

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

bulletin on a regular basis describing legal activities being carried out in the United Nations system as well as in other international organizations.

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

Argentina (A/36/553, p. 6)

1. The General Assembly should, without prejudice to the gathering and dissemination of data, assume a co-ordinating role in respect of multilateral treaty-making activities, directly in the case of all organizations of the United Nations system and indirectly in the case of inter-governmental organizations.

2. With respect to the former, it should propose subjects to be considered or deal with subjects referred to it. In so doing, it should take into account the results of the search for existing instruments on the subject and the current work of other United Nations organs or organizations within the system and of all inter-governmental organizations. It should identify the organs and organizations of the United Nations system most suitable to conduct such a study.

3. With respect to inter-governmental organizations, it should co-ordinate the activities with those of the United Nations system, maintaining close co-operation through: the gathering and dissemination of data on all treaty-making activities, and the free exchange of such data; recommendations to inter-governmental organizations on the treaty-making process, including, for instance, proposals concerning subjects within their competence which they might consider, subjects which for stated reasons it would be advisable to leave to other organizations and subjects on which complementary work might exist concerning the majority necessary in order to give votes greater authority concerning voting by consensus on certain subjects; and concerning means of making treaties more flexible (reservations to be allowed, system of deposits, etc.). This could constitute a first step towards systematic reorganization of the international legislative process.

4. This task could be entrusted to the Sixth Committee, duly assisted by the United Nations Office of Legal Affairs or any other department considered appropriate in the interests of continuity, particularly administrative continuity. For example, with respect to studies to be carried out, these would be the gathering and publication of information, the exchange of information with inter-governmental organizations and the receipt and processing of information; memoranda to the legal offices of other organizations; and research and studies on subjects proposed or to be proposed.

5. Continuing research on the various procedures which the organs and organizations of the system could use, and of those used by inter-governmental organizations, should be carried on with the aim of identifying short-comings or possible improvements.

Australia (A/37/44, p. 6)

Australia has reservations about giving the General Assembly a co-ordinating role in respect of multilateral treaty-making activities of all United Nations organs, all organizations of the United Nations system or all inter-

governmental organizations. There is merit in leaving the burden of treaty-making to organs of the United Nations and inter-governmental organizations, particularly when the treaty in question is highly technical and when there has been a long tradition of entrusting the preparation of such a treaty to a technically competent organization. To give the General Assembly a co-ordinating role would have the effect of increasing the already heavy work-load of the General Assembly and slow down the multilateral treaty-making process. The treaty-making role of the General Assembly is best exercised in subject areas where it has traditionally had a primary role, or when specialized machinery is lacking.

Brazil (A/36/553, p. 14)

Although in theory it would seem possible for the General Assembly to play a co-ordinating role in the multilateral treaty-making activities, conceptual and practical considerations could be advanced against that course. On the one hand, it would imply an undesirable centralization, were the Assembly to attempt to concentrate in a single body, possibly the Sixth Committee, the responsibility of guiding the whole multilateral treaty-making process through the examination of such a very broad spectrum of subjects, sometimes of a very specialized nature. But, on the other hand, if the Assembly limits itself to the gathering and dissemination of information, the item would soon become just a routine exercise, like many others now in its agenda, without any meaningful content.

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

Co-ordination by the General Assembly of activities connected with multilateral treaty-making could make the process more fruitful. If international treaties are concluded under the auspices of other inter-governmental organizations, the United Nations Secretariat should, on the instructions of the General Assembly, collect information on the negotiations in progress and inform the Sixth Committee of them.

Cuba (A/36/553, p. 17)

1. Affirmative answers to all the questions posed in the first paragraph.
2. (a) This might be an alternative, although we consider (b) more decisive.
 - (b) Within the United Nations, the General Assembly should play a guiding role with respect to subjects to be considered, since this will avoid duplication of some studies and will vitalize the procedure. Interference with the legal status of organizations would, of course, have to be avoided.
3. This function should be exercised by the Sixth Committee, in view of its legal character.

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

In view of its composition and its heavy work-load, the General Assembly, being primarily concerned with political matters, is less suitable for co-ordination activities.

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

The United Nations General Assembly could take the initiative as co-ordinator in the framework of the treaty-making process. If the Assembly is given such a role the executive should be the Sixth Committee, which deals with legal matters.

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

1. The Italian Government has serious doubts on the usefulness of entrusting to the General Assembly a general responsibility for co-ordination in the area of multilateral treaty-making. Such a task cannot be accomplished in practice, and to impose it upon the General Assembly would have the effect of slowing down the multilateral treaty-making process. On the other hand, it is of the utmost importance to safeguard the technical specialization of both United Nations bodies and other international organizations without imposing upon them requirements that would often be meaningless.

