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Sources of IDL: Focus on Subsidiary Means for the Determination of Rules of International Law (2024)

*Dug Cubie**

1 Introduction

Throughout 2024, the International Law Commission (ILC) continued its examination of the sources of international law set out in Article 38(1) of the Statute of the International Court of Justice.[1] In particular, the Special Rapporteur on subsidiary means for the determination of rules of international law, Charles Chernor Jalloh, submitted his second report in January 2024,[2] alongside the publication of a comprehensive Memorandum of practice on subsidiary means by the ILC Secretariat.[3] The ILC's analysis of the sources of international law has progressed steadily in recent years – a set of Draft Conclusions and Commentaries on the identification of customary international law was adopted in 2018,[4] and this was followed by Draft Conclusions and Commentaries on identification and legal consequences of peremptory norms of general international law (*jus cogens*) in 2022.[5] Concurrently, the ILC has continued its examination of general principles of law and published its first report on non-legally binding international agreements in June 2024.[6]

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1 UN, Statute of the International Court of Justice, 18 April 1946. Article 38(1) states "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a) international conventions … b) international custom … c) general principles of law … d) 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."

2 UNGA, Second report on subsidiary means for the determination of rules of international law, by Charles Chernor Jalloh, Special Rapporteur (30 January 2024, reissued for technical reasons on 22 April 2024) UN Doc. A/CN.4/769.

3 UNGA, Subsidiary means for the determination of rules of international law, Memorandum by the Secretariat (17 January 2024) UN Doc. A/CN.4/765.

4 UN, Report of the International Law Commission Seventieth session (30 April–1 June and 2 July–10 August 2018), UN Doc. A/73/10, Chapter V: Identification of customary international law, 117–156.

5 UN, Report of the International Law Commission Seventy-third session (18 April–3 June and 4 July–5 August 2022), UN Doc. A/77/10, Chapter IV: Peremptory norms of general international law (*jus cogens*), 10–89.

6 UNGA, First report on non-legally binding international agreements, by Mathias Forteau, Special Rapporteur (21 June 2024) UN Doc. A/CN.4/772.

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As Charles Jalloh has succinctly explained, 'when international lawyers speak of sources, they usually mean in the technical sense of where the law derives its force'.[7] Once completed, the ILC's cumulative body of work on the sources of international law will therefore provide important guidance for delineating the boundaries of international disaster law.[8] Continuing our series on the Sources of IDL,[9] the focus for this year is the ILC's analysis of subsidiary means as a source of general international law and the role that judicial decisions and the teachings of publicists play in the development of international disaster law.

2 The ILC's Work on Subsidiary Means (2021–Present)

2.1 *Overview*

For over 100 years, Article 38(1) has governed the sources of international law – originally as part of the Statute of the Permanent Court of International Justice (PCIJ) between 1922 and 1946. The provision was then incorporated into the Statute of the International Court of Justice (ICJ), with subsections 1(a)–(c) covering international conventions, international custom and general principles of law. In his original note proposing an examination of subsidiary means, Charles Jalloh argued that Article 38(1) is 'widely considered one of the most, if not the most, authoritative statement of the sources of international law'.[10] Built into the article is a putative hierarchy between the first three sources (treaties, custom and principles) and those set out in Article 38(1)(d), namely 'judicial decisions and the teachings of the most highly qualified publicists of the various nations' which are defined as 'subsidiary means for the determination

7 UNGA, First report on subsidiary means for the determination of rules of international law, by Charles Chernor Jalloh, Special Rapporteur (13 February 2023) UN Doc. A/CN.4/760, p. 56.

8 It is envisaged that the ILC's examination of the core sources of international law will be completed by the end of their 2023–27 quinquennium. Of note, the Special Rapporteur has proposed examining fragmentation, coherence and the systemic integration of international law in a future report. See: UNGA, Second report (n. 3) p. 18.

9 See, for example, Dug Cubie, 'Sources of IDL: Focus on Customary International Law' (2025) 6 Yearbook of International Disaster Law, 515–525; Dug Cubie, 'Sources of IDL: Focus on General Principles of Law' (2024) 5 Yearbook of International Disaster Law, 493–501.

