THE ROLE OF INTERNATIONAL ORGANISATIONS IN THE DEVELOPMENT OF INTERNATIONAL LAW: AN ANALYTICAL ASSESSMENT OF THE UNITED NATIONS

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**ABSTRACT**

International organisations play a vital role in shaping and implementing international norms and standards, contributing to the development of international law. This paper focuses on the United Nations (UN) as a prominent international organisation and examines its role in developing and implementing international law. Specialized entities within the UN, such as the International Court of Justice (ICJ), the United Nations General Assembly (UNGA), and the International Law Commission (ILC), have played significant roles in the development, codification, and implementation of international law. The UN serves as a platform for ongoing dialogue, identifies emerging challenges, formulates international legal and policy instruments, provides mechanisms for peaceful settlement of disputes, and collaborates with other international and regional organisations. However, this paper also acknowledges the inherent challenges and shortcomings of the UN and explores proposals for UN reform to address these issues, enhance its influence, and better fulfil its overarching purpose. Through an analytical assessment of the UN’s role and influence on international law, this paper aims to provide insights into the functioning of international organisations and their impact on shaping global legal norms.
INTRODUCTION

International organisations play an important role in shaping international norms and standards, addressing issues that transcend national boundaries and promoting collective solutions on the global stage. These organisations are established by states through multilateral treaties, acquire distinct wills separate from their member states, and derive their competence from the treaties that establish them. While subject to domestic laws, they also possess legal personality within the jurisdictions they are headquartered.

The increasing number of international organisations reflects states' recognition of the importance of interdependence and collaboration in addressing global challenges through the establishment of international standards. There are approximately 250 to 350 international organisations exercising public authority through legislative and regulatory actions, adopting various decisions. International organisations can be universal or regional in scope, representing groups of countries or institutions that share similar values, cultures or objectives. They may also be members of other international organisations.

This paper provides a concise analysis of the historical development of international organisations and their impact on the development and implementation of international law. It explores the functioning of these organisations in the realm of public international law, which encompasses the regulation of state relations as well as the behaviour of individuals, corporations, and non-governmental organisations (NGOs). The primary focus is on the United Nations (UN) and its pivotal role within the international legal framework. The paper critically evaluates the contributions of specialized UN bodies, the UN General Assembly (UNGA), the International Law Commission (ILC), the International Court of Justice (ICJ), and the UN Security Council (UNSC) to the development, codification and implementation of international law. The paper also addresses the challenges faced by these bodies and proposes reforms for the UN to effectively address these challenges and enhance its functioning in promoting and upholding international law.

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2 Ibid.
9 See Mańko (n 7). Additionally, in the 9th edition of Brownlie's Principles of Public International Law by James Crawford (published on July 9, 2019, at 16), Crawford argues that there is no requirement for all international organizations to possess legal personality, contrary to the stance taken by the International Law Commission (ILC).
International organisations have been a long-standing presence in the field of international law. Although states have historically held primary responsibility within the realm of international law, governments are increasingly recognizing the potential benefits of ceding certain aspects of their sovereign authority to international organisations committed to addressing global issues. Since the mid-20th century, international organisations have gained international legal personalities and become significant subjects of international law, albeit with fewer rights and responsibilities than states. This section will present an overview of the historical evolution of international organisations, tracing their development from temporary assemblies or conferences to permanent international organisations with enduring international legal frameworks.

In the late eighteenth and nineteenth centuries, several powers started to establish forms of cooperation that went beyond bilateral treaties and diplomatic efforts. According to Klabbers, while traces of international organisations can be found in different historical periods, such as the ancient Greek “amphictyonic councils”, the late-medieval Hanseatic League, and early examples like the Swiss Confederation, it was not until the nineteenth century that international organisations resembling those we see today were formally established. Klabbers also argues that the Congress of Vienna (1814-1815) holds significant importance in the realm of international relations. It marked the creation of a modern political and legal framework for Europe following a period of instability characterized by upheaval and conflict after the French Revolution. During this time, states began to recognize the inadequacy of the existing system in effectively addressing the emerging conflicts between them.

Initially, the mandates of these organisations were limited and narrow in scope. The establishment of river commissions, like the European Commission of the Danube in 1856, indicates that the primary area requiring international cooperation was transportation and communication. During this time, private individuals also took the initiative to create organisations with the goal of addressing global issues. In the year 1840, the establishment of the World Anti-Slavery Convention took place, while in 1863 the International Committee of the Red Cross was established.

