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REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS

Report of the Secretary-General

Addendum

CONTENTS

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/
/12 October 1981/

1. The Byelorussian SSR has already stated its general position on the item "Review of the multilateral treaty-making process". The observations of the Byelorussian SSR on that question were set forth in document A/35/312/Add.1. This reply in general contains observations on the questions in part IV of the Secretary-General's report (A/35/312).

2. On the whole, that report correctly reflects the multilateral treaty-making practice of States. The representative of the Byelorussian SSR pointed out at the thirty-fifth session of the United Nations General Assembly that the small number of replies received from Governments indicated that the question had been considered exhaustively in the Sixth Committee and that the discussion on it could be concluded at this stage.

3. When the United Nations Secretariat, in providing legal assistance, prepares auxiliary material, such documents should, in the opinion of the Byelorussian SSR, only be for reference.

4. The methods and procedures currently in use in the United Nations offer States adequate opportunity to agree on the order of consideration of questions within United Nations bodies or at international conferences. Therefore the question of the burden of the multilateral treaty-making process has no significance in practice. The main thing is that States should strictly observe their obligations under the United Nations Charter, particularly in matters concerning the maintenance of peace and international security.

5. The expansion of treaty relations in the modern world is resulting in a more efficient multilateral treaty-making process, but that growth in efficiency should be achieved not through standardization or by reducing the number of treaties but by making fuller use of a range of methods and procedures, which should be applied with due attention to the specific situation encountered in the consideration of questions.

6. Co-ordination by the General Assembly of activities connected with multilateral treaty-making could make the process more fruitful. If international treaties are concluded under the auspices of other intergovernmental organizations, the United Nations Secretariat should, on the instructions of the General Assembly, collect information on the negotiations in progress and inform the Sixth Committee of them.

7. In the process of preparing an international treaty under United Nations auspices, the Secretariat has the right, within the bounds of its authority, to collect relevant information and to ascertain the interest of States in drawing up the proposed treaty. It may also prepare useful auxiliary material.

8. With regard to the formulation of the texts of treaties, given the great variety of existing drafting methods it is inadvisable at present to decide which body should be entrusted with drawing up the actual draft treaty.

9. The Byelorussian SSR considers that the International Law Commission can play a bigger role in drafting treaties and should increase the effectiveness of its work, and that the Sixth Committee should play a more active role in the process of establishing norms, without convening ad hoc international conferences for that purpose. There should also be no time-limit on the consideration of questions. A time-limit is acceptable only with the free consent of the plenipotentiaries of States participating in the work of a conference or a United Nations body.

10. The existing structure of the International Law Commission has proved itself in practice and it would be inadvisable to change it. The existing way of determining how full the agenda should be and in what order individual items should be considered at sessions of the Commission has also proved itself. At the same time the Commission should fulfil General Assembly instructions with respect to the period in which it should complete its consideration of a topic.

11. Delegates of the Byelorussian SSR have often pointed out at General Assembly sessions that the Main Committees, particularly the Sixth Committee, have an important role to play in formulating and adopting international legal instruments. Plenipotentiaries of States Members of the United Nations take part in the work of those Committees and, as a rule, a wider range of States is represented in a Main Committee than at ad hoc conferences.

12. At the same time, given the consent of States, the possibility of convening ad hoc plenipotentiary conferences in certain cases is not excluded, but the United Nations General Assembly should determine the duration and dates of such conferences and other necessary arrangements. With respect to the way a conference should go about its work, the rules of procedure should be adopted by the plenipotentiaries themselves at the conference, as has been the case in practice.

13. The Byelorussian SSR considers that there is no need to establish an international legislative drafting bureau or to give the drafting committees more extensive functions.

14. The Organization has a proven practice of formulating treaties in the official and working languages of the United Nations.

15. There is no need to make rules concerning the extent of and need for verbatim and summary records and commentaries to draft treaties. As can be seen from existing practice, the matter may be dealt with in a way appropriate to each specific case.

16. Matters relating to the ratification procedure for international treaties, the acceptance of any obligations concerning the establishment of régimes and, in general, the adoption of a position on any international treaty are the sovereign right of every State and no one may interfere in such matters.

17. Provisions relating to the provisional application of a treaty are considered when the treaty is adopted by the plenipotentiaries and fall fully within their competence.

