

The Role of Previous Resolutions in the Practice of the Security Council

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This Article focuses on one of the most ubiquitous and visible features of United Nations Security Council (U.N.S.C.) resolutions: the almost inescapable inclusion of a wealth of references to previous resolutions. We ground our study on a novel dataset of all 2,489 resolutions adopted by the U.N.S.C. from 1945 to 2019, and, with the employment of text-as-data computational analysis, we analyze the normative effects of recalling previous resolutions. After introducing this topic, reviewing the literature, and describing the potential of text-as-data approaches for the study of international organizations, we posit that references to previous resolutions have an impact both for interpretation and law-making. We highlight the implications for the interpretation of the U.N. Charter itself, showing the relevance of citations for revealing the content of subsequent practice and subsequent agreements. Our claim here is for a broader use of network analysis and the data we gathered to answer essential questions of United Nations law, such as the evolution of U.N.S.C.'s competences. Concerning law-making, we show the role of citing previous resolutions in the identification of established practice, asking whether competences not included in the U.N. Charter may have developed as a matter of established practice. We also offer normative conclusions concerning the

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limits of Security Council action by applying the notion of norm diffusion to the empirical data on the inclusion of human rights language in U.N.S.C. resolutions.

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INTRODUCTION

Much has been written on the legal nature, effects, and interpretation of United Nations Security Council (U.N.S.C.) resolutions,¹ which constitute the outcome of the U.N.S.C.'s decision-making process and the embodiment of its powers. Yet, until very recently, one of the most ubiquitous and visible features of the typical resolution has remained largely neglected: the almost inescapable inclusion of a wealth of references to previous resolutions. The literature on the U.N.S.C. has generally acknowledged such references as a fact of life, but save for isolated exceptions,² no meaningful efforts have been made to describe and assess its implications. The lacuna appears significant: Resolutions represent highly-negotiated texts, the result of a multi-stage process in which U.N.S.C. members seek to maintain a significant degree of control over the content of the final document.³ This content includes references to previous resolutions.⁴

Anecdotal evidence exists that references might have played a significant role in one of the most delicate moments of the U.N.S.C.'s history: the 2003 invasion of Iraq.⁵ We know that the United States read Resolution 678 (1990) as providing a legal basis for the invasion of Iraq.⁶ However, the negotiation history of Resolution 1441 (2002) offers a less visible, and accordingly lesser-known, insight into the so-called “final opportunity” for disarmament.⁷ The media reported that

1. See generally MICHAEL WOOD & ERAN STHOEGER, *THE UN SECURITY COUNCIL AND INTERNATIONAL LAW* (2022).

2. See generally Wouter Werner, *Recall It Again, Sam. Practices of Repetition in the Security Council*, 86 *NORDIC J. INT'L L.* 151 (2017).

3. See generally Wood & Stoeger, *supra* note 1, at 28–58.

4. This article uses the expressions “references” and “citations” interchangeably.

5. See, e.g., S.C. Res. 678, ¶ 1 (Nov. 29, 1990).

6. Sean D. Murphy, *Assessing the Legality of Invading Iraq*, 92 *GEO. L.J.* 173, 178 (2003).

7. *Id.*

the discussion of the text, and much of the controversy surrounding it, hinged on the request by the United States to include a reference in the preamble to previous resolutions, along with the specific language concerning the authorization to use “all necessary means” to ensure compliance with those resolutions.⁸ Eventually, the text made it into the final version as follows: “Recalling that its resolution 678 (1990) authorized Member States to use all necessary means to uphold and implement its resolution 660 (1990) of 2 August 1990 and all relevant resolutions subsequent to resolution 660 (1990) and to restore international peace and security in the area.”⁹

The anecdote does not mean that the inclusion or exclusion of a reference could have ensured a different outcome. It does, however, provide a more nuanced and revealing picture of the role to be played by a seemingly innocuous textual feature and of the importance that states attach to it.

It is with this in mind that we carry out the first large-scale examination of the U.N.S.C.’s practice of citing previous resolutions. We ground our study in an analysis of the referencing patterns extracted from a corpus comprising all 2,489 resolutions adopted from 1945 through 2019 by the U.N.S.C., creating a dataset including 21,274 unique references to previous resolutions.¹⁰ By employing social network analysis¹¹ and automated text classification, we seek to explore the phenomenon by discussing its normative and methodological implications. After illustrating our findings, we discuss methodological consequences for the way resolutions are interpreted, the validity of controversial measures, the formation of customary international law (CIL), and substantive consequences insofar as it provides a channel for norm diffusion within the

8. John Esterbrook, *Saddam’s List of Crimes*, CBS NEWS (Oct. 31, 2002, 7:38 AM), <https://www.cbsnews.com/news/saddams-list-of-crimes/> [<https://perma.cc/798M-GLM3>]; see also MACHIKO KANETAKE, UNITED NATIONS SECURITY COUNCIL RESOLUTION 1441 (2002) UN ON THE DECISION TO SET UP AN ENHANCED INSPECTION REGIME TO ENSURE IRAQ’S COMPLIANCE OF ITS DISARMAMENT OBLIGATIONS, 8TH NOVEMBER 2002 (U.N. DOC. S/RES/1441 (2002)) 4 (2018), OXIO 252.

9. S.C. Res. 1141, at 1 (Nov. 8, 2002); KANETAKE, *supra* note 8, at 8.

10 For an interactive network, see *Retmia*, OUESTWARE, <https://ouestware.gitlab.io/retina/beta/#/graph?url=https%3A%2F%2Fgist.githubusercontent.com%2Fniccoloridi%2F9f02add305bdd5af5861fd2bee624409%2Fraw%2Fcc20d9c3179fd4da76a498f4e1798a49ade9de8b%2Fnetwork-1497ffc9-4d5.gexf&n=1325%20> [<https://perma.cc/327F-U6EW>]

11. “Network analysis [] is a set of integrated techniques to depict relations among actors and to analyze the social structures that emerge from the recurrence of these relations.” A.M. CHIESI, INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES 10499 (Neil J. Smelser & Paul B. Baltes eds., 2001).

institutional practice of the U.N.S.C. and beyond. In sum, we analyze how citations to previous resolutions are an essential element of the institutional practice of the organization. Using state practice as an analogy, we define institutional practice as any form of conduct attributed to the organization.¹²

Our approach in this study is indebted to the works cited above, as well as to the growing body of empirical scholarship on the U.N.S.C.¹³ and the U.N. in general.¹⁴ We also take into account the literature on the study of citations—in the law, as well as beyond—with a view to borrowing methodological tools and explanatory frameworks, while remaining mindful of the limits of any analogy in the examination of such a unique institution. Our contribution aims to provide an accurate description of the phenomenon and discuss its implications, without the hubris of proving or postulating causality and intent in all cases,¹⁵ and to capture latent patterns that would be difficult to discern without insider knowledge and impossible to appreciate in their aggregate dimension.

The Article proceeds in four Parts. Part I outlines the primary theories put forward in the corpus of international legal scholarship of the normative effects of U.N.S.C. resolutions and their citations to prior resolutions; we also briefly problematize the practice of referencing previous resolutions, evaluating whether and how a network analysis

12. See Lorenzo Gasbarri, *The Notion of Institutional Practice in United Nations*, 24 MAX PLANCK Y.B. U.N. L. ONLINE 3, 4–7 (2021). Leaving aside the problem of whether states' conduct taken in the context of an international organization can amount to institutional practice, we will focus on clearly attributed conduct, such as U.N.S.C. resolutions.

13. See ROSSANA DEPLANO, *THE STRATEGIC USE OF INTERNATIONAL LAW BY THE UNITED NATIONS SECURITY COUNCIL: AN EMPIRICAL STUDY* ix (2015). See generally Richard Hanania, *The Humanitarian Turn at the UNSC: Explaining the Development of International Norms Through Machine Learning Algorithms*, 58 J. PEACE RSCH. 655 (2020); Paul J. Kohlenberg et al., *Introducing UNSCdeb8 (Beta): A Database for Corpus-Driven Research on the United Nations Security Council* (Stiftung Wissenschaft und Politik Working Paper No. 1, 2019) <https://www.research-collection.ethz.ch/handle/20.500.11850/356671> [<https://perma.cc/EWA8-EV82>].

14. See generally ROSALYN HIGGINS ET AL., *OPPENHEIM'S INTERNATIONAL LAW: UNITED NATIONS* (1st ed. 2018).

15. On causality in history, see HANS-GEORG GADAMER, *IS THERE A CAUSALITY IN HISTORY?*, reprinted in *HERMENEUTICS BETWEEN HISTORY AND PHILOSOPHY: THE SELECTED WRITINGS OF HANS-GEORG GADAMER* 3 (Pol Vandavelde & Arun Iyer eds. & trans., 2016). Investigating the deeper reasons for the historical course of things is absolutely not an attempt at a "causal" explanation, which would only ask for the *causa efficiens*—the effect that brings about the finished result. When we discern historical connections, we have not discovered a web of causal factors—of nature and freedom—whose threads we isolate only to be able to get our hands on them for the future. It is precisely this that the reality of history consists of: to be and to determine us, without ever being able to be mastered through a causal analysis.

might confirm or contradict those theories. Part II introduces our methodology and dataset. It illustrates the general characteristics and topology of the resulting citation network, including its evolution over time and “extreme points.” Part III breaks down the network to confirm the meaningful, non-random nature of the citation practice. Having confirmed the intentionality of the practice, we turn in Part IV to applying the methodology to testing the normative implications introduced in Part I, with a particular emphasis on the role that citations play in norm diffusion and, consequently, the identification of CIL and the established practice of the U.N.S.C. We then offer a conclusion and suggestions for future avenues of research.

I. LITERATURE REVIEW: POTENTIAL IMPLICATIONS OF U.N.S.C. CITATION PRACTICE

International law is replete with theories as to the normative effects and value of citations,¹⁶ assuming (as many scholars do, and as our methodology will confirm) that this phenomenon is an essential element of U.N.S.C. institutional practice and, as such, capable of producing normative effects.¹⁷ By considering citations as constituting institutional practice, we intend to underline their role and nature as part of U.N.S.C. conduct.

Citations are relevant to understanding international law in multiple ways. First, citations are relevant for the interpretation of resolutions because they provide context. Second, they are relevant for the interpretation of the U.N. Charter as a form of subsequent practice or subsequent agreement. Third, they may contribute to proving or disproving the formation of CIL, by clarifying the existence of *opinio juris* and the generality of the practice.¹⁸ Finally, citations show the

16. See, e.g., Thomas Dörfler & Thomas Gehring, *Analogy-Based Collective Decision-Making and Incremental Change in International Organizations*, 27 EUR. J. INT'L REL. 753 (2021).

17. See generally Dept. Pol. and Peacebuilding Affs., *Repertoire of the Practice of the Security Council: Supplement 2019*, U.N. Doc. ST/PSCA/1/Add.22 (2019), for a U.N. analysis of the Council's recent referencing practices to previous resolutions.

18. See generally Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16 EUR. J. INT'L L. 879 (2005), for an early discussion of the effects of U.N.S.C. resolutions on the crystallization of custom in relation to state practice and *opinio juris*.

importance of “norm diffusion” for the creation of established practice as a rule of the U.N.¹⁹

These theories as to the value or function of U.N.S.C. citations are compatible to a network theory approach to varying degrees. The patterns in citation practice revealed through social network analysis may provide additional supporting evidence validating the normative theories put forward. However, this approach has a limited ability to definitively identify which of these theories is “right” or “wrong” in every case. We explain which of the hypothesized normative implications are more “provable” with our methodology. In Part IV, we will go back to examine the last two theories presented in this Section to show how our network analysis can prove or disprove the described normative implications.

A. Interpretation of Resolution

Scholars posit that one of the central functions of U.N.S.C. resolution citation practice is the interpretive role that the connected network of resolutions can play. For instance, Sir Michael Wood commented on the serial nature of many resolutions and the inherent impossibility of considering them as self-standing and self-contained texts.²⁰ The problem, the argument continued, was exacerbated by the failure of the U.N.S.C. to “always make the relationship to earlier Resolutions clear.”²¹ The institutional nature of U.N.S.C. resolutions, reflected in citations patterns, is one of the reasons why Michael Wood contended that caution is required to apply the rules on interpretation contained in the Vienna Convention on the Law of Treaties (VCLT).²² In a second article on the topic, he reaffirmed the argument, stating that resolutions “are often part of a series, and can only be understood as such.”²³

19. Samuel A. Bleicher, *The Legal Significance of Re-Citation of General Assembly Resolutions*, 63 AM. J. INT’L L. 444, 444 (1969) (which already considered the role of previous resolutions for interpreting the U.N. Charter and proving the creation of a customary norm).

20. Michael C. Wood, *The Interpretation of Security Council Resolutions*, 2 MAX PLANCK Y.B. U.N. L. 73, 87 (1998) (discussing the nature of the terms of the resolution).

21. *See id.*

22. *Id.* at 7–8.

23. Michael Wood, *The Interpretation of Security Council Resolutions, Revisited*, 20 MAX PLANCK Y.B. U.N. L. ONLINE 3, 34 (2016).

The significance of this last point was famously highlighted by International Court of Justice (ICJ) in the *Namibia* Advisory Opinion.²⁴ The Court recalled that “[b]efore analysing [resolution 276], it is necessary to refer briefly to resolutions 264 (1969) and 269 (1969), since these two resolutions have, together with resolution 276 (1970), a combined and a cumulative effect.”²⁵ Individual opinions in that case also reflect the same concerns. For example, Judge Padilla Nervo stressed the importance of Resolution 284 to interpret 276.²⁶ Even Judge Fitzmaurice, while in clear disagreement on the merits, did not question the narrower methodological point concerning the need to examine the relevant resolution as “consequential” to the previous Resolutions adopted by the U.N.S.C. and the General Assembly.²⁷

More recently, the ICJ touched upon the question in the *Kosovo* Advisory Opinion.²⁸ The Court expressly considered the importance of the U.N.S.C. practice of citing previous resolutions, stating that “[t]he interpretation of Resolutions may require the Court to analyse . . . other resolutions of the Security Council on the same issue, as well as the subsequent practice of relevant U.N. organs.”²⁹ It further mentioned that, although the scope of its analysis would be limited to Resolution 1244, the relevant previous resolutions were “in any case, recalled in the second preambular paragraph of [Resolution 1244].”³⁰ Indeed, in its interpretation of Resolution 1244, the Court fleshed out the purpose of Resolution 1244 by looking at Resolution 1239 (cited in 1244, which expressed “grave concern at the humanitarian crisis in and around Kosovo”) as fleshing out the very purpose of Resolution 1244: providing “a means for the stabilization of Kosovo and for the re-establishment of a basic public order in an area beset by crisis.”³¹ Additionally, the issue had also been raised in the parties’ arguments; Serbia had made extensive references to what may be termed the “network” of Resolution 1244 to stress the commitment to

24. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution, Advisory Opinion, 1971 I.C.J. 1 (June 21).

25. *Id.* ¶ 108.

26. *Id.* at 104 (separate opinion by Nervo, J.).

27. *Id.* at 291, ¶ 108 (separate opinion by Fitzmaurice, J.).

28. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403 (July 22) [hereinafter *Kosovo* Advisory Opinion].

29. *Id.* ¶ 94.

30. *Id.* ¶ 86.

31. *Id.* ¶ 98.

the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (FRY).³²

In this connection, our argument is straightforward. Reliance on citation mining and network analysis can serve as an important tool to make sense of a large number of relevant resolutions and decisions and provide the necessary context to carry out any interpretative effort. As we will describe in Parts II and III, network analysis shows patterns of relationships between resolutions, the creation of clusters, and their chronological evolution. We posit that all these data are essential for the current methodological approach to the interpretation of U.N.S.C. resolutions. We do not propose normative changes and do not mean to disparage traditional approaches hinging on close-reading and legal analysis of the resolutions concerned. Our approach would complement the traditional approaches to interpretation, particularly in cases in which the given resolutions include a large number of citations to prior resolutions and is connected to relevant clusters.

B. Interpretation of the U.N. Charter

The practice of citing previous resolutions may also be relevant as a form of subsequent practice or subsequent agreement for the interpretation of the constitutive instruments of international organizations. The implementation of the U.N. Charter requires elaboration and adaptation based on the actual practice adopted by member states and the U.N. itself. Consequently, under article 31(3) of the VCLT, such practice might be used to interpret the constitutive instrument. Citations to previous resolutions are especially important for the so-called “dynamic interpretation” of the U.N. Charter, which the Seventh Commission of the International Law Institute uses to explain how U.N. organs expand their competencies by the means of interpretation of the Charter.³³

In this regard, the International Law Commission (ILC) conclusions on subsequent agreements and subsequent practice in relation to interpretation of treaties distinguish between the subsequent

32. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Verbatim Record, ¶¶ 15–16 (Dec. 1, 2009, 10 a.m.), <https://www.icj-cij.org/public/files/case-related/141/141-20091201-ORA-01-00-BI.pdf> [<https://perma.cc/NP4Z-784U>].

33. See MAHNOUSH ARSANJANI, INSTITUT DE DROIT INTERNATIONAL, ARE THERE LIMITS TO THE DYNAMIC INTERPRETATION OF THE CONSTITUTION AND STATUTES OF INTERNATIONAL ORGANIZATIONS BY THE INTERNAL ORGANS OF SUCH ORGANIZATIONS (WITH PARTICULAR REFERENCE TO THE UN SYSTEM)? 87, 99 (2019).

practice of member states and the practice of the organization as such.³⁴ Conclusion 12(2) affirms that the subsequent practice of member states may arise from the institutional practice adopted in the application of the constitutive instrument. For instance, the 1996 *Nuclear Weapons* Advisory Opinion expressed the view that a single resolution of the World Health Assembly cannot be taken as expressing a subsequent agreement of member states on the conferment of the competence to address the legality of the use of nuclear weapons.³⁵ In the *Whaling in the Antarctic* case, the ICJ stated that resolutions containing recommendations and adopted without the support of all states cannot be considered as expressing their subsequent agreements nor subsequent practice.³⁶

Conversely, for the same purpose of interpreting the constitutive instrument, Conclusion 12(3) of ILC project focuses on institutional practice as such, not as an expression of the agreement of member states. The ILC does not qualify this practice as “subsequent” and excludes that it may be covered by article 31(3) of the VCLT. Yet, it concedes that institutional practice “as such” may contribute to the interpretation of constitutive instruments, consistent with ICJ jurisprudence that has provided concrete examples of the use of institutional practice as a means of interpretation without referring to the practice or the acceptance of member states. In the 1950 Advisory Opinion on *Membership in the United Nations*, the ICJ affirmed that the interpretative practice of the organization showed that the General Assembly can decide to admit a new member only on the basis of the U.N.S.C. recommendation;³⁷ in the 1989 Advisory Opinion on the *Convention on the Privileges and Immunities of the United Nations*, the Court referred to the practice of the organization to define “experts on missions”;³⁸ and, finally, in the 1960 Advisory Opinion on *the Constitution of the Maritime Safety Committee*, it reaffirmed the relevance of the practice of the organization itself in carrying out the constitutive instrument.³⁹

34. Int’l Law Comm’n, Rep. on the Work of Its Seventieth Session, U.N. Doc. A/73/10, at 15, pt. 4, concl. 12 (2018).

35. Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, 1996 I.C.J. 66, ¶ 27 (July 8).

36. *Whaling in the Antarctic* (Aus. v. Jap.), Judgment, 2014 I.C.J. 226, ¶ 83 (Mar. 31).

37. Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, 1950 I.C.J. 4, 9 (Mar. 3).

38. Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, 1989 I.C.J. 177, ¶ 48 (Dec. 15).

39. Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, Advisory Opinion, 1960 I.C.J. 150, 169 (June 8).

