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REVIEW OF THE MULTILATERAL
TREATY-MAKING PROCESS



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RÉEXAMEN DU PROCESSUS
D'ÉTABLISSEMENT
DES TRAITÉS MULTILATÉRAUX

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TABLE OF CONTENTS

TABLE DES MATIÈRES

	<i>Page</i>
INTRODUCTION	1
Part One: Rationale for the review of the multilateral treaty-making process	5
Première partie : Raisons justifiant le réexamen du processus d'établissement des traités multilatéraux.....	5
I. PURPOSE OF THE INITIATIVE	7
II. EXTENT OF UNITED NATIONS TREATY-MAKING ACTIVITY.....	8
III. VARIETY OF METHODS USED.....	8
IV. INQUIRY NOT TO EXTEND TO THE WORK OF SPECIALIZED AGENCIES.....	10
V. NATURE OF THE INQUIRY	10
VI. POSSIBLE COURSE OF THE INITIATIVE	11
Part Two: Analytical review of the process: report of the Secretary-General.....	13
Deuxième partie : Réexamen analytique du processus : rapport du Secrétaire général	13
I. INTRODUCTION.....	15
II. GENERAL FEATURES OF MULTILATERAL TREATY-MAKING	16
A. Within the Organization of the United Nations	16
B. Within other inter-governmental organizations	21
III. SPECIAL FEATURES OF MULTILATERAL TREATY-MAKING PROCESSES.....	23
A. Initiation of treaty-making.....	24
1. Proposal	24
2. Pre-initiation studies.....	24
3. Formal initiation of treaty-making.....	25
4. Decision as to type of instrument	25
B. Formulation of multilateral treaties	27
1. Initial draft.....	27
2. Negotiation	27
3. Consultations with Governments and others.....	28
4. Drafting committees.....	29
5. Languages.....	30
6. Final clauses	31
7. Records and commentaries.....	31
8. Conflicts with other treaties	32

	<i>Page</i>
C. Adoption of multilateral treaties	33
1. Organ	33
2. Special procedural rules	33
3. Voting majorities	34
D. Post-adoption concerns.....	35
1. Facilitating acceptance through method of formulating treaties	35
2. Follow-up on State action	36
E. Supplementing and updating treaties.....	36
Part Three: Comments and observations by Governments and international organizations	39
Troisième partie : Commentaires et observations des gouvernements et organisations internationales	39
I. GENERAL COMMENTS ON THE REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS.....	41
A. Summary of general views expressed during the debate.....	41
B. Written comments and observations by Governments.....	42
Australia.....	42
Austria.....	43
Brazil.....	44
Bulgaria.....	44
Byelorussian Soviet Socialist Republic.....	45
Canada.....	46
Indonesia.....	47
Italy.....	47
Japan.....	47
Mexico.....	48
Netherlands	49
Qatar	50
Republic of Korea.....	50
Spain	51
Switzerland	52
Ukrainian Soviet Socialist Republic.....	53
United Kingdom of Great Britain and Northern Ireland	54
Union of Soviet Socialist Republics	54
United States of America.....	55
C. Written comments and observations by international organizations	56
European Conference of Ministers of Transport.....	56
International Atomic Energy Agency.....	57
International Telecommunication Union	57
Organisation for Economic Co-operation and Development	58
United Nations Educational, Scientific and Cultural Organization	59
Universal Postal Union	59
World Intellectual Property Organization	60

	<i>Page</i>
II. OVERALL BURDEN OF MULTILATERAL TREATY-MAKING PROCESS.....	61
A. Summary of general views expressed during the debate.....	61
B. Written comments and observations by Governments.....	62
Argentina	62
Australia.....	62
Brazil.....	62
Byelorussian Soviet Socialist Republic.....	62
Cuba.....	63
Germany, Federal Republic of.....	63
Indonesia.....	63
Italy.....	63
Mali.....	64
Mexico.....	64
Netherlands	64
Qatar	64
Republic of Korea.....	65
Spain	65
Ukrainian Soviet Socialist Republic.....	65
Union of Soviet Socialist Republics	66
C. Written comments and observations by international organi- zations	66
Council of Europe	66
International Labour Organisation	67
International Telecommunication Union	67
Organisation for Economic Co-operation and Development	67
World Health Organization	68
III. OVERALL CO-ORDINATION OF MULTILATERAL TREATY-MAKING	68
A. Summary of general views expressed during the debate.....	68
B. Written comments and observations by Governments.....	69
Argentina	69
Australia.....	69
Brazil.....	70
Byelorussian Soviet Socialist Republic.....	70
Cuba.....	70
Germany, Federal Republic of.....	70
Indonesia.....	71
Italy.....	71
Mali.....	71
Mexico.....	71
Netherlands	72
Qatar	72
Republic of Korea.....	72
Spain	73
Switzerland	73
Union of Soviet Socialist Republics	73
C. Written comments and observations by international organi- zations	73
Council of Europe	73

	<i>Page</i>
International Labour Organisation	74
International Telecommunication Union	74
Organisation for Economic Co-operation and Development	75
World Health Organization	75
IV. GENERAL IMPROVEMENTS OF THE TREATY-MAKING PROCESS IN THE UNITED NATIONS.....	75
A. Summary of general views expressed during the debate.....	76
B. Written comments and observations by Governments.....	76
Argentina	76
Australia.....	77
Austria.....	78
Brazil.....	79
Bulgaria.....	79
Byelorussian Soviet Socialist Republic.....	80
Canada	80
Cuba	82
Germany, Federal Republic of.....	82
Indonesia.....	82
Italy.....	83
Mali	83
Mexico.....	83
Netherlands	84
Qatar	86
Republic of Korea.....	87
Spain	87
Switzerland	87
Ukrainian Soviet Socialist Republic.....	88
Union of Soviet Socialist Republics	88
United States of America	89
C. Written comments and observations by international organizations	90
Council of Europe	90
International Atomic Energy Agency.....	90
Organisation for Economic Co-operation and Development	90
World Health Organization	91
V. WORK OF THE INTERNATIONAL LAW COMMISSION	91
A. Summary of general views expressed during the debate.....	92
B. Written comments and observations by Governments.....	93
Argentina	93
Australia.....	94
Brazil.....	95
Byelorussian Soviet Socialist Republic.....	96
Cuba.....	96
Germany, Federal Republic of.....	97
Indonesia.....	99
Italy	99
Mali	100
Mexico.....	100

	<i>Page</i>
Netherlands	101
Qatar	103
Republic of Korea	103
Spain	103
Ukrainian Soviet Socialist Republic	104
Union of Soviet Socialist Republics	104
United Kingdom of Great Britain and Northern Ireland	105
United States of America	106
C. Written comments and observations by international organizations	111
Council of Europe	111
Organisation for Economic Co-operation and Development	111
World Health Organization	111
VI. FINAL NEGOTIATION AND ADOPTION OF MULTILATERAL TREATIES	112
A. Summary of general views expressed during the debate	113
B. Written comments and observations by Governments	114
Argentina	114
Australia	115
Austria	116
Brazil	119
Byelorussian Soviet Socialist Republic	120
Canada	120
Cuba	122
Germany, Federal Republic of	123
Indonesia	123
Italy	123
Mali	124
Mexico	124
Netherlands	125
Qatar	126
Republic of Korea	127
Spain	127
Switzerland	128
Ukrainian Soviet Socialist Republic	128
Union of Soviet Socialist Republics	128
United States of America	128
C. Written comments and observations by international organizations	129
Council of Europe	129
International Atomic Energy Agency	130
International Telecommunication Union	130
World Health Organization	130
VII. DRAFTING AND LANGUAGES	131
A. Summary of general views expressed during the debate	131
B. Written comments and observations by Governments	132
Argentina	132
Australia	132
Brazil	132

	<i>Page</i>
Byelorussian Soviet Socialist Republic.....	133
Canada	133
Cuba.....	133
Germany, Federal Republic of.....	133
Indonesia.....	134
Italy	134
Mali.....	134
Mexico.....	134
Netherlands	134
Qatar	135
Republic of Korea	135
Spain	135
Switzerland	136
Ukrainian Soviet Socialist Republic.....	136
Union of Soviet Socialist Republics	136
C. Written comments and observations by international organi- zations	136
Council of Europe	136
International Atomic Energy Agency.....	136
International Telecommunication Union	137
Organisation for Economic Co-operation and Development	137
World Health Organization	137
VIII. RECORDS, REPORTS AND COMMENTARIES	137
A. Summary of general views expressed during the debate.....	138
B. Written comments and observations by Governments.....	138
Argentina	138
Australia.....	139
Austria.....	139
Brazil	141
Byelorussian Soviet Socialist Republic.....	141
Canada.....	141
Cuba.....	141
Germany, Federal Republic of.....	142
Indonesia.....	142
Italy	142
Mali	143
Mexico.....	143
Netherlands	143
Qatar	144
Republic of Korea	144
Spain	144
Switzerland	144
Ukrainian Soviet Socialist Republic.....	145
Union of Soviet Socialist Republics	145
United Kingdom of Great Britain and Northern Ireland	145
United States of America.....	145
C. Written comments and observations by international organi- zations	146
Council of Europe	146

	<i>Page</i>
International Atomic Energy Agency.....	146
International Telecommunication Union	147
Organisation for Economic Co-operation and Development	147
World Health Organization	147
IX. POST-ADOPTION PROCEDURES.....	148
A. Summary of general views expressed during the debate	149
B. Written comments and observations by Governments.....	149
Argentina	149
Australia.....	150
Brazil	151
Byelorussian Soviet Socialist Republic.....	151
Cuba.....	151
Germany, Federal Republic of.....	152
Indonesia.....	152
Italy	152
Mali	153
Mexico.....	153
Netherlands	154
Qatar	156
Republic of Korea	156
Spain	156
Ukrainian Soviet Socialist Republic.....	157
Union of Soviet Socialist Republics	157
United States of America.....	157
C. Written comments and observations by international organi- zations	159
Council of Europe	159
International Atomic Energy Agency.....	159
Telecommunication Union	160
World Health Organization	160
X. TREATY-AMENDING PROCEDURES	161
A. Summary of general views expressed during the debate.....	161
B. Written comments and observations by Governments.....	161
Argentina	161
Australia.....	161
Byelorussian Soviet Socialist Republic.....	162
Cuba.....	162
Germany, Federal Republic of.....	162
Indonesia.....	162
Italy	163
Mali	163
Mexico.....	163
Netherlands	163
Qatar	163
Republic of Korea	163
Spain	164
Switzerland	164
Ukrainian Soviet Socialist Republic.....	164
Union of Soviet Socialist Republics	164

	<i>Page</i>
C. Written comments and observations by international organizations	164
Council of Europe	164
International Atomic Energy Agency.....	165
International Telecommunication Union	165
Organisation for Economic Co-operation and Development	165
World Health Organization	166
XI. ADDITIONAL STUDIES.....	166
A. Summary of general views expressed during the debate.....	166
B. Written comments and observations by Governments.....	167
Argentina	167
Australia.....	167
Brazil	168
Byelorussian Soviet Socialist Republic.....	168
Canada	168
Cuba.....	168
Germany, Federal Republic of.....	168
Indonesia.....	168
Italy	169
Mali	169
Mexico.....	169
Netherlands	170
Qatar	170
Republic of Korea.....	170
Spain	170
Switzerland	171
Ukrainian Soviet Socialist Republic.....	171
Union of Soviet Socialist Republics	171
C. Written comments and observations by international organizations	171
Council of Europe	171
International Atomic Energy Agency.....	171
International Labour Organisation	172
International Telecommunication Union	172
Organisation for Economic Co-operation and Development	172
World Health Organization	173
Part Four: Multilateral treaty-making process in the United Nations, the specialized and related agencies and other international organizations.....	175
Quatrième partie : Processus d'établissement des traités multilatéraux au sein des Nations Unies, des institutions spécialisées et organismes connexes, et d'autres organisations internationales	175
I. UNITED NATIONS	177
A. Centre for Human Rights	177
1. Introduction.....	177
2. The process	178
(a) Treaties drafted in human rights organs, forwarded to the General Assembly through the Economic and So-	

	<i>Page</i>
cial Council and opened for signature and ratification or accession by the General Assembly.....	178
(i) Convention on the Prevention and Punishment of the Crime of Genocide (1948)	178
(ii) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).....	181
(iii) International Convention on the Elimination of All Forms of Racial Discrimination (1965)	182
(iv) International Covenants on Human Rights.....	183
(v) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.....	185
(vi) International Convention on the Suppression and Punishment of the Crime of <i>Apartheid</i>	187
(b) Treaties drafted in human rights organs, considered by international conferences convened by the United Nations and opened for signature and ratification or accession by such conferences: Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery	188
(c) Treaties initiated in human rights organs and sent for consideration by conferences not convened by the United Nations: draft convention for the protection of journalists.....	191
(d) Treaties initiated by international conferences convened by the United Nations and referred to United Nations human rights organs: Convention on the International Right of Correction	194
(e) Instruments drafted mainly at the final stage by the General Assembly: Optional Protocol to the International Covenant on Civil and Political Rights	195
(f) Treaties conceived in United Nations human rights organs but elaborated elsewhere in the United Nations system	195
3. The form	195
Protocol amending the Slavery Convention of 25 September 1926	195
4. Proposed conventions currently under consideration.....	197
(a) Draft international convention on freedom of information.....	197
(b) Draft international convention on the elimination of all forms of religious intolerance	200
(c) Draft international convention against torture	203
(d) Draft international convention on the rights of the child.....	204
5. Initiation	204
(a) Governments.....	205
(b) United Nations organs.....	205
(c) Rapporteurs or authors of studies	205
(d) Non-governmental organizations.....	206

	<i>Page</i>
6. Provision of drafts or study of issues	206
(a) Governments.....	206
(b) United Nations organs.....	206
(c) Rapporteurs or authors of studies	207
(d) Non-governmental organizations.....	207
(e) Secretariat.....	207
7. Consultation of Governments.....	207
8. Negotiation	208
(a) Working Group of Experts	208
(b) <i>Ad hoc</i> committees of government representatives.....	208
(c) Co-operation between the Third Committee and the Sixth Committee	208
(d) Dispensation with general debate in the Third Com- mittee.....	208
9. Level of change introduced at last stage	209
B. Department for Disarmament Affairs.....	216
1. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water	216
2. Treaty for the Prohibition of Nuclear Weapons in Latin America.....	217
3. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.....	218
4. Treaty on the Non-Proliferation of Nuclear Weapons.....	220
5. Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof.....	221
6. Convention on the Prohibition of the Development, Pro- duction and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.....	222
7. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques.....	223
8. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects...	224
9. Conclusions.....	227
C. Division of Narcotic Drugs.....	228
1. Introduction	228
2. The initiative.....	229
3. The process	229
4. Organization of the plenipotentiary conferences.....	231
5. Consultations	232
6. Level of changes	232
7. Records	233
8. Official commentaries.....	233
9. Conclusions.....	233
D. Economic and Social Commission for Asia and the Pacific.....	249
1. Asia and Pacific Coconut Community (APCC).....	249
2. The Asian Development Bank (ADB)	250
3. The Asian Rice Trade Fund	251

	<i>Page</i>
4. The first Agreement on Trade Negotiations among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Bangkok Agreement).....	252
5. Pepper Community	253
6. Agreement Establishing the Southeast Asia Tin Research and Development Centre (SEATRADE)	254
7. Asian Reinsurance Corporation	255
8. Asia-Pacific Telecommunity	257
E. Economic Commission for Europe.....	259
1. Inland transport	259
2. Development of trade	260
(a) Description of stages of elaboration of the 1961 European Convention on International Commercial Arbitration	260
(i) Initiative	260
(ii) Preparation of the initial draft by and the role in general of the <i>ad hoc</i> Working Party of Experts on Arbitration	261
(iii) Readings.....	261
(iv) Special meeting concerning Article IV	262
(v) Adoption and authentication of final treaty text ..	262
(vi) Opening for signature and accession.....	262
(b) Comment on one aspect of techniques used in multilateral treaties regulating international trade procedures.....	263
3. Description of stages in the elaboration of the 1979 Convention on Long-range Transboundary Air Pollution.....	264
(a) Initiatives.....	264
(b) Preparation of the text of the Convention and of accompanying documents	265
(c) Convocation of the High-level Meeting on the Protection of the Environment.....	265
(d) Meeting of the <i>Ad Hoc</i> Group of Experts to Finalize the Legal and Linguistic Editing of the Documents to be submitted to the High-level Meeting on the Protection of the Environment	266
(e) Formal adoption of the Convention and of the two accompanying documents	266
(f) Opening for signature	266
(g) Ratification, acceptance, approval and accession.....	266
F. Economic Commission for Latin America.....	266
G. International Law Commission	268
1. The International Law Commission as a United Nations body.....	268
2. Object and functions of the International Law Commission ..	270
3. Programme of work of the International Law Commission...	275
4. The role of the International Law Commission and its contribution to the treaty-making process through the preparation of draft articles	278

	<i>Page</i>
5. Consolidated method and techniques of work of the International Law Commission as applied in general to the preparation of draft articles	283
(a) Preliminary stage of the consideration of a topic	283
(i) Plan of work on a topic selected for consideration and appointment of a Special Rapporteur ...	283
(ii) Request for data and information from Governments	285
(iii) Studies and research projects by the Secretariat .	285
(b) The first reading of the draft articles submitted by the Special Rapporteur	286
(i) Discussion of the Special Rapporteur's reports ...	286
(ii) The Drafting Committee	286
(iii) Consideration by the Commission of the texts approved by the Drafting Committee	287
(iv) Transmittal of provisional draft articles for comments and observations from Governments .	287
(c) The second reading of the draft articles under preparation by the Commission	287
(i) Re-examination of the preliminary draft articles and the adoption of a final draft	287
(ii) Recommendations by the Commission to the General Assembly with respect to the final draft articles	288
6. Other methods and techniques employed by the International Law Commission	290
7. Relationship between the General Assembly and the International Law Commission	293
(a) The annual report submitted by the International Law Commission to the General Assembly	293
(b) Consideration by the General Assembly of the reports of the International Law Commission	294
(i) Procedural recommendations concerning beginning of work on a topic, continuing work on a topic, giving priority to the study of a topic, completing particular draft articles under preparation, etc.	294
(ii) Substantive recommendations concerning the study of a given topic or the preparation of a specific set of draft articles	296
(iii) Decisions on recommendations made by the International Law Commission to conclude a convention on the basis of final draft articles prepared by it	296
8. Elaboration and conclusion of conventions on the basis of draft articles prepared by the International Law Commission following a General Assembly decision to that effect	299
(a) By an international conference convened by the General Assembly	299
(b) By the General Assembly	303
9. Conclusions	304

	<i>Page</i>
H. Office of Legal Affairs	313
1. Convention on the Privileges and Immunities of the United Nations	314
(a) First stage	314
(b) Intermediate stage.....	315
(c) Final stage.....	316
2. Constitution of the International Refugee Organization.....	316
(a) Initial stage	316
(b) Intermediate stage.....	317
(c) Final stage.....	319
3. Convention on the Privileges and Immunities of the Specialized Agencies	320
(a) Initial stage	320
(b) Intermediate stage.....	320
(c) Final stage.....	321
4. Protocols amending the Convention of 30 September 1921 on the Suppression of the Traffic in Women and Children, the Convention of 11 October 1933 on the Suppression of the Traffic of Women of Full Age and the Convention of 12 September 1923 on the Suppression of the Circulation of and Traffic in Obscene Publications.....	322
(a) Initial stage	322
(b) Intermediate stage.....	323
(c) Final stage.....	323
5. Convention on the Inter-Governmental Maritime Consultative Organization	324
(a) Initial stage	324
(b) Intermediate stage.....	325
(c) Final stage.....	326
6. Revised General Act for the Pacific Settlement of International Disputes	326
(a) Initial stage	326
(b) Intermediate stage.....	326
(c) Final stage.....	327
7. Convention on Declaration of Death of Missing Persons	327
(a) Initial stage	327
(b) Intermediate stage.....	327
(c) Final stage.....	328
8. Convention on the Recovery Abroad of Maintenance.....	329
(a) Initial stage	329
(b) Intermediate stage.....	329
(c) Final stage.....	331
9. Statute of the International Atomic Energy Agency	331
(a) Initial stage	331
(b) Intermediate stage.....	332
(c) Final stage.....	332
10. Convention on Transit Trade of Land-locked States	332
(a) Initial stage	332
(b) Intermediate stage.....	333
(c) Final stage.....	334

	<i>Page</i>
11. International Convention against the Taking of Hostages...	334
(a) Initial stage	334
(b) Intermediate stage.....	334
(c) Final stage.....	336
I. Office of the United Nations High Commissioner for Refugees...	339
J. Outer Space Affairs Division	341
1. United Nations bodies within which the treaties are prepared.....	341
2. Treaties formulated or in the course of formulation.....	342
3. Initiation of the treaty-making process.....	342
4. Preparation of a treaty	343
(a) Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space.....	343
(i) Organization of sessions of the Sub-Committee..	343
(ii) Plenary meetings of Sub-Committee in the first week of a session	343
(iii) Working Groups of the Sub-Committee.....	343
(iv) Plenary meetings in the fourth and last week of a session of the Sub-Committee	345
(b) Committee on the Peaceful Uses of Outer Space.....	346
(c) The General Assembly.....	347
5. Opening of treaty for signature.....	347
K. Secretariat of the Third United Nations Conference on the Law of the Sea	348
1. Introduction	348
2. The Sea-Bed Committee	350
3. The Third United Nations Conference on the Law of the Sea	353
4. The negotiating machinery of the Conference.....	354
5. A basic negotiating text.....	355
6. The Negotiating Groups	359
7. The role of the collegium in the revisions of the Informal Composite Negotiating Text.....	360
8. The Drafting Committee.....	362
(a) Membership and competence	362
(b) <i>Modus operandi</i> of the Committee	363
(c) The procedure for adoption of the Committee's recommendations	363
(d) The language groups.....	364
9. Conclusions.....	364
L. United Nations Commission on International Trade Law (UNCITRAL)	371
1. Origin and organization of UNCITRAL	371
(a) The Commission	371
(b) Working Groups	372
(c) Observers	372
(d) Secretariat	372
2. Initiation of the treaty-making process by UNCITRAL	372
(a) Original UNCITRAL programme of work	372
(b) UNCITRAL's current long-term programme of work ..	373

	<i>Page</i>
(i) Proposals from the international community.....	373
(ii) Proposals from within UNCITRAL.....	373
(iii) Consideration of proposed topics by the Commission.....	374
3. Consideration of a subject by a Working Group.....	374
(a) Usual UNCITRAL practice.....	374
(b) The new international economic order (NIEO).....	374
(c) Work in UNCITRAL Working Groups.....	375
(d) Study Group on International Payments.....	376
4. Consideration of draft treaty by UNCITRAL.....	376
5. Consideration of draft treaty by diplomatic conference.....	377
6. Opening of the treaty for signature, ratification or accession.....	378
7. Nature and scope of elaboration of multilateral treaties by UNCITRAL.....	378
(a) Revision of work done by other agencies.....	378
(b) Elaboration of new uniform rules.....	378
8. Alternative methods and procedures for the elaboration of multilateral treaties.....	378
(a) Form of rules.....	379
(b) Preferred forum to adopt a convention.....	379
9. Status of treaties adopted based on the work of UNCITRAL and draft treaties currently under consideration.....	379
(a) Status of conventions.....	379
(b) Draft treaties currently under consideration.....	380
M. United Nations Environment Programme (UNEP).....	382
1. Introduction.....	382
2. The initiative.....	382
3. Preparation of guidelines and related materials for the drafting of the proposed agreement.....	383
4. Finalization of the draft instruments by a special Working Group or by the UNEP secretariat.....	383
5. Adoption of the draft instruments at a conference of plenipotentiaries.....	384
6. Characteristics of the UNEP approach to the development of multilateral treaties.....	384
II. SPECIALIZED AND RELATED AGENCIES.....	384
A. Food and Agriculture Organization of the United Nations (FAO).....	384
1. Decision as to the type of instrument.....	384
2. Languages.....	385
3. Records and reports.....	387
4. Voting majorities.....	388
5. Post-adoption concerns.....	389
6. Supplementing and updating treaties.....	391
B. General Agreement on Tariffs and Trade (GATT).....	392
C. International Atomic Energy Agency (IAEA).....	395
D. International Labour Organisation (ILO).....	396
1. General considerations.....	396
2. Office reports and conference discussions.....	397

	<i>Page</i>
3. Procedures for the consideration and adoption of conventions revising existing conventions.....	399
4. Amendment procedures	400
5. Other methods of relating new conventions to existing ones	401
6. Methods of ensuring flexibility necessary for universal application	401
7. Authentication of conventions adopted by the Conference ...	402
8. Current review of procedures for adoption of multilateral treaties (conventions)	403
E. International Civil Aviation Organization (ICAO).....	405
F. International Maritime Organization (IMO).....	406
1. Introduction	406
2. International Convention on Safety of Life at Sea, 1960.....	407
3. 1962 Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954.....	408
4. Convention on Facilitation of International Maritime Traffic, 1965	409
5. International Convention on Load Lines, 1966	410
6. International Convention on Tonnage Measurement, 1969.	411
7. International Convention relating to Intervention on the High Sea in Cases of Oil Pollution Casualties, 1969, and International Convention on Civil Liability for Oil Pollution Damage, 1969.....	412
8. Special Trade Passenger Ships Agreement, 1971	414
9. Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971.....	415
10. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971	416
11. Convention on International Regulations for Preventing Collisions at Sea, 1972.....	418
12. International Convention for Safe Containers, 1972	420
13. International Convention for the Prevention of Pollution of the Sea from Ships, 1973.....	422
14. International Convention for the Safety of Life at Sea, 1974	423
15. Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974.....	424
16. Convention on the International Maritime Satellite Organization (INMARSAT) and Operating Agreement, 1976.....	425
17. Convention on Limitation of Liability for Maritime Claims, 1976.....	427
G. Union internationale des télécommunications (UIT)	435
1. Considérations générales.....	435
2. Procédures utilisées.....	435
3. Réunions préparatoires	436
H. Union postale universelle (UPU)	437
1. Généralités	437
2. Procédure d'adoption des nouveaux actes.....	437

	<i>Page</i>
3. Procédure de “renouvellement” des actes de l’UPU	438
4. Approbation des actes de l’UPU.....	439
5. Mise en vigueur des actes	440
6. Réserves	440
I. United Nations Educational, Scientific and Cultural Organization (UNESCO)	440
1. Multilateral treaties adopted by the General Conference of UNESCO	440
(a) Inclusion in the agenda of the General Conference	441
(b) Initial discussion by the General Conference.....	442
(c) Preparation of drafts to be submitted to the General Conference for consideration and adoption.....	442
(d) Consideration and adoption of drafts by the General Conference.....	442
(i) Role of the Executive Board	443
(ii) Role of the General Conference.....	443
2. Multilateral treaties adopted by international conferences of States convened by UNESCO	443
3. Recent development.....	444
J. World Health Organization (WHO).....	445
K. World Intellectual Property Organization (WIPO).....	446
L. World Meteorological Organization (WMO).....	446
III. OTHER INTERNATIONAL ORGANIZATIONS.....	449
A. Commission of the European Economic Community	449
B. Conseil de l’Europe.....	451
1. Introduction	451
2. L’initiative	452
3. La décision d’élaborer une convention ou un accord	453
4. La négociation proprement dite.....	453
5. Adoption du texte.....	454
6. Durée de l’élaboration.....	454
C. Council for Mutual Economic Assistance (CMEA).....	466
D. Customs Co-operation Council.....	468
E. European Free Trade Association (EFTA).....	470
F. European Space Agency (ESA)	472
1. Introduction	472
2. The legal framework.....	473
3. The treaty-making power	473
4. The ESRO agreements	473
5. The ESA agreements	473
(a) Legal framework.....	474
(b) The practice.....	474
6. The Memorandum of Understanding of AEROSAT	474
7. Conclusion.....	475
G. Inter-American Development Bank.....	475
H. International Commission for the Southeast Atlantic Fisheries ...	476

	<i>Page</i>
I. International Institute for the Unification of Private Law (UNIDROIT)	478
J. International Whaling Commission	482
K. Latin American Free Trade Association	486
1. Protocols amending the Montevideo Treaty	487
(a) Protocol institutionalizing the Council of Ministers of the Association (12 December 1966)	487
(b) Caracas Protocol amending the Montevideo Treaty (12 December 1969)	487
2. Protocol supplementary to the Montevideo Treaty: Protocol for the Settlement of Disputes (2 September 1967)	487
3. Other protocols and treaties	487
(a) Protocol on the Transit of Persons (12 December 1966)	487
(b) Water Transport Agreement of the Association (30 September 1966)	487
(c) Privileges and immunities of the Association and its organs	488
4. General considerations	488
L. Le Comité international de la Croix-Rouge (CICR)	489
1. Introduction	489
2. Les principaux organes entrant en ligne de compte dans les processus d'élaboration (travaux préparatoires) des conventions de Genève	491
(a) Le CICR	491
(b) Le mouvement de la Croix-Rouge internationale	492
(c) Le Gouvernement suisse	493
(d) L'organisation internationale	493
3. L'initiative des travaux préparatoires dans l'élaboration du droit international humanitaire et les modalités de cette initiative	494
(a) Les fondements réels	494
(b) Les sources formelles des travaux préparatoires	495
(i) Résolutions de conférences internationales de la Croix-Rouge	495
(ii) Résolutions des conférences intergouvernementales	496
(c) La délimitation des compétences	497
4. Organisation des travaux	498
(a) Le processus de consultation	498
(i) Les consultations menées par le CICR	498
(ii) Procédures des consultations d'experts, notamment gouvernementaux	501
(iii) Préparation et rapports des consultations d'experts	502
(b) L'organisation des travaux au sein du CICR	502
(i) Jusqu'en 1945	503
(ii) Après 1945	503
5. La préparation des projets de convention	503

	<i>Page</i>
M. Office central des transports internationaux par chemins de fer (OCTI)	506
N. Organization for the Prohibition of the Use of Nuclear Weapons in Latin America (OPANAL)	509
O. Permanent Commission for the South Pacific (CPPS)	511
1. History	511
2. Structure of the Commission	511
3. Operation	512
4. Procedure for adopting resolutions	512
P. The Hague Conference on Private International Law	513
1. General remarks on the scope and history of the multi-lateral treaty-making process within the Hague Conference on Private International Law	513
2. The normal system for elaboration of a multilateral treaty within the Hague Conference	513
(a) The stages of work	513
(i) The selection stage	513
(ii) The research stage	514
(iii) The discussion stage	515
(iv) The drafting stage	516
(v) The consolidation stage	517
(b) Personnel	518
(i) The permanent secretariat	518
(ii) The National Organs	518
(iii) The expert delegates	519
(iv) Observers of international organizations	519
(v) Non-member States	520
(vi) Temporary assistants	520
3. Extraordinary Sessions of the Conference	520

INTRODUCTION

The present publication is prepared in response to General Assembly resolution 36/112 of 10 December 1981 entitled "Review of the Multilateral Treaty-Making Process".

Since 1977, as the result of the initiative of Australia, Egypt, Indonesia, Kenya, Mexico, the Netherlands and Sri Lanka, the General Assembly has been conducting a review of the many methods of multilateral treaty-making employed in the United Nations and in other international organizations and forums. For the purpose of this review, the Secretary-General has prepared reports¹ and has submitted them to the General Assembly for consideration. Governments have commented on this subject at the thirty-second, thirty-fifth and thirty-sixth sessions, and have submitted written observations thereon. The Secretary-General has also received written contributions on the subject from United Nations organs and offices, and from international organizations that are active in the preparation and study of multilateral treaties. All together these materials represent a unique and valuable collection of information on the topic under consideration, which has now been gathered in this four-part publication.

Part one contains the text of the memorandum² submitted by the sponsors initiating this review of the multilateral treaty-making process; it provides the basis of the review.

Part two reproduces the 1980 Report of the Secretary-General (A/35/312 and Corr.1 of 27 August 1980), which analyses the general and special features of the treaty-making process in the United Nations system and in other international organizations.

Part three contains the views, comments and observations of Governments and international organizations. Although most of these materials have already been published,³ in order to provide a framework for analytical examinations, they have now been organized under eleven specific headings based on the questionnaire included in the 1980 Report of the Secretary-General. Users are urged to read this part as a whole so as to avoid a partial view of a given Government or organization on this subject. Under each heading, there are three sections: (i) summary of general views expressed during the debate, based on the summary records of the discussions on this topic in the Sixth Committee; (ii) written comments and observations by Governments; and (iii) written comments and observations by international organizations.

Part four contains information on the techniques and procedures used in the formulation of multilateral treaties by various United Nations organs and offices, the specialized and related agencies, and other international organizations.

NOTES

¹ A/35/312 and Corr.1, Add.1 and 2, and Add.2/Corr.1; A/36/553 and Add.1 and 2.

² A/32/143 and Corr.1.

³ A/35/312/Add.1 and 2, and Add.2/Corr.1; A/36/553 and Add.1 and 2; A/37/444 and Add.1; summary records of the Sixth Committee at the thirty-second session (A/C.6/32/SR.46 to 50), thirty-fifth session (A/C.6/35/SR.55, 60-64, 73 and 75) and thirty-sixth session (A/C.6/36/SR.54 to 57, 63 and 64).

INTRODUCTION

La présente publication a été élaborée conformément à la résolution 36/112 de l'Assemblée générale, en date du 10 décembre 1981, intitulée "Réexamen du processus d'établissement des traités multilatéraux".

Depuis 1977, à la suite de l'initiative prise par l'Australie, l'Égypte, l'Indonésie, le Kenya, le Mexique, les Pays-Bas et Sri Lanka, l'Assemblée générale procède à un examen des nombreuses méthodes d'établissement des traités multilatéraux utilisées par l'Organisation des Nations Unies et par d'autres organisations et instances internationales. Aux fins de cet examen, le Secrétaire général a établi des rapports¹ et les a soumis pour examen à l'Assemblée générale. Les gouvernements ont fait des commentaires à ce sujet aux trente-deuxième, trente-cinquième et trente-sixième sessions, et ils ont présenté par écrit des observations sur cette question. Le Secrétaire général a également reçu à ce sujet des observations écrites émanant d'organes et de services de l'Organisation des Nations Unies ainsi que d'organisations internationales qui jouent un rôle actif dans l'élaboration et l'étude des traités multilatéraux. L'ensemble de ces données constitue une collection unique et précieuse d'informations sur la question examinée, qui ont été rassemblées dans la présente publication, qui comprend quatre parties.

La première partie contient le texte du mémorandum² soumis par les auteurs qui avaient pris l'initiative de ce réexamen du processus d'établissement des traités multilatéraux; il sert également de base au réexamen.

La deuxième partie contient le texte du rapport du Secrétaire général présenté en 1980 (A/35/312 et Corr.1, en date du 27 août 1980), qui contient une analyse des caractéristiques générales et particulières du processus d'établissement des traités au sein du système des Nations Unies et dans d'autres organisations internationales.

La troisième partie contient les vues, les commentaires et les observations des gouvernements et des organisations internationales. Bien que la plupart de ces informations aient déjà été publiées³, elles ont été classées, afin de fournir un cadre pour les examens analytiques, dans 11 rubriques spécifiques fondées sur le questionnaire qui faisait partie du rapport du Secrétaire général publié en 1980. Les utilisateurs sont instamment priés de lire cette partie comme un tout afin d'éviter de n'avoir qu'une vue partielle de l'avis d'un gouvernement ou d'une organisation donné sur ce sujet. Chaque rubrique est divisée en trois sections : i) un résumé des opinions générales exprimées au cours des débats, fondé sur les comptes rendus analytiques des débats qui ont eu lieu sur cette question à la Sixième Commission; ii) les commentaires et les observations présentés par écrit par les gouvernements; iii) les commentaires et les observations présentés par écrit par les organisations internationales.

La quatrième partie contient des informations sur les techniques et les procédures utilisées lors de l'élaboration des traités multilatéraux par les différents organes et services de l'Organisation des Nations Unies, les institu-

tions spécialisées et organismes connexes, et les autres organisations internationales.

Comme il est spécifié au paragraphe 5 de la résolution 36/112 de l'Assemblée générale, la présente publication a été élaborée sous la forme d'une version provisoire d'un volume de la *Série législative*. Dans la version définitive de la présente publication, il sera tenu compte de toutes les observations pertinentes qui auront été faites à la Sixième Commission et au sein du groupe de travail.

NOTES

¹ A/35/312 et Corr.1, Add.1 et 2, et Add.2/Corr.1; A/36/553 et Add.1 et 2.

² A/32/143 et Corr.1.

³ A/35/312/Add.1 et 2, et Add.2/Corr.1; A/36/553 et Add.1 et 2; A/37/444 et Add.1; comptes rendus analytiques des débats de la Sixième Commission à la trente-deuxième session (A/C.6/32/SR.46 à 50), à la trente-cinquième session (A/C.6/35/SR.55, 60 à 64, 73 et 75) et à la trente-sixième session (A/C.6/36/SR.54 à 57, 63 et 64).

Part One

**RATIONALE FOR THE REVIEW OF THE
MULTILATERAL TREATY-MAKING PROCESS**

Première partie

**RAISONS JUSTIFIANT LE RÉEXAMEN
DU PROCESSUS D'ÉTABLISSEMENT
DES TRAITÉS MULTILATÉRAUX**

Part One

RATIONALE FOR THE REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS¹

1. The Foreign Minister of Australia, in his speech to the General Assembly at its thirty-first session, referred to the suggestion which had been made by Australia in the Sixth Committee in 1975² that the time was ripe for the United Nations to review the process by which the international community makes multilateral treaties. He said:

“The ways in which we approach multilateral treaty-making are varied, chancy, frequently experimental and often inefficient. They place great burdens upon the Governments of Member States, especially upon the developing countries, and it is open to question whether the community could not find more economical and efficient methods of drafting conventions.”³

I. PURPOSE OF THE INITIATIVE

2. The purpose of the present initiative is to occasion examination of the methods of multilateral treaty-making employed in the United Nations and under its auspices. This consideration should be directed towards an assessment of whether the methods employed are as efficient and economical as the needs of the community require or circumstances permit. If the assessment indicates—as seems likely—that there is room for improvement in the methods employed, then the General Assembly should consider the steps which may be taken to achieve this.

3. It must be emphasized that the proposal relates exclusively to the methods by which the texts of multilateral treaties are prepared within the United Nations. The initiative looks forward, but not backward. Though it must necessarily start from the procedures which have been followed in the past, its intention is to secure an improvement in the techniques which will be used in the future. The initiative is in no way concerned with the substantive content of treaties, except to the extent that the subject-matter of a treaty may be relevant to the identification of the best procedure to follow in preparing it. Nor is it intended that the present initiative should extend beyond the process of multilateral treaty preparation. The dimensions of the exercise are sufficiently great, and the effort in itself sufficiently worthwhile, to justify emphasis at the present time on its limitation to the treaty-making process alone.

II. EXTENT OF UNITED NATIONS TREATY-MAKING ACTIVITY

4. The United Nations seeks to fulfil the purposes stated in Article 1 of its Charter by both proposing courses of political conduct and preparing for international acceptance a wide variety of multilateral conventions. The agenda of every session of the General Assembly contains a significant number of items which relate to various stages in the United Nations treaty-making process. Of the 124 items on the agenda of the thirty-first session of the General Assembly, no less than 17 involved multilateral treaties under preparation or review covering a wide range of subjects.⁴

5. During the 32 years of the existence of the United Nations, some 80 substantive conventions have been concluded under its aegis, not to mention half as many again in the form of protocols amending or extending earlier instruments. These are listed in the Secretariat's publication entitled *Multilateral Treaties in Respect of Which the Secretary-General Performs Depositary Functions*. In addition, there are those treaties which, though originating in United Nations organs, are not deposited with the Secretary-General. Thus treaty-making activity within the United Nations can be seen to be striking in its extent—as to numbers of treaties concluded and especially as to range and complexity of subjects covered.

6. As a glance at the calendar of United Nations conferences will show, the pace of international legislative activity is intense. In the course of any single year, Members of the United Nations will be expected to participate in the preparation of one stage or another of at least a score of treaties. In addition to involvement in the meetings at which the texts are discussed, Members are obliged to consider in their capitals the policies to be adopted towards drafts, as well as the ratification and often the legislative implementation of texts which have been completed and are found to be acceptable. The burden which these processes place upon the administrative machinery of all States, and especially upon new or small States, requires no elaboration.

7. The extent of multilateral treaty-making cannot be measured exclusively in terms of the United Nations as such. States also have a heavy commitment to treaty-making in the specialized agencies of the United Nations system, in the regional organizations outside the United Nations system and in independent conferences, such as that on humanitarian law. While it is not suggested that the present initiative should be directly focused upon multilateral treaty-making practices in these other bodies, it is evident that they cannot be ignored when identifying the extent to which activity in the United Nations poses a problem for Members.

III. VARIETY OF METHODS USED

8. The methods used for the initial preparation and subsequent development of draft conventions in the United Nations vary widely according to the organ within which the subject-matter is being handled—and sometimes even within the same organ. The technique used in one organ is not necessarily

influenced by the experience of other organs or even by its own past practice. Moreover, there is no manual of treaty-making techniques which records the methods used and which can serve as a guide to the best methods to be employed in the future.

9. As the list of treaties under consideration at the thirty-first session of the General Assembly shows, at any given moment treaty-making activity tends to be concentrated in certain fields. There is nothing fixed about this distribution, which is bound to alter as times and political conditions change. But for the moment it is evident that the most active areas are: nuclear testing and weapons limitations; controls in the use of other weapons; outer space; human rights; the law of the sea; and international legal matters generally.

10. The process of producing a treaty differs in each of these fields. Treaties of a technical legal character are initially prepared mainly by the International Law Commission. The carefully ordered work of this organ provides a helpful standard of comparison and may therefore be referred to more fully. The main elements in the International Law Commission process (though the pattern is not a rigid one) are: appointment of a special rapporteur; the preparation of a special report or series of reports containing analyses, draft articles and commentary; consideration by the Commission at several readings; opportunities for governmental comment on the emerging texts through observations addressed to the Commission or through debate in the Sixth Committee on the annual reports of the Commission; eventually the adoption by the Commission of final draft articles with commentary; consideration in the Sixth Committee of the General Assembly; and, lastly, a diplomatic conference using the final draft articles as a basis of discussion. Thus, we have here a process marked by the initial application of one expert mind to the basic preparatory work, followed by subsequent detailed scrutiny by a relatively small group of additional experts, gradual elaboration of texts bearing in mind governmental reactions and, only when the subject has been thoroughly prepared, the holding of a diplomatic conference. At all stages, the preparatory work is adequately, if not fully, recorded. The method, though open to some improvement, has had a notable measure of success in producing some widely accepted conventions.

11. By contrast with this highly ordered method, one may refer to the experimental and not always satisfactory way in which the treatment of the law of the sea has developed over the last decade. From the decision in 1967 to consider the utilization of the resources of the sea-bed beyond the limits of national jurisdiction, the United Nations has moved on to an expanded agenda covering the whole of the law of the sea; and this has been examined first in an *ad hoc* committee, then in a special committee and now in no less than six main sessions of a diplomatic conference, supplemented by numerous intersessional meetings. The process of negotiation has been far from simple and has been marked by a degree of improvisation (some of it imaginative and possibly of long-term value, but some of it not), which has been time-consuming and has led only slowly to results which are as yet incomplete. And much of what has gone on has taken place in working groups and sub-committees whose deliberations are not recorded. The result is a striking absence of records in an area of debate where records would normally be of major importance as an aid to interpretation.

12. It is, of course, possible to suggest a number of explanations of the differences in method between the law of the sea negotiations, which concluded in 1958, and those now in progress: the present exercise is more "political" than the one which concluded in 1958; it is more creative of new law and less a restatement of existing law; it covers a wider number and range of topics; the international community has grown considerably in size in the intervening period and the process of achieving consensus has become correspondingly more difficult. But, while all these "explanations" are true as statements of fact, they do not, either individually or collectively, explain in functional terms why the Members of the United Nations chose, or acquiesced in, this particular legislative technique for pursuing its objectives from 1967 onwards; and, having regard to the pace at which the conference has moved and the difficulties which it has experienced, there is certainly room for consideration of whether the adoption of different methods might have led to better results.

IV. INQUIRY NOT TO EXTEND TO THE WORK OF SPECIALIZED AGENCIES

13. The two examples just cited serve to illustrate the variety and limitations of treaty-making methods at present employed in the United Nations. This is not the place to multiply them. By contrast, the practice of some specialized agencies is more settled. In the International Labour Organisation, the procedure for the drafting and consideration of a convention is contained in section E of the Standing Orders of the Conference. It is clear and precise in its indication of the steps to be followed, as well as of the respective roles of the Conference, of members and of the International Labour Office, and it gives ample time and opportunity for extensive but orderly consideration by, and consultation of, all the interests concerned. To some extent the same is true in the International Civil Aviation Organization, which performs a comparably specialized task in the preparation of international standards and recommended practices applicable to its field of activity. However, because the conditions prevailing in the specialized agencies are so markedly different from those in the United Nations, it is contemplated that the treaty-making activities of the specialized agencies should be the subject of consideration only in so far as their practices can provide useful indications of possible improvements in United Nations techniques.

V. NATURE OF THE INQUIRY

14. Into what kind of matters might the proposed inquiry enter? It is necessary to probe closely questions which do not appear previously to have been examined in any detail. For example, what is the best first approach to a new topic for treaty-making—an inquiry by a single expert, by the Secretariat or by a committee? If by a committee, then should it be a committee comprising all Members or only some? Should it consist of government representatives

or of experts? Is it right to assume that these are the only alternatives? Should there perhaps be supplementary machinery whose responsibility it would be to co-ordinate the activities of all elements interested in a particular subject and ensure that an appropriate report is prepared which seeks to reflect all points of view? What should be the form of reports—whether of such a body or of any other person or entity? Should they be standardized? How should they present the relevant facts, the legal considerations, the proposals and the comments? Should there be a requirement that an attempt be made to assess the extent and nature of the impact of proposals upon the domestic law of the Member States? Is there a need or scope for an indication of uniform methods of State implementation of treaty commitments? What is the best stage at which to inject the views of States into the treaty-making process? How may such views best be conveyed—by answers to questionnaires, by comments on drafts or by discussion in committees? And when should a proposal be deemed ripe for consideration by a diplomatic conference? Is the present general practice of diplomatic conferences satisfactory? Ought there to be some method of identifying and representing the various groups of interested States so as to reduce the scale of participation in debate? Is the search for consensus, and the width of expression of views which that necessitates, a more efficient method of reaching a collective conclusion than a vote taken after the expression of fewer views? Is it sufficient that when the conference concludes its work it should do so only with a convention? Or should the conference prepare a report containing an explanation or a commentary upon the convention—in a manner comparable to the explanatory memoranda which in some States accompany legislation?

15. The above questions are given only as examples of the many that can be posed in this connection. But they should not be taken as implying that the sponsoring States have a particular view of the answers which should be given or that they consider that these questions are necessarily the most important. The questions are intended only to indicate the kind of detail into which it is desirable now to enter in order that the United Nations may be satisfied that it has at least performed its duty of self-examination in this respect. Moreover, it should be borne in mind that the inquiry could well conclude that, although there is scope for a uniform approach to certain classes of subject, the approach cannot be the same for all classes.

VI. POSSIBLE COURSE OF THE INITIATIVE

16. As to the question of how to proceed in the proposed exercise, it is suggested that the item should be referred to the Sixth Committee for debate, with a view, in the first place, to the adoption of a resolution seeking a detailed study of the subject. This report, which would need to take into account the views expressed and suggestions made in the Sixth Committee debate, should examine in deep detail the treaty-making methods which have actually been used in the United Nations since its inception. It would need to look also at comparable techniques used in specialized agencies and the methods of legislation employed in States. It is to be hoped that this study,

which could be sought from the Secretariat, possibly in co-operation with UNITAR, would be available in time for circulation by early 1979. In addition, Governments, specialized agencies, the International Law Commission and other interested inter-governmental organizations experienced in the preparation of multilateral treaties might be invited to submit by 31 July 1979 their observations on the question. These could also be circulated. The matter could then be further discussed at the thirty-fourth session of the General Assembly in 1979.

17. It would be premature now to suggest with any exactness what steps might then follow. But, if there were sufficient agreement amongst Members, it might then be appropriate to refer the question to a small *ad hoc* committee to consider the matter and perhaps to draft a manual of recommended practices to aid the organs of the United Nations in the selection of the most suitable techniques of treaty-making for use in the prevailing circumstances. The contents of this manual would serve as guidelines. They would not in any way be mandatory; and they would be bound to recognize that no single procedural pattern could be applied to every kind of treaty-making effort. An important objective in this examination would be concern to simplify for States their participation in the treaty-making process and thereby to facilitate so far as possible the ratification by States of concluded treaties and the domestic implementation of the obligations assumed under such treaties. After the conclusion of the work of the *ad hoc* committee, the matter could once again be considered in the Sixth Committee so that the appropriate conclusions might be drawn.

18. The United Nations is the world's principal instrument of international co-operation. On any view of the matter, it seems inconsistent with the standard of efficient operation which the international community is bound to set itself that, after virtually a third of a century of intense treaty-making activity, it should not have begun to assess the adequacy of its treaty-making methods; and it is time that it should start now.

NOTES

¹This is based on document A/32/143, and corrigendum dated 18 July 1977 entitled "Request for the Inclusion of An Item in the Provisional Agenda of the Thirty-second Session, Review of the Multilateral Treaty-Making Process, Letter dated 19 July 1977 from the representatives of Australia, Egypt, Indonesia, Kenya, Mexico, the Netherlands and Sri Lanka to the United Nations, addressed to the Secretary-General".

²*Official Records of the General Assembly, Thirtieth Session, Sixth Committee, 1541st meeting, para. 16.*

³*Ibid., Thirty-first Session, Plenary Meetings, 9th meeting, para. 191.*

⁴The topics included: the principles governing the use by States of artificial earth satellites for direct television broadcasting; incendiary and other specific conventional weapons which may be the subject of prohibitions or restrictions of use for humanitarian reasons; a comprehensive ban on nuclear and thermonuclear tests; the prohibition of military or any other hostile use of environmental modification techniques; prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons; human rights and scientific and technological developments; torture and other cruel, inhuman or degrading treatment or punishment; elimination of all forms of religious intolerance; adoption law; successions of States in respect of treaties; the non-use of force; hostages; the norms and principles of international economic development law; and the law of the sea.

Part Two

**ANALYTICAL REVIEW OF THE PROCESS:
REPORT OF THE SECRETARY-GENERAL**

Deuxième partie

**RÉEXAMEN ANALYTIQUE DU PROCESSUS :
RAPPORT DU SECRÉTAIRE GÉNÉRAL**

Part Two

ANALYTICAL REVIEW OF THE PROCESS: REPORT OF THE SECRETARY-GENERAL

I. INTRODUCTION

1. At the thirty-second session of the General Assembly, the Sixth Committee considered an agenda item entitled "Review of the multilateral treaty-making process", proposed for inclusion in the agenda by Australia, Egypt, Indonesia, Kenya, Mexico, the Netherlands, and Sri Lanka. In the communication requesting inclusion (A/32/143 and Corr.1), those States proposed that the United Nations carry out a review of the many methods of multilateral treaty-making employed in the United Nations and under its auspices with a view to determining whether the methods employed were as efficient and economical as the needs the world community required and circumstances permitted. On the basis of the Committee's report (A/32/363), the Assembly adopted resolution 32/48 on 8 December 1977 by which it requested the Secretary-General to prepare a report on the techniques and procedures used in the elaboration of multilateral treaties with a view to its submission to the Assembly at its thirty-fourth session; invited Governments and the International Law Commission to submit by 31 July 1979, for inclusion in the report, their observations on this subject; requested those specialized agencies and other interested organizations which were active in the preparation and study of multilateral treaties, and the United Nations Institute for Training and Research, upon request, to lend any necessary assistance; and decided to include in the provisional agenda of its thirty-fourth session the item entitled "Review of the multilateral treaty-making process".

2. In implementation of resolution 32/48, the Legal Counsel addressed communications to 15 United Nations offices outside the Office of Legal Affairs requesting an account of treaty-making techniques and procedures employed within the framework of their respective responsibilities. To assist in the preparation of such accounts, these communications were accompanied by a set of general guidelines. At the same time, the Legal Counsel addressed a somewhat similar request to all specialized and related agencies and to 22 other world-wide and regional inter-governmental organizations known to be active in treaty-making. These requests, too, were accompanied by another set of guidelines. Finally, reminders concerning the observations requested by the Assembly in paragraph 2 of the resolution were sent to all Governments, and arrangements were made to place an appropriate item on the agenda of the thirtieth session of the International Law Commission (ILC).

3. In response to the above-mentioned communications, the following substantive replies were received:

(a) Observations from nine Governments, the texts of which will be issued in addendum 1 to the present report;¹

(b) Observations from the International Law Commission, which were prepared by a Working Group initially established at the thirtieth session of the Commission and reconstituted at the thirty-first session and which were approved by the Commission at its 1580th meeting, on 31 July 1979;² these observations will be issued in addendum 2 to the present report;

(c) Reports from 13 United Nations offices and from 25 specialized agencies and other international organizations, listed in the annex below;³ because of the limitation on the length of Secretariat reports, it is not possible to set out herein the full texts of the replies received or even a detailed analysis thereof, in particular because (as pointed out in paras. 5-15 below) relatively few generally applicable features appear.

4. Because only three sets of governmental observations had been received within the given time-limit, which itself had been set rather too late to permit the Secretary-General to take them into account for a report to be considered at the thirty-fourth session of the General Assembly, he proposed to the General Committee at that session that consideration of this item be postponed until the thirty-fifth session of the Assembly. The Committee agreed to recommend to the Assembly that the item be removed from the agenda of its thirty-fourth session. However, during the discussion of the annual report of ILC in the Sixth Committee, several representatives commented on the observations the Commission had prepared.⁴

II. GENERAL FEATURES OF MULTILATERAL TREATY-MAKING

A. WITHIN THE ORGANIZATION OF THE UNITED NATIONS

5. In less than 35 years some 200 multilateral treaties have been concluded within the United Nations, i.e. by United Nations organs or by diplomatic conferences convened by the United Nations, of which about one quarter constitute mere amendments or extensions of, or subsidiary protocols to, other agreements (some of which had been concluded within the League of Nations). An examination of the various procedures previously or currently employed within the United Nations to prepare these treaties discloses extensive diversity. Among the significant bases on which these procedures can be differentiated is the extent to which they are established and structured or *ad hoc* in nature, the extent to which they involve expert and representative bodies, and the extent of the involvement of the General Assembly.

6. Thus treaties are promulgated⁵ by the General Assembly, after detailed consideration at a single session or at a long series of sessions in one or more Main Committees or even in two Main Committees meeting jointly or after a more *pro forma* review of a draft formulated by some other body. Such a body may be a principal organ (such as the Economic and Social Council or the Secretariat) or a standing expert group (such as the International Law Commission or the Commission on Human Rights); on occasion it could be a smaller representative organ, whether specialized—such as the United Nations Commission on International Trade Law (UNCITRAL) or the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, or non-

specialized—such as the Preparatory Commission for the United Nations, or *ad hoc*—such as the *Ad Hoc* Committee on the Drafting of an International Convention Against the Taking of Hostages. Other treaties were promulgated directly by the Economic and Social Council, by a regional commission or by a subsidiary organ thereof (such as the Inland Transport Committee of the Economic Commission for Europe) or even by the Secretary-General. However, the greatest number of treaties were promulgated by plenipotentiary conferences convened by the Assembly, the Council, the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Programme (UNEP), the International Trade Centre, etc. In turn, most of these conferences (with the notable exception of the Third United Nations Conference on the Law of the Sea) have based their work, which sometimes was short and *pro forma* but often thorough and extended to several sessions, on a draft text prepared by some other body, such as those just referred to in connection with the instruments adopted directly by the Assembly.

7. Seemingly the only generalization possible is that multilateral treaty-making in the United Nations is almost always (except for some regional or specialized instruments of a most restrictive nature) a multistage process. The first stages of the formulation of an instrument are generally entrusted to some restricted body—a small committee of governmental representatives, an expert group or even the Secretariat, but the final stages always involve a representative body, whether an organ or a conference, whose membership generally coincides with the potential scope of participation in the proposed instrument. However, so many potential combinations of such organs have been tried in practice that it is neither practicable nor useful to list them all. However, a step-by-step examination of many of the procedures so far used in the United Nations, as well as in other organizations, has been attempted in section III below.

8. It should, nevertheless, be noted that the Organization of the United Nations, unlike some of the other organizations referred to in paragraphs 16 to 19 below, does not have any fully structured, complete treaty-making procedure, i.e. one that starts with the formulation of an instrument at a given time and with fair predictability results after the lapse of a specified period (typically two to four years), in a complete instrument ready for governmental acceptance. There are several reasons for this lack of fully structured procedures. The first reason is the diversity of subject matter with which the Organization deals. This in part results from the fact that, when particular fields are identified in which a substantial amount of treaty-making activity is to be developed, a specialized agency or another world-wide or regional inter-governmental organization is likely to be established for that purpose, leaving the central organization mostly concerned with non-homogeneous subjects. Secondly, the types of problems thus left to the United Nations tend to be broader or more controversial, such as disarmament, human rights, the progressive development and codification of international law, the general restructuring of international, political and economic relations, and the creation of new specialized organizations to carry out particular functions. Finally, the membership of the United Nations is more diverse than that of most organizations, such as the many regional or restricted functional ones, and even com-

pared to other world-wide organizations the United Nations membership reflects more a striving towards universality than commitments to any specific narrower goal. A diversity of subjects, submitted to a membership with varied interests and priorities, makes it impractical to evolve rigid and broadly applicable treaty-making procedures.

9. There are, however, some examples of at least partly structured multilateral treaty-making procedures in the United Nations. The most prominent of these is, of course, the ILC whose patterns of work derive in part from the Commission's Statute (General Assembly resolution 174 (II) of 21 November 1947) and which are described in greater detail in the Commission's observations prepared in connection with the present report (see Part Four, I.G.5 below). These procedures normally involve, within the Commission, three stages (preliminary consideration, first reading, second reading), each with several steps (for a total of nine); however, the length of these stages, and in particular that of the first reading, is not specified, so that the total length of the process is entirely undefined. Furthermore, the next stage or stages, i.e. consideration by the Assembly at one or more sessions and possibly reference to a single or multi-session plenipotentiary conference, must be decided in each case *ad hoc* by the Assembly.

10. The resolution establishing UNCITRAL (resolution 2205 (XXI) of 17 December 1966) is far less detailed, especially as to the procedure to be followed by that Commission (see Part Four, I.L. below). Nevertheless, in the dozen years of UNCITRAL operation, during which time drafts formulated by that Commission have resulted in the promulgation of three conventions, certain more or less regular practices have emerged. Such practices, even though not as firmly established as those of the ILC, still admit of some generalization. After a decision by UNCITRAL that a particular subject warrants further study, possibly with a view to preparation of a multilateral treaty, the Commission assigns it to a working group. Before and between the stages of deliberations of the working group, the secretariat carries out background research on existing law, both national and international, often on the basis of replies received to questionnaires addressed to States. It may even prepare preliminary draft texts. The working group uses these materials and others generated by its members, and through small informal negotiating groups and later more formal drafting committees it starts to evolve a set of draft articles. When the working group has established a draft text, the secretariat is asked to prepare an explanatory commentary. After a first consideration of the entire subject, the working group proceeds to a second reading, during which an attempt is made to achieve a complete, coherent and largely agreed text, which is then subjected to a thorough editorial review with the assistance of a drafting committee. When this work is completed, the draft text is approved by the working group and circulated for comments to Governments and interested international organizations, together with the commentary. Thereupon, UNCITRAL receives the draft approved by the working group, with the reports of the group sessions at which the draft had been discussed, an updated commentary and final clauses prepared by the Secretariat, comments by Governments and international organizations, and an analysis of those comments by the Secretariat. The Commission itself considers the draft text during a particular session, directly or in a committee of the whole, and with the assistance at the

final stages of a drafting committee approves a revised text to be submitted by the General Assembly for consideration by a plenipotentiary conference.

11. Human rights is an area in which the United Nations has from its very beginning been very active as a treaty-maker and in which specialized organs have been established (in particular the Commission on Human Rights) that assist in this legislative process (see Part Four, I.A. below). Nevertheless, from an examination of the procedures used in the elaboration of over a dozen instruments (including a few that are still unperfected), no general pattern emerges. The process may be initiated in a principal organ (the General Assembly or the Economic and Social Council) or in a subsidiary one; a diplomatic conference originally convened inside or outside the Organization to deal with some related question may set the process in motion. The initial drafts may be prepared by the secretariat, an *ad hoc* group of experts, a Government or a standing specialized organ, such as the Commission on Human Rights. These drafts are passed to the Council which may forward them directly to the Assembly or may do so only after detailed consideration by one of its sessional Committees. The Assembly may consider such instrument at one or at as many as a dozen sessions, in the Third Committee alone, in both the Third and the Sixth Committee or in some joint meeting or organ of the two.⁶ The entire process may take a period of time from a little over a year to one or more decades. Furthermore, some instruments that originated in a United Nations organ have ultimately been elaborated and promulgated in some other organizations of the United Nations system or at a conference not convened by the Organization.

12. In a field of more recent origin, the regulation of activities in outer space, a highly structured procedure has evolved by which at present five multilateral treaties have been promulgated and several more draft instruments have already received extensive consideration (see Part Four, I.J. below). The main components of this process are successive considerations of proposed texts in a series of annual meetings, by working groups of the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, by the Legal Sub-Committee and by the Committee—all of which have the same composition—and finally by a Main Committee of the General Assembly.⁷ In the Outer Space Committee and its subsidiary organs all decision are taken by consensus, and at any give session several treaty instruments are normally considered. Even before a given treaty is completed, the report of each organ to the next senior one discloses any process made and gives the latter organ the opportunity to give guidance in the preparation of the instrument at the next session—a possibility that is particularly significant when exercised by the competent Main Committee of the General Assembly in which States are represented that are not members of the outer space Committee. In this field, too, the total length of the process in respect of any given instrument is entirely indefinite; in part this may be a consequence of the consensus rule—which, however, appears to result in accelerating the national acceptance of and thus the entry into force of the ultimately promulgated instruments.

13. In a still more recently evolved area, environmental protection, the seven multilateral agreements so far promulgated (one general and six essentially regional ones) were developed without direct participation of the General Assembly; indeed, for the most part, established organs played only an

indirect role in this process (see Part Four, I.M. below). Although the initiation of the procedure was in each case authorized by the Governing Council of UNEP, the preparatory work was accomplished in part by a mixture of governmental and secretariat experts, drawn from UNEP and from other bodies of the United Nations system, working individually or in small groups and periodically convened in interagency or inter-government consultations. The final instruments were adopted at plenipotentiary conferences, which introduced relatively few changes in the texts presented to them. It should be noted that UNEP conceive of this entire process not as an isolated exercise in treaty-making but rather as an important component in the development of comprehensive and effective action plans, which also involve environmental assessment, environmental management, and institutional and financial arrangements. The result is that the treaty instruments merely provide the legal basis for a co-operative effort to which Governments and international organizations have committed themselves.

14. Although certain types of treaties of world-wide applicability, such as those formulated by UNCTAD organs or conferences, are promulgated without the participation of the General Assembly, this is more typically true of regional agreements, such as the environmental instruments referred to above and especially of the treaties promulgated by the regional commissions. Of these, the Economic Commission for Europe (ECE) has been particularly prolific over the years, especially in the field of transport (see Part Four, I.E. below). In that field, work on a new instrument is generally started in a subsidiary body of the Inland Transport Committee of ECE, such as the Group of Experts on Customs Questions Affecting Transport, the Group of Experts on Road Traffic Safety, the Working Party on Road Transport, or the Group of Experts on River Law. In several instances the first drafts of private law conventions have been drawn up by the International Institute for the Unification of Private Law (UNIDROIT (see Part Four, III.I. below)) and in others by the European Conference of Ministers of Transport. After expensive consultations with the members of the Commission, conventions concerning Europe are generally adopted and opened for signature directly by the Inland Transport Committee; instruments of a world-wide scope are, however, submitted to plenipotentiary conferences convened by the Economic and Social Council, or by the Council in conjunction with other inter-governmental organizations, such as the International Maritime Organization (IMO).

15. Other regional commissions have engaged in other types of treaty-making using different procedures. For example, the Economic and Social Commission for Asia and the Pacific has assisted in the formulation of seven treaties establishing regional economic, financial or commodity organizations, in addition to an agreement on trade negotiations (see Part Four, I.D. below). Because of the diversity of the subject matters of these eight agreements, the formulation of each was carried out by a diverse set of standing and *ad hoc* inter-governmental and expert organs. Thus the Agreement Establishing the Asia and Pacific Coconut Community resulted from successive proposals and studies, starting with the 1967 Inter-governmental Consultations on Regional and Subregional Plan Harmonization and Economic Co-operation, followed by subregional consultations on a Regional Plan Harmonization on Coconut, Coconut Products and Oil Palms, and then Inter-governmental Consultations

on the Asian Coconut Community, which promulgated the Agreement. The adoption of several other agreements of this type was characterized by a co-operative effort of the Commission and its secretariat, with those of organs of the United Nations system (such as UNCTAD and UNDP) and specialized agencies (such as the Food and Agriculture Organization of the United Nations), with financing for meetings provided by UNDP.

B. WITHIN OTHER INTER-GOVERNMENTAL ORGANIZATIONS

16. The treaty-making activities of no other inter-government organization match those of the United Nations in quantity or diversity, nor yet in the multitude of approaches and procedures used. Indeed, most organizations utilize only a single procedure or a narrow range of procedures in their treaty-making activities, whether these activities are extensive or only occasional. However, considered collectively, the world-wide and regional international organizations do produce a far greater number of treaties than does the United Nations itself, and both the nature of these instruments and the procedures used to formulate and promulgate them show as great a diversity as those discussed above. It is actually possible to match rather closely many of the overall procedures used in the United Nations with those used outside and vice versa. This statement does not hold for certain specific techniques that have evolved in or become characteristic of particular organizations. Inasmuch as some of these techniques may be instructive in connection with corresponding procedures in the United Nations, they will be described in section III below.

17. One significant exception to the assertion that all types of treaty-making procedure are also reflected by practices within the United Nations is the existence of highly structured procedures designed to produce treaty instruments through a relatively rigid series of steps carried out with specified and thus predictable timing. Within the United Nations system the prime example of such a procedure is the adoption of international labour conventions through the International Labour Organisation (ILO) by means of its "double-discussion" procedure (see Part Four, II.D. below). This procedure, the foundations for which are established in the ILO Constitution and which is further described in the Standing Orders of the International Labour Conference, involve the following steps:

(a) The formal point of origin of each international labour convention is the inclusion, by the Governing Body of ILO, of the subject matter of the proposed convention in the agenda of an annual session of the International Labour Conference;

(b) As soon as possible after the decision on inclusion, the International Labour Office (the secretariat of the ILO) prepares a preliminary report setting out the law and practice in different countries and any other useful information, together with a questionnaire asking for reactions to specific provisions that might be included in the proposed instrument;

(c) On the basis of the replies received, the Office prepares a second report indicating the principal questions which require consideration by the Conference;

(d) The first reading in the Conference usually takes place in a specially constituted tripartite technical committee, constituted of an equal number of representatives of Governments, and of representatives of employers plus workers. After some general discussion there follows a provision by provision discussion, during which amendments are considered. A drafting sub-committee is then set up, consisting of one representative of each of the ILO constituencies, the reporter(s) of the committee and the legal adviser of the conferences. The report of the sub-committee is first considered and adopted by the committee and then by the Conference;

(e) Immediately after the Conference has completed its work, the Office prepares the text of the draft convention, based on the report adopted by the Conference, and circulates it to Governments with a request for amendments. On the basis of replies a further report is prepared;

(f) At the second conference convened to consider a proposed convention, the work proceeds as at the first reading, with the exception that at the time the report of the technical committee is considered by the plenary each clause is considered separately for adoption. The adopted clauses are then submitted to a conference drafting committee (usually consisting of the President, the Director-General, the Legal Adviser and members of his staff and the members of the technical committee's drafting sub-committee) which reviews the substantive provisions and adds the final provisions (which are standard for most ILO conventions). The text that emerges from the drafting committee is then presented for a final vote to the conference, at which time further amendments can only be considered under very severe restrictions; a two-thirds vote is required for adoption.

This entire "double-discussion" procedure thus takes up to 30 months. In a few circumstances, a single discussion procedure is used, either for instruments considered by special maritime sessions of the International Labour Conference or for conventions that merely revise existing instruments.

18. Another international organization that has a highly structured treaty-making process is the Hague Conference on Private International Law established in 1893 but operating since 1951 under a new Statute since which time it had by 1977 promulgated some 26 treaty instruments (see Part Four, III.P. below). This organization, specifically designed to formulate treaties, has evolved a somewhat rigid cycle for this function. It takes just slightly longer than the four-year interval between its conferences.

(a) Approximately nine months before each conference, a special commission meets to establish a list of topics for future consideration. The secretariat then prepares a short feasibility study for each topic. At the conference, one sessional committee formulates a list of future topics, on the basis of which the Netherlands Standing Government Committee on Private International Law decides on the timing of the work on each topic to be considered;

(b) Once a topic has been selected, a member of the secretariat prepares a research study and draft questionnaire for Governments, designed to obtain information and to elicit opinions;

(c) Negotiations start with a meeting of governmental legal experts, lasting about a week and resulting in a set of written conclusions drawn up by a small drafting committee or by the secretariat;

(d) Drafting generally does not start until the second meeting in order not to limit prematurely the range of options. At this meeting a drafting committee of five or six experts is established, the purpose of which is to prepare the substantive clauses in English and in French, leaving the preparation of formal clauses for the conference;

(e) The draft text is considered at the next session of the conference, at which time each proposed instrument is considered by a separate committee constituted more broadly than the intersessional groups. Another committee elaborates the final clauses for all the instruments under consideration at that session;

(f) If it is not possible to complete a particular convention at the quadrennial conference, a special commission may be convened to do so later;

(g) When the text of the convention has been adopted, a date for opening it for signature is set, usually about a year later. During the interval a full report on the convention is prepared, consisting of a fully cross-indexed record of every meeting at which the instrument was discussed and the texts of all relevant working documents.

19. Although the over-all procedures employed by a number of other international organizations could be analysed and presented here, this would not seem to be of great utility, in part because the appropriateness of any procedure, general or *ad hoc*, rigid or loose, depends on the subject matter concerned and on particular circumstances (such as the membership of the organization). Furthermore, there is no adequate method of evaluating, on an abstract basis, the relevant success of any of these procedures. Such an evaluation would have to take into account the following:

(a) The adequacy of the process in formulating treaties as and when required by the particular international community in question;

(b) The quality of the treaties produced, i.e. their adequacy in meeting the needs to which they are addressed—a matter not susceptible of measurement, except subjectively by the rate by which ratifications are deposited and thus entry into force is achieved;

(c) The cost of the process in terms of the expenses imposed on States directly or through their contributions to the international organization concerned, which depends in part on the length of time required to produce each treaty.

III. SPECIAL FEATURES OF MULTILATERAL TREATY-MAKING PROCESSES

20. Although over-all evaluations of treaty-making processes are thus not feasible and a recitation of all such procedures is not possible within the compass of a report of reasonable length (although that might be done in a treaty-makers manual, the preparation of which was suggested in the observations of several Governments), particular examples can be cited of specific procedures that have proven useful as parts of certain treaty-making processes. To facilitate comparison, these examples are grouped according to the relevant stages of the treaty-making process.

A. INITIATION OF TREATY-MAKING

21. Depending on the degree to which a given treaty-making process is structured, the initiation of the process may be a formal, clear-cut and definite stage. For purposes of analysis it is possible to distinguish certain steps or aspects.

1. *Proposal*

22. Experience both in the United Nations and in other inter-governmental organizations shows that proposals for new treaty instruments originate with many different types of sources; for example, Governments (individually or jointly), subsidiary organs, expert groups, the Secretariat, conferences convened to deal with other related subjects, treaty organs and other inter-governmental or non-governmental organizations. Furthermore, when the "source" is any type of collective body, it is always, at least in principle, possible to trace the proposal back to the originator in that body. It thus does not appear possible to attribute to the origin of the proposal any particular significance in respect to the devolution of the subsequent treaty-making process, or to suggest any practical changes in procedures relating to the making or reception of such proposals.

23. In this stage, organs of the United Nations serve as initiators of proposals that are taken up by other international organizations or as recipient of suggestions from other organizations. In this connection it may be noted that while certain organs of the United Nations, in particular the General Assembly and the Economic and Social Council, are entitled to make formal recommendations to other international organizations,⁸ which the latter may be required to take into account, other organizations can generally only make suggestions to the United Nations. However, the Organization has not so far used its central position or its power of recommendation to suggest any systematic reorganization or even co-ordination of the international legislative process.

2. *Pre-initiation studies*

24. In a number of organizations and even in some United Nations organs, particularly in those with a firmly structured treaty-making process—i.e. one that, once set in motion, is expected to result in the formulation of a treaty—extensive studies are carried out before a formal decision is taken to initiate the process. The purpose of such studies is to ascertain the need for the enterprise and its likely success and the optimum method of approaching it. Experience seems to show that the proper use of such studies makes it less likely for an organization to embark on treaty-making projects that must later be abandoned or that extend for undue periods.

25. Some examples of the use of such preliminary studies are the following:

(a) When UNCITRAL considers inclusion of a particular subject in its work programme and the priority to be assigned and the method of dealing with it, the Commission usually has before it preliminary studies prepared by its secretariat, sometimes with the assistance of outside consultants.

(b) Before UNEP embarks on the process of formulating a treaty, its secretariat prepares a summary of the existing state of the environmental problem to which such treaty is to be addressed.

(c) The Committee of Ministers of the Council of Europe generally decides on the inclusion in the programme of work of the task of formulating a new convention on the basis of a report by a committee of experts on the advisability and feasibility of undertaking that enterprise.

(d) In UNESCO, the secretariat prepares, on the basis of an authorization in the programme and budget of the organization, a preliminary study relating to the legal and technical aspects of the possible regulation on an international basis of a particular technical question; the completed study is then examined by the Executive Board which decides on inclusion of a suitable item in the provisional agenda of the General Conference.

(e) As described in paragraph 18 (a) above, the secretariat of the Hague Conference on Private International Law prepares a short feasibility study on each topic that a special commission, meeting in anticipation of a quadrennial conference, has decided might be considered in the future. These feasibility studies are considered in the sessional committee of the conference charged with developing the future programme of work.

3. *Formal initiation of treaty-making*

26. In certain organs and organizations with well-structured treaty-making procedures the initiation of the treaty-making process is a well-defined, formal step. In others, such as in respect of most treaties formulated by the use of *ad hoc* procedures decided by the General Assembly, the process is often initiated in a rather tentative way, to be reinforced or weakened at successive sessions as reports submitted to the Assembly confirm or cast doubt on the desirability and feasibility of the enterprise. Following are some examples of processes involving formal decisions by specified organ before the treaty-making process can begin:

(a) In ILO the formal step is the placement of a suitable item on the agenda of the International Labour Conference; this step is almost always taken by the Governing Body, though the Conference itself may do so in respect of the agenda for the next annual Conference.

(b) Similarly, in UNESCO, the Executive Board decides on the basis of the studies referred to in paragraph 25 (d) above whether to include a suitable item in the provisional agenda of the General Conference.

(c) In the Customs Co-operation Council, the formal decision is taken by the Council on the proposal of its Permanent Technical Committee.

(d) In UNIDROIT, the first step in the formulation of a treaty is inclusion of an item in the triennial work programme of the Institution, which is adopted by its Governing Council and approved by its General Assembly.

(e) In the Council of Europe the formal decision is taken by the Council of Ministers acting on the programme of work.

4. *Decision as to type of instrument*

27. In embarking on the process that may lead to the formulation of a multilateral treaty, an international organization may be faced with various

alternatives as to the type of instrument to be developed. A decision on that matter may also affect the nature, or at least some aspects, of the process by which it is to be formulated. In some instances that decision is, on formal grounds, required to be made at an early stage. For example, the General Conference of UNESCO must decide, before committing the organization to the process of formulating an international regulation of a given subject, whether such regulation should take the form of a recommendation or of a convention, both of which are provided for in article 4 (4) of the UNESCO Constitution. Similarly, in ILO, a decision must be made whether to aim for regulation by convention or by recommendation, or, as is frequently done, by a combination of both types of instruments.

28. On the other hand, certain legislative exercises in the United Nations are characterized by deliberately postponing a decision about the nature of the instrument that is to emerge from a particular negotiation. This has been especially true of certain negotiations conducted within UNCTAD, for example in respect of the transfer of technology (on which at present a code of conduct is being developed) and the control of restrictive business practices (on which the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (TD/RBP/CONF/10) were recently adopted on the understanding that they might later be replaced by a treaty). Similarly, various alternative instruments have been considered within the purview of the Centre on Transnational Corporations in respect of the problem of corrupt practices; these instruments include an international agreement, model national laws, voluntary guidelines for non-governmental organizations and a code of conduct for inter-governmental organizations.

29. In connection with the choice of instrument to be formulated, a special practice of the United Nations, and in particular of the General Assembly, deserves notice. Frequently, before formulating a treaty on a given subject, especially in the human rights but also in other areas, the Assembly adopts a declaration on that subject. Such a solemn instrument may be designed to ameliorate the situation to which it is addressed more quickly than by means of or pending the completion of a long-range treaty-making project. Likewise, it may constitute a guideline for such a project or assist in testing in practice certain principles before they are firmly embodied in a treaty. Examples of such declarations that were later followed by treaties include the Universal Declaration of Human Rights (resolution 217 A(III))⁹ and the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (resolution 1904 (XVIII));¹⁰ in other instances treaties are still being formulated that correspond to certain declarations, such as the Declaration on the Rights of the Child (resolution 1386 (XIV)) and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX)) and the Declaration of Principles Governing the Sea-Bed and Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (resolution 2749 (XXV)).

B. FORMULATION OF MULTILATERAL TREATIES

1. *Initial draft*

30. Once the treaty-making process has started, an initial draft of all provisions or at least of the substantive provisions of the proposed instrument must be prepared. In respect of the timing of this step, treaty-making organs have adopted widely different approaches, with some intermediate positions as follows:

(a) Drafting sometimes starts at the earliest possible point. For example, in ILO the initial questionnaire, which is prepared well before consideration of a potential convention by an International Labour Conference, already requests governmental reactions to precisely formulated provisions which, collectively, are designed to constitute the kernel of the proposed instrument.

(b) In other organizations, the start of the drafting process is delayed as long as possible, so as not to inhibit or influence the free exchange of views on the subject by channelling attention too much towards particular formulations. For example, in the Hague Conference, drafting is normally started only at the second session of the competent special commission after a previous extensive discussion among experts. The same approach was used in the United Nations in the work of the *Ad Hoc* Inter-governmental Working Group on the Problem of Corrupt Practices.

31. Following are various sources from which the initial draft can originate:

(a) The initial draft is sometimes prepared outside of the formal treaty-making process, even before initiation of that process. For example, drafts may come from Governments, inter-governmental or non-governmental organizations.

(b) In some instances, particularly those in which a draft is prepared at an early stage of the process, the draft of all or of crucial portions of the text originates with the secretariat. Thus, for example, in UNCITRAL the initial secretariat studies submitted to the competent working group often include draft provisions to be considered for inclusion in the proposed instrument. In ILO the initial secretariat questionnaire tests possible formulations of key provisions.

(c) In other organs and organizations, particularly where preliminary consideration is by an expert rather than by a representative organ, the initial draft is usually prepared by a member of that organ. For example, in ILC the initial drafts of almost all provisions are presented by the special rapporteur on the item, as part of his reports to the Commission.

2. *Negotiation*

32. The process of negotiation permeates all the procedures relating to the formulation of a multilateral treaty. In some instances, this process starts even before presentation of the initial draft to the first organ to consider it. Negotiations may begin before a formal decision to initiate the treaty-making process is taken by the organization concerned; that decision, therefore, becomes merely an episode in those negotiations. Similarly, the negotiating

process may extend through the approval of the text in principle by the last negotiating organ to consider it, into and through the last stages of editorial revision, and into the post-adoption stage when changes in an instrument may be considered in order to make it more acceptable or to facilitate its ratification by States. However, for the purpose of this study, that part of the negotiating process will be considered that extends from the presentation of the first draft provisions to the formal adoption of the treaty instrument.

33. The negotiating process generally takes place in a succession of organs, usually hierarchically arranged, starting with smaller groups, often composed of experts, and moving towards larger organs composed of government representatives. Sometimes, however, in particular in respect of politically sensitive instruments, this relatively straight-line progression becomes discontinuous. This is so in those instances in which the formulation of an instrument is entrusted to a plenary or to an open-ended group whose membership ultimately proves too numerous for the practical conduct of sensitive negotiations. Small formal or informal negotiating groups are then formed, and they in turn report back to the larger organ that established them.

34. In those situations where the treaty-making process starts in a select group, whether expert or representative, the composition of such a standing group can be subject to variation in several ways. In some instances, such as the Committee on the Peaceful Uses of Outer Space, the composition of the group is varied only by increasing its size from time to time (from 27 in 1959 to 47 in 1977). In other instances, such as ILC and UNCITRAL, there is a regular turnover in the group by limiting the length of the electoral term (typically from 4 to 6 years).

35. The time-span of formulation during the negotiating process can vary depending on the treaty-making body. In some instances, in particular in respect of basically political treaties such as those relating to disarmament, but also in respect of technical ones such as those considered by ILC or the Outer Space Committee, negotiation takes place at a series of discrete sessions, which individually are not (and generally are not expected to be) long enough to reach complete agreement. Instead, each question to be considered is taken up at the stage at which it has last been considered; it is advanced as far as possible and a report is prepared which is submitted either to a senior organ or, in effect, to the next session of the same body. Thus the formulation of an instrument proceeds slowly, by accretion. In other organs, such as in meetings of UNCITRAL, the ILO Conference, the Hague Conference or UNIDROIT, an attempt is made to complete at a particular session the full negotiation of one or more instruments; only exceptionally is an incomplete negotiation put off for a further session or for a special organ.

3. *Consultations with Governments and others*

36. Since most treaty instruments are ultimately adopted by an organ of governmental representatives and ratified or accepted by Governments, the process of formulating a proposed treaty should ensure its acceptance by Governments. In addition, other international organizations that cannot participate directly in its formulation may have particular knowledge or points of view in respect of a proposed treaty. Consequently, various techniques, includ-

ing the following, have been developed to maintain contacts during the treaty-making process with the Governments of potential parties and with other entities with relevant expert knowledge:

(a) Circulation of questionnaires at various stages of the treaty-making process, including the very beginning before formulation of drafts (e.g., at the preliminary stage of consideration by the ILC or the Hague Conference) and at later stages when progress in formulating an instrument has been made. The responses to such questionnaires are tabulated by the secretariat and taken into account by the organ charged with advancing the proposed text;

(b) Distribution for comments of the partly or completely formulated treaty (e.g., at the end of the first reading by the ILC); comments are classified and taken into account;

(c) Preparation by an expert or smaller representative organ of a report for submission to a senior representative organ, which considers it during its session; the comments made in such consideration are communicated to the organ charged with formulating the treaty (e.g., the procedure in formulating outer space treaties, as described in para. 12 above). This is done unless the formulation of a given instrument takes place very rapidly, i.e. at a single session;

(d) Finally, direct consideration of the treaty at one or more stages by organs consisting of governmental representatives, in which observers from other bodies are often and indeed more and more frequently allowed to participate.

4. *Drafting committees*

37. In the reports received in preparation of the present study, many organs and organizations stressed the important role of drafting committees in the formulation of multilateral treaties. Indeed, practically all organs that formulate treaties, whether expert or representative, at one or more stages submit the text for consideration by such a committee. Practically the only bodies that do not do so regularly are Main Committees of the General Assembly.

38. There is no uniformity about the formation of drafting committees. In many instances, for example in the International Labour Conference, both at the technical committee and the plenary stage, the drafting committees are kept very small. In United Nations conferences, on the other hand, there has been a certain tendency towards larger drafting committees, in part reflecting the increase in the membership of the organization and in part the increase in the number of working and official languages.¹¹ With reference to their composition, an attempt is made to include in the drafting committee representatives fluent in those languages in which the treaty is being formulated. A deliberate attempt is also made to have various legal systems represented on the committee. Finally, in some instances, such as in ILO and ITU, drafting committees also include secretariat experts; even when this is not so, secretariat members often play an important role in servicing committees consisting only of governmental or expert members.

39. Although the use of drafting committees is almost universal, there is no uniformity about the extent of their functions. In most United Nations codification conferences, drafting committees are responsible for preparing

drafts and giving advice on drafting as requested by the Conference or by a main committee and to co-ordinate and review the drafting of all texts adopted. In other organs and conferences, such as the Inter-governmental Committee to Draw Up a Constitution for UNIDO as a Specialized Agency (Vienna, 1976-1977), a Legal Drafting Committee was established, which had primary responsibility for preparing all the essentially legal provisions of the draft Constitution, as well as for giving normal advice on drafting to the other organs. Indeed, in some instances, the entire task of formulating texts on the basis of discussions in larger organs is entrusted to a drafting committee. On the other hand, in some instances the competence of a drafting committee is severely restricted, such as in the Third United Nations Conference on the Law of the Sea, in which the drafting committee was explicitly cautioned not to "reopen . . . substantive discussion on any matter" and to "co-ordinate and refine the drafting of all texts referred to it, without altering their substance"; finally it was specified that the committee had "no power of or responsibility for initiating texts" (A/CONF.62/30/Rev.2, Rule 53(1), see also Part Four, I.K. below).

5. Languages

40. Although certain organizations, such as the Hague Conference, still promulgate treaties that are authentic only in English and French, most international organizations have increased the number of official and working languages and consequently the number of languages in which treaties are authentic. In particular, treaties promulgated by the General Assembly in recent years have all been authentic in six languages: Arabic, Chinese, English, French, Russian and Spanish.

41. Where a treaty is to be authentic in more than one language, the negotiation of the text proceeds simultaneously in all those languages, i.e. at each stage of preparation or revision of a draft text this is done in all the languages in question. In some instances, however, an expert or restricted representative organ preparing a treaty works only in some of the languages in which the treaty will be authentic; thus both ILC and UNCITRAL conduct their work and prepare their texts solely in English, French, Russian and Spanish. It is only when the reports of these organs are prepared for presentation to the General Assembly that the texts contained in these reports are translated into Arabic and Chinese, and this is done without the supervision of the body which originally prepared the draft. The text in all six languages is then reviewed by the General Assembly (with or without the assistance of a drafting committee) or by a plenipotentiary conference (which always has a drafting committee).

42. The procedure whereby the law of the sea Conference reviewed the six linguistic versions of the informal composite negotiating text deserves mention (see also Part Four, I.K. below). Instead of conducting meetings of the entire Drafting Committee, the text in each language was first reviewed by the members of the Drafting Committee belonging to that particular language group, each of which proposed improvements in that version; problems that affected several languages were then considered by the co-ordinators of the language meetings under the direction of the Chairman of the Committee.

Only after that work did the Drafting Committee itself consider the text, taking into account the conclusions of the linguistic groups and of the meetings of the co-ordinators.

6. *Final clauses*

43. A number of organizations active in treaty-making, and in particular in the case of treaties that are somewhat homogeneous in subject-matter and potential participation, have prepared standard or model final clauses to be included in such instruments. These organizations include ILO, the Hague Conference on Private International Law and the Council of Europe, which in 1963 adopted two sets of model final clauses (which at present are in the course of being reconsidered), for use respectively with conventions requiring ratification or acceptance, and agreements that merely require signature.

44. The Treaty Section of the United Nations Office of Legal Affairs prepared a Handbook of Final Clauses (ST/LEG/6), which was published in August 1957 and covered clauses in the following categories: (a) method by which States may become parties; (b) entry into force; (c) specification of which States may become parties; (d) duration of validity; (e) methods by which States cease to be parties; (f) territorial application; (g) application under domestic law; (h) reservations; (i) arbitration, interpretation and settlement of disputes; (j) amendment; (k) revision; and (l) depositary and authentic texts. This publication has not since been updated and is now out of print. However, on an annual basis, the final clauses of all new treaties of which the Secretary-General becomes depositary are published in a Supplement to Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions, Annex: Final Clauses (ST/LEG/SER.D/1, annex).

7. *Records and commentaries*

45. Most international organizations engaged in treaty-making provide for the maintenance of either verbatim or summary records of the deliberations of all formal representative organs that consider a treaty. Such records are, however, not necessarily maintained for expert groups, nor for closed or informal meetings of representative organs. Recently, the Economic and Social Council and the General Assembly have decided, as cost-cutting measures, to eliminate, at least on an experimental basis, the keeping of summary records by most subsidiary organs, including those engaged in treaty-making (see E/1980/INF.3, paras. 20-22). An exception to this rule was made by the Assembly in its decision 34/418, at the request of the Sixth Committee, in favour of ILC, but not, for example, in favour of UNCITRAL.

46. Whether or not a subsidiary organ maintains verbatim or summary records, and whether or not it is a representative or an expert body, it normally prepares and submits to a senior organ a report on its deliberations at a particular session. For bodies that are normally engaged in treaty-making, these reports often include important ancillary documents, such as the texts of studies, comments or drafts proposals considered by the subsidiary body, and reports from subsidiaries of that body. Again, recent directives of the General Assembly have tended to reduce the completeness of such reports by proscribing the attachments of certain types of subsidiary documents.

47. In a number of organs engaged in formulating treaties, commentaries are prepared as part of the negotiating process. For example, UNCITRAL usually requests the Secretariat to prepare a commentary for use by the working group considering the first draft of a treaty, and a revised and updated version later forms part of the documentation available to the Commission itself. However, such commentaries are rarely "adopted" or "approved" by a representative body itself, in any event not by the body that finally adopts the treaty.

48. In the Hague Conference a complete report on the consideration of each adopted treaty is written by the secretariat, under the supervision of an expert body immediately after adoption but before the treaty is opened for signature—a delay for that purpose of as much as a year. The report is intended to assist the potential parties to the treaty in considering its acceptance. Other organizations also subsequently collect and publish part or all of the *travaux préparatoires* of treaties for whose promulgation they were responsible. For every United Nations codification conference, whether convened in respect of an ILC or UNCITRAL draft, all the official records of the conference, including the summary records of its principal organs, the background documents and the proposals submitted to the conference and the reports generated within it, are collected and published. However, these records are generally not fully indexed, nor do they contain materials from the stages earlier than the conference, except to the extent that these are reflected in the reports submitted to it. UNITAR has embarked on a project, with outside financing, to collect the *travaux préparatoires* of a number of important treaties originated by the United Nations, starting with the principal human rights conventions.¹²

8. *Conflicts with other treaties*

49. As the body of international law created by multilateral treaties increases, greater and greater problems arise about possible conflict between treaties already in force, whether on a world-wide or regional or otherwise restricted basis, and new proposed instruments. Naturally, identification of the existing instruments that bear on the subject matter of a proposal is always part of the research performed at some stage of the treaty-making process by the secretariat of the organization concerned. This task is particularly important in fields such as international labour legislation because of the large number of treaties that ILO and other bodies have already originated in this area. The ILO secretariat has therefore developed a particularly careful practice of identifying such treaties, including both those within its own organization and those concluded or under consideration outside, about which information is received pursuant to the arrangements referred to in paragraph 50 (b) below.

50. At least two systematic efforts are currently being made in the United Nations system to secure information about the treaty-making and related activities of a number of organizations. For example, UNCITRAL at its third session requested the Secretary-General to submit reports to the annual sessions of the Commission on the current work of international organizations on matters included in the current programme of work of the Commission. Pursuant to that request, annual reports have been submitted each year since 1971 (A/CN.9/59, 71, 82, 94 and Add.1 and 2, 106, 119, 129 and

Add.1, 151, 175, 192 and Add.1 and 2). The 1980 version reports on the activities of four United Nations organs, three specialized and related agencies, five other inter-governmental organizations, two non-governmental organizations and one other organization. To cite another example, in 1974 and again in 1980 the Administrative Committee on Co-ordination (ACC) called on the United Nations system organizations to exchange among themselves information about treaty instruments under preparation in any of their organs, and asked the United Nations Office of Legal Affairs to send annual reminders to the legal offices of the other organizations. This information is not routinely communicated to the General Assembly or to any other representative organ, but important treaty texts prepared within organizations of the United Nations system are reproduced in the *United Nations Juridical Yearbook*.

C. ADOPTION OF MULTILATERAL TREATIES

1. *Organ*

51. The formal adoption of a multilateral treaty normally takes place in a representative organ whose membership more or less corresponds to the potential participation in the treaty in question. A minor exception arises in respect of treaties adopted by the General Assembly, which typically are now open for participation by all States, including non-members of the United Nations. Only in a few instances has the Assembly acceded to the request of a non-member State to participate in the formulation of such a treaty.¹³

52. Normally two types of organs adopt multilateral treaties, either the most representative principal organ of the organization (e.g., the United Nations General Assembly or the International Labour Conference) or a plenipotentiary conference. However, exceptions arise, such as several within the ambit of ECE. Thus, most of the Commission's transport treaties are promulgated by its Inland Transport Committee, while in at least one instance a treaty was promulgated at a plenipotentiary meeting of the Commission itself. That was the 1961 European Convention on International Commercial Arbitration.¹⁴

53. In most instances the organ that adopts an international treaty consists only of inter-governmental representatives. The International Labour Conference constitutes a long-standing prominent exception to this rule, since the Conference, as well as other representative organs of ILO, consists of a number of governmental representatives (two for each member State) and of an equal number of employer plus worker representatives (one for each member State).

2. *Special procedural rules*

54. Certain organizations that specialize in multilateral treaty-making, such as the Hague Conference and UNIDROIT, have organs whose rules of procedure are specifically attuned to the various steps required for consideration and adoption of such treaties. However, some other organizations, for which the adoption of multilateral treaties is an important but not the sole activity, have adopted special rules of procedure for this purpose. For exam-

ple, FAO has included in the General Rules of the Organization a special rule on conventions and agreements. In addition, in 1957 it adopted "Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution and Commissions and Committees established under Article VI of the Constitution". UNESCO in 1950 adopted "Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution". ILO has adopted Standing Orders for both its Conference and its Governing Body that contain provisions relating to the consideration and adoption of international labour conventions.

55. Although the General Assembly has not adopted any such special rules, it has annexed to its Rules of Procedure certain "Recommendations and suggestions of the Special Committee on Methods and Procedures of the General Assembly" approved by the Assembly, and a report on "Methods and procedures of the General Assembly for dealing with legal and drafting questions", both of which contain non-binding procedural suggestions relevant to the consideration and adoption of multilateral treaties.

3. *Voting majorities*

56. Various types of voting majorities have been or are required for the adoption of multilateral treaties in organs or conferences empowered to do so:

(a) Simple majority, as provided for in the immediate post-World War II period by several United Nations conferences;

(b) Two-thirds majority for all substantive decisions of plenipotentiary conferences, including the adoption of the text of an international agreement, as is now specified in article 9 (2) of the Vienna Convention of the Law of Treaties of 1969.¹⁵ In the General Assembly itself, the voting majority required depends on whether the treaty relates to an "important question" within the meaning of Article 18, paragraph 2, of the Charter of the United Nations, or whether the Assembly takes a decision, pursuant to Article 18, paragraph 3, to decide certain questions relating to a treaty by a two-thirds majority;¹⁶ the Assembly has not, however, decided that in general the adoption of all international treaties should require such a qualified majority;

(c) Absolute affirmative majority (i.e. a simple majority of all potential voters) to reinforce the two-thirds majority requirement, which is calculated on the basis of those casting affirmative or negative votes (e.g., the law of the sea conference and the Council of Europe);

(d) Consensus on matters such as the formulation and adoption of multilateral treaties; some rules of procedure (e.g., those of the law of the sea conference) specifically require that before a decision is taken by a vote, every effort at reaching a consensus first be exhausted;

(e) In a few instances, some bodies and conferences have provided that all decisions be taken by consensus (e.g., the Committee on Disarmament) or they simply omit all rules relating to the taking of decisions so that these can only be taken by consensus or unanimity (e.g., the Rules of Procedure of the United Nations Conference on Prohibitions or Restrictions of Use of Certain

Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (A/CONF.95/2)).

D. POST-ADOPTION CONCERNS

57. Both the reports of organizations and the governmental comments indicate an increasing concern with the non-ratification or the slow ratification of multilateral treaties, resulting in delays in their entry into force, in restricting the number of participating States for an excessive number of years, and even in the failure of certain treaties to enter into force at all. This was discussed extensively in a UNITAR study.¹⁷ That study discussed a number of reasons for this phenomenon, including problems relating to the provisions of a particular treaty, as well as both particular difficulties in the domestic ratification process in certain States and general difficulties arising for all States out of the large number of treaties being generated by the international community.

I. *Facilitating acceptance through method of formulating treaties*

58. One reason for few or slow acceptances of certain multilateral treaties is the fact that, even though they were adopted by the requisite procedures and majorities in a duly qualified organ, the texts thus negotiated and adopted were not truly acceptable to many States. Consequently, certain organizations have consciously tried to improve the negotiating process with a view to arriving at texts that are more assuredly acceptable to most of the potential parties. In addition, it has been suggested that the increasing tendency to formulate and even to adopt treaties by consensus (see paras. 12 and 56 (d) and (e) above), which necessarily requires more extensive negotiations and more care in meeting the requirements of all potential participants, is more likely to result in generally acceptable instruments.

59. In addition to improving the negotiating process, other means have been developed for increasing the flexibility of multilateral treaties so as to improve the possibility of States becoming parties to them even though they may not be in full agreement with all provisions or willing and able to assume identical obligations. One common device used to increase the flexibility of treaties is the admission of reservations, either by an explicit provision allowing all or a wide range of reservations or implicitly through the depositary practice, such as that mandated by the General Assembly in its resolutions 598 (VI) and 1452 B (XIV) for treaties of which the Secretary-General is depositary and as foreseen in articles 19 to 21 of the Vienna Convention on the Law of Treaties. However, certain organizations, such as ILO prefer not to admit reservations to the instruments they develop.¹⁸ Instead, to permit flexibility, in particular for the benefit of developing States, other devices have been developed, such as allowing: (a) ratification of a convention by parts; (b) exclusions from the scope of a convention of a particular sector raising special difficulties of application; (c) initial ratification on the basis of a more limited scope, or a lower level of protection, in accordance with a scale specified in the convention; and (d) specification by States of the level of application accepted by them, subject to a minimum required by the convention.

2. *Follow-up on State action*

60. The general rule remains that, once a multilateral treaty has been promulgated by an organ or conference of an international organization, the organization then takes no substantive interest in the steps to bring the treaty into force that must be taken by individual States, except to the extent that the organization may act as depositary and carry out the formal steps required in that capacity. However, it is not unusual for the originating organization to commend a treaty to its members and to other potential parties, and from time to time to adopt additional resolutions addressed to all such States urging them to take the steps necessary to participate in the treaty; or to require its administrative head to report to it periodically as to the progress made in bringing a treaty into force for as many parties as possible.

