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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. Essam Sadek RAMADAN (Egypt)

#### I. INTRODUCTION

1. By resolution 37/110, the General Assembly decided, inter alia, to include in the provisional agenda of its thirty-eighth session an item entitled "Review of the multilateral treaty-making process" and to reconvene at that session the Working Group established by the Sixth Committee with the aim of completing its examination of the matters referred to in paragraph 2 of resolution 36/112, namely:

(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 1/ 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-eighth session, the General Assembly allocated item 130, entitled "Review of the multilateral treaty-making process", to the Sixth Committee.

3. At its 27th meeting, on 27 October 1983, the Sixth Committee appointed Mr. Essam Sadek Ramadan (Egypt) as the Chairman of the Working Group on the Review of the Multilateral Treaty-Making Process.

4. The Working Group held 10 meetings between 28 October and 7 December 1983.
5. The Working Group had before it the same documentation as at the thirty-seventh session, 2/ as well as the report of the Group at that session (A/C.6/37/L.29).
6. After a preliminary exchange of views, the Working Group decided, at the suggestion of its Chairman, to continue its work on the basis of the working paper on which it had initiated its work at the previous session, starting with the item it had reached at the end of that session. 3/ It therefore took up first item II.D ("Formulation of a multilateral treaty: Drafting Committee") and continued through the end of the list (item IV.D - "Post-adoption and entry into force: monitoring of treaty implementation").
7. Each item was introduced by a short oral statement by the Secretariat, the outlines of which were issued as Working Papers of the Working Group. 4/
8. The Working Group agreed with a suggestion of its Chairman that members of the Group should consider the desirability of submitting concrete proposals on the various aspects of multilateral treaty-making. Due to lack of time, the Working Group did not consider in detail these proposals, which had been submitted for the purpose of further consideration.

## II. THE ROLE OF A DRAFTING COMMITTEE IN THE MULTILATERAL TREATY-MAKING PROCESS

9. On that question the Secretariat referred (see also paras. 10-14) to the methods of work and functions of drafting committees that assist in the formulation and adoption of multilateral treaties.
10. The functions of drafting committees depend upon the nature of the treaty being formulated (e.g., codification, constituent instrument of a new intergovernmental organization, disarmament agreement, etc.) and upon the composition of the treaty-making forum (e.g., jurists, technical experts, etc.). Drafting committees may be charged to address themselves to:
  - (a) Purely textual concerns, such as the improvement and refinement of texts, the internal consistency of texts and the concordance of all linguistic versions;
  - (b) The structure of texts, i.e. arrangement of articles, annexes, etc.;
  - (c) Substantive questions (e.g., ambiguities, gaps, contradictions) only in so far as to decide whether it should disregard them or, if time permits, return the texts to the competent substantive forum;
  - (d) Formulating drafts of texts not previously considered by another body, such as formal provisions (e.g., preambles, final clauses, final act) and legal provisions of a substantive nature, (e.g., dispute settlement, status, privileges and immunities, amending process); if the main organ merely decides principles, the drafting of the entire text might be left to the committee.

11. A drafting committee is usually established at the beginning of a conference or meeting. Thereafter, the commencement of its work depends on the practice of the main body concerned, which may opt either for the submission of provisions and their consideration on an article-by-article basis or for the submission of the entire text after agreement has been reached on the entire package. The former procedure enables the drafting committee to start its work at an early stage. On the other hand, the latter procedure makes it difficult for the Committee to start its substantive work prior to the completion of the package and thus requires the drafting committee to compress its work to a few days or hours, with the resultant restriction in the performance of its tasks to purely textual concerns, disregarding entirely questions relating to the structure of instruments and substantive issues.

12. With respect to the composition of drafting committees, the main objective is to ensure adequate representation of all the languages in which a treaty is to be concluded, as well as to give due regard to the principal legal systems of the potential parties. However, there may be certain obstacles to such ideal distribution due to the constraints of geographical and political distribution, to inhibitions against States serving both on the general committee and the drafting committee of a conference, and to the desirability of restricting the size of drafting committees.

13. The members of drafting committees should be jurists, if possible with technical expertise or experience in the relevant substantive negotiations.

14. As regards size, there is a general tendency to increase the size of United Nations organs and conferences so as to keep the size of subsidiary organs in relation to the growth in membership. Furthermore, the increase in the number of working languages tends to require some increase in the size of drafting committees in particular. However, as a substantial increase may affect the work of drafting committees adversely, efforts are sometimes made to contain any excessive increase.

