convention on air terrorism (1971)

➔ Prior declaration of consent
°It is also named "the optional clause declaration"
-A state makes a general declaration of acceptance of the Court's jurisdiction for all future legal disputes with other states.
- If a dispute arises between 2 states, the "optional declaration cause" operates and gives automatically compulsory jurisdiction to the ICJ if the 2 or several states involved made such prior declarations.
°Example: The Connally Amendment.

LESSON N°5

International criminal law

From the Nuremberg trials to the ICC

International criminal law is part of the international public law. It deals with the criminal responsibility of individuals for international crimes.
-There is distinction between international crimes based on international customary law that applies universally, and crimes resulting from specific treaties that require the implicated states to use their national legislation.

➔ The International core crimes

-Genocide
-War crimes
-Crimes against humanity
-Aggression

International tribunals have been given jurisdiction under international law over these types of crimes.

International criminal law finds its origin in both international law and criminal law.
The sources of this international criminal law come from ***the article 38 of the Statute of the ICJ***: treaty law, international customary law, general principles of law, case law (jurisprudence) and doctrine.

Brief History:
-Nuremberg and Tokyo trials: birth of present day international criminal law
-1990's: Major stimulus to international criminal law with the institution of the International -Criminal Tribunal of the Former Yugoslavia and the International Tribute for Rwanda by the UN Security Council.
-Creation of various internationalized or mixed criminal courts
-The proposals of the International Law Commission leading to the 1998 Rome Statute for the Adoption of an International Criminal Court.

The principle that individuals can be held criminally accountable for war crimes dates back to many years. But it was only after WW2 that the idea of individual criminal responsibility became serious.

The concept of universal jurisdiction means that any state is allowed to trial suspected perpetrators of international law, even in the absence of any link between the suspect, and the state concerned.

International Mechanisms of Implementation

International crimes definition: "An act universally recognised as criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the State that would have control over it under ordinary circumstance."

International Criminal Liability exists today in respect of war crimes, crimes against humanity, genocide and torture. But some other crimes such as terrorism can sometimes be considered as international crimes.

War crimes:

- ➔ Serious violations or "grave breaches" of international humanitarian law constitute war crimes
- ➔ International Humanitarian Law is constituted by both:
  -Treaty Law: 1949 Geneva Conventions and Additional Protocols
  -International Customary Law

Look at the PowerPoint to see the definition made by the Rome Statute (Article 8).

The ICC trials war crime part of a large-scale policy, so individuals using war crimes as a way of doing war.
The Geneva Convention aims to protect civilians during war.

Crimes against humanity

They encompass serious attacks upon human dignity or a grave humiliation or degradation of human beings. (Article 7 of the Rome Statute).
They can appear in peacetime as in wartime.

Genocide

Genocide particularity cover acts such as murder or serious body harm, committed with the intend to destroy, in whole or a in a part, an ethnical, racial, national, or religious group.
(Article 6 of the Rome Statute)

Torture

Aggravated for of inhuman treatment prohibited as:

-War Crime

-When its part of a systematic practice amounting to crime against humanity
-A single act

Influence of the Nuremberg Trials

The Hague Conferences were limited to regulate warfare by the State's Sovereignty. The Nuremberg trial established that an international legal shield could guard all humanity.

The ICC

Established by the Statute of Rome on 17 July 1998
The ICC:
The ICC does not have universal jurisdiction, its jurisdiction is limited to the crimes committed on the territory of or by nationals of States which have voluntarily consented to its jurisdiction.
The court's regime recognises the special role of the UNSC in maintaining peace and security, Under the Rome Statute the UNSC may refer statutes to the ICC and this regime was created for the Security Council to avoid to have to constitute Ad Hoc tribunals as it had to do for Yugoslavia and Rwanda. The UNSC has already used this power when it referred the situation in Sudan. When the UNSC does this, it is acting under chapter 7 of the UN charter and it can ask for an investigation or for a prosecution for a period of 1 year.
The jurisdiction is not only not universal, it is also temporary and has jurisdiction only since its entry into action, so no crime before July 1st 2002 can be brought forward in front of the ICC.
The ICC also has jurisdiction over aggression.
Even where the court has jurisdiction, it will not necessarily act, and this is fundamental to understanding the ICC's jurisdiction, it is a court of last resort. It is intended to act only when national courts are unwilling or unable to carry out genuine proceedings.

