DOI: 10.33067/SE.3.2024.13

Dragan Dakić[*]

The Resolution on the Srebrenica Genocide and Dayton Peace Agreement: In Which Direction Is It Heading?

Abstract

This study explores the legal consequences and importance of the United Nations General Assembly (UNGA) Resolution (hereinafter: the Resolution) regarding the Srebrenica Genocide, which was adopted in light of the atrocities that occurred in 1995. The main aim is to assess the Resolution's ability to initiate a supervening impossibility of performance (*ius cogens superveniens*) concerning the Dayton Peace Agreement. Utilising a qualitative approach, the research analyses the text of the resolution, the voting process, and the pertinent legal frameworks as well as the relevant scholarship. The findings highlight that although UNGA resolutions lack binding authority, they can significantly aid in the evolution of Customary International Law (CIL). The aforementioned Resolution's focus on accountability and genocide prevention emphasises its contribution to the development of international legal standards and its interpretative role. The investigation reveals that the Resolution contains elements that could be interpreted as binding, hinting at its intended nature. However, the binding nature of the Resolution, in terms of its components and interpretative role, cannot void nor terminate the Dayton Peace Agreement. For such an outcome to occur, the Resolution would have to establish a peremptory norm of general international law through general principles of international law or Customary International Law. In this context, the research clarifies that the Resolution possesses the legitimacy to support the formation of Customary International Law. Nevertheless, this does not suggest that the potential of Customary International Law automatically overrides the grounds of *ius cogens superveniens* for invalidating the Dayton

[*] **Dragan Dakić** – University of Kragujevac, e-mail: ddakic@jura.kg.ac.rs, ORCID ID: 0000-0002-9612-4133.

Peace Agreement. Instead, the Resolution's reliance on the binding sources of international law, which include peremptory norms along with the judicial interpretation that applies these norms, plays a vital role in this scenario. At the same time, any potential conflict between those principles and the Dayton Peace Agreement, despite being classified as peremptory principles, appears to be overly broad at this juncture.

Keywords: Srebrenica, Resolution, Genocide, Dayton Peace Agreement

Introduction

On 20th May 2024, in its seventy-eighth session, the General Assembly of the United Nations (UNGA), adopted the Resolution on the International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica. The preambular part of the Resolution emphasises the importance of upholding human rights, preventing genocide, and ensuring accountability for crimes against humanity. It recalls relevant Security Council resolutions and international judicial decisions related to the Srebrenica genocide. The resolution reaffirms the commitment to fighting impunity for genocide and other international crimes, stresses the individualised nature of criminal accountability for genocide, and acknowledges the role of international mechanisms and cooperation in promoting justice and reconciliation. Additionally, it highlights the upcoming thirtieth anniversary of the Srebrenica genocide in 2025 and calls for continued efforts to identify its victims, prosecute the perpetrators, and educate future generations about the atrocities committed.

The Resolution's text itself is remarkably free of any morally or legally objectionable content. Nevertheless, the process of its adoption was fraught with fierce political and diplomatic clashes, all while accompanied by retaliatory legal measures. Why is that so? In a broader sense, it could be observed if the Resolution was compliant to the moral and legal requirements enshrined in the UN legal sources. Indisputably, the victims of the Srebrenica crime were military-aged Muslim men while the affected women and children were moved to safe locations (The Prosecutor v. Radislav Krstic, Appeal Judgement, 2004, para 2). Those facts, in conjunction to some other circumstances, are casting sincere doubts over the correctness of the qualification of the event itself (Schabas, 2001, pp. 26, 40, 45), but this, however, is beyond the scope of this inquiry. Nevertheless, in the context of moral and legal requirements prohibiting different forms of discrimination, promoting equality, and providing special protection to women in conflicts (International Convention on

the Elimination of All Forms of Racial Discrimination 1965, pp. 195–205; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, pp. 13–25; United Nations General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981; United Nations General Assembly Declaration on the Elimination of Violence against Women, 1993; United Nations Security Council Resolution 1325 on Women, Peace, and Security, 2000, etc.), the eligibility of the Resolution to bear universal symbolism is questionable. It could be hypothesised that the Resolution has elements of racial, religious, and gender-based discrimination. By focusing on a specific crime with narrow temporal and spatial determination, and defining its victims and perpetrators based on narrow categories of race, nation, and gender, all inadvertently creates a hierarchy of victims, whereby those who don't fit these exclusive criteria are marginalised. Furthermore, the emphasis on distinct national identities not only separates victims from one another but also stigmatises those who don't conform to these rigid classifications, both among victims and between victims and perpetrators. This could potentially disconnect the Resolution from the fundaments of contemporary international law.