15. During the ensuing discussions several members stressed the need to enhance the role of the Sixth Committee in providing advice on legal matters and to find a viable machinery for the improvement of treaty texts formulated in the General Assembly or in ad hoc conferences. Mention was made in that connection to the recommendations contained in annex II to the General Assembly's rules of procedure (A/524/Rev.14) in which reference to the Sixth Committee in drafting matters was envisaged. The view was expressed that those recommendations did not establish any machinery for the consideration of drafting matters and that may have something to do with the fact that those recommendations had been applied only on rare occasions. Some members were of the view that the role of any drafting group should be limited to purely technical aspects and to the improvement of the language of the treaty texts; any substantive questions should be referred back to the body in which the treaty text was formulated. Others were of the opinion that flexibility would be desirable in some cases. With respect to the possibility of establishing a standing drafting committee (see annex, sect. A), some members feared that it would be difficult to establish a drafting body with rigid structure or on a general basis since such a body could not possess the requisite expertise in all the fields that might become the subject matter of treaties considered by

the General Assembly. It was stated that most questions involved in the negotiations of draft treaties by the Main Committees of the General Assembly were of a political nature and could not be solved by the establishment of a standing drafting committee. It was also stated that apart from the need for expertise in legal and technical matters, representatives who participated actively in the substantive discussions should also be involved in the drafting so as to ensure that the substantive agreements already reached were not disturbed.

16. In that connection, the representatives of Australia, Egypt and Mexico introduced a proposal, which is annexed hereto (see annex, sect. A).

III. PROBLEMS RESULTING FROM THE LACK OF PERSONNEL AND FINANCIAL RESOURCES: PROVISION OF LEGAL ADVISORY SERVICES THROUGH TECHNICAL ASSISTANCE

17. On that question the Secretariat noted (see also paras. 18-20) that the liminal question was whether the overall burden of the multilateral treaty-making process, at the world-wide level and at the regional level, was excessive for States either directly through their participation in the treaty-making process (initiation, negotiation, drafting and adoption) or through the need to give domestic consideration after adoption (e.g., whether to participate in the treaty and with what options; implementation), or indirectly through their participation in international organizations.

18. If the present burden is considered excessive, the question of obtaining necessary additional resources arises with respect to the personnel resources of individual Governments (possibility of technical or other assistance) and to financial resources for the process as a whole.

19. Regarding the possibility of a decrease in multilateral treaty-making activities, the options are either across-the-board decreases (by slowing the process overall) or selective decreases, through the setting of priorities. However, effective mechanisms in this regard would have to be established within the United Nations as well as at the world-wide and at the regional levels.

20. Alternatively, if the burden is considered to be excessive, an increase in the efficiency of the multilateral treaty-making process could be achieved, for example, by establishing specific procedures for the formulation and adoption of multilateral treaties.

21. In the ensuing discussions it seemed generally recognized that the multilateral treaty-making process at the international level had brought about, at all stages, a great demand for personnel and financial resources and that many States, particularly developing ones, had found it difficult to meet such a demand. It was thought that the Working Group could not usefully consider the question of increasing resources in national ministries concerned with the preparation, negotiation and implementation of treaties since those were internal matters. In the view of some delegations, one way of improving the multilateral treaty-making process in general and, particularly, in the United Nations, would be

to decrease treaty-making on a selective basis; others considered that that would be difficult and that, rather, the efficiencies of the process should be improved. Better results might be achieved, it was suggested, through, for example, adequate consultations, gathering technical data and the preparation of feasibility studies at the stage where a proposal for making a treaty was initiated.

22. It was, however, pointed out that the provision of advisory services should also be considered. The representative of Egypt made a proposal to the effect that the Secretary-General and the Executive Director of the United Nations Institute for Training and Research (UNITAR), in consultation with regional agencies active in the field of international law, as well as with the Rector of the United Nations University (UNU) and the Administrator of the United Nations Development Programme (UNDP), be requested to formulate appropriate programmes for providing assistance, for example, through:

(a) The provision of technical assistance to particular Member States, at their request, for securing suitable legal training in multilateral treaty-making activities for selected officials of such States;

(b) The conduct of courses or symposia for governmental officials on subject-matters relating to multilateral treaty-making;

(c) The preparation of translations and the drafting of model parliamentary documentation and implementing legislation for particular treaties, for possible use by potential parties thereto.

#### IV. DETERMINATION OF READINESS FOR ADOPTION OF A MULTILATERAL TREATY AND CHOICE OF FORUM

23. On that question the Secretariat noted (see also paras. 24-30) that a determination of readiness for adoption of a multilateral treaty has to be made by ascertaining: (a) whether the formulating process has been carried out in such a way that the forum chosen for the adoption of the proposed treaty has a reasonable chance of completing its work; (b) whether there is sufficient likelihood that a meaningful treaty will be adopted and will enter into force, which requires, in particular, that States in general should consider it both substantively satisfactory and sufficiently important.

24. Assuming positive answers to the above, the forum for adoption should be chosen. Otherwise, the following steps should be envisaged: resuming formulation or negotiation of the treaty; considering an alternative type of instrument (see A/C.6/37/L.79, para. 19); delaying further steps; or abandoning the project altogether.

25. With regard to the choice of forum, the principal venues were either a suitable organ of the sponsoring organization, which is usually one in which all members are represented, or a diplomatic (plenipotentiary) conference.

