

EUROPEAN UNIVERSITY INSTITUTE (FLORENCE)

LAW DEPARTMENT

INTERNATIONAL ECONOMIC ORGANIZATIONS IN INTERNATIONAL
LAW-MAKING

(LLM Dissertation)

Sergei A. VOITOVICH

Supervisor

Professor Antonio Cassese

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TABLE OF CONTENTS

List of abbreviations

PREFACE

CHAPTER I. The Concept and Classification of International
Economic Organizations as Special Subjects of International Law

1. International legal personality of IEOs

2. IEOs' classification

2.1. Form of statutory act

2.2. Legal status

2.3. Volume of powers

2.4. Order of accession to membership

2.5. Character of membership

2.6. Subject of activities

2.7. Geographical sphere of activities

2.8. Jurisdictional competence

2.9. Decision-making procedure

CHAPTER II. International Agreements with Participation of
International Economic Organizations

1. Treaty-making competence of IEOs

2. The main types of international agreements with participation of IEOs

- 2.1. Cooperation agreements with non-member States
- 2.2. Cooperation agreements with other international organizations
- 2.3. Agreements on technical assistance
- 2.4. Financial agreements
- 2.5. Headquarters agreements

CHAPTER III. Acts of International Economic Organizations Influencing International Law-making

1. Procedural aspects of IEOs' decision-making

- 1.1. Decision-making initiatives, draft-making bodies, negotiations
- 1.2. Voting
- 1.3. Amendments to the constituent instruments

2. Types of IEOs' acts and their impact on international law

- 2.1. Decisions
- 2.2. Recommendations

CHAPTER IV. Agreements Concluded under the Auspices of International Economic Organizations

1. Codification conventions
2. Unification conventions

3. Special multilateral agreements

CONCLUSION

LIST OF ABBREVIATIONS

AfDB	African Development Bank
AJIL	American Journal of International Law
APPA	African Petroleum Producers' Association
AsDB	Asian Development Bank
ASEAN	Association of South-East Asian Nations
ATPC	Association of Tin Producing Countries
BYIL	British Yearbook of International Law
CAEU	Council of Arab Economic Unity
CARICOM	Caribbean Community
CCASG	Cooperation Council for the Arab States of the Gulf
CFC	Common Fund for Commodities
CMEA	Council for Mutual Economic Assistance
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOSOC	Economic and Social Council
ECOWAS	Economic Community for West African States
ECR	European Community Reports
EEC	European Economic Community

EFTA European Free Trade Association

FAO Food and Agricultural Organization of the UN

GATT General Agreement on Tariffs and Trade

GYIL German Yearbook of International Law

IAEA International Atomic Energy Agency

IBEC International Bank for Economic Cooperation

IBRD International Bank for Reconstruction and Development

ICAO International Civil Aviation Organization

ICJ International Court of Justice

ICLQ International and Comparative Law Quarterly

ICSID International Centre on Settlement of
Investment Disputes

IDA International Development Association

IEA International Energy Agency

IFAD International Fund for Agricultural Development

IFC International Financial Corporation

IIB International Investment Bank

ILC International Law Commission

ILM International Legal Materials

ILO International Labour Organization

IMF International Monetary Fund

ITPA International Tea Promotion Association

JWTL,JWT Journal of World Trade Law, Journal of World Trade

LAS League of Arab States

LAES Latin American Economic System

LAFTA	Latin American Free Trade Association
LAIA	Latin American Integration Association
MIGA	Multilateral Investment Guarantee Agency
NYIL	Netherlands Yearbook of International Law
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OPEC	Organization of Petroleum Exporting Countries
PTA	Preferential Trade Area for Eastern and Southern African States
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNIDO	United Nations Industrial Development Organization
UNTS	United Nations Treaty Series
UPU	Universal Postal Union
WACU	West African Customs Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization

PREFACE

This paper is a part of a more general research on the institutional mechanism regulating interstate economic relations, which is intended to embrace the participation of international economic organizations (IEOs) in the two main stages of international legal regulation: law-making and law implementation. Intensive development of international economic institutions in the post-war period gave birth to a vast legal practice in this field, which has been examined in numerous juridical studies but still needs a generalized analysis. As E.-U. Petrusmann rightly notes, " an explanatory 'theory of the law of international economic organizations' based on comparative and systematic inquiries into the 'infrastructure', objectives, basic legal norms, steering instruments, procedures, organs and activities of international organizations, could greatly contribute to the understanding and reform of the institutional framework of the world economy"¹.

This study is not planned to go into substantive problems of international economic organizations' activities, neither to tackle all numerous institutional and legal issues. These matters will be touched only in so far as being related to law-making within the frameworks of IEOs. The subject-matter of the present inquiry necessarily deals with a lot of procedural and technical issues, as well as a number of quotations from various documents. It makes the author apologize for those parts of his presentation

which will inevitably be somewhat dry. I hope that this shortcoming will be partially compensated by my efforts to be brief and to concentrate the analysis on the legal facets of international economic organizations which have not yet been comprehensively examined.

The emergence of the early elements of institutional mechanism in economic sphere dates back to the last century when the first administrative unions were established (1865 - the International Telegraphic Union, 1874 - the Universal Postal Union, 1875 - the Metric Union, 1886 - the International Copyright Union). The general premises for this process were the formation of the world market and increasing internationalization of economic life². However, in that period those conditions appeared to be insufficient for establishment of a comprehensive institutional mechanism of economic cooperation. Practically, up to the time when the UN system was formed only separate fragments of such a mechanism had existed (the League of Nations, the Genoa Conference of 1922, the Geneva Conference of 1927, the London Conference of 1933, the first commodity organs, and some others). The scope and intensity of international economic relations of that time determined a sufficiency of their mainly bilateral treaty regulation to ensure individual economic interests of States. The attempts for multilateral regulation in economic field did not give any considerable effect. But under the influence of the world economic crisis of 1929-1933 which showed the danger of

free-market anarchy and trade wars, the idea of global IEOs started to conquer the minds of scholars and politicians³.

In the post-war time international community faced the new realities, which led to increasing economic interdependence of States. A coherent institutional mechanism started to be formed first at the global level, primarily, within the framework of the UN system. The initial steps towards the establishment of multilateral regulation of trade and finance were inspired by the USA, the most powerful State of that time, which planned to use a shift from protectionism to liberalization in international economic relations for its economic expansion on a world scale⁴. The European States, whose economies heavily suffered during the war, had nothing to do but support the US efforts in order to use foreign capitals for their economic restoration. Under those conditions, the first global IEOs (the IMF, the IBRD, the GATT, the FAO) emerged. It must be noted, that unlike political and some specialized institutions of the UN system, the four economic organizations initially caused a restrained, not to say reluctant, attitude of the USSR. The Soviet holding aloof was determined by two main considerations: (1) a simplified view, that market-oriented IEOs are useless for a planned-economy State; (2) a fear of being debared from active decision-making by an overwhelming majority of the Western Member States. By now the things have changed. The Soviet economy is trying to turn its face towards market on both national and international scales, and this

inevitably raises a question of the membership of the global IEOs. Moreover, nowadays the correlation of voting powers in these organizations is more favourable for the USSR participation in decision-making. The question is how long will a preparatory and adaptation period last and how much efforts will it take to reach a rational compromise between the USSR and the Member States of these IEOs. In any case, it is essential to study the legal experience and achievements of these and other IEOs in order to give some practical recommendations concerning their law-making activities.

In 1950s-1980s the new factors, such as scientific and technical revolution, decolonization, global economic problems (New International Economic Order, international economic security, energetic and food problems, etc.) gave more weight to the necessity of institutional instruments and caused a considerable rise of global and regional IEOs. At present, together with States they are the main actors influencing the state and developments of international economic order.

It should be noted that in this paper the term "IEOs" is used in a broad sense, for all intergovernmental organizations dealing with international economic problems. It is hardly possible to embrace all numerous IEOs in one comparatively short inquiry. For this reason, I intentionally leave out of consideration such well-examined specialized organizations partly involved into economic problems, as the ILO, the ICAO, the WHO and some others.

Nonetheless, this study is based on normative instruments and fragments of practice of more than forty organizations.

CHAPTER 1. THE CONCEPT AND CLASSIFICATION OF INTERNATIONAL
ECONOMIC ORGANIZATIONS AS SPECIAL SUBJECTS OF
INTERNATIONAL LAW

1. International legal personality of IEOs

Even at first sight it is quite easy to notice those features of IEOs which distinguish them from the other typical international institutions, i.e. conferences and joint intergovernmental commissions. Unlike international conferences convoked for a limited time, IEOs have a permanent character (as a rule, the duration of IEO's functioning is not limited in their constituent documents). Unlike joint intergovernmental commissions of mainly bilateral character, IEOs have multilateral membership, as a minimum of three parties. More thorough analysis of IEOs' statutory acts and practice⁵ shows their following typical features: (1) establishment on the basis of international agreement in conformity with international law; (2) membership of sovereign States⁶; (3) permanent functioning; (4) system of organs; (5) the purpose for coordination of economic cooperation in certain fields; (6) international legal personality.

On this ground IEO⁷ can be defined as established by international agreement in conformity with international law structurally organized, permanently operating entity of sovereign States, which coordinates their economic cooperation in particular fields and is endowed for this purpose with a quality of international legal person.

Since there are few international legal rules laying down a concept of "international legal personality", the legal science makes attempts to define it on the basis of the existing practice⁸. However, different initial criteria of what is international legal person used by various authors do not allow to create a generally accepted concept. Most often a legal person is associated with possession of legal rights and duties. According to H.Kelsen, a legal person "is that legal substance to which duties and rights belong as legal qualities"⁹. That is right for both municipal and international laws. But this general quality of legal persons neither shows their peculiarities in the different legal systems, nor distinguishes the concepts of legal personality and legal status, both connected with rights and duties.

Two criteria proposed by the Soviet scholars seem to be important for definition of an international legal person. First, unlike most of the subjects of municipal law, traditional international legal persons are not, as a rule, subordinated to any superior power. The phenomenon of supranational power known, for instance, in the EEC, has its functional limits allowing the

Member States to preserve their sovereignty. Second, traditional subjects of international law are capable of not only observing legal provisions and of bearing legal rights and duties deriving from them, but also have a capacity to create legal norms themselves. As E.T.Usenko states: "the subjects of international law are simultaneously the creators of objective international law and the bearers of subjective international rights. This is the peculiarity"¹⁰. Therefore, in the traditional sense, "international legal personality" means an ability of autonomous international actors for independent performing of international legal actions including law-making and implementation of legal norms¹¹. If one accepts an idea of N.V.Zakharova distinguishing law-making and non-law-making subjects of international law (the latter term applies to nationals of States)¹², then the above suggested definition of international legal personality would be true only for law-making subjects, to which IEOs undoubtedly belong.

After a well-known statement of the International Court of Justice in the "Reparations for Injuries Suffered in the Service of the United Nations" case¹³, which recognized the objective international personality of the UN, the fact that international organization may possess international legal personality has no longer been challenged. This is confirmed in the 1986 Vienna Convention on Treaties between States and International Organizations or between International Organizations. However, the

question of whether all intergovernmental organizations possess international personality is not unambiguously answered in the doctrine¹⁴. The statutory documents do not always contain an explicit indication on this matter¹⁵. That's why A.N.Talalaev, for instance, suggests to solve this problem "only proceeding from the entire totality of the contents of functions and competence of the concrete international organization which are fixed in its Charter and other respective normative acts"¹⁶. Without arguing the last thesis one can, however, assert that the absence of international personality can practically impede performing the organization's functions. It is hard to disagree with P.I.B.Kohona's view, that international personality of organizations is "an essential attribute in discharging the objectives for which they are established"¹⁷. The authors who contend that not all intergovernmental organizations possess international legal personality, as a rule, do this in a hypothetical way and do not give any practical examples.

Taking into account a functional necessity of possessing international legal personality for each intergovernmental organization and a lack of facts witnessing that the founder States refused to endow any organization with this quality, I share the concept of objective (erga omnes) international personality of an intergovernmental organization possessing a number of essential features (the first five qualities enumerated at page 8).

The other thing is that the scope of the powers (the competence) of the organization is to be determined in each particular case individually. The difference between "personality" and "powers" was noted in the above mentioned Advisory Opinion of the ICJ (1949) on Reparation for Injuries. Commenting on this matter, E.Lauterpacht writes: "...the mere possession of personality does not dispense with the need to determine whether in the particular case the person possesses the appropriate power"¹⁸. The same point is stressed by M.Rama Montaldo: "Special care must be taken not to confuse the field of rights arising from international personality common to all international organizations, and the field of implied powers or functions particular to each organization"¹⁹.

It is known, that the foundation for international legal personality of a State is its sovereignty, i.e. the superiority of the State power within the State's territory and its independence outside. As regards to organization not possessing sovereignty, two foundations for its legal personality - a legal and an objective one - may be distinguished. The legal foundation is a statutory act and other relevant documents of the organization. An organization's will being formed as a result of the consent of the Member States was termed by M.K.Ivanov as "an objective foundation" of its international legal personality²⁰. The statutory documents fixing the order of decision-making endow the organization with a relatively autonomous will, without which no

independent international legal actions are possible. The bearers of the IEO's will are its organs. The will of the organization is determined by the wills of the Member States and in this sense is termed as relatively autonomous. However, it may considerably differ from the wills of the separate Member States (for example, of the minority objecting the resolution of the organization adopted by the majority). Without an autonomous will a subject of international law is inconceivable, since international legal activities are the process of making decisions of will.

International legal personality of IEO has a special functional character. It is not to be equated to the universal personality of a State. While sovereign States are able to perform any international legal actions not prohibited by international law, IEOs possess a capacity for only a limited scope of international legal activities which are necessary for the objectives of these organizations in conformity with their constituent documents. I. Seidl-Hohenveldern states, that "...international organizations may be subjects of international law only for their acts intra vires"²¹.

Here we need to stress a difference between international legal personality and international legal status of IEO. These concepts interpenetrate and are sometimes mixed. They are two closely connected, but different facets of legal existence of a subject of international law. To be better understood, it is worth

to start from States, in which a correlation between legal personality and status is more visible.

Being sovereign entities, States are formally equal as subjects of international law, though, in fact, they vary in many dimensions (territory, population, economic and political systems, geographical position, level of economic development, etc.). And these actual distinctions are also taken into consideration by international law (e.g. the peculiarities of the legal position of developing and land-locked States, a veto right for the five permanent Members of the UN Security Council, "weighted" voting in some IEOs, etc.). But in principle, States are equal from the viewpoint of their international legal personality, i.e. a capacity for independent international legal actions.

In the course of realization of this capacity States acquire and execute their international rights and duties, which taken in complex are individual for each State. This complex of international rights and duties of a subject obtained and realized within the framework of its international legal personality is termed as international legal status²². International legal status of a State covers a common for all the States "nucleus" (primary sovereign rights and duties embodied in the basic principles of international law) and an individual part containing the secondary rights and duties which are acquired in the course of realization of their primary rights and duties (for instance,

each State has an individual system of treaty relations with other subjects, individual membership to international organizations, etc.).

A similar correlation between personality and status is actual for IEOs. International legal personality is a premise for international legal status of IEO, whereas the latter is a result of possessing personality. International legal personality in general indicates on the organization's capacity for the definite international legal actions. International legal status characterizes the concrete legal position of the organization in the process of the realization of this capacity.

One of the components of IEO's legal status is its competence, i.e. fixed in the statutory documents complex of the powers of the organization in the person of its organs which relates to the scope of the subject-matter and the character of the decision-making. (In the second chapter of this paper the treaty-making competence of IEOs will be examined in detail).

International legal status of an IEO covers its primary and secondary rights and obligations²³. The primary rights and obligations are fixed in the statutory documents or derive from the general international law. They are: the right to participate in creation of legal norms, the right to cooperate with other subjects, the right to make decisions and recommendations, the right to bring an international claim, the right for immunities and privileges, the right of representation, the duty to refrain

from interference into internal affairs of the Member States, etc. The secondary rights and obligations are acquired by the IEOs in the course of realization of their right for participation in international law-making. Their contents are specific for each particular IEO.

2.The IEOs' classification

Examining the present-day IEOs one can discover a dialectical interrelation between their general and special features. Their general signs combining with individual qualities result in a vast variety of IEOs' types which, at first sight, may seem as a disorderly conglomerate of numerous organizations. However, a scientific classification distinguishing common and specific features of the analysed objects helps to elaborate a more systematic notion of IEOs. The principal criteria for classification must relate to the most significant aspects of IEOs as special subjects of international law. They are: (1) form of statutory act; (2) legal status; (3) volume of powers; (4) order of the accession to membership; (5) character of membership; (6) subject of activities; (7) geographical sphere of activities; (8) jurisdictional competence; (9) decision-making procedure.

(1) Form of statutory act .

All the IEOs are established by an agreement of the Member States. However, the forms of the expression of such agreement may be various. In this respect it is possible to distinguish: (1) the IEOs whose constituent documents are international treaties (the major part of the existing IEOs); (2) the IEOs established by a document other than a treaty (e.g. the UNCTAD, the UNIDO founded by the UN General Assembly resolutions, the IEA established by the OECD Council decision, the ASEAN formed by virtue of the Bangkok Declaration of the Ministers of foreign affairs of the Member States); (3) the IEOs which do not have a single formal statutory act. The GATT may serve as an example of the latter type. Its organizational structure has been formed on the basis of a number of acts adopted in different years. Up to 1959 there also had been no Charter of the CMEA. During the first decade this organization had been functioning in accordance with the decision of the 1949 Moscow Economic Meeting (i.e. informal intergovernmental agreement) and the customary rules expressed in the decisions of the CMEA organs²⁴ .

It must be borne in mind, that international institutions other than IEOs may also operate on the basis of an informal agreement. Thus, the COCOM (the Coordinating Committee for Multilateral Strategic Export Controls) formed in 1949 does not possess a clear legal status; it acts only through the Member States (the NATO Members minus Iceland, plus Japan) and, as it was

noted by some authors, can not be properly called an "international organization"²⁵.

(2) Legal status

Each IEO has an individual legal status, though, there are some elements common for all of them. The most general division on this basis may be made for autonomous and quasi-autonomous IEOs. Most of IEOs possess independent status, i.e. do not have any form of legal subordination to any other institution (e.g. the OECD, the CMEA, the EFTA). The term "quasi-autonomous" is somewhat conditional, since we use it for indication of the different forms of legal dependence of one IEO from another organization. For example, the UN Specialized Agencies being in principle independent organizations, to some extent are "subordinated" to the UN (in more detail see Chapter II). The same may be said about the IBRD affiliates (the IDA, the IFC, the IFAD, the MIGA)²⁶. The IEA was established in 1974 as an autonomous organization within the framework of the OECD. There are also some formally non-autonomous institutions which actually possess all essential features of IEOs (e.g. the UNCTAD, which according to UN General Assembly resolution 1995/XIX is the organ of the UN General Assembly).

