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**The Elaboration of General Multilateral Conventions
And of Non-contractual Instruments
Having a Normative Function or Objective**

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(The English text is authoritative. The French text is a translation.)

RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS

The Institute of International Law,

Considering that the mandate of the Thirteenth Commission includes an inquiry into the elaboration of non-contractual instruments that have a normative role,

Considering that some Resolutions of the General Assembly of the United Nations have that role,

Having examined the reports of the Thirteenth Commission on the Resolutions of the General Assembly of the United Nations together with the comments and conclusions attached thereto,

1. Congratulates the Rapporteur and the Members of the Thirteenth Commission on having succeeded in elucidating the numerous factors which, depending on circumstances, allow such Resolutions to contribute to a better knowledge of international law, to hasten its development, to enhance its authority and to ensure stricter compliance therewith.
2. Expresses the wish that the work of the Thirteenth Commission in its entirety should be the object of thorough study by all concerned.

CONCLUSIONS OF THE COMMISSION

I - The Constitutional Position

Conclusion 1 : Recommendations

Although the Charter of the United Nations does not confer on the General Assembly the power to enact rules binding on States in their relations *inter se*, the Assembly may make recommendations contributing to the progressive development of international law, its consolidation and codification. This may be accomplished through a variety of Resolutions.

Conclusion 2 : Addresses of Resolutions

Resolutions referred to in Conclusion 1 are addressed to Member States and international organizations.

There is no impediment to addressing these Resolutions and their rules to all States, but the legal position of States not Members of the United Nations is not thereby prejudiced.

II - Categories of Resolutions

Conclusion 3 : Types of Resolutions

The recommendations referred to in Conclusion 1 include Resolutions of the following types :

- a) Resolutions expressly formulating or reiterating general and abstract rules of conduct for States ;
- b) Resolutions dealing with specific situations but assuming, expressly or impliedly, a general and abstract rule of conduct for States ;
- c) Resolutions addressed to specific States, but assuming that the rule of conduct required of the State specifically named would be required of all States.

Some of these Resolutions constitute a restatement of the existing law (Conclusion 4), while others contribute to crystallising or generating new law (Conclusion 5). Other Resolutions set forth standards relevant to the application or interpretation of law.

Various provisions of a single Resolution may have different functions.

Conclusion 4 : Law-Declaring Resolutions

A law-declaring Resolution purports to state an existing rule of law. In particular, it may be a means for the determination or interpretation of international law, it may constitute evidence of international custom, or it may set forth general principles of law.

Conclusion 5 : Law-Developing Resolutions

The following law-developing Resolutions may be distinguished :

- a) Resolutions contributing to the creation of international custom ;
- b) Resolutions contributing to the emergence of general principles of law ;
- c) Resolutions defining the scope of negotiations on a multilateral treaty of general interest, in particular Resolutions setting forth rules to be included in a future treaty ;
- d) Resolutions laying down policies that determine the substance of future law, whether customary or treaty.

Conclusion 6 : Relevant Elements

The elements which help to identify a Resolution as falling under one of the categories enumerated in Conclusions 3 to 5 include, *inter alia* :

- a) the intent and expectations of States ;
- b) respect for procedural standards and requirements ;
- c) the text of the Resolution ;
- d) the extent of support for the Resolution ;
- e) the context in which the Resolution was elaborated and adopted, including relevant political factors ;
- f) any implementing procedures provided by the Resolution.

III - Procedural Standards and Requirements

Conclusion 7 : Negotiation as a Method

When appropriate, Resolutions referred to in Conclusions 3 to 5 should be based on a negotiated arrangement. The Rules of Procedure of the General Assembly are sufficiently flexible to permit the integration of the negotiating process into the United Nations' parliamentary diplomacy.

Conclusion 8 : Composition of the Intergovernmental Organ

If the elaborating organ is not composed of all the Members of the United Nations, equitable geographical representation, presence of the main legal systems, and legal expertise are factors which favour the formulation of universally acceptable principles and more detailed rules.

Moreover, it is desirable that States particularly interested in the matter be enabled to take part in the deliberations of the organ and in the elaboration of the draft.

Conclusion 9 : Circulation of Drafts

The circulation of drafts for comment in the process of the elaboration of some Resolutions is desirable.

IV - The Language of Resolutions

Conclusion 10 : Importance of Terminology

The language and context of a Resolution help to determine its normative purport. References to international law or equivalent phrases, or their deliberate omission, are relevant but not in themselves determinative.

