UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/37/444
5 October 1982
ENGLISH
ORIGINAL: ARABIC/ENGLISH/
FRENCH

Thirty-seventh session
Agenda item 123

REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS

Report of the Secretary-General

CONTENTS

CONTENTS (continued)

I. INTRODUCTION

1. The present report is submitted in response to General Assembly resolution 36/112 of 10 December 1981.

2. In its resolution 32/48 of 8 December 1977, the General Assembly requested the Secretary-General to prepare a report on the techniques and procedures used in the elaboration of multilateral treaties, taking into consideration the debates in the Assembly at that session and observations to be submitted by Governments and the International Law Commission for inclusion in the report, with a view to its submission to the Assembly at its thirty-fourth session.

3. At its thirty-fourth session, the General Assembly, owing to the late submission of observations, did not hold a substantive discussion on the subject and decided to include the item in the provisional agenda of its thirty-fifth session (decision 34/402).

4. At the thirty-fifth session of the General Assembly, the Secretary-General submitted a report (A/35/312 and Corr.1) containing features of multilateral treaty-making in the United Nations and in other intergovernmental organizations, and the views of Governments and the International Law Commission (A/35/312/Add.1 and 2 and Add.2/Corr.1). In addition to such questions as the initiation of treaty-making and the formulation and adoption of multilateral treaties, the report also dealt 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. The Assembly took note of the report and invited Governments and intergovernmental organizations to submit their observations on it and requested the Secretary-General to make his report widely available to other interested organizations active in the preparation and study of multilateral treaties, and to invite them to comment on the subject of the report. The Assembly also requested the Secretary-General to prepare and publish a new edition of the Handbook of Final Clauses (ST/LEG/6) and the Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements (ST/LEG/7). Furthermore, in its resolution 35/162 of 15 December 1980, the Assembly requested the Secretary-General to submit to it at its thirty-sixth session a report containing the replies received from Governments and international intergovernmental and other interested organizations, as well as a topical summary of the debate at its thirty-fifth session.

5. In its resolution 36/112, the General Assembly took note of the report of the Secretary-General (A/36/553 and Add.1 and 2), invited Governments and international organizations to submit, by 30 June 1982, their observations on the reports submitted by the Secretary-General, taking into account the specific questions contained in annex I of the report, as well as their comments on any other aspect of the subject, as they considered desirable. The Assembly requested the Secretary-General to submit to it at its thirty-seventh session a report containing the observations and comments received and further requested him to prepare and publish as soon as possible a new edition of the Handbook of Final Clauses (ST/LEG/6) and the Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements (SR/LEG/7), taking into account relevant new development

/...

and practices in that respect. The Assembly also decided to establish at the thirty-seventh session a working group of the Sixth Committee:

(a) To consider the questions raised in annex I of the Secretary-General's report (A/36/553 and Add.1 and 2) and any other relevant material submitted by Governments and international organizations;

(b) To assess the methods of multilateral treaty-making used in the United Nations and in conferences convened under its auspices to determine whether the current methods of multilateral treaty-making are as efficient, economical and effective as they could be to meet the needs of the Members of the United Nations;

(c) To make recommendations on the basis of the above-mentioned assessment.

6. The Secretary-General was requested to prepare documentation containing the material and information listed in annex II of his report (A/36/553) in the form of a provisional version of a volume in the Legislative Series, as well as a topical analysis of the observations and replies received, in time for use by the working group.

7. The present report contains the observations and comments received from Governments and international organizations. The Annex reproduces the questionnaire originally contained in the Secretary-General's report (A/35/312). The documentation required for the use of the working group will be issued in a separate volume.

II. REPLIES RECEIVED FROM GOVERNMENTS

AUSTRALIA

[Original: English]

[18 August 1982]

1. The elaboration of multilateral treaties on a wide variety of topics is an essential part of the work of the United Nations. There has been a considerable growth in the number of treaties negotiated and adopted under the auspices of the United Nations since the 1960s. While this trend is likely to continue, it has not been matched by any rationalization of the treaty-making process.

2. The growth in the number of treaties that are elaborated in the United Nations is placing serious strains on the resources of Governments, particularly those of developing countries. This, coupled with difficulties in relation to States' constitutional processes, are leading to delays in ratification. There is a need to assess the methods of multilateral treaty-making used in the United Nations and in conferences convened under its auspices to determine whether the current methods of treaty-making are as efficient, economical and effective as they could be to meet the needs of the Members of the United Nations. We therefore welcomed the decision to establish, at the thirty-seventh session of the General Assembly, a

working group which, it is hoped, will consider the responses to the very useful questionnaire in section IV of the 1980 report of the Secretary-General (A/35/312) and in annex I of the 1981 Report (A/36/553), and decide what recommendations, if any, could be made to improve the treaty-making process.

3. Australia's views on the matters covered, arranged under the headings of the questionnaire, are as follows.

A. Additional Studies

1. It should be for the working group to make a recommendation to the Sixth Committee on whether additional responses from intergovernmetal organizations should be sought, in the light of the information then available.

2 and 4. (a) These matters have already been dealt with in General Assembly resolution 36/112 of 10 December 1981.

3 and 4. (b) We believe that the delegations of States negotiating treaties would be greatly assisted by having a detailed description of all significant multilateral treaty-making techniques in the form of an annotated manual, and by having sets of model clauses. To this end, the working group may wish to consider whether the Secretariat should be requested to prepare a comprehensive collation of the significant techniques.

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

There is evidence to suggest that the burden of the treaty-making process may be too heavy, particularly for smaller States, in each of the three cases listed in (a) to (c) of question 1. Pending a further elaboration of States' views in the working group, it would be premature to attempt to answer question 2.

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

Australia has reservations about giving the General Assembly a co-ordinating role in respect of multilateral treaty-making activities of all United Nations organs, all organizations of the United Nations system or all intergovernmental organizations. There is merit in leaving the burden of treaty-making to organs of the United Nations and intergovernmental organizations, particularly when the treaty in question is highly technical and when there has been a long tradition of entrusting the preparation of such a treaty to a technically competent organization. To give the Assembly a co-ordinating role would have the effect of increasing the already heavy work-load of the Assembly and slow down the multilateral treaty-making process. The treaty-making role of the Assembly is best exercised in subject areas where it has traditionally had a primary role, or when specialized machinery is lacking.

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

1. Before embarking on the formulation of a particular treaty, more extensive efforts should be made in respect of matters covered in (a) to (c) of question 1.

