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"Soft Law"; The Nature and Existence of Soft Law in International Law: Real or Unreal

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ABSTRACT

The term "soft law" represents a comparatively recent conceptual development in international law, denoting rules and principles that are currently non-binding, inchoate, or predominantly politically motivated. The nature and extent of such norms are intrinsically shaped by political contexts and developments, which may appear to lie beyond the legal domain. Nevertheless, the term of soft law is not used in a vacuum devoid of a legal community and system; to do so would it strip of meaning and applicability. Instead, it is invoked in contexts where it has been scrutinized within the fabric of the international community and the international legal system. A pivotal issue in analyzing these norms is whether such a designation corresponds to a genuine legal category or is, in fact, illusory. In this article, we carefully examine this term, the context underpinning the proposal and establishment of such norms in international law, and assess it through the lens of general principles. We contend that the designation "soft" is inapposite and argue for its unreal character under certain conditions. The central thesis advanced herein is that no substantive distinction exists between "soft law" and "hard law"; rather, the rules and principles in question should be analyzed through modern insights and interpretive methods stemming from societal developments. Consequently, the use of dichotomous terms such as "soft" or "hard" - and the demarcation between rights and laws - becomes otiose, highlighting the significant role of general principles and their interplay with such norms. Although certain doctrinal approaches and schools (such as the New Haven School) have not engaged in the etymological and pathological analysis of this concept, they have nevertheless treated it as a component of a political governance system, resulting in a blurring of the precise boundary between law and politics.

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Table of Contents

1. The Term "Soft Law"

Soft law should be defined based on its usage; such a pragmatic approach to issues such as respect for human rights by companies and businesses has been acknowledged by the United Nations.[1] Although it has been claimed that some proponents of relative normativity emphasize the concept of soft rights.[2] "While there is no entrenched definition of what constitutes soft law, in the context of international law it might commonly include an 'international instrument other than a treaty that contains principles, norms, standards or other statements of expected behavior.'"[3] This term and its implications indicate its application in situations where the international community is navigating tense conditions amidst global changes on specific issues. Thus, instead of expressing legal necessity within the framework of traditional sources of international law, it becomes necessary to utilize flexible tools.

Boyle argues that soft law can be determined by the status of the obligations it imposes. Soft law is not (legally) binding, consists of general norms or principles but not rules, and is not readily enforceable through binding dispute resolution mechanisms; consequently, any clear demarcation between hard and soft law is challenging and complicated.[4]

Some other scholars of international law, like *Prosper Weil*, argue that these provisions are not law at all - neither soft nor hard;[5] indeed, they contend that the notion of soft law is undesirable. Conversely, other scholars maintain that due to the existence of such regulations in certain international documents, including the Universal Declaration of Human Rights and some judgments of the International Court of Justice, they possess a quasi-legal nature.[6] Soft law, as noted by *Daniel Thürer* in the *Max Planck Encyclopedia of Public International Law*,

1 John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (United Nations 2011) HR/PUB/11/04.

2 Matthias Goldmann, 'We Need to Cut Off the Head of the King: Past, Present, and Future Approaches to International Soft Law' (2012) 25 Leiden Journal of International Law 335, 341.

3 Dinah Shelton, 'Normative Hierarchy in International Law' (2006) 100 American Journal of International Law 291, 319.

4 Alan E Boyle, 'Some Reflections on the Relationship of Treaties and Soft Law' (1999) 48 International and Comparative Law Quarterly 901, 901-02.

5 Prosper Weil, 'Towards Relative Normativity in International Law?' (1983) 77 American Journal of International Law 413.