(3) Volume of powers

IEOs considerably vary in volume of powers delegated to them by the Member States. At the extremes, ordinary and supranational IEOs are often distinguished in this respect. Most of the existing IEOs are considered as ordinary intergovernmental institutions, while the term "supranational" is usually associated with the EEC, which possesses some limited powers to act on the behalf of the Member States and to take decisions binding directly upon the nationals of the Member States. Some authors rightly noted that the term "supranationality" is used in a relative sense, since there is no one completely supranational organization²⁷. In other words, at present, states remain very reticent to surrender their powers to a supranational body and admit supranationality only in some narrow limits. The more compatible are political and economic systems, the more integrated are the States, the higher level of supranationality they afford. One can find various aspects of supranationality in the international organizations taking binding decisions upon the Member States in substantive matters, in the integration units such as the EEC, in the federations of sovereign States such as the USSR. The very supranationality is neither blessing nor curse. This is a specific form of organization of interstate relationships. All depends on the conditions under which it is used and on the contents it is filled with.

(4) Order of accession to membership

This criterion reflects a distinction between the open IEOs, the accession to which is not restricted by the statutory documents, and the IEOs of the limited accession. An example of the first type is the CMEA. According to Art. 2 of its Charter, "the admission to the Members of the Council is open to other countries which share the objectives and principles of the Council and have accorded to accept the obligations contained in the present Charter". Certainly, as a rule, the term "open organization" does not mean that an applicant State may enter into membership automatically. A positive decision of the competent body of the organization on the admission of a new member is necessary.

Some formally open organizations have quite complicated accession procedures. Thus, according to Art. XXXIII of the GATT²⁸, a new party may accede to this Agreement on terms agreed upon by an applicant State and the Contracting Parties²⁹. The final decision on this matter is to be taken by a two-thirds majority of the Contracting Parties. An applicant State submits a memorandum on its foreign trade system to the working group established for this purpose. As to admission of the socialist States to the GATT's membership, the concept of "effective reciprocity" has been applied. It means that a State controlled foreign trade system is able to restrict an access of the goods exported by the market-economy countries to the markets of a planned-economy country. Accordingly, instead of a formal

(proportional) reciprocity in granting the most-favoured-nation treatment the socialist States are demanded to make additional concessions³⁰, the so-called "ticket of admission".

The following formulas of admission have been used by Yugoslavia, Poland, Romania and Hungary which joined GATT respectively in 1966, 1967, 1971 and 1973. Yugoslavia abrogated the State monopoly on foreign trade and declared the introduction of the market-economy system. Poland was obliged to increase the total value of its imports from the territories of the contracting parties by not less than 7 per cent per annum. Romania also agreed to increase its imports from the contracting parties proportionally to the growth of total Romania imports provided for in its five-year plan. Hungary reduced its customs tariffs and stated that its foreign trade enterprises could do business competitively in world markets, and foreign businessmen could also do business freely in Hungary. At present, China and the USSR undertake efforts to make their foreign trade systems compatible with the GATT provisions aiming at further accession. The position of China which has an observer status in GATT is more preferable. As regards to the USSR accession, there are serious obstacles of more political than economic character determined by the negative attitude of some Western States, first of all, the USA. However, the observer status recently obtained by the USSR gives certain grounds for optimism.

The conditions for restricting accession to the membership of IEOs may be various. Thus, the Articles of Agreement of the IFC of 1955 (Art. 2) and the Articles of Agreement of the IDA of 1960 (Art. 2) prescribe that the membership to them shall be open only to the members of the World Bank. In its turn, the Articles of Agreement of the IBRD of 1944 also fix a peculiar restriction on the membership; any member of the Bank "which ceases to be a member of the International Monetary Fund shall automatically cease after three months to be a member of the Bank unless the Bank by three-fourths of the total voting power has agreed to allow it to remain a member" (Art. VI, section 3).

The regional restrictions to the membership can be met rather often. Art. 237 of the Treaty of Rome of 1957, for instance, permits the EEC membership for the European States only. According to Articles 2 and 46 of the Treaty for the Establishment of the PTA of 1981, the membership of this organization is open to 21 States of the subregion or to the immediately neighbouring African States.

Sometimes, the IEOs' Charters contain provisions restricting accession to the membership on the grounds of the subject of the organization's activities. Art. 2 of the Agreement establishing the ITPA of 1977 states, that it "shall be open to the Government of any country that produces and is a net exporter of tea and that is a Member State of the United Nations or a Member of any of its specialized agencies or of the International Atomic Energy

Agency". Art. 7 of the Statute of the OPEC of 1962 restricts the opportunity to become a member of this organization for the countries without a substantial net export of crude petroleum, and excludes such opportunity for the country which does not fundamentally have interests and aims similar to those of Member Countries. The membership to the ATPC is open only to 12 countries-net exporters of tin listed in Annex A to the establishing Agreement of 1983 which may be revised from time to time by the Conference (Art. 6).

Finally, the accession to IEOs' membership can be limited or prohibited as a form of international legal sanctions. A special resolution of the original members of the AfDB of 1963 prohibits an admission to the members of the Bank for the South African Republic, until its Government has terminated its apartheid policies³¹.

(5) Character of membership

This criterion reveals the distinction between the IEOs with a single status of Member States (e.g. the OECD, the CMEA) and the IEOs having the different categories of membership. The examples of the latter type are the FAO, the GATT, the OPEC. Art. 2 of the FAO Constitution distinguishes full and associate members. Unlike the first, associate members (non-selfgoverning territories) take part in the Conference deliberations without holding office and voting

power (Art. 3). After gaining independence the territory loses an associate membership and can be admitted to full members.

In GATT developing countries (the former dependent territories that acceded to GATT through the "sponsorship" of the former metropolitan countries) having de-facto membership participate side by side with the full members. De-facto members can obtain the full membership by a declaration submitted to the Director-General. In practice, de-facto status may last for a long period of time, since de-facto members benefit from the GATT advantages without reciprocal concessions.

The Statute of the OPEC also makes difference between the full members (which are the founder Members and the Countries with a substantial net export of crude petroleum accepted by a majority of three-fourths of full Members) and associate Members - the countries exporting petroleum in a limited volume. Associate Members may be invited by the Conference to attend any meeting of a Conference, the Board of Governors or Consultative Meetings, and to participate in their deliberations without the right to vote (Art. 7).

The PTA in principle has the single status of the Member States. However, the special temporary exemptions from the full application of certain provisions of the Treaty are granted to Botswana, Lesotho and Swaziland being the Members of the Southern African Customs Union (Articles 3 and 30 of the Treaty of 1981);

and to the Comores and Djibouti in view of their specific economic conditions (Art. 31).

A quite rare phenomenon of "group membership" should be also mentioned here. Under Art. 6 of the International Coffee Agreement of 1983, two or more Contracting Parties which are net exporters of coffee may declare that they are joining the Organization as a Member group which conducts a common coffee policy.

And, finally, it must be borne in mind, as H.G.Schermers writes, that "within each group of participants there are large differences in power and influence. Some full Members contribute more to expenses of the organization than others. Some have privileged positions such as right of permanent membership in subsidiary organs or the right of veto"³².

(6) Subject of activities

The most marked diversity of the IEOs may be seen while analysing the subject of their activities, which covers various forms of economic cooperation. On the ground of the subject competence IEOs are subdivided into the following types:

(1) Organizations of the general competence dealing, among others, with economic problems (e.g. the UN, the LAS, the OAU, the OAS).

(2) Organizations of general economic competence (e.g. the OECD).

(3) Organizations for economic integration (e.g. the EEC, the CMEA, the LAES).

(4) Specialized economic organizations:

(a) trade organizations including general trade organizations (the UNCTAD, the GATT), commodity organizations (e.g. the International Cocoa Organization, the International Organization on Natural Rubber), organizations of the exporters of raw materials (e.g. the OPEC);

(b) financial organizations (e.g. the IMF, the IBRD, the IIB, the IBEC);

(c) investment organizations (the MIGA, the ICSID);

(d) organizations for industrial cooperation (e.g. the UNIDO);

(e) organizations for scientific and technical cooperation (e.g. the International Center for Scientific and Technical Information);

(f) organizations for agricultural cooperation (the FAO, the IFAD);

(g) transport and communication organizations (e.g. the ITU, the UPU).

(5) Other organizations of economic character (e.g. WIPO)³³.

(7) Geographical sphere of activities

A sphere of IEOs activities is, as a rule, determined in the statutory documents due to the organizations' objectives and

subject of activities. The sphere of activities embraces both the membership and the geographical area of operating of the IEO. According to the criterion "sphere of activities", IEOs may be classified into universal, interregional, regional and subregional ones. Such classification is based on the terms "universality" and "regionality".

Being applied to international organizations the term "universality" can not be confined merely to a geographical aspect (embracing all main geographical regions). This concept includes also a social (the States representing all the social and economic systems) and a quantitative (the majority of the States of the world community) aspects. And what is more, the latter one serves as an indicator of the degree of universality which differs from one IEO to another. At present, there is no one absolutely universal organization with the participation of all the States. That's why some scholars prefer to speak about "potentially universal" or "world" organizations³⁴. They are, first of all, the organizations of the UN system. Among the other IEOs approaching the criteria of universality GATT is worth to be mentioned. More than 100 States representing the main social systems and geographical regions participate on the different grounds in this organization. However, by the degree of universality the GATT yields to another global trade organization - the UNCTAD, uniting more than 160 States. In this connection, the GATT's membership is sometimes qualified as "approaching quasi-universality"³⁵, while

the UNCTAD is characterized as "the only universal institution"³⁶.

Under other equal conditions, "the closer an organization comes to universality, the stronger its position will be"³⁷. This concerns the opportunities for coordination of economic policies of the vast majority of States, the effectiveness of rules of world-wide acceptance and the better efficiency of the organization's economic sanctions to a member breaching its obligations.

The contents of the term "region" in international law have been analysed in detail by A.F.Visotskij, who emphasizes, that the regions are "distinguished on the basis of the criteria reflecting the objectively existing features of those regions as relatively separate units and for achieving some practical or scientific and theoretical goals"³⁸.

The regional IEOs are the most numerous ones (the EEC, the EFTA, the ASEAN, the CARICOM, the LAES, regional banks, etc.). This is quite understandable, since "regional cooperation is practiced between States with comparable political systems and compatible cultural and economic backgrounds"³⁹. Regional IEOs also have greater homogeneity, than the universal ones, and therefore, more powers can be transferred to them by Member States⁴⁰. This point is also stressed by P.VerLoren van Themaat: "The main organizations with a limited territorial scope have a far more comprehensive area of operation as to subject matter.

Moreover, in a number of problem areas they often have access to far more effective instruments than the above-named specialized international organizations at a world level"⁴¹.

In order to designate a IEO having the sphere of activities within the vaster region of another organization, the term "subregional" is used. For instance, the Benelux Economic Union is a subregional organization in relation to the EEC; the Andean Group is a subregional organization within the framework of the LAIA. Some IEOs have the sphere of activities extending over one region but not covering all the geographical regions. This kind of IEOs may be called interregional (e.g. the CMEA, the OPEC, the OECD).

The question may be posed the following way: to what extent territorial sphere of organization's activities influences the efficiency of its operation; and what is the optimal interrelationship between universalism and regionalism in IEOs in this connection. Territorial aspect of IEO's functioning appears to be important so far as certain number of Member States are involved in the sphere of regulation. The more global are the problems intended to be covered by the organization, the more approaching to universalism is desirable. However, the remaining heterogeneity of interacting States limits the scope of issues available for effective regulation at the universal level. The greater homogeneity of regional and interregional IEOs resting on the unity of interests and purposes of the Member States is

essential for efficiency of institutional instruments. Therefore, at present, the ideal of universalism for IEOs is being corrected by the remaining reality of regionalism that reflects the correlation of interests and opportunities of States in the international economic field.

(8) Jurisdictional competence

The criterion of jurisdictional competence permits to subdivide IEOs in two major groups: (1) the organizations whose acts, except the decisions on procedural matters, are of recommendatory character (e.g. the UNCTAD); (2) the organizations making both recommendations and binding decisions on the matters of economic cooperation (most of the existing IEOs). The legal force of the IEOs' normative acts and their impact on international law-making will be a subject-matter of the third chapter of the present paper.

(9) Decision-making procedure

The existing IEOs use various decision-making procedures (see some details in chapter III). For the purpose of this classification we distinguish only: (1) the IEOs applying the rule "one State - one vote" (e.g. the OECD, the CMEA, the UNIDO, the OPEC), and (2) the IEOs using a "weighted" voting, when the voting

quota of a Member State depends on its financial deposit to the budget of the organization or other economic indexes (e.g. most of international financial organizations, international commodity organizations). A "weighted" voting procedure was often criticized in legal studies as incompatible with the principle of sovereign equality of States⁴². To put it another way, powerful industrial States in cases they do not belong to majority would be unlikely to follow decisions made by virtue of "one State-one vote" procedure. This could paralyse functioning of the overall system⁴³. Meanwhile, a vast practice of its application gives grounds to affirm, that a majority of States regards it as economically reasonable for some types of IEOs and a legitimate exception from the principle of sovereign equality. I. Seidl-Hohenveldern, commenting on the "weighted" voting in the IMF and the IBRD, writes: "...as these institutions act like banks, it does not seem inequitable that they take their decisions according to the principle that decisions should be taken by those who take the financial risks in proportion to their risks"⁴⁴. To put it another way, powerful industrial States, in cases they do not belong to majority, would be unlikely to follow decisions made by virtue of "one State - one vote" procedure. This could paralyse functioning of the overall system⁴⁵. However, it must be taken into consideration, that under certain conditions a "weighted" voting may really lead to a legalized domination of one or few powerful Member States in decision-making. For example, the USA

possess a de facto right of veto for some decisions in the IMF. Such evident voting imbalance is fraught with the danger of blocking the organization's decisions. In practice, the Member States of the IMF try to avoid voting conflicts by achieving a preliminary consensus on a decision to be taken. Here a provision of the 1986 Seoul Declaration of the International Law Association relating to the principle of participatory equality is worth mentioning: "in international organizations this should lead to such schemes of decision-making, that an equitable balance is realized between all the interests present".

In some IEOs using the rule "one State - one vote" the economic indexes are also taken into account in decision-making. Thus, the Governing Board of the ITPA takes decisions by a simple majority vote in the cases, when a consensus can not be reached. However, "should any Member of the Board or a group of the Members of the Board which represents at least one-tenth of the total volume of exports of all the Members consider that the decision so arrived at is of major importance affecting its interests, it shall have the right, during the same meeting of the Board, to request that a new decision be taken by a two-thirds majority vote and the vote shall be taken accordingly. For the purposes of this paragraph, the required two-thirds majority shall also account for at least two-thirds of the total volume of exports of all the Members" (Art. 9 of the Agreement of the ITPA of 1977).

In the light of the above analysis, the definition and classification of the IEOs are considered the first stage of the research. They allow to observe from the various points the comprehensive system of IEOs, to distinguish their general and specific qualities which determine their diversity. Classification gives initial data for the analysis of IEOs' participation in international law-making.

CHAPTER II. INTERNATIONAL AGREEMENTS WITH PARTICIPATION OF INTERNATIONAL ECONOMIC ORGANIZATIONS

The capacity to participate in creation of international legal rules is one of the main attributes of IEOs' international legal personality. Their norm-making activities are realized either directly, or as a participation in the norm-creating process of the Member States⁴⁶. IEOs are involved into three main forms of international norm-making:

(1) conclusion of treaties with the other subjects of international law;

(2) adoption of the IEOs' normative acts (decisions, recommendations, etc.) influencing the formulation of international legal rules;

(3) elaboration of agreements between the Member States under the auspices of IEOs.

1. 2019年12月31日

2. 2020年12月31日

3. 2021年12月31日

4. 2022年12月31日

5. 2023年12月31日

1. Treaty-making competence of IEOs

Conclusion of treaties with other subjects of international law is the most typical form of direct participation of international organizations in international law-making. In general outline, this problem has been a subject of numerous studies⁴⁷. In the present paper the analysis starts from the less examined aspect of the problem, which is the treaty-making competence of IEOs as a component of their international legal status.

First of all, it is necessary to tackle the correlation between the terms "capacity to conclude treaties" and "treaty-making competence" (or powers) of organization which are sometimes mixed.

The capacity to conclude treaties is an essential feature of international organization as a subject of international law. In this connection, A.N. Talalaev states, that "without possessing the capacity to conclude treaties an organization can not be regarded as a subject of international law"⁴⁸. According to the preamble of the 1986 Vienna Convention, 'international organizations possess the capacity to conclude treaties which is necessary for the exercise of their functions and the fulfilment of their purposes'. Art. 6 of the same Convention proclaims: "The capacity of an international organization to conclude treaties is governed by the rules of that organization".

A capacity to conclude treaties may be termed as sanctioned by international law right and ability of a subject to enter into international agreements. This is an element of its international legal personality (see Chapter 1). As follows from the preamble and Art. 6 of the 1986 Vienna Convention, the capacity of international organizations to conclude treaties has a special functional character in comparison with the universal, in principle, treaty-making capacity of States⁴⁹. No organization, for instance, is capable to conclude a treaty on State borders or on truce. At the same time, as a party to a treaty international organization is equal in rights and duties with a State⁵⁰.

In order to realize duly the organization's treaty-making capacity, it is necessary to formulate its treaty-making competence in the constituent documents. In the 1986 Vienna Convention the term "competence to conclude treaties" is used in Art. 46 : "An international organization may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of the rules of the organization regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of fundamental importance". A treaty-making competence may be defined as distributed among the organization's bodies powers to conclude the particular treaties which are regulated by the rules of the organization. Under Art. 2 of the 1986 Vienna Convention, "the rules of the organizations" are interpreted as "the constituent

instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization".

The constituent documents of IEOs contain various formulas of their treaty-making competence depending on peculiarities of their establishment, subject of activities, functions, as well as the legal qualifications of the draftsmen of those documents.

By the scope of treaty-making competence the IEOs with a relatively wide-ranging competence and the IEOs with a limited competence may be distinguished. A wide-ranging treaty-making competence is more often endowed to the general economic organizations or organizations for economic integration, whose founders do not regard it necessary to introduce any restrictions to the types of the treaties to be concluded or to the list of the potential parties to those treaties. For example, Art. 5 of the Convention Establishing the OECD and Art. 3 of the CMEA Charter state that those organizations may enter into agreements with Member States, non-members and other international organizations. A similar provision is contained in Art. 8 of the Treaty Establishing the CARICOM.

Most of the IEOs have limited treaty-making powers when the constituent documents define the types of the possible treaties and the list of the subjects with which they may be concluded. Most often such limits are determined by the subject and functional peculiarities of the organization. Thus, according to the Convention on the EFTA of 1960, (1) The Council of the

Association may conclude with the Government of the State in whose territory the headquarters will be situated an agreement relating to the legal capacity and the privileges and immunities to be recognized and granted in connection with the Association (Art. 35); (2) The Council may negotiate an agreement between the Member States and any other State, union of States or international organization, creating an association. Such an agreement is to be submitted to the Member States for acceptance and shall enter into force provided that it is accepted by all Member States (Art. 41).

The Treaty for the Establishment of the ECCAS of 1983 contains the only special provision relating to the cooperation agreements with the third States: " (1) Any African State wishing to conclude cooperation agreements with the Community shall make application to the Conference which, having taken the Council's advice, shall take a unanimous decision. (2) Such agreements shall be subject to ratification by Member States in accordance with their respective national legislations" (Art. 89).

