* **Legal and International Relationship Framework of IOs**

The main thesis is: IOs have changed how we conceive of the sources, content, and actors of international law, and this has produced change in how actors comply with and enforce international law. It has also introduced new challenges (vertical, horizontal, and ideological) to the legitimacy of both IOs and IL.

* Defining International Organizations: *Three elements of a working definition—*
* Established by an international agreement between states. Note: Some IOs have been established by “informal” agreements.
* At least one organ distinct from member states and capable of so acting. This does not clearly apply to some organizations, such as the pre-1960 GATT. Also, it is questionable whether some institutions, like the Global Environmental Facility, are autonomous or the subsidiary organs of another IO. *Special Problem of MOPs*: These do not often have a permanent secretariat.
* Established under international law – This may be disputed where the claim to P&I is arguably under national law.
* Common Features of IOs and Relationship to State Sovereignty:
* Tripartite structure: IOs are generally establishes through charter which includes:
	+ Plenary Body: consist of the full membership; broad power to discuss policy; meets infrequently.
	+ Council: reduced membership: select powers of implementation; meets regularly;
	+ Secretariat: staffed by (occasionally) independent civil servants; headed by a secretary general.
* Bureaucracy: IOs are capable of producing other IOs, developing “regime complexes.”
* Relationships: Interact with a range of transnational actors—NGOs, regulatory networks.
	+ Voting: there are two options, Non-Unanimity and Consensus.
* Financial arrangements: in can be in few ways – either reliant on the financial support of the members, often with ineffective penalties. Or obligation to pay in the source of some tensions.
* Reasons for States to act through IOs (**Abbott** and **Snidal**): The authors identify **centralization** and **independence** as the “key properties” of formal international organizations. These properties give rise to a range of effects, many of which benefit states.
	+ Centralization: forum where parties believe that there is a neutral and impartial method to achieve their goals.
		- Enhance effects of iteration and reputation;
		- Enable faster actions;
		- Neutral/depoliticized/specialized forum;
		- Reinforce accepted norms;
		- Partisan forum for coalitions;
		- Strengthen issues, linkage by situating them within common structures.
		- Prior to the UN creating treaties this goal was were hard to achieve since, there was a need to coordinate, select the right forum by a host state and invite those states that the hosting states wishes to negotiate with. The UN solves these issues
	+ Enhance efficiency: Following Coase, organization occurs when the transaction costs of direct contracting are too high for efficient interaction.
	+ Legitimacy: Centralization and independence afford special legitimacy to IO actions. This can affect, negatively or positively, the legitimacy of state actions.
* The UN Charter: the Charter is fundamentally a positive document, first and foremost due to Article 1 and 2, who lay down the purposes of the Charter and by that basing the ideas of state sovereignty as central one. Article 24 provide that the UNSC have to follow these purposes as its guidelines for taking action.
* Article 2(4) clearly states that states have the right to protect their territorial integrity and political independence and prohibit the use of force.
* Article 2(7) forbids the UN from intervening in states internal matters and jurisdiction.
* Article 103 is the primacy article, it state that the UN Charter and Resolutions made by the UNSC would be exceed any other treaty.
* The UN is suppose to have universal membership, but it leaves the possibility to deny membership.

* **IOs as Law-Making**:

The thesis: The Peace of Westphalia in 1648 made clear that states are the sole actors on international law. institutions such as the League of Nation and the United Nation as its predecessor are innovations of the 20th century. Once they were set up, they enquired international legal status, thus fitting uncomfortably to the Westphalia paradigm. Many decisions of IOs have both external and internal normative impact, effect both internal administrative law and more substantive rules.

* IO mechanism effect on sovereignty: There are different mechanisms for joining a treaty, such as opt-in and opt-out. Having the opportunity to opt-in to certain regulations can be seen as impowering sovereignty, since the state actively chooses to be part of the treaty/ consider its regulations. On the other hand, the option to opt-out limits sovereignty since it is likely, that due to state’s many responsibilities it would not opt-out in time. Moreover, there might be a political price to opt-out on certain clauses that might deter state’s from opting-out.
* The ILO Mechanism: the ILO does not allow states to observe from its treaty. This is due to its unique structure which includes not only states but workers and employers’ organizations. The ILO treaty was negotiated between all of these actors.
* The ICJ as Law-Maker: the ICJ jurisdiction is set in Article 36 of its Statute. Under its jurisdiction it can provide Advisory Opinion (at the request of the UNGA, UNSC and the UN subsidiary organizations) and act as Dispute Settlement Jurisdiction (by both accepting parties). Moreover, the ICJ can settle a dispute by providing legal interpretation to certain clause (*General Expanses* case)
* International Court Proliferation: the impact of international courts proliferation is both political and legal, they affect not only the international realm but the domestic as well. Although the courts are providing binding decisions to the respected parties, other courts are not bound by their decisions – there is no hierarchy between them however, they still have effect on international law as a whole.
	+ When examine courts it is important to pay attention to the way they structure – whether they allow for dissent opinion, separate judgments (or provide the entire decision as one body), some have apelet bodies while other does not. Another thing to examine is how judges are appointed.
* The UN Charter as a Constitution: The UN Charter is not the typical Constitution, it does not have a definite separation of powers nor definitive assignment of said powers to one body or the other; moreover, the member states did not want to create a world government. There are, however, some features that make it like a Constitution
	+ Perpetuated: it is not easy to terminate it, there is no withdraw clause (contrary to the League of Nation). Thus, it is different from a regular treaty which is like a contract where parties can get out of it.
	+ Community: the organization represent the entire community, no single member can act by itself, they need the UNSC to defined if a state is aggressor and such.
	+ Primacy: the UN Charter is the highest treaty in the hierarchy, and it trumps other treaties.
	+ Hard to amend reforms are hard to make; this encourage evolving interpretation (living constitution).
	+ Separation of power: there is some priority of which body can deal with certain issues, such as ‘peace and security’ which is in the hands of the UNSC and ‘monetary issues’ that are under the UNGA.
	+ Independent bodies (“civil service”): The Charter creates independent organization to be at its disposal, such as peace keeping, and special rapporteurs.
	+ Subsidiary Bodies: The bodies of the organizations established in the Charter (General Assembly, Security Council and ECOSOC) can institute subsidiary bodies and they can offer binding decision (both the General Assembly and, more specifically, the Security Council). They also have, thanks to the ICJ, implied powers.
	+ Judicial Review: The ICJ has assumed a judicial review role, also limiting the powers of one body or agency (e.g. WHO case; Bosnia Herzegovina case and Lockerbie case).
	+ Subsequent Practice: the UN organs have a great impact in the subsequent practice (the ICJ use the actions of one body to justify its interpretation of the law)
* The *Reparation* case: when the UN was established it was decided that the UN enjoys the same privileges and immunities as any State Member does. Moreover, the UN have the legal capacity to enter into contracts and those are enforceable in states courts. This is the recognition of domestic legal entity. The *Reparation* case elaborate on this legal capacity.
	+ The ICJ provided its Advisory opinion after requested to do so under Article 96(1) to the Charter, holding that the UN has objective personality which extend beyond UN members to non-member states.
	+ The UN has only the degree of personality that is necessary to fulfil the tasks and purposes of the Charter accorded to it. Indicates a test of **functionality**, rather than strict necessity.
	+ The ICJ held that the Member states wished the UN would be independent entity and due to its function and practice of concluding treaties it demonstrates the reasoning to see it as an international legal entity.
	+ The dissenting opinion held that, it was not necessary for the organization to bring the certain monetary claim, since it was not functionally necessary.
* The *Certain Expenses* case: the background of the case is in when France and the Soviet Union withheld funding to a UN peace-keeping mission in the Sinai Peninsula and the Congo, on the grounds that the UNGA has acted *ultra vires* by establishing the mission. The peace-keeping mission were a result of the Uniting for Peace UNGA resolutions.
	+ The ICJ held that, since the actions were taken in accordance to the purposes of the Charter, maintain peace and security, it cannot be presumed as ultra vires to the organization.
	+ While Member states are retaining their freedom of action, when the Organization is taking an action which warrants the assertion that it was appropriate, it has the right to tax its members.
	+ The ICJ stated that, when the UNSC is stuck, the UNGA should be able to RECOMMEND some kind of action to deal with the threat to peace and security 🡪 UNITING FOR PEACE RESOLUTION (1950); this is legally backed by the Certain expenses case. The UNGA gave itself the power to approve certain kinds of action in situations in which the UNSC was unable to do so; this happened in 1950, when it had the assurance that it would have the necessary votes to pass such a resolution.
* WTO Advisory Opinion on the Use of Nuclear Weapon: while Article 96(1) of the UN Charter structure the way in which the UNGA and UNSC can request Advisory Opinion from the ICJ, Article 96(2) allows for other UN organs and specialized agencies to request an advisory opinion. The WHO request for advisory opinion with respect to the question of the legality of the use of nuclear weapon.
	+ The question that was asked was the **legality** of the use of nuclear weapon, in light of the WHO view of its health and environment effect, and not the weapon effect on health in general. Thus, whatever the effect might be, the competence of the WHO do deal with them is not dependent on the legality of the act that causes them. Accordingly, the ICJ held that it has no provision to answer the question due to Article 2 of the WHO Constitution, since it was not part of the WHO special functions.
* As mentioned above, Advisory Opinion can be also given if the GA request so, thus states can form a coalition of members and through this option bypass the permanent 5 unwillingness to act under Chapter VII.
* The Permanent 5 can be stopped even in the Security Council, since five votes are not enough for a UNSC resolution to pass. Thus all the elective members can oppose resolutions. An example of this is Iraq 2, in 2002-2003, when the US and the UK wanted the Security Council to pass a resolution to support their invasion to Iraq which did not pass due to the refusal of states in taking part of the oparation.
* Frame Work for Describing the “Dispute Settlement” Function:
	+ Posner and Yoo approach: for Posner and Yoo, judges are merely agents of states. This means, that the judges speak the law. The Judges are conservative, acts as passive virtues. An example for their view is the *Nuclear Advisory Opinion* and the decision regarding the admissibility of the WHO. Under this view standing, estoppel, plain meaning, are all virtues that judges should operate through. The margin of appreciation of the European Human Court to states is another example of this idea.
	+ Lauterpacht: Lauterpach believed that judges are acting as agents of the international community. This view leads to reading of the Carter as **constitution** and view the disputes in a broad perspective that not only solve the specific problem. A Lauterpacht judge might be more activist. An alternative to diplomacy in the form of the law. The Lauterpacht judge would seek to find answers in different legal systems (international or domestic). Lauterpacht is critical to judges who throughout cases where they could have used them to develop the law.
	+ Karen Alter: view is that judges are acting as trustees to the law to the state but act under boundaries. Her view is some sort of a compromise between Posner and Lauterpacht. She calls for a reasoned decision and view judges as independent even though the judge can be sensitive to the institutions they are in.
	+ M. Shapiro: Shapiro believes that judges should be seen as settling ‘triadic’ disputes. The judge role is to convince the losing part to comply with the law. This can happen through the legitimacy of the court, thus the judge needs to convince the losing part that he (the judge) is independent and the decision was fair. Therefore, the most important part of the decision is explaining both parts of the case and then show why the decision the judge reacched is the right one. Another option would be to try and reach a settlement where no body is losing.
	+ The WTO applet body is an example to a combination of Lauterpacht and Yoo Posner type of judges. Under article 3(2) one can see both predictability and security which leads to the idea that judges should create precedents, and at the same time the last part of the article provides that “the DSB cannot add or diminish the rights and obligations provided in the covered agreement” which leads to the idea that the judge should not go beyond the letter of the law.
* Factors that can Affect Interpretation Choices/Judicial Function:
	+ Tribunal lifespan: a permeant body might be thinking long term, and thus is more likely that the judges would be more independent, and would think of their ruling as precedent. Therefore, would take them more seriously. This might lead to a Lauterpacht and Keren Alter kind of a judge.
	+ Tribunal Constituency (who has standing/ amicus): in this case there is no triadic dispute and therefore different than from Shapiro model.
	+ Available remedies.
	+ Institutional Competition.
* Legal Innovations regarding the International Criminal Court:
	+ ICTY and ICTR:
		- In both of the Tribunals, there was no direct link to inter-state conflict or agression for the porpuse of prosecuting international crimes.
		- Gender cimes were recognized as part of genicide, crimes against humanity and war crimes.
		- Joint criminal laiability was introduces.
		- They asserted that the UNSC can legaly establish independent criminal tribunal.
	+ Special Tribunal for Lebanon: the Tribunal recognized for the first time that terrorism was an international customary crime.
	+ Special Court for Sierra-Leone: ruled that childe conscription was international customary crime prior to 1996 (the date the mandat of the court began).
	+ The Office of the Prosecutor: by announcing preliminary investigation, one of the thing the prosecutor said was that it encouraged “positive complementarity” by assisting in legislation and investigation methods. This suggests that the prosecutor is a law maker, because the prosecutor office define what is “effective investigation” which states would have to adopt in order that its legal system would be respected for complementarity purposes. The Office of the Prosecutor also interpreted the meaning of “interest of justice” for starting an investigation, “unwilling or unable”, and “most seriouse crimes”.
	+ Fact-finding process: Fact Finding is usually not considered much, but is almost always one of the tasks of the tribunal. However, fact finding can be hard because the courts are usually far from where the events had happened, the proceedings are conducted in many different languages (usually at least four), there is no subpoena powers, and the lawyers and judges come from different law systems (civil law v. common law). This leave the Tribunals in a problem which lead sometime to relay on the evidance gathering of other courts.