18. There is an established practice concerning amendments to international instruments and there is no need to change it.

NETHERLANDS

[Original: English]
[6 October 1981]

1. Before replying to the questions contained in section IV of the report of the Secretary-General (A/35/312 and Corr.1 and Add.1 and 2 and Add.2/Corr.1) concerning the item "Review of the multilateral treaty-making process", the Goverment of the Kingdom of the Netherlands wishes to express its appreciation to the Secretary-General for drawing up the questionnaire, as it may very well further the examination of the methods of multilateral treaty-making both within the United Nations Organization itself and under its auspices as well as the assessment of whether the methods employed are as efficient and economical as the needs of the community require or circumstances permit. The present reply should be read in conjunction with the previous comments of the Netherlands (A/35/312/Add.1, pp. 22-27) and the intervention of the Netherlands representative in the Sixth Committee on 25 November 1980 (see A/C.6/35/SR.62).

A. Additional studies

2. A publication of the responses received from intergovernmental organizations and of other relevant documentation is welcomed. A detailed, descriptive analysis of all significant multilateral treaty-making techniques is also considered very useful. The formulation of sets of model clauses, for instance by abstracting the most common ones from the final clauses of various treaties, would be very useful. At the same time one might think of an updating of the Handbook of Final Clauses.

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

3. The Netherlands Government wishes to emphasize that a reduction of personnel and resources involved in treaty-making may well be achieved if the question of the necessity of a particular treaty would receive more thorough examination, thereby reducing the over-all burden of the treaty-making process for Member States and intergovernmental organizations alike.

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

4. The General Assembly should assume a co-ordinating role in respect of multilateral treaty-making activities of all United Nations organs and all organizations of the United Nations system. Only thus it would be able to live up to its obligation under article 13 of the Charter, i.e. to "make recommendations for the purpose of ... encouraging the progressive development of international law and its codification".

5. In respect of United Nations organs, the co-ordinating role should extend to

influencing the treaty-making process by proposing subjects to be considered and to identifying the organs most suitable to do so.

6. In respect of the organizations of the United Nations system the co-ordinating role should be restricted to the gathering and dissemination of data about all treaty-making activities within those organizations.

7. This co-ordinating function is indeed most suitably to be exercised by the Sixth Committee.

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

8. The Netherlands Government underscores the importance, before embarking on the formulation of a particular treaty more extensive, of making efforts 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).

With respect to the preliminary formulation of the text of a treaty, the Netherlands Government wishes to refer to its above-mentioned earlier comments.

9. Rather than by reducing the number of treaty-making organs and procedures, which seems to be a difficult undertaking, a more effective and economical use of personnel and resources could already be achieved by better co-ordination of the treaty-making exercise within the United Nations system. In this respect, the recent initiative of UNCITRAL to co-ordinate its work with other international organizations in the field of international trade law may certainly be mentioned as a relevant example.

10. The question whether an effort should be made to achieve in some or all treaty-making organs and procedures a more structured approach is difficult to answer in a way which is equally valid in all circumstances. The effort as described may well be successful where it concerns an already existing organization, but may well fail in case of an ad hoc established treaty-making organ. The success of such an effort seems also dependent upon the nature of the subject matter of the treaty. Matters of a political nature are probably less apt for organizational structuring than those of a specialized nature.

E. Work of the International Law Commission

11. Inasmuch as the questions posed under this heading do suggest that the contribution by the ILC to the multilateral treaty-making process in general could be enhanced by improvements of a procedural nature of its modus operandi, a note of caution is in order.

12. The topics dealt with by the ILC since its inception bear witness to the fact that its task has been understood to be the formulation of the classical rules of universal ius inter potestates and the adaption of these rules to the requirements of present-day international society. It is therefore submitted that subjects which do not primarily concern inter-State relations at the governmental level, such as international economic relations (goods, services, monetary affairs) or the unification and harmonization of national legal systems in specific areas, do not fall within the scope of activities proper of the ILC.

13. The characteristics of the activities of the ILC, set out above, do have certain consequences for the pace of work of the Commission and its composition. The requirements of universality generally causes the Commission to spend considerable time in bridging gaps between different positions. At the same time the intergovernmental nature of its projects calls for a membership of persons combining a specialist knowledge of international law with extensive experience of day-to-day intergovernmental relations.