The statutory acts of some IEOs of the UN system fix only two kinds of agreements to be concluded: agreements with the UN on the status of a specialized agency and agreements on cooperation with other international organizations operating in the relative fields (e.g. Art. 4, sec.7 of the Articles of Agreement of the IFC of 1955; Art.8 of the Agreement Establishing the IFAD of 1976; Art. 29 of the Agreement Establishing the CFC of 1980). Under the

Constitution of the UNIDO (Articles 18, 19, 20), this organization is empowered to conclude an agreement with the UN on the status of a specialized agency, cooperation agreements with other international organizations and a headquarters agreement. The Charter of the CCASG of 1981 mentions only a special agreement which shall organize the relationship between the Council and the State in which it has its headquarters (Art. 17). The same is provided by Art. 20 of the Agreement Establishing the ATPC of 1983.

The character of the wordings of IEOs' constituent instruments gives grounds to distinct:

- (1) IEOs with treaty-making competence defined in detail;
- (2) IEOs with treaty-making competence defined in general;
- (3) IEOs without clearly formulated treaty-making competence.

The FAO and the EEC may serve as the examples of the first type.

The Constitution of the FAO delimits the treaty-making powers of the Conference (the plenary organ) and of the Director-General. The Conference may enter into agreements with international organizations with related responsibilities about the methods of cooperation, whereas the Director-General may, subject to any decision of the Conference, enter into agreements with other intergovernmental organizations for the maintenance of common services, for common arrangements in regard to recruitment, training, conditions of service and other related matters, and for

interchanges of staff. The Conference may also approve arrangements placing other international organizations dealing with questions relating to food and agriculture under the general authority of the FAO (Art. XIII). Apart from this, the Conference by a two-thirds voting may authorize the Director-General to enter into agreements with Member States for the establishment of international institutions dealing with questions relating to food and agriculture (Art. XV).

According to the Treaty of Rome, the Commission of the European Communities makes recommendations to the Council concerning tariff and trade agreements with the third States. In its turn, the Council authorizes the Commission to open the necessary negotiations and conduct them in consultations with a special committee appointed by the Council (Art. 113). The Agreements on the behalf of the Community are concluded by the Council (Art. 114), which in these cases acts by a qualified majority vote. The same distribution of treaty-making powers between the Council and the Commission is confirmed in Art. 228. Besides that, the Community may conclude with a third State, a union of States, or an international organization agreements establishing an association. These agreements shall be concluded by the Council, acting unanimously and after receiving the assent of the European Parliament which shall act by an absolute majority of its component members (Art. 238 in the wording of the 1986 Single European Act). However, the Treaty does not reveal in

detail what is meant by an association agreement. Moreover, the procedure of Art. 238 is also applied to the agreements on cooperation in research, technological development and demonstration (Art.130 n), and the agreements on the environment (Art. 130 r). A unanimous approval of the Member States is requested for the agreements relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories associated with the Communities, and within those countries and territories for workers from Member States (Art. 135).

It is easy to notice, that the Council taking decisions on the conclusion of the Community's agreements applies different voting procedures under articles 114, 135 and 238. The unanimous voting of the association agreements indicates on their major importance in comparison with the tariff and trade agreements concluded through a qualified majority voting. The latter one is much easier achievable and, thus, used for the conclusion of the numerous tariff and trade agreements, while the unanimous voting is needed for the less frequently negotiated association agreements of the mixed character, in which the Member States and the Community participate together. These considerations of the draftsmen of the EEC constituent documents are quite understandable. However, such voting procedure is hardly regarded as optimum, since it admits that a tariff or trade agreement may be imposed by a majority on a minority. And one can not be sure that such agreement will be

properly implemented by the disagreed minority. The problem of implementation seems to be extremely important in this case, moreover, that the Community agreements under Art. 228 are binding on both the institutions and the Member States.

Meanwhile, life does not stand without moving, and even a relatively clearly formulated treaty-making competence may need some changes and developments. This necessity has been foreseen by Art. 235 of the Treaty of Rome, under which "if action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures". Such measures may concern, among others, an extension of the EEC treaty-making competence. Apart from this, the European Court of Justice in its decisions has extended the treaty-making powers of the Community to the matters of transport, agriculture, fishery and environment⁵¹. In case 22/70 (Commission v Council on the European Road Transport Agreement) the Court came to conclusion, that the treaty-making powers of the Community were not confined to matters covered by Articles 113 and 238, but embraced in addition an implied power to conclude treaties with third countries, which may "flow from other provisions of the Treaty and from measures adopted, within the framework of those provisions, by the Community institutions"⁵². A similar view was

upheld by the Court in its decision "Re the European Laying-up Fund Agreement": "Authority to enter into international commitments may not only arise from an express arbitration by the Treaty, but equally may flow implicitly from its provisions", when it is necessary for the attainment of the Community's objectives⁵³.

The Statutes of many IEOs formulate their treaty-making competence only in general features. The above mentioned Art. 5 of the OECD Convention defines the organization's treaty-making competence not only widely, but also as a brief general formula on the possibility to enter into agreements with the Member States, non-members and other international organizations. Such general wordings can not be regarded as perfect from the juridical technique viewpoint, since they keep open the question on the procedure of decision-making concerning conclusion of treaties. It is not clear, in particular, what bodies take part in the elaboration and conclusion of the treaties, what are the consequences of the minority's dissent with a proposed treaty.

Because of the peculiarities of the establishment of some IEOs their constituent instruments do not contain clear explicit indications on the treaty-making powers. For instance, the basic text of the GATT, which initially was not meant to become an international organization, contains only Art. XV:6 directly indicating the powers of the Contracting Parties to enter into special exchange agreements with any contracting party which is

not a Member of the IMF. In conformity with this provision in 1950-1952 the Contracting Parties entered into special agreements with Ceylon, Haiti, Indonesia and the Federal Republic of Germany. However, the GATT treaty-making practice extends over the framework of the Art. XV:6. In 1948 the GATT entered into arrangements on the cooperation, consultations, etc. with the IMF. In 1964 the GATT concluded an administrative agreement with the UNCTAD on joint operating the International Trade Center, and in 1977- an agreement with the GATT's host country, Switzerland. Taking into account this practice, some researchers of the GATT deduce its treaty-making competence by means of an extended interpretation of Art. XXV:1⁵⁴, which says: "Representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of the Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering of the objectives of this Agreement".

There is also a number of IEOs whose statutes do not have any special provisions concerning their treaty-making competence (e.g. the OPEC, the PTA, the APPA, etc.). Up to 1974 the CMEA Charter also did not contain such provisions, and it was considered sufficient to deduce the capacity of the CMEA to conclude treaties from the Charter as a whole⁵⁵. However, in 1974 after the EEC started to conduct the common trade policy (since 1973) and the question of the framework agreement between the EEC and the CMEA

appeared on the agenda, the CMEA Charter was amended. Its Art. III:2 states: "The Council for Mutual Economic Assistance ... may enter into international agreements with the Member Countries of the Council, other Countries and international organizations". This provision was confirmed in Art. 2 of the Convention on legal capacity, privileges and immunities of the CMEA of 1985, which also states, that "conclusion by the Council of an international agreement creating the rights and obligations for the concerned Member-Countries of the Council demands for this purpose the powers (the consent expressed specially and explicitly) of the respective Countries". However, the CMEA Charter in its present edition does not define neither the types of treaties to be concluded by the Council, nor the procedure of their conclusion.

Therefore, the existing practice of IEOs, as well as the provisions of the 1986 Vienna Convention witness the possibility of extended interpretation of the IEOs' Statutes with respect to their treaty-making competence. Normally, such exceeding over the formal frameworks of the organization's competence is not qualified as illegal. The facts confirm that the concept of "implied powers"⁵⁶ is applied in certain cases to the treaty-making competence of IEOs. H.G.Schermers states, that "as regards international organizations, whose tasks are enumerated in a relatively small number of articles of a constitution, the theory of implied powers is so essential that its possible application can be safely assumed"⁵⁷. However, it is undoubtedly preferable

when the organization's powers to conclude treaties are explicitly formulated in its constituent documents in order to avoid unnecessary complications while its interpreting.

2. The main types of international agreements with the participation of IEOs

During the last decades IEOs have accumulated an extensive treaty-making experience, which covers hundreds of international agreements. Although, the activity of various organizations in this respect is not equal, depending on their functional necessities. Some of the IEOs (for instance, the EEC, the CMEA, the UNIDO) have an intensive and diverse treaty-making practice⁵⁸, while the others conclude a very limited number of agreements.

In comparison with other international organizations, the agreements concluded by IEOs hardly have any peculiarities in procedural matters regulated by the norms of the law of treaties. The contents and sometimes the form of the IEOs' agreements are of primary interest.

Undoubtedly, the author of the present paper can not pretend to give an exhaustive analysis of the numerous treaties concluded by IEOs. The task is more modest: to characterize the main types of them with the illustration of the most interesting examples. These types are: (1) cooperation agreements with non-member

States; (2) cooperation agreements with other international organizations; (3) agreements on technical assistance; (4) financial agreements; (5) headquarters agreements.

(1) Cooperation agreements with non-member States

This type of agreements is often concluded by the organizations for economic integration establishing special economic regimes with non-member States. Such agreements vary in scope, methods and forms of cooperation. Some of them formulate the rights and obligations for both the IEO and its Member States. The practice of the CMEA and EEC gives typical examples.

The agreements of the CMEA with its non-members (Finland, Iraq, Mexico, Nicaragua, Mozambique, Ethiopia, Angola, People's Democratic Republic of Yemen, Afghanistan) are framed according to a rather simple scheme. They proclaim a general purpose of developing multilateral economic, scientific and technical cooperation, and provide for establishment of the bilateral Commissions which make recommendations to the parties on the particular matters of such cooperation. The Commissions' recommendations are implemented through conclusion of the relevant agreements. The parties accept the obligations to assist the Commissions in their activities submitting all necessary materials and information. All the problems arising in connection with the implementation of the agreements are to be settled by

negotiations. The agreements are concluded for unlimited term and are to be confirmed by the competent organs of the parties. Therefore, the agreements between the CMEA and its non-members are rather the guidelines than detailed contractual provisions for economic cooperation. The specific problems coming up in the course of their implementation are supposed to be solved each time by negotiations and consultations. The lack of arbitration provisions in these agreements may be qualified as a shortcoming in juridical technique, since not all the disputes arising can be settled by negotiations among the parties.

Among the existing IEOs the EEC has the broadest network of agreements with non-Member Countries. Some of these structurally remind of the above mentioned CMEA agreements, thus rather outlining the purposes and directions of cooperation, than concrete mechanisms (e.g. the Cooperation Agreement between Member countries of ASEAN and the EEC of 1980). At the same time, in the EEC treaty-making practice one can find the examples of comprehensive regulation of a large-scope cooperation between the IEO and its Member States, on the one part, and non-members, on the other part. One of them is the Third Lome Convention between the EEC and the ACP (African, Carribean and Pacific) States⁵⁹.

The Convention gives a detailed description of the forms and instruments of the cooperation in the fields of agriculture, conservation of natural resources, fisheries, industrial development, development of mining and energy potential,

transports and communications, trade and services, regional cooperation, cultural and social cooperation, investment and financial matters, etc. It fixes the principle of free access to the Community market for products originating in the ACP States, with special provisions for agricultural products and a safeguard clause. This principle does not comprise reciprocity for the ACP States which, in view of their development needs, accord to the Community the most-favoured-nation treatment (Art. 18).

The Convention establishes a special institutional mechanism for facilitating the cooperation between the parties. The Council of Ministers composed, on the one hand, of the members of the Council and the Commission of the European Communities and, on the other hand, of a member of the government of each of the ACP States, establishes the broad lines of the work to be undertaken in the context of the application of the Convention. It is assisted by the Committee of the Ambassadors consisting, on the one hand, of each Member States' Permanent Representative to the European Communities and one representative of the Commission and, on the other hand, of the head of each ACP State's mission to the European Communities. The Joint Assembly, a consultative body, is formed of equal numbers of members of European Parliament and members of parliament or, failing this, of representatives designated by the ACP States. The Convention also established a number of special committees and other bodies.

The key economic instruments of the Lome Conventions are the STABEX and SISMIN systems aimed at the stabilization of the ACP Countries' export earnings from agricultural commodities and mineral products. The overall amount of the EEC financial assistance to the ACP States for the duration of the Convention was supposed to be 8500 million ECU.

Three Lome Conventions have proved to be a working mechanism in spite of some contradictions between the parties. Certainly, the EEC is moved not by a philanthropy granting the ACP Countries some non-reciprocal concessions and financial aid. This special preferential treatment results in the deeper involvement of the ACP Countries into the sphere of the EEC economic influence. However, at the same time, those preferences work for the ACP Countries' development needs, thus, ensuring a sufficient balance of interests of all the parties to the Conventions.

(2) Cooperation agreements with other international organizations

Within this type of treaties, the agreements between the UN and its Specialized economic Agencies may be distinguished as a particular category⁶⁰. They are of a standard composition with some insignificant distinctions:

The UN recognizes the respective IEO as its Specialized Agency. The UN representatives are invited to the sessions and meetings of the Specialized Agency's organs, as well as the

representatives of the Specialized Agency take part in the deliberations of the UN organs on the items of the agenda relating to the competence of the Specialized Agency. The UN and the Specialized Agency may propose the items for the agenda in the organs of each other. The Parties agree to cooperate in the fields of their common competence. The Specialized Agency agrees to take into account the UN recommendations in the shortest possible time and to consult with the UN on the matters relating to such recommendations, as well as to report to the UN on the measures taken for their implementation. The Specialized Agency submits to the UN the annual reports on its activities. The parties exchange all necessary documents and information. They also recognize it desirable to avoid duplications in statistics and to exchange statistic data. The parties take obligations on mutual technical assistance including transfer of technology in the relevant spheres. They agree to consult each other on the most effective use of the service means, to cooperate in exchange of personnel. The Specialized Agency participates in the UN United Pension Fund.

The UN and the Specialized Agency consider desirable to establish close financial interrelations, including making financial agreements. The Specialized Agency agrees to submit its draft budgets to the UN General Assembly for deliberations. It also agrees to submit any information at the request of the ICJ. The UN General Assembly authorizes the Specialized Agency to ask the ICJ for consultations on the legal issues, except for the

matters of interrelations with the UN or the UN establishments. In that case the Specialized Agency is to inform the ECOSOC on each such inquiry. It also informs the ECOSOC on any official arrangement which is planned to be made with the other UN system entities.

In order to implement the agreement between the UN and the Specialized Agency the chief officials of the two organizations may enter into additional arrangements which they regard reasonable.

The agreements between the IEOs and other international organizations, often called "the memorandums of understanding", also have some common features, though, the range of peculiarities is wider than in the agreements between the UN and its Specialized economic Agencies. For instance, the Memorandum of understanding concerning cooperation between the FAO and the UNEP of 1977⁶¹ and the Memorandum of understanding between the IFAD and the UNDP of 1978⁶² fix the purposes and fields of cooperation, common actions on assistance to the common Member States in the achievement of the organizations' objectives, exchange of necessary information, documents, statistics, personnel, mutual representation.

It must be noted, that many cooperation agreements between IEOs negotiated and concluded by their competent organs are subsequently approved by resolutions of these organizations. For instance, under Art. 6 (f) of the Convention Establishing the WIPO, "the approval of an agreement with the United Nations under

Articles 57 and 63 of the Charter of the United Nations shall require a majority of nine-tenths of the votes cast".As P.I.B.Kohona states, "such a resolution of an organization might in this instance amount to a ratification"⁶³.

Life gives birth to the new forms of agreements between IEOs, one of which is the Joint Declaration on the establishment of the official relations between the EEC and the CMEA of 1988. This document was preceded by the lengthy negotiations started in 1973, when the CMEA offered to conclude a framework agreement between the two organizations which was responded by the EEC proposal of a standard agreement with separate Member States of the CMEA⁶⁴. Due to the initial differences in the parties' positions the first stage of the negotiations failed to give any practical effect. An abnormal state of mutual non-recognition caused some strange consequences in the regimes of multilateral treaties to which both the EEC and the CMEA Member States participated. Thus, up to 1986 the USSR used to make reservations to such agreements, pointing out that it did not consider itself to be bound by those treaties' provisions with the EEC⁶⁵. In its turn, the EEC objected the USSR reservations.

Only in 1985, on the initiative of M.Gorbachev, were the previously suspended contacts between the two organizations renewed. The parties agreed upon the principle of parallelism which meant the establishment of the official relations between the EEC and the CMEA with the following opening of the CMEA Member

States' diplomatic missions at the EEC. The first stage was marked by the 1988 Joint Declaration.

What are the legal nature and consequences of this document? Judging from the title and form of the Declaration one might conclude that it belongs to the so-called "international understandings" (communiqués, declarations, etc.) which formulate the general program provisions when there is no reason or no chance to conclude an international agreement. However, more thorough examination of the document gives grounds to affirm that by legal nature it is analogous to international treaty in a simplified form with all relevant consequences. There are at least two reasons for such conclusion: first, "the territorial clause" concerning West Berlin (item 5), usually included by the EEC in its treaties; and, second, the procedure of the adoption of the Declaration through two stages typical for international treaties - initialling and then full signature. An intention to endow the Declaration with the force of an international treaty was noted by the representatives of both organizations in the course of negotiations⁶⁶.

The primary legal effect of the Joint Declaration consists in the mutual official recognition of the two IEOs, which creates a real premise for more comprehensive realization of their international legal personality through participation in new agreements and other forms of international cooperation. Apart from that, under items 2,3 and 4 of the Declaration the parties

took the obligation to develop cooperation in the fields of their competence, to determine the forms and methods of such cooperation, to examine the possibilities for the new fields, forms and methods of cooperation on the basis of the acquired experience. The political and legal conditions formed by the Declaration have already brought the first results - the cooperation agreements between the EEC and Hungary, Czechoslovakia, the USSR.

(3) Agreements on technical assistance

This kind of agreements is very typical for the IEOs of special competence, especially for the UN system agencies. Various in the contents of the assistance, they are aimed, as a rule, at organization of seminars, teaching programmes, research work, experts' services, etc. They also determine the distribution of expenses among the IEOs granting the assistance and the beneficiary States (e.g. the Agreement on technical assistance between the UN, the ILO, the FAO, the UNESCO, the ICAO, the WHO, the ITU, the WMO, the IAAE and Somali of 1961⁶⁷; Assistance Agreement between the UNDP and the Republic of Vietnam of 1974⁶⁸). Some IEOs also conclude agreements with developed States on joint technical assistance for the third developing States. For example, in 1978 the UNIDO and Czechoslovakia signed the Memorandum of understanding on the establishment of joint program

for international cooperation in the field of ceramics, construction materials and non-metal minerals, under which the Czechoslovakian institute was to cooperate with the respective organizations in the developing countries in teaching engineers and technicians, testing raw materials, technological and geological researches, transfer of technology⁶⁹.

(4) Financial agreements

There are hundreds of loan, credit and guarantee agreements concluded between IEOs and other subjects. Those IEOs which actively participate in granting loans to their "Member States use the standard forms of agreements in order to simplify the process of treaty-making. In this connection, the General Conditions Applicable to Loan and Guarantee Agreements of the IBRD and the General Conditions Applicable to Development Credit Agreements of the IDA are worth mentioning. These documents are applied as a general standard form of dispositive character, i.e. the parties to the concrete agreement may specify their terms, concerning the loan (credit) account, charges, repayment, currency, withdrawal of proceeds of loan (credit), acceleration of maturity, taxes, financial and economic information, etc.

