2. Whether verbatim or summary records are kept and especially if they are not, the secretariat of certain organs and conferences should prepare more complete records of their negotiations, indicating various positions taken and the reasons for changes in the text.

3. Commentaries that go beyond the mere recording of the *travaux préparatoires* should normally be prepared on draft treaty texts and should be formulated by expert groups.

4. A systematic effort should be made, by the secretariat unit concerned, to prepare and publish the *travaux préparatoires* of most or all multilateral treaties.

NOTES

[1] This is based on the summary records of the discussions on this subject at the thirty-second, thirty-fifth and thirty-sixth sessions of the General Assembly.

[2] A/35/312/Add.1, p. 23.

[3] *Commentary on the Single Convention on Narcotic Drugs, 1961* (Sales No. E.73.XI.1). Two similar studies were prepared on related instruments: *Commentary on the Convention on Psychotropic Substances* (E/CN.7/589; Sales No. E.76.XI.5) and *Commentary on the Protocol Amending the Single Convention on Narcotic Drugs, 1961* (E/CN.7/588; Sales No. E.76.XI.6).

IX. POST-ADOPTION PROCEDURES

1. *Should the United Nations consider and take any action in respect of the procedures by individual States to ratify and bring into force multilateral treaties formulated under its auspices?*
2. *Should a questionnaire be addressed to States as to why they fail to become parties to multilateral treaties?*
3. *Should the United Nations seek to establish a legal régime, following the example of some inter-governmental organizations, under which it could require:*
   (a) *A commitment from each Member State that it will submit treaties to the appropriate domestic organs with a view to authorizing ratification?*
   (b) *Periodic reports concerning the steps taken towards ratification?*
4. *Should special rapporteurs or other experts who helped in negotiating a treaty be made available to assist States with their internal ratification procedure?*
5. *Should an attempt be made, in respect of certain categories of treaties to provide for their automatic entry into force except in respect of States that voted against adoption or that submit an opting-out notice?*
6. *Should treaties or certain categories of treaties normally provide for provisional entry into force, at least among those States that voted for their adoption and that do not submit an opting-out notice?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE[1]

1. It was stressed by some that the signature of a State to a treaty did not create, as a matter of law, an obligation as to its ratification. With respect to measures to promote the ratification of treaties, several representatives felt quite strongly that this question was governed by the internal law of each State and it was therefore for States themselves to decide whether they wished to accept a treaty; any measures to promote ratification of treaties might be construed as constituting external intervention and as such should not be allowed. Some other representatives, however, cautioned that there were certain limits to this view because delays in ratifications were often due to a wide variety of factors other than conscious political choice, and that there was therefore room to look into those issues raised in section IV.I of the Secretary-General's report. The view was expressed that a balance should be maintained between the desirability of attaining universal accession to treaties and the sovereign right of Governments to make their own decisions on treaty ratification. One representative suggested that a reporting procedure on ratification activities of States and on relevant national legislation would be useful.

2. Some representatives referred to various means that, in their view, could increase or improve wide acceptance of treaties, e.g.: (i) conducting studies on the correlation, if any, between the procedure chosen in adopting a treaty and the acceptability of a treaty, or on possible effects of a new treaty on existing national laws and treaties; (ii) incorporating a provisional entry into force clause into certain categories of treaties dealing with technical matters; (iii) setting a specific time period for States to submit adopted treaties to their national legislatures; (iv) adopting flexible clauses for entry into force so as to allow each State to choose the manner in which its consent to be bound be expressed (e.g., ratification, acceptance or approval) on the basis of its constitutional requirements. However, none of these suggestions gained general support.

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

Argentina (A/36/553, pp. 11-12)

1. Without prejudice to the sovereignty of States—a point made in UNCITRAL when this subject was considered in connection with conventions adopted in its field of competence—the United Nations should consider this matter and take action which fully respects State sovereignty. This will help to achieve the sound objective of ensuring that the tremendous efforts exerted to bring about the codification of international law are not wasted, because the texts formulated remain indefinitely as instruments not legally binding on States.

