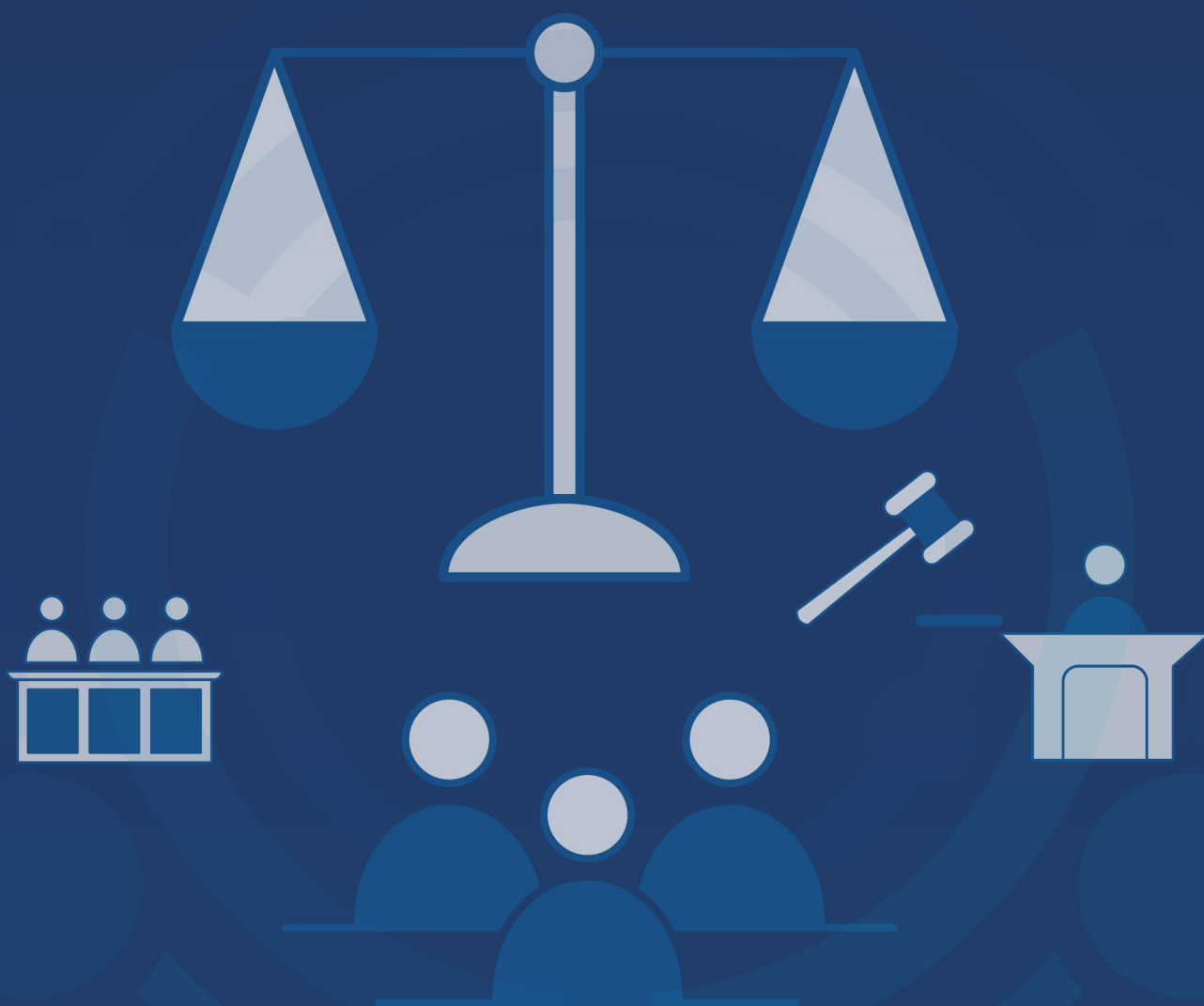




# AMERICAN JOURNAL OF SOCIETY AND LAW (AJSL)

ISSN: 2835-3277 (ONLINE)

VOLUME 3 ISSUE 1 (2024)



PUBLISHED BY  
E-PALLI PUBLISHERS, DELAWARE, USA

## The Role of International Organizations in Shaping Customary International Law: An Analytical Study of the 2018 ILC's Draft Conclusions

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### Article Information

**Received:** March 10, 2024

**Accepted:** April 15, 2024

**Published:** April 19, 2024

### Keywords

*Customary International Law,  
2018 Draft Conclusions,  
International Law Commission*

### ABSTRACT

This research explores the influence and impact of international organisations on the development and formation of customary international law. It specifically examines the 2018 Draft Conclusions issued by the International Law Commission (ILC). This paper has observed the implications of these findings on the evolution of peremptory norms, also known as *jus cogens*, and clarifies the scientific approaches used in their identification and legal consequences. Moreover, it emphasises alternative methodologies within the realm of humanitarian action in influencing customary international law. Research offers a thorough comprehension of which international organisations contribute to the development of customary international law. The (ILC)'s 2018 Draft Conclusions shape customary international law by defining peremptory norms (*jus cogens*). State practice and *opinio juris* produce conventional rules, as these findings show. They also help evaluate governmental announcements, official publications, legal opinions, and diplomatic exchanges. These results must be assessed for compliance with customary law, state practice, and state behaviour. Alternative analyses like humanitarian intervention and R2P also shape customary international law.

### INTRODUCTION

The growth of customary international law serves as evidence of the dynamic character of global legal systems (Slagter & Van Doorn, 2022). CIL has been influenced by the historical practices and beliefs of states that have a governing role under the behavior of countries within the global sphere (Hunter, 2022). Customary international law, based on state histories and beliefs, has evolved through many stages. From ancient Greece, Rome, and China to mediaeval feudal structures and religious organisations, each age shaped governmental behavior (Klabbers, 2020). After two World Wars, the United Nations was founded, and several international treaties were ratified in the 20th century (Maas, 2019). Formalised diplomacy and nation-state formation began in the early modern period after the Soviet Union collapsed, and international criminal courts and theories like the Responsibility to Protect emerged, causing legal and geopolitical changes. These historical stages influence CIL, reflecting nations' actions and ideas worldwide. CIL was unwritten and has been derived from the practices as this has been accepted as law (Murphy, 2019). The significant impact of international organisations in creating and interpreting CIL should not be underestimated. These organisations have shown a prominent role in the domain of global governance, possess a distinct capability to shape the conduct of states and make substantial contributions to the establishment of customary standards.

One of the organisation included as the most famous international organisation for collaboration and governance is the UN (Pershing, 2019). After World War II, it was founded in 1945 to promote world peace and security, human rights, social and economic progress, and

national discourse. The UN has shaped human rights, humanitarian law, and environmental protection norms via several international treaties and conventions. The UN's principal judicial institution, the ICJ, develops and applies international law (Helmersen, 2019). It resolves state-to-state legal disputes and advises the General Assembly, Security Council, and other UN organisations and specialised agencies on legal issues the ICJ helps create and clarify (CIL). World Trade Organisation (WTO) 1995-founded in which WTO regulates worldwide commerce. It facilitates trade agreement negotiations and dispute resolution (Palmer *et al.*, 2022). Also, WTO panels and Appellate Body rulings have shaped international trade law. The year 2018 was a significant turning point in this progression, as the (ILC) put forward its preliminary findings on CIL (Murphy, 2020). This research assessed the (ILC) that has effectively addressed the role of international organisations in the development of (CIL) norms.

