At its most abstract level, international law concerns norms that govern the conduct of States and the relations between them. That isn't to say that international law's reach does not go beyond the rights and obligations of States. It is recognised that individuals may incur responsibility under international law, while corporations have not been left untouched either. Additionally, over the last century, international organisations have played an increasingly important role in the development of international law. Nevertheless, States continue to be the main subjects of international law.

Any system of law must have sources. For instance, in Israeli law, Knesset legislation, government regulations and judicial precedents, among others, serve as binding sources of law. As for international law, while its main sources are clear, as shall be demonstrated below, the process of identifying them is sometimes more complex.

The most accepted statement of the sources of international law may be found in Article 38(1) to the Statute of the International Court of Justice ("ICJ"). The ICJ Statute is to a large degree a
reproduction of the Statute of the Permanent Court of International Justice — the ICJ’s predecessor. Article 38(1) to the ICJ Statute states:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
   b. international custom, as evidence of a general practice accepted as law;
   c. the general principles of law recognized by civilized nations;
   d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

As can be seen, there are three primary sources in international law: treaty, custom and general principles of law. Additionally, there are two subsidiary sources that may assist one in identifying norms derived from the primary sources: judicial decisions and "the teachings of the most highly qualified publicists" — i.e. leading international law scholars. The precise meaning of all these sources shall be elaborated below.

II. Treaty

In discussing the law of treaties, the most common and useful point of departure is the Vienna Convention on the Law of Treaties. It defines a treaty as "an international agreement concluded between States in written form and governed by international law".

Accordingly, the Vienna Convention demands the existence of three elements for an instrument to be considered a treaty: a written agreement, between States and governed by international law. In actuality, the former two criteria are not necessary to create a treaty. A treaty may also be agreed between States and international organisations and between international organisations among

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8 Statute of the International Court of Justice art. 38(1), 41, June 26, 1945, 1 U.N.T.S. 993 [hereinafter ICJ Statute].
9 ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 6 (2nd ed. 2007) (stating that the Vienna Convention “is the starting point for any description of the modern law and practice of treaties” and is the “treaty of treaties”).
themselves. Additionally, under customary international law, a treaty need not be in written form either. It should be noted that a treaty instrument may be called by different names (such as accord, charter, convention, covenant, statute and more) and found in various forms.

Treaties are often at the centre of disputes between States, and these disputes often revolve around questions of interpretation. International law does contain set rules for the purposes of treaty interpretation – though the precise meaning of these are subject to disagreement which are enshrined in Articles 31-32 of the Vienna Convention. The purpose of treaty interpretation is to identify the intention of its drafters, though international law does recognise that the interpretation of a treaty may evolve over time if its parties so intended. The basic rule of treaty interpretation is that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". Recourse may also be made to subsequent practice of the parties to a treaty and other relevant international norms, among other means of interpretation. However, "[i]nterpretation must be based above all upon the text of the treaty".

The mere fact that a State joined a treaty does not necessarily bind it for an eternity. For example, a State may terminate a treaty if there has been an unforeseen fundamental change in

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12 See Part III.
16 See e.g.: Julian Davis Mortenson, The Travaux of Travaux: Is the Vienna Convention Hostile to Drafting History?, 107 AJIL 780 (2013).
20 VCLT, supra note 10, art. 31(1).
21 Id. at art. 31(3)(b); Kasikili/Sedudu Island (Bots./Namib.), Judgment, 1999 I.C.J. 1045, ¶49-50 (Dec. 13).
22 Id. at art. 31(3)(c); Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. 14, ¶ 65 (Apr. 20).
23 Territorial Dispute (Libya/Chad), Judgment, 1994 I.C.J. 6, ¶41 (Feb. 3); LORD McNAIR, THE LAW OF TREATIES 365 (1961) (there is a “duty of giving effect to the expressed intention of the parties, that is, their intention as expressed in the words used by them in the light of the surrounding circumstances”).
circumstances, extremely changing the nature of the original obligation that was envisioned by the parties to the treaty.\textsuperscript{24}

### III. Custom

As evident in the ICJ Statute, customary international law contains two elements: State practice and the belief that such a practice is obligated upon the State as a matter of law.\textsuperscript{25} The latter criterion is known by the Latin term \textit{opinio juris}. The following analysis shall elaborate on the meaning of these two criteria.

