

THE LEGAL VALUE OF THE UNITED NATIONS GENERAL ASSEMBLY'S RESOLUTIONS IN THE INTERPRETATION OF TREATY AND CUSTOMARY INTERNATIONAL LAW

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Abstract

Resolutions passed by the United Nations General Assembly (UNGA) carry considerable legal weight, making significant contributions to the development of international law. For example, the International Court of Justice sometimes refers to them to establish customary international rules. Additionally, the Court has used UNGA resolutions to reinforce its legal interpretations. This raises an interesting question about the legal significance of UNGA resolutions in interpreting both norms in treaty and customary international law. Since the powers of the General Assembly are confined to matters within the scope of the present Charter, it prompts the question of whether UNGA resolutions can be applied to interpret norms in treaties beyond the Charter. To address these inquiries, the article seeks to explore the implications of these resolutions in interpreting norms reflected in treaties and under customary international law.

Keywords: *United Nations General Assembly, resolutions, International Court of Justice, international law, practice of international organizations*

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The works of the United Nations have contributed significantly to the development of international law. One of the prime examples is the resolution adopted by the United Nations General Assembly (UNGA). They have carried the significant legal weight that international judges and lawyers should give to these instruments. The International Court of Justice (ICJ) has affirmed the attitude of states to certain UNGA resolutions as a means to deduce *opinio juris* for the formation of customary international law¹ and as an evidentiary value for establishing customary international law.² Furthermore, the UNGA resolutions could be deemed as “evidence of a recognized source of law in the form of state

1 Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, p. 188 (June 27). <https://www.icj-cij.org/case/70>

2 Öberg, M. D. (2005). The legal effects of resolutions of the UN Security Council and General Assembly in the jurisprudence of the ICJ. *European Journal of International Law*, 16(5), 879–906, p. 896. <https://doi.org/10.1093/ejil/chi151>

practice”, given the evolving role of the United Nations through which States can express their views.³ In its advisory opinion on the legal consequences of the *Separation of the Chagos Archipelago from Mauritius in 1965* (2019), the ICJ affirmed the declaratory character of the UNGA resolutions with regard to the determination of customary norm: “Although Resolution 1514 (XV) is formally a recommendation, it has a declaratory character with regard to the right to self-determination as a customary norm”.⁴ However, it should be noted that only certain UNGA resolutions have legal effects in relation to the development of international law,⁵ so this article first must identify types of UNGA resolutions having such effect and exclude the others.

The ICJ not only used UNGA resolutions to showcase the presence of customs but also relied on them to reinforce its legal interpretation. An example of this can be found in the advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons* (1994), where the ICJ cited the General Assembly Resolution 47/37 (1992) to emphasize that environmental factors had to be considered in the application of legal principles during armed conflicts.⁶ Judge Stephen M. Schwebel, former President of the ICJ, suggested that based on the comment of the ICJ in its advisory opinion concerning South West Africa in 1971, the Declaration on the Granting of Independence to Colonial Countries and People was possibly an indication of the authoritative interpretation of the United Nations Charter’s obligations.⁷ By saying so, Judge Schwebel implicitly assigned an additional function to certain UNGA resolutions, which is the interpretation of treaties, including the United Nations Charter (UNC). However, Judge Schwebel did not explain how that function could fit into the existing rules of treaty interpretation stipulated under the Vienna Convention on the Law of Treaties, the

3 Buga, I. (2018). *Modification of treaties by subsequent practice*. Oxford University Press, pp. 16–106.

4 Amann, D. M. (2019). Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. *American Journal of International Law*, 113(4), 784–791, p. 784. <http://dx.doi.org/10.1017/ajil.2019.50>; See Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. Rep. 169, paras. 150 - 153 (February 25). <https://icj-cij.org/node/105778>

5 Öberg (2005), *supra* note 2.

6 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. Reports, para. 32 (July 8). <https://icj-cij.org/case/95>

7 Schwebel, S. M. (1979, April 26–28). The effect of resolutions of the U.N. General Assembly on customary international law. *Proceedings of the Annual Meeting (American Society of International Law)*, 73, 301–309. Cambridge University Press. <http://www.jstor.org/stable/25658015>

foundation for treaty interpretation. Article 31 brings the general rule of interpretation, mentioning several types of documents/practices that should be considered to construe a treaty, namely agreements relating to the treaty, instruments made by one or more parties and accepted by the other parties, subsequent agreements, and subsequent practices and any relevant rules of international law; meanwhile, Article 32 refers to the supplementary means for interpretation. This raises an interesting question of the legal value of the UNGA resolutions in relation to these interpretation rules embedded in the Vienna Convention: Could UNGA resolutions be seen as subsequent practice, subsequent agreement, or supplementary means for treaty interpretation? Furthermore, because the Vienna Convention on the Law of Treaties applies to the interpretation of rules under treaties (Article 1 states that “the present Convention applies to treaties between States), how to interpret the customary rules and the relation between the UNGA resolutions and customary rules is another question.