2. The preliminary formulation of the text of treaties should generally be placed in the hands of an expert body (Government or otherwise) or of a group of experts specially convened for that purpose. However, the choice of an organ for the drafting of a preliminary text of a treaty should depend on the subject-matter of the treaty in question. When the treaty subject-matter is vague or controversial, it will sometimes be helpful if a representative organ can consider and draft guidelines.

3. In answer to question 3, there is probably scope for reducing the number of treaty-making organs in the United Nations and, in particular, to rationalize procedures. One of the problems currently experienced by United Nations treaty-making organs is the unavailability of information on the methods of work and procedures best suited to deal with a particular subject-matter.

4. A more structured approach should be explored, particularly for treaties dealing with a technical subject. Such an approach is most profitably applied to areas where there is a good deal of treaty-making activity (for example, human rights or technical subjects). It is more difficult to achieve in areas of major political importance (for example, disarmament). Moreover, the imposition of specific time-limits needs to be handled with care and flexibility, since it can lead to rushed work or to failure of consensus.

E. Work of the International Law Commission

1. Possible structural changes

(a) To convert the International Law Commission into a full-time organ raises a number of important issues which should be studied further. Other alternatives should also be examined, including the question of whether there should be more than one session of the Commission a year.

(b) The honorarium of members of the Commission would appear to be insufficient considering the length of sessions, and should be reviewed.

(c) The question of whether Special Rapporteurs should work and be remunerated on a full-time basis is, to some extent, tied up with question (a). Even if the Commission were to be converted into a full-time organ this would not necessarily mean that the Special Rapporteur would have to work on a full-time basis.

(d) Under the existing situation, Special Rapporteurs should be drawn only from members of the Commission so that they may participate as equals in the Commission's consideration of their work.

(e) The question of expert help for Special Rapporteurs, if not on a full-time basis then at least ad hoc, should be examined further.

2. Possible changes in agenda

It is not possible to provide a categorical answer to questions on the Commission's agenda but, in general, the Commission should give priority to the progressive development and codification of important areas of international law where agreement among the Commission's members, as well as among States, may be possible. We consider that the agenda of the Commission is generally too heavy, and the Sixth Committee should carefully consider the items placed upon it. While the Commission may have success in dealing with contentious matters, it will make best use of its limited time, in current circumstances, if these are not numerous. The Commission should be pre-eminently able to take a broad view of major topics.

3. Possible procedural changes

(a) It would be best if members of the Commission could carry a topic through to completion within their period of service.

(b) There would seem to be no need for Governments to be consulted more than once a year on the work of the Commission. Government representatives should, in addition, continue to have the opportunity of commenting on the work of the Commission in the Sixth Committee.

(c) There might be scope for intersessional working groups, subject to constraints on the time of Commission members, coupled with a reduction in the length of Commission sessions. This, however, may not be necessary if the agenda of the Commission is lighter. The matter should be examined further.

(d) The Commission should, in general, attempt to formulate preambles and final clauses of the draft articles it submits to the General Assembly, if it considers that these should contain special features. If the Commission finds it difficult to reach agreement on such provisions, it should leave the responsibility for preambles and final clauses to the General Assembly.

(e) Alternative texts of particularly controversial provisions, and the reasoning behind them, could be helpful for those entrusted with the negotiation of treaties and could save the time of the Commission itself.

(f) The restatement and codification of areas of customary international law should be secondary to its progressive development, and undertaken only if there is scope for agreement among States on the rules of customary international law in question.

(g) We consider that, in general, the Commission should not draft texts for instruments other than treaties. To attempt to do that would detract from its main purpose, overpoliticize the Commission and increase its work-load. In cases where the Commission believes that a particular subject-matter referred to is not ripe for inclusion in a binding instrument, it should say so, stating the reasons.

F. Final negotiation and adoption of multilateral treaties

1 and 2. As a general rule, multilateral treaties of concern to the General Assembly should be finally negotiated in ad hoc plenipotentiary conferences rather than in a Main Committee of the General Assembly. There is scope for greater flexibility in the timing of plenipotentiary conferences, in rules of procedure and in working methods to meet the requirements of the subject-matter than would be the case in a Main Committee of the General Assembly. Unless it is clear that consensus can be readily and quickly achieved, it is better to concentrate on the subject being negotiated in a plenipotentiary conference than to distort the focus of a Main Committee of the General Assembly, which is also burdened with other items on its agenda.

3. The duration of plenipotentiary conferences will vary according to the scope and importance of the subject-matter of the treaty. It is important that States should be free to organize such conferences in the way they believe most suitable for the subject-matter at hand and to ensure maximum efficiency in the consideration of the subject-matter. There is generally value in a series of sessions allowing time for reflection and review. Governments participating in plenipotentiary conferences should have model rules of procedures to consider. The use of negotiating and intersessional committees can be valuable. It is generally most undesirable to have formal debates limited to group spokesmen. However, firm conclusions on all these matters, as well as on whether more extensive participation should be allowed at plenipotentiary conferences, will have to depend on the subject in question and the wishes of the States participating at the conference.

G. Drafting and languages

1. It is not clear what is envisaged by the term "international legislative drafting bureau" and what the powers and functions of such a bureau would be. While it might be appropriate to establish a bureau to train officials in drafting techniques, and so on, it would be undesirable and unrealistic to refer texts of draft treaties that are being negotiated to an outside body composed of persons who had not participated in the negotiations. A first step in improving the drafting of treaties might be to explore ways of achieving consistency of drafting practices to distinguish treaties from instruments which are not of treaty status, and instruments which are intended to be legally binding from those which are not so intended.

2. The functions of drafting committees and the handling of language problems depend on the subject-matter of the treaty being negotiated and the wishes of the Governments involved in the negotiations.

3. While the simultaneous formulation of treaties in all languages in which their text is to be authentic is desirable, the use of one or two languages initially would be more convenient and would facilitate the future examination of the travaux préparatoires for the purposes of interpreting the treaty in question.

4. The practice adopted at the United Nations Conference on the Law of the Sea is cumbersome but is probably the most practicable model for major conferences which themselves engage in significant drafting exercises.

H. Records, reports and commentaries

1. As a general rule, summary records should be maintained only for plenary sessions of a conference and sessions of Main Committees or Committees of the Whole. Records of negotiations provide a means for the interpretation of treaties. There is, therefore, value in records of negotiations, including documents formally circulated during negotiations, being as complete as possible.

2. This question is not entirely clear. The official reporting of various positions taken and the reasons for changes in the text are a sensitive matter. If it is to be undertaken at all, the report should be examined, and made subject to adoption, by the conference which negotiated the text.

3. Commentaries on draft treaty texts of the type prepared by the International Law Commission are of great assistance for treaties which purport to modify or build upon customary international law. The preparation of systematic commentaries on texts is a task best undertaken by expert groups.