14. Turning now to the specific questions posed, the Netherlands Government would see no merit in either converting the ILC into a full-time organ or appointing full-time Special Rapporteurs (see A/35/312, para. 63, E 1 (a) and (c)). Apart from financial considerations, this attitude is inspired by the considerations set out above. Such a set-up would of necessity interfere with the requirement that the Commission be composed of members having practical experience. This requirement is even more relevant in relation to Special Rapporteurs. At the same time, Special Rapporteurs can function effectively only if they are integrated into the over-all work of the Commission (see A/35/312, para. 63, E 1 (d)). The ILC should therefore continue to draw Special Rapporteurs from its membership. On the other hand, the Netherlands Government would welcome a more extensive staffing of Special Rapporteurs (see A/35/312, para. 63, E 1 (e)). Assistance (not necessarily full-time) of Special Rapporteurs would enable them to concentrate more on drafting texts and commentaries. Provision should then also be made in financial terms for the necessary intersessional contacts between a Special Rapporteur and his assistant. Such assistants would have to be selected by the Special Rapporteur (from any source he deems fit), and could be placed under the authority of the codification division of the United Nations Secretariat.

15. Even if the above-mentioned improvement would be effected, the items presently on the agenda of the ILC would still keep the Commission active for a considerable period of time (see A/35/312, E 2 (a)). As the need arises, additional questions could be added, provided they fit in within the general parameters set out above.

16. In this connexion, the Netherlands Government would see considerable merit in devising a procedure through which the General Assembly, presumably at the instigation of a Main Committee or subsidiary body, would thoroughly discuss subjects which are suggested for inclusion in a legal instrument before requesting the ILC to draft such an instrument. Such discussion might well indicate that, politically, there are various solutions to the problem. The General Assembly might then request the ILC to "translate" these options into

legal language. It is then up to the Assembly to choose between the alternatives presented to it. Thus, the political discussion will be held where it rightly belongs. Furthermore, it is quite conceivable that such a request pertains to an issue which forms part of a larger subject area (see A/35/312, E 2 (e)). In any event it would be extremely useful if those portions of a subject, which clearly are within the competence of the ILC, such as state responsibility clauses, dispute settlement provisions, etc., would be referred to it, even if the subject as a whole were being dealt with in another legal forum (ad hoc or permanent).

17. The Netherlands Government would certainly support any suggestions which might enable the Commission to complete a topic within a shorter time span. Certain complicated topics, such as the law of treaties or state responsibility, however, would seem to require more time than a period of five years (see A/35/312, E 3 (a)). In this connexion, it is suggested that Governments, either when nominating their candidates for the Commission or when casting a vote during the elections, give consideration to the desirability of at least some permanence in the membership of the Commission (e.g. two consecutive terms of office).

18. A possible suggestion for speeding up the consideration of subjects might be for the ILC not to deal with all items on its agenda at the same time but to concentrate instead on one or two items. Experience teaches that discussion of all items during the 12-week session has various disadvantages. Special Rapporteurs can present only a few draft articles each year, whereas discussion of those articles is necessarily hampered by the lack of an over-all view. In retrospect a good many questions posed during such discussions are premature or even irrelevant in the light of articles which have been presented by the Special Rapporteurs later on. Discussion of the draft as a whole (or substantive part thereof) during a major part of the session would in the opinion of the Netherlands Government constitute a considerable improvement of the Commission's modus operandi. Such a procedure would at the same time allow for improvement of the system of consultation of Member States (see A/35/312, E 3 (b)). For the same reasons as given above for discussion by the ILC itself, comments by Member States on only small portions of a draft are probably not as useful as they would be if the draft were to be submitted as a whole (or in parts suitable for scrutiny, independently of other parts).

19. The Netherlands Government is aware that such procedure might deprive the Commission of the necessary guidance by Member States. It is therefore submitted that all Special Rapporteurs should report to the Commission each year, even if their subject is not up for discussion. Through its report to the General Assembly, the Commission would keep Member States informed on all topics. To the extent feasible and necessary, Member States could then react during the debate on the ILC report in the Sixth Committee thus providing guidance for the Commission.