International organisations also experienced significant growth in various domains beyond transportation and communications. For example, the establishment of the International Office of Public Health in 1903 focused on addressing health-related issues. Additionally, early precur-

13 See Klabbers (n 10) at 16.
16 See Klabbers, (n 10) at 18.
17 The English Quaker, Joseph Sturge was initially responsible for establishing the convention, “but in its origin, as well as in several other respects, this meeting represented a joint English and American undertaking”. According to Maynard, the convention initiated the movement toward international organisation, however it has been criticized for its exclusion of women. See Maynard, D. H. (1960). The World’s Anti-Slavery Convention of 1840. The Mississippi Valley Historical Review, 47(3), 452.
18 Established by a Swiss national Henry Dunant. The Committee had brought together government representatives “[to agree on Dunant’s proposal for national relief societies, to help military medical services]”. In 1864 the Committee persuaded governments to adopt the first Geneva Convention. See International Committee of the Red Cross (ICRC) “History” <https://www.icrc.org/en/who-we-are/history> [Last accessed: 12 September 2023].
sors to contemporary international organisations in the field of economics emerged during this period, such as the Metric Union (1875), the International Copyright Union (1886), the International Sugar Union (1902), and the International Institute for Agriculture (1905). Some of these institutions, albeit with altered names and based on distinct constituent agreements, continue to operate today. For instance, the International Institute for Agriculture now operates under the name FAO (Food and Agriculture Organization).

According to Klabbers, public international law has undergone a gradual shift from being a “law of co-existence” to a “law of cooperation”, as demonstrated by the growing prevalence of international organisations. This suggests that international organisations are evolving into mechanisms that foster cooperation among states, rather than solely defining and limiting their respective spheres of influence. Max Huber, a renowned Swiss international lawyer, wrote in 1910 that states entered into treaties for two primary motives: the pursuit of self-interest and the pursuit of common or shared interests.

However, the significant growth of international organisations occurred following the conclusion of the First World War. The Treaty of Versailles was signed on June 28, 1919, marking the formal conclusion of World War I. The League of Nations, established under the Treaty of Versailles on January 10, 1920, was the first international governmental organisation with broad authority. Its primary purpose was to provide a platform for resolving conflicts between states. However, despite its establishment, the League of Nations did not gain widespread popularity, attracting only 63 member states. Ultimately, the organization was officially dissolved after the outbreak of World War II.

2. THE GROWTH AND INFLUENCE OF INTERNATIONAL ORGANISATIONS

Traditionally, international law has primarily focused on governing the relationships between states. Oppenheim, who is considered the founder of modern international law, defined international law as “the body of customary and convention rules which are considered legally binding by civilized States in their intercourse with each other”. He further noted that “international offices” are established to implement treaties that establish international unions. Therefore, the priority of states extends over international organisations, as these organisations are “derivative creatures” that derive their existence and powers from the states that established them. As correctly pointed out by Klabbers, “only states can go to war. Only states can conclude treaties. Only states can proclaim territorial waters.”

In fact, it has been argued that international organisations were not intended to exert influence on the global community. When these organisations were first established, they were not granted international legal personality, as it was not deemed important or necessary. International organisations were only intended to interact directly with member states “not with third states, not with other international organisations, and not with the citizens of their member states either”.

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21 See Klabbers (n 10) at 18.
22 Ibid.
23 Ibid.
24 Ibid.
25 Ibid., at 19.
31 Ibid.
32 Ibid.
34 Cited in Klabbers, (n 29) 126.
35 International Court of Justice, Reparation for Injuries Suffered in the Service of the United Nations, Advisory
Prior to the intervention of the ICJ in 1949, international organisations lacked international legal personality.36 Within a decade of the 1949 ICJ advisory ruling there has been a complete change in the position.37 For example, the charters of international organisations now contain clauses conferring legal personality or some measure thereof,38 and various regional instruments, contain general provisions recognising the legal personality of international organisations.39

According to Alvares, the expansion and influence of international organisations on international law and policymaking has for example, aided in the formulation, promotion of treaties and conventions and their implementation by states.40 They play a dual role in the process of shaping global norms and rules: they participate as unique actors in decision-making and provide the essential structures of authority for other participants.41 As subjects of international law, international organisations are also governed by *Jus cogens* norms, customary international law, and general principles of law.42 As we progress through this section, it will become clear that international organisations, particularly the UN, have significantly influenced the sources of international obligations, and the key actors involved in international law-making.

International organisations have had a significant impact on the development of international law,43 effectively contributing to the establishment of a global constitutional system.44 According to Henkin, international organisations "represent new laws at its birth, for it is itself a child of law".45 For instance, the Charter of the United Nations (UN) and its specialized agencies and other international organisations have played a crucial role in shaping international law. The World Health Organization (WHO), the Organisation for Economic Co-operation and Development (OECD), and the International Labour Organization (ILO) are among the organisations that have contributed to the significant transformation of international law's sources, actors, and processes over the past century.46

3. THE UNITED NATIONS AND THE DEVELOPMENT OF INTERNATIONAL LAW

On June 26, 1945, the United Nations (UN) Charter was adopted at the conclusion of the United Nations Conference on International Organizations in San Francisco. The Charter serves as a codification of major principles governing international relations, ranging from "sovereign equality of States to the prohibition of the use of force in international relations".47 The primary missions of the UN is to maintain peace and security, promote economic and social development, uphold human rights, and encourage respect for international laws at its birth, for it is itself a child of law".45 For instance, the Charter of the United Nations (UN) and its specialized agencies and other international organisations have played a crucial role in shaping international law. The World Health Organization (WHO), the Organisation for Economic Co-operation and Development (OECD), and the International Labour Organization (ILO) are among the organisations that have contributed to the significant transformation of international law's sources, actors, and processes over the past century.46

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40 For more information on this, see Alvarez (n 39).


