Explanation on the work of the Special Conference

The Special Conference will draft a treaty during the IMUNA Conference and not a resolution. This document is aimed at explaining the difference between the two and giving some information on drafting a treaty.

If you have any questions regarding the work of the Special Conference, please contact at dsg@imuna.nl

What is the difference between a treaty and a resolution?
A treaty can be defined as follows: "Generally, a 'treaty' can be regarded as a legally binding agreement deliberately created by, and between, two or more subjects of international law who are recognised as having treaty-making capacity" (Martin Dixon, Textbook on International Law, 2000, page 51). Subjects of international law that have a treaty-making capacity are, at least, all Member States of the United Nations. Those states can together decide that they will bind themselves, in a legal manner, to do something or refrain from doing something (or creating, for example, organizations and providing those with a certain authority). Treaties can contain all sorts of statements, even those contradicting existing international law. In general, it can be said that states have much more freedom in drafting treaties then they have in writing resolutions.

Resolutions require a legal basis, usually in a founding document for the organization within which the resolution is being drafted. For example, the UN General Assembly (as organ of the UN created in the UN Charter - which is a treaty) has limited powers in taking decisions. Most of its competences only allow them to make recommendations (Articles 10 to 17 of the UN Charter), and not take binding decisions. Resolutions adopted by the UN GA have to adhere to these Articles by virtue of the fact that they are adopted based on those competences.

Treaties do not need such a legal basis. Any state can contract with others and agree to be bound regarding virtually anything.

How to formulate a treaty?
States are free in the lay-out and formulation of a treaty. Nonetheless, for IMUNA a model has been created as a guideline for lay-out and formulation. It is based on the accepted standards in the international community. It can be found on the forums page on the IMUNA website.

Generally, the following points should be emphasized:

1. A treaty has three main parts: the preamble, the first Article which contains definitions of terms often used in the text of the treaty and the other Articles (the operative part) in which the legal obligations are set out. The operative is divided in chapters which refer to the issues set for the SPC: one treaty will be written by the SPC, for each issue one chapter. All preambulatory elements are taken together and put in the first part (the preamble) without a division in chapters.

2. The preamble is written in the same way as they are for resolutions, although there are no limits in the first words that can be used. The existing list for UN GA resolutions does provide a good guideline.

3. Articles are written as full sentences. They can start with 'The States Parties agree to/shall/may/should', although it is also possible to simply state the obligation:'
The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State' (Article 32(1) of the Vienna   Convention on Diplomatic Relations).
It is useful to differentiate between the legal consequences of the terms used:
   • Agree to / shall: means that the state must do this, it is an obligation,
   • Should: means that a state is recommended to do so, it is not an obligation, but a recommended course of action,
   • May: means that it is at the discretion of the state to do this or choose not to do it. Usually, this formulation is used in shaping procedures for organizations. For example, 'Member States may submit yearly reports to the Secretary-General on the implementation of the current treaty in its national law.'

4. Each treaty has a number of Articles regarding the functioning of the treaty. These can be found in the model treaty, which is published in the SPC page on the IMUNA website; they are called 'Final provisions'. It should be noted that these can be altered by the SPC.

How is the treaty approved?
Once the entire treaty is drafted by the Special Conference, a vote needs be taken to adopt the entire document. By doing that, the text of the document can no longer be changed. It is, however, not yet binding for the members of the Special Conference. A treaty can only be turned into an obligatory text by signing and ratifying it. The text will, however, only be signed at the IMUNA Conference. All members wishing to be bound by the treaty have the possibility to do so at the end of the session. These signatures will be published in the Result Booklet and give the document the authority it needs to be binding.

However, states can choose not to be bound by the entire treaty. Articles and even chapters be excluded for a state by adding a declaration from a state in which a reservation is laid down. A state can, for example, state:

> 'The Kingdom of The Netherlands does not consider itself bound by Articles 7 and 8 of
> the present treaty.
> [Signature]'

Such reservations are quite common as many state concur on large parts of a treaty but have different thoughts on certain details. The SPC can also choose to include an Article which states that reservations to the present treaty are not allowed. In such a case, any reservation would be invalid. Additionally, states can add a declaration on the treaty. Such declaration explain how a specific Article is interpreted by that state.

Have you already drafted a resolution or clauses for a resolution in the Special Conference? No worries then! Clauses can easily be changed into treaty Articles by changing the first words. Your Student Officers can help you in doing this. Often, it will also be possible to do this during debate. An example of a technically sound drafted treaty is the Vienna Convention on Consular Relations.

International law
Always keep in mind that treaties are governed by international law. Specifically, the Vienna Convention on the Law of Treaties should be used for treaties. Please consult the ILO Guide (the paragraph on international law) for further information.

Rules of Procedure
The same rules will apply to the debate as those used in the UN GA committees. Please consult the IMUNA Instructional Guide for information.