NOTES

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

[2] A/34/10, para. 195.

[3] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 10* (A/8710/Rev.1), chap. III, sect. B.

[4] *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 39* (A/34/39), sect. IV.

[5] See Report of the United Nations Conference on Territorial Asylum (A/CONF.78/12).

[6] *Official Records of the General Assembly, Second Session, Sixth Committee, annex 1* (document A/331).

VI. FINAL NEGOTIATION AND ADOPTION OF MULTILATERAL TREATIES

1. *Should the negotiation of multilateral treaties of concern to the General Assembly, such as those emanating from the ILC or UNCITRAL, normally be completed in a Main Committee of the General Assembly, or is it preferable to convene* ad hoc *plenipotentiary conferences?*
2. *If negotiations are normally to be completed in the General Assembly:*
   (a) *Will it be necessary or desirable to extend the preliminary preparatory stage so as to submit to the Assembly more nearly completed texts?*
   (b) *Should special procedural rules be adopted to assist the Assembly in acting as a treaty-formulating organ, e.g., providing for the participation of non-member States, special voting procedures, the establishment of drafting committees, etc.?*
   (c) *Should the Sixth Committee normally be involved in such a process even if the substance of the treaty is considered by some other Main Committee (e.g., disarmament in the First Committee; economic relations in the Second, human rights in the Third):*
      (i) *Through joint meetings of the Sixth with other Main Committees?*
      (ii) *Through the consideration of all formal and legal clauses by the Sixth Committee?*
      (iii) *Through the review of the text as a whole by the Sixth Committee?*
3. *To the extent the completion of multilateral treaties is assigned to plenipotentiary conferences:*
   (a) *Should such conferences be scheduled for longer periods, to make it less likely that additional sessions would need to be convened, or does a series of successive sessions enable preparation of a better text supported by a broader consensus?*
   (b) *Should uniform or model rules of procedure be established for such conferences?*
   (c) *Should such rules provide for the establishment of negotiating committees?*
   (d) *Should there be intersessional meetings of certain conference bodies (negotiating or drafting committees)?*

(e) *Should formal debate at conferences be restricted as much as possible to group spokesmen?*

(f) *Should there be provision for more extensive participation of intergovernmental and non-governmental organizations at plenipotentiary conferences?*

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

1. Some representatives held the view that negotiation and adoption should be treated as two separate stages, the latter being limited to a ceremony after all negotiations had already been completed.

2. There were, however, divergent views as to whether negotiations should be conducted in the General Assembly or be referred to *ad hoc* plenipotentiary conferences. Some representatives preferred the General Assembly and suggested that in the future drafts prepared by the International Law Commission should be submitted for examination by the Sixth Committee without holding special international conferences. They also considered that the existing procedure for drafting agreements on important political matters (e.g., disarmament) had justified itself in practice and required no modification.

3. Several representatives suggested enhancing the role of the Sixth Committee in the negotiation and adoption of multilateral treaties. Special reference was made to a recommendation entitled "Methods and procedures of the General Assembly for dealing with legal and drafting questions" annexed to the rules of procedure of the General Assembly (A/520/Rev.13, annex II, part I) stating: "(*a*) that when a [Main Committee of the Assembly] 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". It was emphasized that this recommendation should be better implemented so as to ensure rational progress, though this did not mean that only the Sixth Committee could draft treaties. Many speakers also believed that the Sixth Committee should play a more active role, particularly in drafting matters. In this regard, it was suggested that certain special procedural rules might become necessary (e.g., providing for participation of Non-Member States) if the General Assembly was to assume an effective role. Others, however, preferred that the Sixth Committee be involved primarily at the preparatory stage, through a working group.

4. On the other hand, some members of the Committee preferred to assign the final negotiations and adoption of multilateral treaties to plenipotentiary conferences, which they regarded as the appropriate forum for negotiations and for participation by non-members of the United Nations so as to increase the possibility of wider acceptance of a treaty.

5. The utility of informal consultations, as employed in the Third United Nations Conference on the Law of the Sea, was also referred to. The need for making proper preparations before convening a conference (e.g., the preparation of a draft treaty) was stressed by many members of the Committee. One representative thought that it would be helpful to have a checklist of procedural methods used in conferences, which might be prepared by the Secre-

tariat on the basis of observations submitted by Governments and international organizations.

6. In this connection many views were expressed on the advantages and disadvantages of applying the consensus formula at plenipotentiary conferences. Reaffirming sovereign equality, promoting wider acceptance of treaties and protecting minority interests were cited as factors in favour of this formula. However, it was also stressed that the application of this formula was time consuming and often resulted in ambiguous provisions.

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

Argentina (A/36/553, pp. 9-10)

1. It is not possible to lay down a single method for negotiating treaties. Subjects may, and in fact do, require different methods according to their technical or political nature. Specific questions of private international law, dealt with by UNCITRAL, would require the presence of specialized staff, as well as of its secretariat, and several weeks free from other matters in which to deal with the drafting work. Account should be taken of the conclusions reached by the Committees themselves, the importance of the Committees, the specific nature of the tasks within their competence and, most of all, the results of their work over the years, which provide a measure of their efficiency. Overburdening the Sixth Committee's programme of work could indefinitely prolong the consideration of subjects, many of which may be urgent, or force the Committee to remain almost permanently in session.

