# The Impact of UN Conference Declarations on International and Domestic Law

Richard G. Wilkins, professor of law, J. Reuben Clark School of Law, Brigham Young University
managing director, World Family Policy Center

The United Nations General Assembly periodically convenes world conferences on issues of global concern. Many recent conferences (such as the Cairo Conference on Population and Development, the Fourth World Conference on Women, the Rio Environmental Conference, the recent Second World Assembly on Ageing and the upcoming World Summit on Children) have received significant worldwide attention and have been perceived as influential norm-setting events.[1] These conferences elaborate upon earlier conferences and engender exhaustive debate. They also produce signed declarations setting forth plans of action to implement worldwide goals established during the conferences. Establishing goals and even subscribing to them, however, is quite different from implementing those precepts. The question remains, therefore, whether UN conference declarations have any real impact on either international or domestic law.

This article explores the impact of UN conferences, not only upon international law, but upon the domestic law of conference participants. The first part discusses the historical international law framework within which UN conferences operate. Then the second part briefly looks at the international law context of UN conferences and the declarations that emerge from them. The final part looks more closely at the specific formal and informal means by which conference declarations may have an appreciable impact upon the internal policy of participating nations.

This brief analysis suggests that UN conference documents, although not technically binding upon participating nations, nevertheless are an important influence in shaping and solidifying the normative concepts of international law. The conference documents, moreover, may have significant impact upon the domestic policy of signatory nations even without formal enforcement mechanisms. Great care, therefore, is warranted in crafting the precise language incorporated into a formal conference declaration.

## The Historical and Modern Roots of International Law

"[C]ontemporary international organizations cannot be fully understood without some reference to their philosophical and historical background."[2] We therefore review, in cursory form, the most relevant history regarding the development of international law in the modern era.

### *The Westphalian International Legal System*

The present international legal system had its genesis nearly four hundred years ago. The 1648 Treaty of Westphalia, entered into by European state powers, marked the beginning of the "modern" era of international law, with the nation/state as the dominant actor in the creation of international law.[3] Not only did the nation/state emerge as the dominant actor in the Westphalian international legal system, but it was the only component of the system subject to international law.[4] The individual, although a subject of the state, was not considered to be subject to the international legal system. Instead, that system regulated the relationship between states, much like the state regulated the relationship between individuals.[5]

Importantly, states were regarded as sovereign entities. Accordingly, the internal affairs of the state, including the treatment of its citizens, could not be interfered with by other states.[6] The international law that developed between the states, moreover, was enforced primarily by means of voluntary compliance.[7]

Two primary sources of international law developed within this system: customary international law and law created by an agreement (e.g., treaty) between states. Before the development of law-making treaties, which nearly overwhelm the international system today, international law was based primarily on the customary behavior of states.[8] Customary international law is generally recognized as binding by the world community.[9]

Treaty law developed mainly as a negative law, prohibiting specific actions by signatory states. It dealt "primarily with political matters: peace treaties, treaties of alliance and friendship, neutrality treaties, and treaties settling territorial claims."[10] Today, treaty law has the same binding force as customary international law.[11] In fact, many treaties are merely codification of custom. For a treaty to become binding upon a domestic legal system, however, it is generally recognized that there must be an act of transformation, that is, "a government action by the state incorporating the treaty norm into its domestic law."[12]

### *The United Nations International Legal System*

For the most part, the international law framework described above survives intact today.[13] However, since the arrival of the United Nations, the "many organizations that became its specialized and related agencies, which together constitute the UN System,"[14] have engendered important evolutionary change.[15] Perhaps the most significant developments have been the expanding number of treaties and other international agreements[16] and the inclusion in those treaties

of matters pertaining primarily to the status of the individual.[17] In fact, contemporary international law is fundamentally "concerned with the development of institutionalized human rights."[18] No longer is the relationship between states the primary (or only) consideration in the development and codification of international law; rather international law now increasingly deals with the relationship between international governmental organizations (IGOs) and the individual.[19]

As a result, and under the tutelage of the UN, the subject matter of contemporary international law has evolved significantly from the pure Westphalian model:

> [I]t differs . . . by a new quality of standards: prohibition on wars of aggression; prohibition of colonialism; the imposition of state responsibility for aggression and for other international violations such as genocide, racial discrimination, apartheid, et cetera; the international imposition of individual criminal responsibility for the violation of international law, as in acts of terrorism; the recognition of principles of self-determination of nations and peoples; the recognition and respect for human rights; and the peaceful resolution of international disputes. All of these standards are the basis of contemporary international law.[20]



Indeed, under the UN System, international law is now concerned with nearly every important aspect of modern society. International law no longer addresses only political matters, but "legal, social, cultural, economic, technical, and administrative matters as well."[21]

Furthermore, modern international law arises from a complicated morass of custom, treaty, formal agreement, informal agreement, debate, discussion, and conference declarations of "norms:"

