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REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS

Report of the Secretary-General

Addendum

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REPLIES RECEIVED FROM GOVERNMENTS

COLOMBIA

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[11 November 1982]

A. Additional studies

1. Yes, because of the experience acquired by specialized agencies such as the International Civil Aviation Organization, the International Maritime Organization and the World Health Organization in the elaboration of international instruments.

2. It would be useful if the responses of intergovernmental organizations could be published in the form of a synthesis containing the most important points mentioned in those responses. This material should be published in a separate volume of the Legislative Series.

3. Such a description is necessary, but not of the highest importance.

4. The preparation of a summary containing a set of model clauses and final clauses would be important in connection with the updating of the Handbook.

B. Overall burden of multilateral treaty-making process

With regard to points 1 and 2, the treaty-making process imposes too great a burden on the personnel that States can make available to participate in expert and representative organs and also imposes a financial burden on Member States and governmental organizations. It would therefore be desirable to reduce the personnel and resources required for the formulation of treaties.

C. Overall co-ordination of international treaty-making

1. The General Assembly should assume a co-ordinating role in respect of the multilateral treaty-making activities of all United Nations organs and all organizations of the United Nations system, that is, the specialized agencies of the United Nations. The co-ordinating role of the Assembly should not be extended to cover other international organizations, since the Assembly does not possess the necessary competence; it could confine itself to formulating recommendations to such organizations.

2. The role of the Assembly should not be restricted to the gathering and dissemination of data about all treaty-making activities but should be extended to include the proposing of subjects to be considered and the identification of the organizations most suitable to do so.

3. Yes.

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

1. (a) Yes. Legal and factual data relevant to the proposed treaty should be collected.

(b) Yes. It is important to ascertain the interest of States in the proposed treaty and their views on its content.

(c) Given the proliferation of such instruments it would not be advisable to increase their number, since that would lead to confusion in international relations.

2. The preliminary draft of a proposed treaty should be prepared by an organ composed of technical or legal experts, as appropriate. The secretariats of the organizations should lend the necessary co-operation in the preparation of preliminary drafts and drafts of treaties, but should not assume responsibility for their preparation, since that is primarily the task of representative organs. Needless to say, the comments and proposals of States should be taken into account.

3. Yes. They should be concentrated and co-ordinated.

4. Yes.

E. Work of the International Law Commission

1. (a) Yes, if the work of the Commission is going to increase. With regard to the honorarium, remuneration or per diem, the financial implications should be studied carefully.

(c) Special Rapporteurs should work on a full-time basis and should therefore receive appropriate remuneration.

(d) The Special Rapporteurs should be given more staff, since that would enable them to devote more time to the preparation of texts and commentaries.

(e) Yes, but not exclusively.

2. (a) The referral of topics falls within the competence of the General Assembly, but if the International Law Commission were to be converted into a full-time organ, the desirability of referring additional questions to it should be considered.

(b) For the time being it is satisfactory.

(c) It depends on the circumstances. A general topic could be given exhaustive consideration or treated in a special way, depending on its characteristics.

3. (a) Yes, at the outset.

(b) The current situation is the most suitable one, the important thing being to ensure that States receive the text in advance.

(c) No, because the multiplication of working groups might unnecessarily delay the attainment of the objectives proposed in the draft treaties.

(d) Yes. The International Law Commission should assume this function, provided that provisions such as those relating to entry into force, ratification, accession and reservations are dealt with at another level.

(e) Yes. Clearly, there are questions which are controversial and the presentation of alternative texts would contribute to the formulation of a final text.

(f) The process of codifying international law should be maintained.

(g) No.

F. Final negotiation and adoption of multilateral treaties

1. It would be preferable to convene an ad hoc organ when the aim is to assemble a group of specialists on a given subject, but in the case of less specialized topics or questions the Sixth Committee could be used.

2. Generally speaking, texts should be submitted to plenary bodies when they have been duly studied and completed but depending on the subject-matter, alternative texts can be submitted so that the body concerned can make a choice. The Sixth Committee should be involved in the treaty-making process through the review of the text as a whole, paying particular attention to the formal and legal clauses.

3. It would seem that the best course would be to prepare uniform or model rules of procedure with possible alternatives so that plenipotentiary conferences can use time to the best advantage. It would also be important to prepare model rules of procedure with possible alternatives for the most controversial items. Intergovernmental and non-governmental organizations should be allowed to participate in plenipotentiary conferences, especially at the preparatory stage.

G. Drafting and languages

1. In principle, no, but such a body might be useful if its functions were purely advisory.

2. No.

3. Treaties should be negotiated and drafted in the languages in which their text is to be authentic. Difficulties and disadvantages for non-English-speaking delegations should be avoided. Even when in practice English and French are the predominant languages in the negotiations, opportunities for the use of the other official languages should be provided.

4. Yes, this is a useful procedure provided that the work of the various sub-groups proceeds at the same pace as the corresponding negotiations and that the resolution of interlingual questions is expedited.

H. Records, reports and commentaries

It does not seem necessary to establish agreements or fixed arrangements concerning verbatim and summary records and the comments made on draft treaty texts; the arrangements should be made on the basis of practice, without establishing models, and taking into account the nature of the draft concerned. The texts of draft treaties should be presented by expert groups and prepared by those groups with the assistance of the Secretariat. Commentaries on draft treaty texts should be prepared by expert groups. The preparation and publication of the travaux préparatoires of multilateral treaties should be the responsibility of the secretariat unit concerned.

I. Post-adoption procedures

1. The ratification system is the correct one. The role of the Organization should be limited to urging States to become parties to the international instrument concerned.

2. No.

3. No. This is an internal matter, subject to the sovereignty of each State.

4. The provisional entry into force of treaties depends entirely on the plenipotentiaries of States.

J. Treaty-amending procedures

Treaty-amending procedures have been established in the light of practice and therefore should not be tampered with. However, States should not abuse this practice, since in many cases amendments are introduced to an international instrument which has not yet entered into force, thus introducing an element of confusion into the implementation of treaties.