2. There is no apparent objection to this kind of action, namely, addressing a questionnaire to States as to why they fail to become parties to a particular multilateral treaty.

Such a procedure would have the merit of causing States gradually to look into the question, how many existing treaties they are parties to and systematically update their position towards such treaties; the fact that they themselves

had created the obligation, through the organization to which they belong, would provide an incentive.

The obligation to opt out, as an act of sovereignty, will indicate which treaties have becomc inoperative because there is no prospect whatever of their being ratified in the medium term. In addition, whcre the prospect of ratification is almost totally lacking, it will give the few States which have become parties an opportunity to consider whcther in those circumstances, there is any point in remaining tied to a treaty or whether they should denounce it and conclude bilateral treaties among themselves. This is obviously one way of tidying up international law on conventions.

3. There would appear to be no objection to the establishment of a legal régime under which States would be required to submit treaties to the appropriate domestic organs with a view to possible ratification and to report on the steps taken later.

The requirements would involve nothing more than a report on whether ratification was in prospect or not.

4. The Organization could, as a form of technical assistance, make available to States which so requested special rapporteurs or other experts to assist them with their internal ratification procedure.

5 and 6. Automatic or provisional entry into force is not desirable for any category of treaty. In view of the difficulties encountered by Governments in obtaining the ratification of international legislation, such a list of opposition does not appear salutary.

Australia (A/37/444, pp. 10-11)

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

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

3. The provisional entry into force of some treaties (e.g. some commodity agreements) has proved a useful and constructive device. Provisional entry into force may serve several purposes such as enabling States to become bound by a treaty which establishes an interim régime pending a decision by other States also to become a party. It may also enable a State to become a party without first having fully implemented all obligations under the treaty in its domestic law. The device of provisional application should be encouraged as a means of obtaining maximum adherence to certain treaties which call for a

wide adherence within a limited time. The treaties should lay down clear circumstances or time limits within which the provisional application must be made definitive.

Brazil (A/36/553, p. 15)

1. The Report of the Secretary-General states that "the general rule remains that, once a multilateral treaty has been promulgated by an organ or conference of an international organization, the organization then takes no substantial interest in the steps to bring the treaty into force that must be taken by individual States, except to the extent that the organization may act as depositary and carry out the formal steps required in that capacity". The Brazilian Government is of the view that the rule should not be changed.

2. Each State being the only judge of its interest in becoming a party to an international treaty, any attempt to influence that decision would be an improper interference in a matter essentially within the domestic jurisdiction of thc State. International organizations should not therefore engage in any action aimed at encouraging States to ratify treaties, nor should States be required to give any information as to the reasons why they have not ratifled a treaty.

Byelorussian Soviet Socialist Republic (A/36/553/Add.1, p. 3)

1. Matters relating to the ratification procedure for international treaties, the acceptance of any obligations concerning the establishment of régimes and, in general, the adoption of a position on any international treaty are the sovereign right of every State and no one may interfere in such matters.

2. Provisions relating to the provisional application of a treaty are considered when the treaty is adopted by the plenipotentiaries and fall fully within their competence.

Cuba (A/36/553, p. 20)

1. The ratification procedures of States are governed by domestic law and should not, therefore, be reviewcd by the United Nations. What the Organization can do is to review treaties which have not entered into force and urge States that have not signed and ratifled them to do so, especially in cases where the subject which the treaty is intended to regulate is of benefit to the international community.

2. This could result in a kind of interference in the internal affairs of a State and is therefore not advisable. However, States could be urged to participate more fully in treaties, especially those of major international interest.

3. (*a*) Any requirement of this kind has overtones of interference and an obligation to submit treaties to the domestic organs does not mean that they will be automatically ratified.

(*b*) This would involve a degree of compulsion that might affect the ratification of some treaties.

4. This is not necessary, since States which do not ratify or become parties to a treaty are motivated by domestic reasons and no solution can be provided by an expert from the Organization.