IEOs conclude both credit and borrowing agreements. For instance, the IMF adopted the General Arrangements to Borrow which are applied as standard agreement form in cases when the main

industrial countries make loans to the Fund to forestall or cope with the impairment of the international monetary system (under Art. VII, Section 1 of the Articles of Agreement of the IMF).

(5) Agreements on headquarters

Since each international institution has to establish the corresponding relationships with the host State, they usually do this in the form of agreements on headquarters. The headquarters agreements provide for the recognition of the IEO's international legal personality by the host State and enumerate the IEO's immunities and privileges (namely, the exception from the host State's jurisdiction, the inviolability of property and archives, the liberty for communications, the immunities and privileges for the personnel, etc.). According to some of the agreements, the organizations are obliged not to use their headquarters as an asylum for the persons sheltering from arrest or subjected to extradition to the other State (e.g. Art. 3 of the Agreement between the UN and Iraq on the headquarters of the UN Economic Commission for the West Africa of 1979⁷⁰).

There are some peculiarities in the form of regulation of the relationships between the GATT and its host country, Switzerland. Up to 1977 the legal status of the GATT was regulated by a unilateral declaration by the Swiss authorities, under which the GATT, provisionally using the office of the Interim Commission of

the International Trade Organization, enjoyed the same treatment as the European office of the UN. In 1977, when the GATT moved into its own headquarters, the special agreement with Switzerland was signed in the form of an exchange of letters⁷¹. It had a reference character and granted to the GATT the privileges and immunities by analogy to the 1946 Agreement between the UN and Switzerland on the UN privileges and immunities.

Sometimes, a headquarter agreement may be followed by a more particular agreement relating to the IEO's status in the host country. The Agreement between the Philippines and the AsDB regarding the AsDB Staff Housing Requirements of 1982 may serve as an example. According to it the Bank may acquire land for its Staff Housing facilities by purchase or otherwise. The Government of the Philippines provides to the Bank all necessary assistance to facilitate the importation of the materials and equipment which may be needed for the construction, furnishing, maintenance and operation of the Staff Housing facilities. All operations and transactions relating to the Staff Housing facilities are exempt from all taxes, custom duties and other charges and levies, as well as from all prohibitions and restrictions. The Government provides to the Bank necessary assistance in obtaining approvals, licenses and permits for public utility and other services connected with the operation of the Staff Housing facilities. The Agreement also regulates the conditions of termination and occupancy of the Staff Housing facilities⁷².

Therefore, the IEOs' treaty-making activities are an important element of their law-creating function, which makes a considerable impact on the process of international legal regulation in economic sphere. Nowadays, States - previously the only subjects of international law - transfer some of their treaty-making powers to the collective intergovernmental institutions which possess the better opportunities for the establishment of certain kinds of treaty regimes with other international legal persons. This concerns, primarily, the opportunities for collective technical and financial assistance, for establishment of special economic regimes of multilateral cooperation. Another part of the IEOs' agreements is concluded for the organizations' "internal" needs (the agreements on the status of the UN Specialized Agency, the headquarters agreements) and for effective realization of their functions (the agreements between IEOs on cooperation in the matters of their common competence). As far as international economic cooperation becomes more complicated and acquires new forms, the IEOs' treaty-making activities may be expected to intensify and diversify, although, direct economic agreements between States will, certainly, remain of the primary importance for international economic order.

**CHAPTER III. ACTS OF INTERNATIONAL ECONOMIC ORGANIZATIONS
INFLUENCING INTERNATIONAL LAW-MAKING**

The new tendencies and changes in the present-day international law-making are often connected with norm-creating activities of international organizations. While the conclusion of agreements between organizations and other subjects still remains within the framework of traditional law-making with some new elements (new actors, contents, institutional base), the organizations' own acts are absolutely new, unknown to the old international law, "sources" of international law-creating. The legal nature of organizations' decisions and recommendations, international "soft" law and internal law of organization belong to the most controversial and disputable problems of legal theory and practice.

It may be supposed that in the nearest future the increasing in scope and intensity IEOs' rule-making is unlikely to move aside treaty and custom as traditional forms of the existence of international legal norms in economic sphere. Treaty and custom have not exhausted their regulatory capacities and are developing simultaneously with the more recent institutional instruments of law-making. But due to their formal and functional peculiarities and some advantages, the IEOs' normative acts are being more and more actively involved in the rule-making process in international economic law. The most important thing is that by virtue of the IEOs' regulations the Member States get the opportunity of quick, competent and in many cases comparatively less costly multilateral ruling of the general and special issues of international economic

relations. Very often the IEOs' normative acts need less time for being formulated than a treaty or a custom. They are issued by permanent specialized institutions and, therefore, are supposed to be enough competent and less expensive than special intergovernmental conferences convoked for the purpose of treaty-making. The IEOs' regulations are also important in cases when a treaty on the particular matter has no chances to be concluded.

Of course, the organizations' acts must not be neither under-, nor overestimated. Their sometimes ambiguous legal nature and shortcomings in wordings, as well as the lack of the authority of some organs issuing them, decrease the effectiveness of those acts. This is an aspect of a more general problem of improving the regulatory effect in interstate economic relations which needs a special analysis.

1. Procedural aspects of the IEOs' decision-making

There is no need for long proving the importance of procedure for organization's decision-making. Figuratively speaking, substantive and procedural matters interrelate like train and railway. If the latter is out of order, the former would not move. Because of imperfect procedure, a substantive decision may be either blocked, or inefficient being contrary to the interests of certain Member States. The task of the draftsmen of constituent instruments is to invent such a procedural mechanism, which would

keep balance between operative decision-making and adequate protection of the Member States' interests.

(1) Decision-making initiatives, draft-making bodies, negotiations

Decision-making in IEOs usually passes through several stages. A starting point is an initiative of a Member State or of an IEO's organ to put the matter on the agenda. In general, such initiative is presumed in all IEOs, though their constituent documents provide various formulas for particular matters.

Normally, the Member States submit proposals on the agenda of the organs⁷³, on convocation of special and extraordinary meetings⁷⁴, on the amendments to the constituent documents⁷⁵. One can also meet some other provisions relating to decision-making initiative of a Member State. At the request of a Member State of the IMF its quota may be adjusted by the Board of Governors⁷⁶. On the application of a Member State the Commission of the EEC investigates any cases of discrimination concerning transport carriage within the Community and takes necessary decisions⁷⁷. After notification of the Council of the EFTA by a Member State introducing quantitative restrictions on imports for the purpose of safeguarding its balance of payments, the Council examines the situation and makes recommendations designed to moderate any damaging effect of these restrictions or to assist the Member State concerned to overcome the difficulties⁷⁸. In

urgent cases a constituent document may fix the term within which a decision must be taken on the matter raised by a Member State. Art. 5 (3) of the Convention Establishing the EFTA illustrates this: "If a deflection of trade of a particularly urgent nature occurs, any Member State may refer the matter to the Council. The Council shall take its decision as quickly as possible and, in general, within one month".

Rather often the organs of IEOs initiate decision-making. Such procedure is thoroughly regulated by the Treaty of Rome. Many of its Articles provide for the following formulas: "the Council on a proposal from the Commission shall adopt"; "the Council on a report from the Commission makes its finding"; "the Council on a proposal from the Commission and after consulting the European Parliament decides"; "the Council at the request of the Court of Justice and after consulting the Commission and the European Parliament may amend"; "the Commission after consulting the Monetary Committee makes recommendations", etc. In some cases a more comprehensive procedure is applicable. Art. 149 (2) of the Treaty dealing with the relationships among the European Parliament, the Council and the Commission in the process of decision-making, may be an illustration to this.

According to the most traditional scheme used in the constituent documents of IEOs, the executive organs make proposals to the plenary organs, or the administrative organs submit recommendations and drafts to the executive organs. For

instance, Art. XVIII, section 4(a) of the Articles of Agreement of the IMF says: "Decisions... shall be made by the Board of Governors on the basis of proposals of the Managing Director concurred in by the Executive Board". The same Article requires the Managing Director before making any proposals to conduct such consultations as will enable him to assert that there is a broad support among participants for the proposal. Under Art. 38 of the 1980 Montevideo Treaty, the Secretariat of the LAIA submits "proposals to the corresponding Association bodies, through the Committee, leading towards a better accomplishment of the objectives and duties of the Association". Art. 6 (3) of the Treaty for the Establishment of the ECCAS states: " At the proposal of the Council the Conference shall confirm that the aims allotted to a stage have been achieved and shall decide on the change-over to the next stage". Under Articles 12 and 15 of the Charter of the CCASG, the Ministerial Council makes arrangements to the Supreme Council's meetings and prepares its agenda, while the Secretariat General prepares reports and studies ordered by the Supreme Council or Ministerial Council, makes preparations for meetings and prepares agendas and draft resolutions for the Ministerial Council, recommends to the chairman of the Ministerial Council the convocation of an extraordinary session of the Council whenever necessary.

Some IEOs consult the other institutions of the adjacent competence on the matters of decision-making. In this respect Art.

V, section 8(b) of the Articles of Agreement of the IBRD⁷⁹ and Art. III, section 7 of the Articles of Agreement of the IFC⁸⁰, Art. VII of GATT⁸¹ are to be borne in mind.

In order to facilitate elaboration of the decisions on the issues which need a special preparation, the permanent or ad hoc consultative and draft-making organs may be set up within the framework of IEOs (e.g. specialized organs in the OPEC; examining committee in the EFTA; committees, working parties and panels of experts in the FAO; committees and working parties in GATT; the Committee of Experts in the WACU, the Consultative Commission in the ECCAS, the Consulting Committee in the Andean Group, etc.).

An interesting institutional phenomenon is the Consultative Group of Eighteen in GATT established on a temporary basis in 1965 and made permanent since 1979. It represents all major groups of the contracting parties at the level of the senior officials responsible for trade policy. This body has a consultative status. However, its recommendations made by consensus are likely to be repeated by the Council and the Contracting Parties. As O.Long concludes, "legal rights and binding obligations can eventually result from positions taken in the Group"⁸².

A special decision-making procedure is used in the UNCTAD. Under the UN General Assembly resolution 1995/XIX, the Member States of the UNCTAD are distributed into four groups on geographical and economic criteria for the purpose of elections of the members to the Trade and Development Board (group B -

developed capitalist countries, group D - socialist countries, groups A and C united into the group of 77 - developing countries). Practically, not only elections, but all substantive matters are first discussed in the groups and then at the official meetings of the UNCTAD organs⁸³.

The stage of negotiations and consultations on the questions at issue in the IEOs' organs may be either open or secret⁸⁴. A requirement of secrecy may relate to certain matters or bodies. For example, the Contracting Parties of the GATT provide for the utmost secrecy on the conduct of any consultation under Art. XII on restrictions to safeguard the balance of payment⁸⁵. The groups' meetings at the UNCTAD are also closed for a wide public.

In some IEOs preliminary informal consultations among the most powerful Member States may be of more importance for actual decision-making than official meetings in organs. Thus, during the Tokyo Round the major decisions were first negotiated by the USA, the EEC and Japan. The other contracting parties of GATT could make little influence on the drafting of proposed decisions until near the end of the process when it was difficult to get changes made.⁸⁶

(2) Voting

After a draft of the IEO's regulation has been worked out and passed through negotiations, it is to be voted in the competent

body. Normally, the constituent instruments determine a quorum for decision-making. It varies from a simple majority (e.g. the Governing Board of the ITPA) to three-quarters of the members (e.g. the Conference of the OPEC) or even to the presence of all Member Countries (e.g. the Council and the Conference in the LAIA). Most often quorum makes up two-thirds of the members of the organ (e.g. the Conference of the ATPC, Supreme Council and the Ministerial Council of the CCASG). In the organizations using "weighted" voting, the quorum is counted of both the number of members and their voting power (e.g. for the meetings of the Boards of Governors of the IMF and the IBRD the quorum is a majority of Governors having not less than two-thirds of the total voting power). A special mechanism of attaining the quorum is provided by Art. 6 (b,c) of the Convention Establishing the WIPO. A general rule for quorum is one half of the States members of the General Assembly. Even if this number is equal or more than one-third, the General Assembly may make decisions. But, with the exception of decisions concerning its own procedure, such decisions may take effect after the States members of the General Assembly which were not represented express in writing their vote or abstention within a period of three months. If the number of States having thus expressed their positions reaches the number of States which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that the required majority of the votes cast still obtains.

Voting machinery in international organizations draws considerable attention of the scholars, primarily, within the context of the 'contradiction' between unanimity and consensus, on the one hand, and majoritarianism, on the other⁸⁷. Actually, if we look at numerous IEOs established in different years, some trends in the ongoing struggle between these voting methods might be observed. Majority voting in various formulas dominated in the IEOs founded in the 1940s and 1950s when it was to the benefit of the Western countries, the major initiators and participants of those organizations (the IMF, the IBRD, the FAO, the GATT). But since the 1960s the shift towards unanimity and consensus became apparent. This tendency was determined not only " by the majority change on the international arena as a result of decolonization, though this reason was, undoubtedly, important. The first experience of majoritarianism in IEOs appeared to prove not only its advantages, but also some drawbacks as well. The Member States of IEOs realized that decisions taken against minority's will could cause a problem of their proper implementation. It is quite understandable, that only mutually beneficial agreements can produce rules of conduct of a good practical effect. As potential tools of protection of the minority's interests unanimity and consensus became a counterweight to majoritarianism in decision-making in order to keep the balance of interests and opportunities of the IEOs' Member States. The Luxembourg compromise of 1966 in

the EEC was a serious victory of unanimity even in the organization usually called "supranational"⁸⁸.

If we cast a glance at the IEOs established in 1960s - 1980s the spreading of unanimity and consensus becomes obvious. The trend to strive for unanimity and consensus can be observed in the OECD, the EFTA, the OPEC, the ITPA, the CARICOM, the ATPC, the CCASG, the PTA, the ECCAS, the APPA, etc. The Council of GATT since its establishment in 1960 takes decisions by consensus. In most cases even the Contracting Parties of GATT prefer consensus to voting, though, formally consensus is not provided by the General Agreement. Many decisions of the IMF are also taken by consensus. However, it would be, at least premature, not to say wrong, to consider unanimity and consensus as the dominant voting methods in the present-day and even recently created IEOs. L. Condorelly seems to be too categorical saying, that majoritarianism is a dead duck⁸⁹. P.I.B. Kohona tends to be more realistic: "There appears to be a tendency at present to adopt norms with the broad agreement of the vast majority (if not all) of the parties despite the existence of provisions in some agreements which require norms of conduct to be adopted by majority votes"⁹⁰.

According to the constituent instruments, the UNCTAD and the UNIDO established in the 1960s apply majority voting (though, in the UNCTAD practice many decisions are taken by consensus). Majority voting is also used in the CAEU formed in 1964⁹¹, in the

EAC established in 1967⁹², and in the MIGA founded in 1985⁹³. In some IEOs formed in 1970s and 1980s the general voting rule is consensus, but if it fails to be reached, majority voting takes effect (e.g. simple majority in the Governing Board of the ITPA, three-quarters majority - in the Council of the APPA, two-thirds of the votes cast in the Conference of Ministers and the Executive Committee of the ATPC).

A real competition between majoritarianism and consensus takes place in the EEC. To some extent it reflects the contradiction between a "supranational" tendency within the Community and individual interests of the Member States. Thanks to the Single European Act that caused a considerable shift towards majoritarianism⁹⁴, in the up-to-date version of the Treaty of Rome there is approximately a fifty-fifty correlation between unanimity and majority voting in the Council. However, some Articles of the Treaty provide for transition from unanimity to a qualified majority after the second stage (8 years) of the transitional period⁹⁵. It is difficult to forecast the further developments in the Community in this respect. The most likely is that some balance between majority voting and unanimity will be preserved in future. The Member States will hardly agree to surrender their basic powers in the field of economic policy to the EEC institutions without having procedural instruments to protect their individual interests when they are threatened by the position of majority.

In general, both majoritarianism and unanimity have their advantages and shortcomings⁹⁶. On the one hand, majority voting is good for operative decision-making in order to avoid obstructive approach of one or few Member States. But it may cause the problems of protection of minority's interests and of implementation of the decisions taken. On the other hand, unanimity and consensus are the best methods of generating mutually beneficial rules of conduct. However, they are fraught with danger of obstructionism or, at least, of the lowest level of compromise and vague wordings of the adopted regulations. The effect of the acts passed by consensus may be also weakened by proceeding reservations of the Member States⁹⁷. This contradiction may seem like a vicious circle. Anyway, practice of the IEOs on the basis of acquired experience is seeking for an optimal way-out. At present, the IEOs, at least, many of them, are not facing a pure dilemma: either majoritarianism, or unanimity. They strive for the most reasonable combination of both methods, taking into account the subject-matter and the importance of the decisions, as well as the conditions under which those decisions are to be taken.

There are some technical juridical means aimed at diminishing the possible negative effects of both majority voting and unanimity, namely, combination of simple and qualified majority voting, relative unanimity and contracting-out procedures.

In comparison with a simple majority (more than fifty percent), a qualified majority voting raises the degree of concordance of the Member States' positions and under other equal conditions, is supposed to give better regulatory effect. Consequently, it is widely applicable for principal decision-making in the IEOs using the method of majoritarianism. A qualified majority voting is provided for the most important decisions in the IMF (70, 75, 85% of the voting power) and the IBRD (two-thirds, three-fourths, four-fifths of the voting power), though formally, a simple majority voting is a general rule according to the constituent instruments of these organizations⁹⁸. In the Council of the EEC a qualified majority voting is also very often required⁹⁹. In such cases 54 votes in favour must be cast for the adoption of acts of the Council on a proposal from the Commission; and the same number of votes cast at least by eight Members in other cases, while the total number of votes is 76 (Art. 148 of the Treaty). Here we see a qualified majority voting complicated by a demand of a minimal number of Members casting their votes in favour of the act to be adopted. This condition is also aimed at the fuller participation of the EEC Member States in decision-making, so far as a minimal number of the Council's Members potentially able to cast the required 54 votes is seven¹⁰⁰. The International Coffee Council applies a special procedure of additional voting if a two-thirds majority required for a decision is not obtained in order to overcome the

negative vote of three or less members¹⁰¹. In some IEOs a qualified majority voting is required either when consensus fails to be achieved (e.g. the ATPC, the APPA), or in combination with a simple majority (e.g. the FAO, the IFC, the IDA, the GATT, the UNIDO).

The so-called 'relative unanimity' voting in its prevailing variant means that abstentions do not prevent the adoption of the act which requires unanimity (Art. 148 of the Treaty of Rome, Art. 32 of the Convention Establishing the EFTA, Art. 6 of the Convention on the OECD). A slightly different formula of relative unanimity, namely, the unanimity of those present, is fixed in Art. 11 of the Statute of the OPEC: "In the case of a full Member being absent from the Meeting of the Conference, the resolutions of the Conference shall become effective unless the Secretariat receives a notification to the contrary from the said Member at least ten days before the date fixed for publication of the Resolutions". A "relative unanimity" may be applied in a combination with a qualified majority voting as it is provided in Art. 11 of the Cartagena Agreement of 1969 establishing the Andean Group. As a general rule, the Commission adopts its decisions with the affirmative vote of two-thirds of the Member Countries. Decisions on some matters require a two-thirds affirmative vote without a negative vote. A similar scheme is provided for decisions taken in the LAIA (Art. 43 of the 1980 Montevideo

Treaty) and at the CARICOM Conference (Art. 9 of the Treaty Establishing the CARICOM of 1973).

