

—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 inter-governmental and non-governmental organizations at plenipotentiary conferences.

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.

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.

⁴See Part One, para 14.

⁵A/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 DEBATE¹

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.
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B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

Argentina (A/36/553, p. 11)

1. It does not appear necessary to create a new international legislative drafting bureau.
2. The present functions of drafting committees are generally adequate—giving advice on the drafting, preparing drafts and co-ordinating, reviewing and polishing adopted texts without reopening discussion of fundamental points or altering the substance of the texts.
3. Treaties should continue to be formulated simultaneously in all languages, in order to preserve the equal rights of the various language groups and their right to monitor in their mother tongue the texts which they help to draft.

Australia (A/37/444, p. 9)

1. It is not clear what is envisaged by the term "international legislative drafting bureau" and what the powers and functions of such a bureau would be. While it might be appropriate to establish a bureau to train officials in drafting techniques, etc., it would be undesirable and unrealistic to refer texts of draft treaties that are being negotiated to an outside body composed of persons who had not participated in the negotiations.

A first step in improving the drafting of treaties might be to explore ways of achieving consistency of drafting practices to distinguish treaties from instruments which are not of treaty status, and instruments which are intended to be legally binding from those which are not so intended.

2. The functions of drafting committees and the handling of language problems depend on the subject-matter of the treaty being negotiated and the wishes of the Governments involved in the negotiations.
3. While the simultaneous formulation of treaties in all languages in which their text is to be authentic is desirable, the use of one or two languages initially would be more convenient and would facilitate the future examination of the *travaux préparatoires* for the purposes of interpreting the treaty in question.
4. The practice adopted at the United Nations Conference on the Law of the Sea is cumbersome but is probably the most practicable model for major conferences which themselves engage in significant drafting exercises.

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

The creation of an international legislative drafting bureau does not seem to be a very practical suggestion. The extent of functions to be assigned to drafting committees, as well as the procedures they should follow, should be decided in each specific case, taking into account the nature of the subject being dealt with and the peculiarities of the negotiating process.

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

1. The Byelorussian SSR considers that there is no need to establish an international legislative drafting bureau or to give the drafting committees more extensive functions.
2. The Organization has a proven practice of formulating treaties in the official and working languages of the United Nations.

Canada (A/35/312/Add.1, p. 6)

1. A technical aspect of the preparatory work for the conclusion of a multilateral treaty is the formal drafting of articles for inclusion in the text of the treaty. The need for technical drafting skills can arise during the preparatory period or during the subsequent negotiating stage. The current practice is for drafting to be done by the negotiators with the assistance of members of secretariats of international organizations. Obviously, many individuals within Governments and within international organizations have developed substantial skills in the field of treaty drafting, but there is not within the United Nations a body with expertise devoting itself solely to this matter. Moreover, there is a degree of unevenness in the drafting of international treaties, and few Governments have the resources to include in each delegation to a multilateral treaty-making conference an expert on international legal drafting. Thus, most Governments have probably come across defective drafting in treaties.

2. It may be that this matter could be dealt with by the creation of an international legislative drafting bureau. During the Sixth Committee debates on the question of a review of the multilateral treaty-making process (A/C.6/32/SR.46-50), it was also suggested that a compilation of a handbook on the drafting of treaties might also be undertaken. The Canadian authorities support such an approach provided that the mandate given to those compiling the handbook is suitably precise. These suggestions are made in the interests of simplifying, as far as is practicable, the treaty-making process. If the process could become more streamlined and efficient, it would benefit in particular smaller States which do not always have adequate material and personnel resources to meet the demands placed on them.

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

1. No.
2. No.
3. They should be drawn up in the working languages of the United Nations, since the establishment of additional versions might result in unofficial translations which altered the meaning in some respect.
4. This could help to ensure the linguistic uniformity of texts, but should not serve any other purpose.

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

The functions of drafting committees and the handling of language problems (the early formulation of treaties in all authentic versions is desirable)

depends on the merits of each individual treaty. The Law of the Sea Conference can be used as a model only in cases of similar nature.

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

The function of the drafting committee with regard to the language that should be used depends upon the importance and kinds of treaties. The method used for the United Nations Conference on the Law of the Sea could be applied only in the same categorical case.

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

It seems difficult to improve to any great extent the present situation, although the method followed by the Third Law of the Sea Conference with regard to linguistic co-ordination seems to have produced praiseworthy results so far.

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

1. Treaties should be formulated simultaneously in all languages in which their text is to be authentic.
2. For certain types of treaties, a subgroup may be established for each language, as in the case of the Third United Nations Conference on the Law of the Sea.

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

1. In some cases, drafting committees can exercise negotiating functions. However, as a general rule, drafting committees should be limited to improving the presentation of texts and harmonizing the various language versions.
2. The practice of adopting multilateral treaties in the six working languages of the United Nations General Assembly should be continued, since that practice serves the interest of avoiding cultural hegemonies.

3. The establishment of language groups within drafting committees, as in the case of the Third United Nations Conference on the Law of the Sea, should be avoided. The establishment at that Conference of such groups, open to the participation of all States, was necessary as a special arrangement, which should not set a precedent.

4. The establishment of those language groups delayed the work of the Drafting Committee, because some of their work was carried out without regard to the work of other similar groups. In short, the groups were an unnecessary additional forum within the Drafting Committee of the Conference.

Netherlands (A/36/553/Add.1, p. 10)

1. It is not considered necessary to give drafting committees more extensive functions. However, drafting committees should be allowed to function normally and their work should not be frustrated by calling each drafting change a change of substance.

