INTRODUCTION TO PUBLIC INTERNATIONAL LAW

What is public international law ?
Is it really law ?
Why is it international ?
Why is it called public ?

PIL = international law

Exam = 3 questions and you answer 2 of them

I. Is PIL actually Law ?

Many will tell you that public international law is not real law, not a genuine branch of law. There are some difficulties when we study this issue because public international law is very different to other branches of national law or even compared to the EU's legal system.

In national law, there is an authority which can tell us what will be the settlement of a dispute between two or more people. There is almost always someone in charge. The mission of a judge is to settle disputes between physical or moral persons.

In public international law there are no judges. Sure an international court of justice exists, equally the international courts of human right or for the law of the sea, sure some judges are in the international legal order but these are judges are of a very peculiar nature. They are not allowed to intervene in a dispute between States but on one condition, the States party to the dispute have to accept that such international judge/court be able to settle the dispute, if one of the two doesn't, the judge will not be competent. this peculiarity makes international very different to national law. For instance if you kill somebody you will not be asked is the judge of criminal law can judge you, you will go to jail if found guilty even if you do not want to whereas in International relations, a State may invade another State and nothing will happen if it does not consent to the jurisdiction of the International Court of Justice.

In the second part of the lecture we will examine the role of the so-called International Court of Justice but is will not be comparable to national courts.

Some scholars will say that when there is no judge capable of settling such disputes which imply a significant violation of the most important principal of international order, there is no legal dispute. This is a common confusion, rules of law exist to be respected, this who think PIL is not Law believe that when there is violation of rule of law there should be a judge to punish the perpetrator of this violation. How can we conceive this difference ? Is it genuine ? Does it even exist ? In national law there are some rules of law, the violation of which cannot be punishes. In Roman law (civil law) roman lawyers used to call such violations *legis imperfecte*. You can find several *legis imperfecte* in national law today. A famous example is the one of debts, in Roman law, if you lost at cards and did not pay, no one could legally oblige you to pay.
Nowadays, there is a branch of national which is near to International Law, it is Constitutional law. In most States there are Supreme courts or Constitutional courts, in most of these states in the past no judge could say that there was a violation of the Constitution.

In France, the Parliament could vote statutes which were unconstitutional but no constitutional judge existed. In 1958, the Vth Constitution provided the « Conseil Constitutionnel » which plays the role of defender of the Constitution. The French Constitutional council does not have a general competence to punish actors or bodies which may be deemed to have violated provisions of the Constitution. It has a very limited reach.

Many violations of the French Constitution can be violated without anyone batting an eye. In 1996, French electors elected a new political majority in the National Assembly led by Jacques Chirac. He was influenced by Thatcher and Reagan and wished to establish a liberal economy very far from the french socialist tradition. In order to act swiftly, he decided to make public some institutions that were before nationalised by the Article 38 of the Constitution (by « procédure ordonnance »). According to article 38, the PM and the government when authorised by the political majority in the national assembly can be authorised to write such texts but it can only be signed by the Président of the French Republic. It was the François Mitterrand who refused to sign the ordinances. In the legal language, when we use the present tense (« he signs ») it signifies an obligation, the President is therefore obliged to sign. François Mitterrand went against the Constitution. Some scholars said that the President had more or less committed a coup and therefore should be punished, however no provision was made in order to punish the President. This is therefore a clear example demonstrating that in Law even national Law may be committed and remain unpunished.

In PIL, there is a given rule of law but in some circumstances, if a violation, most frequently, no punishment is provided. There is no natural judge in PIL to punish States. We therefore have to separate rule of law and punishment in the cas of a violation. the rule of law remains even if no punishment may occur. The problem is therefore not exclusive to PIL it exists in several other branches of law. Yet there are some examples in PIL which demonstrate that States do not feel free to violate PIL.

One is the military agression in 2003 against Irak in which tens of States allied themselves to the US. In PIL there is a paramount rule written in article 2 paragraph 4 of the Charter of the UN which states that no member of the UN may egress another member of the US or even use the menace of an agression. There are some interrogations. The first refers to the power of the Security Council of the UN to allow the use of force against a member of the UN. Such decisions have been given in a few instances such as in 1950 against North Korea in response to the military agression of the North against the South, States who wished to could intervene. Yet in 2003, the Security Council never allowed military action. The second interrogation resides in article 51 of the charter related to Self-defence. If the conditions put down in this article are satisfied, a Stated could use force to resist an agression. The question is, did Irak aggress in a military manner the States which attacked Irak ? The answer is no, however politicians deemed that even if there had been no military action by Baghdad against the allied powers, it was absolutely ready to attack these States and Irak was supposed to possess a nuclear arsenal. What can you do to resist if you have already been destroyed by nuclear bombs ? This is a very important dilemma in the nuclear era, the so-called preemptive defines should be considered with attention. In this case, the Iraqi army was aggressed and did not resist more that 2 weeks, the allied powers have tries and failed to find even some trace of an Iraqi nuclear arsenal. Retrospectively, the imminent agression by Irak was a lie and today, no country can punish the agression because the allied powers detain the veto power. A new question rises, a Stat which possesses veto power can never be punished. They can do whatever they please even in gross violation of paramount laws of the international legal order. Before attacking Baghdad, the US tried to justify their action on the basis of preemptive defence, no one in the US or UK said that they could freely violate the UN Charter.

In Serbia in 1999, a coalition of NATO powers and more agreed that they should take military action against the serina regime in order to free the Albanian population of Kosovo from the menace of genocide. Once more the Security council did not enable this action and the argument of self-defence is not valid here. Yet, western capitals tried to build some kind of legal arguments notably Lionel Jospin French PM said that there is another interrogation relating to paragraph 4 of article 2 of the UN Charter and article 51. According to him there was a to be found in the spirit of the Charter. These arguments are not very convincing however, the primary remark is that no one wishes to violate the UN Charted, they all try to justify their actions on the basis of legal arguments. There is always a political effort to justify something illegal on the basis of PIL even the most powerful States.

The question remains, is international law a kind of law ? Sure but a special one.

II. The second fondamental question pertains to the meaning of international in PIL

The word « international » was first used by Bentham in the 18th century *internationes* (international). This word was immediately translated in many languages and has been accepted without difficulty in nations of latin descent. In other languages, there have been transpositions. The German languages have not admitted the transposition. In German, the expression PIL is the word Völkerrechte (the law of nations) not exactly translatable to the adjective international. Other germanic languages have followed the German example such as Sweden and Dutch. The Germans also say Internazionalesrechte but it is different to PIL.

International means « between nations », it implies that there is a plurality of nations. If ever there would be a single state in the world there would be no PIL. Can we imagine a world composed of a unique state ? There is a smilier experience with the Roman Empire, in all the States far away from the Roman Empire itself, there was only one State capable of waging war against the Romans, was the Persian Empire.

Bentham did not invent international he only invented the word. There was some PIL before the coining of the word in some form. We can almost say there has always been some form of PIL mounting back to Prehistoric times with relations between Clans be they pacific or non-pacific. There has been some form of customary international law since humans have organised themselves in social and political groups.