This is known as the principle of complimentarity, under this principle a case will be inadmissible if it is being or has been investigated or prosecuted by a state which has first jurisdiction. In addition to the definition of the different crimes, a case will be inadmissible if it is not of sufficient gravity to justify action by the court. There is one exception under the principle of complimentarily where the court may act, this is when a state is unwilling or unable to carry out the investigation or the prosecution. For example if proceedings were taken to solely shield a criminal person for responsibility then the court may act.
The Statute incorporates the fundamental provisions of the rights of the accused meaning the rights of due process common to national and international systems and there is a particular future of the ICC which is different from the Ad Hoc tribunals which is the treatment given to the

victims. Victims do participate in other international tribunals, but when they participate they largely participate as witnesses for the prosecutor or for the defence. In the ICC, victims may proceed in proceedings even when not called as witnesses.
Restitution, compensation and rehabilitation are just some of the sentences possible.

LESSON N°6

The IMF and the World Bank

These two international financial organisations render similar services to countries but the contexts in which they act are different, as well as their effects.
Both of the organisations pool capital from the member states and use the collected capital to fun loans to member states in need.

The IMF mandate is to lend money to countries which are having immediate balance of payment problems. IMF loans are short term loans, in view of answering an immediate problem, in loans of foreign currencies. The borrowing country must use the loan to finance the stabilisation of its own currency or monetary system.

The World Bank mandate is on more long term goals to help with specific projects, as long as this project are related to development or to poverty reduction.

The explosion of institution making at the end of WWII and the Bretton Woods Conference of 1944 saw their creation. It was a forum for negotiating among the capitalist powers a new institutional architecture for international economics. Both were founded by interstate treaties, known as the Articles of Agreement of each institution, agreed on at Bretton Woods.

A central coordinating mechanism for exchange rates among countries which were at the time fixed relative to each other but also to gold. Authority to consider requests by states to change their exchange rates, and to collect foreign exchange deposits of members into a fund that could be loaned to members who were experiencing balance of payments .

The World Bank, in the beginning, had an explicit mandate to finance development and reconstruction. In 1994, this was taken to mean the redevelopment of Europe and Asia after WWII.
This was reinterpreted in the 1960’s to cover economic development, seen as a strategy to fight poverty in developing countries around the world.

Why was the system created this way?

during the 1930's, the Great Depression resulted in failing economies because of multiple reason:

- the fall of the gold standard led to
- countries raising to raise trade barriers
- the devaluation of currencies to compete against one another
- curtail usage of foreign exchange by their citizens

All this is what we call an economical war, and this economical war led to a decline of world trade, a high level of unemployment and plummeting living standards in many countries.

In 1944, Bretton Woods established a new international monetary system based on two pillars, the IMF and the World Bank. They are often called Bretton Woods institutions and are twin intergovernmental pillars supporting the structure of the world's economic and financial order.

Similarities include:

- both owned and directed by the governments of member nations
- almost every country on earth is a member of both institutions
- both concern themselves with economic issues
- both focus on broadening and strengthening the economies of their member nations
- Hold joint annual meetings
- Headquarters in Washington DC

THE IMF

Has a role to oversee the international monetary system, exchange rates, and international payments to enable countries and their citizens to buy goods and services from each other
Created in 1945, it had 29 member countries, but USSR refused to join until 1989
Today, 187 countries are members of the IMF, 24 of those are represented on the executive board.
The IMF has multiple purposes including:

- promote international monetary cooperation through a permanent institution
- facilitate the expansion and balanced growth of international trade
- promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
- assist in the establishment of a multilateral system of payments (elimination of foreign exchange restrictions)
- Making the general resources of the Fund temporarily available to Members under adequate safeguards
- Shorten the duration and lessen the degree of disequilibrium in the international balance of payments

Several conditions must be fulfilled to get a loan. They typically include reducing government borrowing (higher taxes and lower spending), higher interest rates to stabilise the currency, allowing failing firms to go bankrupt, structural adjustments such as privatisation, deregulation, reducing bureaucracy.

Austere policies:
The loan conditions are “based on what is termed the ‘Washington Consensus” focusing on liberalisation of trade, investment and the financial sector, deregulation and privatisation of nationalised industries. IMF conditionality's may additionally result in the loss of a state’s authority to govern its own economy as national economic policies are predetermined under IMF packages.

Major criticism of the Austere policies are that the austere policies don’t match a specific country’s needs and its reality. The conditionality's often lead to devaluation as well.
The IMF is “free market aimedlack of transparency and involvement
Supports military dictatorships

Response to the criticisms:
The IMF tried to correct some of the conditionality's by creating a fast disbursing loan facility with low conditionality aimed at reassuring investors by injecting liquidities.

LESSON N°7

The World Trade Organization

The origins of the WTO lay in *the General Agreement of Tariffs and Trade* of 1947 (“GATT 1947”).
1946: Negotiations started in London on the establishment of an international organisation for trade. The negotiations continued in Geneva in 1947. In parallel, countries also negotiated the reduction of tariffs.
In Havana 1948, agreement was reached on the ITO Charter. But the US Congress refused to approve the Charter, and the ITO was never established.