10 UNGA, Report of the International Law Commission, Seventy-second session (26 April–4 June and 5 July–6 August 2021), Annex: Subsidiary means for the determination of rules of international law by Charles C. Jalloh UN Doc. A/76/10, 186.

of rules of law'.[11] This suggests that judicial decisions and teachings are not a primary source of international law *per se*, but may help to identify or interpret the primary sources set out in subsections 1(a)–(c). Jalloh highlighted this distinction in his first report, noting that 'formal sources are said to give the rules their obligatory character, while the material sources reflect the actual content of the rules'.[12] Nevertheless, as evidenced by Jalloh's need to define every single word used in subsection (1)(d), the specific meaning of this remains open to debate.[13]

An examination of subsidiary means as per Article 38(1)(d) was originally incorporated into the ILC's long-term programme of work in 2021, based on a proposal put forward by Jalloh.[14] However, following generally positive views from States in the UNGA Sixth (Legal) Committee, the topic was moved onto the ILC's current programme of work at their 2022 session. Consequently, the Special Rapporteur published his first report on subsidiary means in February 2023 and his second in January 2024. Following a request from the ILC members, the Secretariat published a Memorandum in February 2023 setting out the ILC's conceptualisation and understanding of judicial decisions and teachings for the determination of rules of international law, as well as their use in practice and in the ILC's methods of work.[15] This was followed in January 2024 with an extensive second Secretariat Memorandum elaborating references to judicial decisions and teachings in the work of a variety of international courts, arbitral tribunals, and international criminal tribunals.[16] The Memorandum also examined quasi-judicial decisions from other adjudicatory bodies, such as UN human rights treaty bodies.

The ILC's work on subsidiary means is ongoing at the time of writing and the Special Rapporteur has, so far, proposed eight draft conclusions covering issues such as the definitions of 'decisions of courts and tribunals' and 'teachings', as well as the nature and function of subsidiary means and the criteria for assessing the weight to be given to them. The Special Rapporteur has confirmed that the function of the proposed draft conclusions and commentaries

11 Article 38(1)(d), ICJ Statute (n 1).

12 UNGA, First report (n 7) 57.

13 Ibid, 85–116. For the Special Rapporteur's discussion of the "hierarchy" in Article 38(1), see ibid, 64–66.

14 UNGA, Report of the ILC, Annex (n 10).

15 UNGA, Subsidiary means for the determination of rules of international law: Elements in the previous work of the International Law Commission that could be particularly relevant to the topic, Memorandum by the Secretariat (8 February 2023) UN Doc. A/CN.4/759.

16 UNGA, Second Memorandum (n 3).

is to 'clarify the law based on current practice'.[17] In its 2023 session, the ILC provisionally adopted three conclusions and a further two draft conclusions were provisionally adopted by the ILC Drafting Committee. In his second report in 2024, the Special Rapporteur proposed three more draft conclusions for consideration in 2025.[18] It is beyond the scope of this IDL in Practice section to examine all the different components of Article 38(1)(d). However, drawing from the Special Rapporteur's two reports and relevant ILC deliberations, the following paragraphs will discuss some of the key findings so far, before considering their implications for the field of international disaster law.

2.2 *Judicial Decisions*

In analysing the language of Article 38(1)(d), the Special Rapporteur turned to dictionary definitions of terms such as 'judgment' and 'decisions'. Based on the ordinary meaning of these words, he determined that there were three types of judicial decisions of relevance as a subsidiary means of determining the rules of international law.[19] First, judgments of international courts, in particular the ICJ. Second, the Special Rapporteur considered advisory opinions of the ICJ, as well as decisions of arbitral tribunals and bodies such as the WTO Dispute Settlement Body and the UN Human Rights Committee. Finally, the Special Rapporteur tackled the question of whether national court decisions could be utilised as a subsidiary means;[20] and concluded that a key qualifier for the weight and authority to give to such national decisions was whether the court or tribunal was conducting an examination of the application of international law at the domestic level, or whether the decision was primarily applying national law. The Special Rapporteur expanded upon these points in his second report in 2024, in particular analysing the question of precedence in domestic and international adjudication.[21]

Based on this analysis, and following discussions in the ILC and UNGA Sixth Committee, the current formulation of draft Conclusion 4 sets out that decisions of international courts and tribunals, in particular the ICJ, are a subsidiary means for the determination of the existence and content of the rules of international law, while decisions of national courts *may* be used in certain

17 UNGA, Second report (n 2) 6.

18 Ibid, 68–70.

19 UNGA, First report (n 7) 89–100.

20 Referencing the ILC's work on identification of customary international law, the Special Rapporteur defines national courts as 'tribunals that may operate within a domestic legal system operating usually on the basis of national law, including so-called 'hybrid' courts with mixed subject matter jurisdiction and composition'. Ibid, 94–95.