> International law is manifested in a large variety of different types of instruments, such as treaties, nonbinding agreements, and declarations and decisions of international organs. All of these have the characteristics of "black letter" law in that the provisions can easily be read, although their binding force is widely differentiated and certainly cannot be defined by constructing hierarchies. There are also manifestations of the collective, coordinated, or merely parallel will of states that can be determined by studying their actions in the light of expressed or implied motives. Thus, in addition to the distinctions between black and increasingly gray letter law, there is the distinction between binding or "hard" law and various "softer" forms. The international legislative or norm-making process is similarly structured, and also confusing in that there is no simple legislature and no single source of administrative law. Instead, there are a multitude of norm-makers at every geographic level (i.e., global, regional, subregional, and so on), as well as inchoate processes that create and identify international customary and perhaps even general principles of law. Furthermore, the rather clear-cut relationship that exists at the domestic level between processes and products (e.g., a legislative body produces statutes) is by no means as simple internationally, where all sorts of processes can produce, as direct outputs or as indirect by-products, various types of hard and soft and written and unwritten law.[22]

The UN, in short, has significantly complicated the scope and processes of international law. The range and pervasiveness of the UN's influence, moreover, may be expanding.

The end of the Cold War has brought significant changes to the UN system.[23] The United Nations is more visible [24] and the Security Council and General Assembly are more active.[25] During the Cold War, the Security Council and General Assembly often played a relatively minor role in international politics because controversies regarding the power of these bodies were magnified by the bi-polarity of the two superpowers.[26] During this period, the UN System could only encourage states to follow the principles it had adopted. Since the Cold Wars demise, however, the UN has been thrust to the center of global affairs.[27] UN organs now take actions that go beyond mere "exhortation and admonition" on economic and social issues.[28] In particular, the UN's role in resolving disputes and functioning as a peacekeeper has increased dramatically.[29]

**The International Law Context of UN Conference Declarations**

United Nations conferences and their declarations fit into the "soft"—that is, not automatically binding—category of international law.[30] Although signed by representatives of the attending countries, conference declarations are generally perceived as instruments of exhortation to the world community regarding specified problems.[31] But, while technically "nonbinding," UN conferences have a unique and important role in defining issues and allocating responsibilities with respect to the topics addressed.[32]

As is typical of most international "soft" law, conference declarations primarily use nonobligatory language.[33] Certain actions "should" rather than "must" or "shall" be taken.[34] Despite such language, however, conference declarations are considered to have some binding effect.[35] One of the best examples is the 1975 Final Act of the Helsinki Conference on Cooperation and Security in Europe, which specifically stated that it was not binding.[36] Nevertheless, the act is often cited as the source of enforceable international legal obligations.[37]

In addition to using nonobligatory language, conference declarations generally do not employ the enforcement

mechanisms that have the greatest impact on the domestic policy of participating states. These mechanisms include reporting and supervision procedures,[38] facilitative mechanisms (such as armed peacekeeping forces),[39] expelling the state from the UN (or preventing it from taking part in its activities),[40] non-military enforcement (such as sanctions),[41] military enforcement,[42] and international judicial enforcement.[43] However, "a widely unappreciated fact [is that] a great deal of international law exists and is generally observed—usually without enforcement mechanisms."[44]

The subject matter of UN conferences involves issues of significant import that are generally being addressed contemporaneously by many other organizations and governments throughout the world. As such, the goals and recommendations articulated in a UN conference declaration may already be in an early (or advanced) stage of implementation by some states. Other states, not as far along in the goal formulation and implementation process, may use conference declarations as a planning and/or implementation outline. As a result, conference declarations almost certainly have a significant impact on the evolving discussions and planning decisions of world actors, although it is difficult to accurately assess the past or future effect of UN conferences on domestic law and policy.[45]

**The Probable Impact of UN Conference Declarations on Domestic Policy**

With the historical background of the international legal system and the context of UN declarations in mind, this Article will now focus on four major areas where UN conference declarations have had and/or potentially may have a significant effect on domestic law and policy: first, by articulating perceived principles of customary international law; second, by directing the actions of UN agencies; third, by shaping the decisions and plans of domestic actors; and finally, by molding political and public opinion.

*The Normative Influence of Conference Declarations*

Customary international law, as noted, is considered binding upon states. As a result, a technically nonbinding international instrument can become binding customary international law to the extent that it either crystallizes emergent rules of law or attracts uniform practice by participating states.[46]

Conference declarations are sometimes viewed as binding because they restate customary law. This concept is well illustrated by Principle 21 of the Stockholm Declaration, which was the product of the UN Conference on the Human Environment held in Stockholm, Sweden, in 1972. The declaration was regarded as nothing more than an advisory statement of purpose,[47] much like the exhortations of more recent UN conferences. Principle 21 of the declaration, however, has "acquired the force of a substantive rule of customary international law."[48] Principle 21 provides:

> States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

This Stockholm principle has been incorporated into "innumerable" international agreements and has been the basis for the expansion of international restrictions on transboundary pollution.[49]

Conference declarations, furthermore, can become binding even if they are not immediately perceived as restatements of customary law. "Customs," of course, are developed through uniformity of consistent practice revealed by one state's claims against another.[50] Accordingly, conference declarations may shape and direct the actions of nations, thereby facilitating the development of customary law. In the contemporary UN system, moreover, conference declarations may themselves be seen as evidence of uniform practice.[51] Some have even argued that the negotiation and drafting of an international instrument *creates* customary international law.[52]



Although in the past it took a rather long time for customary international law to develop, the acceleration of international interaction, brought on in part by the activities of the UN and other international governmental organizations, has resulted in the rather rapid creation of customary international law.[53] An extreme example of the rapidity with which customary international law may now be created is the emergence of the doctrine of "instant" customary international law.[54] Although disputed as a legitimate doctrine, it has been argued that a change to (or elimination of) an existing concept accepted as customary international law in a more recent nonbinding international instrument is an agreement that the older concept is no longer accepted by the international community.[55] As a result, the old concept is either no longer enforceable as customary international law or is changed "instantly" to be consistent with the new expression in the nonbinding instrument.