61. In certain instances, the interest taken by organizations in treaties they originate goes beyond the periodic expression of interest and imposes certain requirements on the members of the organization. For example, both the ILO and the WHO Constitutions require member States (a) to submit treaties duly promulgated by the organization to the national organs competent to decide on their formal acceptance; and (b) to report on the actions they have taken to accept treaties promulgated by the organization.

E. SUPPLEMENTING AND UPDATING TREATIES

62. One feature of multilateral treaty-making on which a number of organs and organizations commented is that the modern age requires the conclusion of more and more treaties in technical and other fields where the conditions to which the treaty is addressed or the nature of the obligations to be undertaken may change relatively rapidly. For this purpose the normal purpose of changing multilateral treaties, by concluding what is in effect a new treaty among the States parties to the original instrument,¹⁹ is too slow, involved and uncertain a process. Consequently, many organizations have developed special devices to facilitate the adjustment of treaty provisions among which are the following:

(a) UNEP has formulated certain treaties that specify solely general obligations and administrative matters, but that rely on protocols or technical annexes, some of which may be formulated later than the principal instrument and which may in any event be amended more easily than the principal treaty (e.g., the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona, 1976)).

(b) The Working Party on Facilitation of International Trade Procedures specifically recommended that the ECE response to the Secretary-General's questionnaire on the present subject should include the recommendation that standardized trade documents (which must be uniform but which may have to be changed frequently) should not form an integral part of the text of the treaty that requires their use, but that the treaty should allow changes in the content and layout of such documents to be effected by a decision taken by a competent organ of the organization under whose auspices the treaty was negotiated.

(c) ILO conventions routinely contain a provision providing for supersession in respect of parties that become parties to later conventions on the same subject (for example, art. 38 of the ILO Convention (No. 121) concerning benefits in case of employment injury²⁰). In addition, some recent ILO conventions have contained simplified amendment procedures (see art. 31 of the above-mentioned ILO convention).

(d) The international postal régime established under the auspices of UPU consists of the Universal Postal Convention, which is binding on all member countries of the Union (see Part Four, II.H. below). This act contains the common rules applicable to the international postal service and the provision governing letter-post items. The other branches of the international postal service (parcels, money orders, cheques, collection of payments, etc.) are the subject of optional Arrangements. These two types of Acts are treaties in the full sense of the word.

(e) Certain fisheries conventions provide that recommendations made by authorized organs are binding on all participating States, unless they specifically opt out by an appropriate and timely notification; if the number of States that do so exceeds one third of the parties, the recommendation ceases to be binding on any of them (for example, arts. VIII and IX of the Convention on the conservation of the living resources of the Southeast Atlantic (see Part Four, III.H. below).²¹

(f) An International Convention on the Simplification and Harmonization of Customs Procedures was concluded in 1973, under the auspices of the Customs Co-operation Council (see Part Four, III.D. below). The Convention, prepared over a period of several years, has 30 Annexes which can be accepted independently of each other. This procedure is very flexible, in that it allows States to choose those Annexes whose obligations they are prepared to accept. It has also made it possible for the Annexes to the Convention to enter into force progressively, without it being necessary to wait for them all to be completed. Moreover, there is a simplified procedure for amending the Annexes.

NOTES

¹ See Part Three of the present publication.

² *Official Records of the General Assembly, Thirty-fourth Session. Supplement No. 10 (A/34/10)*, paras. 184-195.

³ Not reproduced here. These contributions are produced in part four of the present publication.

⁴ These comments were summarized in the report of the Sixth Committee to the General Assembly (A/33/419, paras. 259-260) and at greater length in a topical summary of the discussion of the ILC report prepared by the secretariat for the use of the Commission (A/CN.4/L.311, paras. 249-254).

⁵ In this report, the term "promulgated" is used in the sense of adoption of the text and opening of the instrument for signature or other forms of acceptance.

⁶ In one instance an entire treaty, the Optional Protocol to the International Covenant on Civil and Political Rights (resolution 2200 A (XXI), Annex) was formulated by the General Assembly.

⁷ Up to the thirty-second session of the General Assembly, this was the First Committee; when, after the tenth special session, all non-disarmament questions were

transferred from that Committee, outer space questions were assigned to the Special Political Committee.

⁸Such power derives from articles 58; 62, para. 1; 63, para. 1; and 64 of the Charter of the United Nations and from the relationship agreements concluded with specialized and other related agencies.

⁹This resolution was followed by the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (resolution 2200 A (XXI), annex).

¹⁰This resolution was followed by the International Convention of the Elimination of All Forms of Racial Discrimination (resolution 2106 A (XX), annex).

¹¹For example, the Third United Nations Conference on the Law of the Sea has a Drafting Committee of 23 members (A/CONF.62/30/Rev.2, Rule 53(1)), and the 1977 Conference on Territorial Asylum (Geneva, 1977) had a Drafting Committee of 31 (A/CONF.78/12, para. 12).

¹²See *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 14 (A/34/14, para. 76)*.

¹³For example, Switzerland took part in consideration by the Sixth Committee of the Convention on Special Missions (resolution 2530 (XXIV), annex) at the twenty-third and twenty-fourth sessions and, with more limited rights, of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (resolution 3166 (XXVIII), annex) at the twenty-eighth session.

¹⁴United Nations, *Treaty Series*, vol. 484, No. 7041, p. 349.

¹⁵For the text of the Convention, see A/CONF.39/11/Add.2 (United Nations publication, Sales No. E.70.V.5), pp. 287-301.

¹⁶For example, the decision taken at the twenty-third session of the Assembly on the Draft Convention on Special Missions.

¹⁷Oscar Schachter, Mahomed Nawaz and John H. Fried, *Toward Wider Acceptance of United Nations Treaties* (New York, Arno Press, 1971).

¹⁸See Written Statement of the ILO, in International Court of Justice *Pleadings, Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, pp. 216-287.

¹⁹Vienna Convention on the Law of Treaties of 1969, articles 39 to 41.

²⁰United Nations, *Treaty Series*, vol. 602, p. 259.

²¹United Nations, *Treaty Series*, vol. 801, p. 101.

Part Three

**COMMENTS AND OBSERVATIONS BY
GOVERNMENTS AND INTERNATIONAL
ORGANIZATIONS**

Troisième partie

**COMMENTAIRES ET OBSERVATIONS
DES GOUVERNEMENTS ET
ORGANISATIONS INTERNATIONALES**

Part Three

COMMENTS AND OBSERVATIONS BY GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

I. GENERAL COMMENTS ON THE REVIEW OF THE MULTILATERAL TREATY-MAKING PROCESS

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE¹

1. Many representatives noted that multilateral treaties were essential to the conduct of international relations and therefore an important source of international law. The elaboration of multilateral treaties constituted an essential part of the work of the United Nations system. Representatives from some of the developing countries referred to certain financial, technical or personnel difficulties that affected their effective participation in treaty-making, and expressed the hope that the present review might in some way come up with solutions which might reduce their burden. Some delegates, while supporting this review exercise, stressed that the existing procedures and techniques as developed in the United Nations were valuable and should be maintained, though they could be made more effective. A number of delegates questioned the usefulness of the present review and considered that there was insufficient interest and that the scope of the proposed exercise was too broad to permit effective examination.

2. There was some discussion on how the question of the multilateral treaty-making process could be studied. Some delegates thought these questions were best suited for experts or academic institutions; others suggested the setting up of a sessional or intra-sessional working group or advisory committee to study the subject.

3. Some delegates proposed that the present review should lead to the preparing of a manual which would elaborate on the various treaty-making techniques used and their advantages and disadvantages. Detailed and systematic information should be collected to show how multilateral treaties had been carried out in the United Nations in the past in order to have some basis on which to compare its methods with those used elsewhere.

4. With respect to the report requested of the Secretary-General to be submitted at the thirty-fifth session, representatives suggested the following points to be taken into account in preparing the report: (i) the primary concern of the study should be to enable States to participate more easily in the treaty-making process, which would facilitate the ratification and implementation of treaties at the national level; (ii) the study should concentrate on the process from the conception of a treaty to the stage of opening for signature and accession; (iii) the report should propose ways of ensuring fuller

participation by all States, particularly developing countries, in all stages of treaty-making preparation; (iv) it should be factual and analytical, and review a sufficient number of treaties to illustrate the whole range of methods used and the problems encountered; (v) the report should establish guidelines for the drafting of treaties and should provide an idea in the way in which such guidelines can be applied in terms of the amount of effort, time and expenditure involved. Some representatives felt that the study should avoid touching on questions connected with the acceptance and ratification of treaties; others however considered that these questions should be dealt with.

5. Some representatives felt that the International Law Commission should be the organ to prepare a report on the multilateral treaty-making process. A number of delegations also stressed that the report by the Secretary-General should not entail great expenses to the United Nations. Nor should the study require the creation of new machinery.

6. When the report of the Secretary-General on the review of the multilateral treaty-making process (A/35/312) was submitted at the thirty-fifth session, representatives considered that the report dealt with a very complicated legal matter, and was considered useful in providing an analytical account of treaty-making techniques and procedures employed in different fields and by various international organizations. While most representatives who commented on the Secretary-General's report found it generally acceptable, some felt that the report placed too much emphasis on the role of international organizations; in their view, States played the principal role in the making of treaties.

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

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

1. The elaboration of multilateral treaties on a wide variety of topics is an essential part of the work of the United Nations. There has been a considerable growth in the number of treaties negotiated and adopted under the auspices of the United Nations since the 1960s. While this trend is likely to continue, it has not been matched by any rationalization of the treaty-making process.

2. The growth in the number of treaties that are elaborated in the United Nations is placing serious strains on the resources of governments, particularly those of developing countries. This, coupled with difficulties in relation to States' constitutional processes, is leading to delays in ratification. There is a need to assess the methods of multilateral treaty-making used in the United Nations and in conferences convened under its auspices to determine whether the current methods of treaty-making are as efficient, economical and effective as they could be to meet the needs of the Members of the United Nations. We therefore welcomed the decision to establish a working group, at the 37th session of the General Assembly, which it is hoped will consider the responses to the very useful questionnaire raised in Part IV of the 1980 Secretary-General's Report (A/35/312) and in Annex 1 of the 1981 Secretary-General's Report (A/36/553), and decide what recommendations, if any, could be made to improve the treaty-making process.

Austria (A/35/312/Add.1, p. 2)

1. The last decades have seen a rapid increase in the number of multilateral legal instruments. The preparatory work and the servicing of international meetings, which led to the adoption of those instruments as well as the consequential integration of their results into the national context, placed and still place a heavy burden on the legal apparatus (executive and legislative) of States.

2. Under these circumstances a review of the United Nations treaty-making process, as presently undertaken by the General Assembly with a view to ascertaining ways and means for possible improvement, seems both necessary and timely. It would, however, be deceiving to attribute existing problems solely or even mainly to deficiencies in the treaty-making procedure and, hence, to expect that they would disappear with a revision of the latter. The problems originate primarily in the international community's unrestrained appetite for new international instruments, which it then has difficulties in digesting nationally. Only the setting of priorities and the concurrent reduction of the yearly output could provide a remedy to that unsatisfactory situation. It would, therefore, seem advisable for the General Assembly to include this aspect into its future considerations.

3. From a technical point of view the treaty-making procedure of the United Nations has by and large proved satisfactory over the years although it is, naturally, open to improvement. There are not many instances in which the difficulties encountered during either the preparation or ratification of multilateral instruments can be squarely attributed to deficiencies in the treaty-making process. A seemingly obvious exception, however, is the Third United Nations Conference on the Law of the Sea, whose problems apparently stimulated the present inquiry. It is doubtful, however, whether those problems could have been better or more quickly solved by a different procedure. They seem to originate mainly in the diversity of interests involved and the resulting multiplicity of negotiating positions, often changing in time or overlapping in subproblems. Such a somewhat diffuse pattern makes it difficult to imagine any sort of *general rules* for a speedy resolution of conflicts of interest and the experience of the Conference on the Law of the Sea should, therefore, be treated as a rather singular one. If a similar pattern were to appear at the outset of a future endeavour in international treaty-making, consideration should be given to dividing the subject-matter into more manageable separate parts.

4. In view of these circumstances any outcome, in concrete terms, of the present inquiry ought to be considered with caution. Although a comparison of different procedures which have evolved in practice and an assessment of experiences should permit the identification of techniques and/or approaches in need of improvement, the often quoted wisdom that the subject determines procedure ought to be borne in mind and a uniform code for all sorts of multilateral treaty-making should, therefore, not be attempted. A manual of treaty-making procedures, annotated with practical considerations derived from experience, permitting to choose those most appropriate for a particular exercise, would seem to meet best the current need of treaty-makers.

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

1. The Brazilian Government believes that the consideration by the General Assembly of the item "Review of the multilateral treaty-making process" is a very useful exercise. It affords an opportunity to take a serious and comprehensive look at the treaty-making process as it has evolved in international practice and to devise, if necessary, improvements in that process.

2. The report of the Secretary-General (A/35/312) offers an excellent base for the consideration of the subject.

3. A careful examination of the report and of the annexes thereto leads to the conclusion, contained in the report itself, that a diversity of subjects, submitted to a membership with varied interests and priorities, makes it impractical to evolve rigid and broadly applicable treaty-making procedures.

4. One should therefore exclude, as impractical and unwise, any attempt to reduce the present flexibility in the treaty-making process, by drawing up a set of rules to be universally applied.

Bulgaria (A/35/312/Add.1, p. 11)

1. The Government of Bulgaria regards the consideration of the question of the review of the multilateral treaty-making process and of the enhancement of its effectiveness as an important step towards strengthening the role of the United Nations in the codification and progressive development of international law.

2. The systematization of norms and procedural rules applied in the elaboration of multilateral treaties thus far will be conducive to extending the options in each separate case of treaty-making, which will correspond to the character of the subject-matter discussed. Subsequently, the use of more rational methods would create conditions susceptible of alleviating the burden which the active participation in the international law-making process imposes on all Governments, particularly on those of developing countries, as well as of promoting a more rational use of the resources of the United Nations budget.

3. The Government of Bulgaria takes the view that concrete proposals on future improvements in the treaty-making process should be deferred until the report of the Secretary-General is comprehensively studied and submitted to the Sixth Committee at the thirty-fourth session of the General Assembly. For these reasons, the Government at this juncture confines itself only to the following remarks.

4. A survey of the methods for the elaboration of multilateral treaties should deal only with the international aspects of the issues involved, since the problems of ratification of international treaties and the implementation of the obligations assumed are of the exclusive domestic competence of the States and do not relate directly to the substance of the problem under consideration.

5. The Government of Bulgaria is of the opinion that the approach to the problems of treaty-making which require settlement and regulation should be devoid of any standardization and unification of norms. Preserving a flexible approach in implementing some or other methods according to concrete circumstances is a basic requirement for arriving at optimal solutions of questions arising out of the elaboration of multilateral treaties.

Byelorussian Soviet Socialist Republic (A/35/312/Add.1, p. 13)

1. International multilateral treaties play an important role in strengthening peace, in broadening and consolidating the various forms of co-operation between States, and in the progressive development of international law and its codification, and they represent one of the basic sources of international law.

2. The Byelorussian Soviet Socialist Republic is a party to various multilateral treaties and attaches great importance to the treaty-making process. It is steadfastly in favour of full observance of the principle of *pacta sunt servanda*. This principle calling for the scrupulous fulfilment of treaty obligations is embodied in article 28 of the Constitution of the Byelorussian Soviet Socialist Republic, in article 29 of the Constitution of the Union of Soviet Socialist Republics and in article 19 of the Union of Soviet Socialist Republics Act on the Procedure for Concluding, Implementing and Denouncing International Treaties. The Byelorussian Soviet Socialist Republic, which unwaveringly fulfils its treaty obligations, at the same time holds that other parties to international treaties by which it is bound should also strictly fulfil their obligations under such treaties.

3. The report being prepared by the Secretary-General, pursuant to General Assembly resolution 32/48, on the techniques and procedures used in the elaboration of multilateral treaties, could prove useful if, on the basis of an in-depth analysis of treaty practice, it was possible to find real opportunities for enhancing the effectiveness of such techniques and procedures. In this connection, the representative of the Byelorussian Soviet Socialist Republic in the Sixth Committee particularly stressed at the thirty-second session of the General Assembly that such a study should be undertaken without any increase in the United Nations regular budget or any additional manning provision.

4. A leading role in the elaboration of international multilateral treaties of a universal character, which are currently assuming special importance, belongs to the United Nations. Under Article 1 of its Charter, the Organization is called upon to be a centre for harmonizing the actions of nations in the attainment of common ends. The history of United Nations activity in connection with multilateral treaties shows that, under the auspices of the Organization and on the basis of its Charter, a large number of international treaties dealing with various aspects of relations between States have been concluded. In the light of the various legal systems existing in today's world, of the national practice of States, of the nature of organs belonging to the United Nations and other inter-governmental organizations, and of the specific details of problems, diverse techniques and procedures have evolved within the Organization itself for the elaboration of general international treaties. At the same time, each State or national liberation movement recognized by the United Nations has quite properly been accorded the right to take an active part at any stage in the preparation and elaboration of an international treaty.

5. The complexity of the process of establishing norms in contemporary treaty practice is a reflection of the special characteristics and level of development of relations between States, and it ensures that drafts of new legal documents are given full and deep scrutiny. The variety of existing techniques and procedures allows for flexibility in selecting, for each particular situation, the

most suitable techniques and procedures and avoiding the mechanical, ubiquitous use of stereotypes. It therefore seems unjustified and inadvisable to set up a unified procedure for elaborating international multilateral treaties. The Byelorussian Soviet Socialist Republic also believes that there is no justification for attempts to review the current, proven practice followed in drafting treaties on disarmament and other important political questions.

6.² On the whole, the Report of the Secretary-General (A/35/312) correctly reflects the multilateral treaty-making practice of States. The representative of the Byelorussian SSR pointed out at the thirty-fifth session of the United Nations General Assembly that the small number of replies received from Governments indicated that the question has been considered exhaustively in the Sixth Committee and that the discussion on it could be concluded at this stage.

Canada (A/35/312/Add.1, p. 14)

1. The Canadian authorities welcome the opportunity to offer some preliminary comments on the multilateral treaty-making process. In general, Canada sees the objective of the review of this process, initiated by General Assembly resolution 32/48, as the streamlining and rationalization of multilateral treaty-making in light of the current needs and concerns of the international community. It is hoped that the results of this examination will provide guidance to States to enable them to make the most effective and productive use of time and resources devoted to the negotiation of multilateral treaties.

2. A variety of methods has been employed in the multilateral treaty-making process; such diversity in the methods of treaty-making should be considered as a source of strength. It would be neither desirable nor practical to attempt to establish an identical procedure with respect to the variety of differing subjects considered suitable for embodiment in multilateral treaties. It is hoped then that this review will make more information available about the multilateral treaty-making process with a view to determining whether some aspects can be made more rational and systematic and to see if procedures and techniques used in some bodies can provide examples and guidance for others. The multilateral treaty-making process as a whole might be considered to see if it is producing the quantity and quality of agreements required by the international community.

3. It is clear that a comprehensive examination of the multilateral treaty-making process would be a vast undertaking comprising a number of different aspects from the initiation stage, when the idea to elaborate a treaty is proposed, to the entry into force of the new agreement. The Canadian authorities look forward to an exchange of views in the Sixth Committee in order to determine which aspects of this subject are most conducive to further study. It may be possible to identify such specific areas on the basis of discussion in the Sixth Committee, the Secretary-General's report and the view submitted to the United Nations by States in response to resolution 32/48. Possibilities for the rationalization of the process can be considered with respect to both the preparatory and negotiating stages of the multilateral treaty process.

4. The Canadian authorities look forward to the results of this initiative with respect to gaining more information about the multilateral treaty-making

process as well as obtaining a better idea of the views and concerns of other Governments on this important subject. It is hoped that the comments of Governments, the report of the Secretary-General and discussion of this item in the Sixth Committee will contribute to a greater understanding of the complexities of the multilateral treaty-making process and point the direction in which this question can be most fruitfully pursued.

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

1. The Government of the Republic of Indonesia in principle agrees with the efforts of the United Nations General Assembly for a review of the multilateral treaty-making process.

2. The Indonesian Government supports the proposal that the Report of the Secretary-General (Doc. A/35/312) be used as a basis for the subsequent negotiations, including the observations and comments from Member States.

3. The Indonesian Government will participate in the negotiations to be held under the auspices of the United Nations General Assembly and assist the said efforts by providing comments based on the questionnaires in the annex of document A/35/312.

Italy (A/36/553, p. 26)

1. Given the importance of the multilateral treaty-making process, the Italian Government is of the opinion that the idea of reviewing the functioning of that process is most worthwhile, and that the United Nations is the most appropriate forum for an over-all evaluation which, however, should not overlook the peculiarities of the treaty-making process in different contexts (United Nations specialized agencies, regional bodies, *ad hoc* conferences).

2. The Italian Government also believes that such an over-all evaluation might be resumed at appropriate intervals in order to take into account the development of international practice.

3. At the same time, Italy believes neither that such a review must necessarily lead to radical changes in practice nor, conversely, that it should give rise to an increased standardization of procedures which would impede the adaptation of practice to the needs of a particular negotiating context. Treaty law is in fact dominated by the principle of the freedom of contracting parties, which is evidenced mainly in the continuing search for *ad hoc* negotiating patterns aimed at overcoming political difficulties of various kinds which interfere from time to time with the achievement of an agreement. Thus, within the bounds of respect for negotiating "good faith" and for the rules of international *jus cogens*, the negotiating parties must be allowed to enjoy maximum freedom in the treaty-making process, and the treaty must be an act freely arrived at not only with regard to its provisions but also, as much as possible, in the procedures followed during its negotiation.

Japan (A/35/312/Add.1, p. 20)

1. The multilateral treaties recently concluded have greatly increased both in number and in scope, to include such areas as trade, investment, energy and environment. Further, the number of States participating in mul-

tilateral treaty-making conferences has also grown, and consequently the process of drafting and adopting treaties tends to require increasingly more time. There is now a greater need to achieve a higher degree of efficiency and economy in the treaty-making process, thereby reducing the burdens this process places on the participating States. Consistent with this understanding, and because the Japanese Government regards the United Nations as the most suitable forum for undertaking a review, it voted in favour of the resolution on this matter at the thirty-second session of the General Assembly.

2. While recognizing that the difficulties involved in the treaty-making process are caused in part by the inadequacy of existing procedures, the Government of Japan believes that they derive, to an even greater extent, from various elements pertaining to the substance of the treaties. These include, for example, disagreements among the participating States relating to the content of the treaty, the fact that there are completely new areas which are to be dealt with by the treaty, or the complexity of the subject involved.

3. Procedures will naturally differ with each treaty, depending upon such factors as the content, the degree of urgency involved, the number of States participating in the treaty conference, and whether or not the conference is held under the auspices of a particular international organization. Therefore, the amount of work (that is, the compilation and evaluation of information collected by the secretariat) required to establish procedures and methods suitable to each case will be enormous.

4. Further, there exist a number of points which also need to be studied regarding future efforts, such as how the results of this review should be formulated (for example, as a treaty, a resolution, or simply as a manual); whether domestic procedures should be included; what the role of the Sixth Committee of the General Assembly should be in making treaties, and so forth.

5. Accordingly, the Government of Japan would be inclined not to actively support any attempt to unduly hasten the conclusion of the treaty-making process review.

6. Nevertheless, the Government of Japan, recognizing the importance and the value of studying this matter from a long-term perspective, expresses its readiness to co-operate.

Mexico (A/36/553, p. 32)

1. In General Assembly resolution 32/48, which marked the beginning of the consideration of the item "Review of the multilateral treaty-making process", emphasis is placed on the duty of the General Assembly under Article 13, paragraph 1 (a), of the Charter of the United Nations to initiate studies and to make recommendations for the purpose of encouraging the progressive development of international law and its codification.

2. In this respect, there is no doubt that the General Assembly has played an important role in encouraging treaty making on matters of common interest, as well as definition of universally applicable norms of conduct, through the adoption of resolutions or declarations in which: (a) corollaries to the principles expressly recognized in the Charter of the United Nations have been formulated (e.g., the Declaration on Principles of International Law con-

cerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations) and (b) other norms have been defined (e.g., the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction).

3. Consequently, it would seem appropriate that any study referring to Article 13, paragraph 1 (a) of the Charter of the United Nations should devote an important chapter to an analysis of the legal consequences of decisions of the United Nations General Assembly which fulfil certain conditions and which would help in determining the obligations of States, perhaps by seeking the views of States on the desirability of having the International Law Commission make a special study of this subject.

Netherlands (A/35/312/Add.1, p. 2)

1. The General Assembly of the United Nations, at the instigation of certain Member States, including the Netherlands, has undertaken an inquiry into the working of the procedures for multilateral treaty-making under the auspices of the United Nations. The inquiry aims, *inter alia*, to find methods which would use more efficiently the manpower and energy invested by the Governments of the Member States and the Secretariat in the preparation and drafting of multilateral treaties.

2. The limits which have been set for this inquiry call for some comment. First, the inquiry is primarily concerned with the procedures now employed and improvements which could be realized. It need scarcely be said that an examination of the causes of the defects which have been noted in the multilateral treaty-making process cannot limit itself exclusively to procedural aspects. If necessary, the proposed evaluation must extend to other factors, many of which lie in the political sphere.

3. Secondly, the explanatory memorandum (A/32/143, annex)³ could give the impression, in point A (Purpose of the initiative), that the stage following the completion of the text can be disregarded. This conclusion would be wrong, since discord concerning the present procedures with regard to the drafting of multilateral treaties is partly related to the rate at which the Member States give their consent to be bound by the treaties, once they have been drawn up. The two stages of drafting and giving the consent to be bound are further linked in the sense that problems which have not been, or not adequately, dealt with in the first phase inevitably give rise to delays in the second, while, on the other hand, problems which may be foreseen for the implementation play an important role in making a treaty, and, in fact, set the pace for it. The different judicial systems of the Member States form an additional complication, the consequence of which is that the problems associated with implementation are different in practically every country. Thirdly, the enquiry is limited to multilateral treaties made within the context of the United Nations. This limitation seems to be justified, partly because the enquiry was initiated by the General Assembly of the United Nations, and partly because the problems arising from treaties which have been or are being concluded in the United Nations context, particularly in view of their universal nature, are incomparably greater than those connected with treaties drawn up in a smaller, notably regional, context. Nonetheless procedures followed in

contexts other than in the United Nations and the specialized agencies may no doubt serve as comparisons.

4. One condition for a more substantive judgement on the subject-matter is the availability of a report containing an analysis of all the procedures currently used in the United Nations system.

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

1. The State of Qatar attaches special importance to multilateral treaties of a universal character relating to the codification and progressive development of international law whose aims and purposes concern the international community as a whole.

2. Multilateral treaties have an important role in strengthening peace, expanding and deepening various forms of co-operation among States, and the progressive development and codification of international law. Multilateral treaties constitute a basic source of international law.

3. The methods and procedures pursued by the United Nations at present give States sufficient prospects for agreement on the system in the light of which a particular question is to be examined by the organs of the Organization or its international conferences. Hence the burden of the multilateral treaty-making process has no scientific significance. The main thing is that States should fulfil completely the obligations embodied in the Charter of the United Nations, especially with regard to the maintenance of international peace and security.

4. The work done by the International Law Commission, which is a focal point in codification activities, whether in terms of quantity or quality, is admirable, as is the work done by the United Nations Commission on International Trade Law in its field of expertise. The efforts to improve the multilateral treaty-making process cannot result in a system less effective than that of the International Law Commission and the United Nations Commission on International Trade Law.

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

1. Given the importance of the multilateral treaty-making process, the Government of the Republic of Korea believes that the consideration by the General Assembly of the subject "Review of the multilateral treaty-making process" is a highly useful exercise which provides for an opportunity to look into the existing treaty-making process as it has evolved and to address matters that may, where possible, need improvements.

2. Regarding the questions raised in the report of the Secretary-General (A/35/312), the Government of the Republic of Korea is of the view that, in terms of practicality, one should take into account the merits of flexibility in the current treaty-making process rather than a set of rules to be universally applied.

3. Considering realities of the treaty-making process in the international community, it would be advisable to follow gradual treaty-making practices which could ensure a wide basis of acceptance by sovereign States with varied interests and priorities.

4. It is suggested that, in connection with the effective functioning of the General Assembly throughout the process, a certain special procedural consideration be given to ensure full participation, without right to vote, of non-member States in the proceedings of the General Assembly.

Spain (A/36/553/Add.1, pp. 12-13)

1. The Spanish Government supports efforts directed towards the codification and development of international law through multilateral treaties and endorses the review of the multilateral treaty-making process initiated by the United Nations with a view to improving the various stages of that process. Apart from its response to the questionnaire submitted in accordance with General Assembly resolution 35/162, the Spanish Government would like to make a few preliminary comments of a general nature.

2. This subject is extremely complex and should not be unduly simplified. In view of the diversity of situations and circumstances, one should not make generalizations or seek miraculous formulas to solve each and every problem. Although the aim is to elaborate criteria and guidelines that are as general as possible, a certain amount of flexibility is needed to allow for this diversity of situations.

3. The most characteristic elements of the present situation are the following: excessive proliferation of international multilateral treaties and the need for co-ordination, excessive politicization of the international negotiating process, and technical and legal inadequacies in the texts of treaties.

(a) Excessive proliferation and need for co-ordination

4. In recent years there has been an exorbitant increase in the number of international conferences and meetings of international organizations, sub-commissions and working groups at which international treaties are elaborated and, at times, adopted. States cannot regularly or attentively follow this proliferation of meetings and international treaties, which exceeds their "absorption capacity" in such matters.

5. Reasonable limits should be set for this type of international hyperactivity, especially since many of these meetings are held simultaneously and, even if they are not contradictory, they represent an unproductive duplication of effort. A minimum of international co-operation is needed in this process; accordingly, the United Nations should determine the guidelines and set the example. To that end, the efforts to co-ordinate international normative activities within the United Nations "family" should be increased. This applies to the bodies of the Organization itself as well as to its specialized agencies and organizations.

(b) Politicization of the international negotiating process

6. In recent years, there has been a gradual "delegalization" of international treaties and a growing politicization both of the negotiating process and of the contents of such treaties. The main, though not the only, reason for this phenomenon is the fact that the negotiating techniques used in the United

Nations to elaborate provisions of a political nature have been applied to the elaboration of the legal norms contained in treaties.

7. A characteristic of this trend is the growing importance of consensus as a negotiating formula which, although it is essential for the adoption of political texts and should be an objective in the negotiation of legal texts, disrupts the negotiating process if it is carried to the extreme.

8. This type of politicization can also be seen in the fact that technical and legal bodies—both permanent bodies (International Law Commission, UNCITRAL) and *ad hoc* bodies—are being excluded from the mainstream of the international treaty-making process and are being replaced by working groups composed of government representatives. The epitome of this situation can be found in the negotiating process of the Third United Nations Conference on the Law of the Sea, which the Spanish Government considers to be completely atypical and which should therefore be viewed with the utmost caution when the time comes to draw general inferences from that experience.

(c) *Technical and legal inadequacies*

9. The considerable politicization of the negotiating process and the conditions that accompany the use of consensus have logically resulted in a gradual undermining of the legal aspects of the international treaty-making process. All this, together with undue haste to conclude negotiations, the inadequate preparation of the relevant texts and the predominance of political bodies over legal bodies in the negotiating process, helps to explain the legal inadequacies of many of the treaties adopted recently, a situation which in turn creates major problems in terms of the interpretation and application of such treaties.

10. Therefore, greater attention must be devoted to the legal aspects of treaty-making, while allowing the necessary time for them to be properly negotiated, strengthening the participation of technical and legal bodies, avoiding excessive use of consensus and also avoiding wordings of dubious interpretation. This does not mean seeking legal perfectionism beyond the realm of political reality, for that would result in the elaboration of magnificent texts of treaties which would never come into force; instead, the right balance must be found between political requirements and possibilities and the need for precise legal wording.

11. This might be achieved in the following manner: (a) prior discussions at the political level, of the purpose of the treaty and adoption of basic guidelines to that end; (b) elaboration of a preliminary draft by legal experts, or supervision thereof, if it is drafted by technical experts; (c) request for the submission of the views of States before the final elaboration of the draft; (d) adoption of the treaty, preferably at an *ad hoc* diplomatic conference, which should have the benefit of the technical and legal participation of the Drafting Committee.

Switzerland (A/37/444, p. 20)

1. S'il est vrai que l'accroissement du nombre des traités multilatéraux, qui couvrent aujourd'hui pratiquement tous les aspects des relations internationales, impose une lourde charge aux gouvernements qui entendent parti-

ciper activement à leur élaboration, il faut voir aussi que cette prolifération ne fait que refléter le besoin ressenti par les Etats de conduire leurs rapports mutuels d'une manière aussi ordonnée et prévisible que possible. Sans doute convient-il d'utiliser de façon rationnelle les ressources dont disposent les gouvernements et les organisations au sein desquelles s'exercent des activités normatives. Mais il n'est pas sûr que les méthodes actuelles d'établissement des traités puissent être rendues plus efficaces et plus économiques — en admettant que ces deux objectifs ne s'excluent jamais l'un l'autre — par des efforts d'uniformisation qui ne tiendraient pas compte de la diversité des situations, des matières et des besoins.

2. On peut se demander d'autre part s'il est possible de corriger la situation actuelle en limitant la réflexion à un choix de moyens formels et de remèdes de procédure, sans l'étendre à des questions qui, au-delà des inconvénients matériels qu'on cherche justement à corriger, résultent aussi, mais pas exclusivement, du nombre toujours croissant des traités multilatéraux. L'insécurité juridique pouvant découler des chevauchements et des contradictions entre les traités est accentuée encore, par exemple, par l'introduction de considérations politiques dans la solution de problèmes techniques, par l'emploi, lors de la rédaction des traités, de formules qui ne fixent pas de manière suffisamment précise les obligations des parties et par la réticence des Etats à soumettre à un prononcé conforme au droit les divergences éventuelles touchant l'interprétation ou l'application des traités.

3. Dans la mesure où ces défauts procèdent des techniques législatives mises en œuvre, notamment du mode de prise de décisions, il conviendrait de se demander si la méthode du consensus est la plus appropriée en toutes circonstances. Si elle a pour avantage incontestable de contraindre à la négociation les Etats participant à l'établissement des traités jusqu'à la formation d'un accord général, elle peut aussi avoir pour conséquence, en ne révélant pas nettement les oppositions et les réserves, d'entretenir les ambiguïtés et de favoriser les incertitudes.

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

1. The general position of the Ukrainian SSR regarding the review of the multilateral treaty-making process has already been stated repeatedly at sessions of the United Nations General Assembly. The Ukrainian SSR holds the view that the improvement of the procedures and methods used in elaborating multilateral treaties is of considerable practical significance in contemporary international relations. The correct choice of appropriate procedures reflecting the character and aims of the future treaty facilitates fuller exposure of States' opinions and interests and reconciliation of their positions, and permits in-depth study of the draft treaty and the inclusion therein of provisions acceptable to the maximum number of States. There is also a saving of means, time and effort needed for treaty-making.

2. The report by the United Nations Secretary-General entitled "Review of the multilateral treaty-making process" on the whole gives a sufficiently detailed account of the procedures employed in organs within the United Nations system for the elaboration of treaties and generally reflects correctly State practice in this area. The extensive factual data provided in the report

can be put to practical use as reference material. Similar practical use should probably also be made of the auxiliary material being prepared by the Secretariat regarding the provision of legal assistance in multilateral treaty-making questions within the United Nations.

United Kingdom of Great Britain and Northern Ireland
(A/35/312/Add.1, p. 30)

1. The Government of the United Kingdom continues to support efforts to codify and progressively develop international law by means of multilateral treaties and welcomes the current review of the multilateral treaty-making process which is being undertaken in accordance with General Assembly resolution 32/48 with a view to the general improvement of the many different treaty-making procedures.

2. The report of the Secretary-General will clearly be the main focus of future discussion of this item and the Government of the United Kingdom look forward to studying the report in due course. It is hoped that in preparing the report the experience of those regional organizations which have developed particular techniques of multilateral treaty-making will be taken fully into account, as well as that of the United Nations and the specialized agencies.

Union of Soviet Socialist Republics (A/35/312/Add.1, p. 27)

1. The Soviet Union attaches great importance to the question of the techniques and procedures used in the elaboration of multilateral treaties. Selection of the appropriate techniques and procedure can undoubtedly be of assistance in drafting a multilateral treaty which will be a reliable instrument for strengthening peace and will encourage international co-operation and the progressive development of international law and its codification. It promotes the further strengthening of the principle that every treaty in force is binding upon the parties to it and must be strictly observed by them. Strict observance of the obligations arising from the universally recognized principles and norms of international law is a constitutional principle of the foreign policy of the Soviet Union. It is affirmed in article 29 of the Constitution of the USSR, adopted in 1977, and in article 19 of the USSR Act concerning the Procedure of Concluding, Implementing and Denouncing International Treaties of the USSR, a law which emphasizes, *inter alia*, the USSR's position that the other parties to multilateral international treaties to which the USSR is a party must also strictly observe the obligations arising from such treaties.

2. The preparation of a report by the Secretary-General of the United Nations on the techniques and procedures used in the elaboration of multilateral treaties can be of assistance in achieving these objectives, provided that real possibilities for improving those techniques and procedures and for increasing their effectiveness are thus identified. The study of this question should not, of course, lead to increased expenditure under the regular budget of the United Nations or to the creation of any kind of additional machinery.

3. Soviet representatives in various bodies and at United Nations conferences have repeatedly pointed out that in today's world particular significance is attached to general multilateral treaties of a universal character which relate

to the codification and progressive development of international law and whose aims and purposes are of interest to the international community as a whole.

4. An important role in the elaboration of such treaties is played by the United Nations, which, under Article I of its Charter, is called upon to be a centre for harmonizing the actions of nations in the attainment of the common ends of the Organization. Various techniques and procedures for the elaboration of general multilateral treaties have emerged in the course of United Nations activities. Any State has the right to propose the conclusion of such treaties and to contribute to discussion and decision-making at any stage in the elaboration. The representatives of national liberation movements recognized by the United Nations can also take part in this process.

5. Taken as a whole, these techniques and procedures, which reflect the complexity of the process of establishing norms in present-day international law, ensure thorough comprehensive consideration of the substantive aspects of the drafts of new legal instruments. The diversity of the techniques and procedures currently employed in particular cases by States in the elaboration of treaties in specific areas of co-operation precludes the possibility of establishing universal models to be applied mechanically in concluding all multilateral treaties. It would not appear useful to try to create a single procedural scheme to be applied in all treaty-making efforts. Universal models of techniques and procedures for working on treaties are unlikely to yield positive results inasmuch as treaties differ substantially in their subject-matter and in the specific problems associated with them. We firmly believe that there is no reason to review the system by which treaties on disarmament and other important political questions are elaborated since that system has fully proved itself in practice.

6. There is no question that the techniques and procedures used within the United Nations system in the elaboration of multilateral treaties of a universal character could be improved. In particular, the International Law Commission remains extremely ineffective. The draft treaties prepared by the Commission could be finalized and adopted by the Sixth Committee without convening special international conferences; this would have the effect of further enhancing the legislative role of the Sixth Committee in accordance with the provisions of Article 13 of the United Nations Charter.

7.⁴ The study of the multilateral treaty-making process contained in that report generally reflects correctly State practice in this area. The paucity of the observations submitted by Governments in response to the Secretary-General's inquiry indicates that the majority of Governments have little interest in broad studies on the question. Therefore, at the present stage, it would be advisable not to go beyond the results which have been achieved and published to date.

United States of America (A/35/312/Add.1, p. 31)

1. The Government of the United States strongly supports the growth of a more effective system of international law. The principal contemporary means of enacting international law is the multilateral treaty. Accordingly, the mechanics of that means are necessarily important. Its processes merit study, and its imperfections require the consideration and action of the international community.

2. The statements made in the United Nations General Assembly on the introduction of this item by the representative of Australia and others (A/C.6/32/SR.46-50) point to certain problems which have developed over the years which may impede the full utilization of the multilateral treaty-making process as a means of developing the content and efficacy of international law. While there may be differences of opinion among members as to which problems loom largest, there should be no such differences about the desirability of enhancing the efficiency of the process. Nor should the recognition that problems exist and that the process inevitably is susceptible of improvement becloud the fact that attainments in the codification and progressive development of international law during the last 30 years are substantial. In view of the deep differences of policy and even ideology that divide many States, those attainments appear the more impressive. At the same time, those differences impose limits on what further advances may be achieved at any rate, in the short run—respecting both the substance and procedures of international law.

3. The corpus of work of the International Law Commission, which stands at the centre of United Nations codification processes, is impressive in quantity and quality. That judgement applies as well, in its specialized sphere, to the United Nations Commission of International Trade Law. Care must be taken lest any efforts at improvement in the processes of multilateral treaty-making result in a system less effective than that pursued by the International Law Commission and by UNCITRAL.

4. Moreover, it must be borne in mind that at least some of the obstacles to the more expeditious and effective operation of the multilateral treaty-making process lie not in the area of identification and solution of problems of law and policy and the preparation of text but rather in what might be called the absorptive capacity of States. The sparsity and slowness of comments of States on treaty drafts, the state of preparation of delegations to committees and conferences of plenipotentiaries, the frequent requests to defer the convening of conferences because of the press of other business, and the length of time that States take to ratify treaties—when they ratify them at all—suggest that the problems may lie at least as much in the ability of States to absorb treaties and to participate in their preparation as in the capacity of existing or future mechanisms to elaborate them.

5. For the purposes of these comments, examination of the question may be usefully broken down into three main areas: the preparation of draft texts, the international legislative process, and the stage in which States agree to become parties to conventions.⁵

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

European Conference of Ministers of Transport (A/36/553, p. 47)

1. The Conference, although empowered to make such agreements as are necessary for the organization of international transport in Europe, seldom finds it necessary to proceed by way of formal treaties, though we are of course interested in any general guidelines you may be able to develop.

2. In pursuance of the mandate to co-ordinate the activities of international (transport) organizations, we do however work very closely with the European Community and with the United Nations Economic Commission for Europe. We therefore welcome the efforts being made by the General Assembly to improve procedures for drawing up, and implementing international instruments in the United Nations. ECMT has for example a particular interest in the 1968 (Vienna) Conventions and Agreements on Road Traffic and on Road Signs and Signals,⁶ and in their further development. We would greatly welcome proposals to improve and simplify the amendment procedures for this type of technical instrument; perhaps along the lines suggested by the Working Group on the Simplification of Trade Procedures.

3. We appreciate however that the Secretariat may want to concentrate in the first instance on general principles and on the report to the thirty-sixth session, which we shall follow with interest.

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

1. Within the framework of the Agreement Governing the Relationship Between the United Nations and the IAEA the United Nations General Assembly could play a co-ordinating role in relation to the IAEA's treaty-making activities. Article III.B.1 of the IAEA Statute provides that the Agency shall:

“1. Conduct its activities in accordance with the purpose and principles of the United Nations to promote peace and international cooperation, and in conformity with policies of the United Nations furthering the establishment of safeguarded worldwide disarmament and in conformity with any international agreements entered into pursuant to such policies.”

2. The IAEA will consider a relevant resolution referred to it by the United Nations, although it would be open for the IAEA to decide how to respond to the resolution. The IAEA will also furnish any studies and information requested by the United Nations to the extent practicable and relevant to its functions.

International Telecommunication Union (A/37/444, p. 28)

1. Reference is made to the ITU's first contribution entitled “Report on the Techniques and the Procedures used in the Elaboration of Multilateral Treaties” which reflects, in a summary form, the ITU's practice of techniques applied and procedures followed in the Union's Multilateral Treaty-Making Process which is marked by the highly technical and specialized character of the various legal instruments adopted under the auspices of the Union and concerning general as well as specific telecommunication matters (see Part Four, B, ITU).

2. The ITU's practice is based on the pertinent provisions of the International Telecommunication Convention, Malaga-Torremolinos, 1973, adopted by ITU's Plenipotentiary Conference, the supreme organ of the Union. It would, therefore, rather be within the competence and prerogatives of that organ to reply, in a representative and authoritative manner, to a number of questions contained in the above quoted annex and concerning general policy

issues. As this cannot be done due to the lack of time available, the following observations and comments reflect only the view of the ITU's General Secretariat and do not, in any way, represent or pre-judge the position of the Union as a whole or of its individual Member countries on the issues under consideration.

3. The specific observations and comments on the questionnaire are made only on those questions (with reference to the numbers and letters given in that Annex), which are, in the view of the ITU's General Secretariat, of direct concern or interest to the I.T.U. or to which I.T.U. can usefully make any observations or comments. They are made on the understanding that the term "United Nations" means the United Nations Organization proper, not including the specialized agencies forming part of the United Nations Common System, and that the term "Secretariat" means the Secretariat of the United Nations Organization.

Organisation for Economic Co-operation and Development
(A/36/553, pp. 49-50)

1. The Organisation for Economic Co-operation and Development (OECD) is grateful for the opportunity to submit observations on the report of the Secretary-General entitled "Review of the Multilateral Treaty-Making Process" as this is clearly of considerable interest to the Organisation and to its Members. However, the observations of the Organisation are those of the Secretariat and should not be understood as reflecting necessarily the views of its individual Members.

2. It should be made clear from the outset that multilateral treaties are not the principal manner in which the Organisation achieves its aims. The two principal means of action are those provided for under Article (a) and (b) of the Convention on the OECD. The Organisation may take Decisions which, except as otherwise provided, shall be binding on the Members. In addition, the Organisation may make Recommendations to Members and such Recommendations are submitted to the Members for consideration in order that they may, if they consider it opportune, provide for their implementation. Decisions and Recommendations are adopted by the OECD Council which is composed of all the Members of the Organisation.

3. A number of international agreements have, nevertheless, been concluded under the auspices of OECD, covering several fields but principally the field of energy and in particular, nuclear energy. However, the agreements concluded in the field of energy (other than in the specific area of nuclear energy) do not necessarily come within the purview of the classic definition of multilateral treaties since they are not concluded solely among States. Agreements concluded among Members, under the auspices of the Organization, are varied as to form and subject.

4. As concerns the agreements concluded by the Organisation itself pursuant to Article 5 (c) of the Convention of the OECD of 14th December 1960 these have been limited principally to agreements with Members concerning privileges and immunities and co-operation agreements with other international organizations.

5. Finally, a wide range of other forms of agreement are also used frequently, according to the particular subject-matter, circumstances and desires of Members. Once again, these are not multilateral treaties in the formal sense.

6. As concerns the questionnaire itself, the OECD Secretariat does not consider that it is in a position to reply to a number of questions included therein to the extent that such questions are concerned with the internal procedures of the United Nations Organization or international organizations within the Organization of the United Nations or where such questions deal with the work of the International Law Commission. In some cases questions seem to be addressed principally to the United Nations Organization or organizations of the United Nations system but to the extent that these questions would appear to be germane to the activities of other inter-governmental organizations such as OECD a reply has been given.

United Nations Educational, Scientific and Cultural Organization
(A/36/553, p. 54)

1. We find the "Review of the Multilateral Treaty-Making Process" to be an interesting and informative study, though we feel the emphasis was placed somewhat too strongly on examining the purely mechanical processes involved in treaty-making and insufficiently on the examination of Member States' policies toward treaty-making in the international forums.

2. In this connection, we feel that the questions in section IV of document A/35/312 will be best answered by Governments rather than the Secretariats of international organizations, as it is the former who are the vital factor in the treaty-making process, and it is they who best know what needs to be done to alleviate the burdens or remove obstacles to ratification for them in this respect.

3. Since the maximizing of the efficiency and the effectiveness of the multilateral treaty-making process is a challenge which must be primarily met by Governments themselves, we wonder whether it might not be useful to invite Governments to reflect on the following policy questions.

(a) Would it not be advisable, for Governments which negotiate international treaties through one of their branches and ratify them in another, to more closely co-ordinate contacts between the two branches so as to avoid the negotiation of treaties which are subsequently not ratified?

(b) Would it not be advisable, again on the national level, for Governments to more closely co-ordinate instructions to their delegations to the various international agencies so as to avoid having delegations adopt in those fora treaty-making policies which are over-lapping, redundant or conflicting?

4. In our view, the above policy questions go to the source of the major problem areas of the multilateral treaty-making process, and they are questions which only the prime actors in this process, the Governments, can answer.

Universal Postal Union (A/36/553, p. 55)

1. We have taken note of the report (A/36/312) with a great deal of interest, but we feel obliged to point out that the procedures described in that document are fundamentally different from those followed at UPU. However,

despite this distinction and the relative interest our practices may hold for this study, we would like to suggest that the text relating to UPU in paragraph 62 (d) of the report should be changed, since there is some misunderstanding about the Universal Postal Convention, which contains the basic rules of the international postal service, and the UPU Constitution, which concerns the structure of our organization. Only the latter Act is permanent in nature. Amendments to it are the subject of additional protocols. Moreover, we believe that some other features of UPU practice should be mentioned in addition to those stated in the paragraph referred to above.

2. These treaties, together with those concerning the organization and functioning of the Union, namely the Constitution and the General Regulations, are reviewed every five years at the Congress, in accordance with a well-defined procedure which has remained unchanged for many decades. All the UPU Acts, with the exception of the Constitution, are renewed at each Congress. Drafts of the new Acts are approved by member countries and signed by plenipotentiaries.

3. Lastly, it should be noted that, with a view to mitigating the disadvantages resulting from failure to ratify UPU Acts in good time (a problem which is dealt with in paragraph 57 of the report), UPU officially accepts the principle of tacit approval. According to this principle, countries which did not ratify the Acts of the last Congress before their entry into force but which are implementing those Acts are considered to have approved them.

World Intellectual Property Organization (A/37/444, p. 31)

1. With reference to resolution 36/112, we note that it is directed to an assessment of the methods of multilateral treaty-making used in the United Nations and in conferences convened under its auspices and that, to that end, an invitation is extended to Governments and international organization to submit, by June 30, 1982, observations and comments on the two reports of the Secretary-General, referred to above, taking into account the specific questions contained in Annex I of one of those reports (document A/36/553), as well as their comments on any other aspect of the subject, as they consider desirable.

2. Since the questions set forth in the said Annex are, for the most part, directed to matters of concern to the multilateral treaty-making process in the United Nations, any comments thereon or on other aspects of the subject are more appropriate for the bodies and organs of the United Nations to make, rather than for the Secretariat or other organs of WIPO to express a view thereon. As concerns the questions that relate to the additional studies that might be undertaken by the Secretariat of the United Nations (Part A), we would find it helpful if the replies were published in some form, if a manual on multilateral treaty-making techniques were to be published and if the Handbook of Final Clauses were to be updated and extended to additional categories of formal clauses.

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 A/36/553/Add.1, p. 2.

³ See part one of the present publication.

⁴ A/36/553/Add.2, p. 2.

⁵ See the comments of the United States on the ILC in section V.

⁶ Both were signed at Geneva on 19 September 1949. Texts of the respective Conventions are reproduced in United Nations, *Treaty Series*, vol. 125, p. 3, and vol. 182, p. 229 (and vol. 514, p. 254, for amendments to the Protocol).

II. OVERALL BURDEN OF MULTILATERAL TREATY-MAKING PROCESS

1. *Is the burden of the treaty-making process too great for:*
 - (a) *The personnel that States can make available to participate in expert and representative organs?*
 - (b) *The personnel and budgets of the inter-governmental organizations concerned?*
 - (c) *The domestic legal resources of States that must consider the ratification of duly formulated treaties?*
2. *To the extent that the burden of the current treaty-making process cannot be reduced through making it more efficient, should the international community seek:*
 - (a) *To reduce the number of treaties being formulated (i.e. should the formulation of certain treaties be postponed temporarily or indefinitely) by setting priorities?*
 - (b) *To increase the resources available, nationally and internationally as required, for multilateral treaty-making?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE¹

Several representatives from the developing countries specifically mentioned the heavy burden placed on Governments in their active involvement in the process of multilateral treaty-making. In this connection reference was made to their financial, technical and personnel constraints. One representative also referred to the lack of sufficient legal specialists to participate in multilateral treaty-making. It was suggested that it might be possible to reduce the number of treaties being formulated by setting priorities or by increasing the resources provided at national and international levels. Some representatives felt, however, that sovereign States knew best what treaties they wanted and only they could set the priorities; others thought that the reduction of the number of treaties could not be done without sacrificing certain objectives. Some representatives were reluctant to support any increase of financial resources to international organizations for the purpose of treaty-making. Some representatives noted that the need to increase resources in developing countries related to their national development, which was itself difficult to achieve. A number of representatives thought that States should avoid initiating treaties

that merely reiterated well-established principles such as those already embodied in the United Nations Charter.

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

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

It should be borne in mind that the burden of the treaty-making process may be too great for the personnel that some States can make available to participate in expert and representative organs and for the domestic legal resources of States that must consider the ratification of treaties. Nevertheless, to the extent that this burden cannot be reduced and while studies on rationalizing the process are continuing, the United Nations should urge States to take the necessary steps to acquire such personnel and domestic legal resources. The international community, for its part, without prejudice to the setting of priorities in treaty-making and in realization of the fact that such treaty-making should not be an arbitrary exercise but a necessity of the international legal order, should seek to increase as much as possible the resources available at the international level for the multilateral treaty-making process, in order adequately to meet genuine needs.

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

There is evidence to suggest that the burden of the treaty-making process may be too heavy, particularly for smaller States, in each of the three cases listed in parts (a) to (c) of Question 1. Pending a further elaboration of States' views in the Working Group, it would be premature to attempt to answer Question 2.

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

1. There is no doubt that the burden of multilateral treaty-making is becoming too cumbersome, both for governments and international organizations. However it does not seem possible to envisage a decision of a general and abstract character to reduce the number of treaties being formulated. If a decision is taken to prepare a treaty on any given subject, it is because a majority of the States involved believe that such a treaty is necessary.

2. It can only be hoped that States will exercise some restraint, and, when making their decisions will take into account their own possibilities and the possibilities of the international organizations in coping with the problems involved.

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

1. The methods and procedures currently in use in the United Nations offer States adequate opportunity to agree on the order of consideration of questions within United Nations bodies or at international conferences. Therefore the question of the burden of the multilateral treaty-making process has no significance in practice. The main thing is that States should strictly observe

their obligations under the United Nations Charter, particularly in matters concerning the maintenance of peace and international security.

2. The expansion of treaty relations in the modern world is resulting in a more efficient multilateral treaty-making process, but that growth in efficiency should be achieved not through standardization or by reducing the number of treaties but by making fuller use of a range of methods and procedures, which should be applied with due attention to the specific situation encountered in the consideration of questions.

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

1. (a) The great quantity of legal documents which are drafted, and the protracted procedures involved in many cases, increase both the work-load of specialists and the burden on material budgets, affecting under-developed countries in particular.

(b) These too are affected, but to a less extent because of the professional nature of the staff.

(c) The excessive number of draft treaties to be considered may place too great a burden on the legal resources of the domestic organs of countries which have not enough specialists in the subject.

2. (a) The solution to the problem does not lie in a mechanical reduction of the number of treaties to be formulated, which would inhibit the work of codification that the United Nations has been carrying out. It would, however, be advisable to plan the future progress of such work by analysing the subjects which international experience has shown to be in need of regulation as a matter of priority.

(b) With proper selection and planning of work, there will be no need to solve the problem by increasing the resources available.

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

As the burden of treaty-making and treaty implementation can be quite considerable, especially for smaller States, it would indeed appear meaningful to set priorities in selecting material for treaty formulation.

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

1. The multilateral treaty-making process would be a burden to both States and non-governmental organizations concerned, and the problem is difficult because of its complicated nature.

2. However, efforts could be exerted to make it an effective process by establishing a scale of priorities with regard to some important aspects of the treaty. By so doing States could concentrate their attention on those aspects which relate to their direct interests.

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

The Italian Government can only reiterate what has already been observed by the Italian delegation in the debate of the Sixth Committee at the thirty-fifth session of the General Assembly. The question intended to ascer-

tain whether or not the multilateral treaty-making process presents too great a burden for States is ill-advised and cannot be answered. The truth, in fact, is that this cannot be judged in the abstract. The burden of negotiation is accepted or rejected by States according to the importance of a multilateral régime in a given sector. If we were to comment on this, we would merely say that all too often, because of an unwillingness to oppose a rebuttal, negotiations are undertaken without a true perception of their utility. And the inevitable consequence of this is that the negotiation continues wearily for years with an uncertain outcome. From this viewpoint, the proposal contained in question 2a has a certain basis, although it would not be easy to implement.

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

The burden of the interuational treaty-making process is too great for States and for the inter-governmental organizations concerned. The interuational community should seek to reduce the number of treaties being formulated by setting priorities.

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

1. There is no doubt that, for a large number of countries, the burden of the treaty-making process is too great. Comprehensive review of the number and content of the multilateral treaties formulated on a world-wide and regional basis in the post-war period, and especially since the 1960s, shows that often the developing countries do not participate in the process, even in cases where the multilateral treaty is negotiated and drafted under the auspices of organizations of which those countries are members.

2. This sometimes affects the balance of the treaties in question, which, as a result of the non-participation of developing countries, tends to favour other groups of countries, a situation eventually reflected in the number of ratifications.

3. It is recognized that multilateral treaty-making is the best and most expeditious method of ensuring that the rule of law is universal. Nevertheless, in order to ensure that progress is not illusory, priorities must be assigned to subjects for inclusion in treaties, lest the codification and progressive development of international law should prove to be beyond the capacity of the civil services of the majority of States.

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

The Netherlands Government wishes to emphasize that a reduction of personnel and resources involved in treaty-making may well be achieved if the question of the necessity of a particular treaty would receive more thorough examination, thereby reducing the over-all burden of the treaty-making process for Member States and inter-governmental organizations alike.

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

There is no doubt that the burden of the multilateral treaty-making process is becoming too great for both Governments and international organizations. However, it is not possible to envisage a resolution of a general and

abstract character that would be conducive to reducing the number of treaties being formulated. If a decision is taken to formulate a treaty dealing with a specific topic, it is because the majority of States parties to the treaty believe in the need for such a treaty. It is to be hoped that States will exercise some moderation and, when making decisions, will take into consideration their own ability and the ability of international organizations to deal with the problems posed.

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

It should be admitted that only sovereign States as principal treaty-making actors can best decide on what treaties to conclude and on how to set priorities. However, the paramount importance which the international community places on the treaty-making process should be fully appreciated. The point here is how well to co-ordinate the costs with benefits in regard of treaties being formulated. It is clear that neither mere reduction of the number of treaties nor ideas to increase the resources available could solve the problem satisfactorily.

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

1. The burden is too great for the legal and financial personnel and budgets, both of States and of international organizations.
2. The international community should try to reduce the number of treaties being formulated. However, it does not seem necessary, in principle, for there to be any over-all increase in the resources available internationally. Any increase in such resources at the national level should be left to the discretion of each State.

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

1. In the opinion of the Ukrainian SSR, there is in present circumstances no urgent need to consider the question of the sharing of the over-all burden of the multilateral treaty-making process.
2. The United Nations already has the necessary machinery, methods and procedures for the regular exchange of views between the overwhelming majority of States concerning the urgent necessity of concluding a particular treaty and for the establishment of priorities in the selection of questions to be discussed in United Nations organs and at international conferences. The obligations of States derived from the Charter of the United Nations, particularly as regards the maintenance of international peace and security, are naturally particularly important in this connection.
3. However, today's dynamic and intensified international relations objectively produce an increase in the number of general multilateral treaties, which in turn requires a more effective treaty-making process. Attention to the differences which exist in practice between treaty-making methods and procedures can and must improve the effectiveness of this process, provided that a correct and rational selection is made in each specific case of those methods and procedures which best reflect the character and aims of the treaty and take into account the specific subject-matter of the agreement concerned. For this

reason, the complete unification of the methods and procedures used and introduction of universal model provisions (i.e. the establishment of a single process, applicable in all cases, for the formulation of international agreements and the reduction of the number of treaties being formulated) would be undesirable and impracticable.

Union of Soviet Socialist Republics (A/36/553/Add.1, p. 2)

1. In present circumstances, the sharing of the burden of the multilateral treaty-making process is not an urgent question. The methods and procedures which already exist in the United Nations on the whole ensure that States can reach agreement on the establishment of priorities in the selection of questions to be discussed in United Nations organs and at international conferences. In this connection, States must do everything to observe their obligations deriving from the United Nations Charter, particularly as regards the maintenance of peace and international security.

2. The expansion of international legal regulating activities, in both qualitative and quantitative terms, requires a more effective multilateral treaty-making process. That can and must be achieved not through the introduction of universal models or a reduction in the number of treaties being formulated but by taking account of the differences in the existing treaty-making methods and procedures which are applied in each specific case and selecting them correctly and rationally in the specific circumstances which arise when the questions at issue are discussed.

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

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

1. The conclusion of conventions and agreements between member States is one of the principal working methods envisaged by the Statute of the Council of Europe (article 15 (a)), and in practice such instruments have often formed the basis for joint action to bring about greater unity among the States members of the organization. Having regard to its importance and the amount of resources needed to conclude a convention (usually two sessions a year of expert groups over an average period of two to four years), the treaty-making process in that Council of Europe cannot be said to place too heavy a burden on the organization's budget.

2. An increase in the resources available, even if only a moderate one, would obviously be the ideal solution. Since that, unfortunately, is impossible at a time of budgetary austerity both nationally and internationally, the setting of priorities is essential so that international organizations can postpone, temporarily or indefinitely, work which is of less obvious importance to States or to the international community. In the Council of Europe, priorities are set by the Committee of Ministers when it adopts its annual programmes.

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

1. It would seem to be difficult to reduce the number of treaties being formulated by settling over-all priorities. Without a prior effort at co-ordination at the national level—which would increase rather than decrease the burden of the treaty-making process—no international body would have the expertise necessary to weigh the relative merits of treaties in different specialized fields. A further difficulty would be that of deciding between international and regional instruments, in respect of the priority of which the views of different groups of States may differ. And, since priorities are liable to change, the process of setting priorities would itself become a burden.

2. On the other hand, much can probably be done within the various fora which prepare multilateral treaties to weigh, at the outset of the process of preparation, the need for and the suitability of a treaty to deal with particular issues. In this connection, it should be pointed out that the ILO is one of the organizations in which “pre-initiation studies” in the meaning of paragraphs 24 and 25 of document A/35/312 are statutorily required (article 10 Standing Orders of the Governing Body). Moreover, by means of a recent in-depth review, which it is intended to update at intervals, the Governing Body determined those areas of ILO competence for which up-to-date standards exist, those in which there are standards in need of revision, and those in which further standards are desirable. There was discussion, in that connection, of the extent to which there might be forward planning of standard-setting activities, and of the criteria which might be established for the development of new standards,² para. 12 and following. Some forward planning is now achieved through the Medium Term Plan of the Organisation.

International Telecommunication Union (A/37/444, p. 28)

1. (a) to (c) These issues can only be determined and resolved by the States themselves in respect of their domestic resources and, as Members of the inter-governmental organizations concerned, with regard to the latter's personnel and budgets.

2. (a) to (b) With regard to the specific ITU treaty-making process, it has to be noted that it is primarily the Plenipotentiary Conference which sets the priorities in that respect or, in the period between two Plenipotentiary Conferences, the Administrative Council (holding annual sessions) which constantly reviews the calendar of conferences related to the treaty-making process, by taking account of the developments in telecommunication requiring elaboration or updating of pertinent legal instruments and adjusting the resources therefore accordingly.

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

1. The burden of the treaty-making process within the OECD has not proved to be too great for the personnel and budget of the Organisation.

2. It is difficult to reply to this question in an abstract manner as it depends entirely on the requirements of the States and organizations concerned.

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

1. Our experience tends to show that the burden of the treaty-making process is too great for States.
2. It would therefore seem necessary to reduce the number of treaties being formulated (i.e. the formulation of certain treaties should be postponed temporarily or indefinitely) by setting priorities.

NOTES

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

²See ILO document GB.199/9/22 (revised), para. 12 *et seq.*

III. OVERALL CO-ORDINATION OF MULTILATERAL TREATY-MAKING

1. *Should the General Assembly assume a co-ordinating role in respect of multilateral treaty-making activities of:*
 - (a) *All United Nations organs?*
 - (b) *All organizations of the United Nations system?*
 - (c) *All inter-governmental organizations?*
2. *Should such a co-ordinating role by the General Assembly be:*
 - (a) *Restricted to the gathering and dissemination of data about all treaty-making activities within the sphere specified under 1 above?*
 - (b) *Extended to influencing, through decisions in respect of United Nations organs and through recommendations addressed to other inter-governmental organizations, the treaty-making process, such as by proposing subjects to be considered and identifying the organs or organizations most suitable to do so?*
3. *If such functions are to be exercised by the General Assembly, should this most suitably be done through the Sixth Committee?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE¹

1. While several representatives supported the idea that the General Assembly should assume an over-all co-ordinating role in treaty-making, most representatives who spoke on this issue expressed the view that it would be difficult for the General Assembly to assume such a role. Different reasons were given: (i) such a role would slow down the process and increase the work of the General Assembly, whose agenda was already congested; (ii) the high degree of sensitivity of the other organs operating in a particular field; (iii) over-all co-ordination was dependent on the nature of each particular treaty and the circumstances of each case, which rendered a general role impracticable; (iv) the General Assembly had no competence in this regard.

2. Some representatives thought that co-ordination in treaty-making could be enhanced through the issuance by the Secretariat of an information

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

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Yes, in principle.

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

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

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

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

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

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

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

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

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

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

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

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

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

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

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

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

1. (a) No comments.

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

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

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

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

3. No comments.

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

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

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

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

2. Yes.

NOTES

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

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

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

4. *Should an effort be made to achieve in some or all treaty-making organs and procedures a more structured approach, aiming at completing some or all steps of the process within specified periods of time? To what fields might such an approach most profitably be applied?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE¹

1. Several representatives stressed the need to collect factual, legal and other relevant information before embarking on the formulation of a particular treaty. This requirement was regarded as particularly important for determining the feasibility and acceptability of a treaty or for studying possible consequences on existing treaties and laws. It was further noted that any preparatory studies should not only be thorough but also clear in their objectives as to the purpose to be achieved.

2. Different views were expressed on whether the preliminary formulation of the text of a treaty as a whole or part of a text (e.g., the final clauses) should be entrusted to a representative body or to an expert group. Those representatives who emphasized the role of States and were concerned with the political sensitivity of treaties, preferred a body of government representatives; others felt that an expert group or the Secretariat might be more suited at the initial stage for preparing drafts, which should then be referred to a representative body. Still others felt that the choice depended on the subject-matter of a treaty and the circumstances involved; experts were best for preparing treaties dealing with legal and technical matters, whereas governmental representatives were necessary for formulating treaties having economic or political consequences.

3. Many representatives found it difficult to support the idea of taking a more structured approach to treaty-making in the United Nations either by having fixed, uniform rules of procedure or by specifying periods of time within which negotiation must be completed. Such structured approaches as the ones of the International Labour Organisation or the Hague Conference on Private International Law were regarded as mainly suitable for the negotiation of treaties dealing with technical issues. The nature of the work of the United Nations and the variety of subjects which may be involved rendered a structured approach impracticable. The need for flexibility both in procedure and approach was therefore stressed.

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

Argentina (A/36/553, p. 7)

1. Before embarking on the formulation of a particular treaty, it would be advisable to ascertain the potential interest of States in the subject-matter. To that end, States should be supplied with background information together with the proposal and its source and any other useful data, so that Governments can form an advised opinion. The subject should have been thoroughly debated prior to these consultations, in order to gain a clear idea of the principles which it is intended to include, thus ensuring adequate political preparations of the treaty from the outset and disclosing whether consideration of it might be premature. The way towards the supreme act of ratification, in which

the whole process culminates, will thus be smoothed from the outset. Thorough debate followed by consultations will help to determine the need to undertake the work and its chances of success. This preliminary stage should also include studies aimed at determining the type of instrument to be formulated. Once a decision has been taken, formulation of the treaty can begin.

2. In the case of a subject with no political overtones or one where these are of minor importance within the subject as a whole, experience has shown that the preliminary formulation could be entrusted to an organ of experts serving in their personal capacity or to a Secretariat body. The latter would be particularly apt in the case of codification of pre-existing law. Formulation by a representative organ would appear to be preferable in the case of treaties with an important political dimension.

3. A thorough study should be made of the possibility of reducing, in particular, the number of treaty-making organs in the United Nations by concentrating them, in order to avoid duplication of functions and the resulting financial burden. With respect to the number of procedures, the Argentine Republic has previously stated that the preparation of a manual of recommended practices for multilateral treaty-making, which could serve as a guide for future work, would be of great value and would help to improve the techniques used in formulating the instruments which govern the international affairs of States. This task would consist of rationalizing and systematizing whatever already exists, and appraising what remains to be done, in the light of the results obtained over the years, and of identifying economical and efficient methods. It would not, however, be at all possible to accept a single procedure applicable to the codification of existing law when legislating in new areas, to treaties with substantial political aspects and to those which are of an essentially technical character. The mechanical application of a procedural model to any treaty is not advisable.

Australia (A/37/444, p. 6)

1. Before embarking on the formulation of a particular treaty more extensive efforts should be made in respect of matters covered in (a) to (c) of question 1.

2. The preliminary formulation of the text of treaties should generally be placed in the hands of an expert body (government or otherwise) or of a group of experts specially convened for that purpose. However, the choice of an organ for the drafting of a preliminary text of a treaty should depend on the subject-matter of the treaty in question. When the treaty subject-matter is vague or controversial, it will sometimes be helpful if a representative organ can consider and draft guidelines.

3. In answer to question 3, there is probably scope for reducing the number of treaty-making organs in the United Nations, and in particular to rationalise procedures. One of the problems currently experienced by United Nations treaty-making organs is the unavailability of information on the methods of work and procedures best suited to deal with a particular subject-matter.

4. A more structured approach should be explored particularly for treaties dealing with a technical subject. Such an approach is most profitably

applied to areas where there is a good deal of treaty-making activity, e.g. human rights or technical subjects. It is more difficult to achieve in areas of major political importance (e.g., disarmament). Moreover, the imposition of specific time limits needs to be handled with care and flexibility, since it can lead to rushed work, or to failure of consensus.

Austria (A/35/312/Add.1, pp. 3-4)

Type of organ to be entrusted with the preparation of a draft: influence of States

1. The choice of the organ to be entrusted with the preparation of the draft text for a multilateral instrument is obviously of the utmost importance, since the quality of the preparation determines the exigencies of the adoption process.

2. It needs no explanation that an organ with a numerous membership, such as a plenary organ, is ill equipped to prepare a meaningful draft on the basis of numerous and often conflicting proposals. In this respect the Third United Nations Conference on the Law of the Sea sets a warning example.

3. If it thus seems advisable to entrust the task to committees with limited membership, there are basically two different models or options: a committee of qualified representatives of States (e.g., Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space) or a committee of experts, elected in their individual capacity (e.g., International Law Commission).

4. A committee of experts, because of the independence of its members, seems to be in a better position to reach a community-oriented compromise than a committee of representatives of States who are obliged primarily to defend the interests of their countries and rather tend to reach a compromise mostly on the level of the lowest common denominator. It cannot be overlooked, however, that draft texts have to stand the test of acceptance by States in order to become part of the body of international law. And in this respect experience shows that whenever the International Law Commission, for instance, took a bold step towards the progressive development of international law and, for this purpose, had to make a policy decision by selecting one of several possible solutions as basis for its text, the draft sometimes met with stiff opposition, at least by a good number of States, either at the conference or the ratification stage. The Convention on the Continental Shelf of 1958 or Part V of the Vienna Convention on the Law of Treaties can be cited as examples.

5. Thus it becomes crucial to determine beforehand the appropriate influence which States should exercise on the preparation of a draft text. Generally speaking, this influence should be paramount in the formulation of new draft rules on matters that have not yet been regulated in international law, since the future regulation needs the concurrent—but as yet unexpressed—will of States to come into being. The matter is somewhat different with regard to the codification of existing norms of (customary) international law, since the primary task in preparing a draft text of that nature is to identify the existing norms. It is thus a quasi-scholarly exercise, more in the province of a committee of experts. The influence of States in this respect seems adequately safeguarded by their control over the committee of experts and by the final adoption of the draft at a diplomatic conference.

6. The success of a committee composed of representatives of States in preparing a draft multilateral instrument depends, on the other hand, largely on the careful selection of its membership, which should include all interests existing in the matter. Moreover, State-appointed members of a committee and representing specific interests ought to be willing and capable to convince other States with the same or similar interests but not represented on the committee that the solution which finally emerges is the best that could be achieved under present circumstances and that the solution would in any event adequately safeguard the interest in question. The problems facing the Third United Nations Conference on the Law of the Sea result at least partially from the facts that interests are too manifold to be effectively represented by a comparatively small number of States and thus to be settled in a committee of workable size.

7. If, nevertheless, a committee of experts is to be entrusted with the drafting of rules for a new field of international law, care should be taken to avoid the fate of the International Law Commission's "Model Rules on Arbitral Procedure". In such a case the committee should perhaps be instructed to prepare alternative texts on points where fundamental differences between States are evident. This would permit the choice—on political grounds—of one of those alternatives in the course of subsequent negotiations between States, while still assuring that the chosen alternative would fit the rest of the text.

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

There is no doubt that a close look should be taken at the real need for a treaty and at the feasibility of the treaty-making exercise before starting on the preparation of a treaty. However it would not seem to be practical to set down formal specific steps that should necessarily be taken before the actual drafting is begun. One does not see advantages in prescribing general rules as to which bodies would be entrusted with the preparation of certain categories of treaties or in trying to limit the number of bodies engaged in treaty-making processes. It would also seem unrealistic to set down rules trying to determine the duration of the process. Efforts should of course be made, in each case, to proceed with the work as quickly as possible, but account must be taken of the complexities of each exercise and of the resources that States are able to devote to it.

Bulgaria (A/35/312/Add.1, p. 11)

1. The Government of Bulgaria sees the fundamental direction of the process of enhancement of the efficiency of multilateral treaties in the strengthening of the Sixth Committee's role. The Sixth Committee ought to become an important factor in the planning and preparation of international multilateral treaties. Whenever necessary, it should hold joint meetings with other committees and render legal assistance on projects prepared by them.

2. To enhance the Sixth Committee's role closer interaction is required with the International Law Commission and the United Nations Commission on International Trade Law. This would contribute to more adequate reflection of the views expressed by Governments on projects prepared by these bodies.

3. As the Bulgarian Government sees it, the possibility of approval by the Sixth Committee of the final drafts of multilateral treaties deserves careful consideration. In that case, international diplomatic conferences would be convened on more limited occasions, upon recommendation of the General Assembly, such as conclusion of multilateral treaties of particular importance.

4. The Bulgarian Government believes that the difficulties linked with the unavoidable increase in the volume of work of the Sixth Committee, owing to an enhancement of its role in the process of codification and progressive development of international law, could be surmounted by raising the level of the preparatory work on documents to be submitted to it for consideration and by a clear-cut rationalization of the methods of its work.

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

1. In the process of preparing an international treaty under United Nations auspices, the Secretariat has the right, within the bounds of its authority, to collect relevant information and to ascertain the interest of States in drawing up the proposed treaty. It may also prepare useful auxiliary material.

2. With regard to the formulation of the texts of treaties, given the great variety of existing drafting methods it is inadvisable at present to decide which body should be entrusted with drawing up the actual draft treaty.

Canada (A/35/312/Add.1, pp. 15-16)

1. On the assumption that a particular subject is in fact appropriate for expression in a treaty and could not be more suitably formulated in, for example, a General Assembly resolution, the next question is whether the timing is opportune. Experience has shown that on occasion, even after the negotiating process has been commenced, there is not a sufficient degree of consensus to achieve agreement on the basic elements of the proposed treaty. This lack of consensus sometimes only becomes clear after the preparatory work has begun, but it may be apparent when the general discussion of a treaty is first raised. The results can be either failure to agree on a text or an instrument which attracts insufficient ratifications.

2. Of great importance is the preparatory work which establishes the basis for discussion, once representatives of States assemble to begin the negotiation process. The practice in United Nations organs and in the specialized agencies in this matter again varies. The most formal preparatory process is that engaged in by the International Law Commission. The detailed and scholarly examination of the matters referred to it and the presentation of successive series of draft articles by the Commission is well known, and the Canadian authorities look forward to having additional light thrown on the Commission's techniques and procedures when it too reports to the Secretary-General in accordance with resolution 32/48.

3. However, it is clear that the approach of the Committee is only one way of undertaking the preparatory work for the conclusion of multilateral treaties, and the procedure may be more appropriate to treaties of a general law-making nature where the task is one of codification or of progressive development in an area that is not beset by political differences. In presenting

the report of the ILC on its twenty-fifth Session, the Chairman suggested that the Commission was capable of going outside the traditional areas of international law, and he invited the General Assembly to submit topics of a nature different from those usually placed before the Commission.² A question that must be considered in any review of the multilateral treaty-making process is whether there is any consensus as to the kinds of questions that are appropriate for reference to the International Law Commission and the kinds of questions that should be referred elsewhere.

4. In addition to the ILC, draft conventions have been prepared in general conferences of States, by technical groups of experts, by organs of the United Nations, and by non-governmental organizations such as the International Committee of the Red Cross. In some cases it may be necessary to resolve certain issues at the outset in inter-State negotiations; in other instances it may be desired to avoid inter-State disagreements in the preparatory stages; in others a particular forum may be utilized simply because it is expeditious. The availability of special expertise may also be a reason for referring the issue to a particular body. An enquiry might, therefore, be made to determine why particular issues have been referred to certain bodies, and with what results.

5. In addition to the question of which body should undertake the preparation of a draft multilateral treaty, some attention might be directed to the preparatory process itself. The International Law Commission proceeds by a lengthy process that involves consideration of various drafts which at some stage are submitted to Governments for comment. While the input from Governments is essential, when the process extends over a period of years, it is often difficult for Governments to offer detailed criticism of articles that appear year by year in a piecemeal fashion. In order to comment meaningfully, a Government has to be in a position to see the character of thrust of the project as a whole. The Canadian authorities look forward with interest to the report to be submitted by the ILC for its comments on this aspect.

6. In some instances the preparatory process is not an identifiable process distinct from the actual negotiation of the treaty. The issue may be put before a conference or an organ of an international organization which will negotiate, prepare a draft, and adopt a final version of the treaty and recommend it be opened for signature. This occurred with the Convention on the Prevention and Punishment of Crimes against Internationally protected Persons, including Diplomatic Agents, in 1973. The Third United Nations Conference on the Law of the Sea provides a similar example. Inquiry ought to be made into the advantages and disadvantages of having preliminary preparatory work done prior to the convening of a formal conference.³

7. At the initial stages before the negotiating process has commenced, it is important, with regard to the subject-matter of the proposal treaty, to determine (1) whether there is any real need for a convention; (2) whether a consensus is possible; and (3) whether the convening of a conference to adopt a convention is practical. Adequate preparatory considerations might dispose of the technical and relatively non-contentious matters and identify the substantive areas of difference for subsequent negotiations. The experience of the multilateral trade negotiations shows that success in reaching agreement on the substance of a treaty often depends upon preparatory work which has avoided political controversy and has cleared the way for meaningful negotiations.

8. However, it is clear that while the careful and frequently lengthy preparatory process engaged in by the International Law Commission is suitable for certain kinds of treaties, it could not be taken as the model for all forms of multilateral treaty-making. Thus, it is essential that close attention be paid to the different types of preparatory work that might be undertaken in the treaty-making activities of international organizations. The Canadian authorities consider that a review of the multilateral treaty-process which focused principally, or even solely, on this aspect would be most profitable.

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

1. (a) Yes.

(b) Yes.

(c) According to the importance of the subject, it must be decided whether the document to be formulated should be a treaty or some other instrument. If the subject is such that regulating it requires adoption by a large number of States, a declaration would not suffice.

If the proposed procedure of consulting States as to their interest in a subject were properly carried out, it would be possible to form a presumption of their willingness to accept obligations under a treaty of that kind. Apart from that, we consider declarations to be advantageous in cases where it is not possible to reach agreement on a treaty or where the subject does not require a treaty.

2. (a) No.

(b) Yes, depending on the subject.

(c) Yes, preferably.

3. The drafting of treaties in the United Nations should preferably be entrusted to the Sixth Committee in co-ordination with the International Law Commission or, where appropriate, with the United Nations Commission on International Trade Law.

4. Technical improvements in treaty-making procedures should certainly be attempted; this would result in an improvement in quality and a reduction in the use of various resources. However, we do not think that it would be advantageous to set specific time-limits for each step of the process.

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

1. Thorough preparation of treaty negotiations and conferences in the sense of (a) to (c) is always desirable.

2. The preliminary formulation of the text of treaties should generally be placed in the hands of experts, as in the past.

3. It seems hardly possible to achieve more than a negligible reduction of the treaty-making organs and procedures in the United Nations.

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

1. In order to improve the multilateral treaty-making process the following steps should be taken:

- (a) Collecting the necessary legal data, including factual data.
 - (b) Securing clear views from member States regarding their observations or comments relating to the treaty which is going to be considered.
 - (c) Making a possible alternative instrument which has a weaker binding instrument than the proposed instrument.
2. The first formulation could be done by an expert group assisted by the Secretariat. Such an approach will expedite the making of a first draft.
 3. For uniformity of the treaty-making process, the organs should be limited, and the procedure should concentrate on certain organs.

Italy (A/36/553, p. 28)

1. As for group D, the questions under point 1 deserve a positive response since they are of obvious worth. With particular regard to subpoint (c), the usefulness of proposing alternative solutions such as Agreements or Recommendations is often considerable as a means to surmount serious political obstacles to the negotiation. The possibility might also be considered of drafting parallel instruments, one binding and one not, following the example of the ILO.
2. On point 2, the choice of the organ most appropriate for the drafting of the preliminary text of a treaty is often a function of the subject-matter of the treaty itself and of the likelihood of resolving in advance the main political difficulties. Thus, no one response can be valid for all cases.
3. The need to rationalize administrative procedures and to discourage the proliferation of subsidiary bodies, implied in point 3, certainly deserves support; while the vague manner in which the question contained in point 4 is expressed does not allow for a precise answer.

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

1. Before embarking on the formulation of a particular treaty, efforts should be made to collect legal and factual data relevant to the proposed treaty and to ascertain the potential interest of States.
2. The preliminary formulation of the text should be entrusted to an expert group.
3. A reduction of the number of treaty-making organs and procedures in the United Nations would be desirable.

Mexico (A/36/553, p. 34)

1. Undoubtedly, the more thoroughly Governments, by themselves or with the assistance of the Secretariat of the United Nations, study a subject before embarking on the formulation of a treaty, the more likelihood there will be that the treaty meets the needs of the international community.
2. Furthermore, practice has shown the usefulness in some cases of negotiating a Declaration for approval by the Assembly before undertaking the formulation of a Convention. Whether to proceed with the formulation of a treaty will depend, *inter alia*, on whether there is a need to broaden the provisions and to establish monitoring machinery.

3. With regard to the method of preparing a preliminary draft, in Mexico's opinion no uniform rule can be established and the flexibility now practised in the United Nations should be maintained, although it seems not only desirable but necessary, regardless of the method, that the convening of a plenipotentiary conference should in no case be authorized unless the preparation of a preliminary text has first been entrusted to a preparatory committee or a commission.

4. Any attempt to set time-limits for multilateral treaty-making organs is unrealistic. While in some cases it will be possible to predict more or less accurately how much time will be needed for the preparation of a treaty, in other cases any such prediction is impossible.

Netherlands (A/35/312/Add.1, pp. 22-24)

General

1. It is not uncommon at the United Nations for a decision to be taken to draw up a treaty at the proposal of one or more Member States while the broad outlines to be laid down in it are insufficiently clearly understood. At a later stage, this lack of political preparation often proves an obstacle to drawing up the text, or, where a treaty is established, only a small number of States may ratify it. Thus efforts should be made to ensure that a thorough discussion should be held to consider the points of departure prior to taking the decision to make a treaty. If such a discussion were to indicate that there was too little common ground on which to draw up a treaty, the matter would have to be dropped, at least for the time being. It is not improbable that such a discussion will at the same time bring to light a possibility of consensus on certain principles in a less binding form than a treaty, on the basis of which State-practice, doctrine and administration of justice can continue to develop. In fact, this initial discussion should be continued while the treaty itself is being drawn up, and could determine whether the common ground assumed at the outset was still present. If that were no longer the case, then work on the draft would have to be temporarily halted, or a less formal form of agreement, such as a recommendation, would have to be sought. This type of discussion could also clarify which of the procedures sketched out below could best be followed in the circumstances.

2. There is a variety of ways of drafting a treaty. Selection will be determined by a number of factors, which are primarily related to the nature of the subject to be regulated. These factors are, *inter alia*, the level of expertise required; the range of interest concerned; the procedural or substantive aspects; the question whether the treaty is to break new ground or to confirm an existing situation; and the number of parties involved (the more States wish to be working on the draft, the more difficult the formulation of a text becomes).

3. Once during the preparatory stage the decision to establish a treaty has been taken, proposed texts—with alternatives if necessary—should preferably be formulated as soon as possible, so that comments may be concentrated on the wording and selection of the best alternatives.

4. The making of the first draft text, depending on the relative importance of the factors mentioned above, may be carried out either by a committee of government representatives or by one or more special rapporteurs

(sometimes a draft is being prepared by the secretariat of an organization, by one Government or even by a non-governmental organization). The obvious example for the method of drafting by special rapporteurs is the procedure followed by the ILC, in which the text of the first reading is formulated by the ILC to be presented to Governments. The rapporteurs can make themselves aware of the opinions and wishes of Governments, by means of correspondence or by visits to the various capitals. In other cases it may be necessary to have viewpoints put forward prior to the preliminary drafting, so that the first text can be based on the views expressed.

5. After the first text has been sent to Governments for their comments, a second reading of the text is drawn up either by a committee of experts (cf. ILC procedure), or by a committee of government representatives (*ad hoc* or standing), in which all interests are represented: this again depends on the nature of the subject in hand. This second reading, or if necessary a third reading, which may or may not be accompanied by comments from Governments, is laid before a diplomatic conference to establish the text.

6. In preparation for the ultimate decision-making in a diplomatic conference, the bodies charged with making a draft text should also compile an explanatory report which would contain an analytical survey (and not merely a "catalogue") of the comments received from Governments. Such an approach could be encouraged if the General Assembly were to urge the Secretariat to consider this as one of its responsibilities. The report should also include an explanation of the factors which determined the selection of a particular wording. In some cases it may be worth considering whether to include in the report a survey on the consequences of the proposed provisions on the domestic law of the potential parties to the treaty. An assessment would have to be made in individual cases as to whether such a survey is significant. (Noted: in principle, the consequences for domestic law are, in the negotiation phase, primarily of importance to the State in question.)

7. In this context attention might also be drawn to the procedure followed by the International Committee of the Red Cross in establishing the two supplementary Protocols to the 1949 Red Cross Geneva Conventions. The sequence of the procedure was as follows: consultation by experts, then by government experts, followed by a conference (under the auspices of the Swiss Government) between government representatives.

8. At every stage in the preparation of a treaty text the secretariat fulfils an important function of collecting relevant material and obtaining the reactions of Governments, as well as in drafting the text at the first reading. It is often still necessary to work with alternative texts at this stage.

9. In some cases non-governmental organizations with special knowledge and experience with the subject-matter may well be brought in when a text is being prepared, whether in the form of a report or of a draft text. We could, for example, point to the text of a draft convention against torture which was drawn up by the International Association for Penal Law, and was presented through the International Commission of Jurists, to the United Nations Commission on Human Rights, together with a Swedish draft on the same subject.

10. Mention may also be made of the practice of holding intersessional meetings, which has developed within the framework of the Third United

Nations Conference on the Law of the Sea. Although there is no real certainty as yet as to the usefulness of such consultations to that Conference, they do represent, in principle, a means for a small group to break deadlocks, in which all delegations may possibly not be equally interested.

11. Whatever procedure is followed, it is recommended that all potential parties to a treaty should have the opportunity to submit comments so that a worthwhile decision-making process would be encouraged and guaranteed with regard to studying draft texts, the options (both political and those concerned with technical aspects of treaty-making) offered by the subject under consideration, and with regard to putting the treaty in its final form. Such consultations could take the form of answers to questionnaires, comments on drafts, or meetings of government experts, and finally during diplomatic conferences. Where the need arises, interested governmental and non-governmental organizations should have the opportunity to take part in such consultations. The possibility of arriving at a consensus by means of prior consultation within the various interested groups (e.g., regional) of States could be considered.

*Specific reply*⁴

12. The Netherlands Government underscores the importance, before embarking on the formulation of a particular treaty more extensive, of making efforts to:

- (a) Collect legal and factual data relevant to the proposed treaty;
- (b) Ascertain the potential interest of States in the proposed treaty;
- (c) Consider the utility of some less binding instrument (e.g., a declaration). With respect to the preliminary formulation of the text of a treaty, the Netherlands Government wishes to refer to its above-mentioned earlier comments.

13. Rather than by reducing the number of treaty-making organs and procedures, which seems to be a difficult undertaking, a more effective and economical use of personnel and resources could already be achieved by better co-ordination of the treaty-making exercise within the United Nations system. In this respect, the recent initiative of UNCITRAL to co-ordinate its work with other international organizations in the field of international trade law may certainly be mentioned as a relevant example.

14. The question whether an effort should be made to achieve in some or all treaty-making organs and procedures a more structured approach is difficult to answer in a way which is equally valid in all circumstances. The effort as described may well be successful where it concerns an already existing organization but may well fail in case of an *ad hoc* established treaty-making organ. The success of such an effort seems also dependent upon the nature of the subject-matter of the treaty. Matters of a political nature are probably less apt for organizational structuring than those of a specialized nature.

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

1. It is always desirable to undertake the tasks mentioned in (a) to (c) before embarking on the formulation of a particular treaty.
2. The preliminary drafting of the text of treaties should be entrusted to experts, as was the case in the past.

3. Only an insignificant reduction can be made in the number of treaty-making organs and procedures in the United Nations.

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

The mechanical application of a procedural model to any treaty is not advisable and therefore there is no need to set up any unilateral criteria. Indeed, the choice depends on the subject-matter of a treaty and the circumstances involved. It is a truism to say that experts are best for preparing treaties dealing with legal and technical matters, whereas government representatives are entitled to the formulation of treaties having political or economic importance. It is unrealistic to attempt to set time-limits for multilateral treaty-making organs since there will always be treaties as to which prediction of how much time will be needed for their preparation is impossible.

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

1. (a) Yes.

(b) Yes, but to ascertain not only the potential interest of States in the treaty, but also their views on the basic contents of such a treaty.

(c) This possibility should not be ruled out in principle but, since the proliferation of this type of instrument creates confusion and further weakens international law, it should be used very judiciously.

2. We cannot give a clear-cut answer to this question since it would depend on each individual case. In principle, however, it would seem preferable for the preliminary formulation of a treaty to be entrusted to expert organs (technical and legal). The latter should act in accordance with political guidelines pre-established by representative organs and, before formulating the final draft, seek and, wherever possible, take into account comments and formal proposals from States. The secretariats of the various organizations should co-operate in the preparation of preliminary drafts and subsequent drafts but should not be responsible for their preparation unless the representative organ so instructs.

3. Yes, treaty-making organs within the United Nations should be concentrated and the work of such organs should in any case be co-ordinated.

4. Yes, to all fields, especially less politicized fields.

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

Les mesures préalables à la rédaction des traités, qui sont indiquées sous D.1, à savoir la réunion des données juridiques et de fait concernant le traité envisagé (a), la détermination d'un intérêt véritable des Etats à la conclusion du traité (b) et la possibilité d'adopter des instruments moins contraignants qu'un traité (c), sont intéressantes et méritent attention, même s'il apparaît que, des trois mesures suggérées, la première sera sans doute la plus facile à réaliser. Quant au point de savoir si la préparation des projets de traités devrait être confiée à un organe représentatif ou à un groupe d'experts indépendants, il faut observer que l'aspect politique qu'on pourrait déceler dans les problèmes à résoudre ou le fait que le traité projeté paraît relever plus du développement que de la codification du droit international ne devrait pas

conduire automatiquement à la désignation d'un organe composé de délégués gouvernementaux. Il reste à démontrer que des experts indépendants ne seraient pas non plus parvenus à élaborer les projets d'articles dont l'Assemblée générale avait confié la rédaction au comité des fonds marins en vue de la Troisième Conférence des Nations Unies sur le droit de la mer.

Ukrainian Soviet Socialist Republic (A/36/553, p. 39)

1. With regard to the improvement of the effectiveness of multilateral treaty-making, the role of the General Assembly in the co-ordination of multilateral treaties concluded within the United Nations should be highlighted. For treaties being formulated within other intergovernmental organizations, it would be desirable to restrict this role to the gathering and dissemination of data about the progress of the relevant negotiations through the Sixth Committee.

2. In the opinion of the Ukrainian SSR, the United Nations Secretariat should, when preparing for the conclusion of a multilateral treaty within the United Nations, pursue extensive efforts to collect legal and factual data relevant to the proposed treaty and to ascertain the potential interest of States in the elaboration of the text of the treaty. Depending on its existing tasks, the Secretariat could also prepare any material of an auxiliary nature which was considered necessary. However, States must retain the right to establish the utility of the Secretariat material.

3. As regards the preliminary formulation of the text of a treaty, it would seem advisable first to determine the organ to which this work should be entrusted, since this depends on the nature of the future agreement and on the very varied approaches adopted by States towards its subject-matter. An increase in the effectiveness of the work of the International Law Commission (ILC) will play an important role in this connection. It would not be appropriate also to expand the Sixth Committee's law-making role. It is quite unnecessary to convene *ad hoc* international conferences for the completion and adoption of draft treaties; this can also be done in the Sixth Committee. In this connection, it would not seem advisable to establish periods of time for the consideration of particular questions, this would be possible only on the basis of mutual agreement among all the plenipotentiaries participating in the work of the United Nations organ or conference.

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

1. It should be emphasized that, when preparations are being made for the conclusion of a multilateral treaty within the United Nations, the Secretariat still has a mandate, where possible and when its existing tasks permit, to make extensive efforts to collect relevant data and to ascertain the interest of States in preparing the text of the treaty. It could also prepare any auxiliary material which would be considered useful. For their part, States retain the right to establish the usefulness of documents submitted by the Secretariat for the purposes of concluding a treaty.

2. The preliminary formulation of the text of a treaty depends on its nature, and, in view of the variety of approaches adopted by States to different treaties, it would not be desirable to lay down rules as to which body should

be entrusted with any particular treaty. In this connection, an important role should be played in particular by the International Law Commission, which should increase the effectiveness of its work. It would also be desirable to strengthen the law-making role of the Sixth Committee, where draft treaties could be completed and adopted without the convening of *ad hoc* international conferences. In this connection, it would not seem advisable to limit the time for the consideration of particular questions. Such a time limit could be set only on the basis of mutual agreement among the plenipotentiaries participating in the work of the United Nations organ or of the conference.

United States of America (A/35/312/Add.1, pp. 31-33)

1. The United Nations has followed a variety of methods in preparing drafts of treaties. The two primary bodies that have been entrusted with the task are the International Law Commission, whose mandate is broad and fundamental, and the United Nations Commission on International Trade Law, whose mandate is much narrower but important in its sphere. Use has also been made of committees of the General Assembly and the Economic and Social Council and *ad hoc* committees of States and of individual experts. Each approach has had its successes. In the United Nations era, there have also been significant forums for multilateral treaty-making outside of the United Nations ambit, among them the Organization of American States, the Council of Europe and the conferences for the revision of the Geneva Conventions convened by the International Committee of the Red Cross and the Government of Switzerland.

2. While the United States recognizes the advantages of each forum in particular circumstances, experience appears to indicate that, as a rule, the preferred United Nations method is to have the initial drafting of treaty texts done by the International Law Commission (or UNCITRAL in the field of international trade and related commercial areas). The capacity of the International Law Commission is of course limited, though it may be capable of expansion; in any event, it should be exploited in full. (See also comments in Section V below on ILC.)

3. UNCITRAL has a record of substantial success. The initial decisions in UNCITRAL to restrict its efforts to legal issues of trade practice and to abstain from involvement in issues of trade policy have proven correct over the years and should be maintained. The working methods elaborated by UNCITRAL over the years, with the assistance of the secretariat, seem singularly well suited to its tasks. At some point, UNCITRAL may wish to consider the use of a special rapporteur on an experimental basis to ascertain whether that might expedite the early stages of its work. The United States is confident that the Government of Austria and the United Nations will take all necessary measures to ensure that the UNCITRAL secretariat will be able to continue to function as effectively in its new headquarters as it has in the past, including the provision of the necessary reference and research facilities.

4. It may be that the United Nations system at large should be made more fully aware of the potential of UNCITRAL as the agency for dealing with the legal aspects of a number of economic and trade issues. A recommendation of the twelfth session of UNCITRAL is pertinent to this perception.⁵

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

Council of Europe (A/36/553, p. 43)

1. (a) and (b) These two approaches are to some extent complementary and are already the practice of the Council of Europe. When the formulation of a treaty is envisaged, it must first be ascertained that the proposed treaty is likely to be of interest to States or, in other words, that States feel the need for a treaty in a given field. In order to do this, it is necessary to have legal and factual data concerning the field to which the proposed treaty relates.

(c) In many cases, the decision on the nature of the instrument to be adopted (convention, declaration, etc.) cannot be taken until the work has begun, in the light of the position of the parties and the interests involved. The Committee of Ministers has considered these issues and adopted a report on the subject, a copy of which is attached.

2. The usual practice of the Council of Europe is for an expert committee appointed by the Governments of member States to formulate draft texts, with the assistance of the secretariat; this applies from the very earliest stage. Only in very exceptional cases are preliminary drafts submitted to the expert committee responsible for formulating a convention; in that case, the drafts originate either with the Consultative Assembly or with the secretariat. Since different conditions naturally obtain in the United Nations, it is unlikely that an over-all universally applicable solution can be found. However, the procedure of entrusting the drafting of a treaty to a small expert group has some advantages: even when serving in their personal capacity (and not as representatives of their countries), the experts take into account the situation in their countries; the small membership makes it easier and quicker to reach a consensus. The disadvantage is that the small membership makes it impossible for all States to participate, so that their views will not be known until a late stage in the drafting of the text. The secretariat should be allowed a degree of initiative and should, as it were, represent the international public interest.

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

Extensive efforts along the lines of (a), (b) and (c) would seem desirable. In general, an expert body seems to be suited for the preliminary formulation of a draft text; however, such expert body can be given a representative character if composed of experts as designated by member Governments. The body would have to be composed in such a manner as to ensure equitable representation of all regional interests.

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

1. (a) It is clear that before embarking on the formulation of a particular treaty all possible effort should be made to collect relevant legal and factual data.

(b) It is equally clear that before embarking on the formulation of a particular treaty every effort should be made to ascertain the potential interest of States in the proposed treaty.

(c) It would appear difficult to formulate an abstract reply as to the utility of considering some less binding instrument in a particular case since this will depend entirely on the desires of the States concerned as they emerge in the course of preparation and negotiation.