Finding answers to these questions is critical because: (i) rarely do current literature delve upon the connection between UNGA resolutions and treaty interpretation; (ii) the role of UNGA resolutions is evolving with regard to the development of international law; and (iii) the UNGA resolutions have been mentioned and analysed in a number of the international judgments and advisory opinions relating to the interpretation of terms under treaties. However, it would be too overwhelming if this article researches all international judgments and advisory opinions rendered by all international courts (such as the ICJ, the International Tribunal for the Law of the Sea, the Inter-American Court of Human Rights, and the European Court of Human Rights). Thus, the scope is narrowed down to the assessment of case law, where the UNGA resolutions are mentioned, from the ICJ because it is the principal judicial organ of the United Nations, which is “composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices or are jurisconsults of recognised competence in international law”.⁸ Also, the decisions taken by this Court are of significance to

8 International Court of Justice. (2007). *Acts and Documents concerning the organization of the court No. 6: Charter of the United Nations, statute and rules of court and other documents*. United Nations, pp. 58-87. <https://doi.org/10.18356/9789210023924>

the development of international law⁹ and frequently cited by other courts.¹⁰ Therefore, the article explores and examines judgments and advisory opinions issued by the ICJ as well as separate/dissenting opinions of judges of the ICJ to find answers to the above questions.

With the ultimate aim of exploring the implications of the UNGA resolutions in the interpretation of a norm under international law, the article is structured in three main parts. The first part of the article identifies types of UNGA resolutions and classifies them into different categories. Then, the article examines the legal weight of each category of UNGA resolutions in the process of treaty interpretation under Articles 31 and 32 of the Vienna Convention on the Law of Treaties. Finally, if a norm is considered a part of customary international law, the article examines whether the UNGA resolutions have any legal value in interpreting this norm.

1. Types of United Nations General Assembly resolutions

UNGA resolutions encompass various types. From the internal/external approach, some specifically focus on internal organizational matters, such as financial affairs and budget allocation like the resolution A/RES/77/264 A-C dated 30 December 2022 on the programme budget for 2023. On the other hand, some resolutions were adopted to express concerns or call states to take action. For example, the UNGA passed a resolution titled “Protection of civilians and upholding legal and humanitarian obligations” (No. A/RES/ES-10/21 dated 30 October 2023) on calling for a ceasefire in Gaza, releasing all hostages, and ensuring humanitarian access.¹¹ UNGA also adopted resolutions to seek advisory opinion of the ICJ, such as Resolution 49/75K on 15 December 1994 requesting the Court to render its advisory opinion on the question relating to the threat or use of nuclear weapons.¹² From a legal perspective, the type of UNGA resolutions could be divided into two main

9 Tladi, D. (2023). The role of the International Court of Justice in the development of international law. In C. Espósito & K. Parlett (Eds.), *The Cambridge Companion to the International Court of Justice* (pp. 68–85). Cambridge University Press.

10 For example, the International Tribunal for the Law of the Sea, in its Advisory Opinion on the Climate Change and International Law, cited the opinions of the ICJ in its Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970).

11 United Nations General Assembly. (2023). *Resolution A/ES-10/L.27. Protection of civilians and upholding legal and humanitarian obligations*. United Nations General Assembly.

12 United Nations General Assembly. (1994). *Resolution 49/75K. Request for an Advisory Opinion from the International Court of Justice on the Legality of the Threat of Use of Nuclear Weapons*. United Nations General Assembly.

categories. The first one is recommendatory. Articles 10 and 11 of the UNC explicitly empower the UNGA to adopt resolutions making recommendations.¹³ Luis Acosta believes those resolutions of such nature contain words indicating hortatory rather than legally binding.¹⁴ In addition, as Acosta puts it, the UNGA “has adopted resolutions in nature not of recommendations, but of declarations or determinations of general international law principles”.¹⁵ The UNGA Resolution 2625 (XXV) exemplifies this type, articulating the principles of international law concerning friendly relations and cooperation among states in accordance with international law.

As the scope of this article is limited to examining the UNGA resolutions having the legal effect, it will deem those with either the following factors to be considered: (i) legal bindingness; or (ii) normative value. With regard to the legal bindingness, according to Marko Divac Öberg, although UNGA resolutions contain merely recommendations that are non-binding in nature, some UNGA resolutions relating to internal organizational matters might have a binding effect.¹⁶ This view is confirmed by the ICJ in its jurisprudence. In the *South West Africa* case (1966), the UNGA resolutions were deemed recommendatory in nature;¹⁷ however, with regard to several organizational matters such as an admission of new member states or allocation of budget, the UNGA resolutions possess legal-binding effect.¹⁸ Indeed, the wording in the Charter demonstrates the obligation of member states to pay for the expenses of the Organization. The UNGA Resolution 1583(XV), in its preamble, recognized that “that the United Nations Operation in the Congo (ONUC) expenses were expenses of the organisation within the meaning of Article 17(2) and that their assessment against member States created binding legal obligations on such States to pay their assessed shares”. The ICJ cited this fact in its advisory

13 U. N. Charter, arts. 10-11.

14 Acosta, L. M. (2015). *Legal effect of United Nations Resolutions under international and domestic law*. The Law Library of Congress & Global Legal Research Directorate. LL File No. 2015-012099.