2. Obviously, on the basis of the powers vested in it by the United Nations Charter, nothing prevents the General Assembly from exercising a stimulus or, as the case may be, a control with regard to the formulation of multilateral treaties. In these capacities it may address appropriate recommendations to various negotiating bodies connected with the United Nations or to Member States of the Organization.

3. It is also clear that there is no lack of multilateral treaties promoted by the Assembly and negotiated in its context. On the occasion of such negotiation it would be useful for the Sixth Committee to offer at least its advice before the close of the proceedings.

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

1. The General Assembly should have the responsibility for co-ordinating activities undertaken within this sphere by all organizations of the United Nations system.

2. The co-ordinating role of the General Assembly should be restricted to the gathering and dissemination of data about all activities undertaken within this sphere by the organizations of the United Nations system.

3. The Sixth Committee is the most suitable body since the International Law Commission appears to be somewhat overburdened.

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

1. The universal character of the United Nations places the General Assembly in an ideal position to co-ordinate multilateral treaty-making, even at the regional level, and there is no doubt that its powers should include the possibility of making recommendations on subjects suitable for codification.

2. Obviously, the United Nations must carry out such co-ordination through recommendations which do not affect the autonomy of other international organizations. If the General Assembly should decide to exercise that function, there is no doubt that the Sixth Committee, as the Committee dealing with legal questions, would be called on to exercise that function in the first instance.

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

1. The General Assembly should assume a co-ordinating role in respect of multilateral treaty-making activities of all United Nations organs and all organizations of the United Nations system. Only thus would it be able to live up to its obligation under Article 13 of the Charter, i.e. "make recommendations for the purpose of . . . encouraging the progressive development of international law and its codification".

2. In respect of United Nations organs, the co-ordinating role should extend to influencing the treaty-making process by proposing subjects to be considered and to identifying the organs most suitable to do so.

3. In respect of the organizations of the United Nations system the co-ordinating role should be restricted to the gathering and dissemination of data about all treaty-making activities within those organizations.

4. This co-ordinating function is indeed most suitable to be exercised by the Sixth Committee.

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

1. The General Assembly should assume a co-ordinating role in respect of multilateral treaty-making activities of all United Nations organs and all organizations of the United Nations system. Only in this manner can the General Assembly fulfil its obligations in accordance with Article 13 of the Charter, i.e. "make recommendations for the purpose of . . . encouraging the progressive development of international law and its codification".

2. With regard to United Nations organs, the co-ordinating role should be extended to influencing the treaty-making process by proposing subjects to be considered and identifying the organs of the Organization most suitable to do so.

3. With regard to the United Nations system, the co-ordinating role should be restricted to the gathering and dissemination of data about all treaty-making activities which take place within these Organizations. In fact, the co-ordinating functions can best be exercised by the Sixth Committee.

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

The universal character of the United Nations could naturally place the General Assembly in a position to assume a co-ordinating role in regard to multilateral treaty-making activities at all levels in so far as the General Assembly does not compromise the autonomy of inter-governmental organizations. In this connection, there is no doubt that an increase in the role of the General Assembly in co-ordinating multilateral treaties would help enhance the effectiveness of treaty-making. However, such an additional role might overburden the General Assembly whose agenda was already congested, whereby subjects, in particular, of a very specialized nature might often be neglected. And, there may arise a danger that, in case the Assembly strictly confines itself to gathering and disseminating data on the treaties being formulated, its role of co-ordinating as such would become insignificant.

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

1. The General Assembly should assume a co-ordinating role in respect of multilateral treaty-making activities of United Nations organs and other organizations in its systems. However, the Assembly's co-ordinating role should not be extended to other international organizations, since it does not have the necessary jurisdiction. The most it could do in connection with the latter is to submit recommendations to them.

2. The role of the General Assembly should not be restricted to the gathering and dissemination of data. It could be extended along the lines of the suggestion contained in subparagraph (b), but only in connection with organs and organizations in the United Nations system.

3. Yes, in principle.

Switzerland (A/37/444, p. 22)

La multiplicité des activités se déroulant dans le cadre des Nations Unies justifie une coordination des initiatives et des mises en oeuvre en ce qui concerne en tout cas les organes de l'ONU et, dans une mesure appropriée, les organismes du système des Nations Unies. En assumant ce rôle, l'Assemblée générale devrait, par le biais de la Sixième Commission, se limiter à la collecte et à la diffusion des données relatives aux activités en question.

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

An increase in the role of the United Nations General Assembly in the co-ordination of multilateral treaties concluded within the United Nations would help to improve the effectiveness of multilateral treaty-making. In the case of treaties concluded within other inter-governmental organizations, it would seem advisable for the General Assembly to instruct the Secretariat to gather data on the treaties being concluded and disseminate the information in the form of documents of the Sixth Committee.

