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Universidad del Zulia  
Facultad Experimental de Ciencias  
Departamento de Ciencias Humanas  
Maracaibo - Venezuela

## **The United Nations General Assembly's role in the formulation of international custom**

**Hazhar Mahmoudi**

International Public Law, Qeshm International Branch, Islamic  
Azad University

[H.mahmoudi@iau-geshmint.ac.ir](mailto:H.mahmoudi@iau-geshmint.ac.ir)

**Abu Mohammad Asgarkhani**

Political Science School of Tehran University

[a.m.asgarkhani@ut.ac.ir](mailto:a.m.asgarkhani@ut.ac.ir)

**Seyyed Baqer Mirabbasi**

Political Science School of Tehran University

[mahmodihazhar@ut.ac.ir](mailto:mahmodihazhar@ut.ac.ir)

### **Abstract**

The General Assembly within the framework of its charter and authority has enabled the establishment of customary rules that in this research will provide an analytical examination in a library method in the existing judicial and practical procedure in this regard. As a result, if a resolution is merely interpreting the rules of international law, it can be very useful in understanding and applying these rules. In conclusion, the General Assembly of the United Nations has able to create the international custom with its advisory recommendations and issuing resolution and its practical procedure.

**Keywords:** International Custom, Assembly, Rule-Making.

# El papel de la Asamblea General de las Naciones Unidas en la formulación de las costumbres internacionales

## Resumen

La Asamblea General en el marco de su estatuto y autoridad ha permitido el establecimiento de reglas habituales que en esta investigación proporcionarán un examen analítico en un método de biblioteca en el procedimiento judicial y práctico existente a este respecto. Como resultado, si una resolución es simplemente interpretar las reglas del derecho internacional, puede ser muy útil para comprender y aplicar estas reglas. En conclusión, la Asamblea General de las Naciones Unidas ha sido capaz de crear la costumbre internacional con sus recomendaciones de asesoría y resolución de resolución y su procedimiento práctico.

**Palabras clave:** costumbre internacional, asamblea, elaboración de normas.

## 1. INTRODUCTION

The United Nations General Assembly is the main and global pillar of the United Nations, as all member states are participating in it and each member may have up to five representatives, but they have a vote totally. It has a regular annual summit in which the governors of states are expressing their views and opinions on international issues and matters. The General Assembly shall elect its chairman and deputy chairman in the annual session and has the seven main committees in order to facilitate the activities, which the General Assembly invests most of its topics at any meeting to these committees. The General

Assembly can discuss any of the topics contained in the Charter of the United Nations. Of course, it has not allowance to interfere in matters pertaining to the general Council's competence. However, in cases where the Security Council has unable to make decisions on any issue due to the veto right, with the request of the majority of the Members of the Assembly or the Secretary - General or the Security Council itself, (with the approval of nine votes of members without the veto), the general assembly decides instead of security council. Such as the assembly's decision in the reactions England, France and Israel against Egypt in 1956 that was constantly faced to the Security Council's veto and ordered to the belligerent parties that to cease fire and created Red Crescent's forces for observing on the ceasefire. Under article 12 of the Charter, the Security Council can leave any problem, if necessary, to the General Assembly at any time, without having to deal with it already. The General Assembly has an important role in the formulation of custom and international law through the issued resolutions, consultative advisory recommendations and its measures.

### **1.1. Concept of custom**

Custom in the word means knowledge and recognition and then it means something that known in mind and accepted by the wise persons. However, in the so - called custom, it is the accepted way by people and move on it, either in speech or in action. So, it has been used in the meaning of the habit and it is an action that the majority of people do it frequently, without feeling hatred and hatred. In the legal

sense, custom is a rule that gradually becomes common among all people or groups of them as a binding rule. Legally, custom is the habit of the mind of community or special group to an action that related to legal relations (Amidzanjani, 1994).