#### a. State Practice

State practice concerns the behaviour of any official or organ of the State.\textsuperscript{26} Moreover, there are few limits to what form State practice may take. State practice may involve \textit{inter alia} physical actions of States\textsuperscript{27} and statements made by its officials\textsuperscript{28} and may be found in a State's legislation and its courts' judicial decisions.\textsuperscript{29}

Yet, it would be quite preposterous to argue that mere State practice – assuming it is accompanied by \textit{opinio juris} – can create custom. As expected, there must be a form of threshold that a practice must pass in order to be sufficiently strong enough to become a customary international rule. It is in this regard that State practice is characterised by a number of elements that may assist in assessing whether a customary norm has developed. The practice must be \textit{consistent}, be participated in by a \textit{general} number of States and be of certain \textit{duration}.

\textsuperscript{24} VCLT, \textit{supra} note 10, at art. 62; Fisheries Jurisdiction (U.K. v. Ice.), Jurisdiction of the Court, Judgment, 1973 I.C.J. 3, 36 (Feb. 2).

\textsuperscript{25} ICJ Statute, \textit{supra} note 8, at art. 38(1)(b). See also: Prosecutor v. Hadžihasanović (Decision on Interlocutory Appeal Challenging Jurisdiction in relation to Command Responsibility), 133 I.L.R. 54, 60, ¶ 12 (ICTY 2003) (for a norm to be customary it must be that ‘State practice recognized the principle on the basis of supporting \textit{opinio juris}’).

\textsuperscript{26} Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, 1999 I.C.J. 62, ¶ 62 (Apr. 29) (‘[a]ccording to a well-established rule of international law, the conduct of any organ of a state must be regarded as an act of that state’).

\textsuperscript{27} Anthony D’Amato, \textit{Trashing Customary International Law}, 81 AJIL 101, 104 (1987) (discussing actions taken by State that affect the development of custom).

\textsuperscript{28} Michael Wood, \textit{State Practice}, OXFORD PUB. INTL L. (Apr., 2010), \textit{available at} opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1107?rskey=YtVICI&result=1&prd=EPIL (noting that ‘statements made on behalf of States in debates in international organizations, such as the General Assembly and the Security Council, and in written communications to international organizations, such as letters to the President of the Security Council or written comments on matters before the ILC can be a valuable source of practice’); Hersch Lauterpacht, \textit{Sovereignty over Submarine Areas}, 27 BYBIL 376, 394–95 (1950) (noting how statements made by States prompted the evolution of customary norms concerning the continental shelf).

\textsuperscript{29} Jurisdictional Immunities of the State (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 99, ¶ 55 (Feb. 3).
The ICJ had to address the question of consistency in the Asylum case. It involved a dispute between Colombia and Peru concerning a political opponent of the Peruvian government – Haya de la Torre – who sought asylum in the Colombian embassy in Peru. Colombia argued that under customary international law Peru had an obligation to allow de la Torre to freely make his way to Colombia. In rejecting this argument, the ICJ stated that the State practice must be "constant and uniform". That is, States must continuously – and not sporadically – be involved in a certain practice. The Court in the Asylum case examined State practice and found an inconsistency in the practice of those States which provided free passage to asylum seekers in situations like that of de la Torre. In this regard, it should be noted that the Court also addressed the question whether a regional custom existed obligating a State to allow the safe passage of asylum seekers like de la Torre. The Court also rejected this possibility by essentially noting that for a State to be bound by regional custom, the State itself must specifically accept the developing norm.

