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Summary record of the 1552nd meeting

Topic:
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tions stood by their bargains. As the Special Rapporteur had noted in his commentary, from what was known of the practice of international organizations there was no indication that sharp differences of opinion commonly arose between States and organizations in questions of that kind, for the very obvious reason that organizations were the creatures of States, and that it was their purpose to serve them rather than to seek to reduce their responsibilities towards them. Furthermore, policy provided a major safeguard for both parties. If it was considered that something had been done incorrectly, at least States that were members of the organization concerned would be in a position to urge the organization to follow a proper course. It was not necessary to make a sharp distinction between law and policy, and efforts should be made to assimilate the position of States to that of international organizations, as the Special Rapporteur had tried to do in variant B.

37. Part of the essential difference between States and international organizations was that the constitutions and rules of organizations were public property and that States dealing with them were notified of the nature of those rules. However, the expression "rules of the organization", used in paragraph 3 of variant B, went beyond what was meant by the established practice of an organization. As a practical matter, organizations dealing with States under treaties should accept some limitation on the degree to which they could rely on the intricacies of their own rules in disclaiming obligations. That was the condition on which they enjoyed the privilege of entering into treaty relations with States.

38. Another pertinent factor was the importance attached to the term "manifest". In the context of paragraph 3 of variant B alone, the difficulty of determining what constituted a rule of fundamental importance would usually be overcome by the use of the term "manifest". Anything that was contained in the constitution, or that had been promulgated in decisions of which all had been given notice, would be manifest. Much else would not be manifest. However, in paragraph 4 of variant B a different balance existed. In paragraph 3, the condition relating to a rule of fundamental importance was coextensive with the term "manifest", so that the test of what was manifest remained unchanged. In paragraph 4, on the other hand, a knowledge of the normal practice of an organization seemed to be imputed to the other organization concerned, so that the term "manifest" had built into it an imputed knowledge. That distinction between established practice, as defined under "rules of the organization" in article 2, paragraph 1 (*j*), and normal practice, as used in draft article 46, was probably not intentional. But if the meaning of the term "manifest" was to be governed by the expression "normal practice", then the advantage of using the term "manifest" would be lost.

The meeting rose at 12.55 p.m.

1552nd MEETING

Thursday, 14 June 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Ghali, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

Welcome to Mr. Ghali

1. The CHAIRMAN congratulated Mr. Ghali on his election and welcomed him on behalf of the Commission.

2. Mr. Ghali thanked the members of the Commission for electing him. He had been able to appreciate to the full the practical importance of international law, especially the principle of *pacta sunt servanda*, during the difficult negotiations that had led up to the conclusion, at Washington, of the Peace Treaty between Egypt and Israel. That Treaty was based on the rules of international law, and when there had been differences of opinion concerning the interpretation of its provisions, it had always been to international law that the parties had turned. He considered that international law was an essential instrument for overcoming political difficulties.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/319, A/CN.4/L.296)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 46 (Violation of provisions regarding competence to conclude treaties) [1] (*concluded*)

3. Mr. TABIBI said that, in the contemporary community of nations, the role of international organizations had become a fact of everyday life. The constituent instruments of those organizations reflected the collective opinion of sovereign States, and all the decisions made in international organizations, such as the United Nations, were made by sovereign States. Moreover, those organizations derived their power from their member States, through their constituent instruments. Consequently, although there were obvious differences between them, the same trends could be observed in international organizations as in sovereign

[1] For text, see 1550th meeting, para. 22.

States. Variant B proposed by the Special Rapporteur, which he was inclined to support, took account of both the differences and the similarities between States and international organizations.

4. As to the question of normal practice, he could not agree with Mr. Jagota (1551st meeting) that the practice of international organizations was not on the same level as that of States. The normal practice of States in regard to treaty relations could not be relied on. In the past, treaties had been imposed by strong States on weak States. The present normal practice, whereby States negotiated treaties on an equal footing, had developed only recently, with the creation of positive international law, which included the United Nations Charter. Consequently experience of the normal practice of international organizations and of States could be considered to have started at about the same time. Attention should therefore be given not only to the classical principles of international law but also to the new law of international organizations.

