

Preface

In the present book, I have advocated an emerging doctrine of the interpretative framework of constituent instruments as the constitutions of international organizations. I have argued that, under the influences of the inherent dynamism of international organizations, the interpretative framework of the constituent instruments of international organizations is not the same as that of ordinary treaties, and that the interpretation of the constituent instruments of international organizations deviates from the interpretative framework regulated by the law of treaties as codified by the Vienna Convention on the Law of Treaties. I have presented, as an alternative interpretative framework to that of ordinary treaties, a doctrine of constituent instruments as the constitutions of international organizations rather than as the (founding) treaties. In advocating this new doctrine of the interpretative framework, I have been careful not to attempt to construct a fragile house of cards. As the current doctrines and practices of States and international organizations do not support such a construction, the best way would be to construct a moderate but solid doctrine which could be sufficiently justified by actual practices and which could be further improved upon and refined, but even this has yet to be made.

In my opinion, the interpretative framework as constitutions differs from that as treaties in two respects: (1) on the quantitative aspect of the teleological extent admitted, in the sense that constituent instruments are interpreted within the teleological framework so that their efficient functioning and effective activities could be assured and promoted, and that predominant consideration is given to the "efficiency" and "effectiveness" of international organizations to the extent that the teleological reasoning deviates from the textual interpretative framework in the law of treaties; (2) on the qualitative aspect of legal significance possessed by the practice of the organs of international organizations, in the sense that the practice of international organizations affects, in feedback, the interpretations of constituent instruments so that it gives them an evolutionary nature, and that this "subsequent practice" of the organs is given the legal value which deviates qualitatively from the textual interpretative framework in the law of treaties. Certainly each of these two aspects has sometimes been referred to in different contexts by other writers. These two, however, have never been, with sufficient development and refinement, synthesized in this new doctrine of constituent instruments as the constitutions of international organizations.

In the field of international organizations where amendments of their constituent instruments are as exceptional as those of the United Nations, it is through the process of interpretation and application of constituent instruments that political evolutions and changes will be transformed into legal arguments. In this sense interpretation could be qualified as the "concept charnière (hinging concept)" between politics and the law.

We have seen that military enforcement measures were applied to Iraq in 1991 in a manner close to, if not the same as, that expected by the Charter. A series of "authorizations" of the use of force by peace keeping forces and/or Member States were allowed. An international tribunal to prosecute those responsible for serious violations of international humanitarian law were established both for former Yugoslavia and Rwanda. All of these activities were authorized under Chapter VII of the United Nations Charter. We must analyze and judge the legality of these activities in the light of the relevant provisions of Chapter VII. Here the possible conclusions reached are closely related to the position one might take in understanding the legal nature of Chapter VII and the Charter of the United Nations itself.

These and other similar activities will continue in the future in both the United Nations and other international organizations. We are expected to analyze and judge the legality of these activities in the light of the relevant provisions in their constituent instruments.

The emerging doctrine of the interpretative framework of constituent instruments as the constitutions of international organizations, which has gradually formed since 1950s and is now more or less established, will give a useful perspective in understanding the possible evolution of international organizations in the present and the future.

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