6 Andrew T Guzman and Timothy L Meyer, 'International Soft Law' (2010) 2 Journal of Legal Analysis 171 https://watermark.silverchair.com/2-1-171.pdf? Accessed 30 May 2025.

refers to "social norms with varying characteristics influencing the behavior and decisions of international relations actors, to the extent that their binding nature spans a spectrum from social and political obligations to strictly legal ones."[1] Based on this variability, it has been posited, "The use of soft law has the additional benefit of eliminating the positivist equation of obligation and legal rule."[2] Some, like *Ellen Hay*, consider soft law to have varying degrees of influence, serving as a lever for extending development to legal infrastructures, determining the competencies of international law actors to regulate their activities, and influencing policy-making towards hard law.[3] Moreover, *Lord Arnold McNair* introduced soft law into the fragmented and inconsistent realm of international law while discussing existing and desirable rules. A close examination of his work and those of subsequent scholars who have identified soft law in international law reveals that the main foundation of this concept is its non-binding character, which is intrinsic to the norm's substance, not its form.

Some, like *Sir Robert Jennings*, have stated that any unilateral or contractual legal act that imposes no obligation on its creator(s) is considered soft law;[4] however, this interpretation arises from the belief in the necessity of compliance with the provisions of the frameworks in which soft law manifests, such as resolutions, declarations, and other documents that ostensibly promote or affirm its legal status. The term "soft law" has infiltrated the structure and fabric of the dispersed and non-hierarchical sources of international law; its influence can be seen from treaties to the general principles of the international system, which play a crucial role in discovering and shaping so-called hard international rules.

Some have considered the establishment of the *human rights discourse* in the international legal system to be effective in making the sources of international law more dynamic and flexible, and soft law has also been described in this vein;[5] that is, while accepting the existence of such rules, they have considered its existential nature to be attributable to the influence of human rights discourse in the international legal system.

Some scholars, while neither denying nor fully accepting such norms, consider them *de facto* rules that can sometimes be used to interpret hard law and which exhibit a technical nature.[6] Others argue that these instruments should be regarded as behavioral rules stemming from normative principles.[7] This indicates that the term "soft law" has asserted its existence in both form and substance, and the insistence that necessity and obligation stem solely from form appears to have been largely abandoned.

However, the notion of soft law, useful as it may seem at first sight, is conceptually awkward and may give rise to some undesirable consequences.[8]

Therefore, it is evident that this research aims to answer the question of what role general

1 Daniel Thürer, 'Soft Law' in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2021) https://opil.ouplaw.com/display/10.1093/law:epil/ accessed 30 May 2025.
2 Hedayatollah Falsafi, *Eternal Peace and the Rule of Law* (Nashr No 2015) 449.
3 Ellen Hey, 'Making Sense of Soft Law' (2024) 439 Recueil des Cours 102.
4 Robert Y Jennings, 'An International Lawyer Takes Stock' (1990) 39 International and Comparative Law Quarterly 513.
5 Hedayatollah Falsafi, *The Path of Reason in the System of International Law* (Nashr No 2017) 228-230.
6 Daniel Bradlow and David B Hunter, 'International Law: Exploring the Choice between Hard and Soft International Law' in David B Hunter and others (eds), *Advocating Social Change Through International Law* (Brill Nijhoff 2020) 285.
7 Mariolina Eliantonio, Emilia Korkea-aho and Ulrika Mörth (eds), *Research Handbook on Soft Law* (Edward Elgar Publishing 2023) 394.
8 Jan Klabbers, 'The Undesirability of Soft Law' (1998) 67 Nordic Journal of International Law 381.

principles play in the nature and existence of the term "soft law" and whether it is real or unreal. Our hypothesis is that the international community, the normative commonalities that have emerged, and other existing necessities have all contributed to the creation of legal rules, which are situated within the legal domain rather than existing in nonlegal spheres; this issue transcends the formal necessity of existence and obligation in rules for them to be considered soft or hard.

2. The Role of Non-Legal Agreements and Soft Law

Some contend that in the fragmented and heterogeneous international landscape, the existence of something akin to soft law - rules that do not contain definitive obligations but reflect a kind of political agreement and consensus on a specific issue - is acceptable. If the ontological nature of soft law is perceived as a result - albeit somewhat unstable and provisional - of achieving international peace and security, then soft law is not only ontologically and substantively verifiable but is also recognized.[1]

It is clear that such a perception focuses solely on an extrinsic issue unrelated to the so-called soft rule, namely leading to international peace and security, which is an idealistic and entirely non-legal, but rather political, outcome.