It is clear, that this kind of unanimity may be achieved somewhat easier than an absolute unanimity requiring all votes to be affirmative. Unless otherwise specified in the constituent instruments, a relative unanimity voting has the same effect as consensus (approval without voting in its classical form¹⁰²), though they slightly differ from the viewpoint of procedural technique. A unanimity voting, even in its relative form, explicitly reveals the positions of the States (either affirmative, or abstentive) on the act which is to be adopted, while consensus merely states the absence of a "negative attitude.

The most logical compromise between majoritarianism and unanimity seems to be found in the contracting-out procedures. The term "contracting-out" in its traditional version means: a Member State is allowed to declare within a specified term his being not bound by a majority decision. In this connection, references are usually made to the constituent instruments of the ICAO, the WHO, the WMO. To my mind, it would be reasonable to use "contracting-out" in a broader sense: for all cases when a Member State is permitted to avoid being bound by the organization's decision. Various formulas of such contracting-out are used in the OECD, the CCASG, the CMEA.

Under Art. 6 of the Convention on the OECD, its decision or recommendation requiring relative unanimity shall not be applicable to the abstaining Member.

The Rules of Procedures of the Supreme Council of the CCASG reveal a somewhat more complicated scheme: "Its resolutions in substantive matters shall be carried out by unanimous agreement of the Member States present and participating in the vote, while resolutions in procedural matters shall be carried by majority vote. Any member abstaining shall document his being not bound by the resolution" (Art. 5). However, the term, within which an abstaining Member is authorized to document his being not bound by the resolution, is not specified.

The principle of "being concerned" in the Charter of the CMEA gives another variant of contracting-out. Art. IV of the Charter states: "All recommendations and decisions shall be adopted only with the consent of the Member Countries concerned, each Country being entitled to state its interest in any question under consideration of the Council. Recommendations and decisions shall not apply to countries which state that they have no interest in the question at issue. Nevertheless, each such Country may subsequently associate itself with the recommendations and decisions adopted by the remaining Member Countries of the Council". Therefore, the acts adopted by the Council are of consensual nature binding only upon those Member Countries which state their interest in the question at issue and have a positive

attitude to it. If a Member Country interested in the matter opposes the act, the latter can not be adopted. This is a kind of veto¹⁰³. And finally, if a Member Country declares that it has no interest in the question at issue, the act can be adopted, but it is not applicable to this Member Country. However, a point which may cause an abuse of the veto right is an absence of any criteria for definition of "a country concerned" in the Charter. Some commentators suggested to add to the CMEA Charter a provision on motivation of the declaration of a Member Country concerned, which comes out against the Council's recommendation, and to define the conditions under which such a declaration may be recognized as invalid or disputable. Moreover, the principle of the concern should be combined with absolute unanimity on some principal issues (e.g. admission of a new Member, conclusion of international treaties) and majority voting on the matters which are less important¹⁰⁴.

What is the general attitude to the contracting-out procedures? Undoubtedly, its main advantage is in the consensual character of the adopted acts, which at any rate gives the better chances for their due implementation. No Member State which either is not interested in the issue, or does not want to participate in its regulation, can be forced by the other Member States to obey to the organization's act. At the same time, and it is also very important, the abstentions of one or few Member States can not invalidate the act as the whole. However, the contracting-out

method, being a clever invention, is hardly able to be universally applicable in IEOs. On the one hand, the IEO's Member States may face such problems which need a uniform decision only, when contracting-out for one or few Members would crush the whole idea. For instance, contracting-out can not be used by the Members of a customs union to the decision on elimination of customs duties between them and setting up the common customs tariff. On the other hand, unlimited application of contracting-out, especially in the IEOs with a large number of Member States, will inevitably lead to the establishment of a complicated multitude of regimes among various combinations of the Member States on the basis of adopted acts. In general, contracting-out must be treated by analogy with the reservations to the multilateral treaties: for some cases they are permissible, for the others - prohibited.

(3) Amendments to the constituent instruments

A special, more complicated, procedure is provided for amendments to the IEOs' charters. An amendment may be proposed by either a Member State or an organ of the IEO. Such a proposal is to be submitted to a competent organ which transmits it to the Member States for examination. A decision on amendment is taken either by a supreme organ of the IEO or by the Member States after approval from a relevant IEO's organ. In the first case an amendment becomes effective if adopted by a supreme organ

unanimously (e.g. Art. 20 of the Charter of the CCASG), by consensus with further ratification by all Member States (e.g. Art. 90 of the Treaty for the Establishment of the ECCAS), or by a qualified majority (e.g. Art. XX of the Constitution of the FAO; Art. 17 of the Convention Establishing the WIPO, Art. 28 of the Agreement Establishing the ATPC, Art. 10 of the Agreement Establishing the OPEC Fund for International Development of 1980, Articles 59,60 of the Convention on the MIGA). Some constituent documents provide that an amendment adopted by a qualified majority shall take effect only for the Member States accepting the amendment (Art. XX of the Constitution of the FAO). In the WIPO the latter rule acts only in regard to amendments increasing the financial obligations of the Member States. Any other amendment accepted by three-fourths of the Member States after its approval by the Conference binds all the Member States.

Taking into account the importance of amendments, most IEOs' charters do not authorize their organs to take decisions on them, but preserve this power for the Member States. In this case the IEOs' organs only examine and recommend the proposed amendments to the Member States which take a final decision either unanimously (e.g. Art. 236 of the Treaty of Rome, Art. 44 of the Constitution Establishing the EFTA, Art. XVI of the CMEA Charter), or by a qualified majority both "pure" (e.g. Art. 22 of the Agreement Establishing the ITPA) and combined with unanimity provided for amendments to certain charter's provisions (e.g. Art. XXVIII of

the Articles of Agreement of the IMF). A somewhat different voting procedure is provided for the amendments by Art. 23 of the UNIDO Constitution. An amendment comes into force and is binding on all Members when it is recommended by the Board of the Conference, approved by the Conference by a two-thirds majority of all Members, and two-thirds of the Members have deposited instruments of ratification, acceptance or approval of the amendment. Amendments relating to some Articles of the Constitution require three-fourths of the Members deposited their instruments of ratification, acceptance or approval.

Voting or consensual approval of IEO's act does not necessarily make the final step in decision-making. Some additional terms or procedures may be required by the constituent instruments for the act coming into effect. Such terms include either a period of time after which the act becomes enforceable¹⁰⁵, or passing through the constitutional procedures of the Member States¹⁰⁶.

2. Types of IEOs' acts and their impact on international law

Regardless of various terms used in constituent documents (decisions, recommendations, rules, regulations, directives, etc.), most of IEOs' acts may be subdivided into two major types: binding decisions and recommendations¹⁰⁷.

(1) Decisions

No international organization is able to operate without taking binding decisions at least on procedural, administrative and budgetary issues which make up a part of the so-called internal law of the organization. These decisions produce secondary international rules for internal needs of organizations and do not make any considerable impact on regulation of international economic relations. For this reason, they are beyond the scope of this inquiry.

More important are decisions in substantive matters, which nowadays are applicable in the majority of IEOs. In this connection at least two general problems arise: (1) are binding decisions of international organizations compatible with the sovereignty of Member States and the consensual nature of international law; (2) are they sources of international legal norms or merely acts of application of law.

At first sight, it may seem that decisions binding even disagreeing minority of the Member States contradict to traditional consensual international law-making in forms of treaty and custom. In fact, all organizations' decisions have in the end consensual character, either directly (taken by unanimity or consensus), or indirectly (taken by majority vote but on the basis of the Member States' consent expressed in the relevant charters' provisions). As J.Weiler states, and he seems to be right, consent "is fundamental even in supranational organizations. Supranational organizations differ from the world order in a lot of ways, but

not so much by virtue of the way law is formed. What we have there is also rule of consent, even in the EEC which is locus classicus of a supranational organization"¹⁰⁸. It is absolutely natural and normal that sovereign States delegate some of their decision-making powers to international institutions formed with their own participation. By this way they simply use a special method of producing the rules of conduct by virtue of institutional procedures. And such method alone being a result of States' voluntary consent has nothing to do with any 'limitations' of sovereignty. It 'restricts' sovereignty of the Member States in the same manner as any other international agreement voluntarily restricting the freedom of actions of States. This is not a limitation of sovereignty, but its normal realization to the benefit of the Member States. The other thing is that the founders of the organization have to elaborate such decision-making procedures (see the previous paragraph), which minimize the possibility of negative effects injuring the interests of the Member States.

The second question raised in connection with binding decisions has more theoretical than practical significance. In fact, if a decision of the organization is binding and must be complied with by the Member States, there is no much difference, either to consider it as a new source of international law, or merely as an act of application of law. The distinction between sources of law and acts of application of law derives from the

municipal legal approach distinguishing the legal norms of generalized action (designated for numerous similar situations) and ad hoc acts of application of law issued by administrative or judicial organs for a concrete situation. This approach can be hardly automatically applicable to international law, many of whose norms have an individualized and ad hoc character (e.g. a bilateral agreement on exchange of prisoners of war). Therefore, if a decision of international organization in substantive issues contains obligatory rules of conduct for the Member States, such rules may differ from classical norms of treaties and customs in many details, but in the end have the same regulatory effect on interstate economic relations. For instance, recommendations of the CMEA adopted by the Member Countries are equated by juridical force to treaties¹⁰⁹. It must be noted here, that the Council's recommendation is something more than "pure" recommendation. It has a dual recommendatory and obligatory meaning: (1) it is recommended by the Council for consideration of the Member Countries which may either adopt it or not; (2) since adopted by the Member Countries, the recommendation becomes obligatory for them. So, in the end the Council's recommendations have the same regulatory effect as binding decisions or treaties.

International legal rules are also found in binding decisions of other IEOs. For example, the Andean Group Commission's decisions 184 of 1983¹¹⁰ and 220 of 1987¹¹¹ are composed in a manner typical for international agreements. Under Art. 69 of the 1980

Montevideo Treaty, the resolutions adopted by the Council of Ministers of the LAFTA at its Meeting of 12 August 1980 shall be incorporated to the legal framework of the Treaty upon its entry into force.

A special law-making effect is produced by the IEOs' decisions on the amendments to their charters which are not required to be approved by the Member States (e.g. Art. 20 of the Charter of the CCASG, Art. 28 of the Agreement Establishing the ATPC). Here we face a unique phenomenon when an organization's decision changes the contents of a treaty concluded by the Member States. Is such a decision a source of international law? I should answer affirmatively.

Another example of certain interest is the Decision of the Contracting Parties of GATT "Action by the Contracting Parties on the Multilateral Trade Negotiations" (27 November 1979)¹¹². This decision determines the relationship between the General Agreement and the non-tariff agreements concluded during the Tokyo Round in order "to preserve, in the operation and functioning of GATT instruments, the unity and consistency of the GATT system". The main rule of the decision provides that "existing rights and benefits under the GATT of contracting parties to these agreements, including those derived from Article 1 are not affected by these agreements". In other words, the decision of the GATT plenary organ produced a norm which sanctioned a free choice

of the GATT contracting parties as to participation in the non-tariff agreements concluded within the framework of GATT and regarded as an inherent component of the entire GATT system. If this norm had been included in a formal international treaty it would have undoubtedly been treated as a legal norm. But being formulated in a binding decision of the GATT organ it has the same legal effect. Moreover, in this particular case a binding decision is an optimum legal form, since the non-tariff agreements are obligatory only for the signatories, which are not all contracting parties of the GATT. And it was not reasonable neither to include this rule in the texts of these agreements, nor to amend the General Agreement. Therefore, the above-mentioned decision inherently belongs to the so-called "law of GATT". A similar juridical manoeuvre was applied while adopting the "enabling clause" which made an exception to the most-favoured-nation clause (Art. 1 of the General Agreement) for preferences in favour of developing countries. To avoid a complicated procedure of amending the General Agreement the Contracting Parties took a special binding decision.

An interesting legal phenomenon is provided by the OECD Council decision of 1974 establishing the IEA¹¹³. Art. 11 of this document states: "Any two or more Participating Countries may decide to carry out within the scope of the Program special activities, other than which are required to be carried out by all Participating Countries under the Agreement. Participating

Countries who do not wish to take part in such activities shall abstain from taking part in such decisions and shall not be bound by them". In fact, it means that the IEA binding decisions may be dispositive. The above quoted Article allows two or more Participating Countries of this organization to take special decisions which differ from the general decisions of the IEA. It reminds of the analogy in treaty and customary norms of dispositive character, to which, unlike imperative (peremptory) norms, the rule lex specialis is applicable.

Another decision reminding of treaty, but as regards to entering into force, is the Andean Group Commission decision on Andean Multinational Enterprises N 169 of 1982. Under Art. 35, it "shall enter into force when two Member Countries have deposited in the Secretariat of the Junta the instruments whereby they have put it into effect in their respective territories. For the remaining countries, the date of entry into force shall be the date of the deposit of their corresponding instruments"¹¹⁴.

It should be borne in mind, that not all IEOs' acts entitled "decision" contain only binding rules. Some of them are framed as a mixture of binding and recommendatory norms (e.g. Decision of the OECD Council Concerning the Minimum Pre-Marketing Set of Data in the Assessment of Chemicals of 1982¹¹⁵).

Of course, each rule may have exceptions, but in principle I do not see any serious reasons preventing from treating binding decisions of international organizations in substantive matters

which formulate the rights and duties for the Member States as a source of international law. The contents of the principle pacta sunt servanda as formulated in the Seoul Declaration of 1986 of the 62nd Conference of the International Law Association indirectly confirms this conclusion : "Treaties and binding decisions, taken by international economic organizations have to be fulfilled in good faith by the parties concerned".

Decisions of IEOs have various addressees: (1) the Member States; (2) the institutions; (3) the national persons of the Member States. Some charters more or less definitely indicate the addressees of the IEO's acts. Under Art. 11 of the Treaty for the Establishment of the ECCAS, the Conference acts by decisions binding on the Member States and institutions of the Community except for the Court of Justice, and directives binding on the institutions concerned except for the Court of Justice. The former formula is also used in Art. 15 of the Treaty in respect to the regulations of the Council. According to Art. 48 of the Treaty for East African Cooperation of 1967, the Authority of the EAC may give directions to the Councils and to the East African Ministers as to the performance of any functions conferred upon them, and such directions shall be complied with. Under Articles 5 and 6 of the Treaty of the ECOWAS of 1975, the Authority takes decisions binding on all institutions of the Community, while the Council of Ministers makes recommendations to the Authority and gives decisions to all subordinate institutions of the Community.

The Treaty of Rome (Art. 189) enumerates three types of binding acts of the Council and the Commission, namely, regulations which have general application and are directly applicable in all Member States; directives binding upon each Member State to which they are addressed (but the choice of forms and methods of their realization is left to the national authorities); decisions which are binding in their entirety upon those to whom they are addressed. Art. 192 adds that "decisions of the Council or of the Commission which impose a pecuniary obligation on persons other than States shall be enforceable". Therefore, the EEC binding acts may be applicable not only to the Member States, but also to their national persons, either directly (regulations), or by virtue of the relevant municipal legal procedures (directives, decisions). For example, Art. 3 of the Council Regulation 2641/84 says: "Any natural or legal person, or any association not having legal personality, acting on behalf of a Community industry which considers that it has suffered injury as a result of illicit commercial practices may lodge a written complaint"¹¹⁶. Art. 4 of the Commission Decision 83/671 definitely states: "The Decision shall apply to the oil companies to which it is addressed"¹¹⁷.

The draftsmen of some IEOs' charters confine themselves to a brief formula concerning decisions without specifying their addressees. The Articles of Agreements of the IMF and the IBRD contain similar provisions on this matter: "The Board of

Governors, and the Executive Board (the Executive Directors in the IBRD - S.V.) to the extent authorized, may adopt such rules and regulations as may be necessary or appropriate to conduct the business of the Fund (Bank)" (Articles XII and V respectively). In other IEOs the only addressees of the decisions definitely named are the Member States. For instance, under Art. 22 of the Agreement Establishing the ATPC, "Members shall accept as binding all decisions of the Conference and of the Executive Committee under this Agreement". The similar idea is expressed in Art. 5 (a) of the Convention on the OECD and Art. 32 (4) of the Convention Establishing the EFTA. However, these IEOs also take decisions which address the rules of conduct to the national persons of the Member States. Unlike the EEC, normally, they are applied to national persons not directly, but are to be enforced by the competent authorities of the Member State concerned, i.e. to be incorporated into its national legal system (e.g. the OECD Council Decision-Recommendation on Exports of Hazardous Wastes from the OECD Area of 1986¹¹⁸).

(2) Recommendations

It may appear strange, but recommendations of international organizations use to draw more attention of the commentators than binding decisions. Two reasons for this may be observed. First, for a long time there has been a widely shared view, that

recommendations are the primary product of the organizations' rule-making activities, while binding decisions mainly concern procedural matters, and therefore, are of less importance (an exception was usually reserved for the EEC). Nowadays, this argument does not work any more at least for IEOs, most of which are authorized to take binding decisions in substantive matters. Second, and this reason still remains important, unlike decisions taken mainly on more concrete and less controversial issues concerning a limited number of Member States, many recommendations, especially those of the universal organizations relate to a wide spectrum of matters of general importance and in many ways influence the state and developments of general international law. Consequently, the main debates are revolving around (1) the so-called 'soft' law; (2) the legal nature of the UN General Assembly resolutions; (3) the impact of recommendations on creation of the customary rules.

A concept of 'soft' economic law in its modern version is a kind of reaction, on the one hand, on the difficulties in formulation of universal international economic law, and on the other, on the considerable growth in the recent years of the number and significance of the IEOs' recommendations relating among others to a New International Economic Order and international economic security.

One of the authors of the 'soft' economic law concept, I. Seidl-Hohenveldern writes: "At present chances are dim for

establishing firm rules susceptible of worldwide acceptance"¹¹⁹. That is why he pins his hopes on the rules of 'soft' law, most of which are or will be formulated by acts of international organizations¹²⁰. I.Seidl-Hohenveldern writes about 'soft definitions' and 'soft procedure' for the rules concerned, which in his opinion, have allowed solutions impossible under 'strict' law¹²¹.

Some ideas on 'soft' law were suggested by the contributors to "Change and Stability in International Law-Making" (ed. by A.Cassese & J.Weiler). The discussion on its pages shows once more that far from being groundless, the concept of 'soft' law is still vague and does not have general acceptance. "Is it ('soft' law - S.V.) a theoretical aberration which is contrary to meaningful legal discourse, or is it part of the norm setting process as an intermediate category between *lex lata* and *lex ferenda*", - asks J.Weiler¹²². And he is answered in both optimistic and more pessimistic ways:

"...between the world of hard law on the one hand (made up of binding rules specifically requiring or forbidding a particular conduct, or authorizing it, thereby obliging the other addressees of the same rule to tolerate such authorized behaviour) and the world of non-law on the other, there is a transitional zone in which the elements characterizing these two worlds are mixed in very variable proportions... But we have to admit that at present this transitional zone is becoming steadily wider than it was in

the past. The term soft law has become fashionable for precisely that reason; the phenomenon has no doubt always existed but it has today taken on such gigantic dimensions that it could no longer go unnoticed by even the most distracted observer" (L. Condorelli)¹²³;

"...there are cases where the adoption of soft law may represent a first step towards the possible adoption - through further adequate steps - of hard law, or just law without any adjective. This does not, however, justify recourse to soft law devices on the part of States in order to cover up unwillingness to achieve more substantial law-making results, presenting peoples or other States with a poor substitute for what is needed. Nor does it justify attitudes of complacency on the part of those scholars who seem at times too anxious to applaud as achievements soft law solutions which are only illusory" (G. Arangio-Ruiz)¹²⁴.

