United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations

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3rd meeting of the Committee of the Whole

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ganizations, there were other actions taken by many other organizations that could not, technically, be described as such. He consequently wondered whether in a multilateral convention of the type envisaged, it might not be wiser to seek a more comprehensive formulation, such as "precepts established by", which the International Law Commission had itself employed in its commentary; the term "decision" might also be used, provided that it was taken to signify the expression of the will of the organization in question.

88. Concerning the adjective "relevant", he said that while such a qualification was perfectly apposite in the articles dealing with specifics (articles 5 and 6, for example), it seemed to have no significance in the provision under consideration. He favoured its deletion.

89. He agreed with the Austrian and the United Nations representatives that it would be useful to delete the adjective "established". Organizations did, or did not, have practice. To seek to determine whether such practice was "established" might lead to difficulties.

90. Finally, he suggested that if the rules of an organization were to be quite comprehensively defined as its constituent instruments, decisions and practice, the qualification "in particular" would be unnecessary.

91. Mr. SCHRICKE (France) said that his remarks would be of a preliminary nature. Those who had participated in the drafting of the Convention on the Representation of States would recall that the definition reproduced therefrom had been proposed by the delegation of his country, and adopted unanimously. Obviously, therefore, he favoured the text submitted by the International Law Commission and—although he could consider further improvements—would oppose any proposals that deformed its intended scope. Thus, he could not countenance deletion of the adjective "relevant". As the Special Rapporteur had told the Commission, the adjective was indispensable for ensuring that only those decisions and resolutions would be considered which had legal consequences and as such formed part of the organization's "internal law". Nor could he accept deletion of the adjective "established" which, since practice could indeed be hesitant, confused or disputed, offered a necessary legal safeguard.

92. The CHAIRMAN said that since the present discussion was of a preliminary nature, and in the absence of any objections, he proposed to invoke the provisions of the final sentence of rule 29 of the Rules of Procedure concerning the consideration of amendments.

The meeting rose at 1.05 p.m.

3rd meeting

Thursday, 20 February 1986, at 4 p.m.

Chairman: Mr. SHASH (Egypt)

Consideration of the question of the law of treaties between States and international organizations or between international organizations, in accordance with General Assembly resolutions 37/112 of 16 December 1982, 38/139 of 19 December 1983, 39/86 of 13 December 1984 and 40/76 of 11 December 1985 (A/CONF.129/4)

[Agenda item 11] (*continued*)

Article 2 (Use of terms) (*continued*)

Subparagraph 1 (j) (continued)

1. Mr. AENA (Iraq) said that subparagraph (*j*) needed to be simpler and clearer. It should not go into unnecessary details which might cause problems concerning the legal personality of an international organization or its status as a subject of international law. The word "international" might be inserted before the word "organization" in order to make the meaning clearer, but he had doubts about any wording which appeared to put decisions and resolutions on the same footing as constituent instruments. The proposal by the Byelorussian Soviet Socialist Republic, the German Democratic Republic, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics (A/CONF.129/C.1/L.2) had merits, but the phrase "legally binding instruments based on them" might unduly limit the functions and rules of procedure of international organizations. The original approach was much broader.

2. Mr. RASOOL (Pakistan) asked the Expert Consultant what the Commission had understood by the term "decision". Since it preceded the word "resolutions", which were usually adopted by the political organ of an international organization, his delegation had assumed that it too referred to an act of the political organ, but some speakers had indicated that it might include a decision by the judicial organ of an international organization. The wording proposed in the five-Power amendment might have a very limiting effect, since it did not take into account the practice of the United Nations, whose political organ had made decisions and passed rsolutions on certain international agreements.

3. He could accept the amendment proposed by Greece (A/CONF.129/C.1/L.1).

4. Mr. ALBANESE (Council of Europe) said that his organization favoured a very general provision in view of the variety of situations obtaining in international organizations. In the case of the Council of Europe, regard must be had not only to its Statute, which was not very explicit on the subject of treaty-making, but also to the decisions of the Committee of Ministers, which were not always couched in the form of resolu-

tions, and above all to practice. Any attempt to be too precise would create difficulties; for example, the term "legally binding instruments" could not cover the situation within the Council of Europe. His organization preferred the original text of the subparagraph. Like the International Law Commission, it understood the adjective "relevant" to refer to rules which had a bearing on the subject-matter of the draft articles.