The salient question is whether this perception or acknowledgment of the nature and existence of soft law ultimately undermines the entirety of international law. As mentioned, the nature and existence refer to matters outside of law, and another important question is whether the absence of obligation or the lack of legal commitment in a rule serves as a sound criterion for recognizing the nature and existence of soft law. What becomes of unconditional rules and principles or policy-making? Lastly, what constitutes the limit of this category of norms and its distinction from other so-called hard rules, and how far will politics influence the underlying philosophy and legal nature?

Some argue that certain policies in specialized fields, such as the role of United Nations Environment Programme in environmental matters under the title of environmental impact assessment, gradually became recognized as part of general international law through the adoption of the Rio Declaration and certain decisions of the ICJ;[2] this means that mere policy-making does not transform the content of environmental impact assessments into a rule of general international law, but rather subsequent formal and substantive developments have influenced this content's association with international law, leading to its classification as soft law. In this regard, it seems that mere policy-making or related documents do not create the content of soft law or associate it with general international law; instead, subsequent substantive, formal, and judicial developments are deemed effective in attributing legal status to those policies. This analysis, based on our hypothesis, does not seem accurate; it is illogical to dismiss a norm like the principle of environmental impact assessment as a non-legal principle due to its generality and lack of specificity and to regard its nature as dependent on subsequent developments. This undermines the existence of norms mentioned in

1 Falsafi (n 8) 450-451.
2 Hey (n 9) 102.

international documents that often have legal effects and makes the legal status of a provision contingent upon external factors. In this context, one notable international experience regarding international documents is reflected in the *Aegean Sea Continental Shelf* case, where Greece filed a lawsuit based on a joint declaration by the Prime Ministers of Greece and Turkey, invoking the legal nature of that document; the ICJ, disregarding the document's formal designation, focused on the legal exchanges between the two states and the terms and phrases used and other relevant circumstances.[1]

In summary, the Court's attention to the substance of terms rather than mere form indicates that the realization of a legal event transcends textual forms; although documents with an entirely political nature, such as the Yalta Declaration, can create notable political obligations, the legal perception and nature of a term or document must fulfill the conditions of its legal community and system to speak of so-called soft law, whether in a real or unreal sense.

With this in mind, it must be acknowledged that excessive use of soft law instead of hard law can lead to Realpolitik exploitation and abuse by powerful countries and challenge trust in legal obligations and the credibility of international law;[2] however, if they are reflected in non-legal documents of a political nature, this challenge is even more serious.

Answering the above questions requires a thorough examination of the term soft law within the realm of international law, which we will address in the continuation of this research.

3. The Role of General Principles in the Existence of Soft Law; Interrelations

The lack of coherence and fragmentation in the sources of international law, stemming from the absence of a hierarchy among sources and the nature of sovereign subjects of the international legal system, has underscored the importance of general principles and their connection to the term soft law. In a legal system where there is no clear distinction between *lex lata* and *lex ferenda*, the existence of general principles is felt more acutely, and this is a matter we have referred to in explaining the existence and nature of so-called soft law - rules that exist in a twilight zone between existing rules and desirable rules.[3]

