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The United Nations General Assembly Resolution (UNGAR)¹ As a Source of International Law: Toward a Reformulation of Sources of International Law

M. Ya'kub A. Kadir²

The changes in international community since 1945 have led to fundamental disputes on the sources of international law, in particular, the notion of the United Nation General Assembly Resolution to be a source of international law in comparison to the traditional sources as stated in article 38(1) International Court of Justice Statute. The fact that the existed sources are not able to maximize the role of international law in maintaining peace and security in the world would be an essential trigger to have a preliminary discussion on the issue. This paper attempts to identify to what extend the possibility of UNGAR to be a source of international law in conformity with the principle of democracy and justice.

Keywords: *United Nation General Assembly Resolutions, Source of International law, Peace and Security*

I. Introduction

When dealing with question related to sources of international law, international jurists and state usually would automatically resort to the article 38 the statute of international court of justice (ICJ). This article has been applied by the ICJ to be sources of law in deciding disputes. However, nowadays, the source to some extent considered not applicable enough since the quick development of international community. International law which is much dominated

¹ The abbreviation "UNGAR" will be used in a whole essay to indicate the United Nation General Assembly Resolution.

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by western states particularly Europeans and the United States³ have narrowed the space of the other parts of the world to equally participate in the international sphere. It can be noted that the Charter of the United Nations have exclusively given the powerful role to the Security Council, which merely have five permanent members and ten non permanent members.

In one side, it is merely the source of international court of justice when handling any international cases. The approach to take this automatically to be the sources of international law should be considered premature, since it has not represented the world community legal system equally⁴. Therefore, the new approaches to adjust the source of international law to the ongoing occurrences need to take into account seriously.

Unlike national or domestic law, international law is not set down in any legislation approved by a parliament. Even multilateral treaties do not apply to all states, but only to those, which have consented to be bound, by signing and ratifying or acceding to them. As a result, the precise rules of international law are often more difficult to identify than national laws, and may be found in a variety of sources. There no international legislative body to make rules or law of international society. Single international organization which conducts legislative function is General Assembly of United Nation Organization, but its role and the authority did not perceived to be powerful. This is still considered as a political forum that works in formalities. Many resolutions have issued by the General Assembly in maintaining peace and security in the world. However, it would be more ceremonial since it has no binding rules based. In addition, there is international conferences can be defined which carried out in United Nation Organization framework to study certain problems, but do not always formulate law-making treaties.

So that the new source proposal should be a representative of different international legal system. The UNGAR has been a contentious issue in framing to what extent they can be considered as a source of International law. This question emerges when many international organization resolutions have arisen.

³ See the five permanent members of the Security Council and its powerful role in decision-making process which is negated to the role of the General Assembly. See article 10-14 of the Charter of the United Nations 1945, Ibid. p 10-11.

⁴ See an example of the third source of international law based on article 38 ICJ : " the general principle of law recognised by the civilised nations". It is hard to define the civilised nations and it tends to a huge bias in implementation.

The United Nations General Assembly has been considered as the representative of states in the world. Given that it is not mentioned in the article 38 ICJ Statute, its strong position reserves to be stand equal to other sources such as international conventions, international customs, general principle of law, and so forth. Unfortunately, the effort to formulate this as a source of international law is conceived not sufficient. Many scholars are still not paying much attention to construct legal argument in developing source of international law⁵ in the future. Mostly, they still consider the UNGAR as a 'recommendation'⁶ that is not binding, rather than source of law or law making treaties. Consequently, it has influenced the development of International law in general.

The problem concerning the relationship between International Law and Municipal law influences this issue. Moreover, there is no sound theoretical evidence signified it due to the absence from the International Court of Justice Convention (ICJ) article 38 (1).⁷ On the other side, there are many UNGAR have been admitted by most nations as binding moral rules or as *Jus cogen*,⁸ for examples, the Declaration of Human rights 10 Dec 1948, self-determination, anti-discrimination, anti-genocide and anti slavery.⁹ However, some UNGAR cannot be formally applied due to some political interest of states.¹⁰

⁵Comparing to the sources of Islamic Law, consensus of Ulama called 'Ijma' have been a third source after Al-Qur'an and Al-Hadith. See Abdul Wahhab Khalaf, *Ushul al-Fiqh* (Dar-al-Qalam Cairo, 1986) 24.