45 See Henkin (n 43).


rights, and provide platforms for state dialogue. The UN Charter, comprising 111 articles including the preamble, outlines the rights and responsibilities of member states. It also delineates the roles and responsibilities of the UN’s six principal bodies. The Charter emphasizes the importance of peaceful settlement of international disputes and grants authority to the Security Council (UNSC) to uphold international peace and security.

Since its establishment with an initial membership of fifty-one states, the UN has undergone significant development, becoming a diverse and multidimensional global institution with a current membership of 193 nations. The UN has positioned itself as a global constitutional organisation, striving to safeguard and uphold an optimal world order. Article 103 of the UN Charter exemplifies this aim by stipulating that in case of a conflict between member states’ obligations under the Charter and any other international agreement, the obligations under the Charter “shall prevail”.

Numerous experts in international law recognize the UN as a crucial international organisation for the maintenance of peace and security.

The UN Charter’s fundamental principles and its evolution, including amendments made in 1963, 1965, and 1973, have had a profound impact on the codification and progressive development of international law. The ICJ plays a crucial role in providing a platform for peaceful dispute settlement, interpreting treaties, and offering advisory opinions. The UNSC is also instrumental in the maintenance of international peace and security. The opinions of qualified commentators and the work of the International Law Commission (ILC) further contribute significantly to the ongoing development of international law. In addition to the work of the United Nations General Assembly (UNGA), which we will examine further in the following section. These various components collectively shape and promote the principles and regulations governing the international community.

Research indicates that the current composition of the UNSC, which bears the primary responsibility for upholding international peace and security, is considered anarchic and presents an inadequate representation of the global community. Additionally, the Council’s ability to take decisive legal action during crises is often hindered by political agendas and national priorities among the five permanent member states (P5), thereby impeding the adoption of legally binding resolutions to address international conflicts. For example, one study highlights the Council’s inability to effectively respond or intervene in ongoing global conflicts and crises, such as the Russian annexation of Crimea and war with
It has been demonstrated that the UNSC’s ambiguous and discretionary powers are prone to abuse, resulting in violations of fundamental rights of individuals and states.58

As a result, some scholars oppose the UN Charter’s recognition as a global constitution.60 Rao, for instance, emphasizes that “the United Nations has not been conceived as a world government, nor could transform itself into one”.61 The inability of UN bodies to effectively impose their decisions on members and the absence of any judicial review mechanism for their unlawful actions are almost universally regarded as significant constitutional issues.62 In a similar stand, Tomuschat argues that “the Charter is nothing more than the constitution of the international community [...] unrivalled by any other international instrument”.63

Furthermore, the UN Charter is often described as a “rigid” constitution, which has led to a limited number of amendments since its establishment. The only amendments to date were the expansion of the UNSC in 1965 and the expansions of the United Nations Economic and Social Council (ECOSOC) in 197064 and 1971.65 The complexity of the procedure is detailed in Article 108, which requires a “a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council”.66 This provision contributes to the difficulty of amending the UN Charter. As such, when a single permanent member exercises its veto power, the amendment procedure is effectively impeded or blocked.67

However, there have been calls for the reform of the UNSC, suggesting a need for its amendment.68 Proposals to amend the UN Charter, particularly those related to expanding the UNSC permanent state membership, encounter significant obstacles due to the absence of unanimous agreement among the P5 member states. Notably, the United States, the Russian Federation, and China have yet to reach a consensus on this issue.69 These nations express reservations about the potential risks associated with both expanding the Council’s membership and maintaining the current state, as they believe it could impact the stability of the UN.70 Nevertheless, it is vital to reform the UNSC to enhance its legitimacy and effectiveness. It is also the entity responsible for upholding international peace and security. Broadening the Council’s composition could contribute to strengthening its authority, particularly considering that it has remained unaltered since 1965, despite substantial changes in the international landscape.71

Notwithstanding its limitations, the UN Charter has garnered support from numerous experts in the field of international law. Macdonald, for instance, described it the “the most comprehensive framework of cooperation in the history of interna-

60 See Macdonald (n 53) 292.
62 ibid.
66 See UN Charter, Article 108.
70 ibid.
tional relations”. The Charter’s primary objective is to establish a permanent platform for peaceful resolutions and multilateral diplomacy, making it the only comprehensive international Charter. Furthermore, the UN has played a significant role in setting international human rights norms and standards. This is evident through the inclusion of human rights references in the UN Charter, as well as the adoption of resolutions, declarations, multilateral human rights treaties, and monitoring mechanisms aimed at promoting and monitoring human rights situations in member states. Additionally, the UN Charter supports the development of regional organisations to complement the work of the UN. Chapter VIII of the Charter, specifically Articles 52-54, provides the constitutional basis for the participation of regional organisations, alongside the Security Council, in maintaining international peace and security.