26. The choice should depend, inter alia, on the desired participation in the adoption process, with due regard to the expected participation in the treaty of States not members of the organization concerned and of other entities (such as intergovernmental organizations), as well as the possible exclusion of States members of the organization that are not interested in or opposed to a treaty. It should be noted that the further the contemplated participation in the forum of adoption departs from the membership of the competent organization, the more the choice of an ad hoc conference is indicated.

27. On the question of the desirable qualifications of representatives, the representatives accredited to the sponsoring organization might have the desired specialized qualifications. Otherwise, it might be considered whether representatives with the requisite special technical qualifications are more likely to participate in a conference.

28. On the question of timing, in urgent cases immediate adoption by a standing organ may be indicated. Where some speed is desirable, the convening of a conference that can work concentratedly on the treaty for some weeks or months may be preferable. Lastly, if there is no time-limit, consideration at successive sessions of a standing organ may be sufficient.

29. With respect to cost, it should be borne in mind that a conference is generally more expensive, for both the participating States and the sponsoring organization, than the proceedings of a standing organ.

30. The rules of procedure of the forum should make appropriate provisions relating to the types of participation envisaged, an acceptable decision-making process and the use of at least those languages in which the treaty is to be authentic. It may be easier to adopt suitable rules of procedure for an ad hoc conference than to adapt the rules of procedure of a standing organ, which may be subject to constraints imposed by the constituent instrument of the organization.

31. In the ensuing discussions the general view appeared to be that various factors, as outlined above, would have to be taken into account in making the relevant decisions and that there should be no rigid rules. It would, however, be useful to summarize the relevant United Nations practices in the proposed handbook or manual on multilateral treaty-making.

#### V. SPECIAL TREATY-MAKING RULES OF PROCEDURE FOR THE GENERAL ASSEMBLY

32. There was a general but brief exchange of views on the role of the Sixth Committee and on the feasibility of having certain special rules of procedure to govern treaty-making activities in the General Assembly. Due to lack of time, no detailed consideration took place. For the purpose of further consideration by the Working Group, the Chairman submitted a set of draft rules of treaty-making conferences that the Assembly might convene within the framework of its sessions. These draft rules, together with an explanatory paper, are reproduced in the annex, section B.

33. The Working Group noted that questions relating to the draft standard rules of procedure for United Nations Conferences are being considered by the Sixth Committee under its agenda (Item 137).

#### VI. FOLLOW-UP ACTION ON ADOPTION OF A MULTILATERAL TREATY

34. On that question the Secretariat noted that the actions that might be taken by the organization under whose auspices the treaty was adopted were either recommendations by appropriate representative organs that States become parties to a treaty or reports by the secretariat on formal action taken by States in respect of the treaty. On the other hand, States members of the competent organization might be required, if so provided in an appropriate instrument of the organization, either to submit the treaty for consideration by governmental organs competent to decide on participation or to report to the organization on the actions taken.

35. In the ensuing discussions, several members advised caution regarding the actions to follow up on treaty adoption, which they considered to be exclusively within the competence of the States concerned. However, it was agreed that various methods used by international organizations or in respect of certain treaties might be described by the Secretariat in the proposed manual or handbook.

#### VII. PROVISION OF ADVISORY SERVICES

36. With respect to that question the Secretariat noted (see also para. 37) that certain types of assistance that may be required were translation of treaty texts into national language(s); analysis as to whether States should become parties to a treaty in light of other treaty obligations, domestic legislation, substantive interests and political factors; and drafting of domestic documentation or instruments, such as reports to legislative or executive bodies and implementing legislation.

37. Assistance may be given to either individual States or to several States. In the case of the former, assistance may be given by the supply of legal assistance through technical assistance experts (e.g., paid for from UNDP Indicative Planning Figures (IPF)), legal experts supplied to serve as governmental officials under OPAS (Operational Assistance (UNDP)) or ad hoc advice supplied by the Office of Legal Affairs. With regard to assistance to States in general, lecture or seminar courses might be conducted by UNITAR or arranged through UNU or publications about treaties could be provided.

38. In the ensuing discussion, the proposal referred to in paragraph 22 above was noted.

39. It was stressed that the provisions of advisory services would be useful for those States that needed them, but such services should only play a subsidiary role and could only be provided in response to requests. In this connection, reference was also made to existing services of the United Nations and other international organizations, including the Asian-African Legal Consultative Committee. Since

members stated that it would be useful to have comprehensive information on what kind of services were available, what uses were made of them and what problems existed, it was thus suggested that this could be usefully summarized in the manual or handbook referred to earlier.

#### VIII. PREPARATION AND PUBLICATION OF RECORDS AND COMMENTARIES

40. On that question the Secretariat noted (see also paras. 41-42) that the issue was to which bodies verbatim and summary records were to be provided at the formulating and negotiating stage (expert groups and restricted representative bodies) and at the adoption stage (plenary, negotiating or drafting committees). A possible alternative to verbatim and summary records might be to have reports made on particular negotiating stages, indicating arguments stated and the reasons for changes.