4. A systematic effort should be made to prepare and publish the travaux préparatoires of multilateral treaties. A secretariat unit can play an important role in collecting much of the relevant documentation during the negotiations. However, because the work of preparing a full account of the travaux préparatoires will continue after the conclusion of the treaty, it would be useful to have an expert prepare and publish the travaux préparatoires of all major multilateral treaties.

I. Post-adoption procedures

1, 2, 3 and 5. Many of the procedures listed under this heading may, if implemented, have the effect of interfering in an unacceptable way with a State's freedom to decide whether to ratify a particular treaty, at what stage and in what manner. On the other hand, some forms of encouragement of State activity in this area may be acceptable. The automatic entry into force of certain categories of treaties would raise constitutional problems in legal systems where those categories of treaties first have to be implemented in domestic legislation before the State concerned can become a party to them.

4. There would be advantage in having expert assistance available of which a State could avail itself for advice to it when considering becoming a party to a multilateral treaty. This is particularly important in the case of a State considering becoming a party to a multilateral treaty before the travaux préparatoires have been fully collated and published. It may also be of use to consider the preparation by an expert, on request of the State concerned, of a brief general document on the implementation of the treaty concerned.

6. The provisional entry into force of some treaties (for example, some commodity agreements) has proved a useful and constructive device. Provisional entry into force may serve several purposes, such as enabling States to become bound by a treaty which establishes an interim régime pending a decision by other States also to become a party. It may also enable a State to become a party without first having fully implemented all obligations under the treaty in its domestic law. The device of provisional application should be encouraged as a means of obtaining maximum adherence to certain treaties which call for a wide adherence within a limited time. The treaties should lay down clear circumstances or time-limits within which the provisional application must be made definitive.

J. Treaty-amending procedures

1. Certain categories of treaties, particularly those of a technical character, should provide for simplified forms of amendments. Often, details which may require frequent change can be isolated in annexes with special amendment procedures. It would be useful to publish existing models.

2. The relationship between a proposed treaty and earlier treaties on the same subject-matter should receive greater attention when drafting the new treaty, particularly when the series of treaties attempts to lay down rules which require wide adherence for their effectiveness (such as those establishing procedures for compensation, limits of liability and other matters affecting international commerce). The possibility exists of a series of treaties (including treaties amending earlier ones) creating a complex web of legal régimes which might not all be compatible. It would, in these circumstances, be desirable to address specifically the interrelationship between the particular treaties. The proposal to include in treaties provisions for automatic supersession should be considered as part of this more general question.

3. There would be value in making greater use 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. The decision-making power of the organ concerned would have to be clearly circumscribed and consideration should be given to the protection of the interests of minorities. Decisions by such organs (for which there are precedents in the area of health and civil aviation) would avoid the time-consuming procedures required for approval of treaty action under municipal laws of various countries party to the framework treaty.

INDONESIA

[Original: English]

[15 July 1982]

1. The Government of the Republic of Indonesia in principle agrees with the efforts of the General Assembly for a review of the multilateral treaty-making process.

2. The Indonesian Government supports the proposal that the report of the Secretary-General (A/35/312) be used as a basis for the subsequent negotiations, including the observations and comments from Member States.

3. The Indonesian Government will participate in the negotiations to be held under the auspices of the General Assembly. In order to assist the said efforts, comments based on the questionnaire in the annex to document A/35/312 are provided below.

A. Additional studies

1 and 2. Indonesia agrees to seek additional responses from intergovernmental organizations which have not submitted comments requested by the Secretary-General, and those answers should be published as part of the Legislative Series. On the existing answers which are available now, it is to be hoped that these will be systematized in order to be commented upon.

2 and 3. The Secretariat could prepare a detailed description regarding the technique of multilateral treaty-making process, and Indonesia will support the Secretariat in its efforts:

(a) To renew the guidelines concerning the Handbook of Final Clauses.

(b) To establish model clauses for preparing or formulating a United Nations multilateral treaty.

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

1. The multilateral treaty-making process would be a burden to both States and non-governmental organizations concerned and the problem is difficult because of its complicated nature. However, efforts could be exerted to make it an effective process by establishing a scale of priorities with regard to some important aspects of the treaty. By so doing, States could concentrate their attention on those aspects which relate to their direct interests.

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

The General Assembly could take initiative as co-ordinator in the framework of the treaty-making process. If the Assembly is given such a role, the executive should be the Sixth Committee, which deals with legal matters.

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

1. In order to improve the multilateral treaty-making process the following steps should be taken:

(a) Collecting the necessary legal data, including factual data.

(b) Securing clear views from Member States regarding their observations or comments relating to the treaty which is going to be considered.

(c) Making a possible alternative instrument which has a weaker binding instrument than the proposed instrument.

2. The first formulation could be done by an expert group assisted by the Secretariat. Such an approach will expedite the making of a first draft.

3. For uniformity of the treaty-making process, the organs should be limited, and the procedure should concentrate on certain organs.

E. Work of International Law Commission

There are many agenda items which have been considered by the International Law Commission. Due to lack of time, the Commission could not consider them in detail and fulfil its duty. If the effectiveness of the Commission is to be improved, the Sixth Committee will have to designate the scale of priority.

F. Final negotiation and adoption of multilateral treaties

Important treaties must principally be negotiated in an ad hoc plenipotentiary conference so that the deliberations in the General Assembly will succeed. Generally, if the Conference is held for more than six weeks, it would be difficult for several States to have their experts away for such a long duration.

G. Drafting and languages

The function of the drafting committee with regard to the language that should be used depends upon the importance and kinds of treaties. The method used for the United Nations Conference on the Law of the Sea could only be applied in the same categorical case.

H. Records, reports and commentaries

Principally, the verbatim and summary records are only necessary in the sessions of the plenary and whole committees which are based upon consensus. The need for the proceedings of the committee to be recorded will depend upon the nature of the problem. The reports should be formulated by an expert or small group.

I. Post-adoption procedures

It is difficult for the United Nations to exert Member States to ratify a treaty because that process involves national laws. In such a situation, the maximum that the United Nations could do is to urge the Member States which have not ratified the treaty to do so soon and, at the same time, submit periodical reports concerning the number of the Member States that have ratified it.

J. Treaty-amending procedures

It could be done as an amendment concerning technical matters, and would require a comprehensive study to establish certain categories.

QATAR

[Original: Arabic]

[21 July 1982]

1. The State of Qatar attaches special importance to multilateral treaties of a universal character relating to the codification and progressive development of international law whose aims and purposes concern the international community as a whole.