15 *Ibid.*

16 Öberg (2005), *supra* note 2, p. 883.

17 *South West Africa* (Ethiopia v South Africa; Liberia v South Africa), Second Phase Judgment, 1966 I.C.J. Reports, para. 98 (July 18). <https://www.icj-cij.org/case/46>

18 Öberg (2005), *supra* note 2, p. 833; Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, 1950 I.C.J. Reports, para. 8 (March 3). <https://www.icj-cij.org/case/9>; Certain Expenses of the United Nations (Article 17, paragraph 2 of the United Nations Charter), Advisory Opinion, 1962 I.C.J. Reports, p. 178 (July 20). <https://www.icj-cij.org/case/49>

opinion on *Certain expenses* in support of its interpretation.¹⁹

Some UNGA resolutions could have normative value. The ICJ has outlined this view in its advisory opinion on *Legality of the Threat or Use of Nuclear Weapons* (1996). In this case, the Court noted that “General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinion juris*.”²⁰ Thus, the normative value, from the perspective of the ICJ, is the capacity of UNGA resolution to serve as evidence supporting the existence of *opinion juris*, a crucial criterion for the determination of customary international rules. One example of a UNGA resolution that falls into this category is Resolution 1514 (XV) titled “Declaration on the Granting of Independence to Colonial Countries and Peoples” in 1961. The ICJ affirmed the normative character of this resolution as to the right to self-determination.²¹ The Court, in its Advisory Opinion on the *Kosovo* case (2010), confirmed the UNGA Resolution 2625 (XXV) reflecting customary international law.²² The shared characteristic of these resolutions is the existence of a set of principles and rights, which could contribute to the development of international law.

2. The legal implications of United Nations General Assembly resolutions on treaty interpretation

When it comes to treaty interpretation, recourse must be made to Articles 31 and 32 of the Vienna Convention on the 1969 Law of Treaties. Article 31 provides authentic means of interpretation that shall be considered, while the supplementary means, which may be resorted to, are embedded under Article 32.²³ In this part, the article will first examine how the UNGA resolutions contribute to explaining the ordinary meaning of terms in the context of the treaty and the light of its object and purpose. At the same time, the

19 Certain Expenses of the United Nations (1962), *ibid.*, p. 177; see Simmonds, K. R. (1964). *The UN Assessments Advisory Opinion. The International and Comparative Law Quarterly*, 13(4), 854–898, p. 859. <https://doi.org/10.1093/iclqaj/13.3.854>

20 *Legality of the Threat or Use of Nuclear Weapons* (1996), *supra* note 6, para. 70.

21 *Legal Consequences of the Separation* (2019), *supra* note 4, para. 156.

22 Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Advisory Opinion, 2010 I.C.J. Reports, para. 80 (July 22). <https://icj-cij.org/case/141>

23 Regan, D. (2017). Understanding what the Vienna Convention says about identifying and using “sources for treaty interpretation”. In J. d’Aspremont & S. Besson (Eds.), *The Oxford Handbook of the Sources of International Law* (pp. 1047–1066). Oxford University Press.

article will analyze the implications of UNGA resolutions to the interpretation profess in cases where they are deemed as subsequent agreement or subsequent practice under Article 31(3). Then, it will proceed to the analysis of the UNGA resolution as a supplementary means for interpretation stipulated under Article 32.

2.1. Interpretation in good faith in accordance with the ordinary meaning given to the terms of the treaty in their context and the light of its object and purpose

Article 31(1) of the Vienna Convention stipulates that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” This is considered a cardinal rule for treaty interpretation and has been repeatedly applied in the jurisprudence of international courts to interpret provisions in treaties.²⁴ The ICJ affirmed that the subsequent practice and agreement to determine the ordinary meaning of the terms in their context and the light of the object and purpose of the treaty also apply *mutatis mutadis* to the practice of an international organization itself.²⁵ However, the Draft Conclusion of the Commission only concerns about the interpretation of constituent instruments of international organizations.²⁶ This article will go beyond the scope of the Draft Conclusion adopted by the Commission by examining the role of UNGA resolutions in finding the meaning of treaties, including the constituent treaty (the UNC) and other treaties signed between states.