From a legal perspective, the Resolution can be examined beyond its symbolic significance. Akin to other UNGA resolutions, it is anticipated to have both direct and indirect legal implications. The direct effects of the Resolution introduced in its executive part are primarily targeted at specific entities, including UN member states, UN system organisations, and civil society groups, which are expected to be influenced by its provisions (*ratione persone* effects). The Resolution's *ratione materiae* effects, on the other hand, pertain to a range of issues, such as genocide, crimes against humanity, war crimes, humanitarian law, human rights, accountability for atrocities, and the commemoration of historical events including the Srebrenica massacre. The Resolution's core objective is declared to be the promotion of justice, truth, reconciliation, and peace in the context of 1995's Srebrenica atrocities. It also stresses the importance of upholding international legal obligations, particularly those related to preventing and punishing genocide, and emphasising the individualised nature of criminal accountability for such heinous crimes. This emphasis is likely to alleviate concerns about the Resolution's potential indirect effects.

Still, while the UNGA's resolutions formally lack the force of law and being non-binding in essence, they do exert significant influence, implying that their impact cannot be entirely dismissed as merely optional. Joyner (1981) observes competences of the UNGA in creating

international law from the leans of its almost universal representation in combination with a set of powers conferred upon it by the UN Charter. In accordance with the UN Charter's provisions, specifically Articles 10, 11, and 13, the UNGA certainly possesses the authority to establish international legal norms. The General Assembly's broad mandate, as outlined in Article 10, enables it to deliberate on a wide range of issues within the Charter's scope, making recommendations to UN member states or the Security Council except in cases specified in Article 12. This capacity allows the UNGA to tackle pressing matters crucial to international peace and security, thereby fostering cooperation among member states. Furthermore, Article 11 underscores the General Assembly's responsibility in promoting global peace and security by considering the principles of cooperation, including disarmament and armament regulation, and making recommendations to UN members or the Security Council. The General Assembly's role in promoting peace is further emphasised through its deliberation on fundamental principles of cooperation and security. Moreover, Article 13 highlights the UNGA's duty to initiate studies and provide recommendations aimed at enhancing international cooperation in various fields, including the political, legal, economic, and social domains, as well as promoting human rights for all individuals without discrimination. Ultimately, this article reaffirms the UNGA's commitment to advancing global cooperation and development across different areas, striving towards a more peaceful and equitable world.

Rather than debating whether the Resolution achieved described the UN goals or whether it was even purposed to that end, the author's focus will be on examining its ultimate impact on the General Agreement for peace in Bosnia and Herzegovina (the Dayton Peace Agreement), a key concern that has been raised by those who opposed its adoption. Namely, Joyner (1981) notes that UNGA resolutions can have an impact on the existing treaty and Customary International Law obligations of member states in several ways. While UNGA resolutions are generally non-binding, they can contribute to the development of soft law norms. Resolutions can help shape state practice and *opinio juris*, which are essential elements in the formation of Customary International Law. When resolutions consistently reflect the general practice and beliefs of states, they can play a role in the crystallisation of customary norms. Also, over time, certain resolutions may become generally-accepted principles of law. Another significant effect of the UNGA's resolutions is their role in treaty interpretation. Namely, resolutions can provide guidance on the interpretation and implementation of existing treaty obligations. They

may clarify ambiguous provisions in treaties or reinforce the obligations already undertaken by member states. As such, resolutions can serve as supplementary sources of guidance for treaty implementation. Beyond the scope of interpretation, resolutions, especially those with widespread support or unanimous approval, can create normative pressure on member states to align their actions with the principles and objectives outlined in the resolutions. A different perspective can, however, be found belonging to Talmon (2014). In his article, he explored the conflict between obligations arising from UNGA resolutions and the existing treaty and Customary International Law obligations of the member states. Talmon (2014) explored whether UNGA resolutions could provide ground for the evasion of treaty obligations based on Article 103 of the Charter, whether UNGA resolutions constitute a Fundamental Change of Circumstances, and whether recommendations of the UNGA can justify the violation of conflicting treaty and Customary International Law obligations as independent legal justification.

