BINDING VALUE OF UN GENERAL ASSEMBLY RESOLUTIONS IN INTERNATIONAL LAW

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LLM

A United Nations General Assembly Resolution is voted by all members of the United Nations in the General Assembly.

General Assembly resolutions as a rule require a basic larger part (50 percent of all votes in addition to one) to pass. Notwithstanding, if the General Assembly discovers that the issue is a "vital question" by simple majority vote, then two-third majority votes are needed; "vital questions" are those that are for maintenance of peace and security, admission of new members to the United Nations, suspension of the rights and benefits of members, expulsion of members, operation of the trusteeship framework, or budgetary inquiries.

The binding impact of GA choices is restricted, ratione materiae, to organizational issues, yet may cover, ratione personae, the whole UN.

In spite of the fact that GA resolutions are recommendatory as a rule,[1] particularly in regards to external relations with Member States,[2]the Court has perceived the binding legitimate impact of GA decisions relating to the confirmation of new Member States,[3] voting procedure,[4] or

[1] *South West Africa (Ethiopia v S Africa; Liberia v S Africa)* [1966] ICJ Rep 6[
In particular A. Basak, *Decisions of the United Nations Organs in the Judgments and Opinions of the International Court of Justice* (1969); Thierry, 'Les résolutions des organes internationaux dans la jurisprudence de la Cour Internationale de Justice', 167 *Recueil des Cours* (1980)].
[2] *Reparation for Injuries Suffered in the Service of the United Nations* [1949] ICJ Rep 174.
[3] *Competence of the General Assembly for the Admission of a State to the United Nations* [1950] ICJ Rep 4, *Certain Expenses*, *supra* note 4. For a detailed analysis, see Basak, *supra* note 1
[4] E.g. *Voting Procedure*, *[*In the 1955 *Voting Procedure* Case Judges Lauterpacht and Klaestad argued that Member States have a duty to consider them (*Voting Procedure on Questions Relating to Reports and Petitions Concerning the Territory of South-West Africa* [1955] ICJ Rep 67, Separate Opinion of Judge Klaestad, at 88; Separate Opinion of Judge Lauterpacht, at 119. Judge Lauterpacht also thought that consistent exercise of the 'legal right to disregard the recommendation', in the face of the solemn, repeated, and broadly representative will of the organization, may eventually amount to 'the abuse of that right' . On these opinions, see Johnson, Therefore one cannot rely on Charter terminology to identify the legal effects of a given resolution. See J Castañeda, *Legal Effects of UN Resolutions* (1969), at 14; Johnson, 'The Effect of Resolutions of the General Assembly of the United Nations', 32 *British Year Book of Int'l L* (1955–56) 97}, at 99–105. B Sloan has argued

allotment of the budget,[5] and all in all has affirmed that the Court has certain power of decision.[6] The Court has never illuminated whether the GA has any decisional controls in mandate/trusteeship matters.[7]Resolutions of the GA have no binding impact in the operational domain of international peace and security. Neither the GA's budgetary powers around there, nor its enforcement forces to suspend or expel UN Members, fall outside of the organizational sphere.[8]

In short, In most of the cases the resolution taken by general assembly are not binding in nature but in some respective area i.e. Internal resolutions, they have binding effects such as budgetary and procedural matters.

The impacts vary as indicated by the kind of resolution.[9] The expression "resolution" as utilized as a part of UN rehearse has a bland sense, including recommendations and decisions, both of which have an ambiguous and variable significance in the Charter[10] .The Court, then again,

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that the ICJ's 1980 *Regional Office Agreement* advisory opinion establishes for Members a *duty to co-operate* with the UN, implicitly linked to UN recommendations (Sloan, *{*
In practice they often contain provisions of both *lex lata* and *lex ferenda*. See Castañeda, *supra* note 3, at 168–169; B Sloan, *United Nations General Assembly Resolutions in Our Changing World* (1991), at 45–47, 68–69. This is of crucial importance for Section 2 of this article.}. It is not clear, however, how a general duty to co-operate implies any specific duty arising from individual recommendations.], at 76–77, consistently uses the term 'decision'. See the analysis by Basak, *supra* note 1.