Before Bentham, in Europe we used the latin expression *jus gentium* translated to law of nations. As a matter of fact, the germanic expressions of international law are the translations of this latin origin. In France we used to say « droit des gens ». Georges Scelle wrote a book called *Récit du droit des gens.* Since the collapse of the Roman Empire in the 5th century there has been a variety of nations in western Europe and has never been a problem of substance with PIL, there has always been at least a customary IL be it commercial or political.

Can we conceive in the future, a new historical period in which there will not be a plurality of nations ?
It is quite unbelievable, on the contrary there are more and more States. In June 1945 in San Fransisco there were 50 states which ratified the UN Charter. Today, the number of member-states is 192. Most probably there are even more States because some may not want to or cannot be a member of the Un such as the Independent State of Vatican or the Palestinian State even though it has been recognised as a State as the General Assembly of the UN however it is a number of other organisations and has ratified many multilateral agreements. Not only there are no perspectives for having a single universal state but there are more and more independent states.

The main characteristic of a State is its sovereignty. Sovereignty is not a concept generated inside the system of PIL. It was devised by Constitutional Law. In France, under Louis the 14th Jean Bodin coined the expression. According to him, there is only one sovereign person inside a state, in France the sovereignty depends on the King, same thing more or less in England, Spain, Sweden, etc. Politically speaking the sovereignty teachings of Jean Bodin have been major. Thanks to this concept the nations emerged from the medieval legal concept. Two years later, France became a Republic, yet the concept of sovereignty did not disappear, it evolved to the population in its entirety. It implies that there is a unique source of power, nothing a no one may be legally and politically superior to the sovereign.

How can there be an international order if the unities that compose the international community are sovereign States ? Can we transpose the concept of sovereignty into the sphere of international law and

relations ? If there is an international law, the international norms should be superior to national norms however if sovereignty is the only source of power, no one is superior to the people, how can international law be superior ?
Some scholars argue that we should forget the concept of sovereignty when we think about international law. Among these scholars are Georges Scelles and Lewis Henkin. According to them sovereignty in IL is nonsense, yet States are still very fond of their sovereignty. We need to find a solution to the problem how to combine sovereign states and the superiority of international law.

There are several theories trying to combine the two.

a) The classical theory

One is the classical theory about to 1648 during which two important multilateral treaties were signed the first in Münster and the treaty of Osnabrück. These two treaties composed the peace of Westphalia. The important notion in these treaties is that the international community is composed of sovereign states. There is however an issue pertaining to states within states. According to the classical theory, sovereignty can do anything including limiting its own sovereignty.

b) Post-Westphalian theory

States cannot freely choose their own competences. States nowadays have to respects some superior legal norms. Under the classical theory, the percussions of the Jewish people during the Third Reich would be the actions of its own sovereignty. Indeed Goebbels argued that the Society of Nations had nothing to say because Germany acted in its own right. It has been argued that there exists certain post-Westphalian universal rights (no attacks on a sovereign nation - no genocides).

Sovereignty would mean that each sovereign nation may within some limits to have such or such regulations. For instance, selling drugs is in France is a crime, but sometimes it is not in the Netherlands.

PIL is composed of treaties and conventions which have as final effect the unification of legal attitudes in the states concerned. For instance, an international treaty referring to the environment, the signatory states assume obligations to do or to refrain from doing things. Still there are thousands and thousands of international treaties be they bilateral, unilateral, etc. All of these treaties somewhat unify national laws. However sovereignty is the possibility to build your own system, if international law unifies national laws, what will remain of national laws ? If there is no more sovereignty there is no more states but curiously we have an international community with more states than ever and an international law more influent and more detailed than ever. Is it the end of states as we know them ? Are we moving towards a federal international legal system ? International will lose its original meaning.

According to Elizabeth Zoler the deepening of international law will be the grave of international law.

III. Why « public » international law ?

The distinction between public and private law is very much important in the French legal system. It means that there is a private international law.

Is there one or several public international law(s) ?

There is supposed to be only one PIL but the contemporary international legal system recognises also regional systems. There is **one universal PIL and several regional PIL.** The universal PIL is the western one, which makes third world countries very critical of such organisations.
In the late ninetieth century the US and most Latin American States created a « pan-American union ». In other parts of the world, there are many regional international law regimes, the most famous a regional PIL being the EU, but there is also the council of Europe and some Africain, Asian and South Pacific legal systems.

We may consider there is a private international law per State. In some States there are several legal systems, notably in some federal States in which we may find distinct legal systems yet it does not imply a plurality international laws. For instance the US has 51 private international laws.

In France, we understand the choice of jurisdictions and the nationality. A person or company may lose the citizenship. Nationality is usually discussed under constitutional law, tower in France it does not work the same. The « choice of laws » (conflit des lois) expression implies that there may be several national laws which all have the ambition to settle a certain dispute. This means that in some cases the national judge may have to apply not the national law, but a foreign law.

For example, if a French person wishes to get married to a foreign partner, Swedish for example, and they get married in Belgium per their laws and settle in England. 20 years later, the husband lives in New York and falls in love with an American and asks the judge of the state of New York for a divorce. The New Yorker Judge will have to choose which national law to apply. Who can tell him/her which law to choose on this case ? That will be the function of the Choice of Laws of the state of New York. The Choice of Laws may vary from state to state. In some States such as Germany and Switzerland, the Choice of Laws is written but in others, it is not such as in France. There is no written private international law it is only a creation of the « Cour de Cassation » primarily held in the 19th century. From time to time there are some efforts to unify some national laws in the Choice of laws such as in the EU. In countries where written private international already existed, the EU regulations replaced such pre-existing regulations.

Traditionally, private international law regarded organisations such as states but also other non governmental organisations and public international law regulated disputes between states. However, since the end of the Second World war, the distinction between the two has been blurred. When the professor will speak of international law he will refer to Pubic international law only.

IV. The sources of Public international Law

Article 38 of the statute of the ICJ (INternaitonal court of justice
- §1 = paramount importance = enumerates 5 sources of PIL without stating that they are sourced. It exposes how the tribunal will settle a dispute between two or more States
    a. a. the court will have to apply **treaties** parties to the dispute
    b. International customary norms
    c. general principles of law
    d. teachings of prominent publicists (controversial)
    e. jurisprudence (controversial)

PART I
SOURCES OF PUBLIC INTERNATIONAL LAW

CHAPTER 1: INTERNATIONAL TREATIES

Shortcuts
- **UN = United nations**
- **IO = International organisations**
- **UDHR = Universal Declaration of Human Rights**
- **SG = Secretary General**
- **FAO = Farming and Agricultural Organisation of the UN**
- **EUCJ = EU Court of Justice**
- **WWII = Second World War**
- **PLO = organisation for the liberation of the Palestinian State**
- **LAS = League of Arab States**
- **GA = General Assembly**
- **ILC = the International Law Commission**

What are international treaties?

In the past, nothing defined the concept of international treaties. Some lawyers published on the law of treaties. A famous manual was published by Lord McNair and remains prominent today. At the end of his paper there is a summary of legal literature on topics that we will study in this lecture. The most important is the one by Professor Anthony Aust.

The 1969 Vienna convention on the law of treaties and the Vienna Convention of 1986 regulate international treaties. the second one relates to treaties between states and international organisations and between international organisations but it is not in not enforced.