⁶ See article 13 of the Charter of the United Nations.

⁷According to article 38(1) of Statute of International Court of Justice, the sources of International law are International conventions, international customs, general principle of law, judicial decision and the teachings of the most highly qualified publicists of the various nations.

⁸ (Latin: coercive law) a rule or principle in international law that is so fundamental that it binds all state and does not allow any exceptions (sometimes called peremptory norms), for instances: the law prohibiting slavery, genocide, piracy, and acts of aggression or illegal use of force. Martin Elizabeth A (Eds) *Oxford Dictionary of Law* (fifth edition Oxford University Press, 2002) 274.

⁹ Other examples are: the UNGAR No.1803 (XVII) regarding the "Permanent Sovereignty over natural resources" Dec. 14, 1962, Declaration on the Establishment of a new economic order" UNGAR No.320 (XX VIII) 9 May 1974, and Charter of Economic rights and duties of states (UNGAR No.3281/XXIX 15 Jan 1975).

¹⁰ See UNGAR 3314 (XXIX) on 14 December 1974 on the definition of aggression that has not used as a source of international law. Meanwhile in article 5 Rome statute 1998 on the international criminal court which is no definition of aggression. It refers to the role of the Security Council as stated to the charter of the United Nations. Also the UNGAR on the new economic order which is still a document.

In contrast to the agreed sources listed in the ICJ Statute, state practice in recent years, inside and outside international organizations, increasingly has placed normative statements in non-binding political instruments such as declarations, resolutions, and programs of action, and has signaled that compliance is expected with the norms that these texts contain. Commentators refer to these instruments as "soft law" and debate whether the practice of adopting them constitutes evidence of new modes of international law-making. States, however, appear clearly to understand that such "soft law" texts are political commitments that can lead to law, but they are not law, and thus give rise only to political consequences.¹¹

Soft law comes in an almost infinite variety. Many non-binding normative instruments emerge from the work of international organizations, which in most instances lack the power to adopt binding measures. The Security Council, under Article 25, is one of the few international bodies conferred the power to bind states and demand compliance with the measures it adopts. The General Assembly, in contrast, is granted authority in the UN Charter to initiate studies, discuss matters, and make recommendations. Thus, whether the General Assembly denominates a text declaration, set of guidelines, or charter, the text remains a recommendation. Nonetheless, the choice of titles is significant. The practice of the General Assembly confirms that states call a text a "declaration" in accordance with this interpretation¹². Some scholars distinguish hard law and soft law by affirming that a breach of law gives rise to legal consequences while breach of a political norm gives rise to political consequences.

Identifying the difference in practice is not always easy, however, because breaches of law may give rise to politically-motivated consequences and failure to implement non-binding norms may result in retaliatory sanctions indistinguishable from countermeasures in the law of state responsibility. Dinah L. Shelton stated that Soft law norms also may become "hard" law through adoption by states in their domestic law, or by the incorporation into private binding agreements. In general, Shelton considered soft law as a non binding law and can led to customary law through state practice.¹³

This essay concerns with the problem of to what extent UNGAR become

¹¹ See Dinah L. Shelton, *Hand Book of International Law* (Routledge Press, Washington DC, 2008) p 2-3

¹² See Dinah L. Shelton, *Ibid*, p 3-4

¹³ See Dinah L. Shelton, *Op cit*.

a source of international law sources. It will be divided into three parts; the introduction, the source of international law, the UNGAR as sources of International Law and eventually the conclusion.

II. The Source of International Law

Sources of law can be understood as a material that can produce law, causal relation led to law and a visible concrete thing. The visible sources are classified to be written and unwritten sources. The former are such as conventions, resolutions, the latter are such as custom, jurist opinion.¹⁴ The usage of term formal and material sources does not consistently used, even it is sometimes interchangeable.