2. In cases where the nature of the question or the origin of the draft made it desirable for a multilateral treaty to be negotiated by the General Assembly, with regard to which resolution 35/100 will be borne in mind, it would be desirable that texts as complete as possible should be submitted to the Assembly. In the case referred to in the preceding paragraph, the Sixth Committee should normally be involved in the process, even if the substance of the treaty was considered by some other Main Committee. This would not only strengthen the role of the Sixth Committee in the treaty-making process by enabling it to play the active part envisaged for it at the time of its establishment, but would result in fuller compliance with annex II to the rules of procedure of the General Assembly (part I, para. 1(*d*)), which is usually followed by the other Main Committees. It would be appropriate, in this connection, to recommend that any draft convention formulated by the General Assembly might be referred to the Sixth Committee for its opinion. This would be done: If the treaty was being considered by another Main Committee, through joint meetings of the Sixth Committee and the Committee initially dealing with it; If the treaty did not emanate from another Main Committee of the General Assembly, through a review of the text as a whole by the Sixth Committee.

3. (*a*) When, for a particular subject, it is decided that the negotiation of a multilateral treaty should be entrusted to a plenipotentiary conference, it should be borne in mind that: If the subject and the extent to which it has been formulated allow—as in the case of technical subjects of the kind dealt with by UNCITRAL—conferences should be scheduled for periods sufficiently long to avoid convening a further conference. The savings for Governments

will be tremendous. The same will be true for the Organization, since it avoids a repetition of formal matters and of movements of staff and materials and ensures continuity in tempo and the identity of representatives of States. There is also clearly a need in this connection for specific approaches adapted to the special characteristics and difficulties of the subject, the purpose of the treaty and the practical problems involved. In some cases, this may make it desirable or necessary to hold, in advance of or during a conference, a series of successive sessions (e.g., the Conference on Asylum, the Conference on the Law of the Sea).

(*b*), (*c*), (*d*) It would be appropriate to draw up a set of rules allowing variations and providing for the establishment of negotiating committees, which could also hold intersessional meetings if necessary. These rules, which to some extent already exist, would provide a number of model clauses on points for which they are needed, so that they could be adapted to the special characteristics of the subject at the time of their adoption by the conference.

(*e*) If this refers to spokesmen for institutionalized groups, it would be entirely wrong to restrict formal debate to group spokesmen. Where the members of such a group have a common interest in the subject under consideration, and its spokesmen are genuine and are duly elected, such a restriction will occur automatically. This is a question involving State sovereignty and it should not be considered.

(*f*) In some cases the participation of such organizations, particularly non-governmental organizations, is already sufficiently extensive.

Australia (A/37/444, pp. 8-9)

1. As a general rule, multilateral treaties of concern to the General Assembly should be finally negotiated in *ad hoc* plenipotentiary conferences rather than in a Main Committee of the General Assembly. There is scope for greater flexibility in the timing of plenipotentiary conferences, in rules of procedure and in working methods to meet the requirements of the subject-matter than would be the case in a Main Committee of the General Assembly. Unless it is clear that consensus can be readily and quickly achieved, it is better to concentrate on the subject being negotiated in a plenipotentiary conference than to distort the focus of a Main Committee of the General Assembly, which is also burdened with other items on its agenda.

2. The duration of plenipotentiary conferences will vary according to the scope and importance of the subject-matter of the treaty. It is important that States should be free to organize such conferences in the way they believe most suitable for the subject-matter at hand and to ensure maximum efficiency in the consideration of the subject-matter. There is generally value in a serics of sessions allowing time for refiection and review. Governments participating in plenipotentiary conferences should have model rules of procedure to consider. The use of negotiating and intersessional committees can be valuable. It is generally most undesirable to have formal debates limited to group spokesmen. However, firm conclusions on all these matters, as well as on whether more extensive participation should be allowed at plenipotentiary conferences, will have to depend on the subject in question and the wishes of the States participating at the conference.

Austria (A/35/312/Add.1, pp. 6-10.
See also its comments under Section IV above)

1. *Choice of organ: diplomatic conference or United Nations organ*

1. *Prima facie*, it would seem rather attractive to suggest that all draft multilateral instruments originating within the United Nations should be negotiated in a Main Committee and adopted by the General Assembly. That suggestion would have the particular advantage of assuring the participation of all Members of the United Nations and thus nearly all States of the world in the treaty-making process, although it should not be overlooked that some States which in the past have regularly participated in treaty-making diplomatic conferences but which are not Members of the United Nations (e.g., Switzerland, Holy See) would thus find themselves excluded from participation.

2. But several important reasons confiict with this suggestion. The rules of procedure of the General Assembly are not particularly suited for the negotiation of complex texts. They do not provide for the establishment of indispensable subsidiary organs with a clearly defined role in the decision-making process, like drafting committees. Furthermore, experience shows that some rules (e.g., right of reply; explanation of vote; division of proposals and amendments; majority required) are not convenient for dealing with a text consisting of separate but still interrelated articles. It is for this reason that the rules of procedure of diplomatic conferences, which are otherwise modelled on the rules of procedure of the General Assembly, had to be modified in this respect. Other necessary rules (e.g., basic text) are altogether lacking. Though in theory the necessary changes could be introduced into the rules of procedure of the General Assembly and its Main Committees, such a course would hardly appear to be practical for organs which are primarily designed for other purposes.

3. In this context, consideration must also be given to the time factor. Diplomatic conferences, entrusted with the adoption of a complex draft instrument, need normally at least four weeks, frequently even more. In view of the usually very busy schedule of the General Assembly's Main Committees it seems hardly possible to reserve such a long period for a single task within a single session of the General Assembly. When multilateral agreements were directly negotiated in a Main Committee, indeed more than one session was usually needed for their adoption, even for a subject that presented as few difficulties as special missions (Sixth Committee, 1968-1969). Inevitable as it may be under the circumstances, such a division is not advisable, not only because of the problems created by changes in delegations but also because the impetus, generated at the first session, is lost and thus, taken together, more time is spent than is really necessary.

4. On balance it would appear that the General Assembly and its Main Committees are well suited for the adoption of multilateral legal instruments in all cases where the draft text has been thoroughly prepared by a committee composed of representatives of States and needs only little further negotiation before its final adoption. In cases, however, where extensive negotiations are necessary, preference should be given to a diplomatic conference.