The 1978 convention relating to the succession of States as far as international treaties are concerned. For instance when East Germany ceased to exist, the East german Lander became a Lander of Ouest Germany in 1999. What to do with the international treaties that East Berlin had adopted ? Another case, the former colony of Ivory coast became an independent state, there is a succession of states between France and the Ivory Coast, what to do with the international treaties adopted before 1960 by France ? Will they apply all/partly to this new independent state ? This convention is enforced but feebly ratified by states whereas the 1969 Convention is largely ratified which means 110 States out of more than 190 States members of the UN. Some very important states such as France have refused to ratify the 1969 Vienna convention yet all States consider that most of the provisions of this Convention correspond to international customary norms, which means that such provisions are largely applied by national and international tribunals

I. The Concept of International Treaties

A) Definition of international treaties

International treaties are not easily defined. The 1969 Vienna convention gives a formal definition of international treaties however it is not always valid but it is valid as far as the Convention is concerned and as far as the States party to said Convention are concerned.

Article 2 § 1(a) « "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation; »

1) The difference between bilateral and multilateral treaties

For the 1969 VC a Treaty is an agreement concluded between 2 or more States. A single State can never adopt by itself an international treaty. It is a king of contract.
There is a difference between bi-lateral and multilateral treaties. according to Hans von Triepel, Bilateral treaties most frequently will correspond to what he calls « treaties-contracts » and multilateral will correspond to « Treaties-laws ». In a certain way, only multilateral treaties could be of interest to international law scholars. However some bilateral treaties have proved to be of paramount importance for law and for states.

There are some regional or almost universal treaties notably treaties within the UN. For instance, nowadays more than 220 European conventions have been signed, most of them signed in Strasbourg but from time to time elsewhere such as the 1950 European Convention of Human Rights which was signed in Rome.

2) Treaties are concluded in written form

The 1969 convention only considers treaties concluded in written law. In other branches of law, there may exist some form of non-written norms applied. For instance, the policeman ordering the traffic is by his/her gesture, enforcing an administratif act in non-written form. There may be non-written international treaties and in some instances international tribunals argue that some non-written treaties may exist. That was the cas of a dispute between Danemark and Norway in the 1930's the then Permanent Court of international justice decided that there had been an oral bilateral agreement between the two Ministers of International affairs. The court, on the existence of this oral agreement, concluded that the eastern part of Greenland belonged to Danemark.

Still the 1969 convention only considers treaties concluded in written law, what to do with other forms of treaties ? The only thing we can say is that some of the 1969 provisions apply to verbal agreements by analogy.

3) Governed by international law

These agreements must absolutely be governed by international law which means that parties to such treaties will acquire rights but also will assume legal obligations. An international tribunal will be able to make use of the provisions of a verbal treaty governed by internal law in order to settle an international dispute between states party to such dispute and treaty.

Are there international agreements which are not born under international law ? (see later)

4) A treaty may be embodied in a single or more instruments

Traditionally international treaties are contained in a single text. Exceptionally, we may have an international treaty in a plurality of texts. For example, the exchange of diplomatic letters. it is a very common practice. If a minister of Foreign affairs of State A writes down a text according to which a dispute may be settled on the following basis « … » and send this letter to the Ambassador of State B. If int State B Ambassador, he/she will write down and identical text and send back a letter. According to Article 2§1(a), the two letters will constitute a single agreement.

B) International Instruments without legal effects

Most of the time we use the words treaty, agreement, charter, constitution or convention but they mean the same thing. Yet from time to time, the title given to an international agreement is not innocent. a big problem is posed by the word « declaration ». Is a declaration an international treaty ?

We said previously that a treaty must be covered by international law. Some agreements are « non-binding », they are not governed by international law. States party to this non binding agreement do not assume rights or legal obligations. These agreements are of a moral or political nature. If such States put into practice these agreements it is not deemed to have violated any kind of international law but if they refuse to give any practical effet, no one can say they do not abide to international law. Non-binding agreements do not constitute law. The criteria for the distinction between non binding and ending treaties is the terminology which is tricky. The terminology gives most frequently a solution. If an agreement in called « declaration » we may suppose that it is non-binding. However the names sometimes inter-change.

For example, due to WWII there have been agreements between allied powers, such as the Atlantic Charter of 1941 and the 1943 Moscow declaration, in 1945 they all signed (3powers) the Yalta Agreements. All these treaties have different terminologies. The 3 prepared the later Un Charter. The most particular agreement is the 1945 Yalta Agreements because some deny the fact that any agreements have been signed at Yalta. Only Churchill's memoirs tells us that the three countries have concluded agreements in Yalta. According to him, they had written some words in a pack of cigarettes saying that Poland was to be half Western and half Soviet, Bulgaria 90% W

western and 10% Soviet and Greece 10% Western and 90%. Does it have value ? The States have been quite respectful of this « agreement ». In Greece during the civil war between the communists and the nationalists, Stalin, never backed the communist movement, which means that he respected the Yalta « agreement ». Later on when Hungarians (predominantly soviet) took arms against soviet forces, western powers did not help at all. But this fact does not prove that this agreement existed or had any legal value.

Another troublesome example is the Helsinki 1975 final act. There was a convention in Helsinki and agreed upon the « Helsinki final act ». What is interesting about international treaties is the obligation of States to officially register these treaties with the UN secretary general who will publish them in the UN list of treaties. If not, the treaty cannot be used by international tribunals. The Soviet Union wanted this Act published as soon as possible but the US president said it was not possible because it is not legally speaking a treaty but merely a political document. We are still not sure of the legal value of this final act which played an important role in the history of Eastern Europe because it recognised officially the freedom of expression and of religious beliefs.

Finally, the Universal declaration of human right relies on some provisions of the Un charter, immediately. In December 1948 the Universal declaration of Human rights was adopted. The title is interesting. The French delegation insisted heavily of the denomination « Universal » and « general ». However some countries do not have a distinction between the two terms such as Germany. Some States abstained but no one voted against it. It has never been officially registered with the SG of the UN but it does not mean that it is not a treaty. Most scholars strongly believe that the UDHR is not an international treaty but a political document which paved to way to other treaties such as the two 1966 covenants. Several national Constitutions write that their national statutes will have to be in compliance with the UDHR. On may also say that all of these provisions have become part of the international customary law, yet the very question remains, does the UDHR have any legal value ? In France there is not one supreme court but two, one for administrative justice and the other for judicial matters. According to the Cour de Cassation it is a political document whereas according to the Conseil d'État it is an international agreement.

Even if we have a binding agreement it is not sure that all the provisions have the same degree of intensity. Scholars distinguish between soft and hard law. Hard law is genuine law, Soft law is also law but for several reasons a given tribunal will not be able to apply some provisions because they are too vague.

In the 1989 Un Convention on the rights of children, the article 4 provides that all administrations and national judges will have to take duly into account the superior interest of the child in a give legal dispute. Accord to the Cour de Cassation, this provision is too vague and for many years it refused to apply the provisions whereas the Conseil d'État recognised its genuine legal value.

II. The conclusion of international treaties

A) Entities concluding international treaties

1). States

States remain the primary actor of PIL.