As for the number of States necessary to participate for custom to evolve, the practice must be "widespread", though it need not be universally accepted by States. The precise number of States necessary to be involved in a certain practice for it to become custom varies in relation to the subject-matter. While this is often a very complex question, there are certain means that may be of assistance. In assessing the development of a customary norm, special emphasis is placed on the practice of those States who would be most affected by the development of a norm. For example, in relation to the law of armed conflict, an assessment of the development of a customary rule would necessarily entail examination of Israel's practice and stance on the matter, as well as other States often involved in armed conflict such as the United States, Russia, the United Kingdom, among others. In relation to many international norms concerning outer space, it was

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30 Asylum (Colom./Peru), Judgment, 1950 I.C.J. 266, 276 (Nov. 20).
31 Id.
32 Id. at 277-278. See also: Right of Passage over Indian Territory (Port. v. In.), Merits, Judgment, 1960 I.C.J. 6, 39 (Apr. 12) ("[t]he Court sees no reason why long continued practice between two States accepted by them as regulating their relations should not form the basis of mutual rights and obligations between the two States")
33 Fisheries Jurisdiction (UK v. Iceland), Merits, Judgment, 1974 I.C.J. 3, 45 (joint separate opinion of Judges Forster, Bengzon, Jiménez de Aréchaga, Nagendra Singh & Ruda). See also: Fisheries (U.K. v. Nor.), Judgment, 1951 I.C.J. 116, 131 (Dec. 18) (noting that the number of States that declared a 10 nautical mile territorial sea did reach a sufficient general level that it could be considered a customary rule, also noting that other States have not done so).
34 ANDREW CLAPHAM, BRIERLY'S LAW OF NATIONS 59 (7th ed. 2012).
36 See in this regard: Theodor Meron, The Continuing Role of Custom in the Formation of International Humanitarian Law, 90 AJIL 238, 249 (1996) (noting that not every State’s practice carries the same weight in regards to the evolution of the law of armed conflict).
essentially the United States and the Soviet Union who were pertinent in their creation.\footnote{Malcolm N. Shaw, \textit{International Law} 80 (6th ed. 2008) ("the impact of the Soviet Union (now Russia) and the United States on space law has been paramount").} Additionally, a State that expresses mere silence in the face of a developing norm may be considered to have acquiesced in its creation,\footnote{I.C. MacGibbon, \textit{Customary International Law and Acquiescence}, 33 BYBIL 115, 130 (1957).} but this will only occur if that State would have been expected to react under the prevalent circumstances.\footnote{See: Application of the Interim Accord of 13 September 1995 (F.Y.R.O.M. v. Greece), Judgment, 2011 I.C.J. 644, ¶ 100 (Dec. 5). See also: Christian J. Tams, \textit{Waiver, Acquiescence, and Extinctive Prescription}, in \textit{The Law of International Responsibility} 1035, 1044 (James Crawford et al. ed., 2010) (to acquiesce, "a State must have failed to assert claims \textit{in circumstances that would have required action}" (emphasis in original)).}

Regarding the amount of time that must pass for the development of a customary rule, though considered necessary, there is no specific time that must have elapsed.\footnote{James Crawford, \textit{Brownlie's Principles of Public International Law} 24 (8th ed. 2012) ("the formation of a customary rule requires no particular duration").} For example, prior to World War I, there was disagreement as to whether a State had sovereignty over its airspace and could accordingly have the authority to control overflight. However, it is considered that custom crystallised very quickly upon the break out of World War I – the first war involving large-scale aerial warfare – that a State does in fact have sovereignty over its airspace.\footnote{[1950] 1 Y.B. Int'l L. Comm'n 5, UN Doc. A/1CN.4/Ser.A/1950 (Brierly).}

Different kinds of practice carry different weight. A statement made by a State is likely to have lesser weight than actual actions conducted by a State.\footnote{Guy de Lacharrière, \textit{La Politique Juridique Extérieure} 56 (1983) (noting in relation to UNGA resolutions, "cette exigence d'une pratique conforme est tout a fait fondamentale"); Continental Shelf (Libya/Malta), Judgment, 1985 I.C.J. 13, 29-30, ¶ 27 (June 3) (the Court recognizing that "actual practice" is the strongest form of practice for the development of customary international law); Stephen M. Schwebel, \textit{The Effect of Resolutions of the U.N. General Assembly on Customary International Law}, 73 AM. SOC'Y INT'L L. PROC. 301, 302 (1979) ("what states do is more important than what they say" (emphasis in original))).} Furthermore, an act conducted by a high ranking State official will often have greater legal significance than that practised by a lower ranking person.\footnote{Vaughan Lowe, \textit{International Law} 43 (2007) ("Certainly, the higher the level of government at which a particular practice operates the more reasonable it is to regard it as the practice of the State").} \footnote{Tax Regime Governing Pensions Paid to Retired UNESCO Officials Residing in France (Fr. v. UNESCO), [2001] UNJY 421, ¶ 74 (2003) (though this \textit{dicta} was actually concerned with subsequent practice for the purpose of treaty interpretation, the Tribunal stated that "where there is a difference between the conduct of the administration and that of the authorities competent to express the position of a State, precedence should be given to the latter").}