Returning to Stockholm Principle 21, an example of "instant" customary law is illustrated in recent efforts to change that principle at the Rio Conference.[56] The Rio Conference built upon many of the principles of the Stockholm Declaration. Principle 2 of the Rio Declaration on Environment and Development, for example, added "and developmental" to Stockholm Principle 21, so that states were authorized "to exploit their own resources, pursuant to their environmental *and developmental* policies."[57] Because

Stockholm Principle 21, without the developmental component, is regarded as customary international law, the change made by Rio Principle 2 has been argued to be an "instant" change of customary international law that is binding on states—even though the Rio Declaration purportedly is not binding.[58] But, regardless of whether customary international law can be changed instantly by a nonbinding international instrument, the debate reflects the reality that customary international law can be dramatically influenced by a nonbinding instrument—and without the passage of much time.

In addition to being a basis for the development of customary international law, conference declarations may establish "good practice standards" that are later codified into binding conventions or treaties.[59] There are numerous examples of declarations being converted later into binding instruments. The 1948 Universal Declaration of Human Rights was the foundation for the 1966 International Covenants on Economic, Social, and Cultural Right and on Civil and Political Matters.[60] These Covenants have been very influential. The 1963 Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space was the precursor to the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space.[61] Other types of nonbinding international instruments, such as model codes and guidelines, also have been precursors to international treaties and laws enacted by states.[62]



### *The Impact of Conference Declarations on UN Agency Action*

The United Nations system operates with the assistance of many agencies that have been assigned a particular responsibility, such as implementing a treaty, convention, declaration, or merely a provision of such a document. These agencies include, though are not limited to, the World Bank, International Monetary Fund (IMF), International Labor Organization (ILO), World Health Organization (WHO), UNICEF, and Habitat. Although some of these agencies enjoy at least some independence from the UN, such as the World Bank and IMF, they have their origins in the UN and continue to be tied, even if in only a limited sense, to its processes. These agencies, furthermore, have had an increasing impact on the domestic policy of purportedly sovereign states.

Much like agencies of domestic governments, UN agencies implement their mandates by directly applying an international instrument (e.g., a treaty or conference declaration), by promulgating and implementing its own regulations, or by implementing other internal UN regulations.[63] In recent years, the development of agency regulations has dramatically increased.[64] In fact, regulations are now developed and implemented in areas that traditionally have been reserved to the control of states.[65]

UN agencies, moreover, use nonbinding international instruments to expand the scope of their regulatory power.[66] By expanding the scope of international regulation through the use of non-binding international instruments, UN agencies—as a practical matter—have significantly relaxed the principle that no state can be bound to such documents without its consent.[67] As a result of this practice, "texts that are only recommendatory have as much effect as formal rules in channeling state conduct."[68]

UN agency regulations, furthermore, in certain instances, can lead to "a well-accepted body of international guidelines" articulating states duties in a particular area—such as the environment.[69] These guidelines, articulated by a UN agency, can become internalized in the practices and legal systems of states.[70] The development of such guidelines can be initiated by a nonbinding international instrument.[71]

In carrying out their expanding regulatory roles, UN agencies significantly impact the domestic policy of nations. Indeed, UN agencies may directly shape the relationship between the UN, domestic governments and private persons.[72] Those relationships are increasingly important as the world becomes more interdependent. At one extreme, a poor relationship between the UN or its agencies and a domestic government can lead to a state being cut off from the benefits of participation in the international community or the denial of aid or other assistance. On the other extreme, a good relationship can lead to financial, technical and even military assistance.

UN agencies also use innovative techniques to reinforce the scope and influence of their actions. UN agencies coordinate their activities with other international governmental organizations, nongovernmental organizations, and states sympathetic to their positions to draw upon the increased strength of combined efforts and resources. For example, a smaller UN agency, such as Habitat, might work with the much more powerful World Bank to achieve its goals. Through such coordination, financial and technical assistance can be made conditional on state compliance with a certain agency objective.[73] This has been called a "facilitative" process, by which the UN can induce state compliance on a matter to which the state may or may not have consented.[74] This facilitative process has been described as follows in the population control context:

> [E]xperts working for donor organizations such as USAID, UNFPA, or the World Bank form alliances with like-minded local government officials, in-country researchers, or leaders of key [nongovernmental organizations] such as family planning associations to propose policy solutions to recipient governments. A donor agency may appoint a population advisor to work with the government planners to formulate and implement an "official" demographic policy, with

emphasis on the need to reduce birth rates through the promotion of family planning programs.[75]