41. Commentaries may facilitate treaty adoption and interpretation and thus be useful at domestic adoption and implementation stages. However, the difficulty of achieving a consensus on such documentation by an authoritative body must be considered, as well as the cost. Such studies may be carried out by an expert body, the secretariat of a competent organization or consultants, either before or after the adoption of the treaty.

42. On the question of travaux préparatoires, a determination should be made of the list of documents to be included, with due regard to the technical question of what constitutes a "preparatory work of the treaty" within the meaning of article 32 of the Vienna Convention on the Law of Treaties, the availability of such documents otherwise, as well as the cost factor.

43. In the ensuing discussions, some members emphasized that all treaty-making bodies should have summary records and that commentaries giving an objective analysis of the main trends and concentrating on the main issues and ideas should be prepared by the Secretariat or by an expert group whenever treaty-making activities were involved and financial resources permitted.

44. Some members pointed out that several aspects relating to travaux préparatoires had already been considered by the Working Group at its last session in connection with the question of drafting in general (A/C.6/37/L.29, paras. 25 and 30) but were also relevant to the present item. Reference was also made to the information provided by the Secretariat regarding official records of treaty-making bodies in the United Nations (A/C.6/37/L.29, annex II). Some members were of the view that travaux préparatoires were important tools for treaty interpretation and that a complete set of such documentation should be maintained and published. It was, however, stressed that those records should be limited to treaty-making activities only, with due regard to financial considerations. Some members drew attention to the method used by the International Law Commission in the preparation of the commentaries accompanying its draft instruments and suggested that it could serve as a useful model for other bodies engaged in treaty-making activities. Some members also referred to the useful practice in the Council of Europe for the preparation of "explanatory statements" by expert groups as an agreed explanation of instruments adopted.



45. On the question of registration and depositary functions 5/ and of official records, 6/ the representative of Israel presented two proposals which, respectively, suggested that the regulations to give effect to article 102 of the Charter be reviewed to bring up to date provisions that had become obsolete, that an examination of the depositary functions of specialized and related agencies and of other organizations, as well as by Governments, be carried out to ascertain the feasibility of producing consolidated or uniform information regarding the depositary activities of those agencies, organizations and Governments, and that a set of official records be published for each treaty-making conference, comprising the text of any final act, including that of any treaty and any other instrument adopted, the text of the summary records and of all conference documents considered to be of continuing significance, a complete check list of all conference documents (including those not reproduced in the official records) and a list of delegations and their members participating in the conference.

#### IX. MONITORING OF TREATY IMPLEMENTATION

46. On that question the Secretariat noted that monitoring devices might be considered a substantive question outside the purview of treaty-making. Those might either be provided for in the treaty to be carried out through a treaty organ (e.g., Human Rights Committee under the International Covenant on Civil and Political Rights), a treaty conference (e.g., five-yearly review conferences foreseen by the non-proliferation Treaty) or an organ of the competent organization (e.g., Economic and Social Council in respect of the International Covenant on Economic, Social and Cultural Rights) or, if not provided for in the treaty, might be carried out by a competent organization under either specific constitutional powers (e.g., the International Labour Organisation) or general constitutional powers (e.g. the Economic and Social Council and the General Assembly of the United Nations).

47. In the ensuing discussions, several members advised caution regarding measures for monitoring treaty implementation which they considered to be exclusively within the competence of the States concerned. It was pointed out that an outline of the machinery provided for in different categories of treaties (e.g., human rights, disarmament) for monitoring the implementation of those treaties would be useful and could be included in the proposed manual or handbook.

#### X. CONCLUSION

48. The Working Group thus completed the first reading of the items in annex I to document A/C.6/37/L.29. In the light of the above-mentioned proposals and outstanding issues, the Working Group decided to recommend to the Sixth Committee that the item "Review of the multilateral treaty-making process" be included in the provisional agenda of the thirty-ninth session of the General Assembly and that the Working Group on the Review of the Multilateral Treaty-making Process be reconvened at that session with the aim of completing its work.

Notes

1/ A/36/553.

2/ See A/C.6/37/L.29, para. 5.

3/ Ibid., annex I, item II.D.

| <u>4/</u> Working Group<br>working paper |         | <u>A/C.6/37/L.29</u><br>Annex | <u>A/C.6/38/L.28</u> |           |
|------------------------------------------|---------|-------------------------------|----------------------|-----------|
| No.                                      | Section |                               | Section              | Paragraph |
| 1/1983                                   | I-III   | II.D                          | II                   | 9-14      |
| 4/1983                                   | I-II    | II.E                          | III                  | 17-20     |
| 5/1983                                   | I-IV    | III.A-B                       | IV                   | 23-30     |
| 5/1983                                   | V-VI    | III.C-D                       | -                    | -         |
| 8/1983                                   | I       | IV.A                          | VI                   | 34        |
| 8/1983                                   | II-III  | IV.B                          | VII                  | 36-37     |
| 8/1983                                   | IV-VI   | IV.C                          | VIII                 | 40-42     |
| 8/1983                                   | VII     | IV.D                          | IX                   | 46        |

5/ Working Group working paper No. 2/1983.