Additionally, judgments were reached by the (ILC) that have been aligned with the developing dynamics of international relations, legal norms and practices, and the consent of states. The analysis of the acts and practices of businesses is essential based on the five reports presented by the Special Rapporteur of the Commission, Sir Michael Wood, over a nearly five-year long-term program of work; this study describes and quantifies the role of international organisations in determining (CIL). Since 1947, the UN General Assembly Subsidiary (ILC) has advanced international law. However, it analyses gaps in international law and drafts treaties or recommendations to fill them. Customary international law development is an ILC priority; however, nations' consistent and familiar

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practices developed customary international law and the idea that it is legally obligatory (*opino juris*). Sir Michael Wood, a famous international legal scholar, was the ILC Special Rapporteur on “Identification of Customary International Law” for almost five years (Wood, 2019). He performed a detailed investigation and delivered five reports on state practises, beliefs, foreign relations, and legal standards throughout his term. Sir Michael Wood focused on how international organisations shaped customary international law. International organisations, as essential players in global governance, may influence customary norms. This research examined and quantified their impact on customary international law (Wood & Stthoeger, 2022). The ILC, under Sir Michael Wood, examined commercial practises in the framework of international law to better understand how customary standards are formed and changed.

The objective of the 2018 Draft Conclusions was to provide a precise and all-encompassing formulation of peremptory principles of general international law. The objective of this endeavour was to produce a comprehension of the foundations that define jus-cogens, therefore reducing uncertainty and establishing a robust basis for legal interpretation.

## LITERATURE REVIEW

### International Organizations and their Influence on Customary International Law

International organisations were political entities that help governments collaborate on common goals. As middlemen, they help states collaborate, harmonise policy, and solve global problems (Slagter & Van Doorn, 2022). Some argue that customary international law (CIL) has lost importance, however. The treaties’ substantial regulation, which dominates international law, contributes to this image (Wood, 2015). The ILC of the United Nations (UN) has just commenced its efforts in examining a subject matter now designated as “identification of Customary International Law (Arévalo, 2005).” The commission was acquainted with the challenges associated with endeavoring to “systematise the comparatively adaptable procedure through which norms of (CIL) were established” when deciding to follow the subject matter. The challenges were included in which customary law creation was decentralised, which presents a difficulty unlike treaties, in which nations negotiate and accept customary law that has evolved organically from states’ consistent and familiar practises and the assumption that they are legally needed (Gazzini, 2022). This decentralised process makes it hard to pinpoint when a customary norm crystallises. Customary law makes it challenging to discern consistent state practice across legal systems and cultures (Jovanović, 2019). Customary law evolves with circumstances and governmental practices. These challenges demonstrate the complexity of interpreting customary international law. International law operates in a decentralised manner (Roberts, 2001); therefore, the policies and regulations governing its establishment or implementation have

been formulated comprehensively, and it was globally applicable (Scharf, 2013). CIL, referred to as customary law, has significant prominence as a prevailing mechanism for the establishment of international legal norms within the framework of this decentralised system (Scott & Carr, 1996). According to customary law, the consistent practises of States throughout time have the potential to develop into legally enforceable norms that are applicable to all States. International Court of Justice (ICJ), the principle of good faith in CIL, entails that States can establish enforceable legal obligations upon other States through the act of making unilateral declarations or doing unilateral actions (Hakimi, 2019).

One of the examples of the 2004 International Court of Justice (ICJ) Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory illustrates good faith under customary international law (CIL) (ICJadvisory). The ICJ reviewed Israel’s building of the “Israeli West Bank barrier” in occupied Palestine. The Palestinian Authority stated that this barrier has breached international law. Israeli unilateral pronouncements and acts were part of the case. Israel said it built the barrier in self-defence under Article 51 of the UN Charter. This case showed how vital good faith is in customary international law, according to the ICJ. Governments’ unilateral acts create legal duties if they follow international law and are done in good faith. This case shows how governments might unilaterally create legal responsibilities under customary international law’s good faith concept. International organisations (IOs) are managed in the development and progression of (CIL) since they are dynamic bodies operating within the framework of international law. The responsibilities of these organisations include the establishment of norms, the promotion of these standards, and the giving of authoritative explanations. Realism, as a theoretical framework, suggests the assumption that governments function as rational actors, with their behaviour being influenced by the pursuit of power, national interest, and the equilibrium of power within the international sphere (Rosenberg, 1994). This theory often offers a critical analysis of the efficacy of international law and institutions, asserting that nations primarily prioritise their self-interests, irrespective of established legal frameworks (Guzzini, 2007). However, theoretical aspects provide helpful insights into the methods by which international organisations exercise their influence, therefore illuminating the complexity of the delicate interaction between international organisations and customary international law (CIL). The primary objective of the draft Conclusions is to provide a comprehensive understanding of the methodology used in determining CIL (law, 2023). A series of recommendations that serve to highlight the significance of state practice and *opinio juris*, among other relevant factors. The methodology used in this study combines meticulous legal analysis with an extensive examination of data in order to determine the presence and specific characteristics of customary international law.

## Conceptualizing International Organizations in a Legal Context

International Organisations have included entities that the voluntary affiliation of sovereign nations or other international bodies has formed. International organisations are the legal identity with a distinct set of rights, duties, and activities within the framework of international law. In a legal context, International organisations are awarded with legal personality. The concept of legal personality confers to international organisations a range of entitlements, enabling them to participate in a diverse range of legal pursuits. These rights include a diverse range of essential tasks. International organisations function as platforms that promote collaboration, diplomatic discussions, and the process of reaching decisions, thus resolving issues that arise among the governments of member states. The conflict was considered as different acts that were considered within the international organisation in which acts of international organisations conflicting with a peremptory norm have been considered (“Draft conclusions,”). In conclusion draft (16), it is vital to consider the implications of obligations arising from resolutions, decisions, or other actions of international organisations that may contradict peremptory norms of general international law, known as *jus cogens* (Chasapis Tassinis, 2020). A peremptory rule of general international law (*jus cogens*) prevails over any resolution, decision, or other act of an international organisation that would otherwise have binding force, rendering them devoid of responsibilities under international law in cases of conflict. International organisations have shown significant diversity in terms of their characteristics, goals, and range of jurisdiction. Global organisations, such as the United Nations (UN), regional institutions like the European Union (EU), or specialised agencies with particular responsibilities, such as the World Health Organisation (WHO) or the International Monetary Fund (IMF), are examples of many types of international organisations. Every organisation is regulated by its charter, constitution, or statute, which delineates its functions, qualifications for membership, methods for decision-making, and legal structure. International organisations have distinct characteristics within the legal framework that have included Separate Legal Personality, limited powers, Autonomy and independence (Gutner & Thompson, 2012). Corporations are capable of having legal personality, giving them the ability to participate in contractual arrangements, begin legal processes, be susceptible to legal actions, and autonomously do many other legal activities (Crawford, 1995). In addition, member states provide people with the capacity to obtain and exercise ownership over assets, as well as to participate in the advantages and exemptions within their respective territorial jurisdictions.