1 *Aegean Sea Continental Shelf (Greece v Turkey)* (Judgment) [1978] ICJ Rep 3.
OVERVIEW OF THE CASE
On 10 August 1976, Greece instituted proceedings against Turkey in a dispute over the Aegean Sea continental shelf. It asked the Court in particular to declare that the Greek islands in the area were entitled to their lawful portion of continental shelf and to delimit the respective parts of that shelf appertaining to Greece and Turkey. At the same time, it requested provisional measures indicating that, pending the Court's judgment, neither State should, without the other's consent, engage in exploration or research with respect to the shelf in question. On 11 September 1976, the Court found that the indication of such measures was not required and, as Turkey had denied that the Court was competent, ordered that the proceedings should first concern the question of jurisdiction. In a Judgment delivered on 19 December 1978, the Court found that jurisdiction to deal with the case was not conferred upon it by either of the two instruments relied upon by Greece : the application of the General Act for Pacific Settlement of International Disputes (Geneva, 1928) - whether or not it was in force - was excluded by the effect of a reservation made by Greece upon accession, while the Greco-Turkish press communiqué of 31 May 1975 did not contain an agreement binding upon either State to accept the unilateral referral of the dispute to the Court.
2 Falsafi (n 11) 450.
3 Although some have attributed a greater role to soft law and have considered these rules as the basis for the emergence of general principles. Although this role seems extreme and beyond the limits of soft law, it has nevertheless been raised in legal doctrine and seems to be considered a serious challenge to the consistency and stability of the international legal system.

Therefore, this is one of the most significant reasons for understanding soft law through general principles. It is thus necessary to define general principles, and from their essence, to derive the relationship with soft law. General principles are essentially conventional principles in national and international systems that are adapted through analogy to certain international issues that either face a source problem (not mentioned in primary sources, i.e., treaties and customs) or lack enforceable rules. However, some do not consider these principles an independent source and regard them merely as part of international custom; nevertheless, this view does not seem very accurate.[1] General principles possess a very distinctive characteristic; sometimes they are considered a source independent of the direct will of states, and sometimes, as *Georges Selle* and *Grigory Tunkin* have expressed, they are the result of inferences from the same primary sources that exist in the spirit and essence of the international legal system.[2]

General principles of law have also permeated various branches of contemporary international law, such as international environmental law and international criminal law. The reason for this influence is the role of the aforementioned principles in regulating new branches of international law, in that they fill the gaps in these branches that custom has not been able to fill, and this is due to the great ability of general principles to set the international system in motion.[3]

The Permanent Court of International Justice (PCIJ) and the ICJ have utilized these principles in numerous cases when resolving state disputes or issuing advisory opinions. As *Ellen Hey* has stated, referencing soft law in both contentious cases and advisory opinions by the Court leads to the development and growth of normative rules.[4] The soft laws referenced, which have been deemed to promote and develop rules, are manifestations of general principles. What is certain is that general principles play an undeniable role in the dynamism and growth of sources and the entirety of international law. However, the actions of the aforementioned Courts in using general principles as a mere source are not the only factors that have led to the evolution and emergence of topics like soft law; general principles, as indicated and claimed in the jurisprudence of these Courts, have not only been identified and discovered within the framework of a treaty or custom but possess a more powerful nature during times of resource and normative gaps, a phenomenon arising from fundamental and philosophical transformations within the international community. Here, it is essential to briefly discuss the transformation in the international community and the evolution and manifestation of some commonalities to clarify the status of rules like soft law and the mutual influence of general principles. In today's international law context, some rules influenced by the priority of shared values have a nature that is no longer merely consensual or deliberative; as the commonalities of the community on issues of peace, security, and humanity as global public

Therefore, in this article, we attempt to explain the limits and limitations of the term soft law within a framework and structure that can be considered as a rule of law and legal certainty.

For more studies, see: Falsafi (n 8) 450.

1 Seyed Fazlollah Mousavi, *The Nature, Developments and Sources of Public International Law 1* (Tehran SAMT 2024) 90 [In Persian].

