

² A/36/553/Add.1, p. 2.

³ See part one of the present publication.

⁴ A/36/553/Add.2, p. 2.

⁵ See the comments of the United States on the ILC in section V.

⁶ Both were signed at Geneva on 19 September 1949. Texts of the respective Conventions are reproduced in United Nations, *Treaty Series*, vol. 125, p. 3, and vol. 182, p. 229 (and vol. 514, p. 254, for amendments to the Protocol).

II. OVERALL BURDEN OF MULTILATERAL TREATY-MAKING PROCESS

1. *Is the burden of the treaty-making process too great for:*
 - (a) *The personnel that States can make available to participate in expert and representative organs?*
 - (b) *The personnel and budgets of the inter-governmental organizations concerned?*
 - (c) *The domestic legal resources of States that must consider the ratification of duly formulated treaties?*
2. *To the extent that the burden of the current treaty-making process cannot be reduced through making it more efficient, should the international community seek:*
 - (a) *To reduce the number of treaties being formulated (i.e. should the formulation of certain treaties be postponed temporarily or indefinitely) by setting priorities?*
 - (b) *To increase the resources available, nationally and internationally as required, for multilateral treaty-making?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE¹

Several representatives from the developing countries specifically mentioned the heavy burden placed on Governments in their active involvement in the process of multilateral treaty-making. In this connection reference was made to their financial, technical and personnel constraints. One representative also referred to the lack of sufficient legal specialists to participate in multilateral treaty-making. It was suggested that it might be possible to reduce the number of treaties being formulated by setting priorities or by increasing the resources provided at national and international levels. Some representatives felt, however, that sovereign States knew best what treaties they wanted and only they could set the priorities; others thought that the reduction of the number of treaties could not be done without sacrificing certain objectives. Some representatives were reluctant to support any increase of financial resources to international organizations for the purpose of treaty-making. Some representatives noted that the need to increase resources in developing countries related to their national development, which was itself difficult to achieve. A number of representatives thought that States should avoid initiating treaties

that merely reiterated well-established principles such as those already embodied in the United Nations Charter.

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

Argentina (A/36/553, p. 5)

It should be borne in mind that the burden of the treaty-making process may be too great for the personnel that some States can make available to participate in expert and representative organs and for the domestic legal resources of States that must consider the ratification of treaties. Nevertheless, to the extent that this burden cannot be reduced and while studies on rationalizing the process are continuing, the United Nations should urge States to take the necessary steps to acquire such personnel and domestic legal resources. The international community, for its part, without prejudice to the setting of priorities in treaty-making and in realization of the fact that such treaty-making should not be an arbitrary exercise but a necessity of the international legal order, should seek to increase as much as possible the resources available at the international level for the multilateral treaty-making process, in order adequately to meet genuine needs.

Australia (A/37/444, p. 5)

There is evidence to suggest that the burden of the treaty-making process may be too heavy, particularly for smaller States, in each of the three cases listed in parts (a) to (c) of Question 1. Pending a further elaboration of States' views in the Working Group, it would be premature to attempt to answer Question 2.

Brazil (A/36/553, p. 13)

1. There is no doubt that the burden of multilateral treaty-making is becoming too cumbersome, both for governments and international organizations. However it does not seem possible to envisage a decision of a general and abstract character to reduce the number of treaties being formulated. If a decision is taken to prepare a treaty on any given subject, it is because a majority of the States involved believe that such a treaty is necessary.

2. It can only be hoped that States will exercise some restraint, and, when making their decisions will take into account their own possibilities and the possibilities of the international organizations in coping with the problems involved.

Byelorussian Soviet Socialist Republic (A/36/553/Add.1, p. 2)

1. The methods and procedures currently in use in the United Nations offer States adequate opportunity to agree on the order of consideration of questions within United Nations bodies or at international conferences. Therefore the question of the burden of the multilateral treaty-making process has no significance in practice. The main thing is that States should strictly observe

their obligations under the United Nations Charter, particularly in matters concerning the maintenance of peace and international security.