Moreover, international bodies have also shown an essential role in the promotion, interpretation, and enforcement of international law. The recognition of

international organisations with rights and obligations in the framework of international law has been a widely considerable period (Gray, 2018). States can engage in treaty-making, assume international obligations, and seek legal remedies against both member and non-member states for breaches of international law (Kristina and Daugirdas, 2020). In this way, the inquiry into the involvement of international organisations in the development of CIL has historically received less consideration until recent times. International organisations were actively engaged in fulfilling functions under two distinct sets of conditions in; which the first category considered customary international law, which governs the conduct between states and international organisations, as well as among international organisations. According to Article (24), the commission has considered examining strategies and approaches to enhance the accessibility of evidence pertaining to customary international law (“Codification of international law article (24),”). The compilation and dissemination of relevant documents pertaining to the practices of states, as well as the judgments rendered by national and international courts on matters of international law. The commission is further obligated to submit a report to the General Assembly detailing its findings and recommendations on this subject. The second scenario is in which international organisations act like those of nations that were exposed to potential international liability, similar to states. Therefore, as an example, the United Nations can make a valuable contribution to international humanitarian law by means of its peacekeeping endeavors.

## Theoretical Perspectives on International Organizations’ Role in CIL

### The International Law Commission (ILC)

During the early 1980s, the United Nations Institute for Training and Research (UNITAR) sponsored research aimed at stimulating a reassessment of the commission’s position within the United Nations (UN) system (Commission, 1971). As part of this study, the International Law Commission (ILC) enhanced its mandate by using several methodologies, including restatement and analysis (Franck & ElBaradei, 1982). During three decades, the International Law Commission (ILC) primarily focused its efforts on international law and the provision of draft treaties (Gaja, 2010). The ILC continues to fulfil its mandate by actively engaging in the advancement of international law, addressing a diverse range of subjects from different modalities (McCaffrey, 2009). Also, the (ILC) has strengthened its contribution to international law by adapting the final format of its work, promoting a more adaptable and compelling discourse on the subject matter. The International Law Commission (ILC) restricts the outcomes of its efforts to an official reiteration of legal perspectives by selecting soft-law instruments (McRae, 2012). This transition is indicative of broader patterns in the field of international law, whereby adaptable regulatory measures are essential



to garner the attention of the international community on the expanding range of global issues (Forteau, 2015). The ILC is a highly regarded subsidiary body of the United Nations (UN), created with the primary objective of formulating and systematising international law (Bourne, 1992). Established in the year 1947, the International Law Commission (ILC) is composed of highly esteemed legal professionals who possess extensive knowledge and specialisation in several domains of international law. The primary purpose of this entity is to examine and analyse new legal matters, discover established practices, and develop preliminary agreements or principles that may later be acknowledged as customary international law. The scope of the commission's activities spans a broad range of legal subjects, such as the concept of state sovereignty, the protection of human rights, the principles governing the formation and interpretation of treaties, and the mechanisms for resolving international conflicts. The International Law Commission (ILC) employs a meticulous procedure that encompasses the identification of subjects, comprehensive investigation, and the formulation of preliminary articles. The efforts of the International Law Commission (ILC) have a comprehensive and authoritative structure for international legal standards, exerting a considerable impact on the global advancement and implementation of international law (Cano, 1989).

Moreover, the experience and intellectual contributions of this entity are of great significance in guiding nations, practitioners, and international courts when dealing with intricate legal matters on a worldwide scale. During its 70th session in 2018, the United Nations International Law Commission (ILC or Commission) approved two drafts pertaining to the sources of international law (Tomuschat, 2006). These drafts include the draft conclusions on the Identification of Customary International Law and the draft Conclusions on Subsequent Agreements and Subsequent Practices in Relation to the Interpretation of Treaties (Yejoon, 2020). Both subjects are presented as "conclusions" that are not meant to be converted into comprehensive treaties. Regarding the subject matter of Subsequent Agreements and Subsequent practice in the context of Treaty Interpretation, the ultimate version of the draft conclusions has been characterised as possessing a "guiding function." Its objective is to reaffirm and explain the law rather than seeking to supplant an existing convention or potentially evolve into a convention in its own right.

### Role and Functions of the ILC

The primary objective of the International Law Commission is to facilitate the gradual development of international law and its systematic organisation with the help of the process of codification (Watts, 1999). The primary focus of the commission is on matters pertaining to public international law, while it retains the ability to engage with issues related to private international law (Watts, 1999). The function of international law" is

employed under the convenience in which the process of formulating draft conventions pertaining to matters that have not yet been addressed by international law or that have not been adequately developed in the practices of sovereign states (Watts, 1999). The term "codification of international law" is often used to refer to the process of formulating and organising norms of international law in specific areas that have previously seen significant State practice, precedent, and doctrine. In Article (16), when the General Assembly submits a proposal to the commission for the gradual advancement of international law, the commission is expected to adhere to a method that is generally outlined as follows: (a) The committee was designated with one of its members to serve as the Rapporteur (Ramcharan, 1977). (b) The committee will develop a work plan. (c) The committee will distribute a questionnaire to the governments and request them to provide data and information pertaining to the topics outlined in the work plan within a specified timeframe. (d) The committee may assign certain members to collaborate with the Rapporteur in drafting documents while awaiting responses to the questionnaire. (e) The committee has the option to seek advice from scientific institutions and individual experts, who are not required to be citizens of United Nations member states. The Secretary-General will allocate funds, as needed and within budgetary constraints, to cover the expenses associated with these expert consultations. The commission will review the drafts put forth by the Rapporteur. Once the commission deems a draft to be satisfactory, it will request the Secretary-General to publish it as an official Commission document. The Secretariat is responsible for ensuring the dissemination of this document, together with any relevant explanations and supporting materials deemed suitable by the commission. The publication will include all the information provided to the commission in response to the questionnaire mentioned in subparagraph (c) above. The commission encompasses an invitation to the Governments to provide their feedback on this document within a reasonable timeframe. Subsequently, they will prepare a final draft along with an explanatory report, which will be presented to the commission for review and approval. Finally, the commission will transmit the adopted draft, along with its recommendations, to the General Assembly through the Secretary-General. In article (17), the commission is responsible for examining proposals and draft multilateral conventions that are submitted by various entities, including Members of the United Nations, the principal organs of the United Nations (excluding the General Assembly), specialised agencies, and official bodies established through intergovernmental agreements. These proposals aimed to promote the gradual advancement of international law and its systematic organisation. The Secretary-General transmits these proposals to the commission for this specific purpose. Suppose the commission determines it appropriate to examine proposals or drafts in such cases. In that case, it will generally follow a procedure

outlined as follows: (a) The Commission will develop a work plan, analyse the proposals or drafts, and compare them with any other relevant proposals or drafts; (b) The Commission will distribute a questionnaire to all United Nations Members, as well as the relevant organs, specialised agencies, and official bodies mentioned earlier, requesting their comments within a reasonable timeframe; (c) The Commission has presented a report containing its findings and recommendations to the General Assembly. Prior to proceeding, the commission chooses to provide an interim report to the relevant organ or agency that has submitted the proposal or draft. In the event that the General Assembly invites the commission to continue its work based on a proposed plan, the procedure described in Article 16 above shall be followed (Article 17).