Article 6 of the Vienna Convention 1969 on the Capacity of States to conclude treaties
« Every State possesses capacity to conclude treaties. »

a) Treaty making power of States

Traditionally we agree that a State is a territory on which remains a given population which is governed by a sovereign power. There are some exceptions to this definition. For example, Somaliland has never been recognised by any State, Israel is still not recognised by most of the members of the League of Arab States. A State not recognised does not mean that is is not a State however the recognition of a State by other States does not constitute the necessary force to make it a State either.

But if no one recognises you as a State, your treaty making power will be impaired. No bilatéral treaty will be concluded. However, there are many multilateral treaties have been concluded in part by states which do not recognise each other (Charter UN is signed by Israel). This would not be possible under the League of Nations, because according to this convenant there is a mutual agreement of assistance in case of an attack on one of the States parties, if not recognised as a State there would be no protection.

Some so called states have always been deprived of so-called treaty making power. For example, Morocco and Tunisia according to France until the 1950s were States but under the protection of the French republic which would conclude international treaties in the name of these states. Could the rest of the world see independent States in Morocco and Tunisia at the time ? Even nowadays some states have given over their Treaty making power to neighbouring States. For example the principality of Lichtenstein has given its treaty making power in most fields of international relations to Switzerland. Before the creation of the monetary européen union, Luxembourg had given its monetary relations power to Belgium.

In the general legal and political theory of federalism, a federated state is a sovereign State however it cannot conclude international agreements (US). Yet other federal states are much more liberal than the US, for example for marginal fields of the Republic of Germany. In Switzerland, a large treaty making power is given to the Swiss cantons however they are under the control of the federation, an international treaty cannot counter the interests of the Swiss confederation and such treaty should not prejudice the interest of the other Swiss cantons.

There are also asymmetrical treaty making powers within States. In Canada, Quebec has much more Treaty making power than the english speaking provinces. The French Republic and its relation with its old provinces such as Quebec. For long France was afraid that negotiating only with Quebec would prejudice its relation with Canada as a whole. Today it is no more the case and Quebec even has its own embassies.

States are composed of more or less independent territories. In France there is a large degree of decentralisation which means that territorial communities have some kind of treaty making power even if minute. The french region which had a certain role in international relation was Alsace. Strasbourg even kept a kind of small embassy in Brussels and Alsace had relation with the Swiss cantons, Banden-Wüttemberg and Luxembourg.

b) Constitutional bodies in charge of treaty making policy of States

The powers in charge of the treaty making power is relative to national constitutional law, however PIL is not indifferent to it. The 1969 Vienna Convention has some provisions relating to this matter. There are some constitutional bodies which *ipso facto* have the power to at least negotiate and sign international agreements.

Firstly, the head of the State, the head of the Government and the Minister of foreign affairs. No country can deny the negotiation of a minister of foreign affairs the right to negotiate with it.

The Ambassadors have the same power but only in regards to who they negotiate with. For example the french ambassador in Berlin may not negotiate withe the Brazilian government, they have to négociante with the country in which they are stationed.

In international conferences, the head of the delegation has to prove that it has been given but their own government to negotiate. There are some examples in which diplomatic pressure has been enforced when verifying the authorisation given to the delegation to negotiate. In Russia, for some years now the Parliamentary assembly rejected the delegation, which has caused a political crisis in the Council of Europe, the SG of the Council of Europe is against the decision of the Parliamentary assembly on the Russian delegation.

2) International organisations

Our 1969 Convention does not consider treaties relating to International organisations but the 1986 one does.

What is an international organisation ?
Do they really exists as entities ?

There are some schools in international law which have denied any kind of personality to international organisations. It is the example of the Napolitanian school of law. it argued that there was no European economic community only the States which it composed it. Same goes for the Soviet school of Law.

The question is more general, does a legal person exist ?

According to **Gaston Jèze** : « I personally have never had a lounge with a legal person, I have never shaken the hand of a legal person ». This would mean that legal persons are a legal fiction.

But in a sense law is a fiction so who cares right ?

The two Vienna conventions are almost the same. Their articles 6 are almost the same but the latter adds international organisations.

The main problem is that an OI only exists thanks to legal fiction for its member States. Why should we oblige a third State to recognise an OI of which this State cannot or does not want to be a member. Almost all OI have been confronted with problems of this kind even the EU.
For long, East European states, Soviet Union above all, did not wish to recognise the EU as an OI. they only accepted to conclude treaties with the States members of the community. This ended in the Luxembourg agreement in which the Soviet states recognised the three OI at the time. The European communities were recognised and recognised the COMECON as legal a person. Even nowadays, the EU faces many difficulties to conclude treaties with other IOs. It is difficult for the EU to adhere to multilateral conventions or become a member of other IOs. The IOs remain interstate organisations. Therefore the EU will never be able to become a member of the UN. Stil exceptionally, it has been able to adhere to international inter-state organisations of the family of the UN. the most prominent example being the membership to the FAO (Food and agriculture organisation of the UN). This has been possible only thanks to an amendement of the treaty that founded the FAO. There are many difficulties in the functioning of the FAO. At the same time, the State-members of the UN remained members of the FAO. When members of the FAO have to vote on a specific question for which the EU has a competence, the States do not vote, the US votes in their place. On the contrary, when the member states have competence, only the States vote and not the EU itself and when the EU votes, it counts for 27 and not for 1. If there is a conflict on who has competence, the European court of Justice decides.
IOs have the power to conclude multilateral or bilateral agreements. If State A concludes a bilateral treaty with the EU, it implies that State A recognises the treaty power of the EU.

The organisms inside IOs who detain the treaty making power are declared in their founding treaties.
For the EU, only the Commission negotiates international treaties for the EU. The Lisbon treaty of 2007 jas modified the appropriate provisions for the Commission to be able to conclude treaties. It states that the EU can conclude agreements with « countries » not only States (for example Palestine). Some countries inside EU recognise the existence of the Palestinian State.

The EU may conclude an international treaty with a sub-national entity inside a state (for example with Quebec or Scotland, fishing agreements with the Faeroe Islands to not impede on EU sea). The Commission can also conclude treaties with international organisations as seen above.
However, the Commission does not negotiate of their own will, they have to obtain an authorisation by the Council of Ministers who will give directives on the negotiations. If the Treaty is signed, the Council of Ministers will have to conclude the treaty (basically ratify), it has to be agreed upon unanimously or by the qualified majority. The European parliament up to a certain point in history, had to only give its opinion on wether the treaty was an advantage or a disadvantage. Since 2009, the European Parliament has a veto right to some categories of treaties. This final question is, does the EUCJ have a say ? The Court of justice may give its opinion on wether the projectif treaty is or is not in conformity with the primary law of the EU. If the answer is YES, the Council of Ministers may conclude the treaty. If NO, the EU will have three choices : (1) to provoke a re-negotiation of the treaty depending on the partner with which the EU is trying to agree on a treaty (2) the council will be able to conclude the treaty but the primary law of the EU will have to be amended (mission impossible), (3) quit.

Almost all IO have been able to conclude at least a few international treaties. As a whole, IO since the end of WWII have become very important actors in international relations.