6/ Working Group working paper No. 3/1983.

Annex

A. ESTABLISHMENT OF AN ADVISORY COMMITTEE ON DRAFTING OF THE  
GENERAL ASSEMBLY

Paper prepared by the representatives of Australia, Egypt  
and Mexico

1. The Secretariat's report on the review of the multilateral treaty-making process makes it clear that practically all organs that formulate treaties, whether expert or representative, at one or more stages submit the text of treaties for consideration by a drafting committee (A/35/312, para. 37, reproduced in ST/LEG/SER.B/21, p. 22). The report remarks that practically the only bodies that do not do so regularly are the Main Committees of the General Assembly. It has also been customary for drafting committees to be established in all plenipotentiaries conferences convened by the United Nations.
2. Small drafting groups are sometimes established in Main Committees which have been given the task of elaborating treaties, or in working groups and intersessional committees, but this is usually done on an ad hoc basis. Although matters can be referred to the Sixth Committee for advice (General Assembly resolution 684 (VII) of 6 November 1952; see rules of procedure of the General Assembly, A/520/Rev.14, annex II) no machinery has been established to consider questions of drafting. The present practice has led to an inconsistency in drafting styles and, at times, to the adoption of language which is unnecessarily obscure, ambiguous or otherwise defective. Improper drafting can lead to the erosion of accepted legal concepts, difficulty in both the interpretation and implementation of treaties and a consequential delay in ratification and even the entry into force of treaties.
3. To help overcome this it is suggested that a standing committee (to be known as the "Advisory Committee on Drafting") of the General Assembly be established to examine any drafting matter referred to it by a Main Committee of the General Assembly. The Advisory Committee would be convened by its Chairman whenever a Main Committee seeks its advice on a drafting matter and its mandate would be limited to the questions put to it.
4. The Advisory Committee should have a core membership of 18 persons but would be open-ended so that other interested persons might also participate.
5. The members of the Advisory Committee would be appointed by the Chairman of the Sixth Committee, in consultation with all the regional groups, at the beginning of each session of the General Assembly. Members would be selected on the basis of appropriate representation of all geographical groups, paying attention also to the need for representation of the six working languages of the General Assembly and of all the principal legal systems, as well as personal qualifications and experience. They would hold office as members of the Advisory Committee for a period of one year from the time of appointment and be eligible for re-appointment. A new member of the Committee would be appointed from the same group as the member

retiring before the expiration of the term of office of that member. The Chairman of the Advisory Committee would be selected by the members of the Committee. The chairmanship would rotate each year.

6. The rules of procedure of the General Assembly would apply to the proceedings of the Advisory Committee.

7. If such a proposal finds favour it could be given effect by a General Assembly resolution or by inclusion in the rules of procedure of the General Assembly (as, for example, Advisory Committee on Administrative and Budgetary Questions). The latter would seem to be the best option. It would give the Committee more status and make all the Main Committees of the General Assembly aware of its existence and the purpose for which it was established.

8. It is proposed to provide more specific details concerning the implementation of this proposal in a subsequent paper.

B. DRAFT RULES OF PROCEDURE OF TREATY-MAKING CONFERENCES CONVENED  
WITHIN THE FRAMEWORK OF THE GENERAL ASSEMBLY

Proposal by the Chairman

1. The General Assembly has, over the years, adopted over 25 multilateral treaties. 1/ This procedure is an alternative to convening a diplomatic conference for the purpose of adopting a treaty and has several advantages over the latter method, especially in being considerably less costly for the Organization and generally for Member States as well; moreover, considerably more such States participate in Assembly sessions than at conferences convened at some other time and usually in some place other than at United Nations Headquarters. Naturally, adoption of a treaty by the Assembly is generally only considered desirable if the formulation of the text is substantially complete so that the adoption stage may be expected to be relatively brief and formal, though occasionally the Assembly has considered a particular set of instruments during a series of several sessions. 2/

2. Although the procedure of adopting multilateral treaties by the General Assembly is thus well established, there are certain imperfections and legal difficulties in such a use of that forum. Under the former heading the principal points to mention are the usual failure to use a drafting committee, almost always used by diplomatic conferences but only occasionally by a Main Committee of the General Assembly to give a necessary legal and editorial review to the treaty text, 3/ the equally frequent failure to secure the advice of a body of juridical experts on the formulation of the final clauses and other legal provisions, 4/ and the awkwardness of assembling, from the Official Records of the General Assembly, a systematic set of the travaux préparatoires of the treaties adopted by it. More serious are the legal difficulties that arise if it is desired to involve non-member States in the adoption of a multilateral treaty open to all States (the normal practice as to non-regional treaties adopted under United Nations auspices during the past decade), 5/ or if it is desired to vary the majority required for adoption from that provided for in Article 18 (2) or (3) of the United Nations

Charter; these Charter-based constraints must be considered as applying not only to the plenary of the Assembly, but also to the Main and other sessional committees, which constitute integral parts of the Assembly.

