What is Law?
- Law comes from statehood. Statehood is defined as having: Territory, Population, Government & Sovereignty recognized by other nations
- Law is made by Executive Branch in Non-Democratic nations (Decrees) and Legislative Branch in Democratic Nations
- The United Nations is an International Legal Entity BUT not a government, and therefore has no statehood and can’t make laws
- International Law: Consensus though negotiations, except in the case of unequal treaties
- Must be signed by all member nations. Followed as long as basic conditions of the treaty don’t change

International Law
*David Held 2000*
- Traditional sovereign state law
  - Immunity of a state from jurisdiction by another state or organization
  - Immunity of citizens from state agencies of foreign nations
- Postwar developments
  - Challenge the exclusion of individual rights & obligations
  - Increased accountability of political leaders for wrongdoing
  - Linked state legitimacy with democracy & upholding of common values (see UN International Covenant on Civil & Political Rights 1966 & CSCE Helsinki Declaration 1992)
  - Basic international humanitarian values (“human rights”) transgress state laws beginning with Nuremberg & Tokyo Trials 1945/6

Globalization and Legal Certainty
*Gessner 2000*
- State & non-state institutions providing global legal certainty (Table)
- Overall weak consensus who and how global legal interactions should be handled
  - Lex Mercatoria offers some guidelines
  - International arbitrators are few, mostly U.S. law firms
  - Third cultures (scientific community, mafia, religious communities, commercial cartels, Example: Diamond industry brokers)
  - Support structures: consulates, International Conventions, Chamber of Commerce
- BUT: third cultures & non-state mechanisms are fragile and break down easily. Small and medium-sized enterprises, consumers, members of binational families, migrants & victims of accidents in foreign countries are losers of global legal uncertainty because they are not covered or lack access to arbitrators, 3rd cultures & structures

International Criminal Court
Pros
- jurisdiction is based on where the crime is committed not based on nationality
Cons
- Infringement on national security. Can prosecute without permission of a state
- Repressive nations using ICC as anti-U.S. tribunal
- No trial by jury & the chance to confront one’s accusers & and protection from double jeopardy (as in U.S. court)
- Balance of power offsetting power of ICC
- Lack of enforcement
If US does not become signatory, ICC is paper tiger

ICC & ICJ
- Origins: Nuremberg and Tokyo WWII trials
- Civil Law=> International Court of Justice, Established in 1945 by the UN Charter
- Criminal Law=> International Criminal Court--Tribunals in former Yugoslavia and Rwanda, under consideration also in Cambodia and Sierra Leon
- 1998 Conference in Rome to establish a permanent international criminal court, Signed by 129 states, ratified by 60 in 2002=>entered into enforcement
- Non-signatories: U.S., Cuba, N.Korea, Iraq, Libya, Israel …

Questions and Tasks
- Should the UN be given stronger peacekeeping capabilities?
- Should the U.S. ratify the International Criminal Court Treaty?
- Has the U.S. a right to promote unilateral and violent regime change without the blessings of the UN or International Law?