What is called "soft" economic law (though its frameworks are not definitely outlined) appears to reflect some real phenomena in international rule-making. At present, the resolutions of the UN General Assembly, the UNCTAD, the recommendations of the OECD, etc. are filling to some extent the lack of universally binding norms of international economic law badly needed by international community but unlikely to be immediately created. Some of these recommendatory acts, though not necessarily all of them, as G. Arangio-Ruiz rightly noted¹²⁵, sooner or later take the shape of real law (e.g. numerous acts on permanent sovereignty over natural resources), others first make pre-legal regulatory effect¹²⁶ and

then partially penetrate into international and municipal laws. The best illustration to the latter point is the way in which the Generalized System of Preferences (GSP) was transformed from a recommendatory idea into a real institute of international economic law¹²⁷.

The first UNCTAD recommendations on the GSP in favour of developing countries appeared in 1960s¹²⁸. And within a short period of time (a little more than ten years) they were complied with by all developed industrial countries, apart from the South African Republic, which issued national preferential tariff schemes¹²⁹. In 1971 the Contracting Parties of the GATT made temporary exemption for preferences from Art.1 on the most-favoured-nation treatment, which was later developed in 1979 Agreements Relating to the Framework for the Conduct of International Trade (the so-called "enabling clause"). Certainly, the existing preferential schemes are not free from shortcomings. They vary in beneficiaries, goods nomenclature, scopes of preferences, regimes for the least developed countries, rules of goods origin; some schemes have discriminatory restrictions. However, the fact that the majority of developed industrial countries positively reacted to the UNCTAD recommendations is a sufficient proof of their regulatory effect which is even more visible than in some binding legal norms. These recommendations influenced both municipal laws (national preferential schemes) and international treaties (the new GATT provisions relating to

developing countries, preferential rules in the Lome Conventions, commodity agreements, etc.), as well as became a starting point for creation of the new customary norms (e.g. a customary rule under which preferences in favour of developing countries must not be qualified as an illegal discrimination of developed countries).

Another example of "soft" economic law are the so-called "codes of conduct" adopted by various IEOs. Strictly speaking, many of such IEOs' acts contain recommendatory rules of conduct addressed to the Member States and their nationals¹³⁰. But even never being transformed into traditional economic law, the codes of conduct may produce a considerable regulatory effect influencing developments in the corresponding branches of the Member States' national laws. As R.J.Waldmann notes, "perhaps the most important potential benefit of a code is the harmonization of national laws and regulations"¹³¹. If we take, for instance, International Code of Conduct on the Distribution and Use of Pesticides adopted by the FAO Conference in 1985 by the way of resolution 10/85, it is voluntary in nature but serves as a guideline for the Member States, especially if they have not established adequate national legal instruments. Art. 11 of the Code states: "The objectives of this Code are to set fourth responsibilities and establish voluntary standards of conduct for all public and private entities engaged in or affecting the distribution and use of pesticides, particularly where there is no or inadequate national law to regulate pesticides". Under Art.

12.3, "all parties addressed by this Code should observe this Code and should promote the principles and ethics expressed by the Code".

The Recommendation of the OECD Council Concerning Restrictive Business Practices Affecting International Trade of 1986¹³² is also framed as a code of conduct. Its principal part is preceded by the following words of the preamble: "The Council recommends... to the Governments of Member countries that insofar as their laws permit" they "should" (this term is frequently used in the text) comply with the enumerated rules. The Recommendation provides for a special implementation procedure. The other examples of voluntary codes of conduct in this field are the OECD Guidelines for Multinational Enterprises of 1976, the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Conduct of Restrictive Business Practice of 1980.

If we take recommendations of the CARICOM Conference, many of them also appear to belong to "soft" economic law. Art. 9 of the Treaty Establishing the CARICOM distinguishes binding decisions and recommendations of the Conference. The latter (though, formally non-binding) are to be observed by the Member States. A Member State which failed to observe a recommendation, not later than six months thereafter shall submit a report to the Conference, giving reasons for its non-compliance.

The first part of the document is a list of names of people who have been appointed to various positions in the organization. The names are listed in alphabetical order and include: Mr. J. H. Smith, Mr. J. R. Brown, Mr. J. P. White, Mr. J. D. Green, Mr. J. E. Black, Mr. J. K. Red, Mr. J. L. Blue, Mr. J. M. Yellow, Mr. J. N. Purple, Mr. J. O. Pink, Mr. J. Q. Grey, Mr. J. R. Orange, Mr. J. S. Silver, Mr. J. T. Gold, Mr. J. U. Bronze, Mr. J. V. Copper, Mr. J. W. Iron, Mr. J. X. Steel, Mr. J. Y. Lead, Mr. J. Z. Tin, Mr. J. AA. Zinc, Mr. J. AB. Nickel, Mr. J. AC. Cobalt, Mr. J. AD. Manganese, Mr. J. AE. Magnesium, Mr. J. AF. Calcium, Mr. J. AG. Strontium, Mr. J. AH. Barium, Mr. J. AI. Radium, Mr. J. AJ. Polonium, Mr. J. AK. Astatine, Mr. J. AL. Francium, Mr. J. AM. Actinium, Mr. J. AN. Thorium, Mr. J. AO. Uranium, Mr. J. AP. Neptunium, Mr. J. AQ. Plutonium, Mr. J. AR. Americium, Mr. J. AS. Curium, Mr. J. AT. Berkelium, Mr. J. AU. Californium, Mr. J. AV. Einsteinium, Mr. J. AW. Fermium, Mr. J. AX. Mendelevium, Mr. J. AY. Nobelium, Mr. J. AZ. Lawrencium, Mr. J. BA. Rutherfordium, Mr. J. BB. Dubnium, Mr. J. BC. Seaborgium, Mr. J. BD. Bohrium, Mr. J. BE. Hassium, Mr. J. BF. Meitnerium, Mr. J. BG. Darmstadtium, Mr. J. BH. Roentgenium, Mr. J. BI. Copernicium, Mr. J. BJ. Nihonium, Mr. J. BK. Flerovium, Mr. J. BL. Tennessine, Mr. J. BM. Oganesson.

It may be concluded, that the term "soft" economic law (though linguistically not perfect) is used for indicating formally non-binding acts of IEOs which possess, at least, one of the following features: (1) contain rules which are expected to be transformed under favourable conditions into the norms of international or national laws; (2) perform pre-legal regulation in the certain fields of relationships between the Member States, where the adequate legal instruments have not been established. From a strict positivist viewpoint, what is called "soft" law does not belong to a real international law as a system of consensual legally binding norms. At the utmost, the "soft" law may be considered as lex desirata, some kind of "pre-law". An opposite approach dividing international law into "strict" and "soft" is fraught with a methodological error, namely, the erosion of the border between legal and non-juridical norms, when, using L.Lazar's expression, the wheat of law can not be separated from the chaff of pseudo-law¹³³. I agree with those who think, that "soft" law is better than nothing. But it must not be overestimated and let alone discourage attempts to produce legally binding norms of international economic law where it is necessary.

Another subject of intensive discussion are resolutions of the UN General Assembly¹³⁴. Some authoritative conclusions summerizing their legal meaning were made in a special resolution of the Institute of International Law adopted in 1987¹³⁵.

The first point practically not challenged now is that there are resolutions and resolutions, notwithstanding their equally non-binding character under the UN Charter provisions. It is clear without a special analysis that, for instance, the Charter of Economic Rights and Duties of States and resolution on narrow technical matter, being formally equal, can not be equated by their actual significance. Nonetheless, it does not appear very convincing, when due to their subject-matter, the UN General Assembly resolutions are classified into recommendations and law-making resolutions¹³⁶. According to the UN Charter, all of them are recommendations, and even the highest doctrinal appreciations can not change this status. The other thing "is that different recommendations may have zero, insignificant and more considerable law-declaring or law-developing effects.

The Resolution of the Institute of International Law (Conclusion 6) puts forward a number of elements which help to identify law-declaratory and law-developing resolutions, as well as those relevant to the application or interpretation of law:

- (a) the intent and expectations of States;
- (b) respect for procedural standards and requirements;
- (c) the text of the resolution;
- (d) the extent of support for the resolution;
- (e) the context in which the resolution was elaborated and adopted, including relevant political factors;
- (f) any implementing procedures provided by the resolution.

Undoubtedly, one of the most disputable resolutions of the UN General Assembly is the Charter of Economic Rights and Duties of States adopted on December 12, 1974. The estimations of its legal value varied from extreme pessimism¹³⁷ to excessive optimism¹³⁸. The Charter was adopted in the period when the efforts aimed at the establishment of a New International Economic Order achieved their culmination. Unfortunately, the Western Countries unwilling to assume long-term obligations of general character in the economic field practically boycotted this document¹³⁹. It is remarkable, that only a half a year earlier another General Assembly resolution, the Declaration on the Establishment of a New International Economic Order, which dealt with approximately the same scope of issues but was formulated in a more declaratory and less legal language, had passed by consensus.

Although, the practical impact of the Charter has not met the initial expectations, I can not agree with those who affirm that the Charter had zero effect¹⁴⁰. Certainly, not all provisions of the Charter were realistic. Some of them, though just, were infeasible (e.g. the provision of Art. 16 declaring that all States practicing colonialism, apartheid, racial discrimination, neo-colonialism and all forms of foreign aggression, occupation and domination "are economically responsible to the countries, territories and peoples affected for the restitution and full compensation for the exploitation and deflection of, and damages to, the natural and all other resources of those countries,

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territories and peoples"). But still the Charter remains the only document which:

(1) formulates in complex the normative contents of the principles of international economic law¹⁴¹ and may be used for their interpretation¹⁴²;

(2) constitutes an evidence of some basic customary rules of international economic law (e.g. the right to nationalize foreign property, the principle of economic non-discrimination, etc.), though, this evidence is weakened by the negative votes and abstentions of the Western States;

(3) suggests authoritative recommendations on the development of existing and formulation of new generally accepted norms of international economic law (e.g. the rules concerning regulation and supervision of the activities of transnational corporations; transfer of technology, tariff preferences to developing countries, non-use of economic coercion);

(4) is the first step in a badly needed codification of international economic law which has, however, a non-binding character and yields to the conventional codifications typical for many other branches of public international law.

Therefore, it must be admitted without any overestimation that the Charter produces law-interpreting, law-declaratory and law-developing effects. One may remark, that many of the Charter's provisions which are considered as principles and norms of international economic law, being frequently breached by States

are nothing more than fiction. Such nihilistic evaluations are often addressed to many norms of international law. To my mind, a problem of legal efficacy is very serious not only for international law but for municipal laws as well. And it can never be solved in a nihilistic and destructive ways. For centuries murder is qualified as a heaviest crime in all civilized legal systems. And the mere fact that thousands of people are still being killed must not be treated like a legal prohibition of murder does not exist or does not work. Law alone can not be a panacea for numerous social diseases. It reflects the state of social relations it regulates. International economic law, in particular, can not improve upon the willingness and abilities of the States creating it. This limiting factor should be born in mind for both estimations of legal efficacy and efforts to improve it.

At present, the contribution of recommendations to customary international law becomes apparent. B.Sloan rightly explains, why customary rules need recommendations as auxiliary means for their formulation and interpretation: "Custom by its very nature, being derived from diffuse practice, may lack the precision of a text. Resolutions will define, formulate, reformulate, clarify, specify and authenticate a text and corroborate the rule contained therein"¹⁴³.

Recommendations not only "decipher" existing customary law, but also serve as an element of opinio juris. Certainly, the fact

of voting in favour of the resolution taken alone does not make a convincing proof of opinio juris. We must take into account that sometimes States vote solely on political grounds not having an intent to produce any legal effect¹⁴⁴. But together with other evidences of opinio juris (official statements, judicial judgements, national laws, etc.) recommendations may be a sufficient proof that a customary legal rule exists and binds upon the State concerned.

A classical example of how recommendations influence international customary law is the UN General Assembly resolution 1803/XVIII/1962 on permanent sovereignty over natural resources. The fact that it reflects existing customary law concerning nationalization was admitted by professor R-J. Dupuy, a sole arbitrator in the dispute on nationalization between Libia and American oil companies¹⁴⁵. Some authors note also "a destructive effect" of this resolution¹⁴⁶, which denied the formula of "prompt, adequate and effective compensation" in favour of 'appropriate compensation'. However, what is "appropriate compensation" still remains disputable¹⁴⁷.

Recommendations not only declare existing customary law already crystallized in States' practice, but may be also a focal point for a further development of a customary rule¹⁴⁸, i.e. both proceed and precede States' custom-making practice. An example of the latter variant, the UNCTAD resolutions on preferences, has been already mentioned. In this case international community, and

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the developed countries in particular, appeared to be ready for the new ideas suggested by the UNCTAD. Those UNCTAD resolutions were timely and ,therefore, successful. This is an example, though still comparatively rare, when, using the expression by L.Condorelli, the resolutions "have penetrated from the world of words into the world of reality"¹⁴⁹.

At present, there is another problem, much more complicated than the problem of preferences, which urgently needs its adequate international legal regulation and as a starting point the relevant recommendations of IEOs. I mean the problem of use of force in international economic relations.

Economic security of individual States, " as well as global international economic security on the whole are unimaginable without clear legal definition of what are legitimate conditions, forms and limits of use of economic coercion, and when the use of economic force becomes illegal, especially in such extreme and dangerous form as economic aggression. I think, it is unrealistic to expect a universal treaty regulating this problem in a visible future. But the recommendations of such organizations as the UN, UNCTAD and some others are plausible. They could produce the same legal effect as a well-known General Assembly resolution 3314/XXIX/1974 on the definition of the armed aggression. The ground for this has been already prepared by a number of acts condemning economic coercion aimed against sovereignty and economic security of other States¹⁵⁰.

It may be concluded, that regulatory acts of IEOs became an essential factor of norm-making in international economic law and of the movement to what is called "a rule-oriented" international economic society¹⁵¹. Some of them (binding decisions) are the sources of international law, others (recommendations) produce law-interpreting, law-declaring and law-developing effects. Efficiency of IEOs' acts perceptibly depends on such choice of decision-making procedures which make it possible to combine operative regulation with the interests of the Member States concerned. One can hardly find an IEO with an ideal decision-making model. But their common experience suggests useful data for the draftsmen of new constituent documents, as well as for those IEOs whose decision-making mechanisms need improvements.

CHAPTER IV. AGREEMENTS CONCLUDED UNDER THE AUSPICES OF INTERNATIONAL ECONOMIC ORGANIZATIONS

Many IEOs are simultaneously the instruments for coordination of economic policy and the forums for negotiating multilateral economic agreements among the Member States. Elaboration of treaties under the auspices of IEOs is a form of preparatory law-making. In this case IEOs participate in producing international legal norms not directly but as a prefatory institutional base possessing necessary technical facilities, competent experts,

information from the Member States, etc. In principle, the relevant organs of IEOs may take part in three stages of convention-making (following C.H.Alexandrowicz I shall use this term for elaboration of multilateral treaties) : preparation, examination and adoption¹⁵². But a final decision on a convention's entering into force is a prerogative of the States which are supposed to become its contracting parties. Consequently, in a strict sense States are the primary law-makers in this case, while an IEO executes an important but auxiliary law-making function.

The existing IEOs strongly vary in their convention-making capacities and practice. Some of them have "special provisions relating to convention-making in the constituent instruments (e.g. the UN, the FAO, the UNCTAD), while others are oriented to arising practical needs without any preliminary formulated provisions (e.g. GATT). There are few specialized permanent draft-making bodies (the ILC, the UNCITRAL). In the meantime, most of IEOs recourse to ad hoc organs as far as a convention-making necessity emerges. In this Chapter I shall briefly tackle the elaboration of: (1) codification conventions; (2) unification conventions; (3) special multilateral agreements among the Member States.

1. Codification conventions

Codification and progressive development of international law are two closely connected processes of harmonization and improvement of international normative legal system. According to Art. 15 of the Statute of the ILC, "codification" means "the more precise formulation and systematization of rules of international law in fields where there already has been extensive state practice, precedent and doctrine", while the term "progressive development of international law" is used "for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States". Practically these two processes can hardly be separated, since most of codification conventions contain both elements (for instance, the 1969 Vienna Convention on the Law of Treaties codified already existing customary norms of this branch of international law and introduced some legal innovations, e.g. jus cogens).

Here we approach the question of how IEOs contribute to codification of international economic law, i.e. the branch of public international law regulating interstate economic relations.

It is paradoxical that international economic law which appears to be the largest branch of international law by the quantity of norms, has one of the lowest levels of codification in comparison with other branches. There is no general multilateral treaty containing the basic principles and norms of international

economic law. That gap is just partially filled by separate quasi-codification treaties (e.g. the GATT, the Convention on Transit Trade of the Land-locked Countries of 1965, some transport conventions) and pre-codifying recommendations of international organizations (e.g. the Charter of Economic Rights and Duties of States). An acute necessity in a general economic convention has been many times stressed in economic and legal studies¹⁵³. IEOs are expected to make their contribution to codification of international economic law. The first preparatory steps have been already made. I mean the UNITAR analytical document on legal principles and norms of a New International Economic Order presented at the 39th General Assembly session (UN doc. A/39/504/Add. 1), the draft convention on the most-favoured-nation clauses prepared by the ILC in 1978. But the future fate of these documents is still vague because of considerable divergency in the positions of States on the matters concerned.

Unfortunately, the ILC, which is supposed to occupy "a pivotal place in the United Nations law-making system"¹⁵⁴, does not pay adequate attention to the problems of international economic law, while some issues included to its agenda seem to be less important. The ILC's draft on the most-favoured-nation clauses, the only one directly relating to international economic law, has rather weak chances to turn into convention. Nevertheless, despite slow pace of its work, the ILC as a permanent organ consisting of the competent independent lawyers representing the basic legal

systems of the world, appears to be more preferable than any ad hoc organ for the purpose of international economic law codification. It must be concluded that its potential has not yet been realized in this respect. Neither have there been any considerable contributions to international economic law codification on the part of other IEOs' organs.

2. Unification conventions

Unification may be defined as the process of establishment of uniform national laws on particular matters by virtue of international model law conventions. This process of law harmonization relates primarily to technical legal issues which are to be uniformly regulated by national laws of different States in order to avoid undesirable law collisions. A peculiarity of the model law conventions is their interstate character, while the rules contained are addressed mainly to the nationals of the contracting States. The latter are obliged to promote appropriate national legal enforcement for the rules of such conventions.