3) Other entities?

a) The case of "pre-State" entities

Is it possible for an entity which is not a State but ambitions to become a State in the near future, to conclude international treaties ?

The most popular example is one of the Organisation for the Liberation of Palestine. This organisation, deemed by some as a terrorist organisation, has been able to conclude international treaties. The PLO is a member of the League of Arab States, still all the members of the LAS recognise the existence of the Palestinian State. Israel itself has entered some bilateral agreements with the PLO, such as the Oslo Accords in the beginning of the 1990s. Israel has never recognised the PLO as a State, int Israeli eyes, the Oslo accords are between a State and a no-State.

The Evian Accords of 1962 between the French Republic and the Front for the National Liberation of Algeria is another example. Only after the Evian Accords does Paris recognise officially the existence of the Republic of Algeria.

Agreements between States and pre-States can be concluded but no international convention fix the rules.

b) The case of private persons

Private persons, above all Legal Enterprises, sometimes have more power that States. Yet legal Corporations are not States and there is a continuing controversy on wether such multinational societies are actors of the International Legal order. It is complicated to see in those agreements, an international treaty.

In 1952 jugement of the International Court of Justice, the Anglo-Iranian case, the ICJ decided that the contracts between iranien petroleum compagnies and the British states were just administrative contracts and a third party State.

Very rich States which have created funds for aboard such as Norway, Qatar, etc. For some , the contracts between countries and corporations represent the power of Corporations today.

B) The process of international treaties making

1) Negotiating international treaties

a) Methods of international negotiation

Who can negotiate for a State ?

- Head of Government
- Minister of Foreign affairs
- Ambassadors
- Special Delegations

Négociations may be held at a specific level, either universal or regional.

For instance, under the Council of Europe, more than 200 European conventions have already been adopted. The negotiations of the Eu conventions follow the following scheme. Quite often, the initiative comes from the parliamentary assembly of the Council of Europe. It may be that the Committee of Ministers of the Council of Europe will accept the proposition. The, within the Council of Europe, international diplomatic negotiations will take place, the organisation will quite frequently be huge. Only States will be able to sign the treaty.

The UN is another International forum under which many universal conventions have been negotiated. Most of the time, delegations coming from the member-States will negotiate and if a compromise is found it will be found. There is another method, a special subsidiary organ created by the General Assembly (GA), the International Law Commission (ILC). This Commission is supposed to be composed of prominent international lawyers and scholars. The members of this alliance are nominated by the GA of the UN and are supposed to represent different regions and cultures of our world. There is almost always an American commissioner, a Russian one, a Chinese one, a French one and a British one. There is an exception, for a few years now no French commissionner has seated at the commission. There is a question in international customary law to see if there is some kind of codification possible. The first job of the ILC is therefore to find such codifications. The first drafts by the ILC date back to the end of the 1950s, only in 1966 did the Commission adopts its final draft. This draft is officially addressed to the GA

and the GA will decide wether it is politically convenient to convene a conference to adopt this draft. The GA can also decide otherwise. Lastly there can be the case where the conference is held and the treaty is signed but there is no ratification. In the last few years, the ILC has tremendously contributed to the codification of international customary law. Does it only codify customary lax ? No, it can also contribute to the progressive development fo international law which means that we cannot be sure wether a UN convention adopted really corresponds to international customary norms as some may just be a development of international law.

There is specific category of multilateral treaties in which another body plays an important role its the category of the humanitarian law treaties led by the International Red Cross Committee. It is not a body of an IO it is just a private Swiss law corporation composed of 25 people all of which have the Swiss citizenship.

b) Ending negotiations on treaties

According to article 9 of the Vienna Convention, the adoption of the text of a Treat takes place but the consent of all the States party to the drafting of this treaty. But there is an exception in the second paragraph of article 9 relating to multilateral treaties adopted by international conferences. In this case, the adoption of the text will have to take place thanks to the consent of 2/3 of the States parties to the negotiation unless under the majority of the 2/3, the delegations decide otherwise. In this case, otherwise is the decision of the consensual method. Consensus does not mean unanimity, States do not vote, but to « not disagree ». If some delegations abstain, the president of the Conference may decide that there is consensus.

The next step will be the authentification of the text. The heads of the national delegations will have to sign the text of the treaty adopted. There is another possibility, that no official signature will be given but one temporary signatures, a State may decide to sign *ad referendum*. The signature will have to be confirmed by the governmental authorities by the States confirmed.

c) Formal aspects of treaties

A treaty may be a single or several texts (exchange of letters). Let's take the example of what is most frequently practiced : single texts.

The first difficulty is the language of the text. There is no single language in which the treaty will be written there are several. Here we will speak of a Treaty accompanied by other texts adopted at the same time as the treaty. These other texts are protocols. The legal value of the protocols depend on the treaty itself.
For example when the member states of the EU signed a revision of the primary law of the EU. Traditionally this treaty, (Treaty of the EU art 48) is completed by a certain number of protocols. Protocols either to this treaty or tot he treaty of the functioning of the EU have the same legal value as the treaties themselves.

Another example, in 1950 under the Council of Europe, the members adopted the EU convention of Human Rights in Rome. Still two years later, a first additional protocol has been adopted. Todays the number is 16. The legal validity of these protocols depends on their category. Some relate to the procedure followed by the European Court of Human Rights, these protocols have to be ratifies by all States party to the convention. Yet there are some additional protocols which « just » add new human rights to the ones already recognised by the EU convention (protocols n°1,4,6,7,13). The most famous is protocol number 13 which prohibits the death penalty in all circumstance whereas art 2 of the … does recognise the legality of the capital punishment. Nearly all States have ratified protocol n°13 but the Russian Federation, Armenian and … do not recognise it.

Another type of conventions may be completed by other protocols such she 1966 Barcelona convention on the pollution of the Mediterranean sea.

Only States to the framework convention may ratify an additional convention. States party to the original convention are not obliged to ratify these new protocols. For example France refuses to ratify protocol n°12 is about the equality of all persons as far as rights recognised by national law are concerned.

An international treaty can also be completed by annexes. These instruments almost always have the same legal value as the main treaty. Why not then place the provisions of such annexes among the provisions of the main treaty ?
For example, the first historical European community was established by the 1951 Paris Treaty, it only concerned coal and steel. How can you say that a product is steel or coal ? Some specific long and technical texts have been added to the convention to explain the precise definition of the words steel and coal. It would have been impossible to place these texts as provisions.

What about declarations ?
Declarations or resolutions are adopted at the end of and international conference that adopts a final act of the conference. This final act contains the text of the Treaty may be completed by resolutions and/or declarations.
For example, the 2007 European conference in Lisbon also adopted almost 60 declarations.

Many of the declarations have been adopted by the conference, some were adopted by the member of the EU, other have been adopted by just a few States of the EU and some only by one ore two members. We cannot say that declaration of the last kind pertain to the primary law of the EU. Declarations adopted by all member states or by the conference distinguish themselves and will have to be examined to determine if any kind of normatively is contained in those declarations. If States « agree that » it means that some kind of legal obligation is assumed by the States. If the States « wish that » or « would prefer that » it means undoubtably that there is no legal obligations assumed, at best it would be a non binding agreement. It is not always easy to distinguish between different kinds of declarations. We do not know if some declarations fall under the « acquis communautaires ».