[5] *Certain Expenses, [Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter*) [1962] ICJ Rep 151, at 163 (hereinafter '*Certain Expenses*') (ICJ decisions are available at http://www.icj-cij.org)], at 164, 177. See analysis by Basak, *supra* note 1

[6] *Certain Expenses, [Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter*) [1962] ICJ Rep 151, at 163 (hereinafter '*Certain Expenses*') (ICJ decisions are available at http://www.icj-cij.org), with analysis by Basak, *supra* note 1, at 80, 144.], at 163–164. See Basak, *supra* note 1, at 51–52.

[7] *Northern Cameroons*, Preliminary Objection [1963] ICJ Rep 15, at 24, did not decide the question of the GA's power to terminate trusteeship agreements, since this was not in dispute between the parties. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276* [1971] ICJ Rep 16, at 50 (hereinafter: '*Namibia*'), para. 105, seems to recognize the GA's power to terminate mandates, but is inconclusive due to ambiguities regarding both the legal basis of the power of termination and the role of the SC (see Bollecker (now Stern), 'L'avis consultatif du 21 juin 1971 dans l'affaire de la Namibie (Sud-Est Africain)', 17 *Annuaire Français de Droit International* (1971) 281, at 308–311; Jacqué, 'L'avis de la Cour Internationale de Justice du 21 juin 1971', 76 *Revue Générale de Droit International Public* (1971) 1046, at 1083). Finally, *Certain Phosphate Lands in Nauru (Nauru v Australia)*, Preliminary Objection [1992] ICJ Rep 240 (hereinafter: '*Nauru*'), at 253, para. 29, after citing the *Northern Cameroons* case, inconclusively found that the GA decided to terminate a trusteeship agreement 'in agreement with the Administering Authority'.

[8] *Certain Expenses*, *supra* note 6. See Basak, *supra* note 1.

[9] According to *Black's Law Dictionary* (7th edn, 1999) a *resolution* is a 'formal expression of an opinion, intention, or decision by an official body or assembly'. It is therefore a unilateral instrument. On the various types of UN resolutions, see Lagoni, 'Resolution, Declaration, Decision', in R. Wolfrum *et al.* (eds), *United Nations: Law, Policies, and Practice* (1995), at 1081–1091.

[10] Therefore, one cannot rely on Charter terminology to identify the legal effects of a given resolution. See J Castañeda, *Legal Effects of UN Resolutions* (1969), at 14; Johnson, 'The Effect of Resolutions of the General Assembly of the United Nations', 32 *British Year Book of Int'l L* (1955–56) 97, at 107–108.

saves the articulation "decision" for binding and "recommendations" for non-binding ones[11]. A resolution is "binding" when it is equipped for making commitments on its addressee(s).[12] There is some difference about whether declarations, which in principle just translate the Charter or attest the substance of general international law,[13] constitute a sub-classification of recommendations or a different classification. Our examination will demonstrate that there is a point in regarding these as a different classification. Note that a resolution, as a formal instrument, may consolidate distinctive arrangements that, substantively, respectively recommend, decide or declare. These three articulations will here be utilized as a part of their substantive importance, though "resolution" will, contingent upon the unique situation, either be a bland substantive term or assign the formal instrument.

Different components significant for the impacts are the conventional[14]or customary[15] legitimate premise of the resolutions, their similarity with the Charter (intra vires or ultra vires),[16]their addressees (one member, some members, all members, other UN organs ...), their subject matter (to which the Charter may append distinctive lawful results), their wording (might rather than should, prescribe instead of interest, and so forth.), and, for the conceivable consequences for international customary law, the ways they are embraced, who and what number of vote in favour of and against them, and maybe even why they do so.[17]But the title of the resolutions (declaration, code, charter...) is unimportant, just like the express or suggested nature of the forces whereupon their adoption is based.[18]

[11] *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter*) [1962] ICJ Rep 151, at 163 (hereinafter '*Certain Expenses*') (ICJ decisions are available at http://www.icj-cij.org), with analysis by Basak, *supra* note 1.

[12] Since the ICJ has found recommendations to have certain legal effects that nonetheless do not amount to those of decisions, I prefer a less inclusive definition of 'binding' than Castañeda, *supra* note 3.

[13] In practice, they often contain provisions of both *lex lata* and *lex ferenda*. See Castañeda, *supra* note 3, at 168–169; B Sloan, *United Nations General Assembly Resolutions in Our Changing World* (1991). This is of crucial importance for Section 2 of this article.

[14] In most cases the basis is the UN Charter, except when another agreement gives special effects to a UN resolution.

[15] Either an internal UN customary norm or international customary law.