3. Certain of the anomalies mentioned in the previous paragraph could be overcome if the General Assembly were to have special rules of procedure for the adoption of multilateral treaties (which could constitute a special chapter of the Assembly's rules of procedure, or a binding annex thereto). 6/ On the other hand, the Charter provisions relating to the composition and to the decision-making procedures of the General Assembly make it impossible to overcome certain of the above-mentioned legal difficulties through a mere amendment of the rules of the Assembly.

4. An alternative that is not subject to these legal objections would be the largely pro forma conversion of the General Assembly into a diplomatic conference whenever it desires to adopt a multilateral treaty to be open to all States. There are no legal obstacles to a diplomatic or other conference being convened in conjunction with the General Assembly, for which there are numerous examples. 7/ Nor would there be any practical obstacles or financial implications, if it is understood that the conference, though legally distinct from the Assembly, would only utilize for the meetings of its organs (Main Committee(s), working group(s), drafting committee, plenary) precisely the same facilities as those that would be used by the Assembly in considering the same treaty 8/, since it is proposed to use the same officers and committees for such a conference as are elected or established by the then current session of the General Assembly (see annexed draft rules, rule 2); the only difference between meetings of organs of the conference and those of the Assembly would be, in respect of the former, the inclusion as full participants of non-member States and of any other entities (e.g., Namibia, represented by the United Nations Council for Namibia, and possibly of intergovernmental organizations, for example the European Economic Community) that might wish to become parties to the treaty in question. However, since the conference would be formally distinct from the Assembly, there would be no legal obstacle, in the Charter or otherwise, in adjusting participation in and the decision-making procedures of the conference in any way considered desirable in respect of a particular proposed treaty.

5. If the General Assembly is to follow the practice of adopting treaties not directly through its own organs but through conferences convened within the framework of its sessions 9/, it might be best to do so on the basis of a standard set of rules of procedure that would govern such conferences. A draft of such a set of rules is attached hereto. It will be seen that under these proposed rules such conferences, which are to utilize the officers and organs of the Assembly to the fullest extent feasible (draft rule 2), would for the same reason also use as far as possible the rules of procedure of the General Assembly (draft rule 1 (2)). Departures from the Assembly's rules are only provided for in respect of those procedures as to which a special régime may be thought to be required because of the special function that the treaty-making conference is to carry out, as proposed in draft rules 3 to 9; as indicated in notes to the annexed draft, these rules are largely based on the draft standard rules of procedure for United Nations conferences. 10/ However, maximum flexibility is allowed for adapting these proposed rules to the particular circumstances or requirements of each conference (see draft rule 1 (3), as well as rules 2 (1), 4 (2), 7 (3) and 8).

6. Finally, if for political reasons it is considered desirable that the actual adoption and opening for signature of a particular treaty be accomplished by the General Assembly, then the conference could be instructed that, upon the completion of its work, it report the text of the completed instrument to the Assembly so that the latter might take the appropriate formal action with respect to it.

#### Notes

1/ See annex II, "Conventions, declarations and other instruments", to the Resolutions and Decisions adopted by the General Assembly during its Thirty-seventh Session, General Assembly Official Records, Thirty-seventh Session, Supplement No. 51 (A/37/51).

2/ For example, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and the Optional Protocol to the former (all annexed to General Assembly resolution 2200 A (XXI)), which were considered by the Third Committee at the ninth to eighteenth and twenty-first sessions of the Assembly (A/6546, paras. 4-5), and the Convention on Special Missions and the Optional Protocol thereto (annexed to General Assembly resolution 2530 (XXIV)), which were considered by the Sixth Committee at the twenty-third and twenty-fourth sessions of the Assembly.

3/ In spite of annex II, part 2, paras. 29-30, to the rules of procedure of the General Assembly (A/520/Rev.14).

4/ Idem., part 1, para. 1 (c).

5/ Switzerland was permitted to participate, without a vote, in the Sixth Committee's consideration, at the twenty-third and twenty-fourth sessions of the General Assembly, of the draft Convention on Special Missions (A/C.6/SR.1039, paras. 36-44; A/7375, para. 5, A/7799, para. 2); at the twenty-eighth session it was similarly permitted to participate in the consideration of the draft Convention on the Prevention and Punishment of Crimes against Diplomatic Agents or Other Internationally Protected Persons, though this time it was also precluded from submitting formal proposals or amendments (A/C.6/SR.1407, para. 26, A/C.6/SR.1408, para. 3, and A/C.6/SR.1409, paras. 1-3; A/9407, para. 4). In respect of other treaties adopted by the Assembly, non-member States were not able to participate, except in their usual role as observers.

6/ The chapters are marked by Roman numeral headings in the body of the rules of procedure themselves (A/520/Rev.14). Existing annex II, which deals with certain aspects of this subject, constitutes a non-binding set of recommendations, in contrast to annex III, which is a special set of binding rules.