### Historical Significance of the ILC's Work in International Law (Article 17)

The International Law Commission (ILC) in 2018 achieved an advancement in its continuous effort to systematise the fundamental concepts of customary international law (Harrison, 2013). The conclusions have a role in establishing a complete framework for comprehending and implementing customary international law, which serves as a fundamental pillar of the global legal system (Boucher, 2011). Moreover, it examines the enduring difficulties associated with the persistent objector rule and the significance of state practice and *opinio juris* in the evolution of customary law.

### Draft Conclusion 1 Scope

Draft Conclusion 1 is essential to understanding customary international law's structure and concepts. The method used to identify customary norms. Customary law is a system of legal principles that have formed over time via continuous state practice and a widespread belief in their obligatory nature (Murphy, 2020). Draft Conclusion 1 explains the criteria and methods used to define customary international law to help legal practitioners, scholars, and policymakers understand its complexity. The declaration proposes a strategy for making customary rules mandatory, improving the global legal environment. Draft Conclusion 1 provides a solid basis for comprehending customary international law worldwide. Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide" between Croatia and Serbia in which the legal proceedings against Serbia, claiming that Serbia had contravened the provisions of the Genocide Convention in the context of the Croatian War of Independence that transpired in the early 1990s (Van Den Herik, 2015). The case included a comprehensive analysis of the facts pertaining to state practice and *opinio juris*. The (ICJ) included instances of large-scale executions, forced relocation of communities, and many other actions that were purportedly indicative of genocide. The court further scrutinised diplomatic communications, official declarations, and measures undertaken by both

Croatia and Serbia during the war. Process of evolution throughout time as a result of the consistent behavior shown by governments.

### Draft Conclusion 2 Two Constituent Elements

The 2018 International Law Commission's Draft Conclusion 2 highlights customary international law's two main concepts (Jalloh, 2020). For a standard to be considered customary international law, it must be consistent and pervasive, and there must be a shared conviction that it is legitimate. This conclusion examines how state acts affect legal responsibility perception. This shows that sheer repetition or usual practice is insufficient; states must agree that the activity is essential under international law. Legal professionals and academics use this approach to evaluate and distinguish customary norms.

Draft Conclusion 2 is the "Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)" convinced by the International Court of Justice (ICJ) in 1970. In the present scenario, Belgium initiated legal proceedings against Spain, claiming that Spain had contravened international law by its interference in the rights of a Belgian firm known as Barcelona Traction, Light and Power Company (Flemming, 1965). The case included a comprehensive analysis of facts pertaining to the consistent and widespread implementation of a specific practice, together with a collective belief in its legitimacy. The (ICJ) conducted a thorough analysis of many factors, including the legal standing of businesses within the framework of international law, as well as the measures undertaken by Spain. The court analysed diplomatic communications, judicial processes, and public declarations issued by both Belgium and Spain. The ruling in the Barcelona Traction case highlighted the elements of customary international law, which need the presence of a consistent and widespread practice coupled with a collective acceptance of the practice's validity. The case has strengthened the credibility and consistency of customary international law within the international legal framework, in accordance with Draft Conclusion 2.

### Draft Conclusion 3 Assessment of Evidence For The Two Elements

Draft Conclusion 3, which offers significant evaluation in order to establish the two essential components of customary international law (Giza *et al.*, 2013). These factors include the broader contextual framework, the intrinsic characteristics of the rule under consideration, and the particular conditions in which the relevant evidence is positioned. By emphasising the need for a comprehensive strategy, however, customary international law cannot be universally applied. Instead, it requires a comprehensive examination that considers the distinct complexities of each circumstance. Moreover, Draft Conclusion 3 emphasises the separate assessment of each component, namely general practice and *opinio juris*. This methodology strengthens the emphasis on the

meticulousness necessary for demonstrating the presence and substance of customary standards, guaranteeing that each facet is subject to distinct scrutiny.

The “Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide” between Bosnia and Herzegovina and Serbia. Bosnia and Herzegovina initiated legal proceedings against Serbia, claiming that Serbia had contravened the provisions of the Genocide Convention in the Bosnian war that transpired in the 1990s. The case included a comprehensive analysis of facts pertaining to both customary practice and *opinio juris* (Cernic, 2007). The (ICJ) meticulously examined an extensive body of evidence, including instances of large-scale executions, forced relocation of communities, and other actions that were purportedly indicative of genocide. The court further scrutinised diplomatic communications, official declarations, and measures undertaken by both Bosnia and Herzegovina and Serbia during the duration of the war. The ruling rendered in the case pertaining to the Genocide Convention underscores the need to conduct a thorough evaluation of evidence in order to create customary international law.

#### **Draft Conclusion 4 Requirement of Practice**

Draft Conclusion 4, as stated by the International Law Commission in 2018, highlights the crucial significance of practice in the establishment of customary international law (Murphy, 2015). The statement posits that the conduct and behavior of nations in the international arena mostly form the foundation of customary standards. Furthermore, Draft Conclusion 4 recognises that there are some circumstances in which the actions of international organisations have a role in the development or expression of customary international law. The changing function of international organisations introduces an additional level of intricacy to the customary law domain. Significantly, the judgment clarifies that the activities undertaken by non-state actors alone do not create the practice that forms customary law.

The International Court of Justice (ICJ) rendered a decision in 2003 on the Case Concerning Oil Platforms (Islamic Republic of Iran v. United States). In this particular case, Iran initiated legal proceedings against the United States, challenging that the actions carried out by the U.S. military, which included the destruction of Iranian oil installations during the Iran-Iraq War, contravened established norms of international law (Garwood-Gowers, 2004). These norms encompassed principles pertaining to state sovereignty and the prohibition of using force. The judgement rendered in the Oil Platforms case serves as a notable example that has highlighted the importance of state practice within the framework of customary international law, as underscored in Draft Conclusion 4.

#### **Draft Conclusion 5: Conduct of the State as State Practice**

The conclusion, 5, is a declaration that presents a precise

and concise elucidation of the parameters that define state practice in the context of customary international law (Bowett, 1998). The statement unambiguously asserts that the concept of state practice comprises the range of acts and behaviour shown by a state across several domains, such as the executive, legislative, judicial, and other functional aspects (Coombes & Stokes, 1985).

