

Interactions Between United Nations Organs and Agencies and International Law

Hongshan Duan^{1,a,*}

¹Law School, University of Sydney, City Road, Sydney, Australia
a. hdua0629@uni.sydney.edu.au

**corresponding author*

Abstract: During the past 10 to 15 years, international society has been strongly connected to and guided by the system under United Nations (UN) six main organs and countless agencies. With international order being challenged and re-established during these years, the mechanism of United Nations organs and agencies are usually viewed under International Law perspectives. The operating routine of the UN and International Law was somehow connected especially in the way of the decision-making process and decision-making results (i.e. Conventions, Resolutions). The article took an analytical and comparative view regarding the UN system and International Law and innovatively pointed out the current dilemma between those two entities. The article naturally draws out the drafting and the settlement of International Law. The process surely sped up the development of UN organs and agencies and reversely the UN system boosted the loopholes and the lay-backs of International Law consecutively. Also, the author spotted that with the leading roles of the United Nations Security Council and the International Court of Justice under International Law, there is still a long path to mend the relationship established between UN organs and International Law. It is valuable to examine the UN organs and agencies underneath International Law. The consensus-oriented mechanism of the UN will surely match the true essence of liberty of contract in International Law.

Keywords: United Nations, international law, decision-making, legal perspective

1. Introduction

The United Nations (UN) is an intergovernmental organization (IGO) that maintains world peace, security, and dignity which is generally respected and cherished by the international community. Holding on to its principal organs listed under Article 7 of the UN Charter, there are 6 main organs and multiple specialized agencies functioning on their own rights as subsidiary bodies within the UN System. The UN system, including the six main organs and the specialized agencies, is commonly governed by the rule of law, which was regarded as the UN legal order. Commonly seen, the legal system cast by international law is also guided by the rule of law [1].

The purpose of this article is to make a comparative view, to see the legal links between the United Nations organs and agencies and the framework of international law. Without illustrating much on the checks and balances inside the UN system, it is quite ironic to see how the UN legal order was somehow connected to the rationale of international law. The links are deeply immersed in international public law cases (international criminal law to the most, and especially easy to recognize

in the United Nations Security Council and International Court of Justice). Recalling back at the Al-Bashir case upon Head of States Immunity, especially on the referral, easily reminds us of the relationship between International Criminal Court and the United Nations Security Council. Besides, there are more links beyond the mechanism of those UN organs. The outcoming session result (resolutions, working papers, treaties, etc.) inside the UN system and how it can impact and enforce Member States take after the modes of how countries are bound by international law. Also, the article will take on a comparative view reversely on how the enforcement of international law would cast the upgrade and fix the loopholes of the current UN system.

This article will first elaborate on the rationale of international law and UN organs and agencies, which laid a solid analytical background for the paper. Moving on, the author will talk about the mutual impact of the two entities, on the topic of UN organs and agencies under international law and also prevail the current dilemma between UN organs, agencies, and international law to spot the loose match of the two entities.

2. The Rationale of International Law and UN Organs and Agencies

2.1. International Law

International law, or usually public international law, usually “*recognize states as its principle subjects who bear international rights and obligations, and have the capacity to make international claims and be held responsible for their breaches*” [2]. Broadly, international law was one of the branches decided by its subject matter, which also took a completely different framework and distinct jurisdiction from domestic law.

In the process of the development and the functioning of international law, there underpins different principles and articles under its framework. Vital as it is, it is advisable to go through the rationale of international law regard to the source of international law. Under Article 38(1) of the Statute of the International Court of Justice (ICJ), it listed out “international conventions, international custom, the general principles of law recognized by civilized nations and judicial decisions and the teachings of the most qualified publicists” as the application of the source of international law and related disputes [3]. Those listed sources do not do a hierarchical order when referring to any of them. Beyond the items listed in Article 38(1), there underlies a gold line naming *jus cogens*. “*The concept of jus cogens is based upon an acceptance of fundamental and superior values within the system and in some respects is akin to the notion of public order or public policy in domestic legal orders* [4].” With the specific type of hierarchy built upon the source and reference of international law, it could be seen that when referring or implementing international law, *jus cogens* is seen with priority, followed by items listed under Article 38(1) in Statute of International Court of Justice.

However, it has been over consecutive discussion that whether or not international law should be regarded as international law. In this article, the author took a relatively positive view to regard it as a substantive law. The mechanism or the rationale of international law should be examined under the sources of it. Regardless of the textual treaties, conventions, or other forms of the article which were referred to by Article 38(1)(a) or it is the international custom under Article 38(1)(b), international law impacts different parties with a rather loosely obliged and voluntary pattern. The thing is, state parties are only bound to the articles once they are signed under international law because the nature and the notion of agreement are significantly impacted. Also, if international customs apply, State should carry the burden of proof to illustrate both State practice and *opinio juris* where the two elements are usually rare to compile and see. Seeing this circumstance, it could be easily drawn out that the rationale of international law falls into the realm of agreement, which only binds the contracting parties. Also, another rationale relies on States’ own burden of proof to search out for sources as customary international law.