The difficulty in identifying the source of international law is indicated in article 24 of the statute of the international law commission, which provide the commission

" shall consider ways and means for making the evidence of customary international law more readily available, such as the collection and publication of documents concerning state practice of the decisions of national and international courts on questions of international law, shall make a report to the General Assembly on this matter".¹⁵

The effort to make a codification of international law has been assigned the international law commission, but there have been many challenges in achieving its goal.

According to Salmond

"A formal source is that from which a rule of law derives its force and validity.... The material sources, on the other hand, are those from which is derived the matter, not the validity, of the law. The material source supplies the substance of the rule to which the formal source gives the force and nature of law".¹⁶

Where do international lawyers look to find international law? There are, in the context of international law, recognized and accepted methods by which legal rules come into existence (formal sources) as well as several ways in which

¹⁴ See Parthiana, I Wayan, Pengantar Hukum International, (CV. Bandar Maju, Bandung, 2003) p. 193-195.

¹⁵ See R. Coquia, Jorge and Santiago, Miriam Defensor, International Law, (Central Professional Books, Inc, philipine, 1998) p. 23-24.

¹⁶ Salmond, J.W., Jurisprudence (7th.ed., 1924) p. 24.

the precise content of legal rules can be identified (material sources) These are the sources of international law.¹⁷

Article 38 of the Statute of the International Court of Justice is always the starting point for any study of the sources of international law, namely:

The court, whose function is to decide in accordance with international law such dispute as are submitted to it, shall apply:

- (a) International conventions, whether general or particular, establishing rules expressly recognised by contesting states;
- (b) International custom, as evidence of a general practice accepted as law;
- (c) The general principles of law recognised by civilised nations;
- (d) Subject to the provisions of article 59, Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.¹⁸

These provisions are expressed in terms of the function of the Court, but they represent the previous practice of arbitral tribunals, and are generally regarded as an authoritative statement of the sources of international law. Some writers have criticized the article on the ground that it does not list all the sources of international law, or that it includes aspects which are not genuine sources, but none of the alternative lists which have been suggested has won general approval.¹⁹ It is therefore proposed to examine the sources listed in the Court's Statute before considering other possible sources of international law.

A. International Convention

International conventions are defined in the Vienna Convention on the law of treaties²⁰ as international agreements concluded between states in written

¹⁷ Abdul Ghafur Hamid and Khin Maung Sein, *Sources of International Law: A Re-Evaluation* (IUM Law Journal, Vol. 11, No. 2, 2003) p. 3.

¹⁸ Article 59 stated that "the decision of the court has no binding force except between the parties and in respect of that particular case". See completely related article of Statute of the international court of justice (1945) in Evan, Malcom D, *International Law Documents*, (3rd edition, Backstone, 1991, London) p.26-36.

¹⁹ The International Court of Justice has been prepared to consider other sources not listed in Article.

form and governed by international law.²¹ They are considered to incorporate definitive legal commitments on behalf of parties.²² It is an agreement made between two or more States or other subjects of international law. A treaty is based on consent. Such consent may be expressed by one of the accepted methods (signature, ratification, accession, etc.). Once a treaty has entered into force, it is binding on the parties to it. By virtue of the maxim *pacta sunt servanda*, States parties shall perform the treaty in good faith. In other words, the treaty is the law for the parties. Failure to comply with the terms of a binding treaty will incur international responsibility unless a defense is available²³. The international conventions, in brief, may have merely restate a pre existing rule of custom, Crystallize an emergent rule and serve as the focal point for a subsequent practise of state, which, in due course, hardens into a customary rule²⁴. International convention has a potent power in international law due to the essence mostly come from the states concerns. In addition, the development of conventions seems relatively fast in comparison to the others.

B. International Custom

International custom has been considered by the ICJ on a number of occasions. In the continental Shelf decision²⁵, the ICJ set out the requirements as follows

"The material of customary international law is to be looked for primarily in actual practice and *opinio juris* of states, even though multilateral conventions may have an important role to play in recording and defining rules deriving from custom, or indeed in developing them."²⁶

Customary international law derives from the practice of States. It is by nature slow in its law-making process. There is lack of precision in customary

²⁰ Treaties may be given diverse name such as pact, agreement, Covenant, charter, protocol, Memorandum of Understanding and Exchange of letter. See Cristph Schreuer, Source of International law: Scope and Application, (Emirate Lecture Series 28, The Emirate Center For Strategies Studies And Research).