2. *Organizational problems of diplomatic conferences*

(a) *Duration of a conference*

5. For many years, the General Assembly, when determining the duration of a diplomatic conference to be held under United Nations auspices, relied on the estimates submitted by the branch of the Secretariat dealing with the substance of the proposed treaty. Such estimates were based on experience and insight into the difficulties which might arise during the negotiating process. Usually those estimates proved correct.

6. In recent years, however, other bodies and branches of the Secretariat, applying primarily managerial and/or exclusively financial standards, unfamiliar with the substantive difficulties of the issue, have insisted on shortening the suggested period, and the Fifth Committee has followed their advice rather than that of the substantive department. In some cases, such as the Vienna Conference on Succession of States in Respect of Treaties, this has resulted in the necessity of convening a second session—originally not planned—and the two sessions, taken together, lasted longer than the single session originally suggested by the substantive department. In order to avoid such events, conferences have sometimes been given the power to extend, if necessary, their session within specified time limits. However, this device rarely leads to the desired result since delegations assume from the start that the conference will last through the extended period, make the necessary travel and hotel arrangements, and adopt their rhythm of work accordingly.

7. Both experiences seem to indicate that the substantive department of the Secretariat is best qualified to suggest the necessary length of a session, which should thereupon be definitely determined.

(b) *Loss of time*

8. During the debate of the present item in the Sixth Committee (A/C.6/32/SR.46-50), some speakers voiced doubt as to the economic and efficient use of time allotted in diplomatic conferences. In considering this problem it should be borne in mind that a diplomatic conference is not only legally but also practically the master of its own procedure. Hence it is primarily up to participating delegations and, thus, to the States which they represent, to see to it that no time is wasted. Presiding officers or prominent members of the Secretariat, trying to exert leadership, depend on the co-operation of delegations and no strengthening of the rules of procedure or their strict application can replace that co-operation.

9. If, for instance, the "introduction of extraneous issues" is blamed as a major factor for delay, it should not be overlooked that such issues are introduced by sovereign States, and what may seem irrelevant to some parties may appear highly relevant to others. No presiding officer can or even should decide the issue. The only legitimate way of disposing of an issue which is challenged on the ground that it is "extraneous" is by a vote, which unfortunately is often preceded by a lengthy debate interrupting all other work of the conference. To urge more stringent measures against the introduction of "extraneous" issues into diplomatic conferences is, in reality, an appeal to the self-restraint of States.

10. The same holds true for the loss of time frequently encountered at the start of a conference or at the beginning of the consideration of a new

draft article. Meetings have to be adjourned prematurely because delegations are not prepared to address the issue under discussion. If their unpreparedness is the real reason for delegations' restraint then only the States which are sending them can remedy the situation.

(c) *Negotiating body*

11. There is, however, another cause for delay which merits consideration because it is of a different nature. When proposals and/or amendments concerning a particular point are numerous and contradictory and the conference wants to avoid the ordeal of a protracted debate and voting process, it quite often appeals to the sponsors or interested parties "to get together" and to present a consolidated proposal. It is not rare in such a situation that valuable time is lost because nobody takes the initiative to organize the necessary negotiations.

12. Since such negotiations are "private", the rules of procedure do not apply. When presiding officers or the Secretariat intervene by providing assistance, they do so on their own initiative and one has to reckon with the fact that presiding officers are primarily chosen on account of geographical or political consideration and not for the personal leadership they are able to provide. In some conferences it has been found convenient to use the drafting committee as a forum. But all these devices are improvised and fortuitous.

13. Consideration might, therefore, be given to the idea of providing for this sort of situation in the rules of procedure. One might think of a special negotiating committee, as exists in the General Conference of UNESCO or as was established in the recent United Nations Conference on the Establishment of the United Nations Industrial Development Organization as a Specialized Agency (A/CONF.90/8, rule 44). But it would probably be simpler to empower and instruct the presiding officer to convene in such circumstances without delay a meeting of the interested parties.

(d) *Composition of delegations*

14. From the point of view of efficiency, it would obviously be desirable for States to send to diplomatic conferences high-level delegates who are qualified experts and, at the same time, conversant with the intentions of their political authorities. Since such delegates would know precisely what their Government will or will not accept, they could negotiate without having to ask for instructions on every change of a comma and would, nevertheless, guarantee a high probability of acceptance by their Government.

15. Yet the very conditions of their efficiency require their constant contact with government and central administration. Their absence from their capital ought to be neither too frequent nor too long. If such a person has to attend too many conferences in a row, his efficiency in the aforementioned sense will obviously be reduced. Under present circumstances this fact presents a serious problem for States with a small legal staff.

16. Such States tend to respond with frequent rotations within their respective delegations, especially to conferences with more than one session, and by nominating junior (and thus in the aforementioned sense less effective) delegates. If this consequence was deplored in the General Assembly during its debate on the present item, it would seem up to that body to correct the situation by more rationally co-ordinating the convening of conferences and of *ad*

hoc or special committees, all involving the same but small group of qualified persons.

3. *Ratifications*

17. It is a truism that the number of ratifications of, and/or accessions to, some multilateral conventions adopted under the auspices of the United Nations has remained below expectation. The reasons for this deplorable fact are manifold. There may be practical reasons for convenience, limitation of staff resources, which in turn may lead to delayed action at the one stage of the treaty-making process that is not limited in time, i.e., the ratification process. But of the many conceivable reasons only those relating to the manner or procedure in which the text of a convention was prepared and adopted are properly within the framework of the present observations.

