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REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS

Report of the Working Group on the Review of the Multilateral Treaty-Making Process

Chairman: Mr. Peter D. MAYNARD (Bahamas)

I. INTRODUCTION

1. By resolution 36/112, the General Assembly decided, inter alia, to include in the provisional agenda of its thirty-seventh session an item entitled "Review of the multilateral treaty-making process" and to establish at that session a working group of the Sixth Committee:

(a) To consider the questions raised in annex I of the report of the Secretary-General to the General Assembly at its thirty-sixth session (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 Member States;

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

2. At its thirty-seventh session, the General Assembly allocated item 123, entitled "Review of the multilateral treaty-making process", to the Sixth Committee.

3. At its 9th meeting, on 15 October 1982, the Sixth Committee appointed Mr. Peter D. Maynard (Bahamas), Vice-Chairman of the Committee, as the Chairman of the Working Group on the Review of the Multilateral Treaty-Making Process.

4. The Working Group held 14 meetings between 7 October and 3 December 1982.

5. The Working Group had before it the reports of the Secretary-General prepared for the thirty-fifth, thirty-sixth and thirty-seventh sessions (A/35/312 and Corr.1, Add.1 and 2 and Add.2/Corr.1; A/36/553 and Add.1 and 2; A/37/444 and Add.1), which contained, inter alia, the replies of Governments in response to the requests in the relevant General Assembly resolutions. In addition, in accordance with paragraph 5 of General Assembly resolution 36/112, the Working Group also had before it the provisional version of the United Nations Legislative Series (ST/LEG/SER.B/21, in two volumes) containing relevant material and information on the subject of the review of the multilateral treaty-making process compiled by the Secretary-General. That publication consisted of four parts. Part one, entitled "Rationale for the review of the multilateral treaty-making process", contained the text of a Memorandum prepared by a group of States setting forth the basis of the review. Part two, entitled "Analytical review of the process", reproduced most of the 1980 report of the Secretary-General (A/35/312 and Corr.1), which analysed the general and special features of the treaty-making process in the United Nations system and in other international organizations. Part three, entitled "Comments and observations by Governments and international organizations", contained the views, comments and observations of 20 Governments and 8 international organizations. Part four (in volume 2 of the publication) contained information on the techniques and procedures used in the formulation of multilateral treaties by 13 United Nations organs and offices, 12 specialized and related agencies and 16 other international organizations. Finally, information provided by the Secretariat in connection with the discussion of travaux préparatoires is annexed to this report (annex II).

6. After a preliminary exchange of views, the Working Group requested the Chairman to prepare a working paper based on a phased approach to the multilateral treaty-making process, taking into account the questions raised in annex I of the 1980 report of the Secretary-General. In the light of further suggestions made in the Working Group on the Chairman's working paper (A/C.6/37/WG.1/WP.1), certain modifications were introduced (A/C.6/37/WG.1/WP.1/Amend.1); the text of this paper, as modified, is set out in the annex to the present report (annex I). The Working Group decided to consider the Chairman's working paper as a flexible basis for its work and proceeded to examine it paragraph by paragraph, on the understanding that other issues relating to the multilateral treaty-making process could also be examined. The Secretary-General's reports, the provisional version of Legislative Series No. 21 and other materials would be used as background information for the purpose of the discussions.

7. The deliberations in the Working Group followed the sequence suggested in the Chairman's working paper. In the working paper, the entire multilateral treaty-making process was divided into four major phases: initiation of a treaty-making process; formulation of a multilateral treaty; adoption of a multilateral treaty; and post-adoption and entry into force. Because of the limited time available, the Working Group completed only an exchange of views on the topics in the first two phases, excepting items (D) Drafting Committee and (E) Problems resulting from the lack of personnel and financial resources, of the second phase. More time will therefore be needed to complete its tasks. The discussions that took place in the Working Group are summarized under the appropriate headings in the following paragraphs.

II. GENERAL VIEWS

8. There was general recognition that multilateral treaties were important means of ensuring co-operation amongst States and constituted a principal source of international law, and that the United Nations assumed an important role through its conduct of treaty-making activities on a variety of important subjects.

9. Some members stressed the important role of the Secretary-General as a depositary of multilateral treaties and suggested that this role might be reviewed in the light of current practice. The view was also expressed that the Working Group might formulate a definition of "multilateral treaty" in order to guide the discussions; other members, however, stressed the need for caution in this regard.