5. Variant B proposed by the Special Rapporteur provided the necessary flexibility, which he hoped would be maintained in the final draft articles.

6. Mr. SUCHARITKUL found both variants A and B acceptable, although he preferred variant B. He did not dispute the principle that, in the matters covered by article 46, international organizations should be assimilated to States as far as possible; but he had some difficulty with the expression "normal practice", which appeared in variant A, paragraph 3, and in variant B, paragraph 4, of the article under consideration and in paragraph 2 of the text proposed by Mr. Ushakov (para. 15 below). That expression could not be taken to mean a single act or an isolated event, since a whole series of actions was needed to establish a normal practice. What was meant was the normal practice followed in relations between the parties to a treaty, in other words, between States or between States and international organizations.

7. He was grateful to Mr. Ushakov for having underlined at the 1550th meeting the difference between States and international organizations in that regard. For while there might be a normal practice of States, there was no normal practice common to international organizations.

8. In fact, he even wondered whether it was really possible to speak of the normal practice of a State; on that point he shared the view of Mr. Schwebel, who had expressed doubts about the practice of his own country. In the case of a country such as Thailand, although practice was well established, owing to the development of the State's activities in all spheres there had been changes in the practice relating to competence to conclude treaties. The Ministry for Foreign Affairs was no longer exclusively competent to conclude treaties; while it was still responsible for the most important treaties, secondary treaties now came within the competence of other ministries. It could be seen, therefore, that a State's practice was not constant, but was continually evolving.

9. With regard to the normal practice of international organizations, account must be taken of the new organizations that were set up each year. It was difficult to determine in advance what their normal practice would be, however, so that, as the Special Rapporteur proposed, the Commission should confine itself to the existing practice of States and international organizations.

10. Even in the case of international organizations that were already long established, such as EEC, practice did not always provide a solution to the problems that might arise. For example, in connexion with the Regional Office Agreement it had just signed with EEC, Thailand had had to adopt a law recognizing the legal personality and capacity of that entity, for the Community had asked that its legal personality should be recognized not only under international law but also under the national law of Thailand. Recourse had been had to precedents such as the agreements the Community had concluded with Belgium and Japan, for there was no normal practice of the Community. Indeed, while States always recognized the Community's legal personality under international law, they did not always recognize it under their internal law.

11. With regard to variant B, paragraph 4, which stated that "a violation is manifest if it would be objectively evident to any State or any international organization not a member of the organization concerned", he wondered whether a distinction could not also be made between the different categories of members of an international organization. ESCAP, for example, had several categories of members: founder members, such as France, the Netherlands, the USSR, the United Kingdom and the United States of America; regional members, extra-regional members; and associate members, like Hong Kong. The Asian Development Bank also had several categories of members: founder members; members which contributed to the Asian Development Fund, such as Japan and the United States of America; and members which borrowed from the Fund. The question he wished to put to the Commission was whether different competence to conclude treaties should be attributed to different categories of members.

12. Mr. RIPHAGEN thought article 46 of the Vienna Convention [2] was sufficiently flexible to be applicable to the consent of international organizations to be bound by a treaty. The most formidable obstacle to invoking invalidity under that article was the condition that the violation of internal rules regarding competence must be manifest to the other party or parties. It was particularly formidable if the limitations of internal law were of a substantive rather than a procedural nature. In many cases, it might be unclear which organ of the State was competent to conclude a particular treaty. And there was often a genuine difference of opinion between the member States of an organization as to the treaty-making capacity of the organiza-

[2] See 1546th meeting, foot-note 1.

tion. Given such differences of opinion, it could hardly be said that the effect of the limitations in question was sufficiently evident to be manifest to third States.