2 Falsafi (n 11) 536.

3 Ibid.

4 Hey (n 9).

goods of the international legal system have strengthened, rules that transcend mere state will have increased and acquired a more objective character. In the current era of international law, how can we discuss objective rules like peremptory norms, the right to self-determination, the right to a healthy environment, and the principle of border stability without acknowledging the role of general principles in understanding, discovering, and interpreting such rules that have been established based on shared international commonalities, sometimes even against the will of states? Moreover, the role of general principles, where they have emerged beyond formal sources and addressed gaps - not merely as natural law or ethical principles but in the guise of, for instance, principles of international environmental law - cannot be denied, as this stems from shared interests that transcend mere state agreements. In a book entitled "*The Responsibility of States for Transboundary Pollution*," it is stated: "Legal analysts have resorted to the principles of international law, which are general, to develop a comprehensive framework for environmental protection."[1]It is here that the core argument of this work, namely the existence and nature of soft law, emerges; now the questions that must be answered are: Are general principles arising from transformations in the international community, which have manifested both as sources and as the essence of rules in addressing gaps, not legal? Is the notion of creating a designation such as "soft law," which has primarily arisen from the mutual relationships between general principles and these norms, a correct terminological choice? And is there fundamentally anything like soft law or hard law in legal systems, particularly in the international context? Does the introduction of the term soft law not render the construction and validation of legal rules contingent and dependent on enforcement mechanisms? In reality, what is the precise answer to these key questions?

When we refer to general principles as a source, namely Article 38(1) of the Statute of the ICJ, it may not yield results that lead judges to rules that are seemingly new or soft, but it has not been without impact;[2] as seen in cases and issues of international environmental law, soft law has been most frequently applied. For instance, one can refer to the recognition of certain environmental principles, such as the principle of prevention, by the ICJ as a means of formulating and adopting an up-to-date judicial policy aligned with developments in the international community and the commonalities that have emerged in the environmental domain, as evidenced in the 2010 *Pulp Mills* case.[3] Especially in times of encountering gaps in primary sources of international law, the role of general principles and the notion of discovering soft law become very evident. A gap, in this context, arises when a rule cannot be found to

1 Seyed Fazlollah Mousavi, *International Environmental Law* (3rd edn, Tehran Mizan 2016) 41-42 [In Persian]. See Also: Jutta Brunnée, *Acid Rain and Ozone Layer Depletion: International Law and Regulation* (Martinus Nijhoff Publishers 1988).; Kernaghan Webb, 'Acid Rain and Ozone Layer Depletion: International Law and Regulation' (1990) 13 Dalhousie Law Journal 474.

2 Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 38.:
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.

3 *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, 4. For more see: Martti Koskenniemi, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law* (Report of the Study Group of the International Law Commission, 2006).

address a specific issue within the primary sources available to a judge or legal scholar; in such instances, if a rule cannot be found in two primary sources of international law (namely treaties and customs), one must refer to general principles to "fill" that gap.[1] In this context, considering general principles as gap-fillers for normative lacunae in primary sources can be regarded as a non-original but independent source according to Article 38(1) of the Statute of the ICJ, as mentioned earlier, to prevent the establishment of *non liquet*. However, it should be noted that in positivist thought, a reality called the state and the sovereignty derived from it exists, which largely governs law. In this case, the will of the state is the determining factor in the existence or non-existence of that source, rule, or general principle. Here, it is the state that propels law forward, but in opposing views, which have accompanied transformations in the international community and the influence of human rights perspectives and attention to commonalities, a kind of suprapositive and objective legal system has emerged. In such a view, the needs of social life and the principle of solidarity take precedence over any purely state-centric perspective.[2] This does not mean negating states or sovereignties but recognizing and acknowledging commonalities that are essential for the current existence of all subjects in the international community. Therefore, this perspective, which has recently been evident in many rulings that have somehow contributed to the existence and articulation of soft law, especially in cases and opinions related to rights that are inherently social and transnational, such as international environmental law, is clearly observable. In this case, although the judge is not a legislator, within the scope of their authority and based on the endorsement and utilization of general principles, without offering dogmatic or narrow interpretations and using broad interpretive techniques, sometimes hermeneutic or teleological, while incorporating social elements into their interpretations, they discover and articulate rules through the lens of general principles. These interpretations arise from the judge's inference from the legal system and, while filling gaps, become a factor in the dynamism of the system; at this juncture, states and some legal scholars, in justifying the judge's actions, which closely resemble law-making but are not, are compelled to invent or utilize terms like soft law; whereas, as stated, even if general principles mentioned in Article 38(1) of the Statute of the ICJ are merely regarded as a non-original source, they play a critical role in filling gaps and invigorating the legal system and discovering credible rules. This is undoubtedly a legal process, neither artificial nor unreal; however, the decisions of international judges, whether in the context of peacefully resolving international disputes (binding judgments) or issuing advisory opinions (non-binding decisions), indicate an inquiry within an existing legal community and system and provide legally substantiated results. Thus, certainly, something called soft law in this context appears to be an imprecise concept. However, when not only judges but also the international community and legal scholars face a gap regarding an issue, and that gap or new external reality has not occurred within a judicial process and requires legal adaptation to new matters, opposing positivist thoughts, as they have granted judges the authority to discover based on general principles, also provide approaches to states and members of the international community in announcing new rules, some of which have been referred to as