2.2. UN Organs and Agencies

United Nations as the most authorized international organization, has been governing order, peace, and security, from the past to the future. The underlying six main organs (including the General Assembly, Security Council, Economic and Social Council, Secretariat, Trusteeship Council, and International Court of Justice) was functioning with separate duties and followed a distinct programme of work within the UN system. Here, the article would specialize on two main organs (General Assembly and the United Nations Security Council) and point out their rationale of the programme of work and decision-making. Other specialized organs and agencies underneath the setting of General Assembly (GA) and Economic and Social Council (ECOSOC), can be inferred with General Assembly rationale as well.

Importantly, the decision-making mechanism of the General Assembly can be usually seen in different plenary sessions of the United Nations. Covering 193 Member States, General Assembly is an occasion where all Member States can fully discuss so-called international affairs. Generally speaking, *“it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the Charter of the United Nations”* [5]. In order to best adapt to the interest of all Member States, the decisions (or the Resolutions) discussed by the General Assembly were now usually decided by consensus instead of voting. The point of General Assembly’s consensus rule was raised and implemented because unlike United Nations Security Council (UNSC), the resolutions are not legally binding to member states. In fact, to what extent Member States are influenced by the GA was absolutely up to Member States’ own political stand and legal practice. Without a compulsory power upon GA resolutions, Member States tables down every preliminary matter at the conference and negotiate every paragraph to the largest extent so that more common background can be seen from the resolution, which also guarantees that not many Member States are doubtful upon the outcome. In a nutshell, *“if a GA resolution is not legally binding then the best way to encourage all Member States to implement the recommendations expressed in a resolution is to get all of them to agree on the same text [6].”* Consensus rule was practiced and implemented with GA annual conference, as well as the subsidiary body underneath GA. The rationale also goes with ECOSOC sessions and its subsidiary bodies.

Except for the consensus rule in GA, the other extraordinary organ, the UNSC holds the voting and partially unanimity rule when coming to the decision-making process. With such a powerful body inside the UN system governing global peace and security, UNSC would have a similar consensus rule but it turns out very unique upon voting. In United Nations Charter Article 27, *“decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members”* and *“decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting”* [7,8]. It can be easily understood that the decision-making mechanism was strongly connected with the mandate of the Council when dealing with breathtaking issues of international security where the resolutions of the UNSC is the only legally binding document inside the UN system to all Member States.

With the consensus rule and the UNSC voting mechanism rule being illustrated as the decision-making rationale, the soft and tough ways of regulating the international community rose clearly.

2.3. Comparison of the Rationale

It’s very rare in academia to see how sources of international law can connect with the UN decision-making mechanism. However, this article innovatively builds the connection between the two. The article went through the soft and tough approaches of regulating the international community

separately. It should be linked that the legally binding resolutions of the UNSC somehow take after the modes of *jus cogens*, sitting at the highest hierarchy of international law governance. While the soft consensus-made approach in GA, ECOSOC and their subsidiary bodies also can be seen from the perspective of other liable resources which acts as sources of international law in ICJ Article 38(1). The United Nations organs and agencies also direct their results and document as one of the sources of international law as well. The article will take a further step on the links and dilemma of the two entities in the following part.

3. UN Organs and Agencies under International Law and Current Dilemmas Between Two Entities

3.1. Promotion of the Development of UN Organs and Agencies Through International Law

Viewing UN organs and agencies in the context of international law first falls within the description of how international law can promote the development of the UN system. It seems to spot that the direct textual link between international law and UN organs and agencies should be how international law under the International Court of Justice. However, it also should be examined that international law holds different forms in contributing to UN organs and agencies' development on a larger scale. First and foremost, the underlying rule of law within the sphere of international law undoubtedly builds the principle of the programme of work in UN organs and agencies. The United Nations once took the bedrock of establishing such a giant international organization from the very beginning [9]. Even if the United Nations is an assembling of Member States, it was deeply impacted by the rule of law principle in International Law or even from a legal perspective. The basic rule of law was interpreted in different circumstances including but not limited to the establishment of six main organs and subsidiary bodies, the programme of work of each organ and agency, etc. Moreover, during the past years with the status of the UN being confirmed by most of the international community (though sometimes being challenged), there generated a trend that the authorized resolutions flow violently and detailly compared to previous years.

3.2. Improvements of International Law Through UN Organs and Agencies

Also, the UN organs and agencies seem to contribute more to international law as a certified and recognizable entity. When recalling ICJ Article 38(1), it clearly states in subclause 1, saying: The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply (a) international conventions, whether general or, establishing rules expressly recognized by the contesting states. Backing at the sources and types of international law, it is undeniable that GA, one of the main organs of the UN and its subordinate bodies, provided a platform and occasion for all Member States to table down bilateral and unilateral treaties [10]. It specifies that GA6 (UNGA Legal Committee) consecutively provides and gives assistant work to GA by offering legal advice on substantive matters. GA as a whole, was actually the place where bilateral or multilateral treaties were brought upon, then coming into the signature and the ratification for contracting parties. Way beyond that, there are other outstanding organs or agencies, such as International Labor Organization (ILO), UN Commission on International Trade Law (UNCITAR), that contributing to the solidation of the treaties. Under this process, the treaties echo back to enrich the sources of international law.