2. (a), (b) and (c) Once again, it would appear very difficult to reply in an abstract manner to this question as it depends very much on the origin of the initiative, the subject matter and practices of the organizations concerned. The general practice within the OECD has been for the secretariat to draft a preliminary text, based on guidance given to it by the appropriate body of the Organization; subsequently the text is developed by an expert body or drafting group and at a later stage by a body with full representation.

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

1. Before embarking on the formulation of a particular treaty, efforts should be made, in general, to:

- (a) Collect legal and factual data relevant to the proposed treaty;
- (b) Ascertain the potential interest of States in the proposed treaty, and
- (c) Consider the utility of some less-binding instrument (e.g., a declaration).

2. The preliminary formulation of the text of a treaty should generally be entrusted to the Secretariat, or where controversial issues are involved, to an expert organ.

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*Official Records of the General Assembly, Twenty-eighth Session, Sixth Committee, 1396th meeting, para. 20.*

³See also comments by the Netherlands.

⁴A/36/553/Add.1, p. 6.

⁵*Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 17 (A/34/17), chap. IX, sect. F, paras. 129-131.* The General Assembly endorsed this position in its resolution 34/142 of 17 December 1979.

V. WORK OF THE INTERNATIONAL LAW COMMISSION

1. *Possible structural change*

- (a) *Should the ILC be converted into a full-time organ, whose members would be appropriately remunerated?*
- (b) *Should the honorarium or the per diem of ILC members be increased?*
- (c) *Should the special rapporteurs work and be remunerated on a full-time basis?*
- (d) *Should special rapporteurs occasionally be drawn from outside the Commission?*

- (e) *Should the special rapporteurs be supported by experts working under their direction on a full-time basis?*
2. *Possible changes in agenda*
- (a) *Should certain questions not be referred to the ILC or should certain additional questions be referred to it?*
- (b) *Should the ILC have a heavier or a lighter agenda?*
- (c) *Should the ILC concentrate more on specific topics, restricted in scope, that may constitute only part of a larger subject area?*
3. *Possible procedural changes*
- (a) *Should the ILC make more of an attempt to complete all its work on each subject within the five-year term for which its members are elected?*
- (b) *Should Governments be consulted more or less frequently during the progress of work by the ILC on a particular draft?*
- (c) *Should there be working groups that meet intersessionally—with perhaps a reduction in the length of Commission sessions?*
- (d) *Should the ILC formulate preambles and final clauses for the draft articles it submits to the General Assembly?*
- (e) *Should the ILC prepare alternative texts of particularly controversial provisions?*
- (f) *Should the ILC consider the possibility of “restating” areas of customary international law, as an alternative to codification?*
- (g) *Should the ILC consider drafting texts for instruments other than treaties?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE¹

1. Several representatives expressed their satisfaction with the International Law Commission's contribution to the study of the multilateral treaty-making process (A/35/312/Add.2). While a number of representatives considered it inappropriate and untimely to examine the work of the Commission in the context of this review, some delegates proceeded to comment on questions in this regard posed in section IV of the Secretary-General's report.

2. Different views were expressed on the role of the Commission with respect to multilateral treaty-making. Some representatives held the view that the Commission, being an expert group, was best suited for treaty-making on selected topics such as treaties and State responsibility, but less suitable for dealing with issues of exclusively political character. Some other representatives went on to suggest certain ways for making better use of the Commission, for example by increasing the honorarium or the per diem of its members, converting the Commission to a full time body, making better use of special rapporteurs who might be supported, as appropriate, by outside experts. Some representatives suggested that the Commission's congested, general work programme and agenda should in the future be changed to more specific programmes. Some of them thought that this could be achieved by excluding the formulation of instruments other than those in treaty form or by limiting its task to codification and progressive development of new norms of international law.

3. It was stated by some that the techniques and procedures provided for in the statute of the Commission were well suited to the tasks entrusted to it by the General Assembly and had made a significant contribution to the codification and progressive development of international law. Some representatives added that other techniques and procedures could however also be used, either because vital national interests required draft articles to be prepared by Government representatives as had been the case with the Third United Nations Conference on the Law of the Sea, or because the issues were more scientific and technical than legal. Some representatives maintained the view that the Commission's study of this topic was part of the rationalization effort now proceeding within the organization.

4. One representative expressed the view that the conclusion reached in the report that the techniques and procedures provided in the Commission's Statute, as they had evolved in practice, were well-suited to the tasks entrusted to the Commission by the General Assembly, seems to beg the question. He pointed out that though the report² had a list of important conventions concluded by the States on the basis of drafts prepared by the Commission, it did not proceed to examine their current status vis-à-vis the number of parties to them. Nor had the Commission attempted to find reasons why entirely new techniques had had to be evolved to deal with the question of the law of the sea, and the preparation of the Convention against the Taking of Hostages. He also expressed the view that the Commission's practice of concluding its work on a given topic by submitting draft articles which were intended to form the basis of a convention ought to be revised. In connection with this, he hoped that the Commission would explore other methods.

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

Argentina (A/36/553, p. 8)

1. *Possible Structural changes*

(a) ILC properly performs its work in accordance with its statute, and has a broad and extremely important mandate.

(b) If ILC continued with its present functions, it would not be necessary to increase the honorarium of the *per diem* of its members.

(c) As stated previously, having a full-time Special Rapporteur would change the present structure of the Commission: as matters stand, therefore, it would not be appropriate to appoint one.

(d) On those occasions when highly specialized subjects originating from other organs are debated, it might be advantageous to draw a Special Rapporteur from outside the Commission.

(e) This is not necessary, except on very special occasions of the kind mentioned in (d) above.

2. *Possible changes in agenda*

(a) Inasmuch as the specific function of ILC is the progressive development and codification of international law, that implies the deletion of certain questions and the inclusion of new ones.

(b) The agenda of ILC varies according to demands at a particular time, which it is impossible to determine in advance.

(c) This does not appear necessary, in view of the fact that larger subject areas are normally subdivided.

3. *Possible procedural changes*

(a) This will depend on the subject. Some may require more than five years, others less; in any event, the Commission's system of re-election allows for some continuity.

(b) The frequency with which Governments are consulted at present is appropriate.

(c) This might be useful in urgent cases, but the length of sessions should remain the same.

(d) This is not *necessary*, but it might be appropriate in view of the nature of the Commission's work, especially in the case of preambles. If "final clauses" means those relating to the number of ratifications required, entry into force, and so on, that might overburden the Commission's already sizable workload.

(e) It would be preferable to prepare a text which reflected and attempted to reconcile the views of all States, even if the drafting of such a text required an additional effort on the part of the Commission.

(f) Since the Commission's function is essentially legal, it formulates legal rules on the subjects referred to it in the form of articles. Any other procedure would render the progressive development and codification of international law less flexible.

(g) This would be appropriate in cases in which, by reflecting the views of a group, it gave the Commission a better understanding of such interests or views.

Australia (A/37/444, p. 7)

1. *Possible structural changes*

(a) To convert the International Law Commission into a full-time organ raises a number of important issues which should be studied further. Other alternatives should also be examined, including the question of whether there should be more than one session of the Commission a year.

(b) The honorarium of ILC members would appear to be insufficient considering the length of sessions, and should be reviewed.

(c) The question of whether Special Rapporteurs should work and be remunerated on a full-time basis is, to some extent, tied up with question (a). Even if the ILC were to be converted into a full-time organ this would not necessarily mean that the Special Rapporteur would have to work on a full-time basis.

(d) Under the existing situation, Special Rapporteurs should be drawn only from members of the ILC so that they may participate as equals in the Commission's consideration of their work.

(e) The question of expert help for Special Rapporteurs, if not on a full-time basis then at least *ad hoc*, should be examined further.

2. *Possible changes in agenda*

It is not possible to provide a categorical answer to questions on the ILC agenda but, in general, the Commission should give priority to the progressive development and codification of important areas of international law where agreement among the Commission's members, as well as among States, may be possible. We consider that the agenda of the Commission is generally too heavy, and the Sixth Committee should carefully consider items placed upon it. While the ILC may have success in dealing with contentious matters it will make best use of its limited time, in current circumstances, if these are not numerous. The ILC should be pre-eminently able to take broad views of major topics.

3. *Possible procedural changes*

(a) It would be best if ILC members could carry a topic through to completion within their period of service.

(b) There would seem to be no need for Governments to be consulted more than once a year on the work of the Commission. Government representatives should, in addition, continue to have the opportunity of commenting on the work of the Commission in the Sixth Committee.

(c) There might be scope for intersessional working groups, subject to constraints on the time of Commission members, coupled with a reduction in the length of Commission sessions. This, however, may not be necessary if the agenda of the ILC is lighter. The matter should be examined further.

(d) The Commission should in general attempt to formulate preambles and final clauses of draft articles it submits to the General Assembly, if it considers these should contain special features. If the Commission finds it difficult to reach agreement on such provisions it should leave the responsibility for preambles and final clauses to the General Assembly.

(e) Alternative texts of particularly controversial provisions, and the reasoning behind them, could be helpful for those entrusted with the negotiation of treaties and could save the time of the ILC itself.

(f) The restatement and codification of areas of customary international law should be secondary to its progressive development, and undertaken only if there is scope for agreement among States on the rules of customary international law in question.

(g) We consider that in general the ILC should not draft texts for instruments other than treaties. To attempt to do that would detract from its main purpose, over-politicize the Commission and increase its workload. In cases where the Commission believes that a particular subject-matter referred to is not ripe for inclusion in a binding instrument it should say so, stating the reasons.

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

The International Law Commission considers that "the techniques and procedures provided in its Statute, as they have evolved during a period of three decades, are well adapted for the object stated in article 2 and further defined in article 15, i.e. 'the progressive development of international law and

its codification'". The Brazilian Government shares this view and considers that any suggestions for modifications in the procedures followed by the Commission, as well as in its structure, should be made by the Commission itself, if and when the Commission feels they are needed.

Byelorussian Soviet Socialist Republic
(A/35/312/Add.1, p. 13, and A/36/553/Add.1, p. 3)

1. With regard to methods of perfecting and increasing the effectiveness of techniques and procedures for the elaboration of multilateral treaties of a universal character within the United Nations, it should be pointed out that the output of the International Law Commission continues to be inadequate.

2. In the view of the Byelorussian Soviet Socialist Republic, an investigation into the multilateral treaty-making process should, among other things, lead to an enhancement of the role and significance of the Sixth Committee of the General Assembly in promoting the codification and progressive development of international law, which is its main task under Article 13 of the United Nations Charter. In particular, draft multilateral treaties and conventions prepared by the International Law Commission should be finalized and adopted by the Sixth Committee rather than by special international conferences convened for that purpose, as occurs in a majority of cases at the present time. This would also give the representatives of all countries an opportunity to participate directly in the elaboration of multilateral treaties. The representatives of many Member States, including the Byelorussian Soviet Socialist Republic, have spoken out repeatedly at General Assembly sessions in favour of such a course.

3. Consideration of the process of elaborating multilateral treaties of a universal character within the United Nations system should also serve to draw the attention of Member States to the need to increase to the greatest possible extent the number of parties to existing multilateral treaties concluded under United Nations auspices.

4. The Byelorussian SSR considers that the International Law Commission can play a bigger role in drafting treaties and should increase the effectiveness of its work, and that the Sixth Committee should play a more active role in the process of establishing norms, without convening *ad hoc* international conferences for that purpose. There should also be no time-limit on the consideration of questions. A time-limit is acceptable only with the free consent of the plenipotentiaries of States participating in the work of a conference or a United Nations body.

5. The existing structure of the International Law Commission has proved itself in practice and it would be inadvisable to change it. The existing way of determining how full the agenda should be and in what order individual items should be considered at sessions of the Commission has also proved itself. At the same time the Commission should fulfil General Assembly instructions with respect to the period in which it should complete its consideration of a topic.

Cuba (A/36/553, p. 18)

1. *Possible structural changes*

(a) We do not consider this necessary.

(b) No.

(c) No.

(d) Yes, for subjects where the technical questions to be regulated are beyond the scope of the legal knowledge of the members of the International Law Commission.

(e) Yes, for the same reasons as in 1 (d).

2. *Possible changes in agenda*

(a) There may be certain questions that can be dealt with by the Sixth Committee without needing to involve the International Law Commission: conversely, it may be necessary to refer to the Commission some topic which is not at present before it. The matter should be considered on a case-by-case basis.

(b) As stated above, the agenda should be based on a work programme designed to give priority to the most important subjects and to achieve concrete results without unnecessary delays.

(c) It would not be advantageous to divide the study of a subject among a number of organs, although it certainly is advisable to concentrate systematically on specific topics.

3. *Possible procedural changes*

(a) This could be attempted, but it would depend on the complexity of the subject under consideration. Changes of rapporteur can unquestionably contribute to delay in concluding an item, and so can the replacement of most of the members of the Commission who are already familiar with the subject.

(b) This would be beneficial, since it would show which aspects were most controversial before the formulation of the draft was completed.

(c) If work is divided among a number of working groups within the Commission, the groups should meet intersessionally, which would expedite work during the session.

(d) Drafts formulated by the International Law Commission should include both a preamble and final clauses.

(e) If, as we suggest in (b) above, States are consulted during the formulation of a draft, it will be possible to identify the aspects on which there are problems and alternative texts could be prepared, provided that the objective pursued is not lost sight of.

(f) This is not necessary and would, moreover, be contrary to the purposes of the Commission and the provisions of Article 13, paragraph 1 (a), of the Charter of the United Nations.

(g) This must depend on the importance of the subject to be regulated.

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

1. The techniques and procedures provided for in the Statute of the International Law Commission, as they have evolved in practice, are well suited to the tasks entrusted to the Commission by the General Assembly, i.e. the progressive development of international law and its codification. The

quality of the Commission's work is well recognized by the United Nations members. The draft articles submitted by the Commission to the General Assembly constituted the extremely valuable basis for numerous conventions, elaborated and concluded under the auspices of the United Nations. The summary records of the Commission and the Commission's Report to the General Assembly as well as the reports and studies of the Special Rapporteurs play an important role in legal research and international practice, promoting knowledge of and interest in the process of the progressive development of international law and its codification.

2. Although the Commission is a permanent subsidiary body of the General Assembly, there is a continuous need for the General Assembly as well as for Member States individually to bear in mind the *sui generis* nature of the Commission and of its work. Any endeavour to review the possibility of improving the work of the Commission should respect this special status of the Commission, considering that the Commission itself keeps constantly under review the possibility of improving its procedure and methods of work.

1. *Possible structural changes*

3. The Federal Republic of Germany does not see a necessity to convert the International Law Commission into a full-time organ. For a full-time organ, it would be more difficult to find outstanding international lawyers willing to sit on the Commission as they would have to give up all other professional obligations. Regular attendance has been a problem for some members; it would be more so, if the Commission met on a permanent basis. The honoraria or the per diem of International Law Commission members should guarantee their financial independence. If Special Rapporteurs are expected to work on a full-time basis this would exclude those members of the Commission as Special Rapporteurs who are in no position to work full-time for the Commission. Remuneration should take account of the extra work-load for a Special Rapporteur.

4. Special Rapporteurs should be drawn from within the Commission. As the Commission is composed of persons of recognized competence in international law, all its members are qualified as Special Rapporteurs.

5. Considering the need for thorough legal research as well as the ever increasing amount of legal material being available from the different legal systems of the world, it may be feasible to support the Special Rapporteurs by experts working under their direction. It will depend on the circumstances of the research to be done whether such research should be done by experts working on a permanent full-time basis or on a temporary basis.

2. *Possible changes in agenda*

6. As in the past, questions which are primarily of a political or technical nature should not be referred to the International Law Commission. The work of the International Law Commission should continue to concentrate on those issues where Member States see a general need for codification and progressive development of international law and where general agreement among the Commission's members as well as among States may be possible.

3. *Possible procedural changes*

7. The authority of the International Law Commission drafts and of the Commentaries to these drafts is based on the quality of the work. Time-pressure exerted on the Commission could affect the quality of its work.

8. Governments should be consulted in such a manner as to guarantee the widest possible acceptance by States of a particular draft.

9. Whether the International Law Commission should formulate preambles and final clauses for draft articles is to be decided in specific cases on a pragmatic basis. A general decision on this question does neither seem necessary nor feasible.

10. The International Law Commission should strive to reach a consensus. If consensus cannot be reached, the International Law Commission may prepare either alternative texts or no text at all, depending on the circumstances.

11. "Restating" areas of international law should be considered only if there is complete agreement among States on rules of customary international law. Nevertheless by restating areas of international law the International Law Commission could expose its work and its authority to challenges by States.

12. The drafting of texts for instruments other than treaties should not be excluded, but in principle the International Law Commission will best fulfil the functions by drafting texts which may form the basis of an international treaty.

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

There are many agenda items which have been considered by the International Law Commission. Due to lack of time, the Commission could not consider them in detail and fulfil its duty. If the effectiveness of the Commission is to be improved, the Sixth Committee will have to designate the scale of priority.

Italy (A/36/553, p. 28)

1. It is the Italian Government's opinion that the role of the International Law Commission should be further enhanced, and that members of the Commission should be chosen exclusively on the basis of their competence in its field of work. It would be desirable for these experts, who should be independent of their Governments, to work in and for the Commission full-time, even if this might represent a greater financial burden for the United Nations. On the other hand it does not seem necessary, if the Commission members are selected on the basis of rigorous criteria, to entrust part of the work to outside experts or to assign assistants to the Special Rapporteurs of the Commission. Assisting the ILC is the task of the United Nations Secretariat.

2. If, however, the Commission's structure remains as it is, and if its sessions maintain their present duration, it seems impossible to entrust it with further tasks. The agenda of the last few years already seems extremely heavy, and to burden the Commission further would undermine the seriousness and

efficiency of its work. In fact, some thought should be given to lightening the agenda by not burdening the Commission with minor matters on which it could limit itself to expressing an opinion.

3. Regarding the procedure currently followed or to be followed by the Commission, subpoints (e), (f) and (g) of point 3 are worthy of attention. It would in fact be useful for the Commission to prepare alternative texts, explaining the motives and basis of each variant. Similarly, the idea of “restating” areas of customary international law as an alternative to codification should not be discarded. Finally, a greater recourse to texts not intended to become treaties—such as recommendations, model-rules, and so forth—might often facilitate the absorption of the Commission’s findings into international practice.

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

1. It might be preferable to increase the honorarium or the per diem of members of the Commission.

2. Certain questions should not be referred to the International Law Commission, which already has a heavy agenda.

3. The International Law Commission should make more of an attempt to complete all its work on each subject within the five-year term for which its members are elected.

4. It should formulate preambles and final clauses for the draft articles it submits to the General Assembly. This would make it easier for the Assembly to follow the progress of a topic.

Mexico (A/36/553, p. 34)

1. The International Law Commission has proved to be a suitable organ for the preparation of draft multilateral agreements. Its efficiency is due to the high professional qualifications of its members and to the fact that, although they serve in their personal capacity, most of them are fully acquainted with the positions of their Governments and the Governments of other States. For that reason, converting the International Law Commission into a full-time organ, with members whose professional lives would be bound up entirely with the Commission, would mean converting it into an academic organ remote from reality.

2. The practice whereby the General Assembly of the United Nations is the organ which decides what topics are to be considered in the International Law Commission should be maintained, because there can be no organ more capable than the General Assembly of determining which topics merit priority; however, the International Law Commission should be left free to decide how much time is to be spent on each topic, in the light of the stage of maturity which, in the opinion of the Commission, has been reached in the process of formulating the draft treaty in question and of international circumstances. It is not advisable to impose time-limits on the International Law Commission, although the General Assembly should provide guidelines in order to avoid unjustified delays of the kind which have occurred in the case of the item on State responsibility.

Netherlands (A/36/553/Add.1, pp. 6-9)

1. Inasmuch as the questions posed under this heading do suggest that the contribution by the ILC to the multilateral treaty-making process in general could be enhanced by improvements of a procedural nature of its *modus operandi*, a note of caution is in order.

2. The topics dealt with by the ILC since its inception bear witness to the fact that its task has been understood to be the formulation of the classical rules of universal *ius inter potestates* and the adaption of these rules to the requirements of present-day international society. It is therefore submitted that subjects which do not primarily concern inter-State relations at the government level, such as international economic relations (goods, services, monetary affairs) or the unification and harmonization of national legal systems in specific areas, do not fall within the scope of activities proper of the ILC.

3. The characteristics of the activities of the ILC, set out above, do have certain consequences for the pace of work of the Commission and its composition. The requirements of universality generally cause the Commission to spend considerable time in bridging gaps between different positions. At the same time the intergovernmental nature of its projects calls for a membership of persons combining a specialist knowledge of international law with extensive experience of day-to-day intergovernmental relations.

4. Turning now to the specific questions posed, the Netherlands Government would see no merit in either converting the ILC into a full-time organ or appointing full-time Special Rapporteurs. Apart from financial considerations, this attitude is inspired by the considerations set out above. Such a set-up would of necessity interfere with the requirement that the Commission be composed of members having practical experience. This requirement is even more relevant to Special Rapporteurs. At the same time, Special Rapporteurs can function effectively only if they are integrated into the over-all work of the Commission. The ILC should therefore continue to draw Special Rapporteurs from its membership. On the other hand, the Netherlands Government would welcome a more extensive staffing of Special Rapporteurs. Assistance (not necessarily full-time) of Special Rapporteurs would enable them to concentrate more on drafting texts and commentaries. Provision should then also be made in financial terms for the necessary intersessional contacts between a Special Rapporteur and his assistant. Such assistants would have to be selected by the Special Rapporteur (from any source he deems fit), and could be placed under the authority of the codification division of the United Nations Secretariat.

5. Even if the above-mentioned improvement would be effected, the items presently on the agenda of the ILC would still keep the Commission active for a considerable period of time. As the need arises, additional questions could be added, provided they fit in within the general parameters set out above.

6. In this connection, the Netherlands Government would see considerable merit in devising a procedure through which the General Assembly, presumably at the instigation of a Main Committee or subsidiary body, would thoroughly discuss subjects which are suggested for inclusion in a legal instrument before requesting the ILC to draft such an instrument. Such discussion might well indicate that, politically, there are various solutions to the problem.

The General Assembly might then request the ILC to “translate” these options into legal language. It is then up to the Assembly to choose between the alternatives presented to it. Thus, the political discussion will be held where it rightly belongs. Furthermore, it is quite conceivable that such a request pertains to an issue which forms part of a larger subject area. In any event it would be extremely useful if those portions of a subject, which clearly are within the competence of the ILC, such as state responsibility clauses, dispute settlement provisions, etc., would be referred to it, even if the subject as a whole were being dealt with in another legal forum (*ad hoc* or permanent).

7. The Netherlands Government would certainly support any suggestions which might enable the Commission to complete a topic within a shorter time span. Certain complicated topics, such as the law of treaties or state responsibility, however, would seem to require more time than a period of five years. In this connection, it is suggested that Governments, either when nominating their candidates for the Commission or when casting a vote during the elections, give consideration to the desirability of at least some permanence in the membership of the Commission (e.g., two consecutive terms of office).

8. A possible suggestion for speeding up the consideration of subjects might be for the ILC not to deal with all items on its agenda at the same time but to concentrate instead on one or two items. Experience teaches that discussion of *all* items during the 12-week session has various disadvantages. Special Rapporteurs can present only a few draft articles each year, whereas discussion of those articles is necessarily hampered by the lack of an over-all view. In retrospect a good many questions posed during such discussions are premature or even irrelevant in the light of articles which have been presented by the Special Rapporteurs later on. Discussion of the draft as a whole (or substantive part thereof) during a major part of the session would in the opinion of the Netherlands Government constitute a considerable improvement of the Commission's *modus operandi*. Such a procedure would at the same time allow for improvement of the system of consultation of Member States. For the same reasons as given above for discussion by the ILC itself, comments by Member States on only small portions of a draft are probably not as useful as they would be if the draft were to be submitted as a whole (or in parts suitable for scrutiny, independently of other parts).

9. The Netherlands Government is aware that such procedure might deprive the Commission of the necessary guidance by Member States. It is therefore submitted that all Special Rapporteurs should report to the Commission each year, even if their subject is not up for discussion. Through its report to the General Assembly, the Commission would keep Member States informed on all topics. To the extent feasible and necessary, Member States could then react during the debate on the ILC report in the Sixth Committee thus providing guidance for the Commission.

10. Intersessional meetings, even if combined with a reduction in the length of the Commission's session, will presumably be attended to by less than the full membership. Being less “representative” such meeting can hardly be expected to serve the objectives sought.

11. Most certainly the ILC must present as complete a text as possible (see A/35/312, E, 3 (*d*)). In the opinion of the Netherlands Government many provisions, usually referred to as final clauses, are of such importance that they

can rightly be considered as substantive. Thus dispute settlement provisions, which have to be tailor-made taking into account the text as a whole, would certainly qualify as substantive provisions. This is equally the case with provisions regarding the relationship to other treaties. Even final clauses of a more technical nature should be included in the draft before it is presented as a whole to the General Assembly. On the other hand it would seem to be within the province of the (political) forum which is to finalize the text to draft the preamble.

12. In accordance with its Statute (article 23), the Commission operates on the presumption that the drafts it prepares will eventually take the form of a convention. It would seem to be up to the General Assembly to decide on the final form once the draft articles have been presented to it. Depending on the nature of the topic which is suggested for inclusion in a legal instrument, however, it is conceivable that the Assembly would decide to request not the drafting of a convention but of model rules or guidelines.

13. This decision might also be prompted by indications during discussions of the subject that the time was not ripe for such a relatively final formulation of legal rules as would be implied by the form of a convention. This would seem to answer in the negative both questions posed in paragraphs (f) and (g).

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

1. It would be appropriate to consider the possibility of increasing the honorarium or the *per diem* of ILC members.

2. Care should be taken to avoid referring too many questions to the International Law Commission so as not to overload its agenda.

3. The International Law Commission should make more of an attempt to complete all of its work on each subject within the five-year term for which its members are elected. It should formulate preambles and final clauses for the draft articles it submits to the General Assembly, so that the latter may follow up the progress of the topic.

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

The International Law Commission, being an expert group, has proved to be an efficient organ for the preparation of draft multilateral agreements. Therefore, there would be no particular need to convert the Commission into a full-time body which might distance itself from reality were it to be transformed into a kind of academic organ. Besides, it is widely recognized that the Commission is less suitable for purely political matters.

Spain (A/36/553/Add.1, pp. 15-16)

1. *Possible structural changes*

(a) Yes, especially if its workload is to be increased.

(b) Yes, in principle.

(c) The Rapporteurs should at least work on a full-time basis. They should in any case be properly remunerated.

(d) No.

(e) The Rapporteurs should be supported by experts, but it would not seem necessary for such experts to work on a full-time basis.

2. *Possible changes in agenda*

(a) The question is not very clear. The General Assembly decides where to refer items. The desirability or otherwise of referring a question to ILC would have to be considered in each individual case.

(b) Generally speaking, the agenda is all right as it is. It could be heavier if ILC members devoted more time to their work and States' absorptive capacity was increased.

(c) Depending on the case, it could agree to deal with a global topic exhaustively or to adopt a sectoral approach. This would also depend on the time available. In any case, it would not seem advisable to assign overly specific topics to ILC.

3. *Possible procedural changes*

(a) Yes, in principle.

(b) The present situation seems satisfactory. It would however, be desirable, for States to receive the text of the ILC report further in advance so that they can comment on it in the corresponding debate in the Sixth Committee.

(c) No.

(d) That might be desirable. Standard clauses could be included, leaving a blank for points which required a political decision, such as the admissibility or otherwise of reservations, the number of instruments needed for entry into force, etc.

(e) Yes. When controversial topics are at issue, ILC should prepare more than one alternative, especially when one or more States have made conflicting proposals.

(f) The question is not very clear. In general, the existing process of codification and development of international law appears to be adequate.

(g) No. The current process of politicization should not be allowed to affect ILC.

Ukrainian Soviet Socialist Republic (A/36/553, p. 39)

There is no need to introduce any structural changes in the International Law Commission, and it would also be undesirable to conduct an internal reorganization of its work. The correct system for determining the order of consideration by ILC of particular questions ensures that the agendas for its sessions are filled. In its attempts to activate the consideration of individual questions, ILC should be guided by the General Assembly recommendations determining the time-limits for completion of the consideration of those questions.

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

The present structure of the International Law Commission has justified itself and it would seem undesirable to change it. The existing way of

establishing the order of consideration by ILC of particular questions ensures that the agendas for its sessions are filled. Attempts by ILC to activate the consideration of individual questions should not run counter to the General Assembly recommendations on time limits for completion of the consideration of those questions. It would also be undesirable to make any new changes to the Commission's internal organization of work.

United Kingdom of Great Britain and Northern Ireland
(A/35/312/Add.1, pp. 29-30)

In this connection, the Government of the United Kingdom would like to take this opportunity of paying tribute to the work of the International Law Commission. In the 30 years since its creation, the Commission has played a key role in the codification and progressive development of international law. The Government of the United Kingdom are conscious that the Commission has under constant review improvements in its working methods, and stand ready to consider sympathetically any proposals which the Commission may make with a view to improving the efficiency of its procedures, as well as its working relationship with the Sixth Committee. In this context, the Government of the United Kingdom would suggest that, within the framework of this item, consideration might be given to an examination of the scope of topics placed or proposed to be placed on the active work programme of the Commission. The scope of some of the topics currently on the active work programme of the Commission is so broad that it is hardly surprising that the Commission has had to devote many years to the elaboration of a first set of draft articles on only part of a particular topic. It is possible that concrete results could be achieved more quickly if the Commission were to restrict itself, at least initially, to the consideration of specific aspects of a topic whose scope was generally acknowledged to be so broad as to preclude comprehensive treatment within a reasonable time-scale. The Government of the United Kingdom would likewise suggest that consideration could be given to possible measures to ease the burden put upon special rapporteurs appointed by the Commission to work on a particular topic. The special rapporteur system is a central and valuable feature of the Commission's procedures, and the Government of the United Kingdom would not wish to see the role of the special rapporteur diminished in any way. But conceivably the work of the special rapporteur on a particular topic could be speeded up if the Secretary-General were empowered to recruit qualified experts from outside the ranks of the Commission who would be entrusted with the task of preparing preliminary studies on particular aspects of a topic entrusted to a special rapporteur and otherwise of assisting the special rapporteur in the preparation of his reports. Whether such an innovation would be of value would depend on the Commission's assessment of its usefulness. The Government of the United Kingdom would stress that these are simply suggestions that could warrant further consideration within the framework of this item. Their sole aim is to bring about improvements in the functioning of the Commission as the body whose central task is to engage in studies directed towards the progressive development and codification of international law. It is self-evident that the views of the Commission on these and any other ideas that may be advanced for the enhancement and more effective discharge of the role entrusted to it would be of paramount importance.

United States of America (A/35/312/Add.1, pp 32-37)

1. *General observations*

1. With the benefit of hindsight, it may well be that reference to the International Law Commission of the law of the sea issues in the late 1960s would have materially expedited matters. While certain basic political and economic issues might have had to have been thrashed out in a larger forum before remission of a draft treaty to a conference of plenipotentiaries, many problems might have been settled more expeditiously and the issues which needed political disposition clarified by the preparation of a basic, comprehensive text at an earlier stage than proved to be the case. The comparative experiences of the International Law Commission in the 1950s and of the First and Second United Nations Conferences of the Law of the Sea so suggest. Nor should the capacity of the International Law Commission to negotiate accommodation of differences of policy be underestimated, the process of codification inevitably demands that capacity, which is enhanced in the Commission's case by participation in its work of some members of political and diplomatic experience who hold or have held senior official positions.

2. To take another example of the professionalism and relative expeditiousness of the International Law Commission, it proved able to complete the draft articles on the prevention and punishment of crimes against diplomatic agents and other protected persons³ in one session whereas the *Ad Hoc* Committee on the Drafting of an International Convention against the Taking of Hostages has taken three sessions to bring a treaty draft almost to completion.⁴ Again, a recent plenipotentiary conference on asylum which did not have the advantage of a draft convention prepared by the Commission did not succeed in elaborating a convention (it was provided with a draft prepared by a specially convened committee of experts, which, however, did not have the benefit of the Commission's ripening processes).⁵ No criticism of the path actually followed in these or other cases is advanced; but it is suggested that, in the future, the unique professionalism and potential of the International Law Commission should be borne fully in mind in all cases. Where a subject has large legal content and is of broad interest to the international community, recourse to the Commission should be the first course to be considered.

3. At the same time, it is important that the current agenda of the International Law Commission not be overloaded, and that the Commission be afforded considerable discretion in the priority and pace which it attaches to various topics. The Commission—and the General Assembly in agenda advice to the Commission—should concentrate on subjects of substantial, practical importance. It is reassuring that the Commission has taken up the most substantial and practical subjects of the law of the non-navigational uses of international watercourses and the jurisdictional immunities of States and their property. By the same token, it is not reassuring that the Commission has devoted the time it has to the subject of treaties concluded between two or more international organizations. Nor is it clear that the Commission will do well to address the subject of the immunities of the officials of international secretariats, in view of the greater significance of other subjects. It is equally important that when the Commission is charged with subjects of large dimensions, it emphasizes those aspects that pose real problems in the conduct of

international affairs. It would, for example, be a most positive development if the continuing preoccupation of the Commission with the vital subject of State responsibility would focus on those aspects of it that are of moment in the affairs of States and their nationals.

4. As noted, it may not be assumed that the present international system as it is now fashioned and funded is capable of absorbing a markedly increased flow of draft conventions. It may be that, in order to do so, foreign ministries and national legislatures will have to devote larger resources to the international legislative process. That would require not a restructuring of the system but a model re-allocation of resources within it, a re-allocation that may be overdue. As it is, how many foreign ministries have lawyers functionally and primarily assigned to dealing with the processes and product of the codification and progressive development of international law? Nevertheless, it would seem appropriate to consider whether there are adaptations that could be made by or to existing institutions to the end of enlarging the production and ratification of draft conventions.

5. It is worth reiterating that the quality and quantity of output of the International Law Commission as well as its demonstrated ability to respond expeditiously in special circumstances are such as to require caution before taking any action which would adversely affect the functioning of its system. The process of progressive development and codification is a delicate one requiring the studied application of learning and judgement, as well as of political accommodation. It requires time for reflection both of experts and Governments. It requires opportunity for States to comment in the course of the process in order to maximize the likelihood that the final product will be generally acceptable and, indeed, in order for States to learn the intricacies of the subject matter as the process progresses so they do not face its subsequent phases with insufficient background to take the decisions required in a timely fashion. Accordingly, it may well be that the final conclusion of the examination of the multilateral treaty-making process, insofar as it concerns the International Law Commission, is that the International Law Commission substantially, as it stands and with its current methods of work, is the best system that can be devised at this juncture.

6. Before reaching that conclusion, however, it is believed that there are possibilities that might be examined which relate to such matters as the duration of the Commission's sessions and its methods of work.

2. Duration of sessions

7. It is believed that the current 12-week session is the longest time period that is consistent with the nature of the Commission as a part-time entity made up of members elected in their personal, expert capacities. Quite apart from other professional demands upon them, it is not reasonable to anticipate that the Commission's members could be expected to devote more time to a body which does not serve as a source of income (the current "honorarium" of \$1,000 for participation in a 12-week session is so minor as to be discounted). There is indeed a strong case, within the current length of the Commission's sessions, for giving its members a larger per diem and compensating its special rapporteurs more adequately, perhaps under contractual

arrangements which are adjusted to the special rapporteur's charge and product.

8. Alternatively, there is room for considering whether the Commission should be converted into a full-time or quasi-full-time institution with adequate remuneration provided to the members, e.g., in the same manner and scale as Judges of the International Court of Justice. There can be no doubt that such a step would markedly facilitate the task of the Commission in producing a greater volume of work in a shorter period of time. It should be recalled that the report of the Committee on the Progressive Development of International Law and its Codification⁶ which proposed the creation of the Commission recommended that it be a full-time body. In 1947, when the General Assembly decided in favour of the current system (resolution 174(II) of 21 November 1947) there was less certainty than there is today that the Commission was viable and could produce important work. In any re-examination of the desirability of such a step (which the United States raises rather than recommends) consideration should be given, in addition to the absorptive capacity of States, to the following questions that conversion of the Commission into a full-time body would pose: will there be a sufficient volume of work over a long period of time to justify such a step, can the quality of the membership of the Commission be maintained, and are States Members willing to absorb the costs in terms of salaries of the members and the increased secretariat staff that would be required to service a full-time Commission? Would the useful relations of many Commission members with their Governments be sustainable if members were to become full-time officials responsible only to the organization? For its part, the United States is not prepared at this juncture to take a position on the relative advantages and disadvantages of a full-time International Law Commission. It would note, however, that what might be a desirable compromise between the current status and that of a full-time Commission would be for selected special rapporteurs to work full-time for the Commission during part or possibly all of their service as special rapporteur. That would markedly expedite the work of the Commission and might exploit what practical margin there is for its improvement. Full-time rapporteurs would have to be compensated appropriately, if not at commercial levels then at those of Judges of the International Court of Justice or the most senior officials of international secretariats.

3. *Working methods*

9. The working methods which the Commission has evolved, and which are lucidly expounded in a Report of a Commission Working Group on Review of the Multilateral Treaty-Making Process of 23 July 1979 (see A/35/312/Add.2), appear to be admirably suited to the achievement of its purposes. Nevertheless, a few comments may be in order.

(a) The Codification Division of the Secretariat should continue to be strengthened, particularly with a view to its lending to special rapporteurs of the Commission the necessary specialized assistance.

(b) During a particular five-year term, the Commission should endeavor to concentrate upon and complete a few topics, rather than dissipating its efforts among several. Such concentration will permit the Commission to

accomplish more, and will reduce the impact which a succession of special rapporteurs produces.

(c) When the Commission undertakes a very large subject, it should consider from the outset whether it should be broken down into two or more components, to be addressed by two or more special rapporteurs.

(d) The Commission should consider establishing working groups for particular topics which might meet for two or three weeks between sessions. Sessions of the Commission itself might then be reduced in length. This pattern has worked well for UNCITRAL and perhaps is applicable to the Commission.

(e) Consideration should be given in appropriate cases to the use by the United Nations, at the initiative and with the concurrence of the Commission, of special rapporteurs drawn from outside the Commission's membership.

(f) Governments might increasingly be requested to submit written comments on draft articles prepared by the Commission in the course, and before the final completion, of a first reading of an entire set of draft articles.

(g) Questionnaires might more often be addressed by the Commission to Governments to elicit their views on the direction and content which Commission drafts should take.

(h) The Commission should give renewed consideration to the preparation of instruments other than articles designed to compose a treaty (as it did in its earlier years).

(i) The mode of adoption of the Commission's annual report might be adjusted. As it is, the whole of the report is adopted during the last week of a session of the Commission. Commission members often receive drafts of the passages proposed for adoption so shortly before they are moved that time is not always adequate for their consideration. Yet these commentaries can play an important role in the understanding and interpretation of the draft articles proposed, and can be given significant weight by Governments and other interpreters. It may be that the Commission could consider draft chapters of its report at various stages of a session rather than in its final week, or perhaps commentaries should be provisionally adopted at one session and subject to revision and final adoption at the succeeding session.

(j) There is some tendency for the Commission in its comments on draft articles to repeat *in extenso* the passages to be found in the pertinent report of its special rapporteur. The Commission should consider to what extent cross-referencing or other approaches might minimize this practice which, however understandable, is not economical.

(k) The content of the commentaries on draft articles to be found in the Commission's reports may require more rigorous and objective treatment than the Commission has always manifested, particularly in recent years, when it has occasionally permitted the adoption of passages which are of questionable relevance or which even are tendentious. The Commission also has appeared to assign legal weight to certain controverted and controversial resolutions of the General Assembly, despite the fact that the General Assembly generally lacks legislative authority and despite the fact that the resolutions in question cannot reasonably be evaluated as declaratory of international law. The International Law Commission is a subsidiary organ of the Assembly, but it does

not follow from that fact that the Commission is justified in treating as the law what a majority of the Assembly may believe or wish the law to be. Should the Commission include in its commentaries—and, *a fortiori* in its draft articles—passages and provisions which, however congenial to many States of the Assembly or to certain of its special rapporteurs, are not consonant with existing international law or with the progressive development of that law as the international community as a whole wishes it to be, it will risk prejudicing its authority.

(1) The report of the Commission should be drafted so as to focus the attention of the members of the Sixth Committee on the particular questions on which interim governmental comments are most desired. As it is, the report tends to be so long and distributed so late that it is difficult for the members of the Sixth Committee to assimilate it and comment upon it in a considered, and even less, instructed way. Thus misapprehension may arise in the Commission about what really are considered governmental reactions to its drafts.

4. *Character of the Commission*

10. The character of the Commission as an expert body composed of persons of recognized competence in international law has been accepted from the outset. The experience of three decades fully justified the continuation of the Commission as an expert body comprised of individuals serving in their personal capacity. Not only has this permitted the Commission to attract to its membership eminent scholars who might not otherwise have served, it also has promoted a valuable continuity of membership. Moreover, the members of the Commission serving in their expert capacities do not manifest the caucus consultations, bloc voting and ritualistic expressions of position that often characterize governmental bodies of the United Nations.

11. It is recognized that UNCITRAL, which is composed of representatives of Governments, has been successful in doing somewhat similar work. However, the nature of the work of UNCITRAL has been such that it is unlikely that many individuals would have sufficient expertise in all the specialized fields covered and, consequently, many members send different representatives to the various working groups, whose mandates are technical and specific. These considerations do not equally apply to the International Law Commission. It is believed that the work of various *ad hoc* and special committees within the United Nations system over the years demonstrates that, while there are often benefits in having governmental involvement at an early stage of work, there is some loss in that representatives may feel obligated to assert governmental views in a manner that is often not consistent with the expeditious examination of the legal issues. Indeed, pressures of representational responsibility may lead to compromises of the lowest common denominator with insufficient attention paid to the technical legal issues or, indeed, the interests of the international community as a whole. Bloc politics may impede the early processes of codification; they have sufficient (if not excessive) influence in later stages.

12. In sum, there appears no reason to change the Commission from a body of uninstructed experts to a body of governmental representatives.

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

Council of Europe (A/36/553, p. 43)

1. While the idea of converting ILC into a full-time organ is attractive, it gives rise to certain problems, including, in particular, the danger of bureaucratizing the Commission.

2. Regarding possible procedural changes:

(e) No. In the Council of Europe, the Committee of Ministers usually has a final draft before it. In the view of the secretariat, proposals for alternative texts would result in a reopening of the whole debate and be conducive to a hardening of the positions of the various States. Such alternatives should be proposed only if the issue is so controversial that no majority can be discerned on either side.

(f) The idea of "restating" international law seems interesting and would certainly make genuine codification possible in the longer term. It might also provide a basis for regional action, even if action at the world level seems to be ruled out.

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

1. The first two questions are not applicable.

2. With regard to possible procedural changes:

(a) The answer to this question will depend entirely on the subject matter and political context.

(b) The establishment of model rules of procedure for plenipotentiary conferences could be of interest to the extent sufficient flexibility were provided to allow adaptation to the type of subject, the context of the negotiation and the intergovernmental organization concerned.

(c) The utility of establishing negotiating committees would have to be left to the discretion of each conference.

(d) The utility of inter-sessional meetings of certain conference bodies must also be left to the discretion of each conference.

(e) Not applicable.

(f) Participation of intergovernmental and non-governmental organizations at plenipotentiary conferences is clearly very useful as they are often in a position to provide expertise on the subject at hand.

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

With respect to possible procedural changes, it would be very much welcome if the ILC could make more of an attempt to complete all its work on each subject within the five-year term for which its members are elected, to formulate preambles and final clauses for the draft articles it submits to the General Assembly, and to consider the possibility of "restating" areas of customary international law, as an alternative to codification.

NOTES

¹This 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.

²A/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.*

⁵See 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 I (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 inter-governmental and non-governmental organizations at plenipotentiary conferences?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE¹

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 series of sessions allowing time for reflection 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 conflict 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 ILC² 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 memorandum⁴ 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 competence of the General Assembly. Practice has shown that sovereign States often attach more importance to plenipotentiary conferences than to the General Assembly, particularly in the case of treaties of major concern 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 function 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 pre-judge 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 sufficiently 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 necessary.

(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 distract-

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 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.

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 coordinators 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 coordinators 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*

of their negotiations, indicating various positions taken and the reasons for changes in the text? Who should prepare such reports?

3. *Should commentaries normally be prepared on draft treaty texts formulated:*
 - (a) *By expert groups?*
 - (b) *By representative organs?*
4. *Should a systematic effort be made to prepare and publish the travaux préparatoires of most or all multilateral treaties? If so, should this primarily be done by:*
 - (a) *The secretariat unit concerned?*
 - (b) *UNITAR?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE¹

1. Those representatives who commented on this subject preferred that adequate records and reports should be maintained by all organs and conferences formulating multilateral treaties. However, the preparation of commentaries was regarded as an extremely difficult task because even objective analyses might sometimes become a source of confusion, and when provisions were adopted by consensus States might prefer to adhere to their own interpretations.

2. The view was expressed that *travaux préparatoires* represented an important source in understanding the considerations underlying the various clauses of a treaty and would help particularly those developing countries that did not have the resources to collect and maintain extensive records in their archives. Some representatives considered that the *travaux* should be prepared and published by the United Nations Secretariat or the conference formulating multilateral treaties, and that UNITAR should be encouraged to continue its work in respect of the *travaux* of treaties promulgated by the United Nations. One representative suggested that the Secretariat should be asked to prepare a detailed report on how to determine what kind of conference (e.g., all diplomatic conferences or only conferences dealing with legal topics) should prepare and publish official records, and what should be included in them.

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

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

1. Verbatim records should be kept at least for the main committees of plenipotentiary conferences and for as many as possible of the organs normally engaged in the formulation of treaties.

2. A full report should be prepared of the discussions on every treaty that is adopted, indicating various positions taken, the arguments on which they are based, the reasons for changes in the texts and other points of interest.

3. Commentaries on draft treaty texts formulated by expert groups or by representative organs provide additional documentation relating to the pre-

conference phase and, together with commentaries on the texts of treaties already drafted, are of particular importance, when incorporated in the *travaux préparatoires*, in helping those legal organs of States that are responsible for ratification.

4. A systematic effort to prepare and publish the *travaux préparatoires* of most or all multilateral treaties would make an extremely valuable contribution to the full understanding of conventional international law on conventions, the progressive development of which is the responsibility of the United Nations.

Australia (A/37/444, p. 10)

1. As a general rule, summary records should be maintained only for plenary sessions of a conference and sessions of Main Committees or Committees of the Whole. Records of negotiations provide a means for the interpretation of treaties. There is, therefore, value in records of negotiations, including documents formally circulated during negotiations, being as complete as possible.

2. This question is not entirely clear. The official reporting of various positions taken and the reasons for changes in the text are a sensitive matter. If it is to be undertaken at all, the report should be examined, and made subject to adoption, by the conference which negotiated the text.

3. Commentaries on draft treaty texts of the type prepared by the International Law Commission are of great assistance for treaties which purport to modify or build upon customary international law. The preparation of systematic commentaries on texts is a task best undertaken by expert groups.

4. A systematic effort should be made to prepare and publish the *travaux préparatoires* of multilateral treaties. A secretariat unit can play an important role in collecting much of the relevant documentation during the negotiations. However, because the work of preparing a full account of the *travaux préparatoires* will continue after the conclusion of the treaty, it would be useful to have an expert prepare and publish the *travaux préparatoires* of all major multilateral treaties.

Austria (A/35/312/Add.1, pp. 4-5)

1. *Records*

1. It is not felt that serious problems are caused by the practice of some of the committees, sub-committees or working groups, etc., composed by representatives of States and entrusted with the preparation of a draft text, to dispense with records. Although it may be true that official records are helpful for delegations whose membership might change between sessions, private records of the delegation or at least the delegation's interval reports to its authorities would normally provide a remedy. A remedy surely could also be found in somewhat more extensive committee reports reflecting the main trends of the discussion. The problem is, therefore, rather one of internal administrative organization. The minor and subsidiary role which the Vienna Convention on the Law of Treaties in article 32 assigns to the preparatory work of a treaty would not seem either to justify an extension of records.

2. It would rather seem that stringent reasons militate in favour of maintaining the present practice. Crucial negotiations might be seriously impaired—if not made impossible—when everything that is said risks to become part of a record and thus part of the public domain. If proof is needed, such proof is provided by the growing number of anonymous working papers in already confidential negotiations, a clear indication of the necessity to facilitate the submission of new ideas during the negotiating process without officially committing the negotiators. An exercise outside the United Nations—i.e. the Conference on Security and Co-operation in Europe—provides an additional pertinent example. It seems that, for the sake of achieving a result, some sacrifice has to be made in respect of the historic record.

3. Moreover, many negotiating committees have already adopted the practice of enlarging their reports in such a manner as to include a summary of all relevant positions expressed during negotiations with a view to satisfying the legitimate interests of non-participating States.

2. *Commentary*

4. A commentary on draft articles which are to be submitted for adoption to a diplomatic conference or a United Nations organ is obviously of great value since it permits a better understanding of the text, elucidates the history of formulations and explains the reasons which led to them. But for the very same reasons, a commentary of such nature can be established only on a draft text which has been arrived at in an open—one might say rational—way. This will normally be the case if the text emanates from a committee of experts.

5. In a committee composed of representatives of States, the real reasons for which a particular formulation may be chosen are not necessarily indicated. Moreover, the text, whether achieved by a vote or by consensus, is not only the result of a meeting of wills but also of a meeting of various motives and reasons. Thus, the negotiating or decision-making process, determined as it is by the necessity to accommodate different interests, is not a process which can be termed logical from a legal point of view and cannot, therefore, be explained in a rational commentary. Hence, it seems useless to burden committees composed of representatives of States by insisting on their adopting a commentary on any draft text on which they agree, since that commentary would be of little value.

3. *Commentary on the text of a convention*

6. It has been suggested that a diplomatic conference or an organ of the United Nations should, when adopting the text of a multilateral instrument, also adopt a commentary on it. Such a commentary seems both unnecessary and impossible to achieve. The commentary is unnecessary because it would not be ratified and would thus be only a supplementary means of interpretation under article 32 of the Vienna Convention on the Law of Treaties. Moreover, if a commentary really clarified an otherwise obscure text and commanded general support, it should rather be incorporated into the text than remain separate as a commentary. The commentary seems impossible to achieve because the motives for which States prefer a particular formulation over another may differ as widely as their understanding of it. It is precisely because those motives or understandings are not publicly voiced that an agree-

ment on the text is often achieved. This could, obviously, not happen were a commentary to explain the variety of motives and understandings, and even less if it were to favour one motive or understanding over the other. There is also a great difference between the declaration by a State, made to a conference, that it accepts a text on a particular understanding, and the conference taking note or even approving such a declaration.

7. It is a further misunderstanding to refer in this respect to the explanatory memoranda "which in some States accompany legislation". Such memoranda, where they exist, accompany draft legislation and are submitted by the authority that introduces the draft (in most cases the Government). Their function is comparable to that of the commentaries of the International Law Commission, in that they are an aid to the decision-making process of the legislative body, but are not adopted by it and do not acquire a specific legal status.

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

1. Verbatim or summary records are always useful for future reference, as they may be helpful in clarifying the meaning of certain provisions of a treaty. Whenever possible they should be kept and published. Reports with indication of positions taken and reasons for changes in texts do not provide the same degree of information and are not easy to prepare. Only in very special cases, when the preparation of summary records would be too onerous from the administrative or financial point of view, would it be advisable to rely on such reports.

2. A systematic effort to prepare and publish the *travaux préparatoires* of most or all multilateral treaties would seem too ambitious a task. The Secretariat or UNITAR could, however, with approval of the General Assembly, undertake the task of publication of such *travaux* on a selective basis.

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

There is no need to make rules concerning the extent of and need for verbatim and summary records and commentaries to draft treaties. As can be seen from existing practice, the matter may be dealt with in a way appropriate to each specific case.

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

The Canadian authorities also consider that a review of the multilateral treaty-making process should include an examination of the adequacy of the *travaux préparatoires* with a view to achieving, in so far as is possible, consistency in the quality of the documentation so that a complete and accurate record of the negotiations is available in all cases.

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

1. (a) Summary records.
- (b) Summary records.
- (c) (i) Verbatim records.

- (ii) Verbatim records.
- (iii) Summary records.

2. Any explanatory summary should be produced by the organ formulating the text. Such a summary could assist in analysis, especially in cases where decisions have been taken on contentious points and there are no records, or where certain matters are to be submitted to another organ for a decision.

- 3. (a) Yes.
- (b) Yes.
- 4. (a) Yes.
- (b) No.

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

1. Verbatim or summary records should in principle be maintained for plenary sessions and sessions of the Committee of the Whole. Whether they are necessary for meetings of other committees as well depends on the nature of the subject under negotiation.

2. Records of negotiations are a useful means of indicating the meaning and purpose of a treaty that has been adopted. However, the importance of such preliminary work for the interpretation of treaties should not be over-rated.

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

Principally, the verbatim and summary records are necessary only in the sessions of the plenary and whole committees which are based upon consensus. The need for the proceedings of the committee to be recorded will depend upon the nature of the problem. The reports should be formulated by an expert or small group.

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

1. It should not be forgotten that while the recourse to preparatory work is a useful means for interpreting treaties, it is not the basic criterion followed by the Vienna Convention of 1969. In this context it is not always necessary to have analytical summaries or verbatim records of all the activity of international negotiating bodies. This is worth while only with regard to main committees of international conferences and, in the interest of co-ordinating texts in several languages, to drafting committees. For the rest, it is preferable to decide case by case, while leaving to the discretion of individual States participant to a negotiation the decision of whether or not to make their decisions public (i.e. by setting them forth in an official document). The decision to elaborate comments to draft conventions should similarly be taken case by case, although in most cases the affirmative solution will be self-imposed.

2. When a decision is made to publish the preparatory work of a treaty, UNITAR might play a role if it is endowed with experts of obvious renown and guaranteed impartiality.

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

1. In connection with the formulation of multilateral treaties, summary or verbatim records should be maintained for expert groups and restricted representative groups.

2. Commentaries should normally be prepared on drafts formulated by expert groups.

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

1. With respect to verbatim or summary records, the ideal would be for every organ participating in the formulation of a multilateral treaty, except those informal negotiating bodies in which records would be an impediment to the work, to have records that would chronicle the entire negotiating process for the purposes of article 32 of the Vienna Convention on the Law of Treaties. With regard to the question of more complete records, however, since for budgetary purposes it is uneconomic to keep verbatim or summary records for all such organs, they should be kept at least for the plenary and the main committees of a plenipotentiary conference.

2. The absence of records in other organs can be successfully compensated for with *in extenso* reports by the Rapporteur or Chairman, as the case may be. Since, in the United Nations, the Secretariat normally prepares draft reports for the rapporteurs, experienced officials of the Secretariat should make an effort to rationalize such reports and make them more systematic, subject, of course, to the responsibility of the rapporteur for the final wording of his report.

3. The International Law Commission's practice of preparing commentaries on its draft articles has proved to be of value. Any collective body or any Government submitting preliminary drafts for a treaty should follow that good practice.

4. A systematic effort to compile and publish the *travaux préparatoires* of most multilateral treaties would be especially useful for all students of international law and for the purposes of article 32 of the Vienna Convention on the Law of Treaties.

5. Since such work would not require research but merely compilation and publication, it should be entrusted to the Secretariat of the United Nations, leaving the research work to UNITAR.

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

1. In general, documentation which clarifies the results of negotiations is very useful. However, records, reports etc. are to be used cautiously, because they often provoke "speeches for the record" and tend to fix the positions of delegations. One should also bear in mind that sometimes results can be achieved only in smaller groups and that those results are possible only because the negotiating process as in such small groups remains unknown to the outside world.

2. Commentaries should preferably be prepared by expert groups. A systematic effort to prepare and publish the *travaux préparatoires* should indeed be made, primarily by the Secretariat unit concerned.

3.² In the regional context (e.g., the Council of Europe), non-binding explanatory notes are customarily attached to an established treaty. Whether such a formula is also desirable for universal treaties will have to be considered in each individual case. Accompanying comments/explanatory notes can fulfil a useful function if differences arise over the interpretation or application of the treaty in question. On the other hand, such explanatory notes can impede the treaty-making progress by limiting the margin for interpretation, which some States might desire. Explanatory notes should in any case make clear the extent to which the attitudes of the Member States have converged.

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

Summary records must be maintained for meetings of the main committees. As a general rule, commentaries should be prepared on drafts formulated by expert groups.

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

One cannot overemphasize the importance of maintaining adequate records and reports in all relevant bodies, and the need for publication of *travaux préparatoires* is undoubtedly great.

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

1. There should be summary records only for meetings of Main Committees.
2. In the preparatory stage, there should be reports on the meetings of expert groups, especially when such groups submit preliminary draft or draft treaties. These reports should be drawn up by the corresponding groups with the help of the Secretariat.
3. As we have already indicated, only by expert groups.
4. Yes, wherever possible. This should be done by the secretariat unit concerned.

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

Les comptes rendus analytiques ou sténographiques devraient être maintenus pour les séances plénières des conférences, ainsi que pour les réunions des grandes commissions. S'il est utile, voire indispensable, de pouvoir déterminer quelle a été la position respective des Etats au cours de la discussion d'un traité, cette exigence ne s'étend pas aux travaux des groupes restreints et autres comités de négociation pour lesquels l'absence de publicité est souvent une condition de succès. Etant donné que les travaux préparatoires doivent permettre d'éclairer après coup les choix opérés par les auteurs des projets de traités, ceux-ci devraient être assortis d'un commentaire lorsqu'ils sont établis par des experts. L'élaboration et la publication des travaux préparatoires devraient être confiées aux secrétariats intéressés, normalement mieux équipés à ces fins que l'UNITAR.

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

There is no need to regulate the arrangements regarding verbatim or summary records or commentaries on draft treaties. In making arrangements, attention should be paid to the existing practice whereby an individual approach is adopted towards specific draft multilateral treaties.

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

There is no need to regulate the arrangements regarding verbatim or summary records, or commentaries on draft treaties. The relevant arrangements should be made, as is the case in existing practice, not on the basis of a standard model but in a way appropriate to individual draft multilateral treaties.

*United Kingdom of Great Britain and Northern Ireland
(A/35/312/Add.1, p. 32)*

The present review provides an occasion for looking again at the question of the records of the preparatory work of treaties. It is considered that more could usefully be done to prepare analytical collections of records. Such collections do exist for certain multilateral treaties, such as the Vienna Conventions on Diplomatic and Consular Relations and the Law of Treaties, which have been concluded at diplomatic conferences. However, this is not the case with many other important treaties, including the Human Rights Covenants, which have been drawn up within the United Nations framework. It is recalled that it is the practice in some regional organizations to draw up explanatory reports on Conventions, and that a commentary was prepared on the Single Convention on Narcotic Drugs.³ These explanatory reports and commentaries may provide guidance to the records of the preparatory work, and will in any event shed light on the meaning of particular provisions in the text of the Convention. Without making any firm proposal, consideration should be given as part of the present review to this and other possible means of improving knowledge of and access to the records of preparatory work of treaties.

United States of America (A/35/312/Add.1, p. 39)

1. The final report prepared by a conference that adopts a treaty text should be comprehensive. The reports should provide a summary of the negotiations, and information on any articles where the opinion of the conference or a significant number of delegates differs from that of any body of experts, such as the International Law Commission, that initially drafted the treaty text. The report should emphasize any changes in the treaty structure made by the conference, whether amendments to or deletions of particular articles, or new articles. A rapporteur of some skill would be required to draft a detailed report of this kind, in which extensive assistance of the secretariat is vital.

2. Closely related is the importance of records of committees and working groups. It is not essential to have a verbatim or even summary text of the debate in such groups—indeed, its preparation could inhibit supple and productive negotiation of differences—but it is important to have a history of their negotiations, and a record of the intention of the members concerning the meaning of the final text proposed by them, at any rate where its members

agree that a revelation of their intentions will be constructive. It may be that such records should not identify particular States as taking specific positions.

3. Plenipotentiary conferences need not only be carefully prepared but well organized if they are to be successful. The selection of key officers of the conference is a vital factor in maximizing the chances of success. Capacity and experience must be the paramount consideration, with due regard being paid to geographic distribution. The President, Chairmen of Committees of the Whole and Chairman of the Drafting Committee should if possible be selected well before the opening of the session.

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

Council of Europe (A/36/553, p. 45)

1 and 2. In the Council of Europe, the documents made available in connection with the formulation and negotiation of European treaties are the following:

- (i) Working papers: papers submitted by delegations and notes prepared by the Secretariat;
- (ii) Reports of meetings of the expert committee, not always containing detailed descriptions of the positions of the various delegations;
- (iii) The final report of the work of the expert committee, containing the final draft of the convention and the commentary thereon;
- (iv) Conclusions of meetings of the Committee of Ministers, which is responsible for adopting the text and opening the convention for signature by member States.

3 and 4. The practice in the Council of Europe is to produce a commentary on each convention or agreement. It is normally prepared by the Secretariat and approved by the expert committee responsible for drafting the convention or agreement. The Committee of Ministers must authorize its publication.

4. Yes. Such a publication would be useful, at least with respect to the most important treaties; see, for instance, the publication of the *travaux préparatoires* of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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

1. It would be necessary to maintain summary records of discussions at the bodies listed in paragraph 1(a) and (b). As for the bodies described in paragraph 1(c), at least summary records should be prepared to cover discussion at the main committees of plenipotentiary conferences, whereas reports indicating the outcome of discussion may be sufficient or even more desirable than summary records in case of negotiating and drafting committees. Summary records should always be prepared in such a manner as to indicate various positions taken and proposals made by delegates, explanatory notes given by the drafter (e.g. the secretariat, delegates) of the text and the reasons for changes in the wording of the text.

2. With the exception of certain types of treaties such as those emanating from the ILC, it would not be very practicable or necessary to prepare commentaries on the provisions of treaties.

3. The preparation and publication of the *travaux préparatoires* could normally be best done by the secretariat unit concerned.

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

1 and 2. No comments, as the present practice followed by the ITU with regard to records and reports (see the ITU's first contribution referred to until I.1. above) gives full satisfaction.

3. The preparation of commentaries on draft treaty texts appears to be of little use and a possible waste of time and man-power. On the other hand, it may be quite useful to elaborate commentaries on the final texts of a treaty adopted. The mandate for such a work should certainly come from the competent policy-making or "representative organ" of the organization concerned, but it seems to be quite difficult, if not impossible, to imagine that such an organ prepares itself any such commentaries. The preparation itself might be entrusted either to a small expert group or the secretariat of the organization concerned. After their elaboration, such commentaries might need the approval of the organ having given the mandate therefor.

4. The preparation and publication of the *travaux préparatoires* of any multilateral treaty appear to be quite useful. This work should, however, be entrusted not to UNITAR, but to the secretariat of the organization concerned.

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

1. (a) and (b) The maintenance of secretariat records of the proceedings of expert groups or restricted representation groups can often be of considerable use. Practice at OECD is to prepare summary records.

(c) (i) The maintenance of summary records of the proceedings of main committees of plenipotentiary conferences is equally useful.

(ii) and (iii) The maintenance of verbatim or summary records of negotiating committees or drafting committees can have the disadvantage of inhibiting flexibility and compromise.

2. See answer in paragraph 4.

3. The preparation by the OECD Secretariat of commentaries on draft treaty texts prepared by expert groups or representative organs is often used and has proved to be very helpful in the course of negotiation.

4. To the extent that financial means are available to do so, the preparation and publication of *travaux préparatoires* could undoubtedly be of great use. The OECD Secretariat is not in a position to reply to the specific question of who should prepare such *travaux préparatoires* within the United Nations Organization or Organizations of the United Nations system.

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

1. No comments.

2. Whether verbatim or summary records are kept and especially if they are not, the secretariat of certain organs and conferences should prepare more complete records of their negotiations, indicating various positions taken and the reasons for changes in the text.

3. Commentaries that go beyond the mere recording of the *travaux préparatoires* should normally be prepared on draft treaty texts and should be formulated by expert groups.

4. A systematic effort should be made, by the secretariat unit concerned, to prepare and publish the *travaux préparatoires* of most or all multilateral treaties.

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.

²A/35/312/Add.1, p. 23.

³*Commentary on the Single Convention on Narcotic Drugs, 1961* (Sales No. E.73.XI.1). Two similar studies were prepared on related instruments: *Commentary on the Convention on Psychotropic Substances* (E/CN.7/589; Sales No. E.76.XI.5) and *Commentary on the Protocol Amending the Single Convention on Narcotic Drugs, 1961* (E/CN.7/588; Sales No. E.76.XI.6).

IX. POST-ADOPTION PROCEDURES

1. *Should the United Nations consider and take any action in respect of the procedures by individual States to ratify and bring into force multilateral treaties formulated under its auspices?*
2. *Should a questionnaire be addressed to States as to why they fail to become parties to multilateral treaties?*
3. *Should the United Nations seek to establish a legal régime, following the example of some inter-governmental organizations, under which it could require:*
 - (a) *A commitment from each Member State that it will submit treaties to the appropriate domestic organs with a view to authorizing ratification?*
 - (b) *Periodic reports concerning the steps taken towards ratification?*
4. *Should special rapporteurs or other experts who helped in negotiating a treaty be made available to assist States with their internal ratification procedure?*
5. *Should an attempt be made, in respect of certain categories of treaties to provide for their automatic entry into force except in respect of States that voted against adoption or that submit an opting-out notice?*
6. *Should treaties or certain categories of treaties normally provide for provisional entry into force, at least among those States that voted for their adoption and that do not submit an opting-out notice?*

A. SUMMARY OF GENERAL VIEWS EXPRESSED DURING THE DEBATE¹

1. It was stressed by some that the signature of a State to a treaty did not create, as a matter of law, an obligation as to its ratification. With respect to measures to promote the ratification of treaties, several representatives felt quite strongly that this question was governed by the internal law of each State and it was therefore for States themselves to decide whether they wished to accept a treaty; any measures to promote ratification of treaties might be construed as constituting external intervention and as such should not be allowed. Some other representatives, however, cautioned that there were certain limits to this view because delays in ratifications were often due to a wide variety of factors other than conscious political choice, and that there was therefore room to look into those issues raised in section IV.I of the Secretary-General's report. The view was expressed that a balance should be maintained between the desirability of attaining universal accession to treaties and the sovereign right of Governments to make their own decisions on treaty ratification. One representative suggested that a reporting procedure on ratification activities of States and on relevant national legislation would be useful.

2. Some representatives referred to various means that, in their view, could increase or improve wide acceptance of treaties, e.g.: (i) conducting studies on the correlation, if any, between the procedure chosen in adopting a treaty and the acceptability of a treaty, or on possible effects of a new treaty on existing national laws and treaties; (ii) incorporating a provisional entry into force clause into certain categories of treaties dealing with technical matters; (iii) setting a specific time period for States to submit adopted treaties to their national legislatures; (iv) adopting flexible clauses for entry into force so as to allow each State to choose the manner in which its consent to be bound be expressed (e.g., ratification, acceptance or approval) on the basis of its constitutional requirements. However, none of these suggestions gained general support.

B. WRITTEN COMMENTS AND OBSERVATIONS BY GOVERNMENTS

Argentina (A/36/553, pp. 11-12)

1. Without prejudice to the sovereignty of States—a point made in UNCITRAL when this subject was considered in connection with conventions adopted in its field of competence—the United Nations should consider this matter and take action which fully respects State sovereignty. This will help to achieve the sound objective of ensuring that the tremendous efforts exerted to bring about the codification of international law are not wasted, because the texts formulated remain indefinitely as instruments not legally binding on States.

2. There is no apparent objection to this kind of action, namely, addressing a questionnaire to States as to why they fail to become parties to a particular multilateral treaty.

Such a procedure would have the merit of causing States gradually to look into the question, how many existing treaties they are parties to and systematically update their position towards such treaties; the fact that they themselves

had created the obligation, through the organization to which they belong, would provide an incentive.

The obligation to opt out, as an act of sovereignty, will indicate which treaties have become inoperative because there is no prospect whatever of their being ratified in the medium term. In addition, where the prospect of ratification is almost totally lacking, it will give the few States which have become parties an opportunity to consider whether in those circumstances, there is any point in remaining tied to a treaty or whether they should denounce it and conclude bilateral treaties among themselves. This is obviously one way of tidying up international law on conventions.

3. There would appear to be no objection to the establishment of a legal régime under which States would be required to submit treaties to the appropriate domestic organs with a view to possible ratification and to report on the steps taken later.

The requirements would involve nothing more than a report on whether ratification was in prospect or not.

4. The Organization could, as a form of technical assistance, make available to States which so requested special rapporteurs or other experts to assist them with their internal ratification procedure.

5 and 6. Automatic or provisional entry into force is not desirable for any category of treaty. In view of the difficulties encountered by Governments in obtaining the ratification of international legislation, such a list of opposition does not appear salutary.

Australia (A/37/444, pp. 10-11)

1. Many of the procedures listed under this heading may, if implemented, have the effect of interfering in an unacceptable way with a State's freedom to decide whether to ratify a particular treaty, at what stage and in what manner. On the other hand, some forms of encouragement of State activity in this area may be acceptable. The automatic entry into force of certain categories of treaties would raise constitutional problems in legal systems where those categories of treaties first have to be implemented in domestic legislation before the State concerned can become a party to them.

2. There would be advantage in having expert assistance available of which a State could avail itself for advice to it when considering becoming a party to a multilateral treaty. This is particularly important in the case of a State considering becoming a party to a multilateral treaty before the *travaux préparatoires* have been fully collated and published. It may also be of use to consider the preparation by an expert, on request of the State concerned, of a brief general document on the implementation of the treaty concerned.

3. The provisional entry into force of some treaties (e.g. some commodity agreements) has proved a useful and constructive device. Provisional entry into force may serve several purposes such as enabling States to become bound by a treaty which establishes an interim régime pending a decision by other States also to become a party. It may also enable a State to become a party without first having fully implemented all obligations under the treaty in its domestic law. The device of provisional application should be encouraged as a means of obtaining maximum adherence to certain treaties which call for a

wide adherence within a limited time. The treaties should lay down clear circumstances or time limits within which the provisional application must be made definitive.

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

1. The Report of the Secretary-General states that "the general rule remains that, once a multilateral treaty has been promulgated by an organ or conference of an international organization, the organization then takes no substantial interest in the steps to bring the treaty into force that must be taken by individual States, except to the extent that the organization may act as depositary and carry out the formal steps required in that capacity". The Brazilian Government is of the view that the rule should not be changed.

2. Each State being the only judge of its interest in becoming a party to an international treaty, any attempt to influence that decision would be an improper interference in a matter essentially within the domestic jurisdiction of the State. International organizations should not therefore engage in any action aimed at encouraging States to ratify treaties, nor should States be required to give any information as to the reasons why they have not ratified a treaty.

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

1. Matters relating to the ratification procedure for international treaties, the acceptance of any obligations concerning the establishment of régimes and, in general, the adoption of a position on any international treaty are the sovereign right of every State and no one may interfere in such matters.

2. Provisions relating to the provisional application of a treaty are considered when the treaty is adopted by the plenipotentiaries and fall fully within their competence.

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

1. The ratification procedures of States are governed by domestic law and should not, therefore, be reviewed by the United Nations. What the Organization can do is to review treaties which have not entered into force and urge States that have not signed and ratified them to do so, especially in cases where the subject which the treaty is intended to regulate is of benefit to the international community.

2. This could result in a kind of interference in the internal affairs of a State and is therefore not advisable. However, States could be urged to participate more fully in treaties, especially those of major international interest.

3. (a) Any requirement of this kind has overtones of interference and an obligation to submit treaties to the domestic organs does not mean that they will be automatically ratified.

(b) This would involve a degree of compulsion that might affect the ratification of some treaties.

4. This is not necessary, since States which do not ratify or become parties to a treaty are motivated by domestic reasons and no solution can be provided by an expert from the Organization.

5. This procedure would not be appropriate because, even if the treaty in question entered into force, as long as States did not ratify it or become parties to it they would not be obliged to comply with its provisions, at least where that is required by the various national legal systems.

6. This would not be appropriate, for the same reasons as are stated in the preceding paragraph.

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

1 and 2. Experience has shown that attempts by international organizations to encourage their member States or other countries involved in the negotiations to ratify and bring into force treaties formulated under their auspices have had little effect. It is hardly likely, therefore, that questionnaires inviting sovereign States to state the reasons why they are delaying adherence to multilateral treaties will produce any better results.

3 and 4. The possibility of requiring a commitment from member States to submit treaties to their domestic legislative organs or to submit periodic reports concerning the steps taken towards ratification, could at best be considered in connection with the adoption of specific treaties but not as a general rule. Similarly, experts who have helped in negotiating a particular treaty could only be asked to assist in internal ratification procedures in exceptional cases. The initiative for such assistance would have to come from the States concerned.

5. The automatic entry into force of treaties without their specific acceptance by contracting parties raises constitutional problems, where they are subject to ratification by Parliament or other national organs. Consequently, simplified entry into force procedure shall be restricted to certain categories of treaties where the governments of contracting States have competence in the subject-matter concerned.

6. The provisional application of treaties (one should perhaps avoid the expression "provisional entry into force") creates problems for many States on constitutional grounds.

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

It is difficult for the United Nations to exert Member States to ratify a treaty because that process involves national laws. In such a situation the maximum that the United Nations could do is to urge the Member States which have not ratified the treaty to do so soon, and at the same time submit periodical reports concerning the number of Member States that have ratified it.

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

The Italian Government observes that many of the proposals contained therein risk limiting the freedom of States in the phase subsequent to the adoption of a treaty, thus violating the Vienna Convention of 1969. These proposals would make much more sense if all treaties were adopted on a broad and detailed consensus basis, which is not always the case today. In particular, proposals 5 and 6 seem highly inadvisable, in that the suggestions contained

therein might be applied only rarely, on the basis of a specific consensus expressed from time to time in the negotiating forum.

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

1. A questionnaire should be addressed to States as to why they fail to become parties to multilateral treaties.
2. An attempt should be made, in respect of certain categories of treaties, to provide for their automatic entry into force except in respect of States that voted against adoption or that submit an opting-out notice.
3. Certain important treaties should provide for provisional entry into force among those States that voted for their adoption.

Mexico (A/36/553, p. 37)

1. Matters relating to the process of ratifying an agreement are within the exclusive competence of sovereign States. For that reason, except in the case of those agreements or instruments establishing international organizations under which States have agreed internationally on a system whereby a specific organ promotes and collaborates with States in the ratification or accession process, that process must remain within the exclusive competence of State sovereignty.
2. The foregoing should not prevent the continuation of the practice whereby the United Nations General Assembly and other governmental organizations regularly send appeals and reminders to States with a view to obtaining their consent to be bound by multilateral treaties.
3. When a multilateral treaty is being formulated, a systematic study should be made of whether it is desirable to include in the text clauses requiring States to submit reports on the steps they have taken in compliance with the treaty.
4. There is nothing to prevent the Secretariat of the United Nations or the secretariats of other international organizations from offering States the assistance of experts to clarify doubts on the scope of a treaty, during the process leading up to ratification or accession. However, the acceptance of such assistance is also a prerogative of State sovereignty.
5. Where the "automatic" entry into force of certain treaties is concerned, it should be underscored that such entry into force is not provided for in the Vienna Convention on the Law of Treaties and is undoubtedly unconstitutional, or at least illegal, for all those States whose systems for the ratification of or accession to a treaty require the participation of the executive and legislative branches.
6. With regard to provisional application, the expression "provisional entry into force", used in some conventions drawn up within the United Nations Conference on Trade and Development (UNCTAD) and in the questionnaire contained in document A/35/312 (but not used in the Vienna Convention on the Law of Treaties), should be avoided because it is a contradiction in terms. The reference should be to "provisional application" pending entry into force (see art. 25 of the Vienna Convention).

7. A provisional application clause should be included in some treaties, always provided that it is optional. Some Governments would be unable, for constitutional reasons, to undertake to apply certain agreements provisionally.

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

1. *Post-adoption procedures*

1. As regards this item, reference is made to the comment by the Netherlands and the intervention by the Netherlands representative in the Sixth Committee on 25 November 1980 (see A/C.6/35/SR.62), which contain various suggestions to encourage States to become a party to a treaty and to promote its entry into force.²

2. As to the suggestion of addressing questionnaires to States, such action (as other actions) should necessarily be based on a treaty provision. If provided for, it would be up to the depositary to send out such questionnaires.

2. *Entry into force*³

3. Account should be taken as early as the drafting stages of the problems which may arise in implementation. The actual implementation of a treaty is still to a great extent a task for national governments, with all the risks this entails in terms of disparities in interpretation and application. These risks are naturally diminished in proportion to the extent to which the degree of uniformity in interpretation and application is secured by the involvement of a single judicial or arbitral body. The Government of the Netherlands would thus also like to see the adoption of a clause concerning the referral to the International Court of Justice of disagreements over interpretation or application at least in the case of treaties established under the auspices of the United Nations or the specialized agencies. In treaties having such a clause, and even more in treaties without one, the risks mentioned above may moreover be further reduced by the inclusion of rules, which should be as detailed as possible, so that national authorities have as little undesirable margin for manoeuvre in implementation as possible. If a treaty, in order to realize its objectives, prescribes particular measures, for example, making certain actions or omissions a punishable offence, then these obligations should be clearly defined.

4. The delay between the establishment and entry into force of a multilateral treaty can be attributed not only to the large number of States whose acceptance is often essential to the entry into force, but equally to the acceptability of the treaty for each individual State. For this reason it is important that already in the preparatory stage sufficient attention is given to whether or not to allow reservations, and to the relationship with other treaties. Furthermore, one needs to recognize that even if the provisions of a treaty are acceptable, delay may still result from the need to adapt domestic regulations before the consent to be bound by the treaty can be given. Where no statutory instruments are necessary, lack of time and personnel can impede an early decision: the treaty must be explained to parliament and assessed for its likely effects on the State in question.

5. On this point there are measures which could be taken at the international level. First there is the possibility of bringing the role of the "rappor-

teur" into greater relief. He, having been entrusted with special duties during the preparatory phase, owing to his expertise in the matter under consideration, may still be able to play an extremely important part in the introduction and explanation of the draft treaty during the diplomatic conference, for he has become not only the special expert on the treaty as a result of his work, but also a person with a certain independent supra-national view of it. It is conceivable that he could subsequently write explanatory comments, on his own authority, on the final text, for the convenience of domestic administrations which have to consider accepting and implementing the treaty. Finally—and this would by no means be his least important contribution—the rapporteur could be made available for a time to provide information for Governments which were considering becoming parties to the treaty. His participation could at least speed up the decision-making, and might also have a positive influence on it. In the regional context these methods are already being applied in connection with the individual members of the Afro-Asian Legal Consultative Committee.

6. It would further be possible to consider the introduction of final clauses which stipulate the entry into force of the treaty at a set date for all States represented at the diplomatic conference except for those which before that date declare that they cannot accept the provisions of the treaty. However, these States and also States not represented at the conference should have the possibility to become parties to the treaty at a later date. Thus, the opting-out procedure does not exclude certain States from treaties, but becomes an effective means of ensuring the entry into force of a treaty. Once a treaty has entered into force, it often gains importance and other States feel obliged to become a party. One possible objection may be that some States may tacitly accept the treaty but do nothing in practice to implement its provisions. This is not a particularly weighty objection, however, for implementation at national level is not the most important aspect of many treaties; it is rather the creation of legal relations between States that is important. Furthermore, the problem of non-implementation occurs independently of the opting-out procedure. Domestic implementation may also be a problem with international consequences, but nonetheless one which is not connected with the question of improving procedures for establishing international legislation.

7. If this negative procedure is deemed too drastic a measure, there are other means whereby pressure can be brought to bear on Governments. First, the obligation to present the treaty to the competent domestic authorities (in particular the parliament) to obtain a decision on whether or not the State should become a party. Second, the obligation to report at international level on the progress of the preparations for ratification.

8. Various possibilities have been discussed above with regard to shortening the period between establishment and entry into force of a multilateral treaty of a legislative nature. A separate idea would be to increase the commitment of States to the treaty, not yet in force, during this period. One might envisage for example making the obligation of good faith separate from the signing of the treaty. Such obligation would therefore have to have its starting point in the collective decision to establish the text of a treaty or in the decision to label the treaty as urgent. Such a facility for "semi-commitment" does not apply to States which voted against the relevant decision. In this respect it

should be noted that the provisions of article 18 of the Vienna Convention on the Law of Treaties (“until it shall have made its intention clear not to become a party to the treaty”) offer sufficient room for manoeuvre.

9. Another means of bridging the gap between establishment and entry into effect could be found in the concept of provisional application (article 25 of the Vienna Convention). Various forms of this are known in practice, both in the treaty itself (see art. 21, para. 2, of the 1976 Convention Establishing the World Intellectual Property Organization) and in a separate document (see the 1964 Protocol of Provisional Application of the Fisheries Convention of 9 March 1964⁴). It should be noted here that the General Agreement on Tariffs and Trade of 1947 has now been operating for more than 30 years exclusively on the basis of a Protocol of Provisional Application of the General Agreement on Tariffs and Trade.⁵

10. The possibilities outlined above require a collective decision, either of the conference establishing the treaty or by an organ of one or the other international organization adopting the treaty.

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

1. No ratification of treaties is regulated by the domestic law of each State. All that the United Nations can do is to send notes periodically to inform States about the status of treaties. The United Nations can request States to adhere to such treaties.

2. No.

3. No.

4. It would be better to provide assistance to States that requested it.

5. No.

6. No. In specific cases, treaties can provide for provisional entry into force, when particular conditions apply. The position a State takes at the time of adoption of the treaty does not constitute a sufficient element in this respect.

Republic of Korea (A/37/444, p. 26)

In the light of the sovereign right of States to make their own decisions on treaty ratification, the United Nations should bear in mind the reality of international legislation. However, the United Nations should spare no efforts of persuasion with a view to attaining broad accession to treaties.

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

1. No. At most, it should periodically remind States of the status of treaties and urge them to become parties thereto.

2. No.

3. No.

4. This kind of assistance should be provided to States who request it.

5. No.

6. In some cases, they could provide for the provisional application of treaties as long as certain conditions were fulfilled. How a State voted when the treaty was adopted would not be a sufficient condition.

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

1. The United Nations should not consider, and should definitely not take any action in respect of, the procedures by individual States to ratify and bring into force multilateral treaties. States should not be asked to explain their reasons for opting out of a multilateral treaty, there should be no establishment of any compulsory legal régime, and no attempt should be made to provide for automatic entry into force of treaties in States which did not express agreement to be bound by the treaty. All these actions would be illegal, because they violate the principles of States sovereignty and non-interference in the internal affairs of States.

2. The question of the inclusion in a treaty of clauses concerning the provisional application should be decided by the plenipotentiaries themselves who are participating in the elaboration of the treaty.

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

1. It is quite unacceptable for the United Nations to consider, and still less to take any action in respect of, the procedures employed by individual States to ratify treaties. Such actions as asking States to explain their reasons for opting out of a treaty or to undertake any obligations in the interests of establishing any régime, or attempting to provide for the automatic entry into force of treaties in States which did not express agreement to be bound by the treaty, would be illegal since they would violate the basic principles of States sovereignty and non-interference in the internal affairs of States.

2. The question of the inclusion in a treaty of clauses providing for provisional application fall entirely within the competence of the plenipotentiaries who are participating in the elaboration of the treaty.

United States of America (A/35/312/Add.1, pp. 39-41)

1. Whether a State becomes a party to a treaty is a decision that each State must take as an exercise of its sovereign will. Nevertheless, the entire process of drafting and adopting treaty texts becomes fruitless if the resulting treaties are not ratified, and a less effective process if ratifications do not come about with sufficient reach and rapidity that treaties come into force within a reasonable period of time after their completion. It may be that there is room for an exchange of views and analysis, perhaps based on a questionnaire to States, designed to illuminate the reasons for the failure of treaties adopted by large majorities to attract sufficient parties to come into force within a reasonable period of time. Such a questionnaire might also ask States whether they would be prepared to accept practices such as those of the International Labour Organisation to encourage treaty ratification.

2. It is possible that the problem of non-ratification is in part attributable to the increase in the volume of international legal work with which foreign and other Government ministries are burdened. To the extent that this is a causal factor, the problem will only be exacerbated by an increase in the volume of treaties produced. In part, the problem may be due to shortages of trained personnel who are available to do the necessary work involved in positioning a State to deposit its instrument of ratification. To the extent that this is a causal factor the most that can be done is to urge States to undertake the

necessary steps to make sufficient manpower available and to provide additional opportunities for the training of enough qualified international lawyers.

3. As suggested above, the United Nations system has not been sufficiently selective in determining in what areas treaties should be prepared. It may be presumed that when the General Assembly proliferates special international committees which require the attention of government lawyers, time and energy may in some cases be drained away that could be devoted to work which would lead to the ratification of a treaty. Moreover, it may be that from time to time the system has produced texts which have failed to deal fully with the relevant aspects of the subject, thus necessitating the elaboration of subsequent treaties to fill the gaps, which, however, of themselves seem insufficiently important to attract ratification. While this process may have expedited the completion and adoption of the initial treaty, the resultant need for yet another treaty and the effect of this accumulation upon the ratification process has perhaps not been sufficiently considered. The failure of the Vienna Convention on the Law of Treaties to deal with treaties by and between international organizations, presumably because the International Law Commission had not included the requisite provisions in its draft articles, may be an example of immediate gains which in the long run create more problems for the system than is proportionate.

4. Still another problem may be that minorities of States believe that their positions received inadequate consideration in the treaty text adopted. Most fundamentally, the problem of non-ratification may stem from the fact that a State, or its legislature, does not favour the substance of the treaty or important provisions of it, an opposition which may not always be reflected in a vote at the conference against the text as a whole, or that it may not find the treaty important enough to its interests to merit pressing it through the processes of ratification.

5. The magnitude of the problem of unratified treaties is considerable. Among the questions it raises is that of alternative means of contributing to the progressive development and codification of international law. In this connection thought should be given to requesting the International Law Commission to consider the viability of restatements of the law as one of the alternative approaches to codification. That the Commission has been empowered to prepare products other than treaties has been abundantly clear from the outset when the General Assembly rejected an amendment to its Statute that would have restricted it to the production of draft treaties.⁶ The Commission in its earlier years did not so restrict itself, and it may well be that some of the topics currently before the Commission would lend themselves to this approach. At the same time, if the Commission and the Assembly were to implement this approach, the Commission producing and the Assembly adopting or taking note of such restatements, both the Commission and the Assembly could only do so upon the basis of genuine consensus of all of their membership.

C. WRITTEN COMMENTS AND OBSERVATIONS BY INTERNATIONAL ORGANIZATIONS

Council of Europe (A/36/553, p. 45)

1 and 2. The question of the ratification of conventions by member States is also among the subjects at present engaging the attention of the Council of Europe. Two resolutions on it were adopted in the past (see 3 below), but the whole question is currently under study by the organization.

Any system for monitoring the status of ratification and, to the extent possible, speeding up the deposit of further ratifications should be very flexible and entail a minimum amount of extra work for national civil services; otherwise, it is doomed to failure. For this reason, while the idea of a questionnaire addressed to States as to why they fail to become parties to multilateral treaties is acceptable in principle, it would seem necessary to apply it selectively (one or two treaties at a time) and at suitable intervals (e.g., once a year or every two years), that being the system which some governing bodies have been using for several years.

3 and 4. (a) In the Council of Europe, such a régime is provided for in resolution (51) 30 B (adopted on 3 May 1951). The resolution has never been implemented. It must be said that such a régime is not very realistic from either the political or the legal standpoint, since it rather exceeds the scope of ordinary international law, under which ratification is a discretionary act for which States are not required to give commitments restrictive of their freedom.

The reservations expressed by a number of Governments as to the compatibility of such a régime with the basic principles of the law of treaties are entirely pertinent.

(b) In the Council of Europe, such a régime is provided for in resolution (61) 6 (adopted on 27 February 1961), in which member States undertake to submit annual reports on treaties ratified during the previous year, on action taken with a view to the ratification of other treaties and, to the extent that they deem it possible and appropriate, on the reasons why treaties have not been submitted for ratification within 18 months from the date of signature. This resolution is now disregarded. It has not been implemented since 1970, partly because of the over-frequency of reporting (every year) and the extra work it entailed for national civil services.

5. At the present stage of international law, this solution cannot be recommended as a general rule. The expression of consent to be bound by a treaty *by deed or by positive conduct* must remain the rule and *tacit* consent the exception. On the other hand, the system of an "opting-out notice" could be developed where the adoption of amendments to earlier treaties is concerned, provided that the proposed amendments do not entail any substantial change in the material commitments assumed under the treaty. Such a solution is at present under study by the Council of Europe in three specific cases.

6. No. As a general rule, this should not be the case. However, in individual cases, this solution might be envisaged as an exception.

International Atomic Energy Agency (A/37/444, p. 30)

The Agency is directed by Article III.D of its Statute:

“Subject to the provisions of this Statute and to the terms of agreements concluded between a State or a group of States and the Agency which shall be in accordance with the provisions of the Statute, the activities of the Agency shall be carried out with due observance of the sovereign rights of States.”

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

No specific comments on the various sub-sections of this section, because of the general idea that any steps in the post-adoption procedure should be left to each organization concerned and because of the specific practice established in this respect by the ITU. In the latter respect, it should be noted that the Convention of the ITU enters into force “between members in respect of which an instrument of ratification or accession has been deposited before” the date of entry into force which is fixed in the Convention itself with a precise calendar date. Any signatory Government not having deposited an instrument of ratification after the end of a period of two years from the date of entry into force of the Convention shall not be entitled to vote at any conference of the Union, or at any session of the Administrative Council, or at any meeting of any of the permanent organs of the Union, or during consultation by correspondence conducted in accordance with the provisions of the Convention until it has so deposited such an instrument.

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

1. No comments.
2. No comments.
3. The United Nations should seek to establish a legal régime, following the example of some inter-governmental organizations, under which it could require:
 - (a) a commitment from each member State that it will submit treaties to the appropriate domestic organs with a view to authorizing ratification, and
 - (b) periodic reports concerning the steps taken towards ratification.
4. No comments.
5. An attempt should be made, in respect of certain categories of treaties, to provide for their automatic entry into force except of States that voted against adoption or that submit an opting-out notice.
6. Treaties, or certain categories of treaties, should normally provide for provisional entry into force, at least among those States that voted for their adoption and that do not submit an opting-out notice.

NOTES

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

²See also below paras. 4 to 10.

³A/35/312/Add.1, pp. 26-27.

⁴United Nations, *Treaty Series*, vol. 581, p. 76.

⁵*Ibid.*, vol. 55, p. 308.

⁶ *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 DEBATE¹

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.²

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

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

²See 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 DEBATE¹

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*² and the *Summary of the Practice of the Secretary-General as Depositary of Multilateral Agreements*,³ 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.

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.

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.

²ST/LEG/6, published in 1957.

³ST/LEG/7, published in 1959.

Part Four

**MULTILATERAL TREATY-MAKING PROCESS
IN THE UNITED NATIONS, THE
SPECIALIZED AND RELATED
AGENCIES AND OTHER INTERNATIONAL
ORGANIZATIONS**

Quatrième partie

**PROCESSUS D'ÉTABLISSEMENT
DES TRAITÉS MULTILATÉRAUX AU SEIN
DES NATIONS UNIES, DES INSTITUTIONS
SPÉCIALISÉES ET ORGANISMES CONNEXES,
ET D'AUTRES ORGANISATIONS
INTERNATIONALES**

Part Four

MULTILATERAL TREATY-MAKING PROCESS IN THE UNITED NATIONS, THE SPECIALIZED AND RELATED AGENCIES AND OTHER INTER- NATIONAL ORGANIZATIONS

I. UNITED NATIONS

A. CENTRE FOR HUMAN RIGHTS

1. *Introduction*

1. This outline of techniques and procedures used by the United Nations in the elaboration of multilateral treaties relating to human rights covers the following international conventions concluded since the establishment of the United Nations:

—Convention on the Prevention and Punishment of the Crime of Genocide (1948);

—Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);

—Convention on the International Right of Correction (1952);

—Protocol amending the Slavery Convention signed at Geneva on 26 September 1926 (1953);

—Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956);

—International Convention on the Elimination of All Forms of Racial Discrimination (1965);

—International Covenant on Economic, Social and Cultural Rights (1966);

—International Covenant on Civil and Political Rights (1966);

—Optional Protocol to the International Covenant on Civil and Political Rights (1966);

—Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968);

—International Convention on the Suppression and Punishment of the Crime of *Apartheid* (1973).

2. The following proposed conventions which are being considered currently will also be considered:

—Draft International Convention on Freedom of Information;

—Draft International Convention on the Elimination of All Forms of Religious Intolerance;

—Draft International Convention against Torture;

—Draft International Convention on the Rights of the Child.

2. *The process*

3. In the multilateral treaty-making process in the field of human rights, the following patterns of techniques and procedures may be identified:

(a) Conventions drafted in human rights organs, forwarded to the General Assembly through the Economic and Social Council and opened for signature and ratification or accession by the General Assembly.

(b) Conventions drafted in human rights organs, considered by international conferences convened by the United Nations and opened for signature and ratification or accession by such conferences.

(c) Conventions initiated in human rights organs and sent for consideration by conferences not convened by the United Nations.

(d) Conventions initiated by international conferences convened by the United Nations and referred to United Nations human rights organs.

(e) Instruments drafted mainly at the final stage by the General Assembly.

(f) Instruments conceived in United Nations human rights organs but elaborated elsewhere in the United Nations system.

4. An element common to patterns (a), (b), (c) and (e) above is that the draft instrument is usually prepared by United Nations organs, often with the assistance of the Secretariat and sometimes of outside experts. This feature, however, does not apply to patterns (d) and (f), which are somewhat unusual. A general feature which may be noted is that there is a tendency, before concluding conventions, to elaborate declarations or bodies of principles as a first stage. This may be seen, for example, in the Universal Declaration of Human Rights, which led to the International Covenants on Human Rights; the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, which led to the International Convention on that subject;¹ the Declaration on the Rights of the Child, which appears to be leading presently to a convention on this subject; the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which also appears to be leading presently to a convention on this subject; and the Declaration on Territorial Asylum, which is expected to lead eventually to a convention on this subject. It is significant that in two cases where draft conventions were submitted to it before declarations had been adopted (freedom of information and religious intolerance), the General Assembly decided to defer the draft conventions until it was able to consider the adoption of declarations on the topics.

(a) *Treaties drafted in human rights organs, forwarded to the General Assembly through the Economic and Social Council and opened for signature and ratification or accession by the General Assembly*

(i) *Convention on the Prevention and Punishment of the Crime of Genocide (1948)*

5. At the second part of its first session, held from 23 October to 15 December 1946, the General Assembly included on its agenda an item entitled "Resolution on the crime of genocide" and adopted, on 11 December 1946, resolution 96 (1) in which it, *inter alia*, recommended that international cooperation be organized between States with a view to facilitating the speedy

prevention and punishment of the crime of genocide, and, to this end, requested the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly.

6. At its fourth session, held in 1947, the Economic and Social Council adopted, on 28 March 1947, resolution 47 (IV) on the crime of genocide, in which it took cognizance of General Assembly resolution 96 (I) and instructed the Secretary-General to undertake, "with the assistance of experts in the field of international and criminal law, the necessary studies with a view to drawing up a draft convention in accordance with the General Assembly Committee on the Development and Codification of International Law and, if feasible, the International Commission on Human Rights, and after reference to all Member Governments for comments" to submit that draft to the next session of the Economic and Social Council.

7. In pursuance of that resolution, the Secretary-General had a preliminary draft convention prepared, and requested three experts—Professors Lemkin, Pella and Donnedieu de Vabres—to give him their assistance. On the basis of the comments of those experts, the Secretary-General amended and supplemented the preliminary draft, which thus became the draft convention on the prevention and punishment of the crime of genocide, drawn up by the Secretariat, with the assistance of experts in the field of international and criminal law.²

8. In accordance with Economic and Social Council resolution 47 (IV), the Secretary-General transmitted the draft, by his letter of 13 June 1947, to the Committee on the Development and Codification of International Law. That Committee's Chairman, by a letter dated 17 June 1947 addressed to the Secretary-General, replied that "the Committee fully realizes the urgency . . . of organizing co-operation between States with a view to facilitating the speedy prevention and punishment of the crime of genocide". The Committee, however, "regretted that, in the absence of information as to the views of the Governments, it feels unable at present to express any opinion in the matter".³ The draft convention was also transmitted to Member States for comments.⁴

9. Consultation with the Commission on Human Rights, which was also mentioned in Council resolution 47 (IV), was not possible, because the Commission did not meet between the fourth and fifth sessions of the Economic and Social Council.

10. At its fifth session, held from 19 July to 17 August 1947, the Economic and Social Council adopted resolution 77 (V) of 6 August 1947, in which, taking note of the fact that the General Assembly Committee on the Development and Codification of International Law and the Commission on Human Rights had not considered the draft convention on the crime of genocide prepared by the Secretariat and that the comments of the Member Governments on that draft convention had not been received in time for consideration at the fifth session of the Economic and Social Council, it decided "to inform the General Assembly that it proposes to proceed as rapidly as possible with the consideration of the question subject to any further instructions of the General Assembly". The Council requested the "Secretary-General, in

the meanwhile, to transmit to the General Assembly the draft convention on the crime of genocide" prepared by the Secretariat.

11. At its second session, the General Assembly adopted resolution 180 (II) of 21 November 1947, in which it declared, *inter alia*, that "genocide is an international crime entailing national and international responsibility on the part of individuals and States" and requested "the Economic and Social Council to continue the work it has begun concerning the suppression of the crime of genocide, including the study of the draft convention prepared by the Secretariat, and to proceed with the completion of a convention . . .".

12. Taking cognizance of General Assembly resolution 180 (II), the Economic and Social Council at its sixth session, held from 2 February to 11 March 1948, established in resolution 117 (VI) of March 1948 an *Ad Hoc* Committee composed of the following members of the Council: China, France, Lebanon, Poland, the Union of Soviet Socialist Republics, the United States of America and Venezuela, and instructed it:

(a) To meet at the Headquarters of the United Nations, in order to prepare the draft convention on the crime of genocide in accordance with the above-mentioned resolution of the General Assembly, and to submit this draft convention, together with the recommendation of the Commission on Human Rights thereon, to the next session of the Economic and Social Council; and

(b) To take into consideration, in the preparation of the draft convention, the draft convention prepared by the Secretary-General, the comments of the Member Governments on this draft convention, and other drafts on the matter submitted by any Member Government.

13. The *Ad Hoc* Committee on Genocide met at Lake Success from 5 April to 10 May 1948 and prepared a report⁵ containing a draft convention on the prevention and punishment of genocide.⁶

14. At its third session, held from 24 May to 18 June 1948, owing to lack of time, the Commission on Human Rights was not able to consider thoroughly the draft convention on the prevention and punishment of genocide and therefore was not in a position to make any observations concerning its substance. It expressed the opinion that "the draft convention represents an appropriate basis for urgent consideration and decisive action by the Economic and Social Council and by the General Assembly during their coming sessions."⁷

15. At its seventh session, held from 19 July to 29 August 1948, the Economic and Social Council in resolution 153 (VII) of 26 August 1948 decided to transmit to the General Assembly the draft Convention on the Prevention and Punishment of the Crime of Genocide submitted to the Council in the report of the *Ad Hoc* Committee on Genocide, together with the remainder of that report and the records of the proceedings of the Council at its seventh session on that subject.