21 UNGA, Second report (n 2) 38–67.

circumstances.[22] The Special Rapporteur supplemented this with a proposal in his 2024 report for draft Conclusion 7 confirming there is no rule of legally binding precedence in international law, followed by draft Conclusion 8 which elaborates that decisions of international courts and tribunals may have persuasive value.[23]

2.3 *Teachings of the Most Highly Qualified Publicists*

Throughout history, authors such as Hugo Grotius, Emer de Vattel, Jeremy Bentham and William Blackstone, and more recently academic-practitioners such as Hersch Lauterpacht and Raphael Lemkin, have played a fundamental role in the evolution and interpretation of international law. Indeed, many current and former members of the ILC are illustrious authors and teachers. However, as Sandesh Sivakumaran has highlighted, the 'founding fathers' approach to international law needs to be re-evaluated through more representative lenses, including feminist approaches to international law as pioneered by Hilary Charlesworth, Christine Chinkin and Shelley Wright, and Third World Approaches to International Law (TWAIL) developed by, *inter alia*, Antony Anghie, BS Chimini and James Thuo Gathii.[24]

The Special Rapporteur has acknowledged that while the definition of "teaching" encompasses both written and audio-visual materials, the scope of what should be included is more challenging. Clearly, not all academic or written work is 'teachings of the most highly qualified publicists of the various nations', so determining what qualifies as 'teachings' for the purpose of Article 38(1)(d) is essential.[25] In this regard, the current formulation of draft Conclusion 3 setting out the general criteria for subsidiary means is of relevance, since it states that when assessing the weight of both judicial decisions

22 Ibid, 69 [emphasis added]. In his first report, the Special Rapporteur observed that 'the choice of the Commission as to which judicial body to refer to would, in the normal course, largely be driven by the topic under consideration and the availability of relevant jurisprudence', UNGA, First report (n 7) 52.

23 UNGA, Second report (n 2) 67.

24 Sandesh Sivakumaran, 'The Influence of Teachings of Publicists on the Development of International Law' (2017) 66 International & Comparative Law Quarterly, 1–38. See also Hilary Charlesworth, Christine Chinkin & Shelley Wright, 'Feminist Approaches to International Law' (1991) 85/4 American Journal of International Law, 613–645; Antony Anghie & B.S. Chimni, 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003) 2/1 Chinese Journal of International Law, 77–103; and James Thuo Gathii, 'TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography' (2011) 3/1 Trade Law & Development, 26–64.

25 See, for example, Fábio P. Shecaira, Legal Scholarship as a Source of Law (Springer Briefs in Law, 2013).

and teachings, regard should be had to, *inter alia*, a) their degree of representativeness; b) the quality of the reasoning; c) the expertise of those involved; d) the level of agreement among those involved; e) the reception by States and other entities; and f) where applicable, the mandate conferred on the body.[26]

In addition to the weight to be placed on a particular teaching, the Special Rapporteur identified three specific functions for teachings. First, as a means of interpreting the rules of international law. Next, teachings can play a persuasive function by influencing the practice of States and international organisations. Finally, teachings can "lead the way" for the codification or progressive development of international law by advocating for law reform, especially if the teaching takes the form of a consensus of opinion across a number of experts. In each of these situations, and reflecting the phrase 'most highly qualified' in Article 38(1)(d), the prestige and persuasiveness of the author(s) will be of particular importance. For example, the Special Rapporteur highlighted the authoritative role of the International Committee of the Red Cross (ICRC) in the field of international humanitarian law.[27] However, the Special Rapporteur has noted that it is rare for the ICJ to refer to teachings in its majority decisions; although they are more prevalent in separate opinions and in the pleadings of parties.[28]

Based on this analysis, the ILC Drafting Committee adopted draft Conclusion 5 on teachings in their 2023 session, highlighting the need for, *inter alia*, geographic, gender and linguistic diversity in such teachings.[29] However, despite the important role which academic writing and analysis might play, the Special Rapporteur has noted that 'in practice, it is more likely that scholarship will serve as confirmatory of the results arrived at following an assessment of the existence of a rule in a treaty, customary international law or general principles of law'.[30] In other words, teachings can help identify and interpret the rules of international law, but cannot be considered as a formal source of law in their own right.