10. There was general agreement that the work of the Working Group should proceed on the basis of consensus and should not lead to the adoption of any binding instrument laying down rigid rules on multilateral treaty-making. The purpose of this review was, in the opinion of some members, to examine existing practices and procedures in treaty making, identify any deficiencies and express preliminary views on how they should be overcome. In this regard, several members expressed the view that a manual or handbook on treaty-making practices should be prepared. The opinion was expressed that the review might lead to the adoption of certain practical recommendations for the purpose of making the process of multilateral treaty-making more efficient, economical and effective. Some members suggested that in examining the issues raised in the Chairman's working paper the Working Group should identify matters which could usefully be included in a handbook and matters which could form the basis of recommendations. Other delegates were of the opinion that the Working Group could not at this juncture identify matters which could be included in such a document.

11. There was general agreement that, as indicated in General Assembly resolution 36/112, the review should concentrate on the process within the United Nations itself. This, however, should not preclude possible references being made, for the purposes of comparison and analysis, to practices and procedures used in the specialized agencies and other international organizations outside the United Nations, and to the experiences of States themselves in the making of treaties.

III. INITIATION OF THE TREATY-MAKING PROCESS

12. The discussions were centred on procedures connected with initiating a proposal for making a treaty and on matters relevant to the evaluation of such a proposal.

A. Initiating a proposal for making a treaty

13. The Working Group took note of the practice in the United Nations that the rules of procedure of the respective organ governed in general the question of initiating a proposal for making a treaty. It was noted that there were no special requirements in the rules of procedure concerning the initiation of a proposal for

making a treaty. Thus, who may initiate such a proposal and where such a proposal may be initiated depended upon the applicable rule of procedure of the organ or body concerned.

14. In the event that a decision is taken to prepare the manual or handbook of practices referred to above, it was the view of several delegates that such a handbook or manual might be prepared by the Secretariat. Some delegates suggested that such a manual or handbook need not be purely descriptive; it should also provide guidelines where appropriate.

15. During the discussions some delegates stressed that the proposal for a multilateral treaty on specific issues often stemmed from a universally felt need and a number of other factors. On the other hand some other delegates held the view that States in proposing a treaty should take into account certain prerequisites; they include, for example, that the subject-matter should be of a universal character of interest to the international community as a whole and that there should be widespread support from the main geographical regions, including States with different political and legal systems. A suggestion was made that relevant General Assembly resolutions should be considered as an indication of general interest on a subject, particularly when a matter had been reiterated in a series of resolutions. Some members, however, cautioned that even though prior consultations could be deemed to be useful, a requirement to resort to these might be prejudicial to the right of any State to propose a treaty.

B. Evaluation of a proposal for making a treaty

16. On this question, the Working Group's discussions revolved around the following points: undertaking of studies to assist in the evaluation of a proposal for making a treaty; preliminary consideration of the choice of an instrument other than a treaty; the taking of a formal decision by the competent organ regarding a proposal for making a treaty; and co-ordination among treaty-making organs.

17. The general view was that it would be useful to dispatch questionnaires, to collect relevant legal and technical data and to prepare feasibility studies to assist in the evaluation of each proposal for making a treaty. Some members suggested that a recommendation to this effect should be made in a General Assembly resolution. It was noted that the practice within and outside the United Nations varied and, in a number of situations, the use of questionnaires and feasibility studies had not been found necessary.

18. It was generally recognized, however, that the proper use of these and other evaluation studies would lead to a rational approach to the subject and avoid loss of time and waste of resources. Such studies could reveal various elements relating to the need for the treaty, and the practical considerations and financial costs involved. It was noted by some members that the Secretariat might undertake such evaluation studies on a routine basis whenever a proposal for making a treaty had been submitted. Some members were of the view that it would also be desirable for the entity proposing the making of a treaty to justify its proposal by providing information relevant to its feasibility. Some delegates also expressed

the view that questionnaires should be sent not only to States but also to those international organizations whose functions are related to the subject-matter of the proposed treaty.

19. In the view of some members, it was important that prior to embarking on the making of a treaty, the organ concerned should consider the choice of an instrument other than a treaty, since the resort to other alternatives, such as a declaration, proclamation or model legislation might sometimes prove to be quicker than a long-range treaty-making project in order to ameliorate the situation to which a given proposal was addressed. In addition, such instruments could also serve to test in practice certain principles before they are firmly embodied in a treaty.