3.1. The Role of UN Specialized Bodies

As this study indicates, the UN possesses specialized technical bodies that play a crucial role in the negotiation and adoption of legally binding instruments, such as treaties, conventions, agreements, and directives. The majority of international treaties and conventions established by the UN incorporate monitoring mechanisms to ensure the implementation of the respective legal instruments. These mechanisms often include reporting requirements for the parties involved and generate conclusions and/or recommendations from the monitoring bodies.

For example, within the framework of the Universal Periodic Review (UPR), the UN Human Rights Council (HRC), an intergovernmental organisation established by the UN General Assembly (UNGA) through resolution 60/251 on March 15, 2006, examines the human rights records of all 193 UN Member States. These processes possess investigative or quasi-judicial characteristics, such as the HRC’s special procedures for addressing human rights situations or violations, as well as the communications procedures of UN human rights treaty bodies. The HRC holds significant importance as an intergovernmental organisation as it has created a public platform for the discussion of contentious human rights issues, involving the participation of States and human rights non-governmental organisations (NGOs). While the conclusions and recommendations of the HRC and other international human rights treaty bodies are not legally binding, they exert a substantial influence on shaping and promoting international human rights norms and standards.

As such, according to Higgins the HRC “has championed the protection of human rights defenders and tackled human rights situations at the national level”. By actively promoting international human rights standards, the HRC can be seen as a critical element of the international legal system. Its efforts contribute to the development, enforcement, and promotion of human rights principles globally.

72 See Macdonald (n 53) at 293.
74 In fact, the term “human rights” was mentioned seven times, see UN Preamble and Arts. 1, 13, 55, 62, 68, 76 of the UN Charter.
77 Ibid.
In the following section, we will explore how the ICJ, as the primary judicial organ of the UN, interprets international law. This includes its recognition of the legal validity of United Nations declarations and treaties. We will also discuss some of the challenges that the ICJ encounters in its work.

### 3.2. The Role of International Adjudications

O’Connell and VanderZee assert that courts and tribunals have played a significant role in international law since the mid-seventeenth century, coinciding with the emergence of modern international law and the establishment of the state system. During this period, these judicial bodies were primarily immersed in theoretical debates concerning the nature of international law. While arbitration held initial prominence, there was a gradual rise in support for the creation of courts endowed with general compulsory jurisdiction.

As the late twentieth century approached, there was a noticeable shift towards the emergence of courts specializing in specific subject matters such as human rights, trade, the law of the sea, and international criminal justice. Diverging from the International Court of Justice (ICJ), these specialized courts have proliferated, resulting in a broad and mandatory jurisdiction within their respective specialized domains. Nevertheless, as this section aims to demonstrate, the ICJ has not succeeded in evolving into a hierarchical judicial system and this could potentially contribute to fragmentation, ultimately weakening the perception of international law as a unified system. However, as this section unfolds, it will reveal that despite its institutional shortcomings, the ICJ has exerted a significant influence on the development of international law.

Alford argues that the influence of international courts and tribunals as a source of international law is a crucial aspect to consider when examining the expansion of these mechanisms. These courts and tribunals regularly issue rulings that serve as foundations for international law and are well-equipped to handle disputes that may arise due to the expanding scope of international law. According to Alvarez, the most substantial body of emerging “soft law” consists of a growing volume of rulings rendered by permanent international courts and tribunals. The UNSC, for example, has established interim criminal tribunals such as: the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to prosecute those involved in war crimes and serious violations of international humanitarian law. The UN has also collaborated with the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), and others, such as regional human rights courts and the International Criminal Court (ICC) employing diverse approaches and strategies.

At this juncture, it is crucial to emphasize the significance of the ICJ and its influence on the development of international law. In 1922, the League of Nations was instrumental in the formation of the first world court, the predecessor of the ICJ, the Permanent Court of International Justice (PCIJ).

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86 Ibid.
87 Ibid.
88 Ibid.
90 Ibid.
91 See Higgins (n 81).
92 See Alvarez (n 39) at 329.
It played an important part in interpreting international treaties and solving disputes between states. During its brief existence, the Court adjudicated 66 cases between 1922 and 1940, including 39 contentious cases and 27 advisory opinions. In addition to resolving specific disputes, the PCIJ established a respected corpus of law. Its successor, the ICJ and other courts continue to cite a number of its decisions.

Kelsen, a leading Western scholar of jurisprudence, expressed his criticism towards the institutional structure of the LoN. He argued that the PCIJ should have held a central position within the organisation, rather than the League Council or Assembly. According to Kelsen, this court should have possessed compulsory jurisdiction and been composed of expert and impartial judges. The aim was to establish a centralized court that would compel the council to implement the court's decisions. However, as we will observe, both the PCIJ and its successor, the ICJ, fell short of realizing this vision.