## **1.2. The position of custom in the rules of domestic and international law**

### *1.2.1. Custom in domestic law*

In domestic law, custom is following the law, based on the value and validity. Some legal provisions are not enforceable except with attributing to the law, even the law itself. While the national sovereignty and unity requires that the country is governed with a unified law, the code for the survival of the custom is its transformability and flexibility. Legally, the custom is the habits of all or most people of a nation in a speech or behavior. The purpose of custom as a source of law is practical custom in particular; mainly the frequent habits and behaviors of all or most people of a society, due to social needs, generally accepted as a legally binding rule between them. Two important characteristics of customary rule are: Emotion and general belief to its binding characteristic and enjoying from kind of rationality and acceptance. Custom, that is the material resource of some legal rules, has long been the official source of law prior to recognizing and validating the law in different communities. The

position and influence of the custom is different in branches of law and its validity is subject to some conditions.

### **1.3. Custom in the international law**

The custom has a more important position and broader scope than the other branches of law. since contractual and codified rules are much less common than customary rules and in fact; the traditions that have dominated on the relations between countries and representatives of nations have gradually become law and are recognized by international organizations and are a measure for examining the recognized values and now, for concluding the binding treaties, conventions, as well as settlement of international disputes, the judicial decisions are based on them. So, the custom is one of the two main sources of law on contemporary international law.

### **1.4. The pillars of international custom**

For existing custom in its true meaning, two basic spiritual and basic pillars are unavoidable:

#### *1.4.1. Material element*

The material pillar of custom that is in fact the framework of customary rules is the habit or practice and method that is customary for a long period of time between the people and all of them use it against an event. This pillar is perfect if it is general and stable. To be public is not that all the people of the community acclimatize to it, but rather that most of those in its territory comply with it, as many of the practices are specific to the place or group of people, of course, in that case, it must also be found as a general act between the same particular group. That is to say, they have been recognized some extent that are almost universally accepted and esteemed. It should be noted that custom usually does not follow the necessity of being as an old requirement as some imagine. For by establishing the correct elements of custom, it does not remain a place to doubt about its validation. Moreover, many customs are very recent. The attention and consideration of the phenomenon of custom especially in the international law recognize the truth of this view. Regarding material element of custom that sometimes is called as the practical element, it is clear that this pillar is the repetition, persistence, and universality of a certain act, which has already been discussed about it in the topic of custom elements.

#### *1.4.2. The spiritual pillar:*

The spiritual pillar of the custom is the spiritual acceptance of custom by people and society that gives it a sanction and binding characteristic. This is the feeling and believe in complying the practice

of custom and regulating behavior based on it that considered it as a binding rule and qualifying the right and duty, without be recorded and registered and be included in the legal rules. So that the governments consider themselves obliged to protect it and the courts referred to it. Therefore, only when social behavior known as a customary phenomenon that the existence of two basic spiritual and material pillars is established in it. These elements and the constitutive elements of legal custom are always the same in spite of the multiplicity of custom types and not changed by the difference of time and place.

### **1.5. Types and scope of General Assembly competences**

Generally speaking, any issue or matter that is within the Charter of the United Nations or relating to the powers and functions of each pillar in the present Charter shall be in the jurisdiction of the general assembly. Therefore, it is possible to say that the General Assembly has all the qualifications expressed in the Charter, in which each of the other organs of the United Nations has taken each of these qualifications. In order to be clear, the general assembly has three kinds of common, special and common competence (Ardebili, 2013).

### **1.6. General competences of assembly**



The general competence, as noted, means the General Assembly as a comprehensive and general pillar has competence for examining all matters and issues in the Charter due to the validity of the charter of the United Nations, except in the cases that has referred to the Security Council. In this context, the text of Article 10 of the Charter is clear that states:

The General Assembly may discuss any issue or matter, whether it is within the present Charter or relating to the powers and functions of any given pillar in the present Charter, except in the mentioned case in article 12, it may advice to the UN members or to Security Council or to both of them about each of the matters or issues. The general competence of the General Assembly would open this pillar to a wide extent to review or make recommendations in the various fields of human rights.