20. Some members stressed that the preliminary consideration of the choice of an instrument should take place in a representative organ. It was also stressed at the same time that even if an instrument other than a treaty was chosen initially, this would not prevent the later formulation of a treaty in the light of further developments. The Working Group, however, considered that the scope of the question was wide and that all these and other aspects should form a separate subject for further study.

21. On the question of taking a formal decision by the competent organ regarding a proposal for making a treaty, the following aspects were put forward for consideration: (a) whether and when such a decision was required; (b) which body should take such a decision, and (c) what requirements must be met prior to taking such a decision. Regarding the first question, the view was expressed that upon completion of the evaluation, a formal, deliberate decision would be desirable. On the other hand, some members felt that such a decision was not necessary since it was inherent in any decision regarding the financial cost of the proposal, and since the allocation of funds necessarily implied the endorsement of the proposal for making a treaty. Still another view was that, as experience showed, it was not always possible to make a definite decision at the outset, and that the situation needed to be reviewed as negotiations progressed. With regard to the second question, the general view was that such a decision could not always be centralized (e.g., in the General Assembly) and that, as a rule, the competent organ in which the proposal had been submitted should take the decision. As to the third question, many members were of the view that such a decision should be taken only after feasibility studies had been prepared.

22. On the question of co-ordination among treaty-making organs, the Working Group noted its importance at all phases of the process and it was suggested that the General Assembly and, as appropriate, the Secretary-General, might assume an active co-ordinating role. Reference was made to paragraph 50 of the Secretary-General's 1980 report in which the Secretary-General referred to a decision by the Administrative Committee on Co-ordination requiring the specialized agencies to communicate to the Office of Legal Affairs information relating to treaty-making activities, and it was the view of some members that this practice be continued and the information be made available on a regular basis.

IV. FORMULATION OF A MULTILATERAL TREATY

23. The deliberations of the Working Group on the second phase of the process, i.e. formulation of a multilateral treaty, were centred on those questions concerning the undertaking of studies to assist in the formulation of multilateral treaties and the drafting and solicitation of comments on the drafts. The Working Group also had an exchange of views on certain aspects of the work of the International Law Commission pertinent to the process of treaty-making.

A. Studies to assist in the formulation of a multilateral treaty

24. With respect to the undertaking of studies to assist in the formulation of a multilateral treaty, the view of some members was that at the formulation stage the purpose of such studies should be supplementary to what had already been gathered and prepared at the evaluation stage (see paras. 17 and 18 above), and that the studies should deal with specific problems and should be solution-oriented; examples offered included the utility of a frame treaty, the feasibility of amending an existing treaty and problems of conflicts with other treaties. It was noted that such studies would help to clarify the detailed approach to be taken and to identify possible difficulties that might be encountered at the adoption and implementation stage. Several members thought that the Secretariat was best suited for the preparation of these studies. It was, however, stressed by some that, unlike the evaluation studies mentioned earlier, these studies should only be undertaken upon request of the competent organ on the basis of a justified need.

B. Drafting

25. On the question of drafting, various issues were considered; for example, the entity or entities to prepare the initial and further drafts, languages of drafts, final clauses and travaux préparatoires, including commentaries and explanatory notes. Some members thought that all these aspects should be covered in the proposed handbook. Some members stressed that, before convening a diplomatic conference and where a preparatory committee existed, an initial draft should first be prepared to avoid the need for extensive conference sessions. It was recognized, however, that this might not always be possible in cases where the task was urgent or political considerations required rapid adoption.

26. In connection with preparing the initial draft of a treaty, a suggestion was made to distinguish three categories of treaties: politically sensitive ones (e.g., disarmament and outer space); law-making treaties, particularly those drafted by the International Law Commission; and treaties of a technical nature (e.g., international trade law). Such categorization, in the opinion of some members, could facilitate the preparation of drafts in accordance with the nature of the treaty concerned (e.g., expert groups to deal with subjects of a technical nature and representative organs to deal with those subjects which were politically sensitive). However, in the view of several members, such a categorization had no basis in United Nations practice and its usefulness could be challenged. Some members felt that such a categorization would be artificial and difficult to apply as each treaty had attributes of more than one of the suggested categories: for

example, technical treaties often contained elements of a politically sensitive nature and States differed in their assessment of the political sensitivity of treaties.