13. The influence of internal rules and procedures was such that it was often difficult to imagine cases in which article 46 could be invoked. For example, under the constitutional law of the Netherlands, the approval of Parliament was needed before the conclusion of a treaty by the Head of State, unless the treaty was considered to be of paramount importance to the interests of the State, in which case prior approval was not necessary. In such cases, there was no objective criterion that could be manifest to a third State. Conversely, EEC had internal rules under which any State could ask the Court of Justice of the European Communities whether the Community had the power to conclude a given treaty. If the treaty was concluded despite a negative ruling of the Court, an obvious objective criterion would exist that would be manifest to all.

14. There was therefore some interplay between internal constitutional rules, the application of article 46 of the Vienna Convention, and the draft article before the Commission. Since article 46 of the Vienna Convention was sufficiently flexible to take account of that interplay, it could be applied to the consent of international organizations to be bound by a treaty without any need for amendment.

15. Mr. USHAKOV read out the text he proposed for article 46 (A/CN.4/L.296):

> "1. A State may not invoke the fact that its consent to be bound by a treaty between one or more States and one or more international organizations has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
>
> "2. A violation as indicated in paragraph 1 is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith, and is therefore also manifest for any international organization.
>
> "3. An international organization may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of the relevant rules of the organization regarding competence to conclude treaties as invalidating its consent unless that violation was manifest.
>
> "4. A violation as indicated in paragraph 3 of a relevant rule of the organization in question concerning competence to conclude treaties is manifest if the rule, interpreted in good faith, is clear."

16. He pointed out that paragraph 1 of that text followed the text of the Vienna Convention, since it dealt with States. Under the Vienna Convention, a State could invoke its internal law as invalidating its consent only within certain limits intended to protect the other parties to the treaty: the rule of internal law violated must be of "fundamental importance" and the violation must be "manifest". Paragraph 2 of the relevant article of the Vienna Convention specified:

> A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

In his view, a violation was manifest if the rule broken was manifest—in other words, if it was a rule of international law based on the normal practice of States, namely, a customary rule. Thus paragraph 2 of the Vienna Convention text had introduced, alongside the reference to the internal law of the States, a reference to the customary rules of international law. But the customary rules of international law must be known to every international organization, and that was why he had added, in paragraph 2 of his proposal, the words "and is therefore also manifest for any international organization".

17. If, for example, a customary rule of international law provided that a State's representative to an international organization could conduct negotiations with that organization for the conclusion of a treaty, but was not competent to bind the State by his signature, a State whose representative broke that rule by giving his signature could invoke that violation of a customary rule of international law as invalidating its consent to be bound by the treaty, since the international organization must have known the rule.

18. In addition to the customary rules of international law, however, there were fundamentally important rules of internal law that must be known to the other parties to the treaty. A State could therefore invoke a violation of those fundamental rules to claim that a treaty was invalid. On the other hand, there were also, in the internal law of every State, rather obscure rules which even lawyers of the State concerned did not always know very well, and with which other States or international organizations could not be expected to be familiar. That was why it was necessary to stipulate, with regard to the internal law of States, that the rule violated must have been "of fundamental importance".

19. No such stipulation was necessary in the case of international organizations, however, since it was easy to know what their rules were. He had therefore considered it sufficient to provide, in paragraph 3 of his amendment, that the violation of the relevant rules of the organization must have been manifest, without adding that it must have concerned a rule of fundamental importance.

20. In the case of international organizations, as in that of States, a violation was manifest if the rule violated was manifest, in other words, objectively evident to all when interpreted in good faith. But according to the definition given in article 2, paragraph 1 (*j*), of the draft,[3] the expression "rules of the organiza-

[3] See 1546th meeting, foot-note 4.

tion" meant not only the organization's constituent instruments, which were presumed to be evident, but also its relevant decisions and resolutions and its practice, which might be ambiguous or obscure. An international organization could not invoke its practice or resolutions if they were obscure; it could invoke only practice or resolutions that were evident when interpreted in good faith, for the resolutions and practice invoked must be known to its treaty partners. Thus the partners of the international organization would be sufficiently protected if it were provided that the rule violated must have been "clear". It was not necessary to specify that the rule must have been clear "to any State or any international organization not a member of the organization concerned". If the rule was clear, it would be clear to all States and all organizations, whether they were members or not.

