United Nations
GENERAL ASSEMBLY
THIRTY-SECOND SESSION
Official Records *

DEC 5 1977

SIXTH COMMITTEE
48th meeting
held on
Thursday, 17 November 1977
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 48th MEETING

Chairman: Mr. GAVIRIA (Colombia)

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AGENDA ITEM 124: REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS (continued)

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Distr. GENERAL
A/C.6/32/SR.48
22 November 1977
ENGLISH
ORIGINAL: FRENCH

77-58216

The meeting was called to order at 10.55 a.m.

AGENDA ITEM 124: REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS (continued) (A/32/143 and Corr.1; A/C.6/32/L.9)

1. The CHAIRMAN said that Colombia, Lesotho and Paraguay had become sponsors of draft resolution A/C.6/32/L.9.

2. Mr. STEPANOV (Ukrainian Soviet Socialist Republic) said that the question under consideration related to one of the most important areas of activity of the United Nations. The numerous draft conventions and treaties which the United Nations had prepared since its establishment had considerably enriched international law, filling the gaps and gradually changing it into a coherent and complete system.

3. However, the growing multiplicity of legal documents elaborated raised many problems, particularly for small countries and some developing countries which were no longer able to participate effectively in the treaty-making process. In order to solve those problems, some countries had proposed that the procedures used in the preparation of multilateral treaties should be reviewed so that necessary improvements might be made.

4. His delegation believed that the first thing to be done should be to apply existing methods more rationally. More drafts should be completed and adopted by the Sixth Committee rather than by diplomatic conferences convened specifically for that purpose; that would not only result in savings but would also give all States Members of the United Nations an opportunity to participate in that normative process and would strengthen the role of the Sixth Committee.

5. The countries which had requested the review of the multilateral treaty-making process had stated specifically that the review should deal exclusively with treaty-making methods. Nevertheless, some of the issues which they proposed should be considered in the explanatory memorandum contained in the annex to document A/32/143 did not really relate to the treaty-making process. They referred, inter alia, to the possibility of considering how to facilitate State participation, not only in treaty-making but also in the implementation process and how to bring the greatest possible number of States to ratify the treaties already concluded. In that connexion, he pointed out that questions relating to the ratification and implementation at the national level of the contractual obligations of States fell within the competence of those States. Even if perfect treaty-making procedures were developed, the fate of treaties would continue to depend, in the final analysis, on the political will of States.

6. As had been stated in the explanatory memorandum, the review should relate to the methods used in all areas in which codification had been undertaken. The techniques utilized in codifying the law of the sea, for example, had nothing in common with those that had been used in the area of human rights. Indeed, treaty-making methods differed according to the nature of the treaty. Any attempt

(Mr. Stepanov, Ukrainian SSR)

to standardize those procedures would be vain and even prejudicial to the quality of the treaties.

7. His delegation had no objection to the Secretary-General's preparing a report on the techniques and procedures used in elaborating multilateral treaties. It would then be possible to draw a comprehensive picture of those procedures, evaluate their effectiveness and determine whether they could be streamlined. Depending on the results of the report, a decision might then be taken on the question of the review of the multilateral treaty-making process.

8. Mr. KRISPIS (Greece) said that the review of the multilateral treaty-making process would most likely be only an academic exercise which would require much work and consume much time and a considerable amount of money; his delegation would nevertheless be in favour of the exercise, but with some hesitation. Even if the review - whose specific purpose and outcome was not yet known - turned out to be of no practical use, it would provide a very useful reference work.

9. Moreover, the task was quite within the province of the United Nations, since Article 13, paragraph 1, of the Charter stated that the General Assembly should initiate studies and make recommendations for the purpose of the progressive development of international law and its codification.

10. With regard to draft resolution A/C.6/32/L.9, it would be preferable to use the word "study" rather than "report" in operative paragraph 1. The word "review" was not satisfactory either, since what was wanted was a real critical study of all techniques and procedures used in the elaboration of multilateral treaties in the United Nations. The importance and scope of the study should not be minimized.