²¹ Vienna Convention on the Law of Treaties. Art 2(1)(a)

²² Brownlie, Principle of Public International Law,(oxford, 1990) p. 605.

²³ Abdul Ghafur Hamid and Khin Maung Sein, Sources of International Law:A Re-Evaluation(IJUM Law Journal, Vol. 11, No. 2 2003) p 4.

²⁴ R. Coquia, Jorge and Santiago, Miriam Defensor, International Law (Central Professional Books,Inc, Philipine, 1998) p 25-26

²⁵ Continental Shelf Case (Libyan Arab Jamahiriya v Malta), ICJ report 1985.

rules, and it is very often quite difficult to ascertain their exact contents. On the other hand, treaty-making process is relatively faster. States may enter into a treaty at any time when they feel that a new rule is required. Treaties are the only way by which international law can be made by a deliberate act of States. In this way treaties are contributing to the rapid expansion of international law. Since treaty law is a kind of written law, it possesses the merit of considerable precision. It is not surprising, therefore, that treaties are fast becoming the most important source of international law. Meaning of State practice: What States do and what States say it is sometimes suggested that State practice consists only of what States do, not of what they say.

The material sources of custom or evidence of State practice can be found in the following:²⁷

1. Treaties
2. Judicial decisions
3. National legislation
4. Diplomatic correspondence
5. Opinions of national legal advisors
6. Resolutions relating to legal questions of the General Assembly
7. Practice of international organizations.

Evidence of customary law may also be found in the writings of international lawyers, and in judgments of national and international tribunals, which are mentioned as subsidiary means for the determination of rules of law in Article 38(1)(d) of the Statute of the International Court of Justice.

C. General Principle of Law Recognised by Civilised Nation

The third source of international law listed in the Statute of the Court is 'the general principles of law'. Most modern jurists accept that 'general principles of law' are

Principles of law that are common to all national legal systems, in so far as they are applicable to relations of States. However, some considered contro-

²⁶ Ibid, p. 29-30.

²⁷ The International Law Commission has suggested a non-exhaustive list of the forms that State practice may take, Yearbook of the ILC, 1950, vol. II, 368-72. The present list is mainly based on the list of the ILC. See also Brownlie, Principles of Public International Law, 5th.ed., 1998, 5.

versial and difficult to grasp them than other two sources.²⁸ The main objective of inserting this paragraph in Article 38 is to fill in gaps in treaty law and customary law and is necessary to meet the possibility of decisions.²⁹

Many international law scholars do not give a concern on the phrase used. It should be understood because most of them can be considered coming from "Civilised Nation". It is very ambiguity to determine the meaning of *recognised by civilised nation* since the term usually refers to developed nations. Indeed this source should be amended to some extent in maintaining equal relation between and among states in the world.

General principle of law, basically, would be the same values among the world. For instance, *Good faith* considered the most important general principle. This principle is enshrined in the United Nation charter, which provide in article 2 (2) that "*all members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligation assumed by them in accordance with the present charter*".³⁰

Judicial decisions, considered including judgments and advisory opinions of the ICJ and arbitral or other international tribunal, and the teachings of the most highly qualified publicists of the various nations considered as subsidiary sources. These are important in affirming the development of general principles and customary international law. There is no indication in Article 38 of the Statute of the priority or hierarchy of the sources of international law. Apart from a single reference to 'subsidiary means' in Article 38(1)(d), we do not know the order in which the sources of law are to be applied. The silence in Article 38 as to a hierarchy of sources reflects accurately the nature of the international legal order in which a hierarchy of sources is an alien concept³¹. Surely, there is no difficulty if the rules derived from the various sources are Complementary. However, in cases of conflict it is vital to determine which source shall prevail.

²⁸ See Anthony Clark Arend and Robert J. Beck, *International Law and the Use of Force, Beyond the UN Charter Paradigm*, Routledge, London, 1993. p. 7.

²⁹ Abdul Ghafur Hamid and Khin Maung Sein, *Sources of International Law: A Re-Evaluation* IIUM Law Journal, Vol. 11, No. 2 (2003) p. 16-17.