27. On the languages of the draft, the Working Group recognized the difficulties in making any changes in existing practices. It equally recognized that the number of languages in which an organ prepared drafts and conducted negotiations had to conform to the rules of procedure of that organ.

28. There was a suggestion that it might be possible to draw a distinction between the languages used in negotiations and those of the final text; the former would usually be those specified by the rules of procedure of the organ in which negotiations were being conducted. It was suggested that one or more of the language versions might be designated as standards for the purpose of ensuring concordance of the final text in all languages. Some members opposed this suggestion and thought that the selection of certain languages would be difficult. The real problem, it was pointed out, was that in practice little time was available for concentrating on the concordance of the final draft, and it might therefore be advisable to begin the process of concordance at an earlier stage. Some members favoured the preparation of the draft text in the official languages of a given conference from the very beginning, as the appropriate version of the text should be evolved through a comparison of the language versions; the longer the concordance of the drafting in different languages is postponed, the more difficult the task becomes at the end. A question that appeared to be purely technical could really involve a matter of substance, which might not be apparent if the initial draft was prepared in only one language. Some members strongly objected to any modification of the status of the official and working languages or of the existing practices of the United Nations. The Group was of the view that it would be inappropriate to change the existing practice or to envisage any recommendations in that respect.

29. Regarding the preparation of final clauses, different views were expressed. Some members were of the view that as a rule final clauses should accompany the initial draft. On the other hand some members thought that, as in the case of drafts prepared by the International Law Commission, final clauses needed not to be included at the initial stage. A third view was that the preparation of the final clauses was closely linked to the scope and substance of a proposed treaty. Consequently, the timing of their preparation must be considered on that basis. If special features were contemplated in the final clauses, they should be considered at an early stage. But, on the other hand, if the final clauses are to follow a standard form, they could be left to the final stage. The view was expressed that even at the formulation stage, consideration should be given to methods of facilitating acceptance (e.g., permitting the acceptance of an instrument by parts, allowing reservations, provisional entry into force and flexible acceptance clauses) and methods of amending treaties (e.g., simplified forms of amendments and the use of technical annexes). All these and other issues should be considered whenever they were relevant to the substance of the proposed treaty.

30. The preparation and availability of travaux préparatoires (which were understood in a broad sense to include official records, proposals, reports, commentaries and explanatory notes, etc.) received considerable attention. Many

members expressed the view that the Secretariat should maintain as completely as possible and publish, as appropriate and financially feasible, all travaux préparatoires from the initial stage to the adoption of a multilateral treaty. The usefulness of commentaries and explanatory notes was also stressed by some members. There was considerable support in the Working Group for the view that the entity which formulated the initial draft should prepare commentaries or explanatory notes containing information on the background of the draft, its evolution, the process of negotiation, the reasoning underlying the formulation, and any other relevant considerations. Some members were of the view that this could not be mandatory as its feasibility must depend on such factors as the nature of the entity preparing the draft, the subject-matter, the time available and the financial implications. Some members questioned the legal status of such commentary or notes and suggested that the issue should not be ignored. Others were of the view that their preparation might complicate matters. Summary records, statements, reports of committees, together with all other background material, already constituted a reliable body of travaux préparatoires that States could freely use for purposes of interpretation. Some members requested that the Secretariat issue a brief note on the question of official records, the decision to have them, their preparation, editing and publication.

C. Solicitation of comments on drafts

31. With respect to solicitation of comments on draft treaties, the general view was that the current practice of the United Nations should continue. Draft texts should be sent for comments to all Member States and, when appropriate, to non-member States and competent intergovernmental organizations. Some members expressed the view that the solicitation of comments on drafts should also be addressed to national liberation movements having observer status with the United Nations. It was acknowledged that generally, in the past, the number of replies in response to such solicitations had not been encouraging, but that should not be regarded as a reason for excluding any State from a request to make comments. The lack of sufficient responses was a separate question, which was closely related to the availability of personnel and the volume of work involved.

D. Aspects of the work of the International Law Commission pertinent to the process of treaty making

32. The Working Group had an exchange of views on certain aspects of the work of the International Law Commission pertinent to the process of treaty making, particularly regarding the structure, agenda and procedures of the Commission. In this regard some members felt that the consideration of the International Law Commission's practices in detail was unjustified since no attention was being paid to other United Nations bodies engaged in the treaty-making process.

