

JUSTITIA ET PACE
INSTITUT DE DROIT INTERNATIONAL

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**International Texts of Legal Import in the Mutual Relations of their
Authors and Texts Devoid of Such Import**

(Seventh Commission, Rapporteurs : Mr Michel Virally)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Having examined the whole set of reports of the 7th Commission, in particular the final report and the conclusions of the Rapporteur ;

Observing that States frequently adopt variously denominated texts by which they accept commitments in their mutual relations in respect of which there is an express or implicit agreement that they are not of a legal character, or the character or import of which is difficult to determine ;

Taking into consideration the debate on the reports of the 7th Commission, which indicated an interest in the topic, the diversity of opinions thereon and the need to continue to study it ;

Convinced of the utility of clarifying the nature of these texts and their consequences for the States concerned,

1. *Congratulates* the 7th Commission on the work done, which has thrown considerable light on the problems raised by international practice ;
2. Requests the Bureau to consider in the near future whether further development of practice and more profound doctrinal thought on the subject might justify the Institute in placing this topic again on its agenda.

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(29 August 1983)

For purposes of information, the conclusions reached by the Rapporteur, as amended by him in the light of the debates which took place in the Institute, are set below :

1. International texts of legal import in the relations between their authors include, irrespective of their form :

- a) texts by which their authors agree to define, to amend or to revoke legal commitments ;
- b) texts by which their authors agree to produce other legal effects, whatever their nature, such as the establishment of a legal framework for future action of the parties, the creation of an organ or institutional mechanism likely to act at the legal level, the recognition of a specific legal situation or claim, and the recognition of the legal authority of principles or rules of international law.

2. Legal obligations resulting from a legal commitment are more or less restrictive of the freedom of action of those who accepted that commitment (and are therefore more or less binding), depending on the degree of precision (or lack of precision) of the terms used to define it, on the nature of any reservation attached to it, or on the more or less discretionary conditions to which the performance of the commitment may be subject.

However, when substantiated, the violation of a legal obligation always entails the consequences that are defined by the international legal system.

3. Despite the high degree of subjective appreciation which they involve for those who are subject to them, and despite the fact that their performance usually requires supplementary agreements (or even discretionary unilateral decisions), obligations to co-operate, to negotiate, to consult or even simply to take into consideration a possible future occurrence with a view to an equally possible action, are legal obligations which a third party may determine, within certain limits, as having been or not having been performed in good faith.

The violation of such obligations entails the same consequences as that of any other legal obligation.

4. Subject to what is stated in paragraphs 5 and 6, texts containing commitments which States that accepted them intended to be binding solely at the political level and which have all their effects at that level (hereafter referred to as "purely political commitments") do not constitute international texts of legal import in the mutual relations between their authors.

However, a specific text, whatever its name, may contain at the same time provisions of a legal character within the meaning of paragraph 1 and purely political commitments within the meaning of the preceding subparagraph.

5. The violation of a purely political commitments justifies the aggrieved party in resorting to all means within its power in order to put an end to, or compensate for, its harmful consequences or drawbacks, in so far as such means are not prohibited by international law. Disputes arising from such violations may be submitted to all appropriate means of peaceful settlement and must be submitted to peaceful settlement procedures in the circumstances specified in Article 33, para. 1, of the Charter of the United Nations.

6. A State which has accepted a purely political commitment is subject to the general obligation of good faith which governs the conduct of subjects of international law in their mutual relations.

Consequently, it is subject to all legal obligations resulting from such a commitment, in particular when it has created the appearance of a legal commitment upon which another person has relied and if the conditions required by international law for the creation of such obligations are fulfilled.

Likewise, it is deemed to have waived the right to invoke possible pleas under international law (including the objection related to domestic jurisdiction) against an action for enforcement of its commitment brought by someone in relation to whom it has bound itself. Consequently, such an action cannot be regarded as unlawful interference.

7. Commitments set forth in the text of an international treaty within the meaning of the Vienna Convention of 23 May 1969 are legal commitments unless it follows unquestionably from that text that the intention was to the contrary.

8. The legal or purely political character of a commitment set forth in an international text of uncertain character depends upon the intention of the parties as may be established by the usual rules of interpretation, including an examination of the terms used to express such intention, the circumstances in which the text was adopted and the subsequent behaviour of the parties.

9. International texts that merely formulate declarations of intent, whereby their authors simply mean to give some indication of their views in relation to a particular issue at the time of drafting the text without wishing to be bound for the future, are devoid of any legal import and are only binding on their authors if they have generated a situation of estoppel.

A declaration of intent is admissible only if the will not to be bound, as resulting in particular from the terms used, the circumstances in which the declaration was made and the subsequent behaviour of its author, proves perfectly clear .

In particular, a treaty provision may be considered to contain a mere declaration of intent only if it cannot be construed otherwise.