26 UNGA, Second report (n 2) 68.

27 UNGA, First report (n 7) 102. Jalloh's original proposal likewise noted the authority of the ICRC as a state-created body tasked with a specific role under a treaty, i.e. the Geneva Conventions and Additional Protocols. See: UNGA, Report of the ILC, Annex (n 10) 196.

28 UNGA, Second report (n 2) 28.

29 Ibid, 69.

30 UNGA, First report (n 7) 88.

3 The Role of Subsidiary Means in International Disaster Law

3.1 *Overview*

As regularly noted in this Yearbook, international disaster law is a relatively new branch of international law and so is still establishing its boundaries. Yet de Vattel's 'The Law of Nations' of 1758 famously proclaims that 'when the occasion arises, every Nation should give its aid to further the advancement of other Nations and save them from disaster and ruin, so far as it can do so without running too great a risk'.[31] One can therefore link modern international disaster law to the teachings of one of the pre-eminent founding fathers of international law. Admittedly, there was little academic or practitioner focus on the legal rights and obligations of States in the context of disasters for the next 250 years, but there is now an active global community of disaster law scholars and practitioners as evidenced in the pages of this Yearbook. Consequently, judicial decisions and academic-practitioner analyses are likely to play an increasing role in understanding and interpreting international legal rules relating to disasters. The following sections will therefore briefly discuss the connections between the ILC's current work on subsidiary means and international disaster law.

3.2 *Judicial Decisions*

Despite the growing breadth and depth of international disaster law as a field of legal practice, there are limited judicial decisions specifically addressing the legal rights and obligations of different stakeholders in the context of disasters. The majority of case law contained in the IFRC Disaster Law Database[32] relates to national decisions involving judicial analysis and interpretation of domestic law, rather than international legal rules and obligations.[33] As per draft Conclusion 4, some of these domestic disaster law decisions may be used to help interpret international obligations in certain circumstances, but this is likely to be rare due to the paucity of international judicial decisions specifically examining disaster law.[34] To date, the main arena where disasters have been

31 Emer de Vattel, The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns, text of 1758, Books I–IV, Vol. iii, 114.

32 The IFRC Disaster Law database is available at <https://disasterlaw.ifrc.org/disaster-law-database>.

33 See, for example, Dug Cubie, 'Sources of IDL: Focus on Case Law' (2023) 4 Yearbook of International Disaster Law, 640–647.

34 For discussion of domestic disaster law jurisprudence from a variety of countries, see Kristian Cedervall Lauta, 'Disasters and Responsibility: Normative Issues for Law

judicially considered by international bodies has been in the field of human rights law. The European Court of Human Rights has interpreted states' positive obligation to take appropriate steps to safeguard the lives of those within their jurisdiction in cases such as *Öneryildiz v. Turkey*[35] and *Budayeva and others v. Russia*,[36] and the Inter-American Court of Human Rights examined declarations of states of emergency following severe flooding in *Blanco-Romero et al v. Venezuela*.[37] Meanwhile, the *Teitiota* decision by the UN Human Rights Committee provides some interesting analysis of state obligations regarding the impacts of sea-level rise.[38] These and other decisions have advanced our understanding of the rights-holders and duty-bearers in the context of disasters. However, it should be noted that the weight and authority to be placed on decisions by international quasi-judicial bodies remains an open question. In the context of disaster law, this may be of particular relevance since UN treaty bodies are increasingly engaging with states regarding their preparations and responses to different forms of disaster.[39]

The current formulation of the provisionally adopted Draft Conclusions on subsidiary means highlights the primary role played by the International Court of Justice. While the ICJ has not yet engaged with the rules or principles of international disaster law in any of its decisions, its forthcoming advisory opinion on climate change has the potential to provide the first ICJ examination of disaster law.[40] Notably, the ILC's 2016 Draft Articles on the Protection of Persons in the event of Disasters were one of the resources submitted to the ICJ for consideration in its deliberations, as was the ongoing work of the

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Following Disasters' in Dónal P. O'Mathúna, Vilius Dranseika & Bert Gordijn (eds), Disasters: Core Concepts and Ethical Theories (Springer: Advancing Global Bioethics Series, AGBIO, Vol. 11, 2018) 43–53.