16. At the third session (first part) of the General Assembly, the draft convention prepared by the *Ad Hoc* Committee was referred to the Sixth Committee. The Sixth Committee examined the draft article by article, as well as the amendments submitted to it, at its 63rd to 69th meetings, its 71st to 81st meetings, its 91st to 110th meetings and its 128th to 134th meetings. The draft convention as revised by the Sixth Committee, together with certain amend-

ments which had not been accepted by the Committee, was considered by the General Assembly at its 178th and 179th meetings. In the plenary, five amendments proposed to the draft convention were defeated and one was not put to the vote. No amendments were therefore made at this stage. In resolution 260 A (III) of 9 December 1948, the Assembly approved the Convention on the Prevention and Punishment of the Crime of Genocide, which was annexed to the resolution, and opened it for signature and ratification or accession by Member States.

(ii) *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)*

17. In accordance with General Assembly resolution 51 (I), the Economic and Social Council, by its resolution 43 (IV), requested the Secretary-General, *inter alia*, to resume the study of the draft Convention prepared by the League of Nations in 1937 regarding the suppression of the exploitation of the prostitution of others; to make any necessary amendments to bring it up to date; and to introduce any desirable improvement in view of the changes in the general situation since 1937. The Economic and Social Council, by resolution 83 (V), further requested the Secretary-General to report to the Social Commission on the possibility of the unification of the existing international instruments for the suppression of the traffic in women and children. The Social Commission was, by the same resolution, requested to advise the Council as to the steps necessary for the implementation of such unification.

18. At its third session the Social Commission, having studied the report of the Secretary-General regarding the revision of the 1937 draft Convention mentioned above, advised the Economic and Social Council that developments since 1937 allowed for the immediate formulation and conclusion of a new and comprehensive convention for the suppression of the traffic in women and children and the prevention of prostitution, and that such a convention should unify the existing international instruments in this field and also embody the substance of the 1937 draft Convention as well as any desirable improvement thereto.

19. The Economic and Social Council, by resolution 155 E (VII), requested the Secretary-General to prepare a draft of such a convention, to ascertain the views of Governments and international organizations specialized in this field regarding this draft, and to submit the draft Convention and any views expressed to the Social Commission at its fourth session. The Social Commission, at its fourth session, considered the report of the Secretary-General as well as the views expressed by Governments and interested international organizations, and submitted a draft of a unified convention to the Economic and Social Council.

20. At its ninth session, the Economic and Social Council examined the draft unified convention submitted by the Social Commission (E/1359) and decided to submit it, together with the records of its proceedings on this subject to the fourth regular session of the General Assembly (A/977).

21. At its 224th plenary meeting on 22 September 1949, the General Assembly referred the draft Convention to the Third Committee, which began consideration of this item at its 237th meeting.

22. At its 239th, 240th and 243rd meetings, the Third Committee decided to request the Sixth Committee to give consideration to articles 8, 9, 10, 12, 25, 26, 28, 29, 30, 31 and 32 of the draft Convention and to make recommendations as to the text to be adopted for these articles. The Third Committee also requested the Sixth Committee to inform it as to what would be the legal effects of deleting or retaining the clause "subject to the requirements of domestic law" in articles 4, 7, 16, 19 and 20 of the draft Convention and to transmit to it any comments the Sixth Committee deemed necessary or any other legal problem arising from the draft Convention.

23. The Third Committee devoted its 237th to 248th meetings inclusive to the consideration of articles 1, 2, 3, 5, 6, 14, 15, 17, 18, 21, 22, 23 and 24 of the draft Convention as well as the Preamble and Final Protocol. At its 248th meeting, the Committee decided by 25 votes to 1, with 4 abstentions, to delete article 27 of the draft Convention.

24. A memorandum from the Chairman of the Third Committee on points to be referred for consideration to the Sixth Committee (A/C.6/333) was forwarded by the President of the Assembly to the Chairman of the Sixth Committee and examined by that Committee and by a Sub-Committee established to that effect. A memorandum from the Chairman of the Sixth Committee (A/C.6/L.102) setting forth the conclusions reached by that Committee on all the questions referred to it was forwarded by the President of the Assembly to the Chairman of the Third Committee.

25. At its 268th and 269th meetings, the Third Committee examined the text proposed by the Sixth Committee for articles 8, 9, 12, 25, 28, 29, 30 and 31. It approved the suggestion of the Sixth Committee to delete articles 10, 26 and 32. It approved the recommendation of the Sixth Committee for a new text for article 24. It approved articles 4, 7, 11, 13, 16, 19 and 20 of the draft Convention, taking into account the suggestions and recommendations concerning these articles which had been made by the Sixth Committee. It finally approved several drafting changes proposed by the Sixth Committee in articles previously adopted by the Third Committee.

26. At its 269th meeting held on 28 November 1949, the Third Committee, by 34 votes to none, with 8 abstentions, adopted the draft Convention as a whole and recommended its approval to the General Assembly. The Convention was approved by General Assembly resolution 317 (IV) of 2 December 1949. No changes were made at the final stage in the Plenary, as three amendments moved were rejected.

(iii) *International Convention on the Elimination of All Forms of Racial Discrimination (1965)*

27. In its resolution 1906 (XVIII), entitled "Preparation of a draft international convention on the elimination of all forms of racial discrimination", adopted by the General Assembly on 20 November 1963, the Assembly requested the Economic and Social Council to invite the Commission on Human Rights, bearing in mind the views of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the debates at the seventeenth and eighteenth sessions of the General Assembly, any proposals on the matter that might be submitted by the Governments of Member States and any international instruments already adopted in that field, to give absolute

priority to the preparation of a draft international Convention on the elimination of all forms of racial discrimination, to be submitted to the Assembly for consideration at its nineteenth session.

28. The Commission on Human Rights accordingly gave absolute priority to the drafting of a Convention at its twentieth session and adopted the substantive articles of a draft Convention on the Elimination of All Forms of Racial Discrimination.⁸

29. The Economic and Social Council, in resolution 1015 B (XXXVII) of 30 July 1964, submitted to the General Assembly for consideration at the Assembly's nineteenth session the substantive articles prepared by the Commission on Human Rights, as well as the following documents which had not been voted upon by the Commission:

(a) The proposal for an additional article submitted by the United States of America and the sub-amendment submitted thereto by the Union of Soviet Socialist Republics⁹ as well as the records of the discussion thereon in the Commission;¹⁰

(b) Article X of the draft Convention transmitted to the Commission on Human Rights by resolution I (XVI) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which dealt with measures of implementation,¹¹ as well as the records of the discussion thereon in the Commission;¹²

(c) The preliminary draft of additional measures of implementation transmitted to the Commission by resolution 2 (XVI) of the Sub-Commission (annex I of the report of the Commission on Human Rights)¹³ as well as the records of the discussion thereon in the Commission;¹⁴

(d) The working paper prepared by the Secretary-General for the final clauses of the draft Convention on the Elimination of All Forms of Racial Discrimination;¹⁵

(e) The records of the discussion of this item by the Commission on Human Rights.¹⁶ The Assembly did not consider the item at its nineteenth session and it was included in the agenda of the twentieth session.

30. At its twentieth session the Third Committee decided that it would not hold a general debate on the draft Convention as a whole. It proceeded to consider the texts of the preamble and each of the substantive articles submitted by the Commission on Human Rights (A/5921, annex). After a general discussion on measures of implementation, the Committee proceeded to elaborate these measures based on a text submitted by Ghana, Mauritania, and the Philippines (A/C.3/L.1291). The Committee then considered the final clauses, based on a preliminary draft suggested by the officers of the Third Committee (A/C.3/L.1237). At its 1373rd meeting on 15 December 1965, the Third Committee recommended the draft Convention for adoption by the General Assembly. The Convention was adopted by the General Assembly in its resolution 2106 A (XX) of 21 December 1965. In the plenary an amendment inserting an article on reservations was accepted.

(iv) *International Covenants on Human Rights*

31. It may be recalled that at its second session in December 1947 the Commission on Human Rights had decided to prepare an International Bill of

Human Rights consisting of a “declaration”, a “covenant” and “measures of implementation”.¹⁷ When the General Assembly adopted and proclaimed the Universal Declaration of Human Rights on 10 December 1948, it requested, by resolution 217 F (III), that continued priority be given to the preparation of a draft covenant on human rights and draft measures of implementation. Thereafter, the Commission devoted six sessions (fifth to tenth) from 1949 to 1954 to the preparation of the covenants.¹⁸ During this time it received observations and comments from Governments of Member States, specialized agencies and non-governmental organizations; proposals and suggestions from the Commission on the Status of Women and the Sub-Commission on Freedom of Information and of the Press and the Sub-Commission on Prevention of Discrimination and Protection of Minorities; as well as directives and instructions from the General Assembly and the Economic and Social Council.

32. At its ninth session (1954), the General Assembly had before it the text of two draft Covenants, one on economic, social and cultural rights and the other on civil and political rights, together with certain proposals and amendments and documents.¹⁹ At that session the Third Committee of the Assembly heard a general discussion on the texts and proposals and amendments thereto.²⁰

(a) At the tenth session (1955) the Third Committee considered and adopted the preamble and article 1 of both draft Covenants.²¹

(b) At the eleventh session (1956) the Third Committee considered and adopted articles 6 to 13 of the draft Covenant on Economic, Social and Cultural Rights.²²

(c) At the twelfth session (1957) the Third Committee considered and adopted articles 14 to 16 of the draft Covenant on Economic, Social and Cultural Rights and article 6 of the draft Covenant on Civil and Political Rights.²³

(d) At the thirteenth session (1958) the Third Committee considered and adopted articles 7 to 11 of the draft Covenant on Civil and Political Rights.²⁴

(e) At the fourteenth session (1959) the Third Committee considered and adopted articles 12 to 14 of the draft Covenant on Civil and Political Rights.²⁵

(f) At the fifteenth session (1961) the Third Committee considered and adopted articles 15 to 18 of the draft Covenant on Civil and Political Rights.²⁶

(g) At the sixteenth session (1961) the Third Committee considered and adopted articles 19 to 25 of the draft Covenant on Civil and Political Rights.²⁷

(h) At the seventeenth session (1962) the Third Committee considered certain additional articles proposed for inclusion in the draft Covenant on Civil and Political Rights, and it considered and adopted articles 2 to 5 of the draft Covenant on Economic, Social and Cultural Rights as well as articles 3 and 5 of the draft Covenant on Civil and Political Rights.²⁸

(i) At the eighteenth session (1963) the Third Committee considered and adopted articles 2 and 4 and an additional article to follow article 22 of the draft Covenant on Civil and Political Rights, and an additional paragraph for the combined articles 11 and 12 of the draft Covenant on Economic, Social and Political Rights.²⁹

(j) At the twentieth session (1965) the Third Committee, owing to its heavy agenda, was unable to consider the draft Covenants.

33. At the twenty-first and twenty-second sessions of the General Assembly, the Third Committee examined the provisions of the text proposed by the Commission on Human Rights which still required consideration: the articles on measures of implementation (part IV, articles 17-25, of the draft Covenant on Economic, Social and Cultural Rights; part IV, articles 27-48, and part V, articles 49 and 50, of the draft Covenant on Civil and Political Rights) and the final clauses, which were identical in both draft Covenants (part V, articles 26-29, of the draft Covenant on Economic, Social and Cultural Rights; part VI, articles 51-54, of the draft Covenant on Civil and Political Rights).³⁰

34. In addition, the Third Committee had before it: the texts of proposals and amendments relating to reservations and the final clauses³¹ and the proposal for the establishment of an office of the United Nations High Commissioner (Attorney-General) for Human Rights,³² transmitted by the Commission on Human Rights; observations made by Governments³³ and the specialized agencies³⁴ on the texts of the draft Covenants, in accordance with resolution 883 (IX) of the General Assembly; a working paper by the Secretary-General³⁵ containing the proposals and amendments submitted by Governments in their above-mentioned observations; an annotation of the text of the draft Covenants, prepared by the Secretary-General;³⁶ an explanatory paper by the Secretary-General on measures of implementation, and Governments' comments thereon;³⁷ as well as further observations submitted by Governments in accordance with resolution 1960 (XVIII) of the General Assembly.³⁸

35. At its twenty-second session the Third Committee completed the drafting of two Covenants by adopting articles relating to measures of implementation and final clauses of the draft Covenant on Economic, Social and Cultural Rights and the draft Covenant on Civil and Political Rights, as well as by adopting provisions for an optional protocol relating to the Covenant on Civil and Political Rights. The Optional Protocol was initiated and drafted in the Third Committee.

36. The two Covenants and the Protocol were adopted and opened for signature and ratification or accession by General Assembly resolution 2200 (XXI) of 16 December 1966. No amendments were made in the plenary.

(v) *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity*

37. The question of the punishment of war criminals and of persons who have committed crimes against humanity was considered by the Commission on Human Rights at its twenty-first and twenty-second sessions.

38. In resolution 3 (XXI), the Commission requested the Secretary-General "to undertake a study of the problems raised in international law by war crimes and crimes against humanity, and by priority a study of legal procedures to ensure that no period of limitation shall apply to such crimes". In accordance with resolution 3 (XXI) of the Commission, the Secretary-General submitted to the twenty-second session of the Commission a study on the question of the non-applicability of periods of limitation to war crimes and crimes against humanity, and, in particular, on legal procedures to ensure that

no period of limitation shall apply to such crimes in international law (E/CN.4/906). The Commission also had before it statements submitted by the following non-governmental organizations: the Coordinating Board of Jewish Organizations (E/CN.4/NGO/133) and the World Veterans Federation (E/CN.4/NGO/138).

39. By resolution 1158 (XLI) of 5 August 1966, the Economic and Social Council, upon the recommendation of the Commission, contained in the latter's resolution 3 (XXII), invited the Commission to prepare at its twenty-third session as a matter of priority a draft Convention providing that no statutory limitations shall apply to war crimes and crimes against humanity, irrespective of the date of their commission, for consideration by the Economic and Social Council at its forty-third session and for adoption by the General Assembly at its twenty-second session, and to consider and make any further recommendations it believes desirable with a view to developing international co-operation in the prosecution and punishment of those responsible for war crimes and crimes against humanity. The Council also requested the Secretary-General to prepare a preliminary draft for such a Convention to assist the Commission in its task and also to carry out a study as regards ensuring the arrest, extradition and punishment of persons responsible for war crimes and crimes against humanity and the exchange of documentation relating thereto.

40. At its twenty-third session, the Commission had before it a note by the Secretary-General (E/CN.4/926), and a preliminary draft convention, prepared by the Secretary-General, on the non-applicability of statutory limitations to war crimes and crimes against humanity (E/CN.4/928). The Commission established a working group to assist it in the consideration of this preliminary draft convention.

41. The Commission considered the preliminary draft convention and the report of its Working Group on this item (E/CN.4/L.943), containing draft texts for an article I, for paragraphs 1 and 3 of an article II, and alternative texts for paragraph 2 of an article II; and a draft text contained in paragraph 11 of the said report. The Commission, however, by its resolution 4 (XXIII) expressed its regret that for lack of time it was not possible for it to prepare a draft convention on the non-applicability of statutory limitations to war crimes and crimes against humanity; and transmitted to the Economic and Social Council the preliminary draft convention prepared by the Secretary-General and the report of the Commission's Working Group, together with all proposals submitted to the Commission (E/CN.4/L.917, E/CN.4/L.946, E/CN.4/L.947, E/CN.4/L.948, E/CN.4/L.957, E/CN.4/L.958, E/CN.4/L.959, E/CN.4/L.962, E/CN.4/L.963) and the records of discussions in the Commission on this item (E/CN.4/SR.919, 921, 931 and 933-935). The Commission requested the Economic and Social Council to transmit the above documents and records to the General Assembly with the request that they be taken into consideration in the preparation and adoption by the Assembly of a draft convention on the non-applicability of statutory limitations to war crimes and crimes against humanity. The Commission further requested the Economic and Social Council to request the Secretary-General to include in the provisional agenda of the General Assembly the question of punishment of war criminals

and of persons who have committed crimes against humanity, as a new and separate item.

42. At its forty-second session, the Economic and Social Council, by resolution 1220 (XLII), transmitted to the General Assembly all the relevant documents on this question and expressed the hope that the General Assembly would adopt the convention on the subject at the earliest possible date.

43. At the twenty-second session of the General Assembly, a joint working group of the Third and Sixth Committees was established to prepare a draft convention. The Third Committee discussed the report and the draft convention prepared by the joint working group, but was unable to complete consideration of the draft convention. In resolution 2338 (XXII) the General Assembly, *inter alia*, requested the Secretary-General to transmit to Member States the report of the joint working group containing the text of the draft convention, and to invite Member States to submit comments on the draft convention to be contained in a report to be issued by the Secretary-General before the twenty-third session of the General Assembly (A/7174 and Add.1-3). In the same resolution the Assembly decided to give high priority to the completion of the draft convention with a view to its adoption at the twenty-third session.

44. The Committee discussed this item at its 1562nd to 1574th and 1604th to 1605th meetings, held between 7 October and 12 November 1968. The Committee concentrated on the adoption of the draft convention on the non-applicability of statutory limitations to war crimes and crimes against humanity as prepared by the joint working group.

45. The draft convention, as amended, was adopted by the Committee at its 1573rd meeting, held on 15 October 1968. It was adopted by General Assembly resolution 2391 (XXIII) of 26 November 1968. No changes were made in the plenary.

(vi) *International Convention on the Suppression and Punishment of the Crime of Apartheid*

46. At the twenty-sixth session of the General Assembly in 1971 two delegations submitted to the Third Committee a draft Convention on the Suppression and Punishment of the Crime of *Apartheid*.³⁹ By its resolution 2786 (XXVII) of 6 December 1971, the Assembly transmitted to the Commission on Human Rights the draft Convention, together with the relevant records of the discussion. The Commission considered the question at its twenty-eighth session in 1972 when it had before it, in addition to a draft Convention, also a draft Protocol (E/CN.4/L.1189), which was intended to be annexed to the International Convention on the Elimination of All Forms of Racial Discrimination. Pursuant to a General Assembly directive, the Commission on Human Rights also decided that the pertinent documents should be sent to the Special Committee on *Apartheid* so that it could examine them and prepare comments.⁴⁰

47. At the twenty-seventh session of the General Assembly a revised version of the draft Convention was submitted to the Third Committee. The General Assembly, in its resolution 2922 (XXVII) of 15 November 1972, reaffirmed its firm conviction that the conclusion of an international convention on the subject would be an important contribution to the struggle against *apartheid*,

racism, economic exploitation, colonial domination and foreign occupation. The Assembly decided to transmit to the Special Committee on *Apartheid* and to States the revised draft Convention and the amendments thereto for their comments and views, and invited the Commission on Human Rights, through the Economic and Social Council, to consider as a priority item the revised draft Convention and the amendments thereto, and to submit the results of its consideration to the General Assembly at its twenty-eighth session.

48. The Secretary-General transmitted the revised draft Convention and the amendments thereto to the Governments of States Members of the United Nations and of specialized agencies, for their comments and views. He also transmitted these documents to the Special Committee on *Apartheid*.

49. At its 1849th meeting, on 10 January 1973, the Economic and Social Council decided to transmit General Assembly resolution 2922 (XXVII) to the Commission on Human Rights, and requested the Commission to consider as an item of priority the revised draft Convention and the amendments thereto and to submit the results of its consideration to the Council at its fifty-fourth session.

50. The Commission, at its twenty-ninth session, set up a Working Group to consider the revised draft Convention and related documentation. At the same session, on the recommendation of the Working Group, the Commission approved the preamble and the articles (excluding article VIII), of the draft Convention.⁴¹

51. The Economic and Social Council, in resolution 1784 (LIV) of 18 May 1973, approved the draft Convention and recommended that the General Assembly should consider and approve it at its twenty-eighth session.

52. The Special Committee on *Apartheid* considered the revised draft Convention and the amendments thereto at its 248th and 249th meetings, held on 15 and 29 May. The Special Committee decided at its 249th meeting to approve the draft Convention, as amended by the Commission on Human Rights, for submission to the twenty-eighth session of the General Assembly, bearing in mind the remarks made by its members.

53. The Third Committee considered this item at its 2002nd to 2008th meetings, from 19 to 26 October 1973.

54. Various amendments to the draft Convention (A/9095, annex, and A/9095/Add.1) were submitted: A/C.3/L.2016; A/C.3/L.2017; A/C.3/L.2018/Rev.1; A/C.3/L.2020; A/C.3/L.2021; A/C.3/L.2024; A/C.3/L.2026.

55. The Third Committee voted on the draft Convention and the amendments thereto at its 2008th meeting, on 26 October. At the same meeting, the Committee recommended the Convention for adoption by the General Assembly. The Convention was adopted by the General Assembly in its resolution 3068 (XXVIII) of 30 November 1973. In the plenary an amendment inserting a provision was accepted.

- (b) *Treaties drafted in human rights organs, considered by international conferences convened by the United Nations and opened for signature and ratification or accession by such conferences: Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*

56. On 27 April 1953 the Economic and Social Council adopted resolution 475 (XV), in which it requested the Secretary-General to consult the Governments of all States, both Members and non-members of the United Nations, concerning the desirability of a supplementary convention and its possible contents, at the same time communicating to them the proposals of the *Ad Hoc* Committee of Experts on Slavery contained in its recommendation B (E/1988), and to report to the Council, if possible at its first regular session in 1954.

57. In accordance with the Council's request, the Secretary-General addressed a communication on 18 June 1953 to the Governments of all States, both Members and non-members, drawing their attention to the resolution and requesting them to submit their comments. Two annexes were attached to the Secretary-General's communication: the text of the International Slavery Convention of 1926 and the text of Recommendation B of the *Ad Hoc* Committee on Slavery.⁴²

58. The Secretary-General also enclosed a copy of his Report to the fifteenth session of the Council on Slavery, the Slave Trade and Other Forms of Servitude (E/2357), paragraphs 31 to 51, 70 and 71 of which contained the Secretary-General's comments on Recommendation B and his supplementary suggestions as to methods of dealing with the problems referred to in that recommendation. The Secretary-General received replies from nineteen Governments.

59. The Secretary-General communicated to the Economic and Social Council, at its 17th session, a report on his consultations concerning the desirability of a supplementary convention on slavery and its possible contents. The replies of Governments were analysed under the following headings: I. Desirability of a Supplementary Convention; II. Possible Contents of a Supplementary Convention; III. Other Comments. By its resolution 525 A (XVII) the Economic and Social Council urged all Governments which had not yet done so to reply to the questionnaire transmitted to them, and invited the other Governments to forward any additional data or information which they thought necessary or appropriate to submit. The Council also decided to appoint the Permanent Representative of Norway to the United Nations, His Excellency Mr. Hans Engen, as Rapporteur to prepare a concise summary of the information supplied in accordance with the resolutions referred to above and the present resolution and of any relevant information supplied by the International Labour Organisation, for consideration at the nineteenth session of the Council. The Secretary-General was requested to place the report of the Rapporteur on the agenda of the nineteenth session of the Council.

60. In part B of its resolution, the Council, noting that the Government of the United Kingdom of Great Britain and Northern Ireland had submitted a draft of a supplementary convention, decided to transmit to all Governments and to the International Labour Organisation any draft supplementary convention on slavery submitted by Governments and requested the Secretary-General to deal accordingly with the United Kingdom draft. Governments and the International Labour Organisation were invited to submit comments on this draft and on any other draft to the Secretary-General. The Secretary-General was further requested to prepare a report on the replies received for consideration by the Council at its nineteenth session.

61. By its resolution 564 (XIX), the Economic and Social Council considered:

(a) The report of the Rapporteur prepared in accordance with its resolution 525 A (XVII);

(b) The report of the Secretary-General containing the comments of Governments on the draft supplementary convention on slavery submitted by the United Kingdom;

(c) The comments of the International Labour Organisation on the United Kingdom draft. The Council, noting that many Governments had not yet commented on the latter draft, considered that, in the light of the situation as revealed by the report of the Rapporteur and earlier reports on the subject, it was desirable to prepare a text of a draft supplementary convention which would deal with those practices resembling slavery not covered in the International Slavery Convention of 1926, and decided:

- (i) To appoint a committee consisting of representatives of the Governments of Australia, Ecuador, Egypt, France, India, the Netherlands, Turkey, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and Yugoslavia for the purpose of preparing a text of a draft supplementary convention for submission to the Council at its twenty-first session;
- (ii) To transmit to the committee the United Kingdom draft supplementary convention contained in document E/2540/Add.4, together with all the comments received on it from Governments, the International Labour Organisation or non-governmental organizations;
- (iii) To request the Secretary-General to convene the committee at a time and a place to be decided by him in consultation with the Governments represented on the committee. The Council also invited all Governments which had not yet commented on the draft contained in document E/2540/Add.4 to do so before the committee convened, and decided to consider at its twenty-first session the draft prepared by the committee.

62. The Committee provided for in Council resolution 564 (XIX) met at Headquarters from 16 January to 6 February 1956. At its 1st to 20th meetings, the Committee considered the preparation of a draft supplementary convention dealing with those practices resembling slavery not covered in the International Slavery Convention of 1926.

63. The Committee had before it the Draft Convention on the Abolition of Slavery and Servitude (E/2540/Add.4), which had been submitted to the Economic and Social Council by the Government of the United Kingdom of Great Britain and Northern Ireland, and the comments that had been received on it from Governments, the International Labour Organisation, and non-governmental organizations which had been transmitted to the Committee by the Economic and Social Council in resolution 564 (XIX).

64. For the convenience of the Committee, the Secretary-General had prepared a memorandum (E/AC.43/L.1 and Add.1 and 2 and Corr.1 and 2), containing the text of the Draft Supplementary Convention on Slavery and Servitude and the comments thereon received from Governments, the International Labour Organisation and various non-governmental organiza-

tions. The memorandum also contained a number of comments submitted by the Secretary-General. The Committee decided to use this memorandum as its basic working document, and to examine the articles of the draft convention one by one.

65. The Committee gave the draft convention three readings. The first reading, which took place at the 2nd to 7th meetings, was devoted to an examination of the draft convention, article by article. Amendments to the articles were submitted by members of the Committee, but decisions with respect to such amendments were postponed until the second reading, which took place at the 8th to 19th meetings. The third reading, which took place at the 20th meeting, was devoted to consideration of drafting proposals and suggestions for improvement of the style of the English, French, Spanish and Russian texts.

66. At its 20th meeting, the Committee adopted the Draft Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery for submission to the Economic and Social Council.

67. By its resolution 608 (XXI), the Economic and Social Council, having examined the report of the *Ad Hoc* Committee,⁴³ considered that it was desirable that the drafting of the convention should be completed by a conference of plenipotentiaries and that the convention should be opened for signature as soon as possible. The Council decided: (a) That a conference of plenipotentiaries should be convened in order to complete the drafting of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery and to open it for signature; (b) That invitations to attend the conference should be extended to all States Members of the United Nations and to those States non-members of the United Nations which are members of any of the specialized agencies; (c) That the conference should be held at Geneva as soon as possible after the end of the twenty-second session of the Council. The Secretary-General was requested to make all necessary arrangements for the calling of the conference of plenipotentiaries in accordance with the terms of General Assembly resolution 366 (IV) and of the present resolution; and to transmit the report of the *Ad Hoc* Committee to those States invited to attend the conference.

68. The conference met at the European Office of the United Nations in Geneva from 13 August to 4 September 1956 and adopted the Convention and opened it for signature.

(c) *Treaties initiated in human rights organs and sent for consideration by conferences not convened by the United Nations: draft convention for the protection of journalists*

69. A topic proposed for an international convention but referred to a non-United Nations conference was the draft convention for the protection of journalists. An initiative to provide for the protection of journalists engaged in dangerous missions was taken by the General Assembly at its twenty-fifth session, when in resolution 2673 (XXV) it stated that it was essential for the United Nations to obtain complete information concerning armed conflicts and that journalists, whatever their nationality, had an important role to play in that regard. The General Assembly noted with regret that journalists engaged

in missions in areas of armed conflict sometimes suffered as a result of their professional duty. The General Assembly listed the provisions of the Geneva Conventions of 1949, in the protection of which journalists partake, but added that these provisions did not cover some categories of journalists engaged in dangerous missions and did not correspond to their present needs. Convinced of the need for an additional humanitarian international instrument to ensure the better protection of journalists engaged in dangerous missions, the General Assembly in resolution 2673 (XXV) invited the Economic and Social Council to request the Commission on Human Rights to consider the possibility of preparing a draft international agreement on the question which would provide, *inter alia*, for the creation of a universally recognized and guaranteed identification document.

70. The Commission on Human Rights accordingly considered this question at its twenty-seventh session in 1971 when it had before it a preliminary draft international convention on the protection of journalists engaged in dangerous missions, presented by one delegation (E/CN.4/L.1149), and a revised text thereof co-sponsored by six delegations (E/CN.4/L.1149/Rev.1).

71. In its resolution 15 (XXVII)⁴⁴ the Commission recommended that the Economic and Social Council consider the transmission of the preliminary draft convention to the General Assembly, to States Members of the organizations of the United Nations system and—through the International Committee of the Red Cross—to the parties to the Geneva Conventions of 1949 as well as to the Intergovernmental Conference of Experts of the International Committee of the Red Cross.

72. The Secretary-General was requested to establish a group of experts to consider the appropriate composition for an international professional committee for the protection of journalists engaged in dangerous missions and to consider the conditions, procedure and criteria for the issuance and withdrawal of the safe-conduct card.

73. The Working Group of Experts established under Commission resolution 15 (XXVIII) met in September 1971 and submitted in its report (A/8438) a number of conclusions and recommendations concerning the contemplated International Professional Committee for the protection of journalists engaged in dangerous missions and the issuance, withdrawal and recognition of the contemplated safe-conduct card and also a draft Protocol relating to the composition and functions of the International Professional Committee.

74. At its fiftieth session the Economic and Social Council, by resolution 1597 (L) of 21 May 1971, transmitted to the General Assembly the preliminary draft convention on the protection of journalists and the pertinent documentation.

75. At its twenty-sixth session, the General Assembly dealt with the protection of journalists engaged in dangerous missions in its resolution 2854 (XXVI) of 20 December 1971. It expressed the belief that it was necessary to adopt a convention providing for the protection of journalists engaged in dangerous missions in areas of armed conflict and invited the Commission on Human Rights, through the Economic and Social Council, to consider as a matter of priority the preliminary draft convention, taking also into consideration the draft convention submitted by one Government, the working paper

submitted by another, the observations of Governments and subsequent documents including the draft protocol prepared by the Working Group. It arranged also for the submission of the text to the Conference of Government Experts at its second session, convened in 1972 by the International Committee of the Red Cross.

76. The Commission on Human Rights at its twenty-eighth session in March/April 1972 approved as a basis for further work the draft articles of an international convention on the protection of journalists engaged in dangerous professional missions in areas of armed conflict.⁴⁵ It also decided to transmit the draft articles to the second session of the Conference of Government Experts convened by the International Committee of the Red Cross in order that they might be brought to the notice of the Conference for its observations. On the recommendation of the Commission, the Economic and Social Council, by resolution 1690 (LII), transmitted to the General Assembly the draft articles and relevant other documentation.

77. At its twenty-seventh session in 1972, the Third Committee conducted an examination of the draft Convention before it. Many amendments were proposed and, after an informal working group had studied the various texts with a view to reconciling the differences, a number of delegations submitted a new text of the revised draft articles (A/C.3/L.1963/Rev.1), to which additional amendments were also proposed. Eventually, on the recommendation of the Third Committee, the General Assembly, at its 2017th plenary meeting on 12 December 1972, decided to include the item "Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflict" in the provisional agenda of its twenty-eighth session and to consider it as a matter of high priority.

78. At its twenty-eighth session in 1973, the General Assembly, having examined, article by article, the draft articles of a convention proposed by Australia, Austria, Denmark, Ecuador, Finland, France, Iran, Lebanon, Morocco and Turkey,⁴⁶ as well as some related amendments, expressed the opinion that it would be desirable to adopt a convention ensuring the protection of journalists engaged in dangerous missions in areas of armed conflict. However, taking into account that the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was scheduled to be held at Geneva from 20 February to 29 March 1974 under the auspices of the Swiss Government, the General Assembly requested the Secretary-General to transmit to the Diplomatic Conference the draft articles and amendments annexed to his note of 9 July 1973,⁴⁷ together with the observations and suggestions made during the twenty-eighth session of the General Assembly, and to invite the Diplomatic Conference to submit its comments and advice on the above-mentioned texts. The Assembly further decided to continue the examination of this question at its twenty-ninth session, as a matter of priority, having regard to the deliberations and findings of the Diplomatic Conference.⁴⁸

79. At its twenty-ninth session, the General Assembly, by resolution 3245 (XXIX), noted the resolution of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, of 28 March 1974,⁴⁹ in which the Diplomatic Conference decided to consider this item as a matter of priority at its second session,

to be held in 1975, and expressed the wish that the Diplomatic Conference should submit its observations and suggestions to the General Assembly at its thirtieth session. The Assembly decided to continue the examination of this question as a matter of priority at its thirtieth session, having regard to the deliberations and findings of the Diplomatic Conference.

80. Between 1974 and 1976 the Diplomatic Conference reported to the General Assembly that it was considering the inclusion in the draft Additional Protocols to the Geneva Conventions of 1949 of articles on the protection of journalists engaged in dangerous missions in areas of armed conflict. In Protocol I, finally adopted by the Diplomatic Conference in 1977, article 79 was included on this subject. At its thirty-second session in 1977, the General Assembly, by resolution 32/44, welcomed the successful conclusion of the Diplomatic Conference, urged States to consider without delay signing, ratifying or acceding to the two Protocols Additional to the Geneva Conventions of 1949 and requested the Secretary-General to submit to the General Assembly at its thirty-fourth session a report concerning the state of signatures and ratifications of the two Protocols. The General Assembly also decided to include in the provisional agenda of its thirty-fourth session an item entitled "Report of the Secretary-General on the state of signatures and ratifications of the Protocols Additional to the Geneva Conventions of 1949 concerning the respect of human rights in armed conflicts". The General Assembly did not refer in this resolution to its earlier resolutions of 1973 and 1974 to continue the examination of a convention on the protection of journalists engaged in dangerous missions in areas of armed conflict.

(d) *Treaties initiated by international conferences convened by the United Nations and referred to United Nations human rights organs: Convention on the International Right of Correction*

81. At its first session, the General Assembly declared that freedom of information is a fundamental right and is the touchstone of all freedoms to which the United Nations is consecrated; resolved to authorize the holding of a conference of all Members of the United Nations on freedom of information; and instructed the Economic and Social Council to undertake the convocation of such a conference (resolution 59 (I)).

82. The United Nations Conference on Freedom of Information met at Geneva in March and April 1948. The Conference prepared three draft conventions—on the gathering and international transmission of news, on the instituting of an international right of correction and on freedom of information—as well as a draft article for inclusion in the Universal Declaration of Human Rights and a number of resolutions. The Final Act of the Conference (E/CONF.6/79) was referred to the Economic and Social Council for action.

83. At its third session, the General Assembly approved the draft Convention on the International Transmission of News and the Right of Correction, which consisted of an amalgamation of the provisions of the draft Conventions on the Gathering and International Transmission of News and on the Institution of an International Right of Correction prepared by the Conference of 1948. The Assembly, however, resolved that the draft Convention should not be opened for signature until it had taken definite action on the draft Convention on Freedom of Information (resolutions 277 A and C (III)).

84. At its seventh session, the General Assembly separated the provisions relating to the right of correction from the draft Convention on the International Transmission of News and the Right of Correction and decided to open for signature a Convention on the International Right of Correction (resolution 63 (VII)).

(e) *Instruments drafted mainly at the final stage by the General Assembly: Optional Protocol to the International Covenant on Civil and Political Rights*

85. The optional Protocol to the International Covenant on Civil and Political Rights (1966) was an instrument conceived and drafted mainly in the Third Committee of the General Assembly. During the consideration of the implementation provisions of the International Covenant on Civil and Political Rights in the Third Committee of the General Assembly in 1966, it was suggested that the right of individual petition should be inserted in the Covenant. In the end it was finally decided to include provisions to this effect in an Optional Protocol to the Covenant. The draft Optional Protocol was proposed in the Third Committee and debated, revised and adopted at the same session of the Third Committee, in 1966.

(f) *Treaties conceived in United Nations human rights organs but elaborated elsewhere in the United Nations system*

86. In two instances, the idea for an international instrument was proposed by United Nations human rights organs but actually elaborated elsewhere. Thus, an instrument on Discrimination in Employment was first recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. This recommendation was then taken up by the ILO, which eventually elaborated the Convention on Discrimination in Employment (1958). The Sub-Commission, following a study prepared for it on Discrimination in Education, also recommended an instrument on this subject. This recommendation was taken up by UNESCO, which elaborated the Convention against Discrimination in Education.

3. *The form*

87. From the point of view of form, human rights treaties may be grouped into four categories, the first two of which are related to form and the third and fourth more to substance:

(a) *Treaties*, such as the International Convention on the Elimination of Racial Discrimination and the International Covenants on Human Rights;

(b) *Protocols*, such as the Protocol amending the Slavery Convention of 1926 and the Optional Protocol to the International Covenant on Civil and Political Rights;

(c) *Consolidations*, such as the Convention for the Suppression of the Traffic in Persons;

(d) *Adaptations*, such as the Protocol amending the Slavery Convention of 1926. The latter instrument, which was not discussed in Section I above, will be considered below.

Protocol amending the Slavery Convention of 25 September 1926

88. By resolution 475 (XV) of 27 April 1953, the Economic and Social Council: (a) recommended that the General Assembly should invite States

which were or might become parties to the International Slavery Convention of 25 September 1926 to agree to the transfer to the United Nations of the functions undertaken by the League of Nations under that Convention and (b) requested the Secretary-General to prepare a draft protocol to that end.

89. In accordance with this resolution, the Secretary-General prepared a draft protocol which he submitted to the General Assembly as an annex to document A/2435.

90. The Secretary-General also transmitted to the General Assembly observations (A/2435/Add.1, 2 and 3) he had received from Governments on the draft protocol which he had circulated to States parties to the International Slavery Convention in accordance with the request in Economic and Social Council resolution 475 (XV).

91. At its 435th plenary meeting on 17 September 1953, the General Assembly decided to include in the agenda of its eighth session the item: "Transfer to the United Nations of functions and powers exercised by the League of Nations under the International Slavery Convention of 25 September 1926: draft protocol prepared by the Secretary-General", and referred the item to the Sixth Committee for consideration.

92. The Sixth Committee considered the item at its 369th and 370th meetings, held on 12 and 15 October 1953.

93. The Committee also had before it a draft resolution submitted by the United Kingdom (A/C.6/L.304).

94. During the discussions in the Sixth Committee, the question was raised, in connection with the broader problem of the adaptation of League of Nations Conventions to the United Nations, whether a protocol was necessary for the transfer to the Organization of the functions and powers exercised by the League of Nations under the International Slavery Convention. In that connection, the Committee's attention was drawn to General Assembly resolution 24 (I) on the transfer to the United Nations of certain functions and activities of the League of Nations and to the resolution of the League of Nations Assembly of 18 April 1946. The United Nations General Assembly had stated in resolution 24 (I) that the Organization was prepared to accept the custody of international instruments formerly entrusted to the League of Nations and to charge the Secretariat of the United Nations with the task of performing for the parties the functions pertaining to a secretariat, formerly entrusted to the League of Nations and set forth in part A of that resolution. There was therefore no need for a protocol for the transfer of such functions. An analysis of the International Slavery Convention moreover showed that only article 7, which laid upon parties the obligation to inform the Secretary-General of the League of Nations of, *inter alia*, the laws and regulations enacted by them for the purpose of applying the Convention, might perhaps require a protocol before it could be sanctioned. But it was pointed out in that connection that, even if that were the case, some practical remedy for the deficiency might easily be found. Finally, with regard to the invitation addressed to certain States Members or non-members which could not at the present stage accede to the Convention, it would be enough for the General Assembly to adopt a resolution to that effect (A/C.6/SR.370).

95. Some delegations expressed the opinion that a protocol was desirable for the purpose of transferring to the United Nations the functions and powers exercised by the League of Nations under the International Slavery Convention so that States non-members which were parties to the Convention might give their assent to such a transfer. The same delegations also pointed out that there were several precedents.

96. The Secretary-General's representative said that the Secretary-General considered himself bound by the terms of General Assembly resolution 24 A (I) of 12 February 1946. In accordance with the provisions of that resolution, the Secretary-General had always confined himself to the exercise of purely administrative functions and there had never been any objections. Thus, he had accepted, and notified the States concerned of, the depositing with him of instruments relating to Conventions which entrusted the Secretary-General of the League of Nations with the function of depositary and which had never been the subject of a protocol of transfer. The adoption of a protocol, which the General Assembly had frequently thought desirable, would nevertheless not reflect upon the status of States which, by depositing an instrument of accession or ratification with the Secretary-General, had become parties to such Conventions.

97. Some delegations emphasized that in their opinion the International Slavery Convention of 25 September 1926 appeared inadequate, particularly in the light of the report of the Special Committee on Slavery (E/1988). They indicated that they had nonetheless supported the transfer to the United Nations of the functions exercised by the League of Nations under that Convention in the hope that the whole problem would shortly be re-examined and a fresh Convention adopted so as to place the campaign against slavery on a broader footing.

98. With reference to the provisions of the Protocol accompanying the United Kingdom draft resolution (A/C.6/L.304), several delegations indicated that they were in favour of the provisions of its article II, particularly in the matter of the method of acceptance by successive stages, as in other international instruments concluded under the auspices of the United Nations or the specialized agencies, which enabled States to become parties without having to go through the more complicated procedure of ratification or accession.

99. The United Kingdom draft resolution was adopted by 38 votes to none, with 9 abstentions. It was subsequently adopted by the General Assembly in its resolution 794 (VIII) of 23 October 1953.

4. *Proposed conventions currently under consideration*

(a) *Draft international convention on freedom of information*

100. As was seen earlier, the General Assembly in resolution 59 (I) of 14 December 1946 instructed the Economic and Social Council to convoke a conference on freedom of information. In resolution 74 (V) of 15 August 1947, the Economic and Social Council decided:

“(a) To request the Secretary-General to send a request for information based upon the provisional agenda of the Conference to all States Members of the United Nations, and to all States not Members of the

United Nations which will be invited to the International Conference on Freedom of Information; and

“(b) To request the Secretary-General to prepare a memorandum based upon the replies received, as documentation for the Conference;

“(c) To request UNESCO to submit the findings based upon its questionnaire concerning technical information needs in war devastated areas, together with other relevant material, to the Conference;

“(d) To request the Secretary-General to prepare the necessary documentation under each item of the proposed agenda for the Conference, and should he deem it necessary, to seek the co-operation of UNESCO and other international organizations working in this field;

“(e) To request that the documentation be organized under each item of the agenda and consist of a compilation and analysis of existing practices and problems.”

101. The Conference met at the United Nations Office at Geneva from 23 March to 21 April 1978.

102. The Conference was attended by: (a) delegations representing the Governments of 44 States Members of the United Nations; (b) delegations representing the Governments of 10 States which at that time were not Members of the United Nations; (c) observers representing the Governments of two States Members of the United Nations and one State non-member of the Organization; (d) observers and consultants from the International Labour Office, the International Telecommunication Union and the United Nations Educational, Scientific and Cultural Organization; and observers and consultants from five non-governmental organizations.

103. On the basis of its deliberations the Conference prepared and forwarded to the Economic and Social Council three draft conventions: a Draft Convention on the Gathering and International Transmission of News; a Draft Convention Concerning the Institution of an International Right of Correction; and a Draft Convention on Freedom of Information.

104. Furthermore, the Conference adopted 43 resolutions, most of them of a substantive nature, including one on possible modes of action by means of which the recommendations of the Conference could best be put into effect. Under this latter heading the Conference, in resolution No. 43, resolved:

“1. That all documents passed by the Conference, resolutions or draft conventions, be referred to the Economic and Social Council for study at its next session;

“2. That all Governments invited to this Conference be requested to forward to the Secretary-General of the United Nations before 5 July 1948 their comments on the draft conventions proposed by the Conference and proposals for other draft conventions based on the recommendations of this Conference;

“3. That the Economic and Social Council be requested to examine at its seventh session the draft conventions referred to it by the Conference in the light of such comments and other proposed draft conventions as provided in paragraph 2, and to submit to the General Assembly at its third session draft conventions which may thereafter be opened at that session for signature or accession by those States entitled and will-

ing to become parties thereto, and remain open subsequently for additional accessions.”

105. As was seen above, the General Assembly, at its third session, approved the draft Convention on the International Transmission of News and the Right of Correction, which consisted of an amalgamation of the provisions of the draft Conventions on the Gathering and International Transmission of News and on the Institution of an International Right of Correction prepared by the Conference of 1948. The Assembly, however, resolved that the draft Convention should not be opened for signature until it had taken definite action on the draft Convention on Freedom of Information (resolutions 227 A and C (III)). At its seventh session, the General Assembly separated the provisions relating to the right of correction from the draft Convention on the International Transmission of News and the Right of Correction and decided to open for signature a Convention on the International Right of Correction (resolution 630 (VII)).

106. In its resolution 426 (V), the General Assembly appointed a Committee consisting of the representatives of the following fifteen countries: Cuba, Ecuador, Egypt, France, India, Lebanon, Mexico, the Netherlands, Pakistan, the Philippines, Saudi Arabia, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yugoslavia, to meet at the Headquarters of the United Nations to prepare a draft Convention on Freedom of Information, taking into consideration the draft⁵⁰ approved by the United Nations Conference on Freedom of Information held at Geneva from 23 March to 21 April 1948; the text⁵¹ voted during the second part of the third session of the General Assembly; article 14 of the provisional text⁵² of the draft First International Covenant on Human Rights; and the observations⁵³ contained in the summary records of the meetings of the Third Committee dealing with the question. The General Assembly also requested the Committee to report to the Economic and Social Council at its thirteenth session on the results of its work and to submit recommendations, in particular with regard to the advisability of convening a conference of plenipotentiaries with a view to the framing and signature of a Convention on Freedom of Information. The Assembly further requested the Secretary-General to submit the Committee's report, together with the draft or drafts of the Convention prepared by the Committee, to the various Governments concerned for their consideration and invited the Governments so consulted to transmit their suggestions and observations to the Secretary-General by 15 June 1951.

107. The Economic and Social Council was invited to consider the Committee's report at its thirteenth session and, if it thought fit, in the light of the Committee's recommendations and the observations of Governments, and also taking into consideration the General Assembly's wish that one or more conventions to ensure freedom of information in the world should be adopted as soon as possible, to convene a conference of plenipotentiaries to meet as soon as possible and not later than 1 February 1952, with a view to the framing and signature of a Convention on Freedom of Information, based on the draft or drafts prepared by the above-mentioned Committee and on the observations of Governments.

108. This Committee prepared a new version of the draft Convention on Freedom of Information.⁵⁴ On the basis of the work done by that Committee, the Third Committee, at the fourteenth, fifteenth and sixteenth sessions of the General Assembly, approved the preamble and four operative paragraphs of the draft Convention on Freedom of Information.⁵⁵ The articles have not yet been approved by the Assembly in plenary meeting. From the seventeenth to the thirty-second session, the Assembly was not able to continue the consideration of the draft Convention.⁵⁶

(b) *Draft international convention on the elimination of all forms of religious intolerance*

109. In resolution 1781 (XVII) of 7 December 1962, the General Assembly requested the Economic and Social Council to ask the Commission on Human Rights, bearing in mind the views of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the debates at the seventeenth session of the General Assembly, any proposals on the matter that might be submitted by Governments and any international instruments already adopted in that field by the specialized agencies, to prepare: (a) a draft declaration on the elimination of all forms of religious intolerance, to be submitted to the Assembly for consideration at its eighteenth session; and (b) a draft international convention on the elimination of all forms of religious intolerance, to be submitted to the Assembly if possible at its nineteenth session and, in any case, not later than at its twentieth session. The Assembly also invited Member States to submit their comments and proposals concerning the draft convention by 15 January 1964.

110. At its resumed thirty-fourth session, the Economic and Social Council, on 19 December 1962 (1238th meeting), decided to transmit the General Assembly resolution to the Commission on Human Rights and to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

111. At its nineteenth session, held from 11 March to 5 April 1963, the Commission held a brief exchange of views on the resolution of the General Assembly, noted resolution 8 (XV) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,⁵⁷ and decided⁵⁸ to give priority at its twentieth session to the preparation of a draft declaration on the elimination of all forms of religious intolerance. The Commission also requested the Sub-Commission to prepare and submit to the Commission at its twentieth session a preliminary draft of a declaration on the elimination of all forms of religious intolerance, taking into account the views expressed during the debate on the subject at the nineteenth session of the Commission, and requested the Secretary-General to invite the Governments of Member States to submit any proposals which they may wish to make as to the provisions which such a declaration should contain, in time for consideration by the Commission at its twentieth session.

112. On the recommendation of the Commission, the Economic and Social Council in resolution 958 F (XXXVI) of 12 July 1963 drew the attention of the General Assembly to the Commission's decision.⁵⁹

113. At its sixteenth session, held from 13 to 31 January 1964, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 3 (XVI),⁶⁰ submitting to the Commission on Human Rights

a preliminary draft of a United Nations declaration on the elimination of all forms of religious intolerance as representing the Sub-Commission's general views, consistent with the Principles of Freedom and Non-Discrimination in the Matter of Religious Rights and Practices that it had adopted in 1969,⁶¹ regarding the substance which should be taken into account in preparing a draft declaration, together with other relevant documentation.

114. At its twentieth session, held from 17 February to 18 March 1964,⁶² the Commission on Human Rights set up a working group to prepare, on the basis of the preliminary draft of the Sub-Commission and all other relevant documentation, a draft declaration on the elimination of all forms of religious intolerance. The working group, however, was able to consider only the first six articles of the text submitted by the Sub-Commission in relation to which it prepared a provisional text consisting of six articles. It also submitted to the Commission certain alternative texts and proposals presented to it.

115. Owing to lack of time, the Commission was unable to consider and adopt a draft declaration on the elimination of all forms of religious intolerance. In resolution 2 (XX), the Commission requested the Secretary-General to transmit to Member Governments for comments the report of the working group⁶³ and the preliminary draft of a declaration on the elimination of all forms of religious intolerance submitted by the Sub-Commission⁶⁴ and to submit to the Economic and Social Council at its thirty-seventh session the comments of Governments as well as the working group's report and the Sub-Commission's draft of a declaration. The Commission recommended to the Economic and Social Council "to give such further consideration as it may deem practicable to the drafting of a declaration on the elimination of all forms of religious intolerance, in the light of the comments of Governments, and that it transmit the appropriate documents to the General Assembly for consideration at its nineteenth session".

116. At its twentieth session in 1964, the Commission on Human Rights decided, in resolution 2 (XX), to prepare at its twenty-first session a draft convention on the elimination of all forms of religious intolerance in compliance with General Assembly resolution 1781 (XVII) and invited the Sub-Commission to prepare and submit to the Commission at its twenty-first session a preliminary draft convention on the elimination of all forms of religious intolerance.

117. The Sub-Commission on Prevention of Discrimination and Protection of Minorities considered this item at its 17th session in 1965. The Sub-Commission had before it a note by the Secretary-General (E/CN.4/Sub.2/243), summarizing the consideration of the draft convention on the elimination of all forms of religious intolerance in the United Nations. The note referred to substantive comments or proposals concerning the proposed draft convention which had been submitted, in accordance with the General Assembly's invitation to Member States, by the Governments of Chad, Finland, Ireland, Nigeria and the United Kingdom of Great Britain and Northern Ireland (E/CN.4/Sub.2/243, Annex), China and Kenya (E/3925), and the Netherlands (E/3925/Add.1). The Sub-Commission also had before it a memorandum (E/CN.4/Sub.2/L.365) setting out the text of article 18 of the draft covenant on civil and political rights as adopted by the Third Committee of the General Assembly (A/5705, Annex), and the paragraphs adopted by the

Commission on Human Rights at its eighteenth session for inclusion in the preamble of the proposed draft principles on freedom and non-discrimination in the matter of religious rights and practices.⁶⁵ The note also referred to the report of the working group set up by the Commission on Human Rights at its twentieth session to prepare a draft declaration on the elimination of all forms of religious intolerance.⁶⁶ The latter report contained the texts of articles adopted by the working group for inclusion in the draft declaration.

118. Written statements relating to the draft convention on the elimination of all forms of religious intolerance were submitted to the Sub-Commission by the Co-ordinating Board of Jewish Organizations (E/CN.4/Sub.2/NGO/41) and the International Humanist and Ethical Union (E/CN.4/Sub.2/NGO/42). Oral statements were made by the representatives of the International League for the Rights of Man (438th meeting), the Commission of the Churches on International Affairs (438th meeting), the Co-ordinating Board of Jewish Organizations (436th meeting), Pax Romana (439th meeting) and the World Jewish Congress (438th and 441st meetings).

119. Three draft conventions on the elimination of all forms of religious intolerance were submitted to the Sub-Commission at its 436th meeting: (i) a draft convention submitted by Mr. Calvocoressi (E/CN.4/Sub.2/L.360); (ii) a draft convention submitted by Mr. Abram (E/CN.4/Sub.2/L.361 and Rev.1); and (iii) a draft convention submitted by Mr. Krishnaswami (E/CN.4/Sub.2/L.364 and Add.1 and 2). Six draft articles for the draft convention were also submitted to the Sub-Commission at its 440th meeting by Mr. Nassinovsky (E/CN.4/Sub.2/L.369). In the course of the discussion of the draft convention two additional articles were submitted to the Sub-Commission by Mr. Ingles (E/CN.4/Sub.2/L.392 and 395).

120. At the 436th meeting, the authors of the three draft conventions then before the Sub-Commission, Messrs. Abram, Calvocoressi and Krishnaswami, were requested to meet in an informal group, open to all interested members of the Sub-Commission, with a view to combining the three conventions into a single joint text which could serve as a basis for further discussion. In preparing the draft convention, the Sub-Commission examined the preamble and provisions presented by the informal working group which it had set up, the draft articles submitted by Mr. Nassinovsky, and the additional articles submitted by Mr. Ingles. The Sub-Commission adopted a draft convention containing a preamble and thirteen articles (resolution I (XVII), annex).

121. At its eighteenth and nineteenth sessions, the General Assembly adopted resolutions inviting the Commission on Human Rights to give priority to this topic.

122. By its resolution 2020 (XX), the General Assembly requested the Economic and Social Council to invite the Commission to make every effort to complete, at its twenty-second session, the preparation of the draft declaration and of the draft international convention on the elimination of all forms of religious intolerance, in order that they might be submitted to the Assembly at its twenty-first session.

123. At its twenty-second session, the Commission adopted five more articles of the draft convention, but was unable, for lack of time, to complete its work on that instrument. The consideration and adoption of articles VIII,

IX, XI and XII, and of the articles concerning implementation, could not be completed at that session. In resolution I (XXII), the Commission decided to give the highest priority at its twenty-third session to the completion of the preparation of the draft convention.

124. At its twenty-third session the Commission adopted three more articles and, by resolution 3 (XXIII) of 9 March 1967, transmitted to the Economic and Social Council:

(a) A preamble and twelve articles of a draft international convention on the elimination of all forms of religious intolerance, adopted by the Commission and annexed to its resolution;

(b) An additional draft article submitted by the delegation of Jamaica and draft article XIII proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which, after some discussion, the Commission considered should be submitted to the Assembly;

(c) The preliminary draft of additional measures of implementation submitted by the Sub-Commission in its resolution 2 (XVII) which the Commission did not consider for lack of time.

125. The Commission recommended to the Economic and Social Council to transmit these documents to the General Assembly and expressed the hope that the General Assembly would decide upon suitable measures of implementation and final clauses of the draft convention.

126. The General Assembly kept this topic on its agenda between its twentieth and twenty-seventh sessions. At its twenty-seventh session, the General Assembly decided to accord priority to the completion of the Declaration on the Elimination of All Forms of Religious Intolerance before resuming consideration of the draft International Convention on this subject (resolution 3027 (XXVII)).

127. The Commission on Human Rights is still engaged in the preparation of a draft declaration and will continue its work on this matter at its thirty-fifth session in 1979.

(c) *Draft international convention against torture*

128. By its resolution 32/62 of 8 December 1977, the General Assembly requested the Commission on Human Rights to draw up a draft convention on torture and other cruel, inhuman or degrading treatment or punishment, in the light of the principles embodied in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Assembly further requested the Commission to submit a progress report to it at its thirty-third session.

129. At its thirty-fourth session in 1978, the Commission had before it the text of a "Draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", proposed by the delegation of Sweden (E/CN.4/1285). It also had before it the text of a "Draft Convention for the Prevention and Suppression of Torture" presented by the International Association of Penal Law (E/CN.4/NGO/213).

130. By its resolution 18 (XXXIV) adopted on 7 March 1978, the Commission requested the Secretary-General "... to transmit all relevant documents of the thirty-fourth session of the Commission on Human Rights concerning

the draft convention on torture and other cruel, inhuman or degrading treatment or punishment to the Governments of States Members of the United Nations or members of specialized agencies wishing to express their views on this subject for their comments, and to prepare a summary of those comments". Upon the recommendation of the Commission, the Economic and Social Council, by its decision E/DEC/1978/24, decided to approve the recommendation made by the Commission on Human Rights in paragraph 2 of its resolution 18 (XXXIV) and to authorize the holding of a meeting of a working group open to all members of the Commission for one week immediately before the thirty-fifth session of the Commission with the task of preparing for the Commission concrete drafting proposals for a draft convention on torture and other cruel, inhuman or degrading treatment or punishment.

(d) *Draft international convention on the rights of the child*

131. At the 1438th meeting of the Commission on Human Rights in 1978, the representative of Poland introduced a draft resolution (E/CN.4/L.1366/Rev.1) sponsored by Austria, Bulgaria, Colombia, Jordan, Poland, Senegal and the Syrian Arab Republic which contained in an annex a draft Convention on the Rights of the Child. He recalled that in 1959 the General Assembly had adopted the Declaration of the Rights of the Child. He felt that, almost 20 years after the proclamation of the principles of that Declaration by the General Assembly, it was time to take further and more consistent steps by adopting an internationally binding instrument in the form of a convention, and expressed the view that the draft Convention should be based on the principles of the Declaration of the Rights of the Child. By its resolution 20 (XXXIV) adopted on 8 March 1978, the Commission requested the Secretary-General to transmit the draft Convention to Member States and to the competent specialized agencies, regional intergovernmental organizations and non-governmental organizations, inviting them to communicate to him, not later than 31 October 1978, their views, observations and suggestions on such a convention, and requested him to submit a report thereon to the Commission on Human Rights at its thirty-fifth session. The Commission also decided to continue at its thirty-fifth session, as one of its priorities, its consideration of a draft Convention on the Rights of the Child, taking into account both the draft Convention referred to above and the report of the Secretary-General, with a view to concluding, if possible, a convention at that session for transmission to the General Assembly through the Economic and Social Council. By its resolution 78/18, the Economic and Social Council took note with satisfaction of the initiative taken by the Commission at its thirty-fourth session with a view to the conclusion of a convention on the rights of the child and to the adoption of this Convention by the General Assembly, if possible during the International Year of the Child; and recommended to the General Assembly to consider including in the agenda for its thirty-fourth session, as a priority matter, the question of the adoption of a convention on the rights of the child.

5. *Initiation*

132. The initiation of international conventions is usually made by four main sources: (1) by Governments; (2) by United Nations organs; (3) by rapporteurs; and (4) by non-governmental organizations.

(a) *Governments*

133. As can be seen from the chart annexed to the present paper, practically all of the treaties considered were initiated by Governments or by their representatives in United Nations organs (though in some cases the idea may have been taken from other sources).

134. A recent instance of a convention initiated by a Government was the draft International Convention on the Rights of the Child. At the 1438th meeting of the Commission on Human Rights in 1978, the representative of Poland introduced a draft resolution E/CN.4/L.1366/Rev.1, sponsored by Austria, Bulgaria, Colombia, Jordan, Poland, Senegal and the Syrian Arab Republic. He recalled that in 1959 the General Assembly had adopted the Declaration of the Rights of the Child, which had been instrumental in promoting the rights of children throughout the world as well as in shaping various forms of international co-operation in that field. He felt, however, that, almost 20 years after the proclamation of the principles of that Declaration by the General Assembly, it was time to take further and more consistent steps by adopting an internationally binding instrument in the form of a convention, and expressed the view that the draft Convention should be based on the principles of the Declaration of the Rights of the Child. As was seen earlier, the Commission on Human Rights, as a result of this initiative, decided to draft an international convention on this subject.

(b) *United Nations organs*

135. There are several examples of initiation by United Nations organs although it should be borne in mind that a decision of an organ composed of government representatives invariably stems from a proposal made in the first place by one or more of the government representatives sitting on it. The idea of drafting one or more international covenants on human rights as part of the International Bill of Human Rights was initiated by the Commission on Human Rights in 1947 and was subsequently endorsed by the Economic and Social Council and by the General Assembly. Apart from the Convention on the International Right of Correction and the draft Convention on Freedom of Information, work on all of the treaties considered in this paper commenced as a result of decisions of United Nations organs. The two instruments mentioned were initiated by a United Nations Conference but the decisions to proceed with the drafting of the treaties were then taken by the General Assembly. On some occasions the decision to initiate a treaty was taken by a superior organ such as the General Assembly. In others it was taken by the Commission on Human Rights or the Economic and Social Council and subsequently endorsed by the General Assembly.

(c) *Rapporteurs or authors of studies*

136. As was seen earlier, the UNESCO Convention on Discrimination in Education was conceived in a study on this subject prepared for the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Another recent example was the recommendation made by Mr. Hector Gros Espiell, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, for a codification of the law relating to self-determination.⁶⁷ While the form of this codification is not yet settled, it is

possible that in the end a draft convention may be elaborated. At its thirty-first session in 1978, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Commission on Human Rights to entrust Mr. Gros Espiell with the preparation of the preliminary draft of the international instrument proposed by him, and requested the Secretary-General to give him all the necessary assistance for the completion of this task.

(d) *Non-governmental organizations*

137. An example of the role played by non-governmental organizations in the initiation of an international convention was the draft international convention against torture. For some time certain non-governmental organizations, notably, the International Commission of Jurists, Amnesty International and the International Association of Penal Law, have been calling for an international convention against torture; they convened meetings and held consultations on the preparation of a draft convention. In 1977, the General Assembly requested the Commission on Human Rights to draw up a draft convention on torture and other cruel, inhuman or degrading treatment or punishment. When this matter came before the Commission on Human Rights in 1978, the Commission received, in addition to a draft international convention proposed by the delegation of Sweden (E/CN.4/1285), a draft convention presented by the International Association of Penal Law (E/CN.4/NGO/213) which is being used in the Commission's work in elaborating the draft convention.

6. *Provision of drafts or study of issues*

138. Drafts utilized in the preparation of international treaties in the field of human rights have come from five main sources: (1) Governments; (2) human rights organs; (3) rapporteurs; (4) non-governmental organizations; and (5) the Secretariat.

(a) *Governments*

139. As can be seen from the annexed chart, initial drafts were submitted by Governments for the Protocol amending the Slavery Convention; the Optional Protocol to the International Covenant on Civil and Political Rights; the draft Convention on the Suppression and Punishment of the Crime of *Apartheid*; the draft Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the draft International Convention on the Rights of the Child.

(b) *United Nations organs*

140. As can be seen from the annexed chart, initial drafts were submitted by United Nations organs for the following instruments: the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the draft International Convention on the Elimination of All Forms of Religious Intolerance. An important feature has been the valuable role played by a body of experts, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in the initial drafting of many treaties, including the Covenants on Human Rights; the International Convention on

the Elimination of All Forms of Racial Discrimination; and the draft International Convention on the Elimination of All Forms of Religious Intolerance.

(c) *Rapporteurs or authors of studies*

141. Draft principles submitted by rapporteurs entrusted with the preparation of reports or studies for human rights organs sometimes form the basis of further work leading eventually to the elaboration of conventions. This was seen above as regards the UNESCO Convention against Discrimination in Education and the proposed codification of the law of self-determination.⁶⁸ In resolution 564 (XIX) of 7 April 1955, the Economic and Social Council, having considered,⁶⁹ *inter alia*, a report on slavery prepared by one of its rapporteurs, decided to initiate work on a draft supplementary convention on the question.

(d) *Non-governmental organizations*

142. As was seen above, the Commission on Human Rights at its thirty-fourth session in 1978 was seized of a draft convention for the prevention and suppression of torture presented by the International Association of Penal Law (E/CN.4/NGO/213).

(e) *Secretariat*

143. Instances of drafts provided by the Secretariat were the Convention on the Crime of Genocide; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; the Protocol amending the Slavery Convention; and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. The Secretariat also played an important role in the drafting of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

7. *Consultation of Governments*

144. Apart from the consultation of Governments which takes place by virtue of the fact that the Commission on Human Rights, the Economic and Social Council and the General Assembly are composed of government representatives, there was express consultation in respect of the following instruments: the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the International Right of Correction; the Protocol amending the Slavery Convention of 1926; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; the International Convention on the Suppression and Punishment of the Crime of *Apartheid*; the draft Convention on Freedom of Information; the draft International Convention on the Elimination of All Forms of Religious Intolerance; the draft International Convention against Torture; and the draft International Convention on the Rights of the Child. To take a recent example, the Commission on Human Rights, at its thirty-fourth session in 1978, requested the Secretary-General to transmit all the relevant documents concerning the draft Convention on Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment to the Governments of States Members of the United Nations or members of the specialized agencies wishing to express their views on this subject, for their comments. The Commission took a similar decision on the draft Convention on the Rights of the Child.

8. *Negotiation*

145. The negotiation of multilateral treaties in the field of human rights is done mainly in: (1) the Commission on Human Rights and its subsidiary organs; (2) the Economic and Social Council; (3) the General Assembly; and (4) international conferences.

146. The negotiation stages of the various treaties were given in section II above and therefore it is not necessary to repeat them. Certain significant aspects may, however, be noted:

(a) *Working Group of Experts*

147. In some instances, Working Groups of Experts were appointed to assist in the preparation of drafts or to study particular issues involved in the drafting of an instrument. Thus, by its resolution 15 (XXVIII) the Commission on Human Rights established a Working Group of Experts to consider questions pertaining to the protection of journalists engaged in dangerous missions.

(b) *Ad hoc committees of government representatives*

148. In some instances, an *ad hoc* committee of government representatives was appointed to work out a draft instrument for further consideration. This occurred during the drafting of the Convention on the Prevention and Punishment of the Crime of Genocide, the draft Convention on Freedom of Information and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.

(c) *Co-operation between the Third Committee and the Sixth Committee*

149. In most of the treaties considered, the final drafting before the treaty reached the plenary of the General Assembly was done by the Third Committee of the General Assembly. However, the Convention on the Prevention and Punishment of the Crime of Genocide was considered by the Sixth Committee. In some cases, there was collaboration between the Third Committee and the Sixth Committee. This occurred as regards the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. In the latter case a Joint Working Group of the Third and Sixth Committees was established at one stage to elaborate a draft convention.

(d) *Dispensation with general debate in the Third Committee*

150. In two instances, the Third Committee decided to dispense with general debates when it came to consider draft conventions. This was done in the consideration of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

9. *Level of change introduced at last stage*

151. An assessment of changes introduced in the Third and/or Sixth Committees would be beyond the scope of the present paper. On the whole, it can be said that the basic structure and substance of draft instruments reaching the Third or Sixth Committee were retained in the cases of the human rights treaties considered in the present paper. However, provisions for the implementation of these treaties were heavily shaped by the Treaty Committee. Usually, there are few changes in the plenary of the General Assembly. As can be seen from the annexed chart, an important amendment was made in the plenary as regards the Protocol amending the Slavery Convention signed at Geneva on 26 September 1926. Slight amendments were also made in the plenary to the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of *Apartheid*. In other instances, occasional amendments were moved but were rejected (Convention on the Prevention and Punishment of the Crime of Genocide; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others).

ANNEX

<i>Instrument</i>	<i>Initiated by</i>	<i>Initial drafts submitted</i>	<i>Expert or other assistance</i>	<i>Negotiation stage</i>	<i>Consultation of Governments</i>	<i>Consultation of other bodies</i>	<i>Changes introduced at last stage (Plenary)</i>	<i>Concluded and opened for signature by</i>	<i>Time taken from proposal to completion</i>
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	Governments (General Assembly)	Secretariat	1. Secretariat 2. <i>Ad Hoc</i> Committee of the Council 3. Individual Experts 4. General Assembly Committee on the Codification and Progressive Development of International Law	<i>Ad Hoc</i> Committee of ECOSOC—General Assembly	Yes. Draft Convention submitted to Member States for comments	Commission on Human Rights (provided for but not realized due to technical difficulty)	None (an amendment to the Pre-ambule was rejected in Plenary)	General Assembly	1946-1948
Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others (1949)	Governments ECOSOC	1. League of Nations 2. Secretariat 3. Social Commission	—	ECOSOC, General Assembly	In ECOSOC and General Assembly	International organizations specialized in the field	None. Three amendments moved in the Plenary were rejected	General Assembly	1949
Convention on the International Right of Correction	Governments (UN Conference)	UN Conference	—	CONF, ECOSOC, General Assembly	Views of Governments requested	—	—	—	1948-1952
Protocol amending the Slavery Convention	Governments (ECOSOC)	1. Secretariat 2. Governments	Secretariat	ECOSOC, General Assembly	Yes	—	Yes	General Assembly	One year (1953)

Supplementary Convention on the Abolition of Slavery	Governments 1. Governments 2. Secretariat	Rapporteur of study	ECOSOC, General Assembly	Yes	Specialized Agencies NGOs	—	Plenipotentiary Conference	1953-1956
International Convention on the Elimination of All Forms of Racial Discrimination	Governments (General Assembly)	CHR and its Sub-Commission on Prevention of Discrimination and Protection of Minorities	General Assembly CHR, ECOSOC, General Assembly	Yes. Also in CHR, ECOSOC and General Assembly	Specialized Agencies NGOs	Yes. One article on reservations in Plenary	General Assembly	1963-1965
International Covenant on Economic and Cultural Rights	Governments (CHR)	CHR	CHR, ECOSOC, General Assembly	Yes—written debates in UN organs	NGOs; Scientific Associations	Nont	General Assembly	1949-1966
International Convention on the Suppression and Punishment of the Crime of <i>Apartheid</i>	Governments (General Assembly)	Governments CHR	General Assembly— CHR— Assembly	Yes	Special Committee on <i>Apartheid</i>	Yes. One amendment inserting a provision was accepted in the Plenary	General Assembly	1971-1973
Draft Convention on Freedom of Information	Governments Conference	UN Conference on Freedom of Information (1948)	Conference— ECOSOC— General Assembly	Yes	—	—	—	Initiated in 1948 still not completed

ANNEX (continued)

<i>Instrument</i>	<i>Initiated by</i>	<i>Initial drafts submitted</i>	<i>Expert or other assistance</i>	<i>Negotiation stage</i>	<i>Consultation of Governments</i>	<i>Consultation of other bodies</i>	<i>Changes introduced at last stage (Plenary)</i>	<i>Concluded and opened for signature by</i>	<i>Time taken from proposal to completion</i>
Draft International Convention on the Elimination of All Forms of Religious Intolerance.....	Governments (General Assembly)	Sub-Commission on Prevention of Discrimination and Protection of Minorities	Sub-Commission on Prevention of Discrimination and Protection of Minorities	CHR	Yes	-	-	-	Initiated 1962 but still pending
Draft International Convention against Torture.....	Governments (General Assembly)	1. Government of Sweden 2. NGOs	-	CHR	Yes—at initial stage	-	-	-	1977
Draft International Convention on the Rights of the Child.....	Governments (CHR)	Government of Poland in CHR	-	CHR	Yes—at initial stage	Yes—at initial stage; regional intergovernmental organs and NGOs	-	-	1978
International Covenant on Civil and Political Rights.....	Governments (CHR)	CHR	Secretariat	CHR, ECOSOC, General Assembly	Yes—written debates in UN organs	NGOs; Scientific Association	None	General Assembly	1949-1966
Optional Protocol to International Covenant on Civil and Political Rights.....	Governments (Third Committee of General Assembly)	Governments	-	Third Committee of General Assembly	Only in Third Committee	-	None	General Assembly	One year (1966)

Convention on the Non-Application of Statutory Limitations to War Crimes against Humanity	Governments (General Assembly)	Secretariat	Secretariat	CHR, ECOSOC, General Assembly	Yes. Information sought by Secretary-General from Governments	--	None	General Assembly	1966-1968
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NOTES

¹ See below, paragraphs 21-33.

² See E/447, part II, sections I, 11.

³ *Ibid.*, part III.

⁴ For these comments, see A/401 and Add.1-3 and E/623 and Add.1-4.

⁵ *Official Records of the Economic and Social Council, Third Year, Seventh Session, Supplement No. 6.*

⁶ *Ibid.*, annex.

⁷ *Ibid.*, Supplement No. 2, para. 24.

⁸ *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8 (E/3873), chapter II, draft resolution I (XX), annex.*

⁹ *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8 (E/3873), chapter II, draft resolution I (XX), annex, paras. 273 and 274.*

¹⁰ *Ibid.*, paras. 273 and 274.

¹¹ E/CN.4/SR.805, 807 and 808.

¹² *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8 (E/3873), para. 281.*

¹³ E/CN.4/SR.805, 808 and 810.

¹⁴ *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8 (E/3873), annex I.*

¹⁵ E/CN.4/L.679.

¹⁶ E/CN.4/SR.774-810.

¹⁷ *Official Records of the Economic and Social Council, Sixth Session, Supplement No. I (E/600), chapter II.*

¹⁸ *Ibid.*, Ninth Session, Supplement No. 10 (E/1371); Eleventh Session, Supplement No. 5 (E/1681); Thirteenth Session, Supplement No. 9 (E/1992); Fourteenth Session, Supplement No. 4 (E/2256); Sixteenth Session, Supplement No. 8 (E/2447); Eighteenth Session, Supplement No. 7 (E/2573).

¹⁹ *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573), chapter III, and annexes I to III.*

²⁰ *Official Records of the General Assembly, Ninth Session, Annexes, agenda item 58, document A/2808 and Corr.1.*

²¹ *Ibid.*, Tenth Session, Annexes, agenda item 28, part I, document A/3077, and in particular paras. 17-77 thereof.

²² *Ibid.*, Eleventh Session, Annexes, agenda item 31, document A/3525, and in particular paras. 13 to 157 thereof.

²³ *Ibid.*, Twelfth Session, Annexes, agenda item 33, document A/3764 and Add.1, and in particular paras. 5 to 121 thereof.

²⁴ *Ibid.*, Thirteenth Session, Annexes, agenda item 32, document A/4045, and in particular paras. 3 to 91 thereof.

²⁵ *Ibid.*, Fourteenth Session, Annexes, agenda item 34, document A/4299 and Corr.1, and in particular paras. 3 to 64 thereof.

²⁶ *Ibid.*, Fifteenth Session, Annexes, agenda item 34, document A/4625, and in particular paras. 4 to 58 thereof.

²⁷ *Ibid.*, Sixteenth Session, Annexes, agenda item 35, document A/5000, and in particular paras. 5 to 126 thereof.

²⁸ *Ibid.*, Seventeenth Session, Annexes, agenda item 43, document A/5365, and in particular paras. 5 to 98 thereof.

²⁹ *Ibid.*, Eighteenth Session, Annexes, agenda item 48, document A/5655, and in particular paras. 6 to 108 thereof.

³⁰ *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 7 (E/2573), annex I.* The texts of these provisions were reproduced in the *Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 62 (A/6342), annex II.*

³¹ *Ibid.*, annex II.

³² *Ibid.*, annex III.

³³ *Official Records of the General Assembly, Tenth Session, Annexes*, agenda item 28, part I, documents E/2910 and Add.1-6.

³⁴ *Ibid.*, documents E/2907 and Add.1 and 2.

³⁵ *Ibid.*, document A/C.3/L.460.

³⁶ *Ibid.*, part II, document A/2929.

³⁷ *Ibid.*, *Eighteenth Session, Annexes*, agenda item 48, documents A/5411 and Add.1 and 2.

³⁸ *Ibid.*, *Twentieth Session, Annexes*, agenda item 65, documents A/5702 and Add.1.

³⁹ *Ibid.*, *Twenty-sixth Session, Annexes*, agenda item 54, document A/8542, para. 32.

⁴⁰ See *Official Records of the Economic and Social Council, Fifty-second Session, Supplement No. 7* (E/5113), paras. 37-48 and chap. XIII, resolution 4 (XXVIII).

⁴¹ *Ibid.*, *Fifty-fourth Session, Supplement No. 6* (E/5265), chap. IV, sect. b; chap. XX, resolution 16 (XXIX); and chap. XXI, draft resolution X.

⁴² The text of the International Slavery Convention of 1926 is contained in League of Nations document No. C.586.M.223.1926.VI. The text of Recommendation B of the *Ad Hoc* Committee is contained in document E/1988.

⁴³ *Ibid.*, *Twenty-first Session, Annexes*, agenda item 12, document E/2824.

⁴⁴ *Ibid.*, *Fiftieth Session, Supplement No. 4* (E/4949), chap. XIX.

⁴⁵ *Ibid.*, *Fifty-second Session, Supplement No. 7* (E/5113), chap. XIII, resolution 6 (XXVIII), annex.

⁴⁶ A/9073, annex 1.

⁴⁷ *Ibid.*, annexes I and II.

⁴⁸ General Assembly resolution 3058 (XXVIII) of 2 November 1973.

⁴⁹ See A/9669, para. 129.

⁵⁰ See *Official Records of the General Assembly, Fourth Session, Third Committee, Annex*, documents A/961 and A/C.3/518 and A/C.3/518/Corr.1.

⁵¹ See resolution 277 A (III).

⁵² See *Official Records of the Economic and Social Council, Fifth Year, Eleventh Session, Supplement No. 5*, annex I.

⁵³ See *Official Records of the General Assembly, Fifth Session, Third Committee*, 320th-324th meetings.

⁵⁴ A/AC.42/7 and Corr.1.

⁵⁵ A/4341; A/4636; A/5041.

⁵⁶ The question of a draft Declaration on Freedom of Information was discussed by the Economic and Social Council at its twenty-seventh and twenty-eighth sessions, in 1959. In its resolution 732 (XXVIII), the Council invited Member States to comment on the desirability of the adoption by the United Nations of a declaration on freedom of information and on the draft text of such a declaration which was annexed to the resolution. At its twenty-ninth session, the Council considered and adopted a draft Declaration and by resolution 756 (XXIX) transmitted it to the General Assembly for its consideration. The question entitled "Draft Declaration on Freedom of Information" has been on the Assembly's agenda since its fifteenth session, but at that and subsequent sessions the Assembly was not able to consider it.

⁵⁷ E/CN.4/846, para. 221.

⁵⁸ *Official Records of the Economic and Social Council, Thirty-sixth Session, Supplement No. 8*, chapter X, resolution 10 (XIX).

⁵⁹ *Official Records of the General Assembly, Eighteenth Session, Annexes*, agenda items 40, 41, 42, 44, 45 and 46, document A/5460.

⁶⁰ E/CN.4/873, para. 142.

⁶¹ E/CN.4/800, resolution 1 (XII).

⁶² See *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 8* (E/3873), chapter III.

⁶³ *Ibid.*, para. 296.

⁶⁴ *Ibid.*, para. 294.

⁶⁵ *Ibid.*, *Thirty-fourth Session, Supplement No. 8* (E/3616/Rev.1, para. 158).

⁶⁶ *Ibid.*, *Thirty-seventh Session, Supplement No. 8* (E/3873, para. 296).

⁶⁷ E/CN.4/Sub.2/405.

⁶⁸ See para. 142 above.

⁶⁹ E/2673 and Add.1-4.

B. DEPARTMENT FOR DISARMAMENT AFFAIRS

1. During the period under review (1945-1981), the following multi-lateral agreements were concluded in the field of arms limitation and disarmament:

- (a) The Antarctic Treaty (1 December 1959);¹
- (b) Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water (5 August 1963);
- (c) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (27 January 1967);
- (d) Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) with Additional Protocols I and II (14 February 1967);
- (e) Treaty on the Non-Proliferation of Nuclear Weapons (1 July 1968);
- (f) Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof (11 February 1971);
- (g) Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (10 April 1972);
- (h) Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (18 May 1977);
- (i) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (10 April 1981).

2. Among these agreements, only the Antarctic Treaty was negotiated entirely outside the framework of the United Nations.

1. *Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water*

3. This Treaty was actually negotiated and concluded outside the United Nations, in 1963, by the Soviet Union, the United Kingdom and the United States, but the question of a nuclear test ban had received active consideration by the General Assembly of the United Nations as early as 1954 and since 1957 there had been a separate item on the subject on the Assembly agenda. In addition, from 1958 to 1962, the three nuclear Powers had conducted negotiations on a nuclear test ban in the tripartite Conference on the Discontinuance of Nuclear Weapon Tests, at which a representative of the Secretary-General of the United Nations was present, but no agreement had been reached.

4. At the time the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water was negotiated, in July/August 1963,

the issue of a nuclear test ban, in all its aspects, was being considered by the Eighteen-Nation Committee on Disarmament (ENDC), the multilateral disarmament negotiating body, which reported to the General Assembly and the other deliberative subsidiary body, the Disarmament Commission. At the ENDC, a representative of the Secretary-General of the United Nations was present.

5. The Committee had been established early in 1962, following the adoption of General Assembly resolution 1722 (XVI) of 20 December 1961 by which the Assembly, noting with satisfaction the report submitted by the Soviet Union and the United States following an exchange of views on questions relating to disarmament and to the resumption of negotiations in an appropriate body,² had endorsed the agreement that had been reached on the composition of the Eighteen-Nation Committee on Disarmament.³

6. The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water was signed in Moscow on 5 August 1963 and then, on 8 August, was opened for signature at London, Moscow and Washington—the capitals of the three depositary Governments. In the Treaty, the three Governments are referred to as the “Original Parties” of the Treaty. In Article III of the Treaty it was stated that “the Treaty shall be open to all States for signature” and that any State which does not sign it before its entry into force may accede to it at any time. The Treaty entered into force on 10 October 1963, after its ratification by the three Original Parties. On 27 November 1963, the General Assembly adopted resolution 1910 (XVIII) by which, *inter alia*, it called upon all States to become parties to the Treaty and to abide by its spirit and provisions.

2. *Treaty for the Prohibition of Nuclear Weapons in Latin America*

7. The process leading to this Treaty was started at the seventeenth session of the General Assembly, in 1962, and the United Nations was involved at various stages in the process leading to the conclusion of the Treaty, even though the Treaty was actually negotiated outside of the United Nations, as in the case of the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water.

8. At the seventeenth session of the General Assembly, Brazil submitted a draft resolution, which was later revised and co-sponsored by Bolivia, Chile and Ecuador,⁴ concerning the establishment of a denuclearized zone in Latin America. The Assembly decided, however, to defer consideration of this proposal to the eighteenth session, at which Brazil requested the inclusion of “Denuclearization of Latin America” as a separate item in the agenda.

9. In the interim between the two sessions, the Presidents of Bolivia, Brazil, Chile, Ecuador and Mexico, on 29 April 1963, issued a declaration by which they announced that their Governments were prepared to sign a multilateral agreement whereby countries would undertake not to manufacture, receive, store or test nuclear weapons or nuclear launching devices.

10. At the eighteenth session, at the initiative of a group of Latin American States, the General Assembly adopted resolution 1911 (XVIII) by which it: (a) noted with satisfaction the initiative for the denuclearization of Latin America taken in the joint declaration of 29 April 1963; (b) expressed the

hope that the States of Latin America would initiate studies, as they deemed appropriate, in the light of the principles of the Charter of the United Nations and of regional agreements and by the means and through the channels which they deemed suitable, concerning the measures that should be agreed upon with a view to achieving the aims of the said declaration; (c) trusted that at the appropriate moment, after a satisfactory agreement had been reached, all States, particularly the nuclear Powers, would lend their co-operation for the effective realization of the peaceful aims inspiring the resolution; and (d) requested the Secretary-General to extend to the States of Latin America, at their request, such technical facilities as they might require in order to achieve the aims set forth in the resolution.

11. Negotiations on a treaty to prohibit nuclear weapons in Latin America were carried out by the parties concerned between 1964 and the beginning of 1967. The negotiating sessions were attended by a United Nations expert appointed by the Secretary-General. At the end of January 1967, the negotiations on a treaty for the denuclearization of Latin America entered the final stage. These negotiations led to the signing at Mexico City (Borough of Tlatelolco), on 14 February 1967, of the Treaty for the Prohibition of Nuclear Weapons in Latin America. Annexed to the Treaty were two Protocols. In Additional Protocol I, it was provided that the extraterritorial Powers (France, the Netherlands, the United Kingdom and the United States) controlling certain territories situated within the limits of the Latin American geographical zone, as defined in the Treaty, would undertake to apply the statute of denuclearization in those territories for which, *de jure* or *de facto*, they were internationally responsible. Additional Protocol II provided that the nuclear-weapon Powers would undertake fully to respect the status of denuclearization of Latin America and also would undertake not to use or threaten to use nuclear weapons against the parties to the Treaty.

12. At its twenty-second session, the General Assembly adopted resolution 2286 (XXII) by which it welcomed with special satisfaction the Treaty; called for its observance; and invited the Powers contemplated in Additional Protocols I and II to sign and ratify the two documents. In subsequent years, the Assembly adopted numerous resolutions on the question of adherence to the two Protocols.

3. *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*

13. The process which led to the conclusion of this Treaty was started by the General Assembly and remained closely connected with that body in subsequent developments.

14. Early efforts to prevent the spread of the arms race to outer space were made in the Assembly in the late 1950s and early 1960s and Assembly resolutions 1148 (XII), 1348 (XIII), 1472 (XIV), 1721 A (XVI) and 1962 (XVIII), which were adopted on the subject, laid the ground for subsequent progress. In particular, by resolution 1472 (XIV), the Committee on the Peaceful Uses of Outer Space was established.

15. Meanwhile, in 1962, the ENDC turned its attention to the question of the peaceful uses of outer space. In particular, Canada, supported by Italy and Mexico, proposed that the question be given priority. It was also under-

lined that the two draft agreements on general and complete disarmament submitted to the ENDC, one by the Soviet Union and the other by the United States, included a ban on the placing of weapons of mass destruction in orbit and that the two Powers had proposed that such a measure be implemented independently of general and complete disarmament. No action was taken in 1962, but the United States declared its readiness to enter into such an agreement.

16. During 1963, the issue again arose in the ENDC when, on 21 June, Mexico submitted a draft treaty on the prohibition of the orbiting or stationing in outer space of nuclear weapons and other weapons of mass destruction.⁵ The draft treaty also prohibited tests in outer space of all weapons of mass destruction or any other warlike devices. In introducing the document, Mexico stressed the *sui generis* character of the problem which made its solution distinct from other disarmament measures.

17. At the beginning of the General Assembly's eighteenth session, on 19 September 1963, the Soviet Union declared that it deemed it necessary that steps be taken to prevent the spread of the armaments race to outer space and to that end suggested that an agreement be reached between the Soviet Union and the United States to ban the placing in orbit of objects equipped with nuclear weapons or other weapons of mass destruction. It was assumed that an exchange of views on this subject would be continued between the two Governments on a bilateral basis. The United States, on 20 September, welcomed the Soviet response to the suggestion for an arrangement to keep weapons of mass destruction out of outer space, and proposed that negotiators work out the details to attain this goal.

18. Following private talks and agreement between the United States and the Soviet Union, Mexico submitted a joint draft resolution, on behalf of the seventeen participating members of the ENDC, to ban nuclear and other weapons of mass destruction from outer space. On 17 October 1963, the General Assembly adopted the seventeen-Power draft by acclamation as resolution 1884 (XVIII). By the resolution the General Assembly welcomed the expressions by the Soviet Union and the United States of their intention not to station in outer space any objects carrying nuclear weapons or other kinds of weapons of mass destruction and solemnly called upon all States: (a) to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner; and (b) to refrain from causing, encouraging or in any way participating in the conduct of the foregoing activities.

19. Thereafter, the matter was considered in the Committee on the Peaceful Uses of Outer Space and by the General Assembly. After the Soviet Union and the United States had reached agreement on the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, the General Assembly commended the Treaty in resolution 2222 (XXI), unanimously adopted on 14 December 1966.

20. The Treaty was opened for signature on 27 January 1967 at London, Moscow and Washington, the capitals of the three depositary Governments, and entered into force on 10 October 1967.

4. *Treaty on the Non-Proliferation of Nuclear Weapons*

21. The four agreements listed as (e) to (h) above were mainly, though not exclusively, the outcome of joint efforts by the General Assembly and the ENDC/CCD. In the ENDC/CCD, the two Co-Chairmen, i.e. the Soviet Union and the United States, often played a catalytic role. During the negotiating process, on several occasions, the non-aligned countries submitted joint memoranda, with a view to clarifying the issues and suggesting possible solutions.

22. All four agreements were completed in the ENDC/CCD and submitted to the General Assembly as part of reports of either the ENDC or the CCD. Only in the case of the Treaty on the Non-Proliferation of Nuclear Weapons did the Assembly amend the text submitted to it, as indicated below.

23. The first proposals dealing directly with the prevention of the proliferation of nuclear weapons were advanced by the Soviet Union and the United States in the Sub-Committee of the Disarmament Commission in the years 1956 and 1957. The General Assembly's concern about the possible spread of nuclear weapons through dissemination and acquisition took concrete shape in 1958 when, at the thirteenth session of the General Assembly, Ireland submitted a draft resolution⁶ on the subject which, though not pressed to a vote, prepared the way for future United Nations decisions. In subsequent years, the General Assembly adopted a number of resolutions on the subject, namely, 1380 (XIV), 1576 (XV), 1664 (XVI) and 1665 (XVI). In 1965, the Disarmament Commission adopted a resolution (DC/225) calling upon the ENDC to accord special priority to the consideration of the question of a treaty or convention to prevent the proliferation of nuclear weapons.

24. On 17 August 1965, the United States submitted to the ENDC a draft treaty on the subject. Then, at the twentieth session of the General Assembly, the Soviet Union submitted another draft. After intensive deliberations the Assembly adopted resolution 2028 (XX) which, *inter alia*, called upon the CCD to negotiate a treaty to prevent the proliferation of nuclear weapons, based on the following principles: (a) the treaty should be void of any loopholes which might permit nuclear or non-nuclear Powers to proliferate, directly or indirectly, nuclear weapons in any form; (b) the treaty should embody an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers; (c) the treaty should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament; (d) there should be acceptable and workable provisions to ensure the effectiveness of the treaty; and (e) nothing in the treaty should adversely affect the right of any group of States to conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories. Subsequently, the General Assembly adopted further resolutions on the subject (2149 (XXI) and 2153 (XXI)).

25. On 24 August 1967, identical but separate and still incomplete drafts of a non-proliferation treaty were submitted by the Soviet Union and the United States superseding their earlier separate and different drafts. This provided the basis for concrete and intensive negotiations by the ENDC, which continued during most of the 1967 General Assembly session. In an interim report to the Assembly, on 7 December 1967, the ENDC stated that "the

Committee has undertaken intensive consideration of a draft treaty on the non-proliferation of nuclear weapons” and that it “has already made substantial progress, although a final draft has not yet been achieved”.⁷ The Assembly, for its part, adopted resolution 2346 A (XXII) calling on the ENDC urgently to continue its work; requesting the Committee to submit a full report on or before 15 March 1968; and recommending that shortly after that date the twenty-second session of the General Assembly should be resumed to consider the report on the ENDC.

26. The ENDC reconvened in Geneva on 18 January 1968 and remained in session until 14 March. At the opening meeting, on 18 January, the Soviet Union and the United States submitted identical revised treaty drafts. On 11 March 1968, the two Powers presented a joint revised draft treaty which incorporated some of the additional suggestions made in the course of the session by other ENDC members. The draft treaty was submitted to the General Assembly as part of the Committee report, on 14 March 1968. At the resumed twenty-second session of the General Assembly, the draft treaty was further amended. On 12 June 1968, by resolution 2373 (XXII), the General Assembly commended the Treaty on the Non-Proliferation of Nuclear Weapons and requested the depositary Governments (the Soviet Union, the United Kingdom and the United States) to open the Treaty for signature and ratification at the earliest possible date.

27. Following the approval of General Assembly resolution 2373 (XXII), the three nuclear Powers made identical formal declarations in the Security Council on the subject of safeguards to non-nuclear-weapon States. Thereupon, the Security Council adopted resolution 255 (1968) on the same subject.

5. *Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof*

28. The question of an international agreement on the limitation of the military use of the sea-bed and the ocean floor was formally raised by the Soviet Union and the United States in the ENDC in 1968. The following year, each of the two Powers submitted to the Committee its own draft treaty on the subject. Subsequently, on 7 October 1969, they submitted a joint draft treaty which was then revised in the light of comments by the members of the Committee (CCD). At its twenty-fourth session the General Assembly, by resolution 2602 F (XXIV), welcomed the submission of the draft treaty and the various proposals and suggestions made in regard to the draft treaty (including suggestions by the Committee on the Peaceful Uses of the Sea-Bed) and called upon the CCD to take into account all the proposals and suggestions that had been made and to continue its work on the subject.

29. On 23 April 1970 the Soviet Union and the United States, after extensive consultations with other CCD members, submitted a new revised draft treaty, which was then further revised in the light of the discussion in the Committee. The text of the final draft of the treaty was submitted to the General Assembly on 11 September 1970.

30. At its twenty-fifth session, on 7 December 1970, the General Assembly adopted resolution 2660 (XXV) by which it commended the Treaty on the

Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof and requested the depositary Governments (the Soviet Union, the United Kingdom and the United States) to open the Treaty for signature and ratification at the earliest possible date. It also expressed its hope for the widest possible adherence to the Treaty.

6. *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*

31. The various initiatives within the framework of the United Nations which ultimately led to the conclusion of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction are closely linked with initiatives and achievements of an earlier period.

32. The Members of the United Nations have always been aware of the threat posed by chemical and biological weapons. Over the years, as the toxicity of these weapons and the potential for their widespread use increased, efforts were made to ban them both through a single international agreement, in a way that would supplement and strengthen the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, adopted and signed in Geneva in 1925.

33. In 1969, the United Kingdom submitted to the ENDC a draft convention for the prohibition of biological methods of warfare, the rationale of the proposal being that it would be preferable and possible to reach early agreement on a separate convention banning biological weapons as a first step. Later, in 1970, the United States proposed that toxins be added to the list of agents whose use would be prohibited under the provisions of the United Kingdom draft convention. The United Kingdom accepted the United States proposals and subsequently submitted a revised draft. However, the view that chemical and biological weapons should be dealt with together in a single treaty continued to prevail in the CCD and also at the twenty-fifth session of the General Assembly (resolution 2662 (XXV)).

34. At the beginning of the 1971 session of the CCD, efforts for a comprehensive solution of the problem of chemical and biological weapons continued without any immediate change in the positions of the parties. However, as a compromise, on 30 March 1971, Bulgaria, Czechoslovakia, Hungary, Mongolia, Poland, Romania and the Union of Soviet Socialist Republics introduced a draft convention on the prohibition of the development, production and stockpiling of bacteriological (biological) weapons and toxins and on their destruction, with the understanding that the need to achieve the complete prohibition and elimination of chemical and biological weapons remained unchanged.

35. On 5 August 1971, two separate but identical drafts of a convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction were submitted by (a) Bulgaria, Czechoslovakia, Hungary, Mongolia, Poland, Romania and the USSR, and (b) the United States. In introducing the revised draft convention, the Soviet Union recognized once again the significance of the 1925

Geneva Protocol and reaffirmed adherence to its purposes and principles, noting that one of its important objectives was to ensure the eventual complete prohibition and elimination of chemical weapons. The United States also held that the draft convention on biological weapons would in no way detract from continued efforts to ban chemical weapons and that it would strengthen the Geneva Protocol. Moreover, inclusion of a ban on toxins would significantly broaden the scope of this first agreement in the field of chemical and biological weapons.

36. On 28 September 1971, a revised draft convention was submitted by Bulgaria, Canada, Czechoslovakia, Hungary, Italy, Mongolia, the Netherlands, Poland, Romania, the USSR, the United Kingdom and the United States, taking into account the views expressed by Committee members.

37. At the twenty-sixth session of the General Assembly, resolution 2826 (XXVI) was adopted. By the resolution, the Assembly commended the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and requested the depositary Governments (the Soviet Union, the United Kingdom and the United States) to open the Convention for signature and ratification at the earliest possible date. The Assembly also expressed its hope for the widest possible adherence to the Convention.

7. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques

38. During the current decade increasing attention has been given to the question of the artificial modification of the environment for warlike purposes.

39. Concern over the general issue of environmental protection was expressed as early as 1972 in the Declaration of the United Nations Conference on the Human Environment, that was held at Stockholm that year.

40. Subsequently, in 1974, some attention was given to the question of meteorological warfare, at the CCD. That same year, the question of environmental warfare was examined at the Moscow summit meeting by the Soviet Union and the United States and a joint statement was issued, in which the two Powers, taking into consideration the fact that scientific and technical advances in the environmental field, including climate modification, might open possibilities for using environmental modification techniques for military purposes, advocated the most effective measures possible to overcome the danger of the use of such techniques.

41. Also in 1974, at the request of the Soviet Union, an item entitled "Prohibition of action to influence the environment and climate for military and other purposes incompatible with the maintenance of international security, human well-being and health" was inscribed in the agenda of the twenty-ninth session of the General Assembly. The request emphasized the need to draw up and conclude an international convention to outlaw action to influence the environment for military purposes and urged the General Assembly to adopt a resolution with that objective in view. By resolution 3264 (XXIX) of 9 December 1974, the General Assembly recognized such a need. The Assembly also took note of a draft convention on the subject submitted by the Soviet Union, which was annexed to the resolution.

42. In 1975, the CCD considered the question in both formal and informal meetings and, on 21 August that year, the Soviet Union and the United States submitted to the CCD identical texts of a draft convention on the prohibition of military or any other hostile use of environmental modification techniques. Preliminary comments on the draft convention were made in the Committee by a number of delegations and those comments were reflected in the report of the CCD to the General Assembly.

43. At its thirtieth session, in 1975, the General Assembly considered the report of the CCD on the matter and adopted resolution 3475 (XXX). By the resolution, the Assembly: (1) noted with satisfaction that the Soviet Union and the United States had submitted identical drafts of a convention and that other delegations had offered suggestions and preliminary observations regarding the drafts; (2) requested the CCD to continue negotiations, bearing in mind existing proposals and suggestions as well as relevant discussion by the Assembly, with a view to reaching early agreement, if possible during the 1976 meetings of the CCD, on the text of a convention on the prohibition of military or other hostile uses of environmental modification techniques; and (3) requested the CCD to submit a special report on the results achieved for consideration by the Assembly at its thirty-first session.