### **1.7. Special competences of the General Assembly**

There are some cases in the charter that only the general assembly has competence for deciding them, including; the budget matters, the selecting the non-permanent members of the security council, selecting members of the Economic and Social Council and the selecting the members of the International Law Commission and the Human Rights Council and ... The Assembly shall also have joint competences such as selecting the Secretary - General of the United Nations, the selecting the new members of the United Nations and the

appointment of judges of the International Court of Justice is invest to the Security Council.

### **1.8. The decision – making procedure in the General Assembly**

As mentioned earlier, the United Nations General Assembly is the most important pillar of the UN's consultative and advisory body that is called the World Assembly. Basically, the Assembly's decisions have a consultative aspect (declaratory). Of course, in certain cases that related to the internal affairs of the organization, the assembly's decisions are binding on all members. In terms of the provisions of the Charter and its attached association and domestic regulation of the General Assembly, the procedures of decision - making in the Assembly is a majority of two thirds, absolute majority and a simple or relative majority, but in practice, the vast majority or consensus has been common. The resolutions of the General Assembly are generally referred to as resolution. By 1965, resolutions containing code or identification mark were been so. The history of resolution, the Latin number, the Arabic number and the GA (acronym for General Assembly) that was noted immediately after the resolution number, encoded in 1946 by the Arabic numbering and then the Latin numbering system (i.e. I, II X X) such as the resolution of the GA Number: 1893, 14, 1962, regarding the permanent sovereignty of nations on their natural resources. But from 1976 ( 31 session of the convention ), the coding method changed, mainly after the GA, the

first Arabic number expressed the resolution number and then a diagonal line ( / ), the second Arabic number expressed the meeting number and then the date of the resolution was recorded. In the human rights cases, all these procedures are done more and more.

### **1.9. Effective factors in the assessment of UN General Assembly resolutions**

Most jurists have presented the same factors in the evaluation of the resolutions because of its impact. For example, Professor Arshaga believes the determination and evaluation of the legal effects of General Assembly resolutions is an issue requiring careful analysis of the provisions of the resolutions on every particular subject. In these cases, issues such as writing the wording of the resolution, the number of votes supporting the resolution, the views of governments during the negotiations, the process of passing the resolution and the actions of States and the United Nations following the passage of the resolution have to be considered.

### **1.10. The used terms in the resolution**

The used terms in each resolution are one of the very important factors in determining the effects related to the relevant resolution and the used term have its own effects if they are declaratory or persuasive.

The terms used in the resolution may also declare the existing and applicable legal principles. As noted in the discussion of the relationship of resolutions with custom, according to Professor Arshaga, resolutions, however, contribute only to the formation of customary law if a resolution declaring the right is not available. As it is noted, the meaning of the resolution and the wording used in writing it is one of the most important factors in determining the effects related to any resolution.

*1.10.1. The purpose and intention of the resolution*

The purpose and intention of the resolution is another important factor that should be considered in assessing the effects of the resolution. This intention can be extended to the General Assembly in general or Member States Parties in assembly. The General Assembly's intention to pass the resolution may be implicit or explicit regarding the terms of the resolution. The intentions of Member States Parties can be considered in assessing the effects associated with the resolution if stipulated in the backgrounds relating to passing the resolution.

*1.10.2. Preliminary works done in the process of passing the resolution*

In investigating the effective factors in determining and evaluating the effects of the resolutions of the question that arises, it is about the value of the preparatory works of passing the resolution. Is it

possible that refer to preparatory works relation to the resolution for the assessment of the General Assembly resolutions such treaties? While the principles of interpretation of treaties organized by the Vienna Treaty and developed through the international judicial procedure, the rules of interpretation of the Assembly resolutions suffered by considerable poverty. Nevertheless, some theoreticians believe that the interpretation rules of treaties can be applied using analogies to resolutions.

#### *1.10.3. Issues relating to the voting process of resolution*

The number of votes in support or opposition with resolution by the States Parties to the Assembly is another decisive factor in assessing the effects of a resolution. Resolutions that enjoy from the support of all members or the majority of the members have a higher position than resolutions passed by lesser votes. The resolution adopted by a third of the votes or in the most important cases by two - thirds of the votes are considered as a valid resolution that cannot be cancelled.