33. Some members were of the view that questions such as remuneration, the Commission's work programme, the length of its sessions and its working procedures should be left for the Commission itself and for the General Assembly to decide. Other members felt, however, that an exchange of views would be useful and that members of the Working Group could express their preference.

34. On the question of whether special rapporteurs of the International Law Commission should work and be remunerated on a full-time basis, the general view appeared to be that the current arrangement should continue, having regard to the fact that they are recognized experts in international law with their own careers and professions. It would be difficult for them to work on a full-time basis; besides, this would also change the nature of the Commission.

35. Under the rubric of outside expertise, two issues were considered: the appointment of special rapporteurs from outside the Commission and the use of outside expertise to assist the Commission or its special rapporteurs. Regarding the first issue, the view of some members was that a person who is not a member of the Commission should not be appointed as a special rapporteur, since members of the Commission are elected by the General Assembly and special rapporteurs are appointed by the Commission. The opinion of some members on the use of outside expertise to assist the work of the Commission and its special rapporteurs was more flexible. Reference was made in this regard to relevant provisions of the statute of the Commission (articles 16, 25 and 26), which envisaged the possibility of using special expertise by the Commission itself and by special rapporteurs when necessary. In this connection the contributions made and assistance given by the Codification Division of the Secretariat was especially acknowledged. One member put forward the idea that an overall conspectus of all the legal work done within the framework of the United Nations should be issued periodically by the Legal Office of the Secretariat, inter alia as a means of assisting the work of special rapporteurs. It was also suggested that consideration should be given to the possibility of establishing a contingency fund offering financial assistance to those special rapporteurs who lacked adequate access to library facilities or needed research assistance.

36. With respect to the agenda of the Commission, two main views were expressed. On the one hand, some members were reluctant to discuss this question; they pointed out that the Commission established its own work programme and reported to the General Assembly. Any comments on the work of the Commission should be made in that context; the Working Group was not competent to review the work programme of the Commission. On the other hand, some other members, while respecting the prerogatives of the Commission and the Sixth Committee, felt that the Working Group should not be prevented from expressing its views so long as they related to the multilateral treaty-making process. They expressed the hope that highly politically sensitive issues should not be referred to the Commission and that the Commission should be left to concentrate on law-making topics.

37. With a view to facilitating the work of the Commission, and especially in view of its newly increased size, some members suggested that the Commission might divide its work between two sub-commissions, which would then be reviewed by the Commission as a whole. Other members considered that all these questions should be referred to the Commission itself for consideration and subsequent review by the Sixth Committee.

38. With respect to the procedural aspects of the work of the International Law Commission, the Chairman had suggested a consideration of the following issues: (a) completion of work within the five-year term; (b) consultation with Governments; (c) duration of sessions and use of inter-sessional working groups;

(d) preambles and final clauses; (e) alternative texts of particular controversial provisions; (f) restatements; (g) formulation of instruments other than treaties. Due to the limited time available, the Working Group had a preliminary exchange of views only on the first three issues. Some members were reluctant to discuss these aspects and felt that the Working Group was not competent to review the work programme of the Commission.

39. On the question of the desirability of the International Law Commission completing its assignments within the five-year term of its members, some members expressed the view that this question should be deferred until the Commission's Planning Group of the Enlarged Bureau had completed its work. 1/ Other members pointed out that that question was related to the assignments made to the Commission by the General Assembly and to the working procedures of the Commission.

40. There was some discussion on the question of consultation with Governments. One member expressed the view that the use of questionnaires on issues relevant to the work of Special Rapporteurs should be examined. Another member said that too many questionnaires were being sent, not all were clearly drafted and often the information solicited could be obtained by other means.

41. Some members also stressed that efforts should be made to publish the Commission's Yearbook and its annual report as early as possible to make possible their full use by Governments as well as by the academic community. Some members recognized, however, that due to the short interval between the sessions of the Commission and the General Assembly, early publication during the latter's session was probably impractical. Other members thought that it might be possible to advance the Commission's session to the early spring; others felt that that would depend on the availability of its members and on decisions of the Commission itself.

42. The Working Group also discussed briefly the duration of the Commission's sessions and the possibility of using inter-sessional working groups. The view of many members was that the present practice should continue and no recommendation should be made at this stage.