11. In fact, the scope of the study was very wide indeed. Operative paragraph 1 of the draft resolution requested the Secretary-General to prepare a report on the procedures used not only by the United Nations but also by other organizations and by States. Moreover, the fact that the sponsors had used the word "multilateral" in a very broad sense meant that the Secretary-General would have to study multilateral treaties of a universal nature as well as more restricted multilateral treaties.

12. The proposed study would never have anything more than a theoretical value, as it would be impossible to conclude an international treaty on treaty-making procedures. The techniques used varied too much from one treaty to another for any standardization or uniformity to be possible; moreover, it would not be desirable. States or organizations taking part in the drafting of a treaty must be able to use any method.

13. If the study was to be confined to multilateral treaty-making procedures, it must avoid touching on questions connected with the acceptance and ratification of and accession to treaties and, certainly, with their substance. In that regard the ninth preambular paragraph of the draft resolution was not relevant; if that paragraph had been in the operative part, his delegation would have had doubts as to the exact scope of the proposed review.

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(Mr. Krispis, Greece)

14. The United Nations Institute for Training and Research (UNITAR), referred to in the eighth preambular paragraph, should be given the opportunity to contribute to the proposed study, since it was a research body.

15. His delegation was not quite satisfied with operative paragraph 2. On the one hand, it was highly likely that the Secretary-General would not confine himself to including in his report the comments provided by the International Law Commission but that he would evaluate and use them in any way he chose. The Commission would then be in a somewhat strange situation; generally, the Secretariat assisted the Commission but in the current case the situation would be the reverse. Moreover, the invitation in paragraph 2 did not have the same force in the case of Governments as it did in the case of the Commission. In the former case it was a recommendation, whereas in the latter it was a request with which the Commission was bound to comply. Accordingly, it would be better to have two paragraphs, rather than one.

16. With regard to operative paragraph 1, he wondered why the Secretary-General should be asked to prepare the report in question rather than the International Law Commission. In view of the nature of the report, the Commission was perfectly competent to prepare it and should not become a sort of auxiliary organ to the Secretariat.

17. His delegation noted with regret that the draft resolution omitted any reference to the United Nations Commission on International Trade Law (UNCITRAL), which played a very active role in the elaboration of treaties. That omission should be rectified in operative paragraph 2.

18. In operative paragraph 3, the Secretary-General should request the views of the following intergovernmental organizations: the European Economic Community, UNIDROIT, The Hague Conference on Private International Law, the Council of Europe, and the International Commission on Civil Status.

19. His delegation would vote in favour of the draft resolution, although that draft could be criticized on several points.

20. Mr. KOH (Singapore) welcomed the inclusion of the question in the agenda, and thanked the representative of Austrlia in particular for his part in that initiative.

21. No objection had been raised to the suggestion in paragraph 1 of draft resolution A/C.6/32/L.9 that the Secretary-General should prepare a report. It would be inappropriate to discuss how to improve the current system of multilateral treaty-making before that report was available, and he would therefore limit himself to suggesting some of the more important issues which the Secretary-General should look into.

22. Observing that the International Law Commission was the centre of the current system of treaty-making, although the task of law-making had also been entrusted, over the years, to UNCITRAL and to various ad hoc committees, some very small, others embracing the entire membership of the United Nations, he wished to raise some factual questions: how had the current system of multilateral treaty-making evolved? Had it evolved in accordance with some pre-conceived plan or in an ad hoc

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(Mr. Koh, Singapore)

manner? If the latter, could the rationale for the evolution of the different techniques and procedures be identified? Were there any discernible policies, criteria or factors governing the use of the different techniques and procedures? Was there any correlation between the technique or procedure chosen and the nature or field of the treaty? Why, for example, had the preparatory work for the Third United Nations Conference on the Law of the Sea not been entrusted to the International Law Commission? Had the decision to entrust that task to a committee of government representatives been a wise one, since after three years not a single draft article had been drawn up? Was there any correlation between the technique or procedure chosen and the time taken to elaborate a treaty? Was there any correlation between the technique or procedure chosen and the costs, in both human resource and monetary terms, involved in preparing a treaty? Was there any correlation between the technique or procedure chosen and the acceptability of a treaty?

23. With regard to the negotiation process, he believed that the major problem which had plagued the Third Conference on the Law of the Sea was the very size of the Conference, and the reluctance of some delegations to empower others to negotiate on their behalf. He wondered whether the Secretary-General could suggest any way to overcome that problem.

