
UN70: Contributions of the United Nations to the Development of International Law

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INTRODUCTION

As any international lawyer would concede, the international legal order is decentralised, and no single central organ exercises functions akin to legislatures in national legal orders.² States create international legal rules either implicitly, through their practice and *opinio juris* (the combination of which constitutes rules of customary international law), or explicitly, through the adoption of bilateral or multilateral treaties setting out legal rules and obligations for the states adhering to them. This creates a complex system in which the contribution of international subjects that are not states—such as international organizations—is not always clear.

International organizations are creatures of their mandates, brought into being by states to perform certain tasks.³ In the case of the United Nations, this mandate is exceptionally broad, encompassing almost all aspects of international life. Any review of the agenda of the UN General Assembly, for instance, will reveal a complex menagerie of issues. The agenda for the seventieth session of the Assembly, for instance, included

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173 items under the broad headings of sustainable development, the maintenance of international peace and security, the promotion of human rights, the coordination of humanitarian assistance, disarmament, drug control, crime prevention and combating international terrorism, and, of course, the promotion of justice and international law, among others. The Assembly constitutes the paradigmatic venue for collective action for the international community—each member gets a say and a vote, and the body may discuss “any questions or any matters” within the scope of the Charter of the United Nations (the “Charter”).⁴

Generally speaking, the UN system consists of three mutually reinforcing pillars: (i) peace and security, (ii) development, and (iii) human rights.⁵ As established by the International Court of Justice in the *Reparations* advisory opinion, the Organization also enjoys an independent legal personality “in certain respects in detachment from its Members” that is indispensable to its activities.⁶ As an organization, the UN is equipped with organs and special tasks. It may impose binding obligations on its

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members, and it may institute international claims and conclude international agreements. Accordingly, while states are the legislators of the international legal system, over the seventy years of its existence, the UN has provided not only a forum for collective action, but also a defined legal framework and an independent agency to contribute to the development and consolidation of legal norms.

Along these lines, the following briefly traces the contribution of the UN to the development of international law in a few important ways. In particular, it focuses on (i) the role of the Organization as a venue for collective action, including multilateral treaty negotiation, (ii) the law-making that occurs through the organs and institutions of the Organization, such as the work of the International Law Commission, the adoption of resolutions and decisions by the Organization’s political organs, and the jurisprudence of the International Court of Justice, and (iii) the contribution of the legal opinions of the Office of Legal Affairs to the development of international legal rules and customary norms.

VENUE FOR COLLECTIVE ACTION

By the terms of its Charter, the United Nations is open to all “peace-loving states” that accept the obligations contained in the Charter.⁷ From an initial membership of 51 states, the Organization has expanded markedly to include, at present, 193 members. For many states, particularly those with smaller populations and limited means or bases to establish diplomatic missions around the world, membership in the UN and participation in its work and deliberations constitutes one of their primary international activities.

The broad mandate and near-universal membership of the UN makes it a unique venue for collective action. No other international organization can match the breadth or depth of opportunities presented by the UN for States to give voice to their positions. In addition to the annual plenary session of the General Assembly, traditionally attended by heads of state and heads of government, the Organization also conducts myriad conferences, meetings, symposia, workshops, and similar activities throughout the year. These happen both at UN headquarters in New York and at various locations around the globe, collectively giving rise to a perpetual slate of international engagements taking place under the auspices of the Organization.

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The UN also enjoys a presumptive legitimacy that complements its structural elements. It is premised on the principle of sovereign equality, giving each member an important stake in the Organization’s activities.⁸ Members are also committed to fulfilling “in good faith” the obligations assumed by them under the Charter.⁹ Taken together, the principles and purposes of the UN enshrined in Articles 1 and 2 of the Charter, as well as the Preamble, are both aspirational and inspirational, forming the fundamental basis for collective action to address issues of international concern.

The substantive output of this collective action can take many shapes. In the context of contributions to the development of international law, a primary (although not exclusive) form is a multilateral treaty. The number of multilateral treaties adopted under the auspices of the UN has grown exponentially. In 1977, around eighty multilateral treaties were deposited with the Secretary-General. Less than forty years later, this figure has risen to more than 560. The subject matter governed by such treaties cover almost every area of activity of the Organization. The actors involved have

also become more diverse, and the specialization of the domains of treaty regulation has also implied that the negotiators themselves are increasingly experts in specific subject areas. Non-governmental actors also increasingly play an important role in treaty negotiations.