Neither the ILC nor the ICJ considers references to previous resolutions to establish the existence of a subsequent practice. Yet, network analysis may in fact illustrate the repetition and the acceptance of the practice itself manifested in citation practice. For example, the creation of international criminal tribunals as subsidiary organs of the U.N.S.C. is not envisaged by the U.N. Charter, but the networks of relevant resolutions provide evidence of the role of references to previous ones. These resolutions, forty-six in the case of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and forty-two resolutions for the International Criminal Tribunal for Rwanda (ICTR), chiefly express continuity from the resolutions establishing those courts. Network analysis is essential to show the context of the institutional practice and assist in its interpretation. Although Resolution 955 (1994) establishing the ICTR does not directly quote Resolution 827 (1993) establishing the ICTY, the courts are linked by a wealth of subsequent resolutions, such as Resolution 1503 (2003), which split the Prosecutorial office of the two Tribunals and called upon the international community to assist and cooperate with them.

C. Identification of Customary International Law

The practice of citation can also be used to CIL. The ILC has tackled the contribution of international organizations to the identification of CIL by distinguishing between the practice and the *opinio juris* of member states and the practice of the organization as such.⁴⁰ Consequently, there are different ways in which citations to previous resolutions play a role.

Conclusion 12 of the ILC report on the Identification of Customary International Law concerns the capacity of resolutions to express the practice or the *opinio juris* of member states.⁴¹ The ILC has recognized that a resolution can reflect a pre-existing customary norm, provide evidence of its existence, or contribute to its development, but that it cannot, by itself, create a new custom. As traditionally considered, a single resolution cannot be the sole source

40. Int'l Law Comm'n, Rep. on the Work of Its Seventieth Session, U.N. Doc. A/73/10, at 119, pt. 3, concl. 4 (2018) [hereinafter ILC, Customary Law]. For an analysis of the project and further reflection, see INTERNATIONAL ORGANISATIONS, NON-STATE ACTORS, AND THE FORMATION OF CUSTOMARY INTERNATIONAL LAW (Sufyan Droubi & Jean d'Aspremont eds., 2020).

41. ILC, Customary Law, *supra* note 40, at 121, pt. 5, concl. 12.

of state practice and/or *opinio juris*.⁴² The ICJ, in turn, considered the relevance of this form of institutional practice to identify CIL in its advisory opinion on *Nuclear Weapons (General Assembly request)*.⁴³ It stressed that “a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule”⁴⁴ Notably, the Court did not in that case establish the existence of a rule, as the resolutions were adopted with a substantial number of negative votes and abstentions.

Conversely, Conclusion 4 concerns the practice of organizations as such, and not as an expression of member states’ practice and *opinio juris*.⁴⁵ The ILC recognizes that, at least in certain cases, the practice of international organizations as such may also contribute to the formation of CIL. The commentaries to the Conclusions clarify that this contribution is limited to customary norms that either fall under the mandate of the organization or are addressed specifically to it (e.g., on matters of international responsibility), and to the organizations to which member states have transferred exclusive competences.⁴⁶ The ICJ, for its part, has referred to institutional practice “as such,” but has not distinguished it from the practice of member states. In the *Chagos* Advisory Opinion, the Court considered that Resolution 1514 (xv) “as such” had a declaratory character of the customary nature of self-determination, and, at the same time, it referred to the value of the Resolution as expressing the position of states.⁴⁷

Finally, resolutions may contribute to the formation of CIL by acting as catalysts for the reaction of states or, put differently, as an “offer” waiting for the expression by states of practice and *opinio juris* (including silence). Danae Azaria recently described this effect in the context of ILC interpretative pronouncements, arguing that the ILC

42. See, e.g., Gaetano Arangio-Ruiz, *The Normative Role of the General Assembly of the United Nations and the Declaration of Principles of Friendly Relations*, in COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW 418, 476 (1972) (analyzing the relationship between assembly declarations and customary law); Rosalyn Higgins, *The United Nations and Law-Making: the Political Organs*, 64 AM. J. INT’L L. 37, 47 (1970) (discussing the circumstances where United Nations Practices is evidence of CIL).

43. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8).

44. *Id.* ¶ 70.

45. ILC, Customary Law, *supra* note 40, at 119, pt. 3, concl. 4.

46. Kristina Daugirdas, *International Organizations and the Creation of Customary International Law*, 31 EUR. J. INT’L L. 201, 204 (2020).

47. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, ¶ 150 (Feb. 25).

contributes to the formation of CIL as an organ of the U.N. by provoking states' reactions.⁴⁸ Similarly, other forms of practice, such as resolutions, might be relevant for provoking a reaction by states. For instance, in the 1986 judgment of the *Nicaragua* case, the ICJ relied on General Assembly Resolution 2625 (xxv) to establish the customary nature of the prohibition on the use of force, claiming that *opinio juris* might be deduced from the attitude of States towards the Resolution. Consensus "may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves."⁴⁹

In all cases, the practice of citing previous resolutions adds a further layer to the understanding of how international organizations contribute to the formation of CIL. They reveal how resolutions should be studied as part of a network and not in their isolation. The network may provide further information on the generality of the concerned practice and its duration. The ILC defines "generality" as practice that is "sufficiently widespread and representative, as well as consistent."⁵⁰ References can provide a useful proxy to determine whether and when this is the case. The repetition of past practices by the way of citation reflects generality and duration. While the ILC contended that resolutions issued by plenary organs are more relevant because they express the view of all member states, the practice of referencing previous resolutions problematizes the finding, providing ample evidence of citation throughout an ever-evolving membership. With the composition of the U.N.S.C. changing yearly, citations recalling previous resolutions, establishing the legal basis for new measures, and demanding the implementation of previous resolutions, work as an element of continuity. Network theory, as a methodology, allows the quantitative analysis of the relevant practice reflected in the citation of previous resolutions.

D. Identification of the Established Practice of the Organization

Finally, previous resolutions are also essential for identifying the relevance of so called "institutional practice." Article 2(b) of the Articles on the Responsibility of International Organizations includes the "established practice of the organization" as part of the category "rules of the organization," which also include "the constituent

48. Danae Azaria, 'Codification by Interpretation': *The International Law Commission as an Interpreter of International Law*, 31 EUR. J. INT'L L. 171, 174 (2020).

49. *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 I.C.J. 14, ¶ 188 (June 27).

50. ILC, Customary Law, *supra* note 40, at 120, pt. 3, concl. 8.

instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments,” constituting the normative structure and output of the organization.⁵¹ For instance, the ILC refers to the practice of consensus decision making in the North Atlantic Treaty Organization (NATO) as an example of established practice.⁵² Moreover, this normative category is also mentioned in the context of the attribution of conduct, creating room for maneuver to adapt the general framework established by the ILC to the variety of international organizations.⁵³ Thus, established practice is another legal notion that explains how international organizations adapt the attributed functions to new and unforeseen circumstances. As the ICJ stated: “Whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice.”⁵⁴

While both scholars and organizations were favorable to the inclusion of institutional practice as a rule of the organization in light of its potential for the development of the institutional order from the constitutive treaty, the approach poses serious risks.⁵⁵ In particular, an uncontrolled expansion of practice may compromise the validity of the acts of international organizations that go beyond the functions attributed to it.⁵⁶ Conversely, it is not clear whether an activity that does not respect an established practice of the organization could be a breach of institutional law. The fact is that the legal status of established practice is unclear, recalling a form of institutional custom. Indeed, if established practice is considered a source of law, the element of *opinio juris* is implicit in its definition.⁵⁷

51. Int’l Law Comm’n, Rep. on the Work of Its Sixty-Third Session, U.N. Doc. A/66/10, at 54 (2011).

52. *Id.* at 78.

53. Giorgio Gaja (Special Rapporteur), *Second Report on Responsibility of International Organizations*, ¶ 22, U.N. Doc. A/CN.4/541 (Apr. 2, 2004).

54. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174, 180 (Apr. 11).

55. Emmanuel Roucouas, *Practice as a Relevant Factor for the Responsibility of International Organizations*, in *RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS: ESSAYS IN MEMORY OF SIR IAN BROWNLIE* 159, 159 (Maurizio Ragazzi ed., 2013).

56. See, e.g., *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, Advisory Opinion, 1962 I.C.J. 151 (July 20).

57. Lorenzo Gasbarri, (*Meta*) *Grotian Moment: International Organizations and the Rapid Formation of Customary International Law*, 43 *GROTIANA* 113, 113 (2022).

The citation of previous resolutions is an indicator of how widespread and accepted the practice is and could provide information on whether not respecting it could be considered as a breach of an institutional rule. The question of whether the U.N.S.C. is obliged to respect CIL is a vexed issue. Many have discussed the validity of its activities, ranging from the very early idea that this organ was not subject to laws to the contemporary forms of constitutionalization.⁵⁸ Another question, perhaps bolder, is whether the U.N.S.C. is bound by its past decisions, such as previous resolutions. In particular, the question arises whether normative effects are derived from the repetitions and accumulations of resolutions imposing an obligation to respect humanitarian and human rights norms on member states carrying out U.N.S.C. activities.

The relevance of employing citations for the development of established practice can also be explained by referring to the concept of “norm diffusion.” This notion, borrowed from political science and international relations theory, may be defined as the process by which “collectively held ideas about behaviour” are promoted.⁵⁹ Notably, the notion has been applied to the U.N.S.C. in a landmark study by Cora True-Frost, who analyzed how the so-called legislative Resolutions on general matters concerning the threat to international peace and security initiated a chain reaction causing the progressive inclusion of human rights norms in U.N.S.C. resolutions. The study applied the notion of norm diffusion to the “consumption” of human rights norms by the U.N.S.C., focusing on its formal agenda of human rights promotion in its peacekeeping mandate and in its administration of territories.⁶⁰ As such, citing previous resolutions with human rights content may reveal the development of an established practice as a rule of the organization. The network analysis of citation practice provides both a channel for and means of confirming norm diffusion. In the next pages, we will be able to apply the notion of norm diffusion to our empirical findings on the repetition of resolutions with human rights content and discuss its normative implications.

58. See, e.g., Dapo Akande, *The International Court of Justice and the Security Council: Is There Room for Judicial Control of Decisions of the Political Organs of the United Nations?*, 46 INT'L COMPAR. J.L. Q. 309, 310 (1997).

59. C. Cora True-Frost, *The Security Council and Norm Consumption*, 40 N.Y.U. J. INT'L L. & POL. 115, 124 (2007) (quoting Martha Finnemore, NATIONAL INTERESTS IN INTERNATIONAL SOCIETY 3–4 (1996)). On norm diffusion, see Susan Park, *Theorizing Norm Diffusion Within International Organizations*, 43 INT'L POL. 342 (2006).

60. True-Frost, *supra* note 59, at 118–19.

II. THE CASE FOR AN ANALYSIS OF CITATION PATTERNS

A. *Why Citations Matter*

As we mentioned in the Introduction, the U.N.S.C.'s practice of citing previous resolutions has not been explored extensively or systematically.⁶¹ This is not to say that the practice has been deemed irrelevant. Legal Opinions of the Secretariat of the U.N., for example, often refer to previous resolutions. On at least one occasion, the Opinion explicitly considered the relevance of reaffirming previous resolutions:

[I]t would be reasonable to conclude that the [U.N.S.C.], in reaffirming the previous resolutions, is maintaining the same position in respect of arms that it had previously taken, and that the intervening events which have occurred have not altered this stand. Should members of the [U.N.S.C.] desire a change in this position, the appropriate means would be by a new decision of the [U.N.S.C.].⁶²

The Repertoire of Practice of U.N. organs include several references to the role of previous resolutions. For instance, the 1966–1969 practice includes a specific section on recalling or reaffirming previous decisions, censuring non-compliance with U.N.S.C. decisions, requesting compliance with those decisions.⁶³

Several commentators have taken similar views on the relevance of previous resolutions. Sir Michael Wood commented on the serial nature of many resolutions and the inherent impossibility of considering them as self-standing texts.⁶⁴ He argued that the U.N.S.C.'s failure to “always make the relationship to earlier Resolutions clear” exacerbated the importance of the series.⁶⁵

In their landmark, practitioner-oriented contribution on the U.N.S.C.'s procedure, Sievers and Daws observed that the U.N.S.C.

61. See Richard A. Posner, *An Economic Analysis of the Use of Citations in the Law*, 2 AM. L. ECON. REV. 381, 383 (2000) (“It does not follow from the commonness of citing that citing is an activity worth studying.”).

62. *Legal Position Regarding the Import of Arms and War Materials by the Central Government of the Republic of the Congo - Interpretation of Paragraph 6 of General Assembly Resolution 1474 (ES IV) of 20 September 1960 - Interpretation of Paragraph 6 of the Security Council Resolution of 24 November 1961*, 1962 U.N. Jurid. Y.B. 238, U.N. Doc. ST/Leg/8.

63. REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS, at 16, U.N. Sales No. E.82.V.7 (1982) (covering Sept. 1966 to Dec. 31, 1969).

64. See Wood, *supra* note 20, at 87.

65. See *id.*

had occasionally adopted resolutions grounded in its Chapter VII powers without expressly saying so. Instead, it has adopted some Chapter VII resolutions “in follow-up to previous Resolutions which *did* contain a determination of a threat to international peace and security, and to which they referred.”⁶⁶ Conversely, *Oppenheim’s International Law: United Nations* contests the relevance of quoting Chapter VII resolutions to impose new measures, even if it recognizes this practice in other context, such as “individual and collective self-defence.”⁶⁷

Using a different approach, Wouter Werner reflected on the *effects* of citations, investigating its significance for the problems of origins, authorship, as well as of continuity and change.⁶⁸ According to Werner, a practice of repetition of this kind “solidifies and at the same time adapts and updates the meaning of rules and decisions,” increasing the coherence of the U.N.S.C.’s output and self-referentially justifying itself.⁶⁹ In a 1969 article unrelated to the U.N.S.C., Samuel Bleicher examined the potential significance of the General Assembly’s citation practice on the law-making effect of such resolutions.⁷⁰ The article, singled out in Shaffer and Ginsburg’s watershed piece on the *Empirical Turn* as one of the early exceptions to the prevalence of doctrinal scholarship in international law,⁷¹ ultimately concluded that “[the] process of re-citation distinguishes those resolutions which express deeply-held, temporally stable convictions from those which are of only passing or mild concern.”⁷² According to Bleicher, legislation through re-citation emerged as an alternative to the better, but politically unattainable option of including in a resolution a statement that a particular paragraph of the resolution was indeed declaratory of international law.⁷³

66. LORAINIE SIEVERS & SAM DAWS, *THE PROCEDURE OF THE UN SECURITY COUNCIL* 388 (4th ed. 2014).

67. Higgins et al., *supra* note 14, ¶¶ 26.87, 26.101.

68. Werner, *supra* note 2, at 154–55.

69. *Id.* at 168. Werner refers here to Luhmann’s well-known ideas on Law’s autopoiesis and the stabilization of normative expectations as developed by Niklas Luhmann. For a closer look, see NIKLAS LUHMANN ET AL., *LAW AS A SOCIAL SYSTEM* (Fatima Kastner et al. eds., 2008).

70. Bleicher, *supra* note 19.

71. Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AM. J. INT’L L. 1, 3, 9 (2012) (introducing to the shift toward an empirical study of international law).

72. Bleicher, *supra* note 19, at 477.

73. There is arguably an equal measure of irony and vindication within Bleicher’s views in the circumstance that, not one year later, the General Assembly adopted G.A. Res. 2625

The approaches chosen in the above-mentioned studies differ greatly, but they all reveal the importance attached to the references made in a resolution to previous ones, qualifying it as a practice worth considering for both its explanatory promise and potential for normative implications. The intellectual legacy of Bleicher's article may be seen as a proof of the importance of this topic: While the study was chiefly concerned with the law-making effect of resolutions, it was cited for many different propositions relating to citations. For example, in her seminal work on *International Law and the Use of Force*, Christine Gray did so to discuss the symbolic role of repeated condemnation,⁷⁴ while Schermers and Blokker referred to it approvingly to introduce a discussion of the citation of previous resolutions as a technique designed to reinforce pre-existing recommendation, arguing that the practice "mobilizes public opinion and legal opinion in support of the view that such former Resolutions have created obligations."⁷⁵

On the basis of this received wisdom, we make our case for the study of the U.N.S.C.'s citation practice. We argue that understanding citation practice is crucial because of the implications of the practice and the heuristic benefits it can yield. As to the first aspect, we understand citations to previous resolutions as providing linkages to past practice, capable of supporting—and, potentially, constraining—conduct performed in the present. As to the second, we argue the practice is worth studying insofar as it provides us with a privileged channel and powerful heuristic tool to look at how the U.N.S.C. itself defines its relationship with the past and contextualizes its present conduct, whether or not this is done in a deliberate fashion and with specific goals. As Blaise Cronin puts it, discussing the evolution of scientific literature, citations may be seen as "footprints which bear witness to the passage of ideas," and from which "it is possible to deduce direction," establishing "whether the advance was orderly and purposive."⁷⁶

(XXV) (Oct. 24, 1970) (the "Friendly Relations" Resolution), largely confirming the approach advocated in the 1969 paper.

74. CHRISTINE GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* 78, 97 (3d ed. 2008).

75. HENRY G. SCHERMERS & NIELS M. BLOKKER, *INTERNATIONAL INSTITUTIONAL LAW: UNITY WITHIN DIVERSITY* 780 (5th ed. 2011).

76. Blaise Cronin, *The Need for a Theory of Citing*, 37 J. DOCUMENTATION 16, 16 (1981) (establishing the importance of citing).

B. Resolutions as Data

For all their distinctive formal effects warranting a unique status and treatment, resolutions are just text. As such, they can be analyzed with the help of computational tools designed to extract and classify textual data. The expression text-as-data is often used to identify these techniques, which are designed to extract structured data from text that does not have a predefined data model.⁷⁷ Text-as-data approaches have been tested in the legal domain and have been found to provide, at the very least, an important complement to doctrinal approaches.⁷⁸ Thus, such approaches have allowed scholars to understand the “Americanization” of bilateral investment treaties (BITs) by measuring the similarity between provisions contained in any given pair of BITs in a corpus;⁷⁹ to understand the citation patterns of courts and tribunals, and thus, the role of precedent in national and international law;⁸⁰ to identify “unseen actors” in the drafting process

77. For recent overviews of the field, see Kenneth Benoit, *Text as Data: An Overview*, in THE SAGE HANDBOOK OF RESEARCH METHODS IN POLITICAL SCIENCE AND INTERNATIONAL RELATIONS 461 (Luigi Curini & Robert Franzese ed., 2020); Matthew Gentzkow et al., *Text as Data*, 57 J. ECON. LIT. 535 (2019); Justin Grimmer & Brandon M. Stewart, *Text as Data: The Promise and Pitfalls of Automatic Content Analysis Methods for Political Texts*, 21 POL. ANALYSIS 267 (2013).

78. Urška Šadl & Henrik Palmer Olsen, *Can Quantitative Methods Complement Doctrinal Legal Studies? Using Citation Network and Corpus Linguistic Analysis to Understand International Courts*, 30 LEIDEN J. INT’L L. 327, 328 (2017).

79. Wolfgang Alschner & Dmitriy Skougarevskiy, *Mapping the Universe of International Investment Agreements*, 19 J. INT’L ECON. L. 561, 562 (2016).