5. This procedure would not be appropriate because, even if the treaty in question entered into force, as long as States did not ratify it or become parties to it they would not be obliged to comply with its provisions, at least where that is required by the various national legal systems.

6. This would not be appropriate, for the same reasons as are stated in the preceding paragraph.

Germany, Federal Republic of (A/36/553, p. 25)

1 and 2. Experience has shown that attempts by international organizations to encourage their member States or other countries involved in the negotiations to ratify and bring into force treaties formulated under their auspices have had little effect. It is hardly likely, therefore, that questionnaires inviting sovereign States to state the reasons why they are delaying adherence to multilateral treaties will produce any better results.

3 and 4. The possibility of requiring a commitment from member States to submit treaties to their domestic legislative organs or to submit periodic reports concerning the steps taken towards ratification, could at best be considered in connection with the adoption of specific treaties but not as a general rule. Similarly, experts who have helped in negotiating a particular treaty could only be asked to assist in internal ratification procedures in exceptional cases. The initiative for such assistance would have to come from the States concerned.

5. The automatic entry into force of treaties without their specific acceptance by contracting parties raises constitutional problems, where they are subject to ratification by Parliament or other national organs. Consequently, simplified entry into force procedure shall be restricted to certain categories of treaties where the governments of contracting States have competence in the subject-matter concerned.

6. The provisional application of treaties (one should perhaps avoid the expression "provisional entry into force") creates problems for many States on constitutional grounds.

Indonesia (A/37/444, p. 14)

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

Italy (A/36/553, p. 29)

The Italian Government observes that many of the proposals contained therein risk limiting the freedom of States in the phase subsequent to the adoption of a treaty, thus violating the Vienna Convention of 1969. These proposals would make much more sense if all treaties were adopted on a broad and detailed consensus basis, which is not always the case today. In particular, proposals 5 and 6 seem highly inadvisable, in that the suggestions contained

therein might be applied only rarely, on the basis of a specific consensus expressed from time to time in the negotiating forum.

Mali (A/36/553, p. 32)

1. A questionnaire should be addressed to States as to why they fail to become parties to multilateral treaties.

2. An attempt should be made, in respect of certain categories of treaties, to provide for their automatic entry into force except in respect of States that voted against adoption or that submit an opting-out notice.

3. Certain important treaties should provide for provisional entry into force among those States that voted for their adoption.

Mexico (A/36/553, p. 37)

1. Matters relating to the process of ratifying an agreement are within the exclusive competence of sovereign States. For that reason, except in the case of those agreements or instruments establishing international organizations under which States have agreed internationally on a system whereby a specific organ promotes and collaborates with States in the ratification or accession process, that process must remain within the exclusive competence of State sovereignty.

2. The foregoing should not prevent the continuation of the practice whereby the United Nations General Assembly and other governmental organizations regularly send appeals and reminders to States with a view to obtaining their consent to be bound by multilateral treaties.

3. When a multilateral treaty is being formulated, a systematic study should be made of whether it is desirable to include in the text clauses requiring States to submit reports on the steps they have taken in compliance with the treaty.

4. There is nothing to prevent the Secretariat of the United Nations or the secretariats of other international organizations from offering States the assistance of experts to clarify doubts on the scope of a treaty, during the process leading up to ratification or accession. However, the acceptance of such assistance is also a prerogative of State sovereignty.

5. Where the "automatic" entry into force of certain treaties is concerned, it should be underscored that such entry into force is not provided for in the Vienna Convention on the Law of Treaties and is undoubtedly unconstitutional, or at least illegal, for all those States whose systems for the ratification of or accession to a treaty require the participation of the executive and legislative branches.

6. With regard to provisional application, the expression "provisional entry into force", used in some conventions drawn up within the United Nations Conference on Trade and Development (UNCTAD) and in the questionnaire contained in document A/35/312 (but not used in the Vienna Convention on the Law of Treaties), should be avoided because it is a contradiction in terms. The reference should be to "provisional application" pending entry into force (see art. 25 of the Vienna Convention).