Importantly, it's of global recognition that the International Law Commission (ILC) set by GA was taken into account in the consideration of liable international law sources under ICJ Statute 38(1)(d). It took a specialized track and working mechanism upon "*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*" [11]. It is such a

comprehensive and specialized entity that fills up the vacancies in the sphere of international law. It's also worth mentioning that the judges elected by GA will act in their own personal capacity instead of working out of political favor or any other reasons. The settlement and the working of ILC played a vital role in the continuous implementation of public international law issues.

3.3. Current Dilemmas Between Two Entities

At present, the UN organs, agencies, and international law usually be seen as different subject matters. Sometimes the two entities will fall into the other's sub-category when doing classifications. For instance, international law will regard documents in UN organs and agencies as sources of international law. The parallel model between the two has not yet been established. Also, there can be some overlapping between the two. Recalling back at the Darfur situation regarding the Al-Bashir Case, the UNSC's referral and the referral mechanism of the Rome Statute are mixed and complex which will lead to the referral abuse on Head of State immunity.

Regardless of the overlapping and the connections between the two upon substantive matters, the programme of work also triggers a dilemma when viewing UN organs and agencies from an international law perspective. It has been long criticized that the non-legally binding documents within the UN system took a majority proportion of all the results of decision-making. Thus, there may be a trend to outweigh different UN systems (with the UNSC taking up most of the power and the rest organs being cut down for their power). The GA's resolution, even the legal entity within the six main organs, the International Court of Justice's document is not legally binding. Even if the legal-binding feature was to prioritize the function and the global peace maintenance, this feature will somehow lead to a textual misconception of other organs and agencies status in international law, thus creating a hierarchy for documents within the UN system upon international law.

4. Conclusions

To conclude, the dynamic relationship between international law and UN organs and agencies is appealing to see from a rather academic perspective. The two entities consecutively support and fill in the gaps and loopholes they two originally have. The United Nations organs and agencies were acting and generating textual content for the operation and reference of international law whilst international law triggers the content, procedural matters, and the outcoming document of UN organs and agencies to follow a systematic pattern in the perspective of international law. The article also draws a clear conclusion that to some extent, the hard approach (UNSC decision-making mechanism) and the soft approach (GA consensus rule) can also be interpreted as the sources respectively as *jus cogens* and other sources listed in ICJ Statute 38(1). Even regarding international law and the UN system operates parallelly on their own mandates and schemes, it is also amusing to establish connections and links. Only by seeing the connection can the international society fully inspect the UN system and international law in a more rational and distinct way.

Acknowledgements

This article was somehow scratching on the surface of the United Nations and the sphere of international law. With interest being developed in the interactions of those fields, I hereby thank the person who supported and enlightened me for starting up and elaborating this paper.

I personally thank Professor Miles Jackson from the University of Oxford who led me into the research programme of international criminal law and directed me to the basic and wonderful case of Al-Bashir, which truly triggered me to think more general as well as more in-depth questions. Also, I would like to express my sincere gratitude of Professor Wenhua Wang from Beijing Foreign Studies

University, who diligently inspires me at any time during my path to academia. “*Sidere mens eadem mutato*”. I finally thank the University of Sydney to enable me a fresh new start.

References

- [1] White, Nigel D. (2002). *The United Nations System: towards international justice*. Lynne Rienner Publishers, 43.
- [2] Crawford, E., A. Pert, & B. Saul (2023). *Public International Law*. Cambridge University Press, 32-54.
- [3] Statute of International Court of Justice, Article 38 (1)(a),(b),(c) and (d). Retrieved from <https://www.icj-cij.org/statute>.
- [4] Shaw, M. N. (2022). *International law*. Cambridge University Press, 106.
- [5] *Workings of the General Assembly*. United Nations General Assembly. Retrieved from <https://www.un.org/en/ga/>.
- [6] *Why consensus is important*. United Nations. Retrieved from <https://www.un.org/en/model-united-nations/how-decisions-are-made-un>.
- [7] *United Nations Charter, Article 27 (2)*. United Nations. Retrieved from <https://www.un.org/en/about-us/un-charter/full-text>.
- [8] *United Nations Charter, Article 27 (3)*. United Nations. Retrieved from <https://www.un.org/en/about-us/un-charter/full-text>.
- [9] *The Role of the UN in Promoting the Rule of Law: Challenges and New Approaches*. United Nations. Retrieved from <https://www.un.org/en/chronicle/article/role-un-promoting-rule-law-challenges-and-new-approaches>.
- [10] *2011 Treaty Event, Role of the United Nations in International Law*. United Nations. Retrieved from https://treaties.un.org/doc/source/events/2011/Press_kit/fact_sheet_5_english.pdf.
- [11] *Statute of International Law Commissions*. United Nations. Retrieved from <https://legal.un.org/ilc/texts/instruments/english/statute/statute.pdf>.