

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.

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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).

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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.

2. The materials gathered for the purpose of the present review (i.e. the Secretary-General's report and the responses submitted by Governments, by international organizations and by the International Law Commission) were considered extremely valuable. There was wide support for their publication and the Secretary-General was requested to explore this possibility.

3. A sizeable number of representatives also emphasized the desirability of updating the *Handbook of Final Clauses*<sup>2</sup> and the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements*,<sup>3</sup> which have been out of print for well over a decade. Their republication in updated form would provide references and could assist States in formulating treaties.

4. Limited interest was also expressed in requesting the Secretary-General to prepare sets of model final clauses or a detailed description of significant multilateral treaty-making techniques in the form of an annotated manual. Many representatives emphasized that no single, fixed procedure should be laid down for the making of multilateral treaties and that flexibility was required in view of the divergent subjects of proposed treaties and the different circumstances under which they had to be formulated and negotiated.

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#### B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

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

1. Bearing in mind that the subject should not be approached too hastily, since it is important to adopt a methodical, long-term approach, an attempt might be made to solicit additional detailed responses from intergovernmental organizations, both on the questions already raised and on any others which may arise from the discussions on the subject in the Sixth Committee.

2. In view of the specific nature of the questions generally dealt with by each intergovernmental organization, it would be preferable to publish the responses in a separate volume.

3. It would be useful to reissue the *Handbook of Final Clauses*, updated and extended as indicated, and to devise a system for continual updating at the lowest cost (e.g., loose leaves).

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

1. It should be for the working group to make a recommendation to the Sixth Committee on whether additional responses from inter-governmental organizations should be sought, in the light of the information then available.

2. These matters have already been dealt with in resolution 36/112 adopted on 10 December 1981.

3 and 4. We believe that the delegations of States negotiating treaties would be greatly assisted by having a detailed description of all significant multilateral treaty-making techniques in the form of an annotated manual, and by having sets of model clauses. To this end, the Working Group may wish to consider whether the Secretariat should be requested to prepare a comprehensive collation of these significant techniques.

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

Although the usefulness of additional studies on the subject is not disputed, it is doubtful whether the practical results that could be obtained would justify the effort and expense involved. The updating of the *Handbook on Final Clauses*, with its extension to additional categories of formal clauses, however, seems an acceptable suggestion.

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

When the United Nations Secretariat, in providing legal assistance, prepares auxiliary material, such documents should, in the opinion of the Byelorussian SSR, only be for reference.

*Canada (A/35/312/Add.1, p. 19)*

In this connection one example which could be considered is the preparation of a handbook on treaties, dealing with such matters as model preliminary and final clauses. On the basis of specific suggestions such as this, the Sixth Committee will be able to determine how this matter should be pursued in order to bring about productive results.

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

1. We think that this should be done, since a more complete analysis will be possible with a great number of opinions in hand.

2. This would be useful.

3. In our view, such an approach would help to determine in advance how a treaty should be formulated and make it possible to choose the most appropriate method for the subject in question.

4. (a) Yes.

(b) Yes, but (a) would be more comprehensive. In any event, those model clauses under (b) that are relevant to the intended purpose could be included in (a).

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

1. It would seem appropriate to solicit additional responses from inter-governmental organizations. In this connection reference is made to the current work of the International Law Commission on the preparation of draft articles on the law of treaties concluded between States and international organizations or between two or more international organizations. The responses of inter-governmental organizations should be made accessible to the public in suitable form.

2. The Secretary-General should prepare a detailed description of the procedures leading to the conclusion of multilateral treaties in the form of a manual and at the same time update the *Handbook of Final Clauses*.

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

1. Agrees to seek supplementary answers from inter-governmental organizations which have not submitted comments requested by the Secretary-

General, and those answers should be published as part of the Legislative Series. On the existing answers which are available now, it is to be hoped that these will be systematized in order to be commented upon.

2. The United Nations Secretariat could prepare a detailed description regarding the technique of multilateral treaty-making process, and Indonesia will support the Secretariat in its efforts as follows:

(a) To renew the guidelines concerning the *Handbook of Final Clauses*.

(b) To establish model as a manual to prepare or formulate a United Nations multilateral treaty.

