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REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS

Report of the Secretary-General

CONTENTS

I. INTRODUCTION

1. This report is submitted in response to General Assembly resolution 35/162 adopted on 15 December 1980.

2. At its thirty-second session, the General Assembly, by its resolution 32/48, requested the Secretary-General to prepare a report on the techniques and procedures used in the elaboration of multilateral treaties with a view to submission to its thirty-fourth session. Governments and the International Law Commission were invited to submit their observations on the subject; those specialized agencies and other international organizations which were active in the preparation and study of multilateral treaties, and the United Nations Institute for Training and Research, were also requested to lend any necessary assistance. In implementing this resolution, the Secretary-General invited these organizations, and a number of offices within the United Nations Secretariat itself, to give an account of treaty-making techniques and procedures employed in their respective fields. The consideration of this question was postponed at the thirty-fourth session owing to the limited repsonse received within the original deadline.

3. At the thirty-fifth session of the General Assembly, the Secretary-General submitted a report (A/35/312 and Corr.1, Add.1 and 2, and Add.2/Corr.1) in which he discussed the general features of multilateral treaty-making within the United Nations and within other intergovernmental organizations. In addition to such questions as the initiation of treaty making and the formulation and adoption of multilateral treaties, the report dealt also with ways of accelerating and enlarging participation in treaty making. Section IV of the report set out a series of questions that could be taken into account in the examination of the multilateral treaty-making process.

4. The report was discussed by the Sixth Committee (see A/C.6/SR.55, 60-64, 73 and 75) and, upon its recommendation, the General Assembly adopted resolution 35/162, in which it invited Governments and international intergovernmental organizations to submit their observations on the report, and requested the Secretary-General to make that report widely available to the interested organizations active in the preparation and study of multilateral treaties, and to invite them to comment on the subject of the report. The Secretary-General was requested to collate and arrange the material that had been received pursuant to resolution 32/48, with a view to its possible publication, and to prepare and publish new editions of the Handbook of Final Clauses and of the Summary of the Practice of the Secretary-General as depositary of multilateral agreements. The Secretary-General was also asked to prepare a report containing the replies received as well as a topical summary of the debate at its thirty-fifth session for submission to the General Assembly at its thirty-sixth session.

5. In implementing resolution 35/162, the Secretary-General invited Governments and international intergovernmental organizations to submit by 31 July 1981 their observations on the report of the Secretary-General, taking into account the specific questions contained in section IV thereof, as well as their comments on

any other aspect of the subject, as they considered desirable. The observations and comments received are reproduced in sections II and III below. Section IV contains a topical summary of the views expressed on this subject by representatives during the thirty-fifth session of the General Assembly. Its structure follows the format of section IV of the Secretary-General's report to the thirty-fifth session (A/35/312), reproduced in annex I to the present report.

6. Annexes II and III contain the relevant information regarding possible publication of the material that had been received pursuant to resolution 32/48, and regarding the publication of new editions of the Handbook of Final Clauses and of the Summary of the Practice of the Secretary-General as depositary of multilateral agreements.

II. REPLIES RECEIVED FROM GOVERNMENTS

ARGENTINA

[Original: Spanish]

[7 August 1981]

A. Additional studies

1 and 2. Bearing in mind that the subject should not be approached too hastily, since it is important to adopt a methodical, long-term approach, an attempt might be made to solicit additional detailed responses from intergovernmental organizations, both on the questions already raised and on any others which may arise from the discussions on the subject in the Sixth Committee.

3. In view of the specific nature of the questions generally dealt with by each intergovernmental organization, it would be preferable to publish the responses in a separate volume.

4. It would be useful to reissue the Handbook of Final Clauses, updated and extended as indicated, and to devise a system for continual updating at the lowest cost (e.g., loose leaves).

B. Over-all burden of multilateral treaty-making process

1. It should be borne in mind that the burden of the treaty-making process may be too great for the personnel that some States can make available to participate in expert and representative organs and for the domestic legal resources of States that must consider the ratification of treaties.

Nevertheless, to the extent that this burden cannot be reduced and while studies on rationalizing the process are continuing, the United Nations should urge States to take the necessary steps to acquire such personnel and domestic legal resources.

The international community, for its part, without prejudice to the setting of priorities in treaty-making and in realization of the fact that such treaty-making should not be an arbitrary exercise but a necessity of the international legal order, should seek to increase as much as possible the resources available at the international level for the multilateral treaty-making process, in order adequately to meet genuine needs.

C. Overall co-ordination of multilateral treaty-making

1 and 2. The General Assembly should, without prejudice to the gathering and dissemination of data, assume a co-ordinating role in respect of multilateral treaty-making activities, directly in the case of all organizations of the United Nations system and indirectly in the case of intergovernmental organizations.

With respect to the former, it should propose subjects to be considered or deal with subjects referred to it. In so doing, it should take into account the results of the search for existing instruments on the subject and the current work of other United Nations organs or organizations within the system and of all intergovernmental organizations.

It should identify the organs and organizations of the United Nations system most suitable to conduct such a study.

With respect to intergovernmental organizations, it should co-ordinate the activities with those of the United Nations system, maintaining close co-operation through:

The gathering and dissemination of data on all treaty-making activities;

The free exchange of such data;

Recommendations to intergovernmental organizations on the treaty-making process, including for instance, proposals concerning subjects within their competence which they might consider, subjects which for stated reasons it would be advisable to leave to other organizations and subjects on which complementary work might exist concerning the majority necessary in order to give votes greater authority concerning voting by consensus on certain subjects; and concerning means of making treaties more flexible (reservations to be allowed, system of deposits, etc.).

This could constitute a first step towards systematic reorganization of the international legislative process.

3. This task could be entrusted to the Sixth Committee, duly assisted by the United Nations Office of Legal Affairs or any other department considered appropriate in the interests of continuity, particularly administrative continuity. For example, with respect to studies to be carried out, these would be the gathering and publication of information, the exchange of information with intergovernmental organizations and the receipt and processing of information; memoranda to the legal offices of other organizations; and research and studies on subjects proposed or to be proposed.

Continuing research on the various procedures which the organs and organizations of the system could use, and of those used by intergovernmental organizations, should be carried on with the aim of identifying short-comings or possible improvements.

D. General improvements of the treaty-making process in the United Nations

1. Before embarking on the formulation of a particular treaty, it would be advisable to ascertain the potential interest of States in the subject-matter.

To that end, States should be supplied with background information together with the proposal and its source and any other useful data, so that Governments can form an advised opinion. The subject should have been thoroughly debated prior to these consultations, in order to gain a clear idea of the principles which it is intended to include, thus ensuring adequate political preparations of the treaty from the outset and disclosing whether consideration of it might be premature. The way towards the supreme act of ratification, in which the whole process culminates, will thus be smoothed from the outset. Thorough debate followed by consultations will help to determine the need to undertake the work and its chances of success.

This preliminary stage should also include studies aimed at determining the type of instrument to be formulated.

Once a decision has been taken, formulation of the treaty can begin.

2. In the case of a subject with no political overtones or one where these are of minor importance within the subject as a whole, experience has shown that the preliminary formulation could be entrusted to an organ of experts serving in their personal capacity or to a Secretariat body. The latter would be particularly apt in the case of codification of pre-existing law. Formulation by a representative organ would appear to be preferable in the case of treaties with an important political dimension.

3. A thorough study should be made of the possibility of reducing, in particular, the number of treaty-making organs in the United Nations by concentrating them, in order to avoid duplication of functions and the resulting financial burden.

With respect to the number of procedures, the Argentine Republic has previously stated that the preparation of a manual of recommended practices for multilateral treaty-making, which could serve as a guide for future work, would be of great value and would help to improve the techniques used in formulating the instruments which govern the international affairs of States.

This task would consist of rationalizing and systematizing whatever already exists, and appraising what remains to be done, in the light of the results obtained over the years, and of identifying economical and efficient methods.

It would not, however, be at all possible to accept a single procedure applicable to the codification of existing law when legislating in new areas, to treaties with substantial political aspects and to those which are of an essentially technical character.

The mechanical application of a procedural model to any treaty is not advisable.

E. Work of the International Law Commission

1. Possible structural changes

(a) ILC properly performs its work in accordance with its statute, and has a broad and extremely important mandate.

(b) If ILC continued with its present functions, it would not be necessary to increase the honorarium of the per diem of its members.

(c) As stated previously, having a full-time Special Rapporteur would change the present structure of the Commission: as matters stand, therefore, it would not be appropriate to appoint one.

(d) On those occasions when highly specialized subjects originating from other organs are debated, it might be advantageous to draw a Special Rapporteur from outside the Commission.

(e) This is not necessary, except on very special occasions of the kind mentioned in (d) above.

2. Possible changes in agenda

(a) Inasmuch as the specific function of ILC is the progressive development and codification of international law, that implies the deletion of certain questions and the inclusion of new ones.

(b) The agenda of ILC varies according to demands at a particular time, which it is impossible to detemine in advance.

(c) This does not appear necessary, in view of the fact that larger subject areas are normally subdivided.

3. Possible procedural changes

(a) This will depend on the subject. Some may require more than five years, others less; in any event, the Commissions's system of re-election allows for some continuity.

(b) The frequency with which Governments are consulted at present is appropriate.

(c) This might be useful in urgent cases, but the length of sessions should remain the same.

(d) This is not necessary, but it might be appropriate in view of the nature of the Commissions's work, especially in the case of preambles. If "final clauses" means those relating to the number of ratifications required, entry into force, and so on, that might overburden the Commissions's already sizable workload.

(e) It would be preferable to prepare a text which reflected and attempted to reconcile the views of all States, even if the drafting of such a text required an additional effort on the part of the Commission.

(f) Since the Commission's function is essentially legal, it formulates legal rules on the subjects referred to it in the form of articles. Any other procedure would render the progressive development and codification of international law less flexible.

(g) This would be appropriate in cases in which, by reflecting the views of a group, it gave the Commission a better understanding of such interests or views.

F. Final negotiation and adoption of multilateral treaties

1. It is not possible to lay down a single method for negotiating treaties. Subjects may, and in fact do, require different methods according to their technical or political nature. Specific questions of private international law, dealt with by UNCITRAL, would require the presence of specialized staff, as well as of its secretariat, and several weeks free fom other matters in which to deal with the drafting work.

Account should be taken of the conclusions reached by the Committees themselves, the importance of the Committees, the specific nature of the tasks within their competence and, most of all, the results of their work over the years, which provide a measure of their efficiency.

Overburdening the Sixth Committee's programme of work could indefinitely prolong the consideration of subjects, many of which may be urgent, or force the Committee to remain almost permanently in session.

2. In cases where the nature of the question or the origin of the draft made it desirable for a multilateral treaty to be negotiated by the General Assembly, with regard to which resolution 35/100 will be borne in mind, it would be desirable that texts as complete as possible should be submitted to the Assembly. In the case referred to in the preceding paragraph, the Sixth Committee should normally be involved in the process, even if the substance of the treaty was considered by some other Main Committee.

This would not only strengthen the role of the Sixth Committee in the treaty-making process by enabling it to play the active part envisaged for it at the time of its establishment, but would result in fuller compliance with annex II to the rules of procedure of the General Assembly, (part 1, para. 1(d)), which is usually ignored by the other Main Committees.

It would be appropriate, in this connexion, to recommend that any draft convention formulated by the General Assembly might be referred to the Sixth Committee for its opinion.

This would be done:

If the treaty was being considered by another Main Committee, through joint meetings of the Sixth Committee and the Committee initially dealing with it;

If the treaty did not emanate from another Main Committee of the General Assembly, through a review of the text as a whole by the Sixth Committee.

3. When, for a particular subject, it is decided that the negotiation of a multilateral treaty should be entrusted to a plenipotentiary conference, it should be borne in mind that:

(a) If the subject and the extent to which it has been formulated allow - as in the case of technical subjects of the kind dealt with by UNCITRAL - conferences should be scheduled for periods sufficiently long to avoid convening a further conference. The savings for Governments will be tremendous. The same will be true for the Organization, since it avoids a repetition of formal matters and of movements of staff and materials and ensures continuity in tempo and the identity of representatives of States.

There is also clearly a need in this connexion for specific approaches adapted to the special characteristics and difficulties of the subject, the purpose of the treaty and the practical problems involved.

In some cases, this may make it desirable or necessary to hold, in advance of or during a conference, a series of successive sessions (e.g., the Conference on Asylum, the Conference on the Law of the Sea).

(b), (c) and (d) It would be appropriate to draw up a set of rules allowing variations and providing for the establishment of negotiating committees, which could also hold intersessional meetings if necessary. These rules, which to some extent already exist, would provide a number of model clauses on points for which they are needed, so that they could be adapted to the special characteristics of the subject at the time of their adoption by the conference.

(e) If this refers to spokesmen for institutionalized groups, it would be entirely wrong to restrict formal debate to group spokesmen. Where the members of such a group have a common interest in the subject under consideration, and its spokesmen are genuine and are duly elected, such a restriction will occur automatically.

This is a question involving State sovereignty and it should not be considered.

(f) In some cases the participation of such organizations, particularly non-governmental organizations, is already sufficiently extensive.

G. Drafting and languages

1. It does not appear necessary to create a new international legislative drafting bureau.

2. The present functions of drafting committees are generally adequate - giving advice on the drafting, preparing drafts, and co-ordinating, reviewing and polishing of adopted texts without reopening discussion of fundamental points or altering the substance of the texts.

3. Treaties should continue to be formulated simultaneously in all languages, in order to preserve the equal rights of the various language groups and their right to monitor in their mother tongue the texts which they help to draft.

H. Records, reports and commentaries

1. Verbatim records should be kept at least for the main committees of plenipotentiary conferences and for as many as possible of the organs normally engaged in the formulation of treaties.

2. A full report should be prepared of the discussions on every treaty that is adopted, indicating various positions taken, the arguments on which they are based, the reasons for changes in the texts and other points of interest.

3. Commentaries on draft treaty texts formulated by expert groups or by representative organs provide additional documentation relating to the pre-conference phase and, together with commentaries on the texts of treaties already drafted, are of particular importance, when incorporated in the travaux préparatoires, in helping those legal organs of States that are responsible for ratification.

4. A systematic effort to prepare and publish the travaux préparatoires of most or all multilateral treaties would make an extremely valuable contribution to the full understanding of conventional international law on conventions, the progressive development of which is the responsibility of the United Nations.

I. Post-adoption procedures

1. Without prejudice to the sovereignty of States - a point made in UNCITRAL when this subject was considered in connexion with conventions adopted in its field of competence - the United Nations should consider this matter and take action which fully respects State sovereignty. This will help to achieve the sound objective of ensuring that the tremendous efforts exerted to bring about the codification of international law are not wasted, because the texts formulated remain indefinitely as instruments not legally binding on States.

2. There is no apparent objection to this kind of action, namely, addressing a questionnaire to States as to why they fail to become parties to a particular multilateral treaty.

Such a procedure would have the merit of causing States gradually to look into the question, how many existing treaties they are parties to and systematically update their position towards such treaties; the fact that they themselves had created the obligation, through the organization to which they belong, would provide an incentive.