The conclusion functions as a critical principle for legal professionals and academics, providing a definite structure for recognising and assessing the actions of states within the framework of customary international law. “Case Concerning Pulp Mills on the River Uruguay” (Argentina v. Uruguay) In this particular instance, Argentina initiated legal proceedings against Uruguay, claiming that Uruguay’s endorsement of the establishment and functioning of pulp mills along the River Uruguay contravened many international accords and principles, those pertaining to environmental preservation (McIntyre, 2010). The ICJ reflected on the acts and behaviour of Uruguay in authorising and the establishment and functioning of the pulp mills. The court has analysed the decisions and measures taken by the executive, legislative, and regulatory authorities of Uruguay in relation to the pulp mills project. The ruling in the Pulp Mills case serves as an illustration of how the actions of a state in many spheres, such as the executive, legislative, and regulatory realms, contribute to the establishment of state practice under customary international law. The case is in accordance with the ideas defined in Draft Conclusion 5, which underscores the need to comprehend and evaluate the conduct of nations within the context of customary international law.

#### **Draft Conclusion 6**

Draft Conclusion 6 of the 2018 International Law Commission shows how customary international law may affect state behavior (Deplano, 2017). The practice encompasses physical and verbal aspects, according to the statement. In some instances, a state’s inactivity might be considered behaviour. A grasp of practice highlights its flexibility and variety. Diplomatic activities, communication, international resolutions and treaties, presidential actions, legislative and administrative measures, and domestic court opinions are covered in the conclusion. Draft Conclusion 6 shows that state practice is complicated and essential to international law and customary rules.

The International Court of Justice (ICJ) rendered a decision in 1986 on the “Case Concerning Military and Paramilitary Activities in and against Nicaragua” (Nicaragua v. United States) (Leigh, 1984). The International Court of Justice (ICJ) examined various state acts and measures, including military operations, assistance provided to armed organisations, diplomatic correspondences, and public declarations made by government officials. The court further examined the reactions and responses of other governments to these activities. The Nicaragua case judgement serves as an illustration of how state practice involves a wide range of elements, including both physical and verbal

manifestations. This case highlights the diverse nature of state practice and its pivotal contribution to the formation of customary international law in accordance with the concepts elucidated in Draft Conclusion 6.

#### **Draft Conclusion 7: Assessing a State's Practice**

Draft Conclusion 7, a crucial 2018 International Law Commission statement, provides essential information on analysing state action under customary international law (Leigh, 1984). It emphasises evaluating a state's operations holistically, including all relevant data. This comprehensive view explains the state's connection with customary norms. This recognition of official activities highlights customary law formation's intricacy and need for examination; however, this conclusion helps study global legal traditions. The International Court of Justice (ICJ) extracted a decision in 1997 on the "Case Concerning the Gabčíkovo-Nagymaros Project" between Hungary and Slovakia (Tomka, 2019). In the present case, Hungary initiated legal proceedings against Slovakia with regard to a hydrological undertaking concerning the Danube River. Hungary contended that the acts undertaken by Slovakia were in contravention of established norms of international law, including principles pertaining to environmental preservation as well as regulations governing international watercourses.

The International Court of Justice (ICJ) conducted a comprehensive analysis of the activities, policies, and conduct of both nations with respect to the project. The analysis included several facets, including the original agreements, later changes, and the practical execution of the project. The court placed significant emphasis on the need to conduct a thorough evaluation of governmental practice when evaluating the establishment of customary standards. The instance of the Gabčíkovo-Nagymaros Project underscores the need to comprehensively review a state's activities in order to determine their compliance with customary international law.

#### **Draft Conclusion 8: The Practice Must Be General**

The 2018 International Law Commission's Draft Conclusion 8 provides an essential requirement for customary international law recognition (Murphy, 2020). This practice should also be constant and uniform. Draft Conclusion 8 emphasises that the practice's universality is more critical than its time requirement for customary law. This result gives legal practitioners and researchers a clear framework for assessing state activity under customary international law. Draft Conclusion 8 emphasises the need for broad and representative practice in the creation and acceptance of global legal customary standards. The International Court of Justice (ICJ) extracted a decision in the case of the "North Sea Continental Shelf Cases" in 1969. The (ICJ) in this instance, deliberated upon the differentiation of the continental shelf between Germany and Denmark, as well as between Germany and the Netherlands (Klabbers, 2023). The parties involved in the dispute drew upon a range of treaties, accords,

and established principles of customary international law in order to substantiate their respective assertions. The court analysed the consistent practice seen across nations in the delineation of their continental shelves, determining that such practice had a uniform nature. The ruling of the court served to affirm the customary international law norm that coastal nations had sovereign rights pertaining to their continental shelves. The North Sea Continental Shelf Case serve as a prime illustration of how the establishment of customary international law may be achieved by the combination of consistent and uniform state practise, together with the presence of opinio juris.

#### **Draft Conclusion 9: Requirement of Acceptance as Law (Opinio Juris)**

Draft Conclusion 9, a necessary declaration from the 2018 International Law Commission, states that opinio juris is essential to customary international law (Sender & Wood, 2017). It states that a widespread practice must be performed with a true feeling of legal responsibility or suitable to be deemed customary law. Draft Conclusion 9 clearly states that legal practitioners and academics must recognise the legal duty underpinning state activity. Draft Conclusion 9 emphasises the importance of legal responsibility in establishing customary international law. The "Lotus Case" (1927), which was decided by the Permanent Court of International Justice (PCIJ), the precursor of the International Court of Justice (ICJ), serves as a relevant case that highlights the importance of opinio juris in customary international law (Anil *et al.*, 2021). The Lotus Case pertains to a maritime incident that transpired on the high seas involving two vessels, namely the French ship named Lotus and the Turkish ship named Bozkurt. This accident tragically led to the loss of lives among the crew members of both vessels. The central focus of the case principally was the issue of jurisdiction and the validity of the acts undertaken by the French authorities. As per the case of the findings of the PCIJ, it was determined that in situations where there is no explicit provision in a treaty or established customary rule to the contrary, a state has the authority to exercise jurisdiction over actions that occur on the high seas. The Lotus Case is widely regarded as a substantial illustration of the influential role played by opinio juris in the determination of customary international law. The concepts defined in Draft Conclusion 9 highlight the significance of the legal obligation that forms the basis of state conduct in the establishment of customary international law.

#### **Draft Conclusion 10: Forms of Evidence of Acceptance as Law (Opinio Juris)**

Draft Conclusion 10, a critical statement from the 2018 International Law Commission, lists the many sorts of opinio juris evidence that might support a common practice as law. It stresses the variety of ways to convey acceptance (Bílková, 2020). These may include state



pronouncements, official publications, legal views from government authorities, diplomatic interactions, judicial judgments, treaty terms, and international resolution or intergovernmental conference behavior. Draft Conclusion 10 further notes that a state's inability to respond to practice from the evidence of *opinio juris*, if the circumstances allow it and the states are able to do so. This result gives legal practitioners and researchers a rich framework to evaluate customary rules in the global legal arena. Draft Conclusion 10 emphasises the evidence in *opinio juris* and customary international law.