For example if another European State become a member of the EU, does it have any legal obligations pertaining to the declarations ? No answer has yet been agreed upon.

2) Entry into force of international treaties

a) General aspects concerning entry into force

The first difficulty is that the signature of the text adopted does not mean that the States have assumed any definite legal obligations. Treaties will have to enter into force. At the first stage at least, only states having participated in the negotiations will be able to give their consent to be bound by this treaty.

In which methods can States become legally bound by Treaties ?
The signature in itself is not a valid legal expression of the consent to be bound. As a matter of fact, international treaties will have to be ratified. Very few multilateral treaties can claim unanimous ratification. How many ratifications could/should/might an international treaty claim ? It depends on the political will of the States which have negotiated the treaty. Traditionally under regional organisations, few ratifications are required. At the international level, they claim more ratifications.
For example the 1968 Vienna Convention has 20 national ratifications in order to enter into force (not much). The 1982 UN Convention of the Sea Montego Bay convention claims 60 ratifications at least (difficult number to reach).

How can we know that an international Treaty needs to be ratified ? The Treaty will explain the ratification process in its last provisions. If no provisions are made, the Treaty does not need to be ratified.

There is a distinction to be made between international treaties and other agreements in simplified form. Treaties need to be ratified. Other agreements may enter into force at the moment of their signature. This distinction has something to do with national constitutional and political systems.
For example, in the US international treaties are negotiated by the federal executive, the President of the US, because the US is a federation, the States will have to have their say, it is the US Senate. They need a majority of 2/3 of the Senate to agree to sign. Given the bipolar political scene of the US, it is difficult to reach the majority. Some very important multilateral treaties negotiated and signed by the US president have never entered into force for the US because of the lack of 2/3 majority such as the 1919 Versailles majority with the provisions of the Convenant of the League of Nations or the Havana Charter under Truman after which nearly all other States refused to ratify the Charter. The US became conscious of its difficulty to ratify. The Supreme court decided that some international agreements may enter into force for the US even if not ratified by the Senate. The Supreme court finds two categories : Treaties and agreements in simplified form.

Other countries have more or less adopted the same attitude and have adapted the reasoning. In the French 1958 Constitution only the President may negotiate and sign international treaties. Now some categories of these treaties may only be ratified by the President of the French Republic with an authorisation given by the French Parliament (Art53). The Constitution also speaks of international agreements and of approval of these agreements but the text doesn't designate which entity should approve the international agreement. The head of the french administration/executive, the Prime Minister indirectly may be supposed to approve such agreements and legally will always negotiate and sign them legally but nearly that never happens, it is always the diplomats and the President.

Another important thing is that the ratification passes when the 60th item of ratification is given to the SG of the UN.

What is the validity of an international treaty which has not yet reached the right number, the convention is not enforced, its provisions have to legal validity. There are some exceptions, the final provision of the treaty is enforced as the States ratify the Treaty.

There are also other methods binding States to treaties. The 1969 Vienna convention specifies that States may express their consent to be bound by an international instrument by other acts. There is no exhaustive list. There is for example the accession. Some treaties limit the time period in which States have the right to ratify.

Article 18 of the Vienna convention provides that if a treaty has expressed its consent to be bound, and the treaty itself is still not enforced, a State which has already ratified can tell the other states that it considers itself as not bound anymore by the treaty. It also provides for the instance in which a state has not ratified, what is the meaning of the signature ? The legal value of the signature is that the treaty is not enforced but pending ratification this State cannot do anything that could destroy the object of the treaty itself. The object of a treaty can only be given by an international tribunal, the signature may play a certain legal role even if the treaty requires ratification for its entry into force. The signature is not an innocent legal act.

The Supreme Court decided that some international agreements may enter into force for the US even if not ratified by the Senate. The Supreme Court found two categories: the treaties requiring ratification, and the agreements in simplified forms.

According to the French Constitution, only the French President may ratify international treaties. Some categories of treaties may only be ratified by the President of the French Republic, after the authorisation from the French Parliament (article 53 of the French Constitution).

The head of the French administration and executive remains the Prime Minister. So indirectly, we may suppose that formally the person who will approve agreements, will be the Prime Minister.

The Montego Bay UN Convention entered into force a year after the 60th national ratification deposited at the headquarters at the Secretary General of the UN.

What is the validity of an international treaty which has not yet reached the right number? It has no legal validity. There are some exceptions. When the treaty states a temporality after which the convention enters into force, the ratification isn't waited. Some provisions may enter into force at a later time. There are also some other methods enabling states to be bound by international treaties. We have seen the ratification and the signature, yet the Vienna Convention specifies that States can express their consent to be bound by an international instrument by other acts.

The accession is a method for States to be bound. The former Yugoslavia had ratified the convention on the law of the sea. After its disappearance, the succeeding States may be bound by the treaty, due to the principle of accession.

b) The consent to be internationally bound

The article 18 of the 1968 Vienna Convention tackles a double question: what if a State expressed its consent to be bound by a treaty, but the treaty itself is still not enforced?

The legal meaning of the signature of a State means that the said treaty is not enforced by the State, but the State should do absolutely nothing that could destroy the object and purpose of the treaty itself. This is quite a vague expression. The signature may play a certain legal role even if the treaty requires a ratification for its entry into force. The signature is never in such cases an innocent act, legally speaking. Article 18 enables a State that has already signed to tell the other States parties to the treaty that it has no intention to ratify it.

c.The pactum de contrahendo

A pactum de contrahendo or pactum de negotiando is a binding legal instrument under international law by which contracting parties assume legal obligations to conclude or negotiate future agreements (see also Treaties). Despite this seemingly straightforward explanation, however, distinguishing a legally binding pactum de contrahendo or pactum de negotiando from non-binding political declaration[s] or statements of intent (Non-Binding Agreements) can be difficult in practice.

3)Reservations in international treaties

Reservations aren't new in international Law. States have **always had the possibility to have reservations**, way before the Vienna Convention. Yet, the international Law, in the field of treaties was quite different to what we sought after the Second World War.

The definition of what a reservation truly is, was given in the article 2 paragraph 1-d of the Vienna Convention. It literally means "*a unilateral statement phrased or named by a State whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their obligation to that State*". The Vienna Convention only evokes reservations made by States, whereas the second Vienna convention is larger.

If it is a text unilaterally made by a State or international organisation. We cannot conceive of a bilateral reservation. Each State formulates their own reservations even though some might be

similar between several States. However, there is a time limit for proposing reservation, which is the moment at which the consent of the State to be bound by the treaty is expressed. It is possible for a State to formulate reservations upon ratifying. A State may only submit reservations after it has expressed its consent to be bound by the treaty, which means ratification (when the treaty enters into force).

If State A enters a reservation to article 30 of a given treaty, the article 30 won't legally bind State A. A State may enter several reservations. International Law had known the concept of reservations way before the Vienna Convention.

However, in the history of international Law, a certain moment in time was quite prolific regarding reservations. Before the WWII, reservations could be made by States but on one condition: **the States parties to the same treaties had to accept the reservation entered by this State**. If a single State stated that it didn't accept this reservation, the reservation didn't come into force. Either the given State had to ratify the treaty without the reservation, or it didn't ratify the treaty at all.