#### *1.10.4. Repeat of the resolutions*

Another important factor that should be considered in assessing the effects of resolutions is the repetition of the content of the resolutions in other resolutions. The repetition of a resolution indicates

that the resolution enjoy from the permanent support of governments and this indicates the importance of this resolution from the view of member states. Repetition of a resolution also response to criticism that the General Assembly resolutions only reflect a majority which may soon be changed by the General Assembly.

### **1.11. Position of international and national arbitration and judicial votes in the assessment of General Assembly resolutions**

The judicial procedure and international arbitration indicate that in some cases, the General Assembly resolutions invoked by such authorities. For example, these resolutions invoked by the International Court of Justice in the cases and various consultative views. In addition, the court judges also refer to these resolutions in their separate comments. These resolutions also have a special importance in international arbitrations, and arbitrators or arbitration panel have invoked to the General Assembly resolutions if necessary. At the internal level, the judicial forums in several cases have referred to the General Assembly resolutions. In this case, the procedure of the U.S.A. courts is remarkable. For example, in the case of *Flaritga* against *Pana Irala*, U.S.A. Court of Appeals in order to determine whether the torture is a crime in the international law crime law, referred to the General Assembly resolutions, the resolutions that for U.S.A. government are not binding in terms of classical international law. Supreme Court of Federal also referred to the Universal Declaration of

Human Rights in some cases, including the Kennedy case against Mendozoma (Ghodratollah, 2012).

### **1.12. The Role of the General Assembly resolutions in concluding the Peace**

The General Assembly's competence in establishing peace and international security was a controversial issue that caused many controversies in the San Francisco Conference between small states and superpowers. These discussions were due to fact that at the Dambarten Ex Conference, the Great Powers had not given much power to the General Assembly and for that reason, the smaller governments believed that all powers should not be concentrated in the Security Council. According to United Nations Charter, the primary task of preserving peace and international rests on the Security Council. However, as the Assembly is the General meeting of the United Nations, then it can decide in this case and provide at least some guidance. Therefore, it can be said that in the maintenance of peace and international security, secondary responsibility rests on the General Assembly. The mentioned opinion was also approved in international court of justice in the case of UN's losses at the International Court of Justice. In this case, the court said that the Security Council has a primary responsibility for maintaining peace and international security, but this responsibility is not exclusive. It paved the way for playing effective role of the General Assembly (Conforti, 2005).

The general assembly's competence in establishing peace and international security is the only consultative. The Assembly may submit recommendations to the Members of the United Nations or the Council of Security or both, to discuss any issue that related to international peace and security and to attract the attention of the Security Council to situations that are likely to endanger international peace and security. In addition, the Assembly may recommend measures for the peaceful settlement of any situation. Nevertheless, in cases related to solidarity for peace resolutions, the General Assembly can pass resolutions that are binding on the member governments. The obligation arising from these resolutions is because they are based on principles that have been developed within the framework of the United Nations and are considered as one of the principles of public international law today. The General Assembly in this area has become a focal point for exchanging views of governments on international law. In such cases, it can be said that the role of the General Assembly is not as pale as those that the Assembly has only a consultative competence or not as highlight as that we can consider a competence for it, such as the Security Council (Hakim, 1996).

The General Assembly's competence to discuss and provide recommendations about international peace and security includes the General Assembly's authorities to investigate and explore the relevant cases. These authorities of Assembly derived from Charter, because in order to discuss any subject fully and effectively, the Assembly should be able to conduct research and collect the required information. For this purpose, the Assembly can establish the commissions or



committees for research. For example, in 1946, the Assembly created a special committee to investigate the conditions in Palestine, as the United Nations Special Committee on Palestine. The General Assembly, in 1958, sent monitors to Lebanon, as UN observers to inform from the existing situations in this country. All such measures conducted by the General Assembly helped to reduce cases that could be considered a threat to international peace. The Council may also ask the General Assembly to submit recommendations under paragraph 1 of Article 12 of the Charter. In such cases, if the matter is partially subject to the internal competence of member states, the Assembly will consider the internal situations of member states as much as it relates to international issues. For instance, the concept of human rights in the body of international law has established its place and today it is not a subject to be exclusively dominated by governments. This has been reflected in many General Assembly resolutions (Gregory, 1983).