The ICJ was established in June 1945 by the UN Charter and began its operations in April 1946. Article 92 of the UN Charter recognizes the ICJ as “the principal judicial organ of the United Nations.” Where its duties will be governed by the ICJ Statute, which is annexed to the Charter. The Court has a dual purpose: to settle international disputes submitted by states in accordance with international law, and to provide advisory opinions on legal issues referred to it by authorized UN organs and specialized agencies, such as the Security Council, the General Assembly, and other UN bodies.

According to Higgins, the ICJ played a central role in resolving international law disputes before 1966. Since its establishment, the Court has issued more than 110 decisions on a wide range of issues, including land frontiers, maritime boundaries, territorial sovereignty, the non-use of force, diplomatic relations, the right to asylum, rights of passage, and economic and social rights. During this period, the ICJ has also provided 27 advisory opinions on matters such as the compliance with international law of Kosovo’s unilateral declaration of independence, the legal consequences of constructing a wall in occupied Palestinian territory, and compensation for injuries sustained while serving the United Nations.

Judge Peter Tomka, the former president of the ICJ, emphasized the Court’s crucial role in upholding and promoting the rule of law, he emphasises “the Court—through its activities—is an important agent for upholding and promoting the rule of law at the international level, in relations between States” and has the important and “noble role of determining existing law and rendering justice between States”. The ICJ has also demonstrated a progressive approach in dealing with new cases.
es and developing international law. For instance, in the 1970 Barcelona Traction case (Belgium v. Spain), the Court introduced the concept of erga omnes obligations, which are obligations applying to the international community as a whole. The Court explicitly referred to “the principles and rules pertaining to the fundamental rights of the human person” in defining these obligations. Similarly, in its 1995 Case Concerning East Timor (Portugal v. Australia), the ICJ recognized the right to self-determination as an erga omnes obligation.

Therefore, the ICJ plays a significant role in shaping the evolution of international law. While courts typically apply the law rather than actively contribute to its development, Higgins argues that the ICJ’s activities in interpreting legal instruments and applying international law to new situations, as shown above, and as per Article 38 of the ICJ’s Statute, contribute to the development of legal principles. In support of her argument, Higgins highlights the case of Qatar v. Bahrain, where a question arose regarding the appropriation of low-tide elevations by the coastal State in the context of delimitation. Given the absence of a clear answer in the UNCLOS texts, the Court, considering the policy implications, ultimately ruled that low-tide elevations could not be appropriated. This ruling exemplifies the Court’s influence in shaping the direction of international law.

Kelsen further argues that compulsory jurisdiction is the fundamental component of a legal system, playing a crucial role in preventing the escalation of conflicts between states. However, the ICJ does not currently have compulsory jurisdiction. Article 36, paragraph 2 of the ICJ Statute states that States parties to the Statute of the Court may “at any time declare that they recognize as obligatory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court”. Currently, only 74 of the UN’s 193 member states have acknowledged the Court’s compulsory jurisdiction.

O’Connell and VanderZee contend that the United States withdrew from the court’s optional compulsory jurisdiction as soon as it became aware that Nicaragua intended to submit a case with the ICJ. Nicaragua’s use of the ICJ as a “political tool” was cited as justification for the United States’ withdrawal from the court.

Despite its non-binding jurisdiction and lack of enforcement mechanisms to ensure compliance, states often comply with ICJ rulings out of “fear of losing their reputation for noncompliance”. In addition, states are increasingly turning to the courts to settle interstate disputes peacefully. As emphasised by Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and the United Nations Legal Counsel:

“More and more States are having recourse to the Court, since it offers convenient and effective means for the peaceful resolution of their differences. Its unique mandate, which comprises all cases which the Parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force, coupled with its universal character, as well as the authoritative value of its decisions and consent-based nature of its jurisdiction, make the Court the preferred

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110 Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain); Second Phase, International Court of Justice (ICJ), 5 February 1970.
112 Ibid.
114 See Higgins (n 81) at 16.
115 Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Qatar v Bahrain, [1994], ICJ Rep 112, ICGI 81 (ICJ 1994), 1st July 1994, United Nations [UN].; International Court of Justice [ICJ].
116 For more information on the case, see Mendelson, M. (2001). The Curious Case of Qatar v. Bahrain in the International Court of Justice, British Yearbook of International Law, Volume 72, Issue 1, Pages 183-211.
117 See Higgins (n 81).
118 See O’Connell and VanderZee (n 85) at 57.
121 See O’Connell and VanderZee (n 85) at 59. See A Chayes, “Nicaragua, the United States and the World Court” (1985) Columbia Law Review, Rev. 1445.
122 See O’Connell and VanderZee (n 85) at 59.
123 See Alford (n 89) at 163.
mechanism for the adjudication of legal disputes between States.”