The “Nicaragua v. United States” case before the International Court of Justice illustrates Draft Conclusion 10 of the 2018 International Law Commission on kinds of proof of adoption as law (*opinio juris*). In 1984, Nicaragua sued the US for violating international law, including supporting armed organisations in Nicaragua. Nicaragua's contention that U.S. activities breached customary international law was crucial (Onate-Madrado, 2022). The ICJ examined public declarations, diplomatic communications, official records, and US government acts and policies to identify customary rules. The court also examined other states' responses to similar measures (Abello Galvis, 2019). This case presented how evidence establishes *opinio juris* and customary international law, according to the ICJ. It stressed that a state's declarations, policies, and actions, as well as other states' responses, may shape customary norms. The case shows how complicated *opinio juris* evidence evaluation is and how complex customary international law is.

#### Draft Conclusion 11: Treaties

Draft Conclusion 11, 2018 International Law Commission examines treaties and customary law (Villiger, 1997). The treaty rule can create a new customary international law rule if it (a) encapsulates a pre-existing customary norm at the time of its conclusion, (b) contributes to the crystallisation of a customary norm already in formation, or (c) creates a general practice accepted as law (*opinio juris*). Draft Conclusion 11 observed that each situation must be examined individually and that a rule in numerous treaties does not imply customary international law.

Conclusion 11 of the 2018 study conducted by the International Law Commission pertains to the case “North Sea Continental Shelf Cases” (1969). However, in this case, the International Court of Justice (ICJ) reflected on the demarcation of the continental shelf boundaries between Germany and Denmark, as well as between Germany and the Netherlands (Klabbers, 2023). The parties involved in the matter placed their trust in a range of treaties in the Geneva Convention on the Continental Shelf. The judicial body was focused on a decision affirming that the Geneva Convention has effectively established customary international law pertaining to the legal standing of the continental shelf. The analysis revealed that the convention effectively included customary laws that were already in existence at the time of its finalisation, thereby serving to validate the

usual norm. The provisions established by the agreement were shown in the development and consolidation of the customary international law principle concerning the rights and jurisdiction pertaining to the continental shelf. This particular case serves as an illustration of how a treaty, such as the Geneva Convention on the Continental Shelf, may assume a crucial function in the advancement and validation of customary international law. The ruling in the North Sea Continental Shelf Cases is in accordance with the ideas elucidated in Draft Conclusion 11, underscoring the capacity of treaties to impact customary international law.

#### Draft Conclusion 12: Resolutions of International Organisations and Intergovernmental Conferences

Draft Conclusion 12, a significant 2018 International Law Commission statement, discusses international Organisation and intergovernmental conference decisions under customary international law (Sybesma-Knol, 1985). It establishes that a resolution cannot unilaterally create customary international law. However, such a decision may prove the existence and content of a customary norm or contribute to its development. Also, Draft Conclusion 12 emphasises that a resolution provision can be considered customary international law if it aligns with a widely accepted general practice and the belief in its legal obligation.

#### Draft Conclusion 13: Decisions of Courts and Tribunals

Draft Conclusion 13, a key 2018 International Law Commission statement, discusses court and tribunal rulings under customary international law. International court and tribunal rulings, notably those from the International Court of Justice, help build and interpret customary rules. Draft Conclusion 13 further notes that national court rulings used to determine customary international law standards where relevant and appropriate. This result gives legal practitioners and researchers a clear procedural framework for using court judgments to analyse global customary standards.

#### Draft Conclusion 14: Teachings

The teachings of highly competent publicists from diverse states may help determine customary international law, according to Draft Conclusion 14. This has distinguished legal professors from many nations on customary rules. Draft Conclusion 15 adds “persistent objector” in customary international law. It says a customary norm is not obligatory on a state if it clearly disagrees with its growth throughout its formative phases and maintains this objection consistently. This emphasises consent and respects a state's opposition to customary law until it withdraws or modifies it.

#### Draft Conclusion 16: Particular Customary International Law

According to Draft Conclusion 16, a critical declaration from the 2018 International Law Commission, a rule of

special customary international law applies solely to a limited number of states, whether regionally, locally, or elsewhere (Charney, 1986). The draft has demonstrated the existence and substance of such a norm; it must be determined if the states concerned have a consistent practice and consider it as legally enforceable. This result gives legal practitioners and researchers a clear framework for identifying and assessing customary international law in a given group of nations.

### Background and Contextualizing the 2018 Draft Conclusions

The 2018 draft conclusions put out by the commission are essential elements of its deliverables, and it is vital to take them into account in conjunction with the accompanying commentary. The findings pertain primarily to the peremptory rules of general international law, usually known as *jus cogens* (Tladi, 2021). These standards have garnered growth from international and regional tribunals, national courts, States, and other relevant actors. These standards require the establishment of a methodical approach to identify them and comprehend their legal consequences. The conclusion (1) functions delineating these findings have highlighted their focus on the identification and legal consequences of *jus cogens*. The results primarily pertain to methodological techniques, abstaining from digging into the substance of specific peremptory rules.

Furthermore, many States were illustrative instances without suggesting complete support by the commission. The primary focus of these preliminary conclusions pertains to the procedure of ascertaining the peremptory nature of a norm in general international law. The primary focus of the draft findings is on technique in relation to identification and legal ramifications. The resources that are cited as instances of practice, which include the perspectives of States, are used to demonstrate the approach employed in identifying and understanding the implications of peremptory rules of general international law (*jus cogens*). The Draft Conclusions demonstrate customary international law's adaptability to global situations overall; this landmark 2018 ILC document guides academic and practical law, reaffirming the commission's commitment to global legal uniformity and effectiveness (Laina, 2018).

## METHODOLOGY

### Process of Formulating Draft Conclusions

The development of the 2018 Draft Conclusions by the International Law Commission (ILC) was marked by a meticulous and transparent approach, demonstrating the commission's (McDougal, 1967). The process used by the International Law Commission (ILC) included a structured approach to doing research, with the help of empirical review and fostering agreement. The team conducted thorough examinations of pertinent legal literature, state practices, and jurisprudence, establishing a strong basis for the findings. The inclusion of

stakeholders and the conduct of discussions were important in exploring the credibility and validity of the 2018 Draft Conclusions (Silva *et al.*, 2019).

One of the examples included an international conference that includes stakeholders and the 2018 draft Conclusions' legitimacy and validity. Many governments, environmental NGOs, scientific organisations, and industrial groupings participated in the 2018 Draft Conclusions on Climate Change discussions (Evangelidis & O'Donnell, 2019). They shared climate-related opinions and concerns in comprehensive conversations. These stakeholders reviewed the draft findings, provided critical advice, and helped ensure that it represented a comprehensive agreement among varied benefits. The International Law Commission (ILC) contributes to an array of stakeholders that includes nations, legal professionals, and international organisations (Nolte, 2019). The use of an inclusive approach allowed the consideration of a wide range of experiences, enhancing the overall quality and practicality of the results. The commission proactively initiated communication with governments through diplomatic channels, soliciting their input and perspectives. Furthermore, the International Law Commission (ILC) engaged in discussions with many international organisations and legal professionals, seeking their valuable insights about different facets of peremptory standards in the realm of general international law (Voulgaris, 2022).