2. The smaller the number of authentic texts there are, the better it is. In the case of several authentic texts it is recommendable to provide that among divergencies between the various authentic texts one should be decisive.

3. The language of the decisive authentic text should be the one in which the treaty is formulated. If need be, other language versions could be made later. Experience shows that negotiations often continue to the last moment, leaving no time to adjust the various texts to decisions then taken. Such a procedure could also bring about considerable savings in expenditures.

4. Subject to the above, where negotiations are held in multiple languages, the establishment of sub-groups for each language, whose co-ordinators meet from time to time to resolve any interlingual and general questions, is preferable.

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

Treaties should be formulated simultaneously in all languages of the United Nations.

In some cases, a sub-group may be set up for each language, as is the case at the Third United Nations Conference on the Law of the Sea.

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

The Government of the Republic of Korea has no objection either to an increase in the role of the Sixth Committee or to creation of a drafting committee within each plenipotentiary conference. As regards the languages to be used, it would be advisable to continue the current practice.

Spain (A/36/553/Add.I, p. 17)

1. This might be appropriate, as long as it performed a purely advisory function.

2. In general, no.

3. We must try to negotiate and formulate treaties in the languages in which their text is to be authentic, at least in the most widely used languages such as Spanish, French and English. We must prevent one language (generally English) from gradually monopolizing such work, especially in the negotiating stage. The increasing informality of negotiations, the use of small negotiating groups and the logistical difficulties of holding several meetings at once . . . are leading to the artificial imposition of a single language, placing non-English-speaking delegations at a disadvantage. There are cases in which, for instance, a proposal made formally in Spanish is translated into English and then back into Spanish. The final text sometimes differs considerably from the original proposal. Even when, in practice, English is imposed as the vehicle for informal negotiations, we must try to give an equal opportunity to the other official languages, especially when texts come to be published and hasty, imprecise and inaccurate translations of the English are sometimes produced.

4. The practice of establishing language subgroups within drafting groups would seem useful, but such groups would have to be given enough time for

their reports to be examined and discussed by the drafting group. We would have to ensure that the different language groups worked at the same speed and did not simply follow the English language group. Language group co-ordinators are useful in helping to solve problems of co-ordination between the different texts, but they cannot become super-members of the drafting group with decision-making powers.

Switzerland (A/37/444, p. 23)

En ce qui concerne la rédaction des traités, il ne paraît pas opportun d'attribuer aux comités de rédaction des fonctions allant au-delà de la mise au point formelle des textes. D'autre part, il convient de maintenir la pratique consistant à rédiger simultanément les traités dans toutes les langues dans lesquelles ils feront foi, seule manière d'assurer l'égalité des langages décrétés authentiques. Même si la création de six groupes linguistiques (correspondant à chacune des six langues faisant foi) par le comité de rédaction de la troisième Conférence sur le droit de la mer s'est révélée très utile, vu l'ampleur et la complexité de la tâche dévolue au comité, cette mesure ne devrait pas nécessairement s'appliquer désormais uniformément à toutes les conférences.

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

There are at present no grounds for creating an international treaty drafting bureau or for giving drafting committees more extensive functions. Nor are there any grounds for changing the existing effective practice of the United Nations regarding the language formulation of treaties.

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

There are no grounds for creating an international treaty drafting bureau or for giving drafting committees more extensive functions. As for the formulation of treaties in a number of languages, the United Nations has an existing and sufficiently effective practice of using its official and working languages.

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

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

The Council of Europe has no particular problems in this respect. Its official languages are English and French. In view of the relatively small number of member States, legal drafting does not raise any particular problem. It is done in expert committees, with the assistance of the Secretariat (which is also responsible for the final polishing of the text before its adoption by the Committee of Ministers).

International Atomic Energy Agency (A/37/444, p. 27)

There seem to be no specific needs to create a centralized drafting body such as an "international legislative drafting bureau".

It seems appropriate that treaties should continue to be formulated simultaneously in all languages in which their text is to be authentic.

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

1. The usefulness of the creation of an international legislative drafting bureau might depend a good deal on the functions envisaged to be given to that bureau. If they were of a general nature limited to elaborating recommendations on drafting multilateral treaties without being involved in the practical drafting of any particular treaty, such a bureau might serve a useful purpose.

2 to 4. No comments, as the matter is already dealt with satisfactorily, as far as the ITU is concerned, by the provisions of the ITU Convention (see I.1 and 2 above).

Organisation for Economic Co-operation and Development (A/36/553, p. 52)

1. The OECD Secretariat has no view on this matter.

2. The extension of the functions of a drafting committee in the preparation of any given multilateral treaty is entirely dependent on the circumstances of a particular negotiation.

3. The Secretariat of OECD has no view on this subject.

4. Not applicable.

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

The drafting process might be facilitated if treaties, rather than being formulated simultaneously in all languages in which their text is to be authentic, were originally to be formulated in only one or two languages, with additional versions being established by a special procedure later.

NOTE

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.

VIII. RECORDS, REPORTS AND COMMENTARIES

1. *To what extent should verbatim or summary records be maintained by organs formulating multilateral treaties:*
 - (a) *Expert groups?*
 - (b) *Restricted representative groups?*
 - (c) *Various organs of plenipotentiary conferences:*
 - (i) *Main Committees?*
 - (ii) *Negotiating committees?*
 - (iii) *Drafting committees?*
2. *Whether verbatim or summary records are kept, and especially if they are not, should certain organs and conferences prepare more complete records*