2. Multilateral treaties have an important role in strengthening peace, expanding and deepening various forms of co-operation among States, and in the progressive development and codification of international law. Multilateral treaties constitute a basic source of international law.

3. The methods and procedures pursued by the United Nations at present give States sufficient prospects for agreement on the system in the light of which a particular question is to be examined by the organs of the Organization or its international conferences. Hence, the burden of the multilateral treaty-making process has no scientific significance. The main thing is that States should fulfil completely the obligations embodied in the Charter of the United Nations, especially with regard to the maintenance of international peace and security.

4. The work done by the International Law Commission, which is a focal point in codification activities, whether in terms of quantity or quality, is admirable, as is the work done by the United Nations Commission on International Trade Law in its field of expertise. The efforts to improve the multilateral treaty-making process cannot result in a system less effective than that of the International Law Commission and the United Nations Commission on International Trade Law.

A. Additional studies

1. Yes, this should be done, as additional responses will make it possible to make a thorough analysis.

2. No. Perhaps it would be better to publish a summary of the responses which present the best results. If such a summary is published, it should not be published within the framework of the Legislative Series.

3. Yes. We believe that it would be useful if the Secretariat prepared a detailed description of all significant multilateral treaty-making techniques.

4. (a) Yes.

(b) Yes. However, the Handbook of Final Clauses mentioned in paragraph (a) could be more complete and, in all cases, paragraph (a) could embody the sets of model clauses mentioned in paragraph (b), which could be of assistance in formulating formal clauses.

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

There is no doubt that the burden of the multilateral treaty-making process is becoming too great for both Governments and international organizations. However, it is not possible to envisage a resolution of a general and abstract character that would be conducive to reducing the number of treaties being formulated. If a decision is taken to formulate a treaty dealing with a specific topic, it is because the majority of States parties to the treaty believe in the need for such a treaty. It is to be hoped that States will exercise some moderation and, when making decisions, will take into consideration their own ability and the ability of international organizations to deal with the problems posed.

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 United Nations organs and all organizations of the United Nations system. Only in this manner can the General Assembly fulfil its obligations in accordance with Article 13 of the Charter, namely, to make recommendations for the purpose of "encouraging the progressive development of international law and its codification".

2. With regard to United Nations organs, the co-ordinating role should be extended to influencing the treaty-making process by proposing subjects to be considered and identifying the organs of the Organization most suitable to do so.

3. With regard to the United Nations system, the co-ordinating role should be restricted to the gathering and dissemination of data about all treaty-making activities which take place within these organizations. In fact, the co-ordinating functions can best be exercised by the Sixth Committee.

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

1. It is always desirable to undertake the tasks mentioned in (a) to (c) before embarking on the formulation of a particular treaty.

2. The preliminary drafting of the text of treaties should be entrusted to experts, as was the case in the past.

3. Only an insignificant reduction can be made in the number of treaty-making organs and procedures in the United Nations.

E. Work of the International Law Commission

1. Possible structural changes

It would be appropriate to consider the possibility of increasing the honorarium or the per diem of Commission members.

2. Possible changes in the agenda

Care should be taken to avoid referring too many questions to the International Law Commission so as not to overload its agenda.

3. Possible procedural changes

The International Law Commission should make more of an attempt to complete all of its work on each subject within the five-year term for which its members are elected. The Commission should formulate preambles and final clauses for the draft articles it submits to the General Assembly so that the latter may follow up the progress of the topic.

F. Final negotiations and adoption of multilateral treaties

1. It is better to conduct the negotiation of treaties in the General Assembly (the Sixth Committee).

2. (a) Yes, in accordance with the draft-treaty under consideration.

(b) Yes.

(c) Yes, through consideration of the formal and legal provisions.

3. (a) It is not easy to answer this question, especially since it is necessary to consider every case on its merits. Accordingly, it is necessary to allocate sufficient time to each conference so that it may be able to complete its work. Hence, the necessary preparatory work should be done, though we realize that this might impose a great burden on States, particularly third world States.

(b) Yes. Model rules of procedure could be established for such conferences.

(c) No. While every conference may set up committees according to its needs, we believe that a proliferation of committees can be counter-productive.

(d) No, unless there is a need for this.

(e) No. New elements may emerge that affect only one member of a group and not the group as a whole. States have the right to express their views when they wish to do so.

(f) No.

G. Drafting and languages

Treaties should be formulated simultaneously in all languages of the United Nations. In some cases, a subgroup may be set up for each language, as is the case at the Third United Nations Conference on the Law of the Sea.

H. Records, reports and commentaries

1. Summary records must be maintained for meetings of the main committees.

3. As a general rule, commentaries should be prepared on drafts formulated by expert groups.

I. Post-adoption procedures

1. No. Ratification of treaties is regulated by the domestic law of each State. All that the United Nations can do is to send notes periodically to inform States about the status of treaties. The United Nations can request States to adhere to such treaties.

2. No.

3. No.

4. It would be better to provide assistance to States that requested it.

5. No.

6. No. In specific cases, treaties can provide for provisional entry into force, when particular conditions apply. The position a State takes at the time of adoption of the treaty does not constitute a sufficient element in this respect.

J. Treaty-amending procedures

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

2. This may lead to some simplification.

3. This is possible, especially as it depends on the treaty. One should not generalize.

REPUBLIC OF KOREA

[Original: English]

[12 July 1982]

1. Given the importance of the multilateral treaty-making process, the Government of the Republic of Korea believes that the consideration by the General Assembly of the item entitled "Review of the multilateral treaty-making process" is a highly useful exercise which provides for an opportunity to look into the existing treaty-making process as it has evolved and to address matters that may, where possible, need improvements.

2. Regarding the questions contained in section IV of the report of the Secretary-General (A/35/312), the Republic of Korea is of the view that, in terms of practicality, one should take into account the merits of flexibility in the current treaty-making process rather than a set of rules to be universally applied.

3. Considering the realities of the treaty-making process in the international community, it would be advisable to follow gradual treaty-making practices which could ensure a wider basis of acceptance by sovereign States with varied interests and priorities.

4. It is in this context that the Korean Government is pleased to make comments on the questions contained in the Secretary-General's report.

A. Additional studies

With respect to questions involving intergovernmental organizations, there would be further need for such solicitation and, in view of the specific nature of the questions generally dealt with by individual intergovernmental organizations, it would be preferable to publish a separate volume containing significant multilateral treaty-making techniques. In so far as the practical results that could be achieved from the formulation of relevant clauses are worthy of the efforts and expenses involved, no one could dispute its usefulness. The updating of the Handbook of Final Clauses, inter alia, seems a desirable task.