2. The expansion of treaty relations in the modern world is resulting in a more efficient multilateral treaty-making process, but that growth in efficiency should be achieved not through standardization or by reducing the number of treaties but by making fuller use of a range of methods and procedures, which should be applied with due attention to the specific situation encountered in the consideration of questions.

Cuba (A/36/553, p. 16)

1. (a) The great quantity of legal documents which are drafted, and the protracted procedures involved in many cases, increase both the work-load of specialists and the burden on material budgets, affecting under-developed countries in particular.

(b) These too are affected, but to a less extent because of the professional nature of the staff.

(c) The excessive number of draft treaties to be considered may place too great a burden on the legal resources of the domestic organs of countries which have not enough specialists in the subject.

2. (a) The solution to the problem does not lie in a mechanical reduction of the number of treaties to be formulated, which would inhibit the work of codification that the United Nations has been carrying out. It would, however, be advisable to plan the future progress of such work by analysing the subjects which international experience has shown to be in need of regulation as a matter of priority.

(b) With proper selection and planning of work, there will be no need to solve the problem by increasing the resources available.

Germany, Federal Republic of (A/36/553, p. 22)

As the burden of treaty-making and treaty implementation can be quite considerable, especially for smaller States, it would indeed appear meaningful to set priorities in selecting material for treaty formulation.

Indonesia (A/37/444, p. 13)

1. The multilateral treaty-making process would be a burden to both States and non-governmental organizations concerned, and the problem is difficult because of its complicated nature.

2. However, efforts could be exerted to make it an effective process by establishing a scale of priorities with regard to some important aspects of the treaty. By so doing States could concentrate their attention on those aspects which relate to their direct interests.

Italy (A/36/553, p. 27)

The Italian Government can only reiterate what has already been observed by the Italian delegation in the debate of the Sixth Committee at the thirty-fifth session of the General Assembly. The question intended to ascer-

tain whether or not the multilateral treaty-making process presents too great a burden for States is ill-advised and cannot be answered. The truth, in fact, is that this cannot be judged in the abstract. The burden of negotiation is accepted or rejected by States according to the importance of a multilateral régime in a given sector. If we were to comment on this, we would merely say that all too often, because of an unwillingness to oppose a rebuttal, negotiations are undertaken without a true perception of their utility. And the inevitable consequence of this is that the negotiation continues wearily for years with an uncertain outcome. From this viewpoint, the proposal contained in question 2a has a certain basis, although it would not be easy to implement.

Mali (A/36/553, p. 30)

The burden of the interuational treaty-making process is too great for States and for the inter-governmental organizations concerned. The interuational community should seek to reduce the number of treaties being formulated by setting priorities.

Mexico (A/36/553, p. 33)

1. There is no doubt that, for a large number of countries, the burden of the treaty-making process is too great. Comprehensive review of the number and content of the multilateral treaties formulated on a world-wide and regional basis in the post-war period, and especially since the 1960s, shows that often the developing countries do not participate in the process, even in cases where the multilateral treaty is negotiated and drafted under the auspices of organizations of which those countries are members.

2. This sometimes affects the balance of the treaties in question, which, as a result of the non-participation of developing countries, tends to favour other groups of countries, a situation eventually reflected in the number of ratifications.

3. It is recognized that multilateral treaty-making is the best and most expeditious method of ensuring that the rule of law is universal. Nevertheless, in order to ensure that progress is not illusory, priorities must be assigned to subjects for inclusion in treaties, lest the codification and progressive development of international law should prove to be beyond the capacity of the civil services of the majority of States.

Netherlands (A/36/553/Add.1, p. 5)

The Netherlands Government wishes to emphasize that a reduction of personnel and resources involved in treaty-making may well be achieved if the question of the necessity of a particular treaty would receive more thorough examination, thereby reducing the over-all burden of the treaty-making process for Member States and inter-governmental organizations alike.

Qatar (A/37/444, p. 15)

There is no doubt that the burden of the multilateral treaty-making process is becoming too great for both Governments and international organizations. However, it is not possible to envisage a resolution of a general and

abstract character that would be conducive to reducing the number of treaties being formulated. If a decision is taken to formulate a treaty dealing with a specific topic, it is because the majority of States parties to the treaty believe in the need for such a treaty. It is to be hoped that States will exercise some moderation and, when making decisions, will take into consideration their own ability and the ability of international organizations to deal with the problems posed.