1 Falsafi (n 11) 678.
2 Ibid.

soft law in international law. The answer is that whether in the context of interpretation by a judge or in the context of declaration in a document or resolution, what has been created is law, and it is unlikely that anyone would doubt the attribution of this title to what has been discovered or emerged; however, our central emphasis and hypothesis here is that if general principles are discovered by legal actors and announced and created by states or any of the members of the community, this phenomenon arises from commonalities that, in some cases, have taken on an objective form and stem from the human-centered transformations of international law, rather than creating an artificial category that, by applying the term soft, faces conceptual instability despite being unable to refute it; if so, then what will be the fate of unconditional principles[1] and very important and credible norms in national legal systems?

Thus, certainly, in no legal system do the terms soft law and hard law exist; what exists is merely law, nothing more; whether it be unconditional (principles) or conditional (rules).[2] In this context, general principles, both as a source and as normative principles mentioned in certain resolutions, cannot be non-legal; this issue is reinforced by the formalistic nature and the manner of presenting and declaring those principles, not merely by their substantive existence and legal nature. This is a very subtle and significant point that has a close connection with the community and legal system from which they emanate;

To confirm and analytically compare this, we refer to Principle 50 of the Constitution of the Islamic Republic of Iran:

> *"Principle 50 of the Constitution of the Islamic Republic of Iran states: 'In the Islamic Republic, the protection of the environment, in which the present and future generations must have a growing social life, is considered a public duty. Therefore, economic and other activities that are associated with environmental pollution or irreversible destruction are prohibited."*[3]

In this article, three very important points are mentioned:

- The subject is the protection of the environment and not another domain.
- The obligation is a duty indicating a commitment beyond mere moral or social recommendations.
- The prohibition represents a relatively strict condition in preventing conflicting activities.

In this context, one can also refer to the very important Stockholm Declaration of 1972,[4] the Johannesburg Conference, and the Rio Declaration, which initially stated:

Principles that arise from the general and fundamental norms and values of the legal system. Such as the principles contained 1 in constitutional laws, which are more general and inclusive than conditional and some punitive laws. In the law of the .international system, unconditional rules and principles are more reflected in the form of declarations and principled resolutions

2 These rules are commonly non-general rules, in other words, they are detailed rules that contain both behavioral and punitive rules; like most criminal, civil, etc. rules and regulations in the ordinary laws of domestic systems and the rules contained in executive protocols in the international legal system.

3 Constitution of the Islamic Republic of Iran (adopted 24 October 1979, amended 28 July 1989) art 50.: [Preservation of the Environment] the preservation of the environment، in which the present as well as the future generations have a right to flourishing social existence، is regarded as a public duty in the Islamic Republic. Economic and other activities that inevitably involve pollution of the environment or cause irreparable damage to it are therefore forbidden.

4 United Nations Conference on the Human Environment, 'Stockholm Declaration' (16 June 1972) UN Doc A/CONF.48/14/Rev.1. The 1972 United Nations Conference on the Human Environment in Stockholm was the first world conference to make the

"We, the representatives of the peoples of the world, gathered in Johannesburg, South Africa, from September 2 to 4, 2002, at the World Summit on Sustainable Development, reaffirm our commitments to sustainable development."

