

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

---

## X. TREATY-AMENDING PROCEDURES

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

### A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE<sup>1</sup>

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

---

### B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

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

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

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

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

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

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

treaty, particularly when the series of treaties attempts to lay down rules which require wide adherence for their effectiveness (such as those establishing procedures for compensation, limits of liability and other matters affecting international commerce). The possibility exists of a series of treaties (including treaties amending earlier ones) creating a complex web of legal régimes which might not all be compatible. It would in these circumstances be desirable specifically to address the interrelationship between the particular treaties. The proposal to include in treaties provisions for automatic supersession should be considered as part of this more general question.

3. There would be value in making greater use of framework treaties, whose substantive provisions are set out in separate annexes that may be adopted or changed by an organ established by the treaty or by the organization that promulgated it. The decision-making power of the organ concerned would have to be clearly circumscribed and consideration should be given to the protection of the interests of minorities. Decisions by such organs (for which there are precedents in the area of health and civil aviation) would avoid the time-consuming procedures required for approval of treaty action under municipal laws of various countries party to the framework treaty.

*Byelorussian Soviet Socialist Republic (A/36/553/Add.1, p. 4)*

There is an established practice concerning amendments to international instruments and there is no need to change it.

*Cuba (A/36/553, p. 21)*

1. Yes, provided that the form adopted still allows for the approval in due form of the amendment by the parties.

2. This might serve as a simplified procedure.

3. This would depend on the type of treaty and the powers of the organ. It is impossible to generalize. It might be useful in the case of some treaties where the provisions adopted quickly become obsolete owing to technological developments.

*Germany, Federal Republic of (A/36/553, p. 26)*

1. The amendment of certain categories of treaties, that is to say, certain sections of treaties (technical details of implementation) can and should be simplified, as is indeed already the case with many treaties. It would be desirable and useful to select and publish existing models.

2 and 3. Whether it would be appropriate to regulate the relationship between a certain treaty and subsequent treaties on the same subject along the lines of question 2, and whether the conclusion of framework treaties whose substantive provisions (annexes) can be more easily modified, and whether the delegation of this work to a subordinate organ would facilitate the conclusion and adoption of treaties, depends on the merits of each individual case.

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

It could be done as an amendment concerning technical matters, and would require a comprehensive study to establish certain categories.

*Italy (A/36/553, p. 30)*

The Italian Government expressed reservations similar to those regarding the question of post-adoption procedures. The proposals listed here seem based on a centralized notion of the international community which is not likely to emerge today.

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

Certain categories of treaties should provide for simplified forms of amendments.

*Mexico (A/36/553, p. 38)*

1. Simplified forms of amendments not requiring a process of ratification or accession identical to that required for the entry into force of the agreement which is being amended—for example, when it is laid down that acceptance of an amendment by a conference or an organ is sufficient to bring the amendment into force—should be the exception to the rule and should be used only for technical annexes to a so-called “framework treaty”.

2. The consideration of a proposed amendment to a treaty should not be carried out by plenary or subsidiary organs of international organizations whose members are not also parties to the instrument in question.

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

1. The acceptability of treaties will become more and more dependent upon the possibility of adapting them to changing circumstances. It is, therefore, advisable to devise various amendment procedures. It would also be possible in a particular treaty to provide that certain parts could be changed by a simplified procedure.

2. Another alternative may be the greater use of framework treaties. It is essential, however, not to create amendment procedures which might lead to conflicting treaty régimes.

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

1. Yes. Certain categories of treaties should provide for simplified forms of amendments.

2. This may lead to some simplification.

3. This is possible, especially as it depends on the treaty. One should not generalize.

*Republic of Korea (A/37/444, p. 21)*

Conceding desirability of introducing flexible treaty-amending procedures into certain treaties, the whole matter should be assessed on an *ad hoc* basis according to the nature of individual cases.

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

1. Yes, in general. Lately, there has been a tendency to abuse this practice, creating situations of confusion. If treaties are to be properly implemented, States must know what obligations they are assuming. Abuse of simplified forms of amendments, recourse to tacit agreement with reduced time limits, the adoption of amendments in forums other than those which adopted the treaty, the proliferation of amendment proposals (even before the treaty or earlier amendments on the same subject have entered into force) . . . can upset the normal process of States' implementation of treaties.

2. The question is unclear.

3. This would have to be determined case by case. The excesses to which we drew attention in our reply to paragraph 1 of this section must be avoided.

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

Il conviendrait de laisser aux Etats participant à la négociation des traités le soin de décider dans chaque cas et en fonction du but à atteindre si l'un ou plusieurs des moyens mentionnés sous la section I du questionnaire à propos des procédures à suivre après l'adoption du traité devraient être mis en œuvre. Il en va de même des suggestions relatives aux procédures d'amendement des traités indiquées sous la section J du questionnaire.