This "facilitative" process can have not only a significant—but a debatable—impact. For example, Dr. Margaret Ogola, a physician and general practitioner in Kenya, feels that the efforts of UN bodies and other nongovernmental organizations in providing condoms and IUDs to curb population growth in Kenya is not only misdirected, but is causing the spread of AIDs:[76]

> [T]o quote one patient of mine, who was thoroughly horrified at the way Kenyans by the thousands are falling to AIDs, declared, "Doc, we are dying like flies!" The only answer that the nongovernmental organizations (NGOs) and UN bodies have is to make condoms freely available, thus adding fuel to the flame.[77]

Regardless of how one feels about population control and the methods of UN agencies and NGOs in Kenya, Dr. Ogolas comments show that coordinated activities have significant effects.

UN conferences, finally, have played an important role in influencing the types of activities UN agencies pursue. The conferences have served as "catalytic agents in the process of redirecting and reforming the system."[78] Agency actions which deal in the subject area of a conference are strongly influenced by the conference and its declarations. This is well illustrated by the recent evolution of the international law of development.

The Vienna Conference Program of Action directs the World Bank to assess the social impacts, including human rights effects, of its financed projects.[79] In the past, the World Bank and the International Monetary Fund have been reluctant to consider human rights or other noneconomic considerations in loan determinations.[80] However, in light of the controversy surrounding their continued connections with South Africa at the same time that the General Assembly was renouncing South Africa's polices of racial discrimination,[81] both the World Bank and the International Monetary Fund reconsidered that position. As a result of the South Africa controversy, the admonition by the Vienna conference, and other political pressures, the World Bank and other international development agencies now incorporate human rights into their guidelines.[82] Accordingly, UN conferences, along with other influences, enable states, international development agencies, and nongovernmental organizations to "interact and develop common standards to be imposed on national and international agencies engaged in the business of development."[83]

*The Direct Effects of Conference Declarations on Domestic Policy*

The two previous subsections of this article dealt primarily with how UN conferences and their declarations may impact the *international* legal system, with subsequent consequences for domestic law and policy. This subsection, however, deals specifically with direct *domestic* enforcement and implementation of conference declarations. Without doubt, a conference declaration would have its greatest impact if it were enforceable through domestic courts.[84] It is generally recognized, however, that conference declarations have no direct binding force upon a domestic legal system. But that does not mean that conference declarations have little effect on domestic policy.

It has been argued that conference declarations should be enforced directly by domestic courts as "authoritative" interpretations of international law authorized by Articles 55 and 56 of the UN Charter.[85] If a state has ratified the UN Charter, as nearly all have, some argue that a declaration—under the obligatory force of the Charter—is binding upon the state. This theory, however, has enjoyed limited (or no) success to date. In the United States, for example, courts have routinely rejected it.[86] The nonobligatory language of conference documents suggests that the documents were never intended to create binding obligations and are merely recommendations for future action.

But, even if not formally binding, domestic courts *may* use conference declarations to "shape" domestic law. In the area of human rights,[87] advocates have argued that domestic courts can rely upon nonbinding principles articulated in international instruments and conference declarations in construing domestic law, even if direct application of a particular principle is impossible.[88] In the United States, for example, where many of the most recent human rights treaties and conventions have no binding effect because they have not been ratified by the United States Senate, litigants have nevertheless invoked nonbinding UN documents. The approach, furthermore, has had some success.

In *Thompson v Oklahoma*, the United States Supreme Court found that the execution of a sixteen-year-old for a brutal murder he committed at age fifteen was "cruel and unusual punishment" prohibited by the Eighth Amendment to the United States Constitution. In finding the execution would violate the Eighth Amendment, the court relied, in part, on the International Covenant on Civil and Political Rights and the American Convention on Human Rights—even though these documents were not binding in the United States, because (at the time of the decision) they had not been ratified.

The direct enforceability of formally nonbinding instruments in domestic courts may be limited to gross violations of human rights.[89] It is important to note, however, that less than sixty years ago even gross violations of human rights were not considered challengeable on the basis of nonbinding international declarations. It is, therefore, possible that—within the next sixty years—the principles articulated at the

World Summit on Children will carry the same weight and be used in a similar manner as the nonbinding instruments in *Thompson*.[90]

Outside of the courts, conference declarations have had a significant impact on domestic governmental systems through implementation of the documents by the executive arms of domestic governments. Even though conference declarations are not binding, some governments have voluntarily implemented the articulated principles.[91] In fact, precisely because conference declarations are nonobligatory and therefore do not require formal domestic ratification like a treaty, the executive branch of a domestic government may be able to implement the declarations solely through executive action.[92] In the United States, for example, the Clinton Administration formed an interagency task force and commission to implement the Beijing document. The task force and commission educated various federal agencies regarding Beijing recommendations and implemented the document through domestic regulations. As a result, portions of the Beijing document were incorporated directly into United States policy—even without formal adoption of that document (or its stated objectives) by the United States legislature.[93]