7/ Numerous pledging conferences have been convened during sessions of the General Assembly; indeed, this is the general practice. Part two of the eleventh session of the Third United Nations Conference on the Law of the Sea was convened at Headquarters during the first days of the thirty-seventh session of the General Assembly; the end of the 1954 United Nations Conference on the Status of Stateless Persons took place at Headquarters during the opening days of the ninth session of the General Assembly.

Notes (continued)

8/ It is not intended that such a conference would require a special block of time during the Assembly session(s) within which it is convened. Rather, the conference plenary and committees would meet precisely as and when the corresponding Assembly organs would otherwise meet on the same item, so that meetings of the Assembly and the conference would be interspersed until the conference completes its business by adopting the text of the treaty for which it was convened.

9/ The special conference device could be used whether the Assembly expects to adopt the proposed treaty during the course of a single regular session, as has usually been the case, or at two successive sessions (e.g., the Convention on Special Missions, see note 2 above) or at a series of regular sessions (e.g., the human rights Covenants, see note 2 above), or at a special or a resumed regular session (e.g., the Treaty on the Non-Proliferation of Nuclear Weapons, resolution 2373 (XXII), annex).

10/ A/38/298, annex (to be considered by the Sixth Committee under item 137 of the agenda of the thirty-eighth session).

DRAFT RULES OF PROCEDURE OF TREATY-MAKING CONFERENCES  
CONVENED WITHIN THE FRAMEWORK OF THE GENERAL ASSEMBLY

Rule 1

Rules of procedure

1. These rules of procedure shall be applicable to any conference (hereinafter "the Conference") convened by the General Assembly to function within the framework of sessions of the Assembly for the purpose of adopting one or more multilateral treaties. 1/
2. Except as otherwise provided herein, and subject to paragraph 3, the relevant provisions of chapters III to XIII of the rules of procedure of the General Assembly shall apply to the Conference.
3. Except as otherwise provided by the General Assembly or by the Conference, an organ of the Conference may, by a two-thirds majority of the representatives of the full participants present and voting, agree to apply other rules of procedure.

Rule 2

Organs and officers of the Conference

1. Except as otherwise provided by the Conference, the officers and committees as most recently elected or constituted by the General Assembly shall perform corresponding functions for the Conference. 2/
2. The Conference shall, on the basis of a recommendation of the General Committee, specify which Main Committee or Committees, acting as organs of the Conference, shall consider and report to it on all or on specified portions of the instruments to be adopted by the Conference.

Rule 3

Full participants

1. Except as otherwise decided by the General Assembly, the following shall be invited to participate fully in the Conference:
  - (a) All States; 3/
  - (b) Namibia, represented by the United Nations Council for Namibia, in accordance with all applicable resolutions of the Assembly. 4/



2. The full participants in the Conference shall be those invited pursuant to paragraph 1 who notify to the Secretary-General their intention to so participate. The quorum of the Conference at a particular session shall be calculated on the basis of these notifications in respect of that session. 5/

3. Any representative whose credentials have been approved by the General Assembly shall be considered to have been duly accredited to the Conference. 6/ Any representative of a full participant not so accredited shall present, if possible not less than one week before the opening of the first session of the Conference in which he is to participate, credentials issued either by the head of State or Government or by the Minister for Foreign Affairs; 7/ these credentials shall be examined by the Credentials Committee, which shall report to the Conference. 8/

#### Rule 4

##### Other participants

1. Except as otherwise decided by the General Assembly, the following other entities shall be invited to participate in the Conference:

(a) Organizations that have received a standing invitation from the Assembly to participate, in the capacity of observers, in the sessions and work of all international conferences convened under the auspices of the Assembly in accordance with all applicable resolutions of the Assembly;

(b) National liberation movements recognized in its region by the Organization of African Unity, in accordance with all applicable resolutions of the General Assembly;

(c) Specialized and related 9/ agencies;

(d) Other intergovernmental organizations that indicate their interest to the Assembly and to which an invitation is authorized by the Assembly or by the Conference;

(e) United Nations organs authorized to participate by decision of a competent intergovernmental organ or by the Secretary-General;

(f) Non-governmental organizations in consultative status with the Economic and Social Council that indicate to the Secretary-General that they have a special interest in the subject-matter of the Conference, and other interested non-governmental organizations that may be designated under the authority of the Assembly or the Council on the basis of their special competence. 10/

2. Except as otherwise provided by the General Assembly or, subject to such provisions, by the Conference, the representatives of participants other than full participants:

- (a) May intervene, with the permission of the President, in the debates in plenary meetings of the Conference and, with the permission of the Chairman, in meetings of other committees;
- (b) May be given an opportunity to reply;
- (c) May participate in working groups, as appropriate and as authorized by the Conference or the working group concerned;
- (d) May not participate in decision-making, make any procedural motion, raise points of order, appeal against rulings on such points of order, or submit substantive proposals. 11/

#### Rule 5

##### Basic proposals

1. The General Assembly may specify the draft text that is to constitute the basic proposal for consideration by the Conference. 12/
2. The basic proposal shall have priority over all other proposals submitted to the Conference, unless it decides otherwise.
3. The General Assembly may establish a target date, in advance of the date on which the Conference is to be convened, by which any amendments relating to the basic proposal should be submitted to the Secretary-General; amendments so submitted shall receive priority in their processing by the Secretariat and their consideration by the Conference. 13/

