

THE ROLE OF GENERAL ASSEMBLY RESOLUTIONS TO THE DEVELOPMENT OF INTERNATIONAL LAW

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ABSTRACT

A United Nations General Assembly Resolution is a decision or declaration voted on by all member states of the United Nations in the General Assembly. General Assembly resolutions usually require a simple majority (50 percent of all votes plus one) to pass. However, if the General Assembly determines that the issue is an "important question" by a simple majority vote, then a two-thirds majority is required; "important questions" are those that deal significantly with the maintenance of international peace and security, admission of new members to the United Nations, suspension of the rights and privileges of membership, the expulsion of members, operation of the trusteeship system, or budgetary questions. Although General Assembly resolutions are generally non-binding towards member states, internal resolutions may be binding on the operation of the General Assembly itself, for example with regard to budgetary and procedural matters.

Although the resolutions of the General Assembly are not binding, they contribute to the development of international law. This research will critically discuss the statement in the light of recent international practice.

Keywords: United Nations, General Assembly, International Law, Security Council.

INTRODUCTION

International law is a system of law made primarily for a state to deal with the external relations with other states with a function quite different from the domestic legal system of a state (Malanczuk, 1997). In its global application, when all such states make laws to deal with the external relations, this creates a “*voluntary association*” of states. As a voluntary association there is no superior authority that can make law and to enforce and make them binding as well. Moreover, consent is the main factor with binding effect which makes international law valid (Christiano, 2010). Consent has been described as the free will that emanates from the conventions and generally accepted principles of law that has been established to regulate the independence of the states to achieve common aims (Cases, 1927). Therefore, international law is a normative system, where the existence of that system is to secure “*desirable degree of societal order*” (Higgins, 1994).

The traditional sources of international law are enshrined in Art 38(1) of the Statute of the International Court of Justice (ICJ) which is classified into four categories. According to the Art, the ICJ has the preliminary function to interpret international disputes in accordance with international law. The four main sources of the international law are the international

conventions or treaties which are established by the contesting parties. It also included the international custom which is a general practice that has been accepted as law. In addition, the general principles of law that are recognized by the civilized nations in another accepted category of the source of international law. Finally, in accordance with the provisions of Art 59, there are secondary or subsidiary sources of international law which are judicial decisions and teaching of the most highly qualified publicists from the Member States.

Most of the scholarly writings classify the sources of international law into formal sources that deals with the methods and procedure necessary for the creation of international law and the material sources that deals with the content and substance of international law (Brownlie, 2003). There is a distinct difference in the functions of the formal and material sources of the law. The function of the formal sources of the law is to create the laws, while that of the material source helps to identify the obligatory substances that later become the part of law (Dixon, 2007). In this context, there have been suggestions to show that the General Assembly (GA) resolutions can also be counted as a part of the material sources as they clearly indicate the obligations of the State. Such obligations created by the GA are binding upon the contesting states. Hence the resolutions of the GA can be treated as obligations and not a law as such.

RESULTS AND DISCUSSIONS

This research has studies the nature and scope of the GA resolution in the light of international laws and how it has been interpreted in accordance with the UN Charter. It also discusses the various underlying theories that help to understand the principles of accepting GA resolution as the source of law.

Nature and Scope of the Resolutions of General Assembly

A resolution can be defined as a formal expression of an opinion, intention, or decision by an official body or assembly (Black's, 2007). According to the UN, the term has been defined to mean recommendations and decisions. The resolutions of the GA have been identified to have normative value. The resolutions by analyzing the content and conditions of its adaption can establish and provide the evidence for the existence of a rule (Cases, 1996). A series of resolutions shows that it has seen the necessary evolution to establish a new rule. As the central concept of the UN is to maintain peace and security, the GA has recommended to the use of voluntary sanctions where it has been established that there is threat to international peace and security (White, 1990). Such a recommendation was made in the Question of Territories under Portuguese Administration, where the GA urged the Member States to boycott trade, diplomatic and consular relations with Portugal, (UN GA Resolution 2107). According to the Resolution, the GA urged the Member States:

1. To break off diplomatic and consular relations with the Government of Portugal or refrain from establishing such relations;
2. To close their ports to all vessels flying the Portuguese flag or in the service of Portugal;
3. To prohibit their ships from entering any ports in Portugal and its colonial territories;
4. To refuse landing and transit facilities to all aircraft belonging to or in the service of the Government of Portugal and to companies registered under the laws of Portugal;
5. To boycott all trade with Portugal.

According to the International Law Association Committee on the Formation of Customary Laws, the resolutions of the GA provide evidence of the customary international laws (Cases, 1996). In addition to contributing to the formation of the new law, it also helps in the shaping the emerging law as well. However they do not create any rules for customary laws. Any resolution that has been adopted lays down an intention to bring in a new law. Only when all the members pass the resolution will there be any consideration to create a new customary law. A customary act can thus be defined as a settled practice that is carried out in a way that such a practice is considered as obligatory as the rule of law (Cases, 1969).

However, there have been disagreements with scholars seeking the validity of the actions of the Member States and its implications on bilateral and multilateral treaties. In the event of the clash of customary source of international law and the resolutions of the GA, the choice of the State is whether to implement the treaty with the concerned state or the resolution of the GA. This was resolved by referring to the UN Charter, according to which states:

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” (Art 103 of the UN Charter).