80. See generally Wolfgang Alschner & Damien Charlotin, *The Growing Complexity of the International Court of Justice’s Self-Citation Network*, 29 EUR. J. INT’L L. 83 (2018); James H. Fowler & Sangick Jeon, *The Authority of Supreme Court Precedent*, 30 SOC. NETWORK 16 (2008); Yonatan Lupu & Erik Voeten, *Precedent in International Courts: A Network Analysis of Case Citations by the European Court of Human Rights*, 42 BRIT. J. POL. SCI. 413 (2012); Niccolò Ridi, *Doing Things with International Precedents: The Use and Authority of Previous Decisions in International Adjudication* (2019) (Ph.D. dissertation, King’s College London) (on file at King’s College London); Niccolò Ridi, *The Shape and Structure of the ‘Usable Past’: An Empirical Analysis of the Use of Precedent in International Adjudication*, 10 J. INT’L DISP. SETTL. 200 (2019) [hereinafter Ridi, *Shape and Structure*]; Niccolò Ridi, *Mirages of an Intellectual Dreamland? Ratio, Obiter and the Textualization of International Precedent*, 10 J. INT’L DISP. SETTL. 361 (2019) [hereinafter Ridi, *Mirages*].

of judicial decisions;⁸¹ and even to single out the features of a “citable opinion.”⁸²

The relatively large corpus of U.N.S.C. resolutions, with its highly formalized stylistic conventions and consistent citation styles, is a prime candidate for the application of these methodologies with a view to extracting data.⁸³ While we gloss over other relevant documents,⁸⁴ this collection of uniform documents allows us to carry out a large-scale investigation. Moreover, we do not perceive the precise contours of our dataset as a limitation. Whatever determinants and processes lead to their adoption, the U.N.S.C. recalls resolutions—that is to say, the end product, not what preceded them chronologically or logically. It is through the citation of the final version of the text that the U.N.S.C. negotiates its relationship with the past, thereby making resolutions an appropriate proxy to examine this relationship.

Our main dataset includes the full text of all the 2,489 U.N.S.C. resolutions available on the U.N.S.C. institutional website and the U.N. Digital Library up to late 2019.⁸⁵ We downloaded each resolution in the .pdf format, converted it into machine-readable format, and removed unnecessary material.⁸⁶ We also captured additional metadata, such as: the title and official topic of each resolution; their date; the current composition of the U.N.S.C.; the voting records, as well as the presence of an abstention by one of the Permanent Members; the U.N.S.C.’s agenda; sponsorship data at the regional group level and at the state level, including a Boolean variable for each

81. Joost Pauwelyn & Krzysztof Pelc, *Who Writes the Rulings of the World Trade Organization? A Critical Assessment of the Role of the Secretariat in WTO Dispute Settlement*, at 3, (Oct. 26, 2019) (unpublished manuscript), <https://papers.ssrn.com/abstract=3458872> [<https://perma.cc/3FJN-QXR3>].

82. Nina Varsava, *The Citable Opinion: A Quantitative Analysis of the Style and Impact of Judicial Decisions* (Univ. of Wisconsin, Research Paper No. 1494, 2018), <https://ssrn.com/abstract=3197209> [<https://perma.cc/F52J-7S4H>].

83. In this respect, it is interesting to note that even those who have adopted a largely doctrinal approach to the study of the subject have reflected on the potential significance of the citation and document classification styles. For an example in a landmark contribution, see Wood, *supra* note 20, at 87 (arguing that “[t]he documentation of the Council is somewhat obscure, but probably the most authoritative text is that published under the Symbol S/RES/= immediately following adoption”).

84. We do in fact also consider draft resolutions, but only insofar as they are available and always as a comparator.

85. Our sample only includes documents labeled “resolution,” thereby excluding any other type of decision or presidential statement. This is required for reasons of consistency, but we aim to explore such documents in future studies.

86. This was required because resolutions and decisions are commonly stored together in the same .pdf documents.

of the 132 states that have been members of the U.N.S.C. In addition to this material, we also downloaded the text of all the available draft resolutions which formed the basis of adopted resolutions in order to carry out further analysis.

To collect citations, we used regular expressions,⁸⁷ extracting them along with an identifier of the resolutions in which they appear and which they cite, their dates, and the text of the citing paragraph. We also extracted relevant metadata relating to the position and length of citing paragraph, and more. If a paragraph contained more than one citation, we saved an individual record for each.⁸⁸

C. The Network Approach

The next step in our analysis takes advantage of social network analysis. This is a strategy that can be employed to carry out large-scale investigations on the basis of the characteristics of the actors and the relational data covering the linkages between them.⁸⁹ In social network analysis, such actors—be they individuals, companies, documents, or any other entity—are conceptualized as points and their relationship as lines, so as to create a network of relationship that lends itself to investigation. As John Scott, the author of a leading text on the topic, puts it, social network analysis is “concerned with the patterns formed by the points and lines and involves exploring these patterns, mathematically or visually, in order to assess their effects on the individuals and organisations that are the members of the ‘networks’ formed by the intersecting lines that connect them.”⁹⁰

The developments in network science have reverberated in the social sciences, as network approaches were found useful in answering old questions and invaluable in laying the foundation for the analysis

87. A regular expression, or “regex,” is, simply put, a pattern that matches strings of text. Because citations are formatted in a relatively consistent way, they can be matched even without knowing their content. The regular expression `\d+s(\d\d\d\d)` would match S.C. Res. 1325 (2000) as well as S.C. Res. 364 (1974). On regular expressions, see Ken Thompson, *Programming Techniques: Regular Expression Search Algorithm*, 11 COMM’NS ACM 419 (1968).

88. See *infra* Table A, for an overview of the dataset.

89. Evelien Otte & Ronald Rousseau, *Social Network Analysis: A Powerful Strategy, Also for the Information Sciences*, 28 J. INFO. SCI. 441, 441–42 (2002).

90. JOHN SCOTT, WHAT IS SOCIAL NETWORK ANALYSIS? 1 (2012), <https://library.oapen.org/handle/20.500.12657/58730> [<https://perma.cc/49UD-7VV9>].

of new ones.⁹¹ For example, network approaches have been used to understand the makeup of transnational activist networks;⁹² to determine the authority of precedent in the context of national⁹³ and international adjudication;⁹⁴ to better understand the sociology of international adjudication⁹⁵ or the legal profession at the practice or academic level.⁹⁶ In most, if not all these cases, network analysis has the potential to bring to light the latent patterns emerging from the relationship between the different elements within the network, thereby enhancing our understanding of their role and value within their reference system.

To perform social network analysis, we also constructed a network on the basis of citations between resolutions with a view to accurately identify, map, and rank the connections between the various resolutions.⁹⁷ In our network, “nodes” represent resolutions and “edges” a citation. Because citations only link newer documents to older ones, the resulting graph can be defined as a *directed* network, including 2,489 nodes (one for each resolution) and 12,417 edges.⁹⁸

91. For a review of the use of network approaches in international relations (broadly construed), see generally Emilie M. Hafner-Burton, Miles Kahler & Alexander H. Montgomery, *Network Analysis for International Relations*, 63 INT'L ORG. 559 (2009); Peter Kacziba, *The Network Analysis of International Relations: Overview of an Emergent Methodology*, 14 J. INT'L STUD. 155 (2021).

92. Margaret E. Keck & Kathryn Sikkink, *Transnational Advocacy Networks in International and Regional Politics*, 68 INT'L SOC. SCI. J. 65, 65 (2018).

93. James H. Fowler & Sangick Jeon, *The Authority of Supreme Court Precedent*, 30 SOC. NETWORKS 16 (2008).

94. See generally Lupu & Voeten, *supra* note 80; Krzysztof J. Pelc, *The Politics of Precedent in International Law: A Social Network Application*, 108 AM. POL. SCI. REV. 547 (2014); Damien Charlotin, *The Place of Investment Awards and WTO Decisions in International Law: A Citation Analysis*, 20 J. INT'L ECON. L. 279 (2017); Alschner & Charlotin, *supra* note 80; Ridi, *Mirages*, *supra* note 80; Ridi, *Shape and Structure*, *supra* note 80.

95. See generally Sergio Puig, *Social Capital in the Arbitration Market*, 25 EUR. J. INT'L L. 387 (2014); Malcolm Langford, Daniel Behn & Runar Hilleren Lie, *The Revolving Door in International Investment Arbitration*, 20 J. INT'L ECON. L. 301 (2017).

96. See Daniel Katz et al., *Reproduction of Hierarchy? A Social Network Analysis of the American Law Professoriate*, 61 J. LEGAL EDUC. 76 (2011); Luíza Leão Soares Pereira & Niccolò Ridi, *Mapping the “Invisible College of International Lawyers” Through Obituaries* 34 LEIDEN J. INT'L L. 67 (2018).

97. We do so with the open source software Gephi. See Mathieu Bastian et al., *Gephi: An Open Source Software for Exploring and Manipulating Networks*, 3 PROC. INT'L AAAI CONF. WEB & SOC. MEDIA 361, 361 (2009).

98. The number of edges is lower than the overall number of citations because it is possible for a resolution to refer to another more than once. Where this was the case, we merged the resulting edges, accounting for their number by weighing them.

The network thus generated retains several characteristics typical of citation networks,⁹⁹ which in turn share features with most other man-made networks, be they the World Wide Web¹⁰⁰ or the networks of bankable Hollywood actors.¹⁰¹ For example, its degree distribution—that is to say, the probability distribution of the number of inward or outward connections of any given node—follows a power law. In other words, a small minority of nodes are true outliers, being highly connected to others, while most other nodes do not have such characteristics. In network science, features of this kind are generally taken as a strong indication that the network in question is not at all random, for such networks tend to exhibit different types of distribution.¹⁰²

Our network also shares other characteristics distinguishing it from randomly generated networks. For example, it is *sparse*, meaning that it has a low network density of 0.002. This last measure is defined as the ratio between the number of ties between the items in the network and the number of possible ties between them.¹⁰³ Again, much like other real-world, man-made networks, ours has very strong modularity, meaning that “communities” of nodes can be easily identified at the mathematical level by comparing the density of the would-be community with the density of the full graph.¹⁰⁴ Our network is no exception and features a comparatively high clustering coefficient, meaning that nodes tend to cluster together in communities.¹⁰⁵ Our network also contains a high modularity score,

99. See generally DEREK JOHN DE SOLLA PRICE, *LITTLE SCIENCE, BIG SCIENCE—AND BEYOND* (1963).

100. See Albert-Laszlo Barabasi, *Science of Networks from Society to the Web*, in *A SENSE OF PLACE: THE GLOBAL AND THE LOCAL IN MOBILE COMMUNICATION* 415 (János Kristóf Nyíri ed., 2005); Albert-László Barabási, Réka Albert & Hawoong Jeong, *Scale-Free Characteristics of Random Networks: The Topology of the World-Wide Web*, 281 *PHYSICA STAT. MECHS. & ITS APPLICATIONS* 69 (2000).

101. ALBERT-LÁSZLÓ BARABÁSI, *NETWORK SCIENCE* 416 (2016); Thomas A. Smith, *The Web of Law*, 44 *SAN DIEGO L. REV.* 309, 310 (2007).

102. In particular, most random networks tend to exhibit a Poisson distribution. See Reka Albert & Albert-Laszlo Barabasi, *Statistical Mechanics of Complex Networks*, 74 *REVS. MOD. PHYSICS* 47 (2002); see also BARABÁSI, *supra* note 101, at 119.

103. BARABÁSI, *supra* note 101, at 13.

104. *Id.* at 18–19.

105. Notably, the average clustering coefficient in this network is far lower if directionality is taken into account, yielding a score of 0.247. However, this is inevitable in directional networks representing a practice unfolding over several decades with an uneven distribution (in this case, an acceleration) in the rate at which they appear and enter the network. A more holistic measure is offered by the calculation of the same score without taking into

meaning that the several communities of resolutions that are more connected among themselves than to the rest of the network.¹⁰⁶ These measures are consistent with the emergence of communities of resolutions dealing with the same or related topics or concerns, as well as of the tendency of similar connections (in our case, references to the same resolutions) being replicated across several members of the same community.¹⁰⁷ Indeed, the grouping of resolutions on the basis of their mathematically-generated network cluster offers a good fit for their classification by the in topics and agenda items made available by U.N. resources such as the Repertory of Practice and the U.N. Digital Library.

These mathematical properties of the network are also apparent in its graphical representation. The full network of U.N.S.C. resolutions is shown in Figure 1. The size of the nodes, which reflects the number of inward citations, is immediately suggestive of the comparative centrality of specific resolutions, such as Resolution 1325 (2000) on Women, Peace and Security, which we will later discuss in depth.¹⁰⁸ The different colors, in turn, reflect the different communities of resolutions. As the labels in the network indicate, the computationally generated modules of the network offer a good fit for communities of resolutions that have a thematic aspect or situational mandate in common.

These conclusions, confirmed by the bird's eye view provided by the representation full network, are but the tip of the iceberg. We now turn to the less detectable features.

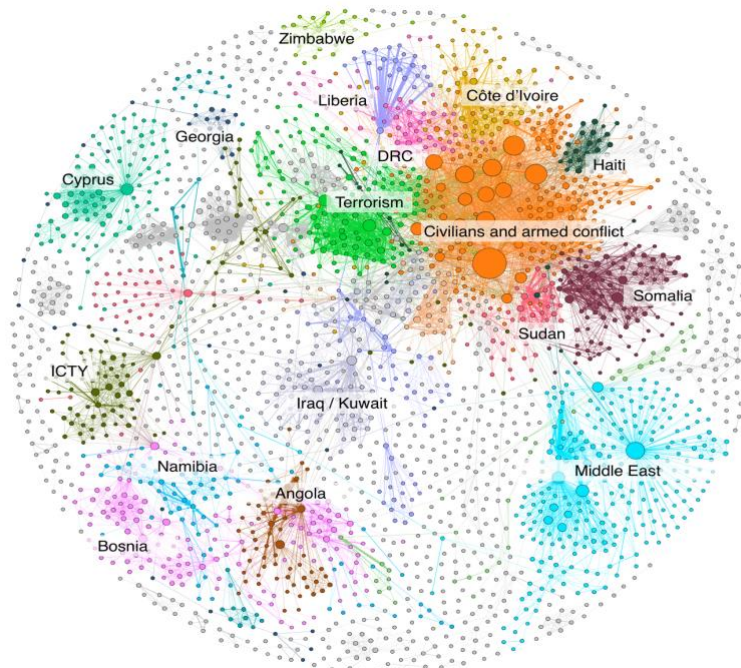


Figure 1: Overview of the U.N.S.C. Network. The Interactive Network may be Found at: <https://ouestware.gitlab.io/retina/beta/#/graph/?url=https%3A%2F%2Fgist.githubusercontent.com%2Fniccoloridi%2F9f02add305bdd5af5861fd2bee624409%2Fraw%2Fcc20d9c3179fd4da76a498f4e1798a49ade9de8b%2Fnetwork-1497ffc9-4d5.gexf>

III. UNPACKING THE U.N.S.C.'S CITATION PRACTICE

We begin by unpacking the basic features of citation practice in order to confirm the fundamental assumption that citations are intentional and the importance of citation practice generally at the U.N.S.C. We illustrate how the practice of citing is growing in importance and is altogether more complex than it might appear at first sight. We also provide evidence that states do not see citations as a purely ceremonial matter but instead attach some significance to them. We start by confirming that references to previous resolutions matter. We then proceed to describe the rise in citations over the history of the Security U.N.S.C. and its activity. Next, we illustrate the distinguishing features of resolutions attracting citations. Finally, we will map references to previous resolutions based on the topics they attract and the uses that are made of them within the broader resolution.

A. Citations Matter

Our first investigation is intended to confirm the threshold requirement that references to previous resolutions matter. Our network data supports the view that they are not random, and the deliberate use of references also supports the assertion that they are important. This confirmation is useful because, although we do have anecdotal evidence concerning the weight a reference may have and the importance states attach to it,¹⁰⁹ the informal nature of the negotiating process makes it difficult to collect data on the matter.

Going beyond anecdotal evidence to investigate the matter, we rely on a proxy for state involvement, looking at which actors have the last word on the inclusion of references. We do so by tracking variations between the citations included in the final draft text circulated as an official U.N.S.C. document and the adopted text of the resolution. The rationale behind the experiment is simple enough: If references matter little, discrepancies between the proposed and ultimately adopted set of references should be the exception, rather than the norm, as nobody would want to renegotiate a text on that basis alone. Thus, the difference from the proposed set of citations acts as the litmus test of their importance—as the proxy of objections that arise at a very late stage after a proposed text has already been circulated.¹¹⁰

Our analysis relied on a “parallel” corpus, including 2,124 resolutions for which a corresponding draft resolution was readily available on the U.N. Digital Library. We compared the references included in both in order to determine whether there were differences in their identity and number. As Figure 2 and 3 show, we find that, although in a majority of cases (71.75%) there is a complete identity between the citations included in the draft text and the adopted resolution (including their order), this is not the case in over a quarter of the cases we investigated (28.25%). To further assess the significance of this practice, we also measured the degree of change by calculating the difference between the number of references included at the draft stage and those that remain in the adopted resolution. We found that the addition of new references after the circulation of a draft as an official U.N.S.C. document has become less and less likely. By plotting the difference between the number of references cited in the

109. See Wood, *supra* note 20, at 87.

110. See SIEVERS & DAWS, *supra* note 66, at 269 (discussing the practice of “blue” draft resolutions, which generally occurs when a draft resolution has already garnered sufficient support to be put to a vote, and stating that “changes to a draft resolution after it has been put into ‘blue’ are usually limited to technical corrections, changes to the substance are occasionally agreed”).

final text compared to the draft, we also found that citations to previous resolutions are as likely to be *removed* as they are to be added during the adoption process. In particular, this appears to be the case in recent years, during which we also find that sets of references in the draft and adopted resolution have aligned more and more, though not always fully. This finding is consistent with literature on the evolution of U.N.S.C. drafting and the practice of penholding.¹¹¹

Based on these findings, we argue that control over references must matter because if they did not, there would not be changes to citations between the drafted and final versions. We turn to the implications of this finding in Part IV.

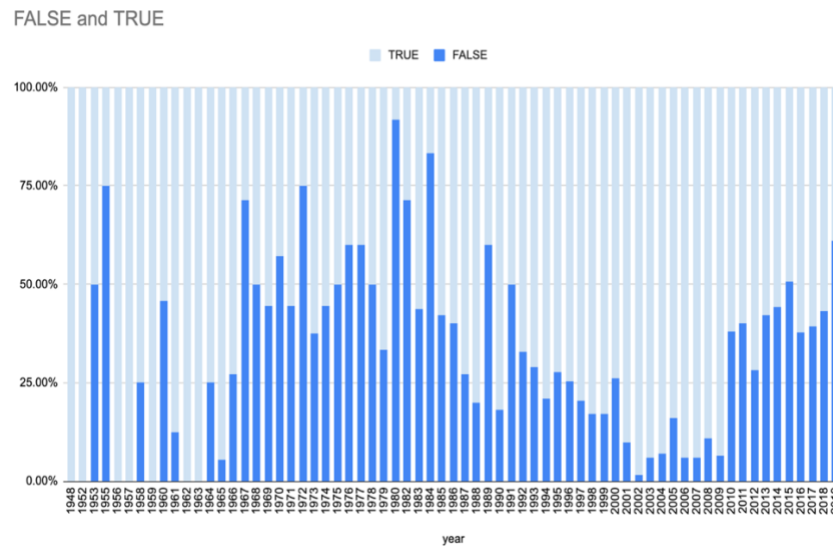


Figure 2: Identity between citations in draft and adopted texts (including order)

111. On “penholding,” see SIEVERS & DAWS, *supra* note 66, at 267; see also Marie-Eve Loiselle, *The Penholder System and the Rule of Law in the Security Council Decision-Making: Setback or Improvement?*, 33 LEIDEN J. INT’L L. 139 (2020).