The requirement in Article 102 of the Charter that every treaty and international agreement entered into by any member state be registered with the Secretariat and published by it heralded a new era for international treaty relations. With more than 2,600 volumes, the United Nations Treaty Series constitutes the most authoritative reference on international treaty making.

Due to an unprecedented willingness of states to address complex questions at a global level, the normative architecture of international treaties has also become more intricate. In addition to expanding in numbers, multi-lateral treaties are also taking on a wider variety of forms as they are required to address the new challenges of a globalized age. Trends identifiable in this regard include the use of framework conventions, accompanied by protocols, in fields such as climate change and tobacco control, the use of annexes,

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and a willingness of States to resort to decisions of Conferences of State Parties to address key substantive issues.

A further identifiable trend in modern treaty-making is the tendency towards the establishment of institutional mechanisms in relation to multilateral treaties, with core responsibilities in the negotiation, conclusion,

and implementation of treaties now delegated to Conferences of State Parties, Secretariats and other bodies. This in turn has required enhanced coordination in order to ensure an efficient division of labor between such bodies (generally responsible for supporting implementation of treaties) and the Secretary-General as depositary of those treaties (being responsible for facilitating actions by states relating to their participation in the relevant instrument, such as signature, ratification and declarations).

LAW-MAKING THROUGH UN ORGANS AND INSTITUTIONS

The General Assembly

The Organization has also been involved in law-making through its various organs and subsidiary bodies, which has had a substantial impact on numerous areas of international law. Article 13(1)(a) of the Charter

calls on the General Assembly to initiate studies and make recommendations for the purpose of “encouraging the progressive development of international law and its codification.” In implementing Article 13(1)(a), the Assembly has essentially established a “conveyor belt” of international law-making. The manufacturing process begins with the International Law Commission, where issues are considered and instruments are drafted, and traverses back through the General Assembly, in particular its Sixth Committee (Legal), where instruments are further considered and developed by member states before being adopted and opened for accession.

Outside of that process, the General Assembly and the Security Council have also been influential on their own accord in developing international law through their deliberative functions. Finally, the International Court of Justice, while not entrusted with any legislative role, also contributes to the development of international law through its decisions in contentious cases and its advisory opinions.

In discharging Article 13(1)(a) of the Charter, the key consideration underlying the dual concepts of “progressive development” and “codification” of international law is the belief that written international law will remove the uncertainties of customary international law by filling existing gaps in the law, as well as by giving precision to abstract general principles whose practical application is not settled.

The practice of the International Law Commission over the last sixty-seven years has demonstrated that maintaining a strict distinction between the codification of settled law (*lex lata*)
 and the progressive development of
 international law (*de lege ferenda*) has
 not always been possible, since the
 mode in which it was operating when
 considering any particular topic of
 international law was largely a matter
 of opinion. Instead, the Commission
 has come to view the two modes as a
 single, composite, concept,¹⁰ where
 international law-making takes place
 on a continuum between codifying
 largely settled rules to progressively developing other aspects.

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The dual concept of progressive development and codification has proved catalytic in providing the intellectual framework for contemporary efforts at international law-making. The main focus of the Commission has been on the sources of international law and the international legal

rules applicable to the interaction of the main subjects of international law, primarily states, but also to some degree, international organizations. The Commission has also undertaken studies, and contributed significantly to the development of the law regarding the position of individuals under contemporary international law, the law applicable to international spaces, and the question of the settlement of international disputes.

In the exercise of their deliberative functions, the General Assembly and the Security Council have also been active in the development of international law.¹¹ The Assembly's broad mandate has meant that it has considered a wide range of activities and topics. While much of this work has, necessarily, been undertaken at the political level, such activities have been accompanied by, or have led to, the further development of international rules.