Articles 1, 2 and 55 of the United Nations Charter indicates the importance of development and protection of human rights at the international level and consequently on the internal level. The Security Council has broadly accepted this view and violating the human rights has been considered in many Security Council resolutions as a threat to international peace and security and has been interpreted within the framework of Article 39 of the Charter. In the same regard, in 1956, in the situation relate to Hungary country, the General Assembly denied the application of paragraph 7 of Article 2 of the Charter, because it decided that the threat or use of force by foreign forces is opposed to the prohibition of force in paragraph 2 of Article 4 of the Charter. In

similar cases, the General Assembly has taken a more explicit position against decolonial, racial discrimination and apartheid. The matters that are not subject to the internal competence of governments and therefore the article 7 of article 2 of the Charter shall not apply. Racial discrimination in South Africa and apartheid policy was another matter in which the bold role of the General Assembly was undeniable. In this case, the General Assembly decided that South Africa's apartheid policy was not just an issue under domestic jurisdiction, but because human rights have been threatened, it has global dimensions. This South African policy was examined frequently in the meetings of the General Assembly and was condemned by the members of the Assembly. The general assembly also frequently drew attention of the Security Council to the matter. Finally, in 1977, the Security Council adopted resolutions and declared that South Africa's apartheid policy was considered a threat to international peace and security under Article 39 of the Charter. While prior to enacting these resolutions, the weaponal sanctions imposed on South Africa were the only voluntary, because they were adopted in accordance with the sixth season of the Charter. but by taking the actions by the Security Council under Chapter VII of the Charter, the applied anctions were binding for all States. Therefore, the general view of the General Assembly was that serious violations of human rights in the form of racial discrimination or any other way endangere the world peace. What follows by the Security Council's policy suggests that the Council will consider the decisions of the General Assembly in most cases, because these decisions enjoys the support of the majority of the UN member states and represents their general view.

While the Security Council has no mandate in giving effect to General Assembly resolutions, the fact is that when the council will consider the Assembly's views, the council's actions in the international community will enjoy wider acceptance and legitimacy when the Council considers. ... so when the Security Council fails to implement its own primary and basic task, the General Assembly, where all governments are members, can take this responsibility. The Charter itself states that the General Assembly may recommend recommendations on any important issue such as the establishment of international peace and security with the majority of the two thirds of its members present in the Assembly (Danesh & Syri, 2013).

### **1.13. The solidarity for peace resolution**

#### *1.13.1. The war on Iraq*

In 2003, when it was almost certain that U.S.A and its supporters were preparing an attack on Iraq, peacekeeping governments and groups around the world insisted on replacing an option instead of war. Many governments, including Russia and France opposed the war. At this point, there was a tangible and visible split among the permanent members of the Security Council. On the one hand, the United States and the United Kingdom wanted force against Iraq and were on the other side of Russia and France. This split created in the council did not prevent the influence of this pillar of peacekeeping in the coming issue. Owing to this, groups such as

international green peace and fundamental rights center often demanded an emergency meeting of the General Assembly. New York's fundamental rights center even went further and provided a draft resolution as the solidarity for Peace. This was due to a split in the Security Council on the Iraqi issue. The resolution said that any military action against Iraq without the authorization of the Security Council is inconsistent with the Charter of the United Nations and international law. The base of alternative option instead of war was latent in resolution (A) 377 the General Assembly that declared the General Assembly can recommend the collective action necessary that the members of the United Nations have to take, if the Security Council failed in its initial responsibility for peace and international security (Clapham, 2006).