The obligation to opt out, as an act of sovereignty, will indicate which treaties have become inoperative because there is no prospect whatever of their being ratified in the medium term. In addition, where the prospect of ratification is almost toally lacking, it will give the few States which have become parties an opportunity to consider whether in those circumstances, there is any point in remaining tied to a treaty or whether they should denounce it and conclude bilateral treaties among themselves. This is obviously one way of tidying up international law on conventions.

3. There would appear to be no objection to the establishment of a legal régime under which States would be required to submit treaties to the appropriate domestic organs with a view to possible ratification and to report on the steps taken later.

The requirements would involve nothing more than a report on whether ratification was in prospect or not.

4. The Organization could, as a form of technical assistance, make available to States which so requested special rapporteurs or other experts to assist them with their internal ratification procedure.

5 and 6. Automatic or provisional entry into force is not desirable for any category of treaty. In view of the difficulties encountered by Governments in obtaining the ratification of international legislation, such a list of opposition does not appear salutary.

J. Treaty-amending procedures

Subject to the possibility that a more detailed study of the question within the Organization may suggest the contrary, as things stand at present it would not appear advisable to provide for automatic supercession in respect of States parties which later become parties to other treaties in respect of the same subject. Apart from the fact that the States parties to the two treaties may be different, their approach may be dissimilar.

There is a recognized recent trend towards the ever-greater use of framework treaties, and this practice may be useful when the nature of the subject-matter and the problems it presents require it.

BRAZIL

[Original: English]

[22 July 1981]

1. The Brazilian Government believes that the consideration by the General Assembly of the item "Review of the multilateral treaty-making process" is a very useful exercise. It affords an opportunity to take a serious and comprehensive look at the treaty-making process as it has evolved in international practice and to devise, if necessary, improvements in that process.

2. The report of the Secretary-General (A/35/312) offers an excellent base for the consideration of the subject.

3. A careful examination of the report and of the annexes thereto leads to the conclusion, contained in the report itself, that a diversity of subjects, submitted to a membership with varied interests and priorities, makes it impractical to evolve rigid and broadly applicable treaty-making procedures.

4. One should therefore exclude, as impractical and unwise, any attempt to reduce the present flexibility in the treaty-making process, by drawing up a set of rules to be universally applied.

5. The following comments deal with the suggestions presented in section IV of the Secretary-General's report.

A. Additional studies

6. Although the usefulness of additional studies on the subject is not disputed, it is doubtful whether the practical results that could be obtained would justify the effort and expense involved. The updating of the Handbook on Final Clauses, with its extension to additional categories of formal clauses, however, seems an acceptable suggestion.

B. Over-all burden of multilateral treaty-making process

7. There is no doubt that the burden of multilateral treaty-making is becoming too cumbersome, both for governments and international organizations. However it does not seem possible to envisage a decision of a general and abstract character to reduce the number of treaties being formulated. If a decision is taken to prepare a treaty on any given subject, it is because a majority of the States involved believe that such a treaty is necessary.

8. It can only be hoped that States will exercise some restraint, and, when making their decisions, will take into account their own possiblities and the possibilities of the international organizations in coping with the problems involved.

C. Over-all co-ordination of multilateral treaty-making

9. Although in theory it would seem possible for the General Assembly to play a co-ordinating role in the multilateral treaty-making activities, conceptual and practical considerations could be advanced against that course. On the one hand, it would imply an undesirable centralization, were the Assembly to attempt to concentrate in a single body, possibly the Sixth Committee, the responsibility of guiding the whole mutilateral treaty-making process through the examination of such a very broad spectrum of subjects, sometimes of a very specialized nature. But, on the other hand, if the Assembly limits itself to the gathering and dissemination of information, the item would soon become just a routine exercise, like many others now in its agenda, without any meaningful content.

D. General improvement in the treaty-making process in the United Nations

10. There is no doubt that a close look should be taken at the real need for a treaty and at the feasibility of the treaty-making exercise before starting on the preparation of a treaty. However it would not seem to be practical to set down formal specific steps that should necessarily be taken before the actual drafting is begun. One does not see advantages in prescribing general rules as to which bodies would be entrusted with the preparation of certain categories of treaties or in trying to limit the number of bodies engaged in treaty-making processes. It would also seem unrealistic to set down rules trying to determine the duration of the process. Efforts should of course be made, in each case, to proceed with the work as quickly as possible, but account must be taken of the complexities of each exercise and of the resources that States are able to devote to it.

E. Work of the International Law Commission

11. The Internatonal Law Commission considers that "the techniques and procedures provided in its Statute, as they have evolved during a period of three decades, are well adapted for the object stated in article 2 and further defined in article 15, i.e., 'the progressive development of international law and its codification'". The Brazilian Government shares this view and considers that any suggestions for modifications in the procedures followed by the Commission, as well as in its structure, should be made by the Commission itself, if and when the Commission feels they are needed.

F. Final negotiation and adoption of multilateral treaties

12. It is the view of the Brazilian Government that the present flexibility regarding final negotiation and adoption of multilateral treaties has been useful and should be maintained. The decision on whether to convene a plenipotentiary conference or to have the final negotiation and adoption of a treaty in the General Assembly should always be taken on an ad hoc basis, in each specific case. For technical reasons, however, in the General Assembly the Sixth Committee should have a larger role in the preparation of treaties, either through joint meetings with other Committees or through the review of the text as a whole within the Sixth Committee itself.

G. Drafting and languages

13. The creation of an international legislative drafting bureau does not seem to be a very practical suggestion. The extent of functions to be assigned to drafting committees as well as the procedures they should follow, should be decided in each specific case, taking into account the nature of the subject being dealt with and the pecularities of the negotiating process.

H. Records, reports and commentaries

14. Verbatim or summary records are always useful for future reference, as they may be helpful in clarifying the meaning of certain provisions of a treaty. Whenever possible they should be kept and published. Reports with indication of positions taken and reasons for changes in texts do not provide the same degree of information and are not easy to prepare. Only in very special cases, when the preparation of summary records would be too onerous from the administrative or financial point of view, would it be advisable to rely on such Reports.

15. A systematic effort to prepare and publish the travaux préparatoires of most or all multilateral treaties would seem too ambitious a task. The Secretariat or UNITAR could, however, with approval of the General Assembly, undertake the task of publication of such travaux on a selective basis.

I. Post-adoption procedures

16. The Report of the Secretary-General states that "the general rule remains that, once a multilateral treaty has been promulgated by an organ or conference of an international organization, the organization then takes no substantial interest in the steps to bring the treaty into force that must be taken by individual States, except to the extent that the organization may act as depositary and carry out the formal steps required in that capacity". The Brazilian Government is of the view that that rule should not be changed.

17. Each State being the only judge of its interest in becoming a party to an international treaty, any attempt to influence that decision would be an improper interference in a matter essentially within the domestic jurisdiction of the State. International organizations should not therefore engage in any action aimed at encouraging States to ratify treaties, nor should States be required to give any information as to the reasons why they have not ratified a treaty.

CUBA

[Original: Spanish]

[21 July 1981]

A. Additional studies

1. We think that this should be done, since a more complete analysis will be possible with a great number of opinions in hand.

2. This would be useful.

3. In our view, such an approach would help to determine in advance how a treaty should be formulated and make it possible to choose the most appropriate method for the subject in question.

4. (a) Yes.

(b) Yes, but (a) would be more comprehensive. In any event, those model clauses under (b) that are relevant to the intended purpose could be included in (a).

B. Over-all burden of multilateral treaty-making process

1. (a) The great quantity of legal documents which are drafted, and the protracted procedures involved in many cases, increase both the work-load of specialists and the burden on material budgets, affecting under-developed countries in particular.

(b) These too are affected, but to a less extent because of the professional nature of the staff.

(c) The excessive number of draft treaties to be considered may place too great a burden on the legal resources of the domestic organs of countries which have not enough specialists in the subject.

2. (a) The solution to the problem does not lie in a mechanical reduction of the number of treaties to be formulated, which would inhibit the work of codification that the United Nations has been carrying out. It would, however, be advisable to plan the future progress of such work by analysing the subjects which international experience has shown to be in need of regulation as a matter of priority.

(b) With proper selection and planning of work, there will be no need to solve the problem by increasing the resources available.

C. Over-all co-ordination of multilateral treaty-making

1. (a) Yes.

(b) Yes.

(c) Yes.

2. (a) This might be an alternative, although we consider (b) more decisive.

(b) Within the United Nations, the General Assembly should play a guiding role with respect to subjects to be considered, since this will avoid duplication of some studies and will vitalize the procedure. Interference with the legal status of organizations would, of course, have to be avoided.

3. This function should be exercised by the Sixth Committee, in view of its legal character.

D. General improvements of the treaty-making process in the United Nations

1. (a) Yes.

(b) Yes.

(c) According to the importance of the subject, it must be decided whether the document to be formulated should be a treaty or some other instrument. If the subject is such that regulating it requires adoption by a large number of States, a declaration would not suffice.

If the proposed procedure of consulting States as to their interest in a subject were properly carried out, it would be possible to form a presumption of their willingness to accept obligations under a treaty of that kind. Apart from that, we consider declarations to be advantageous in cases where it is not possible to reach agreement on a treaty or where the subject does not require a treaty.

2. (a) No.

(b) Yes, depending on the subject.

(c) Yes, preferably.

3. The drafting of treaties in the United Nations should preferably be entrusted to the Sixth Committee in co-ordination with the International Law Commission or, where appropriate, with the United Nations Commission on International Trade Law.

4. Technical improvements in treaty-making procedures should certainly be attempted; this would result in an improvement in quality and a reduction in the use of various resources. However, we do not think that it would be advantageous to set specific time-limits for each step of the process.

E. Work of the International Law Commission

1. Possible structural changes

(a) We do not consider this necessary.

(b) No.

(c) No.

(d) Yes, for subject where the technical questions to be regulated are beyond the scope of the legal knowledge of the members of the International Law Commission.

(e) Yes, for the same reasons as in 1 (d).

2. Possible changes in agenda

(a) There may be certain questions that can be dealt with by the Sixth Committee without needing to involve the International Law Commission: conversely, it may be necessary to refer to the Commission some topic which is not at present before it. The matter should be considered on a case-by-case basis.

(b) As stated above, the agenda should be based on a work programme designed to give priority to the most important subjects and to achieve concrete results without unnecessary delays.

(c) It would not be advantageous to divide the study of a subject among a number of organs, although it certainly is advisable to concentrate systematically on specific topics.

3. Possible procedural changes

(a) This could be attempted, but it would depend on the complexity of the subject under consideration. Changes of rapporteur can unquestionably contribute to delay in concluding an item, and so can the replacement of most of the members of the Commission who are already familiar with the subject.

(b) This would be beneficial, since it would show which aspects were most controversial before the formulation of the draft was completed.

(c) If work is divided among a number of working groups within the Commission, the groups should meet intersessionally, which would expedite work during the session.

(d) Drafts formulated by the International Law Commission should include both a preamble and final clauses.

(e) If, as we suggest in (b) above, States are consulted during the formulation of a draft, it will be possible to identify the aspects on which there

are problems and alternative texts could be prepared, provided that the objective pursued is not lost sight of.

(f) This is not necessary and would, moreover, be contrary to the purposes of the Commission and the provisions of Article 13, paragraph 1 (a), of the Charter of the United Nations.

(g) This must depend on the importance of the subject to be regulated.

F. Final negotiation and adoption of multilateral treaties

1. Preferably in, or in co-ordination with, the General Assembly (Sixth Committee). It should, however, be borne in mind that there are subjects of such complexity that the Assembly could not give them due attention and they would require a special conference.

2. (a) Yes, depending on the draft treaty.

(b) Yes, this would be useful and conducive to the negotiation and general understanding of the subject.

(c) (i) Even if the Sixth Committee is not normally involved in the whole process, it should be kept informed concerning the subject under consideration, for which purpose it could hold meetings with the Committee involved.

(ii) It should review in particular the legal aspects.

(iii) Once a text has been formulated, it should be reviewed by the Sixth Committee.

3. (a) Sessions should not be unduly long or too numerous, since both impose a financial burden on States, particularly under-developed countries.

If the organizational work is well done, States will have the information needed for an advance study and the proceedings will be expedited.

(b) Yes.

(c) We see no advantage in this, because it might happen that all the work would gradually be transferred to the negotiating commitee.

(d) This might be appropriate in some cases, but it might also be detrimental, since it tends to remove the subject from the main arena of negotiation.

(e) No, because during the debate new points may emerge which affect a State member of the group and not the group as a whole, in which case, the views of the spokesman would not be sufficiently representative.

(f) In our view, intergovernmental and non-governmental organizations should participate mainly as consultative organs in those cases where they deal with matters relevant to the subject under discussion. However, they could also participate as observers.

G. Drafting and languages

1. No.

2. No.

3. They should be drawn up in the working languages of the United Nations, since the establishment of additional versions might result in unofficial translations which altered the meaning in some respect.

4. This could help to ensure the linguistic uniformity of texts, but should not serve any other purpose.

H. Records, reports and commentaries

1. (a) Summary records.

(b) Summary records.

(c) (i) Verbatim records

(ii) Verbatim records

(iii) Summary records.

2. Any explanatory summary should be produced by the organ formulating the text. Such a summary could assist in analysis, expecially in cases where decisions have been taken on contentious points and there are no records, or where certain matters are to be submitted to another organ for a decision.

3. (a) Yes.

(b) Yes.

4. (a) Yes.

(b) No.

I. Post-adoption procedures

1. The ratification procedures of States are governed by domestic law and should not, therefore, be reviewed by the United Nations. What the Organization can do is to review treaties which have not entered into force and urge States that have not signed and ratified them to do so, especially in cases where the subject

which the treaty is intended to regulate is of benefit to the international community.

2. This could result in a kind of interference in the internal affairs of a State and is therefore not advisable. However, States could be urged to particpate more fully in treaties, especially those of major international interest.

3. (a) Any requirement of this kind has overtones of interference and an obligation to submit treaties to the domestic organs does not mean that they will be automatically ratified.

(b) This would involve a degree of compulsion that might affect the ratification of some treaties.

4. This is not necessary, since States which do not ratify or become parties to a treaty are motivated by domestic reasons and no solution can be provided by an expert from the Organization.

5. This procedure would not be appropriate because, even if the treaty in question entered into force, as long as States did not ratify it or become parties to it they would not be obliged to comply with its provisions, at least where that is required by the various national legal systems.

6. This would not be appropriate, for the same reasons as are stated in the preceding paragraph.

J. Treaty-amending procedures

1. Yes, provided that the form adopted still allows for the approval in due form of the amendment by the parties.

2. This might serve as a simplified procedure.

3. This would depend on the type of treaty and the powers of the organ. It is impossible to generalize. It might be useful in the case of some treaties where the provisions adopted quickly become obsolete owing to technological developments.

GERMANY, FEDERAL REPUBLIC OF

[Original: English]

[3 August 1981]

A. Additional studies

1 and 2. It would seem appropriate to solicit additional responses from intergovernmental organizations. In this connexion reference is made to the current work of the International Law Commission on the preparation of draft articles on the law of treaties concluded between States and international organizations or between two or more international organizations. The responses of intergovernmental organizations should be made accessible to the public in suitable form.

3 and 4. The Secretary-General should prepare a detailed description of the procedures leading to the conclusion of multilateral treaties in the form of a manual and at the same time update the Handbook of Final Clauses.