#### Rule 6

##### Drafting

1. Before the Conference adopts any instrument, its text shall be considered by [the Advisory Committee on Drafting] 14/ [a Drafting Committee consisting of a Chairman elected by the Conference and of eighteen other members nominated by the President and approved by the Conference, selected so that each language in which any instrument to be adopted by the Conference is to be authentic will be adequately represented and with due regard to equitable geographical distribution; it is expected that members of the Committee, in designating their representatives on the Committee, will bear in mind the desirability of selecting persons with experience in the field concerned or in legal affairs]. 15/
2. The [Advisory Committee on Drafting] 14/ [Drafting Committee] shall prepare drafts and give advice on drafting as requested by the Conference or a committee. Subject to any general instructions of the Conference, it shall co-ordinate, review and refine the drafting of all texts referred to it and shall report, as appropriate, either to the Conference or the committee concerned. 16/

Rule 7

Decision-making

1. The Conference shall make every effort to ensure that its decisions on all questions of substance are taken by general agreement, or by consensus or otherwise without a vote. 17/
2. Notwithstanding any measures that may be taken in compliance with paragraph 1, a proposal or motion before the Conference shall be voted on if the representative of any full participant so requests. 18/
3. Unless the General Assembly or, subject thereto, the Conference provides otherwise and subject to paragraph 1, the adoption of any instrument and any other question of substance shall be decided by the Conference by a two-thirds majority of the representatives of the full participants present and voting. 19/

Rule 8

Languages

Unless the General Assembly or the Conference decides otherwise, any instrument adopted by the Conference shall be authentic in the official languages of the General Assembly. 20/

Rule 9

Official records

1. Summary records shall be provided for the plenary meetings of the Conference and for meetings of any Main Committees; sound recordings shall be made of all meetings of the Conference and its subsidiary organs. Such records and recordings shall be kept in accordance with the practice of the United Nations. 21/
2. The Conference shall adopt a final act. 22/
3. A set of official records shall be published for the Conference, containing the text of the Final Act, including that of any treaty and any other instrument adopted by the Conference, the texts of the summary records and of all Conference documents considered to be of continuing significance, a complete check list of all Conference documents and records including those not reproduced in the official records, and a list of delegations and their members participating in the Conference. 23/

Notes

1/ Based on rules 1 and 2 (1) of the draft standard rules of procedure for United Nations conferences, A/38/298, annex.

2/ The committees referred to in this paragraph include the General and Credentials Committees, as well as those of the Main Committees to which assignments are to be given pursuant to paragraph 2 of this rule.

3/ The term "all States" has acquired a special meaning in the practice of the United Nations, meaning all States that are members of any United Nations system organization as well as any State recognized as such by a decision of the General Assembly.

4/ Paragraph based on draft standard rule 16 (1).

5/ The General Assembly might decide, in convening a conference to function under these rules, on a minimum number of participating States.

6/ This provision depends on a liberal interpretation of article 7 (2) (c) of the Vienna Convention on the Law of Treaties. In any event, representatives desiring to sign a treaty instrument adopted by the Conference will have to submit full powers acceptable to the depositary.

7/ Based on standard rule 18 (2) and on General Assembly rule of procedure 27 (A/520/Rev.14).

8/ Based on General Assembly rule of procedure 28, last sentence.

9/ Other organizations that have a relationship agreement or an established relationship with the United Nations, such as the International Atomic Energy Agency, the World Tourism Organization and the General Agreement on Tariffs and Trade.

10/ Paragraph based on draft standard rule 16 (2).

11/ Paragraph based on draft standard rule 79.

12/ The Working Group may be expected to recommend that the General Assembly should not convene any treaty-making conference, especially one that is to function under these rules, without the prior formulation, by a suitable standing or ad hoc body (such as the International Law Commission), of a draft of each principal instrument that the conference is to adopt.

13/ Rule based on draft standard rule 45.

14/ Assuming that the proposal in Working Group working paper No. 6/1983 is adopted.

Notes (continued)

15/ Based on draft standard rule 64 (1); this alternative would be used if the proposal referred to in note 14 is not adopted. This rule is intended to leave it to the Drafting Committee itself to decide on its own organization - for example, whether to establish language groups, such as those that functioned at the Third United Nations Conference on the Law of the Sea.

16/ Based on draft standard rule 64 (2).

17/ Based on draft standard rule 51 (1).

18/ Based on draft standard rule 51 (2).

19/ Based on draft standard rule 53 (1) and on article 9 (2) of the Vienna Convention on the Law of Treaties.

20/ Based on draft standard rule 71 (3).

21/ Based on draft standard rules 73 (1) and 74.

22/ Based on draft standard rule 75 (1).

23/ Based on draft standard rule 76 and on Working Group working paper No. 3/1983.

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