7. A provisional application clause should be included in some treaties, always provided that it is optional. Some Governments would be unable, for constitutional reasons, to undertake to apply certain agreements provisionally.

Netherlands (A/36/553/Add.1, p. 11)

1. *Post-adoption procedures*

1. As regards this item, reference is made to the comment by the Netherlands and the intervention by the Netherlands representative in the Sixth Committee on 25 November 1980 (see A/C.6/35/SR.62), which contain various suggestions to encourage States to become a party to a treaty and to promote its entry into force.[2]

2. As to the suggestion of addressing questionnaires to States, such action (as other actions) should necessarily be based on a treaty provision. If provided for, it would be up to the depositary to send out such questionnaires.

2. *Entry into force*[3]

3. Account should be taken as early as the drafting stages of the problems which may arise in implementation. The actual implementation of a treaty is still to a great extent a task for national governments, with all the risks this entails in terms of disparities in interpretation and application. These risks are naturally diminished in proportion to the extent to which the degree of uniformity in interpretation and application is secured by the involvement of a single judicial or arbitral body. The Government of the Netherlands would thus also like to see the adoption of a clause concerning the referral to the International Court of Justice of disagreements over interpretation or application at least in the case of treaties established under the auspices of the United Nations or the specialized agencies. In treaties having such a clause, and even more in treaties without one, the risks mentioned above may moreover be further reduced by the inclusion of rules, which should be as detailed as possible, so that national authorities have as little undesirable margin for manoeuvre in implementation as possible. If a treaty, in order to realize its objectives, prescribes particular measures, for example, making certain actions or omissions a punishable offence, then these obligations should be clearly defined.

4. The delay between the establishment and entry into force of a multilateral treaty can be attributed not only to the large number of States whose acceptance is often essential to the entry into force, but equally to the acceptability of the treaty for each individual State. For this reason it is important that already in the preparatory stage sufficient attention is given to whether or not to allow reservations, and to the relationship with other treaties. Furthermore, one needs to recognize that even if the provisions of a treaty are acceptable, delay may still result from the need to adapt domestic regulations before the consent to be bound by the treaty can be given. Where no statutory instruments are necessary, lack of time and personnel can impede an early decision: the treaty must be explained to parliament and assessed for its likely effects on the State in question.

5. On this point there are measures which could be taken at the international level. First there is the possibility of bringing the role of the "rappor-

teur" into greater relief. He, having been entrusted with special duties during the preparatory phase, owing to his expertise in the matter under consideration, may still be able to play an extremely important part in the introduction and explanation of the draft treaty during the diplomatic conference, for he has become not only the special expert on the treaty as a result of his work, but also a person with a certain independent supra-national view of it. It is conceivable that he could subsequently write explanatory comments, on his own authority, on the final text, for the convenience of domestic administrations which have to consider accepting and implementing the treaty. Finally—and this would by no means be his least important contribution—the rapporteur could be made available for a time to provide information for Governments which were considering becoming parties to the treaty. His participation could at least speed up the decision-making, and might also have a positive influence on it. In the regional context these methods are already being applied in connection with the individual members of the Afro-Asian Legal Consultative Committee.

6. It would further be possible to consider the introduction of final clauses which stipulate the entry into force of the treaty at a set date for all States represented at the diplomatic conference except for those which before that date declare that they cannot accept the provisions of the treaty. However, these States and also States not represented at the conference should have the possibility to become parties to the treaty at a later date. Thus, the opting-out procedure does not exclude certain States from treaties, but becomes an effective means of ensuring the entry into force of a treaty. Once a treaty has entered into force, it often gains importance and other States feel obliged to become a party. One possible objection may be that some States may tacitly accept the treaty but do nothing in practice to implement its provisions. This is not a particularly weighty objection, however, for implementation at national level is not the most important aspect of many treaties; it is rather the creation of legal relations between States that is important. Furthermore, the problem of non-implementation occurs independently of the opting-out procedure. Domestic implementation may also be a problem with international consequences, but nonetheless one which is not connected with the question of improving procedures for establishing international legislation.