[16] The Court has never invalidated a SC or GA resolution, so we will not deal with this issue.

[17] See Pellet, 'La formation du droit international dans le cadre des Nations Unies', 6 *EJIL* (1995) 401, at 417–418, para. 22; Sloan, *supra* note 6, at 108.

[18] In *Effects of Awards of Compensation made by the United Nations Administrative Tribunal* [1954] ICJ Rep 47, at 58 (hereinafter: '*UNAT*'), the Court attributed full legal effect to the GA decision creating the UN Administrative Tribunal, although there was no express provision for this power in the Charter. See also Basak, *supra* note 1, at 168.

It is truth that the General Assembly of the United Nations Is devoid of authoritative forces. Its resolutions are not, as a rule, binding on the States Members of the United Nations or binding in international law. It could scarcely be something else. We don't have a world law making authority. On the off chance that we had one, ideally it would not be made similar to the General Assembly on the premise of the unrepresentative rule of the sovereign correspondence of states, states which is presented by governments in which such a significant number of whom are themselves not illustrative of their people will. As the Secretary of State has stated:

In considering the decision-making procedure in the United Nations, it is vital to hold up under at the top of the priority list that, while the one-state, one-vote technique for communicating the feeling of the General Assembly is unsuitable, the consolidation of this guideline in the Charter was adjusted by giving the Assembly just recommendatory powers[19]

US COURTS OPINION: GENEREAL ASSEMBLY RESOLUTION EFFECT

United States courts hear not very many cases that turn on standards of international law. The few cases that have emerged since 1945 have occasionally alluded to General Assembly Resolutions to support their conclusions. Whether United States courts will accord significant weight to UN General Assembly Resolutions as lawful sources, however, stays unclear.

Previous Cases:

Before 1977, the few United States courts that tended to whether UN General Assembly Resolutions should fill in as definitive source of international law to a great extent took after the conventional view that they ought not. The courts did not formally talk about the benefits of General Assembly Resolutions, however essentially declined to give Resolutions any weight.

For instance, in Diggs v. Dent,[20] a government region court confronted the question whether a few United Nations Resolutions identified with South Africa's "illicit" occupation of Namibia

[19] The secretary's report to the president on reform and restructuring of the U.N. System, Dept. St. Publ. 8940 (June 1978).
[20] 14 INT'L LEGAL MATERIALS 797 (D.D.C. 1975)

were enforceable.[21] Instead of endeavouring to decide the case on the benefits, the court held that it lacked subject matter jurisdiction to hear the case,[22] hence effectively avoided the issue. In Diggs v. Richardson,[23] a comparative case including the United States' relations with South Africa, the Court of Appeals for the district of Columbia Circuit held that a claim in view of UN Security Board Resolutions[24] was nonjusticiable, declining to choose whether a Security Council Resolution can make an enforceable international obligation.[25]

In these early cases the courts underlined that United Nations enactments under the UN charter, for example, UN Security Council Resolutions and the UN Charter itself, are not self-executing and accordingly are definitely not binding on a court without actualizing legislation.[26] In spite

[21] See id. the plaintiff claimed that "United Nations Resolutions are positive domestic law and as such are judicially enforceable."

[22] Id. The court revealed in dictum that it would have considered the issue non- justiciable even if it had had jurisdiction because it was reluctant to infringe on the executive branch's power to manage foreign affairs.

[23] 555 F.2d 848 (D.C. Cir. 1976

[24] Security Council Resolutions are theoretically binding on UN member states. Article 25 of the United Nations Charter provides: "The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." U.N. CHARTER art. 25. Thus, Diggs v. Richardson, 555 F.2d 848 (D.C. Cir. 1976), might have been an appropriate case for a United States court to defer to a UN Resolution in order to honour the United States' treaty obligation arising from the UN Charter.