20. Intersessional meetings (see A/35/312, E 3 (c)), even if combined with a reduction in the length of the Commission's session, will presumably be attended to by less than the full membership. Being less "representative" such meetings can hardly be expected to serve the objectives sought.

21. Most certainly the ILC must present as complete a text as possible (see A/35/312, E, 3 (d)). In the opinion of the Netherlands Government many provisions, usually referred to as final clauses, are of such importance that they can rightly be considered as substantive. Thus dispute settlement provisions, which have to be tailor-made taking into account the text as a whole, would certainly qualify as substantive provisions. This is equally the case with provisions regarding the relationship to other treaties. Even final clauses of a more technical nature should be included in the draft before it is presented as a whole to the General Assembly. On the other hand it would seem to be within the province of the (political) forum which is to finalize the text to draft the preamble.

22. In accordance with its Statute (article 23), the Commission operates on the presumption that the drafts it prepares will eventually take the form of a convention. It would seem to be up to the General Assembly to decide on the final form once the draft articles have been presented to it. Depending on the nature of the topic which is suggested for inclusion in a legal instrument, however, it is conceivable that the Assembly would decide to request not the drafting of a convention but of model rules or guidelines.

23. This decision might also be prompted by indications during discussions of the subject that the time was not ripe for such a relatively final formulation of legal rules as would be implied by the form of a convention. This would seem to answer in the negative both questions contained in A/35/312, para. 63, E 3 (f) and (g).

F. Final negotiation and adoption of multilateral treaties

24. In view of the often highly specialized nature of the treaties of concern to the General Assembly, notably those emanating from bodies such as UNCITRAL, the convening of an ad hoc body seems preferable since it provides a better chance to gather the people with the necessary expertise for the subject. For other subjects of a less specialized nature better use could be made of the legal expertise of the Sixth Committee.

25. In general it may be said that texts should be submitted to the plenary organs for approval only when they are nearly completed. This would, however, not exclude the possibility of presentation to those organs of alternative texts, leaving them the choice between the options presented.

26. Consistent with earlier replies, it is the opinion of the Netherlands Government that the Sixth Committee should be involved in the process of treaty-making by a United Nations organ. This involvement should take the form of a review of the text as a whole. The rules of procedure applicable to the Sixth Committee must then be examined in order to determine whether they need to be modified to allow for such a review.

27. The establishment of uniform or model rules of procedure for plenipotentiary conferences is strongly supported, because it saves a lot of time. The organ convening the plenipotentiary conference could at the same time decide upon its rules of procedure.

28. The participation of non-governmental organizations should above all be ensured at the prepatory stage.

29. Intergovernmental organizations having competence in subject matter of the plenipotentiary conference must be allowed to participate. This is of special importance for those intergovernmental organizations to which their respective member States have transferred competence over matters dealt with by the conference. In this respect the Netherlands Government wishes to emphasize the importance of treating the latter category of intergovernmental organizations, to the extent possible, on a par with States. To do otherwise, e.g. by stressing notions of state sovereignty, would neglect practical realities.

G. Drafting and languages

30. It is not considered necessary to give drafting committees more extensive functions. However, drafting committees should be allowed to function normally and their work should not be frustrated by calling each drafting change a change of substance.

31. The less number of authentic texts there are, the better it is. In the case of several authentic texts it is recommendable to provide that among divergencies between the various authentic texts one should be decisive.

32. The language of the decisive authentic text should be the one in which the treaty is formulated. If need be, other language versions could be made later. Experience shows that negotiations often continue to the last moment, leaving no time to adjust the various texts to decisions then taken. Such a procedure could also bring about considerable savings in expenditures.

33. Subject to the above, where negotiations are held in multiple languages, the establishment of sub-groups for each language, whose co-ordinators meet from time to time to resolve any interlingual and general questions, is preferable.

H. Records, reports and commentaries

34. In general, documentation which clarifies the results of negotiations is very useful. However, records, reports etc. are to be used cautiously, because they often provoke "speeches for the record" and tend to fix the positions of delegations. One should also bear in mind that sometimes results can only be achieved in smaller groups and that those results are only possible because the negotiating process as in such small groups remains unknown to the outside world.