All the provisions and principles mentioned in the above document are unconditional provisions and principles. Additionally, one should add other foundational documents such as Resolution 2625, which, although it has entered the sources of treaties and customs by fulfilling other formal conditions, contains unconditional rules, and one cannot merely consider formalism as determinative of the legal status of its provisions.

Now, it must be examined what has led to the legal status of the principles mentioned, for instance, in the Constitution of a country or in a declaration like the one above, and why they are not to be regarded as political; the difference being that there is hardly any legal scholar who claims that constitutional principles, due to their generality and unconditional nature or lack of specific enforcement in the provision itself, are non-legal or are assigned a soft status, while international environmental law is sometimes referred to as soft even in cases under judicial review. It seems that the challenge arises when the legal scholar or legal actor unconsciously focuses on the issue of enforcement or a punitive rule; here, we are not seeking to elucidate legal opinions and schools of thought, but it must be acknowledged that one of the reasons for attributing a soft status to the law in question is the absence of a unified community and subjects like national societies, the lack of a coherent legal system based on hierarchy, and the absence of a foundational or constitutional identity in international law in the perspectives of these scholars. That is, in the view of positivists and those who deny the attachment of certain rules beyond the mere will of states, there is no conclusive evidence, and that will has not been buttressed by enforcement mechanisms; thus, skepticism arises regarding the legal status or the so-called hardness of those phenomena in that system.

The issue lies here: we believe that although the absence of a constitution and other factors that create certainty regarding the legal status of a provision (like Principle: 50 of the Constitution of the Islamic Republic of Iran) is evident in the international legal system, several points regarding the community and the international legal system are undeniable:

- Although the specific nature and form of the international community and the international legal system differ entirely from domestic systems and the existence of a constitution is not applicable, the existence of some core and fundamental principles and rules, such as Articles 2 and 103 of the UN Charter, the Statute of the International Criminal Court, fundamental human rights, and other rules and

environment a major issue. The participants adopted a series of principles for sound management of the environment including the Stockholm Declaration and Action Plan for the Human Environment and several resolutions. The Stockholm Declaration, which contained 26 principles, placed environmental issues at the forefront of international concerns and marked the start of a dialogue between industrialized and developing countries on the link between economic growth, the pollution of the air, water, and oceans and the well-being of people around the world. The Action Plan contained three main categories: a) Global Environmental Assessment Programme (watch plan); b) Environmental management activities; (c) International measures to support assessment and management activities carried out at the national and international levels. In addition, these categories were broken down into 109 recommendations. One of the major results of the Stockholm conference was the creation of the United Nations Environment Programme (UNEP). Available at: https://www.un.org/en/conferences/environment/stockholm1972

principles indicating the humanization process of the relevant system that transcend mere state will and are now considered objective law cannot be denied.[1]

- Moreover, attributing a legal term or status to principles and rules merely due to their conditionality or enforcement mechanisms is the most reductive form of perceiving legal status or the so-called softness or hardness of those provisions; in this regard, a deeper perspective should be adopted. Today, the international community possesses commonalities arising from the humanization process, which is evident in the philosophical-analytical perspectives and interpretations of international law; in this context, a view like that of *Santi Romano*, who is regarded as a proponent of moderate normativity, does not regard the legal system merely as a collection of rigid and inflexible rules; rather, it posits that an organized social system must exist that operates institutionally. Therefore, the transformations in the society that function institutionally represent a far deeper and more nuanced issue than merely the existence or non-existence of a punitive rule concerning the legal status or the softness and hardness of international principles and rules.
- Thus, it has been observed that the legal status of a declaration like Stockholm 1972 or Resolution 2625 is not merely due to its form and framing but stems from the legal content arising from social transformations and the international legal system. This content tells us today that the movement of the international community has shifted from a Society of States to an International Community of Solidarity, entering more areas of creation, implementation, interpretation, and analysis, and emphasizing that the purely positivist equation of obligation and legal rule does not encompass all existing realities; on one hand, this attention to transformations has led some scholars to accept these developments in the realm of rule-making while still being unable to avoid the non-legal term "soft" .
- These regulations and principles are legal, even in the form of unconditional rules, without an enforcement mechanism or punitive rule. In conditions where even such principles and rules are undeniably legal, attributing the title or status of soft and hard seems futile and somewhat imprecise and unrealistic.
- The role and connection of general principles in the discovery and declaration (by legal actors in times of gaps) and law-making (by subjects of the international community) are direct, undeniable, and beneficial, and indeed prevent the drowning of international principles and rules in the flood of politicization because *law is law*, not merely a *soft or hard* tool. However, some experts, such as *Dinah Shelton*, believe that it is not possible to draw a precise line between legal and non-legal in the case of what is called soft law.[2]