States had to be bound exactly by the same provisions, unless of course, the other States parties to the treaty accepted the reservation proposed by the fellow State. This political choice made by the international community reduced drastically the number of States ratifying the international treaties. This acknowledgement may seem surprising, but only 50 States were invited to the San Francisco Conference in 1945. The situation has truly evolved since 1945.

By putting the condition in which reservations can only enter into force on some conditions, it reduced the States willing to be parties to the treaty.

The 1948 UN Convention regarding the crime of genocide was ratified by the Soviet Union, but on one reservation: the settlement of disputes concerning the interpretation of the Genocide Convention had to be done by the La Haye Court (International Court of Justice). The UN Assembly asked the International Court of Justice for an advisory opinion in 1951. This opinion stated that States made enter reservations to international treaties even though some States parties to the multilateral treaty don't accept these reservations. **The formulation of reservations is completely free for States**. The advisory opinion put some conditions, which were specified by the Vienna Convention of 1969 in its article 19.

By proposing some reservations, the reserving State proposes to renegotiate the multilateral treaty. There have been some cases in which the formulation of reservations was prohibited. The article 19 of the 1969 Vienna Convention states three cases in which reservations cannot be formulated:

- **Some multilateral treaties prohibit the use of reservations.** The 1982 UN Convention in its article 309 prohibits any reservations. If you couldn't accept all the provisions of this international Law of the sea treaty, you couldn't ratify it.

- **The treaty provides only for the formulation of reservations to specified provisions**. It means that a contracting State may enter reservations, but not to all the provisions of the treaty. This kind of reservation would be considered as invalid.

- **The 1951 advisory opinion of the Court of Justice stated that a reservation couldn't be made if it was incompatible with the object and purpose of the treaty.** This expression ("object and purpose") can also be found in the article 18 of the Vienna Convention regarding the "pactum de contrahendo".

It is quite complex to conceive the object and purpose of a multilateral treaty. The protocol 13 of the European Convention of Human Rights abolishes the death penalty under all circumstances. Nonetheless, this protocol doesn't specify the possibility to enter reservations. The object and purpose of this protocol 13 would be harmed by a potential reservation made to this European principle.

What about the other contracting States to this treaty ?

The States have lost their right to object to reservations proposed by other States. There are many cases in which an objection to a reservation is related to a political and not legal reason. For instance, a given State could enter a reservation against an article prohibiting torture. The objecting State might grant itself the right to torture its citizen or foreigners. The objection against a reservation plays a political role in the sense that it draws attention the validity to this kind of reservation. In this case, an objecting State might denounce the violation of human rights in this attempt to legalise torture.

Diplomatically speaking, the ratification of a human rights convention makes the country/ State appear in a positive spectrum. The predominantly Muslim States have for instance entered many reservations to the 1979 UN women's right convention. The interpretation and application of this UN convention had to be, according to these States, **judged according to the "sharia Law".** Following this event, some more "liberal" States have contested this attempt of amending the treaty. Such objections made by the Occidental States were motivated by political reasons.

Who is able to determine legally speaking, the validity of a reservation?

The Vienna Convention is silent on this peculiar point. Scholars disagree on who should have such power. Not all disputes related to reservations may be settled by international judges. Some few systems, in international Law, allow the designation of an international Court capable of saying that a reservation isn't valid.

The 1957 Rome Convention doesn't contain any provision clearly saying that the European Court of Human Right has the power to declare a reservation as invalid. This is what the Strasbourg Court did. In a case of paramount importance, the so-called **Belilos case**, a reservation entered by Switzerland was declared by the European Court of Human Rights as invalid. This Court even got as far as to state that the reserving State (Switzerland) **is bound by the European Convention of Human Rights.** Through the Belilos case, **the Court considers that it has power to examine the validity of this reservation**. Moreover, the reservation is declared invalid, and yet the Swiss State is considered to be still bound by the European Convention of Human Rights.

The Swiss federal Parliament disagreed with this decision. Thanks to a vote, Switzerland accepted to not denounce the European Convention of Human Rights. For some Swiss scholars, Switzerland should have denounced the European Convention of Human Rights.

Some other European entities haven't forsaken the idea to formulate reservations, such as the conservative British party, Sweden or even some political parties in France (François Fillon was in favour of a re-ratification of the European treaty with new reservations).

Who has the power to formulate reservations upon signing or ratifying a multilateral treaty ?

This question relates, in fact, to constitutional Law. **In France, only the French president has the power to enter reservations. In the United States, the Senate has this kind of power.** A State has the power to withdraw its own reservations. On the other hand, objecting countries have the power to withdraw their objections. The European Convention of Human Rights was adopted in 1950, a year before the huge shift of the advisory opinion introduced by the International Court of Justice regarding reservations.

The European Convention of Human Rights admits reservations. The conditions are however quite different to the ones of the Vienna Convention. The reserving State may only enter reservations if there aren't any legal text contradicting the given multilateral treaty.

Norway has ratified the European Convention of Human Rights but entered a reservation to the article 9 of the treaty, relating to the freedom of religion. According to the Norwegian Constitution, Jesuits weren't allowed on the Norwegian territory. The Convention entered into force in 1952 with this reservation.

In 1954, the Norwegian Constitution was amended and the provision regarding religious freedom was abolished. Following this event, the reservation was withdrawn. In international practice, States may also enter interpretative declarations. The Vienna Convention doesn't really examine the question of interpretative declarations. We can't really know the conditions under which a State may enter this kind of declaration, or even the legal effect of these declarations.

The 1982 UN Convention, in its article 310 specifies that States may enter interpretative declarations. The legal effects of the interpretative declarations remain in fact a grey zone. The danger is that States use article 310 allowing interpretative declarations to put aside the prohibition of reservations acted by the article 309. Some interpretative declarations seem quite doubtful. The Republic of China has entered an interpretative declaration prohibiting the passage of a ship whose passage wasn't allowed by the Chinese government.

Sweden doesn't ask for a previous permission but asks a notification from foreign ships before their passage in Swedish canals.

III. Legal effects of international treaties

A) Legal effects of treaties on States parties to a treaty

1) Implementing international treaties

a) Pacta sunt servanda

Pacta sunt servanda is the title of the article 26 of the Vienna Convention. This expression means **that the provisions of the treaty must enter into force, except for the reservations, must be "performed in good faith".** The article 29 of the Vienna Convention states that this "performance", the entry into force of the treaty may encounter certain exceptions.

The first exception is the colonial exception. **Colonial States had, in the past, the power to conclude a treaty on behalf of a given part of the territory.** This clause allowed colonial countries to apply international treaties to the metropolitan area or even some colonies instead of the whole territory.

According of the article 56 of European Convention of Human Rights, a State may extend the application of the European Convention Human Rights on some territories it assumes a certain overview on. It was the case for the Netherlands or even Great Britain (ex: Channel islands, Man island).

According to paragraph 3 of article 56, when the European Convention has been extended to an overseas territory, it has to comply to the local requirements. These "local requirements" enabled the amending of the provisions of the European Convention of Human Rights.