\textit{b. Opinio Juris}

Strictly speaking, the term \textit{opinio juris} translates into English as "belief" that something is law.\footnote{Aaron X. Fellmeth \& Maurice Horwitz, \textit{Guide to Latin in International Law} 208 (2009).} However, it is more accurate to understand this element of custom in accordance with the language
of the ICJ Statute: "accepted as law". That is, a generality of States must accept the practice as legally binding.

*Opinio juris* may be inferred from various sources in which a State may express its legal views. For instance, the ICJ turned to General Assembly resolutions – though not legally binding in and of themselves – in seeking to determine whether the use of nuclear weapons was illegal under international law. The Court pointed out that while there was a large number of States which supported resolutions considering the use of these weapons unlawful, these resolutions were "adopted with substantial numbers of negative votes and abstentions" and therefore did not reach the necessary threshold for customary international law.

Treaties may also be somewhere where a State's *opinio juris* can be discovered. This often depends on the language of the treaty the State has joined, thus agreeing to its content. The question is often whether the treaty's preamble or text implies that the norms stipulated within it reflect *existing* customary international law (a "declarative" treaty) or whether the treaty infers that it is seeking to *develop* the law on the subject matter (a "constitutive" treaty). Caution is also needed in relation to treaties, since States may in fact join a treaty to create an obligation between them which would otherwise not exist since the obligation is not customary.

### IV. General Principles of Law

"[G]eneral principles of law recognized by civilized nations" is probably the vaguest of the sources stipulated in Article 38(1) to the ICJ Statute. It also suffers from controversy due to the

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46 Charter of the United Nations art. 10 [hereinafter UN Charter].

47 *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 70* (July 8).

48 *Id.* at ¶ 71.


52 ICJ Statute, *supra* note 8, at art. 38(1)(c).
colonial connotation of the term "civilized nations", though it is now recognised that this part of the definition is of no significance. In any event, the main purpose of this source of law was to ensure that there would not be unfilled lacunae when the Permanent Court of International Justice would have to adjudicate a case on the basis of existing international law. This source includes those general principles found in the internal laws of States. This would include principles such as good faith, estoppel and that "no one can be judge in his own suit".60

There is an approach that this source also includes general principles of international law. For example, a recent dispute brought before the ICJ between Timor-Leste and Australia concerned the seizing of documents belonging to a Timor-Leste legal adviser by Australian authorities claiming this action was necessary for security purposes. Timor-Leste argued that this violated its legal adviser-client confidentiality. In the provisional measures stage, the Court considered this act prima facie illegal. In doing so, the Court – instead of turning to the internal law of States regarding this confidentiality – referred to the general principles of international law of sovereign equality and the peaceful settlement of disputes. The Court considered Australia's actions contrary to these principles. Nevertheless, the preferable approach is that when the Court applies general