The Assembly's contribution to the development of international law in this context has been more indirect, either by way of providing general policy guidance to the law-making process, or more procedural through the formal establishment of processes or subsidiary bodies with a mandate to consider the legal aspects of specific issues.¹² Nonetheless, through its deliberative functions, including the adoption of resolutions and decisions, the Assembly has had a major impact on the development of international law. While not strictly legally binding, a significant number of such resolutions, particularly those adopted in the form of solemn declarations of principle, have had a normative impact on the law.

Notably, on the occasion of the twenty-fifth anniversary of the United Nations, in 1970, the General Assembly adopted the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (hereinafter "Friendly Relations Declaration of 1970"),¹³ in which

..... it proclaimed several "principles of international law relating to friendly relations and cooperation among States." A further significant proclamation by the General Assembly came in 1974, when it adopted, by consensus, the definition of aggression.¹⁴

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..... Of all the areas the Assembly has been involved in over the course of the last seventy years, its activities in the area of human rights have been particularly normative.¹⁵ The Assembly has adopted a number of declarations and other texts, many of which then served as a basis for the subsequent negotiation of major multilateral treaties.

The key text is the Universal Declaration of Human Rights, adopted by the General Assembly on December 10, 1948,¹⁶ which served as the basis for the subsequent negotiation of the two Covenants¹⁷ (and inspired several other human rights treaties). The Assembly has also referred in other major proclamations, such as the Millennium Declaration of 2000, to the need to respect internationally recognized human rights and fundamental freedoms.¹⁸

This is necessarily only an illustrative rather than exhaustive list. The Assembly has also made important contributions through its deliberative functions to, *inter alia*, peacekeeping and other operations,¹⁹ the responsibility to protect,²⁰ national sovereignty and non-intervention,²¹ disarmament,²² the peaceful settlement of disputes,²³ the rule of law at the national and international levels,²⁴ the right to self-determination,²⁵ the protection of civilian populations in armed conflicts,²⁶ refugees and displaced persons,²⁷ humanitarian assistance,²⁸ international criminal law²⁹, and the environment³⁰.

The Security Council

While the Security Council has a narrower mandate than the General Assembly, it has the power to take binding decisions on substantive matters.³¹ According to Article 39 of the Charter, the Security Council has the authority to first determine the existence of a threat to the peace, a breach of the peace, or an act of aggression, and then “make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.” In practice, such measures have ranged from targeted sanctions against terrorists, to the establishment of peacekeeping operations and the creation of international criminal tribunals. Importantly, enforcement measures adopted by the Council under Chapter VII of the Charter are not constrained by the general prohibition on intervention in matters essentially within the domestic jurisdiction of states contained in Article 2(7) of the Charter.

In the exercise of its functions under the Charter, the Security Council has the power to make binding decisions in specific situations, and it has used its discretion to hold state- and non-state actors alike responsible for their wrongdoings under international law. It has regularly found violations of international law and taken sanctions against the wrongdoer(s)—whether states or non-state actors³²—thus contributing to filling the enforcement gap that characterizes the decentralized international legal system. One of the first cases concerned Southern Rhodesia in 1966, when the Council considered that the policies of racial segregation and the Unilateral Declaration of Independence by a white minority

government infringed the right to self-determination of the majority population.³³ Similarly, another case concerned South Africa, in 1977, in connection with its apartheid policies. In subsequent years, the Security Council strongly condemned “violations of international humanitarian law” in crises such as those in Somalia, Rwanda, and Sudan, which all involved internal conflicts.³⁴ It also characterized the massacre in Rwanda as constituting genocide. Moreover, the Security Council attributed some such violations of international law to non-state actors, such as the National Union for the Total Independence of Angola (UNITA), the Bosnian Serbs, the Taliban and Al-Qaida, and the Janjaweed in Sudan.

Since the early 1990s, the Security Council has continuously addressed issues relating to terrorism by means of sanctions. Following the attacks of September 11, 2001, the Security Council established a Counter-Terrorism Committee, composed of all members of the Council, by means of resolution 1373 (2001). The resolution obliged member states of the UN to take a number of measures to prevent terrorist activities and to criminalize various forms of terrorist actions, as well as to take measures that assist and promote cooperation among countries in adherence with international counter-terrorism instruments.