Republic of Korea (A/37/444, p. 19)

It should be admitted that only sovereign States as principal treaty-making actors can best decide on what treaties to conclude and on how to set priorities. However, the paramount importance which the international community places on the treaty-making process should be fully appreciated. The point here is how well to co-ordinate the costs with benefits in regard of treaties being formulated. It is clear that neither mere reduction of the number of treaties nor ideas to increase the resources available could solve the problem satisfactorily.

Spain (A/36/553/Add.1, p. 14)

1. The burden is too great for the legal and financial personnel and budgets, both of States and of international organizations.
2. The international community should try to reduce the number of treaties being formulated. However, it does not seem necessary, in principle, for there to be any over-all increase in the resources available internationally. Any increase in such resources at the national level should be left to the discretion of each State.

Ukrainian Soviet Socialist Republic (A/36/553, p. 38)

1. In the opinion of the Ukrainian SSR, there is in present circumstances no urgent need to consider the question of the sharing of the over-all burden of the multilateral treaty-making process.
2. The United Nations already has the necessary machinery, methods and procedures for the regular exchange of views between the overwhelming majority of States concerning the urgent necessity of concluding a particular treaty and for the establishment of priorities in the selection of questions to be discussed in United Nations organs and at international conferences. The obligations of States derived from the Charter of the United Nations, particularly as regards the maintenance of international peace and security, are naturally particularly important in this connection.
3. However, today's dynamic and intensified international relations objectively produce an increase in the number of general multilateral treaties, which in turn requires a more effective treaty-making process. Attention to the differences which exist in practice between treaty-making methods and procedures can and must improve the effectiveness of this process, provided that a correct and rational selection is made in each specific case of those methods and procedures which best reflect the character and aims of the treaty and take into account the specific subject-matter of the agreement concerned. For this

reason, the complete unification of the methods and procedures used and introduction of universal model provisions (i.e. the establishment of a single process, applicable in all cases, for the formulation of international agreements and the reduction of the number of treaties being formulated) would be undesirable and impracticable.

Union of Soviet Socialist Republics (A/36/553/Add.1, p. 2)

1. In present circumstances, the sharing of the burden of the multilateral treaty-making process is not an urgent question. The methods and procedures which already exist in the United Nations on the whole ensure that States can reach agreement on the establishment of priorities in the selection of questions to be discussed in United Nations organs and at international conferences. In this connection, States must do everything to observe their obligations deriving from the United Nations Charter, particularly as regards the maintenance of peace and international security.

2. The expansion of international legal regulating activities, in both qualitative and quantitative terms, requires a more effective multilateral treaty-making process. That can and must be achieved not through the introduction of universal models or a reduction in the number of treaties being formulated but by taking account of the differences in the existing treaty-making methods and procedures which are applied in each specific case and selecting them correctly and rationally in the specific circumstances which arise when the questions at issue are discussed.

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

Council of Europe (A/36/553, p. 41)

1. The conclusion of conventions and agreements between member States is one of the principal working methods envisaged by the Statute of the Council of Europe (article 15 (a)), and in practice such instruments have often formed the basis for joint action to bring about greater unity among the States members of the organization. Having regard to its importance and the amount of resources needed to conclude a convention (usually two sessions a year of expert groups over an average period of two to four years), the treaty-making process in that Council of Europe cannot be said to place too heavy a burden on the organization's budget.

2. An increase in the resources available, even if only a moderate one, would obviously be the ideal solution. Since that, unfortunately, is impossible at a time of budgetary austerity both nationally and internationally, the setting of priorities is essential so that international organizations can postpone, temporarily or indefinitely, work which is of less obvious importance to States or to the international community. In the Council of Europe, priorities are set by the Committee of Ministers when it adopts its annual programmes.