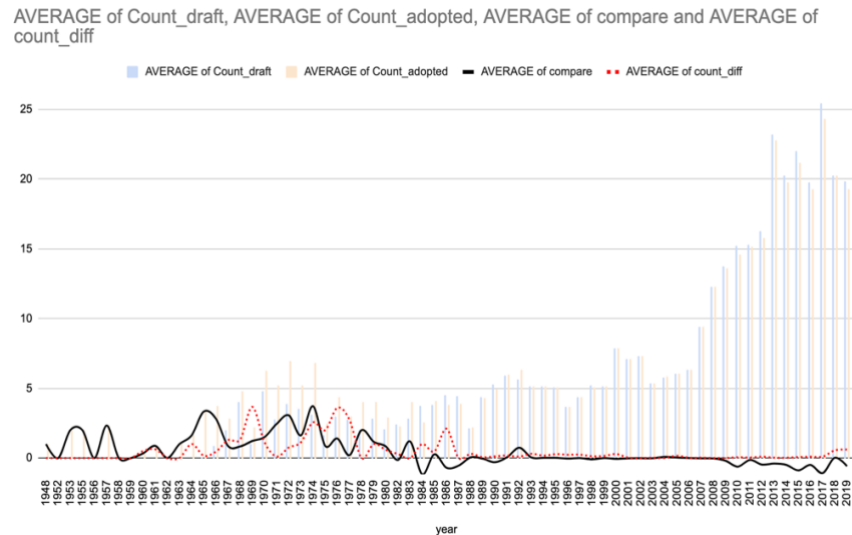


Figure 3: Number of citations in draft Resolutions, adopted Resolutions, difference in number between the two, and number of unique citations added in adopted Resolutions

B. The Rise in Citations and Their Age

The rapid increase in the number of citations over time provides a striking indication of the growing significance of citations. As the plot in Figure 4 shows, we find that the number of citations has greatly overtaken the number of resolutions adopted per year.¹¹² However, up until the mid-2000s, the *average* number of citations per resolution remained relatively stable. After this date, a veritable surge may be observed, with the average number of references per resolution rising from 8.5 in 2005 to 27.5 in 2017. The rise, as we discuss in the following Sections, correlates with the increasing length of the average resolutions and the growing variety of purposes associated with the practice of referencing previous resolutions.

When the U.N.S.C. cites resolutions, they are often relatively recently passed resolutions. This pattern can be explained by the fact the U.N.S.C.'s activity generally targets situations that unfold across short temporal horizons which the selection of citations reflects. To fully appreciate this tendency, we rely on approaches developed in the context of scientometrics and aimed at determining the rate of

112. For a similar pattern, see Alschner & Charlotin, *supra* note 80, at 95.

“depreciation” of the cited material, that is to say, the rate at which its citation becomes unnecessary or ineffective.¹¹³ As Figure 5 shows, in almost every year, the U.N.S.C. cites extremely recent resolutions and the average age of cited resolutions tends to only exhibit a modest upward trend. Thus, taking the last five years in our dataset as a sample, the average age of a cited resolution in the 2015–2019 interval is a mere four years, with a median age of three. While older resolutions are not forgotten, they are unlikely to be cited absent special circumstances. In this regard, outliers are revealing: The high average age scores in the year 1986 can be explained by the fact that a number of resolutions were passed concerning the situation in Lebanon, with several resolutions recalling Resolution 338 (1973) (calling for a ceasefire in the Yom Kippur war), as well as 425 (1978) and 426 (1978) (establishing the mandate of the U.N. Interim Force in Lebanon (UNIFIL)), for various purposes. Among these purposes was “[t]o call upon the parties concerned to implement immediately Security Council resolution 338 (1973),”¹¹⁴ extending the UNIFIL’s mandate, and condemning the attacks against it.¹¹⁵

113. See Jacob B. Snyder et al., *Citation Pattern and Lifespan: A Comparison of Discipline, Institution, and Individual*, 89 *SCIENTOMETRICS* 955, 955 (2011). In a landmark study on judicial precedent, Landes and Posner posited that judicial decisions, too, “depreciated” over time as new, better precedents became available. See William M. Landes & Richard A. Posner, *Legal Precedent: A Theoretical and Empirical Analysis*, 19 *J.L. & ECON.* 249, 262 (1976) (discussing the theoretical framework of legal capital).

114. See S.C. Res. 584 (May 29, 1986).

115. See S.C. Res. 587 (Sept. 23, 1986).

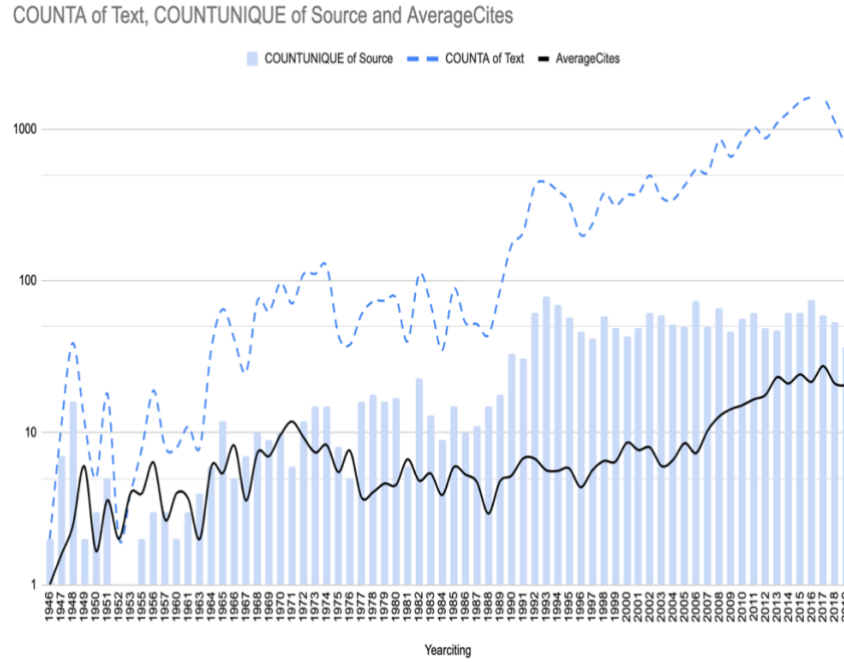


Figure 4: Number of citations against the number of Resolutions containing a citation adopted per year (logarithmic scale)

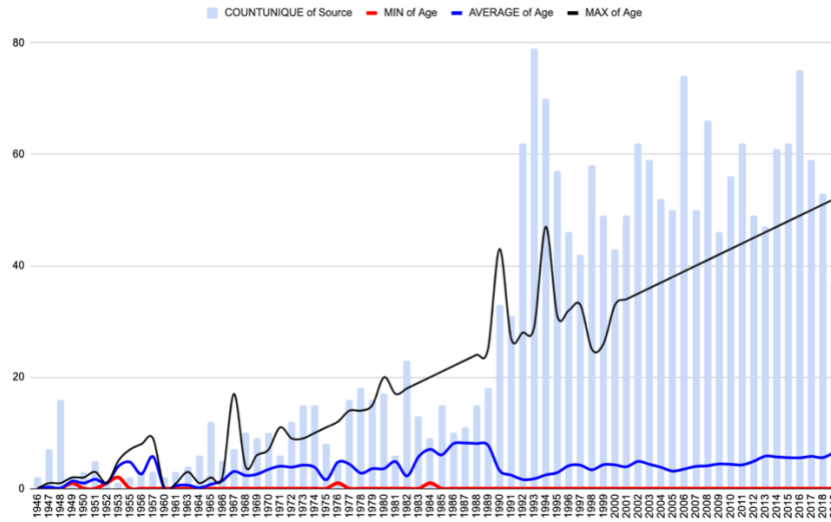


Figure 5: Average age of cited Resolutions over time

C. Network Centrality: The Citable Resolution

The findings above are confirmed by an analysis of the “extreme points” in the citation network. In order to further unpack the U.N.S.C.’s citing practice, this section turns to the identification of resolutions attracting or containing a disproportionate number of inward references in order to determine which attributes are correlated with such high citation scores. Because the degree distribution of man-made networks, such as citation networks, tends to approximate a power law,¹¹⁶ only a few resolutions will be highly connected to other resolutions.¹¹⁷ Ranking resolutions on the basis of the citations they receive (“inward citations”), only 48 resolutions received more than 20, only 28 have more than 50, and only 10 more than 100, while 805 have zero.¹¹⁸ Based on an analysis of the top thirty items of the network ranked by inward citations, we identify a number of common characteristics of the citable resolution.

First, highly-cited resolutions tend to be both relatively recent and comparatively long compared to the rest of the dataset, even taking into account the increasing average length of resolutions. Out of the thirty most cited resolutions, twenty-one were adopted after the year 2000 and have an average wordcount of 1,579.2 words, compared to the all-corpus average of 960 words and an average of 1507 words for resolutions adopted after the year 2000.¹¹⁹ Nevertheless, a regression analysis shows that word count is, in and by itself, a very poor predictor of future citations.¹²⁰ In practice, the most cited resolutions tend to be thematic ones with a high-degree of generality and applicability to new scenarios.¹²¹ Consistent with the findings made in the previous Section, the five most cited Resolutions (1325 (2000),¹²² 1820

116. See Albert-László Barabási & Eric Bonabeau, *Scale-Free Networks*, 288 SCI. AM. 60, 60 (2003). For an objection, see Michael Golosovsky, *Power-Law Citation Distributions Are Not Scale-Free*, PHYSICAL REV. E, Sept. 2017, at 1, 1.

117. In-degree and out-degree distribution plots are available in the Appendix.

118. The distribution of outward citations is similar, but not as extreme, as only 477 resolutions do not contain any reference to previous ones, while 427 contain more than 10, 112 more than 20, and only 25 more than 30.

119. See *supra* Figure 2.

120. R Square: 0.041905787.

121. See *infra* Figure 9.

122. S.C. Res. 1325 (Oct. 31, 2000).

(2008),¹²³ 1612 (2005),¹²⁴ 1888 (2009),¹²⁵ 1889 (2009)¹²⁶ all deal with the protection of civilians in armed conflict.¹²⁷ The few exceptions may be explained by the continued relevance of resolutions about ongoing situations. The most striking example is Resolution 242, on the cease-fire in Middle East, which has been recalled in many later resolutions concerning the same conflict, largely to the effect of “call[ing] upon the parties concerned to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all of its parts.”¹²⁸

A second feature of highly cited resolutions is the breadth of the consensus they gather. We find some correlation between unanimity and high citation scores, with most of the highly cited resolutions having been adopted unanimously. There are, however, some important exceptions. The most notable is Resolution 2068 (2012), the first resolution on the theme of Children and Armed Conflict (CAAC) not to be adopted unanimously.¹²⁹ Despite four abstentions, including two by permanent members,¹³⁰ it has been cited over fifty times¹³¹ and has certainly not been expunged from the corpus of relevant Resolutions on the matter.¹³² A more telling feature for future citability is the degree of sponsorship support of the resolution: We find that a large majority of the most cited resolutions enjoyed

123. S.C. Res. 1820 (June 19, 2008).

124. S.C. Res. 1612 (July 26, 2005).

125. S.C. Res. 1888 (Sept. 30, 2009).

126. S.C. Res. 1889 (Oct. 5, 2009).

127. See *infra* Table E: Top 10 Resolutions by Inward Citations.

128. S.C. Res. 338, ¶ 2 (Oct. 22, 1973).

129. U.N. SCOR, 67th Sess., 6838th mtg. at 16, U.N. Doc. S/PV.6838 (Sept. 19, 2012) (Statement of Mr. Karev, representative for the Russian Federation).

130. See S.C. Res. 2068 (Sept. 19, 2012).

131. *Id.*

132. See, e.g., S.C. Res. 2126 (Nov. 25, 2013). A typical string recalling these thematic resolutions will read:

Reaffirming its previous resolutions 1265 (1999), 1296 (2000), 1674 (2006), 1738 (2006) and 1894 (2009) on the protection of civilians in armed conflict, 1612 (2005), 1882 (2009), 1998 (2011), and 2068 (2012) on children and armed conflict, 1502 (2003) on the protection of humanitarian and United Nations personnel, and 1325 (2000), 1820 (2008), 1888 (2009), and 1889 (2009), 1960 (2010) and 2122 (2013) on women peace and security.

For an analysis of the circumstances concerning the adoption of S.C. Res. 2068 (Sept. 19, 2012), see Ingvild Bode, *Reflective Practices at the Security Council: Children and Armed Conflict and the Three United Nations*, 24 EUR. J. INT’L RELS. 293, 308–09 (2018).

broad sponsorship across a range of regional and other groups at the draft stage.¹³³

D. Uses of Citations: Use and Content

When dealing with references to the past, one might be tempted to simply look back at what is being recalled. Yet, any reference included in a text performs a function within that text, just as any other textual element may.¹³⁴ Accordingly, focusing only on the quantitative dimension may hide other information relevant for normative purposes. It also matters how and why each citation is included in the text, and in which position.¹³⁵ Consequently, this Section shifts the focus to the paragraphs containing citations, applying automated text analysis to map, on a large scale, the use of references to previous resolutions, as well as the content of the passages citing them and their respective positions in the text (whether in preambles or operative paragraphs).

1. Uses

Functionally, citations express a temporal connection between what is citing and what is cited. However, the inclusion of a citation might perform additional functions.¹³⁶ On this basis, we used automated text classification to catalogue citations in three classes based on the type of connection they embodied. To do so, we coded a

133. See *infra* Table F: Sponsorship by Regional Groups. We rely on “authorship” data available on the U.N. Digital Library. U.N., United Nations Digital Library, <https://digitallibrary.un.org/?ln=en> [<https://perma.cc/4AQ6-842B>]. We adopt U.N. classification in Regional Groups, including: African Group (sp_Africa), Asia and the Pacific Group (sp_AsiaPacific), Eastern European Group (sp_eeg), Latin American and Caribbean Group (sp_grulac), and the Western European and Others Group (SP_weog). The latter is duplicated as a separate version including the United States (SP_weogUS), which is not formally a member of that group.

134. See, e.g., Indra Budi & Yaniasih Yaniasih, *Understanding the Meanings of Citations Using Sentiment, Role, and Citation Function Classification*, 128 *SCIENTOMETRICS* 735 (2023) (analyzing three citation meanings: sentiment, role, and function).

135. See, e.g., Mingyang Wang et al., *Important Citation Identification by Exploiting the Syntactic and Contextual Information of Citations*, 125 *SCIENTOMETRICS* 2109 (2020) (proposing a new framework to distinguish important and non-important citations by examining the syntactic and contextual information of citations).

136. See generally Bojana Petrić, *Rhetorical Functions of Citations in High- and Low-Rated Master’s Theses*, 6 *J. ENG. FOR ACAD. PURPOSES* 238 (2007) (suggesting that one of the functions of citation in student writing is knowledge display).

sample of our collection of citations in order to train an automated classifier. Our coding was inductive and relied in part on the highly formalized use of verbs or expressions linked with the citations.¹³⁷ Our hypothesis, informed by U.N. documentation,¹³⁸ was that similar verbs such as “recall,” “reaffirm,” and “remind” might be used for the same purposes, while different expressions such as “established by,” “acting under,” and “pursuant to” constitute different ones.¹³⁹ As an additional layer, we also considered the specific location of the reference within the resolution, so as to distinguish references contained in the preamble from those embedded in the operative paragraphs of the resolution.

As to the first part of the investigation, we classified citations that create a link between the citing resolution and the past as conveying the idea of *basis* for an action. Frequent expressions are: “established by,” “acting under,” “following,” “pursuant to,” “in accordance,” “in conformity,” “in line,” “as referred,” and “as noted.” The basis to act could be legal, e.g., in the case of a resolution which originally created a subsidiary organ.¹⁴⁰ Or it could be factual, e.g., where a resolution establishes that something has or has not happened.¹⁴¹ Our second category captures those links with the past which convey a sense of *continuity*. This is the case for expressions such as “recalling,” “reaffirming,” “reminds,” and “maintain its offer.” We also included in this category citations that extend the mandate of subsidiary organs or peacekeeping missions.¹⁴² Finally, when citations are added to refer to previous measures which must be implemented,

137. We also posited that this approach could work well for automated text classification based on bag-of-words models, which keep the individual words contained in the original text, as well as their number, but remove their order. See Yin Zhang et al., *Understanding Bag-of-Words Model: A Statistical Framework*, 1 INT’L J. MACH. LEARNING & CYBERNETICS 43, 43 (2010).

138. See, e.g., U.N. Editorial Manual, Department of Conference Service, U.N. Doc. ST/DCS/2 (1983).

139. For a recent study relying on use of specific verbs, see Gregory H. Fox et al., *The Contributions of United Nations Security Council Resolutions to the Law of Non-International Armed Conflict: New Evidence of Customary International Law*, 67 AM. U. L. REV. 649, 661–62 (2018).

140. See, e.g., S.C. Res. 1019, at 2 (Nov. 9, 1995) (“expressing its strong support for the work of the International Tribunal established pursuant to its resolution 8 27 (1993)”).

141. See, e.g., S.C. Res. 36, at 1 (Nov. 1, 1947) (“taken note of the report . . . indicating that the Council’s resolution 27 (1947) . . . has not been fully effective”).

142. See, e.g., S.C. Res. 194, at 1 (Sept. 25, 1964) (“extends the period in which the United Nations Peace-keeping Force shall be stationed in Cyprus . . . in conformity with the terms of resolution 186 (1964)”); Here, “extends” and “in conformity” express different purposes. When this is the case, we considered the possibility of overlap.

complied with, or amended, we classified them as *aim*. Expressions include “to reach previous aim,” “implementation,” “comply with,” “modify,” “interpret,” “call,” “demand,” and “decide.” It is possible for a single citation to perform more than one function, and we took the possibility of overlapping functions into account.¹⁴³ On this basis, we coded a small portion of the dataset (a little over 500 randomly selected citing paragraphs) to serve as a training set, obtaining class predictions for the remainder using a logistic regression-based classifier.¹⁴⁴

As Figure 6 shows, we find that a majority of references to previous resolutions fall under the category of continuity. However, a substantial minority of paragraphs containing references may be classified as falling in the aim and basis categories, with an average percentage of 18.34%, and 17.18% for each respectively in the period 1946–2019. In the period 2005–2019, the percentages vary slightly, rising to 18.62% and 18.06% respectively.¹⁴⁵

These findings reflect, in large part, the evolving structure of the resolutions from short, actionable texts to longer documents with extensive preambles. Such preambles have sometimes been labelled as a “dumping ground for proposals that are not acceptable in the operative paragraphs.”¹⁴⁶ This label carries with it the implication that a reference contained therein may be considered less relevant to the U.N.S.C.’s activity than one incorporated in the operative paragraphs. As Sievers and Daws note, “[s]ome Council humorists have joked that preambles to resolutions have become so lengthy because elected members, feeling thwarted in their attempts to introduce ideas into operative paragraphs, have poured their ideas into the preambles.”¹⁴⁷ However, it is also true that the preambular paragraphs may contain important determinations or contextual information, such as the confirmation that the U.N.S.C. is acting under Chapter VII of the

143. Our coding and data excerpts are available in the Appendix. See *infra* Table B: Uses of citations and position within preambles or operative paragraphs.

144. We rely on the classifier included in the Python module Scikit-learn. See Fabian Pedregosa et al., *Scikit-learn: Machine Learning in Python*, 12 J. MACH. LEARNING RSCH. 2825 (2011). The accuracy of the classification is, for the purposes of our large-scale analysis, more than sufficient. See Table C: Automated text classification - validation, in Appendix.

145. See *infra* Figure 6.

146. Wood, *supra* note 20, at 87; see also Rossana Deplano, *The Use of International Law by the United Nations Security Council: An Empirical Framework for Analysis*, 29 EMORY INT’L L. REV. 2085 (2015).

