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## **Canon Law Aspects of the Utrecht Union \***

### **I. Introduction**

The Utrecht Union has its roots in the Declaration of Utrecht dating from the year 1889. This Declaration, which was issued by the Old Catholic bishops of the Netherlands, Germany and Switzerland, established the doctrinal basis of Old Catholicism. For the church of Utrecht it marked the end of the isolation which some hundred and fifty years earlier had resulted from the unfortunate breach with Rome. For the churches of Germany and Switzerland, which had recently evolved out of the Old Catholic movements of central Europe in reaction to the new decrees concerning papal infallibility and the universal episcopate of the bishop of Rome, the Declaration expressed the shared justification of their very existence.

Here we encounter two major features of the Utrecht Union, that is to say, in the first place, the inclination to give shape to the unity of the Church and, secondly, the foundation of this unity upon communal premisses, determined largely by the position which should be taken towards the claims of Rome. From the outset of the Union a third aspect played a rôle, that is to say the relation with other churches. In 1889 there was indeed a controversy as regards the relation to the Church of England. Some Old Catholic bishops considered the anglicans to be catholic, whereas others denied this. This divergence of opinion endangered the recently developed contacts between the bishops. For this reason it was not unimportant that the Old Catholic bishops established some kind of unity among themselves. This third aspect has become increasingly predominant in this century. Under the influence of the ecumenical movement the Utrecht Union and its Bishops' Conference eventually came to act as the representative of the united churches on the international level.

The search of the local church for an expression of ecclesiastical unity, as just mentioned, implied the pursuit of expressing the alliance with other churches. This had to be realised by crossing its own boundaries, which were not only determined by political frontiers but also by the historically developed separation of christian churches.

\* Referat gehalten an der 31. Internationalen Altkatholischen Theologenkongferenz in Malvern bei Philadelphia (USA), 23.–27. August 1993 (siehe IKZ 84 (1994) SS. 7–61).

This effort to give shape to the ideal of the unity of the Church exceeded, as it does nowadays, the already existing relationships between the churches united in the Utrecht Union. It is the same orientation as expressed in the Creed. After all, we do not affirm, time after time, to belief in the Utrecht Union, but rather in “one holy catholic and apostolic Church”.

The ideal of unity had survived until 1889, in spite of the fact that in earlier days the church of Utrecht was compelled to offer resistance against strong centralistic tendencies and to turn against an ecclesiastical unity which had reached such a stage that it became a constant threat to the indefeasible rights of the local church.

From earliest times western catholicism had its own proper ways of expressing ecclesiastical unity, that is to say through the ecumenical council and through the bishop of Rome as the enduring and visible centre of christianity. For the bishops who promulgated the Declaration of Utrecht in 1889, however, none of these was at hand in order to meet such a purpose. It was doubted whether the councils which took place during the Middle Ages and in later periods, i. e. after the breaking up of christianity as a result of the Great Schism in 1054, could be regarded as ecumenical in the proper sense. They were in any event not recognized as such by Döllinger<sup>1</sup>. All the same, even nowadays this should not prevent us from acknowledging that the ecumenical council in theory still is the outstanding authority, capable of preserving the unity in the Church from a doctrinal viewpoint. In 1889 the bishop of Rome, with whom all bonds were severed, could not serve as a binding force. And again, even nowadays, we still should recognize that he is or at least ought to be the visible head of the entire western Church.

The text of the Declaration gives the impression that the originators based this document upon their communal attitude towards the Holy See and upon their communal evaluation of the later decrees and councils. For this reason we are led to the sad conclusion that they agreed upon an ecclesiological view, which at the same time would keep the faithful under their care separate from the overwhelming majority of catholic christians.

In 1889 it was not clear exactly what the character of the Union was supposed to be. It seemed to emerge as some kind of temporary, ma-

<sup>1</sup> Bericht über die Bonner Unionskonferenzen (ed. H. Reusch), Bonn 1875, p. 81.

keshift institution, which implies that it should be regarded as a perforced invention of human, ecclesiastical law, rather than one of divine law. This character of the Union has not changed in this century. By our human standards the Union might have gained a more permanent character, but, if for example the schism with the Eastern Churches can be lifted, channels will be open for the realization of new forms of ecclesiastical unity, leaving no room any longer for the Union in its present set-up.