³⁰ Malcolm N. Shaw, *International law*, (Cambridge University Press 1997) p. 81.

³¹ Abdul Ghafur Hamid and Khin Maung Sein, *Sources of International Law: A Re-Evaluation* (IIUM Law Journal, Vol. 11, No. 2 (2003) p. 22.

III. The UNGAR as a Source of International Law

UNGAR are a declarative statement of world's issues and lacks the legal authority to enact or amend international law that legally bind states. The UN Secretary-General, the General Assembly, and now the international Court of Justice (ICJ) seem ignorant of the General Assembly's powers or perhaps prefer to ignore them. These UN organs even fail to note that "affirmation" means merely a declarative statement of world issues. One does not even have to be an experienced judge to see this; one need only to read the UN Charter to establish this fact. Article 10 of the UN Charter states:

"The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."

An UNGAR is voted on by all member states of the United Nations in the General Assembly. General Assembly resolutions usually require a simple majority (50% of all votes plus one) to pass. However, if the General Assembly determines that the issue is an "important question" by a simple majority vote, then a two-thirds majority is required. "Important questions" are those that deal significantly with maintenance of international peace and security, admission of new members to the United Nations, suspension of the rights and privileges of membership, expulsion of members, operation of the trusteeship system, or budgetary questions.³²

There have been suggestions that the resolutions of the United Nations General Assembly should be recognized as a source of international law. As a rule, General Assembly resolutions are not binding on member states, even,

³² Axel Dreher and Nathan Jensen, *Country or Leader?*, Political Change and UN General Assembly Voting (KOF working paper, 217, February 2009. Swiss Federal Institute of Technology Zurich) p. 34.

³³ Examples of 'law-making resolutions' are the Resolution which affirmed the Principles of International Law recognized by the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal (Res. No. 95, 11 Dec. 1946, adopted unanimously); the Declaration on Granting of Independence to Colonial Countries and Peoples (Res. No. 1514, 14 Dec. 1960, adopted by 89 votes to none, with 9 abstentions); and the Declaration on Permanent Sovereignty over Natural Resources, (Res. No. 1803, 14 Dec. 1962, adopted by 87 votes to 2, 12 abstentions).

most resolutions have nothing to do with international law. Nevertheless, when they are concerned with general norms of international law, they may provide a basis for progressive development of the law and the speedy consolidation of customary rules.³³ As Sloan suggests, General Assembly resolutions may also contribute to custom more directly in a form of "Collective State Practice".³⁴

They are the collective equivalent of unilateral general statements or, in the context of a particular dispute. The process by which they are adopted ("adopted unanimously, or near unanimously, or by a true consensus" or otherwise) establishes whether the practice is a "general" one. Their repetition in later resolutions goes to the 'constancy' and 'uniformity' of the practice. As to the requirement of *opinio juris*, this will be evidenced, as Sloan indicates, by the wording of the resolution; by statements made in the General Assembly in debate prior to its adoption or later in explanation of a vote; or by statements made elsewhere³⁵. In Advisory opinion related to Legality of the Threat and Use of Nuclear Weapons case, the Court stated that:

*"The General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can ...provide evidence important for the emergence of an opinio juris.... a series of resolutions may show the gradual evolution of the opinio juris required for the establishment of a customary rule."*³⁶

The explanation above indicates how the current perspective of the standing of the UNGAR within international law. However, there might be another perspective in looking at the UNGAR as source of international Law, as follow:

Firstly, the United Nation has been the biggest and the most representative organization of nations in the world. It is widely known that nearly all nations have become its members, and more urgently known that the UN covers all international aspects considered as a necessity in bridging nations' interests, such as economics, politics, peaces and justice. It should be differentiated with other international organizations concerning in one aspect of them. Also the process of the UNGAR, one nation one vote³⁷, has been a good precedent in

³⁴ Sloan, "General Assembly Resolutions Revisited", (1987) 58 BYIL 39

³⁵ Abdul Ghafur Hamid and Khin Maung Sein, Sources of International Law: A Re-Evaluation (IUM Law Journal, Vol. 11, No. 2 (2003) p. 19.