35. Commentaries should preferably be prepared by expert groups. A systematic effort to prepare and publish the travaux préparatoires should indeed be made, primarily by the Secretariat unit concerned.

I. Post adoption procedures

36. As regards this item, reference is made to the comment by the Netherlands and the intervention by the Netherlands representative in the Sixth Committee on 25 November 1980 (see A/C.6/35/SR.62), which contain various suggestions to encourage States to become a party to a treaty and to promote its entry into force.

37. As to the suggestion of addressing questionnaires to States, such action (as other actions) should necessarily be based on a treaty provision. If provided for, it would be up to the depositary to send out such questionnaires.

J. Treaty-amending procedures

38. The acceptability of treaties will become more and more dependent upon the possibility of adapting them to changing circumstances. It is, therefore, advisable to devise various amendment procedures. It would also be possible in a particular treaty to provide that certain parts could be changed by a simplified procedure.

39. Another alternative may be the greater use of framework treaties. It is essential, however, not to create amendment procedures which might lead to conflicting treaty régimes.

SPAIN

/Original: Spanish/
/22 September 1981/

I. General considerations

1. The Spanish Government supports efforts directed towards the codification and development of international law through multilateral treaties and endorses the review of the multilateral treaty-making process initiated by the United Nations with a view to improving the various stages of that process. Apart from its response to the questionnaire submitted in accordance with General Assembly resolution 35/162, the Spanish Government would like to make a few preliminary comments of a general nature.

2. This subject is extremely complex and should not be unduly simplified. In view of the diversity of situations and circumstances, one should not make generalizations or seek miraculous formulas to solve each and every problem. Although the aim is to elaborate criteria and guidelines that are as general as possible, a certain amount of flexibility is needed to allow for this diversity of situations.

3. The most characteristic elements of the present situation are the following: excessive proliferation of international multilateral treaties and the need for co-ordination, excessive politicization of the international negotiating process, and technical and legal inadequacies in the texts of treaties.

A. Excessive proliferation and need for co-ordination

4. In recent years there has been an exorbitant increase in the number of international conferences and meetings of international organizations, sub-commissions and working groups at which international treaties are elaborated and, at times, adopted. States cannot regularly or attentively follow this proliferation of meetings and international treaties, which exceeds their "absorption capacity" in such matters.

5. Reasonable limits should be set for this type of international hyperactivity, especially since many of these meetings are held simultaneously and, even if they are not contradictory, they represent an unproductive duplication of effort. A minimum of international co-operation is needed in this process; accordingly, the United Nations should determine the guidelines and set the example. To that end, the efforts to co-ordinate international normative activities within the United Nations "family" should be increased. This applies to the bodies of the Organization itself as well as to its specialized agencies and organizations.

B. Politicization of the international negotiating process

6. In recent years, there has been a gradual "delegalization" of international treaties and a growing politicization both of the negotiating process and of

the contents of such treaties. The main, though not the only, reason for this phenomenon is the fact that the negotiating techniques used in the United Nations to elaborate provisions of a political nature have been applied to the elaboration of the legal norms contained in treaties.

7. A characteristic of this trend is the growing importance of consensus as a negotiating formula which, although it is essential for the adoption of political texts and should be an objective in the negotiation of legal texts, disrupts the negotiating process if it is carried to the extreme.

8-9. This type of politicization can also be seen in the fact that technical and legal bodies - both permanent bodies (International Law Commission, UNCITRAL) and ad hoc bodies - are being excluded from the mainstream of the international treaty-making process and are being replaced by working groups composed of government representatives. The epitome of this situation can be found in the negotiating process of the Third United Nations Conference on the Law of the Sea, which the Spanish Government considers to be completely atypical and which should therefore be viewed with the utmost caution when the time comes to draw general inferences from that experience.

C. Technical and legal inadequacies

10. The considerable politicization of the negotiating process and the conditions that accompany the use of consensus have logically resulted in a gradual undermining of the legal aspects of the international treaty-making process. All this, together with undue haste to conclude negotiations, the inadequate preparation of the relevant texts and the predominance of political bodies over legal bodies in the negotiating process, helps to explain the legal inadequacies of many of the treaties adopted recently, a situation which in turn creates major problems in terms of the interpretation and application of such treaties.