*The Effect of Conference Declarations on Political Discussion*

Conference declarations have a significant impact beyond their role in developing customary law, directing the actions of UN agencies, and shaping domestic policy. Conferences and conference declarations influence public opinion, attract media attention, and generate political pressures that are important factors at all levels of the international and domestic legal systems.[94]

These are amorphous and interdependent factors.[95] Public opinion is strongly influenced by the amount of attention a conference is given by the media.[96] The Beijing Conference on Women, for example, received vast media coverage. Perhaps as a result of that media attention, the Clinton Administration implemented the Beijing declaration even without supporting legislation from the United States Congress. It would be difficult to determine what effect the media attention in Beijing had on the administration's actions. However, political reality would dictate that the president of the United States would not implement the non-binding Beijing declaration without public support. Accordingly, the substantial media coverage of the Beijing Conference undoubtedly had a role in defining women's issues for the American public.

Conferences not only influence the opinion of the general public, but the opinion and efforts of smaller groups and nongovernmental organizations as well.[97] Declarations give individuals and groups who feel wronged by their government a tool to use in negotiations with the government. These groups, with the legitimizing support of a conference declaration, can be a strong force in swaying public opinion and governmental policies toward compliance with the declaration. Indeed, such groups—to the extent they gain popular support—can make it politically impossible for a government *not* to comply with principles stated in a UN conference declaration.[98]

Political pressures and public opinion, however, can also *prevent* a government from implementing a conference declaration. For example, in the context of population control, local citizens supported by their local leaders have sometimes resisted state population policies which threaten their survival strategies.[99] This resistance can essentially stifle state efforts to comply with policies enunciated at international population control conferences.[100] Therefore, the distribution of political power within a country can greatly influence whether a conference declaration will (or can) be implemented.

## CONCLUSION

To date, the signature of a state representative on a UN conference declaration has not been seen as a clear indication of that state's acceptance of the principles therein contained or of the state's commitment to future compliance. Indeed, nonbinding commitments may be made only to reach consensus or to "appease popular or 'politically correct sentiment."[101] In fact, one writer has noted that, in a conversation with a Latin American lawyer-diplomat, he was told that treaties signed by the lawyers country were negotiated by the Ministry of Foreign Affairs and, when approved, were locked in a cabinet and almost never seen again.[102] Such an approach to the negotiation and finalization of UN conference declarations is unwise.

Although the precise influence of UN conference declarations on particular topical areas is debatable,[103] there can be little question but that conference declarations *do have* an impact. Each conference builds upon language used and objectives sought in preceding conferences and—as a result—forms an important link in a chain that inevitably encircles the international community.[104] The conferences, moreover, have become unique vehicles for mobilizing governmental and nongovernmental entities regarding global causes.[105] They also have been the impetus for the growth of new international law, particularly in the fields of human rights, development and the environment.[106] Perhaps most importantly, however, conference documents—although not formally binding upon participating states—over time develop the force of customary international law and serve as important resources in the interpretation (and sometimes development) of the domestic policy of participating nations.

This final point suggests that all participating nations should take very seriously indeed the language they incorporate into a UN declaration. Language may be precatory or exhortive today. That same language, however, may well become binding tomorrow.

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NOTES

1. Nafis Sadik, *Reflections on the International Conference on Population and Development and the Efficacy of UN Conferences*, 6 *Colorado Journal of International Law and Politics* 249, 252–53 (1995) ("More than any previous events of their kind, these conferences have fostered the mobilization and participation of civil society and the private sector in the affairs of the international community. . . . The process has nurtured the growth of democracy at the national level and democratized processes at the international level increasing their transparency and accountability.").

2. Oscar Schachter, *The UN Legal Order: An Overview,* in 1 *United Nations Legal Order* 1, 3 (Oscar Schachter and Christopher C. Joyner, eds. 1995).

3. Oscar Schachter, *The UN Legal Order: An Overview,* in 1 *United Nations Legal Order* at 11 (Oscar Schachter and Christopher C. Joyner, eds. 1995). States have been dominant actors in international systems throughout history, but the Treaty of Westphalia is recognized as the event that placed states in their dominant position in modern international law. *See* Oleg I. Tiunov, *Concepts and Features on International Law: its Relationship to Norms of the National Law of the States*, 38 *St. Louis U. L.J.* 915, 916 (1994) (states were the actors in the earliest international law).

4. Schachter, *supra* note 3, at 5.

5. Tiunov, *supra* note 3, at 916.

6. *Ibid.* at 916, 919; Richard B. Bilder, *An Overview of International Human Rights Law*, in *Guide to International Human Rights Practice* 3, 4 (Hurst Hannum, ed. 1992, 2nd ed.).

7. Tiunov, *supra* note 3, at 916; *see also* Bilder, *supra* note 6, at 12.

8. Paul Szasz, *General Law-Making Processes*, in 1 *United Nations Legal Order* 35, 41 (Oscar Schachter and Christopher C. Joyner, eds. 1995); *see also* Tiunov, *supra* note 3, at 916–17 (Middle Ages international law was based on customs, religion and power. "International custom is the other great source of classical international law. Well before the development of law-making treaties, international law was based mostly on the customary behavior of states. . . .").