147. See SIEVERS & DAWS, *supra* note 66, at 396.

Charter (which is generally made in the last preambular paragraph)¹⁴⁸ or the general characterization of the action taken by the U.N.S.C.¹⁴⁹

However, we also find that references to previous resolutions are not *increasingly* contained in preambular paragraphs. Indeed, there remains a substantial minority of resolutions that include references in their operative paragraphs (Figure 7). This is a significant finding, because it reveals that previous resolutions are not simply cited to provide a backdrop to the U.N.S.C.'s activity. Rather, their inclusion in the operative paragraphs shows that they provide the specific context and normative support for the operative demands made by the U.N.S.C. and, in many cases, the benchmark to assess the compliance with the operative demands.¹⁵⁰

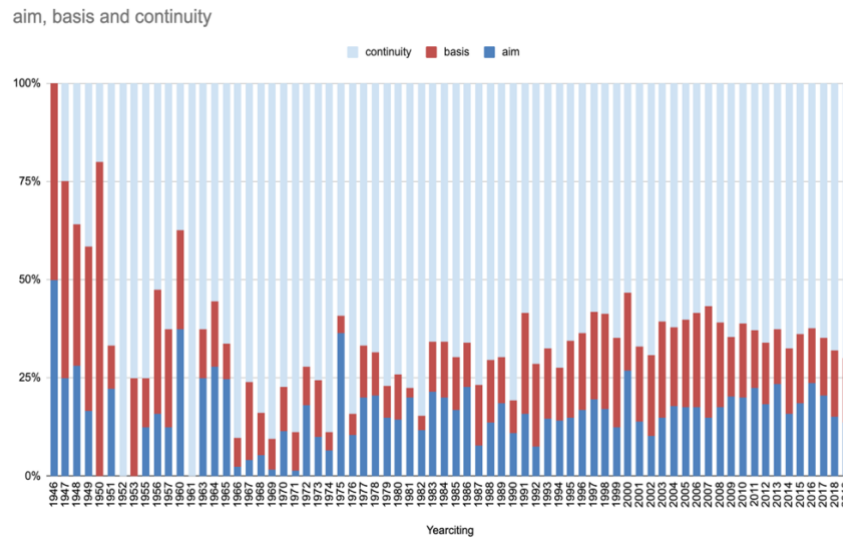


Figure 6: Percentage of citations by function

148. See WOOD & STHOEGER, *supra* note 1, at 35–36.

149. *Id.* at 112 (discussing, with reference to the Iraq-Kuwait boundary dispute, that “[t]he Council’s attempt to present its actions as a ‘technical exercise’ in the preamble to its decision speaks to the political sensitivities over such actions, but does not change their legal nature”).

150. See, e.g., S.C. Res. 1441, at 2 (Nov. 8, 2002) (“Deploring also that the Government of Iraq has failed to comply with its commitments pursuant to resolution 687 (1991)”; see also *infra* Table B: Uses of citations and position within preambles or operative paragraphs.

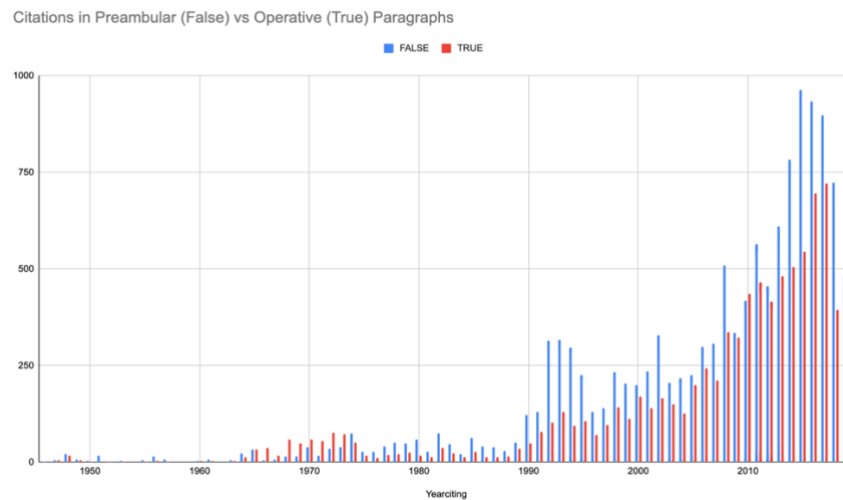


Figure 7: Number of citations in preambular and operative paragraphs

2. Topics

Although some of the citing paragraphs restrict themselves to recalling a previous resolution, most of them include a sizeable amount of meaningful content. This content provides useful information about the context and subject area to which the citation relates. Relying on topic modelling to map the substance and evolution of the paragraphs, we now turn to this content.

The methods we used are designed to identify clusters of words (topics) that share some similarity based on the occurrence of certain words, and have been applied with some success to the study of legal and political corpora,¹⁵¹ including in the U.N. context.¹⁵² In order to carry out our analysis, we used the widespread Latent Dirichlet Allocation (LDA) approach, which models each document in a corpus as a “finite mixture” of a set of topics, which is in turn modeled on a

151. See generally Yannis Panagis & Urška Šadl, *The Force of EU Case Law: A Multi-Dimensional Study of Case Citations*, 279 LEGAL KNOWLEDGE & INFO. SYS. 71 (2015).

152. See Mirco Schönfeld et al., *Discursive Landscapes and Unsupervised Topic Modeling in IR: A Validation of Text-As-Data Approaches through a New Corpus of UN Security Council Speeches on Afghanistan* (Oct. 12, 2018) (unpublished manuscript), <https://arxiv.org/abs/1810.05572> [<https://perma.cc/2BVT-8V77>]; Hanania, *supra* note 13.

mixture of topic probabilities.¹⁵³ Topics, therefore, are not exclusive, and a document is generally represented by more than one. The determination of the ideal number of topics in a corpus is not an exact science and is highly dependent on the characteristics of the collection of texts concerned. Although more mathematically precise approaches have been proposed,¹⁵⁴ most practical applications of topic modeling tend to be based on a number of topics that is arrived at inductively.¹⁵⁵ For the purposes of the present analysis, we found that an LDA model with forty topics proved to be the most instructive after assessing the lack of granularity and precision of models featuring fewer topics and the excessive, if inevitable, overlap of topics.¹⁵⁶

We find that the number of topics making up the paragraphs containing references to previous resolutions has increased significantly. Figure 8 below tracks the number of the first or main topic for the paragraphs containing references to previous resolutions for each year against the number of resolutions issued by the U.N.S.C. in the same period and the average number of citations per resolution. We find a significant increase in the number of topics, which is not explained by the increase of the average number of citations per resolution. This finding is significant because it reflects the increasingly diverse range of matters with which the U.N.S.C. concerns itself, further confirming that the practice of referencing previous resolutions has evolved along with the expansion of the U.N.S.C.'s functions.

Even more significantly, by tracking the evolution of topics, we may observe the increase in citations concerning—or evoking—policies and norms related to thematic issues. The stacked column chart in Figure 9 below provides an illustration of the rise of the Civilians in Armed Conflict and Women, Peace and Security (WPS) agendas by tracking a number of relevant topics (9, 8, 6, 40, 33),

153. David M. Blei et al., *Latent Dirichlet Allocation*, 3 J. MACH. LEARNING RSCH. 993, 1015 (2003).

154. See Rajkumar Arun et al., *On Finding the Natural Number of Topics with Latent Dirichlet Allocation: Some Observations*, in ADVANCES IN KNOWLEDGE DISCOVERY AND DATA MINING 391, 391 (Mohammed J. Zaki et al. ed., 2010); Weizhong Zhao et al., *A Heuristic Approach to Determine an Appropriate Number of Topics in Topic Modeling*, 16 BMC BIOINFORMATICS 1 (2015); Murzintcev Nikita, *Select Number of Topics for LDA Model*, CRAN, (Apr. 20, 2020), <https://cran.r-project.org/web/packages/ldatuning/vignettes/topics.html> [<https://perma.cc/YZ93-VJBD>].

155. For an instructive example, also consider the use of a model with three topics only in Hanania, *supra* note 13, at 662.

156. See *infra* Table D: List of LDA Topics. Because citing paragraphs tend to be formulaic, the topics were created on the basis of words present in at least one percent and no more than seventy percent of citing paragraphs.

depicted as stacks within columns representing the overall number of resolutions per year.¹⁵⁷ As the chart shows, the number of paragraphs in our dataset which fits the model of the corresponding topics has risen consistently since the end of the Cold War. This is consistent with other studies which point to a “humanitarian turn” in the U.N.S.C.’s practice,¹⁵⁸ thereby providing evidence that the practice of referencing previous resolutions might act as a channel for the incorporation of such concerns in the U.N.S.C.’s other areas of responsibility.¹⁵⁹

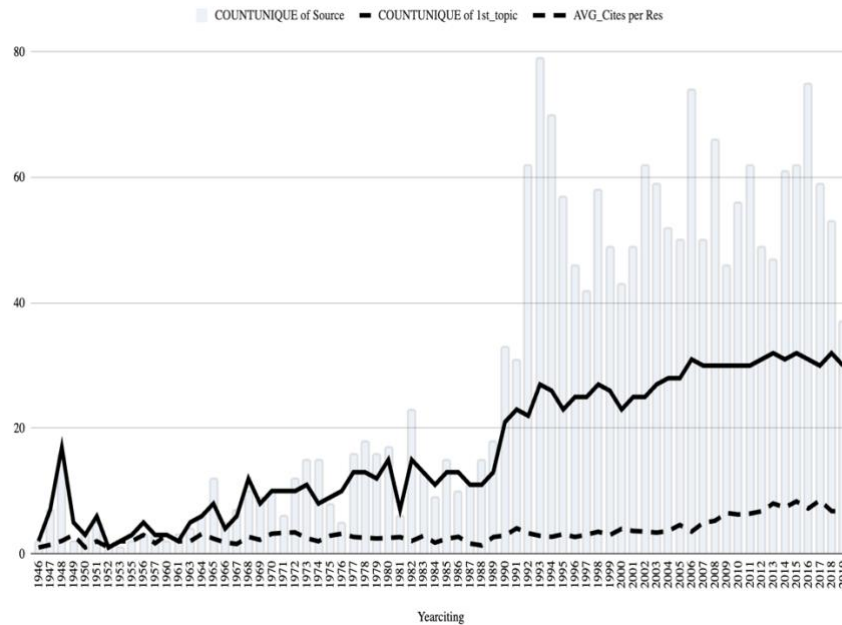


Figure 8: Increasing variety of topics

157. On WPS, see Laura J. Shepherd, *Power and Authority in the Production of United Nations Security Council Resolution 1325*, 52 INT’L STUD. Q. 383 (2008).

158. Hanania, *supra* note 13, at 657.

159. Other studies have tracked the recurrence of specific words. See, e.g., SARAH KENNY WERNER & ELENA B. STAVREVSKA, WHERE ARE THE WORDS? THE DISAPPEARANCE OF THE WOMEN, PEACE AND SECURITY AGENDA IN THE LANGUAGE OF COUNTRY-SPECIFIC UN SECURITY COUNCIL RESOLUTIONS (2020), <https://www.lse.ac.uk/women-peace-security/assets/documents/2020/Report-WILPF-LSE-Web.pdf> [https://perma.cc/2YUV-JR2Z].

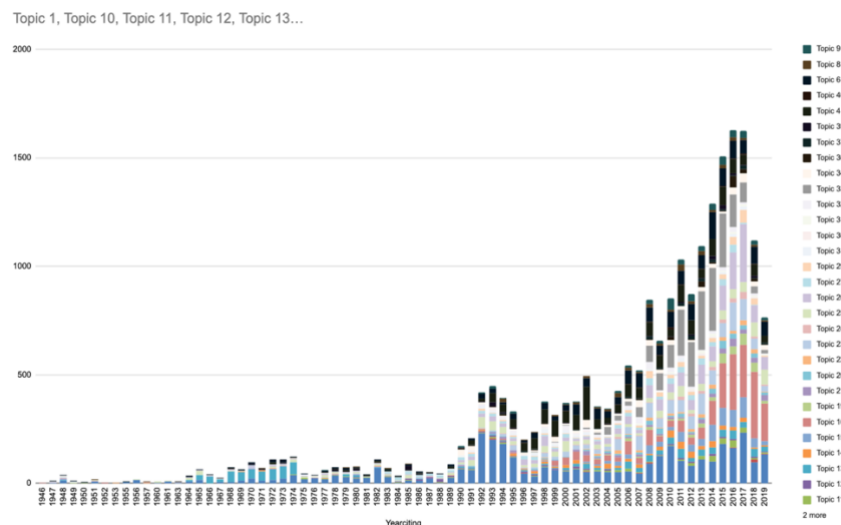


Figure 9: Rise of WPS (Topics 9, 8, 6, 40, 33)

IV. TESTING THE NORMATIVE IMPLICATIONS OF THE U.N.S.C. CITATION NETWORK

On the basis of the findings made in our analysis, we argue that the practice of citation is a particular form of institutional practice, and, as such, capable of producing normative effects. In this final Section, we will test our hypotheses on the normative implications by employing the citation network. In particular, we will focus on two overarching themes concerning the identification of the established practice of the organization: whether the practice of citing previous resolutions has an effect on the development of new competences, and whether it can impose limits to the U.N.S.C. action. For this purpose, we will deal with two case studies, concerning the U.N.S.C. practice of binding non-state actors and the limits imposed to U.N.S.C. activities by human rights norms.

A. Identification of Established Practice: Can the U.N.S.C. Expand Its Competences by Recalling Previous Resolutions?

In this Section, we will discuss how recalling previous resolutions may impact the acceptance and crystallizations of institutional practice that does not clearly derive from the powers

included in the constitutive instrument. As discussed in Section II.A, network analysis of resolutions can be used to identify CIL by showing whether the practice is consistent and widespread. References may prove the consistency of a certain practice through time, allowing us to shift our gaze from the single resolution to the network, and prove the existence of the constitutive elements of CIL.

The imposition of obligations on non-state actors provides a telling example of established practice. The U.N. Charter does not confer on the U.N.S.C. the power to impose obligations to entities other than member states. However, the U.N.S.C. has increasingly “demanded” respect for human rights or “ordered” all kind of entities to abide by peace agreements.¹⁶⁰ Among the vast literature on this issue, Wood and Stthoeger recently claimed that, despite the absence of a clear legal basis, the practice of the U.N.S.C. addressing non-member state actors is accepted.¹⁶¹ Whether the relevant entities are non-member states, international organizations, armed groups, or individuals, there is a clear indication that the U.N.S.C. must deal with these actors to fulfil its aim of maintaining peace and security. In the *Kosovo Advisory Opinion*, the ICJ stated that:

[I]t has not been uncommon for the Security Council to make demands on actors other than United Nations Member States and inter-governmental organizations When interpreting Security Council resolutions, the Court must establish, on a case-by-case basis, considering all relevant circumstances, for whom the Security Council intended to create binding legal obligations.¹⁶²

In the next two Sections, we will first compare the data on the practice of referencing previous resolutions with the practice of addressing non-state actors. We will then focus on the specific case of the imposition of obligations to armed groups. Once again, our aim is to reveal how citing previous resolutions is an essential element for analyzing the development of established practice, in this case towards the assumption of competences not included in the U.N. Charter, establishing the so-called “objective nature” of the U.N. against the principle *pacta tertiis nec nocent nec prosunt*.¹⁶³

160. Fox et al., *supra* note 139.

161. WOOD & STTHOEGER *supra* note 1, at 143.

162. Kosovo Advisory Opinion, *supra* note 28, ¶¶ 116–17.

163. Finn Seyersted, *Objective International Personality of Intergovernmental Organizations-Do Their Capacities Really Depend upon the Conventions Establishing Them*, 34 NORDISK TIDSSKRIFT INT'L RET. 3 (1964).

1. The Inclusion of Non-Member State and Non-State Actors in Security Council Resolutions

It may seem that the current universal reach of the U.N. makes the issue concerning non-member states moot. However, it still relevant to provide an overview of the past practice and compare it with non-state actors. In particular, taken together, this citation practice could reveal the objective nature of the organization, against which non-members cannot claim their status as a third party. As the ICJ claimed in the *Reparation Advisory Opinion*, “fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone, together with capacity to bring international claims.”

As a proxy to measure the references to non-member states we use the expression “all States,” increasingly used by the U.N.S.C., distinguishing it from “all member States” that is still in the vocabulary of the U.N.S.C.¹⁶⁴ In our database, we counted 690 references to “all states,” excluding misleading expression such as “all states parties” and “all states members” (Figure 10). Clearly, the reasons to refer to all states may vary and do not exclusively lead to conclude that U.N.S.C. resolutions bind non-members. Even when it expressively uses binding language, it might be that the U.N.S.C. does not refer to the imposition of new obligations, but to a mere reaffirmation of a well-established customary obligation.

However, the data is clear enough to draw relevant conclusions. The practice of referring to “all states” started in the 1960s and continued throughout the years.

164. See generally Stefan Talmon, *Ch.I Purposes and Principles, Article 2 (6)*, in 1 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY (Bruno Simma et al. eds., 3d ed. 2012).

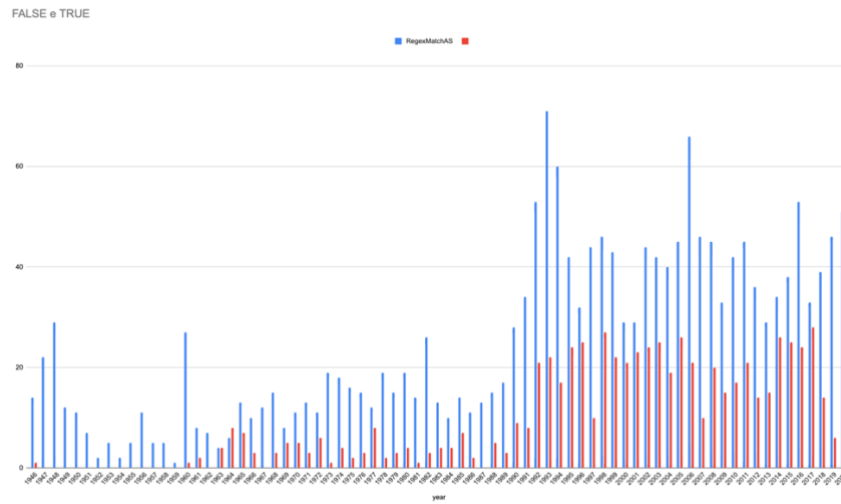


Figure 10: Time Evolution of resolutions mentioning “all states”

One of main cases referred in the literature concerns the sanction regimes imposed against Southern Rhodesia and against South Africa (Figure 11). Resolution 314 (1972) urged “all States to implement fully all Security Council resolutions establishing sanctions against Southern Rhodesia, in accordance with their obligations under Article 25 and Article 2, paragraph 6, of the Charter of the United Nations.”¹⁶⁵

165. S.C. Res. 314, ¶ 2 (Feb. 28, 1972).

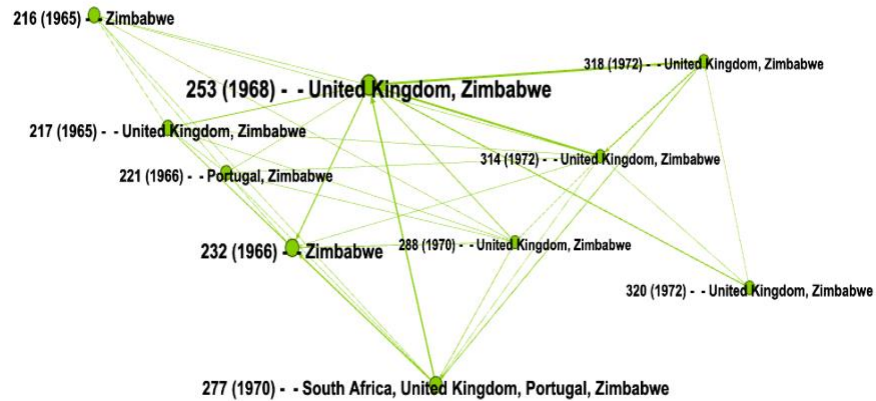


Figure 11: Ego-Network of Resolution 314 (1972)

The same expression, including the reference to article 2(6), is used in subsequent resolutions, while in previous resolutions the U.N.S.C. often refers to “all States Members of the United Nations.”