1 Seyed Hossein Mousavifar, *Legal Certainty in International Law* (Tehran Judiciary Press 2021) 132-148 [In Persian].
2 Dinah Shelton, 'The Corporate Responsibility to Respect Human Rights: Soft Law or Not Law?' in Surya Deva and David Bilchitz (eds), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (CUP 2013).

Conclusion

As demonstrated in this article, our hypothesis regarding the term "soft law" in the context of rules and principles in the international legal system whether arising from processes of peaceful dispute settlement, the issuance of advisory opinions, or the direct will and decisions of subjects of international law in the form of various documents and resolutions that result from specific legal processes and have legal effects and outcomes - is that it is an imprecise and extra-legal term. We cannot discuss legal processes recognized in the international legal system while disregarding or deeming the results as uncertain. It is clear that what results from operation within the international legal system is inherently legal, and the application of the dichotomies "soft" or "hard" law will only create disarray, a lack of legal certainty, and an oversight of transformations in the international community, thereby destabilizing legal logic.

Moreover, as stated, soft law, then, contributes to a paradox: using soft law, we may end up in precisely the type of trouble that resort to soft law was supposed to help us overcome. By creating uncertainty at the edges of legal thinking, the concept of soft law contributes to the crumbling of the entire legal system.[1] Once political or moral concerns are allowed to infiltrate the law, the law loses its relative autonomy from politics or morality, and thereby becomes nothing else but a fig leaf for power.[2]

As a result of this article and the evaluation of its central question and hypothesis, it can be stated that the application of the term "soft" to laws created or discovered, whether akin to claims made by some, such as behavioral rules or *de facto* rules or policy-making, has not aided in the precise understanding of established principles and rules, but rather ignores the reality of transformations in society and the movement of the international legal system toward its authentic ideals; as the analyses indicate, due to the impact of such laws on subjects of international law, these rules and principles cannot be considered soft.

That said, it seems that if the term "soft" is used to indicate a degree of normative flexibility concerning rules that reflect norms beyond the mere will of states and exist between *lex lata* and *lex ferenda* it may not be entirely unacceptable; however, it still does not indicate the non-legal status or nature of certain legal rules compared to others within any legal system.

Therefore, the use of the attribute "soft" is a kind of verbal simplification to justify the high degree of flexibility in the rule in question compared to other established rules in the international legal system. Of course, one cannot ignore the important role of human rights theory and its influence on the rules and sources of international law; (for instance, even the pragmatist approaches in some spheres toward the evolution of human rights, such as those of the Special Representative of the Secretary-General (SRSG), are understandable, but inadequate). This establishment and influence play an important role in the flexibility of

1 The New Haven school does not care much about questions of validity, but about the policy implications of law. This has the advantage that its representatives do not consider soft law as pathological, but rather as a regular component of democratic governance in liberal societies.

Michael Reisman, 'The Concept and Function of Soft Law in International Politics' in Emmanuel Bello and Prince Bola Ajibola (eds), *Essays in Honour of Judge Taslim Olawale Elias* (vol 1, Martinus Nijhoff 1992) 435.; Michael Reisman, 'A Hard Look at Soft Law' (1988) 82 Proceedings of the American Society of International Law 371, 375.

2 Klabbers (n 14) 391.

emerging rules, including rules with greater flexibility through general principles, which are leniently, and unrealistically, labelled *soft law*.

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