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REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS

Report of the Secretary-General

Addendum

CONTENTS

UNION OF SOVIET SOCIALIST REPUBLICS

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[5 November 1981]

1. The general position of the USSR on the questions dealt with in the report of the Secretary-General entitled "Review of the multilateral treaty-making process" is set forth in the observations of the USSR contained in document A/35/312/Add.1.

2. The study of the multilateral treaty-making process contained in that report generally reflects correctly State practice in this area. The paucity of the observations submitted by Governments in response to the Secretary-General's inquiry indicates that the majority of Governments have little interest in broad studies on the question. Therefore, at the present stage, it would be advisable not to go beyond the results which have been achieved and published to date.

3. With regard to the provision by the United Nations Secretariat of legal assistance on multilateral treaty-making questions within the United Nations, the auxiliary material which it prepares should not be anything more than reference aids.

4. In present circumstances, the sharing of the burden of the multilateral treaty-making process is not an urgent question. The methods and procedures which already exist in the United Nations on the whole ensure that States can reach agreement on the establishment of priorities in the selection of questions to be discussed in United Nations organs and at international conferences. In this connexion, States must do everything to observe their obligations deriving from the United Nations Charter, particularly as regards the maintenance of peace and international security.

5. The expansion of international legal regulating activities, in both qualitative and quantitative terms, requires a more effective multilateral treaty-making process. That can and must be achieved not through the introduction of universal models or a reduction in the number of treaties being formulated but by taking account of the differences in the existing treaty-making methods and procedures which are applied in each specific case and selecting them correctly and rationally in the specific circumstances which arise when the questions at issue are discussed.

6. An increase in the role of the United Nations General Assembly in the co-ordination of multilateral treaties concluded within the United Nations would help to improve the effectiveness of multilateral treaty-making. In the case of treaties concluded within other intergovernmental organizations, it would seem advisable for the General Assembly to instruct the Secretariat to gather data on the treaties being concluded and disseminate the information in the form of documents of the Sixth Committee.

7. It should be emphasized that, when preparations are being made for the conclusion of a multilateral treaty within the United Nations, the Secretariat still has a mandate, where possible and when its existing tasks permit, to make extensive efforts to collect relevant data and to ascertain the interest of States

in preparing the text of the treaty. It could also prepare any auxiliary material which would be considered useful. For their part, States retain the right to establish the usefulness of documents submitted by the Secretariat for the purposes of concluding a treaty.

8. The preliminary formulation of the text of a treaty depends on its nature, and, in view of the variety of approaches adopted by States to different treaties, it would not be desirable to lay down rules as to which body should be entrusted with any particular treaty. In this connexion, an important role should be played in particular by the International Law Commission, which should increase the effectiveness of its work. It would also be desirable to strengthen the law-making role of the Sixth Committee, where draft treaties could be completed and adopted without the convening of ad hoc international conferences. In this connexion, it would not seem advisable to limit the time for the consideration of particular questions. Such a time limit could be set only on the basis of mutual agreement among the plenipotentiaries participating in the work of the United Nations organ or of the conference.

9. The present structure of the International Law Commission has justified itself and it would seem undesirable to change it. The existing way of establishing the order of consideration by ILC of particular questions ensures that the agendas for its sessions are filled. Attempts by ILC to activate the consideration of individual questions should not run counter to the General Assembly recommendations on time limits for completion of the consideration of those questions. It would also be undesirable to make any new changes to the Commission's internal organization of work.

10. When multilateral treaties are being negotiated and adopted, the Sixth Committee and the other Main Committees of the General Assembly, in whose work States' plenipotentiaries participate, are extremely important.

11. Where it is considered necessary to convene an ad hoc plenipotentiary conference, in accordance with established practice and depending on the nature of the question being considered, there should be a General Assembly resolution concerning the duration and dates of the work of the plenipotentiaries and, if need be, other arrangements. The internal procedure for this work should be determined by the plenipotentiaries themselves.

12. There are no grounds for creating an international treaty drafting bureau or for giving drafting committees more extensive functions. As for the formulation of treaties in a number of languages, the United Nations has an existing and sufficiently effective practice of using its official and working languages.

13. There is no need to regulate the arrangements regarding verbatim or summary records, or commentaries on draft treaties. The relevant arrangements should be made, as is the case in existing practice, not on the basis of a standard model but in a way appropriate to individual draft multilateral treaties.

14. It is quite unacceptable for the United Nations to consider, and still less to take any action in respect of, the procedures employed by individual States to ratify treaties. Such actions as asking States to explain their reasons for opting

out of a treaty or to undertake any obligations in the interests of establishing any régime, or attempting to provide for the automatic entry into force of treaties in States which did not express agreement to be bound by the treaty, would be illegal since they would violate the basic principles of State sovereignty and non-interference in the internal affairs of States.

15. The question of the inclusion in a treaty of clauses providing for provisional application fall entirely within the competence of the plenipotentiaries who are participating in the elaboration of the treaty.

16. In the question of treaty-amending procedures, which are also established in United Nations bodies and at the conferences considering the draft treaty, existing practice should also be followed.