This paper will investigate whether the Resolution can trigger a supervening impossibility of performance (*ius cogens superveniens*) with respect to the Dayton Peace Agreement. The initial section of the paper focuses on the idea of *ius cogens* norms, analysing their purpose and significance. It refers to the 1969 Vienna Convention on the Law of Treaties (VCLT) as a crucial document that clarifies the consequences of *ius cogens superveniens*. This segment investigates the potential for the aforementioned Resolution to establish a new *ius cogens* norm that could affect the implementation of the Dayton Peace Agreement. The next section shifts attention to the connection between the Resolution and peremptory norms in international law. It starts by recognising that although resolutions, recommendations, and decisions from international entities are typically regarded as non-binding for member states, the resolutions passed by the United Nations General Assembly (UNGA) possess a distinct status. These resolutions are acknowledged for their ability to integrate international legal rules and principles, along with their role in interpreting and shaping legal commitments. Here, the author examines how the Resolution exhibits traits similar to binding acts, as it corresponds with primary sources of international law, including multilateral treaties that define peremptory norms. This section also considers other aspects of the Resolution, including its language and methods of implementation. In the concluding section, the paper explores the intricate formation of Customary International Law (CIL) and the Resolution's role within this framework. It begins with an overview of CIL's evolution and its components. The text underscores

the influence of the UN General Assembly (UNGA) and the significance of its resolutions in forming *opinio juris*, thus aiding the progression of CIL. Overall, this section portrays the complex interactions between state behaviours, shared beliefs, and the formal procedures of international law, highlighting the Resolution's critical function in potentially influencing the development of Customary International Law.

The Resolution and *Ius Cogens Superveniens*

At the heart of the international legal system lies a set of fundamental principles, known as peremptory norms, or *ius cogens*, which form the bedrock of global governance. These norms embody the collective conscience of the international community, upholding the most essential values of justice, human rights, and peace. By establishing a non-negotiable framework, peremptory norms provide a common foundation for all nations to adhere to, regardless of their individual interests or agreements. Orakhelashvili (2006) argues that the dynamic nature of *ius cogens* allows international law to adapt to evolving moral and ethical standards, thus reinforcing the integrity and coherence of the international legal system. The 1969 Vienna Convention on the Law of Treaties (VCLT) lays the groundwork for this interpretation of *ius cogens* norms. Specifically, Article 64 of the VCLT discusses *ius cogens superveniens*, asserting that should a new peremptory norm arise, any current treaty that contradicts it shall be void and terminated (United Nations, 1969). Consequently, the notion of *ius cogens superveniens* pertains to the development and introduction of new peremptory norms following the establishment of a treaty. In essence, this concept relates to instances where a norm achieves *ius cogens* status after a treaty has been executed, thereby invalidating any conflicting clauses within that treaty and requiring adherence to the new norm.

To assess whether the Resolution might trigger a *ius cogens superveniens* scenario concerning the Dayton Peace Agreement, the author will first examine the components of the Resolution alongside the foundational elements and sources of peremptory norms in general international law. Subsequently, the Resolution's potential to give rise to Customary International Law (CIL) will be explored, particularly in light of the diminishing significance of general principles of law recognised by civilised nations, as outlined in Article 38 (c) of the Statute of the International Court of Justice, in both modern international law and jurisprudence, as noted by Kreća (2023, p. 118).

The Resolution and Peremptory Norms

In the context of international organisations, instruments such as resolutions, recommendations, and decisions are typically considered non-binding on member states. However, a notable exception are the resolutions of the UNGA, which possess a unique character due to their incorporation of international law rules and principles, as well as their interpretative role (Kreća, 2023, p. 132). The Resolution possess the prerogatives of a binding act, as evidenced by its adoption in conformity with authoritative sources of international law. These sources include multilateral treaties that establish peremptory norms, such as the Charter of the United Nations, the Universal Declaration of Human Rights, and the Convention on the Prevention and Punishment of the Crime of Genocide. Additionally, the Resolutions draw on *erga omnes* binding resolutions of the UN Security Council, including resolutions 819, 827, and 1966, which address issues such as safe areas, international tribunals, and residual mechanisms for criminal tribunals. Furthermore, the Resolution is informed by jurisprudence that interprets and applies peremptory norms, as seen in judgments from the Tribunal Appeals Chamber, the International Residual Mechanism for Criminal Tribunals Appeals Chamber, and the International Court of Justice.