21. Mr. VEROSTA said that he had at first favoured variant B, but that in the light of the Commission's discussion he now believed, like Mr. Riphagen, that variant A was preferable, because it was more flexible.

22. He thought Mr. Ushakov was right in saying that international organizations, as subjects of international law, were also bound by customary international law. But he doubted whether it could be said, as in paragraph 2 of Mr. Ushakov's proposal, that a violation that was evident to any State was "therefore also manifest for any international organization", for that would mean that international organizations were bound by customary law in regard to certain activities of States. He also wondered whether it was possible to speak of a "règle évidente", and whether it was helpful to introduce that new concept beside that of a "manifest violation".

23. He proposed that draft article 46 should be referred to the Drafting Committee.

24. Mr. CASTAÑEDA favoured variant A, for the basic reason that it provided a better guarantee for the maintenance of the stability of treaties and took sufficient account of the difference between the respective positions of international organizations and States in regard to consent to be bound by a treaty. For the same reasons, in paragraph 4 of variant B it would be better to eliminate the distinction between States that were members and States that were not members of the organization concerned, although he attached some importance to the comments made by the Special Rapporteur in foot-note 30 of his report.

25. The primary concern of the Commission should be to ensure greater stability of treaties. Even in connexion with paragraph 1 of draft article 46, problems could arise concerning agreements in simplified form. The relevant provisions of the Vienna Convention itself were open to different interpretations in that regard. While the constitutions of some countries, such as the United States of America, distinguished between treaties that must be ratified by the legislative body and those that needed no such ratification, the constitutions of many other countries contained no such provisions. Nevertheless, for practical purposes, those countries, which included Mexico and many other Latin American States, found it necessary to conclude numerous international agreements that were not ratified by their respective legislatures. In such cases, paragraph 1 of draft article 46 could be invoked to invalidate consent. That was a serious problem, especially since doctrine provided no acceptable definition of what constituted an agreement in simplified form, as opposed to a treaty requiring ratification.

26. Similar cases could also arise in regard to international organizations, so that every effort should be made to maintain the stability of treaties and to minimize the possibility of their being invalidated by reason of a defect in consent. It would therefore be preferable to adopt the principle proposed by Mr. Ushakov, namely, that a violation must be manifest to any international organization, rather than the criterion of the fundamental importance of the rule violated for the organization concerned. The latter test could be difficult to apply where the rule in question was not embodied in the constituent instrument or in a clear decision taken by the principal organ of the organization.

27. Mr. REUTER (Special Rapporteur), reviewing the further comments made on article 46, noted that, with regard to the consent of States, the members of the Commission were for the most part in favour of keeping to the wording of the corresponding article of the Vienna Convention. The question whether a reference to international organizations should be retained in a paragraph dealing with the consent of States should be settled by the Drafting Committee.

28. The members of the Commission also seemed to find that paragraph 4 of variant B was not convincing. Hence the question of member and non-member States should not be dealt with in the article under consideration, but might at most be mentioned in the commentary. In that connexion, he pointed out that, if paragraph 4 were dropped, variant B would disappear completely, as it would no longer differ substantially from variant A.

29. Two trends were emerging from the debate. The first was in favour of variant A, paragraph 3 of which could be examined by the Drafting Committee in the light of the wording proposed by Mr. Jagota (1551st meeting, para. 23). The second was expressed in the text of article 46 proposed by Mr. Ushakov (see above, para. 15). Those members of the Commission who were inclined to favour variant B would prefer, for the consent of organizations, a provision based on Mr. Ushakov's proposal. That proposal was characterized by the omission of any reference to the fundamental importance of the relevant rules of the organization; hence the violation of any relevant rule of the organization came within the scope of the provision. The proposal also defined a manifest violation, without referring to practice regarding the consent of international organizations. As each of the two trends was represented by a draft article, the Drafting Committee

could itself decide whether the Commission should put forward two variants or only a single text, the alternative version being mentioned in the commentary.