Similarly, Resolution 418 (1977) on South Africa explicitly “call[ed] upon all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution.”¹⁶⁶

166. S.C. Res. 418, ¶ 5 (Nov. 4, 1977).

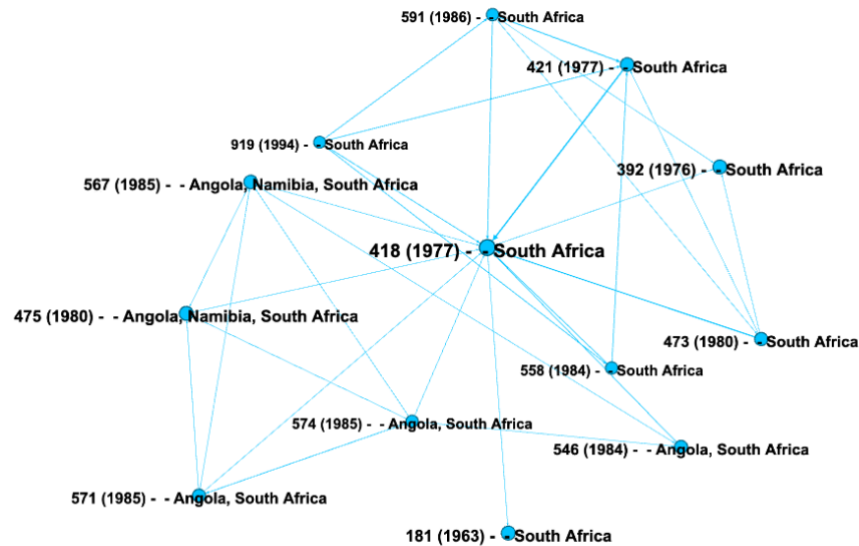


Figure 12: Ego-Network of Resolution 418(1977)

Again, the expression is repeated in subsequent resolutions (Figure 12). It was used in situations concerning Libya (Resolutions 748 (1992) and 883 (1993)), Bosnia and Herzegovina (Resolution 757 (1992)), Haiti (Resolution 917 (1994)), Rwanda (Resolution 918 (1994)), and, for the last time, Egypt (Resolution 1054 (1996)). The quasi-universal membership of the U.N. made the expression, outdated, but the U.N.S.C. kept referring in general to “all states.”

In the same years in which the practice concerning non-member states exhausted its relevance, the U.N.S.C. began addressing international organizations (Figure 13). In our database, we counted 226 resolutions mentioning international organizations in general, 307 the African Union, 166 the European Union, and 25 the Organization of American States.

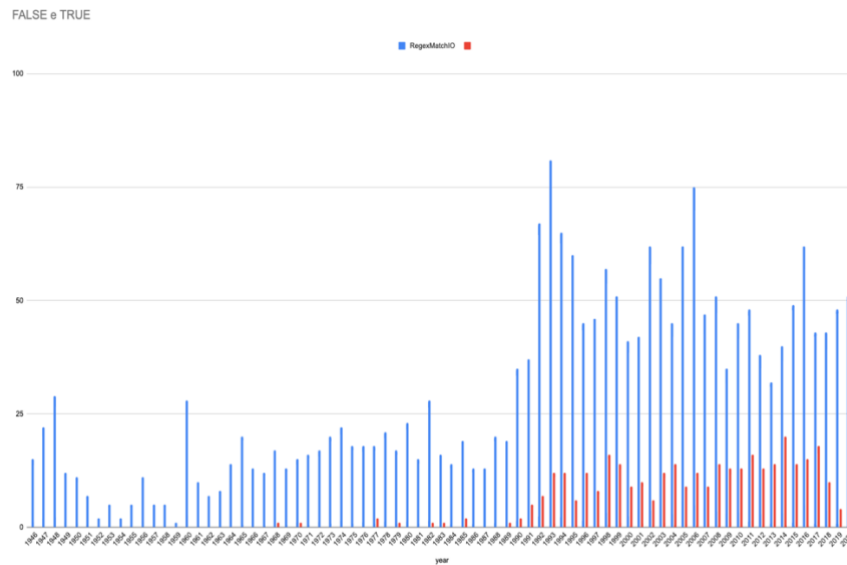


Figure 13 Time evolution of resolutions mentioning “international organizations”

Expressions vary considerably and it is not easy to have clear data on the general involvement of international organizations. Except for a few mentions in the 1960s and 1970s in the context of the sanction regime against Rhodesia, a clear practice of binding international organizations did not start before the 1990s and began with the Iraqi invasion of Kuwait. Resolution 686 (1991) requested international organizations to cooperate with Kuwait,¹⁶⁷ and Resolution 687 (1991) called upon them “to act strictly” in accordance with the provisions of the resolution.¹⁶⁸

167. S.C. Res. 686, ¶ 6 (Mar. 2, 1991).

168. S.C. Res. 687, ¶ 25 (Apr. 3, 1991).

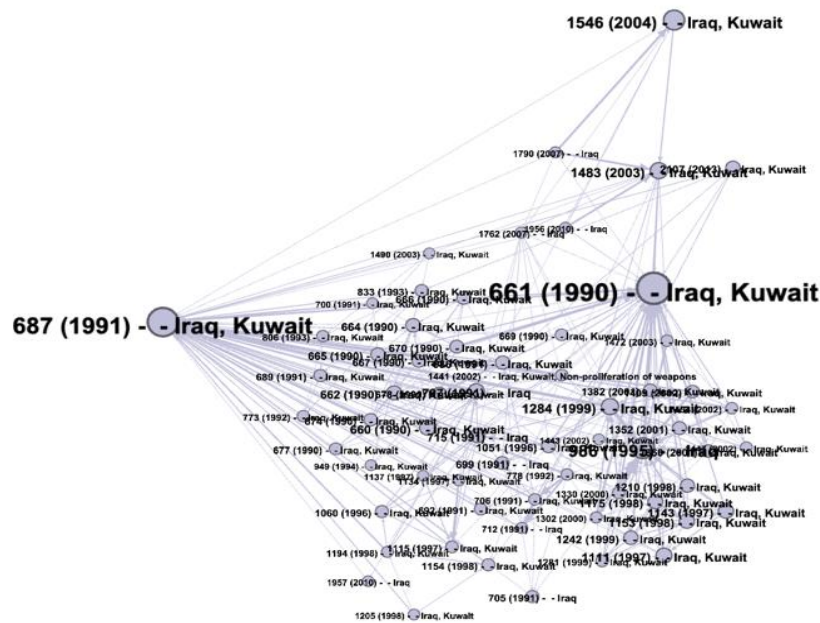


Figure 14: Ego-Network of Resolution 687 (1991)

The network of Resolution 687 is particularly dense, with a high number of subsequent resolutions recalling the role of international organizations. High density reveals how general and widespread the institutional practice is, which contributes to proving the existence of a new competence in the form of established practice.

2. The Imposition of Obligations to Armed Groups

The capacity of the U.N.S.C. to address and bind armed groups remains more controversial. In the vast literature on this issue, Fox, Boon, and Jenkins claim that U.N.S.C. practice should have a more prominent role for the identification of customary law relevant for non-international armed conflicts.¹⁶⁹ Borlini, conversely, does not support the existence of a U.N.S.C. capacity to bind armed groups; he instead focuses on the importance of the reaction of states and acquiescence.¹⁷⁰

169. Fox et al., *supra* note 139.

170. Leonardo Borlini, *The Security Council and Non-State Domestic Actors: Changes in Non-Forcible Measures Between International Lawmaking and Peacebuilding*, 61 VA. J. INT'L L. 489, 535 (2021).

We counted 302 resolutions mentioning “armed group(s),” all issued in the late 1990s. However, this is not a good indication of the relevance of the practice because the U.N.S.C. often refers to the particular armed group, rather than considering them as a general category. For instance, “Bosnian Serb Forces” can be found in 14 resolutions, and “Al-Qaida” in 142.

The practice of recalling previous resolutions, demanding their implementation, and relying on them as basis for new measures against non-state actors is particularly relevant in the context of armed groups. Due to the absence of international legal personality, the demands that armed groups respect human rights and humanitarian obligations cannot take the form of recalling existing international customary obligations. Therefore, in order to make such demands, the U.N.S.C. must have developed a specific power to bind non-state actors. For instance, Resolution 2139 (2014) on Syria, which directly addresses non-state actors, uses the phrase “demands” all parties.¹⁷¹ Subsequently, Resolution 2347, a thematic resolution on terrorism, recalled Resolution

2139.¹⁷² Figure 15, the ego network of 2347, shows how the measure falls within the cluster of terrorism, revealing the move from a country-specific issue to a general theme, which was subsequently employed in other country-specific situations.

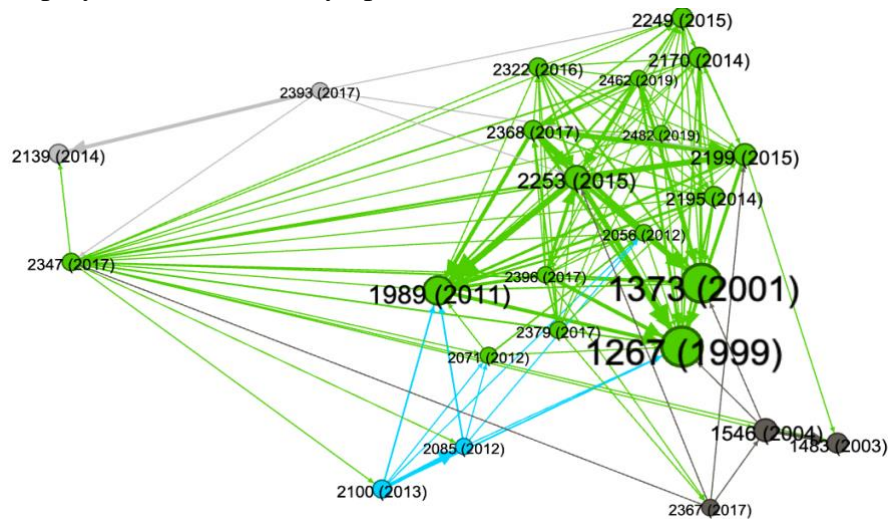


Figure 15: Ego-Network of Resolution 2347 (2017)

171. S.C. Res. 2139, ¶¶ 2–6, 8–11, 14–15 (Feb. 22, 2014).

172. S.C. Res 2347, at 1 (Mar. 24, 2017).

Another relevant example of the importance of citation practice to the U.N.S.C. practice of addressing non-state actors is the ego network of Resolution 2056 (2012) (Figure 16), adopted under Chapter VII, demanding “that all parties and armed groups take appropriate steps to ensure the safety and security of humanitarian personnel, equipment and supplies, in accordance with international law, including applicable international humanitarian, human rights and refugee law.”¹⁷³ It was reaffirmed by Resolutions 2071 (2012) and 2085 (2012).¹⁷⁴ This network is also part of the terrorism cluster and is linked with its main resolutions.

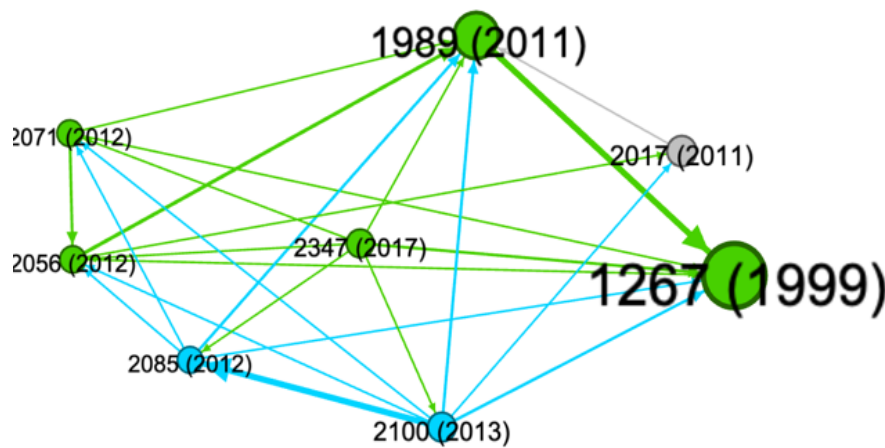


Figure 16: Ego network of Resolution 2056 (2012)

That ego networks of resolutions addressing non-state actors belong to the broader cluster of the U.N.S.C. counterterrorism agenda reveals the development of new competences to directly address and bind terrorist groups in this specific area of U.N.S.C. practice. The data on the growth and extension of the network of resolutions seeking to impose obligations on non-state actors under the counterterrorism agenda constitute fundamental evidence that “sufficiently widespread and representative, as well as consistent” institutional practice exists.¹⁷⁵

References are an indicator of whether the practice is widespread and representative, so able to constitute a new competence in the form of an established practice of the organization. Of course, other elements should also play a role to prove the existence of a new

173. S.C. Res. 2056, ¶ 14 (Jul. 5, 2012).

174. S.C. Res. 2071, ¶ 3 (Oct. 12, 2012); S.C. Res. 2085, at 1 (Dec. 20, 2012).

175. ILC, Customary Law, *supra* note 40, at 135–37.

competence, such as the reaction of states and their active participation within the U.N.S.C. In the formation of established practice as customary institutional law, there is also the relevant problem on whether international organizations can express *opinio juris*.¹⁷⁶ In this case, it seems contradictory to assume that the U.N.S.C. imposed Chapter VII measures believing that they were not accepted as law. Therefore, the resolutions do express *opinio juris* because the U.N.S.C. intended that the Chapter VII resolutions express binding norms.

Potentially, the normative framework on the identification of CIL established by the ILC is applicable in this context:¹⁷⁷ The practice is within the U.N. mandate to act in response to a threat to the peace, it is an exclusive competence of the U.N.S.C., and the customary norm is addressed to the U.N. capacity to bind non-state actors.¹⁷⁸ Clearly, the development of a right of the U.N.S.C. to bind non-state actors in a situation of terrorism, or, more generally, a threat to the peace, raises several concerns about its legitimacy, but these are not solved by relying on acquiescence or other forms of acceptance of an *ultra vires* practice.¹⁷⁹ Talmon explicitly relies on the development of a customary norm to provide a legal basis for the U.N.S.C. competence of binding armed groups.¹⁸⁰ The practice of recalling previous resolutions seem to confirm the finding that since the 1990s, the provisions of the U.N. Charter dealing with international peace and security have acquired the status of rules of CIL binding on non-members entities.¹⁸¹

B. Legal Validity and Norm Diffusion: Does the Practice of Recalling Previous Resolutions Bind the U.N.S.C. to Its Own Past?

Finally, in this Section we argue that the U.N.S.C. practice of citing previous resolutions has normative implications for the legal validity of certain U.N.S.C. activities. In this sense, citation practice

176. Sufyan Droubi, *Opinio Juris: Between Mental States and Institutional Objects*, in INTERNATIONAL ORGANISATIONS, NON-STATE ACTORS, AND THE FORMATION OF CUSTOMARY INTERNATIONAL LAW 62, 62 (Sufyan Droubi & Jean d'Aspremont eds., 2020).

177. ILC, Customary Law, *supra* note 40.

178. Clearly, by including a reference to “exclusive competences,” the ILC referred to the EU. However, we do not see a reason why Chapter VII measures cannot be considered as exclusive competences of the SC. *Id.* at 131.

179. Borlini, *supra* note 170.

180. Talmon, *supra* note 164, ¶ 75.

181. *Id.*

does not provide evidence of new competences. In fact, it may create a limit for U.N.S.C. action. In Section I.D, we introduced the concept of norm diffusion presented by True-Frost, and we will now provide the basis for further expansion on the normative implications of the practice. We will focus on the employment of human rights language to test our hypothesis that the diffusion of norms from one area of activity to the other poses limits to the validity of U.N.S.C. resolutions.

Doctrinal scholarship provides a clear negative answer on whether the U.N.S.C. is bound by human rights obligations.¹⁸² As a matter of policy, the U.N.S.C. may want to picture itself as a law-abiding institution, caring for individuals and their rights. However, as a matter of law, there are no reasons to conclude that it must respect human rights in all its activities: the U.N. is not a party to any human rights treaties; articles 1(3) and 24 of the U.N. Charter, which foster the promotion and encourage the respect of human rights, do not impose an obligation to the U.N.S.C. itself;¹⁸³ the separate legal personality of the U.N. and article 103 of the U.N. Charter does not allow for the transfer of obligations from member states;¹⁸⁴ and, finally, the abstract capacity to bear customary obligations does not automatically mean that the U.N. is bound to the same customary obligations binding states.¹⁸⁵ At the most, certain acts of the U.N. Secretary General might be interpreted as unilateral declarations binding the organization in specific activities.¹⁸⁶

Alternatively, existence of certain customary obligations could be determined through the notion of established practice, as introduced in Section I.D. The method for the formation of customary law is always the same, requiring *opinio juris* and practice, and, as evidenced above, the referencing of previous resolutions may play an important role. In this Section, we will employ the concept of norm diffusion to describe the “consumption” of human rights norms that are first internalized and then imposed at the international level. This will allow

182. See, e.g., WOOD & STHOEGER, *supra* note 1, at 182.

183. Ian Johnstone, *The UN Security Council, Counterterrorism and Human Rights*, in COUNTERTERRORISM: DEMOCRACY'S CHALLENGE 335, 335 (Andrea Bianchi & Alexis Keller eds., 2008); Salvatore Zappalà, *Reviewing Security Council Measures in the Light of International Human Rights Principles*, in SECURING HUMAN RIGHTS?: ACHIEVEMENTS AND CHALLENGES OF THE UN SECURITY COUNCIL 172, 183 (Bardo Fassbender ed., 2011).

184. WOOD & STHOEGER, *supra* note 1, at 8–10.

185. Eyal Benvenisti, *Upholding Democracy Amid the Challenges of New Technology: What Role for the Law of Global Governance?*, 29 EUR. J. INT'L L. 9, 23 (2018).

186. See, e.g., U.N. Secretary-General, Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law, U.N. Doc. ST/SGB/1999/13 (Aug. 6, 1999).

us to describe the formation of established practice, relevant for discussing whether the U.N.S.C. could be bound by its own past practice. We will describe how human rights are consumed and diffused by the U.N.S.C., finally asking whether the respect for human rights became an established practice of the organ.

1. The Inclusion of Human Rights in Security Council Resolutions

As a starting point, it is particularly telling that the True-Frost's study on norm diffusion would focus on Resolution 1325, on Women Peace and Security, which we already singled out as the most quoted of the entire network. True-Frost described the impact of Resolution 1325 within the subsequent practice of the U.N., illustrating its use by Non-Governmental Organizations (NGOs) and other non-state actors to advance the human rights agenda.¹⁸⁷ The author contended that, after Resolution 1325, the language of human rights law was included in more and more country-specific resolutions and in other thematic resolutions, such as the ones on children and armed conflicts. Her main argument is that, despite the non-coercive nature of a resolution that "urges," "calls upon," or "emphasizes," the language of human rights was diffused, ultimately fostering actions at the national and international level.¹⁸⁸ The implementation of such thematic resolutions thus occurred at the national level, but also *within* the U.N.S.C. itself, promoting "a dialectic framework for norm promotion through which the U.N.S.C. members and non-state actors develop the norms."¹⁸⁹

Our findings are consistent with True-Frost's observations and provide the basis for further expansion on the normative implications of the practice. As mentioned above, the U.N.S.C. citation network is replete with clusters of resolutions more connected among themselves than to the rest of the network, and clustering largely follows their topics and themes. However, by introducing a higher level of abstraction, we can show clusters are in fact quite connected to each other (Figure 17). The analysis of the way in which clusters are connected allows us to determine the diffusion of norms between topics.

187. True-Frost, *supra* note 59, at 152–53.

188. *Id.* at 118–19.

189. *Id.* at 177.