The language of the Resolution is also indicative of its intended authoritative nature, as it contain directives, condemnations, requests, and invitations that create obligations and expectations for the intended addressees. Moreover, the Resolutions introduce mechanisms designed to ensure enforcement, even if it does not outline a formal enforcement process with specific reporting requirements or timelines. The involvement of the Secretary-General, the call for observance by member states and organisations, and the emphasis on education and awareness activities suggest potential pathways for monitoring and reporting on the implementation of the Resolutions' provisions.

And yet, the eventually-binding composition of the Resolution in the sense of its constituents and interpretative function cannot lawfully void and terminate the Dayton Peace Agreement. As indicated above, to achieve this outcome the Resolution would need to be capable of establishing a peremptory norm of general international law. It is so because only the emergence of a new peremptory norm could create ultimate conflict between the subsequent legal regime and previously-concluded treaties. Consequently, even if the Dayton Peace Agreement itself is found to have introduced peremptory norms, any conflict with a subsequent norm of similar stature would render the Dayton norms null and void.

When assessing the Resolution's capacity to establish a peremptory norm in general international law, two approaches come to the fore. One perspective focuses on its direct impact in introducing a *ius cogens* norm, while the other considers its indirect influence in shaping such a norm. Regardless of how it commences, a new peremptory norm would inevitably have a profound effect on the Dayton Peace Agreement. The formal sources of general international law – including multilateral treaties with legislative function, Customary International Law, and the general principles of international law – possess the inherent capacity to directly introduce a *ius cogens* norm. Those sources could be referred as primary sources of *ius cogens*. Additionally, the jurisprudence of international courts and tribunals, as well as the expert opinions of renowned scholars, could inform the development and identification of *ius cogens* norms. Those sources are serving as supplementary means for determining the peremptory character of general international law norms, rather than as an autonomous, norm-creating mechanism. Although the Resolution is not a formal source of general international law, as mentioned above it can still shape state practice and *opinio juris*, potentially amounting to Customary International Law or general principles of international law. The question remains whether the Resolution could initiate the creation of these two formal sources of general international law with *ius cogens* characteristics.

In this regard, one can observe that at the heart of peremptory norms, Customary International Law, and general principles of international law, there lies a common foundation; the collective will of the international community. This fundamental concept is reflected in Article 53 of the Vienna Convention on the Law of Treaties (VCLT), which defines peremptory norms as those recognised and accepted by the international community as a whole. Similarly, Article 38 (b) of the Statute of the International Court of Justice establishes that international custom is evidenced by a general practice accepted as law, while also requiring general principles of law to be recognised by civilised nations in its subsection (c). Article 38 of the VCLT echoes this requirement, mandating that international custom be recognised as such. Ultimately, the operation of the international community's will is a subjective element that manifests through various evidentiary instruments specific to each source of general international law.

The Resolution and Customary International Law

The formation of CIL is a gradual and dynamic process that mirrors the shifting landscape of international relations rather than a sudden event (d'Aspremont 2022). Initially, the development of CIL begins

with consistent state practice, where states engage in repeated actions that are accepted as law. This practice is accompanied by *opinio juris*, the belief that these actions are undertaken out of a sense of legal obligation. Together, state practice and *opinio juris* form the two constitutive elements of CIL (d'Aspremont, 2022, p. 36). Since the UNGA serves as a platform where member states express their collective beliefs and commitments on various international issues, its resolutions are undoubtedly influencing the development of *opinio juris* (Daugirdas, 2020). Some scholars, such as Kirgis (1987), Kreća (1988, p. 116 and 2023, p. 110), and Cheng (1997), have identified situations providing compelling evidence of *opinio juris* which could eventually compensate for the lack of widespread state practice in the past. Again, those situations refer to resolutions unanimously approved by the UNGA, which is not the case with the Resolution observed herein. Furthermore, the UN International Law Commission's (ILC) in its commentaries on the Draft Articles on the Identification of Customary International Law highlighted the importance of establishing duration, noting that a brief period of time may be insufficient to demonstrate extensive state practice, implying that instant custom is unlikely. This perspective is particularly relevant when considering acts adopted by international organisations, including the UNGA's resolutions (Conclusion 12). However, it remains beyond any doubt that international organisations do play a significant role in the process of regular creation and development of CIL. These organisations contribute to the formation and expression of rules of Customary International Law (the biggest contributor being the United Nations) through their resolutions, decisions, and practices. According to Daugirdas (2020), UNGA resolutions act as a catalyst for creating *opinio juris* and shaping state practice by fostering consensus, guiding behaviour, and promoting a common understanding of legal principles in international relations. States actively contribute to the evolution and reinforcement of Customary International Law through their engagement with UNGA resolutions, based on shared beliefs and demonstrated actions (Daugirdas, 2020). All of this indicates that the mere adoption of a UNGA resolution is insufficient to initiate the process of CIL creation. Rather, a common understanding and consensus on the resolution's content are essential prerequisites. Without these, it would be unrealistic to expect states to incorporate UNGA resolutions into their domestic legislation and foreign policies, and to align their state practice with the endorsed norms, as is required for CIL creation.