The island of Man is constitutionally fairly autonomous. The **1978 Tyrez judgement** of the European Court of Human Rights was of a paramount importance in this case. Tyrez was convicted on the island of Man. According to the legislature of the island of Man, he is sentenced to be whipped by policemen. Yet, the article 3 of the European Convention of Human Rights prohibits degrading physical treatments AND torture. The victim brings the case before the European Court of Human Rights. The Court found that there were no local requirement justifying corporal punishments. The mere view of the majority of the population on this island that this judgment was fair, didn't constitute for the Court "a local requirement".

Another case would be the **"Py" case**. Py is a public Law professor in New Caledonia. The Py case doesn't relate to the European Convention itself. Py contests the fact that as a French citizen in an overseas territory, he has no right to vote in local elections. The 1998 Nouméa Agreements stated that no French citizens recently established in New Caledonia has the right to vote in local elections. The Strasbourg Court decided that this is a local requirement, the fact that not every French citizen may participate in elections in New Caledonia. The Court argued that the Nouméa Agreements aimed at conserving the balance between the communities in New Caledonia.

The international human rights Law shows us the extraterritoriality of the international treaties. The Loizidou case is prolific in this matter. When Turkey invades Cyprus, the North part of the island is colonised. Turkey doesn't admit the colonisation of the island. Cypriots of Turkish origin proclaimed the independence of a Northern Cyprus. Miss Loizidou is a Cypriot woman. She brings her case to the European Court, and argues that her rights regarding private properties, left in the Turkish part of Cyprus, was violated.

Turkey is condemned as responsible for all violation of the European Convention of Human Rights in this part of Cyprus since the Northern Cypriot Republic is only recognised internationally by the Turkish government.

Mister Ilascu lived in the Eastern part of the Pridnestrovian Moldavian Republic called Transnistria. During a manifestation, he is arrested and sentenced to death. The political and economic support of Moscow for the secessionist movement of Transnistria is enough to dismiss the case by saying that Russia is responsible for the unfair treatment of Mister Ilascu.

b. Contradictory engagements

A State may in a single year ratify several bilateral or multilateral treaties. But what about the hypothesis of provisions from different treaties contradicting themselves ? **Contradictions in Law are a common feature in national legal system. However, these national contradictions are settled by national judges.** The traditional legal rule (lex posterior derogat legi anterior: later statute prevails on the previous statute) **doesn't work in international Law.**

The paramount article 103 from the San Francisco Charter states **that in the event of a conflict between the obligations of the States parties to the Charter, the obligations of the Charter prevail.** In some way, the UN Charter is considered in international Law as the **supreme legal act.**

The article 53 of the European Convention of Human Rights states that if national Law or any other international conventions binding the States parties to the European Convention of Human Rights provides a better protection of human rights, it will prevail. This article has almost never been applied. The settlement of contradictory agreements is far from being adjusted.

c. Legal effects of treaties in national law

There are two main theories: **monism** and **dualism.** Monism is a theory saying that international treaties ratified by a monist State will freely apply within the legal system of a given State. It means that you may invoke some provisions from international treaties to revoke national dispositions. International treaties prevail on national Law. In the monist countries, we count France, African French-speaking countries, most European countries or even Latin American countries.

Some part of the national Law of the monist State won't have to be set aside by a prevailing international treaty. The French Constitution will always prevail over the international treaties (Fraisse judgement). In monist States, international treaties are incorporated into the national legal system.

According to the dualist theory there are two distinct worlds: the world of the national Law and of the international Law. These two spheres of the legal system may not collide. International Law may not be applied by the national dualist judge. The application of the international treaties only concerns the international relations of this given State.

There are **three main dualist States:** Italy (under the auspices of Anzilotti Dioniso), Germany (under the guidance of Hans Trieppel) and England + Wales. But we also count the former British colonies (India, Pakistan, Australia, etc.).

According to the Philadelphia letter, the United States is considered as a dualist country. In fact, federal judges have put some restrictions on the transposition of international Law in national Law. We can think of a statute that incorporates some or all the provisions of an international treaty. This is what happened with the 2000 Human Rights Act in England. This act enabled an incorporation of the European Human Rights Convention in the English and Welsh legal system.

Some monist States become dualist States when international customary Law is concerned. On the contrary, the German Constitution estimates that international customary Law is part of the national Law.

2.Interpreting international treaties

The interpretation of a legal text in general is a very delicate affair. The international Law relating to the interpretation of treaties has known a shift. The article 31 paragraph 1 of the Vienna Convention reminds us of the principle of "good faith". The interpretation or performance "bona fide" of a treaty is of a paramount importance.

Law doesn't have its specific language. The legal science makes use of the common language. We start from the belief that there is a given meaning for each word. Specialists of linguistics could say that the article 31 paragraph 1 is basically nonsensical. The context of the treaty is defined in the following paragraphs.

Almost all international treaties have a preamble. It is quite complex to determine the "object and purpose" of a given treaty. Some tribunals are determined to interpret international treaties. One famous example is the method followed by the Court of Justice of the European Union. This Court has based its way of settling disputes under the "Telos", which means the final goal/ purpose followed by the treaty. Thus, we speak of the teleological method of the European Court of Justice. If a directive or a regulation of a given treaty can be interpreted in different ways, the Court will choose the norm pushing closer to the principle of the European Union (economic integration).

Most bilateral and multilateral conventions contain an article explaining the meaning of certain terminologies used by the treaty. In its article 2, the Vienna Convention explains what the terms "treaty" or even "reservation" mean. There are supplementary means of interpretation. Under the Vienna convention, other interpretation methods are called "supplementary". You can use supplementary means in two cases: the interpretation under the principles of article 31 leaves the meaning ambiguous or obscure OR the interpretation leads to a result manifestly absurd or unreasonable.

In the past, international treaties were only drafted in Latin. Until the 19th century, they were written in **French.** Since the end of the First World War it was English. Since the end of the Second World War, other languages

The **UN drafted all their treaties in English, Russian, Chinese, French and Spanish**. Since the late 1970's, a sixth language was introduced: **Arabic**. Some other languages are taking more and more space in international negotiations: **German and Portuguese.**

The final text of the treaty is supposed to be exactly the same in all languages. The article 33 of the Vienna Convention specifies that all official versions have the **same legal value**. In general, international treaties won't determine a version prevailing on the others. The fourth paragraph of article 33 says that **when there is a difference in meaning during the translation, it is the version which best reconciles the text with the object and purpose of the treaty that shall be adopted.**

2) Interpreting international treaties

B) Legal effects on non-parties to treaties

1. Rights of third parties
    a) A general rule in favour of third parties
    b) The particular case of the most favoured nation clause
2. Obligations of third parties
    a) The restrictive scope of obligations on third parties
    b) The particular case of objective regimes

IV End of validity of international treaties

A) Termination of international treaties
1). Ordinary causes of termination of treaties
    a) End of effects of treaties provided by treaties
    b) Denunciation of treaties
2) Extraordinary causes of termination of treaties
    a) General aspects
    b) The *rebus sic stantibus* clause
    c) The emergence of a new peremptory norm of international law

B) Cases of invalidity of international treaties
1) Problems with the consent to be bound
2) Treaties contrary to existing peremptory norms