44. Negotiations on the text of the draft convention continued in the CCD, in 1976, in plenary and, later, in a Working Group. The Working Group held 29 meetings between 2 July and 1 September 1976, in which all the CCD members participated. During its deliberations, the Working Group considered modifications proposed by various delegations to the identical texts of the draft convention by the Soviet Union and the United States dated 21 August 1975. As stated in the report of the Working Group to the CCD,⁸ there was agreement on many modifications, but no agreement on others. Therefore, the report of the Working Group included, in addition to the text of a revised draft convention on the prohibition of military or any other hostile use of environmental modification techniques, comments, dissenting views or reservations of certain delegations.

45. At the thirty-first session of the General Assembly, after an extended debate, the Assembly adopted resolution 31/72. By the resolution, the Assembly: (1) referred the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, the text of which was annexed to the resolution, to all States for their consideration, signature and ratification; (2) requested the Secretary-General, as Depositary of the Convention, to open it for signature and ratification at the earliest possible date; (3) expressed its hope for the widest possible adherence to the Convention; and (4) called upon the Conference of the Committee on Disarmament, without prejudice to the priorities established in its programme of work, to keep under review the problem of effectively averting the dangers of military or any other hostile use of environmental modification techniques.

8. *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*

46. The question of prohibitions or restrictions on the use of certain conventional weapons that may be deemed to be excessively injurious or to have

indiscriminate effects has, over the years, been considered by the international community under the aegis of the United Nations, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and the International Committee of the Red Cross (ICRC).

47. At the United Nations, the matter has been discussed by the General Assembly under various topics. For instance, at its twenty-seventh session, in 1972, the Assembly considered the question under general and complete disarmament. At that session it had before it a report of the Secretary-General entitled *Napalm and Other Incendiary Weapons and All Aspects of Their Possible Use*,⁹ which submitted that there was a need for measures prohibiting their use, production, development and stockpiling. The General Assembly adopted resolution 2392 A (XXVII), by which it deplored the use of napalm and other incendiary weapons in all armed conflicts and commended the report to the attention of all Governments and peoples.

48. The following year, the Assembly discussed the question as a separate agenda item entitled "Napalm and other incendiary weapons and all aspects of their possible use" and adopted resolution 3076 (XXVIII), by which it invited the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which held four sessions from 1974 to 1977, to consider the question of the use of napalm and other incendiary weapons, as well as other specific conventional weapons which might be deemed to cause unnecessary suffering or to have indiscriminate effects, and to seek agreement on rules prohibiting or restricting the use of such weapons. The Diplomatic Conference established an *Ad Hoc* Committee on Conventional Weapons for that purpose.

49. A notable contribution to the study of the question was also made at the expert level by the International Committee of the Red Cross (ICRC) between 1973 and 1976.¹⁰

50. In 1977, on the recommendation of the Diplomatic Conference, the General Assembly decided to hold a United Nations conference in 1979, with a view to reaching agreement on prohibitions or restrictions on the use of certain inhumane conventional weapons. To that end, the Assembly decided, by resolution 32/152, to convene a preparatory conference for the United Nations Conference open to all participants and Member States which had been invited to attend the Diplomatic Conference.

51. In 1978, at the first special session of the General Assembly devoted to disarmament (tenth special session), the decision of the General Assembly to convene the 1979 United Nations conference was widely welcomed. As a result of the deliberations at the special session, the General Assembly agreed on the following provisions, which were included in the Final Document of the session:¹¹

"86. The United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, to be held in 1979, should seek agreement, in the light of humanitarian and military considerations, on the prohibition or restriction of use of certain conventional weapons including those which may cause unnecessary suffering or

have indiscriminate effects. The Conference should consider specific categories of such weapons, including those which were the subject-matter of previously conducted discussions.

“87. All States are called upon to contribute towards carrying out this task.

“88. The result of the Conference should be considered by all States, especially producer States, in regard to the question of the transfer of such weapons to other States.”

52. The Preparatory Conference held two sessions in Geneva, from 28 August to 15 September 1978 and from 19 March to 12 April 1979. The Conference had before it a number of proposals on land-mines and other devices, incendiary weapons, small-calibre weapons systems, non-detectable fragments, fuel-air explosives, anti-personnel fragmentation weapons and flechettes, as well as an outline of a general treaty to which optional protocols or clauses embodying agreed prohibitions or restrictions on the use of specific weapons were to be attached.

53. Although the Preparatory Conference made some progress in its consideration of some of the proposals, it was able to finalize only one draft text for submission to the United Nations Conference, namely the proposal on non-detectable fragments, on which unanimous agreement was reached.

54. The United Nations Conference held two sessions, also at Geneva: one from 10 to 28 September 1979 and the other from 15 September to 10 October 1980. It had before it the report of the Preparatory Conference,¹² as well as a number of additional proposals submitted in the course of its work.

55. At the thirty-fourth session of the General Assembly, in 1979, Member States underlined the importance of the matters dealt with by the Conference and reaffirmed their support of its objectives. This was reflected in General Assembly resolution 34/82 of 11 December 1979, adopted by consensus, by which the General Assembly, *inter alia*, endorsed the recommendation of the Conference to hold a second and final session in 1980 and took note of the understanding of the Conference that issues on which agreement had already been achieved should not be reopened at the forthcoming session, so that all efforts would be concentrated on working out agreements on outstanding issues.

56. On 10 October 1980, the Conference unanimously adopted its Final Act,¹³ to which the following four instruments and one resolution were annexed:

(a) Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects;

(b) Protocol on Non-Detectable Fragments (Protocol I);

(c) Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps or Other Devices (Protocol II);

(d) Protocol on Prohibitions or Restriction on the Use of Incendiary Weapons (Protocol III);

(e) Resolution on small-calibre weapons systems.

57. It was provided in the Convention (Art. 4) that any State wishing to become a party to the Convention must, at the same time, express its consent to be bound at least by two annexed Protocols of its choice, which would then become an integral part of the Convention. The Secretary-General of the United Nations is the Depositary of the Convention (Art. 10).

58. On 12 December 1980, the General Assembly adopted resolution 32/153, by which it recommended the Convention and the three annexed Protocols to all States, with a view to achieving the widest possible adherence to those instruments.

9. Conclusions

59. It is evident from the above that there is no single pattern in the multilateral disarmament treaty-making process within the framework of the United Nations. In the search for disarmament, the United Nations has been confronted with a complex and difficult task and, in seeking to discharge its responsibilities, the Organization, in the light of the circumstances, has resorted to different methods and approaches. In every case, the Organization has tried to face the many problems involved in the disarmament treaty-making process with a high degree of flexibility.

60. Some characteristic elements can, however, be identified in the process. For instance, the interplay between the deliberative and negotiating bodies in the process is evident. It is also clear that, in a field in which delicate matters of national and international security are involved, the initiative for seeking an accord must necessarily be taken by Governments. Sometimes the initiative originated in the multilateral deliberative body and other times in the multilateral negotiating body, but in the process both were usually involved. Also, the initiative was often taken by the Government or Governments concerned by formulating and submitting a draft agreement for consideration by the other parties concerned. In this connection, the specific role played by the two major Powers in the formulation of several draft agreements has been referred to earlier in the text. However, in several cases, the submission was preceded by debates—often long debates—in the deliberative body, notably in the General Assembly.

61. Indeed, at different stages in the treaty-making process, the General Assembly had usually the opportunity to give consideration to the subject-matter of the future agreement and, ultimately, to recommend the agreement for signature or ratification by States, with or without prior amendments.

62. Three nuclear Powers—the Soviet Union, the United Kingdom and the United States—are the joint depositaries of the multilateral disarmament agreements listed under (b), (c), (e), (f) and (g) above. In the case of the two most recent agreements—those under (h) and (i)—the Secretary-General of the United Nations was designated as the Depositary.

63. At its tenth special session, on 30 June 1978, the General Assembly adopted by consensus a Final Document (A/RES/S-10/2), which, in paragraph 116, reads as follows: "Draft multilateral disarmament conventions should be subjected to the normal procedures applicable in the law of treaties. Those submitted to the General Assembly for its commendation should be subject to full review by the Assembly".

NOTES

¹The date after each agreement indicates when the agreement was opened for signature and ratification.

²*Official Records of the General Assembly, Sixteenth Session, Annexes*, agenda item 19, document A/4879.

³Initially, Brazil, Bulgaria, Burma, Canada, Czechoslovakia, Ethiopia, France, India, Italy, Mexico, Nigeria, Poland, Romania, Sweden, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland and United States of America were the members of the Committee. The membership was enlarged in 1969 and again in 1974. After the enlargement in 1969, the name was changed to the Conference of the Committee on Disarmament (CCD).

⁴*Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 90, document A/C.1/L.312/Rev.2.

⁵*Official Records of the Disarmament Commission, Supplement for January to December 1963*, document DC/208, Annex 1, N (ENDC/98).

⁶*Official Records of the General Assembly, Thirteenth Session, Annexes*, agenda items 64, 70, 72, document A/C.1/L.206.

⁷*Official Records of the General Assembly, Twenty-second Session, Annexes*, agenda item 28, document A/6951-DC/229, para. 5.

⁸*Official Records of the General Assembly, Thirty-first Session, Supplement No. 27 (A/31/27)*, volume I, Annex I.

⁹United Nations publication, Sales No. E.73.I.3.

¹⁰See, for instance, the report entitled *Weapons That May Cause Unnecessary Sufferings or Have Indiscriminate Effects* (International Committee of the Red Cross, Geneva, 1973) and the reports entitled *Conference of Government Experts on the Use of Certain Conventional Weapons* (International Committee of the Red Cross, Geneva, 1975 and 1976).

¹¹*Official Records of the General Assembly, Tenth Special Session*, resolution S-10/2.

¹²*Ibid.*, *Thirty-third Session, Supplement No. 44 (A/33/44)*.

¹³A/CONF.95/15.

C. DIVISION OF NARCOTIC DRUGS

1. Introduction

1. Under the Secretary-General, the Commission on Narcotic Drugs (hereinafter called "the Commission") and the Economic and Social Council (hereinafter called "the Council"), the Division of Narcotic Drugs is responsible for supervising the application of the international conventions concerning narcotic drugs and psychotropic substances and for assisting in elaborating any new texts which may be necessary in the light of changing circumstances. Furthermore, the Division acts as the secretariat of the Commission whose task it is, among others, to "prepare such draft international conventions as may be necessary",¹ derived from the powers of the Council according to Article 2, paragraph 3, of the Charter.

2. It should be recalled that narcotic drugs have been a matter of international concern and control since at least the turn of the century, and it was, therefore, important for the United Nations to re-establish the full operation of the pre-war control system immediately after the Second World War. Subsequently, it became the task of the United Nations to improve and codify the existing multilateral treaty law in this field, to simplify the international control

machinery and to extend the control system to new narcotic drugs and psychotropic substances.

3. In the present paper, the six post-war instruments on narcotic drugs and psychotropic substances, adopted within or under the auspices of the United Nations, will be examined with regard to the techniques and procedures used in their elaboration. For detailed examination of the preparation of each treaty, the reader is referred to annexes I-VI below, and for a presentation in summary form reference is made to the chart in annex VII.

2. *The initiative*

4. The initiative for drawing up two of the six treaties under review can be traced back to a Member State. Thus both the Single Convention and the 1972 Protocol were initiated by the United States: in the case of the Single Convention the United States representative submitted to the Commission, at its third session in May 1948, a draft resolution proposing that the existing instruments relating to narcotic drugs be replaced by a single convention;² in the case of the 1972 Protocol the United States Ambassador to the United Nations communicated, in March 1971, the text of a number of amendments to the Single Convention to the Secretary-General,³ and at the subsequent fiftieth session of the Council the United States representative sponsored a draft resolution calling for a plenipotentiary conference to consider the question.

5. The initiative for preparing the other four treaties originated with organs under the United Nations or elsewhere in the United Nations system. It should, of course, be borne in mind that a decision by an organ composed of government representatives usually stems from a proposal or suggestion put forward or taken up by one or more government representatives serving thereon.

6. The General Assembly may be said to have initiated the Protocol of 1946 (which adapted the pre-war treaties to the United Nations era) in deciding, at its first session (February 1946), upon a survey of the non-political activities of the League of Nations to be assumed by the United Nations.⁴

7. Both the Paris Protocol of 1948 and the Opium Protocol of 1953 originated from decisions taken by the Commission at its first session (November-December 1946) requesting the Secretary-General to undertake the necessary preparatory work.

8. The work on the Convention on Psychotropic Substances was set in motion by a resolution of the World Health Assembly (in 1965) requesting the Director-General of WHO to study the possibilities of international control of sedatives and stimulants.⁵

3. *The process*

Basic pattern

9. The basic pattern for elaborating the multilateral treaties in the field of drug-abuse control may be summarized in the following sequence:

Secretariat—Commission—Council—General Assembly or a plenipotentiary conference.

10. This general pattern may be described more in detail as follows: On the basis of preparatory work and possibly a preliminary draft by the Secretariat (Division of Narcotic Drugs), a text is negotiated by the Commission, which, to this end, may establish sub-committees to meet either during or between the Commission's sessions. The text, as prepared by the Commission, is submitted to the Council for consideration and forwarded either to the General Assembly or—more often—to a plenipotentiary conference for final adoption.

11. The basic pattern described above was departed from with regard to the Protocol of 1946. In this case the draft protocol prepared by the Secretariat was negotiated by the Council itself (in September 1946), since it was not possible for the newly established Commission to meet before the forthcoming sessions of the Council and the General Assembly during which the Protocol was to be completed. However, the members of the Commission were consulted in writing.

12. Moreover, a departure from the general pattern may be noted with regard to the 1972 Protocol, in which case a Secretariat study or draft was not involved, since the Protocol was based on various amendments to the Single Convention, submitted by Member States.

Initial stage

13. Once a decision has been taken to study or negotiate the elaboration of a treaty (with the exception of the 1972 Protocol, see paragraph 12 above), it has been left to the Secretariat to play the very important role of undertaking the preparatory studies necessary for the further work and of drawing up an outline of the provisions to be included in the new treaty or of preparing a first draft (with commentaries) of the treaty.

Intermediate stage

14. The intermediate stage has involved negotiations which have taken place in the Commission and its sub-committees and in the Council. During this stage, the Secretariat has also made important contributions by assisting in the preparation of drafts or in the study of particular issues connected with the drafting of the treaty in question.

15. The length of the intermediate stage has varied according to the difficulties inherent in the subject-matter of the treaty. Thus the intermediate stage for the Protocol of 1946 (which dealt with non-controversial matters of form) comprised less than three months' work, whereas the comparable stage for the Single Convention (including all the manifold aspects of narcotics control) involved almost ten years of elaborate preparations.

16. Certain significant aspects of the intermediate stage may be noted:

17. During the preparation of the Opium Protocol of 1953, the Commission had recourse to assistance from *ad hoc* committees: thus an *ad hoc* committee composed of the representatives on the Commission of the principal opium-producing countries met in 1949 and a corresponding committee of the principal drug-manufacturing countries met in 1950, and a joint meeting of the two committees followed later that year.

18. In the preparation of the Convention on Psychotropic Substances, the Commission established a Committee on substances not under interna-

tional control, which met in 1966 to discuss various questions connected with the adoption of an international control system.

19. In order to expedite the drafting of the Convention on Psychotropic Substances, the Commission held a special session devoted solely to that end in 1970.

20. During its sessions the Commission—and in one instance the Council—has made ample use of drafting committees or working groups to deal with specific questions involved in the preparation of the various treaties.

21. The final stage comprises the conclusion of the treaty, either within the General Assembly or within a plenipotentiary conference. Two of the treaties under review, namely the Protocol of 1946 and the Paris Protocol of 1948, were adopted by the General Assembly, in the first case after consideration both in the Third Committee and in the Sixth Committee, in the latter case after consideration in the Third Committee alone.

22. The other four drug control treaties, which are of a more complex nature than the two Protocols mentioned above, have all been concluded in conferences of plenipotentiaries, convened—in 1953, 1961, 1971 and 1972—by the Council in accordance with Article 62, paragraph 4, of the Charter and with the provisions of General Assembly resolution 366 (IV) of 3 December 1949. This practice also reflects the general tendency whereby the General Assembly since 1949 has refrained to a great extent from taking part in the drafting of international treaties,⁶ especially those of a technical, as distinct from a political, character.

4. *Organization of the plenipotentiary conferences*

23. Each of the four above-mentioned plenipotentiary conferences has had its own distinct form of organization. The Opium Conference of 1953⁷ represents the “classical” pattern whereby the Conference establishes a committee of the whole to deal with the draft treaty, article by article, before referring the material to a drafting committee which sends the edited text back for consideration by the committee of the whole and for ultimate approval in the plenary conference. At the Opium Conference all decisions were taken by simple majority, thus implicitly reflecting the rules of procedure of the functional commissions of the Council, as well as the majority required in the Council itself according to Article 67 of the Charter.

24. The Conference for the adoption of the Single Convention in 1961⁸ appointed eleven *ad hoc* committees of limited membership to deal with each principal article or group of articles or scientific questions. After a first reading by the Conference, the various articles were referred to the appropriate committees, which studied them in greater detail before referring them back for a second reading in plenary. From here they were sent to the Drafting Committee and then back to the plenary Conference for ultimate adoption. Decisions of the plenary Conference on all matters of substance were taken by a two-thirds majority, whereas all other decisions were made by simple majority, a practice which has been reflected in the Vienna Convention on the Law of Treaties, article 9, paragraph 2.

25. The Conference for the adoption of the Convention on Psychotropic Substances in 1971⁹ appointed a Technical Committee of limited membership

to deal with scientific questions and an open-ended committee on control measures which in turn established nine *ad hoc* working groups. After a brief general debate, the Conference allocated the various articles to the two committees. Having considered the committees' reports as well as the articles to be dealt with in plenary, the Conference transmitted the texts to the drafting committee for review before adopting the Convention.

26. The Conference for the adoption of the 1972 Protocol¹⁰ appointed two main committees, both open-ended, and divided the detailed substantive work between them. As the draft texts were approved by either main committee, they were referred to the Drafting Committee, which edited the finished drafts for consideration and adoption by the plenary Conference.

5. Consultations

27. Apart from the consultation of Governments which takes place by virtue of the fact that the Commission, the Council, the General Assembly and the plenipotentiary conferences consist of government representatives, written consultations—in some cases by transmission of questionnaires—occurred with regard to all of the treaties under review, except for the 1972 Protocol (which dealt with various amendments to the Single Convention proposed by a few Member States). On the whole the Secretary-General's requests for observations met with a very high response.

28. Besides Governments, relevant international organizations or organs, in particular WHO and the International Narcotics Control Board (INCB) (or its two parent bodies) have also been consulted.

6. Level of changes

29. In general it may be said that the basic structure and the substance of the draft instruments reaching either the General Assembly or the plenipotentiary conference concerned were retained in the case of the drug control treaties considered in the present paper. Those changes which did take place may, broadly speaking, be said to deal especially with such provisions which—in the words of some delegates—could be considered as infringements of national sovereignty. A few examples of more significant changes will be mentioned below.

30. As far as the Single Convention is concerned, the final draft had limited the number of countries producing opium for export to eight expressly enumerated countries, whereas the Single Convention permits the traditional producers to continue such cultivation and leaves it to the INCB or the Council to approve or try to dissuade production for export by other countries. Moreover, the draft had given the INCB the authority to impose a mandatory embargo on trade in narcotics with countries which had accumulated excessive quantities; the Convention merely gives the Board the right to recommend the embargo. Similarly, the draft had given the Commission the possibility of issuing a mandatory prohibition on the use of especially dangerous drugs, whereas the Convention leaves it to the Parties to adopt the special measures of control deemed necessary, including prohibition.

31. With regard to the Convention on Psychotropic Substances, the article concerning the scope of the control of those substances has been

significantly modified in comparison with the final draft. For instance, the Commission has been given a wider discretion to place a substance under a particular control régime than in the draft. On the other hand, the Parties have been given a "right of non-acceptance" of the Commission's decision in the case of all substances, whereas the draft disallowed this right with respect to the most dangerous substances. Finally, it may be mentioned that the draft had authorized the Commission to make decisions, bringing upon the Parties to place substances considered especially dangerous under provisional control, but the Convention merely provides that the Parties shall examine the possibility of provisional control for such substances.

32. Although not introduced at the last stage, the fundamental change which occurred during the intermediate negotiating stage of the Opium Protocol might be briefly mentioned: the original idea of establishing direct control over the production of opium by means of an international opium monopoly had to be abandoned, and in its stead a new scheme was adopted to control opium production by the indirect method of limiting the amount of opium that any country might stock.

7. *Records*

33. For all the treaties under review, records have been kept of the deliberations in all bodies and at all stages, except for discussions in certain drafting committees, sub-committees and *ad hoc* working groups.

8. *Official commentaries*

34. Model Guides for the application of the Opium Protocol of 1953 and of the Single Convention have been published. Official Commentaries on the Single Convention, the Convention on Psychotropic Substances and the 1972 Protocol have likewise appeared as aids to the interpretation of those treaties.

9. *Conclusions*

35. The elaborations of the international drug control treaties have been collective endeavours to which the Commission and its secretariat, the Division of Narcotic Drugs, have been the main contributors, while such other international bodies as WHO and the INCB (or its two predecessors) have also participated actively. In addition, Governments have been consulted systematically and continuously. The painstaking and time-consuming preparatory work—and the fact that the treaties deal with a worldwide problem largely of a non-political nature—is certainly the reason for the high acceptance record of those treaties: thus 112 States have so far adhered to the Single Convention, whereas 75 have adhered to the Convention on Psychotropic Substances, adopted ten years later.

ANNEX I

Protocol of 11 December 1946

1. The Protocol, consisting of a preamble, nine articles and an annex containing the amendments to the pre-war instruments, transferred to the United Nations the func-

tions previously exercised by the League of Nations under the six agreements, conventions and treaties concluded between 1912 and 1936.

2. The initiative for drawing up the Protocol originated with the General Assembly, which on 12 February 1946 requested the Economic and Social Council "to survey... the activities of a non-political character ... by the League of Nations in order to determine which of them should . . . be assumed by organs of the United Nations".¹¹

3. At the request of the Council,¹² the Secretariat drew up a draft protocol and consulted the members of the Commission on Narcotic Drugs in writing, since it was not possible to hold a session of the newly established Commission before the forthcoming sessions of the Council and the General Assembly.

4. The draft protocol and the comments from Commission members were considered at five meetings by a Drafting Committee appointed at a Council meeting (September 1946). At a subsequent meeting the Council invited the Secretary-General to scrutinize the work of the Drafting Committee. The Council's report and the Secretary-General's comments¹³ were examined and approved at a meeting of the Third Committee of the General Assembly, which referred the documents to the Sixth Committee (November 1946). At two meetings the latter discussed the legal questions involved and reported back to the Third Committee. Finally, on 19 November 1946, the General Assembly unanimously approved the protocol,¹⁴ which was opened for signature on 11 December 1946 and signed by 36 representatives to that session of the Assembly, duly empowered to sign.

5. The proceedings in the various bodies referred to above have all been recorded.

6. Only three months passed between the publication by the Secretary-General of the Draft Protocol, on 10 September 1946, and its signature on 11 December 1946. This speedy procedure was due, no doubt, to the fact that the Protocol dealt with non-controversial matters of form. On the other hand, these matters were important if international control of narcotic drugs were to be continued and carried out by the United Nations.

7. The handling of the matter was thorough, implying (in this order) the Secretariat and—by letter—the Commission; the Council and its *ad hoc* Drafting Committee; the Secretariat anew; the Third and Sixth Committees; and finally a plenary meeting of the General Assembly.

ANNEX II

The Paris Protocol of 19 November 1948 bringing under control drugs outside the scope of the 1931 Convention

1. The Protocol, consisting of a preamble and eleven articles, authorized the World Health Organization (WHO) to place under full international control any new drug (including substances made synthetically) liable to produce addiction which did not fall under the 1931 Convention (the provisions of which were limited to control of drugs derived from certain natural raw materials).

2. At its first session in November-December 1946, the Commission requested the Secretary-General to undertake a study of measures to be taken with a view to bringing under international control drugs not covered by the then existing conventions. In his study, the Secretary-General recommended the drafting of a new protocol and included an outline of the provisions to be incorporated in such an instrument.

3. Following a recommendation adopted by the Commission after four meetings at its second session (July-August 1947), the Council, at its fifth session held at the same time, instructed the Secretary-General to draft a protocol as suggested in his outline.¹⁵ This draft protocol, together with replies and observations from 33 Governments and WHO, was considered at eight meetings by the Commission during its third session (May

1948) and a revised text—prepared by a Drafting Committee—was forwarded to the Council at its seventh session (July-August 1948).

4. The draft protocol was examined by the Council's Social Committee at three meetings, at which certain amendments were adopted, and subsequently by the Council at a plenary meeting, which recommended to the General Assembly that it approve the draft protocol.¹⁶

5. During the General Assembly's third session, the draft protocol was considered at three meetings by the Third Committee and at two plenary meetings. On 8 October 1948 the General Assembly approved the protocol without a vote;¹⁷ it was opened for signature during the session on 19 November 1948.

6. The proceedings in the various bodies referred to above have all been recorded.

7. Two years passed from the Commission's initial request in 1946 and 16 months passed from the publication of the Secretary-General's study in July 1947 to the signing of the Protocol in November 1948. In spite of the promptness with which the various United Nations organs had acted—because of the urgency of bringing the new drugs under international control—a thorough handling of the matter was secured, comprising an initial study by the Secretariat, consideration of that study by the Commission and the Council, the drafting of the Protocol by the Secretariat and its circulation to Governments for observations, and renewed examination by the Commission and the Council followed by the General Assembly in its Third Committee and in plenary.

ANNEX III

The Opium Protocol of 23 June 1953

CONTENTS

1. This Protocol, consisting of a preamble and 26 articles, is entitled "The Protocol for limiting and regulating the cultivation of the poppy plant, the production of, international and wholesale trade in, and use of opium". It limited the use of opium and the international trade in it exclusively to medical and scientific needs, as established by a system of estimates and statistical returns. Only seven countries were authorized to produce opium for export, and the stock of opium maintained by individual States was to be restricted. Supervisory and enforcement measures could be employed by the Permanent Central Opium Board.

2. The Protocol was based on the idea that free competition in the licit trade of opium—subject to a system of import and export certificates—should in principle be maintained in so far as it was compatible with the limitation of production and with the maintenance of effective government control. Thus it differed radically from the original idea by the Commission, which had been to bring about an international opium monopoly, with quotas allocated annually to the various opium-producing countries and with some form of international inspection. This idea, however, had had to be abandoned, since the principal opium-producing and drug-manufacturing countries could not reach agreement on such important questions as the basic price of opium and the system of international inspection.

PREPARATORY STUDIES

3. The problem of limiting the production of the raw materials needed for the manufacture of narcotic drugs had been examined by the League of Nations, which in the Thirties had begun the preparatory work on the limitation of the production of opium. This preparatory work, which the United States Government had endeavoured to continue during the war, was reviewed by the Commission at its first session (November-December 1946); it unanimously decided that the Secretary-General should collect such

information and statistics on the world opium situation as would be necessary to carry on the preparatory work. This decision was approved by the Council at its fourth session (March 1974).¹⁸

4. During its third session (May 1948), the Commission examined the Secretary-General's report at six meetings; it decided to draw up a Single Convention (see below, Annex IV) to replace the existing instruments relating to narcotic drugs and also to include provisions for limiting the production of narcotic raw materials. However, since the elaboration of the Single Convention would be a long-term project, a majority of Commission members found that important immediate results might be obtained with regard to opium by convening a joint conference of opium-producing countries and drug-manufacturing countries with a view to reaching an interim agreement, limiting the production and export of opium to medical and scientific needs. Consequently, the Commission proposed, by 6 votes to 5, with 4 abstentions, that the Secretary-General study the desirability of convening such a conference. This proposal was approved by the Council at its seventh session (July-August 1948) by 13 votes to 1, with 4 abstentions,¹⁹ after consideration in its Social Committee at one meeting.

5. The Commission considered the Secretariat study at . . . meetings during its fourth session (May-June 1949)²⁰ and appointed a sub-committee which, at two meetings, studied the matter in detail. The sub-committee unanimously agreed that an interim agreement was necessary and found the holding of the above-mentioned joint conference most desirable, but proposed that, as a preliminary step, a meeting of the principal opium-producing countries be convened before the end of the year. This proposal was endorsed by the Commission and approved by the Council at its ninth session (July-August 1949) by 13 votes to none, with 5 abstentions, after the matter had been discussed in two plenary meetings.²¹

MEETINGS OF OPIUM-PRODUCING COUNTRIES (1949) AND OF DRUG-MANUFACTURING COUNTRIES

6. Pursuant to the Council's decision, an *ad hoc* committee, composed of the representatives on the Commission of the principal opium-producing countries, met in Ankara in November-December 1949. At twelve meetings the *ad hoc* committee worked out a proposed structure for an interim agreement, of which an important feature—as already indicated—was the creation of an international purchasing and selling agency which would have a monopoly in the trade to countries desirous of importing opium for the manufacture of drugs. The *ad hoc* committee also recommended that the above-mentioned joint conference be held in 1950. All decisions of the committee were adopted unanimously.

7. On the basis of the proposals of the *ad hoc* committee, the Secretary-General drew up a first draft of an interim agreement and submitted it to the Meeting of the principal drug-manufacturing countries, which held a total of twelve meetings in Geneva at the beginning of August 1950. The Meeting accepted, in principle, the decisions made in Ankara.

JOINT COMMITTEE (1950)

8. Following the meeting of the principal drug-manufacturing countries, a Joint Committee of the principal opium-producing and drug-manufacturing countries met in Geneva during the latter half of August and in New York in November. However, as already indicated above, the Joint Committee, which held 28 meetings altogether, was unable to reach agreement on several important questions, among others on the basic price at which the international opium monopoly should conduct its transactions and the precise form that international inspection of the opium trade should take.

CONSIDERATION BY THE COMMISSION AND THE COUNCIL

9. During its fifth session (December 1950), the Commission devoted . . . meetings²² to an examination of the situation in the light of the discussions mentioned above, but being unable to find a solution to the outstanding problems the Commission requested the Council to be authorized to hold a two-month session in 1951 in order to be able to complete its work at that session.

10. At its twelfth session in February-March 1951, the Council—upon the advice of its Social Committee, which discussed the matter at three meetings—resolved, by 14 votes to 3, to urge the Commission to make every possible effort to find a basis for a solution,²³ but the Commission, at its sixth session in April-May 1951, was still unable to reach agreement on any of the outstanding problems.

DRAFT PROTOCOL

11. In view of the deadlock which had been reached, the Commission then pondered other means to limit opium production. Having heard a French proposal that such limitation be based on the principles of the 1931 Convention for limiting the manufacture of narcotics, the Commission formed a sub-committee to study the implications of the French proposal. After consideration of the sub-committee's report, the Commission found that international control of opium production could be carried out through the indirect method of limiting the amount of opium that any country might stock under a proposed new protocol. Subsequently, a (second) committee was appointed to consider in detail the contents of such a protocol, and upon the recommendation of this committee, the Commission drew up—with the assistance of a Drafting Committee—a set of general principles upon which the proposed protocol could be based. These principles were adopted by 8 votes to 2, with 2 abstentions.

12. The difficulties which the Commission encountered at its sixth session are clearly revealed by the fact that it had to devote a total of 23 meetings—not counting the meetings of the sub-committees—to the problem of the limitation of opium production.

13. At its thirteenth session in July-August 1951, the Council considered the question at three meetings of its Social Committee and at one plenary meeting. The Council decided, by 14 votes to 3, with 1 abstention, that both the draft of the proposed interim agreement and the text of the general principles of the protocol should be submitted to Governments for their comments, that an annotated compendium of these observations should be prepared and the draft protocol be drawn up by the Secretary-General.²⁴

DECISION OF THE COUNCIL TO CONVENE AN INTERNATIONAL CONFERENCE

14. Since the observations by Governments were for the most part favourable to the draft protocol,²⁵ the Council felt, at its fourteenth session in May-June 1952, that the discussion on the proposed interim agreement and international opium monopoly should not be reopened, but that the deliberations should be concentrated on the protocol. After having examined the questions at two plenary meetings, the Council decided, by 13 votes to 3, with 2 abstentions, to convene an international conference to draft and adopt a protocol relating to the limitation of the production of opium and to request the Secretary-General to take the necessary measures, including the preparation of the provisional rules of procedure.²⁶

THE UNITED NATIONS OPIUM CONFERENCE

15. The United Nations Opium Conference was held at Headquarters from 11 May to 18 June 1953 with 34 participating States and with observers from seven States, WHO and the two then existing international drug control bodies.

16. The Conference had before it a draft protocol; provisional rules of procedure; a compilation of observations from 26 Governments and from the two then existing interna-

tional drug control bodies; as well as technical papers and statistics on various subjects relating to opium.²⁷

ORGANIZATION OF WORK

17. In conformity with the rules of procedure, the Conference appointed a Credentials Committee (five members), a Business Committee (consisting of the Bureau), a Main Committee (Committee of the Whole) and a Drafting Committee (ten members).

18. After having conducted a general debate on the draft protocol, the Conference assigned further consideration to the Main Committee, which initially discussed the draft chapter by chapter, except when a representative requested that specific points of a given chapter be debated. A total of six particularly difficult topics were referred to a sub-committee for detailed examination. Material dealt with by the Main Committee was referred to the Drafting Committee, which referred the draft text back to the Main Committee for consideration article by article. Finally, the plenary Conference considered the draft article by article, taking a vote on the whole text, as amended, at the end.

19. The Conference met eleven times, whereas the Main Committee held 24 meetings. All decisions were made by a majority of the delegations present and voting.

20. The Protocol was adopted on 18 June 1953, by 27 votes to none, with 2 abstentions, the Final Act by 28 votes to none, with 1 abstention, and the Protocol was opened for signature on 23 June 1953.

RECORDS

21. The proceedings in the various bodies referred to above have all been recorded, except the meetings in the sub-committees and drafting committees established during the Commission's fourth and sixth sessions and during the Conference.

OFFICIAL COMMENTARY

22. Pursuant to resolution XIV annexed to the Final Act of the Conference, an expert was designated to prepare a draft code and commentary on the Protocol. Accordingly, a Model Guide for the Application of the Protocol was drawn up and reviewed and adopted by the Commission at its tenth session in 1955.²⁸

OBSERVATION

23. Almost seven years and well over 100 meetings elapsed from the initial decision by the Commission in 1946 until the adoption of the Protocol in 1953. However, it should be recalled that the original idea of creating an international opium monopoly had to be abandoned during the negotiations. In this perspective it took two years and some 60 meetings from 1951, when agreement was reached on the alternative principle of limiting opium production by indirect means, to the adoption of the Protocol in 1953.

ANNEX IV

The Single Convention on Narcotic Drugs, 1961

CONTENTS

1. The Single Convention on Narcotic Drugs, consisting of a preamble, 51 articles and four lists of drugs, under various forms of control, replaces the six pre-war and three post-war international instruments, simplifies the international control machinery by establishing a single body to perform all supervisory functions, and provides for the limitation of the production of narcotic raw materials (not only the opium poppy, but also the cocoa bush and cannabis plant).

PREPARATORY STUDIES AND FIRST DRAFT

2. At the suggestion of the United States representative, the Commission, at its third session in May 1948, decided—after three meetings of deliberations—to draw up a Single Convention to replace the existing instruments relating to narcotic drugs. This decision was unanimously approved by the Council at its seventh session (July-August 1948) and the Secretary-General was requested to begin work on the drafting.²⁹

3. During its fourth session (May-June 1949) the Commission dwelt at some length on the documentary material prepared by the Secretary-General, consisting of four monographs on the problems of and possible solutions to drafting the new treaty. Subsequently, it decided to request the Secretary-General to prepare an annotated draft convention; this decision was approved by the Council by 13 votes to none, with 5 abstentions, at the ninth session (July-August 1949).³⁰

4. At its following six sessions the Commission worked on the Secretary-General's draft convention. At its fifth session (December 1950) it devoted several meetings to a preliminary general debate on the draft, but during its sixth session (April-May 1951) it only discussed the matter briefly at a single meeting, since it was preoccupied with the elaboration of the Opium Protocol (as described in Annex III).

5. During its seventh and eighth sessions (April-May 1952 and March-April 1953) the Commission devoted considerable time to a detailed examination of those articles of the draft which dealt with the scope of the convention, the obligations of the parties, the international and national control organs and the control of the manufacture of and international trade in narcotic drugs.

6. During its ninth session (April-May 1954) the Commission considered the sections of the draft covering control of internal trade in narcotics and of the production of agricultural raw materials, and provisions on domestic penal legislation, enforcement measures and the treatment of addiction. Finally, at its tenth session (April-May 1955), it further discussed control measures at the cultivation level, regulation of synthetic narcotics, provisions for the estimate and statistical returns systems and final clauses.

7. At the end of the tenth session the Commission requested the Secretary-General to prepare a second draft in accordance with the decisions and drafting suggestions which it had adopted during its last six sessions. The Commission decided to examine the new text before sending it to Governments for comments.

8. Between 1952 and 1955 the Commission devoted a total of 44 meetings to the first draft of the Single Convention; in addition, it appointed both at its seventh and at its eighth sessions a Drafting Committee which held five meetings at each session. The Commission had received at its request written observations from Governments represented on the Commission and various working papers from the Secretariat, the two international drug control bodies and WHO.

9. The Council did not discuss the draft in detail during this period, but at its eighteenth session in 1954 it invited the Commission to give the draft priority.³¹

THE SECOND AND THIRD DRAFTS

10. During its eleventh session (April-May 1956) the Commission devoted six meetings to the Secretary-General's second draft of the Single Convention (which contained numerous alternative texts in square brackets) and, in particular, considered the further procedure for the preparation of a final text. The Commission suggested several procedural possibilities, but the Council, at its twenty-second session (July-August 1956) decided to request the Commission to devote the maximum time at its twelfth and, if necessary, thirteenth session to the completion of the draft; it also decided that the second draft should be transmitted, for comments, to all Governments represented on the Council.³²

11. During its twelfth session (April-May 1957) the Commission devoted 13 meetings and a Drafting Committee nine meetings to the further work, and after another 18 plenary meetings and 13 meetings in the Drafting Committee during its thirteenth session (April-May 1958) the Commission approved a third and final draft. The Commission submitted the draft to the Council, recommending that it convene a conference of plenipotentiaries for the adoption of the convention.

DECISION OF THE COUNCIL TO CONVENE AN INTERNATIONAL CONFERENCE

12. At its twenty-sixth session in July 1958, the Council considered the matter at two meetings of its Social Committee and at one plenary meeting. The Council decided unanimously³³ to instruct the Secretary-General to convene a plenipotentiary conference, not only inviting States, but also asking interested international organizations to participate in the deliberations. Governments and organizations were given ample time (until October 1959) to make their comments on the draft treaty, in view of its complex and comprehensive character.

THE UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A SINGLE CONVENTION ON NARCOTIC DRUGS

13. In accordance with the Council's resolution, the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs was held at Headquarters from 24 January to 25 March 1961. Seventy-three States were represented; four inter-governmental organizations, the two then existing international drug control bodies and three non-governmental organizations also participated.

14. The Conference had before it the third draft of the Single Convention, provisional rules of procedure and a compilation of replies and observations from 55 Governments and 16 organizations, as well as various other organizational and technical papers.³⁴

ORGANIZATION OF WORK

15. In conformity with the rules of procedure the Conference appointed a Credentials Committee (nine members), a General Committee (consisting of the Bureau) and a Drafting Committee (17 members). In addition, instead of establishing a committee, or committees, of the whole, the Conference appointed ten *ad hoc* committees to deal with each principal article or group of articles, as well as a Technical Committee to consider scientific questions, particularly the contents of the list of drugs to be controlled.

16. After having conducted a brief general debate, the Conference proceeded to discuss articles or groups of articles in plenary session and then referred them to the eleven Committees mentioned above, which, in turn, studied them in greater detail before submitting a report back to plenary. Here they were given a second reading before being sent to the Drafting Committee and then back for ultimate approval by the plenary Conference, which considered the text article by article, taking a vote on the whole text, as amended, at the end.

17. The Conference met 43 times, the Drafting Committee held 22 meetings, whereas the other Committees held a total of 61 meetings. Decisions of the plenary Conference on all matters of substance were taken by a two-thirds majority of the representatives present and voting, while all other decisions were made by simple majority.

18. The Convention was adopted on 25 March 1961 by 46 votes to none, with 8 abstentions, the Final Act by 50 votes to none, with 1 abstention, and the Convention was opened for signature on 30 March 1961.

RECORDS

19. The proceedings in the various bodies referred to above have all been recorded, except the meetings in the drafting committees established during the Commission's seventh, twelfth and thirteenth sessions and during the Conference.

OFFICIAL COMMENTARY

20. Pursuant to the Council's resolution E/RES/914 D (XXXIV), the Secretary-General issued a Guide for the Application of the Single Convention, in 1966, and a Legal Commentary was published in 1973.³⁵

OBSERVATION

21. The almost 13 years, a total of more than 250 meetings and the detailed preparatory papers involved in elaborating the Single Convention reflect a most patient and careful consideration of all the complicated aspects of international narcotics control. In judging the efforts required, it should be remembered that the Commission, during its nine annual sessions from its fifth to its thirteenth, could devote only part of its time to work on the Convention and to tackling the many difficult problems of an economic, social, medical, legal and administrative nature which such a comprehensive Convention entailed.

ANNEX V

The Convention on Psychotropic Substances of 1971

CONTENTS

1. The Convention on Psychotropic Substances, consisting of a preamble, 33 articles and four lists of such substances, subjects these substances to four régimes of international control, corresponding to their different degrees of health hazard. Provisions are made for bringing new substances under control and for transferring a substance from one régime to another.

PREPARATORY STUDIES

2. During the past decades there has been increasing concern over the danger to public health and the social hazards arising from the abuse of hallucinogens, stimulants and sedative-hypnotics. Therefore, in the late sixties, WHO, the Commission and the Council repeatedly adopted resolutions recommending that Governments take appropriate measures to place such psychotropic substances under strict national control. However, as time went on it became ever more evident that national measures would have to be supplemented by co-operation and action at the international level.

3. In 1965, at its eighteenth session, the World Health Assembly requested the Director-General to study the advisability and feasibility of international measures for control of sedatives and stimulants.³⁶ This resolution and the corresponding recommendations of the WHO Expert Committee on Dependence-producing Drugs were brought to the attention of the Commission at its twentieth session (November-December 1965).

4. The Commission dealt with the matter at five meetings and recommended that a committee meet to study the problem and report back to the Commission at its twenty-first session. This recommendation was approved by the Council at its fortieth session (February-March 1966)³⁷ after consideration by the Social Commission at two meetings.

5. The Committee on substances not under international control consisted of ten Member States, and nine other States, as well as WHO and the Permanent Central Nar-

cotics Board (PCNB), sent observers. The Committee held eight meetings in August 1966 and—apart from the acute problem of controlling LSD—discussed the question of whether the Single Convention on Narcotic Drugs could be employed for the control of psychotropic substances or whether a new treaty should be drafted. The Committee suggested that the Secretary-General, in consultation with WHO and PCNB, undertake a study of the legal, administrative and other questions connected with the adoption of an international control system.

6. At its twenty-first session (December 1966), the Commission devoted five meetings to the Committee's report and approved its recommendation for a study by the Secretary-General. The Council took note of the need for this study at its forty-second session in May 1967.

7. The Secretary-General submitted a thorough study to the Commission's twenty-second session (January 1968); he concluded that, for legal and practical reasons, a special treaty should be drawn up. The problem was discussed at six plenary meetings and at five meetings of a working group, after which the majority of the Commission's members came to agree with the Secretary-General's assessment that a new treaty would be necessary. Consequently, the Secretary-General was requested to transmit to Governments a detailed questionnaire seeking their opinion on the eventual contents of such a treaty and to begin the formulation of the operative part of such an instrument.

8. The Council, at its forty-fourth session (May 1968), had learned with satisfaction of the progress of the work.³⁸ The General Assembly, at its twenty-third session, requested the Council to call upon the Commission to give urgent attention to the problem.³⁹

FIRST AND SECOND DRAFTS

9. At its twenty-third session, the Commission had before it a compilation of replies to the above-mentioned questionnaire from 74 Governments and an annotated draft protocol set forth in two alternatives, which differed mainly as to the mandatory nature of the control provisions. After an extensive discussion at 18 meetings, the Commission agreed on a new annotated draft to be sent to Governments for comments; these comments were to be considered at a special session of the Commission, which would meet solely to complete a final text.

10. The Council, at its forty-sixth session (May-June 1969), authorized the convening of the special session.⁴⁰ Furthermore, the General Assembly, at its twenty-fourth session, requested the Council to call upon the Commission to proceed without delay to complete the draft protocol.⁴¹

THE COMMISSION'S SPECIAL SESSION AND THE THIRD DRAFT

11. The Commission's first special session was held at Geneva in January 1970. The background documents were the draft protocol, as revised during the Commission's twenty-third session, and a compilation of observations from 55 Governments, WHO and the International Narcotics Control Board (INCB, successor to PCNB).

12. During the special session for the completion of the final draft, the Commission held 30 plenary meetings, a Technical Committee met nine times, and a Working Party held four meetings; in addition, an *ad hoc* working group met once.

13. The Commission submitted the new draft protocol to the Council, which, at its forty-eighth session (March-April 1970), dealt with the matter at four meetings. Following a recommendation from the Commission, it decided to convene a Conference of plenipotentiaries for the adoption of the protocol on psychotropic substances.⁴²

THE UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A PROTOCOL
ON PSYCHOTROPIC SUBSTANCES

14. The United Nations Conference for the Adoption of a Protocol on Psychotropic Substances met in Vienna from 11 January to 19 February 1971 at the invitation of the Government of Austria. Seventy-one States were represented and four sent observers; in addition, WHO, INCB and the International Criminal Police Organization participated.

15. The work of the Conference was based on the (third) draft protocol which the Commission had completed at its special session and the report and summary records of that session. It was decided to call the new treaty "convention" instead of "protocol".⁴³

ORGANIZATION OF WORK

16. In conformity with its rules of procedure, the Conference appointed a Credentials Committee (nine members), a General Committee (consisting of the Bureau and committee chairmen) and a Drafting Committee (15 members). In addition, the Conference appointed a Technical Committee (26 members), which in turn established an *ad hoc* working group; it also appointed an open-ended Committee on Control Measures which established nine *ad hoc* working groups.

17. After a brief general debate, the Conference referred articles of a scientific nature to the Technical Committee and provisions regarding the control system to the Committee on Control Measures. Having considered the report of the committees as well as the articles to be dealt with in plenary, the Conference transmitted the texts to the Drafting Committee for review; the convention thus reviewed was adopted article by article and as a whole by the plenary Conference.

18. The Conference met 28 times, the Committee on Control Measures held 26 meetings, and the Technical Committee and Drafting Committee met 22 and 14 times respectively. Decisions of the plenary Conference and all matters of substance were taken by a two-thirds majority of the representatives present and voting, whereas all other decisions were made by simple majority.

19. The Convention was adopted on 19 February 1971 by 51 votes to none, with 9 abstentions, the Final Act without a vote, and the Convention was opened for signature on 21 February 1971.

RECORDS

20. The proceedings in the bodies referred to above have all been recorded, except the meetings in the various committees under the Commission and the meetings in the Drafting Committee, the Technical Committee and the working groups during the Conference.

OFFICIAL COMMENTARY

21. A commentary on the Convention on Psychotropic Substances was prepared and financed as a project of the United Nations Fund for Drug Abuse Control; it was published in 1976.⁴⁴

OBSERVATION

22. Not counting the meetings which various organs of WHO may have devoted to the elaboration of the Convention, the competent organs of the United Nations dedicated almost 200 meetings to their difficult and time-consuming task between 1965 and 1971.

ANNEX VI

The 1972 Protocol Amending the Single Convention
on Narcotic Drugs, 1961

CONTENTS

1. The 1972 Protocol, consisting of a brief preamble and 22 articles, amends 13 articles of the Single Convention and adds three new articles thereto. The Protocol increases the authority of the International Narcotics Control Board (INCB), harmonizes the Single Convention with the Convention on Psychotropic Substances in respect of penal provisions and measures of fighting drug abuse, renders serious narcotics offences extraditable and introduces the possibility of technical and financial assistance to Parties for the fulfilment of their obligations.

PREPARATORY WORK

2. At the Commission's second special session (September-October 1970), the United States signified its intention to propose amendments to the Single Convention mainly in order to strengthen its control system. Those proposals were formally transmitted to the Secretary-General in March 1971 by a letter from the United States Ambassador to the United Nations and considered by the Council during its fiftieth session (April-May 1971) at four meetings of its Social Committee and at one plenary meeting. The Council decided, by 24 votes to 2, to call a Conference of plenipotentiaries to consider all amendments proposed to the Single Convention and to request the Commission to study and comment on such proposals at its twenty-fourth session.⁴⁵

3. During its twenty-fourth session (September-October 1971), the Commission devoted 12 meetings to the discussion of various amendments to the Single Convention proposed by the United States and three other countries. At the end of the discussion, the Commission adopted a resolution, *inter alia*, requesting the Secretary-General to transmit all relevant documentation to the Conference.

THE UNITED NATIONS CONFERENCE TO CONSIDER AMENDMENTS TO THE
SINGLE CONVENTION ON NARCOTIC DRUGS, 1961

4. The United Nations Conference to Consider Amendments to the Single Convention on Narcotic Drugs, 1961, met in Geneva from 6 to 24 March 1972. The Conference was attended by representatives from 97 States and observers from five States; WHO, INCB and the International Criminal Police Organization also participated.

5. The Conference had before it the texts of the amendments submitted by various States participating in the Conference and the relevant chapter of the Commission's report on its twenty-fourth session, as well as summary records of the discussion on this matter.⁴⁶

ORGANIZATION OF WORK

6. In conformity with its rules of procedure, the Conference appointed a Credentials Committee (nine members), a General Committee (consisting of the Bureau and committee chairmen) and a Drafting Committee (15 members). Moreover, two main committees, both open-ended, were established, between which the detailed substantive work was divided; one of these main committees established a working group.

7. The two main committees began their work on the proposed amendments allocated to them after a brief general debate had taken place in the plenary Conference. As the proposals for amendments were approved by either main committee, they were referred to the Drafting Committee, which edited the finished drafts for consideration in plenary. Here the Protocol was adopted article by article and, at the end, as a whole.

8. The Conference met 14 times, the two main committees held 22 and 18 meetings respectively, and the Drafting Committee met seven times. Decisions of the plenary Conference on all matters of substance were taken by a two-thirds majority of the representatives present and voting, while all other decisions were made by simple majority.

9. The Protocol was adopted on 24 March 1972 by 71 votes to none, with 12 abstentions, the Final Act was adopted without objection, and the Protocol was opened for signature on 25 March 1972.

RECORDS

10. The proceedings in the various bodies referred to above have all been recorded, except the meetings in the Drafting Committee and a working group during the Conference.

OFFICIAL COMMENTARY

11. A commentary was prepared and financed as a project of the United Nations Fund for Drug Abuse Control; it was published in 1976.⁴⁷

ANNEX VII
Resumé in chart form

<i>Instrument</i>	<i>Initiated by</i>	<i>Initial draft submitted by</i>	<i>Intermediate stage</i>	<i>Written consultation of Governments</i>	<i>Organizations which were consulted or sent observers to plenipotentiary conference</i>	<i>Changes introduced at last stage</i>	<i>Concluded and opened for signature by</i>	<i>Time from preparation to compilation</i>
Protocol of 1946	General Assembly	Secretariat	Council and Drafting Committee	Yes (members of the Commission)	—	None	General Assembly	1946 (3 months)
Paris Protocol of 1948	Commission	Secretariat	Commission (1st-3rd sessions) and Drafting Committee; Council	Yes	WHO	None (Amendment to "Colonial clause" rejected)	General Assembly	1946-1948
Opium Protocol of 1953	Commission	Secretariat	Commission (1st-6th sessions) and sub-committees; Committee of opium-producing countries; Committee of drug-manufacturing countries; Joint Committee (of the two above-mentioned); Council	Yes	WHO Permanent Central (Opium) Board; (Drug) Supervisory Body	(Fundamental change in conception during intermediate stage)	Plenipotentiary Conference	1946-1953

Single Convention on Narcotic Drugs, 1961	Government	Secretariat	Commission (4th, 13th sessions) and Drafting Committees; Council	Yes	FAO ICAO IMCO (comments only); ILO UPU (comments only); WHO; Permanent Central (Opium) Board; Drug Supervisory Body; ICPO/Interpol	Yes	Plenipotentiary Conference	1948 1961
Convention on Psychotropic Substances 1971	WHO	Secretariat	Commission (20th 23rd sessions and special session); Committee on Substances not under international control; Council; General Assembly	Yes	WHO; International Narcotics Control Board; ICPO/Interpol; Customs Co-operation Council	Yes	Plenipotentiary Conference	1965 1971
1972 Protocol Amending the Single Convention	Government	Governments	Commission (24th session); Council	No	WHO; International Narcotics Control Board; ICPO/Interpol	Yes	Plenipotentiary Conference	1971-1972

NOTES

- ¹ E/RES/9(1), establishing the Commission.
- ² E/CN/130; adopted by the Council in modified form as E/RES/159 II D (VII).
- ³ E/4971 and Add.1.
- ⁴ A/RES/24(I).
- ⁵ WHA 18.47.
- ⁶ A/RES/362 (IV).
- ⁷ United Nations, *Treaty Series*, vol. 456, p. 3.
- ⁸ United Nations, *Treaty Series*, vol. 520, p. 151; vol. 557, p. 280.
- ⁹ E/CONF.58/6.
- ¹⁰ E/CONF.63/9.
- ¹¹ A/RES.24(I).
- ¹² E/RES.12(I).
- ¹³ A/129.
- ¹⁴ A/RES/54(I).
- ¹⁵ E/RES/86(V).
- ¹⁶ E/RES/159(VII).
- ¹⁷ A/RES/211(III)—United Nations, *Treaty Series*, vol. 44, p. 277.
- ¹⁸ E/RES/49(IV).
- ¹⁹ E/RES/159 II.E (VII).
- ²⁰ Summary Records of the fourth session (E/CN.7/SR.78 *et seq.*) are not available in Geneva.
- ²¹ E/RES/246 D (IX).
- ²² Only certain Summary Records of the fifth session are available in Geneva.
- ²³ E/RES/355 C (XII).
- ²⁴ E/RES/395 B, C (XIII).
- ²⁵ E/2186.
- ²⁶ E/RES/436 A (XIV).
- ²⁷ All material relating to the Conference has been published under E/CONF.14/ and the Protocol itself under E/NT/8 and United Nations, *Treaty Series*, vol. 456, p. 3.
- ²⁸ E/NT/9.
- ²⁹ E/RES/159 I.LD (VII).
- ³⁰ E/RES/246 D (IX).
- ³¹ E/RES/548 K (XXVIII).
- ³² E/RES/626 F (XXII).
- ³³ E/RES/689 J (XXVI).
- ³⁴ All material relating to the Conference has been published under E/CONF.34/ and the Single Convention itself under E/CONF.34/22 and Sales No. 62.XI.1. and United Nations, *Treaty Series*, vol. 520, p. 151.
- ³⁵ E/CN.7/484/Rev.1 (Guide)—Publication Sales No. E.73.XI.1 (Commentary).
- ³⁶ WHA 18.47.
- ³⁷ E/RES/1104 (XL).
- ³⁸ E/RES/1293 (XLIV).
- ³⁹ A/RES/2433 (XXIII).
- ⁴⁰ E/RES/1402 (XLVI).
- ⁴¹ A/RES/2584 (XXIV).
- ⁴² A/RES/1474 (XLVIII).
- ⁴³ All material relating to the Conference has been published under E/CONF.58/ and the Convention itself under E/CONF.58/6 and Sales No. E.78.XI.3.
- ⁴⁴ Publication Sales No. E.76.XI.5.
- ⁴⁵ E/RES/1577 (L).
- ⁴⁶ All material relating to the Conference has been published under E/CONF.63/ and the Protocol itself under E/CONF.63/9. The Single Convention as amended has been issued as a United Nations Publication under Sales No. E.77.XI.3.
- ⁴⁷ United Nations Publication, Sales No. E.76.XI.6.

D. ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

There are eight cases within the framework of ESCAP which involved multilateral treaty-making process.

1. *Asia and Pacific Coconut Community (APCC)*

1. The ECAFE Commission at its twenty-third session held at Tokyo in April 1967 requested, by resolution (XXIII), the Executive Secretary to conduct and promote studies on economic co-operation and plan harmonization at the subregional and regional levels and to organize meetings and discussions relating to studies on economic co-operation and plan harmonization.

2. The First Series of Intergovernmental Consultations on Regional and Subregional Plan Harmonization and Economic Co-operation, held at Bangkok in November 1967, came to the conclusion that the most feasible approach to regional economic co-operation and plan harmonization was to proceed on a commodity-by-commodity, project-by-project and subregional basis.

3. The subregional consultations on Regional Plan Harmonization on Coconut, Coconut Products and Oil Palms was held at Bangkok in October 1968. The meeting examined proposed regional organization of coconut, and unanimously agreed that there was an urgent need for co-operation among the coconut producing countries of Asia. The meeting suggested the organization be called the "Asian Coconut Community", and requested the Executive Secretary of ESCAP to organize another meeting at inter-governmental level to finalize the draft of the general principles for the establishment of the proposed community which would be submitted to the Governments for ratification.

4. The Inter-governmental Consultations on the Asian Coconut Community were convened at Bangkok in November 1968 by ECAFE in response to the request of the participants in the Sub-regional Consultations on Regional Plan Harmonization: Coconut, Coconut Products and Oil Palms to negotiate an acceptable agreement covering the whole range of policies, functions, structure, finance, administration and legal aspects of the proposed Asian Coconut Community. The Agreement, consisting of a preamble and sixteen articles, was open for signature by the plenipotentiaries of the seven Contracting Parties at ECAFE in Bangkok in June 1969 and was subject to ratification or acceptance by the signatory Governments in accordance with their respective constitutional procedures. Instruments of ratification or acceptance should be deposited with the Secretary-General of the United Nations not later than 31 December 1969.

5. The meeting resolved to recommend to the Governments of the developing countries concerned in the region that they consider joining the Asian Coconut Community and giving it all the support it might need. It requested the Executive Secretary of ECAFE to continue his assistance in the establishment of the Community and to urge all appropriate bodies of the

United Nations family of organizations to give it their full support and assistance.

6. At the 25th session held at Singapore in April 1969 the Commission adopted resolution 95 (XXV) whereby it endorsed fully the formation of the Asian Coconut Community.

7. The Agreement establishing the Asian Coconut Community entered into force on 30 July 1969, the Secretary-General of the United Nations being the depositary of the instruments of ratification and accession. The Community was formally inaugurated on 2 September 1969 in Colombo.

8. At the 26th session of the ECAFE Commission, held at Bangkok in April 1970, the Community was accorded the status of inter-governmental organization pursuant to ECOSOC resolution 1267 (LXIII).

2. *The Asian Development Bank (ADB)*

9. The ECAFE Commission at its 19th session held in Manila in March 1963 adopted resolution 45 (XIX) on "Accelerated measures for regional economic co-operation for development of trade and industry" whereby the Executive Secretary was requested "to convene a meeting of high level representatives of member and associate member governments of the ECAFE (ESCAP) region to review the progress achieved so far and to formulate and adopt more positive measures for concerted regional action". Pursuant to this resolution, the first session of the Ministerial Conference on Asian Economic Co-operation (later renamed as the Council of Ministers for Asian Economic Co-operation in 1970) was held at Manila in December 1963. The First Ministerial Conference adopted a "Resolution on Asian Economic Co-operation" in which the ministers agreed to convene *ad hoc* committees to undertake preparatory and investigatory work on various measures aimed at regional economic co-operation among which was the establishment of an Asian Development Bank.

10. Pursuant to the aforementioned programme on regional economic co-operation adopted at the Manila Ministerial Conference, an *ad hoc* Working Group of Experts on the Asian Development Bank was convened at Bangkok in October 1964 to examine major questions relating to the Asian Development Bank and to recommend institutional arrangements including a draft charter for its establishment.

11. The Commission at its 21st session held at Wellington in March 1965 adopted resolution 62 (XXI) whereby it decided to establish a high level consultative committee of experts designated by the Governments of nine regional member countries to consult the Governments of member countries in the region and of developed countries outside the region, as well as international financial and other institutions regarding various aspects of the establishment of the proposed Bank. The Consultative Committee met four times respectively in June, August, October, and November 1965.

12. Also pursuant to resolution 62 (XXI), the Preparatory Committee on the Asian Development Bank was convened at Bangkok in October/November 1965 to consider the recommendations of the Consultative Committee on the Asian Development Bank, including the draft charter and to prepare its report for consideration by the Second Ministerial Conference on Asian Economic

Co-operation and the Conference of Plenipotentiaries on the Asian Development Bank. The Preparatory Committee endorsed, with minor amendments, the draft Agreement recommended by the Consultative Committee.

13. The Agreement Establishing the Asian Development Bank was submitted by the Preparatory Committee to the Second Ministerial Conference on Asian Economic Co-operation which was held at Manila in November/December 1965. The Second Ministerial Conference adopted the Agreement Establishing the Asian Development Bank.¹

14. Further, the Conference of Plenipotentiaries on the Asian Development Bank was convened immediately after the Second Ministerial Conference on Asian Economic Co-operation, at Manila in December 1965, also in pursuance of ECAFE Commission resolution 62 (XXI). The Conference was attended by representatives of twenty-seven countries, eighteen from the region and nine from countries outside the region. The Agreement Establishing the Asian Development Bank was presented at the Conference for signature by the Plenipotentiaries.

15. The Agreement came into force on 22 August 1966, the Secretary-General of the United Nations being the depositary of the instruments of ratification and accession.

3. *The Asian Rice Trade Fund*

16. The efforts for promotion and development of regional economic co-operation on agricultural commodities including rice were initiated by the First Working Group of Planning Experts on Regional Harmonization of Development Plans held at Bangkok in November-December 1966. Following the recommendations made by this Working Group, the First Series of Intergovernmental Consultations on Regional and Subregional Plan Harmonization and Economic Co-operation was convened at Bangkok in November 1967. The consultations worked out an action programme for accelerating regional co-operation, recommending to adopt a commodity-by-commodity, project-by-project and subregional approach. The efforts made in accordance with the action programme culminated in the establishment of communities or associations on several agricultural commodities such as coconut, pepper, natural rubber and lumber.

17. As for rice, ECAFE/FAO Expert Group Meeting on Stabilization and Expansion of Intra-regional Trade in Rice and some other Agricultural and Non-Agricultural Commodities and Harmonization of National Plans was held at Bangkok in October 1969. The Expert Group reviewed the export availability and import requirements for rice, wheat, other cereals and agricultural requisites in eleven selected ECAFE countries, discussed the possible measures to stabilize and expand intra-regional trade of rice, and recommended to build up a more comprehensive picture of import/export requirements of those commodities in the region.

18. Pursuant to the recommendation of the Expert Group, Intergovernmental Consultation and Regional Co-operation in Rice was convened at Bangkok in March 1970. The Consultation reviewed the issues related to rice economy and rice trade in Asia, examined the proposal on trading arrangement for expansion in intra-regional rice trading which was prepared by the

ECAFE secretariat by modelling after the International Wheat Agreement, and discussed buffer stocks for stabilization of supply and price of rice.

19. The Commission at its 26th session held at Bangkok in April 1970 adopted resolution 105 (XXVI) on "Regional consultations on rice" whereby the Executive Secretary was requested "in consultation with FAO, to undertake studies for and initiate as early as possible regular intergovernmental consultations on rice among the countries of the region within the framework of the trade liberalization and development programme".

20. Pursuant to this resolution, an Expert Group Meeting on Intraregional Trade in Rice and Cereals and Harmonization of National Plans, organized in co-operation with UNCTAD, FAO and UNDP, was convened at Bangkok in September 1971. The Group reviewed anticipated export availability and import requirements of the region in 1975 and examined draft proposals, "A special Asian Rice Trade Scheme", prepared by the ECAFE secretariat.

21. The Intergovernmental Meeting on the Establishment of an Asian Rice Trade Fund convened at Bangkok in March 1973 examined and approved a draft Agreement Establishing the Asian Rice Trade Fund, which was prepared by the ECAFE secretariat taking recommendations of the aforementioned Expert Group into consideration. The draft Agreement finalized and approved by the Meeting was initialed by the representative of the Khmer Republic, the Philippines and Thailand.

22. The Commission at its 29th session held at Tokyo in April 1973 approved the Agreement and adopted resolution 136 (XXIX) on the "Asian Rice Trade Fund".

23. The Agreement Establishing the Asian Rice Trade Fund was opened for signature at ECAFE up to 31 May 1974, and came into force on 1 December 1974 with the deposit of instruments of acceptance with UN Headquarters by three countries, Bangladesh, India and Sri Lanka.

4. *The first Agreement on Trade Negotiations among Developing Member Countries of the Economic and Social Commission for Asia and the Pacific (Bangkok Agreement)*

24. In the Kabul Declaration by the Fourth Council of Ministers on Asian Economic Co-operation convened at Kabul, Afghanistan, in December 1970, the Council of Ministers announced its decision, *inter alia*, "to establish an intergovernmental committee—comprising representatives of regional member and associate member countries of ECAFE interested in initiating a trade expansion programme—to conduct such an examination of, and make suitable modifications to, the relevant principles and also to deal with other necessary technical and operational matters, so that a trade development programme can be launched as speedily as possible."

25. In pursuance of this mandate, the first meeting of the Intergovernmental Committee on Trade Expansion Programme was convened at Bangkok, Thailand, from 12 to 17 November 1971. In the light of the studies and documentations presented on trade expansion among the developing countries of the region, the Committee unanimously agreed that the Asian Trade Expansion Programme among developing countries be launched and requested the Executive Secretary to convene as soon as possible the first meeting of the

Trade Negotiations Group composed of the developing countries of ESCAP which would consider and agree on its work programme.

26. The First Meeting of the Trade Negotiations Group (TNG) attended by thirteen developing countries of ESCAP was held in Bangkok on 14 February 1972 and adopted the programme of work and timetable for the Asian Trade Expansion Programme. The Secretariat was made a focal point for the exchange of information among the participating States and was also requested to undertake the necessary research and studies in the field of trade expansion and co-operation among developing countries. At its second session in January 1973, the TNG adopted the group rules and procedures for negotiations. Exchange of request and offer of list of products of interest to the countries were made during the subsequent sessions and during its Fifth Session, 106 bilateral negotiations were held and the exchanges of specific offers for tariff reductions on specific commodities were finalized. These offers were formally adopted through the signing of the Agreement on Trade Negotiations among the developing countries of ESCAP, 31 July 1975, otherwise known as the Bangkok Agreement. The following countries signed the Agreement: Bangladesh, India, Laos, Philippines, Republic of Korea, Sri Lanka and Thailand.

27. According to the Agreement, it was to enter into force for the first time 30 days after the date of deposit of the third instrument of ratification by three signatory States which deposit the instrument of ratification. For every other original signatory State which deposits its instrument of ratification after the deposit of the third instrument of ratification, the Agreement shall come into force 30 days after the date on which that State had deposited its respective instrument of ratification, provided that such instruments of ratification are deposited before 31 January 1976. The following countries have ratified the Agreement: Bangladesh, India, Lao People's Democratic Republic, Republic of Korea and Sri Lanka.

28. The Agreement came into force in June 1976. The Executive Secretary of the Economic and Social Commission for Asia and the Pacific was made the depositary of the Agreement.

5. *Pepper Community*

29. In pursuance of resolution 87 (XXIII) adopted at the 23rd session of ECAFE held at Tokyo in April 1967, the Third Ministerial Conference on Asian Economic Co-operation was convened at Bangkok in December 1968. Following the Agreement reached in regard to coconut, the Conference adopted the resolution in which it requested the Executive Secretary to promote similar co-operative efforts on important products produced in the region such as pepper.

30. India, Indonesia and Malaysia agreed in their informal talks held at Djakarta in July 1970 to establish a Pepper Community, patterned after the Asian Coconut Community.

31. In response to a request by a major pepper producing country and as a follow-up to the above informal talks, Inter-governmental Consultations on Regional Co-operation in Pepper in Asia were convened at ECAFE headquarters in February 1971. At the consultations representatives of Governments of

India, Indonesia and Malaysia approved the draft agreement establishing the pepper community.

32. The Agreement establishing the Pepper Community came into force on 21 April 1971 with the deposit of instruments of ratification by its three original signatories, viz. India, Indonesia and Malaysia.

6. *Agreement Establishing the Southeast Asia Tin Research and Development Centre (SEATRADE)*

33. During the joint eighth session of the Working Party of Senior Geologists and the Sub-Committee on Mineral Resources Development (Bandung, Indonesia, 1970), the representatives of Indonesia, Malaysia and Thailand requested the Executive Secretary of the then Economic Commission for Asia and the Pacific (ECAFE) to establish an appropriate organization for the research and development of tin research in the region.

34. The Committee on Industry and Natural Resources, at its twenty-third session (Bangkok, 1971) and the Commission at its twenty-seventh session (Manila, April 1971) endorsed the request as well as the convening of a meeting of representatives of tin-producing countries of Southeast Asia to consider the establishment of a sub-regional organization.

35. Accordingly, ESCAP secretariat engaged a consultant in 1971 to investigate the requirements for a tin research and development centre for Southeast Asia and his report was circulated to the tin-producing countries in the region. A meeting of government representatives of the leading tin-producing countries of Southeast Asia was held at Bangkok from 24 to 28 January 1978 to consider the consultant's report and to examine the question of establishing a tin centre and to recommend institutional arrangements. The meeting was attended by government representatives from Indonesia, Malaysia and Thailand. A draft agreement for the establishment of the Centre was prepared by the meeting for consideration by participating Governments.

36. At the invitations of the Governments of Indonesia, Malaysia and Thailand, UNDP fielded a fact-finding mission in late 1973 to the three countries. A project proposal for UNDP assistance incorporating the recommendations of the mission was prepared and circulated to the three countries for their consideration.

37. In July and October-November 1974, ESCAP convened two meetings at Bangkok and Kuala Lumpur respectively of government representatives from Indonesia, Malaysia and Thailand to discuss in detail the draft project document for UNDP assistance and the draft agreement for establishing the tin centre.

38. The draft agreement and the project document were accepted after some minor amendments at the Kuala Lumpur meeting. Due to constraints in funding by the UNDP which developed in late 1975, the operations of the tin centre project could not be initiated until early 1977.

39. The Agreement Establishing the Southeast Asia Tin Research and Development Centre at Ipoh, Malaysia, as an inter-governmental body was presented during the 33rd session of the Commission at Bangkok to the three founding countries, Indonesia, Malaysia and Thailand, for signature by the plenipotentiaries. The Agreement was signed on 28 April 1977.

40. The instruments of ratification by the Governments of Indonesia, Malaysia, and Thailand, lodged with the Secretary-General on 12 and 20 September and 18 October 1977, respectively, were officially deposited with the Secretary-General on 11 January 1978, the date of the receipt of the third notification of acceptance.

41. Pursuant to the provisions of article 8, the Agreement entered into force for Indonesia, Malaysia and Thailand on 10 February 1978.

7. *Asian Reinsurance Corporation (under incorporation)*

42. The need to strengthen national insurance and reinsurance markets in order to assist trade expansion was noted at the 1969 session of the Committee on Trade of ECAFE. Resolution 42 (III) of insurance and reinsurance adopted at the 1972 session of UNCTAD recommended, *inter alia*, the establishment of closer co-operation between the insurance supervisory services as well as between their insurance and reinsurance institutions on a regional and/or sub-regional basis and requested UNDP and UNCTAD to finance and organise regional meetings for insurance supervisors for the purpose of exchanging information and experiences, with the participation of UN Regional Economic Commissions. It also requested the UNCTAD secretariat to continue its studies of insurance and reinsurance—including regional and/or sub-regional reinsurance funds.

43. A round table meeting of Asian Insurance Commissioners and other senior government officials in charge of insurance supervision was organised by UNCTAD/ECAFE, financed by UNDP, in July 1972 in Bangkok. It was attended by representatives from 16 countries. The meeting discussed the control on terms and conditions of reinsurance arrangements (especially outward reinsurances). The meeting felt that while Insurance Commissioners should in general abstain from interfering in the purely commercial activities of regional pools, they may play a decisive role in promotion of the idea of regional co-operation of the national insurance markets (both in the form of company-to-company exchange of business and that of global institutional arrangements such as regional pools), by suggesting their establishment and in providing general guidelines for action aimed at increasing the exchange of business among the insurance markets of the member countries.

44. The July 1973 session of the Committee on Invisibles of UNCTAD took note of a study by the secretariat on "Reinsurance problems in developing countries" and invited developing countries to consider the adoption of such measures suggested in the study as may be appropriate in their individual circumstances, aimed at a structural development of their national insurance markets and an increase in regional and sub-regional co-operation among developing countries in the field of reinsurance.

45. As a direct follow-up of the June 1972 meeting of Asian Insurance Commissioners and taking note of the full support of Asian Governments to efforts in this field voiced in the January 1973 meeting of the ECAFE Committee on Trade and July 1973 meeting of the UNCTAD Committee on Invisibles, a round table meeting was organized by UNCTAD/ECAFE in December 1974 on Asian Reinsurance Co-operation. The round table meeting was attended by representatives from 18 developing countries of the ESCAP region.

After a detailed technical discussion of the reinsurance conditions in the Asian countries and the existing Asian sub-regional reinsurance schemes, the participants considered further action in the field of Asian reinsurance co-operation. They unanimously accepted the principle of establishing a pan-Asian reinsurance corporation and decided to establish a Preparatory Committee comprising representatives of 10 Asian countries to pursue the subject further.

46. The Preparatory Committee was given the following terms of reference:

(a) to prepare a feasibility report on the basis of which a final decision can be taken by the Asian countries in respect of the establishment of Asian Reinsurance Corporation;

(b) in particular, to determine the basis of the feasibility study, including projections for revenue accounts and cash flows for a number of years based on the expected business inflow, and to determine the requirements for establishing the corporation regarding, for example, share capital issues, legal acts of constitution, headquarters and immunities; and

(c) to submit not later than the end of 1975 its final report and recommendations to a plenary meeting, which in turn will decide whether the project is ready for submission to the proper intergovernmental body for implementation.

47. The Preparatory Committee met twice in January 1976 and June 1976 and discussed the various issues involved in detail. It also attempted to prepare a draft Agreement Establishing the Corporation based on the text of the Agreement establishing African Reinsurance Corporation. The Committee made a positive recommendation regarding the feasibility of establishing the Asian Reinsurance Corporation even though it was unable to collect sufficient data to make the projections of accounts as required by the terms of reference.

48. UNCTAD/ECAFE, with the financial support of UNDP, organised a second round table meeting on Asian Reinsurance Corporation in December 1976 to consider the report of the Preparatory Committee and the draft Agreement Establishing the Asian Reinsurance Corporation which emerged from the discussions in the Preparatory Committee. The Round Table meeting was attended by representatives from 12 developing countries. The meeting decided to recommend establishment of Asian Reinsurance Corporation as an intergovernmental regional institution with headquarters at Bangkok and to ensure a minimum flow of business to the Corporation through obligatory cessions from insurers of member countries. It finalized the provisions of the Agreement establishing the Asian Reinsurance Corporation and requested the ESCAP secretariat to communicate the report of the round table meeting including its recommendations and the Agreement, to member States for further action. It requested UNCTAD to consult the Office of Legal Affairs of the UN on the legal aspects and then finalize the text.

49. In March 1977, the Executive Secretary of ESCAP forwarded the report of the second round table meeting together with the Agreement Establishing the Asian Reinsurance Corporation to the 18 countries which had participated in the first round table meeting. He stated that the Agreement would be ready for signature at the 33rd session of ESCAP in April 1977.

50. In order to enter into force, the Agreement required that at least 8 developing countries (members of ESCAP) had ratified it and deposited their subscriptions to the share capital.

51. While the project had received wide enough support, it could not be implemented due to the lack of sufficient ratifications. Accordingly, a consultation meeting of representatives of signatory Governments was convened in October/November 1977 to consider the matter. The meeting recommended extension of the last date for signature to 31 March 1978 and reduction in the minimum number of signatory Governments to 7. This recommendation was referred to all the signatory Governments for their approval. On 31 March 1978 an eighth country signed the Agreement. One of the original 7 signatories had made reservations both with regard to subscription to share capital and cession of reinsurance business which had the effect of making its signature inoperative. The November 1977 meeting requested ESCAP to write and persuade that country to withdraw its reservations.

52. The Agreement has not yet entered into force since only one out of the 8 signatories has ratified the Agreement so far and only four countries have deposited their subscriptions to the share capital.

8. *Asia-Pacific Telecommunity*

53. The twenty-second session of the Transport and Communications Committee held at Bangkok in January 1974 first initiated the proposal for establishing an "Asian Telecommunity" in order to assist continuously in the planning, augmentation, switching and tariff revision of the links and channels in the Asian telecommunication network, and recommended that studies in that connexion should be continued by ESCAP and ITU to determine the type and extent of co-operation and organization required for the Asian Telecommunity. Accordingly, ESCAP convened an Expert Group Meeting representing the Governments of the region to prepare the first draft of the Statute of the Asian Telecommunity after detailed discussions of the objectives of the Telecommunity and specially the type of the Statute most suitable for the Asia-Pacific region. This meeting was attended by experts from the following countries: Bangladesh, India, Indonesia, Iran, Japan, Malaysia, Nepal, the Philippines, Singapore, Thailand, United Kingdom and Hong Kong. Representatives of ITU also participated.

54. The draft Statute was placed before an Intergovernmental Working Party of Experts which met to finalize the Constitution of the Asia-Pacific Telecommunity from 24 March to 2 April 1976. At this meeting, which was attended by the representatives of the following member and associate member countries: Afghanistan, Australia, Bangladesh, France, Hong Kong, India, Indonesia, Iran, Japan, Malaysia, Nepal, New Zealand, Pakistan, Papua New Guinea, Philippines, Singapore, Thailand, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and the United States of America, the Constitution was considered in great detail. The establishment of an Asia-Pacific Telecommunity was strongly recommended as a regional telecommunication organization in conformity with Article 32 of the International Telecommunication Convention, Malaga-Torremolinos, 1973:

"Members reserve the right to convene regional conferences, to make regional arrangements and to form regional organization for the purpose

of settling telecommunication questions which are susceptible of being treated on a regional basis. Such arrangements shall not be in conflict with this Convention.”

The objectives of the Telecommunity were specially reviewed and revised taking into consideration the wishes of all the participating Governments. In this Constitution, the General Assembly, the Management Committee and the Permanent Secretariat of the Telecommunity were recommended to take into consideration the large amount of work that would be required. The expenses of the Telecommunity and the methodology in raising the same were also considered and included in Article 11 of the Constitution of the Telecommunity.

55. At the thirty-second session of the Commission (April 1976), a resolution on the Establishment of the Asia-Pacific Telecommunity was unanimously adopted. The Commission, in recognizing the need for co-operation in the detailed planning and management of the existing and projected telecommunication services within the region in the current rapid development of the telecommunication and of the implementation of the Asian telecommunication network, endorsed the report of the Intergovernmental Working Party of Experts to Finalize the Constitution of the Asia-Pacific Telecommunity and adopted the Constitution with certain modification and comments of the various Governments.

56. The Constitution of the Asia-Pacific Telecommunity was kept open for signature at the ESCAP secretariat at Bangkok since 1 April 1976 till 31 October 1976. It was signed at Bangkok by Bangladesh, Burma, China, India, Iran, Nauru, Nepal, Papua New Guinea, the Philippines and Thailand. Subsequently, the Constitution was kept open for signature with the Secretary-General of the United Nations at New York and additional countries signed the Constitution.²

57. ESCAP consulted some of the Governments concerned with a view to preparing draft documents for the inaugural session. These documents were circulated to all Governments who either signed or ratified the Constitution and the comments of the Governments have been received for consideration of the final documents to be submitted to the inaugural sessions of the General Assembly and the Management Committee.

58. According to Article 18 of the Constitution, the Constitution “shall enter into force on the thirtieth day after the deposit of instruments of ratification or acceptance with the Depositary, by seven signatory States that are eligible for membership in the Telecommunity under paragraph 2 of Article 3, including Thailand, the country in which the headquarters of the Telecommunity shall be”. This condition was fulfilled on 25 February 1976. So far, 21 countries have ratified or acceded to the Constitution.

NOTES

¹ United Nations, *Treaty Series*, vol. 571, p. 123.

² For information on the signatures and ratifications, see *Multilateral Treaties Deposited with the Secretary-General*, status as at 31 December 1981 (ST/LEG/SGR.E/1), p. 632.

E. ECONOMIC COMMISSION FOR EUROPE

1. *Inland transport*

1. The treaty-making activities of the ECE in the field of transport cover a wide range of subjects according either to the mode of transport on which a given treaty will apply or fields of activities relating to more than one mode of transport and which call for international rules in the form of binding agreements between the member countries of the organization.

2. According to the subjects to be dealt with in the respective treaty and in particular according to the scope of the treaty—European or world-wide—the initiative for its preparation might vary from case to case.

3. The preparation of European conventions is in general initiated by a subsidiary body of the Inland Transport Committee of the ECE, when the need for multilateral rules on a given subject in its field of competence is felt by several delegations. Proposals in this respect are put forward within these bodies not only by a member country or a group of these countries but also by international organizations participating in the work of the respective body.

4. The work on the preparation of world-wide conventions, in which the ECE has been playing a lead-role, has also been generally initiated in subsidiary bodies of the ECE. The convening of conferences of plenipotentiary representatives in order to conclude such conventions was decided by resolutions of the Economic and Social Council (UN Conference on Road and Motor Transport 1949 (ECOSOC Resolution I47 B (VII)); UN Conference on Road Traffic 1968 (ECOSOC Resolutions 1129 (XLI) and 1203 (XLII)); UN/IMCO Conference on Container Traffic 1972 (ECOSOC Resolutions 1568 (L) and 1569 (L) and IMCO Resolution A.245 (VII)).

5. Another way of initiating treaty-making activities in the sense of the revision of an already existing convention is the application of the procedures provided in a given convention and aiming at its revision. This was done by convening a Conference for reviewing the Customs Convention on the International Transport of Goods under cover of TIR Carnets 1959 in pursuance of its article 46.

6. In the latter case the revision of the TIR Convention had to a great extent also been prepared in the ECE Group of Experts on Customs Questions Affecting Transport. This group had elaborated a series of recommendations concerning the application of several provisions of the TIR Convention by its contracting parties “pending the revision of the TIR Convention” and had also elaborated amendments to the annexes of this Convention in pursuance of its article 47, paragraph 4.

7. In the case of several private law conventions drawn up under the auspices of the ECE, such as the CMR, CVR, CLN and CVN Conventions, it was the International Institute for the Unification of Private Law (UNIDROIT) which had made first drafts which were transmitted to the ECE for further consideration by its competent bodies.

8. As far as the European Agreement supplementing the Convention on Road Signs and Signals (1968) is concerned, draft substantive provisions have been prepared by the European Conference of Ministers of Transport for con-

sideration in the ECE Group of Experts on Road Traffic Safety and the ECE Working Party on Road Transport.

9. The Governments participating in the elaboration of international conventions frequently include in their delegations legal experts. In addition, legal officers in the UN Secretariat have been consulted when necessary, particularly on questions relating to the final clauses of the treaty under consideration. With a view to considering legal subjects in the field of inland navigation, in particular the drafting of legal instruments, the Group of Experts on River Law, a subsidiary body of the ECE Inland Transport Committee, was set up: it has elaborated the text of several civil liability conventions.

10. As to the procedure applied to treaty-making activities in the transport field, the following rules have in general been applied.

11. First drafts of treaties or proposals put forward for certain parts of a given treaty are communicated to all ECE member countries in order to give them the opportunity for commenting on it either in writing or orally at the meetings of the competent body preparing the convention. Several readings of the text are provided for, either for provisions where certain countries participating in the drafting work reserve their position, or when the draft texts of a treaty are submitted to the parent body of the body that undertook the initial drafting.

12. In general any comments in the course of the drafting are considered by the competent body.

13. Decisions of ECE bodies concerning the adoption of a text under consideration are taken in pursuance of the rules of procedure of the ECE. It is the Inland Transport Committee of the ECE that takes the final decision concerning the adoption of the text of a convention of European scope and on the date of its opening for signature.

14. The world-wide conferences of plenipotentiary representatives held in the instances mentioned above were also preceded by preparatory drafting work in the competent ECE bodies or, as was the case for the draft text of the Convention on Safe Containers, in joint meetings between ECE and IMCO.

15. As far as the treaty-making techniques in such conferences are concerned, this procedure varies according to the subject to be dealt with in the convention. It can be said that drafting work is divided between several committees dealing with certain parts of the draft convention and which report to the plenary. It is the plenary that takes final decisions and approves the reports made by committees.

2. Development of trade

16. The following comments relate to the techniques for the elaboration of the 1961 European Convention on International Commercial Arbitration and to one aspect of the techniques used in multilateral treaties regulating international trade procedures.

(a) Description of stages of elaboration of the 1961 European Convention on International Commercial Arbitration

(i) Initiative

17. The initiative belonged to the ECE member States at the time of the drawing up of the programme of work and priorities of the ECE for 1959-

1960. Under that programme, which was considered and approved in May 1959 at the fourteenth session of the Commission, the *ad hoc* Working Party of Experts on Arbitration was also to examine a draft European convention on particular questions concerning, *inter alia*, the relationship of arbitration and judicial procedures. The programme was endorsed by ECOSOC resolution 723 (XXVIII) adopted in July 1959.

(ii) *Preparation of the initial draft by and the role in general of the ad hoc Working Party of Experts on Arbitration*

18. The role of the *ad hoc* Working Party was of particular importance to the elaboration of the European Convention. In point of fact, the Working Party had been set up by the Committee on the Development of Trade much earlier (at the third session of the Committee in October 1954) and with assignments not specifying expressly the preparation of a convention. The Working Party's terms of reference included the collation of information on the present facilities for international commercial arbitration, on any international conventions dealing with arbitration which might then have been in force and on national laws concerning arbitration, and the examination of problems relating to the arbitral settlement of commercial disputes.

19. The Working Party discussed various questions connected with its terms of reference during its first, second, third and fourth sessions held in 1955, 1956 and 1957 respectively. The Committee on the Development of Trade took note of the Working Party's reports and decided that the latter was to continue its work.

20. At its fifth (October 1958), sixth (May 1959) and seventh (November 1959) sessions the Working Party drew up a draft European Convention on International Commercial Arbitration. The draft, as attached to the Working Party's report on the work of its seventh session, was submitted to the Committee on the Development of Trade.

21. As the *ad hoc* Working Party was itself composed of experts, including legal ones, there was no involvement of other experts in the preparation of the draft Convention. Necessary legal services were provided by the ECE secretariat, including in particular the latter's legal adviser, and there were no rapporteurs.

22. The draft was not accompanied by explanatory commentaries.

(iii) *Readings*

23. There were two readings—the first at the sixth session of the *ad hoc* Working Party and the second at the seventh session.

24. The draft was considered by the Committee on the Development of Trade during its eighth session held in October/November 1959. The results of the Committee's deliberations were summarized in the Annual Report of the ECE to the Economic and Social Council covering the period from 7 May 1959 to 7 May 1960 (fifteenth session of the Commission).

25. As Governments commented on the emerging text of the draft Convention there arose some differences of opinion on Article IV (Organization of the Arbitration) of the draft Convention after the seventh session of the Working Party. At the request of several Governments which wished to have further time to examine the draft prepared by the Working Party, the Executive

Secretary of ECE postponed the meeting of plenipotentiaries which was to have been convened in April 1960.

26. In its resolution 7 (XV) adopted on 5 May 1960 the Commission noted, *inter alia*, that differences existing between government experts taking part in the discussions in the *ad hoc* Working Party on the text of Article IV of the draft Convention had prevented the submission of an agreed single text. The Commission therefore requested the Executive Secretary to convene a special meeting to prepare an agreed text of Article IV of the draft Convention in order that a single text of the whole draft Convention might be submitted to the meeting of the plenipotentiaries.

(iv) *Special meeting concerning Article IV (Organization of the Arbitration)*

27. The first part of the special meeting to prepare an agreed text of Article IV of the draft Convention was held from 8 to 12 August 1960. After the Committee on the Development of Trade had taken note of the report of this meeting, the Executive Secretary called the second part of the special meeting and, following thereon, a Special Meeting of Plenipotentiaries for the purpose of negotiating and signing the European Convention on International Commercial Arbitration.

28. During the Special Meeting on Article IV several Governments submitted their proposals concerning the final version of the provisions of this Article.

(v) *Adoption and authentication of final treaty text*

29. On the basis of the draft Convention drawn up by the *ad hoc* Working Party, as well as the text agreed upon by the Special Meeting on Article IV and the draft of final clauses submitted by the secretariat, the Plenipotentiaries prepared the European Convention on International Commercial Arbitration.

30. No formal adoption of the Convention took place, although the Convention was actually adopted at the Meeting of the Plenipotentiaries. Reference to adoption was made in the report of the Special Meeting of Plenipotentiaries (E/ECE/424, E/ECE/TRADE/47, 20 April 1961).

31. Since no authentication procedure had been provided for in the text of the Convention or agreed upon by the States participating in its drawing up, it can be considered, on the basis of Article 10 of the Vienna Convention on the Law of Treaties, that the text of the Convention was established as authentic and definitive by the signature by the representatives of all the participating States of the text of the Convention and/or the Final Act of the Special Meeting of Plenipotentiaries incorporating the text.

(vi) *Opening for signature and accession*

32. The Special Meeting of Plenipotentiaries for the purpose of negotiating and signing a European Convention on International Commercial Arbitration was convened by the Executive Secretary of ECE in accordance with the terms of ECE resolution 7 (XV), and was held in Geneva under the auspices of the Commission from 10 to 21 April 1961. The Convention was opened for signature until 31 December 1961. Thereafter it was opened for accession.

33. The Executive Secretary informed the Commission of the results of the Special Meeting of Plenipotentiaries. After the Chairman of the Commission and various delegations had expressed appreciation of these results, the

European Convention and/or the Final Act thereof were signed during the eighteenth meeting of the sixteenth session of the Commission by special plenipotentiaries of the following States:

The Convention and the Final Act: Austria, Belgium, Bulgaria, Byelorussian SSR, Czechoslovakia, Denmark, Federal Republic of Germany, France, Hungary, Italy, Poland, Romania, Turkey, Ukrainian SSR, USSR, Yugoslavia;

The Final Act only: Finland, Luxembourg, Netherlands, Spain, Sweden, Switzerland.

Thus the answer to the question: Had the Convention been finally considered, adopted and opened for signature by a United Nations committee or diplomatic conference? is that it was a diplomatic conference but one convened and held within a United Nations body and composed only of the States members of that body.

34. In the Final Act itself the terms "accession" or "adhesion" do not appear in conjunction with the signature except that the Government of the USSR considered that the Convention was opened to the signature or adhesion of any European State.

35. In adopting the text of the European Convention on International Commercial Arbitration, the Plenipotentiaries decided that a report should be prepared summarizing the observations made by a number of delegations on some of the provisions of the Convention in the course of the discussion.

36. The Convention entered into force on 7 January 1964 after five of the signatory States had deposited their instruments of ratification or accession. Two non-European States and non-members of the ECE (Upper Volta and Cuba) also acceded to the Convention.

(b) *Comment on one aspect of techniques used in multilateral treaties regulating international trade procedures*

37. Treaties concerning the transport of goods internationally (by road, rail, sea or air), treaties concerning conditions for their transit or import and treaties concerning international trade in certain special products such as dangerous goods and endangered species, usually lay down in great detail requirements concerning information (data elements) that must be submitted to authorities to allow the initiation and completion of the international trade transaction.

38. Experience shows that the need to change such information requirements occurs more frequently than the need to change the main provisions of the treaty. In cases where the information must be submitted in accordance with a standardized document (a form) that is annexed to the treaty and, therefore, part of it, it is necessary to change the treaty whenever it is desirable to change the document. Minor, practical changes reflecting recent changes in reproduction and transmission techniques might thus be introduced to the detriment of facilitation efforts.

39. The Working Party on Facilitation of International Trade Procedures has therefore recommended that standardized documents containing information (i.e. forms containing data elements; data carriers) specified in a treaty should not form an integral part of the text; the drafting of a treaty should allow changes in the content and layout of such documents to be affected by a

decision taken by a competent organ of the organization under the auspices of which the convention in question was negotiated.

40. The text of this recommendation was inserted in the Report of the Working Party on Facilitation of International Trade Procedures at its eighth session (September 1978) when the Chairman observed that the Working Party would appreciate it if the Report by the Secretary-General on the important matter of techniques used in multilateral treaties could mention this aspect, which was of practical importance for treaties regulating international trade procedures and, thus, for the facilitation of international trade.

3. *Description of stages in the elaboration of the 1979 Convention on Long-range Transboundary Air Pollution*

(a) *Initiatives*

41. An ECE Symposium on problems relating to environment held in Prague, Czechoslovakia, in 1971 within the framework of the ECE, marked the start of important initiatives towards international co-operation in the field of protection of natural surroundings. On the global front, the Conference on the Human Environment held in Stockholm, Sweden, in 1972 led to extensive activities on the part of the United Nations Environment Programme. The pertinent provisions of this subject were laid down in the Final Act of the Conference on Security and Co-operation in Europe (CSCE), the participating States in which expressed a wish to take advantage of possibilities extended by relevant international organizations—in particular, by the United Nations Economic Commission for Europe—to give effect to certain provisions contained in CSCE documents.

42. During the thirty-first session of the ECE held in 1976, the delegation of the USSR submitted a proposal with regard to holding all-European congresses on co-operation in the field of protection of the environment, development of transport and energy. This proposal was aimed at giving practical effect to the relevant provisions and principles agreed upon in the *Final Act* of CSCE. In its resolution B (XXXI) of 9 April 1976, the Commission suggested that member Governments study the proposal thoroughly in the light of the provisions of the *Final Act* and requested the Executive Secretary to circulate details of the proposal with a view to member Governments communicating any comments to him.

43. During the thirty-second session of the ECE (held in 1977), the suggestion was put forward that many of the problems arising in the field of environment could be dealt with other than by the traditional methods of the ECE at the level of expert meetings: the holding of all-European congresses, for example, as proposed by the USSR delegation, would contribute to the solution of problems in this area. Hence, in its resolution I (XXXII) of 30 April 1977, the Commission invited the Executive Secretary to carry out a detailed analysis of topics which might be appropriate for consideration at a high-level meeting, within the framework of the ECE, on the protection of the environment, and requested him to present to the thirty-third session a Report on the modalities of organizing a high-level meeting and on the procedural and organizational issues related thereto.

44. During the thirty-third session of the ECE (held in 1978), it was decided that the forthcoming high-level meeting should be devoted to transboundary air pollution, the application of low- and non-waste technology, and re-utilization and re-cycling of wastes; and that the Senior Advisers to ECE Governments on Environmental Problems should undertake detailed work with a view to preparing a selection of themes suitable for a high-level meeting. In its resolution I (XXXIII) of 22 April 1978, the Commission requested the Senior Advisers on Environmental Problems to meet in special sessions and to prepare recommendations and concrete proposals on important decisions to be submitted to a high-level meeting.

(b) *Preparation of the text of the Convention and of accompanying documents*

45. In pursuance of the ECE resolution I (XXXIII) of 22 April 1978, the Senior Advisers on Environmental Problems held four special sessions (June 1978, October 1978, December 1978, March 1979) and during their first special session established two special groups: one for long-range transboundary air pollution, the other for low- and non-waste technology, and re-utilization and re-cycling of wastes.

46. The two special groups drafted the elements of the future Convention and its two accompanying documents. The special group on long-range transboundary air pollution was assisted in its work by a consultant.

(c) *Convocation of the High-level Meeting on the Protection of the Environment*

47. At its thirty-fourth session (held in 1979), the Commission considered the Report of the Senior Advisers on Environmental Problems and noted with satisfaction their work concerning a prospective high-level meeting on the protection of environment. Since many delegations were of the opinion that the results already achieved were sufficient to regard the preparations for a high-level meeting as having been mainly completed, the ECE agreed, first, in its resolution I (XXXIV) of 27 April 1979, that, following completion and acceptance by it of the draft Convention, draft resolution and draft declaration, the criteria for the convening of a high-level meeting had been met. Thereafter, in its decision A (XXXIV) of the same date, the ECE stated that the preparatory work on long-range transboundary air pollution, and low- and non-waste technology and re-utilization and re-cycling of wastes has been completed by it at its present session, and thus brought to a satisfactory conclusion. Consequently, the ECE decided to convene the high-level meeting from 13-16 November 1979 and that the following draft documents be submitted to that meeting for formal adoption:

- Convention on Long-range Transboundary Air Pollution;
- Resolution on Long-range Transboundary Air Pollution;
- Declaration on Low- and Non-waste Technology and Re-utilization and Re-cycling of Wastes.

48. For this purpose, the ECE asked the Executive Secretary to convene an *ad hoc* Group of Experts to finalize the legal and linguistic editing of the above three documents.

(d) *Meeting of the Ad Hoc Group of Experts to Finalize the Legal and Linguistic Editing of the Documents to be submitted to the High-level Meeting on the Protection of the Environment*

49. The *Ad Hoc* Group of Experts met in Geneva from 11 to 15 June 1979. It finalized the legal and linguistic editing of the Draft Convention on Long-range Transboundary Air Pollution, the Draft Resolution on Long-range Transboundary Air Pollution (in which the State signatories agree to start its implementation on an interim basis as soon as possible, and to carry out their obligations to the maximum extent possible pending the entry into force of the Convention), and the Draft Declaration on Low- and Non-waste Technology and Re-utilization and Re-cycling of Wastes.

(e) *Formal adoption of the Convention and of the two accompanying documents*

50. The Convention, the Resolution and the Declaration, which were accepted in substance by the ECE at its thirty-fourth session, were formally (by acclamation) adopted by the High-level Meeting on the Protection of the Environment on 13 November 1979.

(f) *Opening for signature*

51. The Convention was opened for signature at the United Nations Office at Geneva until 16 November 1979, on the occasion of the High-level Meeting within the Framework of the ECE on the Protection of the Environment, by ECE member States as well as by States having consultative status with the ECE pursuant to para. 8 of the ECOSOC resolution 36 (IV) of 28 March 1947, and by regional economic integration organizations, constituted by sovereign States members of the ECE, which have due competence in respect of the negotiation, conclusion and application of international agreements in matters covered by the Convention.

52. The Convention was signed by representatives of all ECE member States with exception of Albania, Cyprus and Malta, and also by representatives of the Holy See, Liechtenstein, San Marino, and the European Economic Community: thirty-five signatures in total.

(g) *Ratification, acceptance, approval and accession*

53. Up to 30 September 1981, the Convention had been ratified, accepted, approved or acceded to by the following States: Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Finland, France, Hungary, Norway, Portugal, Sweden, Ukrainian Soviet Socialist Republic and the United States of America.