The GATT 1947 was conceived as a multilateral agreement for the reduction of tariffs, and not an international organization. The GATT was very successful.
In September 1986, the GATT contracting parties decided in Uruguay to start a new round of negotiations on the further liberalisation of international trade.
In 1990, Canada and EU established the 1st proposals for a new trade organization.
In 1992, most countries were convinced of the necessity of this new trade organization, and In1993, the US agreed and joined in.

In January 1995, the WTO became operational as an international organization.
The WTO law is integral. States accept the WTO laws to access to its advantages.
160 countries are member of the WTO today.

The ultimate objectives are the raising of the living conditions, the attainment of full employment, the growth of real income and effective demand, the expansion of production, and the trade of goods and services.
In pursuing theses objectives, the WTO must take into consideration the environmental impact.

Objectives of the WTO:

Implementation of the WTO Agreements
Creation of a form for trade negotiations
Settlement of Disputes
Monitoring of Trade Policies
Cooperation with other organizations

Principle of Non-Discrimination

LESSON N°8

International Labour Organization

The ILO was created in 1919 in order to promote social progress and to overcome social and economic conflicts through cooperation. In contrast to the revolutionary movement of the time, it brought together workers, employers and governments searching common policies and behaviours from which all could benefit. Above all, it gave those actors equal power of decisions with states. The other unique feature is to introduce features in the international sphere concerned with social aims and those treaties are coming along with new ways to apply them. The 2 triggers for the creation of the ILO were war and revolution. The XXth century saw work becoming global. The scope and brutality of the wars were more violent then ever. Not only in the 2 WW, but also all around the world. WW1 and its savagery brought about fundamental changes in society and in politics. After WW2, same ideas came on the table. Human rights had to be more important.
The XXth Century was also structured around work. It became a concern beyond the sphere of the family. The character of work itself changed as population grew fast.
With this accelerated industrialisation, workers started to organize and to demand dialog, decent incomes, and dignity. At this time, waves of economic crisis and mass unemployment destroyed individuals and firms.
There was a growing awareness that labour markets were interconnected across borders and that public action was needed

to achieve common standards. Above all, work dominated the political agenda. The growing contradictions of capitalism contributed not only to the Bolshevik Revolution, but also to the many later revolutionary movements. They also conditioned the development of socialism and liberal thinking in a lot of countries.

The ownership and organization of the means of production, the role of the state, and the interest which is served, the pattern of organization of social forces, the notion of equality and equity…. All these notions were connected with the fundamental role played work in society.

In the creation of the ILO, these 2 streams went together (voir document papier). Peace and justice go hand to hand. The ILO was very innovated. It was the first organization introducing the idea of social justice to protect peace.
This fundamental idea would later have applications that the Constitution may not have thought of. (When an ILO convention on the right of indigenous people contributed to peace in Guatemala in 1996).
The origins of the ILO lie in the XIXth Century as industrialisation began to transform economies and societies. **How to deal with the social consequences of industrialization?**
The workers movement internationalized afterwards (1864). The 1st international trade secretariat was established in 1889 with the creation of international federations of cigar makers, tobacco workers, and book operatives. In parallel with these trade unions developments, states agreed on the condition of work. The International Association for Labour Legislation was created in 1900. This brought together a group of private individuals working in labour and industry. In 1905, it successfully convinced politics to lay down the bases of 2 international conventions adopted in 1906. Night work for women in industry was prohibited, and the use of white phosphorous in manufactures was prohibited. 41 states or colonies agreed to this last convention, and 25 agreed to the convention for women. Its activities were stopped by war, but this was an important base for the ILO.
Workers and employers supported the efforts of the association: workers saw these efforts as coordinated to achieve better condition of work. For employers, they favoured equalizing conditions of work in order to facilitate conditions of trade.

War generated reasons to be concerned about labour matters. The Peace Conference in 1919 was intended to build a new international framework, and also a new economic framework. The point of departure was Wilson's 14 Points. (No economic barriers). **The ILO had to provide a more powerful tool to expend international labour standards.** By establishing this, it provided the conditions for an equitable trading world system.

The Central Ideas of the ILO: At that time, there were no models on which the ILO and the LON could be built. Originals solutions had to be found. The ILO's Constitution wrote down its aims and purposes. The Conference

of Philadelphia saw the great Declaration adopted. It reasserted the principles and goals of the organization and reinforced them.

5 basic principles:

- Lasting peace has to be based on social justice, freedom, dignity, and equal opportunity

- Labour should not be regarded as a commodity or as an article of commerce
This principle guides the ILO's actions, it recognises the value of labour. The 1919 Constitution states that labour is NOT a commodity.

- There should be freedom of associations for workers and employers

- These principles are applicable to every human being

- Poverty anywhere constitutes a danger and must be helped by national and international actions

The remaining principles express commitments to democracy and to the reduction of poverty. The goal of equality is fully applicable to everybody. Of course, those principles are not respected everywhere.