## RESULTS AND DISCUSSION

The evaluation of the compatibility between the draft findings of the International Law Commission (ILC) and established customary international law necessitates an analysis of their conformity with prevailing principles and practices (Weisburd, 2005). A thorough examination of both the past actions of states and their established legal beliefs and opinions. The concept of historical state practice refers to the evident activities and conduct of states throughout history, which provide concrete proof of customary standards (Watson, 1984).

Customary law may create universally enforceable laws, but its formation procedures enable governments to avoid forming norms by becoming persistent objectors (Fon & Parisi, 2009). This kind of objection requires the objecting state to publicly reject a growing practice before it becomes a binding custom. The concept of *opinio juris*, which refers to a particular practice that was necessary under international law, contributes an essential element to this evaluation (Moulin, 2023). The objective was to analyse the state practice and *opinio juris* in South Asia in order to evaluate the presence of support for a developing customary international law (CIL) duty known as "China's Stealthy Sovereignty." This obligation affects avoidance, reduction, or prevention of statelessness and imposes a responsibility on these states to address the issue of statelessness within the area (Immanuel, 2023). In pursuit of this objective, there was a widespread existence of statelessness in the South

Asian area. However, there is a growing body of evidence indicating that state practice and opinion juris in the region are increasingly endorsing the duty to refrain from, minimise, or preempt statelessness.

The “National Register of Citizens (NRC) Assam Case” in India was one of the case focused on the responsibility to avoid statelessness in South Asia (Hari & Nagpal, 2022). In the year 2019, the Indian state of Assam successfully concluded the process of updating its National Register of Citizens (NRC), with the primary objective of identifying persons who were unable to provide sufficient evidence to substantiate their lawful resident status inside the state. The Indian government came under attention due to allegations of human rights breaches and worries of statelessness. The procedure in question had the potential to leave people who had been living in Assam for several generations without a legally recognised nationality. Although the case did not establish a binding legal precedent, it effectively emphasised the significance of statelessness and the need to implement comprehensive legislative frameworks to protect people’s entitlements to nationality.

Furthermore, deliberations on the obligation of states to abstain from engaging in activities that may potentially result in statelessness, in accordance with the norms of international law. The presence of state practise, and opinio juris originating from South Asia might enhance the argument that a nascent customary international law duty of this sort exists, namely within the South Asian area. The presence of this customary international law rule will require South Asian governments to confront the issue of statelessness within the area actively. The draft findings’ alignment with the collective comprehension of customary standards among nations is of utmost importance. The Universal Declaration of Human Rights is widely seen as a comprehensive embodiment of customary international law pertaining to marine affairs, and it also advances the legal framework governing the world’s oceans on this foundation (Li *et al.*, 2023). The regulations governing the demarcation of the outer boundaries of the Exclusive Economic Zone (EEZ) with customary international law. By using the framework of state practice and opinio juris, a thorough assessment was conducted to ascertain the extent to which the draft findings of the International Law Commission (ILC) reflect the fundamental principles of customary international law.

### Recognition of State Practice

State practice recognition to determine how the International Law Commission’s (ILC) Draft conclusions affect customary international law. This method examines if the research results match states’ contemporary international law actions and behaviours. The findings reflect countries’ global behaviour, according to analysis. Government diplomatic, legislative, executive, and international agreements and forum activity are examined. Opinion juris and state practises make up

customary international law (CIL). This course examines international organisation resolutions condemning unilateral sanctions and both sides’ sanctioning practices. This article examines how sender nations justify punishments using CIL standards (Rowhani, 2022). It relates to erga omnes-compliant measures, embargoes, and targeted sanctions. It assessed CIL’s rights-based limits for Russia and China embargoes and Magnitsky Act penalties.

### Impact on State Behavior

One of the impacts on state behaviour has found that the US government’s move from war on terror to power competition with China and Russia has been discussed (Wan, 2022). There has been no comparable consideration of IHL and LOW in the US or China. The US and West benefit from Western legal traditions like IHL and HRL. China had to adjust and now challenges the West-dominated international system, a key source of US-China friction. Chinese and American forces used the Geneva Conventions throughout the Korean War. The conflict happened 70 years ago, and much has changed. It is the sole precedence between the two superpowers. LOW organises high-power conflict. A contest between the two biggest nations would restrict IHL to national concerns and impair its human rights association.

### Evolution of Customary Law

John Austin argues that customary laws are positive morality derived from regulated agreements. The state must construct customary laws to turn moral standards into actual laws. State customary laws were established by legislation or judicial judgment. According to Austin, customary behaviour does not become law until it is enacted by legislation or judicial judgment. Local customary law is sometimes viewed as custom rather than judicial precedent, even if it is based on local judgements rather than local behaviour. This approach questions how judgements create customary law. Custom is different from legislation, and judicial precedent, like judicial precedent, must be adopted by the sovereign to become law. Customs, like legislation and binding precedent, must be given the necessary shape by the sovereign to become law. Customs must be used in court decisions under this type. A community may recognise custom as law when integrated into a court ruling yet deny precedent law-making force, showing that custom is not simply absorbed into precedent. If the courts uphold the tradition, it is customary law. The new decision becomes customary law if the courts rule that the custom has changed (Jalloh, 2020).

In analysing the Connection between Customary Land Rights and Land Grabbing: A Case Study of Zambia,” the study examines the complex causes of land grabbing in Zambia. Since the 2000s, global problems have caused international and domestic companies to buy large amounts of property for different objectives, displacing indigenous African populations on customary

land (Bae, 2023). Weak customary land rights enable land grabs, although the study emphasises that they are not the primary cause. A 'land-grabbing-friendly legal climate' is the study's focus. The study uses legal history to critically investigate Zambia's land-grabbing regions and the varied land-grabbers engaged. It also examines traditional land use and tenure patterns from colonial times to the present. Both domestic and foreign land-grabbers are linked to government-driven agricultural programs, according to the major findings. The dual-tenure system, created under colonial control and still in use today, has made ordinary Zambians living on customary land economically vulnerable, eroding their customary land rights. Given these findings, the study strongly recommends that the Zambian government set appropriate land-titling registration costs for ordinary residents living on customary property. It also supports separating development from land legislation to strengthen Zambians' land rights and combat land grabs.

### Alternative Approaches to Shaping Customary International Law

The evolving standards pertaining to humanitarian intervention and the duty to safeguard people against widespread crimes have the potential to influence customary international law, especially as states and international organisations continue to confront challenges regarding sovereignty and humanitarian intervention (Simpson, 2021). The most severe international reaction is humanitarian intervention or military invasion to defend at-risk populations. This intervention has a contentious history in developing nations of the Global South, claiming that the UN Charter and international law do not allow former imperial or colonial powers to violate their sovereignty and reimpose colonial slavery. Over the past two decades, global diplomacy has sought a more open and collaborative response to enormous human suffering under the banner of "the Responsibility to Protect" (Weiss, 2016).

At the core of customary international law lies the concept of state practice, which refers to the tangible actions undertaken by states. States contribute to the creation of customary standards by consistently participating in state practice and expressing the view that such practice is legally necessary (Negishi, 2017).