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

It should be admitted that only sovereign States, as principal treaty-making actors, can best decide on what treaties to conclude and on how to set priorities. However, the paramount importance which the international community places on the treaty-making process should be fully appreciated. The point here is how well to co-ordinate the costs with benefits in regard of treaties being formulated. It is clear that neither mere reduction of the number of treaties nor ideas to increase the resources available could solve the problem satisfactorily.

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

The universal character of the United Nations could naturally place the General Assembly in a position to assume a co-ordinating role in regard to multilateral treaty-making activities at all levels, in so far as the Assembly does not compromise the autonomy of intergovernmental organizations. In this connexion, there is no doubt that an increase in the role of the Assembly in co-ordinating multilateral treaties would help enhance the effectiveness of treaty-making. However, such an additional role might overburden the General Assembly, whose agenda was already congested, whereby subjects, in particular, of a very specialized nature might often be neglected. And there may arise a danger that, in case the Assembly strictly confines itself to gathering and disseminating data on the treaties being formulated, its role as co-ordinator would become insignificant.

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

The mechanical application of a procedural model to any treaty is not advisable and, therefore, there is no need to set up any unilateral criteria. Indeed, the choice depends on the subject-matter of a treaty and the circumstances involved. It is a truism to say that experts are best for preparing treaties dealing with legal and technical matters, whereas government representatives are entitled to the formulation of treaties having political or economic importance. It is unrealistic to attempt to set time-limits for multilateral treaty-making organs, since there will always be treaties for which it will be impossible to predict the amount of time needed for their preparation.

E. Work of the International Law Commission

The International Law Commission, being an expert group, has proved to be an efficient organ for the preparation of draft multilateral agreements. Therefore, there would be no particular need to convert the Commission into a full-time body which might distance itself from reality were it to be transformed into a kind of academic organ. Besides, it is widely recognized that the Commission is less suitable for purely political matters.

F. Final negotiation and adoption of multilateral treaties

While there must not be one single method for negotiating and adopting treaties so as to sustain the present flexibility needed for dealing with varied subjects, it is appropriate to recommend that the Sixth Committee should actively be involved in any treaty the negotiation of which, by its nature, is considered to fall within the competence of the General Assembly. Practice has shown that sovereign States often attach more importance to plenipotentiary conferences than to the General Assembly, particularly in the case of treaties of major concern to them. For this reason, draft treaties should be referred to plenipotentiary conferences. In brief, the question of whether to convene a plenipotentiary conference or to give the General Assembly the primary function with respect to final negotiation and adoption of multilateral treaties should be determined on a case-by-case basis.

G. Drafting and languages

The Republic of Korea has no objection either to an increase in the role of the Sixth Committee or to the creation of a drafting committee within each plenipotentiary conference. As regards the languages to be used, it would be advisable to continue the current practice.

H. Records, reports and commentaries

One cannot overemphasize the importance of maintaining adequate records and reports in all relevant bodies, and the need for the publication of travaux préparatoires is undoubtedly great.

I. Post-adoption procedures

In the light of the sovereign right of States to make their own decisions on treaty ratification, the United Nations should bear in mind the reality of international legislation. However, the United Nations should spare no efforts of persuasion with a view to attaining broad accession to treaties.

J. Treaty-amending procedures

Conceding desirability of introducing flexible treaty-amending procedures into certain treaties, the whole matter should be assessed on an ad hoc basis according to the nature of individual cases.

Additional comments

It is suggested that, in connexion with the effective functioning of the General Assembly throughout the process referred to above, a certain special procedural consideration be given to ensure full participation, without right to vote, of non-member States in the proceedings of the General Assembly.

SWITZERLAND

[Original: French]

[2 July 1982]

1. While it is true that the increase in the number of multilateral treaties, which today cover practically every aspect of international relations, imposes a heavy burden on Governments intending to take an active part in their drafting them, it should also be realized that this proliferation merely reflects the need felt by States to conduct their mutual relations in as orderly and predictable a manner as possible. Of course, the resources available to Governments and the organizations which engage in legislative activities should be used rationally. However, it is not certain that current treaty-making methods can be rendered more effective and more economical - assuming that those two objectives are never mutually exclusive - by efforts aimed at establishing uniformity, which do not take account of the variety of situations, subject-matter and requirements.

2. It might, moreover, be asked whether the current situation can be rectified by limiting discussion to a choice of formal means and procedural remedies, without broadening it to include questions which, above and beyond the material difficulties for which remedies are quite properly being sought, are also, but not exclusively, a result of the ever growing number of multilateral treaties. The lack of legal certainty which can result from the overlapping of and contradictions between treaties is further accentuated, for example, by the introduction of political considerations into the solution of technical problems, by the use during the drafting of treaties of formulas which do not define the obligations of the

parties with sufficient precision, and by the reluctance of States to submit to a decision based on law any differences which may arise concerning the interpretation or application of treaties.

3. In so far as these deficiencies are the result of current law-making methods, particularly the way in which decisions are taken, it should be asked whether the consensus method is the most appropriate one in every situation. While it has the undoubted advantage of forcing States taking part in the treaty-making process to negotiate until a general agreement has been reached, it can also foster ambiguity and uncertainty by not revealing contrary positions and reservations clearly.

4. With regard to the various practical measures mentioned in the questionnaire in annex I to the Secretary-General's 1981 report (A/36/553), the following observations may be made:

A. Additional studies

4. (a) Updating the Handbook of Final Clauses and the Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements [see A/36/553, annex III] would meet a need which certainly exists and it is therefore something which should be considered.

(b) The formulation of sets of model clauses might also be useful.

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

1. (a) and (b) Since there are so many activities taking place within the United Nations, there is good reason for co-ordinating initiatives and the practical measures involving, in all cases, United Nations organs and, where appropriate, organizations of the United Nations system.

2 and 3. In assuming such a role, the General Assembly should, through the Sixth Committee, confine itself to the gathering and dissemination of data about the activities concerned.

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

1. The measures to be taken before embarking on the formulation of treaties, namely (a) the collection of legal and factual data relevant to the proposed treaty, (b) the determination of a genuine interest on the part of States in concluding the treaty and (c) the possibility of adopting less binding instruments than treaties, are interesting and deserve attention, although it seems that, of the three measures suggested, the first one will doubtless be the easiest to implement.