V. CONCLUSION

43. The above summary of the work of the Working Group recalls the progress it had made, but also indicates that, due to the limited time available, the work could not be completed. It would therefore appear desirable that the review of the multilateral treaty-making process should be continued during the next session of the General Assembly.

Notes

1/ See in particular the report of the International Law Commission on the work of its thirty-fourth session, 3 May-23 July 1982, Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 10 (A/37/10), para. 266.

ANNEX I

REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS

Working paper

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

I. Initiation of a treaty-making process

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

A. Initiating a proposal for making a treaty

1. Entities that may initiate a proposal for making a treaty.

2. Organ in which a proposal may be initiated.

3. Requirements for initiating a proposal, e.g., inscription of an agenda item, minimum number of sponsors.

B. Evaluation of a proposal for making a treaty

1. Undertaking of studies to assist in the evaluation of a proposal:

(a) Questionnaire: preparation, dispatch, evaluation of replies;

(b) Feasibility studies 1/ including financial aspects and potential interest of States in the proposal;

(c) Entities to perform these tasks.

2. Preliminary consideration of the choice of instrument other than treaties. 2/

3. The taking of a formal decision by the competent organ(s) regarding a proposal for making a treaty.

4. Co-ordination among treaty-making organs and organizations.

II. Formulation of a multilateral treaty

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

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

1. Collection of relevant data: legal, technical, etc.

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

B. Drafting

1. Entity to prepare initial draft:

(a) One or more States;

(b) A representative organ or conference;

(c) A group of experts, such as the International Law Commission;

(i) Structural consideration:

(A) Special Rapporteurs;

(B) Outside expertise;

(C) Remuneration;

(ii) Agenda: choice of items;

(iii) Procedure:

(A) Completion of work within the five-year term;

(B) Consultation with Governments;

(C) Duration of sessions and use of inter-sessional working groups;

(D) Preambles and final clauses;

(E) Alternative texts of particularly controversial provisions;

(F) Restatements;

(G) Formulation of instruments other than treaties;

(d) The Secretariat;

(e) Other entities.

2. Entities for preparing further drafts.

3. Languages of the draft.

4. Final clauses:

(a) Their inclusion at this stage;

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

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

5. Preparation of commentaries, explanatory notes, etc.

C. Solicitation of comments on the drafts

1. From all States or from a selected group.

2. From intergovernmental organizations and other entities.

D. Drafting Committee

1. Time of establishment.

2. Composition.

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

E. Problems resulting from the lack of personnel and financial resources: 4/ provision of legal advisory services through technical assistance.

F. Travaux préparatoires.

III. Adoption of a multilateral treaty

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

A. Determination of readiness for adoption.

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

C. If the adoption is by the General Assembly:

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

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

(a) Joint meetings of the Sixth Committee with other Main Committees (see rules of procedure of the General Assembly, annex II, para. 1 (d));

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

(c) Provision of legal advice;

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

D. If the adoption is by a diplomatic conference

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

IV. Post-adoption and entry into force

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

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

C. Preparation and publication of records and commentaries.

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

* * *

Further studies

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

2. Annotated manual of treaty-making techniques.

3. Choice of instruments other than treaties.

Notes

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

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

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

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

ANNEX II

OFFICIAL RECORDS OF TREATY-MAKING BODIES IN THE UNITED NATIONS

Preliminary information provided by the Secretariat

I. INTRODUCTION

1. The following information is provided in connection with the discussion in the Working Group on travaux préparatoires and the practices followed in the United Nations with respect to the preparation of official records of the proceedings of bodies engaged in multilateral treaty-making. Because of the short time available, the practices relating to treaties adopted by the General Assembly itself or by diplomatic conferences convened by it are examined here. However, if the Sixth Committee so desires, this inquiry will be extended to include the practices of other bodies, such as the United Nations Conference on Trade and Development (UNCTAD) and the regional commissions, whose secretariats are not located in New York, and a more complete report will be prepared for the thirty-eighth session of the General Assembly.

II. GENERAL

2. There are no guidelines, rules or explicitly stated practices in the United Nations, nor do there appear to have been any, relating to the preparation of official records relating to treaty-making proceedings. However, a number of recent directives and recommendations of the General Assembly and of the Economic and Social Council relating to the reduction or elimination of certain types of documentation, such as the elimination of verbatim or summary records for a number of bodies and the reduction of the length and the restriction of the contents of reports, have or might affect the preparation of official records relating to proceedings of bodies engaged in the formulation of treaties; some such decisions are referred to in following sections of this report.