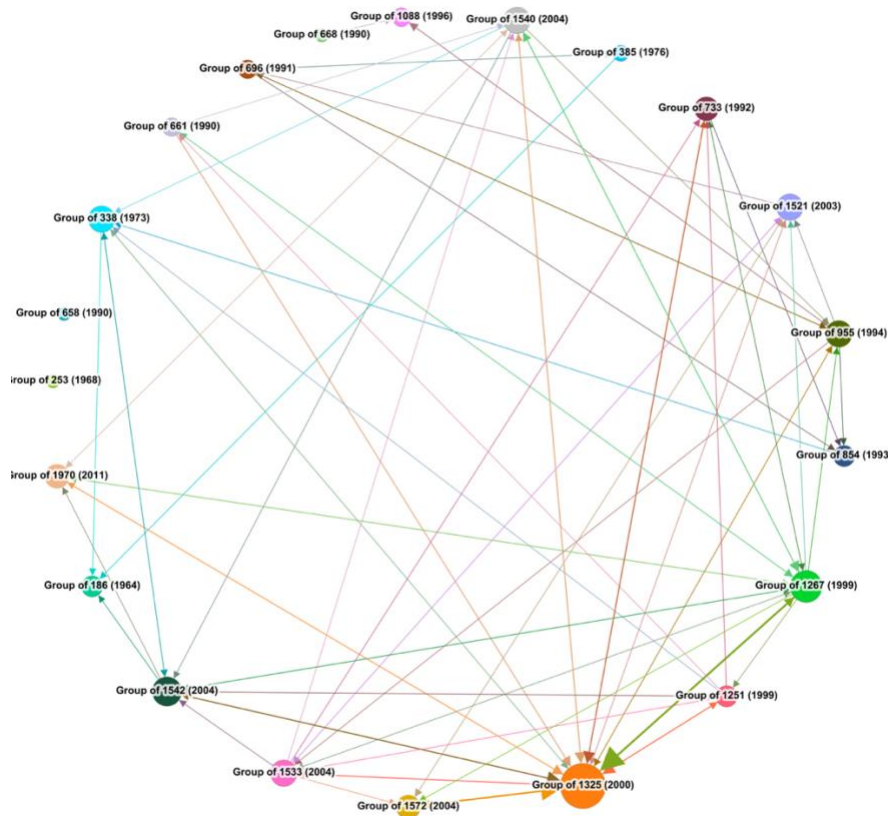


Figure 17: Connections between different clusters of the network

The larger the arrow, the higher the number of references in that direction. The groups are named after the most referenced resolution in the cluster: Thus, the Resolution 1540 (2004) cluster largely concerns the non-proliferation of weapons of mass destruction; the cluster of 1267 (1999) concerns the situation in Afghanistan and the sanctions against the Taliban; 1572 (2004) addresses the situation in Côte d'Ivoire and a series of peacekeeping missions. The data clearly show how thematic resolutions introducing human rights language in the group of 1325 (2000) attract references from every other cluster, particularly in the context of counterterrorism activity and peacekeeping. For instance, almost all the resolutions that extended the peacekeeping mission in Afghanistan quoted the thematic Resolution 1894 on CAAC, which is the second most quoted resolution in the 1325 cluster. This means that the thematic resolutions with human rights content, coalescing around 1325, diffused to other areas of U.N.S.C. activity by the means of citations.

Focusing on resolutions mentioning human rights (Figure 18), we can find references both in general topics of the U.N.S.C. agenda, such as terrorism and civilians in armed conflicts, and in country specific resolutions, such as the Democratic Republic of the Congo and Haiti. Out of our dataset of 2,489 resolutions, 635 mention human rights in its various terminology.

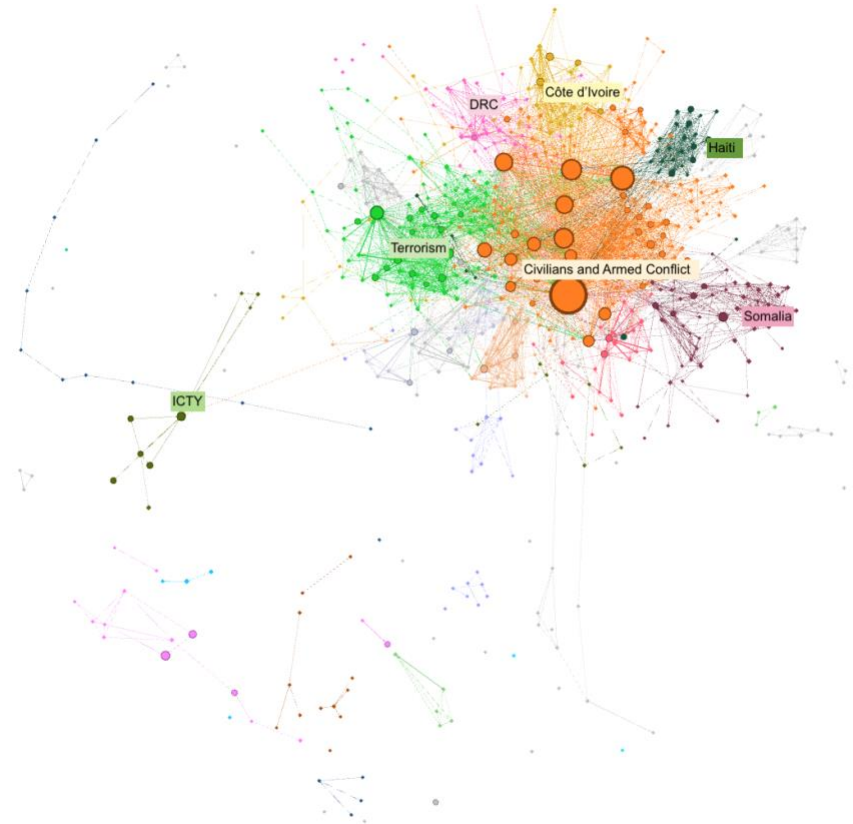


Figure 18: Overview of the network of human rights resolutions

For the purposes of describing the evolution of the Security Council practice, it is also relevant to determine when and how it started. In Figure 19 below, the red column represents resolutions mentioning human rights, in comparison with the blue column, representing the other resolutions. Unsurprisingly, human rights language became popular after the end of Cold War.

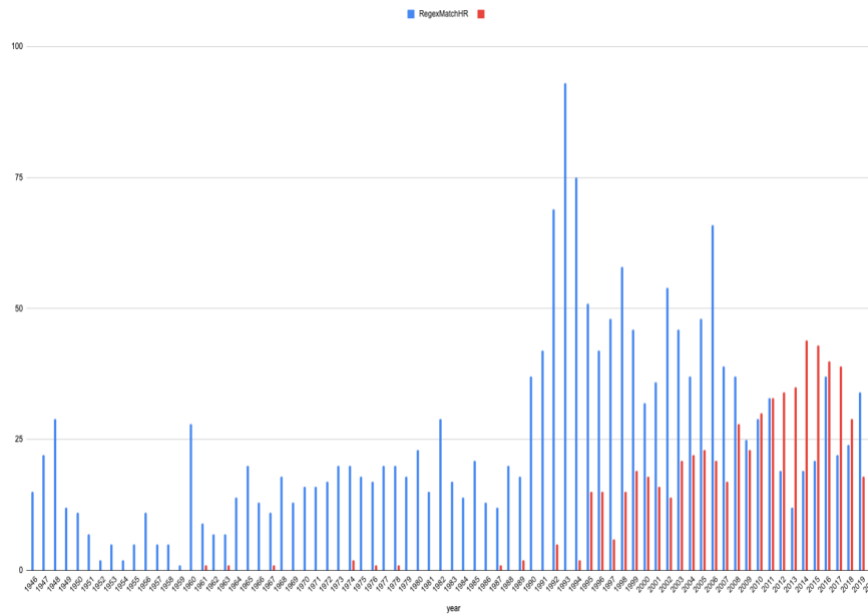


Figure 19: Time evolution of the Inclusion of human rights in Security Council resolutions

From a normative standpoint, these patterns have implications for the development of “established practice.”¹⁹⁰ In this regard, it has been contended that thematic resolutions on human rights norms are not binding on member states, as they are not formally issued under Chapter VII.¹⁹¹ However, this assumption may be challenged. The ICJ affirmed that article 25 of the U.N. Charter does not apply to Chapter VII resolutions exclusively. Rather, under article 25, member states have an obligation “to accept and carry out” all Security Council resolutions and that the precise wording of each resolution needs to be ascertained.¹⁹² In any event, our question is different. The issue is whether the practice of referencing previous resolutions explains the repetition of a certain behavior contributing to the formation of established practice, which would, as a rule of the organization, be binding on the Security Council. In other words, we may assess whether practice and *opinio juris* emerged to identify a rule of customary institutional law obliging the U.N.S.C. to include the respect of human rights in its activities. Clearly, this hypothesis cannot be

190. See generally Roucouas, *supra* note 55.

191. True-Frost, *supra* note 59, at 141.

192. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, 1971 I.C.J. 16, ¶¶ 115–16 (June 21).

generalized by saying that the Security Council is obliged to include human rights protection in all its activities. The respect for human rights might be established practice only in the context of terrorism or peacekeeping missions. Each identification of established practice needs to be ascertained individually. We will now turn to the counterterrorism agenda to describe how the repetition of citation practice concerning the diffusion of human rights norms may demonstrate the crystallization of an established practice as a rule of the organization.

2. The Diffusion of Human Rights in Counterterrorism

The counterterrorism agenda of the U.N.S.C. is a classical case study on the limits of its law-making powers.¹⁹³ Doctrinal studies have traditionally represented the development of new competences as a linear narrative that goes from Point *A* (absence of a legal basis in the Charter) to Point *B* (acceptance of new developed competence). Using terrorism as an example, we show that the development of new competences is better represented in the practice of the U.N.S.C. as a network, and not as linear. The evolution of U.N.S.C. competences do not merely move from Point *A* to Point *B*, but are fragmented into a number of interconnected steps often taken as a pragmatic reaction to an unfolding crisis. A crisis is often connected to several points in time and to similar situations in which a comparable response is needed. Viewing the evolution of institutional practice as part of a network rather than linear allows for the consideration of context and to fully describe the data. In particular, we focus on the respect of human rights as a limit to the legislative and sanctioning activity of the U.N.S.C. in the context of counterterrorism.

Out of 263 resolutions on terrorism, 177 mention human rights (Figure 20), revealing a consistent practice since early 2000 (Figure 21).

193. See generally ANTONIOS TZANAKOPOULOS, *DISOBEYING THE SECURITY COUNCIL: COUNTERMEASURES AGAINST WRONGFUL SANCTIONS* (2013).

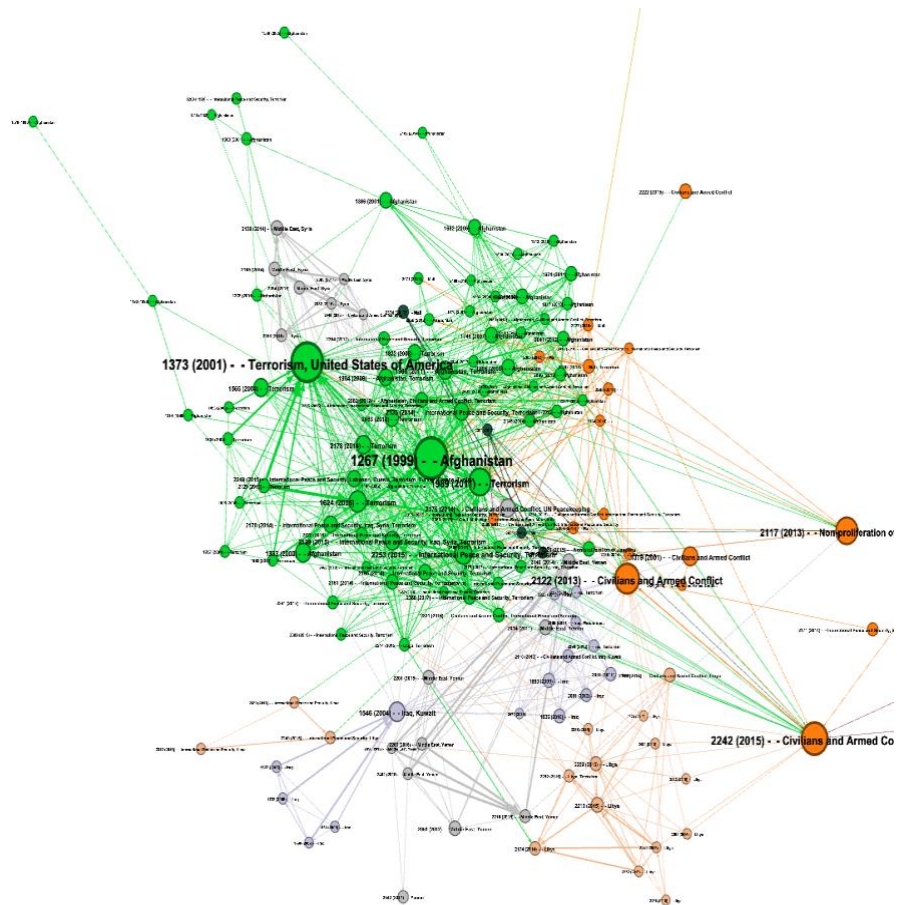


Figure 20: Partial network of resolutions on terrorism also mentioning human rights

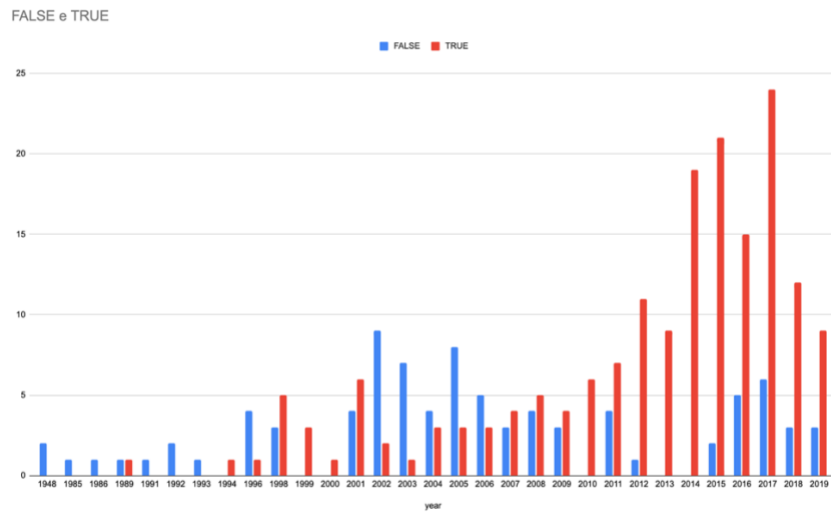


Figure 21: Time evolution of the inclusion of human rights in terrorism resolutions

The two most quoted resolutions in the terrorism network are Resolution 1267 on sanctions and Resolution 1373 on legislative practice. The ego network of Resolution 1267 shows that seventy out of ninety resolutions include human rights concerns and that the citation practice grew exponentially after 2008 (Figure 22).

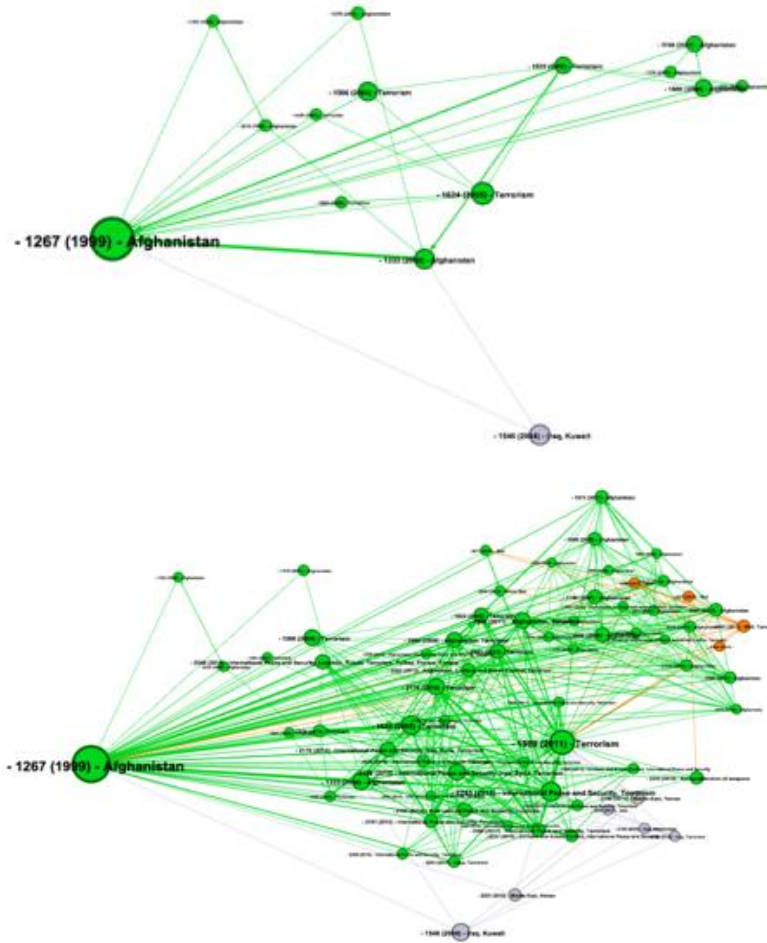


Figure 22: Comparison of Res 1267 in 2008 and in 2019

Similarly, the ego network of Resolution 1373 shows that fifty out of eighty-five resolutions include human rights concerns, with the same growing pattern (Figure 23).

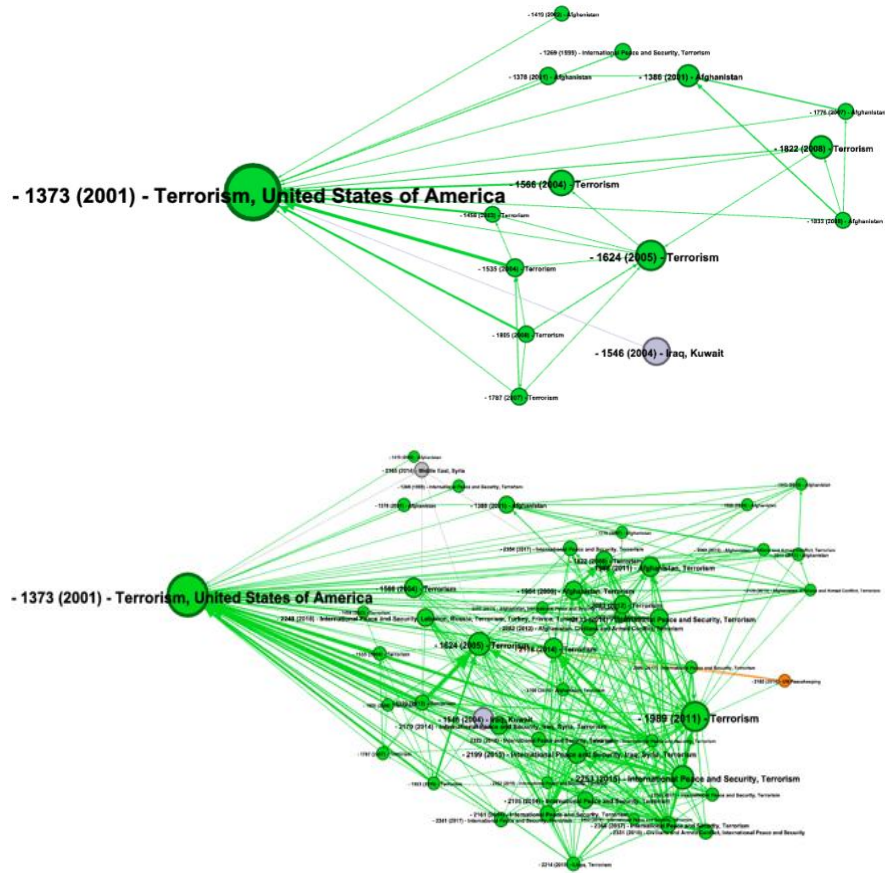


Figure 23: Comparison of Resolution 1373 in 2008 and 2019

Since 2003, human rights concerns are included in all general resolutions possessing a legislative character, often in the form: “States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.”¹⁹⁴ Thus, the examination of the network provides evidence of the rise of the respect of human rights as an established requirement. It illustrates how the vast majority of resolutions issued after Resolution 1822 (2008) mention the respect of human rights and shows the development of a consistent practice across various situational and thematic concerns.