However, similar to the UNSC, the ICJ faces a number of challenges, including compromised legitimacy and impartiality, non-compulsory jurisdiction25 and an increasing caseload.26 It has encountered difficulties in resolving significant ongoing issues such as human trafficking, environmental protection, and conflicts occurring in many parts of the world, which raises concerns about its effectiveness. The structural bases of institutional autonomy has also been called into question, with a study suggesting that “judges are consciously biased”.27 To establish the ICJ as an effective mechanism for promoting international norm compliance and resolving international disputes,28 it is crucial for stakeholders to review the Statute of the ICJ and the institutional framework of the court to uphold the rule of law at the international level.29 Additionally, it is imperative for states to cooperate with the ICJ and accept the optional clause to compulsory judications to the ICJ, to ensure full compliance with its rulings to enhance its effectiveness.

As observed in various international courts, including the WTO,30 the European Court of Human Rights (ECHR), and the European Court of Justice (ECJ), as well as other specialized and regional international courts, they all possess compulsory jurisdiction in certain subject matters or regions, and their decisions are binding on the parties involved.31

4. THE INTERNATIONAL LAW COMMISSION AND THE CODIFICATION AND DEVELOPMENT OF INTERNATIONAL LAW

Throughout its deliberations, the United Nations General Assembly (UNGA) has made significant advances in codifying and developing numerous aspects of customary international law by means of international treaties and conventions.32 Subsidiary bodies created by UNGA resolutions consider particular areas of international law and report to the plenary.33 The International Law Commission (ILC) is one of the most important bodies created by the UNGA resolution in 1947 with the mission to “promotion of the progressive development of international law and codification.”34 Article 15 of the ILC Statute provides a definition of the terms “progressive development” and “codification of international law”. Progressive development is defined as “the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States”.35 Whereas codification of international law, is the more “precise formulation and systematization of rules of international law

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126 See Ogboro (n 125) at 4.


128 See Ogboro (n 125) at 17.

129 Ibid.


131 See O’Connell and VanderZee (n 85) at 60.


in fields where there already has been extensive State practice, precedent and doctrine.”

As such as part of its mandate, the ILC addresses a wide range of legal topics and issues of international significance. Some of the topics the ILC addresses are chosen by the Commission, while others are referred to it by the UNGA. Usually, when the Commission completes its work on a topic, the UNGA frequently convenes a conference to incorporate its draft articles into a treaty or convention. The convention is then open for signatures by UN member States and when adopted most of these conventions form important bases of law that govern state relations. The ILC also frequently consults with other important organisations such as the International Committee of the Red Cross (IRC) and other UN specialized agencies.

Since its establishment in 1949, the ILC has produced a significant volume of draft articles, guidelines, and studies that serve as a foundation of the international legal framework. According to Bordin, the ILC has undertaken notable initiatives, including the creation of draft articles that formed the basis for four law of the sea conventions and a protocol resulting from the first United Nations Conference on the Law of the Sea, which took place in Geneva from February 24 to April 27, 1958. The ILC has also presented draft articles that were subsequently adopted as the Vienna Conventions on Diplomatic and Consular Relations in 1961 and 1963. Furthermore, the Commission’s draft articles have served as a foundation for the 1969 Vienna Convention on the Law of Treaties (VCLT) and the Articles on State Responsibility for Internationally Wrongful Acts, which received recognition from the UNGA in 2001. Additionally, the Commission has made significant contributions to the codification and progressive development of various other fields of international law, including international criminal law, jurisdictional immunities of states, and diplomatic protection.

As stated in many studies, the ILC has faced substantial criticism. Particularly due to the Commission’s composition, working and its sometimes problematic relationship with the Sixth Committee of the UNGA. Despite encountering numerous challenges, the ILC has played a pivotal role in
shaping the landscape of international law.\textsuperscript{149} The Commission has achieved success in the adoption of many treaties by the UNGA, as highlighted by Higgins.\textsuperscript{150} However, such instances are infrequent, and not all of the Commission’s work has influenced the adoption of treaties or conventions.\textsuperscript{151} According to Bordin, “in its early stages, the ambition of the so-called ‘codification movement’ was to produce conventions that would be eventually ratified by all States thus replacing customary international law with binding codes”.\textsuperscript{152} Since its establishment, there has been a strong preference among the members of the ILC and states for convening diplomatic conferences “to consider and adopt sets of draft articles in treaty form”.\textsuperscript{153} This preference aligns with Article 23 of the ILC Statute.\textsuperscript{154} Nevertheless, the shortcomings of treaties as a means of international legislation became evident early on.\textsuperscript{155} For example, Bordin argues even the “most celebrated codification conventions” fell short of achieving universal adherence.\textsuperscript{156} For instance, the VCLT,\textsuperscript{157} often regarded as the pinnacle of the “codification movement”,\textsuperscript{158} took more than a decade to enter into force and, to this day, has not achieved universal ratification.\textsuperscript{159}