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

Council of Europe (A/36/553, p. 42)

1. (a) and (b) Such co-ordination within the United Nations system could have some advantages, in that it would allow for a more systematic handling of certain drafts. However, it would also have disadvantages, in that it would render the multilateral treaty-making process in the United Nations or the organizations belonging to the system even more cumbersome. It is for the competent organs of the United Nations to assess the arguments for and against such co-ordination.

(c) Co-ordination by the General Assembly of the activities undertaken by other international organizations would not be desirable. As explained above, it would inevitably delay the treaty-making process in those organizations and, in addition, would fail to take account of the specific nature of the various international organizations, particularly in the case of specialized or

regional organizations such as the Council of Europe, which have precise functions and operate in specific geographical and ideological contexts that the United Nations can hardly appreciate.

2. (a) If such action by the General Assembly were restricted to the gathering and dissemination of data about the treaty-making activities of the various international organizations (which could hardly be described as a co-ordinating activity), it would certainly meet a need and would therefore be useful, but it is to be feared that it would prove very costly. In its own activities, the Council of Europe could not but benefit from any study conducted or data collected by the United Nations.

(b) At the present stage of development of international law, such a proposal would seem to be out of the question for organizations not belonging to the United Nations system.

3. The Sixth Committee would logically seem best equipped to perform a co-ordinating role, but in view of the Committee's heavy agenda and, above all, its present major function as a forum for discussion on the work of the International Law Commission, the solution envisaged does not seem realistic.

International Labour Organisation (A/36/553, p. 49)

1. The gathering and dissemination of data about treaty-making activities is of growing importance, with a view to avoiding duplication or conflict. It was the International Labour Office which, for that reason, initiated the process which led to the ACC decisions referred to in paragraph 50 of document A/35/312. Moreover, it would seem to be appropriate for organizations to consult on, and as necessary to refer to the one most competent in the field, proposals for treaties on matters falling within the competence of more than one of them. As regards the ILO, consultation is expressly provided for in the Standing Orders of the Governing Body (article 16) and the Conference (article 17 *bis*). There has been, in practice, co-operation with various organizations in respect of treaties adopted by or under the auspices of one of them.

2. On the other hand, it would seem to be difficult to envisage a centralised arrangement under which the General Assembly would seek to determine the subjects to be considered, and the organizations most suitable to do so. Such an arrangement would be liable to conflict with the specialized competences of other organizations. This problem would be of particular importance in relation to an organization, such as the ILO, in which the decision-making organs are not exclusively governmental.

International Telecommunication Union (A/37/444, p. 29)

1. (a) No comments.

(b) No, as it appears practically impossible and legally without sufficient justification to entrust the General Assembly of the United Nations to assume co-ordination in respect of multilateral treaty-making of all the organizations of the UN system, each of them having its own policy-making bodies and one supreme organ in charge of co-ordinating those activities for its own organization.

(c) No, for reasons similar to those given under 1 (b) above.

2. (a) In spite of the reply given under 1 (b) above, a restricted co-ordination by the United Nations General Assembly limited to the gathering and dissemination of data about all treaty-making activities might be helpful to all organizations concerned.

(b) The United Nations General Assembly, within the framework of the competence entrusted to it by the United Nations Charter, might make recommendations to other inter-governmental organizations with regard to the treaty-making process, but should usefully do so only after having obtained the prior agreement thereto by the organization concerned.

3. No comments.

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

It does not appear appropriate to the OECD Secretariat that the General Assembly assumes a co-ordinating role in respect of multilateral treaty-making activities of OECD. The rest of the questions are not applicable.

World Health Organization (A/36/553, p. 57)

1. The General Assembly should assume a co-ordinating role in respect of multilateral treaty-making activities of all organizations of the United Nations system.

2. Yes.

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.

IV. GENERAL IMPROVEMENTS OF THE TREATY-MAKING PROCESS IN THE UNITED NATIONS

1. *Before embarking on the formulation of a particular treaty should more extensive efforts be made, in general, to:*
 - (a) *Collect legal and factual data relevant to the proposed treaty?*
 - (b) *Ascertain the potential interest of States in the proposed treaty?*
 - (c) *Consider the utility of some less binding instrument (e.g., a declaration)?*
2. *Should the preliminary formulation of the text of a treaty generally or in respect of certain categories be entrusted to:*
 - (a) *A representative organ?*
 - (b) *An expert organ?*
 - (c) *The secretariat?*
3. *Should an effort be made to reduce the number of treaty-making organs and procedures in the United Nations by concentrating them?*