35 *Öneryildiz v. Turkey*, ECtHR, Application 48939/99, judgment of 30 November 2004.

36 *Budayeva and others v. Russia*, ECtHR, Applications 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008.

37 *Blanco-Romero et al v. Venezuela*, Mertis, Reparations and Costs, Inter-American Court of Human Rights, Series C No 138 (28 November 2005).

38 UN, Human Rights Committee, 'Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No.2728/2016' (7 January 2020), CCPR/C/127/D/2728/2016.

39 As a recent example, the Committee on the Rights of the Child urged Brazil to 'increase children's awareness and preparedness for climate change and natural disasters by incorporating it into the school curriculum and teachers' training programmes'. See: UN Committee on the Rights of the Child, Concluding observations on the combined fifth to seventh periodic reports of Brazil (5 June 2025) UN Doc. CRC/C/BRA/CO5-7, 13.

40 International Court of Justice, Request for Advisory Opinion transmitted to the Court pursuant to General Assembly Resolution 77/276 of 29 March 2023: Obligations of States in respect of Climate Change.

ILC on the legal implications of sea-level rise.[41] Any references to disasters or disaster law by the ICJ in their advisory opinion on climate change will mark an important step forward in both the recognition of international disaster law as a source of legal rights and obligations, as well as an authoritative judicial interpretation of those rights and obligations.[42]

In a similar manner, the increasing engagement of domestic courts with issues relating to liability, negligence, rights and obligations in the context of hazards such as flooding, storms, hurricanes and large-scale industrial accidents may well provide crucial guidance for international law.[43] The Special Rapporteur acknowledged the important role of national decisions to enable or enrich the application of international law. In particular, he noted the influence on national decisions in the context of international criminal law since "both the substantive and procedural aspects of international criminal law are still at a relatively rudimentary stage in international law."[44] This argument likewise applies in the context of international disaster law. For example, the IFRC Disaster Law Database currently contains 57 domestic decisions from 14 national jurisdictions (as well as 14 decisions by regional courts).[45] Such decisions can provide an additional resource for the determination of the existence and content of rules of international law in the context of disasters.

3.3 *Teachings of the Most Highly Qualified Publicists*

Sandesh Sivakumaran has argued that 'Teachings are particularly influential when there is a gap or uncertainty in the law, and that gap or uncertainty needs to be filled'.[46] He continued by noting '[t]hus, they are used particularly frequently in newer areas of the law such as international criminal law and international investment law'.[47] One could extend this argument to encompass

41 While the recent ITLOS Advisory Opinion on Climate Change and International Law did not specifically discuss disaster law, it did engage with the related issue of sea-level rise. It is also notable that several current and former ILC members, including Charles Jalloh, Ivon Mingashang, Nilüfer Oral, Mārtiņš Paparinskis, Patrícia Galvão Teles and Dire Tladi, were involved as representatives of various countries before ITLOS. See International Tribunal for the Law of the Sea (ITLOS), Advisory Opinion on Climate Change and International Law, Case No. 31 (21 May 2024).

42 See, generally, Eran Sthoeger, 'How Do States React to Advisory Opinions? Rejection, Implementation, and What Lies in Between' (2023) 117 AJIL Unbound 292–297.

43 See, for example, Lauta, 'Disasters and Responsibility' (n 34) and Cubie, 'Sources of IDL: Case Law' (n 33).

44 UNGA, First report (n 7) 97.

45 See <https://disasterlaw.ifrc.org/disaster-law-database/case-laws>.

46 Sivakumaran, 'The Influence of Teachings of Publicists' (n 24) 33.

47 Ibid.

international disaster law.[48] Ironically, due to the novel nature of international disaster law, there are less academic teachings on the topic compared to, say, international humanitarian law, and so more limited consensus on some of the legal issues which might arise. It is notable that the ILC did not discuss their own work under the heading of 'teachings of the most highly qualified publicists of the various nations'. A diverse geographic representation across the members of the ILC is required under the ILC Statute, and they must be persons of recognised competence in international law.[49] Eduardo Valencia-Ospina, during his tenure as the Special Rapporteur on the Protection of Persons in the event of Disasters, compiled eight reports providing detailed legal analysis of disasters.[50] One could therefore argue that these reports constitute 'teachings'. Even if this argument is not accepted, members of the ILC and its Secretariat have written articles in academic journals thereby providing comprehensive analysis of the legal implications of disasters.[51]