B. Over-all burden of multilateral treaty-making process

1 and 2. As the burden of treaty-making and treaty implementation can be quite considerable, especially for smaller States, it would indeed appear meaningful to set priorities in selecting material for treaty formulation.

C. Over-all co-ordination of multilateral treaty-making

1 to 3. In view of its composition and its heavy work-load, the General Assembly, being primarily concerned with political matters, is less suitable for co-ordination activites.

D. General improvements of the treaty-making process in the United Nations

1. Thorough preparation of treaty negotiations and conferences in the sense of (a) to (c) is always desirable.

2. The preliminary formulation of the text of treaties should generally be placed in the hands of experts, as in the past.

3. It seems hardly possible to achieve more than a negligible reduction of the treaty-making organs and procedures in the United Nations.

E. Work of the International Law Commission

The techniques and procedures provided for in the Statute of the International Law Commission, as they have evolved in practice, are well suited to the tasks entrusted to the Commission by the General Assembly, i.e. the progressive development of international law and its codification. The quality of the

Commission's work is well recognized by the United Nations members. The draft articles submitted by the Commission to the General Assembly constituted the extremely valuable basis for numerous conventions, elaborated and concluded under the auspices of the United Nations. The summary records of the Commission and the Commission's Report to the General Assembly as well as the reports and studies of the Special Rapporteurs play an important role in legal research and international practice, promoting knowledge of and interest in the process of the progressive development of international law and its codification.

Although the Commission is a permanent subsidiary body of the General Assembly, there is a continuous need for the General Assembly as well as for Member States individually to bear in mind the sui generis nature of the Commission and of its work. Any endeavour to review the possibility of improving the work of the Commission should respect this special status of the Commission, considering that the Commission itself keeps constantly under review the possibility of improving its procedure and methods of work.

1. Possible structural changes

The Federal Republic of Germany does not see a necessity to convert the International Law Commission into a full-time organ. For a full-time organ, it would be more difficult to find outstanding international lawyers willing to sit on the Commission as they would have to give up all other professional obligations. Regular attendance has been a problem for some members; it would be more so, if the Commission met on a permanent basis. The honoraria or the per diem of International Law Commission members should guarantee their financial independence. If Special Rapporteurs are expected to work on a full-time basis this would exclude those members of the Commission as Special Rapporteurs who are in no position to work full-time for the Commission. Remuneration should take account of the extra work-load for a Special Rapporteur.

Special Rapporteurs should be drawn from within the Commission. As the Commission is composed of persons of recognized competence in international law, all its members are qualified as Special Rapporteurs.

Considering the need for thorough legal research as well as the ever increasing amount of legal material being available from the different legal systems of the world, it may be feasible to support the Special Rapporteurs by experts working under their direction. It will depend on the circumstances of the research to be done whether such research should be done by experts working on a permanent full-time basis or on a temporary basis.

2. Possible changes in agenda

As in the past, questions which are primarily of a political or technical nature should not be referred to the International Law Commission. The work of the International Law Commission should continue to concentrate on those issues where member States see a general need for codification and progressive development of international law and where general agreement among the Commission's members as well as among States may be possible.

3. Possible procedural changes

The authority of the International Law Comission drafts and of the Commentaries to these drafts is based on the quality of the work. Time-pressure exerted on the Commission could affect the quality of its work.

Governments should be consulted in such a manner as to guarantee the widest possible acceptance by States of particular draft.

Whether the International Law Commission should formulate preambles and final clauses for draft articles is to be decided in specific cases on a pragmatic basis. A general decision on this question does neither seem necessary nor feasible.

The International Law Commission should strive to reach a consensus. If consensus cannot be reached, the International Law Commission may prepare either alternative texts or no texts at all, depending on the circumstances.

"Restating" areas of international law should be considered only if there is complete agreement among States on rules of customary international law. Never the less by restating areas of international law the International Law Commission could expose its work and its authority to challenges by States.

The drafting of texts for instruments other than treaties should not be excluded, but in principle the International Law Commission will best fulfil the functions by drafting texts which may form the basis of an international treaty.

F. Final negotiation and adoption of multilateral treaties

1. In principle, major and comprehensive treaties should be negotiated at ad hoc plenipotentiary conferences.

2. The involvement of the General Assembly will only prove successful if draft treaties are brought to it at an advanced stage of maturity if there is reasonable ground for believing that agreement can be reached on their content.

3. (a) The duration of plenipotentiary conferences should depend on the scope and importance of the subject in question. In general it is not possible to keep conferences on major treaties going more than six weeks because many States are not in a position to make experts available for longer periods.

(b) - (f) The model rules of procedure for such conferences already existing within the United Nations system should be adapted to the needs of the conference. Whether they should provide for the establishment of negotiating committees, restrict formal debate to group spokesmen, or permit a more extensive participation of intergovermental organizations, depends on the subject in question.

G. Drafting and languages

1 to 4. The functions of drafting committees and the handling of language problems (the early formulation of treaties in all authentic versions is desirable) depends on the merits of each individual treaty. The Law of the Sea Conference can only be used as a model in cases of similar nature.

H. Records, reports and commentaries

1. Verbatim or summary records should in principle be maintained for plenary sessions and sessions of the Committee of the Whole, Whether they are necessary for meeting of other committees as well, depends on the nature of the subject under negotiation.

2. Records of negotiations are a useful means of indicating the meaning and purpose of a treaty that has been adopted. However, the importance of such preliminary work for the interpretation of treaties should not be overrated.

I. Post-adoption procedures

1 and 2. Experience has shown that attempts by international organizations to encourage their member States or other countries involved in the negotiations to ratify and bring into force treaties formulated under their auspices have had little effect. It is hardly likely, therefore, that questionnaires inviting sovereign States to state the reasons why they are delaying adherence to multilateral treaties will produce any better results.

3 and 4. The possibility of requiring a commitment from member States to submit treaties to their domestic legislative organs or to submit periodic reports concerning the steps taken towards ratification could at best be considered in connexion with the adoption of specific treaties but not as a general rule. Similarly, experts who have helped in negotiating a particular treaty could only be asked to assist in internal ratification procedures in exceptional cases. The initiative for such assistance would have to come from the States concerned.

5. The automatic entry into force of treaties wihout their specific acceptance by contracting parties raises constitutional problems, where they are subject to ratification by Parliament or other national organs. Consequently, simplified entry into force procedure shall be restricted to certain categories of treaties where the governments of contracting States have competence in the subject-matter concerned.

6. The provisional application of treaties (one should perhaps avoid the expression "provisional entry into force") creates problems for many States on constitutional grounds.

J. Treaty-amending procedures

1. The amendment of certain categories of treaties, that is to say, certain sections of treaties (technical details of implementation) can and should be simplified, as is indeed already the case with many treaties. It would be desirable and useful to select and publish existing models.

2 and 3. Whether it would be appropriate to regulate the relationship between a certain treaty and subsequent treaties on the same subject along the lines of question 2, and whether the conclusion of framework treaties whose substantive provisions (annexes) can be more easily modified, and whether the delegation of this work to a subordinate organ would facilitate the conclusion and adoption of treaties, depends on the merits of each individual case.

ITALY

[Original: English]

[29 July 1981]

1. Given the importance of the multilateral treaty-making process, the Italian Government is of the opinion that the idea of reviewing the functioning of that process is most worth while, and that the United Nations is the most appropriate forum for an over-all evaluation which, however, should not overlook the peculiarities of the treaty-making process in different contexts (United Nations specialized agencies, regional bodies, ad hoc conferences).

2. The Italian Government also believes that such an over-all evaluation might be resumed at appropriate intervals in order to take into account the development of international practice.

3. At the same time, Italy believes neither that such a review must necessarily lead to radical changes in practice nor, conversely, that it should give rise to an increased standardization of procedures which would impede the adaptation of practice to the needs of a particular negotiating context. Treaty law is in fact dominated by the principle of the freedom of contracting parties, which is evidenced mainly in the continuing search for ad hoc negotiating patterns aimed at overcoming political difficulties of various kinds which interfere from time to time with the achievement of an agreement. Thus, within the bounds of respect for negotiating "good faith" and for the rules of international jus cogens, the negotiating parties must be allowed to enjoy maximum freedom in the treaty-making process, and the treaty must be an act freely arrived at not only with regard to its provisions but also, as much as possible, in the procedures followed during its negotiation.

4. In the light of these general considerations, the Italian Government offers the following observations on the topics suggested in section IV of document A/35/312 of 27 August 1980.

5. In group A, questions 3 and 4 deserve a rather positive answer. In effect, the drafting of an annotated manual of all the techniques utilized so far for multilateral treaty-making may be useful, if it is done objectively by independent experts, selected on the basis of rigorous criteria of competence, who could work under the auspices of the legal department of the United Nations Secretariat or of UNITAR. Similarly, the revision of the Handbook of Final Clauses, published in a limited edition in 1957 and practically unavailable today, seems most advisable, given the significant growth of practice over the last 25 years. The handbook should be extended to deal with every kind of final clause, including those regarding territorial application of treaties and those relating to participation in a treaty of "groups" of States or international bodies. A work of this kind would greatly assist the consolidation and co-ordination of treaty-making practice, thereby reducing the possibility of sterile polemics.

6. On the other hand, it does not appear appropriate, for reasons stated at the beginning of this commentary, to draft "model clauses" (point 4b), the subject of which - inter alia - the questionnaire does not specify; nor does it seem useful to respond in the affirmative to questions 1 and 2.

7. Regarding group B questions, the Italian Government can only reiterate what has already been observed by the Italian delegation in the debate of the Sixth Committee at the thirty-fifth session of the General Assembly. The question intended to ascertain whether or not the multilateral treaty-making process presents too great a burden for States is ill-advised and cannot be answered. The truth, in fact, is that this cannot be judged in the abstract. The burden of negotiation is accepted or rejected by States according to the importance of a multilateral régime in a given sector. If we were to comment on this, we would merely say that all too often, because of an unwillingness to oppose a rebuttal, negotiations are undertaken without a true perception of their utility. And the inevitable consequence of this is that the negotiation continues wearily for years with an uncertain outcome. From this viewpoint, the proposal contained in point B, 2a has a certain basis, although it would not be easy to implement.

8. Regarding group C questions, the Italian Government has serious doubts on the usefulness of entrusting to the General Assembly a general responsibility for co-ordination in the area of multilateral treaty-making. Such a task cannot be accomplished in practice, and to impose it upon the General Assembly would have the effect of slowing down the multilateral treaty-making process. On the other hand, it is of the utmost importance to safeguard the technical specialization of both United Nations bodies and other international organizations without imposing upon them requirements that would often be meaningless.

9. Obviously, on the basis of the powers vested in it by the United Nations Charter, nothing prevents the General Assembly from exercising a stimulus or, as the case may be, a control with regard to the formulation of multilateral treaties. In these capacities it may address appropriate recommendations to various negotiating bodies connected with the United Nations or to Member States of the Organization.

10. It is also clear that there is no lack of multilateral treaties promoted by the Assembly and negotiated in its context. On the occasion of such negotiation it would be useful for the Sixth Committee to offer at least its advice before the close of the proceedings.

11. As for group D, the questions under point 1 deserve a positive response since they are of obvious worth. With particular regard to subpoint (c), the usefulness of proposing alternative solutions such as Agreements or Recommendations is often considerable as a means to surmount serious political obstacles to the negotiation. The possibility might also be considered of drafting parallel instruments, one binding and one not, following the example of the ILO.

12. On point 2, the choice of the organ most appropriate for the drafting of the preliminary text of a treaty is often a function of the subject-matter of the treaty itself and of the likelihood of resolving in advance the main political difficulties. Thus, no one response can be valid for all cases.

13. The need to rationalize administrative procedures and to discourage the proliferation of subsidiary bodies, implied in point 3, certainly deserves support; while the vague manner in which the question contained in point 4 is expressed does not allow for a precise answer.

14. Regarding group E, it is the Italian Government's opinion that the role of the International Law Commission should be further enhanced, and that members of the Commission should be chosen exclusively on the basis of their competence in its field of work. It would be desirable for these experts, who should be independent of their Governments, to work in and for the Commission full-time, even if this might represent a greater financial burden for the United Nations. On the other hand it does not seem necessary, if the Commission members are selected on the basis of rigorous critera, to entrust part of the work to outside experts or to assign assistants to the Special Rapporteurs of the Commission. Assisting the ILC is the task of the United Nations Secretariat.

15. If, however, the Commission's structure remains as it is, and if its sessions maintain their present duration, it seems impossible to entrust it with futher tasks. The agenda of the last few years already seems extremely heavy, and to burden the Commission further would undermine the seriousness and efficiency of its work. In fact, some thought should be given to lightening the agenda by not burdening the Commission with minor matters on which it could limit itself to expressing an opinion.

16. Regarding the procedure currently followed or to be followed by the Commission, subpoints (e), (f) and (g) of point 3 are worthy of attention. It would in fact be useful for the Commission to prepare alternative texts, explaining the motives and basis of each variant. Similarly, the idea of "restating" areas of customary international law as an alternative to codification should not be discarded. Finally, a greater recourse to texts not intended to become treaties - such as recommendations, model-rules, and so forth - might often facilitate the absorption of the Commission's findings into international practice.

17. With respect to group F, in order both to rationalize the work of negotiation and to economize on financial resources, it is the Italian Government's opinion that the role of the Sixth Committee should be enhanced whenever a treaty is introduced, whether directly or indirectly, by the General Assembly, unless the treaty deals with a highly-specialized matter. In this context it is undoubtedly appropriate to submit to the General Assembly and to the Sixth Committee texts that have already been almost completed. It would also be desirable to study the possibility of ad hoc procedural rules for the adoption of treaty texts; the aim of this research should be to ensure that such texts receive a broad-based consensus in advance.

18. The same criteria should govern the elaboration of procedural rules for plenipotentiary conferences. Neither in general, nor with regard to such conferences, does negotiation by groups of countries always facilitate matters; it merely obscures, temporarily, the differences within groups, which ultimately reappear at the moment of signature or ratification of the text, thereby extending drastically the time needed to complete the treaty-making process.

19. As to group G, it seems difficult to improve to any great extent the present situation, although the method followed by the Third Law of the Sea Conference with regard to linguistic co-ordination seems to have produced praiseworthy results so far.

20. As to group H, it should not be forgotten that while the recourse to preparatory work is a useful means for interpreting treaties, it is not the basic criterion followed by the Vienna Convention of 1969. In this context it is not always necessary to have analytical summaries or verbatim records of all the activity of international negotiating bodies. This is worth while only with regard to main committees of international conferences and, in the interests of co-ordinating texts in several languages, to drafting committees. For the rest, it is preferable to decide case by case, while leaving to the discretion of individual States participant to a negotiation the decision of whether or not to make their decisions public (i.e., by setting them forth in an official document). The decision to elaborate comments to draft conventions should similarly be taken case by case, although in most cases the affirmative solution will be self-imposed.

21. When a decision is made to publish the preparatory work of a treaty, UNITAR might play a role if it is endowed with experts of obvious renown and guaranteed impartiality.