The role of UNGA emerged in the process of treaty interpretation in the case of an admission of a state to the United Nations in 1950. In this case, the ICJ resorted to the Rules of Procedure of the General Assembly (Rules of Procedure), which was adopted in several UNGA resolutions to interpret Article 4 of the UNC on admission of new members to the United Nations Organization.²⁷ The UNGA resolutions on adopting the Rules of Procedure created

24 See Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v United Arab Emirates), I.C.J. Report, Judgment, 2021. <https://www.icj-cij.org/node/105983>; International Tribunal for the Law of the Sea. (2011). *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*. ITLOS Reports.

25 International Law Commission. (2018). *Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties, with Commentaries*. International Law Commission, p. 103. https://legal.un.org/ilc/texts/instruments/english/commentaries/1_11_2018.pdf

26 *Ibid.*, p. 93.

27 Competence of the General Assembly (1950) *supra* note 18, p. 9; See UNGA resolution 173(III) in 1947 on the approval of the text of the rules of procedure.

a legal-binding and legitimate effect for the Court to rely on. The ICJ also cited UNGA resolutions and the record of discussions at UNGA in support of its interpretation. In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004), the ICJ relied on several UNGA resolutions and the official record of the 23rd Session of the General Assembly as evidence to prove the evolving interpretation of Article 12 under the Charter.²⁸

In addition, UNGA resolutions also laid the foundation for many reports and studies relevant to international law that could serve as important materials for the ICJ and states to rely on when determining the meaning of a term under a treaty. In disputes relating to navigational and related rights between Costa Rica and Nicaragua before the ICJ, the Memorial submitted by Costa Rica used the Report of the United Nations Secretary-General entitled “Progressive Development of the Law of International Trade” to support its argument on the meaning of “commerce” in the treaty between these two countries.²⁹ This report was requested by the UNGA in Resolution 2102 (XX) in 1965 and later was recognized in Resolution 2205 (XXI) on the establishment of the United Nations Commission on International Trade Law (UNCITRAL) (Establishment of the United Nations Commission on International Trade Law 1966) It should be noted that this resolution could have an empowering legal effect by virtue of the decision to establish the UNCITRAL.³⁰ Furthermore, it is reasonable to argue that because this resolution contained decisions as to organizational matters of the United Nations, it might have a certain degree of legal bindingness. By noting the report in the preamble of such an important resolution with empowering effects and legal bindingness, the UNGA might implicitly render its support to the persuasiveness of the report prepared by the Secretary-General, which served as a basis for the Assembly to decide on the creation of UNCITRAL. Also, the ICJ explicitly referred to the works of the Secretariat of the League of Nations (the predecessor of the United Nations) and

28 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. Report, paras. 27 – 29 (2004). <https://www.icj-cij.org/case/131/advisory-opinions>

29 Government of Costa Rica. (2006, August). *Jerez-Cañías Treaty Case (Costa Rica) - Costa Rica's Report on August 29, 2006*, p. 65. <https://sajurin.enriquebolanos.org/docs/Memoria%20de%20Costa%20Rica%20290806.pdf>

30 See Öberg (2005), *supra* note 2. This article explains the empowering and disempowering effects of the UNGA resolutions.

the United Nations Secretariat to determine the ordinary meaning of the expression “territorial status”.³¹

Not only do UNGA resolutions play a role in finding the meaning of a term under treaties, but they also serve as a context for the Court to identify the object and purpose in the interpretation of a treaty. In the case *Application of the International Convention on the Elimination of All Forms of Racial Discrimination between Qatar and United Arab Emirates* (2021), the ICJ referred to the Resolution 1514(XV) of UNGA to demonstrate the context in which the Convention was drafted to determine the object and purpose of the Convention.³² In the *Oil Platform* case, Iran, in its Memorial, used UNGA resolution 2625 (XV) to support its contextual interpretation of Article I of the 1955 Treaty between Iran and the United States.³³

Accordingly, through these cases, the article considers that the UNGA resolutions had a vital role in the process of defining a term and providing the background for the interpretation of a term under a treaty.

2.2. Subsequent practice/agreement for treaty interpretation under Article 31(3) of the Vienna Convention on the Law of Treaties

Article 31(3) of the Vienna Convention on the Law of Treaties sets out several means that should be taken into account when construing a treaty:

“(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretations; (c) any relevant rules of international law applicable in the relations between the parties.”³⁴

Initially, subsequent practice was intended to clarify the parties’ original intention, but in recent years, the focus has shifted to their

31 *Aegean Sea Continental Shelf (Greece v Turkey)*, Judgment on jurisdiction and admissibility, 1978 I.C.J. Reports, paras. 73-74 (December 9). <https://www.icj-cij.org/case/62>; The United Nations Secretariat. (1949). *The Systematic Survey of Treaties for the Pacific Settlement of International Disputes 1928-1948*. Prepared by the Secretariat of the United Nations in 1948, Lake Success, N.Y.: United Nations. <https://pegasus.law.columbia.edu/record/344563>

32 *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)* (2021), *supra* note 24, p. 85.