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

Treaty-making procedures are established in the United Nations organs or at the conferences considering the draft treaty, in accordance with existing practice.

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

In the question of treaty-making procedures, which are also established in United Nations bodies and at the conferences considering the draft treaty, existing practice should also be followed.

---

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

*Council of Europe (A/36/553, pp. 46-47)*

1. The practice of the Council of Europe with respect to treaty-amending procedures falls essentially into two categories:

(i) Some treaties contain a clause providing for the amendment of their *annexes* or accompanying *protocols*. In accordance with the provisions of these treaties, the annexes are amended by agreement between the parties, with the Secretary-General verifying that such agreement exists and then notifying the content of the agreed amendments;

(ii) For the amendment of treaty provisions other than those contained in annexes or protocols accompanying the treaty, the procedure of an amend-

ing protocol has been used, whether or not the original instrument contained a clause relating to its amendment.

Simplified amendment procedures, including the "opting-out notice", can be envisaged only for minor amendments entailing no (substantial) change in the commitments assumed under the original treaty (see I.5 above).

2. No.

3. Yes. The possibility of making greater use of the framework treaty techniques should be considered, particularly for technical subjects. The details of how the treaty would be given effect could be governed by one of the following:

- (i) The drafting of more detailed provisions would be entrusted to a body established by the treaty. The system could include "contracting-out" procedures;
- (ii) Detailed provisions would be annexed to the treaty, but a special body established by the treaty would be responsible for amending or broadening the scope of those provisions whenever necessary.

The adoption of these methods for a framework treaty should help to solve the problems created by the difficulty of amending a treaty once it has entered into force.

*International Atomic Energy Agency (A/37/444, p. 28)*

Automatic supersession does not, in principle, seem desirable since necessary steps should be taken by the State concerned to denounce or otherwise give effect to such supersession in respect of the treaty thus superseded.

Framework treaties with annexes as indicated in paragraph 3 would be useful for certain categories of treaties such as those setting out technical standards.

*International Telecommunication Union (A/37/444, p. 31)*

Such procedures should, again, be left to the specific requirements of the Organization under the auspices of which a treaty has been concluded, as they may differ considerably from one organization to another depending on the subject covered by the treaty. With regard to the ITU, both the ITU Convention, as the basic instrument of the Union, and the Administrative Regulations as annexes to the Convention are constantly revised and updated, as necessary in view of new developments in the field of telecommunications, by the ITU Plenipotentiary Conference and the ITU Administrative Conferences respectively, in accordance with the detailed provisions contained in the ITU Convention.

*Organisation for Economic Co-operation and Development  
(A/36/553, p. 53)*

1. Experience shows, particularly in regard to treaties covering technical matters, that provision for simplified forms of amendment is virtually indispensable.

2. The OECD secretariat is not in a position to reply to this question.

3. In line with the reply to question 1 under this heading, the secretariat finds that the use of a framework treaty is of considerable utility in many areas. In giving this response the secretariat assumes that reference to "substantial provisions . . . set out in separate annexes that may be adopted or changed by an organ established by the treaty or by the organization that promulgated it" is meant to refer to detailed technical matters of substance rather than the fundamental provisions of the treaty.

*World Health Organization (A/36/553, p. 59)*

1. Certain categories of treaties should provide for simplified forms of amendments.
2. No comments.
3. Greater use should be made of framework treaties, whose substantive provisions are set out in separate annexes that may be adopted or changed by an organ established by the treaty or by the organization that promulgated it.

---

NOTES

<sup>1</sup>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.

<sup>2</sup>See part two, para. 62 (d).

---

XI. ADDITIONAL STUDIES

1. *Should an attempt be made to solicit additional responses from inter-governmental organizations that did not respond or that did not respond in sufficient detail to the Secretary-General's first request?*
2. *Should the responses of inter-governmental organizations be published in some form, perhaps in a separate volume of the Legislative Series (in which other documentation relevant to this item might also be included)?*
3. *Should the Secretariat prepare a detailed description of all significant multilateral treaty-making techniques, perhaps in the form of an annotated manual?*
4. *Should the Secretariat assist in the formulation of the formal clauses of multilateral treaties by:*
  - (a) *Updating the Handbook of Final Clauses and extending it to additional categories of formal clauses?*
  - (b) *Formulating sets of model clauses?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE<sup>1</sup>

1. It was noted that a very limited number of Governments had submitted observations in response to the relevant General Assembly resolutions and that it was desirable to solicit Governments and the international organizations concerned to comment on the report of the Secretary-General, taking into account the specific questions contained in section IV of the report, or on any other aspect of the subject, as they considered desirable.