11. Therefore, greater attention must be devoted to the legal aspects of treaty-making, while allowing the necessary time for them to be properly negotiated, strengthening the participation of technical and legal bodies, avoiding excessive use of consensus and also avoiding wordings of dubious interpretation. This does not mean seeking legal perfectionism beyond the realm of political reality, for that would result in the elaboration of magnificent texts of treaties which would never come into force; instead, the right balance must be found between political requirements and possibilities and the need for precise legal wording.

12. This might be achieved in the following manner: (a) prior discussion, at the political level, of the purpose of the treaty and adoption of basic guidelines to that end; (b) elaboration of a preliminary draft by legal experts, or supervision thereof, if it is drafted by technical experts; (c) request for the submission of the views of States before the final elaboration of the draft; (d) adoption of the treaty, preferably at an ad hoc diplomatic conference, which should have the benefit of the technical and legal participation of the Drafting Committee.

II. Response to the questionnaire

A. Additional studies

1. Yes, especially when no response is received from specialized agencies having considerable experience in the elaboration of international treaties, for example IMCO and ICAO.

2. No. Perhaps a summary of the responses, containing the most important conclusions, might be published. It should not be published in the Legislative Series.

3. This would be useful, but not essential.

4. It would be useful, if the Secretariat updated and extended the Handbook of Final Clauses. The formulation of model clauses would also be useful; they could be prepared by the International Law Commission or, at least, under its supervision.

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

1. The burden is too great for the legal and financial personnel and budgets, both of States and of international organizations.

2. The international community should try to reduce the number of treaties being formulated. However, it does not seem necessary, in principle, for there to be any over-all increase in the resources available internationally. Any increase in such resources at the national level should be left to the discretion of each State.

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 United Nations organs and other organizations in its system. However, the Assembly's co-ordinating role should not be extended to other international organizations, since it does not have the necessary jurisdiction. The most it could do in connexion with the latter is to submit recommendations to them.

2. The role of the General Assembly should not be restricted to the gathering and dissemination of data. It could be extended along the lines of the suggestion contained in subparagraph (b), but only in connexion with organs and organizations in the United Nations system.

3. Yes, in principle.

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

1 (a). Yes.

1 (b). Yes, but to ascertain not only the potential interest of States in the treaty, but also their views on the basic contents of such a treaty.

1 (c). This possibility should not be ruled out in principle but, since the proliferation of this type of instrument creates confusion and further weakens international law, it should be used very judiciously.

2. We cannot give a clear-cut answer to this question since it would depend on each individual case. In principle, however, it would seem preferable for the preliminary formulation of a treaty to be entrusted to expert organs (technical and legal). The latter should act in accordance with political guidelines pre-established by representative organs and, before formulating the final draft, seek and, wherever possible, take into account comments and formal proposals from States. The secretariats of the various organizations should co-operate in the preparation of preliminary drafts and subsequent drafts but should not be responsible for their preparation unless the representative organ so instructs.

3. Yes, treaty-making organs within the United Nations should be concentrated and the work of such organs should in any case be co-ordinated.

4. Yes, to all fields, especially less politicized fields.

E. Work of the International Law Commission

1 (a). Yes, especially if its workload is to be increased.

1 (b). Yes, in principle.

1 (c). The Rapporteurs should at least work on a full-time basis. They should in any case be properly remunerated.

1 (d). No.

1 (e). The Rapporteurs should be supported by experts, but it would not seem necessary for such experts to work on a full-time basis.

2 (a). The question is not very clear. The General Assembly decides where to refer items. The desirability or otherwise of referring a question to ILC would have to be considered in each individual case.

2 (b). Generally speaking, the agenda is all right as it is. It could be heavier if ILC members devoted more time to their work and States' absorptive capacity was increased.

2 (c). Depending on the case, it could agree to deal with a global topic exhaustively or to adopt a sectoral approach. This would also depend on the time available. In any case, it would not seem advisable to assign overly specific topics to ILC.

3 (a). Yes, in principle.

3 (b). The present situation seems satisfactory. It would however, be desirable, for States to receive the text of the ILC report further in advance so that they can comment on it in the corresponding debate in the Sixth Committee.

3 (c). No.