194. S.C. Res. 2462, ¶ 6 (Jan. 20, 2003); *see, e.g.*, S.C. Res. 2462, at 1 (Mar. 28, 2019).

Data clearly show the growing inclusion of human rights concerns in U.N.S.C. counterterrorism agenda, allowing us to identify an essential element of established practice that imposes a limit to the U.N.S.C. Clearly, this is not enough, by itself, to bind the U.N.S.C. to its past, but it provides a benchmark against which the reactions of states to new measures that do not account for human rights standards might be gauged. Customary institutional law (in the form of established practice as a rule of the organization) requires general practice and *opinio juris*. The diffusion of human rights and the repetition of resolutions should play an essential role in its identification.

CONCLUSION

In this Article, we introduced a novel dataset of U.N.S.C. resolutions to be exploited for corpus-driven and network-based investigations. We propose a heuristic approach based on the use of referencing patterns in U.N.S.C. resolutions as a key to understanding its evolving practice and carrying out the first analysis of the U.N.S.C.'s citation network. We showed that the practice of citing is not only established and widespread, but also varied and continuously evolving. Moreover, we identified evidence suggesting that the inclusion or removal of references is a matter to which states attach far more importance than is normally conceded, indicating that the practice of citation should be considered as having implications, which we explored.

We posited that references to previous resolutions have an impact both for interpretation and law-making. We proved how the data we gathered in terms of network centrality, length, position, and uses of references are an essential practical contribution on the interpretation of U.N.S.C. resolutions. Moreover, we highlighted the implications for the interpretation of the U.N. Charter itself, showing the relevance of citations for revealing the content of subsequent practice and subsequent agreements. We discussed how neither scholarship, nor the ILC, paid attention to this phenomenon.¹⁹⁵ Yet, such references may in fact reflect the repetition and the acceptance of the practice itself. Our claim here is for a broader use of network analysis and the data we gathered to answer essential questions of U.N. law, such as the evolution of U.N.S.C.'s competences.

However, it is in terms of law-making that our conclusions are more incisive. Through computational and network analysis, we

195. See *supra* Section II.B.

showed the role of citing previous resolutions in the identification of established practice, asking whether competences not included in the U.N. Charter, such as binding non-states actors, may have developed as a matter of established practice. We also offered normative conclusions concerning the limits of Security Council action by applying the notion of norm diffusion to the empirical data on the inclusion of human rights obligation in U.N.S.C. resolutions. In general, our findings are limited by the caveat that institutional practice is not the only element to look at for the identification of a customary norm, and states' reactions are essential (including silence).

In conclusion, the construction of a citation network of U.N.S.C. resolutions provided the basis for one such analysis and consistently offered material for the testing of different hypotheses. It should be stressed that the findings made in this contribution barely scratch the surface, though our analysis still confirms the utility of text-as-data methodologies for the discovery of latent patterns that might otherwise be difficult to discern. From a heuristic point of view, we show that the practice of the U.N.S.C. is better represented by a network, in which repetition does not, except in specific cases, provide *actual* evidence of the linear evolution of any practice—although it certainly creates a linear narrative.¹⁹⁶ Navigating the network of U.N.S.C. resolutions provides a bird's-eye view of its practice, allowing a viewer to understand the relationship of a particular document with its immediate antecedents, as well as with its "neighborhood" and broader context, thereby offering a better understanding of the unfolding of the U.N.S.C.'s activity, and providing the foundations for future data-driven research on the practice of international organizations.

196. Werner, *supra* note 2, at 161–62.

2023]

THE ROLE OF PREVIOUS RESOLUTIONS

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APPENDIX

Table A: Overview of the Dataset

	#	Min	Max	Avg
Total # of Resolutions	2489			
Resolutions with at least one reference	1997			
Total # of citing paragraphs	21,274			
# References in para	-	1	28	2.34
Length (words)	-	11	659	58.287

Table B: Uses of Citations and Position Within Preambles or Operative Paragraphs

COUNTA of Text	<i>is_oper</i>		
<i>Logistic Regression</i>	FALSE	TRUE	Grand Total
Aim	888	2965	3853
Basis	1455	2300	3755
Continuity	10525	3591	14116
Grand Total	12868	8856	21724

Table C: Automated Text Classification

Text	Aim	Basis	Continuity
2. Directs the United Nations Commission for India and Pakistan to proceed without delay to the areas of dispute with a view to accomplishing in priority the duties assigned to it by resolution 47 (1948);	0,996007731	0,003104273	0,000887996
Having considered the statement made by the Iranian Government in its preliminary report of 6 May, [1] submitted in compliance with the resolution of 4 April 1946 [resolution 3 (1946)], that it was not able as of 6 May to state whether the withdrawal of all USSR troops from the whole of Iran had been completed,	0,00083099	0,99858599	0,00058302
1. Reminds the Government of the Netherlands and the Government of the Republic of Indonesia of its resolution 27 (1947) concerning the cease-fire order and peaceful settlement of their dispute;	0,002386925	0,000578381	0,997034694

Sampling type: Stratified 20-fold Cross validation

Target class: Average over classes

Scores

Model	AUC	CA	F1	Precision	Recall
Logistic Regression	0.928	0.823	0.81986	0.8205	0.822761

Table D: List of LDA Topics

Model type: Latent Dirichlet Allocation

Number of topics: 40

Topics

1. Sanctions: mandate, implementation, full, continue, compliance, contained, relating, regard, defined, comprehensive

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- 2. Weapons/peacekeeping:** extend, obligation, territory, charter, state, defined, weapon, development, dprk, task
- 3. cooperation:** work, respect, request, yugoslavia, submit, dprk, apply, operation, dialogue, ensuring
- 4. north korea:** relevant, provision, violation, subsequent, violence, dprk, sexual, based, renew, reiterating
- 5. voting:** meeting, consensus, expressed, president, representative, report, mission, subsequent, consistent, civilian
- 6. use of force/peacekeeping:** expert, established, peace, group, report, force, month, note, special, period
- 7. peacekeeping:** purpose, recognizing, al, civilian, consistent, materiel, monitor, manner, process, comprehensive
- 8. peace building:** mission, representative, afghanistan, violence, operation, sexual, cooperation, based, improve, proces
- 9. sexual violence in armed conflicts:** international, law, right, human, violence, attack, sexual, regard, gender, weapon
- 10. accountability:** decision, consistent, weapon, mechanism, participation, establish, monitoring, commitment, arrangement, authorized
- 11. north korea/sexual violence:** conflict, party, case, violence, sexual, dprk, car, prevention, advance, dialogue
- 12. gender:** implement, calling, inter, alia, violence, sexual, gender, mechanism, cooperation, participation
- 13. africa sanctions:** president, provided, meeting, expressed, somalia, dprk, eritrea, car, african, press
- 14. africa arms:** previous, action, threat, somalia, haiti, car, african, central, weapon, Eritre
- 15. terrorism :** entity, individual, sanction, al, qaida, associated, acting, undertaking, commission, dprk
- 16. africa elections:** prst, statement, sudan, presidential, press, submitted, african, central, car, Somalia
- 17. secretary general:** expressed, president, consensus, general, implementation, secretary, meeting, effort, monitor, al
- 18. peacekeeping:** purpose, recognizing, al, civilian, consistent, materiel, monitor, manner, process, comprehensive
- 19. sanctions extension:** panel, modified, extended, travel, embargo, illicit, asset, review, apply, interim
- 20. weapons:** set, expressing, adoption, progress, dprk, weapon, somalia, authorized, mechanism, reiterating
- 21. military operations:** decision, manner, al, civilian, consistent, materiel, purpose, monitor, comprehensive, time
- 22. terrorism:** act, terrorist, terrorism, continuing, violence, sexual, providing, stability, include, travel

- 23. arms embargo:** measure, imposed, arm, noting, embargo, modified, dprk, apply, illicit, weapon
- 24. north korea human rights:** including, final, authority, people, democratic, state, violence, sexual, weapon, dprk
- 25. north korea sanctions?:** secretary, general, effort, implementation, operation, sexual, based, dprk, improve, country
- 26. cooperation:** state, member, call, implementation, fully, designated, order, effective, cooperate, issue
- 27. africa emergency:** situation, report, consider, appointed, somalia, liberia, ivoire, cote, reporting, Eritrea
- 28. civilian protection:** consensus, president, meeting, expressed, manner, al, civilian, consistent, monitor, materiel
- 29. sanctions and humanitarian assistance:** committee, humanitarian, personnel, assistance, dprk, somalia, apply, monitoring, delivery, purpose
- 30. north korea sanctions:** directs, area, view, dprk, supply, transfer, sale, monitoring, review, encouraging
- 31. gender violence:** support, basis, plan, dprk, violence, gender, operation, providing, somalia, stability
- 32. somalia:** political, required, account, fund, referred, dialogue, ensuring, regard, advance, Somalia
- 33. women, peace and security:** armed, woman, civilian, child, protection, assist, violence, sexual, operation, participation
- 34. iraq:** government, iraq, product, person, step, comply, dprk, reiterating, violence, supply
- 35. peacekeeping:** purpose, recognizing, al, civilian, consistent, materiel, monitor, manner, process, comprehensive
- 36. north korea sanctions:** well, activity, military, requested, financial, facilitate, dprk, prohibited, operation, purpose
- 37. lebanon:** lebanon, agreement, responsibility, subject, carry, regard, deployment, dprk, prohibited, providing
- 38. civilians / implementation (ambiguous):** implementation, general, effort, secretary, consistent, materiel, time, equipment, al, civilian
- 39. korea human rights:** south, ensure, provide, republic, recommendation, continued, government, dprk, operation, sudan
- 40. sexual violence:** appropriate, dated, review, intention, country, establish, sexual, materiel, prevent, weapon

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Table E: Top 10 Resolutions by Inward Citations

#	res_cite	Concerns	In-Degree	Year	Votes	Len_w
1	1325 (2000)	Women and peace and security	272	2000	15-0-0	1291
2	1820 (2008)	Women and Peace and Security	163	2008	15-0-0	1799
3	1612 (2005)	Establishes monitoring and reporting mechanism on the use of child soldiers	161	2005	15-0-0	2108
4	1888 (2009)	Mandates peacekeeping missions to protect women and girls from sexual violence in armed conflict	138	2009	15-0-0	3018
5	1889 (2009)	Reaffirms resolution 1325 (2000) on "women and peace and security", and condemns continuing sexual violence against women in conflict and post-conflict situations	135	2009	15-0-0	1982
6	338 (1973)	Yom Kippur War	134	1973	14-0-1 (China)	126
7	1674 (2006)	Importance of preventing conflict through development and democracy	132	2006	15-0-0	1990
8	1882 (2009)	Condemning the use of, and asking member states to respect resolutions against the use of children in armed conflict	118	2009	15-0-0	2072
9	1960 (2010)	Requests information on parties suspected of engaging in sexual abuse in armed conflict to be made available	117	2010	15-0-0	2193
10	1894 (2009)	Calling on member states to respect human rights of civilians in armed conflict, and to act according to international law.	116	2009	15-0-0	2986

Table F: Sponsorship by Regional Groups

#	res_cite	sp_Africa	sp_AsiaPacific	sp_euro	sp_gulf	SP_west	SP_westUS	sp_g77	In-Degree
1	1325 (2000)	√	√	√	√	√	√	√	272
2	1820 (2008)	√	√	√	√	√	√	√	163
3	1612 (2005)	√	√	√	√	√	√	√	161
4	1888 (2009)	√	√	√	√	√	√	√	138
5	1889 (2009)	√	√	√	√	√	√	√	135
6	338 (1973)	X	X	√	X	X	√	X	134
7	1674 (2006)	√	√	√	√	√	√	√	132
8	1882 (2009)	√	√	√	√	√	√	√	118
9	1960 (2010)	√	√	√	√	√	√	√	117
10	1894 (2009)	√	√	√	√	√	√	√	116
11	1998 (2011)	√	√	√	√	√	√	√	90
12	1265 (1999)	√	√	√	√	√	√	√	88
13	1267 (1999)	X	X	√	X	√	√	X	85
14	425 (1978)	X	X	X	X	X	√	X	83
15	426 (1978)	X	X	X	X	√	√	X	82

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Table G: Most Commonly Occurring Paragraphs

#	Text	Times	Resolutions
1	<i>1. Calls upon the parties concerned to implement immediately its resolution 338 (1973) of 22 October 1973;</i>	38	1328 (2000) 1351 (2001) 1381 (2001) 1415 (2002) 1451 (2002) 1488 (2003) 1520 (2003) 1550 (2004) 1578 (2004) 1605 (2005) 1648 (2005) 1685 (2006) 1729 (2006) 1759 (2007) 1788 (2007) 1821 (2008) 1848 (2008) 1875 (2009) 1899 (2009) 1934 (2010) 1965 (2010) 1994 (2011) 2028 (2011) 2052 (2012) 2084 (2012) 2108 (2013) 2131 (2013) 2163 (2014) 2192 (2014) 2229 (2015) 2257 (2015) 2294 (2016) 2330 (2016) 2361 (2017) 2394 (2017) 2426 (2018) 2450 (2018) 2477 (2019)
2	<i>4. Reiterates that the Force should fully implement its mandate as defined in resolutions 425 (1978), 426 (1978) and all other relevant resolutions;</i>	19	1039 (1996) 549 (1984) 555 (1984) 561 (1985) 575 (1985) 583 (1986) 586 (1986) 594 (1987) 609 (1988) 617 (1988) 630 (1989) 639 (1989) 648 (1990) 659 (1990) 701 (1991) 768 (1992) 803 (1993) 852 (1993) 895 (1994)
3	<i>(a) To call upon the parties concerned to implement immediately its resolution 338 (1973) of 22 October 1973;</i>	19	1024 (1995) 1057 (1996) 1081 (1996) 1109 (1997) 1139 (1997) 1169 (1998) 1211 (1998) 1243 (1999) 1276 (1999) 1300 (2000) 679 (1990) 695 (1991) 722 (1991) 756 (1992) 790 (1992) 887 (1993) 921 (1994) 962 (1994) 996 (1995)
4	<i>Acting under Chapter VII of the Charter of the United Nations, as described in section 1 of operative paragraph 7 of resolution 1542 (2004),</i>	17	1576 (2004) 1601 (2005) 1608 (2005) 1658 (2006) 1702 (2006) 1743 (2007) 1780 (2007) 1840 (2008) 1892 (2009) 1927 (2010) 1944 (2010) 2012 (2011) 2070 (2012) 2119 (2013) 2180 (2014) 2243 (2015) 2313 (2016)
5	<i>Recalling its resolutions 425 (1978) and 426 (1978) of 19 March 1978,</i>	15	1006 (1995) 1039 (1996) 1068 (1996) 1095 (1997) 1122 (1997) 1151 (1998) 1188 (1998) 1223 (1999) 1254 (1999) 1288 (2000) 768 (1992) 803 (1993) 852 (1993) 895 (1994) 938 (1994)
6	<i>(c) To request the Secretary-General to submit, at the end of this period, a report on the developments in the situation and the measures taken to implement resolution 338 (1973).</i>	15	506 (1982) 524 (1982) 543 (1983) 551 (1984) 557 (1984) 563 (1985) 576 (1985) 603 (1987) 613 (1988) 624 (1988) 633 (1989) 645 (1989) 679 (1990) 695 (1991) 722 (1991)

7	<i>Reaffirming the provisions of resolution 186 (1964) of 4 March 1964 and other relevant resolutions,</i>	13	614 (1988) 625 (1988) 634 (1989) 646 (1989) 657 (1990) 680 (1990) 697 (1991) 723 (1991) 759 (1992) 796 (1992) 839 (1993) 927 (1994) 969 (1994)
8	<i>4. Requests the Secretary-General to submit, at the end of this period, a report on developments in the situation and the measures taken to implement resolution 338 (1973).</i>	12	1605 (2005) 1648 (2005) 1685 (2006) 1729 (2006) 1759 (2007) 1788 (2007) 1821 (2008) 1848 (2008) 1875 (2009) 1899 (2009) 1934 (2010) 1965 (2010)
9	<i>Reaffirming its resolution 696 (1991) of 30 May 1991 and all subsequent relevant resolutions,</i>	11	1008 (1995) 1045 (1996) 1055 (1996) 1064 (1996) 1075 (1996) 903 (1994) 922 (1994) 932 (1994) 945 (1994) 952 (1994) 976 (1995)
10	<i>Recalling its resolution 1308 (2000) of 17 July 2000,</i>	10	1365 (2001) 1391 (2002) 1428 (2002) 1461 (2003) 1496 (2003) 1525 (2004) 1553 (2004) 1583 (2005) 1614 (2005) 1655 (2006)

Degree Report

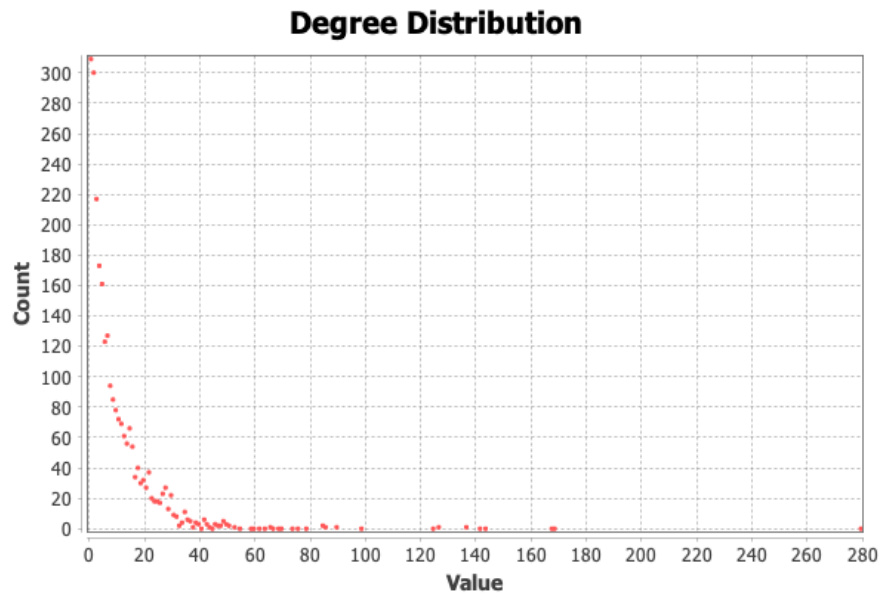
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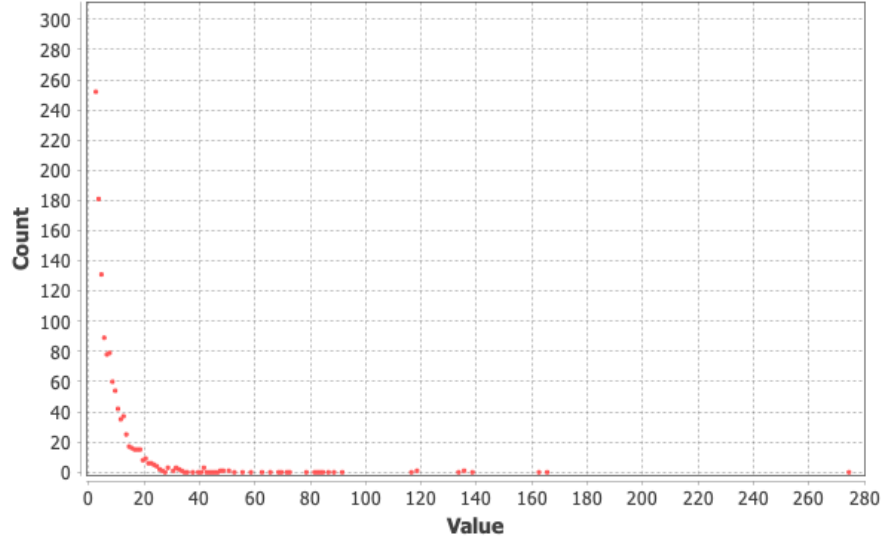
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In-Degree Distribution



Out-Degree Distribution