7. If this negative procedure is deemed too drastic a measure, there are other means whereby pressure can be brought to bear on Governments. First, the obligation to present the treaty to the competent domestic authorities (in particular the parliament) to obtain a decision on whether or not the State should become a party. Second, the obligation to report at international level on the progress of the preparations for ratification.

8. Various possibilities have been discussed above with regard to shortening the period between establishment and entry into force of a multilateral treaty of a legislative nature. A separate idea would be to increase the commitment of States to the treaty, not yet in force, during this period. One might envisage for example making the obligation of good faith separate from the signing of the treaty. Such obligation would therefore have to have its starting point in the collective decision to establish the text of a treaty or in the decision to label the treaty as urgent. Such a facility for "semi-commitment" does not apply to States which voted against the relevant decision. In this respect it

should be noted that the provisions of article 18 of the Vienna Convention on the Law of Treaties ("until it shall have made its intention clear not to become a party to the treaty") offer sufficient room for manoeuvre.

9. Another means of bridging the gap between establishment and entry into effect could be found in the concept of provisional application (article 25 of the Vienna Convention). Various forms of this are known in practice, both in the treaty itself (see art. 21, para. 2, of the 1976 Convention Establishing the World Intellectual Property Organization) and in a separate document (see the 1964 Protocol of Provisional Application of the Fisheries Convention of 9 March 1964[4]). It should be noted here that the General Agreement on Tariffs and Trade of 1947 has now been operating for more than 30 years exclusively on the basis of a Protocol of Provisional Application of the General Agreement on Tariffs and Trade.[5]

10. The possibilities outlined above require a collective decision, either of the conference establishing the treaty or by an organ of one or the other international organization adopting the treaty.

Qatar (A/37/444, p. 17)

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

2. No.

3. No.

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

5. No.

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

Republic of Korea (A/37/444, p. 26)

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

Spain (A/36/553/Add.1, p. 18)

1. No. At most, it should periodically remind States of the status of treaties and urge them to become parties thereto.

2. No.

3. No.

4. This kind of assistance should be provided to States who request it.

5. No.

6. In some cases, they could provide for the provisional application of treaties as long as certain conditions were fulfilled. How a State voted when the treaty was adopted would not be a sufficient condition.

Ukrainian Soviet Socialist Republic (A/36/553, p. 40)

1. The United Nations should not consider, and should definitely not take any action in respect of, the procedures by individual States to ratify and bring into force multilateral treaties. States should not be asked to explain their reasons for opting out of a multilateral treaty, there should be no establishment of any compulsory legal régime, and no attempt should be made to provide for automatic entry into force of treaties in States which did not express agreement to be bound by the treaty. All these actions would be illegal, because they violate the principles of States sovereignty and non-interference in the internal affairs of States.

2. The question of the inclusion in a treaty of clauses concerning the provisional application should be decided by the plenipotentiaries themselves who are participating in the elaboration of the treaty.

Union of Soviet Socialist Republics (A/36/553/Add.2, p. 2)

1. It is quite unacceptable for the United Nations to consider, and still less to take any action in respect of, the procedures employed by individual States to ratify treaties. Such actions as asking States to explain their reasons for opting out of a treaty or to undertake any obligations in the interests of establishing any régime, or attempting to provide for the automatic entry into force of treaties in States which did not express agreement to be bound by the treaty, would be illegal since they would violate the basic principles of States sovereignty and non-interference in the internal affairs of States.

2. The question of the inclusion in a treaty of clauses providing for provisional application fall entirely within the competence of the plenipotentiaries who are participating in the elaboration of the treaty.

United States of America (A/35/312/Add.1, pp. 39-41)

1. Whether a State becomes a party to a treaty is a decision that each State must take as an exercise of its sovereign will. Nevertheless, the entire process of drafting and adopting treaty texts becomes fruitless if the resulting treaties are not ratified, and a less effective process if ratifications do not come about with sufficient reach and rapidity that treaties come into force within a reasonable period of time after their completion. It may be that there is room for an exchange of views and analysis, perhaps based on a questionnaire to States, designed to illuminate the reasons for the failure of treaties adopted by large majorities to attract sufficient parties to come into force within a reasonable period of time. Such a questionnaire might also ask States whether they would be prepared to accept practices such as those of the International Labour Organisation to encourage treaty ratification.