Scholars have suggested that in the current scenario the GA can request the imposition of the *clausa rebus sic stantibus* (Sloane, 1948). According to this clause, it is an accepted fact that a state is a party to a treaty and as there exists a contractual treaty between the states. Under international law, the *clausa rebus sic stantibus* has an implicit presence in every treaty. According to the clause, the obligations of a treaty under international law are binding as long as the terms and conditions prevailing at that present time continue. However, the clause gives the state to an excuse to revoke, rescind or terminate the contractual obligations (Cases, 1984). The clause cannot be revoked under contractual obligations but there are suggestions that it can be invoked under international law. However, in this regard it can be noted that such provisions have never been used by the GA and there haven't been any recent use of the voluntary consent. Further, there are no evidence that the state had relied on the recommendation of the GA to terminate an existing international legal obligation. Also, under the internal laws of the UN, there has been no decision by any tribunal that the GA is empowered to make laws under international law (Klabbers, 2009).

In South Africa Cases (Cases, 1996). The persuasive force and the recommendation procedure that the GA may possess, it will act only on political level and there is no scope to make them legally acceptable. Even so, there has never been a general agreement among the member states on the significance of the resolution as such there is failure to establish the GA resolutions as an important source of international law lacked legitimacy (Onuf, 1970). Therefore, it can be said that the resolutions of the GA though cannot be seen as the customary source of international law but can be viewed as its' evidence where the validity is derived by the subsequent practice by the member states (Asamoah, 1967). In addition, the non-binding recommendations may provide a 'legal authorization' where by its members can act upon these recommendations; either individually or collectively (Cases, 1955).

Role of the Resolutions in Determining the Principles of International Law

The resolutions of the GA have been classified into three categories, namely those confirming the current customary laws, acting as authoritative interpretations of the UN Charter and finally those that contain the new principles of international law. This was confirmed by the ICJ in its decisions in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* and later confirmed in *Legality of the Threat or Use of Nuclear Weapons*. In these cases, it was held that the common character to all these resolutions is that the concept of *opinion juris* and further the normative character of *opinion juris* should also be examined. In the former, the Court held that the GA resolutions should not be viewed as mere reiteration or elucidation of the UN Charter but it should be taken as an acceptance of the validity of the rule set forth in that resolution. In the latter case, the Court held that the GA resolutions even though non-binding, they do have normative value. The resolutions can be viewed as important as evidence to establish the rule of law or of *opinion juris*. In order to reach such a conclusion, it is necessary to analyse the content and conditions of the resolutions.

Opinion juris as a standalone principle does not have the power to create law. It should be read in conjunction with the state practice. There have been considerations raised that in order for the GA resolutions to be acceptable, this requirement is not a compulsory factor. The resolutions of the GA are the practices that are followed by the member states and therefore would befit the role to be an enforceable (Klabbers, 2009). Further, the resolutions passed by the GA are relevant under international law and with the support of the member states and other member states it achieves a normative status (Joyner, 1981).

The role of the GA in adopting and drafting resolutions though not incorporated in the UN Charter as such, there are provisions within the Charter that marks the decision making functions of the GA. The GA is empowered to make the final decision about admission of new members (Art 4 UN Charter). The GA is empowered with recommendatory powers to further develop the norm creation process and as such draft, recommend and approve international instruments for multilateral agreements (Art 13 UN Charter). It can make recommendations about the budget (Art 17 UN Charter) and also suspend the privileges and rights (Art 5 and Art 19 UN Charter).

Professor Gregory Kerwin argued that the arguments in favour of Resolutions serving as an authoritative source of law can be roughly divided into three categories. First, some scholars assert that because General Assembly Resolutions derive their authority from the UN Charter-a treaty binding on all UN members-any Resolution concerning subjects addressed by the Charter has the authority of the Charter itself. A second group of scholars suggests that General Assembly Resolutions can replace certain elements needed to prove custom or serve as a substitute for any extrinsic proof of custom. Proponents of the third approach argue that General Assembly Resolutions have inherent authority as normative standards adopted by an international body speaking for all of its members (Kerwin, 1983).

CONCLUSION

Thus it can be concluded that the resolutions of the GA are a legitimate sources of international law. However there are differences of opinion on the legal aspect of such resolutions. The resolutions are legitimate in the sense that the breach of the resolutions will be

counterproductive in all aspects of international law. The GA resolutions do not classify as sources of law as the ICJ lays down the categories that should be construed as the sources of law. In this context there are suggestions that the GA resolutions should be viewed as an independent source of international law. The roles of the GA resolutions are to strengthen the international law and can establish a general practice that is recognized by the international law. The GA produces norms that functionally operate as law and the states respond in a positive aspect and comply with the “*prescriptive assertions*” of the General Assembly as though such resolutions are binding on the states.

The recommendations of the GA with respect to the international laws are regarded important factor under the UN Charter and to validate such recommendations require a “*two-thirds majority of Members present and voting*”. However, the Rules of Procedure of the General Assembly states that members have to cast in affirmative or negative manner. Member States which abstain from voting, and those which are not present or do not participate in the voting process are considered as “*not voting*” and the votes of such members are not taken into consideration towards the two-thirds majority requirement. A recommendation of the GA may be adopted with a majority of the members present; in contrast a resolution recommending voluntary sanctions can be adopted by less than half of the Member States of the UN. The UN through its Charters has the responsibility to safeguard the international community through diplomatic and humanitarian methods and the principal organ to achieve this is through the General Assembly. The GA has the responsibility to protect the international communities through its commitments and the resolutions. The international community should therefore strengthen the GA and the UN to exercise the responsibilities and use the GA resolutions as a guiding force in the ambit of international law.

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