9. In the United States, customary international law is regarded to be a form of federal common law. It has the same status as treaty law, and has been held to be a component of the "law of the land" to which the Supremacy Clause of the United States Constitution requires adherence. E.g. Marc-Olivier Herman, *Fighting Homelessness: Can International Human Rights Law Make a Difference?*, 2 *Geo. J. Fighting Poverty* 59, 72 (1994).

10. Martin A. Rogoff & Barbara E. Gauditz, *The Provisional Application of International Agreements*, 39 *Maine Law Review* 29 (1987).

11. Tiunov, *supra* note 3, at 916–17 (treaties are nearly as old as customary law and were entered into even at the earliest times and became quite prevalent in the middle ages.).

12. For role of treaties and other binding international instruments in domestic law see John H. Jackson, *Status of Treaties in Domestic Legal Systems: a Policy Analysis*, 86 *American Journal of International Law* 310, 331 (1992). In the United States, a treaty must be ratified before it becomes binding. Ratification involves approval by the Senate and the signature of the President. Once a treaty is ratified in the US, it is treated the same as other federal law. Marc-Olivier, *supra* note 9, at 72. There are other states that require more than ratification, such as a further effort by the government to incorporate the treaty into domestic laws. See Tiunov, *supra* note 3, at 315 & n. 20.

13. Schachter, *supra* note 3, at 28 ("States are regarded as the principle actors in creating and applying law. Their independence and formal equality are taken as axiomatic. The principles of territorial integrity and *pacta sunt servanda*, as well as the customary rules of diplomatic intercourse, are accepted in the UN system, as they are in general international law. Also accepted is the basic divide between the international and domestic domains, though . . . the line between them may change or blur in particular cases.").

14. Szasz, *supra* note 8, at 40.

15. Tiunov, *supra* note 3, at 920, 922 (League of Nations was commencement of modern era but really was only a laboratory for the later real event; the creation of the UN). See also Bilder, *supra* note 6, at 4 (UN human rights focus causes dramatic increase in human rights documents). *See also id.* at 3 ("It is a new world in that only a century ago there were relatively few international organisations and any conception of a system or network was at best embryonic."). Hurst Hannum, *Human Rights*, in 1 *United Nations Legal Order* 319 (Oscar Schachter and Christopher C. Joyner, eds. 1995); Tiunov, *supra* note 3, at 922–23; Schachter, *supra* note 3, at 23–24 ("[I]n today's perspective, it is not surprising that international legal regimes have proliferated in response to new needs and pressures. We are acutely aware of the impact of change through new technology, the population explosion . . . The emergence of new actors, the claims of former submerged peoples. . . . Matters once solely of local concern now have impact across national borders. . . . [many problems] are perceived to require norms and procedures for resolving conflicts and collective action to render them effective. The availability of international institutions and the permanent conference machinery makes it virtually certain that law (hard or soft) will be created, adapted and applied to many of these problems.").

16. Rogoff & Gauditz, *supra* note 10, at 36–37 ("[A]ll types of international law, especially treaty law, are being created at an ever-increasing rate—indeed at a rate that sometimes seems to exceed the capacity of the international community (and especially its newer and less well-equipped members) to absorb and digest all the new norms.").

17. Schachter, *supra* note 3, at 24.

18. Tiunov, *supra* note 3, at 919.

19. *Ibid.*

20. *Ibid.*

21. Rogoff & Gauditz, *supra* note 10, at 29–30.

22. Szasz, *supra* note 8, at 35–36.

23. Schachter, *supra* note 3, at 1 ("There was good reason to take a close look as the ways in which international organizations produced and applied law in the many different fields of international concern [after the end of the Cold War].").

24. *Ibid.* ("The end of the Cold War gave new visibility to the United Nations and raised hopes for a more effective international legal order.").

25. *Ibid*. at 9, 12. ("The end of the Cold War brought to an end some of the old controversies [particularly regarding the power of the Security Council and General Assembly with respect to domestic matters and obligations of states on issues of self-determination and human rights] but new debates have arisen as a consequence of a more active Security Council and marked increase in cases involving UN sanctions and internal conflicts.").

26. Anthony Clark Arend, *The United Nations and the New World Order*, 81 *Georgetown Law Journal* 491, 492 (1993).

27. *Ibid*.

28. Schachter, *supra* note 3, at 15–16; *see also* Oscar Schachter, *United Nations Law*, 88 *American Journal of International Law* 1, 10 (1994).

29. Of course, with this increased activity, the effectiveness of the UN is also being questioned more than in the past. This questioning arises from, among other things, the UNs failure or inability to resolve certain crises. I.e., Bosnia and Somalia. Questions regarding the UNs effectiveness may spill over into its activities in other areas—such as the role and place of UN conferences.

30. *See* Jiri Toman, *Quasi-Legal Standards and Guidelines for Protecting Human Rights*, in *Guide to International Human Rights Practice* 192 (Hurst Hannum, ed. 1992, 2nd ed.)