Another major Security Council contribution to international law is the authorization of peace operations. Over the course of its history, the Security Council has established sixty-nine peace operations in different

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parts of the world. Such operations include traditional peacekeeping, but have increasingly also seen peace enforcement and peacebuilding missions.³⁵

While traditional peacekeeping is said to have its legal basis in Chapter VI of the Charter, the Security Council more recently has developed a practice of invoking Chapter VII of the Charter when authorizing more complex peace operations in volatile environments. The practice of the United Nations authorized peace operations is thereby essential not just in promoting standards of international humanitarian law and human rights law, but also in promoting the international law of military operations more generally.³⁶

The Security Council has also sought justice for the victims of international crimes, such as war crimes, crimes against humanity, ethnic cleansing and genocide. By establishing the International Criminal Tribunal for the

former Yugoslavia and the International Criminal Tribunal for Rwanda in the early 1990s, the Security Council filled the judicial vacuum that was left in the post-conflict societies of both countries. At the same time, the creation of those two tribunals contributed to the development of international criminal law as a fundamental area of international law. In 2010, the Security Council created the Mechanism for International Criminal Tribunals to carry out a number of essential functions of the two ad hoc tribunals after the completion of their respective mandates. Other tribunals in whose creation the Security Council has been involved include the Special Court for Sierra Leone and the Special Tribunal for Lebanon. The Council has also recently been involved in supporting the establishment and operation of the Special Criminal Court in the Central African Republic.

The International Court of Justice

The significant role of the International Court of Justice in the development of international law is commonly accepted. It is the principal organ of the UN entrusted with a judicial function—that is, resolving legal disputes—but in the process of this, the Court’s ancillary function is undoubtedly to some extent the development of international law. The Court’s function is to “decide in accordance with international law such disputes as are submitted to it.”³⁷ In its advisory capacity, the Court provides legal advice to those UN organs and specialized agencies empowered to ask for such advice, but it has been careful to cast this advisory function in terms that do not compromise its essential “judicial” function.³⁸

Despite this distinction between advisory and judicial functions, and the fact that a judgment of the court in
 a contentious case is binding only on
 the parties to that case, however, the
 Court does develop international law
 to a greater or lesser degree through
 each of its judgments. In stating the
 law as applicable to any specific case,
 the Court also confirms or develops
 various rules of international law in the
 process of making its decisions.³⁹ Every case is a building block bound to
 have an impact on the development of the jurisprudence, and hence on
 international law. It will be read, considered, cited, and relied upon, or
 argued against by states, counsel, academics, the Court itself and its judges

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in later cases, as well as by the judges of other international, regional, or even domestic courts.

The almost uninterrupted existence of an International Court for nearly a century has resulted in the development of a significant body of international jurisprudence, which the Court seeks to keep consistent, but also sensitive to the development of international law. The Court is also the only judicial institution with comprehensive jurisdiction under international law: its power to decide disputes extends to all disputes “concerning ... any question of international law.”⁴⁰ The Court is, as such, uniquely placed among international courts and tribunals to contribute to the development of international law, and has done so in many crucial areas of international law.

DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE LEGAL OPINIONS OF THE OFFICE OF LEGAL AFFAIRS

The contribution of the Office’s legal opinions to the development of international law, broadly defined, should be viewed in the context of the Organization’s operations as a whole, as well as its unique composition and the authority and responsibilities accorded to it by member-states under the Charter of the United Nations, some of which are *sui generis*. The range of questions on which the Office is asked to provide legal advice is exceptionally broad, extending across the spectrum of international relations and reflecting the unique position of the UN in the larger international system.

The effectiveness of the Office’s opinions relies less on formal authority, which tribunals and other judicial organs may enjoy, than on those opinions’ intrinsic merits, legal soundness, and persuasive force.⁴¹ Legal advice represents a critical element for ensuring that the UN, and each of its constituent entities, holds to its constitutional foundations and operates according to the rule of law.