18. The question is, therefore, whether changes in the procedure followed so far in the formulation and adoption of multilateral instruments could improve the chance of wider acceptance of these instruments. It has been suggested in this connection that more attention should be paid to the views of important minorities in conferences and to building a broad base of agreement.

19. As a general proposition the implied criticism is difficult to accept and more difficult to translate into a change of procedure. It is very rare that the text of a multilateral convention is adopted against strong opposition, which in any case cannot go beyond one third of the States present and voting or else the convention would fail of adoption altogether. The 1963 Vienna Convention on Consular Relations was adopted unanimously by the United Nations Conference on Consular Relations but has in fact one of the weaker records of ratification and/or accession. If one were to conclude from that, that the Convention in question is refused by a majority of States, it would be difficult to understand why such refusal was not articulated at an earlier stage. Certainly that is not due to any lack of procedural means. Nor does it seem likely that individual provisions, adopted against the opposition of some States, could be the real reason for their reluctance to ratify, since reservations should provide an appropriate remedy.

20. Under these circumstances it appears reasonable to assume that with the possible exception of a few conventions (of which the Vienna Convention on the Representation of States in their Relations with International Organizations, adopted by 57 votes against one, with 15 abstentions, is a noteworthy example) the negotiating process and its procedural basis had no decisive influence on the final acceptance by States, or at least that, should there be hidden impediments, such impediments cannot be cured by a simple change of procedure.

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

It is the view of the Brazilian Government that the present flexibility regarding final negotiation and adoption of multilateral treaties has been useful and should be maintained. The decision on whether to convene a plenipotentiary conference or to have the final negotiation and adoption of a treaty in the General Assembly should always be taken on an *ad hoc* basis, in each specific case. For technical reasons, however, in the General Assembly the Sixth Com-

mittee should have a larger role in the preparation of treaties, either through joint meetings with other Committees or through the review of the text as a whole within the Sixth Committee itself.

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

1. Delegates of the Byelorussian SSR have often pointed out at General Assembly sessions that the Main Committees, particularly the Sixth Committee, have an important role to play in formulating and adopting international legal instruments. Plenipotentiaries of States Members of the United Nations take part in the work of those Committees and, as a rule, a wider range of States is represented in a Main Committee than at *ad hoc* conferences.

2. At the same time, given the consent of States, the possibility of convening *ad hoc* plenipotentiary conferences in certain cases is not excluded, but the United Nations General Assembly should determine the duration and dates of such conferences and other necessary arrangements. With respect to the way a conference should go about its work, the rules of procedure should be adopted by the plenipotentiaries themselves at the conference, as has been the case in practice.

Canada (A/35/312/Add.1, pp. 17-19)

1. The negotiation and adoption phase of the treaty-making process is often closely related to, or in fact part of, the preparatory phase. Yet it has distinctive features which suggest it should be considered separately. It may take place in a diplomatic conference convened at the end of a long preparatory period, and may be of relatively short duration, such as the Conferences on the Law of Treaties, or on Diplomatic and Consular Relations and the 1958 Conference on the Law of the Sea, all of which were the culmination of work of the International Law Commission. Alternatively, the diplomatic conference itself may comprise the whole process and extend to many sessions over a number of years, as with the current Law of the Sea Conference.

2. An initial question that arises in respect of such negotiating conferences is whether they should be convened at all. There are instances where the lack of consensus during negotiations on major issues raises considerable doubt about the wisdom of convening the conference in the first place. This may be the result of inadequate preparatory work; it may be that the initial decision to embark upon the process leading to the conclusion of the treaty was taken with inadequate discussion; it may be that differences of view simply did not emerge until the final conference had commenced. It shows however, how essential the earlier phases are and it indicates a need for substantial flexibility in the way in which the conference or other negotiating body moves towards its objective or even alters its objectives.

3. This flexibility ought to be facilitated by appropriate conference procedures and it is here that a major area for consideration exists. Debates over the rules of procedure at multilateral treaty-making conferences have often been extended. Issues such as who may attend, who may occupy the position of Chairman, who may vote, and on what basis should decisions be taken, have occupied long hours of conference time. It may be that debates over the rules of procedure are inevitable and that little can be done to alter the matter.

However, before such a conclusion is reached the experience of all international organization multilateral treaty-making conferences should be examined. Are there uniform rules of procedure developing in certain areas? Is there scope for codifying some non-contentious rules for all multilateral treaty-making conferences convened by the United Nations? What contentious areas could be resolved in a forum outside the conference? What matters have to be left for each conference to resolve on its own?

4. A question related to the procedure to be adopted in a multilateral treaty-making conference is whether a diplomatic conference is in fact the only appropriate body to finalize and adopt a treaty. During the debates in the Sixth Committee, at the thirty-second session of the General Assembly, a number of States queried whether the Sixth Committee itself should not have a role. The Committee has provided a forum for debate of the draft articles prepared by the International Law Commission and has debated and adopted conventions, such as the 1969 Convention on Special Missions and the 1975 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, without reference to a diplomatic conference. Could this role of the Sixth Committee be expanded? One advantage of utilizing the Sixth Committee for the negotiation and adoption of multilateral treaties is that the sessions of the Committee attract a considerable pool of legal expertise from various States. However, to expand the Committee's role in this respect would raise questions about the fulfilment of the Committee's other responsibilities. It is also clear that certain subjects would more easily lend themselves to negotiation in the Sixth Committee than others.

5. In spite of an extended preparatory period, the length of time devoted to the final diplomatic conference may not always be sufficient to allow a detailed examination of the text under discussion. It may well be useful to hold a series of conferences at which the views of each Government may be fully developed. Such an approach obviously is not always feasible, yet in some cases a lack of time may discourage States from introducing amendments or new proposals that would require a substantial rethinking of the text. Is this always desirable? Again, once a conference has been convened it appears that it must usually result in the adoption of a text. More time might produce a more widely acceptable instrument.