* The UNGA as Law-Maker: the UNGA has the ability to act in many ways in which resemble law-making:
	+ - Membership Articles 4-6: Empowering and disempowering states and “state in being” – such as UNGA recognition of Palestine as observing state.
		- Article 10 provide the UNGA the ability to discuss and recommend to the UNSC.
		- Article 11 allows the UNGA to call the attention of the UNSC on matters regarding peace and security.
		- Article 13 gives rights to conduct studies and recommendation about development.
		- Article 14 allows to give recommendations about measures for the peaceful settlement of disputes.
		- Article 17 gives the UNGA the control over the UN budget.
		- Empowering and disempowering non-state actors – recognizing NGOs as observers at the UN.
		- Maker of internal law – in the wake of 9/11 and Resolution 1373, it accepted making terrorism an act of aggression and criminally prosecuting those responsible, but it rejects the idea of self-defense (also indication of the UNGA as a provider of institutional checks and balances)
		- Progressive develop of customary international law – the UNGA can be seen as though it set up customary international law – the ICJ often cite its resolutions both as interpretive and as *opinio juris*.
		- An administrative law-maker – formed the internal dispute tribunal, create subsidiary organs and work as agenda setter.
		- Convene, modernize, interpret (UNGA Resolution 66/290 on human security) and enforce treaties, including the UN Charter.
		- Promoting the “rule of law” – UNGA Resolution 66/102.
* Sex Trafficking Resolution (UNGA Resolution 66/156 – on women and girls):
	+ Identify treaties and creating linkages and multidimensional (such as in the case of human trafficking, ILO and IHRL).
	+ Make a connection between sex trafficking to slavery and thus criminalize it under international criminal law.
	+ Identify the act as forced labor and thus under the ILO mechanism.
	+ Connecting the offence to the Right of the Child human right treaty.
* UNGA interaction with other organs: United for Peace established a procedure which the UNSC can call a special session be a majority of votes. In that session, the GA may recommend that Members would take aggressive measures to “maintain or restore international peace and security”. The emergency session procedure was used in the past in the cases of the Suez Canal, Hungary, Congo, Bangladesh, Namibia, and Palestine. United for Peace is generally concern as a backdrop that might spur the UNSC to take action.
* The UNSC as Law-Maker:
* Iraq and Kuwait (1990): in1990 it was not sure whether the Cold War was over, but the UNSC ability to react to the Iraqi invasion to Kuwait was a good example for the move out if the UNSC inability to act. Up until that point the UNSC refused to invoke its powers under Chapter VII, except for two examples where in one it was clear that it had used Chapter VII and the other it was unclear whether or not it was invoked. The UNSC reaction to the Iraqi invasion under Chapter VII is important since it flags that the UNSC moved out of its stagnation during the Cold War.
	+ UNSC Resolution 660: this resolution was adopted one day after the invasion and determined that there was a breach of peace by Iraq. The resolution based on Article 39 and 40 to the Charter, meaning under Chapter VII which indicated the seriousness of the UNSC.
	+ UNSC Resolution 661: four days after Resolution 660 was adopted, Resolution 661 was adopted. Resolution 661 was much longer and more elaborated, and it determined that while Kuwait was obeying international law and the previous resolution, Iraq was not. Resolution 661 indicate that it follows Chapter VII to its entirety, not only certain articles, and that all of its provision can be evoked. The Resolution indicated the following:
		- Iraq was to be under economic embargo and Member states were forbidden from importing all of the goods that came from Iraq and Kuwait (since Kuwait was under occupation) (Article 3 of the Resolution);
		- Some commodity can enter Kuwait for certain humanitarian aid (Article 3(c));
		- The Resolution called upon all non-Member states to comply with the Resolution;
		- Sanction Committee was established.
	+ Resolution 678: this Resolution was adopted in late November 1990 and took a radical change of tone. It authorized all Member States to use “all necessary means” in order to stop Iraq – meaning authorizing the use of force.
		- In Resolution 678, the UNSC de facto outsourced the use of force – an example of novel interpretation of the Charter, which would be used later as a precedent.
	+ Iraq Respond: Iraq claimed that Resolution 678 was inconsistence with the UN Charter, since Article 43 assumes that the UN would use its own forces. However, Article 51 allows for collective self-defense, thus the use of force against Iraq was not necessarily illegal.
	+ Resolution 687: this resolution set time for the end of the Gulf War and the sanctions. This Resolution consider to be law-making since it created a UN compensation body, it is a legal entity with judicial abilities.
	+ Resolution 1441 (2002): under this Resolution the UNSC found Iraq in material breach of previous Resolutions and it was meant to give Iraq a final warning before allowing the use of force. This Resolution combined with Resolution 678 were the legal base for the U.S invasion to Iraq without a specific UNSC resolution that would directly permits it. As it seems the Iraqi argument of the open-ended permission to use force in Resolution 678 was correct.
* Kosovo (1999): Kosovo was a predominantly Muslim province of Serbia that had enjoyed a very high degree of autonomy within Yugoslavia but was later denied it by Serbia in order to avoid it from seceding.
	+ UNSC Resolution 1203 (1998): Resolution 1203 was adopted in 1998 and it evoked Chapter VII, but it did not invoke the use of force. Instead, the Resolution commanded the agreement that was reached between the parties, and moreover, it demanded the cooperation with the OSCE mission on the ground. The Resolution was not very successful, because the Russian Federation was closely allied with the Federal Republic of Yugoslavia, thus seeking for all forms of delay and avoiding taking it to the next level, meaning – invoking

NATO tried to intervene diplomatically, but when diplomacy failed, it commenced air-strikes on the regain. NATO invasion was a breach of international law, since its actions were not authorized by the UNSC.

Russia tried to pass a UNSC Resolution to condemn NATO but failed to get the votes.

* + UNSC Resolution 1244 (1999): Number of foreign ministers triyed to negotiate for a solution to the conflict in the G8 forum, since there no state have veto power, and they could consider the new forces which were undeniably present on the ground. Eventually they reached an agreement, outside of the UN, which later the UNSC endorsed in Resolution 1244(1999). This resolution is unusual because it refers the reader to another text, the G8 report. This echos upon the power of other international organization the empower them.
* Anti-Terrorism: in the post 9/11 the UNSC have taken nomerose resolutions which illustrate the claim that the UNSC is acting as a law-maker.
	+ The UNSC Resolution 1373: The Resolution was taken after 9/11was directed not only toward member state but to “all Sates” act with respect to terrorism prevention (movement prevention of terrorist, freezing funds and such).
		- Resolution 1373 deals with the principle of self-defense, but it does not stress that it is a principle under international law.
		- By referring to other UNSC resolution, Resolution 1373 stress the fact that UNSC Resolutions are a **source** of international law.
		- The Resolution provides a different interpretation for the right to self-defense in the sense that it authorizes states to act not only as a respond to an armed attack which had occurred, but also in order to prevent an attack that have yet happen. In so doing the UNSC is acting as law-making of some sort.
		- The Resolution also referred to non-state actors within states, thus punctures the state domestic jurisdiction, which was possible since the Resolution was under Chapter VII.
		- The Resolution urged states to join existing anti-terrorism treaties. In case states were not subject to anti-terrorism, under the Resolution they would be considered as acquiescing parties to terrorism.
		- The Resolution created a committee to monitor the compliance of states to the Resolution. This meant that non-state actors were placed as monitors of the process. The Resolution can be seen as an ongoing law-making action with a committee in charge of the revisions and implementation process.
		- In is unclear which part of Chapter VII the Resolution is basing on, whether it is self-defense (Article 51) or Article 42 🡪 or Article 42 ½ - which was not envisioned by the creators of the Charter since they did not give the UNSC decision-making powers since, it was established as a narrow body (as opposed to the UNGA which is a wider organ and because of that – can only give recommendations).
		- Monika Hakimi points out that even when the SC uses the term ‘specific circumstances’ one can still assert for the creation of a new law, because lawyers can always draw lines between two circumstances. Hakimi argues that the U.S action in Syria and the Council silence, the fact that the U.S was not condemned – even when no resolution was adopted to allow it use of force, could be seen as an approval to the action and create *de facto* new costume.
	+ Resolution 2178 (2014): the aim of the Resolution was to address the growing threat posed by foreign terrorist fighters (FTFs) such as ISIS and Al-Qaida. The Resolution targets both terrorist acts and their perpetrators.
		- Resolution 2178 defines a new crime and express a new security concern.
		- In the Resolution there is a linkage between Al-Qaida and ISIS in order to assert action on previous resolutions who allowed the use of force, and moreover allowed the US to be able to act without having to authorize the action in front of Congress.
		- The Resolution uses the term “call upon” to act in all necessary means while not invoking Chapter VII, however using the phrase “in compliance with international law”.
		- The Resolution is left open to question whether it can be used in regard to Syria.
	+ Resolution 2249 (2015): this Resolution was voted unanimously by the UNSC and it calls upon all Member States to redouble their efforts against both ISIS and al-Nusra Front as well as other Al-Qaeda affiliates.
		- Resolution 2249 is not a Chapter VII resolution, but in nevertheless call all of the Member States to use “all necessary means” to prevent terrorists from traveling freely and target their finance.
		- Since Iraq consented to the intervention in its territory there was no need to use Chapter VII. With that, it can also be seen as a new form of custom as it was “codified” in Resolution 1373, and thus not necessarily require the UNSC to give its authorization once again.
		- The resolution is also a sort of UNSC acquiescence with respect to certain issues – it refrained from directly engaging in authorization about an issue (the use of force), but it nonetheless authorizes some form of action by acquiescing.
	+ Resolution 2396 (2017):
		- The Resolution define certain act of terror, with the hope they would be adopted the Member States. The Resolution mention different aspects of international law such as, IHL, IHRL and refugee law.
		- The Resolution mention free speech and freedom of information and using the internet – all means through which the foreign fighters are recruit and radicalize.
		- The Resolution involve ICAO and INTERPOL in the process of criminalizing, monitoring and preventing the flow of foreign fighters while urging states to legislate and recognize such acts as criminals and to cooperate with one another and with the above organizations in the attempt to prevent travel and radicalization of foreign fighters.
* UNSC Forming of Criminal Tribunals:
	+ Resolution 827 (ICTY): due to concerns of human rights violations, the UNSC gave the UNGA an opportunity to institute a Commission to investigate the situation. The ICTY was established in accordance to UNSC Resolution 827 and the innovative aspect of the Tribunal was that its mandate considered human rights violations as a continuing threat to peace and security. The Tribunal received primacy over the national courts for the crimes in its mandate; another reason it seems as a controversial is that it was established under Article 29 (subsidiary organ of the UNSC) but it is an independent body.
	+ Resolution 955 (ICTR): Rwanda was a member of the UNSC at that the time and voted against it because it wanted to preserve the right persecute high-level perpetrators and enacting the death penalty when wished. Thus, they did not accept the primacy of the tribunal. The death penalty was out of the question because it would have meant the loss of European support because of their treaty commitments which prohibited the death penalty. The record of this tribunal was unexpectedly good, and it convicted most of the people it indicted, although its cost was enormous.
	+ Resolution 1757 (STL): the Lebanon tribunal is uniqe since under its mandate its jurisdiction is to ajudicate ONE event – the assassination of 23 people, amongst them the Lebanis Prime Minister, Hariri, with was done with regular guns. Another special featcher is that it applies Lebanese laws. The Lebanese Parliament refused to ratify the institution of the tribunal, however it was nevertheless instituted since the mandate specified a specific date that the Tribunal would be established, even without ratification from the Lebanese Parliament. The Tribunal also uses international law, since it ruled that terrorism constitut customary international crime offence. In doing so it based its ruling on the UNSC and the UNGA previouse resolutions regarding terrorism and crimes constituting terrorism (objection that the definition has to be applied retroactively, apparently against the principle of *nullum crimen sine lege*).
* Arguments Against the SC Acting as a Law-Maker:
	+ The “law”/policy is being constructed in an undemocratic way. Thus, it is better to bring those ideas to the GA and give one-state-one-vote.
	+ Treaties are the best way to pass those ideas – it does not bind those who does not wish to ratify, solves the representation problem. However, the downside is the need to use the lower common denominator, it takes a lot of time, and there is a need for state ratification for action to be taken. Therefore, might be easier to use the SC.
	+ No judicial review over the actions of the SC (the Libya – *Lockerbie* case might hint about the ability of the UNSC to act as a judicial body with the ICJ willing to hear merit in the case, even though the case ended in compromise between Libya and US/UK).
	+ UNSC acting as a judiciary body – Resolution 687 is an example for this claim, the Resolution created the UN compensation body – the Council created this body by ‘law’ and gave it judicial abilities.