In assessing whether a required level of shared understanding and agreement on the Resolution's content has been reached, the voting system outlined in Article 18 of the UN Charter serves as a valuable

benchmark. The author refers specifically to the UN General Assembly's two-thirds majority voting system employed for important questions, which indicates a substantial majority's acceptance and embodies the principle of consensus-building. This system encourages dialogue and negotiation among member states to achieve broad support for key initiatives. Consequently, the two-thirds majority voting procedure can be considered a legitimate means of initiating CIL. However, in the case of the Resolution, a simple majority voting system was used, which required only a majority of present and participating members to reach a decision. Notwithstanding, if a substantial majority of member states participate in the adoption, a simple majority voting procedure can also be deemed a legitimate pathway for CIL creation.

When analysing the voting results, it is essential to consider the implications of state silence in international law. Namely, the Resolution was adopted with 84 votes in its favour, 19 against, and 68 abstentions, while 22 states did not participate. The lack of clear guidance on the legal effects of choosing to remain silent (Baka, 2022, p. 62) underscores the importance of interpreting such voting results accurately. Did the 68 abstaining and 22 non-participating states implicitly endorse or reject the resolution? This question is crucial, as CIL is not based on formal consent and does not require a specific number of states to vote in favour of a resolution to create CIL (Follesdal, 2022). Moreover, tacit consent by the international community is a legitimate basis for CIL's authority and creation (Kreća, 2023, p. 112).

In this context, Baka (2022) identifies two approaches to interpreting the legal effects of silence; the closed-system approach, which tends to view silence as a lack of opposition or tacit approval, and the open-system perspective, which acknowledges the complexity of silence and absence in international law. Baka advocates for the open-system approach, which recognises that silence can represent various values, propositions, and modalities that may not fit into predefined legal categories. A more pragmatic approach is could be found in Kreća's (2023) writings, which suggest that consent can be validly expressed indirectly through actions or omissions if certain conditions are met, i.e., the subject of international law is aware of the relevant legal fact, does not react appropriately (protest) when the fact occurs or is highlighted, and the absence of reaction reflects the subject's legal intention without being attributed to delusion or coercion. Additionally, the subject must have an interest, direct or indirect, in relation to the relevant fact (Kreća, 2023, p. 112).

In accordance with the criteria defined by Kreća, the closed-system approach, when utilised to analyse observed voting results, unequivocally

demonstrates that the tacit approval of silent states granted the Resolution the authority to legitimately sanction the creation of CIL. However, this does not imply that CIL's potential inherently supersedes the *ius cogens supeviniens* grounds to void the Dayton Peace Agreement. Rather, the Resolution's reliance on authoritative international law sources, which encompass peremptory norms, and the jurisprudence that interprets and applies these norms, are crucial factors in this context. Furthermore, it would be challenging to argue that any derogation of the Resolution's core principles – including the condemnation of denial and glorification, the call for prosecution, and adherence to international law – could be permitted under any circumstances which is another peremptory element of its puzzling nature. At the same time, any conflict between those principles, even if they are labelled as peremptory principles, and the Dayton Peace Agreement appears to be distant at the moment. However, the implementation and interpretation of the Dayton Peace Agreement can be substantially influenced by the Resolution's potential to introduce non-peremptory CIL without rendering it null and void. Namely, in countries with federal structures, such as Germany and Austria, the utilisation of CIL has been proven to provide a legal framework for addressing conflicts between different states within the federation (Hoogers, 2022). Specifically, in Germany's complex legal landscape, CIL played a dual role by both facilitating integration and sparking controversy in the process of unifying federal states under a more centralised structure. At its heart, CIL provides a common framework of international norms that could be applied domestically to regulate state behaviour within the federation, thereby serving as an integrative tool (Hoogers, 2022, p. 516). In this context, constitutional courts emerge as key players, interpreting and applying CIL within the domestic legal framework to navigate and resolve disputes between states or between a central government and individual states. Interestingly, in the context of current situation in Bosnia and Herzegovina, the application of CIL within the German federal system was not without its complexities. While CIL had the potential to promote integration by providing a common set of norms, its utilisation also raised questions about the balance between centralisation and the autonomy of federal units (Hoogers, 2022, p. 507).