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

1. Questions 3 and 4 deserve a rather positive answer. In effect, the drafting of an annotated manual of all the techniques utilized so far for multilateral treaty-making may be useful, if it is done objectively by independent experts, selected on the basis of rigorous criteria of competence, who could work under the auspices of the legal department of the United Nations Secretariat or of UNITAR. Similarly, the revision of the *Handbook of Final Clauses*, published in a limited edition in 1957 and practically unavailable today, seems most advisable, given the significant growth of practice over the last 25 years. The handbook should be extended to deal with every kind of final clause, including those regarding territorial application of treaties and those relating to participation in a treaty of "groups" of States or international bodies. A work of this kind would greatly assist the consolidation and co-ordination of treaty-making practice, thereby reducing the possibility of sterile polemics.

2. On the other hand, it does not appear appropriate, for reasons stated at the beginning of this commentary, to draft "model clauses" (point 4(b)), the subject of which—*inter alia*—the questionnaire does not specify; nor does it seem useful to respond in the affirmative to questions 1 and 2.

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

1. The Secretariat should prepare a detailed description of all significant multilateral treaty-making techniques, perhaps in the form of an annotated manual.

2. It should assist in the formulation of formal clauses by formulating sets of model clauses and by updating the *Handbook of Final Clauses*.

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

1. Any effort to obtain the information needed to carry out a general review of the situation seems highly advisable. Furthermore, discussions by the United Nations General Assembly with the aim of formulating suggestions on the multilateral treaty-making process can have an impact on the rationalization of that process and on a more appropriate selection of subjects suitable for incorporation in multilateral treaties prepared each year, with a view to adapting such activity to the real capacity of Governments.

2. The preparation by the Secretariat of the United Nations, as a result of such discussions, of a manual on the most significant multilateral treaty-

making system or techniques would also be useful; that work could be supplemented by updating the *Handbook of Final Clauses* and extending it to additional categories of clauses, for example those relating to peaceful settlement of disputes.

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

A publication of the responses received from inter-governmental organizations and of other relevant documentation is welcomed. A detailed, descriptive analysis of all significant multilateral treaty-making techniques is also considered very useful. The formulation of sets of model clauses, for instance by abstracting the most common ones from the final clauses of various treaties, would be very useful. At the same time one might think of an updating of the *Handbook of Final Clauses*.

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

1. Yes, this should be done, as additional responses will make it possible to make a thorough analysis.

2. No. Perhaps it would be better to publish a summary of the responses which present the best results. If such a summary is published it should not be published within the framework of the *Legislative Series*.

3. Yes. We believe that it would be useful if the Secretariat prepared a detailed description of all significant multilateral treaty-making techniques.

4. (a) Yes.

(b) Yes. However, the *Handbook of Final Clauses* mentioned in paragraph (a) could be more complete, and in all cases paragraph (a) could embody the sets of model clauses mentioned in paragraph (b) which could be of assistance in formulating formal clauses.

*Republic of Korea* (A/37/444, p. 18)

With respect to questions involving inter-governmental organizations, there would be further need for such solicitation, and in view of the specific nature of the questions dealt with by individual inter-governmental organizations, it would be preferable to publish a separate volume containing significant multilateral treaty-making techniques. Insofar as the practical results that could be achieved from the formulation of relevant clauses are worthy of the efforts and expenses involved, no one could dispute its usefulness. The updating of the *Handbook of Final Clauses*, *inter alia*, seems a desirable task.

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

1. Yes, especially when no response is received from specialized agencies having considerable experience in the elaboration of international treaties, for example IMCO and ICAO.

2. No. Perhaps a summary of the responses, containing the most important conclusions, might be published. It should not be published in the *Legislative Series*.

3. This would be useful, but not essential.

4. It would be useful, if the Secretariat updated and extended the *Handbook of Final Clauses*. The formulation of model clauses would also be useful; they could be prepared by the International Law Commission or, at least, under its supervision.

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

La mise à jour du Recueil des clauses finales et du Précis de la pratique du Secrétaire général dépositaire d'accords multilatéraux répondrait à un besoin indiscutable et devrait dès lors être envisagée. La rédaction de séries de clauses types pourrait d'autre part se révéler utile.

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

With regard to the possibility of additional studies, at this stage there is no need to go beyond the results which have already been published; it is apparent from document A/35/312/Add.1 of 28 August 1980 that the majority of States do not express any interest in further broad studies on this problem.