53 North Sea Continental Shelf, supra note 35, at 132-133 (separate opinion of Judge Ammoun).
54 SHAW, supra note 37, at 98, n. 110. See also: Secretary-General, Review of the Role of the International Court of Justice, 23-25, U.N. Doc. A/8382 (Sep. 15, 1971) (States objecting to the language).
55 See text accompanying supra note 7.
57 Alain Pellet, Article 38, in THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY 731, 834 (Andreas Zimmermann et al. ed., 2nd ed. 2012). See also: 1 INTERNATIONAL LAW – BEING THE COLLECTED PAPERS OF HERSCH LAUTERPACHT 74 (E. Lauterpacht ed., 1970) ("theys are principles arrived at by way of a comparison, generalization and synthesis of rules of law in its various branches… common to various systems of national law"). Some have gone further and argued that in fact general principles of law are not an independent source of international law; see: G.I. TUNKIN, THEORY OF INTERNATIONAL LAW 199 (1974). However, this theory is unsustainable in light of general principles of law being considered an independent source of international law in the ICJ Statute.
59 Temple of Preah Vihear (Cambodia v Thai.), Merits, 1962 I.C.J. 6, 43 (June 15) (separate opinion of Vice-President Alfaro).
60 Interpretation of Article 3, Paragraph 2, of the Treaty of Lausanne (Frontier Between Turkey and Iraq), Advisory Opinion, 1925 P.C.I.J. (Ser. B) No. 12, at 32 (Nov. 21).
61 M. Cherif Bassiouuni, A Functional Approach to “General Principles of International Law”, 11 MICH. J. INT'L L. 768, 771 (1990) ("[t]he consensus among the most noted publicists is that “General Principles” are found in the underlying or posited principles or postulates of national legal systems or of international law"). See also: SHABTAI ROSENNE, THE LAW AND PRACTICE OF THE INTERNATIONAL COURT, 1920-2005 1549 (2005) (stating that general principles of law are “particularizations of a common underlying sense of what is just in the circumstances").
63 UN Charter art. 2, para. 3.
principles of international law, it is simply applying customary or treaty norms while branding them principles.\textsuperscript{65}

\textbf{V. JUDICIAL DECISIONS AND MOST HIGHLY QUALIFIED PUBLICISTS}

We have now entered into the realm of \textit{subsidiary} sources of international law that are aids in identifying norms emanating from primary sources.\textsuperscript{66} A few matters should be noted here. \textit{First}, though there is officially no hierarchy between international or domestic courts and tribunals, it is generally considered that the ICJ is the most authoritative among them in determining the content of international law.\textsuperscript{67}

\textit{Second}, when considering judicial decisions, national courts enjoy a unique status. Not only do their decisions constitute subsidiary sources of law, but they are in fact also engaged in State practice and \textit{opinio juris} when rendering their decision.\textsuperscript{68}

\textit{Third}, the significance of international scholars is "their influence on… better understanding" the law.\textsuperscript{69} Of particular significance are international bodies comprised of scholars. Prominent among these are the International Law Commission ("ILC")\textsuperscript{70} and the United Nations Human Rights Committee.\textsuperscript{71} It should be noted that though the ICJ refrains from citing scholars,\textsuperscript{72} it has regularly cited the ILC.\textsuperscript{73}

\textsuperscript{65} Sir Humphrey Waldock, \textit{General Course on Public International Law, 106 RECUEIL DES COURS 1, 69 (1962 II)} ("the formal source of the principle [of international law] is customary or treaty law ").

\textsuperscript{66} ICJ Statute, \textit{supra} note 8, at art. 38(1)(d).

\textsuperscript{67} See e.g.: Larsen v. The Hawaiian Kingdom, 119 I.L.R. 566, 591 (Permanent Ct. Arbitration 2001) ("[a]lthough there is no doctrine of binding precedent in international law, it is only in the most compelling circumstances that a tribunal charged with the application of international law and governed by that law should depart from a principle laid down in a long line of decisions of the International Court of Justice"); Mara'abe v. Prime Minister, 129 I.L.R. 241, 285 (Isr. 2005) (Justice Barak opining that "the opinion of the International Court of Justice is an interpretation of international law, performed by the highest judicial body in international law").


\textsuperscript{69} Manfred Lachs, \textit{Teachings and Teaching of International Law, 151 RECUEIL DES COURS 161, 212 (1976)}.


\textsuperscript{71} Ahmadou Sadio Diallo (Guinea v. Dem. Rep. Congo), Merits, Judgment, 2010 I.C.J. 639, ¶66 (Nov. 30) (the Court stating "that it should ascribe great weight to the interpretation adopted by" the Human Rights Committee)

\textsuperscript{72} But see: Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicar. Intervening), Judgment, 1992 I.C.J. 350, ¶ 394 (Sep. 11).

VI. AN EXHAUSTIVE LIST?

While covering the vast majority of international law, it may be argued that Article 38(1) to the ICJ Statute does not in fact reflect an exhaustive list of international legal norms. An additional source of law that may be argued is unilateral acts of States. This occurs when a senior State official makes a declaration – in written or oral form – expressing the State's willingness to be bound by a particular obligation.