31. Conferences operate in much the same way the UN General Assembly operates, by attempting to reach a worldwide consensus through "inclusiveness in membership and mandate." Sadik, *supra* note 1, at 249 ("At the local and national levels, the necessary consensus [for questions of rights, obligations and responsibilities] is achieved through numerous public and private political, economic, and social institutions and modalities. At the international level, however, there are few institutions suitable for implementing such a consensus-building process. Because of its inclusiveness in membership and mandate, the United Nations General Assembly is the natural institution to which to turn. The general Assembly, aware of its inherent limitations in this regard, has found it necessary to convene international conferences for this purpose. United Nations (UN) conferences have a very important role to play in meeting today's demands for global action: they help define issues and allocate responsibilities, and the preparatory activities for each conference serve to create the modicum of consensus necessary to (at the very least) prevent even more global instability and disarray than exists today.").

32. *IIbid.*; James C.N. Paul, *The United Nations and the Creation of an International Law of Development*, 36 *Harvard International Law Journal* 307, 315 (1995); *see also* Sadik, *supra* note 1, at 249.

33. Szasz, *supra* note 8, at 46.

34. *Ibid*. One of the primary reasons nonobligatory language is used is because a declaration is generally easier to formulate and consensus is more easily reached without obligatory language. In addition, because declarations do not have formal obligatory force, the procedures for producing them often lack "the political safeguards that generally inform the international legislative process."

35. *Ibid.* at 38–39.

36. *Ibid.* at 46 n.16.

37. *Ibid.*

38. Schachter, *supra* note 3, at 16.

39. *Ibid.* at 17.

40. *Ibid.*

41. *Ibid.* at 18.

42. *Ibid.* at 19.

43. *Ibid.*

44. Szasz, *supra* note 8, at 36.

45. David A. Wirth, *The Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa?*, 29 *Georgia Law Review* 599, 649 (1995) ("If the history of the Stockholm Declaration teaches anything, it is [that] the long-term significance of a nonbinding, aspirational statement of purpose such as the Rio Declaration, the content of which may be responsive to immediate political and policy imperatives, cannot be predicted with certainty. Moreover, the trajectory of discrete components of such an instrument may vary considerably as states make selective use of individual principles. . . . States experience in applying these principles may further elaborate, entrench, and codify these exhortations from both the policy and legal points of view.").

46. Schachter, *supra* note 3, at 4; Toman, *supra* note 30, at 192.

47. Wirth, *supra* note 45, at 602 and n.10.

48. *Ibid.* at 620 & n.56.

49. *Ibid.* at 600–601 ("The United Nations Conference on the Human Environment (Stockholm Conference), held in Stockholm from 5–16 June 5 to 1972, generally is considered a major turning point that 'marked the culmination of efforts to place the protection of the biosphere on the official agenda of international policy and law") (quoting Lynton K. Caldwell, International Environmental Policy: Emergence and Dimensions 55 (2d ed. 1990).

50. Herman, *supra* note 9, at 72; Bilder, *supra* note 6, at 10 ("Customary international law is defined as a consistent practice in which states engage out of a sense of legal obligation.").

51. Schachter, *supra* note 3, at 4.

52. *Ibid.* Conference documents are viewed as significant international instruments because they are the result of consensus, following much debate and deliberation. Hannum, *supra* note 15, at 336 n.77; see also Paul, *supra* note 32, at 315 ("Because world conferences provide potential opportunities for global popular participation, expert consultations, and, sometimes, vigorous debate, they can in theory, become unique vehicles to elaborate norms (cast in the form of legal instruments) governing development.") As such, conference declarations are imbued with a strong expectation that members of the international community will abide by them. As

this expectation is justified by state practice, including activities within the UN organization, the principles of the document may—by custom—become binding upon a state.

53. Szasz, *supra* note 8, at 42.

54. *Ibid.*

55. *Ibid.*

56. Wirth, *supra* note 45, at 623 and nn.53–65)

57. *See Ibid.* at 620. The original text of Principle 21 is set out in the discussion preceding note 49.

58. It is generally accepted that the Rio Conference did change many well-accepted principles of customary international environmental law. *Ibid.* at 648.

59. Szasz, *supra* note 8, at 47, 98; Wirth, *supra* note 45, at 602–603.

60. Szasz, *supra* note 8, at 47 and n.18

61. *Ibid.*

62. *Ibid.*; Paul, *supra* note 32, at 317.

63. Hannum, *supra* note 15, at 339–40; Schachter, *supra* note 28, at 6.

64. *See* Szasz, *supra* note 8, at 36–37, 48; *see also* Section I historical section.

65. *Ibid.*

66. Schachter, *supra* note 3, at 7.

67. *Ibid.*

68. *Ibid.*; *see also* Frederic L. Kirgis, Jr., *Specialized Law-Making Processes*, in 1 *United Nations legal Order* 109 (Oscar Schachter and Christopher C. Joyner, eds. 1995) (UN organizations "have the capacity to channel the conduct of members in a way that are designed to advance, or at least not impede, an organizations attempts to achieve its stated goals. [Norms] are promulgated or established by bodies recognized as legitimate by the members, and as a result they command the respect, even if not always the strict obedience, of decision makers in national governments"). Some might argue that, by cooperating with UN agency regulations, a state is in fact consenting to the application of formal rules. Paul, *supra* note 32, at 311. To the extent states participate in the implementation of these regulations, states could be considered co-creators of the international regulation and consenting, through their conduct or acquiescence, to the agency action. Szasz, *supra* note 8, at 67; *see also* Paul, *supra* note 32, at 310–311. The effectiveness of the regulations, in fact, depends entirely on the "readiness of the member states to work together." Paul, *supra* note 32, at 311. A response to this view, however, would be that it ignores the "forces that have been mobilized within the UN system to influence both the content of the [international law of development] and efforts to enforce it." *Ibid.* at 310.