* **Economic Development**:

Background: Chapter XI of the Charter is focused in economic development. The articles under Chapter XI are characterize as being aspirational and softer in the language than of Chapter VII. Less obligatory in nature, while suggesting a format for obtaining the goals set. The vague nature of Chapter XI is due to the fact that the drafting states did not want to committee for the development of other states. They wanted that the development of the Global South to be done in the hands of the International Financial Institutions which were negotiated in the Bretton Woods in 1944. The US and other states who created the financial institution had a vision for the way in which the market would be structured and create the institutions in a way that would make the developing states to build up their markets in their image.

* Difference between the UN and the Monitory Organizations:
	+ At the UN the Member states representors are diplomats, while at the IMF, World Bank and such, the representators are the state finance minister, central bank representatives – those who know about finance.
	+ While the UN is good in identify good ideas, it is not the ideal place to execute them – the financial aspect of the issues that interest the UN often makes it impossible for the UN to actual act in the manner (according to sir Richard Jolly).
	+ The UN normative framework in of moral authority rather than one of actual action (according to Christine Lagarde – former IMF governor).
	+ The US and others who created the International Financial Institutions had a vision regarding the structure of the market, thus create the institutions in a way in which the development countries could build up their markets as they did.
	+ The working framework of the financial institutions are based on **Goals**, which is an American concept that was transferred to them.
* The Millennium Development Goal Mechanism (MDG): the creation of the MDG in 2000 seemed a very ambitious action – having 8 goals in 2000 seemed something almost impossible to actually achieve in the roughly 75 very poor countries. The MDG was a novel way of thinking and acting and its first and foremost goal was to tackle **poverty**. Kofi Annan office was in charge of the MDGs. The MDG considered to be working very well, which led to the question whether the UN was not ambitious enough. Moreover, Member states wanted themselves to be in charge of the MDG rather than the SG office. Therefore, the UNGA approved a resolution which incorporated also the mission to fight climate changes. Afterward the SG instituted a high-level panel of experts who produced reports on their findings. However, the Member states and the UN did not act in accordance to the reports since they wanted to be in charge of developing the goals. This led to negotiating the Sustainable Development Goals (SDG).
* The SDG: while negotiating on the SDG, member states kept on adding ideas, which resulted in 17 goals and 169 targets.
	+ The biggest different between the Millennium Development Goal Mechanism (MDG) and the Sustainable Development Goals (SDG), is that the MDG was well organized with goals and ways of measuring their successes, however they had no working group and the office of the Secretariat General really managed.
	+ The SDG developed in a very different way from the MDG. The SDG were born as a result of the Brazil 20+ conference and due to the success of the MDG with respect to economic growth. Therefore, it allowed the SDG to adopt bolder resolutions.
	+ SDG Criticism:
	+ It was wrong to try to please everyone and including all of the agendas – it created too many goals and targets.
	+ The SDGs are extremely expensive: it would take 3 to 5 trillions dollars to be able to achieve all of them, between private and public funding, and there is no way the UN will be able to supply such a ginormous amount of money, since UN funding comes as member states choose.
	+ **GOAL 16** was very controversial, since it infused securities goals – which are usually limited only to sovereign states and in the states mined they should not be part of the package.
	+ The SDG and the MDG are not legally binding states.
* The Sri Lanka Case: reasons for the inadequate action taken by the UN:
* The crisis was soon after the Libya crisis, who was at of itself not a great pride for the UN thus they were concern with the right way to act.
* The UN had to respect the Sri Lanka sovereignty, especially because of the importance and the role of sovereignty in the Asian culture.
* Both India and China, important powers in the region has their contrasting stakes in the conflict. India advocated for a caution action by the UN. China, as permanent member at the UNSC was close to the government, and thus did not want the UN to get involved.
* Lack of a political will of member states – the issue was mainly about sovereignty rights, an issue that the Member States did not want to deal with since some of them were dealing with it at home.
* The Petrie Report is a characteristic example of an attempt by the UN to pretend to hold itself accountable for the major failure in Sri Lanka. It lacks specific provisions on what to do, the damage done by the UN, the reparations it needs to pay, the people who need to be fired and so on. This is an example of the largely ineffectiveness of these kinds of reports. The reports are viewed as more of a puppet process than an actual recognition of responsibility on which the UN is going to act and make changes for the future.
* **Internal Matters: Financing and Secretariat**:
* The Secretariat General: the SG has its own Chapter in the UN Charter. The SG has sort of a dual role, it is both an administrative role, which gives the SG wide range of authorities, and acts as a commander-in-chief for the whole UN – from the ambassadors to the peacekeepers. The SG is the leader of the secretarial and sometimes speaks on behalf the whole UN. The sources of the position:
* Article 99 of the Charter provides that, the SG can, under its discretion, inscribe to the agenda of the UNSC any situation that he/she believes threatens the maintenance of international peace and security. The UNSC would usually take under its consideration this referral.
* Article 100 of the Charter is the impartiality clause for both the SG and the Secretariat staff. While Article 100 instruct the staff to put the UN interest over their own countries, in reality, they are appointed by their own Permanent Representatives. The department are being held by the countries, such as Russia in the counterterrorism, china economic affairs. Professor Malone criticize Kofi Anan for this division since he believes it caused for disperse of his power to the states. Moreover, Article 100 also enabled the UN to bring claims for damages for the person itself such as been done in the *Reparation case* and it used as an imply power to act as a state.
* The Chinese Translators Case:

Background: the *Chinese Translators* case is an raises an interesting question of actual and perceived independence of the Secretariat which was brought up to the UN Administrative Tribunal (UNAT). The case dealt with the question of representation three Chinese translators in the Department of Conference Services who wished to be appointed in a permanent status of UN employees. The Chinese government did not wish for that (the background for the denial was due to their opinions on the happening in Tiananmen Square). The Office of the SG replayed to the translators, that since the service aimed to assist the Chinese delegation, they find it hard to appoint translators who might antagonize each other over political views. The UNAT held that, the SG should not have asked for the government decision in order to renew the contracts and that the decision not to renew the contract was a contrary to the interests of the UN, incompatible with Article 100 of the Charter. The UNAT also ruled that the decision to refuse the request of career appointment **exceeded the limits of the SG discretion**. At the end, the UNAT decided that the translators should have been able to keep their jobs, but the Secretariat can nevertheless choses to compensate them instead of hiring them.

* + Case implications and afterthoughts:
		- The case set a precedent and made it quite easy to let personal go when there are the slightest grounds for termination.
		- Damages are easier to provide rather than rehiring someone.
		- Staff association is a good resource to advocate cases at the UN.
		- The case created some sort of precedent that allows a petitioner to receive compensation through the UNAT.
* The ICJ ruled that the SG, by forming the UNAT had created a binding tribunal which has the authority to bind the SG decisions.
* The formation and establishment of the ICTY was done by the UNSC after the SG filed a report on the issue. There is the opinion that the SG can form a subsidiary organ, a binding tribunal, following the establishment of the UNAT.
* Financing the UN: The UNGA approves the budgetary arrangements, and costs are borne by members (Article 17). This is done by a 2/3 vote (Article 18; practice). This leads to *binding obligation to pay* (*Certain Expenses*). Countries with more than a certain amount in debt lose their vote (Article 19) automatically (practice). This gave the UNSG the assurance that “he indeed presides over an entity that is capable of acting in many respects like a state,” including the power to tax.
* **Membership**

The thesis is: Admission to the UN as a member is an important matter, although a state may be recognized in accordance to the *Montevideo Treaty* (which is customary international law), recognition by the UN provides a state with privileges (such as immunity and ability to join other IOs). Membership is a basic constitutional characteristic of any intergovernmental organization. The UN Charter set conditions for membership in Articles 4-6. Article 4(1) reads that membership is open to all “peace-loving states” which accept and can, and are willing, to carry out the obligations associate with the purposes of the UN. Article 4(1) is a *de facto* additional criterion to the Montevideo criteria. Article 5 allows for the UNSC to suspend membership, and Article 6 allows the expulsion of a state if it “persistently violated the Principles” of the Charter. The UNGA has the power take all of the actions of, acceptance, suspension, and expulsion, upon the recommend the UNSC.

* Importance of Recognition: enables a state to enter into international relationships with other states – either objectively, the power is recognized by the people, or subjectively – other states recognize other states as such.
* Membership Agenda:
* The push toward statehood leads to a growing number of states;
* Politics: the UN desires to influence states thus:
	+ Hesitate to expel members (Libya and Iraq)
	+ Allows successions (Russia)
	+ Use recognition as a stand-in for formal statehood criteria (Slovenia, Croatia, Bosnia-Herzegovina)
* Restrictions on Members Admission: the ICJ opinion in the ‘*Condition of the GA for the Admission of State’*, ruled that, according to Article 4(2) of the Charter, the GA needs to receive the UNSC recommendation prior to admitting a member. The ICJ ruled that the UNGA cannot act on its own since it has to obey the text of the Charter. Moreover, the ICJ ruled that the when the UNSC considers a state it cannot do so in the fashion of a “package deal”, it has to consider each state independently. The dissent opinion was in the view that questions about admissions are inherently political and thus the UNSC can use political deals.
* Kosovo: Kosovo has been recognized by 111 states. In its Declaration of Independence it stated that it intend to respect human rights both in accordance with the UN and EU standards the Kosovo declaration is a good example for how sovereignty has changed in the past few years with the rise of IOs and with them gaining more prominence. In its declaration Kosovo made an indication that the case of its recognition was not meant to be a precedent. This was in order to calm the fear from the movement of secession.
* Palestine: Palestine was recognized by 136 states. Part of the story about the US approach toward Palestine is based on Reagans’ action in Lebanon during the revolution in the attempt to stabilize the region as part of keeping the interest of Israel and its survival. For many years the Palestinians tried to get accepted as a Member State to the UN. In 2012, the UNGA changed the status of Palestine to an Observant State. This new status enabled them to join the Rome Treaty and be part of the ICC since it partly recognized it as a state. The recognition by the UNGA also followed the Palestinians joining the UNESCO. Due to this acceptance the US decided to withdraw its membership and funding from the organization (the US does not recognize Palestine as a State). This could explain why other organizations did not follow the path of UNESCO (although the Palestinians are members of different multilateral treaties such as the ICCPR the Torture Treaty and more).
* **Counterterrorism and Nuclear Nonproliferation**:

Background: terrorism and counterterrorism take a big part of the UNSC agenda, although it does not affect as many lives as other things that happens in the world. This is due to the fact that leaders fear terrorism as it challenges the notion of the sovereignty of the states in many aspects. Terrorism leads to overreaction in few ways, as Prof. Alvarez have put it:

* + - A broad use of force against states and non-states actors;
		- Defining new domestic crimes by the UN;
		- Attempts to root out the problem by limiting the ability of terrorist to move freely and move money by developing new methods to prevent money laundering.
* Problems in Counterterrorism: the UN has a problem with defining the term “terrorism”, especially at the UNGA due to prefund disagreements on what does the term includes (freedom fighters paradigm). 9/11 changed everything since it targeted the most powerful government.
* UN respond to the problem of definition: the SG High Level Panel on Threats Challenges and Changes of 2004 came up with a working definition (Malone Book p. 283), but this definition was not accepted by the Member States.
	+ UNSC Resolution 1566 (2004): the UNSC adopted Resolution 1566 on October 2004. This Resolution was endorsed and appreciated by Member States. The Resolution included in the definition of terrorism acts such as hostage taking and made clear that those acts are taken are aimed at causing a “state of terror in the general public” in order to “compel a government or an international organization to do or to abstain” from tacking an action.
	+ UNSC Resolution 1373 and 1540: these Resolutions are quasi-legislative resolutions; they are obligating states to take measures against terrorism and creates Counter-Terrorism Committee to deal with terrorism (CTC). The CTC was composed of the UNSC member states and its role was to conduct terrorist list (this was a problem since there are a lot of people with similar names – leading for arrests of people who had no connection to the terror organizations and such). **RESOLUTION 1540** acknowledges the NPT and recognizing its gaps and wish to fill in those gaps. The Resolution mentions that the IAEA has only made RECOMMENDATIONS, therefore, the UNSC decided to create binding provisions under Chapter VII of the Charter. This is the reason why this resolution is considered to be quasi-legislative (the Council has used the tern ***decides***). By doing so it presumes the legality of an existing regime (extended it beyond the party to the treaty), added to the treaty, and gave different definitions and decisions.
* Nuclear Nonproliferation: the P5 were concerned that they would lose their technological advantage of nuclear weapon, and so the Nonproliferation treaty is between states who have nuclear capabilities and those who does not.
	+ The problems of the NPT:
		- Weak enforcement mechanism;
		- Easy to secede from the treaty;
		- Create nuclear capacity is not that hard.
		- The developing countries complied with the agreement and gave up their nuclear capabilities but feels that the P5 did not comply with their end of the agreement (assist with nuclear energy and for peace purposes).
	+ The Iran deal: UNSC Resolution 2231 is a resolution which endorse the Iran deal (JCPOA) who was reached outside of the UN by the P5, Germany, the EU and Iran. According to the agreement Iran would stop its nuclear enrichment program in exchange for the lifting of the economic sanctions which were imposed by the UN, U.S, and the EU. The resolution is innovative since it has a clause which provide any state who feels that one of the treaty members is not complying with the regime, to unilaterally terminate the agreement and imposing back the sanctions within 30 days, unless the UNSC decides otherwise. This Clause gives great power to Germany and Iran who are not a P5 members. Although Trump pulled back from the agreement, the agreement is still intact, since Trump did not terminate it by using the mentioned clause.

* **Sanctions**:

Background: Article 41 of the Charter allows for sanctions to be impose in three ways: (1) diplomatic; (2) economic; and (3) individuals. Sanctions are a way to achieve leverage to promote a certain goal. It mobilizes shame (South Africa) and encourage a bottom-up change (Oil for Food program). Sanctions consider to be the first step before the authorization of the use of force.

* Criticism of using sanctions:
* Produce great and grave unintended consequences to the civilian population.
* Sometime ineffective. (story about Canada and the push for Panel of Experts to investigate the situation in Angola).
* Easy compromise when the UNSC does not agree on the use of force.
* Change in sanctions: there has been a change in the way in which sanctions are imposed, and there is a shift toward comprehensive economic sanctions – smart sanctions. This is the resolute of the 12 years long Iraq sanctions which devastated the Iraqi economy and affected the poorest population, those who had nothing to do with the reason imposing the sanctions. The shift is due to human rights violations and humanitarian reasons. Ironically those smart sanctions turned up causing human rights violations as well – *Kadi* case.
* The Kadi case: the main issue in the Kadi case was the sanctions fairness. The court of first instance ruled that the UNSC can violate ‘ordinary’ human rights, with that the court suggest that if the UNSC would have prevented Kadi rights permanently – this would have violated *jus cogens* rights and thus would be illegal.
	+ In Kadi II, the Court ruled that the UNSC was not required to comply with the provisions of the ECHR, but European states were; thus, since Kadi was accused of terrorism and the sanctions had become a more permanent measure, the Court ruled that his right for due proces was violated.
	+ In Kadi III, the Court ruled that the UNSC have to take action, and lift the sanctions imposed on Kadi since he did not have a chance of a due process in front of the sanction committee.
	+ The OMBUDSPERSON was able to take many people off the sanctions list, and the US did not challenge this results. The Ombudsperson achieve the results it did since the UNSC had been humiliated by the decision of the ECJ and needed a way to get out of the listing system.
* Arguments against “Smart Sanctions”:
	+ Targets the wrong people – sometime mistakes are being made (*Kadi*).
	+ Intervention in nations administrative law.
	+ Inability of the listed persons to contest the decision (causes infringement of right such as property and freedom of movement).
	+ No proper mechanism for delisting.
	+ Stigmatize individuals.
	+ Faulty judiciary system – the sanctions are imposed without proper evidence the members of the committee are not independent and the “defense” does not have access to the material.
* Haiti (1993): Haiti went to election under the UN voting supervision and the legitimate elected government was overthrown in a military coup. Therefor the UNSC decided to impose sanctions, and after that to intervein military. The wording of the UNSC resolution drew a lot of tension with respect to defining the situation as a Unique and Exceptional, since China feared repercussions on its own election system, and because Haiti never recognized the Beijing government as the government of China. Unfortunately, the sanction over Haiti were inefficient, one of the reasons were that the illegitimate government took control over the black market (similarly to what have happened in Iraq). After threat of the use of force against the illegal government did not work, the U.S decided to send a delegation of its best military generals (Colin Powell included) with diplomats to intimidate the regime – it worked.

* **Peace Keeping Operations and the Rule of Law**:

Background: Between 1988 and 2000, the UN peacekeeping operations went from being something primarily normative, to something of great importance which has political background. Peacekeeping operations demand a mandate, which can come from the UNGA (In the middle of 1950s’ when the UNSC was paralyzed the UNGA granted an authorization for the first time for a grand scale peace operation).

* Financing peacekeeping operations: there are a lot of negotiation between the UNSD and the UNGA regarding financing peacekeeping missions, because the mandate to establish them is in the hands of the UNSC is so varied and the UNGA might wish to cut off some expenses. Moreover. There are some states who opposes certain aspects of peacekeeping for political reasons such as China on human rights monitoring, but other P5 as well. The current peacekeeping missions’ budget is 7$ billion. The missions involve military and police advisors and the UNSG. The more complex the peacekeeping operation, the more it is contested.
* Types of peacekeeping operations:
* Peace Monitoring: maintenance of ceasefire and demilitarization zone (e.g. UNEF I between Israel and some of its neighbors). This kind of operation would usually have monitoring and reporting mechanism for ceasefire violations.
* Peacekeeping: when monitoring is no longer effective, the UN can change the mission goals and shift it towers peacekeeping – a more expansive and ambitious model. The mission is operated under Commander – usually a general from a country that perceived to be in good terms with the country where the mission is deployed. Peacekeeping operations have a very wide mandate and many elements such as:
	+ Military Personal – the military personal are the members of the army of the Member States and also from different organization (regional organization or NATO for example). The operation includes safeguarding civilians and human rights protection.
	+ Police – in charge of monitoring the military personal.
	+ Civilian Personal – both from the UN and other NGOs (for the implementation of specific projects). They can also monitor elections, mediations, election preparation, advisors, human rights monitor, humanitarian assistance, and justice reforms.
	+ Mission Creep – happen when the commander of the mission does something that goes beyond the given mandate and behind the UNSC back that was nevertheless necessary on the ground. Mandate Creep is related to when a Special Rapporteur asks to enlarge the mandate to include some aspects in order to politically back some actions which might become necessary on the ground.
	+ Regional Organization – in cases where sovereignty is highly appreciated, as it is in Asia and Africa or where military intervention is opposed as a general thing, such as in Latin America, using regional organization in the form of Joint Operations can bring the tension down and serve the porpoise of the mission. Moreover, there is an advantage to have experts who understand the region well and they are easier to deploy. Joint Operations are usually though under the UN command.
* Peacebuilding: initially intended to follow peacekeeping missions to boost the economy, create institutions and promote good governance.
* Authorization of Peacekeeping Missions: there are two ways to authorize peacekeeping mission:
* Chapter VI: peaceful means of conflict solving – the operation is not heavily armed.
* Chapter VII: the operation is more heavily armed and have greater intelligence capabilities.
* Peacekeeping Missions Principles:
* Consent: this is a pivotal to the operation to exist and continues existing, this has to do with the whole operation, from the troops to the other elements of the operation.
* Impartiality: the operation cannot take any side in a conflict.
* Non-Enforcement: the troops and personal cannot use force unless it is for their own self-defense.
* The Congo Mission: the mission was controversial. UNSC Resolution 2098 authorized the peacekeeping mission to arrest and bring to justice those who were guilty of war crimes and/or crimes against humanity (this was the first time it was specified in this manner and it was clear from the resolution that it was an exceptional mission in order for it not to create a precedent). The mission was given the mandate to use “all necessary measures” to protect the goals of the mission.
* UNSC Resolution 1325: this resolution raised the issue of gender in conflicts and peacekeeping missions. This Resolution has open the eyes of the scholarly community and at the UN about the importance of paying attention to this component. Gender is important to be address in the way of dealing with the conflict and when addressing criminal responsibility. The Resolution started the agenda of integrating women in security issues as a way to promote peace.
* Modern Peacekeeping Operations: missions are characterized as multi dimension mission; component of mostly of civilians rather than soldiers; work alongside local organizations; in case of election the mission would be also involved in election monitoring; civilian protection, either by civilians or military personal; development missions to build good will among the population; human rights protection; experts of the rule of law; large police training. Nowadays there are extremely complex missions because of the wide mandate given by the UNSC.
* **Sustainable Development**:

Background: the UN Charter does not mention Development per se, this was not an issue when the Charter was negotiated, the developed countries were not interested of having this issue under the Charter. With that, as early as 1946, the UN Secretariat began operation very smal development projects based on the request of the Member States. The UNDP was established in 1968 – today its budget stans on roughly 5$ billion.

* Colombo Plan: The first development program was in 1950 which included India, Pakistan and Sri Lanka, as well as New Zealand, Australia, Great Britain, and Canada and its goal was to provide food to the first three members (this plan is still active to this day due to a public policy mandate).
* Human Rights: The focus on human rights came about 1948 with the Universal Declaration of Human Rights, promoted by Elinor Roosevelt, and the first human right treaty was signed in 1966 the ICCPR.
* Creation of the World Bank and IMF: the UN was created after the Bretton Woods Conference, which aimed to receive funding for projects – the World Bank and IMF were created separately from the UN since it allowed the voting system to remain in favor of the big contributors rather than equal votes – as the UNGA has.
* Decolonialization influence: the biggest shift in the UN was due to the decolonialization, state started to “emerge” and those states were in the opinion that the UN should be used as a platform for their grievances due to the colonial era. The 1964 Geneva Conference is an example of such platform of the poor countries to bring their grievances forward.
* The WTO Establishment: the shift from the GATT toward the WTO gave better representation to the developing states and it helped in making them feel as part and as equal members.
* Climate Change: the issue of climate change emerged long after the UN was established. The issue of climate was raised in the 1960s’ due to the push of a Canadian oil industrialist who promoted it at the UNGA and argued it should be address. This led to the 1971 Stockholm Conference on environmental development. By 1989 states has agreed to form a Framework Convention on Climate Change (FCCC). The FCCC was a non-binding framework and it was conducted due to the ozone crisis.
* Montreal Protocol: The Montreal Protocol of 1987 instituted the binding provisions which were missing in the FCCC and complement it. The U.S was party of the treaty since it was in its economy interest (had the technology to replace HFC in refrigerators – the cause of some of the ozone problem).
* Kyoto Protocol: Dealing with climate change evolved to tackle the influence of gases on temperature rise and negotiation on the matter went on roughly a decade. In 1997 the Kyoto Protocol was signed on the bases that the developing countries were not to be punished for something that they did not do, this led for the developed countries to buy the right to pollute and the money was to invested in the developing countries for developed projects. The developing countries over exceeded this option which led the system to fail (gave to many permits) for example Canada withdrew from the protocol. In 2020 there should be talks about the protocol since it would expire by then.
* Colombia Lawsuit Targeted Climate Change: in Colombia there was a lawsuit dealing with the influence of climate change on the right of housing. The Supreme Court of Justice of Colombia issued to the government a junction obligating it to present an action plan for the reduction of deforestation in the Amazon region – the main source of greenhouse gas emissions driving climate change.
* Development as a Human Right: there is no international treaty which recognize development as a human right, this can be linked to the resistance of certain states, such as the U.S., who did not eve wan to include the concept of right to development in the UNGA resolution.
* Reasons for the absence of development treaty:
	+ The term development is incredibly broad and vague – hard to understand what it stands for – there are many issues that fall under this umbrella (such as the right for health, right for food etc.).
	+ Different of opinion with respects to what is the right approach for rights – positive rights (government have to invest money to provide them) verses negative rights (prevent the state from interfering in certain freedoms). The U.S for example recognize rights as negative obligation. Thus, recognizing the right to develop would mean a change of position that the U.S does not wish to do.
	+ Development is considered to be a collective right.
	+ No concrete enforcement mechanism – this is a base for arguing that development would be non-justiciable (this argument is not so strong since a mechanism could be created that would address this issue).