33 *Oil Platforms (Islamic Republic of Iran v United States of America)*, Memorial Submitted by the Islamic Republic of Iran, 1993 I.C.T. Reports, p. 79 (June 8). <https://www.icj-cij.org/case/90>

34 Article 31(3) of the Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1115 UNTS 331.

current understanding of the meaning of the treaty.³⁵ The International Law Commission (ILC), in its Draft Conclusions, affirmed that “practice of an international organization in the application of its constituent instrument may contribute to the interpretation of that instrument when applying articles 31 and 32.”³⁶ The ILC further explained in its Draft that the practice of international organizations is distinct from the practice of its state parties. However, the term “practice” is unclear in the sense of whether it encompasses UNGA resolutions and whether the resolutions could be seen as subsequent practice or agreement. In the Commentary of the Draft Conclusions, the ILC merely asserted the possibility that the practice of an international organization in the application of its constituent instrument might reflect the subsequent agreements and practice of state parties to a constituent agreement.³⁷

Thus, in this part, the Article will explore whether the UNGA resolutions can be deemed as practice of international organizations for treaty interpretation under Article 31(3) of the Vienna Convention. Although in certain circumstances, it is relatively difficult to distinguish what practice becomes subsequent agreement and practice,³⁸ the UNGA resolutions can be deemed as a practice of international organization serving the interpretation of constituent treaties in accordance with Article 31(3)(a) and (b).

2.3. United Nations General Assembly resolutions as subsequent agreement

With regard to Article 31(3)(a), according to Anthony Aust, any subsequent agreement could “take various forms, including a decision adopted by a meeting of the parties, provided that the purpose is clear.”³⁹ In the Commentary on the Draft Conclusions, the ILC indicated several features of a subsequent agreement, including: (i) the term “subsequent” shows the temporal scope, referring to the agreements/acts “after the conclusion of a treaty”; (ii) the term “parties” requires “such an agreement must be reached between all the parties to the treaty”; (iii) the subsequent agreement may take various forms.⁴⁰ On these bases, it is reasonable to argue that the UNGA resolution, as a decision adopted by a meeting between the

35 Buga (2018), *supra* note 3, p. 18.

36 International Law Commission (2018), *supra* note 25, conclusion 12.

37 *Ibid.*, p. 97.

38 *Ibid.*, p. 25.

39 Aust, A. (2000). *Modern treaty law and practice* (1st ed.). Cambridge University Press, p. 191.

40 International Law Commission (2018), *supra* note 25, pp. 27-30.

state parties to the UNC, could be a subsequent agreement reflecting the interpretation of the Charter itself. The main questions are how to identify a UNGA resolution as a subsequent agreement under Article 31(3)(a) and what are the criteria. The ILC in its Commentary on the Draft Conclusions excluded the “consensus” factor and “form and rule of procedure” from the considerations.⁴¹ The most essential factor is the content, according to the Commission. The ILC also discussed the circumstances in which UNGA resolutions were deemed as subsequent agreements under Article 31(3)(a) in its Commentary on the Draft Conclusions. The Commission cited the considerations of the ICJ in the Judgment on Merits in the Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*) and the *United States — Measures Affecting the Production and Sale of Clove Cigarettes* (2012), a WTO Appellate Body case, to support its comments.⁴² The Commission also cited several legal scholars’ opinions to demonstrate that UNGA resolutions could be subsequent agreements to interpret the UNC, emphasizing the element of “consensus” in all UNGA resolutions, which were arguably seen as subsequent agreements.⁴³

Based on the evaluation of the ILC, under certain circumstances and conditions, UNGA resolutions could be qualified as subsequent agreements to interpret the constituent treaty (the UNC). The UNGA resolution on the Declaration on Friendly Relations between States and Resolution 51/210 on measures to eliminate international terrorism (containing the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism) are cited by the Commission as examples. These resolutions share several common features. According to Oscar Schachter, “the law-declaring resolutions that construed and “concretized” the principles of the Charter, whether as general rules or in particular cases, may be regarded as authentic interpretation by the parties of their existing treaty obligations.”⁴⁴ Indeed, these two resolutions contain normative values. Both resolutions pronounce some principles embedded in the UNC and other international law instruments, such as international human rights law. According to the ICJ in the *Nicaragua* case, the UNGA resolution on the Declaration on Friendly Relations between

41 *Ibid.*, p. 91.

42 *Ibid.*, p. 99.

43 *Ibid.*

44 Schachter, O. (1982). *International law in theory and practice: General course in public international law*. Martinus Nijhoff; International Law Commission (2018), *supra* note 25, p. 99.