[25] Richardson, 555 F.2d at 850. In case there was any doubt about which authority governed when there was a clash between Security Council Resolutions and Acts of Congress, the Court of Appeals for the District of Columbia Circuit, in Diggs v. Schultz, 470 F.2d 461, 465 (D.C. Cir. 1972), cert. denied, 411 U.S. 931 (1973), held that Congress was not bound to follow a Security Council Resolution even though the Resolution took its binding authority directly from the United Nations Charter (a treaty to which the United States is a party). According to the Schultz court, Congress could abrogate part of its treaty commitment under the United Nations Charter and not violate any United States constitutional provisions. Such an action would still constitute a breach of treaty obligation under international law, for which the United States as a nation would be liable. The Schultz court did not discuss this issue, however

[26] 34. See United States v. Vargas, 370 F. Supp. 908, 915 (D.P.R. 1974), rev'don other grounds, 558 F.2d 631 (1st Cir. 1977) (UN Charter invoked). Moreover, courts have suggested that such enactments do not in themselves vest individual rights in United States litigants. In Sanchez- Espinoza v. Reagan, 568 F. Supp. 596, 598, 601 n.6 (D.D.C. 1983) the court granted a motion to dismiss a claim by Nicaraguan plaintiffs seeking damages for "U.S.-sponsored terrorist raids" against various Nicaraguan towns. Plaintiffs claimed the raids violated fundamental human rights established under international law and the United States Constitution, citing as authority numerous Resolutions and treaties including the UN Charter, 59 Stat. 1033 (1945), the Universal Declaration of Human Rights, G.A. Res. 217, 3 U.N. GAOR, U.N. Doc. A/777 (1948), G.A. Res. 191, U.N. Doc. A/64/Add. 1 at 188 (1964), the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970), and the Declaration on the Protection of All Persons from Being Subjected to Torture, G.A. Res. 3452, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1975). The court said: "Because we dismiss this lawsuit as nonjusticiable, we do not decide whether any or all of those sources of international law create a legal foundation for the relief requested by plaintiffs. Compare Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) (torture is a violation of the law of nations that gives rise to an action for damages in federal court) with Hanoch Tel-Oren v. Libyan Arab Republic, 517 F. Supp. 542 (D.D.C. 1981) (law of nations or treaties must provide for private rights of action in order for an injured plaintiff to obtain relief in federal court under alien tort statute, 28 U.S.C.? 1350)." See also Diggs v. Richardson, 555 F.2d 848, 850 (D.C. Cir. 1976) (Security Council Resolution invoked); Diggs v. Dent, 14 INT'L LEGAL MATERIALS 797, 804 (D.D.C. 1975) (UN Charter invoked); cf. Dreyfus v. Von Finck, 534 F.2d 24, 31 (2d. Cir.), cert. denied, 429 U.S. 835 (1976) ("law of nations" invoked). Consider, for example, Judge Friendly's reluctance to recognize as international law one of the fundamental proscriptions of the Ten Commandments.

of the fact that these courts did not address whether General Assembly Resolutions tie the states that were gathering to the establishments, the Dent and Richardson possessions propose that most United States courts like to depend on an authoritative acknowledgment of the international rule by a domestic organ, for example, Congress or president.

CASE: *Texaco Overseas Petroleum Co. v. Libyan Arab Republic*

An intense international arbitration in 1977 incited United States courts to address all the more straightforwardly the utilization of General Assembly Resolutions. In Texaco Overseas Petroleum Co. v. Libyan Arab Republic,[27] referee Rene Dupuy, a prominent French legal adviser, endeavoured to decide what the proper standard of pay ought to be under international law[28] when a nation expropriates foreign assets.

A few General Assembly Resolutions legitimize expropriation and standard for compensation.[29]Professor Dupuy chose that any Resolution by majority States speaking to the majority of the different gatherings" could fill in as a reason for settling the dispute.[30] After participating in a investigation of the circumstances encompassing different Resolutions, Professor Dupuy concluded that General Assembly Resolution 1803 (XVII), which orders

"The reference to the law of nations must be narrowly read if the section [28 U.S.C.? 1350] is to be kept within the confines of Article III. We cannot subscribe to plaintiffs' view that the Eighth Commandment 'Thou shalt not steal' is part of the law of nations." IIT v. Vencap Ltd., 519 F.2d 1001, 1015 (2d. Cir. 1975). Judge Friendly explained that "[w]hile every civilized nation doubtless has this [the equivalent of the Eighth Commandment] as a part of its legal system, a violation of the law of nations arises only when there has been 'a violation by one or more individuals of those standards, rules or customs (a) affecting the relationship between states or between an individual and a foreign state, and (b) used by those states for their common good and/or in dealings inter se.' " Id at 1015 (quoting Lopes v. Reederei Richard Schroder, 225 F. Supp. 292 (E.D. Pa. 1963)). If United States courts subscribe to this view, there would be very few cases when a General Assembly Resolution would have any application in a domestic court, no matter how binding the Resolution under principles of international law. Undoubtedly, Judge Friendly was concerned that some sovereign nations might take exception even to such a fundamental principle as the Eighth Commandment. Given the recent ten- dency of some countries to expropriate foreign-owned assets within their borders, perhaps Judge Friendly's solicitude for the rights of other sovereign nations was not as misplaced as it might otherwise appear