Nevertheless we should not treat the originators of the Declaration unfavourably, as if they were the ones who had caused a new schism. They cannot be reproached with their refusal to accept the new decrees and with the reaction this refusal evoked from Rome. After all, they felt obliged to carry on pre-Vatican catholicism and set themselves the task of presenting a communal front against the new decrees. However, they certainly did not abandon their belief in “one holy catholic and apostolic Church”. Since the breach with Rome was a definite datum, a new avenue had to be followed in order to give shape to the ideal of ecclesiastical unity. The formation of an alliance of churches, which took up analogous ecclesiastical positions, was in 1889 probably the one and only option. Even nowadays, the first move towards the expression of the unity of the Church consists in establishing a community of churches within the Utrecht Union.

## **II. Legal aspects of the Union**

Let us now turn to a more legal approach. What are the implications of all this for the legal character of the Utrecht Union and its International Bishops' Conference (IBC)?

### **(i) The bishop and his diocese**

The local church, i.e. the diocese, is not only a fundamental entity in the structure of the church, but also a basic concept of canon law. It covers a territorially defined community of faithful laity and clergy under the guidance of their bishop. In spite of the fact that modern theology displays a rather subtle view on the apostolic succession and tradition<sup>2</sup>, legal documents mostly reflect the somewhat simplified

<sup>2</sup> *H. Frei*, Die altkatholische Lehre von der apostolischen Sukzession im Lichte der heutigen Ökumene, in *IKZ* 54 (1964), 240–245; *K. Stalder*, Die Wirklichkeit Christi erfahren, Zürich 1984, p. 242–243.

idea that the diocesan bishops have followed in the footsteps of the Apostles, who, in their turn, received a particular mandate from the Lord himself: “as the Father has sent me, I am sending you”<sup>3</sup>. This mission of the Apostles is – at least according to the traditional canon law approach – seen as the scriptural basis for the bishop’s mandate. As a consequence, the Special Ministry is regarded an institution of divine law. The mission of the Apostles resulted in the foundation of congregations, local churches, and according to the traditional view the bishops must be regarded the latter-day successors of the Apostles. Unlike the Apostles, though, every bishop is linked to a specific local church, his diocese. This link, resembling the nuptial bond, is sometimes even compared to the relation between Christ and his Church. Thus, although the diocese itself can be seen as an institution of ecclesiastical law, it is rooted in the divine law character of the Special Ministry and became an enduring and fundamental component of the ecclesiastical system. John Christian van Erckel, dean of the chapter of Utrecht in the eighteenth century, even went further by teaching that it was the individual churches, which at the moment of their foundation received ordinary jurisdiction directly from Heaven<sup>4</sup>.

This concept of the bishop and his diocese has important implications. In accordance with this view there is no hierarchy among bishops. As a consequence, the local church is not dependent on a different authority. It cannot be subjected to a superior jurisdiction on a universal level, since its autonomy is indefeasible. Interference by archbishops in the other dioceses of their province, just as the interference by the bishop of Rome in other provinces all over the world, is merely permitted when there is a request to intervene or when such an interference is based upon the devolution of a competence of ordinary jurisdiction under special circumstances.

The autonomy of the local church, however, does not keep her from searching covenants on a national, regional and even universal level in order to give shape to the ideal of ecclesiastical unity. Provincial structures actually date back to the Primitive Church. The first Council of Nicaea already gave precedence to certain episcopal sees<sup>5</sup>.

<sup>3</sup> John 20:21.

<sup>4</sup> *Observationes Prodomae* XXIV.

<sup>5</sup> See canon 6.