22. As to group I, the Italian Government observes that many of the proposals contained therein risk limiting the freedom of States in the phase subsequent to the adoption of a treaty, thus violating the Vienna Convention of 1969. These proposals would make much more sense if all treaties were adopted on a broad and detailed consensus basis, which is not always the case today. In particular, proposals 5 and 6 seem highly inadvisable, in that the suggestions contained therein might be applied only rarely, on the basis of a specific consensus expressed from time to time in the negotiating forum.

23. With respect to group J, the Italian Government expresses reservations similar to those regarding part I. The proposals listed here seem based on a centralized notion of the international community which is not likely to emerge today.

MALI

[Original: French]

[21 July 1981]

A. Additional studies

1. The Secretariat should prepare a detailed description of all significant multilateral treaty-making techniques, perhaps in the form of an annotated manual.

2. It should assist in the formulation of formal clauses by formulating sets of model clauses and by updating the Handbook of Final Clauses.

B. Over-all burden of multilateral treaty-making process

3. The burden of the international treaty-making process is too great for States and for the intergovernmental oganizations concerned.

4. The international community should seek to reduce the number of treaties being formulated by setting priorities.

C. Over-all co-ordination of multilateral treaty-making

5. The General Assembly should have the responsibility for co-ordinating activites undertaken within this sphere by all organizations of the United Nations system.

6. The co-ordinating role of the General Assembly should be restricted to the gathering and dissemination of data about all activities undertaken within this sphere by the organizations of the United Nations system.

7. The Sixth Committee is the most suitable body since the International Law Commission appears to be somewhat overburdened.

D. General improvements of the treaty-making process in the United Nations

8. Before embarking on the formulation of a particular treaty, efforts should be made to collect legal and factual data relevant to the proposed treaty and to ascertain the potential interest of States.

9. The preliminary formulation of the text should be entursted to an expert group.

10. A reduction of the number of treaty-making organs and procedures in the United Nations would be desirable.

E. Work of the International Law Commission

1. Possible structural changes

11. It might be preferable to increase the honorarium or the per diem of members of the Commission.

2. Possible changes in agenda

12. Certain questions should not be referred to the International Law Commission, which already has a heavy agenda.

3. Possible procedural changes

13. The International Law Commission should make more of an attempt to complete all its work on each subject within the five-year term for which its members are elected.

14. It should formulate preambles and final clauses for the draft articles it submits to the General Assembly. This would make it easier for the Assembly to follow the progress of a topic.

F. Final negotiation and adoption

15. The negotiation of multilateral treaties of concern to the General Assembly, such as those emanating from the International Law Commission, UNCITRAL, should be completed in a Main Committee of the General Assembly.

16. The Sixth Committee should be involved in such a process, and the consideration of all formal and legal clauses should be entrusted to it.

G. Drafting and languages

17. Treaties should be formulated simultaneously in all languages in which their text is to be authentic.

18. For certain types of treaties, a subgroup may be established for each language, as in the case of the Third United Nations Conference on the Law of the Sea.

H. Records, reports and commentaries

19. In connexion with the formulation of multilateral treaties, summary or verbatim records should be maintained for expert groups and restricted representative groups.

20. Commentaries should normally be prepared on drafts formulated by expert groups.

I. Post-adoption procedures

21. A questionnaire should be addressed to States as to why they fail to become parties to multilateral treaties.

22. An attempt should be made, in respect of certain categories of treaties, to provide for their automatic entry into force except in respect of States that voted against adoption or that submit an opting-out notice.

23. Certain important treaties should provide for provisional entry into force among those States that voted for their adoption.

J. Treaty-amending procedures

24. Certain categories of treaties should provide for simplified forms of amendments.

MEXICO

[Original: Spanish]

[31 July 1981]

1. In General Assembly resolution 32/48, which marked the beginning of the consideration of the item "Review of the multilateral treaty-making process", emphasis is placed on the duty of the General Assembly under Article 13, paragraph 1 a, of the Charter of the United Nations to initiate studies and to make recommendations for the purpose of encouraging the progressive development of international law and its codification.

2. In this respect, there is no doubt that the General Assembly has played an important role in encouraging treaty making on matters of common interest, as well as the definition of universally applicable norms of conduct, through the adoption of resolutions or declarations in which: (a) corollaries to the principles expressly recognized in the Charter of the United Nations have been formulated (e.g., the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations) and (b) other norms have been defined (e.g., the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction).

3. Consequently, it would seem appropriate that any study referring to Article 13, paragraph 1 a of the Charter of the United Nations should devote an important chapter to an analysis of the legal consequences of decisions of the United Nations General Assembly which fulfil certain conditions and which would help in determining the obligations of States, perhaps by seeking the views of States on the desirability of having the International Law Commission make a special study of this subject.

4. These follow a number of comments which the Government of Mexico considers it relevant to make on the questions which the Secretary-General, in the last part of his report (A/35/312), suggests should be addressed.

A. Additional studies

5. Any effort to obtain the information needed to carry out a general review of the situation seems highly advisable. Furthermore, discussions by the United Nations General Assembly with the aim of formulating suggestions on the multilateral treaty-making process can have an impact on the rationalization of that process and on a more appropriate selection of subjects suitable for incorporation in multilateral treaties prepared each year, with a view to adapting such activity to the real capacity of Governments.

6. The preparation by the Secretariat of the United Nations, as a result of such discussions of a manual on the most significant multilateral treaty-making system or techniques would also be useful; that work could be supplemented by updating the Handbook of Final Clauses and extending it to additional categories of clauses, for example those relating to peaceful settlement of disputes.

B. Over-all burden of multilateral treaty-making process

7. There is no doubt that, for a large number of countries, the burden of the treaty-making process is too great. Comprehensive review of the number and content of the multilateral treaties formulated on a world-wide and regional basis in the post-war period, and especially since the 1960s, shows that often the developing countries do not participate in the process, even in cases where the multilateral treaty is negotiated and drafted under the auspices of organizations of which those countries are members.

8. This sometimes affects the balance of the treaties in question, which, as a result of the non-participation of developing countries, tend to favour other groups of countries, a situation eventually reflected in the number of ratifications.

9. It is recognized that multilateral treaty-making is the best and most expeditious method of ensuring that the rule of law is universal. Nevertheless, in order to ensure that progress is not illusory, priorities must be assigned to subjects for inclusion in treaties, lest the codification and progressive development of international law should prove to be beyond the capacity of the civil services of the majority of States.

C. Over-all co-ordination of multilateral treaty-making

10. The universal character of the United Nations places the General Assembly in an ideal position to co-ordinate multilateral treaty-making, even at the regional level, and there is no doubt that its powers should include the possibility of making recommendations on subjects suitable for codification.

11. Obviously, the United Nations must carry out such co-ordination through recommendations which do not affect the autonomy of other international organizations. If the General Assembly should decide to exercise that function, there is no doubt that the Sixth Committee, as the Committee dealing with legal questions, would be called on to exercise that function in the first instance.

D. General improvements of the treaty-making process in the United Nations

12. Undoubtedly, the more thoroughly Governments, by themselves or with the assistance of the Secretariat of the United Nations, study a subject before embarking on the formulation of a treaty, the more likelihood there will be that the treaty meets the needs of the international community.

13. Furthermore, practice has shown the usefulness in some cases of negotiating a Declaration for approval by the Assembly before undertaking the formulation of a Convention. Whether to proceed with the formulation of a treaty will depend, inter alia, on whether there is a need to broaden the provisions and to establish monitoring machinery.

14. With regard to the method of preparing a preliminary draft, in Mexico's opinion no uniform rule can be established and the flexibility now practised in the United Nations should be maintained, although it seems not only desirable but necessary, regardless of the method, that the convening of a plenipotentiary conference should in no case be authorized unless the preparation of a preliminary text has first been entrusted to a preparatory committee or a commission.

15. Any attempt to set time-limits for multilateral treaty-making organs is unrealistic. While in some cases it will be possible to predict more or less accurately how much time will be needed for the preparation of a treaty, in other cases any such prediction is impossible.

E. Work of the International Law Commission

16. The International Law Commission has proved to be a suitable organ for the preparation of draft multilateral agreements. Its efficiency is due to the high professional qualifications of its members and to the fact that, although they serve in their personal capacity, most of them are fully acquainted with the positions of their Governments and the Governments of other States. For that reason, converting the International Law Commission into a full-time organ, with members whose professional lives would be bound up entirely with the Commission, would mean converting it into an academic organ remote from reality.

17. The practice whereby the General Assembly of the United Nations is the organ which decides what topics are to be considered in the International Law Commission should be maintained, because there can be no organ more capable than the General Assembly of determining which topics merit priority; however, the International Law Commission should be left free to decide how much time is to be spent on each topic, in the light of the stage of maturity which, in the opinion of the Commission, has been reached in the process of formulating the draft treaty in

question and of international circumstances. It is not advisable to impose time-limits on the International Law Commission, although the General Assembly should provide guidelines in order to avoid unjustified delays of the kind which have occurred in the case of the item on State responsibility.

F. Final negotiation and adoption of multilateral treaties

18. The question whether the General Assembly or a special plenipotentiary conference will be the organ to study drafts produced by the International Law Commission and the United Nations Commission on International Trade Law should be decided on a case-by-case basis.

19. Practice has shown that, while using the United Nations General Assembly is less costly, Governments attach more importance to plenipotentiary conferences and normally send higher-level delegations to such conferences. For that reason, draft treaties of major importance should be referred to plenipotentiary conferences. There does not appear to be any need for the adoption of special rules to enable the General Assembly to study and approve draft conventions prepared by ILC, UNCITRAL or ad hoc committees. The participation in the General Assembly of States not Members of the United Nations when a treaty is being formulated has been no problem, and a decision by the Assembly to permit such participation is sufficient.

20. Nevertheless, the Sixth Committee cannot be expected to study all multilateral treaties formulated within the United Nations system, although it should be laid down in the rules of procedure of the Assembly that, whenever another Main Committee prepares such a draft, the Sixth Committee must be allowed to see it before it is opened for signature so that it can make a final review of the text.

21. Long sessions of plenipotentiary conferences are usually undesirable. It is better to break up a conference into a number of short sessions so that delegations can return to their capitals and hold the necessary consultations in order to continue the negotiation.

22. The tremendous variety of situations with which plenipotentiary conferences are faced makes it inadvisable to establish uniform rules of procedure.

23. Holding intersessional informal negotiating or drafting meetings is a useful practice. However, each conference must decide on that point.

24. The practice of having spokesmen for the various regional groups or common-interest groups at conferences is useful. As a rule, however, that practice cannot be substituted for the normal processes of a conference.

25. The participation of governmental and non-governmental organizations at conferences can be useful. However, the general practice whereby non-governmental organizations are not entitled to speak but only to circulate their views in the form of documents should be maintained.

G. Drafting and languages

26. In some cases, drafting committees can exercise negotiating functions. However, as a general rule, drafting committees should be limited to improving the presentation of texts and harmonizing the various language versions.

27. The practice of adopting multilateral treaties in the six working languages of the United Nations General Assembly should be continued, since that practice serves the interest of avoiding cultural hegemonies.

28. The establishment of language groups within drafting committees, as in the case of the Third United Nations Conference on the Law of the Sea, should be avoided. The establishment at that Conference of such groups, open to the participation of all States, was necessary as a special arrangement which should not set a precedent.

29. The establishment of those language groups delayed the work of the Drafting Committee, because some of their work was carried out without regard to the work of other similar groups. In short, the groups were an unnecessary additional forum within the Drafting Committee of the Conference.

H. Records, reports and commentaries

30. With respect to verbatim or summary records, the ideal would be for every organ participating in the formulation of a multilateral treaty, except those informal negotiating bodies in which records would be an impediment to the work, to have records that would chronicle the entire negotiating process for the purposes of article 32 of the Vienna Convention on the Law of Treaties. With regard to the question of more complete records, however, since for budgetary purposes it is uneconomic to keep verbatim or summary records for all such organs, they should be kept at least for the plenary and the main committees of a plenipotentiary conference.

31. The absence of records in other organs can be successfuly compensated for with in extenso reports by the Rapporteur or Chairman, as the case may be. Since, in the United Nations, the Secretariat normally prepares draft reports for the Rapporteurs, experienced officials of the Secretariat should make an effort to rationalize such reports and make them more systematic, subject, of course, to the responsibility of the Rapporteur for the final wording of his report.

32. The International Law Commission's practice of preparing commentaries on its draft articles has proved to be of value. Any collective body or any Government submitting preliminary drafts for a treaty should follow that good practice.

33. A systematic effort to compile and publish the travaux préparatoires of most multilateral treaties would be especially useful for all students of international law and for the purposes of article 32 of the Vienna Convention on the Law of Treaties.

34. Since such work would not require research but merely compilation and publication, it should be entrusted to the Secretariat of the United Nations, leaving the research work to UNITAR.

I. Post-adoption procedures

35. Matters relating to the process of ratifying an agreement are within the exclusive competence of sovereign States. For that reason, except in the case of those agreements or instruments establishing international organizations under which States have agreed internationally on a system whereby a specific organ promotes and collaborates with States in the ratification or accession process, that process must remain within the exclusive competence of State sovereignty.

36. The foregoing should not prevent the continuation of the practice whereby the United Nations General Assembly and other governmental organizations regularly send appeals and reminders to States with a view to obtaining their consent to be bound by multilateral treaties.

37. When a multilateral treaty is being formulated, a systematic study should be made of whether it is desirable to include in the text clauses requiring States to submit reports on the steps they have taken in compliance with the treaty.

38. There is nothing to prevent the Secretariat of the United Nations or the secretariats of other international organizations from offering States the assistance of experts to clarify doubts on the scope of a treaty, during the process leading up to ratification or accession. However, the acceptance of such assistance is also a prerogative of State sovereignty.

39. Where the "automatic" entry into force of certain treaties is concerned, it should be underscored that such entry into force is not provided for in the Vienna Convention on the Law of Treaties and is undoubtedly unconstitutional, or at least illegal, for all those States whose systems for the ratification of or accession to a treaty require the participation of the executive and legislative branches.

40. With regard to provisional application, the expression "provisional entry into force", used in some conventions drawn up within the United Nations Conference on Trade and Development (UNCTAD) and in the questionnaire contained in document A/35/312 (but not used in the Vienna Convention on the Law of Treaties), should be avoided because it is a contradiction in terms. The reference should be to "provisional application" pending entry into force (see art. 25) of the Vienna Convention).

41. A provisional application clause should be included in some treaties, always provided that it is optional. Some Governments would be unable, for constitutional reasons, to undertake to apply certain agreements provisionally.

J. Treaty-amending procedures

42. Simplified forms of amendments not requiring a process of ratification or accession identical to that required for the entry into force of the agreement which is being amended - for example, when it is laid down that acceptance of an amendment by a conference or an organ is sufficient to bring the amendment into force - should be the exception to the rule and should be used only for technical annexes to a so-called "framework treaty".

43. The consideration of a proposed amendment to a treaty should not be carried out by plenary or subsidiary organs of international organizations whose members are not also parties to the instrument in question.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

[Original: Russian]

[18 August 1981]

1. The general position of the Ukrainian SSR regarding the review of the multilateral treaty-making process has already been stated repeatedly at sessions of the United Nations General Assembly. The Ukrainian SSR holds the view that the improvement of the procedures and methods used in elaborating multilateral treaties is of considerable practical significance in contemporary international relations. The correct choice of appropriate procedures reflecting the character and aims of the future treaty facilitates fuller exposure of States' opinions and interests and reconciliation of their positions, and permits in-depth study of the draft treaty and the inclusion therein of provisions acceptable to the maximum number of States. There is also a saving of means, time and effort needed for treaty-making.