As interest for the adoption of codification conventions began to wane, the notion that the results of the ILC’s work should take the form of non-binding “restatements” began to resurface.\textsuperscript{160} Early commentators held this view, believing that attempts to codify through treaties could be problematic due to the inherent limitations of treaties as a source of general international law and their potential impact on customary law.\textsuperscript{161} Higgins argues that a portion of the Commission’s work has been neglected or has “disappeared”.\textsuperscript{162} In some instances, negative responses from UN Member States prevented ILC reports from being presented to the UNGA as proposed articles or recommendations for international conferences to adopt as treaties or conventions.\textsuperscript{163}

According to Bordin, “ILC members appear to be conscious of the risks involved in the adoption of unsuccessful conventions, and States no longer appear to be interested in convening conferences to discuss matters of general international law”.\textsuperscript{164} In recent ILC practices, alternative options outlined in Article 23 of the ILC Statute, specifically the recommendation that the UNGA “take note of or adopt the report [of the Commission]. by resolution,” have acquired favour.\textsuperscript{165} In 1999, when the Articles on Nationality of Natural Persons in Relation to the Succession of States\textsuperscript{166} were adopted,

\textsuperscript{149} See Bordin (n 155) at 1. The effectiveness of the Commission’s efforts can be observed through the support it has garnered from numerous states, exemplified by the significant number of ratifications for the 1961 and 1963 Conventions on diplomatic and consular relations, which currently stand at over 187 and 173, respectively. See Bordin (n 155).

\textsuperscript{150} See Bordin (n 155) at 539.

\textsuperscript{151} Ibid.

\textsuperscript{152} Ibid.

\textsuperscript{153} Ibid.


\textsuperscript{156} See Bordin (n 155) at 140.


\textsuperscript{159} See Bordin (n 155) at 540.

\textsuperscript{160} Ibid.

\textsuperscript{161} Ibid., at 541.

\textsuperscript{162} See Higgins (n 81) at 1.


\textsuperscript{164} Ibid.

\textsuperscript{165} See Bordin (n 155) at 541.

\textsuperscript{166} Ibid.
this shift in perspective became evident. The ILC suggested adopting the proposed draft article as a declaration, and the UNGA decided to “take note of or adopt the report [of the Commission]. by resolution”.167

As per Friedman’s analysis, the process of concluding multilateral conventions for law-making encounters substantive and procedural challenges.168 However, the accomplishments of the UN and, specifically, the ILC should not be overlooked.169 By the end of 1969, six multilateral conventions were successfully concluded under the auspices of the United Nations, based on draft articles submitted by the ILC commission.170 Therefore, despite the obstacles they face, it seems that the ILC will persist in its efforts to promote the codification and progressive development of international law.171 However, the support of states and the UNGA is crucial to accomplish the main goals of the Commission.

5. THE ROLE OF THE UN GENERAL ASSEMBLY IN THE DEVELOPMENT OF CUSTOMARY INTERNATIONAL LAW

International organisations have not gone so far as to create customary international law, but through their resolutions and declarations, they have altered the past formation of customary international law.172 Since 1945, the UN has grown dramatically, and the UN General Assembly (UNGA) has emerged as a forum for international dialogue.

Assemblies as a part of the Commission’s report covering the work of that session (at para. 48). The report, which also contains commentaries on the draft articles, appears in Yearbook of the International Law Commission, 1999, vol. II, Part Two.

167 See Bordin (n 155) at 541.
169 Ibid.
170 Ibid., four of these treaties were concerned with different aspects of the “Law of The Sea”. The other two treaties deal with the law of diplomatic and consular relations.
171 For more information on the ILC’s past and present activities, see ILC <https://legal.un.org/ilc/> [last access: 02.09.2023].

for all 193 member states and as a vital organ of the UN has influenced the development customary international law.173

Article 38 of the ICJ Statute does not include UNGA resolutions as one of the traditional sources of international law, in fact, the drafters of the Statute rejected a proposal that “the Assembly be vested with legislative authority to enact rules of international law”.174 However, UNGA resolutions, although non-binding on member states, have had an impact on the development of international law. These resolutions have often led to international treaty-making conferences on specific issues and have influenced the evolution of international norms.175 They represent the collective stance of the international community on normative issues and can have a legitimizing or delegitimizing effect on state actions.176 They can also contribute to adjustments in state behaviour by shaping state practice and influencing the development of customary international law.177

UNGA resolutions provide international legal norms and principles that cover a wide variety of subjects such as women’s rights,178 the right to be free from torture,179 the right of all people to self-determination,180 the rights and duties of nations who expropriate foreign-owned assets181 and

174 The Philippines proposed such a role for the General Assembly at the San Francisco Conference in 1945, but the parties to the conference voted it down by an overwhelming margin, granting the Assembly only the power to recommend and advise, see UN Charter, art. 10-14. Cited in Kerwin (n 173) at 879.
176 Ibid.
177 Ibid.
181 See for Declaration on the Establishment of a New International Economic Order, GA. Res. 3201, Sixth Spec.
other important issues.\textsuperscript{182} Resolutions thus address many new and sensitive areas in which customary international law, treaties, and other formal sources provide limited guidance.\textsuperscript{183}