States contained even customary international norms that bind upon states under international law.⁴⁵ The United Nations Office on Drugs and Crime (UNODC) indicated that “one example of customary international law developed is the duty of States to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts.”⁴⁶ This is a principle reflected in Resolution 51/210 on measures to eliminate international terrorism. Moreover, both resolutions were adopted by consensus, which demonstrated the positive attitudes of States (or at least a large majority of States) to the principles in these resolutions.

Accordingly, UNGA resolutions could be considered as subsequent agreements for the interpretation of the UNC under certain circumstances. One firm indication is the normative value found in them, which could form the basis for identifying customary international law.

2.4. United Nations General Assembly resolutions as subsequent practice

The ICJ in various judgments and advisory opinions considered the resolutions of international organizations as practice of international organizations for the purpose of interpretation. In its advisory opinion on the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* in 1996, the ICJ had to interpret the competence of the World Health Organization in light of its constituent treaty.⁴⁷ The Court explicitly cited Article 31(3)(b) of the Vienna Convention on the 1969 Law of Treaties as a legal basis and then resorted to Resolution WHA46.40 adopted by the World Health Assembly to interpret the competence of the organization in its constituent treaty.⁴⁸ Moreover, the Court’s examination of resolution WHA46.40 in light of Article 31(3)(b) demonstrated an assumption that resolutions of international organizations could be deemed as subsequent practice in the application of the treaty, which establishes an agreement of the parties regarding its interpretation.

The advisory opinion of the ICJ on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* in

45 *Nicaragua v United States of America* (1986), *supra* note 1.

46 UNODC. (2009). *Frequently asked questions on international law aspects of countering terrorism*. Vienna, p. 10. <http://repository.out.ac.tz/1656/>

47 *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, 1996 I.C.J. Reports, para. 21 (July 8). <https://www.icj-cij.org/case/93>

48 *Ibid.*, pp. 20-22.

2004 referred to UNGA resolutions (e.g. UNGA resolutions 1955 (XV), 1600 (XVI), 1913 (XVIII)) to demonstrate the evolution of the interpretation of Article 12 in the UNC. Also, the Court considered these resolutions to reflect “the accepted practice of the General Assembly.”⁴⁹ Therefore, the Court implicitly acknowledged the resolutions adopted by UNGA as the practice of the General Assembly, which could be used in a treaty’s interpretation. In the Commentary attached to the Draft Conclusions, the ILC explicitly recognized the implication and relevance of resolutions of international organizations to the interpretation of treaties in their own right.⁵⁰

Furthermore, another question is how to identify an international organization’s resolution as a subsequent practice by Article 31(3)(b) of the Vienna Convention. The ICJ case, the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (1996), might shed light on this issue. In this Advisory Opinion, the Court concluded that Resolution WHA46.40 “could not be taken to expressor to amount on its own practice establishing an agreement between the members of the Organization to interpret its Constitution as empowering it to address a question of the legality of the use of nuclear weapons,” although the resolution was adopted without opposition.⁵¹ This conclusion of the Court might not preclude the possibility of considering resolutions of international organizations as subsequent practices to establish an agreement between the members of the international organizations on treaty interpretation; however, it emphasized the core element that seeing a resolution as subsequent practice was the subject matter of the practice.⁵² The issue here is not whether Resolution WHA46.40 is considered as subsequent practice, but rather whether the subsequent practice establishes an agreement among the members of the international organizations on treaty interpretation. In this case, the Court indicated that the resolutions and documents referred to in the preamble of Resolution WHA46.40 demonstrate concerns about the effects of nuclear

49 *Legal Consequences of the Construction of a Wall* (2004), *supra* note 28, p. 28.

50 International Law Commission (2018), *supra* note 25, p. 40.

51 *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (1996), *supra* note 47, p. 27.

52 *Ibid.* In this case, the ICJ underlined the interpretation of the WHO Constitution that empowered the organization to deal with the effects on health of the use of nuclear weapons, but not to deal with the legality of the use of nuclear weapons in view of their health and environmental effects. The Court also examined the preamble of resolution WHA 46.40 to confirm this interpretation.

weapons on health, rather than addressing the legality of their use.⁵³ That is why the Court arrived at the conclusion that rejected the practice of the WHO on establishing an agreement as “empowering it to address a question of the legality of the use of nuclear weapons” based on Resolution WHA46.40. Also, the same considerations applied to the subsequent agreement; the ILC in its Commentary on Draft Conclusions underlined that “adoption by consensus is not a sufficient condition for an agreement under article 31, paragraph 3 (a) or (b) to be established.”⁵⁴ Instead, the Commission reaffirmed the decisive factor lying in the substance of the agreement embodied in the decisions, not the form of procedure.⁵⁵

