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The role of the United Nations General Assembly in advancing accountability for atrocity crimes: legal powers and effects

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SUMMARY

The rise of ‘international justice’, a field broadly concerned with the imperative of securing accountability for atrocity crimes, has led to much reflection on the role of international institutions in addressing impunity gaps. This literature – now considerable – has included not only international criminal tribunals tasked with interpreting and applying the laws of individual criminal responsibility, but also other courts – including the International Court of Justice (ICJ) and regional human rights mechanisms – in adjudicating upon the responsibility of States in atrocity situations. Similarly, there have also been studies on the impact of political institutions in advancing accountability for atrocities, with scholarship on the United Nations (UN) Security Council’s contribution being particularly voluminous. By contrast, at least until recently, there has been little attempt to comprehensively identify, classify and evaluate the contribution of the UN General Assembly (Assembly) to the field of international justice.

This dissertation aims to comprehensively examine the foundations and effects of Assembly power as it has developed to address the imperative of accountability for atrocity crimes. Assembly ‘power’, in this regard, is evaluated according to five functions: (1) ‘quasi-legislative’; (2) ‘quasi-judicial’; (3) ‘empowering’; (4) ‘recommendatory’; and (5) ‘sanctioning’. In turn, this study poses two major questions. First, what is the scope of the Assembly’s legal powers? Second, to what extent has the Assembly’s exercise of these functions had an ‘effect’ in advancing accountability for mass atrocity? In addressing these questions, this study not only intends to identify the extent of the Assembly’s legal competence but to also inspire more ambitious thinking regarding the possible role that it might play in responding to atrocity situations through the explication of these five functions.

Having provided an outline of these broader fields of enquiry in Chapter 1, Chapter 2 then considers the nature and effect of Assembly resolutions that are ‘quasi-legislative’ in character, meaning that they purport to define and identify norms of international law. Far from the misconception that Assembly resolutions are merely non-binding and at best only exhortations of legal opinion, it is shown here that resolutions of a quasi-legislative character have had a pervasive and persuasive impact on the decision-making of many international and domestic courts. It shows more specifically that Assembly quasi-legislative resolutions have normative value in defining, formulating, clarifying, specifying, authenticating and corroborating the rules contained within them.

Having considered Assembly practice in adopting quasi-legislative resolutions that have been used by courts in the field of international justice, Chapter 3 considers more generally the legal effect of such resolutions. Within UN institutional law, it argues that Assembly quasi-legislative resolutions can amount to a ‘subsequent agreement’ in the interpretation of a provision of the UN Charter, or otherwise can contribute towards an ‘established practice’ that shows such general interpretive acceptance of the membership. Finally, the influence of Assembly quasi-legislative resolutions on the field, as the previous Chapter considered, is explicable given the prevalence of a judicial approach in favouring deductive forms of reasoning that places emphasis on documentary sources and findings of State acceptance (*opinio juris*) over State practice.

Chapter 4 examines a type of Assembly resolution that can be described as ‘quasi-judicial’ in monitoring compliance with a set of norms or making evidence-based factual determinations. There are a variety of legal bases to support the Assembly performing a quasi-judicial function, as this Chapter explains. There is also a rich quasi-judicial practice in Assembly resolutions engaging with issues of individual and State responsibility within the laws of International Criminal Law, International Humanitarian Law, International Human Rights Law and the UN Charter. Beyond this, the Assembly has also pronounced on states of affairs in international relations that serve to resolve contested issues of Statehood or territory, which in turn has facilitated accountability responses.

Chapter 5 considers the legal nature of Assembly recommendations and practice in recommending action to advance accountability for atrocities. Having surveyed recommendations practice on international justice, this Chapter identifies four common forms of recommendation: to investigate or prosecute; to cooperate; to explain or account; and to provide victims reparations. The Assembly has also recommended the Security Council to take action to secure accountability in a situation. This Chapter shows that recommendations, although non-binding, are capable of producing effects to advance international justice. Furthermore, despite the orthodox view being that recommendations are non-binding, they impose requirements on Member States, rooted in the good faith principle, thereby offering some measure of supervision on Member State conduct in atrocity situations.

Chapter 6 evaluates the capacity of the Assembly to empower subsidiary or judicial mechanisms to advance international justice. It first analyses the Assembly’s established practice in creating commissions of inquiry and explains the legal basis for these mechanisms including the recent innovation of commissions with ‘quasi-prosecutorial’ elements. From there, the Chapter then considers the extent to which the Assembly is able to engage the ICJ in advancing international justice in the exercise of its advisory opinion jurisdiction. This shows potential for the Assembly to use the ICJ to address atrocity situations that were otherwise lacking in judicial scrutiny. Finally, the Chapter then considers what only remains theoretical at this stage; the Assembly’s creation of an *ad hoc* tribunal analogous to one established by the Security Council. It analyses the potential basis within the UN Charter and general international law to clothe such a tribunal with legal competencies to try suspects.

In noting Assembly practice in recommending sanctions, Chapter 7 considers the possibility that such recommendations produce legal effects that support the legal imposition of sanctions against offending Member States. Four potential legal avenues that can be used to instil in Assembly recommendations a legal effect is explored: the ILC’s Articles on the Responsibility of States for Internationally Wrongful Acts; the Vienna Convention on the Law of Treaties, the UN Charter, and Assembly practice under its Uniting for Peace resolution.

This dissertation examines the practice and legal foundation of Assembly activity of a quasi-legislative, quasi-judicial, recommendatory, empowering and sanctioning nature in the field of international justice. The Conclusion evaluates the potential for the Assembly to adopt creative solutions to advance accountability crimes in the future, to not only unite for peace but also against impunity, particularly in the face of Security Council deadlock.