These principles require actions on the field. The Constitution writes out those points:

-The promotion of full employment and rising standards of living in occupations in which workers can apply there capabilities and contribute to the common well being along with equal opportunity for all in achieving this end and facilities for trading and migration.

-The provision of an adequate living wage for all those employed, this wage calculated to ensure a just share of the fruits of progress to all.

-The regulation of hours of work including the establishment of a maximum working day and week and of weekly rest.

-The protection of children, young persons and women including the abolition of child labour, limitations of the labour of young persons and maternity protection.

-The adequate protection of all workers against sickness and injury arising out of employment.

-The extension of social and security major to provide a basic income to all those in need of protection.

The Constitution also identifies 4 means of governments:

➔ The tripartism

- ➔ The adoption of international conventions
- ➔ A system of inspection to ensure enforcement of the laws and the regulation concerned
- ➔ Collaboration among international bodies, so that every countries contribute to social progress and well-being

Many action and programs have been developed since then. The 1998 declaration on fundamental principles and right at work have led to new forms of regulation. The ILO differs from other working organisations in 2 basic aspects:

- ➔ Tripartism
- ➔ The particular ways in which standards are adopted and certified. Conventions are an important notion here.

The original British design proposed the adoption of conventions, which would by binding once ratified. The US took the opposite positions, maintaining that there should be only recommendations, nothing binding. **Negotiation in the labour commission brought about the adoption of both.**
Like other international treaties, these standards are negotiated with all international representatives.

The 188 Conventions and 199 recommendations adopted since 1919 cover virtually all aspects of labour law and labour regulations.

So ILO standards cover all labour and work domains (social security, employment, wages, migration…).
Together, all these conventions and recommendations form a comprehensive corpus of international law.
By 2008, there were over 7500 ratifications. Some 14 conventions have registered more than 100 ratifications, ratified by more than 25 countries. Ratification would have little value without follow up. Governments are obliged to report to an independent comity of experts on ratified conventions.
It means that some 3000 reports are made a year. Article 19 permits the governing body of the ILO to require reports from all member states on their practice concerning all non-ratified conventions. Complaints can be made when a state isn't respecting a ratified convention. A state, delegates to the International labour conference members, employers and workers organisation can complain.

In 1951, the ILO added a new complaint mechanism authorizing workers and employers associations allowing them to complaint. **ILO is one of the more active international organizations in the recognition of fundamental human, economic and social rights.**
Beside conventions and recommendations, ILO uses as well declarations. The 1944 Declaration of Philadelphia was so important that it was incorporated to the Constitution.

In 2008, the ILO adopted a norm concerning social justice for a fair globalization.

LESSON N°9

Multinationals and NGOs

We will focus on the violations of international law by multinationals.
An MNC might be liable:
-Directly for certain violations
-As an accomplice or an actor violating International law

They created a new entity in a new country, (direct investments, ownership by representatives in the host state…) which made MNCs entering the international law sphere.
Human rights might be problems for these MNC's.

An MNC might be liable for its direct commission of a crime. Individuals, under international law, have a duty not to violate fundamental principles of law, *jus cogens* (piracy, hijacking, enslavement, genocide, terrorism, war crimes).

Nuremberg and British war crimes trials affirmed the notion that private individuals have responsibilities under international law, and that they can be sued for not respecting it.

The 3 main categories of complicity are:

- ➔ Direct complicity
- ➔ Indirect corporate complicity, it benefits from human rights abuses made by the government
- ➔ Mere presence in a country coupled with complicity, silence or inaction
  (Apartheid in RSA for example) Silence or inaction may amount to complicity

In international law, the **IG Farben case** is an example of corporate complicity.
1947: 23 employees of IG Farben were indicted of slavery, plunder, and complicity in aggression and mass murder. Individuals were accused, not the company, for there wasn't any specific jurisdiction existing at the time.
Farben was found guilty in financing and furnishing in employees the Auschwitz camp. So it was clearly involved in war crimes and crimes against humanity.

States have the obligation to protect human rights
This duty includes regulating non-state actors; **the Human Rights Committee** states this.

States have to offer the possibility for every body, which suffers from non-respected human rights, trials and means to protect them.

-The Right of Access to Effective Remedies

Under international law, victims of human right abuses have the right to access an effective remedy.

-Extraterritorial Harms

Cases whether the national courts of a business's home states have jurisdiction to hear cases brought against businesses alleging human rights abuses that occur outside that States, either through statute or case law

A) US
(Voir diapo ecampus)
B) European States
C) France
D) Netherlands
E) UK

Corporate criminal liability: In some jurisdictions, victims have the ability to bring a criminal complaint to a public prosecutor, or use the criminal proceeding to assist with potential civil recovery later.