24. He did not believe that the draft resolution under discussion could adversely affect the International Law Commission. The Commission was a model in many ways, and the Secretary-General should consider how to strengthen its role in multilateral treaty-making.

25. It was proper to refer to UNITAR in the eighth preambular paragraph and operative paragraph 3 of the draft resolution, since that Institute had been established by the States Members of the United Nations and should play an increasingly large part in the United Nations system. Moreover, UNITAR had a distinguished record of research and publications in the field of international law, as well as that of multilateral treaties.

26. Mr. GAWLEY (Ireland) considered that the report called for in the draft resolution under discussion was justified, because there was no single method of multilateral treaty-making for use at any stage of the process. Multilateral treaty-making and the numerous conferences required placed a great strain upon small and developing countries, whose resources were stretched to their limits. That was particularly true while the Conference on the Law of the Sea continued to make demands on the limited manpower of such countries, including Ireland. Those countries had to choose which conferences to attend, although they would often dearly wish to attend all of them.

27. The report of the Secretary-General and the comments by Governments would allow the Sixth Committee to assess the efficacy of current methods and to decide if those methods effectively met the needs of the existing membership of the United Nations, which had grown considerably since the establishment of the Organization. Only when it had all the relevant data before it could the Sixth Committee decide whether change was necessary or desirable. It might be found that current methods, while

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(Mr. Gawley, Ireland)

not ideal, were the best available. His delegation had co-sponsored the draft resolution, and recommended its adoption by consensus.

28. Mr. FIFOOT (United Kingdom) said he welcomed the inclusion in the agenda of the item under discussion. Since the United Nations had been in existence for more than 30 years, there was clearly much to be said for reviewing the way in which the different treaty-making processes and techniques were currently functioning in the United Nations system.

29. His delegation joined with those delegations which had stressed the importance of preparatory work in the treaty-making process. It was the more important in view of the existing pressure on the treaty-making community.

30. His delegation also joined with those which had emphasized that the study to be undertaken should not aim at standardization. No particular pattern could be imposed on the multilateral treaty-making process, for different kinds of treaty required different treatment. Thus, the preparatory work for codification treaties of the kind produced by the International Law Commission, and that required when establishing standards for new fields of activity, could not be the same. The international community had to retain flexibility in the treaty-making process, so as to tailor the methods employed to the needs of a particular category of treaties.

31. His delegation fully supported the consideration of the item, but it believed that the proposed study covered only one aspect of the problem, for one of the principal causes of the difficulties faced by the international community arose from its appetite for treaty-making. It should not be forgotten that the task of drawing up multilateral treaties did not, in the final analysis, fall to States, but to individuals, whose time was limited. The drafting of multilateral treaties implied consensus and required time. The United Nations, or more particularly the Main Committees of the General Assembly, which initiated new proposals, should consider the existing workload of the international community in that field when proposing that treaties should be drawn up.

32. The item had provided an occasion for the Sixth Committee to look at its own role. As representatives of the legal community, the members of the Sixth Committee should be occupied less by procedural questions and more by matters of substance. On the other hand, his delegation could not support suggestions that treaty-making work should necessarily be channelled through the Sixth Committee: that would create a bottle-neck and the United Nations treaty output would decrease. If other Main Committees of the General Assembly were to be concerned in the treaty-making process, members of the delegations to the Sixth Committee should also take part in their countries' delegations in those other Committees.

33. Mr. ELARABY (Egypt) said that the various modern methods of treaty-making confronted all States, regardless of their size and state of development, with acute problems. The different elements of the problem had been admirably analysed by several delegations during the debate, and it was gratifying to hear that the proposal to review the multilateral treaty-making process had won support from numerous quarters, including the two super-Powers.

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(Mr. Elaraby, Egypt)

34. His delegation had already amply manifested its interest, first by contributing to the inclusion of the item in the Committee's agenda, and then by co-sponsoring the related draft resolution. It felt, however, that the item should not be construed as an attempt to slow the pace of the codification of international law. The intention of the initiative was to streamline the treaty-making process so as to meet the needs of the international community. The task was the more important because an increasing number of international treaties remained unratified.