(ii) The IBC is no ecumenical or provincial council

The Utrecht Union may have come into being as a makeshift for the special situation resulting from the promulgation of the controversial new decrees by the first Vatican Council, but its search for ecclesiastical unity was not different from the above-mentioned inclination in the Primitive Church. This helps to explain why the International Bishops' Conference is sometimes compared to a provincial or even to an ecumenical council<sup>6</sup>.

Some prudence, however, is called for here. In the recent past the comparison of the IBC to the early councils was queried by Kok. He raised the question of whether it is permissible to compare the IBC to the synods of the Primitive Church, and whether as a consequence the IBC would have a similar authority. But instead of identifying the Conference with these synods, he rather sees as a primary task for the Conference – as well as for all others who preside over a local church – to become more conscious of a joint responsibility to create room for a true ecumenical council<sup>7</sup>. Moreover, I should point out that it was the Old Catholic view, which, following the Orthodox Churches, reserved the designation “ecumenical” merely for the seven councils held in the undivided Church of the first thousand years<sup>8</sup>.

The comparison to a national or provincial council is also difficult to maintain, for a number of reasons. In the first place it is not only the bishops who participate in the provincial council, but also representatives of the lower clergy, although only the bishops are fully qualified to vote. But what is actually the purpose of provincial councils? In this respect Zegers Bernard van Espen, the Louvain canonist who defended the position of the church of Utrecht at the beginning of the eighteenth century, mentioned two points, that is to say to correct mistakes (*vitia corrigere*) and to reform morals (*mores reformare*)<sup>9</sup>. In the IBC, however, representatives of the lower clergy and laity are absent, while the original purpose as laid down in the first Agreement of the Union is much more restricted than the generally

<sup>6</sup> *Stalder* (note 2) p. 205 and 217.

<sup>7</sup> *M. Kok*, *Constitutions of the Old Catholic Churches*, in G. Huelin (ed.), *Old Catholics and Anglicans*, Oxford 1983, p. 23–24.

<sup>8</sup> Seven councils according to the eastern count, but eight councils according to the western count. Cf. J. F. von Schulte, *Altkatholizismus*, Giessen 1887 (Aalen 1965), p. 308, note 4.

<sup>9</sup> *Ius Ecclesiasticum Universum* Part. I Tit. XX Caput III N<sup>os</sup> 6–8.



phrased assignment to correct mistakes<sup>10</sup>. In 1889 the bishops did not decide to exercise their authority on an international level, but merely agreed not to undertake any commitments towards other churches without mutual consultation<sup>11</sup>. In matters not concerning the relation with other churches, on the contrary, they went their own way as they had in fact been doing before, for example as regards the questions of separating priesthood and celibacy, of recognizing the validity of the anglican orders, the use of vernacular in the liturgy, the participation of laity in the administration of the church and the competence of national synods.

But there is an additional reason why it is somewhat difficult to class the IBC with a provincial council. Provincial councils did take place in the past, although not very often. In the province of Utrecht it only happened on two occasions. The first one took place in 1565 under archbishop Frederick Schenck, and the second one in 1763 under archbishop Peter John Meindaerts. Thus, the provincial council is an existing institution and the possibility may not be excluded that in the future it still may serve to offer useful solutions for cases where mistakes have to be corrected or morals have to be reformed, although the practical need for future councils seems to be rather limited in the Netherlands. This has to do with several developments in this century. First of all, the Netherlands bishops have increasingly followed a joint course in administrating their dioceses. Secondly, new advisory bodies were established. The main one, confusingly enough termed as “the synod”, is a national committee composed of representatives of the parishes and the clergy. This “synod” is entitled to advise the bishops on any matter whatsoever. It is rather this continuous combined action between bishops and synod on a national level, and not so much the Utrecht Union and its Conference, which can be considered a contemporary modelling of the rôle of the provincial council.

For these reasons, the classing of the International Bishops’ Conference with an ecumenical or provincial council may raise some doubts. As a consequence the relation between the bishops assembled in the Conference and the churches they represent is not identical to the one between council fathers and their local churches. The bishops, gath-

<sup>10</sup> The Conference is capable to institute advisory committees. See Regulations of the Conference (1974) Art. 8.3. By means of such committees the lower clergy and laity can be involved in the work of the Conference.