The legal considerations associated with UN peacekeeping operations illustrate this point. Legal advice is provided at each step of the peacekeeping process, beginning with the Security Council’s establishment of the respective mission, the building up of the mission’s components through the receipt of personnel and equipment contributions by member states, and the conclusion of the status-of-forces agreement with the host country. Legal advice then occurs on a continuous basis in the interpretation and execution of the mandate and the application of the rules of engagement, concepts of operations for the mission components, and various general policy instruments applicable to the mission’s operations.⁴²

When the Security Council adjusts the mandate, corresponding changes are also made to the legal framework as appropriate.

Similarly, advice from the Office of Legal Affairs has contributed markedly to sanctions regimes established by the Security Council. The Office of Legal Affairs, in coordination with the other substantive departments, has been instrumental in advising on the relevant legal considerations, including the further development and strengthening of the due process guarantees under the various sanctions regimes.

Another specialized area where the Office has prominently affected the development of international law relates to the privileges and immunities enjoyed by international organizations. Given the breadth of its operations, it is probably the world's most prolific actor in this regard and its practice on fundamental questions, such as the determination of "official functions" and the criteria for waivers of immunity, has been influential with respect to other international organizations.

The International Law Commission has recently engaged the issue of the contribution of international organizations to the identification and formation of customary international law. In his recent report to the Commission, the Special Rapporteur on the topic noted that "States remain the primary subjects of international law [and] it is primarily their practice that contributes to the formation, and expression, of rules of customary international law."⁴³ He has also observed, however, that "the conduct of international organizations may serve to catalyse state practice"⁴⁴ and that "the practice of international organizations relating to the international conduct of the organization or international organizations generally may...serve as relevant practice for purposes of formation and identification of customary international law."⁴⁵

To a certain extent, the Office acts for the Organization in its external relations and so is a direct participant in
 the process of shaping international law. This includes negotiating international agreements, formulating and making protests, and presenting claims. The Office's main activity, however, is the provision of internal advice. When the Office provides its opinion, it is then for its addressees to act (or not) upon that advice. In doing so, it is they, and
 not the Office, that establish the practice of the Organization. This practice contributes to the development of the Organization's rules. It also shapes

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the interpretation or application of the treaties to which the Organization is party, or under which it has rights and obligations and contributes to, or influences the development of rules of customary international law. The contribution of the Office's opinions to the development of international law is therefore largely indirect. It is nonetheless real.⁴⁶ *f*

ENDNOTES

- 1 The author wishes to thank Matthew Hoisington, Associate Legal Officer, Office of Legal Affairs, Office of the Legal Counsel, for his integral contributions to this article.
- 2 G. Abi-Saab, "Cours général de droit international public," *Recueil des Cours de l'Académie de La Haye*, vol. 207 (1987), p. 9 at p. 127; P. Daillier, M. Forteau, A. Pellet, *Droit international public*, 8e éd. (Paris: L.G.D.J., 2009), p. 102.
- 3 It should also be recalled in this connection that, as the International Court of Justice observed in its advisory opinion on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, international organizations, unlike states, do not possess a general competence. Rather, they are governed by the "principle of speciality," which means that they are "invested by the States which create them with powers, the limits of which are a function of the common interests whose promotion States entrust to them." *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, I.C.J. Reports, 1996, p. 66 at p. 78, para. 25.
- 4 Charter of the United Nations, Article 10.
- 5 See General Assembly resolution 60/1 of September 16, 2005 at paragraph 9 (hereinafter "World Summit Outcome 2005").
- 6 *Reparations for injuries suffered in the service of the United Nations*, Advisory Opinion: I.C.J. Reports 1949, at p. 179.
- 7 Charter, Article 4(1).
- 8 The exception to this principle is the Security Council, which consists of fifteen members, five of which (China, France, Russia, the United Kingdom and the United States) are permanent members whose affirmative vote is required under Article 27 of the Charter for the Council to take decisions on substantive matters. Various efforts to reform the Council's membership and voting procedures have been proposed; however, amending the Charter also requires the agreement of the five permanent members of the Council.
- 9 Charter, Article 2(2).
- 10 *Work of the International Law Commission*, 8th ed., vol. I (United Nations publication, Sales No. E.12.V.2), p. 47.
- 11 See J. Alvarez, *International Organization as Law-makers* (Oxford: Oxford University Press, 2005).
- 12 *Ibid.*, pp. 286–292.
- 13 GA res. 2625 (XXV) of October 24, 1970. See G. Arangio-Ruiz, *The United Nations Declaration on Friendly Relations and the system of the sources of international law: with an appendix on the concept of international law and the theory of international organisation* (Leiden: Sijthoff, 1979); L.C. Green, "The Un Declaration on Friendly Relations and the System of the Sources of International Law," *Dalhousie Law Journal*, vol. 6 (2) (1980), p. 397; V.S. Mani, *Basic principles of modern international law: a study of the United Nations debates on the principles of international law concerning friendly relations and co-operation among States* (New Delhi: Lancers Books, 1993); and I. Sinclair, "The significance of the Friendly Relations Declaration. United Nations & the Principles