[27] 17 INT'L LEGAL MATERIALS 1

[28] The parties stipulated that international law would govern the dispute

[29] See, e.g., Charter of Economic Rights and Duties of States, G.A. Res. 3281 (XXIX), 29 U.N. GAOR Supp. (No. 31) at 50, U.N. Doc. A/9631 (1974) (120 nations voted in favour; six voted against; ten abstained including the United States, West Germany and Great Britain); Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201 (S. VI), Sixth Spec. Sess. U.N. GAOR Supp. (No. I) at 3, U.N. Doc. A/9559 (1974) (adopted without a vote); Permanent Sovereignty over Natural Resources, G.A. Res. 3171 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 52, U.N. Doc. A/9030 (1973) (108 nations voted in favour; one voted against (Great Britain); 16 abstained including the United States, France, West Germany, and Japan); Permanent Sovereignty over Natural Resources, G.A. Res. 1803 (XVII), 17 U.N. GAOR Supp. (No. 17) at 15, U.N. Doc. A/5217 (1962) (87 nations voted in favour; two voted against (France and South Africa); twelve Soviet Bloc nations abstained).

[30] See 17 INT'L LEGAL MATERIALS at 30.

"compensation," commanded the essential support.[31] Professor Dupuy's investigation of different Resolutions is remarkably like the procedure that a court would use to find out standard international law. The vital distinction, in any case, is that Dupuy was looking at every nation's conduct in the controlled condition of the United Nations rather than standard conduct in the bigger world arena.[32]Thus, despite the fact that Dupuy drew on the principals of custom, he withdrew altogether from the customary investigation.

Three years after Texaco Overseas, in 1980 the United States Court of Appeals for the Second Circuit, in Filartiga v. Pena-Irala,[33] additionally agreed noteworthy weight to UN General assembly resolution.

the court comments indirectly that it considers general assembly resolution to be authoritative in nature. Court also cited example of universal declaration of human rights which precepts United Nation charter via resolution 217 (III)(A), [34],constitute important part of international law. To provide it with rational court also cited General Assembly Resolution 2625 (XXV),[35] and highlighted declaration on protection from torture, General Assembly Resolution 3452,50 which was adopted without disapproval.

Cases after Filartiga and Texaco Overseas

After the case of Filartiga several courts have affirmed the general assembly resolution as declarative while on the other hand several courts have disregarded this contention. In Fernandez v wilkinson61 the case resembling the Filartiga position, a Cuban refugee who was in prison due to deportation claimed habeus corpus. The federal court adopted resolution as

[31] Id.

[32] Professor Dupuy held that "the legal value of the resolutions which are relevant to the present case can be determined on the basis of circumstances under which they were adopted and by analysis of the principles which they state." Id Although he had just conceded that "'the legal value of the declaratory resolutions . . . includes an immense gamut of nuances,' " Professor Dupuy asserted that Resolutions, "which proclaim rules recognized by the community of nations. do not create a custom but confirm one by formulating it and specifying its scope, thereby making it possible to determine whether or not one is confronted with a legal rule." Id at 29-30 (quoting La Valeur des Resolutions des Nations Unites, 129 R.C.A.D.I. 204, 319-20 (1970)). There- fore, Professor Dupuy concluded that: on the occasion of the vote on a resolution finding the existence of a customary rule, the States concerned clearly express their views. The consensus by a majority of belonging to the various representative groups indicates without the slightest doubt universal recognition of the rules therein incorporated.

[33] 630 F.2d 876 (2d Cir. 1980).

[34] G.A. Res. 217 (III)(A), 3 U.N. GAOR, U.N. Doc. A/777 (1948).