30. It was clear from Mr. Ushakov's comments that the deletion of the reference to the fundamental importance of the rule would in principle provide better protection for international organizations. There was in fact a tendency to consider that the manifest character of the violation was the essential criterion and that, in order to simplify matters, the reference to the fundamental importance of the rule violated could be omitted; the requirement that the violation must be manifest would provide sufficient protection for third parties. In developing that view, Mr. Ushakov had put forward ideas more liberal than those embodied in variant A: he had gone so far as to maintain that not only the violation but also the rule must be manifest.

31. Other members of the Commission, such as Mr. Castañeda and Mr. Riphagen, thought that the rules of the internal law of States regarding competence to conclude treaties were not evident. He fully agreed with them, but could not accept, *a contrario,* that the rules of international organizations on the subject were clear. The constituent instruments of international organizations were generally badly drafted, and the Charter of the United Nations, which ought to serve as a model, was almost entirely silent on the question of competence to conclude treaties, except for a few allusions to treaties that could be concluded by the Security Council. In that sphere, everything followed from practice. It was true that some organizations had rules on the conclusion of treaties, but those rules were so complicated that they were constantly disputed, everyone interpreting them in his own way. If the Commission opted for Mr. Ushakov's proposal, it would be adopting a text that went further than variant A and could secure general approval only in so far as everyone interpreted it in his own fashion. To sum up, the Commission should have the choice between variant A with minor amendments, the text proposed by Mr. Ushakov with some changes, and that text as it stood, which would be interpreted in different ways.

32. Speaking as a member of the Commission, he said he was inclined to favour variant A, and had two observations to make. First, although he could abandon paragraph 4 of variant B without regret, it should be remembered that the rules set out in the draft articles were residuary rules. During the discussion of article 42,[4] it had been specified that the subsequent articles would cover all grounds for invalidity, termination of or suspension of the operation of a treaty. Article 42, paragraph 3, reserved the obligations that might derive from Article 103 of the Charter. He was becoming more and more convinced that the Drafting Committee would have to consider inserting in that provision a reference to the relevant rules of the organization in regard to treaties concerning relations between members. He would therefore be prepared to drop paragraph 4 of variant B, provided that the relevant rules of the organization were reserved. Moreover, according to article 5 of the Vienna Convention, that instrument applied to any treaty that was the constituent instrument of an international organization and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

33. Secondly, there was no general normal practice of international organizations, but an individual organization could have its own normal practice. A practice might already exist and have some value before it became part of the rules of an organization and constituted established practice within the meaning of article 2, paragraph 1 (*j*), of the draft. The Drafting Committee might therefore consider inserting in article 46 a reference to the normal practice of the organization concerned. As only established practice formed part of the rules of an organization, it could not be objected that such a reference was unnecessary because the relevant rules of the organization were already mentioned. In any case, that question should be dealt with in the commentary.

34. The CHAIRMAN said that if there were no objections he would take it that the Commission decided to refer article 46 to the Drafting Committee, for consideration in the light of the comments and proposals made during the debate.

It was so decided. [5]

ARTICLE 47 (Specific restrictions on authority to express or communicate consent to be bound by a treaty)

35. The CHAIRMAN invited the Special Rapporteur to introduce article 47 (A/CN.4/319), which read:

Article 47. Specific restrictions on authority to express or communicate consent to be bound by a treaty

1. If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States and negotiating international organizations prior to his expressing such consent.

2. If the authority of a representative to communicate the consent of an organization to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent communicated by him unless the restriction was notified to the negotiating States and other negotiating organizations prior to his expressing such consent.