³⁶ Legality of the Threat and Use of Nuclear Weapons case, Advisory Opinion, (1996) ICJ Rep. 66. quoted by Abdul Ghafur Hamid and Khin Maung Sein in Sources of International Law: A Re-Evaluation, (IUM Law Journal, Vol. 11, No. 2 (2003) p. 20.

³⁷ See Article 18(1) of Charter of the United Nations.

examining the power of its resolutions, regardless of the veto right of five permanent members of the Security Council.³⁸ Therefore, its resolutions should be considered as a voice of the majority of the world concern and as well a source of international law.

Secondly, The UN is not an international legislative body theoretically; however, its resolutions have bound internally, such as the setting of budgets, the election of Security Council member, and the appointment of judges. External legal effects of the UNGAR are still debatable due to the lack of efforts of international community to make it bound³⁹. At least, there may be moral or psychological effects that bring international society to the same convictions in overcome the ongoing threat to the international peace and security. Given that the UNGAR is an agreement of world representative, It is not unreasonable to compare it with the conventions or treaties which is considered as primary sources of international law. The UNGAR seems a starting point to achieve common perspective of all nations, and indeed, it can be easily be bound legally at an international conventions level.

Thirdly, there has been a theoretical problem in the Charter of the United Nations; it is obvious that the general Assembly completely has the biggest role in the United Nations⁴⁰. However, most provisions in the charter regarding the General Assembly indicate the limitation of the General Assembly's role by the Security Council's role⁴¹. For instance, article 12 of the charter: "*While the security council is exercising in respect to any dispute or situation the function assigned to it in the present charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the security council so requests*". It should be noted that the Security Council is considered superior than the General Assembly. Moreover, The Se-

³⁸ These are the "republic of China, France, The Union of Soviet Socialist, the United Kingdom of Great Britain and Northern Ireland, and the united states of America. The Union of Soviet Socialist has changed to be Russia. See Article 23(1) of Charter of the United Nations.

³⁹ Compare with the notion that International organisation resolutions can become legally binding as an result of the acceptance. Such acceptances can be done in various manner. See the Kobchai Charoenyimolkul, *Unilateral Act as a New Source of International Law*, (Siam University (article) p. 5.

⁴⁰ General Assembly is the first of six principle organs of the United Nations beside the Security Council, the economic and social council, the Trusteeship council, the International Court of justice and the Secretariat, see Article 7 of the charter of the United Nations.

⁴¹ See Article 9-22 of the Charter of the United Nations.

curity Council have the big role in leading the world affairs to their interests⁴². It should be considered to change in adverse, that the General assembly has a more superior role than the Security Council. Unfortunately, as long as these article of the charter have not been amended and reformed, the idea of UNGAR as the sources of International law would have potent theoretical challenges. In the meanwhile, the idea stated by O'Brien that "Although the principle role lies with the security council, the power of the General assembly should not be overlooked" is not supported theoretically.⁴³

Fourthly, the implementation problems are more concerning to the willingness of state whether to follow the resolution or not. In fact, state is usually not obey to the UNGAR if there is against their interests. So the moral obligation of state to implement the resolution has been often questioned because of the lack of enforcement power designed in the charter. It would be a very good starting if at least the group of states able to implement the resolution in maintaining peace and security in the world. The nation's moral responsibility is obviously required. Otherwise, the existence of the general assembly would consider obscure in achieving the goal of the United Nations.

There are three possibilities to the UNGAR to be a source of the International Law. These may be the independent source, the dependant source or moral source. Most of international Lawyer still consider that the UNGAR as a moral source or 'soft law'⁴⁴ which is not legally binding.⁴⁵ It is signified that the efforts to construct legal arguments to reformulate the source of international law is somewhat weak. It would be a consequence of the lack of international law scholar from the developing countries. Abdul Ghafur Hamid stated that "Judicial decisions, resolutions of the General Assembly, national legislation, and the like are the material sources of international law and they can be the evidence of customary law."⁴⁶

⁴² See Heater, D dan Berridge G.R(1993), *Introduction To International Politics*, (Palgrave, New York) p.147.

⁴³ See O'Brien John *International Law* (Cavendish Limiting Published London 2002) 718.