[35] l Court of Justice, June 26, 1945, 59 Stat. 1055, 1060, T.S. No. 993. See supra note 15. 49. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

source of international law stating that infinite imprisonment of refugee violated international law[36]. The court affirmed the decision64 but it is unclear that weather it has supported GA resolution or domestic law because appellate decision rest primarily on domestic law

There were several other examples that showed the support to Filartiga by adopting GA resolution[37]. In Jafari v Islamic republic of Iran[38]court rejected claim under alien tort claim act [39]and foreign sovereign immunity act[40].the court cited Filartiga [41]

The position established in Filartiga was reversed in banco National de Cuba v Chase Manhattam bank[42],however the court took the same decision as in Texaco overseas arbitrator 1977 [43]but reached different conclusion and court held that resolution did not reflect to international law.

[36] The district court apparently believed it could play a part in advancing human rights by making international law applicable in an area-human rights-in which Congress has repeatedly declined to do so: The United States . . . is signatory to very few international human rights agreements and ratifying state to even fewer such agreements. Moreover, a strong argument can be made that the United States does not follow even the spirit of some of the international human rights agreements to which it is a party. Instead, other concerns--economic, political, and social-assume pre-eminence to the detriment of human rights on an inter- national scale. Id at 799 (quoting Stotzsky, Book Commentary, 11 LAWYERS OF THE AMERICAS 229, 240 (1979)- mistakenly cited as 11 MIAMI J. INT'L L.).

[37] 66. In Lareau v. Manson, 507 F. Supp. 1177 (D. Conn. 1980), modified on other grounds, 651 F.2d 96 (2d Cir. 1981), the court applied Standard Minimum Rules for the Treatment of Prisoners developed by the United Nations Economic and Social Council under the mandate of the United Nations Charter. Citing Filartiga, the court found that the Minimum Standards, may be significant as expressions of the obligations to the international community ... and as part of the body of international law (including customary international law) concerning human rights which has been built upon the foundation of the United Nations Charter. Id at 1188 n.9. The Lareau court asserted that Filartiga supported the proposition that the UN "Charter's provisions on human rights are evidence of principles of customary international law recognized as part of the law of the United States." Id at 1188. The following year, in Jaffee v. United States, 663 F.2d 1226 (3d Cir. 1981) (en banc), cert. denied, 456 U.S. 972 (1982), a dissenting judge urged that forcing a soldier to participate in a radiation test violates the Universal Declaration of Human Rights and several other United Nations Declarations. See id at 1249. The dissenting judge reached the inexplicable conclusion that because such conduct violated international legal principles, it also violated the Constitution and the laws of the United States.

[38] 539 F. Supp. 209 (N.D. Ill. 1982).

[39] 28 U.S.C.? 1350 (1976).

[40] 28 U.S.C.?? 1330, 1332, 1391, 1441, 1602-1611 (1976).

[41] Jafari, 539 F. Supp. at 215.

[42] 658 F.2d 875 (2d Cir. 1981). None of the judges who decided Banco Nacional de Cuba v. Chase Manhattan Bank sat on the Filartiga panel.

[43] See, e.g., Charter of Economic Rights and Duties of States, G.A. Res. 3281 (XXIX), 29 U.N. GAOR Supp. (No. 31) at 50, U.N. Doc. A/9631 (1974) (120 nations voted in favour; six voted against; ten abstained including the United States, West Germany and Great Britain); Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201 (S. VI), Sixth Spec. Sess. U.N. GAOR Supp. (No. I) at 3, U.N. Doc. A/9559 (1974) (adopted without a vote); Permanent Sovereignty over Natural Resources, G.A. Res. 3171 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 52, U.N. Doc. A/9030 (1973) (108 nations voted in favour; one voted against (Great Britain); 16 abstained including the United States, France, West Germany, and Japan); Permanent Sovereignty over Natural Resources, G.A. Res. 1803 (XVII), 17 U.N. GAOR Supp. (No. 17) at 15, U.N. Doc.

OPINION IN FAVOUR OF USING GENERAL ASSEMBLY RESOLUTION AS SOURSE OF INTERNATIONAL LAW

The opinion using GA resolution as source of international law is given by many legal scholars and it is divided into three categories

Scholars of first category states that GA derives its sores from un charter and hence has binding value. The un addresses many topics other than organizational details like self-determination, equal right, human right and fundamental freedom and economic cooperation. Jorge Castaneda, a Mexican diplomat, raised that as there is no one to judge the authority other other than GA itself hence it has binding character.

Scholars of second category says that resolution of GA can serve as substitute of extrinsic proof of custom. Professor Myres mc Dougal contended that UDHR and covenant on Human right have evolved as customary international law. Professor Richard Lellich contended that resolution reflect customary norms.