6. The conduct of negotiations and the final adoption of a text provides substantial scope for investigation. In recent years the traditional approach of formal conference sessions with *ad hoc* consultations among interested groups of States outside of the formal sessions appears to have been supplanted. The importance of informal consultations has increased to the point that in some instances they have been formalized by the conference itself. The experience of the Third United Nations Law of the Sea Conference may well be instructive on this matter, for there the formal sessions of the Conference have all but disappeared and what were informal negotiating sessions have re-emerged as formal conference negotiating groups.

7. This practice, and the practice of other international conferences or organizations, deserves careful study to determine to what extent formal and informal procedures have been developed to expedite the process of reaching agreements and whether the experience of some conferences or organizations

may be applied in other contexts. It is the view of the Canadian authorities that this is an area that should receive major attention in any review of the multilateral treaty-making process.

8. An issue that goes beyond the techniques and procedures of the treaty-making process is the state of law making by multilateral treaty itself. An assessment might be made of the areas covered by multilateral treaties to determine whether there are major gaps, whether further activity is required in certain areas or whether other areas have received more attention than is perhaps warranted. In circumstances where multilateral treaties are being drafted under the auspices of a variety of different international organizations, it is inevitable that some co-ordination and reconciliation of the provisions of treaties emerging from different bodies will be necessary.

9. To a certain extent, the International Law Commission engages in this kind of enquiry. An assessment of the need for the codification and progressive development of international law is made each time the International Law Commission has undertaken a review of future projects, and was the subject of special consideration at the twenty-fifth Session of the ILC[2] and in the subsequent debates in the Sixth Committee.[3] What should be undertaken, however, is a broad ranging review covering the activities of all international organizations engaged in multilateral treaty-making.

Cuba (A/36/553, p. 19)

1. Preferably in, or in co-ordination with, the General Assembly (Sixth Committee). It should, however, be borne in mind that there are subjects of such complexity that the Assembly could not give them due attention and they would require a special conference.

2. (*a*) Yes, depending on the draft treaty.

(*b*) Yes, this would be useful and conducive to the negotiation and general understanding of the subject.

(*c*) (i) Even if the Sixth Committee is not normally involved in the whole process, it should be kept informed concerning the subject under consideration, for which purpose it could hold meetings with the Committee involved.

(ii) It should review in particular the legal aspects.

(iii) Once a text has been formulated, it should be reviewed by the Sixth Committee.

3. (*a*) Sessions should not be unduly long or too numerous, since both impose a financial burden on States, particularly under-developed countries.

If the organizational work is well done, States will have the information needed for an advance study and the proceedings will be expedited.

(*b*) Yes.

(*c*) We see no advantage in this, because it might happen that all the work would gradually be transferred to the negotiating committee.

(*d*) This might be appropriate in some cases, but it might also be detrimental, since it tends to remove the subject from the main arena of negotiation.

(*e*) No, because during the debate new points may emerge which affect a State member of the group and not the group as a whole, in which case the views of the spokesman would not be sufficiently representative.

(*f*) In our view, inter-governmental and non-governmental organizations should participate mainly as consultative organs in those cases where they deal with matters relevant to the subject under discussion. However, they could also participate as observers.

Germany, Federal Republic of (A/36/553, p. 24)

1. In principle, major and comprehensive treaties should be negotiated at *ad hoc* plenipotentiary conferences.

2. The involvement of the General Assembly will prove successful only if draft treaties are brought to it at an advanced stage of maturity, if there is reasonable ground for believing that agreement can be reached on their consent.

3. (*a*) The duration of plenipotentiary conferences should depend on the scope and importance of the subject in question. In general it is not possible to keep conferences on major treaties going more than six weeks because many States are not in a position to make experts available for longer periods.

(*b*)-(*f*) The model rules of procedure for such conferences already existing within the United Nations system should be adapted to the needs of the conference. Whether they should provide for the establishment of negotiating committees, restrict formal debate to group spokesmen or permit a more extensive participation of inter-governmental organizations depends on the subject in question.

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

Important treaties must principally be negotiated in the *Ad Hoc* Plenipotentiary Conference so that the deliberations in the General Assembly will succeed. Generally, if the Conference is held for more than 6 weeks, it would be difficult for several States to have their experts away for such a long duration.

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

1. In order both to rationalize the work of negotiation and to economize on financial resources, it is the Italian Government's opinion that the role of the Sixth Committee should be enhanced whenever a treaty is introduced, whether directly or indirectly, by the General Assembly, unless the treaty deals with a highly specialized matter. In this context, it is undoubtedly appropriate to submit to the General Assembly and to the Sixth Committee texts that have already been almost completed. It would also be desirable to study the possibility of *ad hoc* procedural rules for the adoption of treaty texts; the aim of this research should be to ensure that such texts receive a broad-based consensus in advance.

2. The same criteria should govern the elaboration of procedural rules for plenipotentiary conferences. Neither in general nor with regard to such conferences does negotiation by groups of countries always facilitate matters; it merely obscures, temporarily, the differences within groups, which ultimately

reappear at the moment of signature or ratification of the text, thereby extending drastically the time needed to complete the treaty-making process.

Mali (A/36/553, p. 31)

1. The negotiation of multilateral treaties of concern to the General Assembly, such as those emanating from the International Law Commission, and UNCITRAL, should be completed in a Main Committee of the General Assembly.

2. The Sixth Committee should be involved in such a process, and the consideration of all formal and legal clauses should be entrusted to it.

Mexico (A/36/553, p. 35)

1. The question whether the General Assembly or a special plenipotentiary conference will be the organ to study drafts produced by the International Law Commission and the United Nations Commission on International Trade Law should be decided on a case-by-case basis.