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

With regard to the provision by the United Nations Secretariat of legal assistance on multilateral treaty-making questions within the United Nations, the auxiliary material which it prepares should not be anything more than reference aids.

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

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

1. —

2. Yes. Publication of these responses would provide an important source of information on the procedures followed by the various international organizations with respect to the multilateral treaty-making process and would thus constitute a valuable tool for both theoreticians and practitioners involved in that process.

3. Yes, for the same reasons. Consideration might be given to a two-part publication (manual): part one dealing systematically with multilateral treaty-making techniques in general, and part two analysing the techniques used by various inter-governmental organizations.

4. (a) Not applicable (see resolution 35/162, para. 5).

(b) Such a practice does not exist in the Council of Europe, except in the case of final clauses, for which a model has been approved by the Committee of Ministers.

*International Atomic Energy Agency (A/37/444, p. 26)*

The compilation of all significant multilateral treaty-making techniques and the formulation of sets of model clauses as generally used in multilateral

treaties in recent years would be very useful. It is suggested, however, that they should be exemplary, rather than prescriptive.

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

The General Assembly has already taken decisions in resolution 35/162 on many of the questions raised under this head. However, it is not clear whether it gave preference to the type of publication envisaged in question 2 or to the type envisaged in question 3. A detailed analytical study of the kind envisaged in question 3 would no doubt be particularly useful.

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

1. Yes.

2. The publication of the responses of inter-governmental organizations in a separate volume of the *Legislative Series* might indeed be useful, in particular if the contributions describing each organization's specific techniques and procedures in respect of the overall subject is included, so as to give an idea of the multiplicity of the existing treaty-making practices from which all concerned could benefit.

3. A detailed description of all significant multilateral treaty-making techniques in a form of an annotated manual to be issued by the Secretariat might indeed be very helpful, but would certainly represent a rather cumbersome and time and man-power consuming undertaking.

4. (a) The updating of the *Handbook of Final Clauses* by extending it to an additional category of formal clauses would be very welcome.

(b) The usefulness of formulating "sets of model clauses" appears, however, to be doubtful. A lot would depend on what should be understood by "model clauses" and on whether there might be many such clauses other than "Final Clauses", which could be of use to all concerned.

*Organisation for Economic Co-operation and Development (A/36/553, p. 50)*

1. Not applicable.

2. It would appear to be most useful that the responses of inter-governmental organizations be published in an appropriate form.

3. The preparation by the United Nations Secretariat of a detailed description of significant multilateral treaty-making techniques would be of interest but it is not within the competence of the OECD secretariat to take a position in this matter.

4. Updating by the United Nations Secretariat of the *Handbook of Final Clauses* would clearly be useful. The formulation of sets of model clauses by the Secretariat would appear to be of a more limited application in that the circumstances of the elaboration and the conclusion of multilateral treaties differ according to the subject and the requirements of the Organization concerned.

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

1. It appears doubtful whether much might be gained from an attempt 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. The organizations were given ample time to respond to that request, and *lacunae* in the responses may even be intentional, because the organizations felt unable to give detailed and definite indications, due to the complexity of, and heterogeneity of approaches to, the multilateral treaty-making process.

2. In these circumstances, there may also be hesitations regarding the proposal that the responses of inter-governmental organizations should be published in some form. Much further effort would be required to obtain the necessary precisions, revisions and additions, that would be necessary to permit a meaningful form of publication of the organizations' responses. It is understood that the General Assembly has not, so far, decided definitely in favour of such publication (cf. "possible publication" in paragraph 4 of resolution 35/162) and that your request of 5 May 1981 for any revision or addition does not imply that these and the initial responses of the organizations would be published in their original form.

3. It would seem preferable that the Secretariat prepare a detailed analytical description of all significant multilateral treaty-making techniques, perhaps in the form of an annotated manual.

4. WHO would welcome it if the United Nations Secretariat could assist in the formulation of the final clauses of multilateral treaties by:

(a) Updating the *Handbook of Final Clauses* and extending it to additional categories of final clauses, in particular the question of conflict with other treaties, and by

(b) Formulating sets of model clauses.

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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>ST/LEG/6, published in 1957.

<sup>3</sup>ST/LEG/7, published in 1959.