2. It is possible that the problem of non-ratification is in part attributable to the increase in the volume of international legal work with which foreign and other Government ministries are burdened. To the extent that this is a causal factor, the problem will only be exacerbated by an increase in the volume of treaties produced. In part, the problem may be due to shortages of trained personnel who are available to do the necessary work involved in positioning a State to deposit its instrument of ratification. To the extent that this is a causal factor the most that can be done is to urge States to undertake the

necessary steps to make sufficient manpower available and to provide additional opportunities for the training of enough qualified international lawyers.

3. As suggested above, the United Nations system has not been sufficiently selective in determining in what areas treaties should be prepared. It may be presumed that when the General Assembly proliferates special international committees which require the attention of government lawyers, time and energy may in some cases be drained away that could be devoted to work which would lead to the ratification of a treaty. Moreover, it may be that from time to time the system has produced texts which have failed to deal fully with the relevant aspects of the subject, thus necessitating the elaboration of subsequent treaties to fill the gaps, which, however, of themselves seem insufficiently important to attract ratification. While this process may have expedited the completion and adoption of the initial treaty, the resultant need for yet another treaty and the effect of this accumulation upon the ratification process has perhaps not been sufficiently considered. The failure of the Vienna Convention on the Law of Treaties to deal with treaties by and between international organizations, presumably because the International Law Commission had not included the requisite provisions in its draft articles, may be an example of immediate gains which in the long run create more problems for the system than is proportionate.

4. Still another problem may be that minorities of States believe that their positions received inadequate consideration in the treaty text adopted. Most fundamentally, the problem of non-ratification may stem from the fact that a State, or its legislature, does not favour the substance of the treaty or important provisions of it, an opposition which may not always be reflected in a vote at the conference against the text as a whole, or that it may not find the treaty important enough to its interests to merit pressing it through the processes of ratification.

5. The magnitude of the problem of unratified treaties is considerable. Among the questions it raises is that of alternative means of contributing to the progressive development and codification of international law. In this connection thought should be given to requesting the International Law Commission to consider the viability of restatements of the law as one of the alternative approaches to codification. That the Commission has been empowered to prepare products other than treaties has been abundantly clear from the outset when the General Assembly rejected an amendment to its Statute that would have restricted it to the production of draft treaties.[6] The Commission in its earlier years did not so restrict itself, and it may well be that some of the topics currently before the Commission would lend themselves to this approach. At the same time, if the Commission and the Assembly were to implement this approach, the Commission producing and the Assembly adopting or taking note of such restatements, both the Commission and the Assembly could only do so upon the basis of genuine consensus of all of their membership.

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

Council of Europe (A/36/553, p. 45)

1 and 2. The question of the ratification of conventions by member States is also among the subjects at present engaging the attention of the Council of Europe. Two resolutions on it were adopted in the past (see 3 below), but the whole question is currently under study by the organization.

Any system for monitoring the status of ratification and, to the extent possible, speeding up the deposit of further ratifications should be very flexible and entail a minimum amount of extra work for national civil services; otherwise, it is doomed to failure. For this reason, while the idea of a questionnaire addressed to States as to why they fail to become parties to multilateral treaties is acceptable in principle, it would seem necessary to apply it selectively (one or two treaties at a time) and at suitable intervals (e.g., once a year or every two years), that being the system which some governing bodies have been using for several years.

3 and 4. (*a*) In the Council of Europe, such a régime is provided for in resolution (51) 30 B (adopted on 3 May 1951). The resolution has never been implemented. It must be said that such a régime is not very realistic from either the political or the legal standpoint, since it rather exceeds the scope of ordinary international law, under which ratification is a discretionary act for which States are not required to give commitments restrictive of their freedom.