35. The Committee should assert more emphatically the responsibilities given to it in annex II, part 1, paragraph (d), of the rules of procedure, which recommended "that, when a Committee considers the legal aspects of a question important, the Committee should refer it for legal advice to the Sixth Committee or propose that the question should be considered by a joint Committee of itself and the Sixth Committee". That did not mean that all legal work should be forwarded to the Sixth Committee, but the Committee should at least be involved at some stage. His delegation was also concerned that certain Committees, in particular the Third Committee, were following procedures which in a sense departed from the spirit, if not also the letter, of annex I to the rules of procedure. All Main Committees of the General Assembly should be reminded to heed scrupulously the provisions of that annex. His delegation would support any action by the Sixth Committee to redress that state of affairs.

36. The United Nations had not been developing at the same rate as the international community. The methods of work and composition of organs and institutions were not what they ought to be. His delegation therefore hoped that the examination of the treaty-making process would be extended to include the structures and procedures of the United Nations as a whole.

37. Mr. DUCHENE (Belgium) expressed his satisfaction at the fact that the idea proposed by the delegation of Australia in 1975 was now before the Committee in the form of a resolution of which his country was a sponsor. That initiative could indeed lead to an improvement of multilateral treaty-making methods by making them more effective and economical. The primary concern should be to enable States to participate more easily in the process, which would facilitate ratification and implementation of treaties at the national level.

38. In the first instance, the problem should be carefully studied and the observations of Governments, of the specialized agencies and of the International Law Commission should be transmitted to the Secretary-General so that he could prepare a detailed report providing a sound basis for future work. While it was still too early to decide on subsequent action, care should be taken to ensure that any recommendations made in that respect did not become binding rules, since that would not answer the real need for improving and simplifying treaty-making procedures. It was also gratifying to note that an adequate period for reflection before any further consideration of the question by the Committee had been provided for in the draft resolution. As a result, it would be possible to deal with the question in greater depth and to undertake the broadest possible consultations in order to study the various forms which the initiative might take, while taking care not to lose sight of its original goal.

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(Mr. Duchène, Belgium)

39. The question deserved the Committee's full attention. It was paradoxical that the United Nations, which was the principal instrument of international co-operation in the world, should not yet have reviewed the efficiency of the methods it used to prepare treaties.

40. Mr. FRANCIS (Jamaica) stressed the importance of the proposed review. It was the kind of introspective exercise in which a world organization such as the United Nations engaged only rarely and he was pleased to note that the Committee as a whole was agreed as to the advisability of the initiative. According to the draft resolution, the first step would be to make a retrospective study of the multilateral treaty-making process, analysing the methods used. In that regard, the report which the Secretary-General was requested to prepare would be very useful. The next step would be to decide on how that study should be followed up. As representatives of sovereign States, the members of the Committee should, at that point, try to marshall the courage and willingness to bring about those changes in the current situation which might prove justified. For the time being, it was advisable to adopt a neutral posture and not to seek change for its own sake.

41. Both the explanatory memorandum annexed to A/32/143 and draft resolution A/C.6/32/L.9 implied that current practice was not entirely satisfactory although, in fact, no one knew exactly what was wrong. In his brilliant introduction of the draft resolution, the representative of Australia had stressed the fact that the proposed review in no way sought to call into question the role of the International Law Commission. But it was clear that the Commission, as the principal body for legal reform in the United Nations system, could not respond to all the needs of the international community where preparation of legal instruments was concerned. Similarly, national legislative departments sometimes lagged behind government policy decisions in drafting social legislation, for example. The Commission, which was obliged to apply the methods of work laid down by its statute, could advance only slowly in its work of codifying and progressively developing international law. It needed a certain amount of time for consideration of the written observations made by Governments and in the Committee.

42. Although certain multilateral instruments had been drafted and adopted outside the United Nations, e.g. the protocols to the Geneva Conventions of 1949, many others were the work of the General Assembly, which did not necessarily act through the Sixth Committee. Such was the case with the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; and the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof. It appeared that the participation of Main Committees of the General Assembly other than the Sixth Committee in the preparation of those instruments had met with success, which showed that the United Nations could be flexible in responding to the needs of the international community. All the instruments which he had mentioned had entered into force. Naturally, that method of preparing multilateral treaties had certain disadvantages, but they were offset by the advantages.