Commercial transactions between the nationals of different States is one of the fields in which unification is badly needed and actively provided. In 1966 a special UN organ UNCITRAL was established on the proposal of Hungary by the General Assembly resolution 2205/XXI. The Commission has for its object the promotion of the progressive harmonization and unification of the

law of international trade in forms of international conventions, uniform laws, standard contract provisions, etc. Unlike the ILC whose members act in their individual capacity, the UNCITRAL is composed of 36 States' representatives (under UN General Assembly resolution 28/3108, 12 December 1973) elected by the General Assembly for a term of six years according to the principle of equitable geographical distribution of seats and adequate representation of the principal economic and legal systems of the world, and of developed and developing countries. UNCITRAL allows participation of the observers from other interested UN Member States and international organizations, which may join all discussions without voting right.

Normally, UNCITRAL holds its annual sessions that last from two to four weeks. The initial task on convention drafting is usually entrusted to a working group which presents its completed work to the Commission for detailed review. Once text is approved by UNCITRAL, it submits it to the General Assembly for recommendation to the Member States.

Among conventions prepared by UNCITRAL it is worth to mention: the Convention on the Limitation Period in the International Sale of Goods of 1974, the UN Convention on the Carriage of Goods by the Sea of 1978, the Vienna Convention on Contracts for the International Sale of Goods of 1980¹⁵⁵.

3. Special multilateral agreements

Treaties of this type are elaborated by many IEOs, which, as a rule, do not have any special permanent treaty-making organs (like the ILC or the UNCITRAL), but recourse to ad hoc draft-making groups. Such approach is rational in view of a highly specialized character of the drafted agreements which require different categories of legal experts for each case. In this respect, setting up of compact negotiating groups to deal with particular issues is more preferable than large conferences, while the latter are needed to specify and approve the final agreements on the basis of the drafts reached in restricted negotiating groups¹⁵⁶. In order to avoid any claims of the countries whose representatives are not formally included to such compact working groups, it is worth to keep them open to all interested Member States for the purpose of submitting drafting proposals and participating in deliberations.

The FAO appears to have the most detailed constitutional provisions relating to convention-making. Art. XIV of its Constitution dealing directly with this matter provides for the following order of convention-making. A technical meeting or conference comprising Member Nations makes a draft which is submitted through the Director-General after proper consultations with the Member States to the Conference or the Council. The Conference may, by a two-thirds majority of the votes cast, approve and submit to the Member States a draft of convention or agreement relating to food and agriculture. The relevant

competence of the Council relates only to : (a) agreements of particular interest to the Member States of a specified geographical area; (b) supplementary conventions or agreements designed to implement a previously adopted convention or agreement. Any convention or agreement approved by the Conference or the Council for submission to the Member States comes into force in the order prescribed by this convention or agreement. The FAO may approve conventions to which non-members of the Organization, but Members of the UN may participate. Among conventions concluded under Art. XIV of the FAO Constitution are the International Plant Protection Convention, the International Poplar Convention, the Constitution of International Rice Commission, etc.¹⁵⁷

An active role in convention-making is played by the UNCTAD. Among its principal functions enumerated in the constituent resolution 1995/XIX of the UN General Assembly one can read: "to initiate action, where appropriate, in cooperation with competent organs of the United Nations for the negotiation and adoption of multilateral legal instruments in the field of trade". The first such instrument negotiated under the auspices of the UNCTAD was the Convention on Transit Trade of Land-locked Countries adopted at the intergovernmental conference in New-York in 1965, pursuant to the UNCTAD-1 resolution A.VI.1. Later the UNCTAD contributed to creation of some other multilateral treaties: commodity agreements, the Agreement Establishing the Common Fund for

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Commodities of 1980; the Agreement on the Global System of Trade Preferences among Developing Countries of 1988. A certain preparatory work is carried out by the UNCTAD Secretariat which presents new ideas and proposals in its studies to the UNCTAD negotiating organs, provides technical assistance and offers its good services for consultation and conciliation with a view of promoting agreed solutions¹⁵⁸. For instance, the secretariat unit assisted the Negotiation Conference to do preparatory work for the Common Fund Agreement.

Another UNCTAD organ, the Committee for Primary Commodities, in cooperation with the specialized commodity organizations is involved in elaboration of international commodity agreements aimed at balancing supply and demand of primary commodities in world trade. The working groups of the UNCTAD, for instance, considerably contributed to the International Sugar Agreement of 1966, the International Cocoa Agreement of 1967, etc.¹⁵⁹.

Unlike the UNCTAD, GATT was not intended initially to be a convention-making forum and its text does not contain any relevant provisions. But in course of its evolution GATT several times resorted to elaboration of special agreements which were incorporated into "the law of GATT"¹⁶⁰. These agreements were of two types: the agreements specifying and modifying the basic text of GATT and the so-called sectoral agreements. There can be hardly observed any uniform negotiating procedure which differs from one agreement to another. Some of them were negotiated initially

outside GATT (e.g. the Subsidies Code was a result of the compromise between the USA and the EEC), others were drafted by special working groups in GATT (e.g. the Standards Code, the Customs Valuation Code).

The first Anti-Dumping Code negotiated during the Kennedy Round entered into force in 1968. It interpreted Art.VI of the General Agreement which lays down the conditions under which anti-dumping duties may be imposed as a defence against dumped imports. The revised version of the Anti-Dumping Code was concluded among six non-tariff barrier agreements of the Tokyo Round in 1979. The others five were: the Agreement on Technical Barriers to Trade (the "Standards Code"), the Agreement on Government Procurement, the Agreement on Interpretation and Application of Articles VI, XVI and XXIII (the "Subsidies Code"), the Agreement on Implementation of Article VII (the "Customs Valuation Code") and the Agreement on Import Licensing Procedures. The four others agreements concluded within the framework of GATT related to the certain sectors of international trade: the Arrangement Regarding International Trade in Textiles (the "Multifibre Agreement") of 1974, the Arrangement Regarding Bovine Meat, the International Dairy Arrangement and the Agreement on Trade in Civil Aircraft, the latter three reached in the Tokyo Round. Each of the above mentioned agreements has an overseeing committee or council which reports annually to the Contracting Parties.

The non-tariff barriers and sectoral agreements, on the one hand, demonstrate a flexibility of the GATT system modifying and adapting itself to the newly emerging conditions. On the other hand, they considerably complicate the "law of GATT", since each of these agreements covers different participants, both contracting parties and the third States, and, moreover, separate agreements (for example, the Multifibre Agreement) contain rules which are not completely compatible with the General Agreement¹⁶¹. Another aspect of the problem is that some of these agreements (particularly the Subsidies Code) "contain very ambiguous language, which reflects the lack of real agreement among the negotiating partners in the Tokyo Round"¹⁶². "

Despite the absence of constituent provisions relating to convention-making, an extensive experience in this field has been accumulated by the ASEAN. Among the most important agreements produced within the framework of this organization it is worth to mention: Multilateral Agreement on Commercial Rights of Non-Scheduled Services among ASEAN of 1971, Agreement on ASEAN Preferential Trading Arrangements of 1977, Agreement on the ASEAN Food Security Reserve of 1979, Basic Agreement on ASEAN Industrial Projects of 1980, Basic Agreement on ASEAN Industrial Joint Ventures of 1983, ASEAN Customs Code of Conduct of 1983, Agreement on the Conservation of Nature and Natural Resources of 1985, Agreement on ASEAN Energy Cooperation of 1986, ASEAN Petroleum Security Agreement of 1986, etc. Most of these agreements provide

for the establishment of institutional bodies supervising their implementation. For instance, under Art. 13 of the Agreement on ASEAN Preferential Trading Arrangements, "the ASEAN Committee on Trade and Tourism ... is hereby directed and authorized to conduct trade negotiations within the framework of this agreement and to review and supervise the implementation of this Agreement. In respect of all matters concerning the implementation of the Agreement, all decisions of the Committee shall be taken by the consensus".

Another example of convention-making in regional IEOs may be the Transit Agreement worked out under the auspices of the CAEU. In its 20th session in 1973 the CAEU adopted resolution N 612 which stipulated that the General Secretariat prepares "a draft of a model and developed convention regulating transit transport among Member States". The draft was prepared by a technical committee of experts in customs duties and transit transport from all Arab countries. In 1976 the drafted agreement was adopted by the CAEU resolution N 764.

It may be expected, that convention-making within the framework of IEOs will be an intensifying trend in law-making in international economic law. Since interstate economic relations are one of the most institutionalized fields of international life, it is logical that their multilateral treaty regulation develops on the institutional base of IEOs, which possess financial, expert and technical facilities necessary for this

purpose. One should admit, that, nowadays, convention-making process in IEOs has rather fragmentary and desintegrated, than systematic character. Perhaps, for the nearest future the existing methods and procedures of convention-making will still remain satisfactory for the needs of the Member States. But in the certain point of time, as far as global economic problems will, not to say prevail over, but obtain a comparable importance with individual, group and regional economic interests of the States, a need for establishment of convention-making center for codification and progressive development of international economic law may arise. Even at present, codification and progressive development of international economic law in such matters as principles and norms of a New International Economic Order, legal regulation of use of economic force, the most-favoured-nation treatment, economic preferences for developing countries and some others, are badly needed. Of course, at any time it would be necessary to ensure such combination of centralization and desintegration in convention-making in international economic law which keeps the balance of global, regional and individual economic interests of States and their adequate legal regulation.

CONCLUSION

Moving towards a "rule-oriented" international economic society sovereign States have created a developed system of IEOs which actively participate among others in international law-making and law implementation. Being a product and instrument of the Member States' will, the existing IEOs may be considered, at the same time, as relatively independent actors in the international economic arena. States vested them with a quality of international legal persons possessing autonomous wills and capacity for independent legal actions. In the course of realization of this capacity IEOs acquire and execute their international rights and duties which, taken in complex, are individual for each particular IEO and termed as its international legal status.

Nowadays, interstate economic relations appear to be the most institutionalized field of international life. For this reason, the first step to approach a more or less systematic notion of numerous IEOs is to classify them on the basis of the essential criteria distinguishing their common and specific features. Such classification reveals the legal image of IEOs and gives understanding that in their natural variety IEOs accumulate an experience necessary for moving towards more perfect institutional forms.

Economic relationships is one of the most dynamic spheres of interstate cooperation, where rapidly changing practical needs determine operative and adequate reactions from interacting

subjects. This factor is paramount for the character of law-making in international economic law, whose increasing intensity makes States to recourse to institutional norm-making mechanisms. Therefore, a certain part of law-making activities in this branch is transferred to IEOs, which obtain necessary expert, technical and financial facilities. After centuries of domination of direct bilateral interstate law-making in international economic law, a trend to multilateral norm-creating within the frameworks of IEOs becomes apparent.

IEOs are involved into three main forms of international norm-making: (1) conclusion of treaties with other subjects of international law; (2) adoption of normative¹¹ acts with law-interpreting, law-declaring and law-developing effects; (3) convention-making among the Member States under the auspices of IEOs. There are certain grounds to suppose that among those three forms direct IEOs' rule-making by virtue of decisions and recommendations is obtaining primary importance for law-making process in international economic law and its normative contents. Of course, traditional treaty and custom have not exhausted their capacities and at present carry the main regulatory burden in international economic law. However, States establish IEOs, first of all, not for treaty- or custom-making (these functions are auxiliary for them), but for permanent operative coordination of their multilateral cooperation and economic policies, which presumes direct decision-making. It is also important, that by

virtue of IEOs' acts States get the opportunity of quick, competent and in many cases comparatively less costly multilateral ruling of their economic relationships. In certain cases, when a treaty on a particular matter has dim chances to be concluded, an IEO's regulation may be the only possible normative form.

Once being created, an IEO must become not merely a deliberative forum, but a really working collective organ of the Member States to which they trust and whose binding decisions they treat like an international treaty. Binding decisions of IEOs formulating rights and duties of the Member States must be recognized as a source of international law of full value covered by the principle pacta sunt servanda. The fact that most IEOs are authorized to take binding decisions in substantive matters witnesses that a highly specialized nature of the problems these organizations deal with requires more strict legal instruments than mere recommendations. It is understandable, however, that the binding force of IEOs' decisions taken alone is not a full guarantee of their efficiency. The latter perceptibly depends on such a choice of decision-making procedures, which makes it possible to combine operative regulation with the adequate protection of the Member States' interests.

The stress on binding decisions does not mean an underestimation of IEOs' recommendations for international law. At present, some of them make part of the so-called "soft" economic law which covers formally non-binding acts (1) containing rules

expected to be transformed under favourable conditions into the norms on international or national laws; (2) performing pre-legal regulation in the fields where adequate legal instruments have not been established. Some of the IEOs' recommendations of major importance succeed in producing law-interpreting, law-declaring or law-developing effects, including their impact on formulation of customary norms.

As far as economic cooperation becomes more complicated and acquires new forms, IEOs are expected to be actively involved into international treaty-making, both directly and as a preparatory base for convention-making among the Member States. In many cases IEOs possess better facilities than individual States for collective technical and financial assistance, for establishment of special economic regimes of multilateral cooperation. IEOs are also supposed to contribute to acutely needed codification of international economic law in such matters as principles and norms of a New International Economic Order, legal regulation of use of economic force, the most-favoured-nation treatment, economic preferences for developing countries and some others.

In general, the existing IEOs, not being ideal institutional models, possess a sufficient arsenal of law-making instruments to make a considerable impact on the progressive development of international economic law. How this potential is realized depends on the economic and political climate in the world, on wills and intentions of their Member States.

1. E.-U. Petersmann. International Economic Theory and International Economic Law: On the Tasks of a Legal Theory of International Economic Order. - In: The Structure and Process of International Law / Ed. by R.Mcdonald and D.Johnston. Hague, 1983, p. 258-259.

2. F. Moravetsky. The Functions of International Organization. - Moscow, 1976, p. 41 (in Russian).

All the titles and quotations are translated from Russian by the author of the present paper.

3. See G.Anulova. The IMF and IBRD in the World Economy: a view from new positions. - In: International Economy and International Relations, 1990, N1, p. 111 (in Russian); "

4. See A.Cassese. International Law in a Divided World. Oxford, 1986, p.325.

5. See E.T.Usenko. The Council for Mutual Economic Assistance - the Subject of International law. - In: Soviet Yearbook of International Law 1979.- Moscow, 1980, p. 20; E.A.Shibaeva. The Law of International Organizations.- Moscow, 1986, p. 23-26 (both in Russian); The Concept of International Organization. Ed. by G.Abi-Saab.- P., 1981, p. 11-12.

6. The statutory acts of some IEOs assume the possibility of membership for other than States subjects of international law. Under Art. 4 (b) of the Agreement Establishing the Common Fund for Commodities of 1980, apart from States, the member of the Fund may be "any intergovernmental organization of regional

economic integration which exercises competence in fields of activity of the Fund. Such intergovernmental organizations shall not be required to undertake any financial obligations to the Fund; nor shall they hold any votes".

7. Among other definitions of IEO it is worth to mention the one proposed by P.Verloren van Themaat: "any lasting form of cooperation in the economic field between at least five countries, which is based directly or indirectly on one or more treaties of public international law" (P.Verloren van Themaat. The Changing Structure of International Economic Law. Hague/Boston/London, 1981, p. 12).

8. See International Legal Personality (the basic problems of theory).- Moscow, 1971; D.I.Feldman, G.I.Kurdukov. The Main Tendencies of Development of International Legal Personality.- Kazan, 1974; G.I.Veljaminov. International Legal Personality.- In: Soviet Yearbook of International Law 1986.- Moscow, 1988, p. 77-97 (all in Russian).

9. Quoted from P.B.Moring. European Community - Financial Autonomy for the European Community: An Integrationist Approach to International Legal Personality. - In: Vanderbilt Journal of Transnational Law, 1982, vol. 15, p. 310.

10. E.T.Usenko. The Correlation of the Categories of International and Municipal (National) Laws. - In: Sovetskoje gosudarstvo i pravo, 1983, N 10, p. 51 (in Russian).

11. See International Law. Ed. by G.I. Tunkin. - Moscow, 1982, p. 81 (in Russian).

12. See N.V. Zakharova. An Individual as a Subject of International Law. - In: Sovetskoje gosudarstvo i pravo, 1989, N 11, p. 112 (in Russian).

13. International Court of Justice Reports 1949, p. 174. The Court stated, that if the organization has personality, "it is an entity capable of availing itself of obligations incumbent upon its members".

14. See A.N. Talalaev. The Law of International Treaties. Treaties with Participation of International Organizations. - Moscow, 1989, p. 58-59 (in Russian). "

15. In many cases the Charters of IEOs fix their international legal personality either explicitly:

"The Center shall have full international legal personality. The legal capacity of the Center shall include the capacity (a) to contract; (b) to acquire and dispose of movable and immovable property; (c) to institute legal proceedings" (Art. 18 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) 1965);

or implicitly by enumerating the concrete international rights and duties: "In order to achieve its aims the Organization may (a) take decisions which, except as otherwise provided, shall be binding on all the Members; (b) make recommendations to Members; and (c) enter into agreements with Members, non-member

States and international organizations" (Art. 5 of the Convention on the OECD 1960). But some of the IEOs' Charters do not contain any provisions on their international legal personality (e.g. the Statute of the OPEC of 1962, the Agreement Establishing the APPA of 1987).

16. A.N.Talalaev. Op. cit., p. 58-59.

17. P.I.B.Kohona. The Regulation of International Economic Relations Through Law. - Dordrecht/Boston/Lancaster, 1985, p. 35.

18. E.Lauterpacht. The Development of the Law of International Organization by the Decisions of International Tribunals. - In: Recueil des Cours, 1976-4. - Alphen aan den Rijn, 1980, p. 407.

19. M.Roma-Montaldo. International Legal Personality and Implied Powers of International Organizations. - In: BYIL 1970. Oxford, 1971, p. 155.

20. M.K.Ivanov. An Objective Foundation of International Legal Personality. - In: Pravovedenie, 1988, N 6, p. 91 (in Russian).

21. I.Seidl-Hohenveldern. International Economic Law. General Course of International Law. - In: Recueil des Cours, 1986-3.- Alphen aan den Rijn, 1987, p. 105-107.

22. See G.M.Veljaminov. Op. cit., p. 94.

23. International Law. Ed. by G.I.Tunkin, p. 82-83.

24. See E.T.Usenko. The Council for the Mutual Economic Assistance - the Subject of International Law, p. 22-23.

25. See Shinya Murase. Trade versus Security: The COCOM Regulations in Japan. - In: Japanese Annual of International Law 1988. - Tokyo, 1988, p. 2.

26. See about the World Bank's affiliates: A.O.Adede. Legal Trends in International Lending and Investment in the Developing Countries. - In: Recueil des cours, 1983-II, Hague, 1984, p. 83-84; H.G.Petersmann. The World Bank Contribution to the Law of International Finance and Development (1944-1984). - In: Archiv des Volkerrechts, 1985, p. 244-245.

27. H.G.Schermers. Op. Cit., p. 21.

28. The GATT peculiarity is that in the present time it simultaneously possesses a dual quality - of an agreement and of an organizational structure. In literature one can meet the GATT's definitions as "de facto if not de jure international trade organization", "paraorganization", etc. (See: D.Johnson. The New International Economic Order. (1). - In: Yearbook of World Affairs 1983. L., 1984, vol. 37, p. 211; M.M.Boguslavskij. International Economic Law. Moscow, 1986, p. 166). It must be admitted that an attempt made during the GATT Review Session (1955) to create an official Organization for Trade Cooperation was unsuccessful. However, it seems possible to affirm today that the GATT is an independent IEO possessing international legal personality. Its functions and scope of activities have been considerably extended and can not be reduced merely to implementation of the Agreement. Though, GATT's organizational

structure is comparatively weak and needs, in view of some authors, considerable modifications (See J.H.Jackson. Restructuring the GATT System. London, 1990).