2. Practice has shown that, while using the United Nations General Assembly is less costly, Governments attach more importance to plenipotentiary conferences and normally send higher-level delegations to such conferences. For that reason, draft treaties of major importance should be referred to plenipotentiary conferences. There does not appear to be any need for the adoption of special rules to enable the General Assembly to study and approve draft conventions prepared by ILC, UNCITRAL or *ad hoc* committees. The participation in the General Assembly of States not Members of the United Nations when a treaty is being formulated has been no problem, and a decision by the Assembly to permit such participation is sufficient.

3. Nevertheless, the Sixth Committee cannot be expected to study all multilateral treaties formulated within the United Nations system, although it should be laid down in the rules of procedure of the Assembly that, whenever another Main Committee prepares such a draft, the Sixth Committee must be allowed to see it before it is opened for signature so that it can make a final review of the text.

4. Long sessions of plenipotentiary conferences are usually undesirable. It is better to break up a conference into a number of short sessions so that delegations can return to their capitals and hold the necessary consultations in order to continue the negotiation.

5. The tremendous variety of situations with which plenipotentiary conferences are faced makes it inadvisable to establish uniform rules of procedure.

6. Holding intersessional informal negotiating or drafting meetings is a useful practice. However, each conference must decide on that point.

7. The practice of having spokesmen for the various regional groups or common-interest groups at conferences is useful. As a rule, however, that practice cannot be substituted for the normal processes of a conference.

8. The participation of governmental and non-governmental organizations at conferences can be useful. However, the general practice whereby non-governmental organizations are not entitled to speak but only to circulate their views in the form of documents should be maintained.

Netherlands (A/35/312/Add.1, p. 23)

1. *The adoption of a text*

1. There are no fixed criteria to determine whether or not a certain proposal is ripe for consideration by a diplomatic conference. Consideration should however be given to the fact that it is during such a conference that differences of opinion must finally be resolved which may involve further mutual concessions.

2. The following points may be considered with a view to promoting the efficient running of such a conference. Since there has been ample opportunity for discussion of the broad lines and more or less detailed comment (written or otherwise) in the preceding stages, the conference could decide to dispense with a general debate or to limit it. If necessary, there could be a general debate exclusively for spokesmen for particular groups.

3. In the explanatory memorandum[4] the question is raised whether there ought to be some method of identifying and representing the various groups of interested States so as to reduce the scale of participation in the debate. In this respect one can think of the practice to admit only spokesmen of the particular groups to discussions and negotiations pertaining to the concrete text. Of course the suitability of such an approach would need to be investigated in advance. Furthermore, the satisfactory functioning of such a formula would have to be guaranteed, as has already been sufficiently demonstrated by difficulties arising on this point in the course of the North-South dialogue.

4. Experience has shown that representatives of groups have too little room for manoeuvre, and the negotiation process is held up. This might be prevented in particular if channels were created through which the negotiators could inform their respective "constituents" as to the course of the negotiations and in turn receive instructions. The infrastructure required by such a system (permanent representatives, etc.) would almost certainly mean that such negotiations would have to take place at United Nations Headquarters. Another disadvantage of the practice of a spokesman might be that in some cases after a compromise has been reached within a group, a further compromise with the other group might be necessary, or that a member of a group is more or less forced by the group to give up his point of view, which might have been acceptable to the other group.

5. In drafting the final text of a treaty, there is an increasing tendency to follow a consensus procedure, at least to a certain extent. This was actually formally included in the rules of procedure of the Third United Nations Conference on the Law of the Sea (A/CONF.62/30/Rev.2, rule 37 and appendix). It has the advantage that parts of the treaty which are unacceptable for some parties are not simply pushed through by a majority vote, which would endanger the over-all acceptability of the treaty for all parties. On the other hand, means should be available to end this procedure, since it carries with it the risk of protracted negotiations, and wordings capable of multifarious interpretation; in other words, clarity may be sacrificed to the desire for unanimity. Moreover, even if the consensus procedure in adopting a treaty is followed, the risk exists that States which did not object to the text of a treaty do not give their consent to be bound. Consequently, the treaty may well remain a dead letter.

2. *Final negotiation and adoption*[5]

6. In view of the often highly specialized nature of the treaties of concern to the General Assembly, notably those emanating from bodies such as UNCITRAL, the convening of an *ad hoc* body seems preferable, since it provides a better chance to gather the people with the necessary expertise for the subject. For other subjects of a less specialized nature better use could be made of the legal expertise of the Sixth Committee.

7. In general it may be said that texts should be submitted to the plenary organs for approval only when they are nearly completed. This would, however, not exclude the possibility of presentation to those organs of alternative texts, leaving them the choice between the options presented.

8. Consistent with earlier replies, it is the opinion of the Netherlands Government that the Sixth Committee should be involved in the process of treaty-making by a United Nations organ. This involvement should take the form of a review of the text as a whole. The rules of procedure applicable to the Sixth Committee must then be examined in order to determine whether they need to be modified to allow for such a review.

9. The establishment of uniform or model rules of procedure for plenipotentiary conferences is strongly supported, because it saves a lot of time. The organ convening the plenipotentiary conference could at the same time decide upon its rules of procedure.

10. The participation of non-governmental organizations should above all be ensured at the preparatory stage.

11. Inter-governmental organizations having competence in subject matter of the plenipotentiary conference must be allowed to participate. This is of special importance for those inter-governmental organizations to which their respective member States have transferred competence over matters dealt with by the conference. In this respect the Netherlands Government wishes to emphasize the importance of treating the latter category of inter-governmental organizations, to the extent possible, on a par with States. To do otherwise, e.g. by stressing notions of state sovereignty, would neglect practical realities.