(Mr. Francis, Jamaica)

43. As the representative of the Soviet Union had pointed out, the question arose whether the multilateral treaty-making process had repercussions upon the ratification and the entry into force of a treaty. All things considered, that did not seem to be the case. What counted was rather the length and the degree of technicality of a treaty's content. Thus, ratification of the Vienna Convention on the Law of Treaties of 1969, which was long and technical, had been very slow: only some 30 States had deposited their instruments of ratification. Moreover, as the representative of Ethiopia had stressed, legal experts from third world countries were kept so busy, as could be seen by the United Nations calendar of legal conferences for 1978, that they had difficulty in finding time to study all the treaties opened for ratification or accession by States and the documents awaiting their observations. Ratification was further delayed by the fact that multilateral treaties often directly affected, to some degree, important political objectives of States.

44. Paragraph 11 of the explanatory memorandum dealt with the methods followed over the previous decade in preparing legal instruments on the law of the sea. That question had gone through several committees before reaching a diplomatic conference because no other means was available to the General Assembly in attempting to bring about negotiations in that sphere. For reasons which were well known and realistic, it had not referred the question to the International Law Commission. That experience should serve as a lesson.

45. In reference to the draft resolution, he wondered what role the Sixth Committee was to play in the current circumstances. It was clear that the Committee should play a more important role in the multilateral treaty-making process in the United Nations. However, like the representatives of Romania and of the Soviet Union, he wondered to what extent the role of the Committee should not be strengthened. It was not necessary to wait for the report of the Secretary-General to realize that the Committee should play a more active role with regard to instruments before other Main Committees. Care should be taken to ensure that the legal aspects of those instruments were dealt with by the Sixth Committee. The representative of the United Kingdom had expressed the hope that Committee members would follow the work of the Third Committee more closely. As the representative of a third world country which had few legal experts, in the light of his own experience he felt impelled to stress the difficulties which he would have being present at the deliberations of the Third Committee as well. Nevertheless, it was important that the Sixth Committee be kept informed with regard to the legal instruments being prepared by the other Main Committees.

46. With regard to the preparation of a Convention on the Elimination of Discrimination against Women, he wondered whether the Sixth Committee might have been able to deal with the question once the Third Committee had agreed on guidelines. It was inconceivable that an instrument of that kind should be prepared without the participation of the Third Committee. Nevertheless, the legal experts of the Sixth Committee would have been able to draft it on the basis of guidelines established by the Third Committee. That was the type of question that would have to be studied in due time, with a view to enhancing the role of the Sixth Committee in the multilateral treaty-making process.

(Mr. Francis, Jamaica)

47. Finally, he recalled that, in submitting draft resolution A/C.6/32/L.9, the representative of Australia had raised the question of whether the report to be prepared by the Secretary-General should contain information requiring a measure of assessment; he had added that it was necessary to ascertain whether difficulties had been encountered and whether too much time had been spent on a given phase, in view of the results obtained. In that regard, his delegation wished to reserve its position. He felt that the Secretary-General should limit himself to determining whether difficulties had been encountered; it was for the Sixth Committee to make a value judgement.

48. Mr. OMAR (Libyan Arab Jamahiriya) said that it was necessary to review the multilateral treaty-making process used by the United Nations for over 30 years, in order to determine whether it was as efficient and economical as required by the international community's needs and, especially, by the developing countries' needs and to find means of improving those methods.

49. The multilateral treaty-making methods used by different United Nations bodies varied widely. The most rational and rigorous seemed to be those used by the International Law Commission, while those described in the explanatory memorandum apparently left much to be desired. Those methods should be studied in depth; that was the goal of the initiative in question and of draft resolution A/C.6/32/L.9, of which his delegation was a sponsor. The United Nations Secretariat was perfectly capable of carrying out that task by obtaining the views of Governments and enlisting the assistance of the specialized agencies, of the International Law Commission and of UNITAR. The report should establish guidelines to be followed in the drafting of treaties and should provide an idea of the way in which such guidelines were applied in the methods currently in use and of the amount of effort, time and expenditure involved in each method.

The meeting rose at 12.55 p.m.