- of International Law,” in Vaughan Lowe, Colin Warbrick (eds), *The United Nations and the Principles of International Law: Essays in Memory of Michael Akehurst* (London: Routledge, 1994), pp. 1-32.
- 14 GA res. 3314 (XXIX) of December 14, 1974.
 - 15 See J. Alvarez, *International Organizations as Law-makers* (Oxford: Oxford University Press, 2005), pp. 156-169.
 - 16 GA res. 217(III) A of 10 December 1948. See G. Alfredsson and A. Eide, *The Universal Declaration of Human Rights: A Common Standard of Achievement* (The Hague: Martinus Nijhoff, 1999), pp. 3-25.
 - 17 International Covenant on Civil and Political Rights, done at New York on December 16, 1966, United Nations, *Treaty Series*, vol. 999, p. 171; and International Covenant on Economic, Social and Cultural Rights, done at New York on December 16, 1966, United Nations, *Treaty Series*, vol. 993, p. 3.
 - 18 GA res. 55/2 of September 8, 2000.
 - 19 GA res. 377 (V) of November 3, 1950. See J. Andrassy, “Uniting for Peace,” *American Journal of International Law*, vol. 50 (1956), pp. 563-582; D. W. Bowett, *United Nations Forces: A Legal Study* (New York: Frederick A. Praeger, 1965), pp. 29-60; F. Seyersted, *United Nations Forces in the Law of Peace and War* (Leiden: Sijthoff, 1966), pp. 41-45;
 - 20 GA res. 60/1 of September 16, 2005.
 - 21 See e.g. GA res. 2131 (XX) of December 21, 1965; GA res. 36/103 of December 9, 1981.
 - 22 See e.g. GA res. 41 (I) of December 14, 1946; GA res. 502 (VI) of January 11, 1952 (Regulation, Limited Implementation and Balanced Reduction of all Armed Forces and all Armaments; International Control of Atomic Energy); GA res. 1837 (XVII) of December 18, 1962 (Declaration on the Conversion to Peaceful Needs of the resources Released by Disarmament); GA res. 34/88 of December 11, 1979 (Declaration on International Cooperation for Disarmament); GA res. 44/114 of December 15, 1989 (Reduction of Military Budgets); GA res. 48/62 of December 16, 1993 (Reduction of Military Budgets: Transparency of Military Expenditures); and GA res. 50/70 of December 12, 1995 (General and Complete Disarmament).
 - 23 See e.g. GA res. 37/10 of November 15, 1982. See B. Broms, *The Declaration on the Peaceful Settlement of International Disputes (Manila)*, in *Essays in International Law in Honour of Judge Manfred Lachs* (The Hague: Martinus Nijhoff, 1984), pp. 339-353.
 - 24 GA res. 67/1 of September 24, 2012.
 - 25 See, e.g., GA res. 637 (VII) of December 16, 1952 (The Right of Peoples and Nations to Self-Determination); and GA res. 47/82 of December 16, 1992 (Importance of the Universal Realization of the Right of Peoples to Self-Determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and Observance of Human Rights). See also GA res. 1802 (XVII) of December 14, 1962 (Permanent sovereignty over natural resources).
 - 26 See e.g. GA res. 2675 (XXV) of December 9, 1970 (Basic Principles for the Protection of Civilian Populations in Armed Conflicts).
 - 27 See e.g. GA res. 319 (IV) of December 3, 1949 (Refugees and Stateless Persons) (establishing the Office of the High Commissioner for Refugees)
 - 28 See e.g. GA res. 46/182 of December 19, 1991.
 - 29 See e.g. GA res. 3(I) of February 13, 1946; GA res. 95(I) of December 11, 1946; GA res. 96(I) of December 11, 1946; GA res. 3074 (XXVIII) of December 3, 1973.
 - 30 See e.g. GA res. 37/7 of October 28, 1982. See also GA res. 34/186 of December 18, 1979 (Cooperation in the Field of the Environment Concerning Natural Resources Shared by Two or More States), GA res. 42/186 of December 11, 1987 (Environmental Perspective to the Year 2000 and Beyond). See W. E. Burhenne, *The World Charter for*