2. (a) and (b) As to whether the preliminary formulation of texts of treaties should be entrusted to a representative organ or an independent expert organ it should be said that the possible existence of political elements in the questions to be tackled or the fact that the proposed treaty seems to have more to do with the development of international law than its codification should not automatically

mean that an organ composed of government representatives should be chosen. It remains to be shown that independent experts would have been less successful in preparing the draft articles whose formulation the General Assembly entrusted to the Sea Bed Committee in preparation for the Third United Nations Conference on the Law of the Sea.

F. Final negotiation and adoption of multilateral treaties

1. The consideration and adoption of draft treaties of concern to the General Assembly, such as those emanating from the International Law Commission and the United Nations Commission on International Trade Law, should be assigned to ad hoc plenipotentiary conferences, rather than to a Main Committee of the General Assembly, in order to ensure the full and complete participation of all States without distinction. Furthermore, as the Third Conference on the Law of the Sea showed, an ad hoc conference can be very flexible in working out negotiating methods in keeping with the type of subject-matter to be regulated and can change its procedures and structures according to the obstacles which may arise in the course of the negotiations.

3. The various suggestions set forth here should be seen simply as a series of measures, any or all of which may be employed, by each conference, as the need arises.

G. Drafting and languages

2. As for the drafting of treaties, it would not appear advisable to give drafting committees functions beyond the formal preparation of texts.

3. The practice of formulating treaties simultaneously in all languages in which their text is to be authentic should be maintained, as it is the only way of ensuring equality between the languages decreed authentic.

4. Even though the establishment of six language groups (corresponding to each of the six authentic languages) by the Drafting Committee of the Third Conference on the Law of the Sea proved to be very useful in view of the scale and the complexity of the Committee's task, such an arrangement should not necessarily be used consistently in all conferences from now on.

H. Records, reports and commentaries

1. Verbatim or summary records should be kept for plenary meetings of conferences and for meetings of main committees. While it is useful, even essential, to be able to ascertain the respective positions of States when a treaty was discussed there is no such need in small working groups and other negotiating committees, where the absence of publicity is often a condition for success.

3. In so far as the travaux préparatoires should provide subsequent clarification of why the authors of draft treaties took the course they did, they should be accompanied by a commentary when they are prepared by experts.

4. The preparation and publication of travaux préparatoires should be entrusted to the secretariats concerned, which are usually better equipped for the task than UNITAR.

I. Post-adoption procedures and J. Treaty-amending procedures

The States taking part in the negotiation of treaties should be left to decide, in each case, and depending on the objectives to be achieved, whether use should be made of one or more of the post-adoption procedures mentioned in I. The same goes for the suggested treaty-amending procedures set forth in J.

III. REPLIES RECEIVED FROM INTERNATIONAL ORGANIZATIONS

INTERNATIONAL TELECOMMUNICATION UNION

[Original: English]

[2 July 1982]

1. Reference is made to the International Telecommunication Union's first contribution entitled "Report on the techniques and the procedures used in the elaboration of multilateral treaties" which reflects, in a summary form, the Union's practice of techniques applied and procedures followed in the Union's multilateral treaty-making process, which is marked by the highly technical and specialized character of the various legal instruments adopted under the auspices of the Union and concerning general as well as specific telecommunication matters.

2. The Union's practice is based on the pertinent provisions of the International Telecommunication Convention of 1973, adopted by the Union's Plenipotentiary Conference, the supreme organ of the Union. It would, therefore, rather be within the competence and prerogatives of that organ to reply, in a representative and authoritative manner, to a number of questions contained in the annex to document A/36/553 and concerning general policy issues. As this cannot be done due to the lack of time available, the following observations and comments reflect only the view of the General Secretariat and do not, in any way, represent or prejudge the position of the Union as a whole or of its individual member countries on the issues under consideration.

3. In the following, reference is made to the main sections of annex I of document A/36/553. Observations and comments are made only on those questions (with reference to the numbers and letters given in that annex), which are, in the view of the General Secretariat, of direct concern or interest to the Union or to which can usefully make any observations or comments. They are made on the understanding that the term "United Nations" means the United Nations proper, not including the specialized agencies forming part of the United Nations system, and that the term "Secretariat" means the Secretariat of the United Nations.

A. Additional studies

1. Yes.

2. The publication of the responses of intergovernmental organizations in a separate volume of the Legislative Series might indeed be useful, in particular if the contributions describing each organization's specific techniques and procedures in respect of the over-all subject, (like the Union's first contribution referred to in the first paragraph of this reply) is included, so as to give an idea of the multiplicity of the existing treaty-making practices from which all concerned could benefit.

3. A detailed description of all significant multilateral treaty-making techniques in the form of an annotated manual to be issued by the Secretariat might indeed be very helpful, but would certainly represent a rather cumbersome and time- and manpower-consuming undertaking.

4. (a) The updating of the Handbook of Final Clauses by extending it to an additional category of formal clauses would be very welcome.

(b) The usefulness of formulating "sets of model clauses" appears, however, to be doubtful. A lot would depend on what should be understood by "model clauses" and on whether there might be many such clauses other than "final clauses", which could be of use to all concerned.

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

1. (a) to (c) These issues can only be determined and resolved by the States themselves in respect of their domestic resources and, as members of the intergovernmental organizations concerned, with regard to the latter's personnel and budgets.

2. (a) to (b) With regard to the specific treaty-making process of the International Telecommunication Union it has to be noted that it is primarily the Plenipotentiary Conference which sets the priorities in that respect or, in the period between two plenipotentiary conferences, the Administrative Council (holding annual sessions) which constantly reviews the calendar of conferences related to the treaty-making process, by taking account of the developments in telecommunications requiring elaboration or updating of pertinent legal instruments and accordingly adjusting the resources therefor.

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

1. (a) No comments.

(b) No, as it appears practically impossible and legally without sufficient justification to entrust the General Assembly to assume co-ordination in respect of multilateral treaty-making of all the organizations of the United Nations system,

each of them having its own policy-making bodies and one supreme organ in charge of co-ordinating those activities for its own organization.

(c) No, for reasons similar to those given under 1 (b) above.

2. (a) In spite of the reply given under 1 (b) above, a restricted co-ordination by the General Assembly limited to the gathering and dissemination of data about all treaty-making activities might be helpful to all organizations concerned.

(b) The General Assembly, within the framework of the competence entrusted to it by the Charter of the United Nations might make recommendations to other intergovernmental organizations with regard to the treaty-making process, but should usefully do so only after having obtained the prior agreement thereto by the organization concerned.

3. No comments.

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

No comments, as this section relates to the "United Nations" only (see understanding of the term given in the third paragraph of this reply).

E. Work of the International Law Commission

No comments.