<sup>11</sup> Vereinbarung (1889) § 5.

ered in the Union, in a sense do carry on the tradition of the synods of the Primitive Church, but this does not lead to the conclusion that the IBC has a comparable authority. Apart from the differences in composition between the early synods and the IBC, we must take into consideration that nowadays the existing canon law framework is quite different, because we ascribe – at least theoretically – a distinct and more predominant position in the structure of the church to the provincial and the ecumenical councils.

(iii) The IBC is as regards its legal character comparable to provincial conferences of bishops

It is possible, though, to compare the International Bishops' Conference to an existing institution of traditional canon law. The bishops of the Utrecht Union are in the position to act in a collective way comparable to the long-standing cooperation between diocesan bishops in the administration of the entire province. Here we encounter a similar situation and, consequently, the legal character of the IBC will not be very different from the one of provincial or national bishops' conferences.

Starting from the premiss that the Special Ministry is an institution of divine law, that the bishops, following in the footsteps of the Apostles, have the plenitude of the priestly office and that the territorially confined diocese is a basic component in the structure of the church, whereas on the other hand the Utrecht Union and its Conference are rather provisional institutions of ecclesiastical law, it follows that the Conference has no powers to curtail the bishop's authority.

Bishops are free, though, to agree upon expressing the unity of apostolicity by no longer ruling on certain matters autonomously, but rather in a mutual *communio*. By doing so they indeed create legal relationships between themselves, although they are not capable of transferring their own authority to an international level. As a consequence they cannot create a hierarchically higher authority with a direct coercive power in their churches. They cannot subject themselves to a central authority, but will nevertheless be bound by the agreement that they voluntarily entered into. Every time a bishop does not keep to his word, the unity of Old Catholic churches is in danger, but the bishop does not have to fear a direct interference of the Conference in his church. The revised Agreement does not even recognize the possibility of excluding him from the Conference, because it merely men-



tions other grounds for doing so, such as lapses of confession or morals<sup>12</sup>.

As a consequence, the Conference has no binding legal authority of its own. Its decisions can merely obtain authority through the ordinary jurisdiction of the members of the Conference. Provided the Conference has some authority it is rather a moral, metajuridical one, which may never be identified with jurisdiction and can never prevail over jurisdiction. As explained above, a specific competence of ordinary jurisdiction can through devolution sometimes be exercised by persons other than the diocesan bishop under special circumstances, but jurisdiction cannot be transferred at the bishop's own discretion. Thus, the IBC is no Union-government, no super-ecclesiastical body with discretionary powers. The Conference can never be in the position to exercise episcopal jurisdiction, not even in Old Catholic missionary territories<sup>13</sup>, while it is the unanimous judgement of diocesan bishops with their special authority and nothing else which can give legal force to the statements of the Conference.

#### (iv) A union of bishops or a union of churches?

Here we encounter an important factor which even diminishes the limited authority of the Conference. Although it is quite acceptable to talk about the Utrecht Union of Old Catholic churches, the original intention was to give shape to the unity of the Church not by uniting the several churches, but by creating a place for mutual consultation for their bishops. Until the present day, the Conference is not a body of churches, but rather of bishops. It should be noted, however, that in view of the actual composition of the Conference, there is no obvious foundation of its proceedings upon ecclesiastical jurisdiction and this very datum by itself weakens the Conference's position. I should explain this more fully. According to our traditional Old Catholic approach, ordinary jurisdiction fundamentally rests with the church as the whole of faithful clergy and laity and is only exercised by its bishops. For churches which for whatever reason are deprived of a bishop of their own, we may not presume that jurisdiction is lost. At the beginning of the eighteenth century the church of Utrecht had to do

<sup>12</sup> Vereinbarung (1974) Art. 14.2.