### *1.13.2. Korean War*

North Korea invaded to South Korea in the 1950s. The Security Council subsequently attempted to take an action to applying the United Nations forces to the command of General Vaglas Meg Artour to expel North Korean forces. At this time, the Soviet Union left the United Nations and therefore was unable to exercise its veto as a permanent member of the Council. When the Soviet Union returned to the United Nations, it questioned the validity of the adopted resolutions of the Security Council when he was absent. This prompted the Security Council to convene an emergency meeting of the General Assembly, which gave rise to passing the solidarity for peace

resolution in early November 1950. It was in fact U.S.A. proposal to make the United Nations more effective in dealing with threats to international peace. After stabilizing the solidarity for peace procedure in resolution (A) 377, the General Assembly adopted other resolutions on the subject of Korea. The Assembly, for example, adopted a resolution in 1 February 1951 that urged the States Parties to increase their contributions to the United Nations, in a way reflecting an action in accordance with a resolution of solidarity for peace. According to solidarity for peace resolution, the necessary requirements for calling for the establishment of an emergency meeting of the General Assembly for resort to the resolution of the Union for Peace policy are (Thirlway, 1972):

Firstly, the threat to peace, violation of peace or practice of aggression be contingent; secondly, the lack of alliances among permanent members of the Security Council is considered, and due to above mentioned issues, the Security Council be incapable of implementing its primary task in establishing peace and international security. Solidarity for peace resolution created many discussions between the Socialist and Western governments. The Soviet Union believed that according to Articles 10 and 14 of the Charter, the Security Council and the General Assembly cannot act instead of one another, but they are merely complementary. On the other hand, Western governments with an interpretation of Article 12 of charter believed when the Council paralyzed by the veto of its permanent members, it did not act in accordance with the article.

*1.13.3. The role of the General Assembly in the establishment of  
international peace and security*

The General Assembly attempted to the establishment of the peacekeepers for practical action to maintain international peace and security. The peacekeepers was used for the first time in 1956 in the case of Israeli aggression followed by France and Britain to Egypt following the nationalization of the Suez Canal which was followed by the General Assembly in the establishment of peace in the region. It raised discussions about the competence of the General Assembly to take the necessary measures in the scope of international peace and security. In the case of the Suez Canal, the Soviet Union opposed to the idea of establishing peacekeepers on conflicts in Suez. It was while the occupying forces and Egypt welcomed the idea of entering these forces. The Soviet Union believed that the Charter contains the certain Articles on using armed forces by the United Nations and attributed to necessary agreements under article 43 of the Charter. The Soviet Union believed that the requirements of Article 43 for the establishment of the United Nations Emergency Forces was not recognized and alternative methods had not predicted in the charter. Therefore, the basis of establishing these forces is illegal. On the other hand, as according to article 24 of the Charter, the Security Council has the primary responsibility for maintaining international peace and security and not exclusive responsibility and according to articles 10, 11 and 21, the general assembly will take steps in order to maintain peace, one of which measures can be made to form a peacekeeping force (Steiner, & Alston, 2008).

The tasks of these forces varied depending on the type of conflicts (international or internal). In the first type of conflicts, these forces had the tasks. Such as monitoring on the cease -fire, truce, border control, guiding the hostile forces to positions prior to the starting the conflict, monitor the exchange of prisoners of war and the quasi- judicial duties. In the second type of conflicts, they had tasks, including taking the military missions in the territories controlled by UN, protecting the order and implementation of the law in the country, guaranteeing territorial integrity and political independence and humanitarian duties (Fassbender, 2002).

#### *1.13.4. General Assembly resolutions and international custom*

##### A) General Assembly resolutions and the material element of custom

The government's procedure as one of the constituent elements of the custom is consists of physical acts, claims, internal legislation, verdicts issued by internal courts, and the resolutions and declarations of the public assembly. Therefore, the government's procedure includes their actions in international organizations and their verdicts about the general assembly resolutions considered as one of the government's policy (Nguyen et al., 2003).

B) General Assembly resolutions and the spiritual element of custom

It is generally accepted that only repeat of records does not suffice and a common rule exists only if the knowledge and conscience to a legal obligation and duty causes the action and motivation of action.