2. The report by the United Nations Secretary-General entitled "Review of the multilateral treaty-making process" on the whole gives a sufficiently detailed account of the procedures employed in organs within the United Nations system for the elaboration of treaties and generally reflects correctly State practice in this area. The extensive factual data provided in the report can be put to practical use as reference material. Similar practical use should probably also be made of the auxiliary material being prepared by the Secretariat regarding the provision of legal assistnce in multilateral treaty-making questions within the United Nations.

3. With regard to the possibility of additional studies, at this stage there is no need to go beyond the results which have already been published; it is apparent from document A/35/312/Add.1 of 28 August 1980 that the majority of States do not express any interest in further broad studies on this problem.

4. In the opinion of the Ukrainian SSR, there is in present circumstances no urgent need to consider the question of the sharing of the over-all burden of the multilateral treaty-making process.

5. The United Nations already has the necessary machinery, methods and procedures for the regular exchange of views between the overwhelming majority of States concerning the urgent necessity of concluding a particular treaty and for the establishment of priorities in the selection of questions to be discussed in United Nations organs and at international conferences. The obligations of States derived from the Charter of the United Nations, particularly as regards the maintenance of international peace and security, are naturally particularly important in this connexion.

6. However, today's dynamic and intensified international relations objectively produce an increase in the number of general multilateral treaties, which in turn requires a more effective treaty-making process. Attention to the differences which exist in practice between treaty-making methods and procedures can and must improve the effectiveness of this process, provided that a correct and rational selection is made in each specific case of those methods and procedures which best reflect the character and aims of the treaty and take into account the specific subject-matter of the agreement concerned. For this reason, the complete unification of the methods and procedures used and introduction of universal model provisions (i.e. the establishment of a single process, applicable in all cases, for the formulation of international agreements and the reduction of the number of treaties being formulated would be undesirable and impracticable.

7. With regard to the improvement of the effectiveness of multilateral treaty-making, the role of the General Assembly in the co-ordination of multilateral treaties concluded within the United Nations should be highlighted. For treaties being formulated within other intergovernmental organizations, it would be desirable to restrict this role to the gathering and dissemination of data about the progress of the relevant negotiations through the Sixth Committee.

8. In the opinion of the Ukrainian SSR, the United Nations Secretariat should, when preparing for the conclusion of a multilateral treaty within the United Nations, pursue extensive efforts to collect legal and factual data relevant to the proposed treaty and to ascertain the potential interest of States in the elaboration of the text of the treaty. Depending on its existing tasks, the Secretariat could also prepare any material of an auxiliary nature which was considered necessary. However, States must retain the right to establish the utility of the Secretariat material.

9. As regards the preliminary formulation of the text of a treaty, it would seem advisable first to determine the organ to which this work should be entrusted, since this depends on the nature of the future agreement and on the very varied approaches adopted by States towards its subject-matter. An increase in the effectiveness of the work of the International Law Commission (ILC) will play an important role in this connexion. It would not be appropriate also to expand the Sixth Committee's law-making role. It is quite unnecessary to convene ad hoc international conferences for the completion and adoption of draft treaties; this can also be done in the Sixth Committee. In this connexion, it would not seem advisable to establish periods of time for the consideration of particular questions; this would be possible only on the basis of mutual agreement among all

the plenipotentiaries participating in the work of the United Nations organ or conference.

10. There is no need to introduce any structural changes in the International Law Commission, and it would also be undesirable to conduct an internal reorganization of its work. The correct system for determining the order of consideration by ILC of particular questions ensures that the agendas for its sessions are filled. In its attempts to activate the consideration of individual questions, ILC should be guided by the General Assembly recommendations determining the time-limits for completion of the consideration of those questions.

11. At the concluding stage of the negotiation and adoption of multilateral treaties, it is important to strengthen the role of the Sixth Committee and of the other Main Committees of the General Assembly, in whose work States' plenipotentiaries participate. In this connexion, as has already been stated, the Sixth Committee should participate in the completion of the legal provisions of treaties.

12. If the need should arise to convene an ad hoc plenipotentiary conference, depending on the nature of the question being considered, the duration of its work and, if necessary, other arrangements should be determined by a resolution of the General Assembly. The internal procedure for this work should be determined by the plenipotentiaries themselves.

13. There are at present no grounds for creating an international treaty drafting bureau or for giving drafting committees more extensive functions. Nor are there any grounds for changing the existing effective practice of the United Nations regarding the language formulation of treaties.

14. There is no need to regulate the arrangements regarding verbatim or summary records, or commentaries on draft treaties. In making arrangements, attention should be paid to the existing practice whereby an individual approach is adopted towards specific draft multilateral treaties.

15. The United Nations should not consider, and should definitely not take any action in respect of, the procedures by individual States to ratify and bring into force multilateral treaties. States should not be asked to explain their reasons for opting out of a multilateral treaty, there should be no establishment of any compulsory legal régime, and no attempt should be made to provide for automatic entry into force of treaties in States which did not express agreement to be bound by the treaty. All these actions would be illegal, because they violate the principles of State sovereignty and non-interference in the internal affairs of States.

16. The question of the inclusion in a treaty of clauses concerning the provisional application should be decided by the plenipotentiaries themselves who are participating in the elaboration of the treaty.

17. Treaty-amending procedures are established in the United Nations organs or at the conferences considering the draft treaty, in accordance with existing practice.

III. REPLIES RECEIVED FROM INTERNATIONAL ORGANIZATIONS

COUNCIL OF EUROPE

[Original: French]

[7 July 1981]

This note contains the reply of the Council of Europe to the question raised in chapter IV of the report of the Secretary-General of the United Nations (A/35/312). It is based mainly on the experience acquired by the Council of Europe over its 32-year history.

The secretariat of the Council of Europe has refrained from making any comment where the questions do not apply to it as an international organization, where it has no preference for any of the alternatives proposed or where it has insufficient information to take an informed position.

Moreover, it should be remembered that the Council of Europe contributed to the preparation of the above-mentioned report in the form of a communication dated 3 April 1979.

A. Additional studies

1. -

2. Yes. Publication of these responses would provide an important source of information on the procedures followed by the various international organizations with respect to the multilateral treaty-making process and would thus constitute a valuable tool for both theoreticians and practitioners involved in that process.

3. Yes, for the same reasons. Consideration might be given to a two-part publication (manual): part one dealing systematically with multilateral treaty-making techniques in general, and part two analysing the techniques used by various intergovernmental organizations.

4. (a) Not applicable (see resolution 35/162 para. 5).

(b) Such a practice does not exist in the Council of Europe, except in the case of final clauses, for which a model has been approved by the Committee of Ministers.

B. Over-all burden of multilateral treaty-making process

1. (a) -

(b) The conclusion of conventions and agreements between member States is one of the principal working methods envisaged by the Statute of the Council of Europe

(see article 15 (a)), and in practice such instruments have often formed the basis for joint action to bring about greater unity among the States members of the organization. Having regard to its importance and the amount of resources needed to conclude a convention (usually two sessions a year of expert groups over an average period of two to four years), the treaty-making process in the Council of Europe cannot be said to place too heavy a burden on the organization's budget.

(c) -

2. (a) and (b) An increase in the resources available, even if only a moderate one, would obviously be the ideal solution. Since that, unfortunately, is impossible at a time of budgetary austerity both nationally and internationally, the setting of priorities is essential so that international organizations can postpone, temporarily or indefinitely, work which is of less obvious importance to States or to the international community. In the Council of Europe, priorities are set by the Committee of Ministers when it adopts its annual programmes.

C. Over-all co-ordination of multilateral treaty-making

1. (a) and (b) Such co-ordination within the United Nations system could have some advantages, in that it would allow for a more systematic handling of certain drafts. However, it would also have disadvantages, in that it would render the multilateral treaty-making process in the United Nations or the rganizations belonging to the system even more cumbersome. It is for the competent organs of the United Nations to assess the arguments for and against such co-ordination.

(c) Co-ordination by the General Assembly of the activities undertaken by other international organizations would not be desirable. As explained above, it would inevitably delay the treaty-making process in those organizations and, in addition, would fail to take account of the specific nature of the various international organizations, particularly in the case of specialized or regional organizations such as the Council of Europe, which have precise functions and operate in specific geographical and ideological contexts that the United Nations can hardly appreciate.

2. (a) If such action by the General Assembly were restricted to the gathering and dissemination of data about the treaty-making activities of the various international organizations (which could hardly be described as a co-ordinating activity), it would certainly meet a need and would therefore be useful, but it it is to be feared that it would prove very costly. In its own activities, the Council of Europe could not but benefit from any study conducted or data collected by the United Nations.

(b) At the present stage of development of international law, such a proposal would seem to be out of the question for organizations not belonging to the United Nations system.

3. The Sixth Committee would logically seem best equipped to perform a co-ordinating role, but in view of the Committee's heavy agenda and, above all, its

present major function as a forum for discussion on the work of the International Law Commission, the solution envisaged does not seem realistic.

D. General improvements of the treaty-making process in the United Nations

1. (a) and (b) These two approaches are to some extent complementary and are already the practice of the Council of Europe. When the formulation of a treaty is envisaged, it must first be ascertained that the proposed treaty is likely to be of interest to States or, in other words, that States feel the need for a treaty in a given field. In order to do this, it is necessary to have legal and factual data concerning the field to which the proposed treaty relates.

(c) In many cases, the decision on the nature of the instrument to be adopted (convention, declaration, etc.) cannot be taken until the work has begun, in the light of the position of the parties and the interests involved. The Committee of Ministers has considered these issues and adopted a report on the subject, a copy of which is attached.

2. The usual practice of the Council of Europe is for an expert committee appointed by the Governments of member States to formulate draft texts, with the assistance of the Secretariat; this applies from the very earliest stage. Only in very exceptional cases are preliminary drafts submitted to the expert committee responsible for formulating a convention; in that case, the drafts originate either with the Consultative Assembly or with the Secretariat.

Since different conditions naturally obtain in the United Nations, it is unlikely that an over-all universally applicable solution can be found. However, the procedure of entrusting the drafting of a treaty to a small expert group has some advantages:

Even when serving in their personal capacity (and not as representatives of their countries), the experts take into account the situation in their countries;

The small membership makes it easier and quicker to reach a consensus.

The disadvantage is that the small membership makes it impossible for all States to participate, so that their views will not be known until a late stage in the drafting of the text.

The Secretariat should be allowed a degree of initiative and should, as it were, represent the international public interest.

E. Work of the International Law Commission

1. Possible structural changes

While the idea of converting ILC into a full-time organ is attractive, it gives rise to certain problems, including, in particular, the danger of bureaucratizing the Commission.

2. Possible changes in agenda

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3. Possible procedural changes

(e) No. In the Council of Europe, the Committee of Ministers usually has a final draft before it. In the view of the Secretariat, proposals for alternative texts would result in a reopening of the whole debate and be conducive to a hardening of the positions of the various States. Such alternatives should be proposed only if the issue is so controversial that no majority can be discerned on either side.

(f) The idea of "restating" international law seems interesting and would certainly make genuine codification possible in the longer term. It might also provide a basis for regional action, even if action at the world level seems to be ruled out.

F. Final negotiation and adoption of multilateral treaties

1. Plenipotentiary conferences.

2. Not applicable. If, however, negotiations are to be completed in the General Assembly.

(c) Yes. Involving the Sixth Committee in the process would ensure the requisite uniformity and consistency in the treaty practices of the United Nations.

3. (a) Successive sessions would have some advantages, provided that they were properly prepared, inter alia, through exchanges of views, at an appropriate level, among the States concerned. The practice of the Council of Europe has shown the value of allowing States the time needed for reflection and consultation at the national level, at every stage of the procedure.

(f) In principle, yes. In particular, organizations having recognized experience in the field covered by the conference or representing regional interests should be called upon. Such involvement should take place at a stage in the proceedings which would allow active and effective collaboration.

G. Drafting and languages

The Council of Europe has no particular problems in this respect. Its official languages are English and French. In view of the relatively small number of member States, legal drafting does not raise any particular problem. It is done in expert committees, with the assistance of the Secretariat (which is also responsible for the final polishing of the text before its adoption by the Committee of Ministers).

H. Records, reports and commentaries

1 and 2. In the Council of Europe, the documents made available in connexion with the formulation and negotiation of European treaties are the following:

(i) Working papers: papers submitted by delegations and notes prepared by the Secretariat;

(ii) Reports of meetings of the expert committee, not always containing detailed descriptions of the positions of the various delegations;

(iii) The final report on the work of the expert committee, containing the final draft of the convention and the commentary thereon;

(iv) Conclusions of meetings of the Committee of Ministers, which is responsible for adopting the text and opening the convention for signature by member States.

3 and 4. The practice in the Council of Europe is to produce a commentary on each convention or agreement. It is normally prepared by the Secretariat and approved by the expert committee responsible for drafting the convention or agreement. The Committee of Ministers must authorize its publication.

4. Yes. Such a publication would be useful, at least with respect to the most important treaties; see, for instance, the publication of the travaux préparatoires of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

I. Post-adoption procedures

1 and 2. The question of the ratification of conventions by member States is also among the subjects at present engaging the attention of the Council of Europe. Two resolutions on it were adopted in the past (see 3 below), but the whole question is currently under study by the organization.

Any system for monitoring the status of ratifications and, to the extent possible, speeding up the deposit of further ratifications should be very flexible and entail a minimum amount of extra work for national civil services; otherwise, it is doomed to failure. For this reason, while the idea of a questionnaire addressed to States as to why they fail to become parties to multilateral treaties is acceptable in principle, it would seem necessary to apply it selectively (one or two treaties at a time) and at suitable intervals (e.g., once a year or every two years), that being the system which some governing bodies have been using for several years.

3. (a) In the Council of Europe, such a régime is provided for in resolution (51) 30 B (adopted on 3 May 1951). The resolution has never been implemented. It must be said that such a régime is not very realistic from either the political or the legal standpoint, since it rather exceeds the scope of ordinary international

law, under which ratification is a discretionary act for which States are not required to give commitments restrictive of their freedom.

The reservations expressed by a number of Governments as to the compatibility of such a régime with the basic principles of the law of treaties are entirely pertinent.

(b) In the Council of Europe, such a régime is provided for in resolution (61) 6 (adopted on 27 February 1961), in which member States undertake to submit annual reports on treaties ratified during the previous year, on action taken with a view to the ratification of other treaties and, to the extent that they deem it possible and appropriate, on the reasons why treaties have not been submitted for ratification within 18 months from the date of signature. This resolution is now disregarded. It has not been implemented since 1970, partly because of the over-frequency of reporting (every year) and the extra work it entailed for national civil services.

5. At the present stage of international law, this solution cannot be recommended as a general rule. The expression of consent to be bound by a treaty by deed or by positive conduct must remain the rule and tacit consent the exception. On the other hand, the system of an "opting-out notice" could be developed where the adoption of amendments to earlier treaties is concerned, provided that the proposed amendments do not entail any substantial change in the material commitments assumed under the treaty. Such a solution is at present under study by the Council of Europe in three specific cases.