69. Wirth, *supra* note 45, at 637.

70. Szasz, *supra* note 8, at 48.

71. Wirth, *supra* note 45, at 637.

72. Schachter, *supra* note 28, at 6; *see also* Szasz, *supra* note 8, at 100.

73. Schachter, *supra* note 28, at 11.

74. *Ibid.*

75. Ruth Dixon-Mueller, *Population Policy and Womens Rights* 196 (1993).

76. Margaret Ogola, "Kenya: A Targeted Nation," *Social Justice Review*, July/August 1994, 123, 124.

77. *Ibid.*

78. Sadik, *supra* note 1, at 253.

79. Paul, *supra* note 32, at 315 (citing United Nations, World Conference on Human Rights: Vienna Declaration and Programme of Action, Vienna, 14–25 June 1993, UN Doc. A/Conf.157/24 (part I((1993) reprinted in 32 I.L.M. 1661. Art II(1)).

80. Klaus T. Samson, *Human Rights Coordination Within the UN System*, in *The United Nations and Human Rights* 620, 663 (Philip Alston, ed. 1992).

81. *Ibid.*

82. *Ibid.* at 664; Paul, *supra* note 32, at 315–328.

83. Paul, *supra* note 32, at 309–310, 327 (citing S. Leckie, Towards an International Convention on Housing Rights: Options at Habitat II, (American Society of International Law Papers on World Conference NO. 4, 1994)).

84. As mentioned earlier, international enforcement mechanisms as yet do not compare with the force or legitimacy of domestic ones. Schachter, *supra* note 28, at 14.

85. *See* Szasz, *supra* note 8, at 4; Herman, *supra* note 9, at 70–71; Jackson, *supra* note 12, at 331.

86. *See Sei Fuji v California*, 242 P.2d 617 (Cal. 1952); *see also* Herman, *supra* note 9, at 71 and n.157.

87. Bilder, *supra* note 6, at 6–7 ("[T]here are a great number of international declarations, resolutions, and recommendations relevant to international human rights that have been adopted by the United Nations or by other international organizations or conferences. While these instruments are not directly binding in a legal sense, they establish broadly recognized standards and are frequently invoked in connection with human rights issues.").

88. Herman, *supra* note 9, at 72.

89. *Ibid.*

90. Herman, *supra* note 9, at 72–73 ("Perhaps the most realistic and effective litigation strategy is to suggest to a court that the norms of international human rights law are guides to interpreting federal, state, and local laws.") *See also* Bilder, *supra* note 6, at 11 ("[N]ational courts may be responsive to arguments that domestic law should be interpreted consistently with international human rights standards, particularly in cases where an inconsistent interpretation, even if not technically a breach of law, might nevertheless be politically embarrassing.") *See* also Jackson, *supra* note 12, at 312 and n.12.

91. Jackson, *supra* note 12, at 313.

92. *See* Rogoff & Gauditz, *supra* note 10, at 33; Toman, *supra* note 30, at 193.

93. *See* Szasz, *supra* note 8, at 98

94. *See* Schacter, *supra* note 28, at 22–23; Toman, *supra* note 30, at 208 (the effectiveness of international standard setting instruments "varies in direct proportion to the extent they are

publicized, utilized, and taken seriously by those affected by them.").

95. *See* Schacter, *supra* note 28, at 22.

96. *Compare* Hannum, *supra* note 15, at 23.

97. *See* Schacter, *supra* note 28, at 22; Hannum, *supra* note 15, at 338; Dixon-Mueller, *supra* note 75, at 197.

98. *See* Bilder, *supra* note 6, at 11.

99. *See* Dixon-Mueller, *supra* note 75, at 197.

100. *Ibid.*

101. Neil H. Afran, *International Human Rights Law in the Twenty First Century: Effective Municipal Implementation or Paen to Platitudes*, 18 *Fordham International Law Journal* 1756, 1758 (1995).

102. Jackson, *supra* note 12, at 322 n.70.

103. *See* Schacter, *supra* note 28, at 161 ("While the results of these [human rights] efforts remain uncertain (and, to some, questionable), they do evidence the importance attributed to the human rights movement and ideology."); Szasz, *supra* note 8, at 107 ("Partly because the record keeping of the international legislative process remains woefully fragmented and underdeveloped, it is difficult to establish anything like a complete catalog of all its accomplishments, or even to determine in which fields it has been most productive and effective.").

104. *See* Sadik, *supra* note 1, at 252.

105. *Ibid.*; *see also* Paul, *supra* note 32 at 315.

106. *See* Paul, *supra* note 32 at 327.