Therefore, the procedure alone does not create custom. An alleged rule of international law should not only reveal its existence through the material element, but also the spiritual element play role in its formation, an element that known as the legal belief. By confidence of some jurists, the General Assembly may be a reason for the existence of the spiritual element of international customary law. These are the resolutions that explicitly stating the beliefs surrounding the existence of the principles and norms of international law. For example, the resolution (I) 96, in December 1946 states:

The General Assembly stresses that genocide is a crime according to international law (Jafarilangroudi, 2014).

A spiritual element of custom can be inferred from the terms and context of a resolution (e.g. the above mentioned). It can also be understood from conditions and circumstances associated with passing a resolution. If a resolution is approved by the affirmative vote of all members of the Assembly and the announcer of rights be existed in terms of content, it will be much closer to the spiritual element of



custom than the resolution issued by a considerable number of members. The state that gives the positive vote to resolution comprising customary law admitted that the resolution was declaring the customary law. On the other hand, if a government rejects the resolution, it means that state has not accepted the resolution and then the customary rule associated to it. The state that does not participate in voting is in the same position as the government agrees with voting. Because this principle is clear that if the government has not participated in the formation of international law rules is obliged to those rules, unless it expresses its explicit objection from the beginning. A resolution cannot be seen as declaring the customary, if that resolution is without the declaring words (Saljoughi, 2010).

It is possible, however, that a resolution may affect the development of customary law in the future, in cases where customary law is ambiguous or the views of governments are contrary to existing the common rule.

*1.13.5. Establishment of custom law by convention from the perspective of the International Court of Justice:*

General Assembly resolutions are capable of contributing in the process of forming the customary rules and speed up this very slow nature. The International Court of Justice when examining a dispute between the United States and Nicaragua stated: The legal belief can be inferred by considering aspects of caution, from the perspective of

the parties and the governments towards some resolutions of the General Assembly and especially resolutions (25) as declaration of international law principles on friendly relations and solidarity between states according to the Charter of the United Nations. The court then continues to confirm his opinion about the position of the General Assembly resolutions: The effect of satisfaction on the text of such resolutions cannot be seen only as the transparency and repetition of the charter materials, but it can be regarded as accepting the validity of the rule or the declared rules in the resolution by governments. The role of UN resolutions is contributing in the creation of customary law, nor is it restricted to repetition or interpretation of the Charter. It can also be said that the resolutions are confined to the repetition of customary international law content because the effect of declaration of consent to the text of such resolutions is to accept the validity of the rule or rules stipulated in the resolution. In this respect, it should be noted that the Supreme Court following its vote about the subject of resolution (25) of the General Assembly states:

As it has already stated, passing this resolution by States is a sign of their legal conviction of customary international law. This indicates the intrinsic value and position of the resolution that has encouraged governments to ratify it and the government's vision about it has been the main reason for passing the resolution. In other words, government's view on the resolution has only a declaratory aspect and not establishing aspect.

*1.13.6. The position of General Assembly resolutions in transparency, regulation and facilitating the exercise of customary law from the perspective of the International Court of Justice*

In Nicaragua's case, after it has been established that customary law will continue to exist in parallel with customary law and custom does not result in its deterioration, attempted to form the customary law relating to the mentioned case. The principles were the prohibition of the use of force and its exceptions, including the considered principles by the court were: The prevention of force principle and its exceptions, including self -defense principle that had the customary aspect. After examining that the terms of some of the declarations of the public assembly issued by governments indicate the recognition of the principle of the prohibition of force as an international law principle, tries to examine this legal principle of customary law. When examining the exceptions of this principle, the Court has stated that some of the terms used by the Assembly state some of the right of legitimate self - defense (both individually and collectively). The court attributed to the principle of international law's resolution on friendly relations and solidarity between governments to make clear the exceptions of the prohibition of force. As well as, by investigating the nature of the armed attack and the acts that constitute this concept well, the court is well aware of the resolution of the general assembly that has been defined by the definition of aggression. In the words of the armed attack, the court expressed terms of article 3, paragraph (g) of the aforementioned resolution, and finally stated that these terms could

reflect the customary international law. The court referred to the resolutions of the convention in effect in clarifying the scope and content of customary law and consequently facilitating its implementation in the case. The court also expressed the opinion of the legitimacy of the use of nuclear weapons when discussing the legitimacy of nuclear weapons when discussing the lack of legitimacy of nuclear weapons, expressing the views of governments about the values and status of the resolutions that the General Assembly resolutions could be, if not binding, in some cases. These resolutions can be regarded as an important process for establishing a rule or principle of legal conviction (Herman, 1978).