6. No. As a general rule, this should not be the case. However, in individual cases, this solution might be envisaged as an exception.

J. Treaty-amending procedures

1. The practice of the Council of Europe with respect to treaty-amending procedures falls essentially into two categories:

(i) Some treaties contain a clause providing for the amendment of their annexes or accompanying protocols. In accordance with the provisions of these treaties, the annexes are amended by agreement between the parties, with the Secretary-General verifying that such agreement exists and then notifying the content of the agreed amendments;

(ii) For the amendment of treaty provisions other than those contained in annexes or protocols accompanying the treaty, the procedure of an amending protocol has been used, whether or not the original instrument contained a clause relating to its amendment.

Simplified amendment procedures, including the "opting-out notice", can be envisaged only for minor amendments entailing no (substantial) change in the commitments assumed under the original treaty (see I.5 above).

2. No.

3. Yes. The possibility of making greater use of the framework treaty technique should be considered, particularly for technical subjects. The details of how the treaty would be given effect could be governed by one of the following:

(i) The drafting of more detailed provisions would be entrusted to a body established by the treaty. The system could include "contracting-out" procedures;

(ii) Detailed provisions would be annexed to the treaty, but a special body established by the treaty would be responsible for amending or broadening the scope of those provisions whenever necessary.

The adoption of these methods for a framework treaty should help to solve the problems created by the difficulty of amending a treaty once it has entered into force.

EUROPEAN CONFERENCE OF MINISTERS OF TRANSPORT

[Original: English]

[13 April 1981]

1. The Conference, although empowered to make such agreements as are necessary for the organization of international transport in Europe, seldom finds it necessary to proceed by way of formal treaties, though we are of course interested in any general guidelines you may be able to develop.

2. In pursuance of the mandate to co-ordinate the activities of international (transport) organizations, we do however work very closely with the European Community and with the United Nations Economic Commission for Europe. We therefore welcome the efforts being made by the General Assembly to improve procedures for drawing up, and implementing international instruments in the United Nations. ECMT has for example a particular interest in the 1968 (Vienna) Conventions and Agreements on Road Traffic and on Road Signs and Signals, 1/ and in their further development. We would greatly welcome proposals to improve and simplify the amendment procedures for this type of technical instrument; perhaps along the lines suggested by the Working Group on the Simplification of Trade Procedures. (See A/35/312, p. 27).

3. We appreciate however that the Secretariat may want to concentrate in the first instance on general principles and on the report to the thirty-sixth session, which we shall follow with interest.

1/ Both were signed at Geneva on 19 September 1949. Texts of the respective Convention are reproduced in United Nations Treaty Series, vol. 125, p. 3 and vol. 182, p. 229 (and vol. 514, p. 254 for amendments to the protocol.)

INTERNATIONAL LABOUR ORGANISATION

[Original: English]

[3 April 1981]

A. Additional studies

The General Assembly has already taken decisions in resolution 35/162 on many of the questions raised under this head. However, it is not clear whether it gave preference to the type of publication envisaged in question 2 or to the type envisaged in question 3. A detailed analytical study of the kind envisaged in question 3 would no doubt be particuarly useful.

B. Over-all burden of multilateral treaty-making process

It would seem to be difficult to reduce the number of treaties being formulated by settling over-all priorities. Without a prior major effort at co-ordination at the national level - which would increase rather than decrease the burden of the treaty-making process - no international body would have the expertise necessary to weigh the relative merits of treaties in different specialized fields. A further difficulty would be that of deciding between international and regional instruments, in respect of the priority of which the views of different groups of States may differ. And, since priorities are liable to change, the process of setting priorities would itself become a burden.

On the other hand, much can probably be done within the various fora which prepare multilateral treaties to weigh, at the outset of the process of preparation, the need for and the suitability of a treaty to deal with particular issues. In this connexion, it should be pointed out that the ILO is one of the organizations in which "pre-initiation studies" in the meaning of paragraphs 24 and 25 of document A.35/312 are statutorily required (article 10 Standing Orders of the Governing Body). Moreover, by means of a recent in-depth review, which it is intended to update at intervals, the Governing Body determined those areas of ILO competence for which up-to-date standards exist, those in which there are standards in need of revision, and those in which further standards are desirable. There was discussion, in that connexion, of the extent to which there might be forward planning of standard-setting activities, and of the criteria which might be established for the development of new standards 2/, para. 12 and following. Some forward planning is now achieved through the Medium Term Plan of the Organisation.

2/ See ILO document GB.199/9/22 (revised), para. 12 et. seq.

C. Over-all co-ordination of multilateral treaty-making

The gathering and dissemination of data about treaty-making activities is of growing importance, with a view to avoiding duplication or conflict. It was the International Labour Office which, for that reason, initiated the process which led to the ACC decisions referred to in paragraph 50 of document A/35/312.

Moreover, it would seem to be appropriate for organizations to consult on, and as necessary to refer to the one most competent in the field, proposals for treaties on matters falling within the competence of more than one of them. As regards the ILO, consultation is expressly provided for in the Standing Orders of the Governing Body (article 16) and the Conference (article 17 bis). There has been, in practice, co-operation with various organisations in respect of treaties adopted by or under the auspices of one of them.

On the other hand, it would seem to be difficult to envisage a centralised arrangement under which the General Assembly would seek to determine the subjects to be considered, and the organizations most suitable to do so. Such an arrangement would be liable to conflict with the specialized competences of other organizations. This problems would be of particular importance in relation to an organization, such as the ILO, in which the decision making organs are not exclusively governmental.

D to J

As put, the questions in these sections relate essentially to the United Nations. ILO practice in regard to most of the matters raised was described in the paper transmitted to the United Nations in August 1978.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

[Original: English]

[20 August 1981]

1. The Organisation for Economic Co-operation and Development (OECD) is grateful for the opportunity to submit observations on the report of the Secretary-General entitled "Review of the Multilateral Treaty-Making Process" as this is clearly of considerable interest to the Organisation and to its Members. However, the observations of the Organisation are those of the Secretariat and should not be understood as reflecting necessarily the views of its individual Members.

2. It should be made clear from the outset that multilateral treaties are not the principal manner in which te Organisation achieves its aims. The two principal means of action are those provided for under Article 5(a) and (b) of the Convention on the OECD. The Organisation may take Decisions which, except as otherwise provided, shall be binding on the Members. In addition, the Organisation may make Recommendations to Members and such Recommendations are submitted to the Members

for consideration in order that they may, if they consider it opportune, provide for their implementation. Decisions and Recommendations are adopted by the OECD Council which is composed of all the Members of the Organisation.

3. A number of international agreements have, nevertheless, been concluded under the auspices of OECD, covering several fields but principally the field of energy and in particular, nuclear energy. However, the agreements concluded in the field of energy (other than in the specific area of nuclear energy) do not necessarily come within the purview of the classic definition of multilateral treaties since they are not concluded solely among States. Agreements concluded among Members, under the auspices of the Organization, are varied as to form and subject.

4. As concerns the agreements concluded by the Organisation itself pursuant to Article 5(c) of the Convention on the OECD of 14th December 1960 these have been limited principally to agreements with Members concerning privileges and immunities and co-operation agreements with other international organizations.

5. Finally, a wide range of other forms of agreement are also used frequently, according to the particular subject matter, circumstances and desires of Members. Once again, these are not multilateral treaties in the formal sense.

6. As concerns the questionnaire itself, the OECD Secretariat does not consider that it is in a position to reply to a number of questions included therein to the extent that such questions are concerned with the internal procedures of the United Nations Organization or international organizations within the Organization of the United Nations or where such questions deal with the work of the International Law Commission. In some cases questions seem to be addressed principally to the United Nations Organization or organizations of the United Nations system but to the extent that these questions would appear to be germaine to the activities of other intergovernmental organizations such as OECD a reply has been given.

A. Additional studies

1. Not applicable.

2. It would appear to be most useful that the responses of intergovernmental organisation be published in an appropriate form.

3. The preparation by the United Nations Secretariat of a detailed description of significant multilateral treaty-making techniques would be of interest but it is not within the competence of the OECD Secretariat to take a position in this matter.

4. Updating by the United Nations Secretariat of the Handbook of Final Clauses would clearly be useful. The formulation of sets of model clauses by the Secretariat would appear to be of a more limited application in that the circumstances of the elaboration and the conclusion of multilateral treaties differ according to the subject and the requirements of the Organization concerned.

B. Over-all burden of multilateral treaty-making process

1. (a) Not applicable.

(b) The burden of the treaty-making process within the OECD has not proved to be too great for the personnel and budget of the Organization.

(c) Not applicable.

2. (a) Not applicable.

(b) It is difficult to reply to this question in an abstract manner as it depends entirely on the requirements of the States and Organizations concerned.

C. Over-all co-ordination of multilateral treaty-making

1. (a) Not applicable.

(b) Not applicable.

(c) It does not appear appropriate to the Secretariat that the General Assembly assume a co-ordinating role in respect of multilateral treaty-making activities of OECD.

2. (a) Not applicable.

(b) Not applicable.

3. Not applicable.

D. General improvements of the treaty-making process in the United Nations

1. (a) It is clear that before embarking on the formulation of a particular treaty all possible effort should be made to collect relevant legal and factual data.

(b) It is equally clear that before embarking on the formulation of a particular treaty every effort should be made to ascertain the potential interest of States in the proposed treaty.

(c) It would appear difficult to formulate an abstract reply as to the utility of considering some less binding instrument in a particular case since this will depend entirely on the desires of the States concerned as they emerge in the course of preparation and negotiation.

2. (a) (b) and (c) Once again, it would appear very difficult to reply in an abstract manner to this question as it depends very much on the origin of the initiative, the subject matter and practices of the organizations concerned. The general practice within the OECD has been for the Secretariat to draft a

preliminary text, based on guidance given to it by the appropriate body of the Organization; subsequently the text is developed by an expert body or drafting group and at a later stage by a body with full representation.

3. Not applicable.

4. Not applicable.

E. Work of the International Law Commission

1. Not applicable.

2. Not applicable.

3. (a) The answer to this question will depend entirely on the subject matter and political context.

(b) The establishment of model rules of procedure for plenipotentiary conferences could be of interest to the extent sufficient flexibility were provided to allow adaptation to the type of subject, the context of the negotiation and the intergovernmental organisation concerned.

(c) The utility of establishing negotiating committees would have to be left to the discretion of each Conference.

(d) The utility of inter-sessional meetings of certain conference bodies must also be left to the discretion of each conference.

(e) Not applicable.

(f) Participation of intergovernmental and non-governmental organisations at plenipotentiary conferences is clearly very useful as they are often in a position to provide expertise on the subject at hand.

G. Draft and languages

1. The OECD Secretariat has no view in this matter.

2. The extension of the functions of a drafting committee in the preparation of any given multilateral treaty is entirely dependent on the circumstances of a particular negotiation.

3. The Secretariat of OECD has no view in this subject.

4. Not applicable.

H. Records, reports and commentaries

1. (a) and (b) The maintenance of secretariat records of the proceedings of expert groups or restricted representation groups can often be of considerable use. Practice at OECD is to prepare summary records.

(c) (i) The maintenance of summary records of the proceeding of main committees of plenipotentiary conferences is equally useful.

(ii) and (iii) The maintenance of verbatim or summary records of negotiating committees or drafting committees can have the disadvantage of inhibiting flexibility and compromise.

2. See answer to question 4.

3. The preparation by the OECD Secretariat of commentaries on draft treaty texts prepared by expert groups or representative organs is often used and has proved to be very helpful in the course of negotiation.

4. To the extent that financial means are available to do so, the preparation and publication of travaux préparatoires could undoubtedly be of great use. The OECD Secretariat is not in a position to reply to the specific question of who should prepare such travaux préparatoires within the United Nations Organization or Organizations of the United Nations system.

I. Post-adoption procedures

Not applicable.

J. Treaty-amending procedures

1. Experience shows, particularly in regard to treaties covering technical matters, that provision for simplified forms of amendment is virtually indispensable.

2. The OECD Secretariat is not in a position to reply to this question.

3. In line with the reply to question 1 under this heading, the Secretariat finds that the use of a framework treaty is of considerable utility in many areas. In giving this response the Secretariat assumes that reference to "substantial provisions" "set out in separate annexes that may be adopted or changed by an organ established by the treaty or by the organisation that promolugated it" is meant to refer to detailed technical matters of substance rather than the fundamental provisions of the treaty.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

[Original: English]

[30 July 1981]

1. We find the "Review of the Multilateral Treaty-Making Process" to be an interesting and informative study, though we feel the emphasis was placed somewhat too strongly on examining the purely mechanical processes involved in treaty-making and insufficiently on the examination of Member States' policies toward treaty-making in the international fora.

2. In this connexion, we feel that the questions in section IV of document A.35/312 will be best answered by Governments rather than the Secretariats of international organizations, as it is the former who are the vital factor in the treaty-making process, and it is they who best know what needs to be done to alleviate the burdens or remove obstacles to ratification for them in this respect.

3. Since the maximizing of the efficiency and the effectiveness of the multilateral treaty-making process is a challenge which must be primarily met by Governments themselves, we wonder whether it might not be useful to invite Governments to reflect on the following policy questions:

(a) Would it not be advisable, for Governments which negotiate international treaties through one of their branches and ratify them in another, to more closely co-ordinate contacts between the two branches so as to avoid the neogitation of treaties which are subsequently not ratified?

(b) Would it not be advisable, again on the national level, for Governments to more closely co-ordinate instructions to their delegations to the various international agencies so as to avoid having those delegations adopt in those fora treaty-making policies which are over-lapping, redundant or conflicting?

4. In our view, the above policy questions go to the source of the major problem areas of the multilateral treaty-making process, and they are questions which only the prime actors in this process, the Governments, can answer.

UNIVERSAL POSTAL UNION

[Original: French]

[10 June 1981]

1. We have taken note of the report with a great deal of interest, but we feel obliged to point out that the procedures described in that document are fundamentally different from those followed at UPU. However, despite this distinction and the relative interest our practices may hold for this study, we would like to suggest that the text relating to UPU in paragraph 62 (d) of the report should be changed, since there is some misunderstanding about the Universal Postal Convention, which contains the basic rules of the international postal service, and the UPU Constitution, which concerns the structure of our organization. Only the latter Act is permanent in nature. Amendments to it are the subject of additional protocols. Moreover, we believe that some other features of UPU practice should be mentioned in addition to those stated in the paragraph referred to above. Without repeating the details of what we had communicated to you by our letter No. 1080(A) of 27 September 1978, we suggest the following text:

> "The international postal régime established under the auspices of UPU consists of the Universal Postal Convention, which is binding on all member countries of the Union. This Act contains the common rules applicable to the international postal service and the provisions governing letter-post items. The other branches of the international postal service (parcels, money orders, cheques, collection of payments, etc.) are the subject of optional Arrangements. These two types of Acts are treaties in the full sense of the word."

2. These treaties, together with those concerning the organization and functioning of the Union, namely the Constitution and the General Regulations, are reviewed every five years at the Congress, in accordance with a well-defined procedure which has remained unchanged for many decades. All the UPU Acts, with the exception of the Constitution, are renewed at each Congress. Drafts of the new Acts are approved by member countries and signed by plenipotentiaries.