The Federal Republic of Germany, *et al.*, Petitioners, v. Alan Philipp *et al.*, No. 19-351, was heard by the US Supreme Court. The case, contested on December 7, 2020, and determined on February 3, 2021, concerns the Welfenschatz, a collection of mediaeval antiquities acquired by German Jewish art merchants during the Weimar Republic. The heirs of these merchants claim that the Nazis forced them to sell these antiquities to Prussia at a discount. The Stiftung Preussischer Kulturbesitz, a German government entity, houses the objects in a Berlin museum. After failing to get a remedy in Germany, the heirs filed common law property claims against Germany in the US District Court. The main question was whether

Germany was liable under the Foreign Sovereign Immunities Act for confiscating property in violation of international law (28 U.S.C. § 1605(a)(3)). The heirs claimed genocide, while Germany claimed appropriation under international law. The District Court denied Germany's motion to dismiss, and the D.C. Circuit affirmed it. Under Chief Justice Roberts, the Supreme Court ruled that "rights in property taken in violation of international law" pertain to appropriation and the domestic takings rule (Grabarsky, 2021). Based on the distinction between international ties and domestic concerns, this notion has historically been used to distinguish between foreign and domestic property expropriation. The court emphasised the Foreign Sovereign Immunities Act's goal of formalising the restricted sovereign immunity approach. This view restricts protection to sovereign activities in their official capacity. Expanding the expropriation exception beyond its intended confines will obscure this vital distinction, subjecting other sovereign governmental acts to court review. The court did not examine Germany and the heirs' arguments on international comity and consortium members' nationality during the transaction; the court vacated and remanded the case (894 F.3d. 406). Respondent Gilbert P. Hyatt sued petitioner Franchise Tax Board of California (Board) in Nevada state court for torts committed during a tax audit. The Nevada Supreme Court rejected the Board's claim that the Full Faith and Credit Clause required California law and immunity. Instead, it ruled that comity gave the Board only Nevada agency immunity under Nevada law. The Full Faith and Credit Clause did not require Nevada to adopt California's immunity provision, the Supreme Court ruled. On remand, the Nevada Supreme Court did not limit tort liability for state entities. The U.S. Supreme Court overturned this ruling, stating that the Full Faith and Credit Clause obliged Nevada courts to offer the Board the same immunity as Nevada agencies. The court evenly split on whether to overrule Nevada v. Hall, a precedent holding that the constitution does not bar individual suits against a State in the courts of another State, but ultimately ordered the trial court to enter damages according to Nevada's statutory cap. The Board's third certiorari request asked whether Nevada v. Hall should be reversed. Justice Thomas argued that Nevada v. Hall should be overturned because states have sovereign immunity from private litigation in other states' courts (Hickman & Hahn, 2020). The study employs a methodical and evidence-based methodology to assess the influence of the International Law Commission (ILC) on the advancement of Customary International Law (CIL). This research aims to analyse the trends and patterns that have emerged after the publication of the 2018 Draft Conclusions. Its objective is to provide empirical insights into the International Law Commission's (ILC) impact on the establishment of customary international law (CIL). The objective of this study is to use thorough data collecting and analysis in order to reveal any potential changes in the customary practises and standards



acknowledged by states. Through an analysis of the actual implementations and reception of (ILC) proposals, this research aims to enhance our comprehension of the dynamic nature of customary international law (CIL) and its connection to the ILC's efforts. This study aims to provide insight into the tangible effects of the ILC Draft Conclusions on the development and progression of Customary International Law in current international legal practice, using empirical data. International courts and tribunals, such as the (ICJ), have determination of customary international law (CIL). In this particular region, particularly in the last several decades, there has been a notable shift in the approach adopted within the realm of international jurisprudence. This transformation is attributed to the evolving concepts of humanity and humanitarian law. In contrast to the conventional method that primarily depends on state practice, this recently developed methodology, which has also garnered endorsement from the Special Rapporteur of the International Law Commission (ILC) in its fifth report in 2018, prioritises the identification of *opinio juris* (Zarneshan & Rastgoo Afkham, 2020).

In one of the cases related to *Cambodia v. Thailand* (ICJ) was summoned to adjudicate a territorial conflict between Cambodia and Thailand over the Preah Vihear Temple, an esteemed UNESCO World Heritage site situated along the shared boundary of the two nations (Gosrisirikul & Srisorn, 2019). Cambodia initiated legal proceedings before the (ICJ) with the objective of obtaining an interpretation and implementation of a 1962 judgement that had previously granted ownership of the temple and its surrounding area to Cambodia. Thailand contended that the judgement rendered in 1962 failed to adequately establish the precise boundary in the vicinity of the temple. The (ICJ) extracted a decision in 2013 affirming that the judgement made in 1962 had effectively established the ownership of the temple and its surrounding territory. The court underscored the need to uphold and execute its prior ruling. The case beyond the settlement of a particular territorial dispute serves to underscore the pivotal role played by international law and the (ICJ) in the resolution of disputes within the Asia-Pacific region.

During the 1960s, the Chagos Archipelago, situated in the Indian Ocean, suffered a separation process from Mauritius. During the period of administration, the United Kingdom separated the Chagos Archipelago from Mauritius. It formed the British Indian Ocean Territory (BIOT), including the strategically shown naval installation known as Diego Garcia (Gaver, 2021). Mauritius contended that the act of separation constituted a violation of international law, namely the principle of territorial integrity. In the year 2017, the United Nations General Assembly made a formal request to the (ICJ) for an advisory opinion about the legal ramifications associated with the act of separation (Rrecaj, 2020). The focus of the case was stated on issues pertaining to decolonisation and the exercise of self-determination.

Mauritius argued that the separation of the Chagos Archipelago constituted a breach of the Chagossians' right to self-determination as the indigenous population. The role of international organisations, the United Nations, in supervising and exerting influence over the decolonisation process was brought into question by this particular instance. The analysis focused on the association of the United Kingdom's activities with international law and the ideals advocated by international organisations. The decolonisation process of Mauritius was determined to have deviated from the principles of self-determination. The court reached the determination that the separation of the Chagos Archipelago violated the law, and it was incumbent upon the United Kingdom to terminate its governance of the Archipelago. This case has observed international organisations, namely the United Nations, in supervising and exerting influence over the decolonisation process (Bashfield, 2021).

## CONCLUSION

The 2018 Draft Conclusions published by the International Law Commission (ILC) constitute a achievement in the advancement of customary international law, with a particular emphasis on the peremptory norms often referred to as *jus cogens*. These findings emphasise the significance of using a systematic methodology in the identification and understanding of the fundamental concepts of general international law. The International Law Commission (ILC) shown it's in promoting global legal consistency and effectiveness by a rigorous and open process in developing these Draft findings. This approach included thorough study, empirical analysis, and case studies were included. In addition, alternative methodologies, such as the dynamic principles governing humanitarian intervention and the concept of Responsibility to Protect (R2P), serve as examples of how present-day complexities may influence established norms of international law. The 2018 ILC Draft Conclusions have significant value for both academic and practical purposes within the realm of international law. They provide a well-defined and inclusive structure for understanding and implementing *jus cogens* principles.

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