<sup>13</sup> It should be noted that such a competence is wrongfully claimed for the Conference itself in the present Agreement: see Vereinbarung (1974) Art. 5.2.

without a bishop for about twenty years. Leading canonists maintained that during this “bishopless” era, the entire jurisdiction was preserved within the metropolitan chapter of Utrecht as the representative of the clergy. Similarly, we should acknowledge that nowadays jurisdiction is still present in Old Catholic churches where the episcopal see has been vacant for some time, such as the Czech and Croatian dioceses. These churches, however, are not fully represented in the Conference and are merely allowed to send an observer<sup>14</sup>. The Conference in its present set-up is, as above-mentioned, not a body of churches, but rather of bishops; however, even some of them, such as the emeritus and titular bishops, have no jurisdiction at their disposal, whereas the Conference, perhaps compelled to act as such under the influence of the long-term dialogues with other churches, sets itself up as the representative of all Old Catholic churches on the universal level. As a matter of fact, one could argue, that according to the Agreement only bishops who actually rule a church or a diocese have the vote<sup>15</sup> and that statements of the Conference are based upon the voters’ jurisdiction. Nonetheless, this does not alter the fact that according to the present Agreement *episcopal consecration* is the determining criterion for the membership and the composition of the IBC. The first and only criterion for the exertion of administrative powers and doctrinal authority in the church, on the other hand, is not so much this episcopal consecration, but rather *episcopal jurisdiction*.

Having this said we encounter a subsequent problem. Starting from the idea that at least a number of the bishops in the Conference are diocesan bishops, the question arises whether the jurisdiction of these individual members may be considered as having merged into a new authority, that is to say the one of the Conference, as if the bishops constitute a college and share in each other’s doctrinal authority. We have to admit that diocesan bishops are not always in a position to exercise their doctrinal authority entirely at their own discretion. However, their being bound does not in the first place result from some kind of solidarity with fellow members of the IBC. In most cases it is rather embedded in the domestic constitution of their local churches, where all kinds of advisory bodies may be operating and where their doctrinal authority may even be delegated to other institutions. Thus, the bishops assembled in the IBC have, at least morally, no complete

<sup>14</sup> Vereinbarung (1974) Art. 6.4.

<sup>15</sup> Vereinbarung (1974) Art. 6.1.

freedom of action and, as a consequence, it can sometimes be very hard to reach an unanimous decision. Because of the fact that the opinions and the wishes of the several national churches indirectly play a rôle which should not be underestimated, the unanimous statements of the IBC should be seen as collective rather than as collegiate judgements and this in spite of the evangelical concept of the Ministry. There is, however, yet another reason why the qualification of statements as collegiate acts would be somewhat ill-chosen. The fraternal deliberation of bishops is of the utmost importance, but we must always be aware of the fact that true collegiality is only realised in the ecumenical council. For these reasons the IBC cannot, as mentioned above, be characterized as a super-ecclesiastical body with discretionary powers of its own. As with the Old Catholic Congresses, it is rather a means to give shape to the unity of the church. The bishops in the IBC are in a position to pursue this aim by following a joint course, which is all the more required as soon as the common premisses of Old Catholicism are at issue.

#### (v) The authority of the IBC

How should the limited authority of the IBC thus be qualified? As explained above, the Conference itself is not capable of imposing judgements upon its members or upon the local churches. Implementation of the Conference's statements can only be realized by means of the ordinary jurisdiction of the bishops. This was in fact what Kok meant when he maintained that the Union has no authority, and that it can merely try to overcome differences of opinion by means of a dialogue<sup>16</sup>. Thus, the IBC has no authority in the sense that it would be a superior legal resort, capable of prescribing what should be done in the local churches. It is out of the question that the Conference would have a coercive authority. This was in fact also meant by Küry, when he rightly remarked that the Union of Utrecht is no legal community and that it has no jurisdiction powers at its disposal<sup>17</sup>.

The value of the dialogue just mentioned, on the other hand, should not be underestimated. By the very nature of their Ministry the bi-

<sup>16</sup> *M. Kok*, 100 Jahre Utrechter Union – Rückblick und Ausblick, in IKZ 79 (1989), 158.