F. Final negotiation and adoption of multilateral treaties

No comments, as this section again deals primarily with the United Nations proper, including the "plenipotentiary conferences" mentioned in subsection 3 of this section which has nothing to do with the Union's Plenipotentiary Conference and does also not apply to the Union's administrative conferences for both of which the Union's Convention (see the second paragraph of this reply) already provides specific provisions (see also the Union's first contribution referred to in the first paragraph of this reply).

G. Drafting and languages

1. The usefulness of the creation of an international legislative drafting bureau might depend a good deal on the functions envisaged to be given to that bureau. If they were of a general nature, limited to elaborating recommendations on drafting multilateral treaties without being involved in the practical drafting of any particular treaty, such a bureau might serve a useful purpose.

2 to 4. No comments, as the matter is already dealt with satisfactorily, as far as the Union is concerned, by the provisions of the Convention of the International Telecommunication Union (see the first and second paragraphs of this reply).

H. Records, reports and commentaries

1 and 2. No comments, as the present practice followed by the Union with regard to records and reports (see the Union's first contribution referred to in the first paragraph of this reply) gives full satisfaction.

3. The preparation of commentaries on draft treaty texts appears to be of little use and a possible waste of time and manpower. On the other hand, it may be quite useful to elaborate commentaries on the final texts of a treaty adopted. The mandate for such a work should certainly come from the competent policy-making or "representative organ" of the organization concerned, but it seems to be quite difficult, if not impossible, to imagine that such an organ itself prepares any such commentaries. The preparation itself might be entrusted either to a small expert group or the secretariat of the organization concerned. After their elaboration, such commentaries might need the approval of the organ having given the mandate therefor.

4. The preparation and publication of the travaux préparatoires of any multilateral treaty appear to be quite useful. This work should, however, be entrusted not to UNITAR, but to the secretariat of the organization concerned.

I. Post-adoption procedures

No specific comments on the various subsections of this section, because of the general idea that any steps in the post-adoption procedure should be left to each organization concerned and because of the specific practice established in this respect by the Union. In the latter respect, it should be noted that the Convention of the International Telecommunication Union enters into force "between members in respect of which an instrument of ratification or accession has been deposited before" the date of entry into force which is fixed in the Convention itself with a precise calendar date. Any signatory Government not having deposited an instrument of ratification after the end of a period of two years from the date of entry into force of the Convention shall not be entitled to vote at any conference of the Union, or at any session of the Administrative Council, or at any meeting of any of the permanent organs of the Union, or during consultation by correspondence conducted in accordance with the provisions of the Convention until it has so deposited such an instrument.

J. Treaty-amending procedures

Such procedures should, again, be left to the specific requirements of the organization under the auspices of which a treaty has been concluded, as they may differ considerably from one organization to another depending on the subject covered by the treaty. With regard to the Union, both its Convention, as the basic instrument of the Union, and the Administrative Regulations, as annexes to the Convention, are constantly revised and updated, as necessary in view of new developments in the field of telecommunications, by the Union's Plenipotentiary Conference and its administrative conferences, respectively, in accordance with the detailed provisions contained in the Union's Convention.

WORLD INTELLECTUAL PROPERTY ORGANIZATION

[Original: English]

[3 May 1982]

1. With reference to General Assembly resolution 36/112, we note that it is directed to an assessment of the methods of multilateral treaty-making used in the United Nations and in conferences convened under its auspices and that, to that end, an invitation is extended to Governments and international organizations to submit, by 30 June 1982, observations and comments on the two reports of the Secretary-General (A/35/312 and Corr.1 and A/36/553 and Add.1 and 2), taking into account the specific questions contained in annex I of document A/36/553, as well as their comments on any other aspect of the subject, as they consider desirable.

2. Since the questions set forth in the said annex are, for the most part, directed to matters of concern to the multilateral treaty-making process in the United Nations, any comments thereon or on other aspects of the subject are more appropriate for the bodies and organs of the United Nations to make, rather than for the secretariat or other organs of the World Intellectual Property Organization to express a view thereon. As concerns the questions that relate to the additional studies that might be undertaken by the Secretariat of the United Nations (part A), we would find it helpful if the replies were published in some form, if a manual on multilateral treaty-making techniques were to be published and if the Handbook of Final Clauses were to be updated and extended to additional categories of formal clauses.

INTERNATIONAL ATOMIC ENERGY AGENCY

[Original: English]

[5 August 1982]

A. Additional studies

The compilation of all significant multilateral treaty-making techniques and the formulation of sets of model clauses as generally used in multilateral treaties in recent years would be very useful. It is suggested, however, that they should be exemplary rather than prescriptive.

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

Within the framework of the Agreement Governing the Relationship Between the United Nations and the International Atomic Energy Agency, the General Assembly could play a co-ordinating role in relation to the Agency's treaty-making activities. Article III.B.I of the Statute of the International Atomic Energy Agency provides that the Agency shall:

"1. Conduct its activities in accordance with the purposes and principles of the United Nations to promote peace and international co-operation, and in conformity with policies of the United Nations furthering the establishment of safeguarded world-wide disarmament and in conformity with any international agreements entered into pursuant to such policies."

The Agency will consider a relevant resolution referred to it by the United Nations, although it would be open for the Agency to decide how to respond to the resolution. The Agency will also furnish any studies and information requested by the United Nations, to the extent practicable and relevant to its functions.

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

Extensive efforts along the lines of (a), (b) and (c) would seem desirable. In general, an expert body seems to be best suited for the preliminary formulation of a draft text; however, such an expert body can be given a representative character if composed of experts as designated by Member Governments. The body would have to be composed in such a manner as to ensure equitable representation of all regional interests.

F. Final negotiation and adoption of multilateral treaties

1. There would be a variety of multilateral treaties that may be of concern to the General Assembly. Where it is a multilateral treaty of highly technical nature, such as a nuclear treaty, a Main Committee of the General Assembly would and could not normally be considered an appropriate forum for the negotiation and adoption of the treaty; in this case an ad hoc plenipotentiary conference or the equivalent appears to be more suitable, and the organization of the United Nations system whose statutory functions are directly relevant to the subject-matter dealt with in the treaty may well be called upon to provide secretariat services.

3. (b) The formulation of model rules of procedure for ad hoc plenipotentiary conferences would be useful, but it may be noted that where the negotiations of a treaty are to be completed in a forum provided by an intergovernmental organization, the existing rules of procedure for the representative organ of that organization can often be utilized, with necessary modifications.

3. (c) and (d) The establishment of a negotiating committee may be useful for certain categories of multilateral treaties. In many cases, however, informal consultations, intersessional or otherwise, can play a useful role in achieving a consensus on difficult issues involved.