III. TREATIES FORMULATED BY THE GENERAL ASSEMBLY

3. When the General Assembly itself engages in the formulation of a multilateral treaty, as it has a number of times, 1/ the records maintained and published of these proceedings correspond to those in respect of other items of its agenda. This means first of all that such records are prepared on a session-by-session basis, for each session at which a particular treaty is considered, and such records are integrated with and constitute part of the records of such sessions.

4. The official records maintained at each session consist of the following:

(a) Verbatim records of the relevant debates in the plenary of the General Assembly;

(b) Verbatim records of the relevant debates in the First Committee and summary records (or, by special arrangement, verbatim ones) of those in other Main Committees; the length of such summary records has been somewhat reduced during

recent years, in response to General Assembly resolution 3415 (XXX), and instead of reprinting fully corrected versions, the provisional versions are maintained with a single paper setting out only any substantive changes to all the records of each Committee at a given session;

(c) Annexes to the Official Records, consisting of fascicles for each agenda item, including the ones under which a particular treaty was formulated, which set out the texts of the principal documents considered at the session in respect of the agenda item and cite all other relevant documents and the meetings of the plenary and of Main Committees on the item; the documents reproduced in full generally include any reports made to the Assembly with respect to the treaty by another principal organ (such as the Economic and Social Council (ECOSOC) or the Secretary-General) or by a subsidiary body (such as the International Law Commission), unless these are set out in a Supplement to the Official Records, as well as reports made by Main Committees to the plenary; though for many years the annexes set out the texts of almost all non-ephemeral documents not appearing in a Supplement or duplicated in another document that was reproduced, in recent years practically only the relevant Main Committees reports have been reproduced, and occasionally a secretariat report, and the former no longer include a summary of the Committee's debate but merely minute the documents and proposals considered and their disposition.

(d) The Index to the Proceedings of each session of the General Assembly facilitates, through a variety of lists and indices, the location of documents as well as of interventions in debates related to each subject considered, including any proposed multilateral treaty.

IV. TREATIES PROMULGATED BY A DIPLOMATIC CONFERENCE CONVENED BY THE GENERAL ASSEMBLY

5. For those diplomatic conferences convened by the General Assembly on the recommendation of its Sixth Committee for the purpose of completing the formulation of a multilateral treaty and opening it for signature, generally a set of Official Records is published as part of the documentation of the conference. Such records usually consist of the following:

(a) Summary records of the proceedings of the conference plenary and generally of all committees of the whole; though the maintenance of such records used to be considered automatic, by reason of General Assembly resolution 36/117 D this may now only be done upon specific authorization by the General Assembly, which may also restrict the subsidiary organs of the conference in respect of which records may be kept;

(b) The final act of the conference, and any instruments attached thereto (such as the text of any treaty instruments opened for signature, resolutions adopted by the conference and special remarks whose inclusion in the final act has been agreed);

(c) Any documents specifically cited in the final act (which enables the conference itself, in adopting that instrument, to influence the contents of the Official Records - though that secondary effect is rarely considered in formulating the final act);

(d) Any other documents that the conference specifically decides to include in its official records - though conferences only rarely take any decision on or even allude to that question;

(e) Other documents selected by the secretariat of the conference as important in understanding its work - decisions which, as already indicated, are taken without formal guidelines.

6. For conferences other than those referred to in paragraph 5, such as conferences convened by the General Assembly on the basis or resolutions recommended by the First Committee 2/ or those convened by other organs of the United Nations, formal official records appear rarely to be prepared. However, as indicated in paragraph 1, the Secretariat is prepared to investigate this matter further, and to present a more comprehensive report at the next session of the General Assembly.

Notes

1/ For example, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (resolution 2200 A (XXI)); Treaty on the Non-Proliferation of Nuclear Weapons (resolution 2373 (XXII)); Convention on Special Missions (resolution 2530 (XXIV)); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (resolution 3166 (XXVIII)); Convention on Registration of Objects Launched into Outer Space (resolution 3235 (XXIX)); International Convention against the Taking of Hostages (resolution 34/146).

2/ For example, the Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.
