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Multilateral Treaty-Making Process
Agenda item 123

REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS

Working paper

For the sake of convenience and for the purpose of facilitating an analytical review, the entire multilateral treaty-making process is divided into four major phases: initiation of a treaty-making process; formulation of a multilateral treaty; adoption of a multilateral treaty; post-adoption and entry into force. Bearing in mind their interrelationships, the relevant points and issues that may arise during this process have been set out under these four phases. These points and issues are not intended to be exhaustive, and additional ones may arise during the discussion.

I. Initiation of a treaty-making process

(see A/35/312, paras. 21-29 or ST/LEG/SER.B/21, part two, paras. 21-29)

A. Initiating a proposal for making a treaty

1. Entities that may initiate a proposal for making a treaty
2. Organ in which a proposal may be initiated
3. Requirements for initiating a proposal, e.g., inscription of an agenda item, minimum number of sponsors

B. Evaluation of a proposal for making a treaty

1. Undertaking of studies to assist in the evaluation of a proposal
 - (a) Questionnaire: preparation, dispatch, evaluation of replies
 - (b) Feasibility studies 1/ including financial aspects and potential interest of States in the proposal
 - (c) Entities to perform these tasks
2. Preliminary consideration of the choice of instrument other than treaties: 2/ possible alternatives, e.g., declaration, standards, code of conduct, model laws, guidelines, recommendations, etc.
3. The taking of a formal decision by the competent organ(s) regarding a proposal for making a treaty
4. Co-ordination among treaty-making organs and organizations

II. Formulation of a multilateral treaty

(see A/35/312, paras. 30-50 or ST/LEG/SER.B/21, part two, paras. 30-50)

A. Undertaking of studies to assist in the formulation of a multilateral treaty 3/

1. Collection of relevant data: legal, technical, etc.
2. Preparation of studies on relevant, specific problems or issues, e.g., the utility of a frame treaty and of amending an existing treaty, conflicts with other treaties, etc. (see in particular A/35/312, paras. 49 and 62 (a) or ST/LEG/SER.B/21, part two, paras. 49 and 62 (a))

B. Drafting

1. Entity to prepare initial draft
 - (a) One or more States
 - (b) A representative organ or conference
 - (c) A group of experts 4/
 - (d) The Secretariat
 - (e) Other entities

2. Entities for preparing further drafts

3. Languages of the draft

C. If the adoption is by the General Assembly

1. Special rules of procedure, in particular, to deal with such issues as drafting, languages, records and commentaries, participation of non-member States, intergovernmental organizations and non-governmental organizations, and special voting procedures

2. Role of the Sixth Committee, e.g.:

(a) Joint meetings of the Sixth with other Main Committees (see Rules of Procedure of the General Assembly, annex II, para. 1 (d))

(b) Consideration of all formal and legal clauses by the Sixth Committee

(c) Provision of legal advice

(d) Review of the text as a whole by the Sixth Committee

D. If the adoption is by a diplomatic conference

Formulation of standard rules of procedure to deal with such issues as drafting, languages, records and commentaries, participation and adoption (see General Assembly resolution 35/10 C; these questions are covered under agenda item 130)

IV. Post-adoption and entry into force

A. Follow-up action, e.g., periodic reports on steps taken, recommendations for steps to be taken by States in respect of a convention

B. Provision of advisory services, e.g., translation of texts, drafting implementing legislation

C. Preparation and publication of records and commentaries

D. Monitoring of treaty implementation, e.g., through treaty organs or other bodies

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4. Final clauses

(a) Their inclusion at this stage

(b) Methods of facilitating acceptance, e.g., permitting the acceptance of an instrument by parts, allowing reservations, provisional entry into force, flexible acceptance clauses (A/35/312, paras. 58-59 or ST/LEG/SER.B/21, part two, paras. 58-59)

(c) Methods of amending treaties, e.g., simplified forms of amendments, use of technical annexes (ibid., para. 62 respectively)

5. Preparation of commentaries, explanatory notes, etc.

C. Solicitation of comments on the drafts

1. From all States or from a selected group

2. From inter-governmental organizations and other entities

D. Drafting Committee

1. Time of establishment

2. Composition

3. Functions to be assigned, e.g., formal and legal clauses, certain specific provisions

E. Problems resulting from the lack of personnel and financial resources: 5/
provision of legal advisory services through technical assistance

III. Adoption of a multilateral treaty

(see A/35/312, paras. 51-56 or ST/LEG/SER.B/21, part two, paras. 51-56)

A. Determination of readiness for adoption

B. Choice of forum, e.g., organs such as the General Assembly, ad hoc diplomatic conferences

Further studies

1. Formal clauses, including updating the Handbook of Final Clauses

2. Annotated manual of treaty-making techniques

Notes

1/ Even at this stage the tasks mentioned under formulation of a multilateral treaty (II.A.) may be necessary.

2/ In some cases, the points mentioned under this heading may have to be considered prior to the undertaking of studies just mentioned above, or in subsequent stages.

3/ This may also be required at the subsequent stages.

4/ For example, the International Law Commission.

5/ Such problems may arise both at this and other phases of the process.