Drawing from the assessments of the ICJ in the two cases above, this article argues that a single resolution may not be sufficient to establish subsequent practice that reflects an agreement between parties regarding interpretation. The Court examined the practices of UNGA and WHO through various resolutions to determine the subsequent practice to establish the agreement. The Court considered Resolution WHA46.40 alongside other resolutions such as WHA34.38, WHA36.28, WHA40.24, and WHA47.76. As a result, the ICJ concluded that these resolutions indicated the effects of nuclear weapons on health rather than the legality of their use.⁵⁶ Similarly, the Court examined a series of UNGA resolutions in the case *Legal Consequences of the Construction of a Wall* (2004) before reaching the conclusion that these resolutions reflected “the accepted practice of the General Assembly.”⁵⁷ Additionally, in its advisory opinion on *Certain Expenses of the United Nations* in 1962, the ICJ underlined the consistency in the practice of international organizations regarding the interpretation of the text, citing its advisory opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations* as a legal basis: “The Court sustained its interpretation of Article 4 by considering the manner in which the organs concerned have consistently interpreted the text in their practice.”⁵⁸ Also, the ICJ referred to Resolution 200 (III) on 04 December 1948 and Resolution 304 (IV) on 16 November 1949 to clarify the distinction between operational and administrative

53 *Ibid.*

54 International Law Commission (2018), *supra* note 25, p. 91.

55 *Ibid.*, p. 90.

56 Legality of the Use by a State of Nuclear Weapons in Armed Conflict (1996), *supra* note 47.

57 *Illegal Consequences of the Construction of a Wall* (2004), *supra* note 28.

58 *Certain Expenses of the United Nations* (1962), *supra* note 18, p. 157.

budgets while interpreting the term “budget” in paragraph 1 of Article 17 of the UNC. This reference helped the Court conclude that “the practice of the Organization is entirely consistent with the plain meaning of the text.”⁵⁹

Hence, the standards for considering UNGA resolutions as subsequent practices to establish the agreement may differ from those of subsequent agreements. In the case of a subsequent agreement, the normative value contained in the resolutions is underscored, highlighting the importance of qualitative factors. Whereas, in the case of subsequent practice, a quantitative approach is applied. Under this approach, to determine subsequent practices to establish the agreement for interpretation, a number of relevant resolutions and their consistency would be examined. If these resolutions consistently reflect the same content, views, and principles as the provisions under a treaty, then they could be considered as subsequent practice to establish the agreement of parties on interpretation.

2.5. United Nations General Assembly resolutions as a supplementary means for interpretation under Article 32 of the Vienna Convention on the Law of Treaties

Article 32 of the Vienna Convention on the Law of Treaties stipulates the supplementary means of interpretation to be used when “the interpretation according to Article 31 leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable.”⁶⁰ Through its practice, the ICJ resorts to supplementary means for interpretation in cases where it needs to confirm the interpretation reached.⁶¹ In its Draft Conclusions, the ILC affirmed the role of the practice of international organizations in the interpretation of treaties in accordance with Article 31 of the Vienna Convention,⁶² the question is whether UNGA resolutions could be used as supplementary means for interpretation. The answer could be found in the Judgment concerning the *Obligation to Negotiate Access to the Pacific Ocean in 2018*. Though not invoking the provisions under the Vienna Convention on the Law of Treaties, the ICJ, when interpreting the obligation to settle disputes by peaceful means under the UNC, referred to UNGA Resolution 2625 (XXV) on the Declaration on Principles of International Law concerning

59 *Ibid.*, pp. 159-160.

60 Article 32 of the 1969 Vienna Convention on the Law of Treaties.

61 Lekkas, S.-I., Merkouris, P., & Peat, D. (2023). The interpretative practice of the International Court of Justice. *Max Planck Yearbook of United Nations Law Online*, 26, p. 316.

62 International Law Commission (2018), *supra* note 25.

Friendly Relations and Cooperation among States in accordance with the UNC and Resolution 37/10 on Manila Declaration on the Peaceful Settlement of International Disputes to confirm the interpretation made by the Court.⁶³

3. Legal values of United Nations General Assembly resolutions on the interpretation of customary norms

How to interpret a norm that is part of customary international law? As the Vienna Convention on the Law of Treaties is only applicable to treaty, the rules exist only with regard to the interpretation of treaty instruments, which are found in Articles 31 and 32 of this Convention.⁶⁴ Regarding the interpretation of customs, Anastasios Gourgourinis asserted that “identification and interpretation would be conflated in the case of custom and general principles of law.”⁶⁵ However, only certain provisions of UNGA resolutions reflect the customary international law subject to interpretation. The ICJ interpreted the provisions of UNGA resolutions as customary international law, rather than merely interpreting them as provisions within the UNGA. The article posited that when the ICJ sought to interpret a customary rule, it had to first establish this rule as custom before proceeding with its interpretation. The following cases could exemplify this approach of the Court.