54. As the Convention enters into force on the ninetieth day after the deposit of the twenty-fourth instrument of ratification, acceptance, approval or accession, and since, so far, only seven States have deposited such instruments, the Convention has not yet entered into force.

F. ECONOMIC COMMISSION FOR LATIN AMERICA

1. As part of its work programme this secretariat is assisting member nations with the preparation of a draft Latin American convention on the limi-

tation of civil liability for carriers engaged in international land transport of goods. Subsequent to the preparation of the original draft convention of this secretariat, the draft has gone through the following stages. First, in December 1977, a Group of Experts from various governmental organizations was convened to review and make changes, where necessary, to the original draft convention. The Group of Experts recommended in its report (E/CEPAL/1047) that we undertake a study on the effects of establishing relatively high or low limits of financial liability for such carriers. Second, an Intergovernmental Preparatory Meeting was held in September 1978. At this Meeting, governmental delegates reviewed the draft convention prepared by the Group of Experts and the aforementioned study, made changes considered necessary to said draft, and recommended various additional studies. Finally, each successive draft of the convention—that by the secretariat, that prepared by the Group of Experts, and that approved by governmental delegates at the Intergovernmental Preparatory Meeting—has been submitted to member Governments and regional and international organizations for comments and suggestions. At the present time, we are awaiting confirmation of the date of the second Intergovernmental Preparatory Meeting.

2. We would like to suggest that, as part of the initiative for studying or negotiating the elaboration of a multilateral draft treaty, it would be useful to evaluate the various forms by which such agreements could be expressed. The following paragraphs present some ideas which might be pertinent to such evaluation.

3. The International Convention for the Unification of Certain Rules Relating to Bills of Lading (1924), the Convention on the Contract for the International Carriage of Goods by Road (1956) and the draft Latin American Convention on the Civil Liability of Carriers in International Land Transport of Goods, better known as the Hague Rules, CMR and CRT respectively, are examples of mandatory conventions. The mandatory form for a multilateral treaty seems appropriate where the possible contracting parties agree not only that such measures, controls or standards are necessary but also as to what those measures, controls or standards should be. For example, the Code of Conduct for Liner Conferences—which is framed in a mandatory form—is a response to a general recognition that controls over shipping conferences are needed.

4. By way of comparison, the Container Safety Convention (1972) and the Convention on Facilitation of International Maritime Traffic (1965) are examples of working conventions. Conventions such as these are inherently more flexible than mandatory conventions because of their division into articles and annexes. The articles establish, *inter alia*, a forum in which all contracting parties have voting rights, and a procedure for the adoption of annexes—which will contain the measures, controls or standards developed by the contracting parties. This division into articles and annexes permits the contracting parties to settle their individual differences, over the long run, and establish measures, controls or standards on a piecemeal basis. Thus, the working form for a multilateral treaty requires only that the possible contracting parties agree that such measures, controls or standards are necessary—however far apart their individual definitions of those measures, controls or standards might be.

5. Within this basic framework many other provisions might be added to enhance flexibility of both mandatory and working treaties. Such treaties may be made more flexible by the addition of a review procedure as found in articles 49 of the CMR Convention and 62 of the TIR Convention, and by the allowance for bilateral agreements between contracting parties that modify convention provisions, rendering them more suitable to specific conditions as found in articles 49 of the TIR Convention and 41 of the Vienna Convention on the Law of Treaties.

G. INTERNATIONAL LAW COMMISSION

I. In accordance with General Assembly resolution 32/48 of 8 December 1977, the International Law Commission submits for inclusion in the report on the techniques and procedures used in the elaboration of multilateral treaties, to be prepared by the Secretary-General pursuant to that resolution, its observations on the review of the multilateral treaty-making process.

2. Those observations are presented in nine sections, as follows: (1) The International Law Commission as a United Nations body; (2) Object and functions of the International Law Commission; (3) Programme of work of the International Law Commission; (4) The role of the International Law Commission and its contribution to the treaty-making process through the preparation of draft articles; (5) Consolidated method and techniques of work of the International Law Commission as applied in general to the preparation of draft articles; (6) Other methods and techniques employed by the International Law Commission; (7) Relationship between the General Assembly and the International Law Commission; (8) Elaboration and conclusion of conventions on the basis of draft articles prepared by the International Law Commission following a General Assembly decision to that effect; (9) Conclusions. Appended to the present observations are relevant provisions of the Statute of the International Law Commission.

1. *The International Law Commission as a United Nations body*

3. As a means of fulfilling the task entrusted to it under Article 13 (1) of the Charter of the United Nations, the General Assembly, following the recommendations of the Committee on the progressive development of international law and its codification, by resolution 174 (II) of 21 November 1947 established the International Law Commission to be constituted and to exercise its functions in accordance with the provisions of the Statute annexed thereto.¹

4. The International Law Commission is a permanent and part-time subsidiary organ of the General Assembly. In accordance with its Statute it consists of 25 members who are persons of recognized competence in international law, elected for five years, in a manner such as to assure representation in the Commission as a whole of the main forms of civilization and of the principal legal systems of the world. The members of the Commission sit in their individual capacities and not as representatives of Governments.

5. Members of the Commission are elected by the General Assembly from a list of candidates nominated by States Members of the United Nations.

Casual vacancies are filled by the Commission itself having regard to the same provisions originally addressed to the General Assembly concerning qualifications. The Commission's members are eligible for re-election.

6. The Commission sits, as provided in article 12 of its Statute, at the Office of the United Nations at Geneva. Under present arrangements, the Commission annually holds a 12-week session in the spring and early summer. At each session, the Commission elects the five officers who constitute the Bureau of the session: Chairman, First and Second Vice-Chairmen, Chairman of the Drafting Committee and Rapporteur. These officers, plus former Chairmen of the Commission and the Special Rapporteurs, constitute the Enlarged Bureau of any given session. The practice has been developed that on the recommendation of the Enlarged Bureau, the Commission sets up for a particular session a Planning Group to consider matters relating to the organization, programme and methods of work of the Commission and to report thereon to the Enlarged Bureau. The Commission appoints at each session a Drafting Committee (see paragraphs 45 and 46 below). Also, sub-committees or working groups may be established for the performance of specific tasks entrusted to them by the Commission (see paragraph 57 below).

7. The Commission adopts at the beginning of each session the agenda for the session. The provisional agenda is prepared by the Secretariat on the basis of the relevant decisions of the General Assembly and the Commission and the pertinent provisions of the Statute. The order in which items are listed in the agenda adopted does not necessarily determine their actual order of consideration by the Commission, the latter being rather a result of *ad hoc* decisions. The agenda of a given session is to be distinguished from the Commission's programme of work, which is established as indicated in paragraphs 20 to 23 below. Not every topic on the programme of work of the Commission is necessarily included in the agenda of a particular session.

8. The Commission, at its first session in 1949, decided that the rules referred to in rule 161 (establishment and rules of procedure of subsidiary organs) of the General Assembly Rules of Procedure would be provisionally applicable to the Commission and that it would, if need arose, draft its own rules of procedure.² Accordingly, rule 125 of the rules of procedure of the General Assembly, which provides that decisions of committees shall be made by a majority of the members present and voting, applies to the proceedings of the Commission. However, over the years the Commission has increasingly taken decisions, on both substantive and procedural matters, without a vote, by common understanding or consensus. The Commission holds its plenary meetings in public unless it decides otherwise, in particular when dealing with certain organizational or administrative matters. Summary records of the public meetings are issued provisionally for participants only and are, after Commission members have had the opportunity to correct the provisional versions, subsequently printed in final form in volume I of the *Yearbook of the International Law Commission*, a United Nations publication.

9. In accordance with article 14 of the Commission's Statute, the Secretary-General shall, so far as he is able, make available staff and facilities required by the Commission to fulfil its task. The Codification Division of the Office of Legal Affairs of the United Nations has, as one of its main functions, that of providing the secretariat for the Commission. In order to facilitate the

work of the International Law Commission and its Special Rapporteurs, the Codification Division prepares studies, research projects, surveys and compilations on general questions relating to the progressive development of international law and its codification as well as on particular topics on the programme of work of the Commission or aspects thereof. Published studies, research projects and surveys prepared by the Codification Division for the Commission are issued as documents of the Commission and printed in volume II of the *Yearbook of the International Law Commission*. The Codification Division also publishes, for the assistance of the Commission, the *United Nations Legislative Series*, each volume of the *Series* being a compilation of laws, decrees, treaty provisions and other relevant materials concerning a specific topic, as well as the series entitled *Reports of International Arbitral Awards*, an annotated collection of texts of arbitral awards.³

2. Object and functions of the International Law Commission

10. Article 1, paragraph 1, of the Statute of the International Law Commission provides that the "Commission shall have for its object the promotion of the progressive development of international law and its codification". Article 1, paragraph 2, of the Statute states that the Commission "shall concern itself primarily with public international law".⁴ The Commission has, therefore, been invested by the General Assembly with general permanent functions in its own field of activity, as defined by its Statute, occupying in that respect a central position within the United Nations system in the task of assisting the General Assembly in the promotion of the progressive development of international law and its codification.

11. Other subsidiary organs set up within the United Nations have also been entrusted with functions aimed at or resulting in the promotion of the progressive development of international law and its codification by the United Nations. The United Nations Commission on International Trade Law (UNCITRAL), the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space, and the Commission on Human Rights could be mentioned as examples of bodies established on a permanent basis and dealing with questions of international law or matters relevant thereto. Special or *ad hoc* committees set up by the General Assembly are also frequently entrusted with functions having or presenting an interest for the promotion of the progressive development of international law and its codification. The work done by the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States and the Special Committee on the Question of Defining Aggression could be singled out in that context. Other special or *ad hoc* committees, such as the *Ad Hoc* Committee on International Terrorism, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, the *Ad Hoc* Committee on the Drafting of an International Convention Against the Taking of Hostages and the Special Committee on Enhancing the Effectiveness of the Principle of Non-Use of Force in International Relations, are engaged in work which may also result in furthering the development of international law and its codification. A point common to all the above-mentioned permanent or *ad hoc* bodies is that their contributions to the progressive development of interna-

tional law and its codification take place in specific fields as defined in their mandates. Article 18 of the Statute of the Commission provides that it shall survey "the whole field of international law with a view to selecting topics for codification". Moreover, the General Assembly has, in the course of the years, referred to the Commission for consideration topics belonging to various fields of international law (see paragraph 21 below).

12. The functions of the International Law Commission are set out in Chapter II of its Statute, which is appended to the present observations.⁵ The opening article of that chapter, namely article 15, makes a distinction "for convenience" between "progressive development", as meaning "the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States", and "codification", as meaning "the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine". Having made such a distinction, the Statute enumerates separately the methods to be followed by the Commission with regard to the progressive development of international law from those to be followed with regard to the codification of international law. The general method for the progressive development of international law is provided in article 16 of the Statute. Provision is made in article 17 for a specific method with respect to the progressive development of international law in certain cases. The method for the codification of international law is outlined in articles 18 to 23 of the Statute.

13. In practice, however, the functions performed by the International Law Commission proved not to require a method for "codification" and another for "progressive development", the draft articles prepared on particular topics incorporating and combining elements of both *lex lata* and *lex ferenda*. When submitting its final draft articles on the law of the sea to the General Assembly in 1956, the Commission made the following observations to that effect:

"25. When the International Law Commission was set up, it was thought that the Commission's work might have two different aspects: on the one hand the 'codification of international law' or, in the words of article 15 of the Commission's statute, 'the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine'; and on the other hand, the 'progressive development of international law' or 'the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States'.

"26. In preparing its rules on the law of the sea, the Commission has become convinced that, in this domain at any rate, the distinction established in the statute between these two activities can hardly be maintained. Not only may there be wide differences of opinion as to whether a subject is already 'sufficiently developed in practice', but also several of the provisions adopted by the Commission, based on a 'recognized principle of international law', have been framed in such a way as to place them in the 'progressive development category'. Although it tried at first to specify which articles fell into one and which into the other category,

the Commission has had to abandon the attempt, as several do not wholly belong to either.

“27. In these circumstances, in order to give effect to the project as a whole, it will be necessary to have recourse to conventional means.”⁶

14. Another statement underlining the close interrelationship between “codification” and “progressive development” in the work of the International Law Commission may be found in the following general considerations made by the Commission when submitting to the General Assembly its final draft articles on consular relations:

“29. The codification of the international law on consular intercourse and immunities involves another special problem arising from the fact that the subject is regulated partly by customary international law and partly by a great many international conventions which today constitute the principal source of consular law. A draft which codified only the international customary law would perforce remain incomplete and have little practical value. For this reason, the Commission agreed, in accordance with the Special Rapporteur’s proposal, to base its draft articles not only on customary international law, but also on the material furnished by international conventions, especially consular conventions.

“30. An international convention admittedly establishes rules binding the contracting parties only, and based on reciprocity; but it must be remembered that these rules become generalized through the conclusion of other similar conventions containing identical or similar provisions, and also through the operation of the most-favoured-nation clause. The Special Rapporteur’s analysis of these conventions revealed the existence of rules widely applied by States, which, if incorporated in a draft codification, may be expected to obtain the support of many States.

“31. If it should not prove possible, on the basis of the two sources mentioned—conventions and customary law—to settle all controversial and obscure points, or if there remain gaps, it will be necessary to have recourse to the practice of States as evidenced by internal regulations concerning the organization of the consular service and the status of foreign consuls, in so far, of course, as these are in conformity with the fundamental principles of international law.

“32. It follows from what has been said that the Commission’s work on this subject is both codification and progressive development of international law in the sense in which these concepts are defined in article 15 of the Commission’s statute. The draft to be prepared by the Commission is described by the Special Rapporteur in his report in these words:

“A draft set of articles prepared by that method will therefore entail codification of general customary law, of the concordant rules to be found in most international conventions, and of any provisions adopted under the world’s main legal systems which may be proposed for inclusion in the regulations.”⁷

15. In connection with its most recent final draft articles, the Commission reiterated its observations regarding the incorporation into the draft articles in question of elements of both “codification” and “progressive development”:

Law of treaties (1966): "The Commission's work on the law of treaties constitutes both codification and progressive development of international law in the sense in which those concepts are defined in article 15 of the Commission's Statute, and, as was the case with several previous drafts, it is not practicable to determine into which category each provision falls. Some of the commentaries, however, indicate that certain new rules are being proposed for the consideration of the General Assembly and of Governments."⁸

Special missions (1967): "In preparing the draft articles the Commission has sought to codify the modern rules of international law concerning special missions, and the articles formulated by the Commission contain elements of progressive development as well as of codification of the law."⁹

Representation of States in their relations with international organizations (1971): "The Commission's work on the representation of States in their relations with international organizations constitutes both codification and progressive development of international law in the sense in which those concepts are defined in article 15 of the Commission's Statute and, as in the case of several previous drafts, it is not practicable to determine into which category each provision falls. Some of the commentaries, however, indicate that certain new rules are being proposed for the consideration of the General Assembly and of Governments."¹⁰

Succession of States in respect of treaties (1974): "The Commission's work on succession of States in respect of treaties constitutes both codification and progressive development of international law in the sense in which those concepts are defined in article 15 of the Commission's Statute. The articles it has formulated contain elements of both progressive development as well as of codification of the law and, as in the case of several previous drafts, it is not practicable to determine into which category each provision falls."¹¹

Most-favoured-nation clauses (1978): "The Commission wishes to indicate that it considers that its work on most-favoured-nation clauses constitutes both codification and progressive development of international law in the sense in which those concepts are defined in article 15 of the Commission's Statute. The articles it has formulated contain elements both of progressive development and of codification of the law and, as in the case of several previous drafts, it is not practicable to determine into which category each provision falls."¹²

16. As a consequence of the considerations made in the preceding paragraphs, the distinction, "for convenience", embodied in the Statute between the method applicable to "progressive development" and the method applicable to "codification" has not been strictly maintained in the practice of the Commission. Actually, a consolidated procedure based on the relevant provisions of the Statute has evolved, the Commission devising the most adequate and effective method and form of identifying and embodying the rules of international law relating to a given topic—draft articles prepared in a form to render them capable of serving as a basis for the conclusion of an international convention, should this be decided upon in an appropriate way. Similarities in the Statute between the methods provided for therein for "progressive development" and "codification" have, on the other hand, facilitated the development of the indicated consolidated procedure. The achievements of the Commission so far, the authority attached to its work and the high degree of

support and acceptability that its draft articles receive in the Sixth Committee of the General Assembly and in conferences of plenipotentiaries are the best proof of the merits of the consolidated method followed by the Commission. It must also be added that the Commission has applied that method in a flexible manner, making, within the general framework provided for by it, the adjustments that the specific features of the topic concerned or other circumstances demand. Moreover, the Commission has constantly under review its methods and techniques of work as requested by the General Assembly,¹³ taking into account the comments or suggestions made in that respect in the Sixth Committee or in the Commission itself, with a view to speeding up or streamlining its procedure to respond more readily to the tasks entrusted to it.

17. Governments have an important role in every stage of the work of codification and progressive development carried out by the International Law Commission. Individually, they furnish information at the outset of the Commission's work and comment upon its drafts, and, collectively, through the General Assembly, they decide sometimes upon the initiation or priority of the work and always upon its outcome. The Statute of the Commission contains provisions designed to give Governments an opportunity to make their views known at each stage of the Commission's work. Thus, with regard to progressive development, article 16 (c) requires the Commission, at the outset of its work, to circulate a questionnaire to Governments, inviting them to supply data and information relevant to items included in the plan of work, and article 16 (g) requires the publication of a Commission document containing its drafts along with explanations, supporting materials and the information supplied by Governments in reply to the questionnaire. Under article 16 (h) and (i), Governments are then invited to submit comments on this document, and these must be taken into consideration by the Commission in preparing its final drafts. Similar provisions appear also in regard to codification in articles 19, 21 and 22.

18. Moreover, although the Statute of the Commission is silent on the matter, the Commission from its first session has submitted to the General Assembly a report on the work done at each of its sessions. The well established practice of annually considering the Commission's reports in the Sixth Committee has facilitated the development of the existing relationship between the General Assembly and the Commission. The Sixth Committee has indicated broad policy guidelines when assigning topics to the Commission or when giving priority to some topics, and has exercised its judgement as to action in regard to the Commission's final drafts and recommendations. The policy supervision of the Sixth Committee, however, has tended to be exercised with great restraint. The fact that the Commission is a subsidiary organ of the General Assembly has not prevented wide acceptance in the Sixth Committee of the view that the Commission should have a substantial degree of autonomy in the exercise of its own functions and that it would not be subject to detailed directives from the Assembly. On the other hand, the Commission, at each of its sessions, takes fully into consideration the recommendations addressed to it by the General Assembly and the observations made in the Sixth Committee in connection with the Commission's work in general or its specific drafts.

19. Working independently, although in close contact with States through the Sixth Committee of the General Assembly and the procedure of written comments, the Commission is enabled to formulate texts embodying an objective determination of the legal rules governing the particular area of international relations concerned, as well as taking into account the different trends existing today in the principal legal systems of the world in order to facilitate the progressive development of international law in a coherent manner and in accordance with the current interests, structures and needs of the international community as a whole. In this connection it should be noted that, in accordance with article 26 of its Statute, the Commission has established and maintained a permanent relationship of co-operation with regional legal bodies such as the Inter-American Juridical Committee, the Asian-African Legal Consultative Committee, the European Committee on Legal Co-operation and the Arab Commission for International Law.

3. *Programme of work of the International Law Commission*

20. At its first session, in 1949, the Commission reviewed, pursuant to the relevant provisions of its Statute, on the basis of a Secretariat memorandum entitled "Survey of international law in relation to the work of codification of the International Law Commission",¹⁴ twenty-five topics for possible inclusion in a list of topics for study. Following its consideration of the matter, the Commission drew up a provisional list of fourteen topics selected for codification,¹⁵ as follows:

- (1) Recognition of States and Governments;
- (2) Succession of States and Governments;
- (3) Jurisdictional immunities of States and their property;
- (4) Jurisdiction with regard to crimes committed outside national territory;
- (5) Régime of the high seas;
- (6) Régime of territorial waters;
- (7) Nationality, including statelessness;
- (8) Treatment of aliens;
- (9) Right of asylum;
- (10) Law of treaties;
- (11) Diplomatic intercourse and immunities;
- (12) Consular intercourse and immunities;
- (13) State responsibility;
- (14) Arbitral procedure.¹⁶

21. It was understood that the foregoing list of topics was only provisional and that additions or deletions might be made after further study by the Commission or in compliance with the wishes of the General Assembly.¹⁷ By its resolution 373 (IV) of 6 December 1949 the General Assembly approved part I of the report of the International Law Commission covering its first session, which included the list of topics provisionally selected by the Commission for codification. Since 1949, the General Assembly has referred to the Commission for study, in some cases following an earlier initiative of the latter, the following topics or items:

- Draft Declaration on Rights and Duties of States;
- Formulation of the Nürnberg Principles;

- Question of international criminal jurisdiction;
- Reservations to multilateral conventions;
- Question of defining aggression;
- Draft Code of Offences against the Peace and Security of Mankind;
- Relations between States and international organizations;
- Juridical régime of historic waters, including historic bays;
- Special missions;
- Extended participation in general multilateral treaties concluded under the auspices of the League of Nations;
- Most-favoured-nation clause;
- Question of treaties concluded between States and international organizations or between two or more international organizations;
- The law of non-navigational uses of international watercourses;
- Question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law;
- International liability for injurious consequences arising out of acts not prohibited by international law;
- Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier;
- Review of the multilateral treaty-making process.

In several cases topics listed above have been referred by the General Assembly to the International Law Commission, becoming new or separate topics on its programme of work, following consideration by the Commission of the parent topic included in the 1949 list. Such was the case for instance with respect to topics such as relations between States and international organizations (General Assembly resolution 1289 (XIII) of 5 December 1958), juridical régime of historic waters, including historic bays (General Assembly resolution 1453 (XIV) of 7 December 1959), special missions (General Assembly resolution 1687 (XVI) of 18 December 1961), the most-favoured-nation clause (General Assembly resolution 2272 (XXII) of 1 December 1967), question of treaties concluded between States and international organizations or between two or more international organizations (General Assembly resolution 2501 (XXIV) of 12 November 1969) and international liability for injurious consequences arising out of acts not prohibited by international law (General Assembly resolution 3071 (XXVIII) of 30 November 1973). In some of those cases the recommendation made by the General Assembly followed its consideration of a resolution previously adopted to that effect in a codification conference of plenipotentiaries: juridical régime of historic waters, including historic bays; special missions; and question of treaties concluded between States and international organizations or between two or more international organizations. In other instances, the referral of a topic by the General Assembly to the International Law Commission was made quite independently of previous work of the Commission on a parent topic or of a resolution adopted by a codification conference. This was the case, for example, with regard to topics such as: the law of non-navigational uses of international watercourses (General Assembly resolution 2669 (XXV) of 8 December 1970); question of the protection and inviolability of diplomatic agents and other persons entitled

to special protection under international law (General Assembly resolution 2780 (XXVI) of 3 December 1971); and status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (General Assembly resolutions 31/76 of 13 December 1976 and 33/139 and 33/140 of 19 December 1978).

22. The topics or items referred by the General Assembly to the International Law Commission, together with those in the 1949 list, have constituted the Commission's total programme of work at any time.¹⁸ The inclusion of a given topic or item in the programme of work of the Commission does not imply necessarily, however, its immediate study by the Commission. Actual consideration by the Commission of a topic or item on its programme results, in effect, from further decisions of the General Assembly and of the International Law Commission as to the priority to be given to the study of the topic or item concerned. Topics or items selected for priority consideration constitute, while under study, "the current programme of work" of the International Law Commission at a given period of time.

23. The programme of work of the Commission has been reviewed from time to time by the Commission with a view to bringing it up to date, taking into account General Assembly recommendations and the international community's current needs and discarding those topics which are no longer suitable for treatment. Such a review has sometimes taken place at the request of the General Assembly. In 1962, for example, the International Law Commission considered its future programme of work pursuant to General Assembly resolution 1686 (XVI) of 18 December 1961, which contained, *inter alia*, a recommendation to the Commission to that effect. The resolution had been adopted by the General Assembly in the context of an item entitled "Future work in the field of the codification and progressive development of international law" discussed in the Sixth Committee at the fifteenth and sixteenth sessions of the General Assembly. Another over-all review of the programme of work of the Commission took place in the Commission in 1973 on the basis of a working paper entitled "Survey of International Law" prepared by the Secretary-General in 1971.¹⁹ In recent years, the Enlarged Bureau of the Commission and its Planning Group have sometimes been entrusted with the task of making recommendations relating to the Commission's current programme of work going beyond the organization of work of the forthcoming session of the Commission. It was, for example, on the basis of recommendations made by the Enlarged Bureau and its Planning Group that the International Law Commission concluded in 1977 that it was advisable to place on its active or current programme the topic on the 1949 list entitled "Jurisdictional immunities of States and their property" as well as the topic entitled "International liability for injurious consequences arising out of acts not prohibited by international law", included in 1974 as a separate topic on the programme of work of the Commission, pursuant to General Assembly resolution 3071 (XXVIII) of 30 November 1973.²⁰ On the same occasion the Commission agreed that there are two topics on its programme of work, namely the "Right of asylum" and the "Juridical régime of historic waters, including historic bays", which do not appear at present to require active consideration by the Commission in the near future.²¹ In its resolution 32/151 of 19 December 1977, the General Assembly invited the Commission to commence work on "Jurisdictional

immunities of States and their property” and on “International liability for injurious consequences arising out of acts not prohibited by international law”.

4. *The role of the International Law Commission and its contribution to the treaty-making process through the preparation of draft articles*

24. With the ever-increasing importance of treaties as a source of international law and their fundamental role in the history of international relations, an importance and role acknowledged in the preamble of the Vienna Convention on the Law of Treaties, the conclusion of multilateral agreements has become the main device in the legal regulation of relations between States. The process of progressive development of international law and its codification could not but follow such a general trend. Thus, in exercising the functions attributed to it by Article 13, paragraph 1 (a), of the Charter of the United Nations, the General Assembly has increasingly called for the conclusion of multilateral treaties as a means of promoting the progressive development of international law and its codification and recommended that articles prepared by the International Law Commission serve as a basis for the conclusion of codification conventions. As a result, the preparation of draft articles by the International Law Commission, a primary task inherent in its functions, has become an undertaking frequently leading to the elaboration of multilateral treaties, constituting to that extent part and parcel of the contemporary multilateral treaty-making process.

25. The contribution of the International Law Commission to the multilateral treaty-making process is, however, determined not only by its object (the promotion of the progressive development of international law and its codification), but also by the specific tasks entrusted to the Commission by its Statute. It is not for the Commission to elaborate multilateral treaties or conventions, but rather to prepare drafts susceptible to providing a basis for the elaboration of such treaties or conventions by States, should the General Assembly decide to make a recommendation to that effect. The contribution of the International Law Commission to the treaty-making process in the sense indicated, namely through the preparation of draft articles, is, on the other hand, expressly recognized in the Statute of the Commission in connection with the progressive development of international law as well as with its codification. Thus article 15 of the Statute states that the expression “progressive development of international law” is used for convenience as meaning “the preparation of draft conventions on subjects which have not yet been regulated by international law”. Furthermore, according to article 17 of its Statute the Commission shall also consider proposals and draft multilateral conventions submitted by Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies, or official bodies established by inter-governmental agreement to encourage the progressive development of international law and its codification, and transmitted to it for that purpose by the Secretary-General. As regards the codification of international law, article 23 of the Statute empowers the Commission to recommend to the General Assembly that it recommend Commission drafts to States with a view to the conclusion of a convention or that a conference be convened to conclude a convention.

26. The record of Commission activities over more than thirty years of its existence includes several drafts prepared by the Commission on the basis of which important multilateral conventions have been concluded, testifying to the progressive development of international law and its codification in the respective fields. Those conventions, and their related instruments, are the following:

- Conventions on the Law of the Sea and Optional Protocol (1958)*
- Convention on the Territorial Sea and the Contiguous Zone
- Convention on the High Seas
- Convention on Fishing and Conservation of the Living Resources of the High Seas
- Convention on the Continental Shelf
- Optional Protocol of Signature concerning the Compulsory Settlement of Disputes
- Convention on the Reduction of Statelessness (1961)*
- Vienna Convention on Diplomatic Relations and Optional Protocols (1961)*
- Vienna Convention on Diplomatic Relations
- Optional Protocol concerning Acquisition of Nationality
- Optional Protocol concerning the Compulsory Settlement of Disputes
- Vienna Convention on Consular Relations and Optional Protocols (1963)*
- Vienna Convention on Consular Relations
- Optional Protocol concerning Acquisition of Nationality
- Optional Protocol concerning the Compulsory Settlement of Disputes
- Convention on Special Missions and Optional Protocol (1969)*
- Convention on Special Missions
- Optional Protocol concerning the Compulsory Settlement of Disputes
- Vienna Convention on the Law of Treaties (1969)*
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973)*
- Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character (1975)*
- Vienna Convention on Succession of States in Respect of Treaties (1978).*

27. The four conventions on the Law of the Sea of 1958, the Convention on the Reduction of Statelessness of 1961, the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Vienna Convention on the Law of Treaties of 1969 and the Vienna Convention on Succession of States in Respect of Treaties of 1978 were all elaborated on the basis of draft articles prepared by the International Law Commission as a result of the study of topics included in the list of topics selected by the Commission for codification in 1949 (see para. 20 above). The three other conventions listed above, namely the Convention on Special Missions of 1969, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973 and the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 1975, were elaborated on the basis of draft articles prepared by the International Law Commission following the study of topics in addition to those contained in the 1949 list.

28. The Convention on Special Missions, for example, originated from an initiative taken by the Commission when submitting its final draft articles on diplomatic intercourse and immunities to the General Assembly in 1958. In the introduction to the said draft articles, the Commission singled out the problem of “*ad hoc* diplomacy”, covering, *inter alia*, special missions sent to a State for limited purposes. In 1960, it adopted three draft articles constituting a preliminary survey of the subject-matter, which were referred by General Assembly resolution 1504 (XV) of 12 December 1960 to the United Nations Conference on Diplomatic Intercourse and Immunities to be considered by it, together with the final draft articles of the Commission on diplomatic intercourse and immunities. Following a recommendation of the United Nations Conference on Diplomatic Intercourse and Immunities, the General Assembly requested the Commission to give further study to the topic of special missions “in the light of the Vienna Convention on Diplomatic Relations”. Pursuant to that request the Commission prepared draft articles on the topic and submitted them to the General Assembly in 1967 with a recommendation that appropriate measures be taken “for the conclusion of a convention on special missions”. The General Assembly included an item entitled “Draft Convention on Special Missions” in the agenda of its 1968 and 1969 sessions “with a view to the adoption of such a convention by the General Assembly”. At its twenty-fourth session, the Assembly completed the elaboration of the convention and adopted it by resolution 2530 (XXIV) of 8 December 1969.

29. The topic “Protection and inviolability of diplomatic agents and other persons entitled to special protection under international law” was brought in 1971 to the attention of the General Assembly by the International Law Commission. By its resolution 2780 (XXVI) of 3 December 1971 the General Assembly requested the Commission to study as soon as possible, in the light of the comments of Member States, the topic in question, with a view to preparing a set of draft articles dealing with offences committed against diplomats and other persons entitled to special protection under international law for submission to the General Assembly. Pursuant to this request the Commission prepared the draft articles in 1972 and the General Assembly elaborated on their basis and adopted by resolution 3166 (XXVIII) of 14 December 1973 the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

30. The topic of “Relations between States and international organizations” was included in the programme of work of the Commission in accordance with a request made by the General Assembly in resolution 1289 (XIII) of 5 December 1958, following a reference to the question made by the Commission in the report it submitted to the Assembly at that time. By its resolution 2780 (XXVI) of 3 December 1971 the General Assembly expressed its desire that an international convention be elaborated and concluded expeditiously on the basis of the draft articles on the first part of the topic adopted by the International Law Commission and in the light of the comments and observations submitted in accordance with that resolution. By its resolutions 2966 (XXVII) of 14 December 1972 and 3072 (XXVIII) of 30 November 1973, the General Assembly made arrangements for the convening of an international conference. The Conference met in 1975 and adopted the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.

31. The record of codification conventions concluded on the basis of draft articles prepared by the International Law Commission prompted the General Assembly, on the occasion of the twenty-fifth anniversary of the United Nations, to express in its resolution 2634 (XXV) of 12 November 1970 its profound gratitude to the International Law Commission "for its outstanding contribution to the achievements of the Organization during this period, particularly through the preparation of drafts which have served as basis for the adoption of important codification conventions". In addition to the codification conventions already concluded on the basis of draft articles prepared by the International Law Commission, the Commission in 1978 adopted its final draft articles on most-favoured-nation clauses and submitted them to the General Assembly with a recommendation that the draft "should be recommended to Member States with a view to the conclusion of a convention on the subject".²² Topics on the 1949 list or added subsequently to the programme of work of the Commission by actions taken by the General Assembly and the International Law Commission, or aspects thereof, currently under study in the Commission might eventually result in, if so decided by the General Assembly and States, the adoption of new codification conventions in the relatively near future. Those topics are: State responsibility; succession of States in respect of matters other than treaties; question of treaties concluded between States and international organizations or between two or more international organizations; the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier; the law of non-navigational uses of international watercourses; jurisdictional immunities of States and their property; international liability for injurious consequences arising out of acts not prohibited by international law; and relations between States and international organizations (second part of the topic). Sets of draft articles on State responsibility for internationally wrongful acts, succession of States in respect of matters other than treaties and treaties concluded between States and international organizations are already in an advanced stage of preparation within the Commission. Moreover, the General Assembly in its resolution 33/139 of 19 December 1978 has recommended that the Commission should continue the study concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier in the light of comments made or to be submitted by Governments "with a view to the possible elaboration of an appropriate legal instrument".

32. It should also be recalled that contributions of the International Law Commission to the multilateral treaty-making process may also result from the consideration of proposals and draft multilateral conventions submitted to it pursuant to article 17 of the Statute of the Commission, by, *inter alia*, principal organs of the United Nations other than the General Assembly. At its second and third sessions in 1950 and 1951, the Commission was notified of resolutions adopted by the Economic and Social Council of the United Nations (resolutions 304 D (XI) of 17 July 1950 and 319 B III (XI) of 11 August 1950), in which the Council requested the Commission to deal with two subjects: the nationality of married women and the elimination of statelessness. The Commission dealt with these subjects in connection with the comprehensive topic of "nationality, including statelessness", which had already been selected for codification by the Commission in 1949. The Special Rapporteur for the topic "nationality, including statelessness" prepared in 1952 a draft convention on

the nationality of married persons. The Commission decided, however, that the question of the nationality of married women could be considered only in the context and as an integral part of the whole subject of nationality, including statelessness, and did not therefore take further action with regard to the draft. Thereafter the question of the nationality of married women was considered by other United Nations organs, including the Commission on the Status of Women, culminating in the adoption of the Convention on the Nationality of Married Women. In 1953, at its fifth session, the Commission, on the basis of draft conventions prepared by the Special Rapporteur on the topic, adopted in first reading a draft Convention on the Elimination of Future Statelessness and a draft Convention on the Reduction of Future Statelessness and invited Governments to submit their comments thereon. The Economic and Social Council approved the principles of the two draft conventions by its resolution 526 B (XVII) of 26 April 1954. The International Law Commission revised, in the light of comments received from Governments, the above-mentioned draft conventions and submitted in 1954 its final texts of the two draft conventions to the General Assembly. The General Assembly in resolution 896 (IX) of 4 December 1954 expressed its desire that an international conference of plenipotentiaries be convened to conclude a convention for the reduction or elimination of future statelessness as soon as at least twenty States had communicated to the Secretary-General their willingness to co-operate in such a conference. The United Nations Conference on the Elimination or Reduction of Future Statelessness met in 1959 and 1961, adopting the Convention on the Reduction of Statelessness listed in paragraph 26 above.

33. Lastly, it should be pointed out that the contribution of the International Law Commission to the multilateral treaty-making process has not been confined to the preparation of draft articles which have served as a basis for the conclusion of codification conventions on particular topics of international law. In preparing its 1966 draft articles on the law of treaties, which served as a basis for the conclusion of the Vienna Convention on the Law of Treaties of 1969, the Commission made a contribution to the codification and development of the very rules of treaty-making. The Vienna Convention on the Law of Treaties embodies, *inter alia*, a number of rules of direct relevance to the treaty-making process, particularly those in Part II, which sets out the rules governing the conclusion and entry into force of treaties.²³ The results of the work of the Commission on another topic which was on the 1949 list, namely arbitral procedure, may in some ways also be considered as being relevant to treaty-making, both multilateral and bilateral. The Commission prepared in 1958 a set of draft articles entitled "Model Rules on Arbitral Procedure", which, according to the comments contained in the report of the Commission on the work of its tenth session, would have no binding effect on States unless accepted by them and save to the extent that each one is accepted by them in treaties of arbitration or in a *compromis*. Having taken note of the Commission's comments and the relevant chapter of its report, the General Assembly in its resolution 1262 (XIII) of 14 November 1958 brought the draft articles on arbitral procedure "to the attention of Member States for their consideration and use, in such cases and to such extent as they consider appropriate, in drawing up treaties of arbitration or *compromis*".²⁴

5. *Consolidated method and techniques of work of the International Law Commission as applied in general to the preparation of draft articles*

34. The methods and techniques followed by the International Law Commission as applied to the preparation of draft articles are based on the provisions embodied in its Statute as well as on the arrangements governing its sessions. The object, functions and composition of the Commission as well as the established procedural stages for codifying and progressively developing a given topic have a direct bearing on such methods and techniques. However, out of the need to incorporate elements of both *lex lata* and *lex ferenda* in the rules to be formulated, the Commission, as indicated above, follows generally speaking a consolidated system of methods and techniques which incorporates the various elements set forth in articles 16 to 23 of its Statute.

35. Three main stages in the consideration of a given topic may be distinguished within the consolidated method followed by the Commission: a first preliminary stage devoted mainly to the organization and planning of the work, the appointment of a Special Rapporteur and the gathering of relevant materials; a second stage during which the Commission carries out the first reading of the draft articles submitted by the Special Rapporteur; and a third and final stage devoted to a second reading of the provisionally adopted draft articles in the light of the comments and observations made by Governments as well as intergovernmental organizations concerned when appropriate. The role performed by the Special Rapporteur is of paramount importance, particularly during the second and third stages referred to above. The work done by the Drafting Committee during those stages is also essential. The Secretariat is also entrusted with various tasks and it is frequently called upon to make contributions, especially during the preliminary and second stages.

(a) *Preliminary stage of the consideration of a topic*

(i) *Plan of work on a topic selected for consideration and appointment of a Special Rapporteur*

36. After the decision has been taken to undertake work on a topic already placed on its programme of work, the Commission engages in a discussion as to when and how to deal with it. This discussion normally results in the appointment of a Special Rapporteur for the topic in question. A discussion on the plan of work on a topic may also take place when, notwithstanding a previous study of the topic, it is decided that its codification should be approached *ex novo* or differently.

37. On a number of occasions, the initial appointment or the replacement of a Special Rapporteur has been preceded by the assignment of the topic to a sub-committee or working group for examination and establishment of a plan of work. For example, in 1962, the Commission appointed sub-committees on succession of States and Governments and State responsibility. At its 1963 session, the Commission approved the conclusions and recommendations, including a plan of work, set out in the report of each sub-committee and, thereafter, appointed Special Rapporteurs for the two topics. The appointment of a Special Rapporteur has also been preceded by the referral of the topic to a sub-committee or working group on the following topics under current consideration: treaties concluded between States and international

organizations or between two or more international organizations;²⁵ the law of the non-navigational uses of international watercourses;²⁶ jurisdictional immunities of States and their property;²⁷ and international liability for injurious consequences arising out of acts not prohibited by international law.²⁸ In all the cases referred to in the present paragraph, those members of the Commission who had served as chairmen of the sub-committees or working groups concerned were appointed Special Rapporteurs for the respective topics after the Commission had approved the conclusions and recommendations set out in the reports of those bodies. Members of sub-committees or working groups are frequently requested to submit written contributions, in the form of memoranda or working papers, in order to facilitate the work of such sub-committees or working groups.²⁹

38. New arrangements for dealing with a topic which has been the subject of an earlier plan of work may be made by the Commission when, upon reflection, it seems appropriate to do so. For example, in 1963, a Special Rapporteur was appointed for the three aspects of the topic "Succession of States and Governments" identified by the Commission following the report of the Sub-Committee on Succession of States and Governments. However, in 1967, two of the three aspects of that topic were assigned each to a Special Rapporteur, in order to advance the study of the topic more rapidly. The third aspect was left aside for the time being, without having been so assigned. This re-arrangement of the original plan greatly facilitated the finalization by the Commission, in 1974, of the draft articles on succession of States in respect of treaties as well as the completion, at the present session, of the first reading of the draft articles on succession of States in respect of matters other than treaties.

39. The Special Rapporteur is appointed by the Commission from among its members. Once appointed, the Special Rapporteur is expected to submit to the Commission a substantive report on the topic entrusted to him. However, his initial presentation may be, at the Commission's request or on his initiative, of a general and exploratory character, in the form of a working paper or preliminary report.

40. It has been the established practice in the Commission that a newly appointed Special Rapporteur deals with his topic as he deems most appropriate. The Commission, however, on the occasion of the appointment of the Special Rapporteur or upon his submission of a working paper or a preliminary or further report, may engage in a general debate or discussion aimed at giving him guidelines or instructions on aspects such as the manner of treatment, parts of the subject to be dealt with and priorities to be given to them, especially in the light of relevant decisions of the General Assembly or in cases where the topic has been already dealt with by a previous Special Rapporteur or if it is related to subjects already dealt with or being dealt with by the Commission. For example, at its fifteenth session in 1963, the Commission, while approving the recommendations contained in the reports of the Sub-Committees on State responsibility and on Succession of States and Governments, pointed out that the questions listed in the report of the State Responsibility Sub-Committee were intended solely to serve as an *aide-mémoire* and that the report of the Sub-Committee on Succession of States laid down guiding principles for the Special Rapporteur. The Special Rapporteurs would not, however, be obliged to conform to them in detail.³⁰ On the other hand, a

newly appointed Special Rapporteur may feel the need for guidelines or instructions and request them from the Commission or its members. This occurred, for instance, in 1955 when the Special Rapporteur for the topic of consular relations sent a questionnaire to other members of the Commission with a view to obtaining their opinion thereon for his guidance in the preparation of his first report.³¹ Another example occurred in 1961 on the occasion of the appointment of the fourth Special Rapporteur on the topic "Law of treaties". The newly appointed Special Rapporteur requested guidance of the Commission. The Commission, in response, held a debate which revealed the main approaches to the subject which the Special Rapporteur might follow.³²

41. For the preparation of his initial report or reports the Special Rapporteur has at his disposal the data and information furnished by Governments and, when appropriate, intergovernmental organizations, as well as the substantive assistance of the Secretariat referred to in paragraph 43 below. For the preparation of subsequent reports, the Special Rapporteur has, in addition, the benefit of, *inter alia*: the discussions held in the Commission on the basis of his initial reports and the subsequent conclusions and decisions of the Commission; the comments and observations of representatives of Member States made in the Sixth Committee of the General Assembly in the course of its consideration of the item concerning the report that the Commission submits annually to the Assembly; the reports of the Sixth Committee to the General Assembly on its consideration of that item; and the relevant recommendations contained in the resolutions adopted by the General Assembly.³³ The Special Rapporteur may also consult with experts with a view to elucidating technical questions.³⁴

(ii) *Request for data and information from Governments*

42. Following the decision to undertake work on a given topic, the Commission usually asks the Secretary-General to address a request to Governments to furnish it with data and information relevant to the topic in question, which may take the form of texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other materials. The request may also take the form of a questionnaire elaborated by the Commission. A recent example of this method of gathering data and information is provided by the Commission's 1974 questionnaire transmitted to Governments of Member States, through the Secretary-General, in connection with the study of the topic "The law of non-navigational uses of international watercourses".³⁵ Questionnaires may also be prepared by the Special Rapporteurs in consultation with the Secretariat³⁶ or by the latter alone, in both cases with the concurrence of the Commission. Data and information from intergovernmental organizations may be requested when in view of the subject matter of the topic the Commission or the Special Rapporteur concerned deems it advisable. This request may also take the form of a questionnaire.³⁷ The Secretariat systematizes the data and information thus gathered, which is transmitted to the Special Rapporteur and published as a document of the Commission later to be included in the *Yearbook of the International Law Commission* or as a compilation in a volume of the *United Nations Legislative Series*.

(iii) *Studies and research projects by the Secretariat*

43. At the preliminary stage of the consideration of a topic, the Secretariat, at the Commission's request or on its own initiative, may prepare sub-

stantive studies and carry out research projects to facilitate the commencement of work on the topic by the Commission and the Special Rapporteur concerned. Secretariat studies and research projects may be requested also by the Commission or the Special Rapporteur concerned at other stages in the consideration of a topic.

(b) *The first reading of the draft articles submitted by the Special Rapporteur*

(i) *Discussion of the Special Rapporteur's reports*

44. The reports submitted by the Special Rapporteur for the Commission's consideration, as distinguished from working papers or preliminary reports, normally contain a set of draft articles with commentaries. After the introduction of the report by the Special Rapporteur and an exchange of views thereon, the Commission proceeds to an article-by-article discussion with a view to the formulation of a set of draft articles. Prior to its consideration by the Commission, each draft article is introduced by the Special Rapporteur. Members may submit amendments or alternative formulations to the draft articles presented by the Special Rapporteur or written memoranda thereon. The Commission, upon the conclusion of its consideration of a given draft article, transmits it, together with pertinent suggestions and proposals, to the Drafting Committee.

(ii) *The Drafting Committee*

45. Committees in the nature of drafting committees were set up by the Commission to deal with specific topics or questions at its first three sessions; however, a standing Drafting Committee has been used at each session of the Commission since its fourth session in 1952. The Chairman of the Drafting Committee is elected by the Commission. Since 1974, the Chairman of the Drafting Committee is a member of the Commission's Bureau for the session concerned. This represents a change from the previous practice, begun in 1955, by which the First Vice-Chairman of the Commission also served as Chairman of the Drafting Committee. Other members of the Drafting Committee are appointed by the Commission at each session, on the recommendation of the Chairman of the Commission, with a view to ensuring an adequate representation and taking into account other factors, including linguistic competence. The Rapporteur of the Commission for the session concerned also takes part in the Drafting Committee's work. Special Rapporteurs who have not been appointed members of the Drafting Committee take part in the Committee's work when the draft articles relating to their topics are considered. Under the Commission's term of referral, the Special Rapporteur normally prepares and submits new texts to the Drafting Committee as a basis for the consideration of the draft articles in question. The Drafting Committee is provided with simultaneous interpretation services but no records of its discussions are maintained.

46. The Drafting Committee prepares texts of draft articles for the consideration of the Commission and assists the Commission in co-ordinating and consolidating the draft articles. The texts as submitted by the Committee may embody solutions not only to questions of drafting but also to points of substance which the Commission "has been unable to resolve or which appeared likely to give rise to unduly protracted discussion".³⁸ The Drafting Committee provides therefore a framework not only for drafting but also for negotiation.

Entrusting the Commission's Drafting Committee, whose proceedings are of an informal nature, with the functions referred to above has proved to be an extremely useful procedure which greatly helps to speed up the work of the Commission. The Drafting Committee constitutes an indispensable component of the Commission's methods of work and plays a major, central role in assisting the Commission in fulfilling the performance of its tasks.

(iii) *Consideration by the Commission of the texts approved by the Drafting Committee*

47. The Commission discusses the text of each of the draft articles adopted by the Drafting Committee, following its introduction by the Chairman of the Drafting Committee. The Drafting Committee's texts are subject to amendments or alternative formulations submitted by members of the Commission and may be referred back to the Drafting Committee for further consideration. The texts of the draft articles recommended by the Drafting Committee and adopted by the Commission are included in the relevant chapter of the Commission's report for the session. As these texts generally reflect a common understanding, the need to vote on them seldom arises. In general, detailed explanations of dissenting opinions are not included in the report, which may, however, state that for the reasons given in the records a member was opposed to the adoption of a certain article.

(iv) *Transmittal of provisional draft articles for comments and observations from Governments*

48. The result of a "first reading" by the Commission is a set of provisional draft articles, with commentaries, on a given topic. The Commission will then usually decide to transmit them, in accordance with articles 16 and 21 of the Statute, through the Secretary-General, to Governments for their comments and observations. The Commission transmits provisional draft articles to Governments for the purpose indicated, on some occasions after having completed the first reading of the entire draft. In other instances, particularly when drafts of considerable length are involved, the Commission transmits provisional draft articles to Governments in instalments without waiting for the completion of the provisional draft as a whole. Provisional draft articles are sometimes transmitted by the Commission to certain intergovernmental organizations for their observations and comments pursuant to General Assembly recommendations or when the subject-matter makes it advisable.

49. In the course of the first reading of provisional draft articles, or upon their completion, the Commission may deem it necessary to indicate that the draft articles have been prepared on the assumption that they would form the basis of a convention or that the draft articles are cast in such a form that they can be used as the basis for concluding a convention should this be decided upon at a later stage.

(c) *The second reading of the draft articles under preparation by the Commission*

(i) *Re-examination of the preliminary draft articles and the adoption of a final draft*

50. In the light of the written comments received from Governments and the oral observations made in the Sixth Committee, the Commission re-examines the preliminary draft adopted, on the basis of a further report or reports by the Special Rapporteur. These reports of the Special Rapporteur

usually include a summary of the comments and observations made on the respective articles of the draft and his suggestions as to whether to amend the given article, to leave it as it is or to delete it or to treat it in some other way. The reports of the Special Rapporteur likewise include a summary of the comments and observations received from intergovernmental organizations when comments and observations were requested from them as well as from States. The procedure of article-by-article consideration is followed by the Commission along the lines of that described in paragraphs 44 to 46 above, including the referral of articles, together with the relevant proposals and suggestions, to the Drafting Committee, which examines each article, elaborates its formula and reports back to the plenary of the Commission. The Commission, when considering the report of the Drafting Committee, follows the procedure enunciated in paragraph 47 above. At this stage of the procedure, it is not infrequent in practice for the Commission to proceed to revising, co-ordinating and consolidating the articles, sections and parts of a given draft, particularly in connection with drafts of considerable length adopted in the course of consecutive sessions.³⁹ Normally, the Commission undertakes such a task with the assistance of the Special Rapporteur concerned and the Drafting Committee. In the case of the first aspect of the topic "Relations between States and international organizations", however, the Commission was assisted in such an undertaking by the Working Group established by the Commission for such a purpose.⁴⁰ The Commission then proceeds to the adoption of the final draft articles on the topic and includes them in the report covering the work of the session which it submits to the General Assembly.

(ii) *Recommendations by the Commission to the General Assembly with respect to the final draft articles*

51. When adopting the final draft articles the International Law Commission usually makes, pursuant to article 23 of its Statute, a formal recommendation to the General Assembly that an international convention or conventions should be concluded on the basis of the draft. The formulae of the recommendations in question vary.

52. Thus, in some instances, the Commission, basing itself on article 23, paragraph 1 (*d*), of its Statute, recommended that an international conference of plenipotentiaries should be convened to elaborate a convention or conventions on the basis of the draft articles concerned. The wording of this kind of recommendation may, however, differ from case to case, as the examples below demonstrate:

Law of the Sea (1956): "The Commission therefore recommends, in conformity with article 23, paragraph 1 (*d*) of its Statute, that the General Assembly should summon an international conference of plenipotentiaries to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate."⁴¹

Consular Relations (1961): "At its 624th meeting, the Commission, considering that it should follow the procedure previously adopted by the General Assembly in the case of the Commission's draft concerning diplomatic privileges and immunities, decided, in conformity with article 23, paragraph 1 (*d*) of its Statute, to recommend that the General Assembly should convene an

international conference of plenipotentiaries to study the Commission's draft on consular relations and conclude one or more conventions on the subject."⁴²

Law of Treaties (1966): "At its 892nd meeting, on 18 July 1966, the Commission decided, in conformity with article 23, paragraph 1 (d) of its Statute, to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on the law of treaties and to conclude a convention on the subject."⁴³

Representation of States in Their Relations with International Organizations (1971): "At its 1146th meeting, on 28 July 1971, the Commission decided, in conformity with article 23, paragraph 1 (d), of its Statute to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft articles on the representation of States in their relations with international organizations and to conclude a convention on the subject."⁴⁴

Succession of States in Respect of Treaties (1974): "At the 1301st meeting, on 26 July 1974, the Commission decided, in conformity with article 23 of its Statute, to recommend that the General Assembly should invite Member States to submit their written comments and observations on the Commission's final draft articles on succession of States in respect of treaties and convene an international conference of plenipotentiaries to study the draft articles and to conclude a convention on the subject."⁴⁵

53. In other cases, the Commission, basing itself on article 23, paragraph I (c) of the Statute, confined itself to recommending the draft concerned to Member States with a view to the conclusion of a convention, without referring to the convening of an international conference or any other procedural means for concluding the convention:

Diplomatic Relations (1958): "At its 468th meeting, the Commission decided (under article 23, paragraph 1 (c) of its Statute) to recommend to the General Assembly that the draft articles on diplomatic intercourse and immunities should be recommended to Member States with a view to the conclusion of a convention."⁴⁶

Most-Favoured-Nation Clauses (1978): "At its 1522nd meeting, on 20 July 1978, the Commission decided, in conformity with article 23 of its Statute, to recommend to the General Assembly that the draft articles on most-favoured-nation clauses should be recommended to Member States with a view to the conclusion of a convention on the subject."⁴⁷

54. The recommendation made by the Commission when submitting the final draft articles on special missions presented a third main variant. In that case, the Commission decided "in conformity with article 23 of its Statute to recommend to the General Assembly that appropriate measures be taken for the conclusion of a convention on special missions".⁴⁸

55. Sometimes the Commission includes in its recommendation to the General Assembly a specific comment/suggestion such as the one contained in its recommendation on the draft articles dealing with the representation of States in their relations with international organizations:

"The Commission wishes to refer to the titles given to parts and articles of its draft, which it considers helpful for an understanding of the structure of the draft and for promoting ease of reference. It expresses the

hope, as it did concerning its draft articles on consular relations, law of treaties and special missions, that these titles, subject to any appropriate changes, will be retained in any convention which may be concluded in the future on the basis of the Commission's draft articles."⁴⁹

The Commission has also made other kinds of comments when formulating its recommendations to the General Assembly with respect to final draft articles. Thus, for example, when recommending the conclusion of a convention or conventions on the law of the sea and the convening of an international conference for the purpose, the Commission made the following observations:

"The Commission considers that such a conference has been adequately prepared for by the work the Commission has done. The fact that there have been fairly substantial differences of opinion on certain points should not be regarded as a reason for putting off such a conference. There has been widespread regret at the attitude of Governments after The Hague Codification Conference of 1930 in allowing the disagreement over the breadth of the territorial sea to dissuade them from any attempt at concluding a convention on the points on which agreement had been reached. The Commission expresses the hope that this mistake will not be repeated.

"In recommending confirmation of the proposed rules as indicated in paragraph 28, the Commission has not had to concern itself with the question of the relationship between the proposed rules and existing conventions. The answer to that question must be found in the general rules of international law and the provisions drawn up by the proposed international conference.

"The Commission also wishes to make two other observations, which apply to the whole draft:

"1. The draft regulates the law of the sea in time of peace only.

"2. The term 'mile' means nautical mile (1,852 metres) reckoned at sixty to one degree of latitude."⁵⁰

56. Lastly, it should be noted that because of the terms of reference of the request to the Commission, final draft articles prepared by it may be submitted to the General Assembly as "draft conventions". Thus, the draft articles on the *elimination of future statelessness* and on the *reduction of future statelessness* were submitted by the Commission to the General Assembly as "draft conventions". Such a presentation rendered it unnecessary for the Commission to make any formal recommendation to the General Assembly to the effect that international conventions were concluded on the basis of the submitted drafts.

6. *Other methods and techniques employed by the International Law Commission*

57. The General Assembly has from time to time requested the Commission to report on particular legal problems or to examine particular texts, or to prepare a particular set of draft articles. The question has then arisen whether the Commission, in performing such tasks, should use the methods laid down in its Statute for carrying out its normal work of progressive development and codification, or whether it was free to adopt other methods in dealing with

such cases. The Commission has consistently decided that it was free to adopt special methods for special tasks.⁵¹

58. Thus, the Commission has followed special methods in connexion with assignments referred to it by the General Assembly for the purpose of giving a legal opinion, elaborating a definition or formulating conclusions or observations on a particular subject-matter, e.g. when dealing with the question of international criminal jurisdiction (1950), the question of the definition of aggression (1951), reservations to multilateral conventions (1951), extended participation in general multilateral treaties concluded under the auspices of the League of Nations (1963) and the review of the multilateral treaty-making process (1979). The Commission's reports containing draft articles with commentaries on the Draft Declaration on the Rights and Duties of States (1949) and the Formulation of the Nürnberg Principles (1950) were also prepared by the use of *ad hoc* methods and techniques. Although a Special Rapporteur was appointed in the case of the latter topic, neither the text of the Draft Declaration on the Rights and Duties of States nor the text of the Formulation of the Nürnberg Principles were subject to the procedure of a first and second reading. In the case of the Draft Code of Offences against the Peace and Security of Mankind, the Commission, having appointed a Special Rapporteur for the topic in 1950, completed a draft code in 1951 and submitted it to the General Assembly, together with commentaries thereon, without recommending arrangements for its implementation. At its 1952 session, the Assembly omitted the item from its agenda on the understanding that the topic would continue to be considered by the International Law Commission. The Commission accordingly in 1953 requested the Special Rapporteur for the topic to prepare a new report, taking into account the observations received from Governments, and at its next session, in 1954, revised the Draft Code and submitted it to the General Assembly,⁵² refraining again from making recommendations as to how the Code was to become operative.⁵³

59. More interesting for the subject-matter of the present observations are departures from the basic consolidated method and techniques of work followed by the International Law Commission in certain cases involving the preparation of draft articles which have provided a basis for the elaboration of conventional instruments or whose study is pursued on the assumption that the draft to be prepared should provide such a basis if so decided by the General Assembly at a later stage. The explanations for such departures are usually related to the nature of the topic and in the terms of reference set forth by the General Assembly for its study. The topics entitled "protection and inviolability of diplomatic agents and other persons entitled to special protection under international law" and "status of the diplomatic courier and of the diplomatic bag not accompanied by diplomatic courier" may be mentioned in this respect as examples of cases in which the Commission introduced variations in the basic method of work followed by it for the preparation of draft articles.

60. With regard to these two topics, the Commission, instead of appointing Special Rapporteurs, set up, at its twenty-fourth (1972) and thirtieth (1978) sessions working groups to review the problems involved and, in the case of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law, to prepare a set of draft articles for submission to the Commission. The Working Group on the status of the

diplomatic courier and the diplomatic bag not accompanied by diplomatic courier identified in 1978 a series of issues relevant for the study of the topic. Reconstituted, at the current session, the Working Group is studying the topic in the light of recommendations contained in General Assembly resolution 33/139 and 33/140 of 19 December 1978.

61. The draft articles submitted in 1972 by the Working Group on the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law were not subject to the procedure of a first or second reading. On this topic, the Commission had before it written observations received from Member States, in response to a request made by the General Assembly. In addition, the Commission had before it two texts of a draft convention submitted by Member States and a working paper containing draft articles submitted by one of the Commission's members. Extensive documentation relevant to the question was submitted by the Secretariat. After an initial general discussion, the Commission referred the matter to the Working Group. At the conclusion of the initial stage of its work, the Working Group submitted to the Commission a first report containing a set of draft articles. After considering the report, the Commission referred the set of draft articles back to the Working Group for revision in the light of the discussion. The Working Group submitted two further reports containing a revised set of draft articles which were then provisionally adopted by the Commission and transmitted to the General Assembly as well as to Governments for their comments.⁵⁴ The General Assembly decided in its resolution 2926 (XXVII) of 28 November 1972 to consider at its twenty-eighth session (1973) an item entitled "Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons" with a view to the final elaboration of such a convention by the General Assembly. The Convention was elaborated and adopted by the General Assembly in 1973.

62. Lastly, it should be noted that the Commission has always applied its consolidated method and techniques of work with flexibility to the preparation of draft articles undertaken in accordance with that consolidated method. Minor variations in the application of the consolidated method and techniques are, therefore, ascertainable in the practice of the Commission when a given set of draft articles is compared retrospectively with another or other set or sets of draft articles from the standpoint of the steps followed by the Commission in their preparation. In certain cases, for instance, the two-reading procedure, as described in Chapter V above, was not strictly followed by the Commission. The preparation of the final draft articles on the law of the sea provides an interesting example in this respect. The Commission in 1953 adopted after second reading draft articles on the continental shelf, fishery resources of the high seas and the contiguous zone, prepared in the context of its work on the topic "régime of the high seas". The General Assembly decided, however, not to deal with any aspect of the topics "régime of the high seas" and "régime of territorial waters" until all the problems involved had been studied by the Commission and reported on by it to the Assembly. In a further resolution 899 (IX) of 14 December 1954, the General Assembly requested the Commission to devote the necessary time to the study of the two topics mentioned and all related problems in order to complete its work on these topics and submit its

final report for the Assembly as a whole. The consolidation by the Commission in 1956, pursuant to the Assembly requests referred to, of all the rules it had adopted concerning the high seas, the territorial sea, the continental shelf, the contiguous zone and the conservation of the living resources of the sea into a single set of draft articles on the law of the sea, implied a systematic rearrangement of the rules concerned which, in turn, led the Commission to introduce further changes in the text of some draft articles which had already been adopted in second reading.⁵⁵

63. In other instances, the Commission made minor departures from its consolidated method and techniques of work in order to accelerate its work on a given topic. This happened, for example, with the preparation of the draft articles on consular relations with respect to both the first and the second readings of the draft articles in question. Regarding the first reading, the Commission in 1959 decided that, because of the similarity of the topic of consular relations to that of diplomatic intercourse and immunities which had been debated at two previous sessions, members who might wish to propose amendments to the existing draft presented by the Special Rapporteur should come to the next (1960) session prepared to put in their principal amendments in writing, within a week, or at most ten days, of its opening.⁵⁶ With respect to the second reading of the said draft article, the Commission shortened the deadline normally given to Governments for the submission of comments and observations. As a result, the second reading of the 1960 provisional draft articles on consular relations took place at the next session in 1961, when the Commission adopted and submitted to the General Assembly its final draft articles on the topic.⁵⁷

7. Relationship between the General Assembly and the International Law Commission

(a) The annual report submitted by the International Law Commission to the General Assembly

64. As noted earlier in these observations⁵⁸ the International Law Commission from its first (1949) session has submitted to the General Assembly a report on the work done at each session. The report is the vehicle whereby the Commission keeps the General Assembly informed regularly of the progress of its work on the various topics on its current programme as well as of its achievements in the preparation of draft articles on these topics. The report also serves as a means of giving to the Commission's draft on the various topics the publicity provided for in the Statute of the Commission.

65. The report is adopted by the International Law Commission at the end of the session concerned on the basis of a draft report prepared by the Rapporteur of the Commission with the assistance of the Special Rapporteurs concerned and the Secretariat. Before its approval, the Commission examines the draft report paragraph by paragraph.

66. Apart from the chapters dealing with the organization of the session and other decisions and conclusions of the Commission, the report devotes separate chapters to the topics given substantive consideration at the session concerned. Each of the chapters devoted to topics which have been substantively considered at the session includes information on the progress of work

and future work of the Commission on the topic in question as well as, as appropriate, the texts of the draft articles prepared by the Commission on the topic and commentaries relating thereto and, whenever advisable or necessary, procedural recommendations calling for a decision on the part of the General Assembly. Comments and observations by Governments, and when appropriate by intergovernmental organizations, on a given set of provisional draft articles adopted by the Commission are included as an annex to the Commission's report in which the draft articles are presented in their final form to the General Assembly.

(b) *Consideration by the General Assembly of the reports of the International Law Commission*

67. The General Assembly as the parent body of the International Law Commission exercises its functions with regard to the Commission mainly through the consideration of the report submitted annually to it by the International Law Commission.⁵⁹ An item entitled "Report of the International Law Commission" is included by the General Assembly in its agenda for each regular session and allocated to the Sixth Committee where the substantive discussion of the Commission's report takes place. The oral comments and observations on the various chapters of the International Law Commission's report, included on draft articles contained therein, made by representatives of Member States in the Sixth Committee are included in the summary records of the Sixth Committee. An analytical summary of such comments and observations has been usually included in the report on the item that the Sixth Committee submits to the General Assembly. The Sixth Committee's report contains also the draft resolution or resolutions on the work and activities of the International Law Commission agreed upon as a result of the consideration of the item entitled "Report of the International Law Commission". Once adopted in plenary, such draft resolution or resolutions become resolutions of the General Assembly.

68. The resolutions adopted by the General Assembly following consideration at the Sixth Committee of the item entitled "Report of the International Law Commission" contain a variety of recommendations and decisions addressed to the International Law Commission. Some of those recommendations relate to the performance by the Commission of its task in general, but others concern the consideration by the Commission of specific topics. Such recommendations or decisions may be of a procedural or a substantive nature. They may, in addition, provide for the referral to the Commission of certain documents relevant to its consideration of particular draft articles.

- (i) *Procedural recommendations concerning beginning of work on a topic, continuing work on a topic, giving priority to the study of a topic, completing particular draft articles under preparation, etc.*

69. Quite a number of General Assembly recommendations addressed to the International Law Commission following consideration of the item entitled "Report of the International Law Commission" request the Commission to start studying a particular topic, to continue its work on a topic, to give a priority to the study of one or another topic, to complete the first or second reading of a set of draft articles relating to a particular topic, etc.

70. Some General Assembly resolutions requested the International Law Commission "to undertake codification" of a given topic on its programme,⁶⁰

or that the Commission should “study the topic” referred to in a particular resolution,⁶¹ or “make every effort to begin substantive work” on a given topic.⁶² Some resolutions recommended that the Commission should undertake “a separate study” of a topic⁶³ or “commence its work” on a topic “by, *inter alia*, adopting preliminary measures provided for under article 16” of the Commission’s Statute.⁶⁴ On other occasions, General Assembly resolutions have instructed the Commission to consolidate into a single draft, articles on a broad subject on some aspects of which draft articles had previously been prepared.⁶⁵ When making such recommendations the General Assembly sometimes requests that the Commission study the particular topic concerned “as an important question”.⁶⁶

71. In many resolutions the General Assembly has recommended that the Commission should “continue the work of codification and progressive development of the law” in a particular field⁶⁷ or should “continue its work” on a given topic.⁶⁸ There are also resolutions requesting the Commission “to study further” the subject “as soon as it considers it advisable”⁶⁹ or inviting the Commission “to give further consideration” to the topic “after study” of some other topics “has been completed by the United Nations”,⁷⁰ or inviting it “to commence work” on a topic “at an appropriate time and in the light of progress made on draft articles” on other topics under preparation,⁷¹ and thereby introducing an element of timing as to the consideration of the topic by the Commission. The General Assembly recommended on one occasion to the Commission that it should “expedite the study” of a topic under consideration.⁷²

72. In some resolutions the General Assembly has made recommendations or taken decisions on the question of the priority to be given by the Commission to the study of particular topics or to the preparation of draft articles concerning these topics. The scope of such recommendations and decisions, however, varies from case to case. Thus, for example, the General Assembly has sometimes requested or recommended that the Commission include in its priority list topics the study of which had not yet been undertaken, at that time, by the Commission. This occurred, for example, with respect to the régime of the territorial waters,⁷³ diplomatic intercourse and immunities⁷⁴ and succession of States and Governments.⁷⁵ In other cases, the General Assembly recommended that a certain priority be given to the preparation of draft articles under consideration by the Commission by using formulae such as: to continue “on a high priority basis” its work on a given topic “with a view to completing the preparation of a first set of draft articles at the earliest possible time”;⁷⁶ or to continue “on a priority basis” its work on a particular topic “with a view to the preparation of a first set of draft articles” on the topic concerned;⁷⁷ or “to proceed with the preparation, on a priority basis, of draft articles” on a given topic.⁷⁸ On certain occasions the General Assembly left it to the Commission to “decide upon the priority to be given to the topic” in question.⁷⁹

73. Certain General Assembly resolutions, when recommending to the Commission that it continue to work on a particular topic, set forth specific goals. Formulae to that effect vary as exemplified as follows: “to proceed with the preparation of draft articles” on a topic;⁸⁰ to continue its work with a view to making “substantial progress in the preparation of draft articles” on a given

topic⁸¹ or “with a view to making progress in consideration” of a given topic;⁸² completing “the first reading of draft articles” on a topic;⁸³ or continue work “with the object of presenting a final draft” on a topic or completing “the second reading” thereof.⁸⁴ Some of the latter resolutions specified that completion of the first or second reading of a given set of draft articles under preparation should be achieved at a given session of the Commission. There are also resolutions which recommend the continuance of a study of a topic “with a view to the possible elaboration of an appropriate legal instrument”.⁸⁵

74. It may be noted that on several occasions the General Assembly endorsed general conclusions and decisions reached by the International Law Commission as to the study of particular topics.⁸⁶

75. Finally, reference should be made to the fact that the General Assembly customarily transmits to the International Law Commission for its attention the records of the discussion on the Commission’s report at a given session of the General Assembly. There are also cases where the General Assembly made a specific decision transmitting to the Commission documentation relevant to the consideration of a particular topic or aspects thereof.⁸⁷

(ii) *Substantive recommendations concerning the study of a given topic or the preparation of a specific set of draft articles*

76. Apart from provisions in General Assembly resolutions recommending that the International Law Commission should proceed with the study of a given topic or the preparation of a specific set of draft articles taking into account previous General Assembly recommendations, views expressed in the General Assembly and its Sixth Committee and written comments submitted by Governments and, as the case may be, by international organizations, the General Assembly on occasion gives the Commission broad guidance on matters closely related to the substance of a topic under study or of a draft under preparation.

77. For example, the General Assembly recommended that the Commission should continue the work of codification and progressive development of the law of treaties “in order that the law of treaties may be placed upon the widest and most secure foundations”.⁸⁸ It was also recommended that the Commission continue its work on State responsibility “giving due consideration to the purposes and principles enshrined in the Charter of the United Nation”⁸⁹ and on the succession of States and Governments “with appropriate reference to the views of States which have achieved independence since the Second World War”.⁹⁰

(iii) *Decisions on recommendations made by the International Law Commission to conclude a convention on the basis of final draft articles prepared by it*

78. As indicated in paragraphs 51 to 56 above, final draft articles on a given topic are normally submitted by the International Law Commission to the General Assembly together with a formal recommendation concerning the conclusion of a convention on that basis. Thus, when the General Assembly receives a report of the International Law Commission containing a final set of draft articles, together with such a recommendation, the General Assembly is called upon to take a decision as to whether or not such a convention should be concluded and, in the affirmative, what organ should be entrusted with the task of elaborating and concluding the convention in question.

79. The Commission has recommended to the General Assembly the conclusion of conventions on the basis of final draft articles prepared by it on a number of occasions. On all those occasions except one (see paragraph 80 below), the General Assembly has endorsed the recommendation made to that effect by the Commission. This was the case with the final draft articles relating to the law of the sea, diplomatic intercourse and immunities, consular relations, law of treaties, special missions, representation of States in their relations with international organizations and succession of States in respect of treaties. Moreover, the General Assembly called for the elaboration and conclusion of a conventional instrument or instruments in a case in which its final draft articles were presented to it by the International Law Commission in the form of "draft conventions" because of the particular terms of reference of the request (elimination or reduction of future statelessness). In another case, the General Assembly decided to elaborate and conclude a convention on the basis of draft articles submitted to it by the Commission as "provisional" (prevention and punishment of crimes against diplomatic agents and other internationally protected persons).

80. The draft articles on arbitral procedure submitted by the International Law Commission, as final, in 1953, together with a formal recommendation to conclude a convention on the topic, provide, on the other hand, the only example in which the General Assembly declined to endorse the recommendation made by the Commission. By its resolution 797 (VIII) of 7 December 1953, the General Assembly decided to transmit to Member States "with a view to the submission by Governments of whatever comments they may deem appropriate", an item on the question being included in the provisional agenda of the tenth session of the General Assembly. At that session, the General Assembly by resolution 989 (X) of 14 December 1955 invited the Commission to consider the comments of Governments and the discussions in the Sixth Committee "in so far as they may contribute further to the value of the draft on arbitral procedure" and to report to the Assembly at its thirteenth session. By the same resolution the General Assembly decided to place the question on the provisional agenda at its thirteenth session "including the problem of the desirability of convening an international conference of plenipotentiaries to conclude a convention on arbitral procedure". At its thirteenth session, the General Assembly had before it the report requested from the Commission. The revised draft articles on arbitral procedure contained in that report were this time submitted by the Commission to the General Assembly as "model rules". By resolution 1262 (XIII) of 14 November 1958, the General Assembly brought the "Model Rules on Arbitral Procedure" submitted by the Commission to the attention of Member States for their consideration and use, in such cases and to such extent as they consider appropriate, in drawing up treaties of arbitration or *compromis*.⁹¹

81. As already mentioned,⁹² the International Law Commission is also empowered by its Statute to recommend to the General Assembly that the elaboration and conclusion of a recommended convention on the basis of draft articles prepared by it be effected by an international conference of plenipotentiaries convened by the General Assembly. Such a recommendation was made by the International Law Commission when submitting its final draft articles on law of the sea, consular relations, law of treaties, representation of

States in their relations with international organizations, and succession of States in respect of treaties. In all those cases, the General Assembly decided to entrust the elaboration and conclusion of the convention concerned to an international conference of plenipotentiaries as recommended by the International Law Commission. It also decided to convene an international conference of plenipotentiaries in a case in which the Commission did not make such a recommendation, namely in the case of the draft articles on diplomatic intercourse and immunities.

82. In some instances, the General Assembly, before adopting a decision on the conventional form to be given to a set of final draft articles submitted to it by the International Law Commission and/or on the convening of an international conference of plenipotentiaries to that effect, has given to itself and Governments of Member States time for further reflection. In those cases, an item relating to the draft articles concerned prepared by the Commission is included in the agenda of a subsequent session of the General Assembly and Governments are invited to submit comments and observations on the form and/or the procedure in which work on the draft articles concerned should be completed. Thus, for example, at its thirteenth session, the General Assembly made a decision to include the item entitled "Diplomatic intercourse and immunities" in the provisional agenda of its fourteenth session "with a view to the early conclusion of a convention" on the matter and to consider at that session "the question to what body the formulation of the convention should be entrusted".⁹³ Initial consideration by the General Assembly of the Commission's final draft articles on succession of States in respect of treaties provides another example. At its twenty-ninth session, the General Assembly decided to include an item entitled "Succession of States in respect of treaties" in the provisional agenda of its thirtieth session for the purpose of determining the procedure and form in which work on the said draft articles should be completed.⁹⁴

83. The most recent example of a General Assembly decision aimed at providing a delay for reflection relates to the draft articles on most-favoured-nation clauses adopted by the International Law Commission in 1978. By resolution 33/139 of 19 December 1978, the General Assembly decided to include in the provisional agenda of its thirty-fifth session an item entitled "consideration of the draft articles on most-favoured-nation clauses". By the same resolution, States were requested by the General Assembly, *inter alia*, to comment on the recommendation of the Commission that the draft articles should be recommended to Member States with a view to the conclusion of a convention on the subject.

84. In the case of the International Law Commission's "draft conventions" on the elimination and reduction of future statelessness, General Assembly resolution 896 (IX) of 4 December 1954 expressed the desire that an international conference of plenipotentiaries be convened to conclude a convention for the reduction or elimination of future statelessness "as soon as at least twenty States have communicated to the Secretary-General their willingness to co-operate with such a conference". After that condition was fulfilled, and the Secretary-General reported on the matter to the General Assembly, the conference was convened in 1959.

85. Before adopting its final decisions on the form to be given to a set of draft articles submitted by the Commission and/or the body to be entrusted

with such a task, the General Assembly has invited States and, as the case may be, specialized agencies and other interested intergovernmental organizations to submit also written comments and observations on the relevant chapter of the report of the International Law Commission and, in particular, on the final draft articles contained therein, and eventually, on those provisions relating to the topic on which the Commission was unable to take decisions. This kind of request for comments and observations was made, for example, in the case of the draft articles on diplomatic intercourse and immunities, representation of States in their relations with international organizations, succession of States in respect of treaties, and the most-favoured-nation clauses.⁹⁵ In the latest instance, organs of the United Nations with competence on the subject-matter were also invited to submit their comments and observations. The Secretary-General is usually requested to circulate in due time the above-mentioned comments and observations.

8. *Elaboration and conclusion of conventions on the basis of draft articles prepared by the International Law Commission following a General Assembly decision to that effect*

(a) *By an international conference convened by the General Assembly*

86. Ten conventions have been elaborated and concluded on the basis of draft articles prepared by the International Law Commission by international conferences convened to that effect by the General Assembly, namely: the four 1958 conventions on the law of the sea (Territorial Sea and Contiguous Zone; High Seas; Fishing and Conservation of Living Resources of the High Seas; Continental Shelf); the 1961 Convention on the Reduction of Statelessness; the 1961 Vienna Convention on Diplomatic Relations; the 1963 Vienna Convention on Consular Relations; the 1969 Vienna Convention on the Law of Treaties; the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character and the 1978 Vienna Convention on Succession of States in Respect of Treaties. The 1958 Conference on the Law of the Sea elaborated and adopted an Optional Protocol concerning the compulsory settlement of disputes related to the said four conventions on the law of the sea. The 1961 Conference on Diplomatic Intercourse and Immunities and the 1963 Conference on Consular Relations elaborated and adopted two Optional Protocols, each related to the respectively adopted Conventions and concerning acquisition of nationality and compulsory settlement of disputes.

87. When making a decision that an international conference of plenipotentiaries should be convened to elaborate and conclude a conventional instrument or instruments on the basis of draft articles prepared by the International Law Commission, the General Assembly resolution providing for that decision usually sets forth the task which is before the conference concerned. An elaborate formula on the task entrusted to the conference was included in General Assembly resolution 1105 (XI) of 21 February 1957 on the convening of the first United Nations Conference on the Law of the Sea. Having emphasized that the various problems of the law of the sea "were closely linked together juridically as well as physically" and "closely interdependent", the Assembly requested the Conference "to examine the law of the sea, taking account not only of the legal but also of the technical, biological, economic

and political aspects of the problem, and to embody the results of its work in one or more international conventions or such other instruments as it may deem appropriate". The Conference was also requested to study "the question of free access to the sea of land-locked countries, as established by international practice of treaties".

88. Other formulae used by General Assembly resolutions concerning the task before the conference concerned read as follows:

Diplomatic intercourse and immunities (1959):

"Decides that an international conference of plenipotentiaries shall be convoked to consider the question of diplomatic intercourse and immunities and to embody the results of its work in an international convention, together with such ancillary instruments as may be necessary".⁹⁶

Consular relations (1961):

"Decides that an international conference of plenipotentiaries be convened to consider the question of consular relations and to embody the results of its work in an international convention and such other instruments as it may deem appropriate".⁹⁷

Law of treaties (1966):

"Decides that an international conference of plenipotentiaries shall be convened to consider the law of treaties and to embody the results of its work in an international convention and such other instruments as it may deem appropriate".⁹⁸

Representation of States in their relations with international organizations (1972):

"Decides that an international conference of plenipotentiaries shall be convened as soon as practicable to consider the draft articles on the representation of States in their relations with international organizations and to embody the results of its work in an international convention and such other instruments as it may deem appropriate".⁹⁹

Succession of States in respect of treaties (1975):

"Decides to convene a conference of plenipotentiaries in 1977 to consider the draft articles on succession of States in respect of treaties and to embody the results of its work on an international convention and such other instruments as it may deem appropriate".¹⁰⁰

89. Another decision of importance from the point of view of treaty-making which the General Assembly normally makes when convening an international conference is that determining what will be the basis for the work of the conference. There have evolved four types of formulae embodying such decisions:

(a) In resolution 1105 (XI) relating to the first Conference on the Law of the Sea, the General Assembly referred to it "the report of the International Law Commission as the basis for its consideration of the various problems involved in the development and codification of the law of the sea, and also the verbatim records of the relevant debates in the General Assembly, for consideration by the conference in conjunction with Commission's report". A more or less similar formulae was included in the General Assembly resolu-

tions 1685 (XVI) and 1813 (XVII) relating to the Conference on Consular Relations;

(b) In resolution 1450 (XIV) concerning the Conference on Diplomatic Intercourse and Immunities, the General Assembly referred to it only the relevant chapter of the Commission's report "as the basis for its consideration of the question" without any record of the relevant debates being specifically transmitted to the conference;

(c) In resolution 2166 (XXI) relating to the Conference on the Law of Treaties, the General Assembly referred to it the Commission's draft articles "as the basic proposal for consideration" by the Conference; records of relevant debates held at a subsequent session of the General Assembly were also transmitted to the Conference by General Assembly resolution 2287 (XXII);

(d) And in resolutions 3072 (XXVIII) and 31/18 relating to the Conferences on the Representation of States in Their Relations with International Organizations and on Succession of States in Respect of Treaties, the General Assembly referred to the Conferences the corresponding draft articles of the Commission "as the basic proposal for consideration" without any specific mention of the relevant debates being transmitted to the Conferences.

90. The General Assembly resolution 1105 (XI) convening the first United Nations Conference on the Law of the Sea "called upon the Governments invited to the Conference and groups thereof to utilize the time remaining before the opening of the Conference for exchanges of views on the controversial questions relative to the law of the sea". On other occasions, the General Assembly made arrangements for the consideration by it of the subject prior to the opening of the conference concerned, including an item to that effect on the agenda of one of its subsequent sessions. Thus, for example, an item entitled "Consular Relations" was included by resolution 1685 (XVI) in the provisional agenda of its seventeenth session "to allow further expressions and exchanges of views concerning the draft articles on consular relations" before the opening of the Conference. Another example is provided by resolution 2166 (XXI) whereby the General Assembly decided to include an item entitled "Law of Treaties" in the provisional agenda of its twenty-second session "with a view to further discussion of the draft articles in order to facilitate the conclusion of a convention on the law of treaties at the conference of plenipotentiaries convened pursuant to the present resolution".

91. Another arrangement which the General Assembly used to make when convening an international conference to consider draft articles prepared by the International Law Commission is the request to States to submit to the Secretary-General for circulation written comments and observations on the final draft articles prepared by the International Law Commission in order that they may be circulated to Governments prior to the opening of the conference. Such request was embodied in the resolutions concerning the Conferences on Consular Relations, the Law of Treaties, the Representation of States in Their Relations with International Organizations and Succession of States in respect of Treaties. In one case, the first United Nations Conference on the Law of the Sea, the General Assembly convening resolution 1105 (XI) requested the Secretary-General to invite appropriate experts to advise and assist the Secretariat in preparing the Conference with, *inter alia*, the following terms of refer-

ence: "To obtain, in the manner which they think most appropriate, from the Governments invited to the conference any further provisional comments the Governments may wish to make on the Commission's report and related matters, and to present to the conference in systematic form any comments made by the Governments, as well as the relevant statements made in the Sixth Commission at the eleventh and previous sessions of the General Assembly".

92. On two occasions States invited to conferences were invited by the General Assembly to submit any amendment which they might wish to propose in advance of the conference to the draft articles concerned prepared by the International Law Commission.¹⁰¹ Amendments submitted pursuant to that invitation were circulated at the opening of the conferences in question.

93. The resolutions convening the codification conferences also include provisions which determine the States invited to participate.¹⁰² Such resolutions also provide invitations to specialized agencies and the interested intergovernmental organizations to send observers to the conference. Over the last years, representatives of national liberation movements have likewise been invited to participate in codification conferences. The Secretary-General is also requested to arrange for the presence at the conferences of the International Law Commission's Special Rapporteur on the topic in question. In the case of the first United Nations Conference on the Law of the Sea the Secretary-General was also requested by the necessary General Assembly resolutions to arrange for the technical services of experts.

94. For all the codification conferences the Secretary-General was requested to present recommendations concerning the methods of work and procedures of conference. For the first United Nations Conference on the Law of the Sea a decision was also made to the effect that the appropriate experts invited by the Secretary-General to assist the Secretariat in preparing the Conference should also advise it with respect to the recommendations concerning the methods of work and procedures of the Conference and the preparation of working documents of a legal, technical scientific or economic nature to be submitted to the Conference in order to facilitate its work. General Assembly convening resolutions also request the Secretary-General to arrange for the necessary staff and facilities and to submit to the conferences relevant documentation. The resolution convening the first United Nations Conference on the Law of the Sea specified in that respect that the Secretary-General should transmit to the Conference "all such records of world-wide regional international meetings as may serve as official background material for its work".

95. Each United Nations codification conference called to elaborate and conclude an international conventional instrument or instruments on the basis of draft articles prepared by the International Law Commission approves its own rules of procedure as well as the basic methods of work and techniques to be followed in the conference concerned. The articles of the International Law Commission's draft and amendments thereto are considered first at committee level and then by the plenary of the conference. The first United Nations Conference on the Law of the Sea set up five main committees and the United Nations Conference on Consular Relations two main committees. In other cases, the conferences established a single committee of the whole. All United Nations codification conferences have been assisted by a drafting committee.

Working groups are sometimes set up by the conference to consider specific questions and report back to a main committee or to the plenary of the conference.

96. After having considered all articles and amendments thereto, the preamble of the instrument and final clauses, the draft convention or conventions are put to the vote as a whole. Once adopted, the conventions, as well as related optional protocols, are open for signature and ratification or for accession. Each conference also adopts its final act to which resolutions adopted by the conference are normally annexed.

(b) *By the General Assembly*

97. The 1969 Convention on Special Missions and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, were elaborated and adopted, on the bases of the respective draft articles submitted by the International Law Commission, by the General Assembly itself. The draft articles on special missions, prepared by the International Law Commission following the two-reading procedure, had been recommended by the Commission for conclusion of a convention. The draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons had been provisionally adopted by the Commission and submitted to the General Assembly without any formal recommendations as to the conclusion of a convention on that basis.

98. Having received the sets of draft articles from the International Law Commission mentioned above, the General Assembly made the following arrangements for the elaboration and conclusion on the respective conventions:

- (i) States, and in the case of the draft articles on the prevention and punishment of crimes against internationally protected persons "the specialized agencies and interested inter-governmental organizations", were invited to submit their written comments and observations on the draft articles prepared by the International Law Commission;¹⁰³
- (ii) The Secretary-General was requested to circulate those comments and observations "in order to facilitate the consideration" of the drafts by the General Assembly "in the light of those comments and observations";¹⁰⁴
- (iii) The items entitled "Draft Convention on Special Missions" and "Draft Convention on the Prevention and Punishment of Crimes against Diplomatic Agents and Other Internationally Protected Persons" were included in the agenda of subsequent sessions of the General Assembly "with a view to the adoption" (special missions), "the final elaboration" (internationally protected persons)¹⁰⁵ of the conventions in question. Having been unable, because of lack of time, to conclude the elaboration in a single session of the Convention on Special Missions, the General Assembly inscribed again the item "Draft Convention on Special Missions" in the agenda of its following session "with a view to the adoption of the Convention" at that session;¹⁰⁶

- (iv) In the case of special missions, States were invited to include as far as possible in their delegations experts competent in the field and the Secretary-General was requested to arrange for the presence of the Special Rapporteur of the International Law Commission for the topic as an expert during the debates on the item at the twenty-third and twenty-fourth sessions of the General Assembly.¹⁰⁷

99. The work of the elaboration of the two Conventions was done by the Sixth Committee of the General Assembly which studied in detail each of the provisions of the draft articles, amended them, prepared the preamble and final clauses of the conventions and, in the case of the special missions, an Optional Protocol concerning the compulsory settlement of disputes arising out of the interpretation or application of the Convention. The Sixth Committee was assisted in both instances by a drafting committee established by it. The General Assembly adopted by resolution the Conventions, and the Optional Protocol relevant to the Convention on Special Missions, recommended by the Sixth Committee, and opened the Conventions and the Optional Protocol for signature and ratification or for accession.¹⁰⁸ A resolution on the settlement of civil claims was also adopted in connexion with the Special Missions Convention.

9. *Conclusions*

100. With the assistance of the Working Group, established at its thirtieth session and enlarged at its thirty-first session,¹⁰⁹ the International Law Commission, in the light of the General Assembly's request for observations, has made an evaluation of its own performance and of its potential. This has been done on the basis of the information contained in Sections I to VIII above.

101. This information shows that the techniques and procedures provided in the Statute of the Commission, as they have evolved during a period of three decades, are well adapted for the object stated in Article 1 and further defined in Article 15 of its Statute, i.e. "the progressive development of international law and its codification".

102. Nevertheless, experience has shown that it is not normally feasible in any particular case to separate the elements of progressive development from those of codification and that the Commission as a permanent body of legal experts is well qualified to prepare draft conventions or articles in those cases in which elements of progressive development predominate, as well as those in which elements of codification predominate.

103. The Commission, while constantly keeping under review its techniques and procedures and adapting them to meet the needs of circumstances as they arise, considers that, on the whole, its rate of progress is satisfactory having regard to the time and resources at its disposal and the assistance which it requires from Governments at all stages.

104. Institutional features which contribute to the efficient performance of its functions by the Commission are (a) Special Rapporteurs, (b) the Drafting Committee and (c) Working Groups.

(a) The institution of Special Rapporteurs was foreseen in the Statute of the Commission. The institution has served the Commission well, but it will be

necessary to provide the Special Rapporteurs with more assistance and more facilities to enable them to perform their duties in the future.

(b) The Drafting Committee, which has a somewhat wider mandate than a normal drafting committee, is an indispensable and very effective organ of the Commission.

(c) For preliminary examination of the scope of new topics, and for special topics assigned to the Commission by the General Assembly, Working Groups created *ad hoc* have also proved to be valuable.

105. It is essential not only that the Commission should produce drafts of a high technical quality, but also that these drafts should reflect the comments and observations of Governments whether made directly or through their representatives in the General Assembly. The established procedures do, in fact, provide such opportunities for Governments to make comments and observations and for the Commission to examine them. It may, however, well become necessary for the Commission to make more use of questionnaires addressed to Governments than it has done in the past.

106. Finally, it should be noted that there is a risk that the rate of progress of the Commission may be impeded by its agenda becoming too congested; and it is for consideration whether topics selected for inclusion in its programme should, where appropriate, be specific rather than general.

ANNEX

Statute of the International Law Commission

Article 1

1. The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification.

2. The Commission shall concern itself primarily with public international law, but is not precluded from entering the field of private international law.

CHAPTER I. ORGANIZATION OF THE INTERNATIONAL LAW COMMISSION

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CHAPTER II. FUNCTIONS OF THE INTERNATIONAL LAW COMMISSION

Article 15

In the following articles the expression "progressive development of international law" is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression "codification of international law" is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive State practice, precedent and doctrine.

A. PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW

Article 16

When the General Assembly refers to the Commission a proposal for the progressive development of international law, the Commission shall follow in general a procedure on the following lines:

- (a) It shall appoint one of its members to be Rapporteur;
- (b) It shall formulate a plan of work;
- (c) It shall circulate a questionnaire to the Governments, and shall invite them to supply within a fixed period of time data and information relevant to items included in the plan of work;
- (d) It may appoint some of its members to work with the Rapporteur on the preparation of drafts pending receipt of replies to this questionnaire;
- (e) It may consult with scientific institutions and individual experts; these experts need not necessarily be nationals of Members of the United Nations. The Secretary-General will provide, when necessary and within the limits of the budget, for the expenses of these consultations of experts;
- (f) It shall consider the drafts proposed by the Rapporteur;
- (g) When the Commission considers a draft to be satisfactory, it shall request the Secretary-General to issue it as a Commission document. The Secretariat shall give all necessary publicity to this document which shall be accompanied by such explanations and supporting material as the Commission considers appropriate. The publication shall include any information supplied to the Commission in reply to the questionnaire referred to in sub-paragraph (c) above;
- (h) The Commission shall invite the Governments to submit their comments on this document within a reasonable time;
- (i) The Rapporteur and the members appointed for that purpose shall reconsider the draft taking into consideration these comments and shall prepare a final draft and explanatory report which they shall submit for consideration and adoption by the Commission;
- (j) The Commission shall submit the draft so adopted with its recommendations through the Secretary-General to the General Assembly.

Article 17

1. The Commission shall also consider proposals and draft multilateral conventions submitted by Members of the United Nations, the principal organs of the United Nations other than the General Assembly, specialized agencies, or official bodies established by inter-governmental agreement to encourage the progressive development of international law and its codification, and transmitted to it for that purpose by the Secretary-General.
2. If in such cases the Commission deems it appropriate to proceed with the study of such proposals or drafts, it shall follow in general a procedure on the following lines:
 - (a) The Commission shall formulate a plan of work, and study such proposals or drafts, and compare them with any other proposals and drafts on the same subjects;
 - (b) The Commission shall circulate a questionnaire to all Members of the United Nations and to the organs, specialized agencies and official bodies mentioned above which are concerned with the question, and shall invite them to transmit their comments within a reasonable time;
 - (c) The Commission shall submit a report and its recommendations to the General Assembly. Before doing so, it may also, if it deems it desirable, make an interim report to the organ or agency which has submitted the proposal or draft;
 - (d) If the General Assembly should invite the Commission to proceed with its work in accordance with a suggested plan, the procedure outlined in article 16 above shall apply. The questionnaire referred to in paragraph (c) of that article may not, however, be necessary.

B. CODIFICATION OF INTERNATIONAL LAW

Article 18

1. The Commission shall survey the whole field of international law with a view to selecting topics for codification, having in mind existing drafts whether governmental or not.
2. When the Commission considers that the codification of a particular topic is necessary or desirable, it shall submit its recommendations to the General Assembly.
3. The Commission shall give priority to requests of the General Assembly to deal with any question.

Article 19

1. The Commission shall adopt a plan of work appropriate to each case.
2. The Commission shall, through the Secretary-General, address to Governments a detailed request to furnish the texts of laws, decrees, judicial decisions, treaties, diplomatic correspondence and other documents relevant to the topic being studied and which the Commission deems necessary.

Article 20

The Commission shall prepare its drafts in the form of articles and shall submit them to the General Assembly together with a commentary containing:

- (a) Adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine;
- (b) Conclusions relevant to:
 - (i) The extent of agreement on each point in the practice of States and in doctrine;
 - (ii) Divergencies and disagreements which exist, as well as arguments invoked in favour of one or another solution.

Article 21

1. When the Commission considers a draft to be satisfactory, it shall request the Secretary-General to issue it as a Commission document. The Secretariat shall give all necessary publicity to the document including such explanations and supporting material as the Commission may consider appropriate. The publication shall include any information supplied to the Commission by Governments in accordance with article 19. The Commission shall decide whether the opinions of any scientific institution or individual experts consulted by the Commission shall be included in the publication.
2. The Commission shall request Governments to submit comments on this document within a reasonable time.

Article 22

Taking such comments into consideration, the Commission shall prepare a final draft and explanatory report which it shall submit with its recommendations through the Secretary-General to the General Assembly.

Article 23

1. The Commission may recommend to the General Assembly:
 - (a) To take no action, the report having already been published;
 - (b) To take note of or adopt the report by resolution;

(c) To recommend the draft to Members with a view to the conclusion of a convention;

(d) To convoke a conference to conclude a convention.

2. Whenever it deems it desirable, the General Assembly may refer drafts back to the Commission for reconsideration or redrafting.

Article 24

The Commission shall consider ways and means for making the evidence of customary international law more readily available, such as the collection and publication of documents concerning State practice and of the decisions of national and international courts on questions of international law, and shall make a report to the General Assembly on this matter.

CHAPTER III. CO-OPERATION WITH OTHER BODIES

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NOTES

¹ A general introduction to the International Law Commission and its work is given by the publication entitled "The Work of the International Law Commission" (United Nations publication E.72.I.17) a second revised edition of which is to be published soon. The publication contains, in particular, an account of the organization, programme and methods of work of the Commission as well as brief descriptions of the various topics of international law which have been dealt with by the Commission. It also gives an account of the actions decided upon by the General Assembly following the consideration of the topics by the Commission and of the results achieved by diplomatic conferences or the Assembly itself when considering draft articles prepared by the Commission.

² *Yearbook of the International Law Commission, 1949*, pp. 10-11, 1st meeting, para. 18.

³ At its first two sessions, the International Law Commission, pursuant to article 24 of its Statute, considered ways and means for making the evidence of customary international law more readily available and made recommendations thereon to the General Assembly. The publications entrusted to the Codification Division referred to above had their origin in the said recommendations of the International Law Commission and actions taken by the General Assembly.

⁴ During its first thirty-one sessions, however, the Commission, with the endorsement of the General Assembly, has worked almost exclusively in the field of public international law.

⁵ See the annex to the present report.

⁶ *Yearbook of the International Law Commission, 1956*, vol. II, document A/3159, paras. 25-27.

⁷ *Ibid.*, 1961, vol. II, document A/4843, paras. 29-32.

⁸ *Ibid.*, 1966, vol. II, document A/6309/Rev.1, Part II, para. 35.

⁹ *Ibid.*, 1967, vol. II, document A/6709/Rev.1, para. 23.

¹⁰ *Ibid.*, 1971, vol. II (Part Two), document A/8410/Rev.1, para. 50.

¹¹ *Ibid.*, 1974, vol. II (Part One), document A/9610/Rev.1, para. 83.

¹² *Ibid.*, 1978, vol. II (Part Two), document A/33/10, para. 72.

¹³ See, for example, General Assembly resolutions 31/97 of 15 December 1976, 32/151 of 19 December 1977 and 33/139 of 19 December 1978.

¹⁴ Document A/CN.4/Rev.1.

¹⁵ The sense of the Commission was that, while the codification of the whole of international law was the ultimate objective, it was desirable for the present to begin

work on the codification of a few of the topics, rather than to discuss a general systematic plan which might be left to later elaboration (*Yearbook of the International Law Commission, 1949*, p. 280, para. 14, *in fine*).

¹⁶ *Ibid.*, p. 281, para. 16. The eleven topics not selected by the Commission were the following: subjects of international law; sources of international law; obligations of international law in relation to the law of States; fundamental rights and duties of States; domestic jurisdiction; recognition of acts of foreign States; obligations of territorial jurisdiction; territorial domain of States; pacific settlement of international disputes; extradition; laws of war (*ibid.*, pp. 280-281, para. 15).

¹⁷ In pursuance of General Assembly resolution 899 (IX) of 14 December 1954, the Commission grouped together systematically all the rules it had adopted concerning the "régime of the high seas" and "régime of territorial waters" (two topics included in the 1949 list) with those which it had earlier elaborated regarding the continental shelf, the contiguous zone and the conservation of the living resources of the sea in a single final consolidated draft entitled "Articles concerning the law of the sea" (*Yearbook of the International Law Commission, 1956*, vol. II, document A/3159, para. 33).

¹⁸ A topic the Commission considered but which was not included in the 1949 list or referred to it by the General Assembly was the topic "Ways and means for making the evidence of customary law more readily available". This topic was considered by the Commission on the basis of article 24 of its Statute.