Scholars of third category approach was that GA resolution has inherent authority as normative standard adopted by international body speaking for all of its member.

OPINION AGAINST USING GENERAL ASSEMBLY RESOLUTION AS SOURSEB OF INTERNALIONAL LAW

Although suggestion that GA can play important role in evolution of international law but us courts were against this view.

Some scholars said that GA resolution are inadequate because they contradict and are vague. For instance, United Nations General Assembly Resolution 1803 (XVII) of December 14, 1962 which allows expropriation (i.e. to nationalize) and to override private for sake of public interest. As UDHR article 17 states that no one should be deprived of his own property[44]

A/5217 (1962) (87 nations voted in favour; two voted against (France and South Africa); twelve Soviet Bloc nations abstained).

[44] See Universal Declaration of Human Rights, G.A. Res. 217 (III), 3 U.N. GAOR, U.N. Doc. 1/777 (1948). Doc. Sir Gerald Fitzmaurice highlighted this contradiction between Resolution 1803 and Resolution 217 in Fitzmaurice,

And also considering Filtartiga judgement [45],some scholars raised the question that what is the standard of determining torture and how they define torture to be egregious as it was in Filtartica. In other case British treatment to Irish republic army who were imprisoned, what is the standard to measure torture? Thus, GA in isolation cannot provide with these answers.

Some scholars also state that GA resolution are unreliable indicators of world opinion. Although under some circumstances GA resolution accurately reflect international law often they do not[46].many of the representatives who are voting do not even take it seriously. some resolution are made via unanimous votes, some via no votes, and some passed by marginal votes. However, the court may in future will provide some accurate measures to determine which resolution are credible to form international law or which may not.

CONCLUSION

For the present, United States courts should keep on refusing to regard General Assembly Resolutions as legitimate source of international law. This is not on account of the customary sources are predominant in each regard. They are definitely not. Rather, it is on the grounds that General Assembly Resolutions remain excessively inconsistent, making it impossible to view as conclusive sources. The united Nations General Assembly has remained a political body endowed with the upsides of open and uninhibited discourse. It serves a profitable capacity as a gathering for the statement of fleeting resentment and profoundly held notions. however, its qualities as an international political body are additionally its shortcomings as an authoritative body. if countries knew they would be bound by their votes, numerous

The Future of Public International Law and of the International Legal System in the Circumstances of Today, LIVRE DU CENTENAIRE, 1873-1973 196, 229-30(1973)

[45] See Declaration on the Protection of All Persons from Being Subjected to Torture, G.A. Res. 3452, art. 2, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1975).

[46] Arangio-Ruiz describes how law can carelessly emerge from the General Assembly: As everybody in the United Nations is convinced that recommendations are per se not mandatory, States tend to embellish their image by putting forward draft resolutions. Other States tend naturally to support such drafts. And potential or natural opponents are often reluctant to face the risk of tarnishing or spoiling their own image by opposing the proposal openly or by casting a negative vote. Arangio-Ruiz, The Normative Role of the General Assembly of the United Nations and the Declarations of Principles of Friendly Relations, 137 RECUEIL DES COURs 419, 457 (1972-111). Garibaldi called this "fake agreement." Garibaldi, The Legal Status of General Assembly Resolutions. Some Conceptual Observations, 73 PROC. OF THE AM. Soc'Y OF INT'L L. 324, 326 (1979).

Resolutions could never be passed, and the General Assembly's one of a kind work as the voice of world opinion would be undermined.

Without General Assembly Resolutions as definitive sources, standards of international law will keep on being hard to determine. The four customary sources of international law require more than casual examination before they will yield standards on which to establish an mediation of rights. judicial decisions on universal law are in- frequent. writing of publicist on most issues once in a while recommend a uniform result. principle of customary international law relies upon the amorphous factors of every country's practice and the world communitys acknowledgment as law of a given rule. General Assembly Resolutions can add to an assurance of a specific custom as long as these Resolutions are considered confirmation, and not complete proof of the standards they support[47]

[47] An expansive view of the sources of international law may "seem handy, when a specific point we want to make finds support in a General Assembly resolution, but we may find that after using his services it may be impossible--and intellectually dishonest-to put the genie back into the bottle." Garibaldi, The Legal Status of Genera/Assembly Resolutions: Some Conceptual Observation's, 73 PROC. OF THE AM. SOC'Y OF INT'L LAW 324, 325-26 (1979).