3. Lastly, it should be noted that, with a view to mitigating the disadvantages resulting from failure to ratify UPU Acts in good time (a problem which is dealt with in paragraph 57 of the report), UPU officially accepts the principle of tacit approval. According to this principle, countries which did not ratify the Acts of the last Congress before their entry into force but which are implementing those Acts are considered to have approved them.

WORLD HEALTH ORGANIZATION

[Original: English]

[17 June 1981]

A. Additional studies

1. It appears doubtful whether much might be gained from an attempt to solicit additional responses from intergovernmental organizations that did not respond, or that did not respond in sufficient detail, to the Secretary-General's first request. The Organizations were given ample time to respond to that request, and lacunae in the reponse may even be intentional, because the organizations felt unable to give detailed and definite indications, due to the complexity of, and heterogeneity of approaches to, the multinational treaty-making process.

2. In these circumstances, there may also be hesitations regarding the proposal that the responses of intergovernmental organizations should be published in some form. Much further effort would be required to obtain the necessary precisions, revisions and additions, that would be necessary to permit a meaningful form of publication of the organizations' responses. It is understood that the General Assembly has not, so far, decided definitely in favour of such publication (cf. "possible publication" in paragraph 4 of resolution 35/162) and that your request of 5 May 1981 for any revision or addition does not imply that these and the initial responses of the organizations would be published in their original form.

3. It would seem preferable that the Secretariat prepare a detailed analytical description of all significant multilateral treaty-making techniques, perhaps in the form of an annotated manual.

4. WHO would welcome it if the United Nations Secretariat could assist in the formulation of the final clauses of multilateral treaties by:

(a) updating the Handbook of Final Clauses and extending it to additional categories of final clauses, in particular the question of conflict with other treaties, and by

(b) formulating sets of model clauses.

B. Over-all burden of multilateral treaty-making process

1. Our experience tends to show that the burden of the treaty-making process is too great for States.

2. It would therefore seem necessary to reduce the number of treaties being formulated (i.e., the formulation of certain treaties should be postponed temporarily or indefinitely) by setting priorities.

C. Over-all co-ordination of multilateral treaty-making

1. The General Assembly should assume a co-ordinating role in respect of multilateral treaty-making activities of all organizations of the United Nations system.

2. Such a co-ordinating role by the General Assembly should be restricted to the gathering and dissemination of data about all treaty-making activities within the sphere specified under C.1 above.

D. General improvements of the treaty-making process in the United Nations

1. Before embarking on the formulation of a particular treaty, extensive efforts should be made, in general, to:

(a) collect legal and factual data relevant to the proposed treaty,

(b) ascertain the potential interest of States in the proposed treaty, and

(c) consider the utility of some less-binding instrument (e.g., a declaration).

2. The preliminary formulation of the text of a treaty should generally be entrusted to the Secretariat, or where controversial issues are involved, to an expert organ.

E. Work of the International Law Commission

1. No comments.

2. No comments.

3. Possible procedural changes

- it would be very much welcome if the ILC could make more of an attempt to complete all its work on each subject within the five-year term for which its members are elected,

- formulate preambles and final clauses for the draft articles it submits to the General Assembly, and

- consider the possibility of "restating" areas of customary international law, as an alternative to codification.

F. Final negotiation and adoption of multilateral treaties

To the extent the completion of multilateral treaties is assigned to plenipotentiary conferences, it would seem helpful for their expeditious and fruitful conduct if:

- uniform or model rules of procedure were established for such conferences,

- formal debate at conferences were restricted as much as possible to group spokesmen, and

- provision was made for more extensive participation of intergovernmental and non-governmental organizations at plenipotentiary conferences.

G. Drafting and languages

The drafting process might be facilitated if treaties, rather than being formulated simultaneously in all languages in which their text is to be authentic, were originally to be formulated in only one or two languages, with additional versions being established by a special procedure later.

H. Records, reports and commentaries

1. No comments.

2. Whether verbatim or summary records are kept and especially if they are not, the secretariat of certain organs and conferences should prepare more complete records of their negotiations, indicating various positions taken and the reasons for changes in the text.

3. Commentaries that go beyond the mere recording of the travaux préparatoires should normally be prepared on draft treaty texts and should be formulated by expert groups.

4. A systematic effort should be made, by the secretariat unit concerned, to prepare and publish the travaux préparatoires of most or all multilateral treaties.

I. Post-adoption procedures

1. No comments.

2. No comments.

3. The United Nations should seek to establish a legal régime, following the example of some intergovernmental organizations, under which it could require:

(a) a commitment from each Member State that it will submit treaties to the appropriate domestic organs with a view to authorizing ratification, and

(b) periodic reports concerning the steps taken towards ratification.

4. No comments.

5. An attempt should be made, in respect of certain categories of treaties, to provide for their automatic entry into force except of States that voted against adoption or that submit an opting-out notice.

6. Treaties, or certain categories of treaties should normally provide for provisional entry into force, at least among those States that voted for their adoption and that do not submit an opting-out notice.

J. Treaty-amending procedures

1. Certain categories of treaties should provide for simplified forms of amendments.

2. No comments.

3. Greater use should be made of framework treaties, whose substantive provisions are set out in separate annexes that may be adopted or changed by an organ established by the treaty or by the organization that promulgated it.

IV. TOPICAL SUMMARY OF THE DEBATE IN THE SIXTH COMMITTEE AT THE THIRTY-FIFTH SESSION 3/

1. Many representatives noted that multilateral treaties were essential to the conduct of international relations and therefore an important source of international law. The elaboration of multilateral treaties constituted an essential part of the work of the United Nations system. The report of the Secretary-General on review of the multilateral treaty-making process (A/35/312) dealt with a very complicated legal matter, and was considered useful in providing an analytical account of treaty-making techniques and procedures employed in different fields and by various international organizations. Representatives from some of the developing countries referred to certain financial, technical or personnel difficulties that affected their effective participation in treaty-making, and expressed the hope that the present review might in some way come up with solutions which might reduce their burden. Some delegates, while supporting this review exercise, stressed that the existing procedures and techniques as developed in the United Nations were valuable and should be maintained, though they could be made more effective.

2. While most representatives who commented on the Secretary-General's report found it generally acceptable, some felt that the report placed too much emphasis on the role of international organizations; in their view, States played the principal role in the making of treaties.

3. A number of delegates, however, questioned either the usefulness or the value of the present review, stating that there was insufficient interest and that the scope of the proposed exercise was too broad to permit effective examination.

4. There was some discussion of how the question of multilateral treaty-making process could be studied. Some delegates thought these questions were best suited for experts or academic institutions; others suggested the setting up of a sessional or intra-sessional working group or advisory committee to study the subject. Most representatives who spoke did not comment on this point.

A. Additional studies

5. It was noted that a very limited number of Governments had submitted observations in response to General Assembly resolution 34/48 and that it was desirable to solicit Governments and the international organizations concerned to comment on the report of the Secretary-General, taking into account the specific questions contained in section IV of the report, or on any other aspect of the subject, as they considered desirable.

3/ This section summarizes the debate recorded in A/C.6/35/SR.55, 60-64, 73 and 75.

6. The materials gathered for the purpose of the present review (i.e. the Secretary-General's report and the responses submitted by Governments, by international organizations and by the International Law Commission) were considered extremely valuable. There was wide support for their publication and the Secretary-General was requested to explore this possibility.

7. A sizeable number of representatives also emphasized the desirability of updating the Handbook of Final Clauses 4/ and the Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements 5/, which have been out of print for well over a decade. Their republication in updated form would provide useful references and could assist States in formulating treaties.

8. Limited interest was also expressed in requesting the Secretary-General to prepare sets of model final clauses or a detailed description of significant multilateral treaty-making techniques in the form of an annotated manual. Many representatives emphasized that no single, fixed procedure should be laid down for the making of multilateral treaties and that flexibility was required in view of the divergent subjects of proposed treaties and the different circumstances under which they had to be formulated and negotiated.

B. Over-all burden of the multilateral treaty-making process

9. Two representatives specifically mentioned the heavy burden placed on Governments in their active involvement in the process of multilateral treaty-making. It was suggested that it might be possible to reduce the number of treaties being formulated by setting priorities or by increasing the resources provided at national and international levels. Some representatives felt, however, that sovereign States knew best what treaties they wanted and only they could set the priorities; others thought that the reduction of the number of treaties could not be done without sacrificing certain objectives. Some representatives were also reluctant to support any increase of financial resources to international organizations for the purpose of treaty-making. One representative noted that the need to increase resources in developing countries related to their national development, which was itself difficult to achieve. Another representative thought that States should avoid initiating treaties that merely reiterated well-established principles such as those already embodied in the United Nations Charter.

4/ ST/LEG/6, published in 1957.

5/ ST/LEG/7, published in 1959.

C. Over-all co-ordination of multilateral treaties

10. While several representatives supported the idea that the General Assembly should assume an over-all co-ordinating role in treaty-making, most representatives who spoke on this issue expressed the view that it would be difficult for the General Assembly to assume such a role. Different reasons were given: (i) such a role would slow down the process and increase the work of the General Assembly, whose agenda was already congested; (ii) the high degree of sensitivity of the other organs operating in a particular field; (iii) over-all co-ordination was dependent on the nature of each particular treaty and the circumstances of each case, which rendered a general role impracticable; (iv) the General Assembly had no competence in this regard.

11. Some representatives thought that co-ordination in treaty-making could be enhanced through the issuance by the Secretariat of an information bulletin on a regular basis describing legal activities being carried out in the United Nations system as well as in other international organizations.

D. General improvements in the treaty-making process in the United Nations

12. Several representatives stressed the need to collect factual, legal and other relevant information before embarking on the formulation of a particular treaty. This requirement was regarded as particularly important for determining the feasibility and acceptability of a treaty or for studying possible consequences on existing treaties and laws. It was further noted that any preparatory studies should not only be thorough but also clear in their objectives as to the purpose to be achieved.

13. Different views were expressed on whether the preliminary formulation of the text of a treaty as a whole or part of a text (e.g., the final clauses) should be entrusted to a representative body or to an expert group. Those representatives who emphasized the role of States and were concerned with the political sensitivity of treaties, preferred a body of government representatives; others felt that an expert group or the Secretariat might be more suited at the initial stage for preparing drafts, which should then be referred to a representative body. Still others felt that the choice depended on the subject-matter of a treaty and the circumstances involved; experts were best for preparing treaties dealing with legal and technical matters, whereas government representatives were necessary for formulating treaties having economic or political consequences.

14. Many representatives found it difficult to support the idea of taking a more structured approach to treaty-making in the United Nations either by having fixed, uniform rules of procedure or by specifying periods of time within which negotiation must be completed. Such structured approaches as the ones of the International Labour Organisation or the Hague Conference on Private International Law were regarded as mainly suitable for the negotiation of treaties dealing with technical issues. The nature of the work of the United Nations and the variety of

subjects which may be involved rendered a structured approach impracticable. The need for flexibility both in procedure and approach was therefore stressed.

E. Work of the International Law Commission

15. Several representatives expressed their satisfaction with the International Law Commission's contribution to the study of the multilateral treaty-making process (A/35/312/Add.2). While a number of representatives considered it inappropriate and untimely to examine the work of the Commission in the context of this review, some delegates proceeded to comment on questions in this regard posed in section IV of the Secretary-General's report.

16. Different views were expressed on the role of the Commission with respect to multilateral treaty-making. Some representatives held the view that the Commission being an expert group, was best suited for treaty-making on selected topics such as treaties and State responsibility, but less suitable for dealing with issues of exclusively political character. Some other representatives went on to suggest certain ways for making better use of the Commission, for example by increasing the honorarium or the per diem of its members, converting the Commission to a full time body, making better use of special rapporteurs who might be supported, as appropriate, by outside experts. Some representatives suggested that the Commission's congested, general work programme and agenda should in the future be changed to more specific programmes. Some of them thought that this could be achieved by excluding the formulation of instruments other than those in treaty form or by limiting its task to codification and progressive development of new norms of international law.

F. Final negotiation and adoption of multilateral treaties

17. Some representatives held the view that negotiation and adoption should be treated as two separate stages, the latter being limited to a ceremony after all negotiations had already been completed.

18. There were, however, divergent views as to whether negotiations should be conducted in the General Assembly or be referred to ad hoc plenipotentiary conferences. Some representatives preferred the General Assembly and suggested that in the future drafts prepared by the International Law Commission should be submitted for examination by the Sixth Committee without holding special international conferences. They also considered that the existing procedure for drafting agreements on important political matters (e.g., disarmament) had justified itself in practice and required no modification.

19. Several representatives suggested enhancing the role of the Sixth Committee in the negotiation and adoption of multilateral treaties. Special reference was made to a recommendation entitled "Methods and procedures of the General Assembly for dealing with legal and drafting questions" annexed to the rules of procedure of the General Assembly (A/520/Rev.13, annex II, part I) stating: "a) that when a [Main

Committee of the Assembly] considers the legal aspects of a question important, the Committee should refer it for legal advice to the Sixth Committee or propose that the question should be considered by a joint committee of itself and the Sixth Committee". It was emphasized that this recommendation should be better implemented so as to ensure rational progress, though this did not mean that only the Sixth Committee could draft treaties. Many speakers also believed that the Sixth Committee should play a more active role, particularly in drafting matters. In this regard, it was suggested that certain special procedural rules might become necessary (e.g., providing for participation of Non-Member States) if the General Assembly was to assume an effective role. Others, however, preferred that the Sixth Committee be involved primarily at the preparatory stage, through a working group.

20. On the other hand, some members of the Committee preferred to assign the final negotiations and adoption of multilateral treaties to plenipotentiary conferences, which they regarded as the appropriate forum for negotiations and for participation by non-members of the United Nations so as to increase the possibility of wider acceptance of a treaty.

21. The utility of informal consultations, as employed in the Third United Nations Conference on the Law of the Sea, was also referred to. The need for making proper preparations before convening a conference (e.g., the preparation of a draft treaty) was stressed by many members of the Committee. One representative thought that it would be helpful to have a checklist of procedural methods used in conferences, which might be prepared by the Secretariat on the basis of observations submitted by governments and international organizations.

22. In this connexion many views were expressed on the advantages and disadvantages of applying the consensus formula at plenipotentiary conferences. Reaffirming sovereign equality, promoting wider acceptance of treaties and protecting minority interests were cited as factors in favour of this formula. However, it was also stressed that the application of this formula was time consuming and often resulted in ambiguous provisions.

G. Drafting and languages

23. There was some support for the establishment of an international language drafting bureau, but many representatives preferred either to increase the role of the Sixth Committee or to create a drafting committee within each plenipotentiary conference.

24. As for the languages to be used in formulating treaty provisions, the need was stressed to continue the current practice of formulating treaties simultaneously in all the languages in which their texts had to be authentic. Reference was made to the example of the Third United Nations Conference on the Law of the Sea, in which a sub-group was established for each language, with the co-ordinators of all the language groups meeting from time to time to resolve any interlingual and general questions about the text.

H. Records, reports and commentaries

25. Those representatives who commented on this subject preferred that adequate records and reports should be maintained by all organs and conferences formulating multilateral treaties. However, the preparation of commentaries was regarded as an extremely difficult task because even objective analyses might sometimes become a source of confusion, and when provisions were adopted by consensus States might prefer to adhere to their own interpretations.