Another potential key source of teachings in the field of international disaster law comes from the International Red Cross Red Crescent (RCRC) Movement. Of particular importance are the resolutions adopted at the International Conference of the Red Cross and Red Crescent. These take place every four years and bring together representatives of the 196 State parties of the Geneva Conventions and 191 National Red Cross and Red Crescent Societies, as well as

48 For Professor Sivakumaran's analysis of disaster law, see, Sandesh Sivakumaran, 'Techniques in International Law-Making: Extrapolation, Analogy, Form and the Emergence of an International Law of Disaster Relief' (2018) 28/4 European Journal of International Law 1097–1132.

49 UN, Statute of the International Law Commission, adopted by the General Assembly in Resolution 174(II) of 21 November 1947, as amended by Resolutions 485(V) of 12 December 1950, 984(X) of 3 December 1955, 985(X) of 3 December 1955 and 36/39 of 18 November 1981. See articles 2(1) and 8.

50 All the relevant ILC documents from 2006–2024 can be accessed online via the ILC's thematic Analytical Guide for the topic. Available at <https://legal.un.org/ilc/guide/6_3.shtml>.

51 See, for example, Eduardo Valencia-Ospina, 'The Work of the International Law Commission on the "Protection Of Persons In the Event of Disasters"' (2018) 1 Yearbook of International Disaster Law, 5–27; Arnold Pronto, 'Codification and Progressive Development in Contemporary International Law-Making: Locating the Draft Articles on the Protection of Persons in the Event of Disasters' (2018) 1 Yearbook of International Disaster Law 148–178; Dire Tladi, 'The International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters: Codification, Progressive Development or Creation of Law from Thin Air?' (2017) 16 Chinese Journal of International Law, 425–451; Arnold Pronto, 'Consideration of the Protection of Persons in the event of Disasters by the International Law Commission' (2009) 15/2 ILSA Journal of International & Comparative Law 449–457.

the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross & Red Crescent Societies (IFRC). The International Conference (IC) is the supreme deliberative body of the International RCRC Movement, and so Resolutions adopted by the IC would comply with all six criteria set out in draft Conclusion 3 on assessing the weight of teachings. Over the past 21 years, six Resolutions supporting the promotion of different aspects of international disaster law have been adopted by the IC. Indeed, these Resolutions represent some of the first examples of state endorsement of disaster law as a concept and the evolving legal issues under consideration.[52] The mandate of the IC is of particular relevance, since it brings together representatives from States and the RCRC Movement. Resolutions adopted by the IC therefore have a high level of prestige and persuasiveness covering all three functions of teachings identified by the Special Rapporteur, namely, to interpret the rules of international law, to influence state practice, and to lead the way for codification and progressive development.[53] The Special Rapporteur has stated that his third report in 2025 will focus on teachings and other subsidiary means, thereby expanding his analysis of the types of teachings which might fall under Article 38(1)(d) and the weight to be placed on them.[54]

Finally, one could even be so bold as to propose this Yearbook as a repository of relevant academic and practitioner analysis which may assist in the determination of the existence and content of rules of international law. However, while the Yearbook consistently aims to publish the work of highly qualified academics and practitioners from across the world, it is up to others to decide what weight, if any, to place on the 'teachings' presented in this Yearbook as a subsidiary means for the determination of the rules of international law as per Article 38(1)(d) of the ICJ Statute.

52 Available at <https://disasterlaw.ifrc.org/international-conference>.

53 Consequently, one could also argue that resolutions of the RCRC International Conference constitute state practice and/or the practice of international organisations as per draft Conclusion 4 of the ILC's Draft Conclusions on identification of customary international law. See, UN, Report of the ILC (n 4) 130–132.

54 UNGA, Second report (n 2) 67.