The reservations expressed by a number of Governments as to the compatibility of such a régime with the basic principles of the law of treaties are entirely pertinent.

(*b*) In the Council of Europe, such a régime is provided for in resolution (61) 6 (adopted on 27 February 1961), in which member States undertake to submit annual reports on treaties ratified during the previous year, on action taken with a view to the ratification of other treaties and, to the extent that they deem it possible and appropriate, on the reasons why treaties have not been submitted for ratification within 18 months from the date of signature. This resolution is now disregarded. It has not been implemented since 1970, partly because of the over-frequency of reporting (every year) and the extra work it entailed for national civil services.

5. At the present stage of international law, this solution cannot be recommended as a general rule. The expression of consent to be bound by a treaty *by deed or by positive conduct* must remain the rule and *tacit* consent the exception. On the other hand, the system of an "opting-out notice" could be developed where the adoption of amendments to earlier treaties is concerned, provided that the proposed amendments do not entail any substantial change in the material commitments assumed under the treaty. Such a solution is at present under study by the Council of Europe in three specific cases.

6. No. As a general rule, this should not be the case. However, in individual cases, this solution might be envisaged as an exception.

International Atomic Energy Agency (A/37/444, p. 30)

The Agency is directed by Article III.D of its Statute:

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

International Telecommunication Union (A/37/444, p. 30)

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

World Health Organization (A/36/553, p. 58)

1. No comments.

2. No comments.

3. The United Nations should seek to establish a legal régime, following the example of some inter-governmental organizations, under which it could require:

(*a*) a commitment from each member State that it will submit treaties to the appropriate domestic organs with a view to authorizing ratification, and

(*b*) periodic reports concerning the steps taken towards ratification.

4. No comments.

5. An attempt should be made, in respect of certain categories of treaties, to provide for their automatic entry into force except of States that voted against adoption or that submit an opting-out notice.

6. Treaties, or certain categories of treaties, should normally provide for provisional entry into force, at least among those States that voted for their adoption and that do not submit an opting-out notice.

NOTES

[1] This is based on the summary records of the discussions on this subject at the thirty-second, thirty-fifth and thirty-sixth sessions of the General Assembly.

[2] See also below paras. 4 to 10.

[3] A/35/312/Add.1, pp. 26-27.

[4] United Nations, *Treaty Series*, vol. 581, p. 76.

[5] *Ibid.*, vol. 55, p. 308.

[6] *Official Records of the General Assembly, Second Session, Sixth Committee*, 58th meeting, pp. 151-152; annex 1 (*g*) (document A/C.6/193), para. 15 (para. 7); and annex 1 (*i*) (A/C.6/199), para. 4.

X. TREATY-AMENDING PROCEDURES

1. *Should certain categories of treaties provide for simplified forms of amendments?*
2. *Should certain categories of treaties provide for automatic supersession in respect of States parties that later become parties to other treaties in respect of the same subject?*
3. *Should greater use be made of framework treaties, whose substantive provisions are set out in separate annexes that may be adopted or changed by an organ established by the treaty or by the organization that promulgated it?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE[1]

Regarding treaty-amending procedures, some representatives held the view that this issue touched upon some very sensitive political questions and could usefully be examined only in concrete, individual cases. Others, however, saw the desirability of introducing simplified or flexible treaty-amending procedures (e.g., the procedure of the Universal Postal Union) into certain treaties.[2]

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

Argentina (A/36/553, p. 12)

1. Subject to the possibility that a more detailed study of the question within the Organization may suggest the contrary, as things stand at present it would not appear advisable to provide for automatic supersession in respect of States parties which later become parties to other treaties in respect of the same subject. Apart from the fact that the States parties to the two treaties may be different, their approach may be dissimilar.

2. There is a recognized recent trend towards the ever-greater use of framework treaties, and this practice may be useful when the nature of the subject-matter and the problems it presents require it.

Australia (A/37/444, pp. 11-12)

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

2. The relationship between a proposed treaty and earlier treaties on the same subject matter should receive greater attention when drafting the new