<sup>17</sup> *U. Küry*, Die Altkatholische Kirche, Stuttgart 1982 (third impression, edited by Chr. Oeyen), p. 99.

shops constitute a brotherhood, and by their fraternal consultations they are in a sense following in the footsteps of the Apostles<sup>18</sup> and carrying on the tradition of the synods of the Primitive Church. Compared to true collegiality as expressed in the ecumenical council, however, the IBC remains a temporary makeshift. There are two important points which should not be forgotten. In the first place, a dialogue is not the same as the exertion of administrative powers or doctrinal authority, and secondly there are different kinds of authority in the church. Not all authority has a legally binding character.

The latter observation may require further explanation. As Stalder rightly defended, the law in the church can be characterized as a system of assignments and responsibilities and not as a system of powers of decision<sup>19</sup>. This does not mean, however, that all assignments and responsibilities in the church have a distinct legal character. Some of them do, such as decisions which are not only exhortations, but actually demand to be observed. Let me give an example. If a bishop chooses to ordain women to the priesthood, his decision will first of all be based upon his assignment and responsibility as being the pastor of his diocese. It has little to do with coercion or repression. In such a way we may conceive the concept of law in the church. At the same time, however, the bishop's decision is nevertheless based upon jurisdiction as a category of positive law, whereas its consequences are inescapable. There are, on the other hand, actions, which are as much based upon assignments and responsibilities, but which do not have a legally binding character. The exhortations originating with the IBC may belong to the latter category. For this reason we can qualify them as moral or metajuridical rather than legal. In theory some pronouncements of the IBC can be qualified as legal, such as provisions governing church life. However, they can merely be legal in a narrower sense of the word, that is to say not in the sense that they have a direct validity for the local churches, but in the sense that they may serve as a guideline for the local churches. Until now, though, the IBC has not regarded it its task yet to pronounce upon such issues.

There are different matters, on the other hand, the IBC apparently deals with. Apart from statements concerning the common foundation of the churches gathered in the Union, the revised Agreement of 1974 makes mention of the Conference's competence to pronounce upon

<sup>18</sup> Cf. Acts 15:1–21.

<sup>19</sup> *Stalder* (note 2), p. 206–212, 249–254, 270–272.

disputed questions of faith and ethics<sup>20</sup>. Moreover, these judgements should be proclaimed as doctrinal pronouncements in the united churches<sup>21</sup>. But which considerations have given the Conference the idea of raising the judgement in disputed questions of faith and ethics to the international level? And can such a competence be acquired by a simple revision of the Agreement? It is obvious that the ecumenical dialogue with other churches requires communal Old Catholic opinions on many issues. From a legal point of view, however, a more cautious approach is called for. The mere provision of the Agreement, prescribing that the judgements of the Conference in disputed questions of faith and ethics must be proclaimed, is insufficient to create a competence for the IBC. The Agreement will bind those who entered into the agreement, but it cannot restrict their authority.

Apart from this legal qualification, it should be noted that an increasing involvement of the IBC also constitutes a danger. A divergence of opinion between the national churches can sometimes too easily be regarded a question which should be decided upon by the International Conference. In order to determine whether a dispute does or does not concern the communal foundation of the Union, the text of the Declaration may be directorial. But what standards do we have in order to evaluate whether or not a certain controversy concerns a question of faith or ethics? Again, the mere fact that a problem is experienced as such by one or more of the members of the IBC is insufficient, whereas the text of the Agreement itself does not give further instructions.

There is an imminent danger of concentrating decisions in a coordinating, central organization such as the Conference, by pretending that the question involved concerns the unity of the churches or that it should be qualified as a question of faith or ethics. Such a tendency will, in its turn, endanger the very existence of the Union, that is to say if too little room is left for the domestic opinion of the national churches. After all, the traditionally binding factor of the churches of the Union is the autonomy of the local church, the fact that it does not admit any subjection to the view of a central, universal authority which prescribes uniform answers that must be accepted. Consequently we should be rather wary about leaving too easily a disputed and difficult problem to the decision of the International Bishops' Conference.