As such UNGA can play a crucial role in the formulation and identification of international customary law.\textsuperscript{184} Although not legislative in nature, according to Alvarez, UNGA resolutions “provide evidence of existing or emerging new law and may sometimes have normative value”.\textsuperscript{185} They offer evidence of existing and new customary rules, for example, UNGA resolutions may be used as a premise for validating the conduct of states, and they are crucial for “measuring state practice and developing customary international law when conflicts arise over issues of customary rules”.\textsuperscript{186} State recognition of a new customary rule can be strengthened through UNGA resolutions.\textsuperscript{187} Furthermore, under certain circumstances, a resolution can acquire customary status if it meets certain criteria, receives the support of a majority of states, and contains normative elements. This has been exemplified in the context of international human rights standards.\textsuperscript{188} Throughout its activities, the UNGA has endorsed a diverse array of international human rights treaties and conventions.

Additionally, UNGA resolutions aim to foster a consensus among states, encouraging them to adopt a unified position and exert international influence or initiate action.\textsuperscript{189} For example, the UDHR as stated above and the Stockholm Declaration (1972) provide international norms and standards that have acquired widespread support in state practice and are regarded by states as legally binding, allowing them to be incorporated “into the framework of customary international law”.\textsuperscript{190}

There are, however, arguments that UNGA resolutions are too “unreliable” to be regarded as authoritative sources.\textsuperscript{191} It appears to be a political organisation endowed with the advantages of open discussions on political issues. In addition, as mentioned above, UNGA resolutions are non-binding. In fact, it is submitted that if member nations knew their votes would be binding, many resolutions would never be adopted.\textsuperscript{192} Overall, according to Kerwin, the principles of customary international law are dependent on the variables of state practice and the international community’s acceptance of a given principle as law. Accordingly, UNGA resolutions can play a role in influencing customary practices, if they are supported by a majority of member states.\textsuperscript{193}

CONCLUSION

In conclusion, international organisations, particularly intergovernmental organisations like the UN, play a crucial role in the development and codification of international law. They are essential in formulating and promoting international treaties and conventions, shaping global norms and standards, and addressing global challenges.\textsuperscript{194}

Since the mid-20th century, the number of international organisations has significantly increased, reflecting the growing recognition of the need for global cooperation.\textsuperscript{195} These organisations, whether global entities like the UN or regional organisations, such as the League of Arab States, serve as important platforms for addressing emerging challenges to peace, security, and socio-economic development.
ic development. They also facilitate cooperation among states and oversee the behaviour of various entities, contributing to the maintenance of international order. 196

International organisations can exhibit different degrees of institutionalisation and legal authority; however, their common objective is to establish a rules-based international system and ensure global participation. 197 They recognize the social nature of humanity and uphold the rights of individuals as subjects of international law. 198 The UN has adopted numerous human rights treaties to establish international standards and hold states accountable for their obligations.

As discussed in this paper, the ICJ has contributed to the development and interpretations of international law by adjudicating disputes between states and providing authoritative interpretations of international legal principles. However, the ICJ encounters various challenges, including limitations on its jurisdiction and the absence of effective enforcement mechanisms for its rulings. Despite the expectation that states will adhere to the court’s decisions, there are no mechanisms in place to ensure state compliance with ICJ rulings.

As this paper highlights, the UN encounters inherent challenges and institutional deficiencies that necessitate acknowledgement. Member states of the UN need to acknowledge these shortcomings and proactively improve the effectiveness of the UN. Key areas for reform encompass strengthening the decision-making authority of the UNGA, increased acceptance of ICJ compulsory jurisdiction and establishing a compliance-making mechanism to oversee implementation of ICJ rulings, enhancing the UNGA’s relationship with UNSC, ensuring equitable representation of states within the UNSC. These reforms aim to rectify existing deficiencies and foster a more inclusive and efficient UN system.

Overall, it is argued that the effective implementation of international law is contingent upon the political will of states. The UN recognizes in Article 2(2) that it is founded on the principle of “the sovereign equality of its members”. Sovereignty has consistently maintained its position as a fundamental aspect of international law and inter-state relations. 199 Consequently, enforcing international rules on states proves challenging, as recent events have illustrated, with the UNSC often experiencing stagnation and encounters challenges in achieving effectiveness even in cases involving humanitarian concerns. The political will of states is crucial in determining the UN’s ability to reform and effectively ensure the implementation of international law.

As such, it is imperative for the UN to enhance its purpose and effectiveness. This requires the active engagement and commitment of all stakeholders within the UN and member states. By collectively working towards these goals, the UN can strengthen its overall effectiveness, significance and contribute to the achievement of a more just and peaceful world.


197 See Alvarez (n 46) at 326.


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