Conclusions

The initial section of the discussion made it clear that *ius cogens* norms represent the shared moral conscience of the international community, reinforcing critical values such as justice, human rights, and peace. These

peremptory norms set an unyielding framework that all nations must follow, irrespective of their specific agreements or self-interests. According to Article 64 of the VCLT, which deals with *ius cogens superveniens*, any existing treaty that conflicts with a newly-established peremptory norm shall be considered void and terminated. Essentially, this idea pertains to situations where a norm attains *ius cogens* status post-treaty execution, thus nullifying any contradictory provisions in that treaty and mandating compliance with the new norm.

An analysis of whether the Resolution could invoke a *ius cogens superveniens* situation concerning the Dayton Peace Agreement involved examining the Resolution's elements in conjunction with the core aspects and sources of peremptory norms in international law. It was emphasised that the Resolution possesses characteristics of a binding act, as demonstrated by its adoption in alignment with authoritative international law sources. This also includes references to *erga omnes* binding resolutions from the UN Security Council, pertinent jurisprudence interpreting and applying peremptory norms, and language within the Resolution itself, all indicative of its authoritative intent. Additionally, it was shown that the Resolutions incorporate mechanisms aimed at ensuring enforcement, even though they do not detail a formal process for enforcement or specific reporting requirements and timelines. The engagement of the Secretary-General, the appeal for compliance from member states and organisations, as well as the focus on educational and awareness initiatives, suggest possible avenues for monitoring and reporting on the implementation of the Resolution's provisions. However, it was concluded that the binding nature of the Resolution's components and its interpretive role cannot legally annul or terminate the Dayton Peace Agreement. For such an outcome to be possible, the Resolution would need to establish a peremptory norm of general international law, because only the emergence of a new peremptory norm could create a fundamental clash between a subsequent legal regime and previously-ratified treaties.

Subsequent discussions have explored the Resolution's ability to create a peremptory norm in general international law by focusing on two different approaches. One viewpoint emphasises the direct sources of a *ius cogens* norm, while the other considers how the Resolution indirectly contributes to the development of such a norm. This segment of research revealed that the Resolution could influence both state practice and *opinio juris*, potentially leading to the establishment of Customary International Law or general principles of international law. It was noted that the essence of peremptory norms, Customary International Law, and general principles,

is rooted in a shared commitment of the international community. Consequently, the author has examined whether the Resolution serves as a qualitative expression of this collective intent, particularly in relation to Customary International Law.

In this analysis, the author considered the voting mechanisms and their implications for legitimacy, along with the outcomes of the votes, ultimately concluding that the Resolution possesses the authority to legitimately endorse the formation of Customary International Law. Nonetheless, this does not suggest that the potential of Customary International Law automatically overrides the *ius cogens* grounds that invalidate the Dayton Peace Agreement. Instead, it is the Resolution's connection to recognised international legal sources that include peremptory norms, along with the jurisprudence that elucidates and applies these norms, which are pivotal in this scenario. Additionally, it is difficult to sustain an argument that any deviation from the Resolution's fundamental principles – including the denunciation of denial and glorification, the demand for prosecution, and compliance with international law – could ever be justified, introducing yet another quandary surrounding peremptory norms. Simultaneously, the possibility of conflict among these principles, even when designated as peremptory in their nature, and the Dayton Peace Agreement seems overly broad at this time.

Nevertheless, the Resolution's capability to introduce non-peremptory Customary International Law can significantly affect the application and interpretation of the Dayton Peace Agreement without nullifying it. For instance, in federally-structured nations such as Germany and Austria, the application of Customary International Law has demonstrated its effectiveness in providing a legal structure for resolving disputes among various states within the federation. In Germany's intricate legal framework, CIL has served two purposes; it has both aided integration and generated debate during the effort to unify federal states into a more centralised system. Similarly, for Bosnia and Herzegovina, the key to harnessing these effects is held by its Constitutional Court.