3 (d). That might be desirable. Standard clauses could be included, leaving a blank for points which required a political decision, such as the admissibility or otherwise of reservations, the number of instruments needed for entry into force, etc.

3 (e). Yes. When controversial topics are at issue, ILC should prepare more than one alternative, especially when one or more States have made conflicting proposals.

3 (f). The question is not very clear. In general, the existing process of codification and development of international law appears to be adequate.

3 (g). No. The current process of politicization should not be allowed to affect ILC.

F. Final negotiation and adoption of multilateral treaties

1. It would be preferable to convene ad hoc diplomatic conferences.

2. The question should not be put like this because it appears to prejudge the reply to the previous question. The General Assembly would not seem to be the most appropriate organ for the adoption of treaties, for both substantive reasons (over politicization) and procedural reasons (lack of time).

2 (a). Yes, in all cases.

2 (b). Yes.

2 (c). Yes, through the review of formal and legal clauses.

3 (a). We cannot give an over-all answer because it would depend on the circumstances of each case. In general, it would be desirable for conferences to be scheduled for a sufficiently long period to complete their work. Proper preparation would be needed to permit this.

3 (b). Not necessarily, although it would be desirable. Model rules of procedure could be established, with possible variants for more controversial topics.

3 (c). No. The Conference is sovereign and should be able to establish whatever committees it deems necessary.

3 (d). In general no, although this cannot be ruled out in certain cases if the Conference deems it necessary.

3 (e). No. If certain geographical groups or interest groups wish to express their views through a single spokesman, there is nothing to prevent them from doing so. Such a practice should not, however, be imposed for it would conflict with the sovereign rights of each State participating in the Conference.

3 (f). In general, no.

G. Drafting and languages

1. This might be appropriate, as long as it performed a purely advisory function.

2. In general, no.

3. We must try to negotiate and formulate treaties in the languages in which their text is to be authentic, at least in the most widely used languages such as Spanish, French and English. We must prevent one language (generally English) from gradually monopolizing such work, especially in the negotiating stage. The increasing informality of negotiations, the use of small negotiating groups and the logistical difficulties of holding several meetings at once ... are leading to the artificial imposition of a single language, placing non-English-speaking delegations at a disadvantage. There are cases in which, for instance, a proposal made formally in Spanish is translated into English and then back into Spanish. The final text sometimes differs considerably from the original proposal. Even when in practice, English is imposed as the vehicle for informal negotiations, we must try to give an equal opportunity to the other official languages, especially when texts come to be published and hasty, imprecise and inaccurate translations of the English are sometimes produced.

4. The practice of establishing language subgroups within drafting groups would seem useful, but such groups would have to be given enough time for their reports to be examined and discussed by the drafting group. We would have to ensure that the different language groups worked at the same speed and did not simply follow the English language group. Language group co-ordinators are useful in helping to solve problems of co-ordination between the different texts but they cannot become super-members of the drafting group with decision-making powers.

H. Records, reports and commentaries

1. There should be summary records only for meetings of Main Committees.

2. In the preparatory stage, there should be reports on the meetings of expert groups, especially when such groups submit preliminary draft or draft treaties. These reports should be drawn up by the corresponding groups with the help of the Secretariat.

3. As we already indicated, only by expert groups.

4. Yes, wherever possible. This should be done by the secretariat unit concerned.

I. Post-adoption procedure

1. No. At most, it should periodically remind States of the status of treaties and urge them to become parties thereto.

2. No.

3. No.

4. This kind of assistance should be provided to States who request it.

5. No.

6. In some cases, they could provide for the provisional application of treaties as long as certain conditions were fulfilled. How a State voted when the treaty was adopted would not be a sufficient condition.

J. Treaty-amending procedures

1. Yes, in general. Lately, there has been a tendency to abuse this practice, creating situations of confusion. If treaties are to be properly implemented, States must know what obligations they are assuming. Abuse of simplified forms of amendments, recourse to tacit agreement with reduced time limits, the adoption of amendments in forums other than those which adopted the treaty, the proliferation of amendment proposals (even before the treaty or earlier amendments on the same subject have entered into force) ... can upset the normal process of States' implementation of treaties.

2. The question is unclear.

3. This would have to be determined case by case. The excesses to which we drew attention in our reply to paragraph 1 of this section must be avoided.