* **Human Rights**:

Background: there have been a human rights revolution (Koskenniemi dates it to the 1960). There is a question whether human rights are universal or international – whether the reason of state to have them is due to the international order, treaties that obligates them to incorporate human rights in their domestic laws or that they are acceptable universally. There were precursors to the human rights revolution:

* Protection on emissaries/ diplomats;
* Ban on slave trade;
* Humanitarian restrictions on waging wars;
* State responsibilities toward aliens (this was linked to trad and economic interests);
* Post-WWI minorities treaties;
* ILO (1919.

In the UN Charter preamble human rights are mentioned and in Articles 55 and 56, though in a very vague term.

* Post WWII Proliferation of Treaties:
* American Declaration of the Rights and Duties of Man (1948)
* Universal Declaration of Human Rights: in 1948 the UNGA passed the Universal Declaration of Human Rights as a resolution, thus non-binding. With that, some of the provisions in the Declaration are considered to be customary international law, since it can be found in many states domestic law, and thus was used by the UNGA as the basis for the resolution. Some states do not recognize all of the provisions as customary (political and social-economic rights).
* Genocide convention (1948): this was the first instance of criminalization of a violation of a human right.
* European Convention for the Protection of Human Rights and Fundamental Freedoms (1952): this convention led to the establishment of the ECHR.
* Convention on the Elimination of all Forms of Retail Discriminations (1965)
* ICCPR and ICESCR (1966)
* American Convention on Human Rights (1969)
* Specialized Human Right Treaties: CEDAW. Torture Convention, Rights of the Child, Persons with Disabilities, Enforced Disappearance. These specific human rights treaties allow due enforcement and monitoring mechanism. But also better definitions which allows for better enforcements and monitoring mechanisms.
* Global Human Rights Venues: there are many venues for human rights protection and promotion beside the UN Hight Commission for Human Rights (now the UN Human Rights Council) and the UN High Commission for Refugees. There are 10 committees under the UN Human Rights Conventions (8 of them can receive individual complaints), IOs who addresses human right protection (ILO procedures for example), NGOs and the ICC to the extent where human rights overlap with crimes under the Rome Statue.
* ICCPR Optional Protocols: the ICCPR was initially signed and ratified by small number of countries, but nevertheless enter into force after 10 years, since it reached the necessary number of signatories. The Convention lay down significant normative issues, but the Protocols give individuals the right to address the Human Right Committee and bring their complaint forward. Parties to the Protocol who ratified it are subject to the Committee decisions.
* Canada and the Human Right Committee: An American Black Panther activist entered Canada illegally and was subject to detain in Canada. He filed a complaint against Canada in front of the Committee arguing against procedural issues during the trial, the outcome of the trial, and his treatment in prison, the HRC found the complaint to be inadmissible on the issues of his detention since he entered Canada illegally, but found the complaint admissible regarding his treatment in prison (he could not receive mails fast enough and complained that they were read before he received them).
* Universal Periodic Review: this is a state driven process of assessing human rights situation in all of the UN Member States. States are reviewed every four and a half years in a systematic way – no state can escape the review and every state is reviewed which allows monitoring states progress. The Member States are taking an active role in the review in a dialogue and they are entitled to express their opinion on the state under review.
* Pros:
	+ The mutual criticism mechanism recognizes that human rights are political; there is pier political pressure.
	+ Pressure is put on the government, especially in the case of democracies, by the civil society.
	+ NGOs and observer states are also allowed to take part in the discussion.
	+ Dynamic process of law making, law interpretation and law enforcement fused together and periodically modified and revisited; it brings about the change that international organizations bring to international law and legal positivism.
* Cons:
	+ States can argue that they are working on implementing the criticism while not really acting to change.
	+ The process can be rigged – allied states can help one another during the process (take up the entire time of the per review).
	+ Lack of enforcement. There is no court designed to deal with international human rights violation – only regionals.
	+ Recommendations are relatively imprecise because of the lack of time and of intelligence, they will be vague and not specific nor going in depth in the issue, they will not be detailed and will not be practical recommendations.
* Reasons to Accept Many States: according to Prof. Alvarez the idea of accepting many states into the human rights treaties and organization, even those who do not necessarily adhere to the human rights regime, comes from the belief that participation would change these states and move them toward protecting and promoting human rights in their state. With that, the criticism is that the change goes both ways – those states might change the human rights organization – participation might have negative effect on the process (such as with China).
* The UN as Human rights Enforcer: the UN also plays a role in promoting and securing human rights based on:
* The UN Charter instruct human rights protection;
* The UN is an international legal person;
* The UN is an agent of states which are subject to human rights treaties and thus it obligates it as well;
* Subsequent practice of other UN organs;
* States cannot circumvent (avoid) their human rights duties;
* CIL evolved to this end.
* It is not the UN job to promote human rights:
* Article 55 provides that the UN shall promote human rights, but it is the state who are in charge of providing them, since Article 56 rules that the Member States should act in accordance to the Charter.
* The ICJ *Reparation* case ruled that the UN is an international legal person, however the case indicate that it is a functional right, thus it is unclear if it also has duties under customary human rights law.
* It is not inherently right that the UN is acting as an agent of the Member States.
* Subsequent practice does not necessarily indicate that the UN have human right obligations.
* No general agreement among states that IOs have responsibilities for human rights.
* States cannot circumvent their human rights duties – it is on the states to act under state responsibility to make sure the organization acts in accordance to human rights law.
* **The UNSC Roles and the ICC**:
* UNSC ICC Referral: The UNSC used its mandate to refer situations to the ICC in a strategic way. It formed the situations in ways that would exclude the ICC mandate from reviewing the actions of UN peacekeeping personal (UNSC Resolution 1422, Resolution 1487 (Libya), Resolution 1593 (Sudan)). In UNSC Resolution 1970, the date of the mandate started on February 15th ,2011 and not for example from the date in which the Rome Statue enter into force, since before 2011 some of the P5 members were friendly to the Libya government and financed Qaddafi’s regime. The Resolution passed unanimously, which was a great surprise fro everyone. However, the UNSC decided not to pay for the referral (even though it was said in the Rome Statute that referrals would be financially sustained by the UNSC). Moreover, the Resolution gives exclusive jurisdiction for the states who are not member to the ICC over its own nationals, which enabled the P5 to protect their civilians and all other non-parties to the ICC.
* UNSC Roles:
* Declerative: has the power to declare something as legal or under international law which have legal impications. Can act under Chapter VII.
* Interprtatiev: interprtate the UN Charter and international law in ways which are conviniant to its agendas.
* Promotional: promote some initiatives by making Resolutions which call on states to take certian actions.
* Enforcment: has enforcement powers, can instruct on the use of force, impose sanctions and establish criminal tribunals.
* The UNSC Normative Impact:
* The relative powers of Charter organs;
* The powers of other organs;
* Meaning of Charter tearms;
* IHL;
* Human Rights;
* ICL.
* UNSC Possible limits:
* Legal limitation: the UN Charter has its own limitation on the UNSC:
	+ The UNSC have to act in accordance with the principles and purpeses of the Charter. Article 24 provides:
	+ “(1) In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
	+ (2) In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.”
	+ Article 2(7) limits the ability of interfearing with the “domestic juris” of a state, thus the UNSC cannot act as it wish with this respect. This is subject to the exception of Article 51 which mention the “inherent” right for self-defense (also collective).
	+ Indirect Judiciary review – the UNSC may be subject to the judiciary review of the ICJ and other human rights bodies.
* Political limitations: in order to pass a resolution, the UNSC need to secure 9 votes including the P5. With that, there is always a question whether states would comply with resolutions.
* **The WHO as “Law-Maker”**

Background and main theme: in the past there were many attempts to manage the conflict between health and trade. The European countries in the 18th century feared over diseases coming from the Global South to Europe through trade. Therefore, Europe demanded the countries suffering from the diseases to contain them or it would affect the trade with Europe. Thus, it asked from its Global South trading partners to inform about the emergence of the diseases. Once a state informs about the emergence of the disease there would be put some limitation – but those limitation would be balance and not “over kill” so commerce could continue. The WHO was established, even though there was already health regulation, in order to better enforce of the old conventions. The WHO, in its preamble, made a connection between health and security. The WHO tells the story of how the world have come to think of the concept of global health and international law.