References

Baka, A.I. (2022) *The Logic of Absence in Customary International Law: An Open-System Approach* in Merkouris, P., Kammerhofer, J. and Arajärvi, N. (eds.) *The Theory, Practice, and Interpretation of Customary International Law*. The Rules of Interpretation of Customary International Law. Cambridge: Cambridge University Press, pp. 62–86. DOI: 10.1017/9781009025416.005.

Cheng, B. (1997) "United Nations Resolutions on Outer Space: «Instant» International Customary Law?", *Studies in International Space Law*. DOI: 10.1093/acprof:oso/9780198257301.003.0007.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979). United Nations Treaty Series. Vol. 1249, pp. 13–25. Available at: https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx (Access 30.07.2024).

d'Aspremont, J. (2022) *The Custom-Making Moment in Customary International Law* in Merkouris, P., Kammerhofer, J. and Arajärvi, N. (eds.) *The Theory, Practice, and Interpretation of Customary International Law*. The Rules of Interpretation of Customary International Law. Cambridge: Cambridge University Press, pp. 29–39. DOI: 10.1017/9781009025416.003.

Daugirdas, K. (2020) „International Organizations and the Creation of Customary International Law", *European Journal of International Law*. Vol. 31(1), pp. 201–233. DOI: 10.1093/ejil/chaa012. DOI: 10.1093/ejil/chaa012.

Follesdal, A. (2022) *The Significance of State Consent for the Legitimate Authority of Customary International Law* in Merkouris, P., Kammerhofer, J. and Arajärvi, N. (eds.) *The Theory, Practice, and Interpretation of Customary International Law*. The Rules of Interpretation of Customary International Law. Cambridge: Cambridge University Press, pp. 105–136. DOI: 10.1017/9781009025416.007.

Hoogers, G. (2022) *The Relevance of Customary International Law in the Domestic Legal Order of a Federal State* in Merkouris, P., Kammerhofer, J. and Arajärvi, N. (eds.) *The Theory, Practice, and Interpretation of Customary International Law*. The Rules of Interpretation of Customary International Law. Cambridge: Cambridge University Press, pp. 507–529. DOI: 10.1017/9781009025416.024.

International Convention on the Elimination of All Forms of Racial Discrimination (1965) United Nations Treaty Series. Vol. 660, pp. 195–205. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial (Access 30.07.2024).

Joyner, C.C. (1981) "UN General Assembly resolutions and international law: rethinking the contemporary dynamics of norm-creation", *California Western International Law Journal*. Vol. 11, p. 445.

Kirgis, F. Jr (1987) "Custom on a Sliding Scale", *American Journal of International Law*. Vol. 81, p. 146. DOI: 10.2307/2202144.

Kreća, M. (2023) *Međunarodno javno pravo*. 14. dopunjeno izd. Beograd: Pravni fakultet Univerziteta, centar za izdavaštvo.

Orakhelashvili, A. (2006) *Peremptory Norms in International Law*. Oxford: Oxford University Press.

Resolution on the International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica (document A/78/L.67/Rev.1). Available at: https://www.undocs.org/Home/Mobile?FinalSymbol=A%2F78%2FL.67%2FRev.1&Language=E&DeviceType=Desktop&LangRequested=False (Access 30.07.2024).

Schabas, W. (2001) „Was genocide committed in Bosnia and Herzegovina? first judgments of the International Criminal Tribunal for the former Yugoslavia", *Fordham International Law Journal*. Vol. 25(1), pp. 23–53.

Talmon, S. (2014) "The Legalizing and Legitimizing Function of UN General Assembly Resolutions", *American Journal of International Law*. Vol. 108, pp. 123–128. DOI: 10.1017/S2398772300002002.

The Prosecutor v. Radislav Krstić, Case No. IT-98-33-A, Appeal Judgement (Int'l Crim. Trib. for the Former Yugoslavia 2004). Available at: https://www.refworld.org/jurisprudence/caselaw/icty/2004/en/33340 (Access 30.07.2024).

United Nations General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) United Nations General Assembly, A/RES/36/55. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination (Access 30.07.2024).

United Nations General Assembly Declaration on the Elimination of Violence against Women (1993) United Nations General Assembly, A/RES/48/104. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women (Access 30.07.2024).

United Nations Security Council Resolution 1325 on Women, Peace, and Security (2000) United Nations Security Council, S/RES/1325. Available at: https://undocs.org/S/RES/1325(2000)) (Access 30.07.2024).