26. The view was expressed that travaux préparatoires represented an important source in understanding the considerations underlying the various clauses of a treaty and would help particularly those developing countries that did not have the resources to collect and maintain extensive records in their archives. Some representatives considered that the travaux should be prepared and published by the United Nations Secretariat or the conference formulating multilateral treaties, and that UNITAR should be encouraged to continue its work in respect of the travaux of treaties promulgated by the United Nations. One representative suggested that the Secretariat should be asked to prepare a detailed report on how to determine what kind of c ference (e.g., all diplomatic conferences or only conferences dealing with legal topics) should prepare and publish official records, and what should be included in them.

I. Post-adoption procedures

27. It was stressed by some that the signature of a State to a treaty did not create, as a matter of law, an obligation as to its ratification. With respect to measures to promote the ratification of treaties, several representatives felt quite strongly that this question was governed by the internal law of each State and it was therefore for States themselves to decide whether they wished to accept a treaty; any measures to promote ratification of treaties might be construed as constituting external intervention and as such should not be allowed. Some other representatives, however, cautioned that there were certain limits to this view because delays in ratifications were often due to a wide variety of factors other than conscious political choice, and that there was therefore room to look into those issues raised in section IV.I of the Secretary-General's report. The view was expressed that a balance should be maintained between the desirability of attaining universal accession to treaties and the sovereign right of Governments to make their own decisions on treaty ratification. One representative suggested that a reporting procedure on ratification activities of States and on relevant national legislation would be useful.

28. Some representatives referred to various means that, in their view, could increase or improve wider acceptance of treaties, e.g.: (i) conducting studies on the correlation, if any, between the procedure chosen in adopting a treaty and the acceptability of a treaty, or on possible effects of a new treaty on existing national laws and treaties; (ii) incorporating a provisional entry into force clause into certain categories of treaties dealing with technical matters; (iii) setting a specific time period for States to submit adopted treaties to their

national legislatures; (iv) adopting flexible clauses for entry into force so as to allow each State to choose the manner in which its consent to be bound be expressed (e.g., ratification, acceptance or approval) on the basis of its constitutional requirements. However, none of these suggestions gained general support.

J. Treaty-amending procedures

29. Regarding treaty-amending procedures, some representatives seemed to hold the view that this issue touched upon some very sensitive political questions and could usefully be examined only in concrete, individual cases. Others, however, saw the desirability of introducing flexible treaty-amending procedures (e.g., the procedure of the Universal Postal Union) into certain treaties (see A/35/312, para. 62(d)). No detailed discussion was held.

ANNEX I

Questions to be considered a/

63. Taking into account the above-mentioned and other examples of treaty-making practices, the observations of Governments and of the International Law Commission, it is suggested that the Sixth Committee might address itself to some or all of the following questions raised therein:

A. Additional studies

1. Should an attempt be made to solicit additional responses from intergovernmental organizations that did not respond or that did not respond in sufficient detail to the Secretary-General's first request?

2. Should the responses of intergovernmental organizations be published in some form, perhaps in a separate volume of the Legislative Series (in which other documentation relevant to this item might also be included)?

3. Should the Secretariat prepare a detailed description of all significant multilateral treaty-making techniques, perhaps in the form of an annotated manual?

4. Should the Secretariat assist in the formulation of the formal clauses of multilateral treaties by:

   (a) Updating the Handbook of Final Clauses and extending it to additional categories of formal clauses?

   (b) Formulating sets of model clauses?

B. Over-all burden of multilateral treaty-making process

1. Is the burden of the treaty-making process too great for:

   (a) The personnel that States can make available to participate in expert and representative organs?

   (b) The personnel and budgets of the intergovernmental organizations concerned?

   (c) The domestic legal resources of States that must consider the ratification of duly formulated treaties?

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a/ Reproduced from A/35/312, para. 63.

2. To the extent that the burden of the current treaty-making process cannot be reduced through making it more efficient, should the international community seek:

(a) To reduce the number of treaties being formulated (i.e. should the formulation of certain treaties be postponed temporarily or indefinitely) by setting priorities?

(b) To increase the resources available, nationally and internationally as required, for multilateral treaty-making?

C. Over-all co-ordination of multilateral treaty-making

1. Should the General Assembly assume a co-ordinating role in respect of multilateral treaty-making activities of:

(a) All United Nations organs?

(b) All organizations of the United Nations system?

(c) All intergovernmental organizations?

2. Should such a co-ordinating role by the General Assembly be:

(a) Restricted to the gathering and dissemination of data about all treaty-making activities within the sphere specified under C.1 above?

(b) Extended to influencing, through decisions in respect of United Nations organs and through recommendations addressed to other intergovernmental organizations, the treaty-making process, such as by proposing subjects to be considered and identifying the organs or organizations most suitable to do so?

3. If such functions are to be exercised by the General Assembly, should this most suitably be done through the Sixth Committee?

D. General improvements of the treaty-making process in the United Nations

1. Before embarking on the formulation of a particular treaty should more extensive efforts be made, in general, to:

(a) Collect legal and factual data relevant to the proposed treaty?

(b) Ascertain the potential interest of States in the proposed treaty?

(c) Consider the utility of some less binding instrument (e.g., a declaration)?

2. Should the preliminary formulation of the text of a treaty generally or in respect of certain categories be entrusted to:

   (a) A representative organ?

   (b) An expert organ?

   (c) The Secretariat?

3. Should an effort be made to reduce the number of treaty-making organs and procedures in the United Nations by concentrating them?

4. Should an effort be made to achieve in some or all treaty-making organs and procedures a more structured approach, aiming at completing some or all steps of the process within specified periods of time? To what fields might such an approach most profitably be applied?

E. Work of the International Law Commission

1. Possible structural changes

   (a) Should the ILC be converted into a full-time organ, whose members would be appropriately remunerated?

   (b) Should the honorarium or the per diem of ILC members be increased?

   (c) Should the Special Rapporteurs work and be remunerated on a full-time basis?

   (d) Should Special Rapporteurs occasionally be drawn from outside the Commission?

   (e) Should the Special Rapporteurs be supported by experts working under their direction on a full-time basis?

2. Possible changes in agenda

   (a) Should certain questions not be referred to the ILC or should certain additional questions be referred to it?

   (b) Should the ILC have a heavier or a lighter agenda?

   (c) Should the ILC concentrate more on specific topics, restricted in scope, that may constitute only part of a larger subject area?

3. Possible procedural changes

(a) Should the ILC make more of an attempt to complete all its work on each subject within the five-year term for which its members are elected?

(b) Should Governments be consulted more or less frequently during the progress of work by the ILC on a particular draft?

(c) Should there be working groups that meet intersessionally - with perhaps a reduction in the length of Commission sessions?

(d) Should the ILC formulate preambles and final clauses for the draft articles it submits to the General Assembly?

(e) Should the ILC prepare alternative texts of particularly controversial provisions?

(f) Should the ILC consider the possibility of "restating" areas of customary international law, as an alternative to codification?

(g) Should the ILC consider drafting texts for instruments other than treaties?

F. Final negotiation and adoption of multilateral treaties

1. Should the negotiation of multilateral treaties of concern to the General Assembly, such as those emanating from the ILC or UNCITRAL, normally be completed in a Main Committee of the General Assembly, or is it preferable to convene ad hoc plenipotentiary conferences?

2. If negotiations are normally to be completed in the General Assembly:

(a) Will it be necessary or desirable to extend the preliminary preparatory stage so as to submit to the Assembly more nearly completed texts?

(b) Should special procedural rules be adopted to assist the Assembly in acting as a treaty-formulating organ, e.g., providing for the participation of non-member States, special voting procedures, the establishment of drafting committees, etc.?

(c) Should the Sixth Committee normally be involved in such a process, even if the substance of the treaty is considered by some other Main Committee (e.g., disarmament in the First Committee; economic relations in the Second; human rights in the Third):

(i) Through joint meetings of the Sixth with other Main Committees?

(ii) Through the consideration of all formal and legal clauses by the Sixth Committee?

(iii) Through the review of the text as a whole by the Sixth Committee?

3. To the extent the completion of multilateral treaties is assigned to plenipotentiary conferences:

(a) Should such conferences be scheduled for longer periods, to make it less likely that additional sessions would need to be convened, or does a series of successive sessions enable preparation of a better text supported by a broader consensus?

(b) Should uniform or model rules of procedure be established for such conferences?

(c) Should such rules provide for the establishment of negotiating committees?

(d) Should there be intersessional meetings of certain conference bodies (negotiating or drafting committees)?

(e) Should formal debate at conferences be restricted as much as possible to group spokesmen?

(f) Should there be provision for more extensive participation of intergovernmental and non-governmental organizations at plenipotentiary conferences?

G. Drafting and languages

1. Should an international legislative drafting bureau be created?

2. Should drafting committees generally be given more extensive functions?

3. Should treaties continue to be formulated simultaneously in all languages in which their text is to be authentic, or should they originally be formulated in only one or two languages, with additional versions established by a special procedure later?

4. If negotiation in multiple languages is to continue, should the example of the Third United Nations Conference of the Law of the Sea be followed, of establishing a subgroup for each language, whose co-ordinators meet from time to time to resolve any interlingual and general questions about the text?

H. Records, reports and commentaries

1. To what extent should verbatim or summary records be maintained by organs formulating multilateral treaties:

   (a) Expert groups?

   (b) Restricted representative groups?

   (c) Various organs of plenipotentiary conferences:

      (i) Main committees?

      (ii) Negotiating committees?

      (iii) Drafting committees?

2. Whether verbatim or summary records are kept and especially if they are not, should certain organs and conferences prepare more complete records of their negotiations, indicating various positions taken and the reasons for changes in the text? Who should prepare such reports?

3. Should commentaries normally be prepared on draft treaty texts formulated:

   (a) By expert groups?

   (b) By representative organs?

4. Should a systematic effort be made to prepare and publish the travaux préparatoires of most or all multilateral treaties? If so, should this primarily be done by:

   (a) The secretariat unit concerned?

   (b) UNITAR?

I. Post-adoption procedures

1. Should the United Nations consider and take any action in respect of the procedures by individual States to ratify and bring into force multilateral treaties formulated under its auspices?

2. Should a questionnaire be addressed to States as to why they fail to become parties to multilateral treaties?

3. Should the United Nations seek to establish a legal régime, following the example of some intergovernmental organizations, under which it could require:

(a) A commitment from each Member State that it will submit treaties to the appropriate domestic organs with a view to authorizing ratification?

(b) Periodic reports concerning the steps taken towards ratification?

4. Should special rapporteurs or other experts who helped in negotiating a treaty be made available to assist States with their internal ratification procedure?

5. Should an attempt be made, in respect of certain categories of treaties, to provide for their automatic entry into force except in respect of States that voted against adoption or that submit an opting-out notice?

6. Should treaties or certain categories of treaties normally provide for provisional entry into force, at least among those States that voted for their adoption and that do not submit an opting-out notice?

J. Treaty-amending procedures

1. Should certain categories of treaties provide for simplified forms of amendments?

2. Should certain categories of treaties provide for automatic supersession in respect of States parties that later become parties to other treaties in respect of the same subject?

3. Should greater use be made of framework treaties, whose substantive provisions are set out in separate annexes that may be adopted or changed by an organ established by the treaty or by the organization that promulgated it?

ANNEX II

Information provided by the Secretary-General in connexion with paragraph 4 of resolution 35/162

In connexion with paragraph 4 of resolution 35/162, by which the General Assembly requested the Secretary-General to collate and arrange the material that had been received pursuant to the review of multilateral treaty-making process, with a view to its possible publication, the Secretary-General wishes to submit the following information:

1. In response to inquiries authorized by resolutions 32/48 and 35/162, the Secretary-General has received contributions and comments from some 40 United Nations offices and international organizations that are active in the preparation and study of multilateral treaties. a/ The views of Governments are contained in an addendum to and in their comments on the report of the Secretary-General (A/35/312/Add.1 and sect. II.A of the present report) and in the debate in the Sixth Committee during the last session (summarized in sect. IV of the present report). Together they represent a unique and valuable collection of information on this subject and their publication therefore appears fully justified.

2. The contents of such a publication might optimally include:

A. Report of the Secretary-General (A/35/312 and Corr.1, about 30 pages)

B. Governments' views, observations and replies (A/135/312/Add.1 and sects. II and IV) of the present report, about 43 pages)

C. Observations of the International Law Commission (A/135/312/Add.2 and Corr.1, about 40 pages)

D. Contributions made by the United Nations offices and international organizations (about 550 pages) a/

E. Comments by international organizations on the 1980 report of the Secretary-General (part II.B of the present report, about 15 pages)

F. Other background documents (e.g., A/32/143 and Corr.1, request for the inclusion of an agenda item, and A/32/363 (report of the Sixth Committee), about 12 pages)

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a/ A list of the offices and organizations from which contributions were received is to be found in the annex to the report of the Secretary-General to the thirty-fifth session (A/35/312 and Corr.1).

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3. With due regard to the existing publication programmes in the legal field and bearing in mind the nature and contents of the present collection, it would seem most appropriate to publish it as a separate volume of the United Nations Legislative Series. Since 1951 20 volumes have been published in this Series. The practice followed in respect of this Series is to reproduce texts received in English or French in their original language and texts received in other languages in English.

4. On the basis of the above proposals, a volume in the usual format of the Legislative Series (size: 6 inches x 9 inches) would require:

(a) length: about 700 pages

(b) number of copies: 1,600

(c) estimated cost:

(i)	translation (about 30 pages from Russian and 70 pages from Spanish)	$12,432
(ii)	printing (including type-setting)	$20,700
(iii)	total	$33,132

ANNEX III

Information provided by the Secretary-General in connexion with paragraph 5 of resolution 35/162

By paragraph 5 of its resolution 35/162, the General Assembly requested the Secretary-General to prepare and publish new editions of the Handbook of Final Clauses (ST/LEG/6, published in 1957) and of the Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements (ST/LEG/7, published in 1959). In connexion with this request the Secretary-General wishes to submit the following information:

1. Although the Office of Legal Affairs is in a position to provide the framework as well as guidance and supervision for the preparation of new editions of the Handbook and of the Summary of depository practices, it does not have the manpower required to perform the background research and prepare for reproduction these two publications. In particular the Treaty Section, in which this work should largely be performed, is completely occupied with carrying out the tasks required of it in connexion with the registration of treaties pursuant to Article 102 of the Charter and the depository functions of the Secretary-General, and with the elimination of the backlog in the registration and publication function in accordance with the several resolutions adopted by the General Assembly on this subject at recent sessions. a/ Consequently, in order to make is possible to complete these two publications, it would be necessary to use external assistance amounting to approximately 18 work-months (at P-2 level), which would come to about $36,000.

2. Until the preparation of these two publications is reasonably far advanced, it will not be possible to give any precise estimates of their length and thus of the probable cost of translating and printing them. If the General Assembly authorizes at its present session the use of external assistance as proposed in paragraph 1, it is expected that such cost estimates can be submitted at the thirty-seventh session.

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a/ See the report of the Secretary-General submitted under agenda item 126, entitled "Registration and publication of treaties and international agreements pursuant to Article 102 of the Charter of the United Nations" (A/36/570).