G. Drafting and language

1. There seem to be no specific needs to create a centralized drafting body such as an "international legislative drafting bureau".

3. (a) In principle, the procedure suggested seems to be appropriate.

H. Records, reports and commentaries

1 and 2. It would be necessary to maintain summary records of discussion at the bodies listed in paragraph 1 (a) and (b). As for the bodies described in paragraph 1 (c), at least summary records should be prepared to cover discussion at the main committees of plenipotentiary conferences, whereas reports indicating the outcome of discussion may be sufficient or even more desirable than summary records in the case of negotiating and drafting committees. Summary records should always be prepared in such a manner as to indicate various positions taken and proposals made by delegates, explanatory notes given by the drafter (for example, the secretariat, delegates) of the text and the reasons for changes in the wording of the text.

3. With the exception of certain types of treaties such as those emanating from the International Law Commission, it would not be very practicable or necessary to prepare commentaries on the provisions of treaties.

4. The preparation and publication of the travaux préparatoires could normally be best done by the secretariat unit concerned.

I. Post-adoption procedures

There the Agency is directed by article III.D of its Statute:

"Subject to the provisions of this Statute and to the terms of agreements concluded between a State or a group of States and the Agency which shall be in accordance with the provisions of the Statute, the activities of the Agency shall be carried out with due observance of the sovereign rights of States."

J. Treaty-amending procedures

2. Automatic supersession does not, in principle, seem desirable since necessary steps should be taken by the State concerned to denounce or otherwise give effect to such supersession in respect of the treaty thus superseded.

3. Framework treaties with annexes would be useful for certain categories of treaties, such as those setting out technical standards.

COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY

[Original: English]

[12 July 1982]

1. The Commission of the European Economic Community welcomes the invitation contained in General Assembly resolution 36/112 to forward observations on the reports which the Secretary-General submitted to the thirty-fifth and the thirty-sixth sessions of the General Assembly on the review of the multilateral treaty-making process (A/35/312 and Corr.1 and A/36/553 and Add.1 and 2). The

reports from the Secretary-General contain observations from a number of international organizations which explain the role they have in the context of the multilateral treaty-making process. The Commission considers it necessary to draw attention to certain aspects of the Community's functions which represent important developments in the field of international law and international institutions, developments which must be taken into account when considering the process of the elaboration of multilateral treaties as an element of the progressive development of international law and its codification.

2. Member States of the Community are under the obligation to enter into negotiations with each other, as far as is necessary, with a view to securing certain benefits for their nationals on matters enumerated in article 220 of the founding treaty. The Community, therefore, can, in a limited number of cases, serve as the forum for concluding a multilateral treaty, but this is an exception from its main functions and calls for no particular comments in this context.

3. It must be taken into consideration, that the Community has international legal personality and is capable, under international law, of concluding treaties with States and other entities on matters for which its member States have transferred their competence to the Community. The Community's ability to act as a contracting party to an international convention does not, however, represent a unique case. A number of intergovernmental organizations have been acquiring such capacities; this trend is reflected in the work which, over a number of years, has been carried out within the International Law Commission in its elaboration of a set of draft articles on the question of treaties concluded between States and international organizations, or between two or more international organizations. 1/

4. The Community has the exclusive competence, in particular, to negotiate and conclude agreements on its own behalf with third States in the field of commercial policy. Moreover, the exclusive competence of the Community covers areas where the Community has adopted uniform rules for the application of its common policies, such as the common agricultural policy.

5. In the absence of Community rules, external competence for the Community exists where the Community has internal powers to take action in the sphere in question and where the Community's participation in an international agreement is necessary in order to achieve one of its objectives.

6. In the areas referred to above, the Community has concluded a number of multilateral treaties among which mention will be made only of the following, which are the most interesting in the present context:

(a) The European Economic Community is a contracting party to the International Olive Oil Agreement and to the Convention on Multilateral Co-operation in the Northwest Atlantic Fisheries;

(b) The Community, together with its member States, has concluded several commodity agreements:

(i) The International Wheat Agreement (1971);

(ii) The International Cocoa Agreement (1975);

(iii) The International Tin Agreement (1975);

(iv) The International Coffee Agreement (1976).

The Community is a contracting party, alongside some of its member States, to the Barcelona Convention of 16 February 1976 for the Protection of the Mediterranean Sea against Pollution and the Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, which were elaborated under the auspices of the United Nations Environment Programme. It is also a signatory, alongside all its member States, to the 1979 Convention on Long-range Transboundary Air Pollution, and it is intended to ratify this convention on 15 July 1982.

(c) A particularly interesting series of conventions, which have associated a series of developing countries (more than 50 States) in Africa, the Caribbean and the Pacific with the Community have been concluded over the years (Yaoundé I and II, Lomé I). The Second Lomé Convention was concluded on 31 October 1979. These Conventions have set up a special relationship between the States of Africa, the Caribbean and the Pacific and the Community, which gives these countries privileges in the field of trade as well as aid for development.

7. Under the present practice, rules of procedure for United Nations conferences provide for Community participation as an observer even in cases where such conferences have been convened for the elaboration of a treaty on matters of Community competence. This was, for example, the case at the Third United Nations Conference on the Law of the Sea, which covered a number of subject-matters falling within the Community's competence. Experience has shown that the status of observer does not accommodate the interests of the Community in the case where an international conference has been convened for the purpose of concluding a multilateral treaty in respect of which competence rests either exclusively with the Community or is shared between the Community and its member States.

8. The capacity of an international organization to participate in the elaboration and adoption of a multilateral treaty is taken into consideration in the draft emanating from the International Law Commission on the subject of treaties concluded between States and international organizations or between two or more international organizations. Reference is, in particular, made to the text contained in:

(a) Draft article 7: full powers and powers for representatives of organizations to negotiate and conclude a treaty;

(b) Draft article 9: adoption of the text of a multilateral treaty;

(c) Draft article 77: functions of a depositary for a multilateral treaty;

(d) Draft article 80: registratation of a treaty for which an international organization has the depositary functions.

9. The Community submits that the above reservations should be taken into consideration at the further work at the United Nations on the subject of reviewing the multilateral treaty-making process. In this context, we should like to draw attention to the close relationship that exists between the review of the multilateral treaty-making process and the effort to elaborate standard rules of procedure for United Nations conferences. We welcome the ongoing work in these matters in view of the importance of achieving a coherent approach.

Notes

1/ See the report of the International Law Commission on its thirty-second session in Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10, chap. IV, sect. B, and the Commission report on its thirty-third session in Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10, chap. III, sect. B.

ANNEX

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?

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 on 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?

Notes

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