* WHO decision making mechanism: the WHO regulations are voted by a simple majority and the decisions bind states, unless they opt-out. This method is an attempt to create a better enforcement mechanism. The WHO are also relaying on NGOs when it comes to information about diseases spread resemble to whistleblowers. This is a needed mechanism since the fear is that states will not disclose they are dealing with diseases due to its potential affect on its economy.
* WHO Constitution:
* Article 2 of the WHO Constitution sets the functions of the organization – to direct and co-ordinate authority of international health work, assist governments in strengthening health services, make recommendations with respect to international health matters and so on.
* Article 18 sets the functions of the Health Assembly, Article 19 calls for the WHO to adopt treaties, issue binding regulations (Article 21-22) and recommendations (Article 23).
* Article 28 allows for the WHO Executive Board to take emergency actions.
* Problems with the Old IHR:
* Old diseases – during the Cold War, the IHRs seemed outdated and was not able to deal with real risks states were facing with such as HIV/AIDS. Malaria, pollutions.
* Obsolete concept of “maximum” measures – the IHRs left behind with outdated technology, there was a passive recipient for diseases surveillance and information only came via states. The IHRs ignored the rights of persons that were subject to quarantine and isolation measures. The protection measures on traffic and trade did not take into consideration the international and security dimensions of diseases outbreak.
* Single case reporting – the SARS outbreak illustrated the problem with failing of dealing and identifying crisis.
* Focus on biological pathogens – the IHRs did not take into consideration the dangerous of nuclear and biological weaponry.
* The old IHRs was not binding.
* The Features of the New IHR:
* Focus on risk assessments – risk events (by Annex 2) rather on a close diseases list.
* Respond to international risks to global health such as terrorism.
* Greater focus on internal health measures, not only “at the border” and thus require core public health capacities (Annex 1).
* More embedded in other international law regimes, in particular international human rights.
* Reliant on independent sources of information, as well as state obligation to report.
* Combine both “soft” and ‘hard” binding sources.
* Annex 2 of lists the actions a state must take – obligatory measures that each state must undergo. Annex 1 gives the specific guidelines for surveillance and reporting that a state needs to take in order to meet the obligations of the WHO. The question is whether the state met all of the standards of Annex 1 – therefore the role of non-state actors is important for assessing states actions and whether it meet its obligations under the WHO regulations.
* The Ebola Crisis: the Ebola crisis was the biggest blow to the confidence in the WHO and the 2005 IHRs. The outbreak exposed the organization failure:
	+ WHO Member states had largely failed to implement the core capacities required.
	+ States instituted travel band – which the WHO did not find necessary, violated the IHRs and interfere with travel.
	+ The WHO failed in responding quick enough to the epidemic and declaring PHEIC.
* Due to the failure the Assessment Panel recommended the establishment of priority plan for financing technical assistance to help states comply with the IHRs, adopt financial incentives to encourage states to notify a public health risk.
* Positive lessons learned – the Ebola crisis produce positive interaction between IOs. The WHO and the UNSC and the UNGA among other specialized organizations such as ICAO and the ILO, and even collaboration with the World Bank. It was the first time that the UNSC invoked its Chapter VII powers and declared a threat to global health as a “threat to peace and security”. The linkage between health and security now became stronger.
* The WHO as Treaty-Maker:
* The Tobacco Framework Convention: The Tobacco Convention is an example of a managerial treaty. It was constructed through the WHO as part of its functions and it is the first time that the WHO initiate a process which address an endemic and perennial threat to health rather than temporal or geographically limited crisis. The World Bank took part as well in the Convention, since in the Bank view the tobacco epidemic caused death and according to the Bank data it had affected the global growth. The Tobacco Convention is an example of the current era treaty making, experts are combining force on pressing issues.
	+ The Convention elements:
		- imposing non-threatening commitments to states with no implication on state sovereignty.
		- Article 16 enables states to comply with the Convention by continue to act as they have in the past. With that, if there is no progress with the states’ actions it could lead to a breach of the convention.
		- The Convention of the Parties (COP) can monitor the implication of the Convention.
	+ Problems and Path-dependencies the WHO Framework Convention on Tobacco: The WHO nearly undermined the treaty by insisting that states work by region, instead of by common interest. The large number of delegates and vocal NGOs made things worse. And negotiations were characterized by health ministries, thus not accurately reflecting domestic preferences. Finally, we should not be surprised that the standards finally incorporated were those already in place in the United States.
	+ The Tobacco Convention as a Managerial Treaty:
		- Aspiration to universal participation;
		- Vague/unthreatening initial commitments - The Guidelines wording uses terms such as “shell” in the Convention and is spell out in details about what states need to do in order to deal with the tobacco industry. The vague principles of the Tobacco Convention are spelled out in specifics in the Guidelines and some of them are very intrusive and cast responsibility of many state organs, it requires certain policies and due diligent when employing government officials. The guidelines of the COP and MOP became “legally binding” as can be seen in the Philip Morris case against Uruguay. The amicus brief that was submitted by the WHO in the case became part of the ruling (this is unusual). Moreover, the WHO was seen as expert opinion and is also an example on how “soft law” becomes “real law”.
		- Not usually subject to binding dispute settlements;
		- Different rights and obligations.
* The success of IOs in Treaty-Making:
* Enable repetition;
* Reduce transaction costs;
* Enable self-enforcing behavior;
* Recognition of property rights;
* Promoting issue linkage (WHO and the World Bank);
* Increasing access to information;
* Permitting monitoring of behavior;
* Allowing mediation of disputes;
* Permitting imposition of sanctions.
* Ways for IOs to harm Treaty-Making:
* Wrong IO;
* Too many players/negotiators;
* Too many issues;
* Wrong input bureaucracies;
* Wrong path dependencies.
* ICAO as a Successful Managerial Treaty: the ICAO treaty still achieve high levels of state compliance and national implementation due to several factors:
* High levels of self-interests which states have with compliance.
* The ICAO rules are often incorporate by reference to states domestic law.
* Routinizing application of ICAO standards by the market and actors who also have economic incentives in the issue.

* **Immunities and Accountability**:

Problem of Conflicting Interests: both Article 2(2) of the Convention on Privileges and Immunities of the UN and Article 105(1) of the Charter provide the UN immunity, and thus lawsuit brought against it (torte lawsuits) often fail. The immunity under the UN Charter is a functional immunity. However, the UN can waive its immunity and if done so, it would be subject to court decisions and potentially would have to pat remedies. “On the one hand there is the interest of the international organization having a guarantee that it will be able to perform its tasks independently and free from interference under all circumstances; on the other there is the interest of the other party in having its dispute with an international organization dealt with and decided by an independent and impartial judicial body.” (AS v. Iran-U.S. Claims Tribunal).

* Sources of Privileges and immunities:
* Constituent instruments;
* General multilateral agreements;
* HQ and host agreements;
* Customary international law;
* National legislation.
* General Rules of law:
* Functional Immunity for IOs in customary international law: “an international organization is in principle not subject to the jurisdiction of the courts of the host State in respect of *all disputes which are immediately connected with the performance of the tasks entrusted* to the organization in question.” (*AS v. Iran-US Claims Tribunal*, Dutch Supreme Ct.)[[1]](#footnote-1)
* Relative Immunity in U.S. law: The same immunity as governments, except to the extent that it is waived. (James v. IFC)
* UN Immunity: until recently the Secretariat argued that the UN enjoy absolute immunity, as opposed to sovereign immunity.
* Function Immunity: under the UN Charter Article 105(1) only for what is necessary for the fulfilment of its purposes.
* Absolute Immunity: *Immunity from every form of process except as expressly waived* (Gen. Conv.)
* Relative Immunity: the UN HQ agreement with the U.S does not mention immunity, but it is concerned with inviolability, which in this case extant to service of process.
* Representatives: under the UN Charter Article 105(2) the immunity is for the “*necessary for the independent exercise of their function*”. In order to bring a lawsuit against the UNSG, the UNSC would have to waive his/her immunity. Under Article 12, the UNSG can wave the immunity of an employee of the UN, and under Article 22 of an expert.
* IOs Immunity – the World Bank case:
* Article VII, section 3 of the IBRD Articles of Agreement provides that “actions may be brought against the Bank only in a court of competent jurisdiction in the territory of which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities”
* The Foreign Sovereign Immunity Act (FSIA) put limits on immunity and exclude commercial activities. The FSIA define commercial activity as “include either regular course of conduct or particular transaction; indicates need to look at **nature** not purpose of act”
* James v. IFC: the question that was raised in the James case was of IO immunity and the commercial activity exception clause of the FSIA. The majority opinion argued that IO enjoys the same immunities as States does as they evolve and change in times. In other words, immunity is not static. The majority also agreed that landing may be commercial activity as the FSIA provides, but this does not mean that all lending activities are or that all of them would stand all of the other provisions of the FSIA. The dissent opinion claim that the immunity is static and should have been absolute. Therefore, the World Bank can try and amend its statue and change the waiver clause regarding its activities in providing loans. The Jams is a significant case since it made the IFC to appear in front of the court, instead of the U.S State Department showing up and claiming immunity (such as in the Haiti Cholera case).
* Accountability in Practice: generally, there is little practice on IOs responsibility, the ILC had created the Draft Articles on the Responsibility of International Organizations in 2011 (DARIO) which tries to assert IO responsibility and state responsibility for an internationally wrongful act in connection with the conducts of an IO.
* Sri Lanka: the political around the region mad it impossible for an action to be taken (conflict of interests between India and China). In 2013 the Rights Up Front Report was issues by the office of the UNSG which criticized the UN for the failures in Sri Lanka. The Sri Lanka affair was a sort of a road map for following events. It suggested that the UNSG should have personally gone and speak to the UNSC President to urge for an action – preferably deploying military personal another suggestion was for the UNSG to take responsibility and travel the country and condemn what happen.
* Rwanda (1994): one of the problems with reacting to the happening in Rwanda was due to the fact that at the time the massacre it set in the UNSC. One of the tragedies was the miscommunication between the field and the NY office, while Dallaire sent cable in January stating that the Hutu extremists were planning a genocide, Mr. Bubu, who was the UNSG representative on the ground, sent cables claiming that everything was fine. The failure of the UN in Rwanda led to the establishment of the ICRT.
* Srebrenica (1995): the problem with the mission to Srebrenica and the failure to act was due to the fact that the mandate of the peacekeeping mission was unarmed, and they were easy to target. There was a misunderstanding and a disagreement between the UN and NATO, because the UN supported the Dutch request for NATO airstrikes, but NATO was not convinced that they should for fear of ending up killing many civilians.
* DARIO: the DARIO were largely a consequence of the Rwanda genocide in the sense that the ILC wished to create a responsibility mechanism that would apply to both IOs and states acting with IOs. This aspect is particularly relevant for peacekeeping operations, which are authorized by the UNSC, but are backed by states, who have the money and the courts to prosecute wrongdoings under international law of peacekeeping personal. States consider the DARIO to be controversial, since the whole purpose, sometime, in the creation of IO, is to avoid state responsibility. Another criticism to the DARIO is that it treats IOs as if they were states. The DARIO could end up being considered as customary international law, similarly to what have happened with the Draft Articles on State Responsibility.
* The Haiti Cholera case: Haiti and the UN have signed a State of Force Agreement (SOFA) which is a standard thing in these circumstances. The aim of the SOFA is to balance between the UN privileges and immunity (Articles 15, 50 and 52) and Haiti sovereignty by ensuring the protection of its rules and regulations (Articles 5 and 23). Article 54 deals with third party claims against the MINUSTAD and exclude claims that might arise from “operational necessity”. Article 55 also deals with ways to settle disputes which rise due to the mandate, who are not part of “operational necessity” – but does not give the Haiti citizen right to file suit under it.
	+ The Cholera outburst: the UN argued that the issue was of “policy claim” and that the claim against the actions of the peacekeepers (who arguable were the source of the Cholera in Haiti) would put the entire mandate into scrutiny and that “political and policy matters … are not receivable pursuant to Section 29 of the Convention on Privileges and Immunities”. Moreover, the UN claimed that the claims fall within the scope of private law claims since it did not rise directly from a breach of the contract or use of facilities. The case is waiting for the U.S court to decide on it.
* Immunities and Human Rights: there is a growing approach that recognize that failure to reach accountability with respect to negligence and/or wrongdoing could leas to human rights violation – meaning, immunity has been put into question. In the *Manderlier* case (1969) the Belgium court ruled that in case where there is no place for a complaint to be heard and submit a dispute with the UN, this might seem as the UN is not keeping with the principles proclaimed in the United Declaration of Human Rights. This view might put immunity into question. Some have called for a sort of compromise between accountability and immunity. This might mean that remedies would not be as great as in other tort lawsuits, but that the timing must be expedited in order to avoid the deterioration of the situation and that certain aspects of peacekeeping remain protected by immunity. Absolute immunity might remain in exchange for an assurance of reparations.
* *Lex Specialis* Accountability Regimes:
	+ Inspection panels (World Bank);
	+ UN Administrative Tribunal/ ILOAT;
	+ UNMIK Human Rights Advisory Panel (Kosovo);
	+ Ombudsperson procedure in the Al Qaeda UN Security Council Sanctions Committee;
	+ World Bank’s Anti-Corruption Regime.
* **Reform:**

Background: With the era if decolonization about 60% of the Member State do not agree with the focus of the UN on peace and security and would wish it would do more on development. Most reform agenda are getting pushed back by other member states. The UN have become unreformed place and those who wish that the UN would reform starts to “starve” the it financially – such as the U.S.

* History of Reforms: The history of IOs shows that major changes and developments have happened as a consequence of the two WW – multilateral actions are usually creating by concentrating economic and human capitals in one organization after a huge disaster. A global multilateral organization is clearly a huge leap and a huge challenge: some argue that the future lays with regional organizations, such as the European Union, because they are much easier to structure and to keep going (because of shared interests and ideals).
* Climate Change: the issue of climate change is arguably the most pressing matter right now. However, due to the currant global leaders right now, it is unlikely that the UN will be able to tackle the problem any time soon; moreover, it is unlikely that the UN will address the issue in a significant way in the UNSC (a UNGA resolution might be more likely to happen, but it will have a lower impact). Other organizations, such as the World Bank, the ILO, the WHO or the G-8, might try to set an agenda (G-8) or to tackle some set of specific issues within their competences. Regional organizations might have high stakes concerning the issues so they might be inclined to attempt to try and address the problem.
* Individual Rights at the UN: the SG has relative freedom with respect to human resources policies governing the personnel of the UN. In 2014 Ban Ki-moon responded to the growing support of marriage equality, in particular the need to ensure that same-sex partnership or marriage would be recognized by the UN. Thus, Ban Ki-moon promulgated a Bulletin with a new approach (expanding the one from 2004) to allocation of staff benefits. This issue may seem as symbolic, but it has a broader implication (the Russians try to pass a vote against it in the Fifth Committee unsuccessfully) and therefore we can see the influence the organization have on the formation of some issues even if the issue was an internal administrative decision.
* UNSC Reforms: there have been multiple proposals for the UNSC reform, mostly because of the structure of the Permanent 5 – since states find it to not represent the current world order. The developing countries feel they lack the block power given to the industrialized states – the Global North (and China). In 2004-2005 there was a SC reform proposition by Brazil, India, Japan, Germany, and South Africa to allocate them with a permanent seat. Brazil and Germany have good claim for the status change, they are both strong emerging powers each in its region. Eventually this reform was shut.
	+ Goals of UNSC Reform:
	+ Increase representation;
	+ Change/ increase veto members;
	+ Increase transparency;
	+ Increase participation;
	+ Enable more checks to the UNSC;
	+ Reduce UNSC paralysis.
* **The World Bank**:

History and Background: The World Bank was formed in the Bretton Woods Conference in 1944 along side with the IMF and the World Trade Organization. The three organization, IFI, were envisioned to collaborate with one another. The IFI have always been skeptical about the control of the UN and interference with their work, especially until the year 2000. In 2000, due to the Millennium Development Goals (MDG) the relationship became closer since the IFI found them to be in their interests as well.