5. Mr. PISK (Czechoslovakia) said that the subparagraph would benefit from amendment. It was true that the Commission had taken the wording from the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character,[1] but in his view the term "rules of the organization" had a larger significance in the draft articles and its definition therefore warranted careful attention. The constituent instruments of international organizations were of crucial importance, since they represented international treaties in which States had laid down the purposes and functions of such organizations as well as their powers, including their capacity to conclude treaties. The constituent instrument should therefore take priority over any rules, decisions or resolutions adopted by the competent bodies of the organization. His delegation supported the wording proposed by the five Powers, because it placed due emphasis on the constituent instrument and replaced the ambiguous and controversial expression "decisions and resolutions" by the more precise term "legally binding instruments".

6. Mr. SHIHATA (World Bank) said that subparagraph (*j*) was not a definition of the term "rules of the organization" and merely offered examples of them. The list of examples might be prefaced by wording such as: " 'rules of the organization' means the norms governing the conduct of the organization, including in particuler . . .' ".

7. Mrs. THAKORE (India) said that the definition of the expression "rules of the organization" was intended to cover the whole of the law of international organizations. It included a reference to established practice, which was an essential source of such law. In their comments on the definition, some international organizations had indicated that the term "established practice" might deter innovation, but in its commentary the International Law Commission had disclaimed any wish that such should be the case. The use of the phrase "in particular" gave the provision the requisite flexibility. Her delegation found the Commission's definition acceptable and endorsed the comments made about it by the French and Cape Verde representatives at the previous meeting. It was unable to support the wording proposed by the five Powers, because it was restrictive and would create problems of interpretation.

8. Mr. GILLET BEBIN (Chile) said there was some justification for using a definition which differed from that in the 1975 Vienna Convention. It was of supreme importance that the conduct of international organizations should be fully consistent with their constituent instruments. The competence of international organizations was essentially limited by the will of their member States and was laid down in their constituent instruments. His delegation felt strongly that any wording tending to erode the mandatory force of a constituent instrument should be avoided. That was also the foundation of the legal position of most States in the Western hemisphere. Recently, in fact, the Organization of American States had adopted an amendment to article 1 of its Charter to the effect that the Organization had no powers other than those expressly conferred upon it by the Charter.

9. His delegation had serious doubts about the definition of the term "rules of organizations" proposed by the International Law Commission, since it placed the constituent instrument and established practice on an equal footing. The constituent instrument was an internationally binding legal act, and if established practice was not subordinated to it there would be a violation of that act. Article 1 of the OAS Charter expressly indicated the obligation of the organization to conduct itself in accordance with its constituent instrument. That obligation applied to all international organizations regardless of whether it was expressly stated in their statutes. A constituent instrument might in fact be called the constitutional law of an international organization, and no derogation from it, including the pretext of established practice, was acceptable.

10. Mr. WANG Houli (China) said that the language of the definition should be more precise. The treaty-making capacity of an international organization depended on the will of its member States, and that will was primarily reflected in the constituent instrument of the organization. The definition should therefore take account of the capacity of international organizations to make treaties by virtue of their own resolutions, decisions and established practice, and to do so only in conformity with the goals and purposes laid down in their constituent instruments. The Chinese delegation understood the definition in that way and therefore opposed the idea that the words "relevant" and "established" should be deleted as proposed at the previous meeting by the representatives of Switzerland and Austria, respectively.

11. Mrs. DIAGO (Cuba) said that since the convention would apply to all international organizations, both universal and regional, the Conference did not have to keep to rules adopted in conventions such as the 1975 Vienna Convention. She agreed that the expression "rules of the organization" should be carefully analysed. Her delegation supported the proposal of the five Powers. It took the view that the practice of an organization should be based on its constituent instrument and that the expression "rules of the organization" meant the constituent instrument and other provisions and practices adopted by the organization in keeping with that instrument.

12. Mr. SZÉNÁSI (Hungary) said that his delegation favoured a more precise definition of the term "rules of the organization" that would eliminate any uncertainty aroused by the words "in particular" and "resolutions and decisions". It therefore supported the more comprehensive and unambiguous wording proposed by the five Powers.

[1] See *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations*, vol. II (United Nations publication, Sales No. E.75.V.12), p. 207.