29. In conformity with the GATT's Art. XXV, whenever reference is made to contracting parties acting jointly they are designated as the Contracting Parties (in capital letters).

30. See: V.Shumilov. "Effective Reciprocity" - the Concept of Protectionism and Discrimination. - In: Foreign Trade, Moscow, 1985, N 7, p. 45 - 50; E.R.Petterson. Improving GATT Rules for Non-Market Economies. - In: JWTL, 1986, N 2, p. 185 - 205; W. Benedek, K.Ginther. Planned-Economy Countries and GATT: Legal Issues of Accession. - In: GYIL 1988. Berlin, 1989, p. 70 - 106; Feng Yu-Shu. China's Membership of GATT: A Practical Proposal. - In: JWT, 1988, N 6, p. 53 -70; J.H.Jackson. State trading and Nonmarket Economies. - In: The International Lawyer, 1989, N 4, p. 891-908.

31. UNTS, vol. 510, p. 44.

32. H.G.Schermers. International Institutional Law. Vol. 1, Lieden, 1972, p. 26.

33. In this context the classification of multilateral economic agreements which establish institutional regimes proposed by P.I.B.Kohona is worth mentioning. Combining a subject matter with a manner of regulation, the author subdivides multilateral economic agreements into three types: (1) agreements that are comprehensive in scope and intensity of regulation (the EEC

Treaty, the Montevideo Treaty, the Treaty establishing the CARICOM, the Convention establishing the EFTA, and some others); (2) agreements that are comprehensive in scope but not in intensity of regulation (the agreements establishing the CMEA, the OECD, the UNCTAD, the ASEAN, the UN regional economic commissions, etc.); (3) agreements that are intensive in the manner in which they regulate specific matters (the GATT, the agreements establishing the IMF, the IBRD, the IDA, the FAO, the commodity agreements, etc.). See Op. cit., p. 43-80.

34. M.Virally. Definition and Classification of International Organizations: a legal approach. - In: The Concept of International Organization. Ed. by G.Abi-Saab. P.', 1981, p. 57, 60.

35. W.Benedek, K.Ginther. Op. cit., p. 76.

36. T.Weiss. UNCTAD: What next? - In: JWTL, 1985, N 3, p. 253.

37. H.G.Schermers. Op. cit., p. 16.

38. A.F.Visotskij. The Marine Regionalism. - Kiev, 1986, p. 100 (in Russian).

39. H.G.Schermers. Op. cit., p. 17.

40. Ibid., p. 18.

41. P.VerLoren van Themaat. The Changing Structure of International Economic Law. The Hague/Boston/London, 1981, p. 2.

42. See, for example, E.Osieke. Majority Voting Systems in the International Labour Organization and the International Monetary Fund. - In: ICLQ, 1984, Part 2, p. 404.

43. See J.H.Johnson. Restructuring the GATT System. L., 1990, p. 96-96.

44. I.Seidl-Hohenveldern. Op. cit., p. 118.

45. See J.H.Jackson. Restructuring the GATT System. London,1990,p. 96-97.

46. See International Law. Ed. by G.I.Tunkin, p. 176.

47. See: I.I.Lukashuk. The Parties to International Treaties. - Moscow, 1966, p. 118-144; E.A.Shibaeva. The Law of International Organizations. - Moscow, 1986, p. 106-110; S.A.Malinin, T.M.Kovaleva. Treaty-making Capacity of International Organizations. - In: Pravovedenie, 1988, N 4; L.B.Arhipova. The Treaties of International Economic Organizations of the Socialist Countries. - Moscow, 1989; A.N.Talalaev. Op. cit. (all in Russian); G.E. do Nascimento e Silva. The Vienna Convention and the Treaty-Making Power of International Organizations. - In: GYIL 1986. - Berlin, 1987., p. 68-85; G.Gaja. A "New" Vienna Convention on Treaties between States and International Organizations or between International Organizations: A critical comments. - In: BYIL 1987. - Oxford, 1988., p. 253-269.

48. A.N.Talalaev. Op. cit., p. 60.

49. States also may be limited in their treaty-making capacity, for instance, a continental State is physically unable to conclude a treaty delimitating continental shelf. However, as regards States, such limitations to their treaty-making capacity are of an exclusive and particular character.

50. See I.I.Lukashuk. Op. cit., p. 125.
51. See J.Groux, Ph.Manin. Comunidades na Ordem Internacional. - Bruxelos, 1984, p. 12.
52. ECR 1971, p. 263.
53. Common Market Law Reports 1977, N 2, p. 279-280.
54. See F. Roessler. The Competence of GATT. - In: JWTL, 1987, N 3, p. 80.
55. See E.T. Usenko. 25 years of the International Organization of the New Type. - In: Soviet Yearbook of international law 1974. -Moscow, 1975, p. 31 (in Russian).
56. As D.W.Bowett writes, such implication must be "reasonable" (The Law of International Institutions. - L., 1975, p. 305).
57. H.G.Schermers. International Institutional Law., vol. 1, p. 155.
58. For instance, only in 1988 the UNIDO concluded cooperation agreements with 15 Member Countries, and 14 agreements with other organizations (See Annual Report of UNIDO 1988, p. 137-139).
59. The first and the second Lome Conventions were concluded respectively in 1975 and 1979, each for five years. The Third Convention involves the largest number of the States - the EEC Members and 65 ACP Countries. It is supposed to be followed by the fourth convention in 1990.
60. Those latter are: the IMF, the World Bank, the FAO - 1947; the IFC - 1957; the IDA - 1961; the WIPO - 1974; the IFAD - 1977; the UNIDO - 1985.

61. UNTS, vol. 1126.

62. UNTS, vol. 1080.

63. P.I.B.Kohona. Op. cit., p. 27.

64. See S.Voitovich, Aleksandros Holevas. The Joint EEC-CMEA Declaration: international legal aspects. - In: Foreign Trade, 1989, N 9.

65. See, for example, the International Agreement on Tropical Timber of 1983, the International Sugar Agreement of 1984, the International Wheat Agreement of 1986. In the later concluded agreements the USSR stopped making such reservations (e.g. the International Cocoa Agreement of 1986, the International Sugar Agreement of 1987.

66. A conclusion that the Joint Declaration has a legally binding effect is shared in, at least, two recent articles: G.Lysen. The Joint Declaration by the EEC and the CMEA. - In: North Carolina Journal of International Law and Commercial Regulation, 1989, N 3, p. 388; S.Voitovich, Aleksandros Holevas. Op. cit.

67. UNTS, vol. 387.

68. UNTS, vol. 933/934.

69. UNTS, vol. 1106.

70. UNTS, vol. 1144.

71. See F. Roessler. The Competence of GATT, p. 80-81.

72. ILM, 1982, p. 697-701.

73. See, for instance, Art. 3 of the Rules of procedure of the Supreme Council of the CCASG.

74. See: Articles 12 and 18 of the Statute of the OPEC, Art. 14 of the Treaty for the Establishment of the ECCAS of 1983, Art. 7 of the Charter of the CCASG.

75. See: Art. XX of the Constitution of the FAO, Art. VIII of the Articles of Agreement of the IBRD, Art. IX of the Articles of Agreement of the IDA, Art. 22 of the Agreement Establishing the ITPA.

76. See Art. III, section 2 of the Articles of Agreement of the IMF.

77. See Art. 79 of the Treaty of Rome. "

78. See Art. 19 of the Convention Establishing the EFTA.

79. The Article says: "In making decisions of applications for loans or guarantees relating to matters directly within the competence of any international organization of the type specified in the preceding paragraph and participated in primarily by members of the Bank, the bank will give considerations to the views and recommendations of such organization".

80. The Article says: "Whenever it shall become necessary under this Agreement to value any currency in terms of the value of the other currency, such valuation shall be reasonably determined by the Corporation after consultation with the International Monetary Fund".

81. This Article states: "The Contracting Parties, in agreement with the International Monetary Fund, shall formulate rules governing the conversion by contracting parties of any foreign currency in respect of which multiple rates of exchange are maintained consistently with the Articles of Agreement of the International monetary Fund" (see also Art. XV).

82. O.Long. Law and its Limitations in the GATT Multilateral Trade System. Dordrecht, 1985, p. 51.

83. See Autar Krishan Koul. The Legal Framework of UNCTAD in World Trade, Leyden, 1977.

84. For instance, Art. 28 of the Rules of Procedure of the Ministerial Council of the CCASG states: "The Council shall decide whether the the meetings shall be open or secret".

85. See Notes and Supplementary Provisions Ad Article XII of GATT. - In: International Economic Law. Basic Documents. Ed. by Ph.Kunig, N.Lau, W.Meng. Berlin, 1989, p. 479.

86. See J.H.Jackson. Op. cit., p.23.

87. See Change and Stability in Intrnational Law-Making. Ed. by A.Casses and J.Weiler. - Berlin, 1988.

88. See K.Mason. European Community. - Luxembourg Compromise. - Council of the European Community Ignores British Attempt to Exercise Implied Veto Power of Luxembourg Compromise. - In: Georgia J. of International and Comparative Law, 1983, vol. 13, p. 134-141.

89. See Change and Stability in International Law-Making, p. 118.

90. P.I.B.Kohona. Op.Cit., p. 8-9.

91. See Art. 4.4 of the Agreement on Arab Economic Unity of 1957 (entered into force in 1964).

92. See Annex XI (15.a) to the Treaty for East African Cooperation of 1967.

93. See Articles 40, 42 of the Convention on the MIGA.

94. However, as G.A.Bermann writes, the drafters of the Single Act "could not secure agreement to introduce majority voting in the area of fiscal harmonization, or in the Community's exercise of implied powers under Article 235 of "the EEC Treaty" (G.A.Bermann. The Single European Act: A New Constitution for the Community? - In: Columbia Journal of Transnational Law, 1989, N 3, p. 573.)

95. See Articles 20, 33, 43, 54, 57, 63, 69, 75, 101, 111, 112, 114.

96. See O.G.Zaitseva. International Organizations: decision-making., Moscow, 1989, pp. 71,78.

97. See A.Leroy Bennet. International Organizations: principles and issues. New Jersey, 1980, p. 93.

98. Each Member of the Fund has 250 votes plus one additional vote for each part of its quota equivalent to 100000 special drawing rights (Art. XII, section 5); each Member of the Bank has

250 votes plus one additional vote for each share of stock held (Art. V, section 3).

99. Under Art. 148 of the Treaty of Rome, where the Council is required to act by a qualified majority, the votes of its Members shall be weighted as follows: Belgium - 5; Denmark - 3; Germany - 10; Greece - 5; Spain - 8; France - 10; Ireland - 3; Italy - 10; Luxembourg - 2; Netherlands - 5; Portugal - 5; United Kingdom - 10.

100. In this part Art.148, paragraph 2 of the Treaty of Rome was amended by Art. 14 of the Act of Acession ESP/PORT.

101. Art. 15 of the International Coffee Agreement of 1983.

102. See about consensus: A.Cassese. International Law in a Divided World., Ozford, 1986, p. 196-198.

103. See Socialist Economic Integration and State Sovereignty. Moscow, 1987, p. 15 (in Russian).

104. Ibid., p. 15-17.

105. For instance, the decisions of the Conference of the ECCAS come into effect thirty days after their publication in the official bulletin of the Community; the resolutions of the Conference of the OPEC become effective after thirty days from the conclusion of the meeting or after such period as the Conference may decide unless, within the said period the Secretariat receives notification from Member Countries to the contrary.

106. See e.g. Art. 6 of the Convention on the OECD, Art, IV of the Charter of the CMEA.
107. It should be noted, that certain IEOs' acts do not fit the criteria of such subdivision. I mean the acts entitled "communiqué", "understanding", etc., which state the intentions, conclusions or non-legal agreements of the Member States (e.g. the IEA Governing Board Communiqué Concerning Energy Requirements and Security of 1983. - In: ILM, 1983, Vol. 22).
108. Change and Stability in International Law-Making, p. 122.
109. See Report on Increasing of Efficiency of the CMEA Recommendations. Moscow, 1976, p. 11 (in Russian).
110. See ILM, 1984, vol. 23, p. 425-441.
111. See ILM, 1988, vol 27, p. 974-988.
112. See O.Long. Op. cit., p. 27-28.
113. See International Economic Law. Basic Documents. Ed. by Ph. Kunig, N.Lau, W.Meng. Berlin, 1989, p. 129-130.
114. See ILM, 1982, Vol. 21, p. 546.
115. See ILM, 1983, Vol. 22.
116. See ILM, 1984, vol. 23, p. 1420.
117. See ILM, 1984, vol. 23, p. 465.
118. See ILM, 1986, vol. 25, p. 1010-1013.
119. I.Seidl-Hohenveldern. International Economic 'Soft' Law. - In: Recueil des Cours, 1979, vol. 163, p. 225.
120. Op. cit., p. 205.
121. Op. cit., p. 209.

122. Change and Stability in International Law-Making, p. 63.
123. Change and Stability in International Law-Making, p. 80.
124. Op. cit., p. 82.
125. Op. cit., p.83.
126. See I.I.Lukashuk. Mechanism of International Legal Regulation. Kiev, 1980, p. 140 (in Russian); I.I.Lukashuk. International Organizations and the Functioning of International Law. - In: Indian Journal of International Law, 1984, N 1, p. 74.
127. See S.A.Voitovich. Legal Regulation of the Generalized System of Preferences. - In: Foreign Trade, 1988, N6.
128. Resolution 21 (II) "Preferential or free entry of exports of manufactures and semi-manufactures of developing countries to the developed countries" (1968) is of primary importance in this connection.
129. The preferential schemes were adopted by the USSR (1965), Australia (1966), EEC, Japan, Norway (1971), Austria, Bulgaria, Czechoslovakia, Finland, Hungary, New Zealand, Sweden, Switzerland (1972), Canada (1974), Poland, the USA (1976).
130. Some codes are framed as legally binding acts (e.g. the Code of Liberalization of Capital Movements adopted by the OECD Council in 1961, the Code of Conduct for Liner Conferences of 1974, the Andean Foreign Investment Code of 1976).
131. R.J.Waldmann. Regulating International Business through Codes of Conduct. Wash., L., 1980, p. 23.
132. See text in ILM, 1986, N 4, p. 1629-1636.

133. L.Lazar. Transnational Economic and Monetary Law. Transactions & Contracts. Introduction. N.Y., 1977, p. 207.
134. See e.g. J.Hagashi. The Role of Resolutions of the United Nations General Assembly in the Formative Process of International Customary Law. - In: The Japanese Annual of International Law 1982. Tokyo. 1982, p. 11-25.
135. See Annuaire de l'Institut de Droit International 1987. Paris, 1988, p. 2740289.
136. See T.O.Elias. The Rulemaking Process and the Future of International Law. - In: American Society of International Law. Proceedings of the 75th Anniversary Convocation. April 23-25, 1981. Wash., 1983, p. 29-30.
137. See e.g. M.Akehurst. Custom as a Source of International Law. - In: BYIL 1974-1975, Oxford, 1977, p. 6; E.-U.Petersmann. The New International Economic Order: Principles, Politics and International Law. - In: The International Law and Policy of Human Welfare. Alphen aan den Rijn, 1978, p. 450; J.S.Stanford. International Law and Foreign Investment. - In: The International Law and Policy of Human Welfare, p. 489-490.
138. See T.O.Elias. Op. cit., p. 29-30.
139. The Western position on this matter was explicitly formulated by the representative of the U.K. (See Official Reports of the UN General Assembly. Twenty-ninth session. Second Committee. 18 Sept. - 11 Dec., 1974, p. 604).

140. See American Society of International Law. Proceedings of the 75-th Anniversary Convocation, p. 122.
141. See S.A.Voitovich. International Economic Law: Concept, Structure, Specific Features (the Soviet point of view). - In: *JUS GENTIUM*, Finland, 1987, n 3-4, p. 393-400.
142. A world-wide recognition of the basic principles of international economic law was confirmed by the fact, that Chapter 1 of the Charter, apart from the point "peaceful coexistence", was adopted without negative votes. The Charter's role in formulation and interpretation of the principles is well seen in the analytical research of the principles and norms of international law relating to the New International Economic Order made by the UNITAR (See UN doc. A/39/504/Add. 1).
143. B.Sloan. *Op. cit.*, p. 69.
144. See O.Schachter. International Law in Theory and Practice. General Course in Public International Law. - In: *Recueil des cours*, 1982-V, p. 115.
145. See D.Johnson. The New International Economic Order. - In: *Yearbook of World Affairs* 1984, vol. 38, L., 1984, p. 222-223.
146. See *Change and Stability in International Law-Making*, p. 50.
147. See UN doc. A/39/504/ Add. 1, p. 16-17.
148. See J.de Arechaga. *Recueil des cours*, 1978-I, p. 31.
149. *Change and Stability in International Law-Making*, p. 42.
150. See, for example, Art. 32 of the Charter of Economic Rights and Duties of States, "Economic measures as a means of political

and economic coercion against developing countries" (the 38th UN General Assembly session, 1983), "International Economic Security" (40th UN General Assembly session, 1985), "Rejection of coercive economic measures" (UNCTAD, 1983).

151. See P.I.B.Kohona. Op. cit., p. 23.

152. See C.H.Alexandrowicz. The Law-Making Functions of the Specialized Agencies of the United Nations. Sydney, 1973, p. 20.

153. See, for example, J.Tinbergen. Restructuring the International Order. Moscow, 1980, p. 145; V.P.Shatrov. International Legal Problems of the Establishment of a New International Economic Order. - In: Sovetskoje gosudarstvo i pravo, 1986, N 8, p.96 (both in Russian).

154. M.El Baradei, T.M.Frank, R.Trachtenberg. The International Law Commission. The Need for a New Direction. N.Y., UNITAR, 1981, p.3. See also B.G.Ramcharan. The International Law Commission. Its Approach to the Codification and Progressive Development of International Law. The Hague, 1977; I.Sinclair. The International Law Commission. Cambridge, 1987.

155. See, for instance, G.Herrmann. The Contribution of UNCITRAL to the Development of International Trade Law. - In: The Transnational law of International Commercial Transactions. Ed. by N.Horn, C.M.Schmitthoff. Vol. 2, Deventer, 1982, p.35-50; A Guide to the UNCITRAL Model law on International Commercial Arbitration. By H.M.Holtzmann and J.E.Neuhas. The Hague, 1989.

156. See R.Krishnamurti. UNCTAD as a Negotiating Institution. -
In: JWTL, 1981, N 1, p. 23.
157. See C.H.Alexandrowicz. Op. cit., p. 29-30.
158. See R.Krishnamurti. Op.cit., p. 29-32.
159. See E.Ernst. International Commodity Agreements. The Hague,
1982, p. 104, 123.
160. See, for instance, J.Jackson, Mitsuo Matsushita.
Implementing the Tokyo Round. National Constitutions and
International Economic Rules. The University of Michigan, 1984.
161. See O.Long. Op. cit., p. 32-36.
162. J.H.Jackson. Op. cit., p. 37.