⁴⁴ "Soft law is guidelines of behaviour, such as those provided by treaties not yet in force, resolution of the United Nation, or international conference, that are not binding in themselves..." see Martin A Elizabeth , *Op.cit.*, p.467.

⁴⁵ See the explanation of Wallace Rebecca M.M *International Law* (Sweet and Maxwell: London1997) 28-31.

⁴⁶ Abdul Ghafur Hamid and Khin Maung Sein in *Sources of International Law: A Re-Evaluation*,(IIUM Law Journal, Vol. 11, No. 2 (2003) p. 25.

Theoretically, it is quite reasonable that the UNGAR should be an independent sources of International law.⁴⁷ The consensus or agreements of most of international representative are worthy to consider as legal sources. Moreover, there is no essential different among International conventions, international customs, and general principles of Law in legal philosophy perspective. International law is common consensuses between/among the states. Therefore, what is the meaning of consensus if it is not considered a binding rule. Even, the UNGAR deserve to place the primary source of international law as all other sources refer to. However, it is certain that it needs the whole reformation of the charter of the United Nations. The UNGAR should be the consensus of the world affairs in certain period on the certain cases by the representative of nations, government organizations, non-government organisation and the distinguished people. The resolution then submitted to the Security Councils to be implemented in an effective manner.

The role of the General Assembly as a representative of all the members of the United Nations has been diminished, even excepted by the role of the security council.⁴⁸ Surely, it would be a part of challenging issues regarding the unbalance role between the General Assembly and the Security Council. It is unfair to give a decision making power to the Security Council, which is consisted of small number of the world, and amputate the power of the majority of the General Assembly in term of democracy. So no wonder that many UNGAR do not have legal binding to the members, however the Security Council resolution have to be accepted by the members⁴⁹. This effort could be maximised, particularly for the international lawyers from the *third world*.

Moreover, none can deny the voice of the majority in the international agreements. International law should be strengthened in maintaining peace and justice over the world. Even though the many of international law scholars still

⁴⁷ Evan, Malcolm D. said that the UNGAR 'were creative of law as a formal sources...' and he argue that the UNGAR is no more than declaratory of customary law. Evan Malcom D International Law, (Oxford University Press Oxford) 141.

⁴⁸ See article 12 of the charter of the United Nations: "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests".

⁴⁹ See article 25 of the charter of the United Nations: "The members of the United Nations agree to accept and carry out the decisions of the security council in accordance with the present charter".

insists that the UNGAR has merely a moral or recommendatory role in international Law before being bound in international conventions. However, It is most likely the UNGAR will be a source of International law if the effort to construct legal arguments as well as to reform the charter of the united states can be seriously conducted. The International law commission should play a significant role in empowering the UNGAR to be a formal source as a dynamic of international law development⁵⁰.

IV. Conclusion

The United Nation General Assembly derived from the representatives of virtually all of the states of the world. Therefore, its resolutions can be viewed as a manifestation of world community willingness and thoughts in achieving peace and justice in the world. So that, it is reasonable that the UNGAR should be proposed as one of sources of international law. Principally, the existed sources of international law as stated in article 38 statute of International Court of Justice has been used for the initial development of international law which is more dominated by the developed states and a consequence of very few international organisations established at the time. As a result, the participation and the role of developing and least developed states has considered somewhat weak and more weaken within the international law decision making process, and it have given an unbalance of political bargain in many international law cases. Hence, the reformulating the sources of international law would be an essential part of reforming international law as a whole. *The United Nation General Assembly Resolution* should be standing as a principle source of international Law beside *the international conventions, international custom, jurisprudence and juridical works accordingly*. The United Nation general Assembly should have a legislative role in international law making process. Adversely, the role of the Security Council should be minimized to some extend to be the supporting power for the implementation of UNGAR. This proposal should be taken into account in framing of developing more democratic values within the world order.

⁵⁰ See the idea of the new world order which is based on the criteria: effectiveness, democracy and Justice in Kalypso Nicolaidi and Joyce L. Tong, *Diversity or Cacophony? the Continuing Debate Over New Sources of International Law* (Michigan Journal of International Law (Vol. 24:1349, 2004).

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