* The World Bank Mandate: The Bank was created as an International Bank for Reconstruction and Development and its mandate was initially supposed to be post-war reconstruction of the European states. But, after the move toward decolonization, it became clear that the Bank would have to assist in the new states development. This symbolized the beginning of the era of technical assistance and cooperation. The idea behind technical assistance, was to assist the developing country to become like the West, while the Bank was experimenting in technology means that would might help this goal.

The Bank formed four armed:

* IFC: The Bank created subsidiary bodies aiming to assist in different ways. The International Financial Cooperation (IFC) aim was to push for private investment support, with public investment to help the newly independent emerging countries develop their means of production in the most productive way possible.
* IDA: The International Development Assistance was created in 1962 is another subsidiary body example which was created due to the Global South countries request for help in addressing their economic path, so the IDA was formed to provide low interest rates loans.
* MIGA: The Multilateral Investment Guaranty Agency was formed in the 1980’s and allowed states to receive loans from the private sector for specific development projects.
* The Bank Letter of Agreement Interpretation: the Bank is a capitalist organization and is led by Western influence. The Bank interpretation of the Letter of Agreements is that it can act and do what ever it wishes, as long as it is not prohibit by the Letter of Agreements. The Bank see the Article of Agreement as a living constitution, and thus there is no need for amendment. Article IX gives the interpretation authority to the Executive Directors which allows the Bank to think it is independent from the control of the UN and its political influences.
* “Due Regard Clause” – this clause is the steppingstone of the Bank which allows it to reform its agenda with regards to providing loans at a low interest rate.
* Political Activity Prohibition – according to the Bank lawyers, Article 4(10) allows the Bank act on issues closely tight with economic issues, this allows it to get involved with education for women for example.
* The Relationship Between the Bank and the UN: It can be argued that the Bank is a UN specialized agency in the sense that there is a signed agreement between the UN and the Bank, although the agreement is quite unique, since it gives the Bank a high degree of autonomy and independence and it allows the World Bank to act like a regular bank, with no political constraints. **Article VI**[[2]](#footnote-2)of the Agreement regulates the relationship with regards to UNSC resolutions who falls under the umbrella of Articles 41 and 42 of the UN Charter. **Article VIII**[[3]](#footnote-3) allowed the World Bank to ask the ICJ for advisory opinions, the authorization to do so is given by the UNGA.
* The Bank and the UNSC – Sanctions over South Africa: there have been multiple instances of tension between the Bank and the UNSC on the issue of sanctions. The Bank refused to follow through with the sanction regime over South Africa claiming this was a political issue and under the Bank Letter of Agreements its “political clause” prohibits it to take such measures. In a different case when the UNSC Resolution imposed sanctions upon a different state, and demand that the financial institution would not provide with assistance, the Bank explained that it was not bound to the UNSC Resolution. However, since its Member States are, and they have to act in accordance with it and thus the Bank would follow as well – but not directly. This argument is based upon Article VI to the Bank Articles of Agreements. The Bank argues that its mandate allows it to act only in accordance to economic interests – separate from political interests.
* The Bank as a Standard Setter: the Bank have transformed its goals, from a post WWII IO which aim was to assist in the rebuilding of the broken European countries, to an organization which provides with loan for the developing world, to what it is today – influencing human rights through the lens of economic development. The Bank see some human rights as essential for financial development, such as women inclusion, indigenes people, people with disabilities and more, however, some other human rights are seen by the Bank as political and are not promoted as others (Alston criticism).
* Doing Business Indicator: this is an example of how the Bank influence the “law” even it is not done in a direct manner and not as part of Article 38 legal sources, but it has a normative influence even though it does not reflect treaty, custom, or *opinio juris*. The criticism on the report is that it does not take into account external influences such as war and that the country is deducted into a number which in an anthropology view is bad.
* The Bank Operational Standards:
	+ The Bank Standards influence:
		- Employees action;
		- Bowering State – the Bank impose provisions which become part of the agreement with the Bank, thus can be seen as treaty. The state is bound to act in accordance with the standards;
		- Other IOs and NGOs - tend to see the Bank as a standard setter which they wish to follow.
		- Customary International Law: The Bank’s Standards might end up affecting and influencing the sources of international law and the practices of states and of other agents, which is the same thing that can happen with General Assembly resolutions (which are not legally binding *per se*).
		- Environment and Indigenes People: the characteristics of the Bank OP focuses on environment assessments that the project might cause, and it effects the Bank when choosing projects. Indigenes people assessment of the Bank is an example of how the Bank engage in a political issue and intervening with state sovereignty. The Bank my recognize indigenes people even if the state does not think that a certain group is such, but the state has an incentive to recognize them as well in order to receive the money for the project. Moreover, article 22(a) provide that the bowering country shall address the issue of indigenes by domestic legislation.
		- Treaty interpretation: such as the ILO Convention on Indigenous people.
		- Might lead to “hardening” “soft” laws.
* The Bank Inspection Panel: The Inspection mechanism of the Bank was a result of the criticism after the India dem. The panel consists of independent employees, their job is to receive complaints from beneficiaries and those who are affected by the project that the Bank is sponsoring. The mechanism allows, while the project is still running, to receive remedies and change the project in a way which would address the complaint. The inspection mechanism opinion is not binding. This is managerial process in the Bank.
	+ Effect on States: when a state receives a lone from the Bank, it become subject to the Inspection Mechanism. The mechanism is also a tool to follow the state compliance with the agreement.
* The Bank Anti-Corruption Regime: the Bank Articles of Agreement requires it to make arrangements to ensure that the proceeds of Bank finance are used for their intendent purpose and with due attention to economy and efficiency. The Bank see itself as holding a ‘fiduciary duty’ (Article 5(b) of its Articles of Agreement). Thus, the Bank formed a sanction board in order to help prevent and combat fraud and corruption in Bank Group projects and programs. The sanction practice is linked to Wolfenson, the Bank president, and its 1996 speech against corruption. The sanction board can be seen as sort of Global Administrative Law (GAL), since it effects the borrowing country, IOs and their subsidiaries practices while also piercing state sovereignty.

The Bank Regulate Corruption in the following ways:

* + Disclosure – the Bank encourage anti-corruption by transparency and sharing information with other development banks, states and so on.
	+ Whistle-Blowing – the Bank encourage the use of whistle-blowers to detect corruption and also encourage states to take part in this process.
	+ Blacklisting and encourage others to do the same.
	+ Defining forms of corruption similarly to case laws – the Bank publish its decisions and rational of imposing sanctions. The cases tell how facts meet law and allow others to act in accordance.
	+ Defining other “best practice” on how to blacklist and sanction, prevention, how corporate practice should be with respect to subsidiaries etc.

The Bank practice of disclosure of the process is not the same as a full-length criminal trial, although the process is based on due process – it allows the sanction company to apple and gives its arguments before sanctions are being imposed. But by the method of blacklisting, it can be seen closer to the UNSC counterterrorism methods. By acting this way, the Bank is trying to change actor’s behavior toward the “rule of law” and make them more compliance and accountable for its demands. In this way, the Bank is promoting “good governance”. The Bank is attempting to create deterrence since it sees the economic benefit of fighting corruption and strengthening the “rule of law”.

There are five sanctionable practiceswhich the Bank consider when deciding if there is a case of corruption (this apply for itself, its employees, companies and individuals):

* + - Corrupt practice: the offering, giving, receiving and/or soliciting a bribe;
		- Fraudulent practice: a misinterpretation to obtain a financial benefit;
		- Collusive practice: an arrangement between two or more parties for an improper purpose;
		- Coercive practice: to impair, to harm or to threaten any party to influence their actions;
		- Obstructive practice: anything that might hinder a World Bank investigation into any of the above practices (same as obstruction of justice).

The Bank Anti-Corruption promotion of the “Rule of Law”:

* + - Equality: equal application of the law.
		- Publicity: entitlement to public law that is accessible, intelligible, clear and predictable and publicly administrated by courts.
		- Legal bound decisions.
		- Good faith exercise of power in accordance with purpose for which powers were conferred, without exceeding the limits of such powers.
		- Protection of fundamental human rights (including no crime without law, right to a fair trial, liberty, security, property).
		- Available means to resolve civil disputes without prohibitive cost or delay.
* **Challenges Posed by the IO Era**:

The thesis is: although these organization are not delegated with so much power, or at al – such as constitution – they are nevertheless influence the law subverbally. IOs changed the traditional way to see the sources of law – beyond the source of Article 38 to the ICJ Charter.

The basic action taken by the UNGA, UNSC and WHO, for example, challenge the basic understanding of legal positivism, the legal sources of international law. The law-making activities of these organization cast a doubt on the proposition that international law is established only by states and with their explicit consent.