36. Mr. REUTER (Special Rapporteur) said that the rule stated in draft article 47 was a common-sense rule that should raise no difficulties. It related to cases in

[4] See 1546th meeting, paras. 11 *et seq.*

[5] For consideration of the text proposed by the Drafting Committee, see 1576th meeting.

which the representative of a State or an international organization received, together with full powers, instructions that restricted those powers. If those instructions had not been notified to the other States or organizations concerned before the consent of the State or organization in question had been expressed or communicated, they could not be invoked as invalidating its consent.

37. As in other provisions of the draft, the verb "communicate" had been used rather than the verb "express", when referring to the representatives of international organizations. The article accordingly differed slightly in wording from the corresponding article of the Vienna Convention, both in the title and in the text, in addition to the fact that it consisted of not one but two paragraphs, dealing respectively with the representative of a State and the representative of an international organization.

38. To cover all the types of treaty contemplated in the draft, the words "to the negotiating States and other negotiating organizations", at the end of article 47, paragraph 2, should be replaced by the words "to the negotiating States, to the negotiating States and other negotiating organizations, or to the other negotiating organizations, as the case may be".

The meeting rose at 12.50 p.m.

1553rd MEETING

Friday, 15 June 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Castañeda, Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Ghali, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Tsuruoka, Mr. Ushakov, Mr. Verosta.

Question of treaties concluded between States and international organizations or between two or more international organizations (*continued*) (A/CN.4/319)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR (*continued*)

ARTICLE 47 (Specific restrictions on authority to express or communicate consent to be bound by a treaty)[1] (*concluded*)

1. Mr. USHAKOV doubted whether paragraph 2 of draft article 47 was necessary. There was indeed a great difference between authority to bind a State by expressing its consent and authority to communicate the consent of an international organization. In accordance with the practice of States and in conformity with article 7 of the Vienna Convention[2] and with the corresponding article of the draft, certain persons were considered as representing the State *ex officio* and as authorized to express the consent of the State to be bound by a treaty without having to produce full powers. That did not apply to international organizations, because the decision of an organization to be bound by a treaty emanated, in all cases, from the competent organ. That was why article 7, paragraph 4, of the draft[3] referred to communication of the consent of an international organization, not to expression of its consent. Paragraph 2 of article 47 referred to that same communication. He wondered what restriction there could be on authority to communicate consent emanating from an organ of an organization. A representative having such authority might or might not communicate the consent, but he could not communicate it partially or provisionally. That being so, paragraph 2 of article 47 seemed to be superfluous.

2. The article under consideration also raised the question of the relationship between articles 7 and 11 of the draft. The two paragraphs of article 11, entitled "Means of establishing consent to be bound by a treaty", referred respectively to the consent of a State and the consent of an international organization. Under the terms of paragraph 2, the consent of an international organization to be bound by a treaty was established "by signature, exchange of instruments constituting a treaty, act of formal confirmation, acceptance, approval or accession, or by any other means if so agreed". Those different means, with the exception of signature, involved a decision by the competent organ of the organization. There was no question of a representative of an international organization being able to bind the organization directly and finally by his signature, but unless that possibility existed under article 11 there was no justification for article 47, paragraph 2. He concluded that the Commission had perhaps been wrong in providing, in article 11, that the consent of an international organization to be bound by a treaty could be established by signature.

3. Mr. REUTER (Special Rapporteur) said he did not share Mr. Ushakov's concern at all. As to the possibility of placing a specific restriction on authority to communicate the consent of an international organization, he gave the following example: after taking cognizance of the text of a treaty, the permanent organ of a customs union might give its representative authority to sign the treaty *ad referendum* if he could not persuade one of the other signatories to withdraw a reservation made when the text had been adopted; if the representative then signed the treaty and finally bound the organization without having obtained the desired withdrawal, and if his instructions had been kept secret, article 47 would apply.

[1] For text, see 1552nd meeting, para. 35.

[2] See 1546th meeting, foot-note 1.

[3] *Ibid.*, foot-note 4.