¹⁹ *Yearbook of the International Law Commission, 1971*, vol. II (Part Two), document A/CN.4/245.

²⁰ *Ibid.*, 1977, vol. II (Part Two), document A/32/10, paras. 108 and 110.

²¹ *Ibid.*, para. 109.

²² *Yearbook of the International Law Commission, 1978*, vol. II (Part Two), document A/33/10, para. 73.

²³ Part II of the draft articles on treaties concluded between States and international organizations or between international organizations, currently under preparation, also sets out rules governing the conclusion and entry into force of the treaties falling within the scope of the draft articles.

²⁴ It may be recalled that originally the Commission at its fifth session (1953) adopted a draft convention on arbitral procedure. See para. 80.

²⁵ *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, paras. 51-61 and *ibid.*, annexes I and 2.

²⁶ *Ibid.*, 1971, vol. II (Part One), document A/8410/Rev.1, paras. 114-118.

²⁷ *Ibid.*, 1974, vol. II (Part One), document A/9610/Rev.1, paras. 146-159.

²⁸ *Ibid.*, 1978, vol. II (Part Two), document A/33/10, paras. 179-190.

²⁹ Thus, for example, members of the Sub-committees on State responsibility and on succession of States and Governments submitted memoranda and working papers printed in the Yearbook of the Commission (*Yearbook of the International Law Commission, 1963*, vol. II, at pp. 237-259 and 282-300). The Chairman of the Sub-Committee on treaties concluded between States and international organizations or between two or more international organizations sent to the members of the Sub-Committee a questionnaire requesting their views on the methods of treating the topic and its scope, the replies to which are, together with the questionnaire, printed in the Commission's Yearbook (*Yearbook of the International Law Commission, 1971*, vol. II (Part Two), document A/CN.4/250). Members of the Sub-committee on the law of non-navigational uses of international watercourses also submitted memoranda setting forth suggestions on the contents of a working plan for the topic as well as on organizational and substantive matters having a bearing on such a plan (*Yearbook of the International Law Commission, 1974*, vol. II (Part One), document A/9610/Rev.1, Chapter V, Annex, para. 5).

³⁰ *Yearbook of the International Law Commission, 1963*, vol. II, document A/5509, paras. 54 and 60.

³¹ *Ibid.*, 1956, vol. II, document A/3159, para. 36.

³² *Ibid.*, 1961, vol. I, 597th, 620th and 621st meetings and *ibid.*, vol. II, document A/4843, paras. 38-39.

³³ For reports submitted by the Special Rapporteur for the purpose of the second reading by the Commission of a set of draft articles, the Special Rapporteur also has available to him the written comments and observations on the preliminary draft articles received from Governments and, if requested, intergovernmental organizations (see para. 50).

³⁴ See *Yearbook of the International Law Commission, 1954*, vol. II, document A/2693, paras. 60 and 63; and *ibid.*, 1956, vol. II, document A/3159, paras. 15-18.

³⁵ *Ibid.*, 1974, vol. II (Part One), document A/9610/Rev.1, chapter V and *ibid.*, 1975, vol. II, document A/10010/Rev.1, para. 138.

³⁶ For example, this method was used in connection with the gathering of data and information on the topics "law of treaties", "arbitral procedure" and "régime of the high seas". See *ibid.*, 1949, document A/925, para. 22 and *ibid.*, 1950, vol. II, document A/1316, paras. 160, 165 and 182.

³⁷ For example, questionnaires have been prepared during recent years for the purpose of gathering data and information from international organizations on the topics "relations between States and international organizations" and "question of treaties concluded between States and international organizations or between two or more international organizations", such data and information being needed for the study of those topics by the Special Rapporteurs concerned. See *ibid.*, 1971., vol. II (Part One), document A/8410/Rev.1, para. 15; *ibid.*, 1978, vol. II (Part Two), document A/33/10, paras. 148, 150-153.

³⁸ *Ibid.*, 1958, vol. II, document A/3859, para. 65, p. 108.

³⁹ In certain cases the need for making an over-all review of a given set of draft articles arises before adopting them provisionally in first reading. Thus, for example, in the course of the current session the Commission undertook an over-all review of all the draft articles on succession of States in respect of State property and State debts, including those articles of the draft adopted previously in the course of its first reading.

⁴⁰ *Yearbook of the International Law Commission, 1971*, vol. II (Part One), document A/8410/Rev.1, para. 39, and vol. II (Part Two), documents A/CN.4/L.174 and Add.1-6.

⁴¹ *Ibid.*, 1956, vol. II, document A/3159, para. 28. This recommendation was preceded by an exposé of the reasons upon which it was based, reproduced above at para. 13.

⁴² *Ibid.*, 1961, vol. II, document A/4843, para. 27.

⁴³ *Ibid.*, 1966, vol. II, document A/6309/Rev.1, para. 36.

⁴⁴ *Ibid.*, 1971, vol. II (Part One), document A/8410/Rev.1, para. 57.

⁴⁵ *Ibid.*, 1974, vol. II (Part One), document A/9610/Rev.1, para. 84.

⁴⁶ *Ibid.*, 1958, vol. II, document A/3859, para. 50.

⁴⁷ *Official Records of the General Assembly, Supplement No. 10 (A/33/10)*.

⁴⁸ *Yearbook of the International Law Commission, 1967*, vol. II, document A/6769/Rev.1, para. 33.

⁴⁹ *Ibid.*, 1971, vol. II (Part One), document A/8410/Rev.1, para. 59.

⁵⁰ *Ibid.*, 1956, vol. II, document A/3159, paras. 30-32.

⁵¹ The Commission was confronted with the question from its very first session held in 1949. On that occasion, having been instructed by General Assembly resolution 178 (II) of 21 November 1947 to prepare a draft declaration on rights and duties of States on the basis of a Panamanian draft, the Commission came to the conclusion that its function in relation to the draft declaration fell within neither of the two principal duties laid down upon it by its Statute, but constituted a "special assignment" from the General Assembly. Thereafter, the Commission submitted its 1949 draft "Declaration on the Rights and Duties of States" immediately to the General Assembly, placing on record its conclusion that it was for the General Assembly to decide what further course of action should be taken in relation to the draft Declaration and, in particular, whether it should be transmitted to Governments of Member States for comments (*ibid.*, 1949, document A/295, para. 53).

⁵² *Ibid.*, 1954, vol. II, document A/2693, paras. 41-50.

⁵³In 1977, the Commission expressed the opinion that the draft code could be reviewed in the future if the General Assembly so wishes (*ibid.*, 1977, vol. II (Part Two), document A/32/10, para. 111). An item entitled "Draft Code of Offences against the Peace and Security of Mankind" was inscribed on the agenda of the thirty-second session (1977) of the General Assembly at the request of certain Member States. After consideration by the Sixth Committee, the General Assembly at its thirty-third session adopted resolution 33/97 of 16 December 1978; thereby it invited Member States and relevant international intergovernmental organizations to submit their comments and observations on the draft Code. The Assembly also decided to include the item in the provisional agenda at its thirty-fifth session (1981).

⁵⁴*Ibid.*, 1972, vol. II, document A/8710/Rev.1, paras. 58-64.

⁵⁵*Ibid.*, 1956, vol. II, document A/3159, para. 22.

⁵⁶*Ibid.*, 1960, vol. II, document A/4425, para. 15.

⁵⁷*Ibid.*, 1961, vol. II, document A/4843, para. 19.

⁵⁸See para. 18.

⁵⁹The exercise by the General Assembly of its functions regarding the International Law Commission also takes place sometimes in the context of the consideration of separate items included in its agenda.

⁶⁰For example, General Assembly resolutions 685 (VII) of 5 December 1952 (diplomatic intercourse and immunities), 799 (VIII) of December 1953 (State responsibility) and 1400 (XIV) of 21 November 1959 (right of asylum).

⁶¹For example, General Assembly resolutions 1453 (XIV) of 7 December 1959 (juridical régime of historic waters, including historic bays), 2272 (XXII) of 1 December 1967 (most-favoured-nation clause) and 2501 (XXIV) of 12 November 1969 (question of treaties concluded between States and international organizations or between two or more international organizations).

⁶²For example, General Assembly resolution 2400 (XXIII) of 11 December 1968 (State responsibility).

⁶³For example, General Assembly resolution 3071 (XXVIII) of 30 November 1973 (international liability for injurious consequences arising out of acts not prohibited by international law).

⁶⁴For example, General Assembly resolution 3071 (XXVIII) of 30 November 1973 (the law of non-navigational uses of international watercourses).

⁶⁵For example, in connection with the preparation by the Commission of its 1956 draft articles on the law of the sea, see General Assembly resolution 789 (VIII) of 7 December 1953 and 899 (IX) of 14 December 1954.

⁶⁶For example, General Assembly resolution 2501 (XXIV) of 12 November 1969 (question of treaties concluded between States and international organizations or between two or more international organizations).

⁶⁷For example, General Assembly resolution 1902 (XVIII) of 13 November 1963 (law of treaties).

⁶⁸For example, General Assembly resolution 33/139 of 19 December 1978 (the law of non-navigational uses of international watercourses).

⁶⁹For example, General Assembly resolution 1687 (XVI) of 18 December 1961 (special missions).

⁷⁰For example, General Assembly resolution 1289 (XIII) of 5 December 1958 (relations between States and international organizations).

⁷¹For example, General Assembly resolution 32/151 of 19 December 1977 (international liability for injurious consequences arising out of acts not prohibited by international law; jurisdictional immunities of States and their property).

⁷²General Assembly resolution 2272 (XXII) of 1 December 1977 (State responsibility).

⁷³General Assembly resolution 374 (IV) of 6 December 1949.

⁷⁴General Assembly resolution 685 (VII) of 5 December 1952.

⁷⁵General Assembly resolution 1686 (XVI) of 18 December 1961.

⁷⁶ For example, General Assembly resolution 3495 (XXX) of 15 December 1975 (State responsibility).

⁷⁷ For example, General Assembly resolution 3071 (XXVIII) of 30 November 1973 (State responsibility).

⁷⁸ For example, General Assembly resolution 31/97 of 15 December 1976 and 32/151 of 19 December 1977 (succession of States in respect of matters other than treaties; question of treaties concluded between States and international organizations or between two or more international organizations).

⁷⁹ For example, General Assembly resolutions 2780 (XXVI) of 3 December 1971 and 2926 (XXVII) of 28 November 1972 (the law of non-navigational uses of international watercourses).

⁸⁰ For example, General Assembly resolutions 2780 (XXVI) of 3 December 1971 (question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law) and 3071 (XXVIII) of 30 November 1973 (succession of States in respect of matters other than treaties; most-favoured-nation clause).

⁸¹ For example, General Assembly resolution 2780 (XXVI) of 3 December 1971 (State responsibility).

⁸² For example, General Assembly resolution 2634 (XXV) of 12 November 1970 (succession of States in respect of matters other than treaties).

⁸³ For example, General Assembly resolutions 2780 (XXVI) of 3 December 1971 (succession of States in respect of treaties), 3495 (XXX) of 15 December 1975 (most-favoured-nation clause) and 33/139 of 19 December 1978 (succession of States in respect of matters other than treaties).

⁸⁴ For example, General Assembly resolutions 2045 (XX) of 8 December 1965 (law of treaties), 2167 (XXI) of 5 December 1966 (special missions), 2634 (XXV) of 12 November 1970 (relations between States and international organizations), 3071 (XXVIII) of 30 November 1973 (succession of States in respect of treaties) and 32/151 of 19 December 1977 (most-favoured-nation clause).

⁸⁵ For example, General Assembly resolution 33/139 of 19 December 1978 (status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier).

⁸⁶ For example, General Assembly resolutions 32/151 of 19 December 1977 (second part of the topic of relations between States and international organizations; status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier) and 33/139 of 19 December 1978 (State responsibility).

⁸⁷ For example, by its resolution 900 (IX) of 14 December 1954, the General Assembly decided to refer to the International Law Commission the report of the International Technical Conference on the Conservation of the Living Resources of the Sea "as a further technical contribution to be taken into account in its study of the questions to be dealt with in the final report on the law of the sea".

⁸⁸ General Assembly resolutions 1765 (XVII) of 20 November 1962 and 1902 (XVIII) of 18 November 1963.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ See paragraph 33 above.

⁹² See paragraph 25 above.

⁹³ General Assembly resolution 1288 (XII) of 5 December 1958. A somewhat similar decision was taken by the General Assembly in connection with the Commission's draft articles on representation of States in their relations with international organizations. In resolution 2780 (XXVI) of 3 December 1971, the Assembly decided to elaborate and conclude a convention on the basis of the draft articles, but it postponed its decision as to the body to be entrusted with that task. An item entitled "Representation of States in their relations with international organizations" was included in the provisional agenda of the next regular session of the General Assembly.

⁹⁴ General Assembly resolution 3315 (XXIX) of 14 December 1974.

⁹⁵ General Assembly resolution 1282 (XIII), 2780 (XXVI), 3315 (XXIX) and 33/139.

⁹⁶ General Assembly resolution 1450 (XIV) of 7 December 1959. By its resolution 1504 (XV) of 12 December 1960, the General Assembly decided that the provisional set of draft articles on special missions adopted by the International Law Commission in 1960 be referred to the Conference so that they may be considered together with the draft articles on diplomatic intercourse and immunities.

⁹⁷ General Assembly resolution 1685 (XVI) of 18 December 1961.

⁹⁸ General Assembly resolution 2166 (XXI) of 5 December 1966.

⁹⁹ General Assembly resolution 2966 (XXVII) of 14 December 1972.

¹⁰⁰ General Assembly resolution 3496 (XXX) of 15 December 1975.

¹⁰¹ General Assembly resolutions 1813 (XVII) of 18 December 1962 (consular relations) and 2287 (XXII) of 6 December 1967 (law of treaties).

¹⁰² In some cases, such as that of the Conferences on the Representation of States in their Relations with International Organizations and on Succession of States in Respect of Treaties, the General Assembly decided on the question of participation at the conference at a session subsequent to one at which it decided upon the convening of a conference to consider the draft articles adopted by the Commission and to conclude a convention thereon. Items entitled "Participation in the United Nations Conference on the Representation of States in Their Relations with International Organizations, to be held in 1975" and "Conference of plenipotentiaries on succession of States in respect of treaties" were included in the provisional agendas of the twenty-ninth and thirty-first sessions, respectively, of the General Assembly for the purpose of determining questions of participation and other organizational matters.

¹⁰³ General Assembly resolutions 2273 (XXII) of 1 December 1967 (special missions) and 2926 (XXVII) of 28 November 1972 (internationally protected persons).

¹⁰⁴ *Ibid.*

¹⁰⁵ General Assembly resolution 2419 (XXIII) of 18 December 1968.

¹⁰⁶ General Assembly resolution 2273 (XXII) and 2419 (XXIII). The draft articles on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons had been prepared by a working group established for that purpose by the International Law Commission.

¹⁰⁷ *Ibid.*

¹⁰⁸ General Assembly resolutions 2530 (XXIV) of 8 December 1969 (Convention on Special Missions and related Optional Protocol concerning the compulsory settlement of disputes) and 3166 (XXVIII) of 14 December 1973 (Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents). When adopting the latter Convention by resolution 3166 (XXVIII), the General Assembly recognized in that resolution that the provisions of the "Convention could not in any way prejudice the exercise of the legitimate right to self-determination and independence, in accordance with the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, by peoples struggling against colonialism, alien domination, foreign occupation, racial discrimination and *apartheid*". The Assembly also decided that its resolution 3166 (XXVIII), "whose provisions are related to the annexed Convention shall always be published together with it".

¹⁰⁹ See the report of the International Law Commission on the work of its thirty-first session, *Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 10 (A/34/10)*, chapter VIII.

H. OFFICE OF LEGAL AFFAIRS

This section contains a brief summary of the techniques and procedures used in the elaboration of certain multilateral treaties in which the Office of

Legal Affairs was involved. In order to avoid repetitions, they do not include those treaties promulgated through the International Law Commission or those already dealt with by other offices of the United Nations (e.g., Division of Human Rights) or the specialized or related agencies.

The treaty-making process of each instrument dealt with here is reviewed in three stages: initial, intermediate and final. An attempt is made in each case to show: how and by whom the process was initiated; how the drafts were prepared; which organs had participated in the work; whether governmental representatives or experts were used; by what methods views of Governments and other international organizations were obtained; and how the final text was adopted.

1. *Convention on the Privileges and Immunities of the United Nations*

(a) *First stage*

1. The Executive Committee of the Preparatory Commission of the United Nations established ten committees on 1 September 1945 to undertake certain tasks in preparation for the second meeting of the Preparatory Commission.¹ Committee 5, the Legal Committee, was entrusted, *inter alia*, to prepare studies and make recommendations on the privileges and immunities of the United Nations, its officials, the representatives of Members and international officials who might be appointed in an expert capacity by the organs of the United Nations.²

2. The Secretariat included in a draft agenda for Committee 5 an item on privileges and immunities with a section on the drafting of a resolution calling the attention of the General Assembly to the question and recommending that it "should appoint a special committee to deal with this subject (Committee of jurists, constitutional committee)".³ Using, as a basis, the proposal made by one delegation,⁴ Committee 5 prepared and adopted on 4 October 1945 its report to the Executive Committee on the question of immunities and privileges.⁵ It consisted of a draft resolution by which the Executive Committee would have, *inter alia*, approved an attached report on the question⁶ and recommended to the Preparatory Commission that it transmit that report to the General Assembly for consideration.

3. The report of Committee 5 on the question was modified when it was presented to the Executive Committee on 12 October 1945. The draft, as revised and submitted by Committee 5, provided for a recommendation of the Executive Committee that the report on the question "drawn up by a Committee established by the Executive Committee" be, if approved by the Preparatory Commission, referred to the General Assembly for its consideration.⁷ That report was placed in an appendix and re-titled "Study on Immunities and Privileges". As so modified, the recommendation was unanimously approved by the Executive Committee, although modifications were made by the Committee to one of the paragraphs of the appended study.⁸ The recommendation and appended study eventually formed section 5 of chapter V of the Executive Committee's report.⁹

4. On 26 November 1945, the Chairman of the Executive Committee presented its report to the Preparatory Commission. The report was remitted for detailed discussion to eight technical committees. Committee 5 was to con-

sider and report, *inter alia*, on chapter V of the Executive Committee's report and on any proposals or amendments submitted by delegations on matters falling within the scope of that chapter.¹⁰

5. At its second meeting, on 28 November 1945, Committee 5 decided to appoint a sub-committee on privileges and immunities, as the portions of the Executive Committee's report on that question "needed more detailed study which could most suitably be done" in a sub-committee,¹¹ and later elected the representatives of eight States as members of the sub-committee.¹²

6. Available to members of the Committee and its Sub-committee on Privileges and Immunities were a number of relevant documents submitted by the Secretariat, e.g. texts of national legislation, League of Nations practice, statement made by the Rapporteur of Committee IV/2 of the San Francisco Conference and existing arrangements established by the constituent instruments of certain organizations and specialized agencies.¹³ The only proposal circulated was a "draft resolution" proposed by one delegation recommending that the General Assembly in its First Session adopt "Convention on the Immunities, Facilities and Privileges of the United Nations, of Representatives of its Members and of its Officials".¹⁴

7. On 10 December 1945, the Sub-Committee on Privileges and Immunities presented to the Legal Committee its report,¹⁵ which contained a draft recommendation together with a draft convention for submission to the General Assembly.¹⁶ That draft contained a preamble (four paragraphs) and ten articles.¹⁷

(b) *Intermediate stage*

8. The Legal Committee held a general discussion during which some delegates indicated their view that it would be more advisable to concentrate on the material contained in the Study appended to the Executive Committee's report mentioned earlier than to submit a draft convention to the Assembly. It was said that a convention was an extremely difficult document to draft and required much time and detailed study. Several amendments and additions were made subsequently by the Legal Committee during its article-by-article examination.

9. The Chairman of the Sub-Committee, on his own behalf, proposed on 14 December 1945¹⁸ two additions to the draft Conventions as prepared by his Sub-Committee, one involving an additional paragraph to an article, the other involving the addition of a new (11th) article. The Committee then proceeded to an article-by-article examination of the draft Convention. At that meeting, five articles were passed without comment while one was adopted with certain modifications.

10. At its tenth and final meeting, on 15 December 1945, the draft Convention *in toto* was submitted to a vote and was approved unanimously.¹⁹ It consisted of a preamble (four paragraphs) and twelve articles, plus a few explanatory or interpretative footnotes. Many delegations did, however, make important reservations concerning the different articles and it was quite clearly understood that these delegations were at complete liberty to take up again various points at a later stage.²⁰

11. The Chairman of the Legal Committee introduced its report to the third plenary meeting of the Preparatory Commission held on 18 December

1945. He explained in his introduction that the feeling in the Committee was that it was too early to draw up a final convention on the question, but that the proposed draft might be submitted to the General Assembly as a working paper. The Preparatory Commission approved without discussion²¹ the report of the Legal Committee. That recommendation, together with the Study on the question (with annex) and the draft Convention, *inter alia*, formed chapter VII of the Report of the Preparatory Commission²² to the first session of the General Assembly.

12. At the first session, a Sub-Committee on Privileges and Immunities was established under the Sixth Committee, to study the question. It recommended the conclusion of a general Convention between the United Nations as an Organization, on the one hand, and each of its Members individually on the other hand. A draft with nine articles and 36 sections was subsequently prepared.

(c) *Final stage: General Assembly adoption of the Convention on the Privileges and Immunities of the United Nations*

13. The Sixth Committee, by a unanimous vote, adopted the draft introduction and draft resolution recommended by its Sub-Committee and noted that in making its recommendation to the Assembly to propose to the Members the annexed general Convention on the privileges and immunities of the United Nations it had examined the respective advantages, as methods of implementing the provisions of Article 105 of the Charter, of the Assembly (a) making recommendations or (b) proposing conventions to the Members of the Organization.

14. On 13 February 1946, the General Assembly adopted, without objection,²³ resolution 22 A (I) of 13 February 1946 approving the annexed Convention on the Privileges and Immunities of the United Nations and proposing it for accession by each Member of the Organization. The Convention²⁴ entered into force as regards each State on the date of deposit of its instrument of accession, in accordance with Section 32 of the Convention.

2. *Constitution of the International Refugee Organization*

(a) *Initial stage*

1. The question of the refugees was included in the agenda of the General Assembly at the first part of its first session,²⁵ and was allocated to its Third Committee. The Third Committee devoted seven meetings to the full discussion of the problem and drew up a compromise text, which was adopted by General Assembly resolution 8 (I) of 12 February 1946 by which the Assembly referred and recommended to the Economic and Social Council that it take into consideration in this matter the principle that the future of such refugees or displaced persons should become the concern of whatever international body may be recognized or established later.

2. Accordingly, the Economic and Social Council by resolution 3 (II) adopted on 16 February 1946 established a Special Committee on Refugees and Displaced Persons. The Special Committee was composed of nineteen members of the United Nations; the Director of the Inter-governmental Com-

mittee on Refugees and the Director-General of the United Nations Relief and Rehabilitation Administration or their representatives were invited to sit with the Committee in a consultative capacity. The function of the Committee was to carry out promptly a thorough examination in all its aspects of the problems of refugees and displaced persons of all categories, and to make a report thereon to the Council at its second session. The report of the Committee, after revision pursuant to directions given by the Council, should be communicated to the Members for comments. The report, together with the comments of the Members, should then be reviewed by the Council at its third session and the observations and recommendations of the Council thereon transmitted to the General Assembly.

(b) *Intermediate stage*

3. The Special Committee on Refugees and Displaced Persons met in London from 1 April to 1 June 1946 and devoted 45 meetings to the consideration of the question. On the issue concerning the establishment of an international organization of a non-permanent character to deal with the problems of refugees and displaced persons, the Special Committee appointed a Sub-Committee on Organization and Finance composed of 14 Member States. The Sub-Committee held eight meetings, during which a drafting group composed of seven Members, with representatives of the United Nations Relief and Rehabilitation Administration and the International Refugee Organization sitting in a consultative capacity, was set up to make suggestions as to the form of the future body and its relationship to the United Nations and to prepare the body's constitution as well as to propose an appropriate international administrative regime until the international body in question was in a position to commence its duties.

4. The Drafting Group had before it several documents, including two draft constitutions of the International Refugee Organization, submitted by the delegations of Canada and the United States respectively.²⁶ As the time at its disposal was extremely limited, it was not found possible to complete the tasks satisfactorily and it was decided to forward only certain suggestions in regard to the general principles which would govern the drafting of the constitution of the future body. The suggestions were presented in the form of draft articles which could be readily used as a basis for the drafting of a constitution.²⁷ It was made clear, however, that the draft articles would have to be revised from a technical and legal point of view before their incorporation by the Economic and Social Council in a final draft constitution for submission to Governments.

5. The Sub-Committee on Organization and Finance discussed the suggestions for the proposed constitution contained in the report of its Drafting Group at its seventh meeting, during which it made amendments to the suggestions, including the addition of an article on Finance. A report of the Sub-Committee on Organization and Finance²⁸ was submitted to the Special Committee on Refugees and Displaced Persons. The Special Committee considered the report of the Sub-Committee at its 41st meeting, during which the suggestions were further revised.²⁹ A report was adopted by the Special Committee whereby it, *inter alia*, recommended that the Economic and Social Council arrange for the completion of the constitution of the International Refugee Organization based on the suggestion in the form of draft articles included in

the report. It also recommended that a group of experts be appointed to examine the financial questions of the proposed international body.

6. The Economic and Social Council considered the report of the Special Committee at its 13th and 15th meetings, during which it revised and amended the suggestions for a draft constitution of the International Refugee Organization contained in section I of chapter IV of the report. By resolution 2/2 of 21 June 1948, the Council adopted a draft constitution of the International Refugee Organization and two Annexes—Annex I on Definitions, and Annex II on Budget for the First Financial Year.

7. The Council requested the Secretary-General to draft such technical clauses as were necessary to complete the draft constitution from a legal point of view and to transmit copies of the draft constitution as completed to Members for their comments.

8. The Council established by the same resolution a Committee on the Finance of the International Refugee Organization to prepare constitutional provisional administrative and operational budgets for the first financial year of the Organization and scales according to which contributions to these budgets might be allocated equitably among the Members of the United Nations. The Committee was composed of ten members: Canada, France, Netherlands, Poland, Union of Soviet Socialist Republics, United Kingdom, United States of America, with the addition of Brazil, China and Lebanon. The Director of the Inter-governmental Committee on Refugees and the Director-General of the United Nations Relief and Rehabilitation Administration, or their representatives, were invited to sit with the Committee in a consultative capacity.

9. By resolution 2/2 of 21 June 1946, the Council adopted the interim measures concerning refugees and displaced persons whereby it recommended that the Secretary-General of the United Nations take such steps as might be appropriate to plan the initiation of the work of the International Refugee Organization.

10. The Committee on Finance of the International Refugee Organization met in London from 6 July to 20 July 1946. The Committee prepared a provisional administrative and operational budget for the International Refugee Organization and recommended provisional scales of contributions to the administrative budget and the operational budget. The report (document E/REF.FIN/23) of the Committee was circulated to Governments for their comments.

11. At its third session, the Economic and Social Council appointed a Committee of the Whole on Refugees which at its fifth meeting appointed a Sub-Committee on Refugees to consider the draft articles in the light of comments received from Governments. The Sub-Committee appointed four Drafting Sub-Committees, to deal with, respectively, the outstanding issues of functions (Article II), membership (Article IV, para. 546), the resettlement of refugees and the return of unaccompanied children and war orphans. A report was submitted by the Sub-Committee to the Council on these issues.³⁰

12. With regard to the question of finance, the Council at its eighth meeting appointed an *Ad Hoc* Committee on Finance. This Committee reviewed the administrative budget proposed by the Committee on the Finances of the International Refugee Organization in the light of observations made by

Governments and new information surfaced.³¹ By resolution 18 (III) of 3 October 1946, the Council approved the draft constitution of the International Refugee Organization as amended by it, the provisional budget for the first financial year and an interim arrangement calling for the establishment of a preparatory commission pending the coming into force of the constitution of the International Refugee Organization. Both of these instruments were then transmitted to the General Assembly.

(c) *Final stage*

13. At the second part of its first session, the General Assembly referred the question relating to the draft constitution and the interim arrangement for the establishment of a preparatory Commission to its Third Committee. Questions relating to finance, budget and the provisional scales of contributions were referred to its Fifth Committee.

14. The Third Committee devoted 17 meetings to the detailed consideration of the draft constitution and 65 amendments submitted thereto. At its 31st meeting, the Third Committee appointed a Drafting Sub-Committee composed of seven members to study those amendments relating to the draft constitution of the International Refugee Organization concerning persons who had voluntarily assisted the enemy forces, and, at its 36th meeting, it appointed another drafting committee composed of nine members to revise the text of the amendments relating to the draft constitution on the functions and powers of the International Refugee Organization. Twenty-two of the amendments were adopted, 39 rejected and four withdrawn. By 18 votes to 5, with 5 abstentions, the Third Committee recommended the adoption of the draft constitution as amended by it (A/265).

15. The Fifth Committee considered the articles of the draft constitution dealing with budgetary and financial questions (Article 10 on Finance and Annex II on Budget and Contributions for the First Financial Year), including 14 amendments submitted thereto. Subsequently, Article 10 as amended was adopted by 12 votes to 6, with 4 abstentions; Annex II as amended was adopted by 12 votes to 7. A report of the Fifth Committee was submitted to the General Assembly (A/275).

16. The General Assembly, on 15 December 1946 adopted resolution 62 (I), whereby, *inter alia*, it approved the constitution of the International Refugee Organization and the Arrangement for a Preparatory Commission.

17. The General Assembly in resolution 62 (I) of 15 December 1946 requested the Secretary-General to open these two instruments for signature and, in the case of the Constitution, to open it for signature either with or without reservations as to subsequent acceptance, and urged Members of the United Nations to sign these two instruments, and, where constitutional procedures permit, to sign the Constitution without reservations as to subsequent acceptance. The constitution entered into force on 20 August 1948 in accordance with its Article 18. It may be noted that the whole process (from June 1946 to December 1946) was six months and the time elapsed between conclusion and entry into force of the instrument was 20 months.

3. *Convention on the Privileges and Immunities of the Specialized Agencies*

(a) *Initial stage*

1. When the General Assembly approved the Convention on the Privileges and Immunities of the United Nations in 1946, it also adopted a resolution on the co-ordination of the privileges and immunities of the Organization and the specialized agencies. The Assembly considered that there were many advantages in the unification as far as possible of the privileges and immunities enjoyed by the United Nations and the various specialized agencies, and that the Organization's privileges and immunities should be regarded, as a general rule, as a maximum criterion within which the various agencies should enjoy such privileges and immunities as the appropriate fulfilment of their respective functions might require. The Secretary-General was instructed to begin negotiations with a view to the reconsideration of the privileges and immunities provisions under which the specialized agencies then enjoyed in the light of the general Convention.

(b) *Intermediate stage: consultations between the Secretariat of the United Nations and the secretariats of specialized agencies*

2. The Secretary-General consulted the various specialized agencies in pursuance of the above-mentioned resolution. Meetings were held in March and July 1947 and were attended by representatives of the United Nations Secretariat and of the secretariats of the specialized agencies. At the March meeting it was unanimously agreed that the adoption of a single instrument presented the best method for co-ordination and unification and would facilitate the task of States' parliaments which had to accede to the instruments.³² A single draft convention prepared by the Secretariat of the United Nations was considered and discussed at the meetings.

3. Also discussed was the procedure to be followed for the adoption of such a draft general convention. One method envisaged was the discussion and adoption of such an instrument through the General Assembly. The other method was the convening of a general conference of all States members of the various specialized agencies, to which those agencies would be invited to attend in a consultative capacity. The Conference would discuss and adopt the text of a convention which it would propose for accession by Member States of the Organization and non-Member States which were members of the specialized agencies. At the March meetings, the representatives of those agencies felt that the second method was preferable, as it allowed them as well as those members of the agencies non-Member States of the United Nations to participate more fully in the drafting and discussion of the Convention.

4. In submitting his report on the question to the second Assembly session, the Secretary-General noted that while it remained for the Assembly to take the final decision on the procedure to be followed, if a general conference of the specialized agencies were favourably decided upon, it would be advisable to convene the conference in New York during the closing days of the Assembly to save most representatives a special journey, thus reducing expenses to a minimum.³³

5. Subsequent to the March meetings, the Secretary-General received certain comments and observations on his draft from four specialized agencies. A second meeting of the representatives of specialized agencies was held on 23 July 1947 and a draft convention, amended in accordance with observations and proposals made, was adopted. The draft was submitted to the Assembly by the Secretary-General, who included explanatory comments on certain of its provisions and noted that the draft fell within the framework, and reproduced some provisions, of the general Convention on the Privileges and Immunities of the Organization.³⁴ The draft Convention consisted of a preamble (four paragraphs) and nine articles with 40 sections.³⁵

6. At the Assembly's second session, the Sixth Committee decided, by a vote of 36 to 12, to establish a Sub-Committee on Privileges and Immunities to consider, *inter alia*, the item dealing with the Secretary-General's report. Most of the negative votes reflected the view that the Sixth Committee should have held a general discussion of the relevant items before their referral to a sub-committee.³⁶ The Sub-Committee was composed of 11 States, and elected a Chairman and a Rapporteur.

7. On 2 October 1947, the Rapporteur of the Sub-Committee introduced its interim report³⁷ to the Sixth Committee, indicating that the Sub-Committee had first considered whether the co-ordination and unification sought by the Assembly should be brought about by a single convention applicable to all specialized agencies or by some other method, such as drawing up a model convention to be recommended to each of the agencies. The Sub-Committee examined difficulties with the single convention approach,³⁸ but came unanimously to the conclusion that it would be possible to avoid those difficulties by a certain change in the method proposed as the result of the meetings between the Secretariat and the representatives of the specialized agencies.

8. The Sub-Committee concluded by stating its intentions to consider the substance of a single convention, including, in particular, the final clauses, after it had dealt with other items on its agenda. The report of the Sub-Committee was approved by the Sixth Committee without comment.³⁹

(c) *Final stage: General Assembly adoption of the Convention on the Privileges and Immunities of the Specialized Agencies*

9. The Sub-Committee of the Sixth Committee on Privileges and Immunities had before it not only the draft Convention appearing in the Secretary-General's report, but also a "new draft of the proposed convention" presented by the Rapporteur of the Sub-Committee, consisting of a proposed resolution and an annexed "suggested redraft" of the Convention, composed of a preamble (three paragraphs), eleven articles with 46 sections (later revised to 49) and nine annexes.⁴⁰ Amendments and additions were proposed by some delegations to the draft.⁴¹ One delegation also tabled proposals to an article of the draft found in the report of the Secretary-General.⁴² Another delegation proposed two draft Assembly resolutions,⁴³ the Rapporteur also submitting a draft resolution⁴⁴ in addition to the one previously submitted.

10. The report of the Sub-Committee⁴⁵ was before the Sixth Committee at its last meeting held during the Assembly's second session. In that report, the Sub-Committee submitted a draft convention consisting of a preamble

(three paragraphs), eleven articles with 49 sections and nine draft annexes (19 of the sections of this draft are virtually identical to sections of the draft contained in the Secretary-General's report). The Sub-Committee emphasized⁴⁶ that the first part of the draft largely consisted of standard clauses drawn up on the basis of the Convention on the Privileges and Immunities of the United Nations. The privileges and immunities provided for in the standard clauses were modelled on those of the United Nations under that Convention, and, indeed, in a certain number of cases were narrower in scope. The draft annexes in the second part of the draft related to each of the specialized agencies.⁴⁷ The report included, besides a commentary on the general questions considered by the Sub-Committee, a section-by-section commentary on the draft Convention. It also indicated both general and special reservations made by two delegations in the course of the Sub-Committee's work.⁴⁸

11. The Sub-Committee submitted three draft resolutions on co-ordination of the privileges and immunities of the United Nations and of the specialized agencies, one of which called for the Assembly to approve the Convention and propose it for acceptance by the specialized agencies and for accession by all members of the United Nations and by any other State member of a specialized agency.

12. The report of the Sub-Committee was adopted⁴⁹ by the Sixth Committee by a vote of 27 to 3, with 2 abstentions. One representative expressed a general reservation.

13. In the plenary of the General Assembly, it had before it a detailed report of the Sixth Committee⁵⁰ which included 45 paragraphs extracted from the report of its Sub-Committee. The Assembly adopted on 21 November 1947, as resolution 179 (II) by a vote of 45 to none, with 5 abstentions,⁵¹ the recommended resolution by which it, *inter alia*, approved the proposed Convention on the Privileges and Immunities of the Specialized Agencies. Before the vote, the representative of one Member State explained that while his delegation would vote in favour of the resolution, it reserved its position on two clauses in the proposed Convention.

14. The Convention,⁵² registered on 16 August 1949, is in force for each of the acceding States in respect of a specialized agency indicated in its instrument of accession or in a subsequent notification, as from the date of deposit of that instrument or of receipt of that notification. A number of States made declarations or reservations upon accession or subsequent notification.⁵³

4. *Protocols amending the Convention of 30 September 1921 on the Suppression of the Traffic in Women and Children, the Convention of 11 October 1933 on the Suppression of the Traffic of Women of Full Age and the Convention of 12 September 1923 on the Suppression of the Circulation of and Traffic in Obscene Publications*

(a) *Initial stage of the elaboration of the Protocols*

1. At the first part of its first session, the General Assembly, by resolution 24 (I) adopted on 12 February 1946, declared its willingness to assume the exercise of certain functions and powers previously entrusted to the League of Nations under international agreements, and referred to the Economic and

Social Council to take the necessary measures with respect to functions of a technical and non-political character.

2. The Economic and Social Council, at its fourth session, by resolution 43 (IV) adopted on 29 March 1947, decided, *inter alia*, to request the Secretary-General to "take the necessary steps to transfer to the United Nations the functions formerly exercised by the League of Nations under the Conventions of 30 September 1921 and 11 October 1933 relating to the Suppression of the Traffic in Women and Children and the Convention of 12 September 1923 relating to the Suppression of the Circulation of and Traffic in Obscene Publications".

(b) *Intermediate stage*

3. In accordance with resolution 43 (IV), the Secretary-General submitted on 12 June 1947 to the fifth session of the Economic and Social Council a memorandum (E/444) to which were annexed two draft protocols; each of the draft protocols was attached with an annex containing the suggested amendments to the Conventions in question, so that the latter could be adopted to meet the new situation which would be created by the transfer to the United Nations of the former League functions.

4. On 29 July 1947, the Council referred the memorandum to its Social Committee. On 6 August 1947, the Social Committee appointed a drafting committee consisting of seven government representatives to consider the proposals made by the Secretary-General and comments to those proposals made by government representatives (E/482 and E/509) in the Social Committee.

5. The Drafting Committee, at its first meeting, appointed a small working group consisting of three government representatives to examine the question. At its second meeting, the Drafting Committee unanimously adopted the report of the working group (A/AC.7/40) as revised by the Drafting Committee. On 12 August 1947, the Social Committee adopted the report of the Drafting Committee (E/540).

6. Based on the recommendation of the Social Committee, the Economic and Social Council by resolution 81 (V) of 14 August 1947 recommended that the General Assembly approve the assumption by the United Nations of the functions and powers exercised by the League of Nations under the Convention of 30 September 1921 on the Suppression of the Traffic in Women and Children, the Convention of 11 October 1933 on the Suppression of the Traffic of Women of Full Age and the Convention of 12 September 1923 on the Suppression of the Circulation of and Traffic in Obscene Publications, as well as the two draft protocols, to which were annexed the amendments to the Conventions in question so as to effect the transfer.

7. On 23 September 1947, the General Assembly referred the question to its Third Committee, after considering it at its 52nd, 62nd and 63rd meetings. The Third Committee, by 45 votes to none, with 2 abstentions, recommended the draft protocols as amended for approval by the General Assembly.

(c) *Final stage*

8. On 20 October 1947, the General Assembly approved the draft protocols by 52 votes to none, with 3 abstentions (resolution 126 (II)), and urged that they be signed without delay by all the States which were Parties to the

above-mentioned Conventions. It also recommended that, pending the entry into force of the Protocols, effect be given to their provisions by the Parties to any of the Conventions and instructed the Secretary-General to perform the functions conferred upon him by the aforesaid Protocols upon their entry into force.

9. Pursuant to article 2 of the Protocol amending the Convention on the Suppression of the Traffic in Women and Children, of 30 September 1921, and the Convention on the Suppression of the Traffic of Women of Full Age, of 11 October 1933, the Secretary-General was requested to invite Parties to any of the instruments to be amended by the Protocol to apply the amended texts of those instruments as soon as the amendments are in force, even if they have not yet been able to become Parties to the present Protocol. Article 3 of the Protocol provides that the Protocol shall be open for signature or acceptance by any of the Parties to the Convention of 30 September 1921 on the Suppression of the Traffic in Women and Children or the Convention of 11 October 1933 on the Suppression of the Traffic of Women of Full Age, to which the Secretary-General has communicated a copy of this Protocol. Pursuant to Article 4, States may become parties to the present Protocol by:

- (a) Signature without reservation as to approval; or
- (b) Acceptance, which shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations.

The Protocol entered into force on 12 November 1947 in accordance with Article V of its Protocol.

5. *Convention on the Inter-Governmental Maritime Consultative Organization*

(a) *Initial stage*

1. The question of the establishment of a world-wide inter-governmental organization in the field of shipping was brought to the attention of the Economic and Social Council when its Temporary Transport and Communications Commission submitted on 25 May 1946 a report⁵⁴ whereby it deplored the lack of a coherent organization to co-ordinate technical shipping activities. The Commission was of the opinion that a permanent official organization was required for the technical side of shipping regulations and suggested that the United Maritime Consultative Council⁵⁵ be requested to study what inter-governmental machinery should be developed in the shipping field, so that the United Nations might initiate the necessary negotiations under Article 59 of the Charter to bring about its establishment (unless it were believed that the United Maritime Consultative Council could transform itself into a specialized agency under Article 57).

2. The Economic and Social Council, at its second session, having considered the Temporary Commission's report, adopted, on 21 June 1946, resolution 2/7, whereby it instructed its Transport and Communications Commission to examine with the assistance of experts "the question of the establishment of a world-wide inter-governmental shipping organization to deal with technical matters" and authorize the Secretary-General to seek the views of the United Maritime Consultative Council on the question.

(b) *Intermediate stage*

3. The United Maritime Consultative Council considered the question of the establishment of an inter-governmental organization to deal with international shipping matters during its sessions held in June and October 1946. At the latter session, the United Maritime Consultative Council agreed to recommend to Member Governments the text of a draft convention for an inter-governmental maritime organization to be established as a specialized agency of the United Nations (resolution UMCC 2/39 of 30 October 1946 in E/CONF.4/1).

4. The Permanent Transport and Communications Commission, at its first session in February 1947, examined the problem and, in its report (E/270) to the Economic and Social Council, recommended that the United Nations convene a conference of interested Governments for the purpose of establishing an inter-governmental shipping organization and that the draft convention prepared by the United Maritime Consultative Council be utilized as a working draft. It further suggested that the Secretary-General circulate the United Maritime Consultative Council draft to invite comments on that draft by Governments.

5. The Economic and Social Council at its fourth session considered the recommendations both of the United Maritime Consultative Council (E/270) and of the Transport and Communications Commission (E/270). On 28 March 1947, the Economic and Social Council, by the adoption of resolution 35 (IV), requested the Secretary-General: (i) to convene a conference of interested Governments to consider the establishment of an inter-governmental maritime organization using the draft prepared by the United Maritime Consultative Council as a working paper forming the basis of discussion for the conference; (ii) to circulate the above-mentioned draft convention to all the Governments invited to the conference and to inform the Governments which are invited to the conference that any comments which they may wish to make on specific articles of the draft convention or amendments which they may wish to propose in advance of the conference should be submitted to the Secretary-General for circulation to all Governments participating in the conference and for consideration by the conference itself; (iii) to invite all the Members of the United Nations, and the following Governments, to participate in the conference: Albania, Austria, Bulgaria, Finland, Hungary, Ireland, Italy, Portugal, Romania, Switzerland, Transjordan, Yemen.

6. The same resolution expressed the hope that the Governments invited to the conference may give their respective delegations full powers enabling them to sign such convention on the establishment of an inter-governmental maritime organization as may be concluded at the conference. The Secretary-General was also requested to invite the specialized agencies, inter-governmental organizations and international organizations in this field, as may be appropriate, to send observers to the conference.

7. At the sixth session, the Economic and Social Council decided by resolution 113 (VI), adopted on 3 February 1948, that voting rights at the conference would be exercised by the Members of the United Nations and other Governments participating in the Conference under paragraph (e) of its resolution 35 (IV).

(c) *Final stage*

8. The United Nations Maritime Conference met in Geneva from 19 February to 6 March 1948. Thirty-two States were represented at the conference by delegations and four States by observers. Five inter-governmental organizations and four non-governmental organizations were also represented by observers.

9. At the Conference, four working parties were established: a main working party composed of thirteen members to consider all provisions of the draft convention which were dealt with by other working parties; a working party on legal questions composed of eight members to consider the subject listed in document E/CONF.4/28; a working party on maritime safety composed of fifteen members to consider all the provisions of the draft convention concerning safety matters; and a working party composed of eight members to consider the formulation of a text for a draft relationship agreement between the proposed maritime organization and the United Nations. A drafting committee composed of six members was also established to examine the final draft of the convention.

10. The Conference, on 6 March 1948, by 18 votes to 1, with 7 abstentions, adopted the Convention and opened it for signature and acceptance. The whole process took 21 months (from June 1946 to March 1948). The Convention entered into force on 17 March 1958 in accordance with Article 60 of that Convention, ten years after its opening for signature.

6. *Revised General Act for the Pacific Settlement of International Disputes*

(a) *Initial stage*

1. At its third session, the General Assembly had before it from the Interim Committee⁵⁶ a report on the "Study of methods for the promotion of international co-operation in the political field", in which a draft resolution,⁵⁷ originally submitted by Belgium, seeking to restore the original efficacy of the General Act of 26 September 1928 for the Pacific Settlement of International Disputes, was recommended for consideration by the General Assembly.

2. It was explained in the report that the effectiveness of the General Act, which had been drawn up by the League of Nations Assembly, and to which twenty States had become parties, had diminished since some of its machinery had disappeared. The proposed draft resolution was aimed to replace that machinery, so that the full effect of the General Act would be restored.

(b) *Intermediate stage*

3. The report was referred by the General Assembly to the *Ad Hoc* Political Committee for consideration. After devoting three meetings, at its 28th meeting, on 9 December 1948, the *Ad Hoc* Political Committee adopted, by 32 votes to 6 with 2 abstentions, the draft resolution, to which were annexed amendments of a nature to restore to the General Act its original efficacy. As stated in its preambular paragraph, these amendments would apply only as between States having acceded to the General Act as thus amended and, as a

consequence, would not affect the rights of such States, parties to the Act as established on 26 September 1928, as should claim to invoke it in so far as it might still be operative.

(c) *Final stage*

4. At its 199th meeting on 28 April 1949, the General Assembly adopted, by 45 votes to 6, with 1 abstention, resolution 68 A (III), by which it instructed the Secretary-General to prepare a revised text of the General Act to incorporate the amendments mentioned above, and to hold it open to accession by States, under the title "Revised General Act for the Pacific Settlement of International Disputes". The revised General Act entered into force on 20 September 1950 in accordance with Article 44, seventeen months after its conclusion.

7. *Convention on Declaration of Death of Missing Persons*⁵⁸

(a) *Initial stage*

1. The subject was brought to the attention of the Economic and Social Council by the Preparatory Commission for the International Refugee Organization. In its transmittal memorandum (E/824, 15 June 1948), the Commission drew attention to the urgency and importance of solving the legal difficulties arising from the disappearance of numerous victims of war and persecution. It also expressed the view that these difficulties might best be solved by an international convention.

(b) *Intermediate stage*

2. At its seventh session, the Economic and Social Council took note of the memorandum and adopted on 24 August 1948 resolution 158 (VII), in which it requested the Secretary-General to:

- (i) Prepare, in collaboration with the International Refugee Organization and other competent organizations, a preliminary draft convention on the subject;
- (ii) Submit this convention to Member Governments for comments; and
- (iii) Submit it, along with the comments received from the Governments, to the Council at its eighth session "in order to enable the Council to take such action as may be appropriate with a view to definitive action on this matter by the General Assembly at its fourth regular session".

3. In accordance with the request of the Council embodied in the above resolution, the Secretary-General prepared a draft Convention on Declaration of Death of Missing Persons (document E/1071), and submitted it to Governments for comments.

4. In March 1949, the Economic and Social Council, at its eighth session, adopted resolution 209 (VIII), in which it noted the draft Convention and requested Member Governments which had not yet submitted comments thereto to do so. By the same resolution, the Council established an *ad hoc* committee on Declaration of Death of Missing Persons, composed of persons "specially versed in the matter" to be nominated by and to represent the following seven Member Governments: Brazil, Denmark, France, Lebanon,

Poland, United States of America and Union of Soviet Socialist Republics, to study the complex legal issues raised by the draft Convention. In particular, the *ad hoc* committee was instructed by the Council: (i) to examine whether the purpose of Council resolution 158 (VII) may be met by other procedures than by the conclusion of a single international convention; (ii) to study the draft convention prepared by the Secretary-General, with the comments of Governments and of the International Refugee Organization, and thereafter to prepare a draft or, if necessary, any other proposals in case the drafting of a convention was not practicable; and (iii) to place such draft convention or any other proposals before the Council at its ninth session.

5. The *ad hoc* committee met at Geneva between 7 June and 21 June (E/AC.30/SR.1-18). It held 18 sessions and considered various other procedures which might conceivably solve the problem. It had come to the conclusion that a multilateral convention was the best possible means to solve the problem. The *ad hoc* committee then proceeded to a detailed revision of the Secretariat draft convention and prepared a new text (E/1368) which was submitted to the Council at its ninth session.

6. Over the objection of some of its members, the Economic and Social Council at its ninth session decided not to examine the substance of the *ad hoc* committee's draft convention. By resolution 249 (IX) adopted on 9 August 1949, the Council requested the Secretary-General to transmit immediately the draft convention proposed by the *ad hoc* committee, together with the records of the discussions on the subject at the ninth session of the Council, to Governments for their consideration prior to the fourth session of the General Assembly; and recommended that the General Assembly consider the draft convention during its fourth session, with a view to having a convention adopted and opened for signature during that session.

(c) *Final stage*

7. The General Assembly considered the problem at its fourth session and adopted resolution 369 (IV) on 3 December 1949. In this resolution, the General Assembly recognized the importance and urgency of the question of the legal difficulties arising in particular because of differences of legislation in the matter. It decided that an international conference of government representatives should be convened not later than 1 April 1950 with a view to concluding a multilateral convention on the subject. The Secretary-General was instructed to issue invitations to the Governments of Member States to such a conference, asking all Governments interested to inform him as soon as possible of their acceptance. The Assembly referred the draft Convention on the Declaration of Death of Missing Persons to Member States to enable them to examine it and consider the possibility of adopting, if necessary, legislative measures on the legal status of persons missing, as a result of events of war or other disturbances of peace during the post-war years until the present time.

8. Pursuant to General Assembly resolution 369 (IV), the Conference on Declaration of Death of Missing Persons met in New York from 15 March to 6 April 1950. Twenty-five States were represented at the Conference, and six States and the International Refugee Organization were represented by observers.

9. The Conference used as a basis for discussion the draft convention prepared by the *ad hoc* committee and considered it article by article. A drafting committee composed of nine Member States was established by the Conference. On the basis of the decision of the Conference, the drafting committee prepared a revised draft of the Convention and submitted it to the Conference for its approval (A/CONF.1/7).

10. The Conference at its 11th meeting adopted by 20 votes to none, with 1 abstention, the Convention on Declaration of Death of Missing Persons.

11. Pursuant to Article 13 of the Convention, the Convention was opened for accession on behalf of Members of the United Nations, non-member States which are parties to the Statute of the International Court of Justice and also any other non-member States to which an invitation has been addressed by ECOSOC passing upon request to the State concerned. Accession was effected by the deposit of a formal instrument with the Secretary-General of the United Nations. The Convention entered into force on 24 January 1952, 20 months after its opening for signature.

8. *Convention on the Recovery Abroad of Maintenance*

(a) *Initial stage*

1. The problem of families which were left without support for their maintenance resulting from those who are responsible having moved to another country was studied as early as 1929 at the suggestion of the League of Nations by the International Institute for the Unification of Private Law. A committee of experts established by the Institute and composed of legal consultants from eight countries and from the Secretariat of the League of Nations and the Institute drew up in 1938 a preliminary draft convention covering the matter. However, World War II interrupted further developments.

2. As a result of the transfer of the non-political functions from the League of Nations, the United Nations assumed responsibility for developing further international action in this field. The question was brought to the attention of the Social Commission of the Economic and Social Council at its first⁵⁹ and second⁶⁰ sessions.

3. The Social Commission requested the International Institute for the Unification of Private Law to resume its pre-war study with a view to adjusting the 1938 preliminary draft to the changes which had occurred in national and international legislation and to the situation resulting from the war. A new committee appointed by the Institute prepared a draft convention in 1949 and submitted it to the Secretary-General in 1950 together with an explanatory report.⁶¹

(b) *Intermediate stage*

4. In July 1950, the Secretary-General transmitted the new draft convention elaborated by the Institute for comments to all Member Governments and to certain non-member Governments which were deemed to have particular interest and experience in the problem. A similar request for comments was sent to the interested specialized agencies as well as to representatives of non-governmental organizations likely to be concerned with the problem.

5. As a result of the foregoing action, replies had been received from Governments, the International Labour Organisation and the International Refugee Organization as well as from non-governmental organizations. These comments were circulated (E/CN.5/236 and Add.1-4).

6. The subject was discussed at the seventh session of the Social Commission (April 1951) and at the thirteenth session of the Economic and Social Council (August 1951). By resolution 390 (XIII), the Council requested the Secretary-General to prepare a working draft of a model convention or of a model reciprocal law, or both, with the assistance of a committee of experts, appointed by the Secretary-General, of jurists as well as a representative of the Institute.

7. In conformity with the request, the Secretary-General prepared two working drafts, one entitled "Model Convention on the Enforcement of Maintenance Obligations" (E/AC.39/L.3) and the other entitled "Model Agreement on Maintenance Obligations" (E/AC.39/L.6). Each of them was accompanied by a commentary. The two drafts were submitted to the Committee of Experts on the recognition and enforcement abroad of maintenance obligations. The Committee of Experts met in Geneva from 18 to 28 August 1952 and prepared a draft Convention on the Recovery Abroad of Claims for Maintenance and a Model Convention on the Enforcement Abroad of Maintenance Orders, together with an explanatory report (E/AC.39/1).

8. The report of the Committee of Experts was discussed at the seventeenth session of the Council. The Council, on 26 April 1954, adopted resolution 527 (XVII), in which it recommended to Governments to use the Model Convention on the Enforcement Abroad of Maintenance Orders as a guide for the preparation of bilateral treaties or uniform legislation to be enacted by individual States. With respect to the draft Convention on the Recovery Abroad of Claims for Maintenance, the Council requested the Secretary-General "to ascertain from States Members of the United Nations and those non-members of the United Nations which are members of any of the specialized agencies whether they consider it desirable to convene a conference of plenipotentiaries to complete the drafting of the Convention on the Recovery Abroad of Claims for Maintenance, and whether they are prepared to attend such a conference".

9. The result of the consultation, in which a substantial number of Governments had given an affirmative answer as to the desirability of convening such a conference, and had expressed their willingness to participate in the conference, was reported to the Council at its 19th session (E/2711 and Add.2). By resolution 572 (XIX) adopted on 17 May 1955, the Council decided to call a conference of plenipotentiaries to complete the drafting of and to sign the Convention on the Recovery Abroad of Claims of Maintenance and to invite to this conference the States Members of the United Nations and those States non-members of the United Nations which are members of any of the specialized agencies, and to invite the interested specialized agencies in relationship with the United Nations and non-governmental organizations having consultative status with the Council, as well as the Hague Conference on Private International Law and the International Institute for the Unification of Private Law, to participate in the Conference.

10. The printed text of the draft Convention on the Recovery Abroad of Claims for Maintenance and the report of the committee of experts (E/AC.39/1 and Corr.1) was attached to the Secretary-General's letter of invitation to the Conference. Some Governments forwarded to the Secretary-General their comments on the report of the Committee of Experts. These comments were also reproduced (E/CONF.21/4).

(c) *Final stage*

11. The Conference on Maintenance Obligations was held at the Headquarters of the United Nations in New York from 29 May to 20 June 1956 with 32 States participants and nine States observers. One specialized agency and two intergovernmental organizations, and 21 non-governmental organizations, also participated without a right to vote in the Conference. The Conference established a Working Party and a Drafting Committee.

12. The Conference took as the basis of discussion the text of the draft Convention drawn up by the Committee of Experts, and considered the draft article by article. Where necessary, the draft texts were referred to the Working Party and the Drafting Committee for review.

13. At its 13th meeting, the Conference adopted unanimously the Convention on the Recovery Abroad of Maintenance. Pursuant to Article 13 of the Convention, the instrument was opened for signature. The Convention came into force on 25 May 1957, eleven months after its adoption.

9. *Statute of the International Atomic Energy Agency*

(a) *Initial stage*

1. The idea of the establishment of an International Atomic Energy Agency was brought up by President Eisenhower of the United States of America, when he addressed the General Assembly on 8 December 1953 proposing the establishment, under the aegis of the United Nations, of an international agency which would devote its activities exclusively to the peaceful uses of atomic energy.

2. At that session, the representative of the United States of America had requested the inclusion in the agenda of an additional item entitled "International Co-operation in Developing the Peaceful Uses of Atomic Energy: Report of the United States of America", and forwarded an explanatory memorandum (A/2734). At its 478th meeting on 25 September 1954, the General Assembly decided to include the item in the agenda and referred it to the First Committee for consideration and report. The First Committee considered the item, and the joint draft resolution submitted by the eight Powers (Australia, Belgium, Canada, France, Union of South Africa, United Kingdom, United States of America) concerning the establishment of an international atomic energy agency was recommended for adoption by the General Assembly. At its 503rd meeting on 4 December 1954, the General Assembly adopted the recommendation of the First Committee as resolution 810 A (IX), which, *inter alia*, expressed the hope that the International Atomic Energy Agency would be established without delay.

(b) *Intermediate stage*

3. The drafting of a Statute for the Agency was undertaken in Washington, D.C. in April 1955, by the eight sponsoring States mentioned earlier. The draft Statute was then circulated to Governments for their consideration and comments.

4. The General Assembly considered again the question on the establishment of the agency at its tenth session, during which it adopted resolution 912 (X) on 2 December 1955, in which it increased the sponsoring States to include Brazil, Czechoslovakia, India and the Union of Soviet Socialist Republics.

5. The new sponsoring Governments (twelve members) met in Washington, D.C. early in 1956 to complete the draft of the Statute. The draft (IAEA/CS/2) which emerged from the work was submitted on 23 September 1956 to the Conference on the Statute of the International Atomic Energy Agency.

(c) *Final stage*

6. The Conference on the Statute of the International Atomic Energy Agency, sponsored by the twelve negotiating Governments, was convened at the Headquarters of the United Nations from 20 September to 26 October 1956. The sponsoring Governments issued invitations to all Members of the United Nations or the specialized agencies. Eighty-one countries and seven specialized agencies participated in the Conference. At the request of the sponsoring Governments, the Secretary-General of the United Nations served as the Secretary-General of the Conference.

7. At the outset of the Conference, a Main Committee composed of all participating Governments was established to consider separately each of the articles of the draft Statute to which amendments had been submitted. After consideration, the articles were forwarded directly to the Co-ordination Committee composed of representatives of the sponsoring Governments. The Co-ordination Committee reviewed the draft articles and the draft Statute as a whole with a view to eliminating inconsistencies in terminology and recommended to the Conference the final draft of the Statute for its approval. The Statute was unanimously approved by the Conference on 23 October 1956 and opened for signature on 26 October 1956. The Statute came into force on 29 June 1957.

10. *Convention on Transit Trade of Land-locked States*(a) *Initial stage*

1. At the first United Nations Conference on Trade and Development, held from 23 March to 16 June 1964, the problem of land-locked countries was considered by its Fifth Committee under agenda item 10 (e), entitled "Expansion of international trade and its significance for economic development".⁶²

2. The Fifth Committee of the Conference established a Sub-Committee⁶³ composed of 40 Governments to consider the proposal for the formulation of an adequate and effective international convention, or other means, to ensure the freedom of transit trade of land-locked countries and to formulate recommendations on this matter for consideration by the Commit-

tee. The Sub-Committee established two working groups. The first working group, composed of eight members, was requested to examine the proposals already submitted with a view to drawing up a body of principles designed to promote the transit trade of land-locked States. The second working group, composed of seven members, was requested to consider the proposals other than those principles and to prepare a recommendation for consideration by the Sub-Committee.

3. The Sub-Committee had before it several proposals, including a draft convention on transit trade⁶⁴ sponsored by 11 Afro-Asian countries (Afghanistan, Burundi, Central African Republic, Chad, Laos, Nepal, Mali, Niger, Rwanda, Uganda and Upper Volta). Due to lack of time, the Sub-Committee was not able to discuss the draft convention.⁶⁵ At its seventeenth and eighteenth meetings, the Sub-Committee, after consideration of the draft submitted by its second working group, and an amendment thereto submitted by Afghanistan, adopted a recommendation and submitted it to the Fifth Committee. The Fifth Committee considered the recommendation at its thirty-first and thirty-second meetings in May 1964, and adopted the recommendation of the Sub-Committee as amended by it.

4. At the same session, the United Nations Conference on Trade and Development took note of the report of the Fifth Committee, which included the recommendation of the Sub-Committee on Land-Locked Countries. At its twenty-eighth plenary meeting, the Conference adopted the recommendation without dissent. It recommended, *inter alia*, that the United Nations request the Secretary-General of the United Nations to appoint and convene a committee of 24 members, representing land-locked, transit and other interested States as governmental experts and on the basis of equitable geographical distribution; the committee was requested to prepare a new draft convention, treating the proposal made by Afro-Asian land-locked countries as a basic text and taking into account the principles of international law, conventions and agreements in force and submissions by Governments in this regard, as well as the records of the Sub-Committee on Land-locked Countries established by this Conference. It also recommended the convening of a conference of plenipotentiaries in the middle of 1965, for consideration of the draft and adoption of the convention.

(b) *Intermediate stage*

5. Pursuant to the recommendation, the Secretary-General established a Committee on the Preparation of a Draft Convention relating to Transit Trade of Land-Locked Countries, composed of 24 members representing land-locked, transit and other interested States, to prepare a draft Convention. The Committee met at United Nations Headquarters from 26 October to 20 November 1964 and held 30 public meetings.

6. The Committee took as a basis of discussion the draft convention submitted by the Afro-Asian land-locked countries and examined it article by article. After deliberation, a report (A/5906), which included a brief summary of the discussion of each article and the observations made by members to the draft, was adopted for submission to the Conference of Plenipotentiaries.

7. The recommendation by UNCTAD to convene the Conference of Plenipotentiaries for adoption of a Convention on the Transit Trade of Land-

locked Countries in the summer of 1965 was brought to the attention of the General Assembly by the Secretary-General at the 1327th meeting, and was adopted without objection at the 1328th meeting of the General Assembly.⁶⁶

(c) *Final stage*

8. The Conference of Plenipotentiaries was held at United Nations Headquarters from 7 June to 8 July 1965. Fifty-eight States participated in the Conference. Eleven other States, one specialized agency and two non-governmental organizations were designated as observers. The Conference established four working groups, namely: Working Group I on articles 5, 6 and 7, Working Group II on articles 1 and 2, Working Group III on article 11 and Working Group IV on article 16. The Conference also established a Drafting Committee composed of 15 members to consider the report of the Committee on the Preparation of a Draft Convention, to which were annexed a draft convention submitted by the Committee and the Afro-Asian draft convention, as well as all the amendments (A/5906).

9. On the basis of its deliberations, a convention entitled "Convention on Transit Trade of Land-locked States" was adopted by the diplomatic Conference at its 36th plenary meeting on 8 July 1965. It was opened for signature on the same day.

10. At its twentieth session, the General Assembly adopted resolution 2086 (XX) of 20 December 1965, in which it noted with satisfaction that the Convention on Transit Trade of Land-locked States was successfully concluded and requested that the Convention be signed by 31 December 1965 and ratified or acceded to as soon as possible in order to promote the economic and social development of the land-locked countries through international trade. The Convention came into force on 9 June 1967, two years after its opening for signature.

11. *International Convention against the Taking of Hostages*

(a) *Initial stage: Inscription of an item on the agenda of the General Assembly*

1. By a letter to the Secretary-General dated 28 September 1976, the Foreign Minister of a Member State requested the inclusion in the agenda of the thirty-first (1976) session of the General Assembly of a separate item entitled "Drafting of an international convention against the taking of hostages".⁶⁷

(b) *Intermediate stage: Ad Hoc Committee on the drafting of an international convention against the taking of hostages*

2. The Assembly subsequently adopted, on 15 December 1976, the draft as resolution 31/103, by which it decided to establish an *Ad Hoc* Committee on the Drafting of an International Convention against the Taking of Hostages, composed of 35 Member States to be appointed by the President of the Assembly on the basis of equitable geographical distribution and representing the principal legal systems of the world, after consultations with the chairmen of the regional groups. The *Ad Hoc* Committee was requested to draft at the earliest possible date an international convention against the taking of hostages and was authorized, in the fulfilment of its mandate, to consider suggestions

and proposals from any State, bearing in mind the views expressed during the debate on the item at that Assembly session.

3. The *Ad Hoc* Committee⁶⁸ met at United Nations Headquarters from 1 to 19 August 1977.⁶⁹ Certain members of the *Ad Hoc* Committee submitted working papers, one member submitting the text of a draft convention against the taking of hostages composed of a preamble (five paragraphs) and 14 articles. Five amendments or suggestions related to that text were submitted by other delegations. In addition, one proposal was circulated for the preamble of a convention and seven texts circulated on other matters to be included in any such convention.

4. The *Ad Hoc* Committee decided to start its work with a general debate. It then considered the various working papers. At the end of the session, a recommendation was adopted by consensus that the General Assembly at its thirty-second session should invite the *Ad Hoc* Committee to continue its work in 1978.

5. At its 1978 session, the *Ad Hoc* Committee decided to resume its work at the point at which it had left off at the previous session. It also decided to establish two open-ended working groups. Working Group I was requested to examine the thornier questions connected with the drafting of an international convention against the taking of hostages, and to try to find some common ground by means of consultations. Working Group II was requested to deal with draft articles that were not generally controversial and with texts on which Working Group I had come to an agreement. Working Groups I and II elected as their chairmen representatives who had also been elected Vice-Chairmen of the *Ad Hoc* Committee. The reports of Working Groups I and II reflected not only the results of the discussion of formal proposals contained in working papers, but also oral proposals or informal texts suggested in the course of consultations. They also indicated those areas or texts on which agreement had or had not been reached. The *Ad Hoc* Committee included in its report the *caveat* that the report reflected informal discussion which did not prejudge the final positions of States. At its 1979 session, the *Ad Hoc* Committee decided to resume its work at the point at which it had left off at the 1978 session and re-established Working Groups I and II with the same terms of reference.

6. Eight new texts submitted by groups of delegations were considered by Working Group I, as well as relevant previous proposals. Working Group II, besides the previous documentation, also had before it three proposals for amending texts which had emerged from the 1978 second reading on two proposals for new articles. It carried out a third reading of the articles before it.

7. The Working Group reports reflected the article-by-article or issue-by-issue discussion held therein. Thus proposals, counter-proposals, amendments and the final outcome of the negotiation process were recorded for each of the articles or issues. No votes were taken but agreement was reached on 16 articles of a draft convention, although a few delegations expressed reservations on certain articles or provisions. Two draft articles were discussed but no agreement was reached thereon. While there was insufficient time to discuss the whole preamble, one preambular paragraph was prepared to which no objection was raised, but on which several delegations reserved their position pending the consideration of the preamble as a whole.

8. The *Ad Hoc* Committee, on 16 February 1979, recommended to the General Assembly, in pursuance of the relevant Assembly resolutions and in fulfilment of its mandate, the draft Convention against the Taking of Hostages it had prepared, for the Assembly's further consideration and adoption. It consisted of a preambular paragraph and 18 articles, two of which appeared in square brackets to indicate that their provisions had not been completely agreed upon. Also included in the text of the draft Convention were foot-notes indicating that reservations had been made by certain delegations or that certain interpretations had been agreed upon.

(c) *Final stage*

9. At the thirty-fourth session of the General Assembly, this question was referred to the Sixth Committee, which established a Working Group to review on an article-by-article basis the draft Convention prepared by the *Ad Hoc* Committee. The Working Group would be made up of those States which were members of the *ad hoc* committee, with the understanding that its membership was to be open-ended. The Working Group submitted its report (A/C.6/34/L.12), which was reviewed by the Sixth Committee (A/C.6/34/SR.53, 56, 58, 59, 61 and 62).

10. On 7 December 1979 the Sixth Committee adopted the draft resolution and its annex as a whole without a vote (see A/34/819).

11. At its 105th meeting on 17 December 1979, the General Assembly adopted by consensus resolution 34/146, in which it adopted and opened for signature and ratification or for accession the International Convention against the Taking of Hostages. The Convention consisted of a preamble and 20 articles. Article 18 provides that the Convention shall enter into force on the thirtieth day following the date of deposit of the thirty-second instrument of ratification or accession with the Secretary-General of the United Nations. As of 16 August 1982, seventeen States were parties to the Convention.

NOTES

¹ See *Preparatory Commission of the United Nations, Documents*, PC/EX/113/Rev.1, p. 5 and "Interim Arrangements concluded by the Governments represented at the United Nations Conference on International Organization", *ibid.*, *Report of the Preparatory Commission of the United Nations* (PC/20), pp.143-144.

² *Ibid.*, *Documents*, PC/EX/113/Rev.1, p. 134.

³ *Ibid.*, PC/EX/1CJ/17, p. 2.

⁴ *Ibid.*, PC/EX/1CJ/20, and *ibid.*, Summary record of the 7th meeting of Committee 5, PC/EX/1CJ/22, paras. 2-3.

⁵ *Ibid.*, PC/EX/84, and *ibid.*, Summary record of the 9th meeting of Committee 5, PC/EX/1CJ/25, paras. 1-4.

⁶ This report contained a study which dealt with the relevant Charter provisions, privileges and immunities at the seat of the Organization and elsewhere, precedents afforded by constitutions of specialized agencies, co-ordination of the privileges and immunities of the United Nations with those of specialized agencies, creation of an international passport, the concept of "privileges and immunities", taxation of officials in the country of which they are nationals and the International Court of Justice. Annexed to the report were extracts from the constitutions of certain specialized agencies.

⁷ *Ibid.*, Corrigendum to draft resolution and report from Committee 5, PC/EX/84/Corr.1.

⁸ *Ibid.*, Summary record of the 25th meeting of the Executive Committee, PC/EX/96, pp. 6-8.

⁹ *Ibid.*, PC/EX/113/Rev.1, pp. 69-71.

¹⁰ *Ibid.*, PC/9/Annex III, adopted by the Commission on 26 November 1945, *ibid.*, *Journal*, No. 3, p. 2.

¹¹ *Ibid.*, *Journal*, No. 5, *Supplement No. 5* (PC/LEG/10).

¹² *Ibid.*, *Journal*, No. 5, *Supplement No. 5* (PC/LEG/16).

¹³ *Ibid.*, *Documents*, PC/LEG/7, 11, 14, 15, 20, 21 and 22.

¹⁴ *Ibid.*, *Documents*, PC/LEG/17.

¹⁵ *Ibid.*, *Documents*, PC/LEG/34.

¹⁶ *Ibid.*, *Journal*, No. 7, *Supplement No. 5* (PC/LEG/35). The records do not reveal how many meetings were held of the Sub-Committee, but the *Journal* indicates that six meetings were scheduled.

¹⁷ Two articles, however, were identified solely as to their subject matter, the drafting to be left pending the results of the work of Committee 8 (General Questions), which was examining the question of arrangements between the host State and the Organization. See *ibid.*, *Documents*, PC/LEG/33 and Rev.1.

¹⁸ *Ibid.*, *Documents*, PC/LEG/39.

¹⁹ *Ibid.*, *Journal*, No. 19, *Supplement No. 5* (PC/LEG/40). The text as approved was circulated as *ibid.*, *Documents*, PC/LEG/42.

²⁰ *Ibid.*, *Journal*, No. 20, *Supplement No. 5* (PC/LEG/41).

²¹ *Ibid.*, *Journal*, No. 22, pp. 9-11.

²² *Ibid.*, *Report of the Preparatory Commission of the United Nations* (PC/20), pp. 60-80.

²³ *Ibid.*, 31st plenary meeting, point 68, p. 455.

²⁴ For the text of the Convention, see United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327.

²⁵ Agenda item 17.

²⁶ See Doc. E/REF/ORG.FIN/W.1 and 2 respectively.

²⁷ Report of the Drafting Group, see Doc. E/REF/ORG.FIN/W.3.

²⁸ Report of the Sub-Committee on Organization and Finance, see Doc. E/REF/80.

²⁹ See Summary Records of the Special Committee, 41st, 42nd, 43rd and 44th meetings—Document E/REF/88.

³⁰ *Official Records of the Economic and Social Council, First Year, Third Session, Supplement No. 8*.

³¹ See *Official Records of the Economic and Social Council, First Year, Third Session, Supplement No. 8*, p. 77.

³² *Official Records of the General Assembly, Second Session, Sixth Committee, annex 5, document A/339*, p. 279.

³³ *Ibid.*, annex 5, document A/339, p. 280.

³⁴ *Ibid.*, annex 5, document A/339, p. 281.

³⁵ A/339 and Corr.1 (mimeographed versions).

³⁶ *Official Records of the General Assembly, Sixth Committee, 36th meeting*, point 3, pp. 3-4. The Secretariat had suggested in its memorandum on organization of work that items on privileges and immunities be referred to a small sub-committee for initial consideration and that if so established, it be requested to first report on the proposal relating to the privileges and immunities of the specialized agencies, since "favourable action in this regard might necessitate the holding of a conference during the period of the present [second] session of the General Assembly" (A/C.6/136).

³⁷ *Ibid.*, annex 5 (a), document A/C.6/148, pp. 282-285.

³⁸ Those difficulties mainly arose from the facts that not all the agencies were to enjoy exactly the same privileges, that amendment of the basic instruments of certain agencies would be required for unification and that the draft reflected in the report of the Secretary-General had to refer to a number of instruments in order to ascertain the exact scope of privileges of each agency. See *ibid.*, annex 5 (a), document A/C.6/148, p. 283.

³⁹ *Ibid.*, 40th meeting, point 9, p. 23.

⁴⁰ A/C.6/SC.4/W.10 and Corr.1 and 2; A/C.6/SC.4/W.10/Add.1 and Add.1/Corr.1-4 and Add.4; A/C.6/SC.4/W.19 and Corr.1.

⁴¹ A/C.6/SC.4/W.10/Corr.3 and Add.2 and 3.

⁴² A/C.6/SC.4/W.16.

⁴³ A/C.6/SC.4/W.24.

⁴⁴ A/C.6/SC.4/W.26.

⁴⁵ *Official Records of the General Assembly, Second Session*, annex 5 (b), document A/C.6/191 and Corr.1, pp. 285-304.

⁴⁶ *Ibid.*, annex 5 (b), document A/C.6/191 and Corr.1, para. 5, p. 287.

⁴⁷ The Sub-Committee invited all nine specialized agencies to send advisers. Seven such advisers attended meetings of the Sub-Committee, which had the benefit of their assistance in preparing the annexes. But the Sub-Committee's recommendations did not in all cases exactly correspond with the suggestions of advisers. *Ibid.*, annex 5 (b), document A/C.6/191 and Corr.1, para. 13, p. 290.

⁴⁸ *Ibid.*, annex 5 (b), document A/C.6/191 and Corr.1, paras. 16, 26, 33, 51 and 303, pp. 291, 294, 297 and 303.

⁴⁹ *Ibid.*, 59th meeting, point 51, p. 172.

⁵⁰ *Ibid.*, Plenary Meetings, vol. 11, annex 22 (c), document A/503, pp. 1586-1603.

⁵¹ *Ibid.*, 123rd plenary meeting, point 122, pp. 1307-1309.

⁵² For the text, see United Nations, *Treaty Series*, vol. 33, p. 261. There are presently 16 annexes, three with revised versions, for 15 present specialized agencies and one which has been liquidated.

⁵³ See *Multilateral Treaties Deposited with the Secretary-General. Status as at 31 December 1981* (United Nations publication, Sales No. E.81.V.9).

⁵⁴ Doc. E/42 of 25 May 1946.

⁵⁵ The United Maritime Consultative Council was a temporary body to which fourteen maritime nations had subscribed, but whose existence was provided for only until 31 October 1946.

⁵⁶ *GA (III), Suppl. 10, A/605*.

⁵⁷ *Ibid.*, p. 34, A/605, annex 1.

⁵⁸ Two Protocols for extending the period of validity of the Convention on the Declaration of Death of Missing Persons were concluded on 16 January 1957 and 15 January 1967 respectively. The Convention was terminated on 24 January 1972 in accordance with Article 14 of the Protocol of 15 January 1967 (United Nations, *Treaty Series*, vol. 808).

⁵⁹ E/CN.5/15.

⁶⁰ E/CN.5/24, paras. 64-66.

⁶¹ International Institute for the Unification of Private Law, preliminary Draft of a Convention on the Recognition and the Enforcement Abroad of Maintenance Obligations, Doc. 16 (1) 1950.

⁶² The Preparatory Committee of the Conference, which, at its third session, decided that the problem of land-locked countries would be considered under item 10 (e) of the Conference which was adopted by the Conference on 23 March 1964.

⁶³ It should be noted that the decision of the Preparatory Committee of the Conference was reconfirmed at the pre-conference meeting held on 21 March, which agreed that for the consideration of the problem of land-locked countries and the formulation and adoption of a draft convention concerning the subject a special committee should be established.

⁶⁴ For text of the draft convention, see UNCTAD 1964, vol 11.

⁶⁵ See UNCTAD 1964, vol. 1, Report of the Fifth Committee, Appendix I, p. 320, para. 16.

⁶⁶ *Official Records of the General Assembly, Nineteenth Session*, 1328th meeting.

⁶⁷ *Official Records of the General Assembly, Thirty-first Session, Annexes*, agenda item 123, document A/31/242.

⁶⁸The President of the Assembly initially appointed in 1977 only 33 States as members of the *Ad Hoc* Committee, indicating that he would appoint the remaining two members as soon as candidates were nominated by the Eastern European Group (see document A/31/479). Subsequently, in the course of the 1977 session of the *Ad Hoc* Committee, the President appointed a 34th member (A/31/479/Add.1). The 35th member was appointed just prior to the 1979 session of the *Ad Hoc* Committee.

⁶⁹The report of the *Ad Hoc* Committee is contained in *Official Records of the General Assembly, Thirty-second Session, Supplement No. 39 (A/32/39)*.

I. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES¹

1. The main task of United Nations High Commissioner for Refugees (UNHCR) in the promotion of international instruments on the protection of refugees is to urge more countries to accept the 1951 Convention and the 1967 Protocol relating to the status of refugees which are the basic international instruments for the protection of refugees, giving the minimum standards for the treatment and protection of refugees. Article 8 (a) of the Statute of the Office of the United Nations High Commissioner for Refugees states that the Office is competent to promote the conclusion and ratification of international conventions for the protection of refugees and to supervise their application. The enlargement of basic standards for the protection of refugees within the framework of the preparation and adoption of new international instruments constitutes a logical first step in the achievement of fundamental rights for refugees.

2. Concerning the elaboration of multilateral treaties of direct concern to refugees, UNHCR was involved in the work of the Group of Experts on the Draft Convention on Territorial Asylum and the United Nations Conference on Territorial Asylum.

3. In the realization of UNHCR's policy for the further development of Refugee Law which is directed towards the elaboration of refugee rights already laid down in the 1951 Convention and which could be introduced in different multilateral international instruments adopted or in elaboration by Specialized Agencies and other international organizations, UNHCR obtained some positive results.

4. In the elaboration of UNESCO's instruments concerning the recognition of studies, diplomas and degrees in higher education, UNHCR participated in the preparation of these instruments:

(a) UNHCR was invited to be represented at the meetings of the Special Committee of Governmental Experts to prepare the Draft Convention on the recognition of studies, diplomas and degrees in higher education in the Arab and European States bordering on the Mediterranean. This Convention was adopted by the International Conference of States in Nice from 13 to 17 December 1976. The Convention is already in force. UNHCR proposed a special provision which was introduced in this Convention on refugees and displaced persons who will benefit from the Convention. At preliminary stage for the participation of UNHCR in the preparation of the Convention by the Special Committee, UNHCR prepared a working paper which was submitted and discussed at meetings of the Special Committee of Governmental Experts.

When the formula was found at these meetings, the Governmental Experts proposed the final text for the Conference. At the Conference the UNHCR representative made a statement expressing UNHCR's views on the subject and outlining in a summarized and general way UNHCR's activities in the field of protection and assistance to refugees;

(b) UNHCR was also represented at the meetings of the Special Committee of Governmental Experts to prepare the Convention on the recognition of studies, diplomas, and degrees in higher education in Arab States which took place at Rabat from 9 to 13 January 1978. At this meeting, the UNHCR representative presented a special working paper which was discussed with Governmental Experts who accepted the introduction of a special provision in the Convention which provides for refugees and stateless persons benefiting from the Convention. The International Conference of States for the adoption of the Convention on the recognition of studies, diplomas and degrees in higher education in the Arab States was held at UNESCO Headquarters from 18 to 22 December 1978. The UNHCR representative submitted a special paper for this Conference in order to inform the Conference about UNHCR's activities and the necessity to introduce a provision on refugees and stateless persons;

(c) UNHCR also took part at the meetings of Governmental Experts to prepare within UNESCO two Conventions for the recognition of studies, diplomas and degrees in higher education in African and European States. UNHCR prepared a special working paper in order to propose suitable provisions on refugees and stateless persons which could be introduced in these Conventions.

5. The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, which was convened by the Swiss Federal Council and held four sessions in Geneva (from 20 February to 20 March 1974, from 3 February to 18 April 1975, from 21 April to 8 June 1976 and from 17 March to 10 June 1977), adopted two Additional Protocols on the Geneva Conventions of 12 August 1949.

6. In the elaboration of Additional Protocols prepared for this Conference by the International Committee of the Red Cross, UNHCR took an active part in the formulation of special provisions on refugees, stateless persons and family reunion. The UNHCR representative participated in the preparatory work organized by the International Committee of the Red Cross and during the Conference as Observer. In this regard, UNHCR prepared several working papers which were distributed as official documents during the Conference to governmental delegations and attended the meetings of working groups organized by the Conference. Special statements were also prepared during the Conference in order to get agreement of delegations for the adoption of important provisions which protect refugees, stateless persons and family reunion in armed conflicts. Article 73 of Protocol I on refugees and stateless persons is a basic article which protects refugees and stateless persons not only within the Protocol I but also within the Fourth Geneva Convention on the protection of civilian populations.

7. Similar procedures have been used in other Conferences convened under the auspices of the World Intellectual Property Organization and the International Labour Organisation. UNHCR attends meetings organized by

ILO and WIPO on the elaboration of new conventions or the revision of existing conventions which may concern the protection of certain refugee rights.

NOTE

¹See also Section H.2. Constitution of the International Refugee Organization above.

J. OUTER SPACE AFFAIRS DIVISION

1. *United Nations bodies within which the treaties are prepared*

1. The General Assembly, the Committee on the Peaceful Uses of Outer Space, and the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space constitute the organizational framework within which treaties concerning the peaceful uses of outer space are prepared within the United Nations.

2. The General Assembly has each year, since 1958, included on its agenda an item relating to the peaceful uses of outer space. The item was originally assigned to the First Committee but it has been switched to the Special Political Committee since 1978. The report of the Committee on the Peaceful Uses of Outer Space, which includes a detailed section on the work of the Committee's Legal Sub-Committee, is considered under the item. The General Assembly has each year expressed its views on the work of the Legal Sub-Committee and made recommendations as to the subjects to be considered by the Sub-Committee and the relative priorities to be accorded by the Sub-Committee to the subjects in the following year.

3. The Committee on the Peaceful Uses of Outer Space was established by the General Assembly at its fourteenth session in 1959 with a membership of twenty-four member States. The membership of the Committee was enlarged to twenty-eight at the sixteenth session of the General Assembly, to thirty-seven at the twenty-eighth session, to forty-seven at the thirty-second session and to fifty-three at the thirty-fifth session. The Committee is at present composed of the following fifty-three member States:

Albania, Argentina, Australia, Austria, Belgium, Benin, Brazil, Bulgaria, Canada, Chad, Chile, China, Colombia, Czechoslovakia, Ecuador, Egypt, France, German Democratic Republic, Germany, Federal Republic of, Greece.¹ Hungary, India, Indonesia, Iran, Iraq, Italy, Japan, Kenya, Lebanon, Mexico, Mongolia, Morocco, Netherlands, Niger, Nigeria, Pakistan, Philippines. Poland, Romania, Sierra Leone, Spain.² Sudan, Sweden, Syrian Arab Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United States of America, Upper Volta, Uruguay, Venezuela, Viet Nam and Yugoslavia.

4. The Committee meets each year for a period of two weeks ordinarily in June-July and considers, among others matters, the report of its Legal Sub-Committee. The Committee reports each year to the General Assembly on the work of the Sub-Committee. The Legal Sub-Committee is one of the two standing subsidiary bodies of the Committee on the Peaceful Uses of Outer

Space, the other being the Scientific and Technical Sub-Committee. The two Sub-Committees have the same membership as the Committee. The Legal Sub-Committee meets each year for a period of four weeks ordinarily in March-April and reports each year to the Committee. The work of the Committee and its Sub-Committees is so conducted that decisions are made by way of consensus and without proceeding to a vote. Members of the United Nations who are not members of the Committee have on occasion requested and been granted the opportunity of addressing the Committee or its Sub-Committees on matters of concern to them. The specialized agencies and certain intergovernmental and non-governmental bodies concerned with the peaceful uses of outer space participate in meetings of the Committee and its Sub-Committees without the right to vote.

2. *Treaties formulated or in the course of formulation*

5. The following treaties concerning the peaceful uses of outer space have, as of the present date, been formulated. All but one—the “Moon Treaty”—are in force.

(a) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. The Treaty was opened for signature on 27 January 1967 and entered into force on 10 October 1967. There are, as of the present date, sixty-seven Parties to the Treaty.

(b) Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. The Agreement was opened for signature on 22 April 1968 and entered into force on 3 December 1968. There are, as of the present date, sixty-five Parties to the Agreement.

(c) Convention on International Liability for Damage Caused by Space Objects. The Convention was opened for signature on 29 March 1972 and entered into force on 1 September 1972. There are, as of the present date, sixty-one Parties to the Convention.

(d) Convention on Registration of Objects Launched into Outer Space. The Convention was opened for signature on 14 January 1975 and entered into force on 15 September 1976. There are, as of the present date, twenty-seven Parties to the Convention.

(e) Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. The Agreement was opened for signature on 18 December 1979 and is not yet in force. As of the present date, eleven States have signed, of which three have ratified the Agreement.

3. *Initiation of the treaty-making process*

6. In the past, drafting of treaties has been initiated by proposals made by Member States. On the basis of these proposals the General Assembly has mandated the Committee on the Peaceful Uses of Outer Space to draft treaties on specific subjects concerned. The Committee in turn has delegated its Legal Sub-Committee to undertake the drafting of these treaties.

4. *Preparation of a treaty*

(a) *Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space*

7. It is in the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space that work on the preparation of a treaty principally takes place.

(i) *Organization of sessions of the Sub-Committee*

8. The annual four-week session of the Legal Sub-Committee is generally organized as follows. The first week of a session is devoted to the opening plenary meetings of the Sub-Committee and to meetings of one of the Sub-Committee's Working Groups. The second and third weeks are devoted to meetings of Working Groups of the Sub-Committee. The fourth week of a session is devoted to the concluding meetings of the Working Groups and to the concluding plenary meetings of the Sub-Committee.

(ii) *Plenary meetings of Sub-Committee in the first week of a session*

9. The plenary meetings of the Sub-Committee in the first week of a session provide, when the preparation of a treaty is at an initial stage, the occasion for introductory statements on matters of substance and procedure, and for the introduction of texts of draft treaties by delegations.

10. When work on the preparation of a treaty is already in progress, the plenary meetings of the Sub-Committee in the first week of a session provide the occasion for statements by delegations on outstanding issues and on other matters of substance or procedure.

11. The plenary meetings of the Sub-Committee are provided with summary records³ and other Secretariat services including interpretation. The plenary meetings of the Sub-Committee are open to the public.

12. When the Sub-Committee decides that work on the actual formulation of the provisions of a treaty should begin, it is the practice to establish a Working Group for that purpose.

(iii) *Working Groups of the Sub-Committee*

Composition and organization

13. A Working Group established by the Sub-Committee for the formulation of the provisions of a treaty is composed of the whole membership of the Sub-Committee.

14. The process of conversion of the Sub-Committee into a Working Group is accomplished speedily, usually within a period of a few minutes.

15. The choice of a Chairman of a Working Group is made in plenary meeting following consultations between the Chairman of the Sub-Committee and delegations. The representative appointed Chairman of a Working Group continues to serve in that capacity while he continues to attend the Sub-Committee.

16. The meetings of a Working Group are provided with interpretation services and other Secretariat assistance. The Working Group is not, however, provided with summary records and its meetings are closed to the public.

Documentation

17. The documents that are before a Working Group, in connexion with the preparation of a draft treaty, are usually of three kinds: documents of an

introductory or of a background nature; documents that form the immediate basis for the drafting of the provisions of the treaty; and, where there are scientific or technical aspects to be considered, documents of a scientific and technical nature.

18. The introductory or background documents usually include the following: the relevant resolution of the General Assembly concerning the treaty in question, including the priority to be accorded by the Sub-Committee to the preparation of the treaty; the reports of the Committee on the Peaceful Uses of Outer Space and of the Legal Sub-Committee that may be of relevance; papers that may have been requested of the Secretariat by the Committee on the Peaceful Uses of Outer Space, the Legal Sub-Committee, or a Working Group.

19. The documents that form the immediate basis for the drafting of the provisions of a treaty usually include the following: the draft treaties proposed by delegations constitute the principal basis for the formulation of the treaty; a comparative table of the provisions of such draft treaties prepared by the Secretariat at the request of the Legal Sub-Committee or of the Working Group, when detailed comparison of the provisions of the several texts becomes necessary; amendments to articles, or additional articles, proposed by delegations in the course of the formulation of a particular provision.

20. Where there are scientific or technical aspects to be considered, it is customary for these aspects to be considered by the Scientific and Technical Sub-Committee of the Committee on the Peaceful Uses of Outer Space or by other subsidiary bodies of the Committee.

Drafting of provisions—Initial exchanges of views

21. It is customary for a Working Group to begin its deliberations with an introductory statement by its Chairman. The statement, often made following informal consultations with delegations, touches on the work to be accomplished, questions of working procedure and the documents before the Working Group. The views of delegations are invited and there is an introductory exchange of views.

22. Where a Working Group is at the beginning of its work on a treaty, the exchange of views following a Chairman's introductory statement may take some time. It is at this initial stage that decisions are necessary on, among other matters, the procedures of work: whether, for example, there ought to be a general exchange of views before actual drafting of provisions begins; what order ought to be followed by the Working Group in its consideration of the various articles of the draft treaties proposed by delegations; whether it would be desirable to prepare a comparative table of the provisions of the draft treaties.

23. When a Working Group continues its work on a treaty which was begun at an earlier session of the Sub-Committee, the initial exchange of views in the Working Group is usually concluded within a short period of time.

Process of drafting

24. The process of drafting the provisions of a treaty begins in the Working Group immediately after the initial exchange of views in the Working Group is concluded. The process continues until the report to be made by the

Chairman of the Working Group to the Sub-Committee is considered at the concluding meeting of the Working Group.

25. The process of drafting is necessarily detailed, laborious and time-consuming. It involves the examination, in the agreed order, of the provisions of the various draft proposals that are before the Working Group. It also involves, with respect to each subject considered, a comparison of particular provisions: identification of similarities and dissimilarities; consideration of points of dissimilarity; efforts at narrowing differences; the submission and consideration of new proposals which seek to resolve points of disagreement; and, finally, the recording of a text on which preliminary agreement has been reached, with unagreed texts in square brackets.

Informal consultations

26. There is considerable value to the process of drafting of informal consultations between delegations. There are informal consultations both within and outside the framework of the Working Group. A common example of informal consultations within the framework of the Working Group is the brief adjournment of a meeting of a Working Group to enable concerned delegations to consult on a particular point. Another example of frequent occurrence is the establishment by the Working Group of a small group for informal consultations on a particular matter. The opportunities for informal consultations between delegations outside the framework of a Working Group are numerous.

Editorial review of texts

27. When all the provisions of a treaty are formulated, there is, with the assistance of United Nations editorial services, a final editorial review of the provisions of the treaty in its various language versions.

28. A Drafting Group has on occasion been established for that purpose.

Reports of Working Group to the Legal Sub-Committee

29. Where, as has often been the case, a Working Group is unable to complete the formulation of a treaty within the allocated time in the course of a session of the Legal Sub-Committee, the report of the Working Group to the legal Sub-Committee is in the nature of a progress report. The report notes the documents that were before the Working Group at the beginning of its work and the documents that were submitted to the Working Group in the course of its deliberations. The report sets out the texts on which the Working Group was able to reach consensus and the provisions on which consensus was not possible are placed within square brackets. The report briefly records the views of delegations on points where it is requested.

30. Where a Working Group has completed the formulation of a treaty, the text of the treaty is incorporated in the report of the Working Group to the Sub-Committee.

(iv) *Plenary meetings in the fourth and last week of a session of the Sub-Committee*

31. The fourth and last week of a session of the Sub-Committee is devoted principally to the concluding plenary meetings of the session. The Sub-Committee in the course of these plenary meetings receives and considers the reports of its Working Groups.

32. When discussion on a report of a Working Group is concluded, it has been the practice of the Sub-Committee to take note of it and to have it annexed to the Sub-Committee's report to the Committee on the Peaceful Uses of Outer Space.

33. Where work on the formulation of a treaty is still incomplete, at the conclusion of the Sub-Committee's session there have been occasions on which the Sub-Committee has decided that it would be helpful if the Committee on the Peaceful Uses of Outer Space, in the course of its forthcoming session, were to endeavour to complete the formulation of particular provisions of special importance. In such a case the report of the Sub-Committee to the Committee then includes a recommendation to that effect.

34. Where a Working Group has been successful in completing the formulation of a treaty, the text of the treaty is set out in the report of the Sub-Committee to the parent Committee.

35. As has already been noted, the plenary meetings of the Sub-Committee, unlike the meetings of a Working Group, are normally provided with summary records. The plenary meetings thus enable delegations to have their views placed on record. The records of the plenary meetings of the Sub-Committee form part of the *travaux préparatoires* of a treaty.

(b) *Committee on the Peaceful Uses of Outer Space*

36. The Committee on the Peaceful Uses of Outer Space at its annual two-week session generally held in June-July each year considers, among other matters, the report of the Legal Sub-Committee.

37. Where a treaty is still in the course of formulation in the Legal Sub-Committee, the meetings of the Committee, held approximately three months after the conclusion of a session of the Legal Sub-Committee, provide delegations with an opportunity, while the discussions of the Legal Sub-Committee are still relatively fresh in their minds, to review issues unresolved at the conclusion of the session of the Sub-Committee.

38. Where a treaty would cover matters that require examination from the scientific and technical point of view, the meetings of the Committee (where delegations generally include representatives who have attended the Legal Sub-Committee and representatives who have attended the Scientific and Technical Sub-Committee) provide opportunity for the relevant matters to be considered from the point of view of both Sub-Committees. The extent to which the Scientific and Technical Sub-Committee may be of assistance to the Legal Sub-Committee would be considered and co-ordination of the work of the Legal Sub-Committee and of the Scientific and Technical Sub-Committee reviewed.

39. The Legal Sub-Committee, as noted above, has on occasion requested the Committee to endeavour to complete the preparation of particular texts that were pending at the conclusion of the session of the Sub-Committee. The Committee has on such occasions established a drafting or working group for that purpose.

40. The report of the Committee to the General Assembly contains recommendations as to the subject to be included on the agenda of the Legal

Sub-Committee at its next session and the priority to be accorded to such subjects.

41. Where the Legal Sub-Committee has completed the formulation of a treaty, the meetings of the Committee provide occasion for further review of the treaty. It is customary on such occasions for the Chairman of the Legal Sub-Committee to present the treaty to the Committee with a detailed statement explaining the provisions of the treaty. The discussion that follows provides delegations with an opportunity to place their views on record. The records of the Committee form part of the *travaux préparatoires* of the treaty. After its own approval of a treaty prepared by the Legal Sub-Committee, the Committee transmits and commends the treaty to the General Assembly.

(c) *The General Assembly*

42. The report of the Committee on the Peaceful Uses of Outer Space is considered by the General Assembly under its agenda item relating to international co-operation in the peaceful uses of outer space. The item is assigned to the Special Political Committee.

43. Where a treaty is still in the course of formulation in the Legal Sub-Committee, the Special Political Committee considers the views expressed by the Committee on the Peaceful Uses of Outer Space and, if it concurs on the recommendations of the Committee, incorporates such recommendations in the resolution it would propose for adoption by the General Assembly. The meetings of the Special Political Committee provide States that are not members of the Committee on the Peaceful Uses of Outer Space an opportunity to express their views on questions relating to the treaty.

44. Where formulation of a treaty has been completed by the Legal Sub-Committee and the Committee on the Peaceful Uses of Outer Space has transmitted the treaty to the General Assembly for approval, introductory explanatory statements of the provisions of the treaty are made by the Chairman of the Committee on the Peaceful Uses of Outer Space and, in greater detail, by the Chairman of its Legal Sub-Committee. The discussion that follows enables delegations, both members and non-members of the Committee on the Peaceful Uses of Outer Space, to express their views on the treaty.

45. The resolution proposed by the Special Political Committee for adoption by the General Assembly, on the subject of the treaty, would commend the treaty; request that the treaty be opened for signature and ratification at the earliest possible date; express hope for the widest possible adherence to the treaty; and set out the treaty in an annex to the resolution.

46. Adoption of the resolution by the General Assembly concludes preparation of the treaty.

5. *Opening of treaty for signature*

47. If the Secretary-General is the depositary of a treaty, the treaty would be opened for signature at United Nations Headquarters, New York, within a few months of the General Assembly's approval of the treaty.

48. The 1975 Convention on the Registration of Objects Launched into Outer Space, for example, was approved by the General Assembly on 12

November 1974. The treaty was opened for signature at UN Headquarters, New York, on 14 January 1975.

49. It is expected that the Secretary-General will continue to be the depositary of all future outer space treaties formulated within the United Nations.