In the *Nicaragua case* (1986), after declaring UNGA Resolution 2625 (XXV) reflecting customs under international law, the ICJ attempted to clarify which acts constitute a violation of the principle of the non-use of force and non-intervention on the basis of this resolution: “...First, what is the exact content of the principle so accepted... As noted above (paragraph 191), General Assembly Resolution 2625 (XXV) equates assistance of this kind with the use of force by the assisting state when the acts committed in another State “involve a threat of use of force.”⁶⁶ Also, the Court relied on this resolution to make the distinction between “the most grave forms of the use of force (those constituting an armed attack) from other less grave forms.”⁶⁷

63 Obligation to Negotiate Access to the Pacific Ocean (*Bolivia v Chile*), Judgement, 2018 I.C.J. Report, para. 166 (October 1). <https://www.icj-cij.org/node/105705>

64 Gourgourinis, A. (2011). The distinction between interpretation and application of norms in international adjudication. *Journal of International Dispute Settlement*, 2(1), p. 36. <https://doi.org/10.1093/jnlids/idq022>

65 *Ibid.*

66 *Nicaragua v United States of America* (1986), *supra* note 1. p. 205.

67 *Ibid.*, p. 191.

In the case *Legality of Threat or Use of Nuclear Weapons* (1996), after recognizing the principle of no-harm as a part of the corpus of international law relating to the environment, the ICJ resorted to UNGA Resolution 47/37 (1992) to serve as a context and evidence to reinforce its legal interpretation of this rule in armed conflicts. After referring to this UNGA resolution to demonstrate the general view of states, the Court concluded that:

“While the existing international law relating to the protection and safeguarding of the environment does not specifically prohibit the use of nuclear weapons, it indicates important environmental factors that are properly to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict.”⁶⁸

In its advisory opinion on the *Separation of the Chagos* (2019), the ICJ found that the right to self-determination crystallized as a customary rule binding on all states on the basis of UNGA Resolution 1514 (XV).⁶⁹ Then, the Court proceeded to interpret the extent and components of the right to self-determination based on customary international law, citing various UNGA resolutions to bolster its legal interpretation of this right.⁷⁰

In all three cases, the ICJ first determined the nature of a rule. After identifying the rule as a custom under international law, the Court subsequently conducted an interpretation of this rule. In this process, the Vienna Convention on the Law of Treaties was not invoked, because the rules applicable to treaty interpretation might not apply to the interpretation of customs. During the process of interpreting customary norms, UNGA resolutions have played a significant role not only in the identification of customs,⁷¹ but also in the interpretation of the custom found based on the UNGA resolutions.

Regarding the role of UNGA resolutions, both UNGA Resolution 2625 and Resolution 1514 fall into the category of resolutions with normative value, as they reflect customary

68 *Legality of the Threat or Use of Nuclear Weapons* (1996), *supra* note 6, pp. 30-33.

69 *Legal Consequences of the Separation* (2019), *supra* note 2, p. 152.

70 *Ibid.*, pp. 153-169.

71 See Joyner, C. (1981). U.N. General Assembly resolutions and international law: Rethinking the contemporary dynamics of norm-creation. *California Western International Law Journal*, 11(3). <https://scholarlycommons.law.cwsl.edu/cwilj/vol11/iss3/11>; Deplano, R. (2020). The riddle of custom: General Assembly resolutions. In S. Droubi, & J. d'Aspremont (Eds.), *International organisations, non-State actors, and the formation of customary international law*. Manchester University Press; Öberg (2005), *supra* note 2; Schwebel (1979), *supra* note 7.

international rules confirmed by the ICJ. Additionally, UNGA resolutions could provide evidence of a general view of States and thereby support the Court's interpretation of the rules under customary law, as in the case of UNGA Resolution 47/37 (1992). Therefore, only UNGA resolutions having a certain degree of normative value such as reflecting *opinion juris*, and general views of States will be given significant weight in the interpretation of a customary norm.

Conclusion

UNGA resolutions have played an increasingly important role in treaty interpretation, contributing not only to clarifying the terms of treaties in line with Articles 31 and 32 of the Vienna Convention on the Law of Treaties but also to interpreting the terms under customary law. By examining the jurisprudence of the ICJ, the article finds a positive link between certain UNGA resolutions that have legal effects and treaty interpretation. *First*, UNGA resolutions can be resorted to when the ICJ determines the original meaning of terms in treaties. *Second*, UNGA resolutions can serve as contexts for the ICJ to determine the object and purpose of a treaty. *Third*, it is reasonable to deduce that UNGA resolutions could be seen as supplementary means for interpretation under Article 32 of the Vienna Convention on the Law of Treaties. With regard to the customary rules, which are found partly on the basis of UNGA resolutions, these UNGA resolutions can provide evidence of a general view of states and thus reinforce the Court's interpretation of customary law. ●

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The author solely contributed to the study conception and design. The author read and approved the final manuscript.

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