Conclusion 11 : Principles

Resolutions use the term "principle" with different meanings :

- a) a legal or non-legal principle ;
- b) a norm of a higher or the highest order ;
- c) a norm that generates specific rules ;
- d) an important norm having regard to the purpose of the Resolution ;
- e) a purpose to be achieved, a guiding idea, a demand as to legal or other policies to be followed, particularly relevant to revising old or introducing new law ;
- f) rules or standards of interpretation.

In some cases several of these meanings are combined.

Conclusion 12: Declarations

The legal status of Resolutions designated as declarations is not different from that of other Resolutions. Yet this particular form may emphasize the importance of the norms enunciated. Declarations are suitable for a comprehensive treatment of a subject or for expressing principles the purpose of which is to influence the progressive development of international law.

V - Adoption of Resolutions

Conclusion 13 : Unanimous Statement of Existing Law

A law-declaring Resolution, adopted without negative vote or abstention, creates a presumption that the Resolution contains a correct statement of law. That presumption is subject to rebuttal.

Conclusion 14 : Unanimity and the Development of New Law

In situations where a rule of customary law is emerging from State practice or where there is still doubt whether a rule, though already applied by an international organ or by some States, is a rule of law, a Resolution adopted without negative vote or abstention may consolidate a custom or remove doubts that might have existed.

Conclusion 15 : Majority

The authority of a Resolution is enhanced when it is adopted by a representative majority that includes the main legal systems.

If the number of negative votes or abstentions is large, or qualitatively significant, the law-stating or rule-developing effect of the Resolution is weakened.

Conclusion 16 : Consensus

The authority of a Resolution is enhanced when it is adopted by consensus.

Conclusion 17 : Reservations

Where a Resolution may be subjected to reservations either in the explanations of votes or in other statements, the effect of such reservations is to qualify or limit the extent of approval by the reserving State. Depending on its contents a reservation may mean less than rejection of the rule. It may be merely an expression of doubt.

If a Resolution expresses existing law, a State cannot exclude itself from the binding force of that law by making a reservation.

VI - Implementation of Resolutions

Conclusion 18 : Implementing Procedures

The inclusion in a Resolution of provisions on implementing procedures, or on the supervision of compliance with a Resolution, may contribute to the interpretation or application of law, or to the emergence of new law.

VII - Particular Problems of Law-Declaring Resolutions

Conclusion 19 : Means for the Determination of Law

A Resolution may serve as a supplementary means for the determination of a rule of international law, particularly where evidence of State practice or of *opinio juris* is not otherwise readily available.

A Resolution may constitute evidence of general principles of law where the circumstances of its consideration, including studies of national law, provide ground for inferring that the decision of the General Assembly rested on an adequate foundation.

Conclusion 20 : Evidence of International Custom

A Resolution may constitute evidence of customary law or of one of its ingredients (custom-creating practice, *opinio juris*), in particular when that has been the intention of States in adopting the Resolution or when the procedures applied have led to the elaboration of a statement of law.

Conclusion 21 : Rebuttable Evidence of International Custom

Evidence supplied by a Resolution is rebuttable.

VIII - Particular Issues Relating to Law-Developing Resolutions

Conclusion 22 : International Custom

Principles and rules proclaimed in a Resolution may influence State practice, or initiate a new practice that constitutes an ingredient of new customary law.

A Resolution may contribute to the consolidation of State practice, or to the formation of the *opinio juris communis*.

Conclusion 23 : First Stage of Treaty-making

A Resolution may lay the basis for negotiations designed to lead to a multilateral treaty of general interest by indicating the matters to be dealt with in the treaty and the policies which should underlie the treaty. A Resolution may also make recommendations regarding the contents of a proposed treaty.

A Resolution referred to in the preceding paragraph does not bind States in the elaboration of the treaty.

Conclusion 24 : Treaty Obligation to Abide by a Resolution

A Resolution is binding for States which have accepted it as binding in a treaty.

Conclusion 25 : Inclusion of Treaty Rules in a Resolution

The inclusion of a treaty rule in a Resolution does not affect the binding character of the rule for the parties to the treaty.

Conclusion 26 : Legal Policies

A Resolution or a series of Resolutions may express or reveal tendencies in the development of international law. Such Resolutions may determine policies as to the substance of law to be made, whether by formulating principles or detailed rules or by expressing the main ideas and concepts of prospective law.

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