Qatar (A/37/444, p. 16)

1. It is better to conduct the negotiation of treaties in the General Assembly (the Sixth Committee).

2. (*a*) Yes, in accordance with the draft treaty under consideration.

(*b*) Yes.

(*c*) Yes, through consideration of the formal and legal provisions.

3. (*a*) It is not easy to answer this question, especially as it is necessary to consider every case on its merits. Accordingly, it is necessary to allocate sufficient time to each conference so that it may be able to complete its work. Hence, the necessary preparatory work should be done, though we realize that this might impose a great burden on States, particularly third world States.

(*b*) Yes. Model rules of procedure could be established for such conferences.

(*c*) No. While every conference may set up committees according to its needs, we believe that a proliferation of committees can be counter-productive.

(*d*) No, unless there is a need for this.

(*e*) No. New elements may emerge that affect only one member of a group and not the group as a whole. States have the right to express their views when they wish to do so.

(*f*) No.

Republic of Korea (A/37/444, p. 20)

While there must not be a single method for negotiating and adopting treaties, so as to sustain the present flexibility needed for dealing with varied subjects, it is appropriate to recommend that the Sixth Committee should actively be involved in any treaty the negotiation of which, by its nature, is considered to fall within the eompetence of the General Assembly. Practice has shown that sovereign States often attaeh more importance to plenipotentiary conferenees than to the General Assembly, particularly in the case of treaties of major coneern to them. For this reason, draft treaties should be referred to plenipotentiary conferences. In brief, the question of whether to convene a plenipotentiary conference or to give the General Assembly the primary funetion with respect to final negotiation and adoption of multilateral treaties should be determined on a case-by-case basis.

Spain (A/36/553/Add.1, p. 16)

1. It would be preferable to convene *ad hoc* diplomatic conferences.

2. The question should not be put like this, because it appears to prejudge the reply to the previous question. The General Assembly would not seem to be the most appropriate organ for the adoption of treaties, for both substantive reasons (over-politicization) and procedural reasons (lack of time).

(*a*) Yes, in all cases.

(*b*) Yes.

(*c*) Yes, through the review of formal and legal clauses.

3. (*a*) We cannot give an over-all answer because it would depend on the circumstances of each case. In general, it would be desirable for conferences to be scheduled for a suffieiently long period to complete their work. Proper preparation would be needed to permit this.

(*b*) Not necessarily, although it would be desirable. Model rules of procedure could be established, with possible variants for more controversial topics.

(*c*) No. The conference is sovereign and should be able to establish whatever committees it deems neeessary.

(*d*) In general, no, although this cannot be ruled out in certain cases if the conference deems it necessary.

(*e*) No. If certain geographical groups or interest groups wish to express their views through a single spokesman, there is nothing to prevent them from doing so. Such a practice should not, however, be imposed, for it would conflict with the sovereign rights of each State participating in the conference.

(*f*) In general, no.

Switzerland (A/37/44, pp. 22-23)

L'examen et l'adoption des projets de traités intéressant l'Assemblée générale, comme ceux émanant de la CDI et de la CNUDCI, devraient revenir à une conférence de plénipotentiaires convoquée à ces fins, plutôt qu'à une grande commission de l'Assemblée générale, afin d'assurer la participation pleine et entière de tous les Etats sans distinction. De plus, comme l'a démontré la Troisième Conférence sur le droit de la mer, une conférence *ad hoc* est à même d'élaborer de manière très souple des méthodes de négociation adaptées à la nature de la matière à régir, ainsi que de modifier ses procédures et ses structures en fonction des obstacles pouvant surgir au cours des négociations. Aussi les diverses suggestions énoncées sous F.3 ne peuvent-elles être considérées que comme des moyens susceptibles d'être mis en œuvre, alternativement ou globalement, par chaque conférence, au gré des besoins.

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

1. At the concluding stage of the negotiation and adoption of multilateral treaties, it is important to strengthen the role of the Sixth Committee and of the other Main Committees of the General Assembly, in whose work States' plenipotentiaries participate. In this connection, as has already been stated, the Sixth Committee should participate in the completion of the legal provisions of treaties.

2. If the need should arise to convene an *ad hoc* plenipotentiary conference, depending on the nature of the question being considered, the duration of its work and, if necessary, other arrangements should be determined by a resolution of the General Assembly. The internal procedure for this work should be determined by the plenipotentiaries themselves.

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

1. When multilateral treaties are being negotiated and adopted, the Sixth Committee and other Main Committees of the General Assembly, in whose work States' plenipotentiaries participate, are extremely important.

2. Where it is considered necessary to convene an *ad hoc* plenipotentiary conference, in accordance with established practice and depending on the nature of the question being considered, there should be a General Assembly resolution concerning the duration and dates of the work of the plenipotentiaries and, if need be, other arrangements. The internal procedure for this work should be determined by the plenipotentiaries themselves.

United States of America (A/35/312/Add.1, pp. 38-39)

1. The process by which draft treaties are concluded and opened for signature may be termed the legislative phase. In large measure, work at this stage has been conducted by plenipotentiary conferences convened for the express purpose of concluding a treaty. On the whole, this process has worked fairly well and should not be abandoned, at any rate in the absence of a better recourse. The plenipotentiary conference provides an opportunity for delegates with relevant expertise to come together in an atmosphere of minimal distrac-

tion for the sole purpose of concluding a treaty. The achievements of such conferences in the United Nations era have been considerable.