<sup>20</sup> Vereinbarung (1974) Art. 5.4. The first revision of 1952 did not yet introduce a provision of that import.

<sup>21</sup> Vereinbarung (1974) Art. 5.5.



Having said this, the sensitive subject of the ordination of women inadvertently comes back to mind. It goes without saying that this question is disputed within the Utrecht Union. There is, however, an element of doubt about whether it can be classed either as a question of faith or ethics or as an issue concerning the communal premisses of the Union. The latter is not very likely. The difference of opinion in 1889 concerning the separation of priesthood and celibacy was in any event not an obstacle which kept the bishops from constituting the Union. In a similar vein, the ordination of women does not affect the essence of the communal premisses of the Union. And yet the proceedings of the IBC in the recent past create the impression that, as regards this specific issue, the Conference tends to do more than merely serve as the forum of mutual consultation, with all the dangers that such a tendency entails. If the national churches, with their divergent social and cultural backgrounds, are not granted some freedom of action and are not allowed to form a public opinion of their own, or are kept from putting into practice the logical consequences of their own, sincere belief, we might enter into a situation where national churches or individual bishops will feel morally obligated to follow the true conviction of their own churches and to ordain women to the priesthood without the consent of the Conference. These actions will seem to endanger the unity within the Utrecht Union. However, also the preceding tendency of the Conference to arrogate all kinds of decisions lies at the bottom of such events.

### **III. Conclusions**

Let us draw some conclusions. In summary, we can say that the International Bishops' Conference gives shape to the ecclesiastical unity of the Old Catholic churches, gathered in the Utrecht Union. This is realised by pronouncing collectively and unanimously upon questions concerning the communal premisses of the Union as laid down in the Declaration. The same can be said for disputed questions of faith and ethics, provided that a common consent can be reached within the Union. The agreement by which the bishops voluntarily decided to rule in concert on these matters can be found in the revised Agreement of 1974. Certain statutory provisions aimed at setting such collective action on the right lines can be found in the revised regulations of 1974. These documents inevitably create mutual legal relationships be-



tween the bishops in the Conference and their churches. From such a point of view the Union does have certain canon law aspects.

As explained above the Conference itself, on the other hand, is no lawful authority in the legal sense. This view has various important implications:

1. The International Bishops' Conference of the Utrecht Union is no super-ecclesiastical body. It is primarily a forum for fraternal consultation. Its strength consists in the pastoral care of the bishops for each other's churches, which reveals itself during the deliberations of the Conference.

2. The statements of the Conference may be of the utmost importance, but they can never be taken as directly binding provisions. Depending on their content they will mostly have a moral, metajuridical character. In theory they can have a more legal character, but then only in the narrower sense of the word, i.e. that they may serve as a guideline. An actual binding validity can never be obtained by virtue of the authority of the IBC itself, but only by virtue of the ordinary jurisdiction of its members.

3. The Conference itself cannot compel its members to implement decisions of the Conference. In the case of weighty arguments they cannot be prevented from deviating from the standpoint previously taken in the Conference. The refusal to adopt the judgements of the Conference and the acting without the consent of the Conference implies that the bishops and their churches will draw apart. The present Agreement, however, does not impose legal sanctions upon such behaviour.

These conclusions seem to be in accordance with a number of provisions of the revised Agreement of 1974, but there are also provisions in the same document which seem to present a different view, whereas others, such as the one dealing with the assessment of impediments to reception of orders<sup>22</sup>, are susceptible to various interpretations.

Therefore, I hope this paper may serve a twofold purpose, namely, that it may contribute to the exchange of ideas during this conference and, secondly, that it can be of use for future revisions of the Agreement<sup>23</sup>.

Utrecht

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<sup>22</sup> Vereinbarung (1974) Art.9.3

<sup>23</sup> I would like to thank Prof. E.C. Coppens and Dr. G. Chr. Kok for their help.

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