International Labour Organisation (A/36/553, p. 48)

1. It would seem to be difficult to reduce the number of treaties being formulated by settling over-all priorities. Without a prior effort at co-ordination at the national level—which would increase rather than decrease the burden of the treaty-making process—no international body would have the expertise necessary to weigh the relative merits of treaties in different specialized fields. A further difficulty would be that of deciding between international and regional instruments, in respect of the priority of which the views of different groups of States may differ. And, since priorities are liable to change, the process of setting priorities would itself become a burden.

2. On the other hand, much can probably be done within the various fora which prepare multilateral treaties to weigh, at the outset of the process of preparation, the need for and the suitability of a treaty to deal with particular issues. In this connection, it should be pointed out that the ILO is one of the organizations in which “pre-initiation studies” in the meaning of paragraphs 24 and 25 of document A/35/312 are statutorily required (article 10 Standing Orders of the Governing Body). Moreover, by means of a recent in-depth review, which it is intended to update at intervals, the Governing Body determined those areas of ILO competence for which up-to-date standards exist, those in which there are standards in need of revision, and those in which further standards are desirable. There was discussion, in that connection, of the extent to which there might be forward planning of standard-setting activities, and of the criteria which might be established for the development of new standards,² para. 12 and following. Some forward planning is now achieved through the Medium Term Plan of the Organisation.

International Telecommunication Union (A/37/444, p. 28)

1. (a) to (c) These issues can only be determined and resolved by the States themselves in respect of their domestic resources and, as Members of the inter-governmental organizations concerned, with regard to the latter's personnel and budgets.

2. (a) to (b) With regard to the specific ITU treaty-making process, it has to be noted that it is primarily the Plenipotentiary Conference which sets the priorities in that respect or, in the period between two Plenipotentiary Conferences, the Administrative Council (holding annual sessions) which constantly reviews the calendar of conferences related to the treaty-making process, by taking account of the developments in telecommunication requiring elaboration or updating of pertinent legal instruments and adjusting the resources therefore accordingly.

Organisation for Economic Co-operation and Development (A/36/553, p. 51)

1. The burden of the treaty-making process within the OECD has not proved to be too great for the personnel and budget of the Organisation.

2. It is difficult to reply to this question in an abstract manner as it depends entirely on the requirements of the States and organizations concerned.

World Health Organization (A/36/553, p. 56)

1. Our experience tends to show that the burden of the treaty-making process is too great for States.
2. It would therefore seem necessary to reduce the number of treaties being formulated (i.e. the formulation of certain treaties should be postponed temporarily or indefinitely) by setting priorities.

NOTES

¹This 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.

²See ILO document GB.199/9/22 (revised), para. 12 *et seq.*

III. OVERALL CO-ORDINATION OF MULTILATERAL TREATY-MAKING

1. *Should the General Assembly assume a co-ordinating role in respect of multilateral treaty-making activities of:*
 - (a) *All United Nations organs?*
 - (b) *All organizations of the United Nations system?*
 - (c) *All inter-governmental organizations?*
2. *Should such a co-ordinating role by the General Assembly be:*
 - (a) *Restricted to the gathering and dissemination of data about all treaty-making activities within the sphere specified under 1 above?*
 - (b) *Extended to influencing, through decisions in respect of United Nations organs and through recommendations addressed to other inter-governmental organizations, the treaty-making process, such as by proposing subjects to be considered and identifying the organs or organizations most suitable to do so?*
3. *If such functions are to be exercised by the General Assembly, should this most suitably be done through the Sixth Committee?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE¹

1. While several representatives supported the idea that the General Assembly should assume an over-all co-ordinating role in treaty-making, most representatives who spoke on this issue expressed the view that it would be difficult for the General Assembly to assume such a role. Different reasons were given: (i) such a role would slow down the process and increase the work of the General Assembly, whose agenda was already congested; (ii) the high degree of sensitivity of the other organs operating in a particular field; (iii) over-all co-ordination was dependent on the nature of each particular treaty and the circumstances of each case, which rendered a general role impracticable; (iv) the General Assembly had no competence in this regard.

2. Some representatives thought that co-ordination in treaty-making could be enhanced through the issuance by the Secretariat of an information