Nature: a Background Paper (Berlin: Erich Schmidt Verlag, 1983).

- 31 According to Article 25 of the Charter, Member States “agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.” On the binding nature of Security Council resolutions see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council, Advisory Opinion Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1972, p. 16 at p. 53, para. 114. See also M. Wood, “The Interpretation of Security Council Resolutions”, *Max Planck Yearbook of United Nations Law*, vol. 82 (1998), p. 83.
- 32 See V. Gowlland-Debbas, “Responsibility and the United Nations Charter”, in J. Crawford et al., *The Law of International Responsibility* (Oxford: Oxford University Press, 2010), p. 115 at p. 127.
- 33 SC res. 216 of 12 November 1965 and SC res. 217 of November 20, 1965, SC res. 232 of December 16, 1966, SC res. 253 of May 29, 1968, SC res. 423 of March 14, 1978 and SC res. 448 of April 30, 1979 on Southern Rhodesia; and SC res. 418 of November 4, 1977 and SC res. 569 of July 26, 1985 on South Africa.
- 34 SC res. 794 of December 3, 1992 and SC res. 837 of June 6, 1992 on Somalia, SC res. 935 of July 1, 1994 on Rwanda and SC res. 1547 of June 11, 2004 and SC res. 1556 of July 30, 2004 on Darfur.
- 35 Facts and figures are based on the information provided by “United Nations peacekeeping”, at < <http://www.un.org/en/peacekeeping/> > (visited May 28, 2015).
- 36 See generally T. D. Gill and D. Fleck, *The Handbook of International Law of Military Operations* (Oxford: Oxford University Press, 2010).
- 37 Article 38(1) of its Statute of the International Court of Justice.
- 38 According to Article 68 of the Statute of the International Court of Justice, “[i]n the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable”; See Shabtai Rosenne, *The Law and Procedure of the International Court, 1920-1996*, vol. I, *The Court and the United Nations* (The Hague: Martinus Nijhoff, 1997), pp. 171-172.
- 39 This subsidiary function was actually intended at the time of the creation of the Court. See H. Lauterpacht, *The Development of International law by the International Court* (London: Stevens & Sons Limited, 1958), pp. 5-6; H. Thirlway, “The Contribution of the International Court of Justice to the Development of International Law,” *WuDa guojifa yanjiang ji (diyi juan)* (Wuhan, Wuhan University Press, 2006), pp. 36-41.
- 40 Article 36(2)(b) of the Statute of the International Court of Justice.
- 41 O. Schachter, “The Development of International Law through the Legal Opinions of the United Nations Secretariat”, *The British Yearbook of International Law*, vol. 25 (1948), p. 91 at p. 94.
- 42 Examples include the Human Rights Due Diligence Policy (A/67/775-S/2013/110), the Organization’s zero tolerance policy on sexual abuse and exploitation (A/59/710 and A/RES/59/300) and the Secretary-General’s policy on human rights screening.
- 43 A/CN.4/682, para. 70.
- 44 *Ibid.* para. 75.
- 45 *Ibid.* para 76.
- 46 *Ibid.*, footnote 169 citing M. Akehurst, “Custom as a Source of International Law,” *The British Yearbook of International Law*, vol. 47 (1975), p. 11 (“...the practice of organs which are not composed of representatives of States, such as the United Nations Secretariat, can also create rules of customary law ... Nor must one overlook the legal opinions of the United Nations Secretariat”).