* The era of IOs is characterized by:
* Changes in treaties: more multilateral treaties; better mechanism for interpretation and compliance; hierarchical relationship between different treaties contrary to the VCT that claims that all treaties are equal.
* Change in custom: in order to identify custom, there is no need to conduct a survey among all of the countries to discover *opinio juris*, today more and more judiciary bodies are relaying on UNGA statements for example (the identification of child soldiers as customary international criminal law was done in this fashion).
* Change in general principles of law: tendency to use vague terminology such as obligations and guidelines who are used as a method of explaining what the treaty is all about (similarly to the Tobacco Convention). These vague terms create a spectrum that moves from “soft law” or “informal law” to “real law”, but it is unclear which is which. Are obligations more binding than guidelines? It is unclear.
* The Challenge of State Primacy and Consent:
* IOs are now taking active part in creating, interpreting and enforcing treaties and obligations in different ways. This have led to the fact that state consent basis of international law is constantly attenuate as IOs are exercising their implied powers to obligate member state to act in a certain way and as states are failing to opt-out of such mechanisms.
	+ The ILO mechanism is an example of that sort – some states might find themselves bound by its dispute mechanism even if they have not given their direct consent for it.
	+ ICJ advisory opinions on issues that are seems as dispute are another example, since the disputed states did not ask the ICJ opinion, but it nevertheless gave its advisory opinion due to a referral (the question on the legality of the Wall is the obvious example).
* IOs are re-interpreting parties’ obligations also minimize the concept of state primacy and consent.
	+ UNGA resolution attained in “consensus” may seem as representing states consent, however they are usually achieved through ambiguous terms.
	+ The fact that a state is a part of an IO does not automatically mean it accept every action the IO is taking, either by the IO interpretation or by formulating “best practice standards”.
* Challenges regarding Article 38:
* Subsequent Practice: There is a shift toward non-tradition sources of law such as IOs general code of conduct for businesses; hortatory (symbolic) resolutions taken by the IOs general assemblies; institutions general commission or exports reports; IOs legal advisors opinion letters. Although much of those practices are “soft law” they nevertheless achieve compliance and seen as binding.
* Treaties as living document: There is a shift toward viewing treaties as a living tree, which responds to the needs of the international community.
* UNGA Resolutions: human right treaties and their committees have been affecting UNGA in making resolutions which follows their statements and condemnations taken against states. An example is the UNGA Resolution 66/174 which was taken after the ICCPR committee condemn North Korea on its human right abuses.
* Change in General Principles of Law: burden of proof and evidentiary law has expanded through the judiciary international system. The attempt to seek for general principle is no longer comparative law exercise or comparable, but courts are looking among general principles in other international courts.
* International Criminal Law is expanding in a non-traditional way: The Office of the Prosecutor is writing policy papers which influence the understanding of effective crime investigations for the purpose of complementarity and the justification to open a preliminary investigation. The ICC have adopted guidelines who have legal implications as well (Alvarez Book FN 30 p. 356)
* In trade law, custom become less and less important.
* National courts are using multilateral treaties and IOs legal products to assert customry law (shortcuts).
* The Challenge of Binding:
* Much of the legal authoritative qualities in the age of IOs lies along the spectrum of bindingness.
	+ There is legal ambiguity in the form of UNGA resolutions – some of the resolutions appear to have legal effect, and sometimes they are relied upon for proposition of law by prominent nations and international courts, as well as scholars.
	+ There are UNGA resolutions who clarify the meaning of certain treaties, such as the CEDAW and the Right of the Child. There is a case to be made that those kinds of resolutions can be regarded as representing states individual *opinio juris*, and thus UNGA can be seen as representing customary international law.
	+ The UNGA attempt to interpret terms such as “aggression”, “self-determinations” and “interference in domestic jurisdiction” have an effect on the development of international law and custom and general principles.
	+ The Human Right Declaration have been incorporate in many domestic legal system, thus some would argue that by that it can be regarded as an indication that the Declaration is custom international law.
	+ The Namibia case is another indication to a UNGA Resolution that made an impact (FN 44 page 360 Alvarez).
	+ Other examples of IOs which creates binding mechanisms:
		- ICAO and its SARP (standards and recommended practice) – there is uncertainty over the question which one is considered to be binding, standards or regulations since both are subject to mere notification.
		- The World Bank – some of its operational policies are legally binding and others are not. In fact, the policies are only binding toward the Bank employees. Moreover, the Bank operation guidelines suggests that violating them can constitute an international wrongful act where the Bank will be liable. With that, the operation policies influence states action on variety of issues such as environment, indigenes people, gender equality and so on.
	+ The UNSC Resolution 1373: The Resolution was taken after 9/11was directed not only toward member state but to “all Sates” act with respect to terrorism prevention (movement prevention of terrorist, freezing funds and such).
		- Resolution 1373 deals with the principle of self-defense, but it does not stress that it is a principle under international law.
		- By referring to other UNSC resolution, Resolution 1373 stress the fact that UNSC Resolutions are a **source** of international law.
		- The Resolution provides a different interpretation for the right to self-defense in the sense that it authorizes states to act not only as a respond to an armed attack which had occurred, but also in order to prevent an attack that have yet happen. In so doing the UNSC is acting as law-making of some sort.
		- The Resolution also referred to non-state actors within states, thus punctures the state domestic jurisdiction, which was possible since the Resolution was under Chapter VII.
		- The Resolution urged states to join existing anti-terrorism treaties. In case states were not subject to anti-terrorism, under the Resolution they would be considered as acquiescing parties to terrorism.
		- The Resolution created a committee to monitor the compliance of states to the Resolution. This meant that non-state actors were placed as monitors of the process. The Resolution can be seen as an ongoing law-making action with a committee in charge of the revisions and implementation process.
		- In is unclear which part of Chapter VII the Resolution is basing on, whether it is self-defense (Article 51) or Article 42 🡪 or Article 42 ½ - which was not envisioned by the creators of the Charter since they did not give the UNSC decision-making powers since, it was established as a narrow body (as opposed to the UNGA which is a wider organ and because of that – can only give recommendations).
	+ Change in evaluating compliance: in the past in order to force compliance, a state had to ratify the treaty. Today there is a shift toward examining state actions as a whole, if it had changed it behavior after the treaty was signed – even if the state did not ratify it. A success in international law compliance is if a court, whether national or international, is convinces that a certain international law is binding the state in question. Example of such a success story is the Columbian court recognizing a lawsuit based on environment law.
* Change to the Content of International Law:
	+ Shrinking “domestic jurisdiction” domain;
	+ Hierarchies of values among international law sources;
	+ Greater tendency to affect directly non-state actors;
	+ Introducing intra-regime boundary crossings – cross regimes, both IHL and IHRL/ investment and environment law.
	+ Producing greater tendency to resort to domestic law analogies.
* UN Charter Evolution:
* The UNSC and UNGA are suppose, amongst others, to protect states sovereignty. With that, in their attempts to stabilize states and respond to situation where state is failing to protect its citizens, the UNSC and UNGA deviate considerably from the UN Charter and positive understanding of the power limits that states delegated to the UN.
	+ The UNSC see itself no longer as policing the world but also as a law-maker and sometimes as a global adjudicator.
		- The UNSC contracted out the use of force, presumably under Article 42 even without the envisioned Article 43.
		- Established subsidiary organs under Article 29.
		- Created a “terrorist” list (the **Kadi** case).
		- There are growing numbers of peace-keeping missions – the missions changed their character. From being missions who mainly stationed in between states borders for maintain the peace between states, now they are deployed inside states and acts as administrative agent. The peace-keeping mission involve health care, education, banking. Postal services etc. this illustrate the UNSC and UNGA shift toward human rights protection and a de facto agent of human rights.
	+ The evolution if the Charter and other IOs is a result of these features:
		- Constructive ambiguities: the UN Charter does not specify what are some key terms such as “sovereign equality”, “equal rights”, and “self-determination” along with the concept of “domestic jurisdiction”. All of these terms are left undefined, and except for the ambiguous Article 2(7), it does not say there are legal constraints on the delegation of powers to the organizations. To that adds up that the Charter framers did not agree that the ICJ would have a right to give binding legal opinion on the Charter interpretation (although Belgium was aiming for this option).
		- The VCT “constructive ambiguities”: The Charter is hard to amend according to Article 108. Therefor, the VCT can be used to supplement when there are gaps in the Charter since VCT Article 31 demand that treaties would be interpreters in accordance to the treaty “objects and purpose”, leaving this term undefined. Thus, permits a wide range of interpretation which could be associate with the drafters’ original intention (covered in VCT Article 32) and/or the treaty presumptive intent, as informed from treaty text and context. (more in Alvarez p. 381)
		- Relative absence of clear Charter limitation on IO organs.
		- Reliance on self-judging practice by IO organs: for example, the UNSC is the one who decide what is a “threat to peace and security”.
		- Absence of formal judicial review: although there is no formal body which is authorized to revise the UNSC decisions, an exemption is the Kadi case where the legality of the SC decision was challenged with regard to Kadi and others who were assets were freez duo to the SC terrorists list.
* IOs Challenge to State Sovereignty:
	+ The case of Haiti can be seen as a UN occupation over a territory: the UN send election supervision; the UNSC reacted and toppled Haiti military coup leaders by threating to impose sanctions; Haiti health was jeopardized by UN peace-keeping mission personals.
	+ Iraq was invaded and occupied by the U.S. and the U.K under UNSC authorization which lead to its laws and government to radically transformed.
	+ Libya, Kosovo, and Namibia are all examples of sovereignty challenges as well.
	+ The Palestine Authority owes its status and semi-recognition to the UNGA when given the status of observing state which enabled it to later on join the Rome Statue. This was also due thanks to UNESCO.
	+ Somalia is stumbled along in a state of *de facto* quasi-sovereignty due to the piracy problem. In 2017 the UNSC adopted unanimously Resolution 2383 under Chapter VII which authorization international naval forces to fight piracy off the coast of Somalia.
	+ The IMF influences Argentina economic system and its austerity measures it had to take in order to fulfil its monetary obligations.
	+ The U.S., although it seems to be a strong state who can use its power and influence at the UNSC is not immune either from the IOs interventions. NAFTA claims can be brought against it. Moreover, human rights violation criticism led, in the end, for it to better cooperate with the ICC with respect to responsibility of its soldiers in peace keeping missions.
	+ China too is subject to IO interventions in its sovereignty. The ILO have publicly criticized China in 1990 with respect to the 1989 Tianmen Square human right violations. Moreover, China made changes in its economy and made reforms due to the WTO interference.
* Challenges to the “Rule of Law”:
* The concept of the “rule of law” is associated with compliance to the law since the end of the Cold War. IOs have used this term to give legal justification to deal with security issues. Since 1995 some 250 UNSC resolutions mentioning this term.
* The rule of law paradigm is apparent with respect to peace-keeping mandate, and since 2001, every UN mandate peace-keeping mission has been charged with rule of law mission which included task to promote:
	+ Judiciary reforms;
	+ Constitutional reforms;
	+ General law reforms;
	+ Enhance rule of law compliance in public administration;
	+ Greater legal awareness in general population, and greater access to justice to the general population;
	+ Law enforcement reforms;
	+ Reforms in detention places including prisons;
* The UN rule of law efforts have been bureaucratized and a new UN bureaucracy have been established, such as the Rule of Law Coordination and Resource Group.
* The rule of law means, as Tom Bingham puts it as:
	+ Equality: equal application of the law;
	+ Publicity: entitlement to public law that is accessible, intelligible, clear and predictable, and publicly administrated by courts;
	+ Legally bound discretion;
	+ Good faith exercise of power in accordance with purpose for which powers were conferred, without exceeding the limits of such powers;
	+ Protection of fundamental human rights (including no crime without a law, the right for a fair trial, liberty, security, property etc..);
	+ Available means to resolve civil disputes without prohibitive cost or delay.
* The criticism of the “rule of law” implication: when it comes to IOs is that the law is not equal to all states, it is not clear – due to the many ambiguities discussed above, there is wide discretion for the UNSC (decide what a threat to peace and security means) and so on.
	+ Strategic ambiguity: contrary to the mentioned above, the IOs are using strategic ambiguity in many ways and fashions:
		- SC Res. 2249 with respect to the ISIS threat – there was no clear statement which allowed the use of force and Chapter VII was not mentioned, but it did in some form or another, permit state to use force by using the wording “take all necessary measures”. The reason the resolution was constructed in such a way was to secure and achieve the nine needed votes to pass the resolution.
		- Unclear whether the GA Res; World Bank Guidelines/ Operational Policies/ ICAO SARP, are binding.
		- There are pseudo IOs such as the COP and MOP.
		- Non-authoritative IOs General Counsel opinions.
* The IMF and the World Bank are using the terms “good governance” as an important dimension when evaluating improvement of states which is also linked to the push toward compliance with the rule of law. With that is also the fight against corruption.
* The IOs are turning to the use of the term of “rule of law” to assert human rights obligations, compliance, equality and such. In the GA Res. 64/166 (1.15.2010) the claim that the “rule of law” also apply to the UN. The criticism toward the rule of law is that it is does not act equally toward all states.
* IOs as “Governance”:
* There are many examples for IOs acting under governance capacity:
	+ UN peace-keeping operations;
	+ UN election assistance;
	+ SC acting as legislator – imposing smart sanctions on Iraq;
	+ Word Bank (IFC) indicators and Standards;
	+ World Bank anti-corruption regime;
	+ WHO acting as international human rights advocate;
	+ ICAO and SARPS;
	+ Global governance adjudication: ICC and other international criminal tribunals, ICJ, IO Administrative Tribunals (the UN);
	+ “Legislative” functions – treaty regimes such as the Tobacco Convention.
* Governance without responsibility: Article II section 2 to the General Convention on the Privileges and Immunities of the UN provides that the UN “shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity”. The SG can lift the immunity of a UN personal, however this does not happen often. Moreover, there is an internal UN tribunal which can be used – however it is not a perfect solution. The “best” example of such abuse of immunity is the Cholera case where the opinion of the UN Legal Counsel was that the matter was political and policy and thus not covered by Section 29 of the Convention on Privileges and Immunities of the UN.
1. It might be fun to argue about this. You could say that the translation service is necessary to the functioning of the tribunal, and thus dismiss suits by jilted translators. Most courts decide this way. But it might be fun to say that, no, the dispute in question is not about *translation*, per se. [↑](#footnote-ref-1)
2. “SECURITY COUNCIL. **1.** The Bank takes note of the obligation assumed, under paragraph 2 of Article 48 of the United Nations Charter, by such of its members as are also Members of the United Nations, to carry out the decisions of the Security Council through their action in the appropriate specialized agencies of which they are members, and will, in the conduct of its activities, have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter. 2. The Bank agrees to assist the Security Council by furnishing to it information in accordance with the provisions of Article V of this agreement.” [↑](#footnote-ref-2)
3. “INTERNATIONAL COURT OF JUSTICE. The General Assembly of the United Nations hereby authorizes the Bank to request advisory opinions to the International Court of Justice on any legal questions arising within the scope of the Bank’s activities other than questions relating to the relationship between the Bank and the United Nations or any specialized agency. Whenever the Bank shall request the Court for an advisory opinion, the Bank will inform the Economic and Social Council of the request.” [↑](#footnote-ref-3)