After presenting the above mentioned literature, the court tries to investigate the conditions that the assembly members have to enjoy regarding the impact of the court. The court states that in order to verify the validity of above mentioned items, a general assembly resolution must be subject to the content and conditions of its passage. It has also to be seen whether there is a legal conviction of its normative nature. It is also believed that a series of assembly resolutions can gradually reflect the legal conviction necessary to establish a new rule. What is understood from the Supreme Court's view of the circumstances and how it affects general assembly resolutions is the profound impact of governments' negative feedback. The court considers that although the generality of the General Assembly resolutions that have been approved in connection with the ban on the use of nuclear weapons, however, have shown considerable sensitivity to the extent of the negative and non - repudiation of

governments. The court states that a number of resolutions have been approved by a substantial number of votes and abstention from Syria. What is most important is the conclusion that the ~ ~ U.S.A. ~ ~ has given these negative votes. The court says frankly that although the relevant resolutions are a clear indication of the deep concern of governments in connection with nuclear weapons, they are still unable to form any legal belief about the legitimacy of the use of such weapons. As regards the role of General Assembly resolutions in establishing or clarifying the custom, custom should be remembered that custom acts as one of the sources of international law from an accepted general procedure as a law. Therefore, the absolute uniform is not required, but a high degree of public acceptance should be established. In this case, the court rightly pointed out that the resolutions adopted by the General Assembly regarding the lack of legitimacy of the use of nuclear weapons against a significant number of opposition votes have been passed. It has also pointed out several governments in statements and performance outside the General Assembly that all of the use of nuclear weapons are not considered illegitimate. They have even talked about their intention to use such weapons in certain situations (policy) (Jabbar, 2010).

All of this evidence has been arrested by the conclusion that there is a general accepted rule of the lack of legitimacy of the use of nuclear weapons. The main implication of this thesis is that if a general assembly resolution can be inferred from general acceptance of a common rule and adopted resolutions are approved by the majority of states, they can be considered as evidence of customary rules and other

of customary law. Moreover, in certain circumstances, they can be considered as a common law holder. As regards the position of General Assembly resolutions in facilitating the implementation of customary law of international law, what is interesting is that there are largely resolutions that have a declared feature or rather a declaration approved by the Assembly. It can also be recognized that if a resolution is merely interpreting the rules of international law, it can be very useful in understanding and applying these rules. Also, if a resolution does not repeat the existing rules, it can be said that the resolution will affect the approval of the legal rules.

## **2. CONCLUSION**

International provisions generally derived from international custom and generally reflected being accepting as regulations in the international community. The General Assembly of the United Nations has able to create the international custom with its advisory recommendations and issuing resolution and its practical procedure. This practice also has been recognized by the international judicial procedure. The Assembly's own actions in relation to various issues have created the same procedure by countries and then rule making. For example, in the case of Apartheid of South Africa; The General Assembly with the view that the competence of countries in applying their laws is not only a territorial competence and is epidemic if it conflicts with human rights, enacted the resolutions that led to the deployment of the States against this country and finally the action of

the Security Council. The unity resolution for peace was also another step by the Assembly to establish a common rule. The custom has to its constructive elements, namely the material and the spiritual elements that creating the rule procedure by the member countries of assembly arising from the resolutions issued is posed as spiritual elements and the repetition and continuity of the obligation to these resolutions as legal obligation of States. The spiritual element of custom can be inferred from the terms and framework of a resolution. As in the prevention of genocide resolution, the assembly has called the genocide as a crime, we can infer the spiritual element of custom from the resolution's words and framework. As well as if a government rejects the mentioned resolution, it has not accepted that resolution and then its customary rule. The government that does not participate in the election is in the same position of the agreed government to the resolution.

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