Additionally, with the rise of international organisations, a substantial amount of "secondary" norms have been created. The most notable of these are certain resolutions of the United Nations Security Council that are binding upon all members of the UN. This is different from primary sources of international law, since the binding nature of secondary rules derives from the treaties which created the international organizations.

VII. A HIERARCHY?

It should be noted that the drafters of Article 38(1) to the ICJ Statute did not intend to create any hierarchy between different sources, whereas "the order mentioned simply represented the logical order in which these sources would occur to the mind of the judge". Nevertheless, there are a number of methods of solving clashes between norms. One way of determining which norm should supersede another when two conflict is by referring to general principles of law, such as the rule that a more specific norm (lex specialis in Latin) supersedes a more general one (lex generalis).

One purported source of hierarchy is that of jus cogens norms – a peremptory norm that supersedes all other norms. Though "there is no simple criterion by which to identify a general rule of

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74 See e.g.: Nuclear Tests (N.Z. v. Fr.), Judgment, 1974 I.C.J. 457, ¶ 46 (Dec. 20) ("[i]t is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations").
77 UN Charter art. 25.
78 Procès-Verbaux, supra note 56, at 333.
79 Colleanu v. German State, 5 I.L.R. 438, 440 (Germano-Rumanian Mixed Arbitral Trib. 1929) ("[a]s a rule the special law overrides the general law"); OSPAR Dispute (Ire. v. U.K.), 126 I.L.R. 334, 364, ¶ 84 (Permanent Ct. Arbitration 2003) ("this Tribunal will also apply customary international law and general principles unless and to the extent that the Parties have created a lex specialis").
international law as having the character of *jus cogens*, it has been contended that they are those rules that "safeguard interests transcending those of individual States, have a moral or humanitarian connotation, because its breach would involve a result so morally deplorable as to be considered absolutely unacceptable by the international community as a whole". Norms that have been recognised as *jus cogens* and thereby supersede other rules of international law when found to conflict with them include the prohibition of torture and the prohibition of genocide.

The notion of *jus cogens* has been subject to much criticism, particularly since "the graduated normativity of normative acts is a notion so elusive as to escape comprehension". Under the definition provided, a Pandora's Box can open up as a result, leading to absurdities such as the obligation to kill Saddam Hussain being considered a peremptory duty. Moreover the concept of *jus cogens* is paradoxical. According to the concept, a *jus cogens* norm may only be superseded by a subsequent norm of a *jus cogens* character. Yet, this argument is difficult to sustain if one considers that *jus cogens* norms are supposed to have the power to supersede any other norm challenging their applicability.

Another basis of for solving problems of clashing norms in international law is derived from Article 103 to the United Nations Charter, which stipulates that "[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail". For example, the UN Security Council passed a binding resolution obligating Libya to extradite the suspected bombers of Pan-Am flight 103 over Lockerbie to the United Kingdom, United States or France. Libya argued that it relieved itself of this obligation since it

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82 ALEXANDER ORAKHELASHVILI, PEREMPTORY NORMS IN INTERNATIONAL LAW 50 (2006).
83 Questions Relating to the Obligation to Extradite or Prosecute (Belg. v. Senegal), Judgment, 2012 I.C.J. 422, ¶ 99 (July 20).
86 Ulf Linderfalk, The Effect of Jus Cogens Norms: Whoever Opened Pandora’s Box, Did You Ever Think About the Consequences?, 18 EJIL 853, 856 (2007) ("whoever opened the Pandora’s Box that once contained the jus cogens concept obviously did not fully realize the consequences that this would have for international law in general").
88 VCLT, supra note 10, at art. 53.
90 Robert Kolb, L’Article 103 de la Charte des Nations Unies, 367 RECUEIL DES COURS 9, 245 (2013 III)
91 UN Charter art. 103.
acted in accordance with the *Montreal Convention* that created an alternative to extradition in instances of airline bombings. In rejecting this argument, the ICJ referred to Article 103 to the UN Charter. Since Security Council resolution constitute "obligations under the... Charter", Libya's obligations under the Security Council resolution superseded those under the *Montreal Convention*.94

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