2. There also have been accomplishments in the treaty field which have resulted from the General Assembly acting in lieu of a conference of plenipotentiaries. The conservation of fiscal and human resources requires that, to the extent appropriate, consideration be given to the conclusion of treaties in the Legal (Sixth) Committee of the General Assembly, in accordance with the practice utilized for the conventions on special missions and the protection of diplomats. In this connection, the sound recommendation contained in paragraph 14, annex I, of the Rules of Procedure of the General Assembly should be recalled, namely, that consideration be given to determining whether one of the Main Committees, especially the Legal Committee, would be able to undertake the treaty-making task (preferably working through *ad hoc* committees and small drafting committees), and paragraph 1 of annex II to the effect that, when there are important legal aspects to a question, the matter should be referred for legal advice to the Sixth Committee. The concentration of legal work in the Legal Committee is in the interests of all concerned, both because the requisite treaty-making expertise is found in the Legal Committee and because it, compared to other Main Committees, has an agenda which typically is less charged.

3. Final clauses of treaties have generally been left to conferences of plenipotentiaries or to the General Assembly to draft. While it has been the common practice for the International Law Commission to draft substantive articles and to omit proposed texts for preambles and final clauses, there would be some advantage in the Commission preparing a complete draft. Final clauses may be difficult and controversial, particularly if matters such as dispute settlement procedures are addressed. Complete draft texts, or alternative draft texts on especially difficult issues, will permit delegates to the conference of plenipotentiaries (or, as the case may be, the Assembly) to concentrate on substance and to avoid hasty drafting exercises of the preamble and final clauses.

4. As a general proposition, the International Law Commission or any body of experts involved in the initial preparation of a treaty text should make an effort to anticipate the major controversial issues likely to arise at the conference and to draft texts, in the alternative if necessary, in response to them. As it is, too many important provisions are drafted at conferences, sometimes hurriedly and with scant opportunity for study by the Conference. The process can and should be improved by developing a practice of expert elaboration of complete treaty texts.

5. While each conference will need to adopt methods suited to its particular problems, consideration should be given to the establishment of small working groups to work on particularly difficult problems. In those rare cases where the conference will require more than one session, it might be desirable to have such a group or groups meet intersessionally.

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

Council of Europe (A/36/553, p. 44)

1. Plenipotentiary conferences.

2. Not applicable. If, however, negotiations are to be completed in the General Assembly.

(*c*) Yes. Involving the Sixth Committee in the process would ensure the requisite uniformity and consistency in the treaty practices of the United Nations.

3. (*a*) Successive sessions would have some advantages, provided that they were properly prepared, *inter alia*, through exchanges of views, at an appropriate level, among the States concerned. The practice of the Council of Europe has shown the value of allowing States the time needed for reflection and consultation at the national level, at every stage of the procedure.

(*f*) In principle, yes. In particular, organizations having recognized experience in the field covered by the conference or representing regional interests should be called upon. Such involvement should take place at a stage in the proceedings which would allow active and effective collaboration.

International Atomic Energy Agency (A/37/44, p. 27)

1. There would be a variety of multilateral treaties that may be of concern to the United Nations General Assembly. Where it is a multilateral treaty of a highly technical nature such as a nuclear treaty, a Main Committee of the General Assembly would and could not normally be considered an appropriate forum for the negotiation and adoption of the treaty; in this case an *ad hoc* plenipotentiary conference or the equivalent appears to be more suitable, and the organization of the United Nations system whose statutory functions are directly relevant to the subject matter dealt with in the treaty may well be called upon to provide secretariat services.

2. The formulation of model rules of procedure for *ad hoc* plenipotentiary conferences would be useful, but it may be noted that where the negotiations of a treaty are to be completed in a forum provided by an inter-governmental organization, the existing rules of procedure for the representative organ of that organization can often be utilized with necessary modifications.

3. The establishment of a negotiating committee may be useful for certain categories of multilateral treaties. In many cases, however, informal consultations, intersessional or otherwise, can play a useful role in achieving a consensus on difficult issues involved.

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

No comments, as this section again deals primarily with the United Nations proper, including the "plenipotentiary conferences" mentioned in sub-section 3 of this section, which has nothing to do with the ITU Plenipotentiary Conference and also does not apply to the ITU administrative conferences, for both of which the ITU Convention already provides specific provisions. (See Part Four, B, ITU's contribution.)

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

To the extent that the completion of multilateral treaties is assigned to plenipotentiary conferences, it would seem helpful for their expeditious and fruitful conduct if:

—uniform or model rules of procedure were established for such conferences;

—formal debate at conferences were restricted as much as possible to group spokesmen; and

—provision were made for more extensive participation of intergovernmental and non-governmental organizations at plenipotentiary conferences.

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] *Yearbook of the International Law Commission, 1973*, vol. I, 1233rd to 1237th meetings and *ibid.*, vol. II, document A/9010, paras. 151-169.

[3] *Official Records of the General Assembly, Twenty-eighth Session, Sixth Committee*, 1396th to 1408th meetings.

[4] See Part One, para 14.

[5] A/36/553/Add.1, p. 9.

VII. DRAFTING AND LANGUAGES

1. *Should an international legislative drafting bureau be created?*
2. *Should drafting committees generally be given more extensive functions?*
3. *Should treaties continue to be formulated simultaneously in all languages in which their text is to be authentic, or should they originally be formulated in only one or two languages, with additional versions established by a special procedure later?*
4. *If negotiation in multiple languages is to continue, should the example of the Third United Nations Conference on the Law of the Sea be followed, of establishing a subgroup for each language, whose co-ordinators meet from time to time to resolve any interlingual and general questions about the text?*

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

1. There was some support for the establishment of an international language drafting bureau, but many representatives preferred either to increase the role of the Sixth Committee or to create a drafting committee within each plenipotentiary conference. As for the languages to be used in formulating treaty provisions, the need was stressed to continue the current practice of formulating treaties simultaneously in all the languages in which their texts had to be authentic. Reference was made to the example of the Third United Nations Conference on the Law of the Sea, in which a sub-group was established for each language, with the co-ordinators of all the language groups meeting from time to time to resolve any interlingual and general questions about the text.