13. Mr. VIGNES (World Health Organization) said that his organization approved the text proposed by the International Law Commission, since it took fully into account all the rules of an organization. If, however, the proposal of the five Powers found favour, it would be advisable to amend it by substituting the words "formal acts" for "legally binding instruments", so as to take account of the fact that, even though some resolutions or decisions of an organization could be considered as not legally binding, they were none the less rules in the broad sense, at least for the secretariat of the organization, which was usually the organ called upon to negotiate treaties.

14. Mr. TALALAEV (Union of Soviet Socialist Republics) said that while the definition of the term "rules of the organization" proposed by the International Law Commission had been acceptable for the purposes of the 1975 Vienna Convention, it had two obvious shortcomings as far as the present draft convention was concerned. First, it took no account of the paramount role of the constituent instrument in the system of sources of capacity of international organizations, and secondly, it paved the way for international organizations, through the adoption of resolutions and decisions and through other acts and practices, to depart from the requirements of their constituent instruments which in particular regulated their capacity to conclude treaties. The proposal co-sponsored by his delegation was intended to eliminate those shortcomings by stressing the significance of the constituent instrument of an international organization as the main source of its rights and capacity to conclude treaties, and by eliminating the possibility of it adopting resolutions, decisions or practices that might be a departure from the requirements of the constituent instrument in that area. Consequently, any resolution or decision which conflicted with the provisions of the constituent instrument would be legally invalid.

15. Cases involving invalid resolutions or decisions regrettably had occurred in the past, and needed to be prevented in the future. Furthermore, the proposal was consistent with the approach recommended by Switzerland at the previous meeting, namely, to keep to general terms. The Conference was drawing up a legal convention which would be a source of international law and should therefore possess legal rather than moral force and consequently be based on legally binding rules. Lastly, the proposal upheld the concept of established practice, which must correspond to the constituent instrument of the organization.

16. Mr. BARRETO (Portugal) said that he would welcome the opinion of the Expert Consultant with regard to the words "constituent instruments, relevant decisions and resolutions".

17. Mr. PASCHKE (Federal Republic of Germany) said that his delegation strongly supported the text proposed by the International Law Commission. The words "relevant" and "established" provided safeguards which should meet the concerns of all delegations.

18. Mr. REUTER (Expert Consultant) said that the Commission had drawn the words "relevant decisions and resolutions" verbatim from the 1975 Vienna Convention, which had been given the seal of approval by the duly empowered delegations of Governments. Interpretation of the term "rules of the organization" was accordingly a matter for Governments themselves.

19. The three elements of the definition—constituent instruments, relevant decisions and resolutions—derived both from written documents and from the established practice of organizations. In addition, the order in which they appeared in the text was not arbitrary, but indicated a certain progression. It was important to remember that the status of "decisions and resolutions" varied from one organization to another, and that whereas "decisions" were categorical and binding, "resolutions" were less categorical and not necessarily binding. Thus, while it might be objected that the formulation in the basic proposal created uncertainty, it none the less conferred some measure of flexibility on the draft: hence its adoption by the International Law Commission.

20. It was questionable whether the Conference had competence to determine what the rules of an organization should be in absolute terms, since each organization was an individual case. However, he doubted whether any organization would exclude established practice as a source of its internal law. It was for the Conference to decide whether the existing wording, which was admittedly clumsy, was not after all the best.

21. Mr. ECONOMIDES (Greece) said that the sheer variety of terms used to denote instruments and acts —statutes, conclusions, agreements, proposals, opinions, measures, regulations and decrees, to mention only a few—was such that the best solution would perhaps be to follow the suggestion made at the previous meeting to replace the term "relevant decisions and resolutions" by"relevant acts" and to delete the words "in particular".

22. Mr. REUTER (Expert Consultant) said that he felt it would be best for changes of that kind to be discussed in the Drafting Committee.

23. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee referred the wording of the subparagraph to the Drafting Committee.

It was so decided.

Paragraph 2

24. Mr. HAYES (Ireland) said that the representative of Poland at the previous meeting, had rightly pointed to the fact that the terms used in paragraph 1 were effectively "labels". Like them, the introductory wording of paragraph 1 was intended to facilitate the formulation of subsequent articles, and that intention was reinforced by paragraph 2. The criterion to be borne in mind in the Committee's deliberations was the adequacy of the terms used in article 2 for the purposes of the articles as a whole, rather than any extraneous considerations.

The meeting rose at 5.15 p.m.