NOTES

¹Until the end of 1983; Turkey took over the next three years, thus establishing a rotation system of three-year periods between them.

²In the same rotation arrangement with Portugal as above.

³The provision of summary records was suspended in 1980 but resumed in 1981. Its future is subject to review of the General Assembly possibly at its 37th session.

K. SECRETARIAT OF THE THIRD UNITED NATIONS CONFERENCE
ON THE LAW OF THE SEA

1. *Introduction*

1. It appears relevant to note the possible impact that the treaty-making techniques peculiar to the Law of the Sea Conference may have had both on State practice as related to the Law of the Sea and on international law as a whole. This has been the subject of many comments by publicists of different nations who have suggested that the negotiating texts have themselves accelerated and consolidated the process of change.¹

2. With regard to the areas under national jurisdiction, the informal negotiating texts have played a role in the development of State practice. Since the publication of the Single Negotiating Text, 52 States from all regions of the world have adopted legislation basically modelled after the provisions contained in said text. Nineteen States have enacted legislation on fishery zones up to a distance of 200 nautical miles where the jurisdiction of the coastal State is not as comprehensive as that envisaged in the Single Negotiating Text, but is not, *prima facie*, incompatible with it. Five coastal States, all of them in West Africa, have extended their territorial sea to a distance of 200 nautical miles and five other African States have extended their territorial seas to distances beyond 12 miles but less than 200 nautical miles. Since 22 States had, prior to the publication of the Single Negotiating Text, extended under different denominations their national jurisdiction over ocean spaces up to 200 nautical miles, it is now evident that for at least 103 coastal States there is jurisdiction with regard to the resources within a belt of 200 nautical miles. Whether this trend will be reviewed as a customary rule of law in the absence of a treaty can be the subject of many learned dissertations. The fact remains that only a conventional rule can reconcile the interests of the coastal States that benefit from the extension of national jurisdiction with those of other States that either because of their landlocked condition or on account of other geographical disadvantages cannot derive any benefit from the new concept of the exclusive economic zone. The Draft Convention as it stands offers a bal-

ance of rights and freedoms on the one hand and duties and obligations on the other hand that would not normally be retained should the new law of the sea evolve exclusively as a consequence of State practice.

3. With respect to the areas beyond the limits of national jurisdiction, we are in the face of a situation that has no parallel in legal history. On the one side the developing countries and some developed countries are of the view that the right to engage in mining of the resources of the sea-bed is not a legal freedom of the high seas. According to this view there is no practice or custom in the legal sense or general treaty authorizing the exploitation of the sea-bed. The Declaration of Principles embodied in General Assembly resolution 2749 (XXV) expressly excludes the possibility of extending freedom of the high seas to the sea-bed and subjects exploration and exploitation of the sea-bed to the international régime to be established. In their opinion, therefore, the situation is entirely different from that which applies to the exploitation of the traditional resources of the high seas, which is based on three centuries of custom and innumerable treaties. They maintain that the Declaration is a solemn pronouncement by the most representative organ of the international community to the effect that the resources of the sea-bed beyond national jurisdiction are the common heritage of mankind, can be exploited only under an international régime and cannot be unilaterally exploited. Other developed countries although not concurring with this opinion, have appealed to all countries to refrain from taking any action with regard to sea-bed mining before the Conference concludes its work.² Other States maintain the position that the right to explore and exploit the sea-bed beyond the limits of national jurisdiction derives from the freedom of the high seas, that no rule of positive international law prohibits the exploitation of the mineral resources of the oceans and that no State can be bound under international law without its consent.³ Should there be a conflict or dispute with regard to sea-bed mining operations conducted before an international régime is adopted it is far from clear what kind of decision could be handed down by a court of law. In the absence of an international instrument expressly recognized by the contesting States, without any evidence of a general practice accepted as law and when the teachings of the "most highly qualified publicists" of various nations reflect conflicting opinions, it is possible that the only "general principles of law recognized by civilized nations" on which a decision could be based would be those contained in a Declaration of Principles adopted with no dissenting votes by the General Assembly, without going into the question of the legal nature or binding effect of General Assembly resolutions.

4. The preceding considerations are relevant when studying the techniques and procedures used in the elaboration of the law of the sea convention. It has been pointed out that the Conference, since its inception, has found no precedents on which to base the organization of its work and has produced new pragmatic solutions that have been accepted by all of the 165 participants without any reservation. The validity of those innovative methods cannot be ascertained until the Conference has finalized its work. Any comparison with past experiences or any attempt to transplant them to other areas of United Nations activity can be misleading and will have to be approached with great care.

2. *The Sea-Bed Committee*

5. The item concerning the peaceful uses of the sea-bed beyond national jurisdiction was first included in the agenda of the General Assembly in 1967. This item, which, on account of its political and security implications, was in fact allocated to the First Committee,⁴ was described as "Examination of the question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind".

6. By resolution 2340 (XXII) of 18 December 1967 the General Assembly established an *Ad Hoc* Committee to Study the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, consisting of 35 States. The *Ad Hoc* Committee was required to prepare a study covering three aspects of the question: first, a survey of the past and present activities of the United Nations, the specialized agencies, the International Atomic Energy Agency and other intergovernmental bodies with regard to the sea-bed and the ocean floor, and of existing international agreements concerning these areas; secondly, an account of the scientific, technical, economic, legal and other aspects of this item; and thirdly, an indication regarding practical means of promoting international co-operation in the exploration, conservation and use of the sea-bed and the ocean floor, and subsoil thereof, as contemplated in the title of the item, and of their resources.

7. The *Ad Hoc* Committee created two working groups of the whole, dealing respectively with economic and technical matters and with legal aspects. It worked on the basis of consensus though no formal decision was taken to that effect.⁵

8. In its report⁶ the *Ad Hoc* Committee pointed out, *inter alia*, that it was agreed that the item as a whole needed further study and that institutional arrangements should be established by the General Assembly for that purpose.

9. At its twenty-third session, the General Assembly by resolution 2467 A (XXIII) of 21 December 1968 established the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, composed of 42 States. Thus, the *Ad Hoc* Committee was in effect replaced by a standing Committee.

10. The mandate of this Committee differed substantially from the *Ad Hoc* Committee. It was requested, *inter alia*, to make recommendations on: (a) the elaboration of the legal principles and norms which promote international co-operation in the exploration and use of the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, and ensure the exploitation of their resources for the benefit of mankind, and the economic and other requirements which such a régime should satisfy in order to meet the interests of humanity as a whole; (b) the ways and means of promoting the exploitation and use of the resources of this area, and of international co-operation to that end, taking into account the foreseeable development of technology and the economic implications of such exploitation and bearing in mind that such exploitation should benefit mankind as a whole; (c) intensification of international co-operation and stimulation of the exchange and the widest possible dissemination of scientific knowledge on the subject;

and (d) measures of co-operation to be adopted by the international community in order to prevent the marine pollution which may result from the exploration and exploitation of the resources of this area.

11. The Committee was also requested to study further, within the context of the title of the item and taking into account the studies and international negotiations being undertaken in the field of disarmament, the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor without prejudice to the limits which may be agreed upon in this respect.

12. The organization of the Committee's work was similar to its predecessor, the *Ad Hoc* Committee. However, the two working groups of the *Ad Hoc* Committee were replaced by a Legal Sub-Committee and an Economic and Technical Sub-Committee.⁷ It also carried out its work on the basis of consensus among its members.

13. As reported to the twenty-fourth session of the General Assembly, the Committee focused its attention during 1969 primarily on the questions embodied in resolution 2467 A and C (XXIII),⁸ the elaboration of legal principles and norms for the exploration and exploitation of the sea-bed beyond national jurisdiction; and the establishment of appropriate international machinery to promote such exploration and exploitation for the benefit of mankind.

14. During 1970 the Committee worked intensively on the elaboration of a draft declaration on principles governing the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. The preparation of a comprehensive and balanced statement of principles had been particularly requested by the General Assembly in resolution 2574 B (XXIV) of 15 December 1969. The Committee was unable to reach complete agreement on the elaboration of a draft declaration of principles. It was only in the course of informal consultations during the General Assembly and at the initiative of the Chairman of the Committee that it was possible to submit the text to the Chairman of the First Committee. During the twenty-fifth session, the General Assembly adopted resolution 2749 (XXV) entitled Declaration of Principles Governing the Sea-Bed and the Ocean Floor and the Subsoil Thereof, beyond the Limits of National Jurisdiction, on 17 December 1970 by a vote of 108 in favour, with 14 abstentions. This resolution has been generally considered a landmark in the work of the Committee.

15. At the twenty-fifth session, the General Assembly also adopted resolution 2750 C (XXV), of 17 December 1970, under which it decided to convene in 1973, a conference on the law of the sea⁹ which would deal with the establishment of an equitable international régime—including an international machinery—for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues, including those concerning the régime of the high seas, the continental shelf, the territorial sea (including the question of the preferential rights of coastal States), the preservation of the marine environment (including, *inter alia*, the prevention of pollution) and scientific research.

16. By this same resolution the Committee was enlarged by 44 members and was instructed to prepare for the Conference on the Law of the Sea, first,

draft treaty articles embodying the international régime—including an international machinery—for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, taking into account the equitable sharing by all States in the benefits to be derived therefrom bearing in mind the special interests and the needs of developing countries, whether coastal or land-locked, on the basis of the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction; and secondly, a comprehensive list of subjects and issues relating to the law of the sea which should be dealt with by the Conference, and draft articles on such subjects and issues.

17. Thus, the Committee's mandate underwent a most significant change. It was entrusted with the task of not only elaborating an international sea-bed régime, but also of producing draft articles on a wide range of issues relating to the law of the sea.

18. At its first session, held at Geneva in March 1971, the Committee established three Sub-Committees of the whole.¹⁰

19. During the course of 1972, the membership of the Committee, which had been enlarged by the addition of China and four additional States,¹¹ adopted after intense and lengthy negotiations the list of subjects and issues relating to the law of the sea which in fact served as the basis of the agenda for the Third United Nations Conference on the Law of the Sea.

20. By the end of its work in 1973, it can be said that the Committee reached agreement on only one step of the preparatory work of the law of the sea conference—the adoption of a list of subjects and issues that served as a framework in the drafting of the relevant articles. The report of the Committee to the General Assembly in 1973¹² referred to several documents which included a wide variety of draft articles, working papers, reports and official government proposals. There was, however, no generally agreed set of draft articles.¹³

21. On 16 November 1973, the General Assembly adopted resolution 3067 (XXVIII). By this resolution it was decided to proceed with the immediate inauguration of the Third United Nations Conference on the Law of the Sea in 1973 and the convening of a substantive session in 1974 in order to carry out the negotiations and other work required to complete the adoption of draft articles for a comprehensive convention on the law of the sea. It should here be observed that this resolution had expressly declared that the Committee had accomplished, as far as possible, within the limits of its mandate, the work which the General Assembly had entrusted to it for the preparation of the Third United Nations Conference on the Law of the Sea. On the basis of this resolution the mandate of the Conference was to adopt a convention dealing with all matters relating to the law of the sea, taking into account the subject matter listed in paragraph 2 of General Assembly resolution 2750 C (XXV), and the list of subjects and issues relating to the law of the sea formally approved on 18 August 1972 by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole.

3. *The Third United Nations Conference on the Law of the Sea*

22. The first session of the Conference, held in New York, from 3 December to 15 December 1973, was procedural in nature. The Conference spent that session negotiating the contents of its rules of procedure which were finally adopted at the end of the first week of its second session.

23. The element which revealed most significantly the spirit which pervaded the rules of procedure was contained in the notion of consensus. This notion was embodied in the Declaration incorporating the "Gentleman's Agreement".¹⁴ This Declaration which constitutes an appendix to the rules of procedure states that:

"Bearing in mind that the problems of ocean space are closely inter-related and need to be considered as a whole and the desirability of adopting a Convention on the Law of the Sea which will secure the widest possible acceptance,

"The Conference should make every effort to reach agreement on substantive matters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted."

This basic principle was reflected in certain important provisions in the rules of procedure, in particular the reference in rule 37 that "before a matter of substance is put to vote, a determination that all efforts at reaching general agreement have been exhausted shall be made by the majority specified for matters of substance", i.e. a two-thirds majority, and the reference also in that rule to the procedure for deferring the taking of a vote on any matter of substance at the initiative of the Presiding Officer or of at least fifteen representatives, in order to exhaust all efforts to achieve general agreement, having regard to the overall progress made on all matters of substance which are closely related. Rule 39 which defines the majority required for decisions on matters of substance and for the decision referred to above, is more demanding than the standard rules adopted by most diplomatic conferences in that it requires not only a two-thirds majority of representatives present and voting, but also that such majority include a majority of the States participating in that particular session of the Conference.

24. The three Main Committees were organized as follows:

The First Committee, under the Chairmanship of Mr. Paul B. Engo of the Republic of Cameroon, deals with the régime for the exploration and exploitation of the resources of the sea-bed and the ocean floor beyond the limits of national jurisdiction and machinery to implement the aims of the Declaration of Principles;

The Second Committee, chaired by Ambassador Andrés Aguilar of Venezuela, and during the third session by Ambassador Reynaldo Galindo Pohl of El Salvador, deals with maritime areas subject to national jurisdiction and the high seas—including territorial sea, continental shelf, exclusive economic zone and the régime of straits used for international navigation;

The Third Committee, chaired by Ambassador Alexander Yankov of Bulgaria, deals with the rules for the protection of the marine environment, the conduct of scientific research and the transfer of technology.

The three Main Committees in fact continued to deal with the subjects covered by the three sub-committees of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction. At a later stage, the plenary was entrusted with the peaceful settlement of disputes and the final clauses with the understanding that, for this purpose, it would operate as a Main Committee. The Drafting Committee, whose role and functions are elaborated on in Part VII, has been chaired by Ambassador Alan Beeseley of Canada.

4. *The negotiating machinery of the Conference*

25. Certain salient features of the Third United Nations Conference on the Law of the Sea shaped, or perhaps, rather dictated the working pattern of the Conference. Factors such as the complexity of the issues facing the Conference, the sharp conflict of interests on certain important issues and the relatively large number of delegations participating in the Conference, have had significant consequences on the type of procedures which the Conference found itself obliged to adopt. In the first place, it was generally felt that negotiations could not be effectively carried out in formal proceedings. The result was that most of the work of the Conference has been conducted informally. There were, of course, no summary records of these informal meetings. During the course of the Third United Nations Conference on the Law of the Sea, countless instances of the use of the informal procedure can be cited. The informal meetings of Committee III on the protection of the environment and the informal meeting of that body on marine scientific research and the transfer of technology furnish an instance of this procedure. Important inter-sessional meetings have also taken place on an informal basis especially on matters relating to Committee I.¹⁵

26. In the second place, large groups of delegations were not well suited for undertaking negotiations on several issues facing the Conference.¹⁶ Thus, it was that much of the work of the Conference was carried out in several small negotiating groups. Examples of such groups were (i) for Committee I matters: there was established the working group composed of 50 States and (ii) for Committee II matters: there was set up, e.g., a working group on baselines, another dealing with historic bays and a third on the territorial sea. Small working groups were created to deal with other issues.

27. It should here be pointed out that though these fairly small informal groups were in fact necessary for the conduct of negotiations, some States which had not participated in such negotiations were not prepared, or were prepared only with great reluctance, to accept their outcome. The importance of the subjects being dealt with by the Conference, and the diversity of the interests represented in it, inhibited delegations, it was said, from "entrusting their interests to delegations from elsewhere".¹⁷ Such an attitude certainly rendered the task of finding an adequate negotiating mechanism somewhat more difficult and may have played a part, as will be seen later,¹⁸ in fashioning some of the more recent negotiating procedures devised by the Conference.

28. Certain other groups which existed outside the framework of the Committees, and which have played an influential role in the work of the Conference, must be mentioned. First the regional groups: (a) African

Group, (b) Asian Group, (c) Latin American Group, (d) Group of Arab States, (e) Western European and others, (f) Eastern European Group, and (g) the Group of 77. In the second place, there are certain interest groups, e.g., the Group of Land-locked and Geographically Disadvantaged States and the Coastal State Group and finally certain "cross interest" negotiating groups which operate outside the formal framework of the Conference. An instance of this latter category is furnished by the Group of States which, having held informal consultations on issues connected with the settlement of disputes which may arise under the law of the sea Conference, submitted during the second session of the Conference a working paper on the settlement of the law of the sea disputes.¹⁹ The above-mentioned groups have exercised an influence, and, at times, have made significant contributions to the work of the Conference. They indeed form an essential component of the negotiating mechanism of the Conference.

5. *A basic negotiating text*

29. At the second session of the Third United Nations Conference on the Law of the Sea, held at Caracas, from 20 June to 29 August 1974, the method of work adopted by the Second Committee revealed the nature of the task which generally faced the Conference. Especially in the case of the Second Committee, there was need to impose some order on the welter of documents with which that Committee had to deal.

30. At its first session, the Second Committee decided to consider the items assigned to it, "one by one", in the order in which they appeared in the list. The idea was to consider each of the items, to identify the principal trends and to reduce them to generally acceptable formulae, and then, "to put them on ice", so to speak, without any decision. During the discussion of any given item, delegations were able to refer to related items. All closely interconnected items had to be fully considered before any decision would be taken.²⁰ As a result of this procedure the Second Committee, at its 46th meeting on 28 August 1974, decided to consolidate the 13 informal working papers into a single working document. The purpose of this document (A/CONF.62/C.2/WP.1)²¹ was to reflect the main trends which had emerged from the proposals submitted either to the Committee on Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, or to the Third United Nations Conference on the Law of the Sea, and it is generally acknowledged that this document represented a stage in the production of a basic working document for the Conference.

31. The need for such a basic working text around which negotiations on the various issues could be centred became clearer at the third session of the Conference held in Geneva from 17 March to 9 May 1975. Then the suggestion was made that the three Committees negotiate on the basis of a single text.²² At the 55th plenary meeting, the Conference accepted the President's proposal that the Chairmen of the three Committees should each prepare a single negotiating text²³ covering the subjects entrusted to his Committee, to take account of all the formal and informal discussions held so far. The texts would not prejudice the position of any delegation, and would not represent any negotiating text or accepted compromise. They would be a basis for negotiations.²⁴ In addition, the single negotiating text was not designed to affect the

status of proposals already made by delegations or the right of delegations to submit amendments or new proposals.²⁵

32. At the fourth session of the Conference, which was held in New York from 15 March to 7 May 1976, it was agreed that the Conference should avoid a general discussion on the informal single negotiating text and that it should proceed with informal negotiations in the Main Committees. Any objections to or proposals regarding the texts should be submitted as informal amendments, since the texts themselves were informal. The Chairmen of the Main Committees were given the mandate to revise the Informal Negotiating Text if they felt that there was a set of amendments commanding such widespread support so as to justify such revisions. It was left to the discretion of the Chairmen to determine whether the negotiating texts were to be discussed article by article, by groups of articles, or by concentrating on the key issues. The precise procedure was thus left within each Committee's competence.²⁶

33. The Chairmen each adopted their own procedure for the revision of the text. For instance, in the Second Committee, the Informal Single Negotiating Text was discussed article by article. The principle was adopted that silence was interpreted as signifying agreement with the negotiating text in all cases. When an amendment was submitted, delegations which were in favour of it, were bound to express their support, so that the Chairman might discern the degree of support each amendment enjoyed. Silence with respect to an amendment denoted satisfaction with the Informal Single Negotiating Text. For his part, the Chairman of the First Committee adopted a different procedure. He submitted first impression drafts of various articles, known as the "PBE Series", to all delegations in the hope that they could be studied and comments made to aid the production of the revised single negotiating text.²⁷

34. The Revised Single Negotiating Text was the product of the fourth session of the Conference and enjoyed the same status as the original Informal Single Negotiating Text. The Chairmen retained sole responsibility for their preparation and the text had no other status than that of serving as the basis for further negotiations without prejudice to the rights of any delegation to move amendments or to introduce new proposals. The texts were not to be regarded as committing any delegation to any of their provisions and they were not to be the basis of any general discussion.²⁸

35. It should be noted that at its 65th plenary meeting, the Conference had authorized the President to prepare a single negotiating text on the settlement of disputes. This text was to have the same status and character as parts I, II and III of A/CONF.62/WP.8. In preparing the text, the President took into account the views expressed during the general informal debates in the plenary which was based on A/CONF.62/WP.9—a text which had been prepared by the President on his own account. Account was also taken of relevant provisions contained in parts I, II and III of document A/CONF.62/WP.8, and of the suggestions put forward by the various groups and delegations.²⁹

36. The emergence of a basic negotiating text for the Conference threw into relief the issues that were most difficult to settle and which produced the most serious differences of opinion. It was on these "key issues", or as they were later called "hard-core issues", that from then on the Conference concen-

trated its attention. It can be said that after the appearance of the Revised Single Negotiating Text these "key issues" absorbed the attention of the Conference.

37. The President in his note to the Conference outlined six main areas on which delegations should concentrate in their informal consultations and negotiations during the fifth session, held in New York, from 2 August to 17 September 1976. They were as follows:

"(a) The structure of the proposed International Sea-Bed Authority; the financial arrangements for the maintenance of the Authority and its activities; the basic conditions governing exploration and exploitation of the sea-bed resources and the measures required to prevent or mitigate the adverse consequences to the economies of developing countries that may result from sea-bed mining;

"(b) The accommodation of the interests and concerns of those countries whose peculiar geographical location might, for want of such accommodation, deprive them of any real benefit from the establishment of an exclusive economic zone or of a fair share in the common heritage of mankind;

"(c) The precise legal relationship between the concept of the exclusive economic zone and the doctrine of the high seas at present understood;

"(d) The régime to be applied to marine scientific research in all areas outside the territorial sea;

"(e) A viable mechanism for the compulsory settlement of disputes designed to ensure finality; and

"(f) The formulation of final clauses which would preserve the legal unity of the Convention."³⁰

38. It was left, in the end, to each Committee to decide what were the main issues facing the Committee using, if it so desired, the President's list as a guide. The order in which these issues should be taken up and the way in which such negotiations were conducted were also left within the competence of the Committee to determine.

39. The First Committee adopted the "workshop method". The workshop was presided over by two co-Chairmen and was empowered to negotiate all issues within the mandate of the First Committee.³¹ The two co-Chairmen presided over alternate meetings but when one co-Chairman presided, the second co-Chairman would sit on his right-hand side rather than with his own delegation. With the help of the Secretariat they prepared joint reports which were submitted at regular intervals to the formal meetings of the Committee.

40. The pattern of work established by the Second Committee was different. The Committee created three negotiating groups. The first dealt with the legal status of the exclusive economic zone, and the rights and duties of other States to participate in the exploitation of the living resources of the zone. The second concerned itself with the right of access to and from the sea and the freedom of transit for land-locked States. The third dealt with the definition of the outer limit of the continental margin and the question of payments and contributions in respect of the exploitation of the continental shelf

beyond 200 miles. All three groups were presided over by the Chairman of the Committee and were open to all members.³²

41. In the Third Committee most of the negotiations based on the revised single negotiating text were conducted by the Chairman of the Committee. However, two informal groups were formed, one chaired by Mr. Val-larta (Mexico), discussing issues related to marine pollution, and the other by Mr. Metternich (Federal Republic of Germany), discussing issues connected with marine scientific research and the transfer of technology.³³

42. Informal negotiations continued in the sixth session with a view to resolving the "key issues" facing the Conference. However, as the organization of work revealed, more emphasis was beginning to be placed significantly on the issues relating to the First Committee. This trend has continued. In the programme of work it was stated that the first two or three weeks of the session should be devoted to First Committee matters to enable it to reach the same stage of progress as the Second and Third Committees.³⁴

43. The programme for the sixth session also envisaged what became the next important stage in the work of the Conference. There it was declared that at the end of the sixth week, the President, with the Chairmen of the Committees, adopting the collegiate method, would prepare an informal single composite text to serve as a basis for a draft convention.³⁵

44. At the sixth session, held in New York from 23 May to 15 July 1977, there was some debate as to the *modus operandi* which should be adopted for the consolidation of the Revised Single Negotiating Text.³⁶ The core of the matter was whether the informal single negotiating text should be prepared by the President jointly,³⁷ or in consultation with the Chairmen of the Main Committees, the Chairman of the Drafting Committee and the Rapporteur-General.³⁸

45. In the end it was decided at the 78th plenary meeting of the Conference that the President, as leader of the "team",³⁹ should undertake, jointly with the Chairmen of the three Committees, the preparation of the Informal Composite Negotiating Text. The idea was to consolidate in one document the draft articles relating to the subjects and issues embodied in parts I, II, III and IV⁴⁰ of the Revised Single Negotiating Text. The Chairman of the Drafting Committee and the Rapporteur-General would be associated with the team as the former should be fully aware of the considerations that determined the contents of the Informal Composite Negotiating Text, and the latter should, *ex officio*, be kept informed of the manner in which the work of the Conference has proceeded in all stages.⁴¹

46. In putting the text together each Chairman bore full responsibility for the provisions of the text which were the exclusive and special concern of his Committee and for the adoption of any changes in the text which reflected the progress achieved in the negotiations.

47. The Informal Composite Negotiating Text has not retained the order of the four parts of the Revised Single Negotiating Text. It is so structured that its provisions progress from areas falling under national jurisdiction, such as the territorial sea, through an intermediate area such as the exclusive economic zone, to areas of international jurisdiction. It has been suggested that this pro-

gression will constitute the principle on which the proposed convention on the law of the sea will be based.⁴²

48. The Informal Composite Negotiating Text was meant to enjoy the same status as the Informal Single Negotiating Text and the Revised Single Negotiating Text. Thus, it is informal in character and is designed to serve purely as a procedural device and to provide a basis for negotiation without affecting the right of any delegation to suggest revisions.

49. It is important to cite these observations on the nature of the text:

“It would not have the character and status of the text which was prepared by the International Law Commission and presented to the Geneva Conference of 1958 and would, therefore, not have the status of a basic proposal that would stand unless rejected by the requisite majority.”⁴³

50. It can be fairly said that the quest of the Conference for a basic negotiating text, which could serve as an effective procedural device, culminated in the appearance of the Informal Composite Negotiating Text.

6. *The Negotiating Groups*

51. There is general agreement that a consensus was largely achieved on a substantial part of the Informal Composite Negotiating Text. From its appearance the Conference was obliged to channel all its energies to the resolution of the remaining issues, the important “hard-core issues”. It is an accepted fact that without a settlement of these “hard-core issues”, no generally acceptable convention on the law of the sea can emerge from the Third United Nations Conference on the Law of the Sea.

52. In order to give priority to the resolution of such issues, the Conference at its seventh session, held in Geneva from 21 March to 19 May 1978, and resumed in New York from 21 August to 15 September 1978, was obliged once again to devise a new negotiating mechanism.⁴⁴

53. The Conference decided to establish seven negotiating groups on the following “hard-core issues”:

1. System of exploration and exploitation and resource policy, taking note of the work of the informal group of technical experts invited to consider the technical problems associated with any formula that might be used to limit production of minerals from the area, chaired by a member of the United Kingdom delegation;

2. Financial arrangements;

3. Organs of the Authority, their composition, powers and functions;

4. Right of access of land-locked States and certain developing coastal States in a sub-region or region to the living resources of the exclusive economic zone;

Right of access of land-locked and geographically disadvantaged States to the living resources of the economic zone;

5. The question of the settlement of disputes relating to the exercise of the sovereign rights of coastal States in the exclusive economic zone;

6. Definition of the outer limits of the continental shelf and the question of payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles;

Definition of the outer limits of the continental shelf and the question of revenue sharing;

7. Delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon.⁴⁵

54. It should be remarked here that though it was generally acknowledged that the issues outlined above were the outstanding issues which would impede the progress of the Conference as long as they remained unsettled, other issues seemed, in the eyes of certain States, at least, as important. Paragraph 6 of document A/CONF.62/62 was an attempt to deal with this concern. It stated that other issues might also be considered including, *inter alia*: (i) régime of islands and (ii) enclosed and semi-enclosed seas. The topic of the preamble and final clauses also appeared in this paragraph as a question which had not been discussed at the Conference.

55. In order to deal with a problem which has already been mentioned,⁴⁶ that is, the desire of many delegations to participate in the work of the Conference, the negotiating groups were open-ended. It was expressly stated that "negotiating groups whether constituted by the Plenary or Main Committee should comprise a nucleus of those countries principally concerned but with a clear understanding that they would be open-ended in the sense that any participant not included in the original nucleus would be free to join the groups with the same status as the original members. Each Negotiating Group could also have the right to form smaller groups in order to expedite the process of negotiation."⁴⁷ In a sense, this arrangement was designed to fulfil two important objectives: the need to ensure universal participation in the important negotiations of the Conference and the necessity to preserve the effectiveness of small negotiating groups.

56. The eighth session, held at Geneva, from 19 March to 27 April 1979, and resumed in New York, from 19 July to 24 August 1979, witnessed another modification of the negotiating machinery of the Conference. The special character of the problems confronting the First Committee led the Conference to devise another negotiating mechanism—the Group of 21.⁴⁸ There was established a group of 21 delegations, in addition to the Chairmen of negotiating groups 1, 2 and 3, and of the group of legal experts, on the settlement of disputes concerning Part XI. The group's mandate was "to co-ordinate, without review or alteration, the results achieved in the three negotiating groups and determine outstanding issues and find acceptable solutions."⁴⁹

57. In order to ensure that all interests were represented alternate members were appointed from delegations other than those which constituted the principal members of the Group of 21. There were to be seven alternate members representing the Group of 77 and seven alternate members representing the industrialized countries.⁵⁰

7. *The role of the collegium in the revisions of the Informal Composite Negotiating Text*

58. The mechanism for revising the Informal Composite Negotiating Text differs in some important respects from that adopted for the compilation

of the Informal Single Negotiating Text, the Revised Single Negotiating Text, and the Informal Composite Negotiating Text. In contradistinction to the method adopted for these earlier texts, the process has become more open and perhaps less exposed to the personal appreciation of the Chairmen or that of the President.

59. Paragraphs 10 and 11 of document A/CONF.62/62 stated that:

“Any modifications or revisions to be made in the Informal Composite Negotiating Text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a Chairman of a Committee, unless presented to the Plenary and found, from the widespread and substantial support prevailing in Plenary, to offer a substantially improved prospect of a consensus.”

“The revision of the Informal Composite Negotiating Text should be the collective responsibility of the President and the Chairmen of the Main Committees, acting together as a team headed by the President. The Chairman of the Drafting Committee and the Rapporteur-General should be associated with the team as the former should be fully aware of the considerations that determined any revision and the latter should, *ex officio*, be kept informed of the manner in which the Conference has proceeded at all stages.”

60. The role of the collegium in the revisions of the text⁵¹ was significant. For in practice, the collegium assumed the responsibility of determining what criteria to apply in deciding whether a given text emerging from the negotiations enjoyed widespread and substantial support in plenary and, therefore, offered a substantially improved prospect of consensus.⁵²

61. The mechanism outlined above was first utilized at the eighth session of the Conference, held in Geneva, from 19 March to 27 April 1979, when the collegium effected the first revision of the Informal Composite Negotiating Text.⁵³ A second revision was carried out by the collegium at the ninth session held in New York, from 3 March to 4 April 1980.⁵⁴ A further revision was made by the collegium at the resumed ninth session held in Geneva, from 28 July to 29 August 1980.⁵⁵

62. It should be noted that at certain sessions the Conference was unable to revise the Informal Composite Negotiating Text. It nevertheless received reports submitted to the plenary by the Chairmen of the Committees and of the Negotiating Groups.⁵⁶ In some of these reports the Chairmen proposed compromise formulae which were designed to aid the search for consensus.

63. The status of these revised texts remained the same as the Informal Composite Negotiating Text itself. Thus, they were informal in character and were of a negotiating nature. The status of these revised texts was quite clearly brought out in the following observations by the President of the Conference on the occasion of the second revision of the text. He stated that

“...the very nature of the concept of a package deal required that no delegation's position on a particular issue should be treated as irrevocable until at least all the elements of the package had formed the subject of agreement and that, therefore, every delegation had the right to reserve its position on any particular issue until it had received satisfaction on other issues which it considered to be of vital importance to it.”

To avoid any misunderstanding as to the status of the second revision which is now presented, the President would wish to emphasize that it must be regarded as "a negotiating text which provides, in the best judgement of the collegium, a better basis of negotiation and one that offers a substantially improved prospect of a consensus."⁵⁷

64. These observations applied with equal force to the other two revisions of the Informal Composite Negotiating Text.⁵⁸

65. The programme of work for the tenth session, held in New York, from 9 March to 17 April 1981, envisaged the adoption of the Convention during 1981, and the signature of the final act at a date to be determined in consultation with the Government of Venezuela.⁵⁹ The ninth session was to be regarded as the last negotiating session except on those issues on which there had as yet been no agreement.⁶⁰ However, certain unforeseen circumstances delayed the work of the Conference.⁶¹

66. At the resumed tenth session of the Conference held in Geneva from 3 to 28 August 1981, the text was again revised pursuant to the decision taken by the Conference at its 153rd meeting on 27 August 1981, on the basis of recommendations by the collegium (A/CONF.62/BUR.14) endorsed by the General Committee (A/CONF.62/114*). In accordance with A/CONF.62/62, this revision incorporated the recommendations of the Drafting Committee, approved by the Informal Plenary, the decisions taken by the Informal Plenary on the site of the International Sea-Bed Authority and the International Law of the Sea Tribunal and a new proposal of delimitation of the exclusive economic zone and of the continental shelf between States with opposite or adjacent coasts.⁶²

67. On this occasion, however, the text lost its informal character. The Conference agreed by consensus that the draft Convention should be elevated from the status of an informal text to that of an official Conference document and it recognized that the text was no longer an informal text but the official Draft Convention (A/CONF.62/L.78).⁶³

68. The Conference has recommended that the General Assembly should convene the final decision-making session of the Third United Nations Conference on the Law of the Sea for the adoption of the Convention from 8 March to 30 April 1982.⁶⁴

8. *The Drafting Committee*

(a) *Membership and competence*

69. The Drafting Committee of the Third United Nations Conference on the Law of the Sea consists of 23 members, including its Chairman.⁶⁵ The function of the Committee is embodied in Rule 53 of the Rules of Procedure which states:

"It shall, without re-opening substantive discussion on any matter, formulate drafts and give advice on drafting as requested by the Conference or by a Main Committee, co-ordinate and refine the drafting of all texts referred to it, without altering their substance, and report to the Conference or to the Main Committee as appropriate. It shall have no power of or responsibility for initiating texts."

70. This explicit statement on the competence of the Drafting Committee was the consequence of amendments to the draft rules of procedure which were submitted to and discussed at the second session of the Conference.⁶⁶

(b) *Modus operandi of the Committee*

71. At the seventh session of the Conference, the Drafting Committee was requested to commence work⁶⁷ by addressing itself to the provisions of the informal composite negotiating text that appeared to be settled, and recommended changes that were considered necessary from a technical and drafting point of view, particularly the adoption of uniform terminology.⁶⁸

72. The procedure adopted by the Drafting Committee for carrying out its task is novel. The Committee operates on three levels. On the first level, there are the language groups of the Drafting Committee representing the six official languages of the United Nations: Arabic, Chinese, English, French, Russian and Spanish.⁶⁹ These language groups are open to all delegations.⁷⁰ On the second level, there are the co-ordinators of the language groups who meet under the direction of the Chairman of the Drafting Committee. It should be noted that since the informal inter-sessional meeting of the Drafting Committee held in New York from 12 January to 27 February 1981, the meetings of the co-ordinators of the language groups are open to all members of the Drafting Committee and of the language groups,⁷¹ which means that these meetings are in effect open to all delegations attending the Conference. Finally, on the third level, there is the Drafting Committee itself.

73. The work of the Drafting Committee begins at the level of the language groups. Each language group discusses drafting proposals coming from members of that language group, from other language groups and from the Secretariat, and on the basis of these discussions it submits to the co-ordinators of the language groups suggestions for drafting changes to the text. These suggestions are considered at meetings of the co-ordinators of the language groups under the direction of the Chairman of the Drafting Committee. On the basis of their deliberations, the co-ordinators of the language groups in turn submit to the Drafting Committee proposals for changes to the text. After examining these proposals, the Drafting Committee then submits recommendations to the Conference.

74. The Drafting Committee's work can be divided into two parts: first, the process of harmonization of words and expressions recurring in the text and, second, the textual review, article by article, of the provisions of the Draft Convention. At first, the Committee directed its attention almost solely to the process of harmonization—seeking to ensure uniformity in the use of words and expressions in the text taken as a whole. The Committee commenced the review, article by article, of the text at the informal inter-sessional meeting of the Drafting Committee held in New York from 12 January to 27 February 1981, and continued this review at the tenth session,⁷² at the informal inter-sessional meeting of the Committee held at Geneva from 29 June to 31 July 1981,⁷³ and at the resumed tenth session.⁷⁴

(c) *The procedure for adoption of the Committee's recommendations*

75. Two types of procedures have been utilized for the adoption of the Drafting Committee's recommendations. The procedure for incorporating in

the various revisions of the text the recommendations emerging from the early work of the Committee—the process of harmonization—was left largely to the discretion of the Chairmen of the Main Committees. For example, in a reply to a letter dated 26 March 1980 from the Chairmen of the Drafting Committee,⁷⁵ requesting the incorporation of the Drafting Committee's recommendations in the revision of the Informal Composite Negotiating Text/Rev.1, the Chairman of the Second Committee indicated which recommendations of the Drafting Committee should be applied at that stage.⁷⁶

76. The Conference devised a different procedure for dealing with recommendations emanating from the textual review, article by article, of the provisions of the Draft Convention. These recommendations were considered at informal meetings of the plenary and not in the Main Committees. When the informal plenary met to consider the recommendations of the Drafting Committee, the Chairmen of the relevant Committees as well as the Chairman of the Drafting Committee would sit on the podium with the President.⁷⁷ It was noted that this procedure was adopted to ensure that the process of examining these recommendations should not result in any lack of harmonization or co-ordination.⁷⁸

(d) *The language groups*

77. The use of language groups by the Drafting Committee is a particularly significant feature. In the first place, the existence of these groups has enabled all language versions of the text to be examined more closely than would otherwise have been the case.⁷⁹ The interaction between the language groups and the co-ordinators of the language groups has been of immense value in ensuring the concordance of the six language versions of the text.⁸⁰ Finally, these groups being open to all delegations has in fact allowed all delegations to participate in the work of the Drafting Committee⁸¹—a fact which has facilitated the adoption of the recommendations of the Drafting Committee by the Conference.

9. *Conclusions*

78. The Third United Nations Conference on the Law of the Sea is engaged in law-making with respect to issues—perhaps the most important of which are of an essentially political nature—which was the reason in the first place that the item concerning the peaceful uses of the sea-bed beyond national jurisdiction was in fact allocated to the First Committee.⁸² It should also be recalled that it was due to the “large political element” in item 25⁸³ that a proposal at the twenty-fifth session of the General Assembly to have sub-items (c) and (d) referred to the Sixth Committee was rejected in both the General Committee⁸⁴ and the General Assembly,⁸⁵ with the consequence that the preparation of the Conference was entrusted to a political and not a juridical body.

79. The sharp clash of interests on some of these issues facing the Conference, their complexity and the relatively large number of participants at the Conference have rendered the task of finding an adequate and effective negotiating mechanism a fairly long and arduous process and have led the Conference to devise a variety of procedures to achieve that end.

80. There was also need for a basic working document around which negotiations could be centred. The first step towards that goal took place at the second session of the Conference when the Second Committee produced the so-called "main-trends" paper. At the third session in 1975, the Conference endorsed the President's proposal that a single negotiating text should be prepared by the Chairmen of the three Committees. This Informal Single Negotiating Text formed the basis for negotiations at the fourth session, and from this emerged the Revised Single Negotiating Text. At its sixth session the Conference decided to consolidate the various parts of the Revised Single Negotiating Text. With the appearance of this consolidated text—the Informal Composite Negotiating Text—it can be said that the Conference found a basic negotiating text. The emergence of the Informal Composite Negotiating Text threw into bold relief the so-called "hard-core issues" facing the Conference. These "hard-core issues" were entrusted to the negotiating groups.

81. The mechanism utilized for the subsequent revisions of the Informal Composite Negotiating Text is particularly significant. It was not within the competence of either the President or a Chairman of a Committee to introduce any modifications or revisions in the Informal Composite Negotiating Text unless such modifications or revisions were submitted to the Plenary and found, from the widespread and substantial support prevailing there, to offer a substantially improved prospect of a consensus. It was the role of the collegium to determine what criteria to apply in deciding whether a modification or revision of the text enjoyed the widespread and substantial support necessary to offer a substantially improved prospect of consensus.

82. The procedures of the Third United Nations Conference on the Law of the Sea are essentially informal and flexible. The mechanism adopted by the Drafting Committee of the Conference for processing its recommendations provides a particularly interesting example of these features. The formation of language groups by the Drafting Committee is noteworthy. The task of coping with drafting problems in a text comprised of more than 400 articles, in six official languages, drafted by the three Main Committees with the Informal Plenary has been facilitated by the existence of the language groups, which are open to all delegations.

83. The objective of the Conference, as set out in its mandate, remains the adoption of a "comprehensive convention dealing with all matters relating to the law of the sea . . . bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole". The nature of this mandate has obligated States to look at the provisions of the proposed Convention in their entirety, in short, to adopt the so-called "package-deal" approach. The structure of the Informal Composite Negotiating Text itself has further strengthened this approach.

84. It must be noted too that, as the rules of procedure indicate, the spirit of consensus constitutes the *leitmotif* of the Conference. The concept of consensus applies not only to the decision-making processes whereby the Convention will be adopted, but in practice to every step taken towards that end. But voting, of course, is not excluded once the Conference has determined that all efforts at reaching general agreement have been exhausted.

85. These two elements—the concept of consensus and the “package-deal” approach—have influenced the Conference throughout its history. Their roles remain significant in the stage the Conference has now reached.

86. It should be remarked that the proposed Convention will contain a novel combination of international law provisions. It will codify certain aspects of the law of the sea, e.g. in the provisions dealing with the territorial sea and contiguous zone, continental shelf and high seas. There are certain aspects involving progressive development of international law, e.g. in the provisions dealing with the establishment of, and the juridical régime governing, the exclusive economic zone, the legal status of archipelagoes and the creation of an international sea-bed régime. Perhaps it is more accurate to state that the provisions dealing with the establishment of an international sea-bed régime are seeking to create a novel régime of law.⁸⁶ In attempting to create an international sea-bed régime the proposed Convention will also be in fact providing the constitutional framework or the constituent instrument of an international organization, i.e. the International Sea-Bed Authority. In this respect, it should be noted that provision has also been made for a Statute of the Enterprise. Finally, there are dispute-settlement provisions which have the character of a multilateral compromise conferring jurisdiction on a court or other tribunal.

87. The Third United Nations Conference has not yet finished its task, that is, the adoption of a comprehensive convention on the law of the sea. That is why, of course, it is somewhat difficult at this stage to assess the efficacy or otherwise of the procedures and devices adopted in the first place by the international community and then by the Conference itself to achieve its goal. Nevertheless, it must be pointed out that the transactions at the Conference, in particular the emergence of the negotiating text, have had an undoubted influence on the national maritime legislation of several States. In fact, the maritime legislation of several coastal States is closely based on the Draft Convention. In this sense the Conference has already exerted a significant influence on the practice of States.

NOTES

¹ See, for example, R. Y. Jennings, “Law-making and Package Deal,” in *Mélanges offerts à Paul Reuter*, 1981, p. 350, and Guy de Lacharrière, “La Réforme du Droit de la Mer et le rôle de la Conférence des Nations Unies”, *Revue Générale du Droit International Publique*, Tome 84, p. 245.

² See summary record A/CONF.62/SR.109—declaration by Ambassador Nandan of Fiji on behalf of the Group of 77 and declarations by the representatives of the USSR, China, Romania, Norway, Canada, New Zealand, Australia, German Democratic Republic and Poland.

³ See summary record A/CONF.62/SR.109—declarations by the United States, France, Federal Republic of Germany, Italy, Belgium, Japan and Netherlands.

⁴ *Official Records of the General Assembly, Twenty-second Session*, A/BUR/SR.165-173.

⁵ *Ibid.*, *Twenty-eighth Session*, Supplement No. 21, A/9021.

⁶ *Ibid.*, *Twenty-third Session*, A/7230.

⁷ *Ibid.*, *Twenty-eighth Session*, Supplement No. 21, A/9021.

⁸ Resolution 2467 C (XXIII) had requested the Secretary-General to undertake a study on the question of establishing in due time appropriate international machinery for the promotion of the exploration and exploitation of the resources of this area, and the use of these resources in the interests of mankind, irrespective of the geographical location of

States, and taking into special consideration the interests and needs of the developing countries, and to submit a report thereon to the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction for consideration during one of its sessions in 1969.

⁹ An earlier resolution—resolution 2574 A (XXIV)—had requested the Secretary-General to ascertain the views of Member States on the desirability of convening at an early date a conference on the law of the sea to review the régimes of the high seas, the continental shelf, the territorial sea and contiguous zone, fishing and conservation of the living resources of the high seas, particularly in order to arrive at a clear, precise and internationally accepted definition of the area of the sea-bed and ocean floor which lies beyond the limits of national jurisdiction, in the light of the international régime to be established for that area.

¹⁰ *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21, A/9021.*

¹¹ General Assembly resolution 2881 (XXVI).

¹² *Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 21, A/9021.*

¹³ *Official Records of the General Assembly, Twenty-eighth Session, First Committee, document A/C.1/PV.1924.*

¹⁴ Approved by the United Nations General Assembly at its 2179th meeting of 16 November 1973. It was made by the President and endorsed by the Conference at its 19th meeting on 27 June 1974.

¹⁵ The meetings of the Drafting Committee have all been informal.

¹⁶ *Official Records of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.75.V.10), vol. IV, 8th General Committee meeting, para. 9.

¹⁷ *Ibid.*, 10th General Committee meeting, para. 39. For similar observations see *ibid.*, vol. XIII, 128th plenary meeting, para. 92 and documents A/CONF.62/SR.134 and A/CONF.62/SR.136.

¹⁸ See Section 6 below.

¹⁹ *Ibid.* (United Nations publication, Sales No. E.75.V.5), vol. III, document A/CONF.62/L.7.

²⁰ *Ibid.* (United Nations publication, Sales No. E.75.V.4), vol. II, 1st Second Committee meeting, para. 3.

²¹ *Ibid.* (United Nations publication, Sales No. E.75.V.5), vol. III, p. 107.

²² *Ibid.* (United Nations publication, Sales No. E.75.V.10), vol. IV, 11th General Committee meeting.

²³ The Chairman had observed that the expression "single negotiating text", used by the representative of Singapore was preferable to the term "unified text" which he himself had used. *Ibid.*, para. 49.

²⁴ *Ibid.*, 55th plenary meeting, para. 92.

²⁵ *Ibid.*, document A/CONF.62/WP.8, p. 137.

²⁶ *Ibid.* (United Nations publication, Sales No. E.76.V.8), vol. V, 57th plenary meeting, para. 17.

²⁷ *Ibid.*, document A/CONF.62/WP.8/Rev.1, p. 125.

²⁸ *Ibid.*

²⁹ *Ibid.*, document A/CONF.62/WP.9/Rev.1, pp. 185-201.

³⁰ *Ibid.* (United Nations publication, Sales No. E.77.V.2), vol. VI, document A/CONF.62/L.12/Rev.1.

³¹ *Ibid.*, 22nd General Committee meeting, para. 3.

³² *Ibid.*, 22nd General Committee meeting, para. 9.

³³ *Ibid.*, para. 12. It should be noted that discussion of Part IV of the draft articles on settlement of disputes was carried out, article by article, in informal plenary meetings. *Ibid.*, para. 19.

³⁴ *Ibid.*, vol. VI, 76th plenary meeting, para. 33.

³⁵ *Ibid.* It was observed that it was essential to draft a consolidated text for three main reasons: "... from the legal standpoint, the Conference had a mandate to draft a convention covering all aspects of the law of the sea; from a political standpoint, Governments could take a final decision only on the basis of a package agreement; from an organizational standpoint, it was necessary to establish a single text in order to coordinate the work of the three Committees and the plenary". *Ibid.*, 24th General Committee meeting, para. 15.

³⁶ *Ibid.* (United Nations publication, Sales No. E.78.V.3), vol. VII, 29th General Committee meeting.

³⁷ *Ibid.* (United Nations publication, Sales No. E.77.V.2), vol. VI, 76th plenary meeting, para. 33.

³⁸ *Ibid.* (United Nations publication, Sales No. E.78.V.3), vol. VII, 29th General Committee meeting, para. 1.

³⁹ Referred to hereafter as the collegium.

⁴⁰ The single negotiating text on the settlement of disputes was revised at the fifth session after informal sessions in plenary. Consequently the Revised Single Negotiating Text on the settlement of disputes (A/CONF.62/WP.9/Rev.2) enjoyed the same status as the other parts.

⁴¹ *Ibid.* (United Nations publication, Sales No. E.78.V.4), vol. VIII, document A/CONF.62/WP.10/Add.1, p. 65.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ See Section 3 above.

⁴⁵ *Ibid.* (United Nations publication, Sales No. E.79.V.4), vol. X, document A/CONF.62/62, p. 11. Negotiating Groups 1, 4, 5 and 7 were established by the plenary. See *ibid.*, vol. IV, 94th plenary meeting, para. 3.

⁴⁶ See Section 3 above.

⁴⁷ A/CONF.62/62.

⁴⁸ See Note by the President: A/CONF.62/BUR.11/Rev.1.

⁴⁹ *Ibid.* (United Nations publication, Sales No. E.80.V.12), vol. XII, 117th plenary meeting, para. 4.

⁵⁰ *Ibid.* (United Nations publication, Sales No. E.80.V.6), vol. XI, 45th General Committee meeting, para. 7.

⁵¹ The Conference had approved, at the 118th plenary meeting, a programme of work for the ninth session which envisaged giving the Revised Informal Composite Negotiating Text the status of a final Conference document that would serve as a draft Convention. However, the circumstances and, in particular "the difficulty encountered in one of the Main Committees of resolving issues of fundamental importance prevented the Conference from adhering to this schedule and compelled it to prolong the stages of final negotiation and to accept the need for not merely a second revision of the ICNT as had been foreseen but a third revision as well". See document A/CONF.62/BUR.13/Rev.1.

⁵² Explanatory memorandum by the President of the Conference, A/CONF.62/WP.10/Rev.3/Add.1, p. xix.

⁵³ Informal Composite Negotiating Text/Rev.1: A/CONF.62/WP.10/Rev.1.

⁵⁴ Informal Composite Negotiating Text/Rev.2: A/CONF.62/WP.10/Rev.2.

⁵⁵ This revision carried the title "Draft Convention on the Law of the Sea (Informal Text)", document A/CONF.62/WP.10/Rev.3.

⁵⁶ Such reports were submitted at the seventh session, held in New York from 21 March to 19 May 1978; at the resumed seventh session, held in New York from 21 August to 15 September 1978, and at the resumed eighth session held in New York from 19 July to 24 August 1979. See *Official Records of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.79.V.4), vol. X, documents A/CONF.62/RCNG/1 and A/CONF.62/RCNG/2; *ibid.* (United Nations publication, Sales No. E.80.V.12), vol. XII, document A/CONF.62/91.

⁵⁷ Document A/CONF.62/WP.10/Rev.2, pp. 21-22.

⁵⁸ See document A/CONF.62/WP.10/Rev.1, p. 18, and document A/CONF.62/WP.10/Rev.3, p. xx.

⁵⁹ See document A/CONF.62/BUR.13/Rev.1.

⁶⁰ The issues were: the work of the Drafting Committee and the manner in which its recommendations should be processed, the participation clause, the Preparatory Commission and the treatment to be accorded to the preparatory investments made before the Convention entered into force. *Ibid.*, and see also the President's remark at the tenth session of the Conference at its 145th plenary meeting.

⁶¹ It was reported that the United States was not prepared to finalize the text of the Convention at that session and had in fact decided to undertake a review of the Convention. At the 59th General Committee meeting the United States delegate stated that a decision concerning the Convention would be taken by his Government only after a thorough review of the text and its history, in particular Part XI.

⁶² The following observations were made on this issue: "It was not by chance that it was the only issue for which representative groups had been established, with their own Chairmen who had reported on their work at several sessions; and it was not by chance that the highest officer of the Conference had been involved in the negotiations. No other issue had been treated with such importance or given so much time for consideration". Document A/CONF.62/SR.154.

⁶³ This was done subject to the following conditions: "First, the door would be kept open for the continuation of consultations and negotiations on certain outstanding issues. The results of these consultations and negotiations, if they satisfy the criterion in A/CONF.62/62, will be incorporated in the Draft Convention by the collegium without the need for formal amendments. Secondly, the Drafting Committee will complete its work and its further recommendations, approved by the Informal Plenary, will be incorporated in the text. Thirdly, in view of the fact that the process of consultations and negotiations on certain outstanding issues will continue, the time has, therefore, not arrived for the application of rule 33 of the Rules of Procedure of the Conference. At this stage, delegations will not be permitted to submit amendments. Formal amendments may only be submitted after the termination of all negotiations". See document A/CONF.62/114.

⁶⁴ The Conference adopted the following programme of work:

First Stage (8-26 March 1982)

During the first three weeks of the session, the Conference will continue consultations and negotiations on pending issues.

The Informal Plenary will meet to process the recommendations of the Drafting Committee resulting from its final intersessional meeting.

Second Stage (29 March-1 April 1982)

Beginning Monday, 29 March, the Plenary will meet for three days (29-31 March) to discuss the results of the consultations and negotiations. In accordance with A/CONF.62/L.46, statements will be limited to 15 minutes.

In the light of the Plenary debate and taking into account the criteria established in document A/CONF.62/62, the President of the Conference, the Chairmen of the Main Committees, the Chairman of the Drafting Committee and the Rapporteur-General will meet on Thursday, 1 April, and decide on the incorporation of the results of the consultations and negotiations into the Draft Convention.

In order to enable delegations to prepare themselves for the next stage, the Collegium will issue a memorandum containing all the changes that will be incorporated in the Draft Convention. These changes will be referred to the Drafting Committee for its consideration and recommendations. The Drafting Committee's report and its processing by Plenary will be completed by 12 April.

Third Stage (6-12 April 1982)

During this stage, the Conference will decide the date on which Rule 33 will become operative. Delegations could also use this period to consult their respective Governments on the decision-making stages of the session.

Fourth Stage (13-22 April 1982)

Should delegations at this point of time feel it necessary to submit formal amendments to the Draft Convention, such amendments would have to be submitted to the Secretariat by 6 p.m. on Tuesday, 13 April. Should the President, in accordance with Rule 37, defer the taking of a vote on amendments, the Plenary will give an opportunity to delegations, during the interval, to make statements on the amendments. During that period, the President, assisted by the General Committee, will make every effort conducive to the attainment of general agreement.

Fifth Stage (23-30 April 1982)

By Friday, 23 April, the Conference will have to determine whether all efforts at reaching general agreements have been exhausted.

During the last week which will end on 30 April, the Conference will adopt the Convention, the text of the draft resolution on the establishment of the Preparatory Commission, the Final Act and any other pertinent decisions.

Should the fifth stage have started and more time be needed to complete the work of the Conference, it shall, in consultation with the Secretary-General, be authorized to extend its formal work beyond 30 April exclusively for that purpose. Document A/CONF.62/116.

⁶⁵The members of the Drafting Committee are: Afghanistan, Bangladesh, Argentina, Ecuador, El Salvador, Ghana, India, Italy, Lesotho, Malaysia, Mauritania, Mauritius, Mexico, Netherlands, Philippines, Romania, Sierra Leone, Spain, Syria, Union of Soviet Socialist Republics, United Republic of Tanzania and United States of America. Thailand replaced Bangladesh and Austria replaced the Netherlands as members of the Drafting Committee on a rotating basis.

⁶⁶See document A/CONF.62/4 submitted by Cameroon, Chile, Colombia, Kenya, Mexico and United Republic of Tanzania, and the subamendment to this document submitted by Pakistan. Both documents are incorporated in document A/CONF.62/L.1: *Official Records of the Third United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. E.75.V.5), vol. III, p. 77.

⁶⁷Attempts to have the Drafting Committee begin its work earlier were unsuccessful. See *ibid.* (United Nations publication, Sales No. E.75.V.8), vol. V, 70th plenary meeting, and 14th General Committee meeting.

⁶⁸*Ibid.* (United Nations publication, Sales No. E.70.V.3), vol. IX, 93rd plenary meeting, para. 7.

⁶⁹Note also that article 320 of the Draft Convention on the Law of the Sea states, *inter alia*, that the "Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic".

⁷⁰*Ibid.* (United Nations publication, Sales No. E.79.V.4), vol. X, A/CONF.62/RCNG/2, p. 199.

⁷¹See document A/CONF.62/L.67 of 26 February 1981, para. 2.

⁷²See document A/CONF.62/L.73 of 26 June 1981, para. 1.

⁷³See document A/CONF.62/L.75 of 3 August 1981. There will be another inter-sessional meeting of the Drafting Committee in New York from 18 January to 26 February 1981.

⁷⁴See document A/CONF.62/L.83.

⁷⁵Document A/CONF.62/L.57/Rev.1 of 1 August 1980, annex I, p. 1.

⁷⁶*Ibid.*, p. 2. See also the letter dated 29 April 1980 from the Chairman of the Third Committee: *ibid.*, p. 3. Further recommendations were in fact examined at the resumed ninth session of the Conference by both the Second and Third Committees before their incorporation in the text. See letter dated 26 August 1980 from the Chairman of the Second Committee to the Chairman of the Drafting Committee (A/CONF.62/L.63/Rev.1, Annex 11, p. 10, and the statements in plenary by the Chairman of the Third Committee (A/CONF.62/SR.134).

⁷⁷See document A/CONF.62/110 of 16 March 1981, para. 5.

⁷⁸ *Ibid.* For the reports of these informal plenary meetings, see document A/CONF.62/L.72 of 23 April 1981 and document A/CONF.62/L.82 of 30 September 1981.

⁷⁹ In a letter dated 25 February 1981, the co-ordinator of the Arabic language group noted that since "no Arabic translation of the Law of the Sea Conventions has previously been made, the Group felt that part of its programme of work should be devoted to a meticulous examination of the Arabic text in order to bring it to the highest level of accuracy. Consequently, the Group found it necessary to engage in performing this task in addition to the drafting exercise that it has been mandated to perform". See document A/CONF.62/L.67/Add.1/Rev.1 of 2 March 1981, annex III.

⁸⁰ The Drafting Committee considers this issue of ensuring the concordance of the six language versions particularly important. The Chairman of the Drafting Committee has observed that "it should be noted that, with respect to the requirements for concordance of the six language texts of the Draft Convention, the Drafting Committee sought to improve linguistic concordance, to the extent possible, and juridical concordance in all cases". Document A/CONF.62/L.67 of 26 February 1981.

⁸¹ On this issue, see Sections 3 and 6 above.

⁸² See Section 2.

⁸³ Item 25 reads as follows:

(a) Question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind: report of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction;

(b) Marine pollution and other hazardous and harmful effects which might arise from the exploration and exploitation of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction: report of the Secretary-General;

(c) Views of Member States on the desirability of convening at an early date a conference on the law of the sea: report of the Secretary-General;

(d) Question of the breadth of the territorial sea and related matters (1933).

⁸⁴ *Official Records of the General Assembly, Twenty-fifth Session, A/BUR/SR.188.*

⁸⁵ *Official Records of the General Assembly, Twenty-fifth Session, 1823rd plenary meeting.*

⁸⁶ R. Y. Jennings, "The Discipline of International Law", *International Law Association, report of the 57th Conference*, pp. 622-632, on p. 629.

L. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

1. *Origin and organization of UNCITRAL*

(a) *The Commission*

1. In response to the need for the United Nations to play a more active role in removing or reducing legal obstacles to the flow of international trade, at its twenty-first session in 1966 the General Assembly established the United Nations Commission on International Trade Law (UNCITRAL—hereinafter sometimes referred to as "the Commission").¹

2. The mandate given to UNCITRAL by the General Assembly is to "further the progressive harmonization and unification of the law of international trade" by, *inter alia*, promoting wider participation in existing international conventions in the field of international trade law; preparing or promoting the adoption of new international conventions in this field; promoting the codification and wider acceptance of international trade terms, provisions, cus-

toms and practices; promoting ways and means of ensuring a uniform interpretation and application of international conventions in the field of international trade law.²

3. The Commission is composed of 36³ member States representing the various geographic regions and the principal economic and legal systems of the world. All members of UNCITRAL are elected by the General Assembly for a term of six years. The following States are currently members: Australia, Austria, Burundi, Chile, Colombia, Cuba, Cyprus, Czechoslovakia, Egypt, Finland, France, German Democratic Republic, Germany, Federal Republic of, Ghana, Guatemala, Hungary, India, Indonesia, Iraq, Italy, Japan, Kenya, Nigeria, Peru, Philippines, Senegal, Sierra Leone, Singapore, Spain, Trinidad and Tobago, Uganda, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, and Yugoslavia.

(b) *Working Groups*

4. Much of the work of UNCITRAL is carried out in Working Groups which concentrate on specific subjects assigned to them by the Commission. The size of each Working Group varies, depending upon the nature of the topics to be dealt with by it and the interests of member States. Member States are encouraged to send to each Working Group representatives who are experts in the field to be covered. There currently exist three Working Groups of UNCITRAL.

(c) *Observers*

5. Because of the importance of participation of all interested parties in the development of a text for the unification of law from its earlier stages to its final form, all States and interested international organizations are invited to attend sessions of the Commission and its Working Groups as observers.⁴ Observers are permitted to participate in discussions in almost the same manner as member States.

(d) *Secretariat*

6. The International Trade Law Branch of the Office of Legal Affairs serves as the UNCITRAL secretariat. In September 1979, it was transferred from New York to Vienna.

2. *Initiation of the treaty-making process by UNCITRAL*

(a) *Original UNCITRAL programme of work*

7. When UNCITRAL was established in 1966, it was not assigned specific subjects to consider pursuant to its mandate to further the progressive harmonization and unification of international trade law. Rather, the Commission itself decided upon the topics that it would take up.

8. At its first session in 1968, after considering a number of topics suggested by member States, the Commission adopted nine topics as the basis of its future work programme, according priority status to three of them.⁵ The priority topics were the international sale of goods, international payments and international commercial arbitration. After deciding on these three priority

topics, the Commission settled on particular items within each topic which it would consider separately and in depth.⁶

9. One topic in UNCITRAL's original work programme emanated from outside UNCITRAL. In 1968, several members of the Trade and Development Board of UNCTAD expressed the wish that the Commission should add the subject of international shipping legislation to its list of priority topics.⁷ The General Assembly noted this wish and recommended that UNCITRAL consider the inclusion of this subject among its priority topics.⁸ Following the suggestions of UNCTAD and the General Assembly, UNCITRAL, at its second session in 1969, decided to include international legislation on shipping among the priority topics in its work programme and established a Working Group to deal with this subject.⁹

(b) *UNCITRAL's current long-term programme of work*

(i) *Proposals from the international community*

10. At its ninth session (1976), the Commission noted that it had completed, or soon would complete, work on many of the priority items included in its original programme of work, and considered it desirable to establish a new long-term work programme.¹⁰ The Commission requested the Secretariat to submit a report, after consultation with international organizations and trade institutions, containing suggestions as to the contents of the Commission's long-term programme of work.¹¹

11. The Secretary-General solicited proposals from Governments¹² and engaged in consultations with various international organizations.¹³ The responses and views obtained by the Secretariat were compiled and synthesized in a report submitted to the Commission.¹⁴ Based on these responses and views, the report proposed a list of topics for possible inclusion in the Commission's future work programme. The Secretariat also prepared and annexed to the report brief studies concerning three of the suggested topics, discussing some of the legal and policy issues which they presented.¹⁵

(ii) *Proposals from within UNCITRAL*

12. Suggestions of new topics for inclusion in UNCITRAL's long-term programme of work have also arisen in the course of other work carried on by the Commission. For example, during consideration by UNCITRAL of the draft Convention on the International Sale of Goods in 1977, a proposal was made that the Convention include a provision on liquidated damage clauses in sales contracts.¹⁶ The ensuing discussion revealed that there was considerable support for the idea behind the proposal. However, due to the complexity of the issue, and the applicability of liquidated damage clauses to a wide variety of situations in addition to sales contracts, it was thought preferable to deal with the subject as a separate matter.¹⁷ Accordingly, the Commission requested the Secretary-General to consider the subject as part of its study on the Commission's future programme of work.¹⁸ It was included in the list of proposed topics contained in the Secretary-General's report on the programme of work,¹⁹ and was considered in one of the studies annexed to that report.²⁰

13. The legal aspects of international electronic funds transfer also arose out of other work of the Commission. At its third session (1975), in connection with its assessment of the desirability of preparing uniform rules applicable to

international cheques, the Commission's Working Group on International Negotiable Instruments requested the Secretariat to obtain information concerning the impact of the increased use of electronic funds transfer and inter-bank settlements.²¹ This subject, too, was included in the Secretary-General's list of proposed topics,²² and was considered in one of the studies annexed to the report.²³

(iii) *Consideration of proposed topics by the Commission*

14. The proposed list of topics and the studies by the Secretary-General were before the Commission at its eleventh session (1979).²⁴ In the Commission there was wide agreement that the new work programme should be composed of specific identified topics which had global significance. In addition, in accordance with the mandate given to the Commission by the General Assembly, it was agreed that an attempt should be made to identify topics of special interest to developing countries.²⁵ After deliberation and consideration of a report of an *ad hoc* Working Group established to consider the matter, the Commission decided to take note of all topics proposed in the report of the Secretary-General, but selected ten topics which it suggested should be accorded priority by the Commission.²⁶ Furthermore, the Commission decided to accord high priority to legal implications of the new international economic order, as detailed in section 3(b), below.

3. *Consideration of a subject by a Working Group*

(a) *Usual UNCITRAL practice*

15. The preparatory and substantive work leading to the adoption of a multilateral convention by UNCITRAL on a particular subject is usually performed in one of the Commission's Working Groups. Normally, however, before a subject is referred to a Working Group, the Commission requests the Secretariat to engage in further studies of the issues arising in connection with the topic, including the suitability and feasibility of creating uniform international legal rules on the subject.

16. At its eleventh session (1978), the Commission adopted the following policy concerning the referral of a topic to a Working Group:

"As a general rule, the Commission should not refer subject-matters to a Working Group until after preparatory studies had been made by the Secretariat and the consideration of these studies by the Commission had indicated not only that the subject-matter was a suitable one in the context of the unification and harmonization of a law, but that the preparatory work was sufficiently advanced for a working group to commence work in a profitable manner."²⁷

(b) *The new international economic order (NIEO)*²⁸

17. The Commission's work on the new international economic order has evolved differently from the foregoing pattern. In recognition of the mandate given to it by the General Assembly to take account of relevant General Assembly resolutions concerning the NIEO and to participate in the implementation of those resolutions,²⁹ the Commission, at its eleventh session (1978), requested the Secretary-General to carry out a study of issues related

to the NIEO that would be suitable for consideration by the Commission. At the same time it established a Working Group on the New International Economic Order to examine this report and to recommend specific topics which could be undertaken by the Commission.³⁰ The report of the Secretary-General was presented to the twelfth session of the Commission (1979)³¹ and was subsequently considered by the Working Group.³² At the thirteenth session of the Commission (1980) the Working Group proposed six topics for inclusion in the Commission's programme of work.³³ After considering this report, the Commission decided to accord priority to one of these topics³⁴ for study by the Working Group. Thus, unlike the practice with respect to other topics undertaken by the Commission,³⁵ the Working Group on the New International Economic Order itself recommended specific topics for inclusion in the Commission's programme of work.

(c) *Work in UNCITRAL Working Groups*

18. For most sessions of an UNCITRAL Working Group, the Secretariat of UNCITRAL prepares background research studies analysing various aspects of the subjects as requested by the Working Group. Such studies, which are issued in the working languages of UNCITRAL, examine the existing law on both the national and international levels, highlight existing problems and difficulties in legal interpretation, and suggest possible ways to harmonize and unify the law on the subject. They also often contain draft provisions which are intended to assist the Working Group in its deliberations.

19. In the past, at various stages of work on a subject, the Secretariat of UNCITRAL has often circulated questionnaires to all States and interested international organizations requesting comments concerning existing problems and areas of needed reform, and soliciting concrete suggestions and proposals for consideration by the Working Group. Sometimes, the UNCITRAL Secretariat has prepared for the Working Group an analysis of the replies received; on other occasions, the substance of the replies has been incorporated in the research studies prepared by the Secretariat.

20. Deliberations in the Working Group usually have as their starting point the background research studies prepared by the Secretariat, including any draft provisions that may have appeared therein. Proposals made during a session of the Working Group by its members and observers are issued as conference room papers in the working languages of UNCITRAL.

21. UNCITRAL Working Groups make very strong efforts to agree by consensus on draft texts that will be acceptable to States with different social, economic and legal systems. Small, informal groups are often established on an *ad hoc* basis in an attempt to find compromise solutions when the initial views expressed by representatives regarding a particular draft provision differ widely.

22. When engaged in the formulation and adoption of draft articles for multilateral treaties, UNCITRAL Working Groups create Drafting Committees to recommend the text of the draft provisions and to suggest where and how the provisions should be incorporated in the draft treaty.

23. When the preparation of a draft treaty is at an advanced stage, the Working Group engaged in its formulation often requests the UNCITRAL Secretariat to prepare an explanatory commentary on the draft treaty as it

stands at that time. These commentaries, prepared in the working languages of UNCITRAL, are intended only to aid the Working Group in its deliberations and are not considered as official, authorized commentaries interpreting the draft provisions.

24. After concluding its initial consideration of all the subject matters and substantive provisions that in the view of the Working Group should be included in a multilateral treaty, the Working Group reviews the draft provisions on which no agreement could be reached and as a consequence of which either no provision was approved at all or the text was placed between square brackets in order to denote a divergence of views within the Working Group.

25. The UNICTRAL Secretariat, based on decisions by the Working Group, proposals received from Working Group members and observers, as well as its own views, may prepare a conference room paper for the Working Group, containing a possible structure outline for a treaty and amalgamating the approved or bracketed draft provisions into the substantive portion of a draft treaty.

26. The Working Group then decides definitively on the structure of the treaty and arranges all the approved or still bracketed draft articles in the form of a draft treaty. Following this, in a second reading, the Working Group reviews all the draft articles and considers whether any of them should be modified or deleted and whether any further substantive provisions should be added. A thorough editorial review of the draft treaty is undertaken in all language versions and a final draft text is prepared in all languages for submission to UNCITRAL. If a commentary was previously prepared, the Secretariat is normally requested to prepare, for submission to UNCITRAL, a revised commentary taking into account all the modifications by the Working Group of the text of the draft treaty since the preparation of the original commentary.

(d) *Study Group on International Payments*

27. Some UNCITRAL Working Groups have had the benefit of consultations with and advice from the Study Group on International Payments, a group of experts from several banking institutions. The assistance of the Study Group has been sought in matters of a highly technical and complex nature in respect of bank practices in the international collection of negotiable instruments, electronic funds transfer and a universal unit of account of constant value for use in international conventions.

4. *Consideration of draft treaty by UNCITRAL*

28. Under the practice followed heretofore by UNCITRAL, the texts of draft treaties adopted by a Working Group have been circulated for comments to all States and to interested international organizations. The full texts of these comments, together with an analysis of them prepared by the Secretariat, have been submitted to the Commission when it considered the draft treaties.

29. When a draft multilateral treaty is placed before it, UNCITRAL devotes the major part of its annual session to a consideration of the draft text. The debate in UNCITRAL is based on the following general distribution documents, issued in the working languages of UNCITRAL: text of the draft

treaty; commentary to the draft treaty, if any; reports by the Working Group on the sessions in which the draft treaty was discussed; text of comments by Governments and international organizations on the draft treaty; and an analysis of those comments by the UNCITRAL Secretariat.

30. During its deliberations concerning a draft treaty, UNCITRAL considers its structure and scope and examines its provisions article by article. Written proposals for modifying the draft treaty made by UNCITRAL members and observers are issued as conference room papers in the working languages of UNCITRAL. The Commission may decide to make substantive modifications and additions to the draft text, and it may also alter the order in which various draft articles appear. Before UNCITRAL formally adopts a draft treaty, a Drafting Committee is established, charged with editing the text and ensuring the accuracy and conformity of all language versions.

31. The customary practice of UNCITRAL has been to recommend that the General Assembly convene an international conference of plenipotentiaries to adopt a treaty on the basis of the draft approved by UNCITRAL.³⁶ Thus far, the Sixth Committee and the General Assembly have followed the recommendations of UNCITRAL and have approved resolutions convening conferences as requested by UNCITRAL.

5. *Consideration of draft treaty by diplomatic conference*

32. All draft treaties approved by UNCITRAL thus far have been submitted for adoption by diplomatic conferences convened for this purpose by the General Assembly. The General Assembly resolutions convening the Conferences have governed their duration and date, participation, terms of reference, servicing requirements and preparatory documentation.

33. Prior to each Conference, the draft treaty, draft formal and final clauses and commentary, if any, have been circulated to Governments and interested international organizations for comments. An analysis of these comments prepared by the Secretariat has also been distributed prior to each Conference.

34. In the past, all States have been invited to participate in these Diplomatic Conferences and interested international organizations have been invited to attend as observers. Each Conference has established two Main Committees, a Drafting Committee and a Credentials Committee. For meetings of the plenary and Main Committees, summary records have been kept. The proceedings of the plenary, the Main Committees, the Drafting Committee and the Credentials Committee have been interpreted into the languages of the Conference. Sometimes, group meetings have also been interpreted but they have not been recorded in summary records. Informal consultations and meetings of small *ad hoc* Working Groups have often taken place, but without interpretation and without any formal record. Proposals by representatives and observers, reports of Committees of the Whole, summary records, and the text of the treaty as adopted, have been issued during the Conference in all the languages of the Conference. This documentation has been collected after the conclusion of the Conference and published in the languages of the Conference, in one or more volumes, as the Official Records of the Conference.

6. *Opening of the treaty for signature, ratification or accession*

35. The elaboration of a multilateral treaty ends with the adoption of the treaty by the Conference. The Final Act of the Conference and the terms of the newly adopted treaty specify the time and place when it is to be open for signature, the method to be used by States for ratifying or acceding to the treaty, and the requirements for its entry into force. The treaties concluded so far on the basis of drafts prepared by UNCITRAL have been opened for signature on the last day of the Conference.

7. *Nature and scope of elaboration of multilateral treaties by UNCITRAL*

(a) *Revision of work done by other agencies*

36. Some of the multilateral treaties prepared by UNCITRAL have constituted revisions of texts previously elaborated by other agencies. For example; UNCITRAL's work leading to the United Nations Convention on Contracts for the International Sale of Goods, adopted on 10 April 1980 at Vienna,³⁷ was undertaken to render the 1964 Hague Conventions relating to a Uniform Law on the International Sale of Goods, and to the Formation of Contracts for the International Sale of Goods, capable of wider acceptance by countries of different legal, social and economic systems.³⁸ Similarly, the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg),³⁹ elaborated by UNCITRAL and adopted on 31 March 1978, was designed to revise and amplify the International Convention for the Unification of Certain Rules relating to Bills of Lading (the Brussels Convention of 1924), and the Protocol to amend that Convention (the Brussels Protocol of 1968).⁴⁰

(b) *Elaboration of new uniform rules*

37. In other cases UNCITRAL has generated new international legal rules on subjects for which none previously existed. In doing so it has sometimes had occasion to use as models rules contained in existing regional, national or private texts. Such was the case with the work of the Commission leading to the Convention on the Limitation Period in the International Sale of Goods, adopted on 12 June 1974, in New York.⁴¹ Similarly, the work of the Commission on a draft Convention on International Bills of Exchange and International Promissory Notes has been based on a synthesis of the 1930 Geneva Uniform Law on Bills of Exchange and Promissory Notes, the British Bills of Exchange Act and the American Uniform Commercial Code.⁴²

8. *Alternative methods and procedures for the elaboration of multilateral treaties*

38. In the course of their work the Commission and some of its Working Groups have dealt with questions concerning forms and procedures for the elaboration of multilateral treaties. Issues which have arisen in this regard include the form that rules drafted by the Commission should take (i.e. convention, model law or recommendation) and the preferred forum to adopt a multilateral convention (i.e. conference of plenipotentiaries, or the General Assembly upon a recommendation by the Sixth Committee).

(a) *Form of rules*

39. At the time of its adoption of draft rules on liquidated damages and penalty clauses, the Working Group on International Contract Practices considered the question of the form that the rules should take.⁴³ It was decided to leave this issue for decision by the Commission, which would have before it a study examining the possible approaches to the question.⁴⁴ That study discussed the respective advantages and disadvantages of a convention, model law and recommendation.⁴⁵

40. After deliberating the advantages, appropriateness and effectiveness of the various forms,⁴⁶ the Commission deferred to a later session the decision as to the form which the draft uniform rules should take, and requested the Secretary-General to elicit the views of Governments and international organizations on this issue.⁴⁷ The responses will be submitted to the fifteenth session of UNCITRAL in 1982.

(b) *Preferred forum to adopt a convention*

41. The Commission had before it at its fourteenth session (1981) a note by the Secretariat on "Alternative methods for the final adoption of conventions emanating from the work of the Commission".⁴⁸ As a possible method to simplify the procedures for adopting texts emanating from the Commission, the study noted that a convention could be adopted by the General Assembly on the recommendation of the Sixth Committee, rather than by a separate conference of plenipotentiaries,⁴⁹ and discussed some advantages and disadvantages of such a procedure.

42. At its fourteenth session, the Commission agreed that after the texts on international bills of exchange and international promissory notes, and on international cheques, were finalized by the Working Group on International Negotiable Instruments, the appropriate procedure for their adoption as (a) convention(s) would be through a Diplomatic Conference, rather than by the General Assembly upon recommendation by the Sixth Committee.⁵⁰

9. *Status of treaties adopted based on the work of UNCITRAL and draft treaties currently under consideration*

(a) *Status of conventions*

43. The following multilateral instruments elaborated by UNCITRAL have been adopted by Diplomatic Conferences. The status of each instrument, as of 11 November 1981, is also indicated.

(a) Convention on the Limitation Period in the International Sale of Goods (New York, 1974):⁵¹

Signatures only:	14
Ratifications:	3
Accessions:	3
Ratifications or accessions necessary to go into force:	10

(b) United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978):⁵²

Signatures only:	26
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Ratifications:	1
Accessions:	5
Ratifications, acceptances, approvals or accessions necessary to go into force:	20
(c) United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980): ⁵³	
Signatures only:	21
Ratifications:	1
Ratifications, acceptances, approvals or accessions necessary to go into force:	10
(d) Protocol amending the Convention on the Limitation Period in the International Sale of Goods (Vienna, 1980): ⁵⁴	
No accessions to date	
Accessions necessary to go into force: ⁵⁵	2
(b) <i>Draft treaties currently under consideration</i>	

44. At its second session (April 1981), the Working Group on International Contract Practices finalized a set of draft uniform rules on liquidated damages and penalty clauses.⁵⁶ The form that the uniform rules should take (i.e. convention, model law or recommendation) was left for determination by the Commission.⁵⁷

45. Also in 1981, at its eleventh session, the Working Group on International Negotiable Instruments completed its work on two draft texts, adopting a draft Convention on International Bills of Exchange and International Promissory Notes,⁵⁸ and a draft Convention on International Cheques.⁵⁹

NOTES

¹ Resolution 2205 (XXI) of 17 December 1966 (*Yearbook of the United Nations Commission on International Trade Law*, volume I, 1968-1970, part one, II, E). (Hereinafter volumes of the UNCITRAL Yearbook are cited as "*Yearbook*, (year)").

² *Ibid.*, part II, operative para. 8.

³ Increased from twenty-nine in 1973. Resolution 3108 (XXVIII) of 12 December 1973 (*Yearbook*, 1974, part one, I, C).

⁴ See resolution 31/99 of 15 December 1976, operative para. 10 (c) (*Yearbook*, 1977, part one, I, C), and resolution 36/32 of 13 November 1981, operative para. 9.

⁵ These were: international sale of goods, commercial arbitration, transportation, insurance, international payments, intellectual property, elimination of discrimination in laws affecting international trade, agency, and legalization of documents. *Report of the United Nations Commission on International Trade Law on the work of its first session*, para. 40 (*Yearbook*, 1968-1970, part two, I, A). (Hereinafter UNCITRAL Reports are cited as "*Report*, (session)").

⁶ *Ibid.*, para. 48. Work by UNCITRAL in the area of international sale of goods has resulted in the Convention on the Limitation Period in the International Sale of Goods (New York, 1974) (A/CONF.63/15, reproduced in *Yearbook*, 1974, part three, I, B), the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (A/CONF.97/18, annex I; reproduced in *Yearbook*, 1980, part three, I, B) and the Protocol amending the Convention on the Limitation Period in the International Sale of Goods (Vienna, 1980) (A/CONF.97/18, annex II; reproduced in *Yearbook*, 1980, part three, I, C). In the area of international payments, the Working Group dealing with this

topic has produced a draft Convention on International Bills of Exchange and International Promissory Notes (A/CN.9/WG.IV/WP.24 and Add.1 and 2) and a draft Convention on International Cheques (A/CN.9/WG.IV/WP.25 and Add.1), both of which, together with their commentaries, will be circulated to Governments during 1982. The Commission's work on the third original priority topic—international commercial arbitration—has not resulted in any multilateral conventions. However, in 1976 UNCITRAL adopted the UNCITRAL Arbitration Rules (*Report*, ninth session, para. 57 (*Yearbook*, 1976, part one, II, A)), and in 1980 it adopted the UNCITRAL Conciliation Rules (*Report*, thirteenth session, para. 106 (*Yearbook*, 1980, part one, II, A)). The topic of international commercial arbitration is still under active consideration by the Commission.

⁷ *Official Records of the General Assembly, Twenty-third Session, Supplement No. 14 (A/7214)*, para. 74.

⁸ Resolution 2421 (XXIII) of 18 December 1968, operative para. 6 (b) (reproduced in *Yearbook*, 1968-1970, part two, I, B, 3).

⁹ *Report*, second session, para. 133 (*Yearbook*, 1968-1970, part two, II, A). Work by UNCITRAL on this topic resulted in the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg) (A/CONF.89/13, annex I, reproduced in *Yearbook*, 1978, part three, I, B).

¹⁰ *Report*, ninth session, para. 65 (*Yearbook*, 1976, part one, II, A).

¹¹ *Ibid.*, para. 66.

¹² A/CN.9/149, fn. 7 (*Yearbook*, 1978, part two, IV, A).

¹³ *Ibid.*, paras. 4, 5, 6; fn. 7.

¹⁴ A/CN.9/149, *supra*; see also A/CN.9/154; A/CN.9/155 (*Yearbook*, 1978, part two, IV, B); A/CN.9/156 (*Yearbook*, 1978, part two, IV, C).

¹⁵ A/CN.9/149/Add.1, 2 and 3 (*Yearbook*, 1978, part two, IV, A, annexes I to III).

¹⁶ *Report*, tenth session, annex I, para. 510 (*Yearbook*, 1977, part one, II, A).

¹⁷ *Ibid.*, para. 512.

¹⁸ *Ibid.*, para. 513.

¹⁹ A/CN.9/149, *supra*, list of subject-matters for possible inclusion in the future work programme, I(3) (x).

²⁰ A/CN.9/149/Add.1, *supra*.

²¹ A/CN.9/149/Add.3, *supra*, para. 1.

²² A/CN.9/149, *supra*, list of subject-matters for possible inclusion in the future work programme, I(4) (a).

²³ A/CN.9/149/Add.3, *supra*.

²⁴ *Report*, eleventh session, para. 39 (*Yearbook*, 1978, part one, II, A).

²⁵ *Ibid.*, para. 43.

²⁶ *Ibid.*, para. 67.

²⁷ *Ibid.*, paras. 67-68.

²⁸ While the current efforts of the Commission in relation to the NIEO are not expected to result in a multilateral treaty, these efforts do not preclude further steps being undertaken in the future if they appear necessary. See *Report*, fourteenth session, para. 74.

²⁹ Resolution 3494 (XXX) of 15 December 1975 (*Yearbook*, 1976, part one, I, C); and 32/145 of 16 December 1977 (*Yearbook*, 1978, part one, I, C).

³⁰ *Report*, eleventh session, para. 71 (*Yearbook*, 1978, part one, II, A); see also *Report*, twelfth session, para. 100 (*Yearbook*, 1979, part one, II, A).

³¹ *Report*, twelfth session, paras. 90-92 (*Yearbook*, 1979, part one, II, A).

³² A/CN.9/176.

³³ *Report*, thirteenth session, para. 123 (*Yearbook*, 1980, part one, II, A).

³⁴ This topic is contracts in the field of industrial development; *ibid.*, para. 143. Under this topic the Working Group has been requested by the Commission to engage in work concerning contracts on supply and construction of large industrial works and on industrial co-operation. It has also been requested to draft a legal guide identifying the

legal issues involved in contracts for the supply and construction of large industrial works and suggesting possible solutions to assist parties, in particular from developing countries, in their negotiations (*Report*, fourteenth session, para. 84).

³⁵ See paras. 15-16, *supra*.

³⁶ See paras. 41-42, *infra*.

³⁷ A/CONF.97/18, annex I (*Yearbook*, 1980, part three, I, B).

³⁸ *Report*, second session, para. 38 (*Yearbook*, 1968-1970, part two, II, A).

³⁹ A/CONF.89/13, annex I (*Yearbook*, 1978, part three, I, B).

⁴⁰ *Report*, fourth session, para. 19 (*Yearbook*, 1971, part one, II, A).

⁴¹ A/CONF.63/15 (*Yearbook*, 1974, part three, I, B). See A/CN.9/203, paras. 54-55.

⁴² A/CN.9/203, paras. 56-57.

⁴³ A/CN.9/197, paras. 45-46.

⁴⁴ *Ibid.*, para. 46.

⁴⁵ A/CN.9/203, paras. 114-122.

⁴⁶ *Report*, fourteenth session, paras. 40-43.

⁴⁷ *Ibid.*, paras. 43-44.

⁴⁸ A/CN.9/204.

⁴⁹ *Ibid.*, para. 11.

⁵⁰ *Report*, fourteenth session, para. 21.

⁵¹ A/CONF.63/15 (*Yearbook*, 1974, part three, I, B).

⁵² A/CONF.89/13, annex I (*Yearbook*, 1978, part three, I, B).

⁵³ A/CONF.97/18, annex I (*Yearbook*, 1980, part three, I, B).

⁵⁴ A/CONF.97/18, annex II (*Yearbook*, 1980, part three, I, C).

⁵⁵ Pursuant to Article IX(1) of the Protocol, the 1974 Limitation Convention and the 1980 Sales Convention must both be in force before the Protocol can enter into force.

⁵⁶ *Report*, fourteenth session, para. 38.

⁵⁷ *Ibid.*, para. 43. See paras. 39-40, *supra*.

⁵⁸ A/CN.9/WG.IV/WP.24 and Add.1 and 2.

⁵⁹ A/CN.9/WG.25 and Add.1.

M. UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)

I. Introduction

1. UNEP carries out a number of activities which involve the development of multilateral treaties relating to the protection of the environment. This function is a part of its general mandate. Since its establishment in 1973 UNEP activities have resulted in the conclusion of a number of multilateral conventions and related protocols. UNEP is also assisting Governments in developing draft instruments (concerning environmental protection).

2. The analysis of the UNEP treaty-making process in this paper will be limited to the development of two regional sea conventions: (a) the 1976 Convention for the protection of the Mediterranean Sea against Pollution (Barcelona Convention) and its protocols; (b) the 1978 Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution (Kuwait Convention) and its protocols. In these instances, UNEP developed a systematic approach to the formulation and adoption of regional agreements. They are as follows.

2. The initiative

3. The preparation of a survey of the existing state of a specific environmental problem lays the groundwork for a formal proposal to initiate action

for the prevention and control of pollution in the area. A special field mission can then be organized to prepare a report of its findings and recommendations. This is then followed by the adoption at an appropriate intergovernmental forum of a decision authorizing the initiation of action for the development of a multilateral agreement addressed to a specific environmental problem.

4. Such an initiative may be taken outside UNEP. For example, in the case of the Mediterranean, the intergovernmental consultation on the Protection of Living Resources and Fisheries from Pollution, convened in Rome in 1974 under FAO/GFCM (the FAO General Fisheries Council for the Mediterranean) auspices, proposed the development of a framework convention. UNEP was requested by the meeting to follow this initiative, which was subsequently endorsed by the Governing Council of UNEP. In the case of the Kuwait Convention, the initiative was taken by the Governing Council of UNEP itself.

3. *Preparation of guidelines and related materials for the drafting of the proposed agreement*

5. In the case of the Barcelona Convention, a number of documents were first prepared for the Rome Consultation, which resulted in the adoption of "Guidelines for the Drafting of a Framework Convention". On the basis of guidelines and comments thereon received from Governments, preliminary drafts were prepared of a framework convention and protocol.

6. In the case of the Kuwait Convention and Protocol, the initial document, "Draft Agreement for Co-operation", was submitted by the Government of Kuwait. UNEP also prepared a draft.

7. These were then followed by the convening of inter-agency and/or intergovernmental consultations to discuss the preliminary drafts and to consider steps for the preparation and adoption of the proposed agreement. Thus, the Intergovernmental Meeting was convened in Barcelona in January 1975 by UNEP in co-operation with other international organizations. The meeting made preliminary comments on the draft and adopted the Action Plan for the Mediterranean, which consists of, *inter alia*, the Framework convention and related protocols for protection of the Mediterranean environment, with technical annexes and with approximate timing of the successive steps required for the preparation of these instruments, including the convening of Working Groups to elaborate the texts of instruments and a plenipotentiary conference for their adoption.

8. Two expert meetings were convened in 1977 to consider and further elaborate the draft instruments concerning the Kuwait Convention.

4. *Finalization of the draft instruments by a special Working Group or by the UNEP secretariat*

9. In the case of the Barcelona Convention and Protocol, the three draft instruments were submitted after the Intergovernmental Meeting to a Working Group of Experts on Draft Legal Instruments which met under UNEP auspices in April 1975. The final clauses of the three instruments were, in accordance with the recommendations of the Working Group, reviewed and harmonized by the secretariat of the Group. The drafts were further revised to

include alternative provisions proposed by the Working Group. After the draft text had been circulated to Governments, the Executive Director of UNEP convened a meeting of experts in January 1976, to discuss the provisions of the draft in order to find some alternative for a number of provisions.

10. In the case of the Kuwait Convention and Protocol, the above-mentioned two expert meetings revised and finalized the draft texts, leaving provisions on which no agreement was reached in brackets. No special working group was convened to revise or modify the text after two meetings and it was circulated to Governments for adoption at a conference of plenipotentiaries. The secretariat sought comments from the Office of Legal Affairs of the United Nations to the drafts; the comments were considered in subsequent meetings held to revise the text.

5. *Adoption of the draft instruments at a conference of plenipotentiaries*

11. In the case of the Barcelona Convention, a conference of plenipotentiaries of the Coastal States was convened in February 1975 to adopt the instruments. The level of changes introduced into the text at the Conference was not considerable. In the case of the Kuwait Convention, the Kuwait Regional Conference of Plenipotentiaries was convened by UNEP in April 1974. The level of changes was again not very considerable.

6. *Characteristics of the UNEP approach to the development of multilateral treaties*

12. The general procedures adopted by UNEP are not very different from those adopted by other United Nations bodies. Certain aspects are quite unique. The approach adopted by UNEP in the context of the Barcelona and Kuwait Conventions was therefore to limit the main agreement to general obligations and financial and administrative matters only, leaving detailed provisions to related protocols or likewise. This approach speeded up the pace of negotiations considerably. Furthermore, these conventions were supplemented by technical annexes which would require constant review and amendments. It is therefore not difficult to amend them, when they do not form the main body of the instrument.

13. UNEP considers that the early involvement of government experts in the process of development of the proposed instrument is essential to success. UNEP considers that all environmental problems require co-operation of all the organizations competent in various aspects of the solution of the problem.

II. SPECIALIZED AND RELATED AGENCIES

A. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

1. *Decision as to the type of instrument*

1. In FAO, the type of instrument to be developed is usually envisaged by its governing bodies or the secretariat at an early stage in the multilateral

treaty-making process. The type of instrument is, generally, a world-wide convention or a regional or supplementary agreement under Article XIV, paragraphs 1 and 2 of the Constitution; an agreement between FAO and Member Nations under Article XV of the Constitution; or a convention or agreement to be concluded under its auspices but outside its constitutional framework. However, in one instance, the Organization was faced with the problem of deciding the most appropriate way of establishing a regional plant protection body.

2. In October 1964, a proposal for the establishment of a regional plant protection organization for the Caribbean was presented at the second meeting of the Caribbean Food Crops Society. In August 1965, the first Caribbean Plant Protection Conference recommended that FAO be requested to establish a Caribbean Plant Protection Commission as a subsidiary body of the Organization under Article VI of its Constitution. The question was considered by the Thirteenth Session of the FAO Conference (1965), and subsequently by the FAO Council, with a view to determining how such a body could best be established and what action it might take to achieve this purpose. Governments in the Caribbean area were consulted by the Director-General to obtain their views. Out of the ten Governments consulted, replies were received from seven. Six expressed the view that the proposed Commission should be established under Article VI of the Constitution; one was in favour of its establishment by means of a treaty concluded under Article XIV of the Constitution.

3. In the light of the replies from the Governments and in compliance with the Council's request, the Committee on Constitutional and Legal Matters (April 1967) considered the legal and constitutional implications of the establishment of the proposed commission under Articles VI or XIV respectively of the FAO Constitution. The CCLM reached the conclusion that, as regards the form which the Caribbean Plant Protection body might take, there were three possibilities, as follows: (a) a regional commission under Article VI, paragraph 1 of the Constitution, in which case an appropriate resolution would have to be adopted by the Conference or Council; (b) an Article XIV body, on the basis of an agreement to be drafted by a technical meeting or conference of Member Nations, and approved by the Conference or Council of the Organization; (c) a Regional Plant Protection Convention set up by a supplementary agreement to the International Plant Protection Convention. An organization established in the manner envisaged under (c) would also be an Article XIV body and, consequently, the supplementary agreement would likewise have had to be drafted by a technical meeting or conference of Member Nations and submitted to the FAO Conference or Council for approval.

4. The Council (June 1967), after having considered the views expressed by the Governments concerned, the legal and constitutional implications of the establishment of such a body and the three possible solutions, established the Caribbean Plant Protection Commission under Article VI, paragraph 1 of the FAO Constitution. A Council Resolution was adopted to this effect and, therefore, no multilateral treaty was concluded.

2. Languages

5. The first version of the FAO Constitution, which entered into force on 16 October 1945, did not contain a definite policy concerning the use of

languages in the Organization. In fact, Article XXIII of the Constitution merely provided that "pending the adoption by the Conference of any Rules regarding languages, the business of the Conference shall be transacted in English".

6. The Conference at its Special Session held in 1950, when amending its Rules of Procedure (now General Rules of the Organization), adopted Rule XXXIII whereby "Chinese, English, French and Spanish shall be the official languages of the Organization. English, French and Spanish shall be the working languages".

7. Nevertheless, both the Constitution and the General Rules were silent on the question of the use of languages in the drawing up of multilateral treaties under the aegis of FAO. Therefore, during the early days of the Organization some texts of multilateral treaties were drawn up in a single language, either English or French, such as the Agreement for the Establishment of the Indo-Pacific Fisheries Council (now Commission) originally drawn up in English in 1948 and the Agreement for the Establishment of a General Fisheries Council for the Mediterranean originally drawn up in French in 1949. Other treaties were drawn up in English, French and Spanish, the texts of which were equally authentic.

8. The Conference at its Ninth Session (1957) adopted a set of "Principles and Procedures which should govern conventions and agreements concluded under Articles XIV and XV of the Constitution" and "Guiding Principles with Respect to Agreements under Article XV of the Constitution for the Establishment of International Institutions dealing with questions relating to Food and Agriculture", and included in these Principles the following provisions on languages:

"16. Unless otherwise decided by the Conference or Council, all conventions and agreements [under Article XIV] shall be drawn up in the three working languages of the Organization, i.e. English, French and Spanish, which languages would be equally authentic.

"17. Unless otherwise decided by the Conference, the Agreement [under Article XV] should be drawn up in the three working languages of the Organization, i.e. English, French and Spanish, which languages would be equally authentic."

9. After the adoption of the aforementioned Principles, authentic versions of several multilateral treaties were drawn up in the three working languages, while authentic versions in other languages were adopted for treaties drawn up in only one authentic language version: e.g. equally authentic English and Spanish versions of the Agreement for the Establishment of a General Fisheries Council for the Mediterranean were approved by the FAO Conference after the Agreement had entered into force.

10. Following decisions taken by the Conference in 1969 and 1977 respectively (Conference resolutions 10/69 and 18/77), authoritative Arabic and Chinese texts of the Constitution were adopted and the provisions concerning languages appearing in Rule XLI of the General Rules of the Organization and of the Principles adopted by the Conference were amended to read as follows:

Rule XLI of the General Rules of the Organization

“Arabic, Chinese, English, French and Spanish are the languages of the Organization.”

This does not necessarily mean that Conventions and Agreements would henceforth have to be drawn up in all five languages. Although they would have to be submitted to Conference or Council for approval, and documents presented to these governing bodies are normally reproduced in the five languages, the authentic languages would still be specified in each treaty, in accordance with the “Principles and Procedures” referred to above.

PRINCIPLES AND PROCEDURES WHICH SHOULD GOVERN CONVENTIONS AND AGREEMENTS CONCLUDED UNDER ARTICLES XIV AND XV OF THE CONSTITUTION, AND COMMISSIONS AND COMMITTEES ESTABLISHED UNDER ARTICLE VI OF THE CONSTITUTION

“Authentic languages

“16. Unless otherwise decided by the Conference or Council, all conventions and agreements shall be drawn up in English, French and Spanish, which languages shall be equally authentic.”

GUIDING PRINCIPLES WITH RESPECT TO AGREEMENTS UNDER ARTICLE XV OF THE CONSTITUTION FOR THE ESTABLISHMENT OF INTERNATIONAL INSTITUTIONS DEALING WITH QUESTIONS RELATING TO FOOD AND AGRICULTURE

“Authentic languages

“17. Unless otherwise decided by the Conference, the agreements should be drawn up in English, French and Spanish, which languages would be equally authentic.”

11. Consequently, under the Principles quoted above, the Conference or Council is free to decide whether authentic texts of conventions or agreements concluded under Article XIV or XV of the Constitution should also be drawn up and approved in Arabic, Chinese or any other language if appropriate, bearing in mind, especially, the potential parties to the treaty and the languages in which the FAO Secretariat normally works.

12. With respect to treaties concluded under the auspices of FAO, but outside its framework, the authentic language versions have likewise been determined on the basis of the potential participation in the treaties concerned and the languages used by the Secretariat.

3. Records and reports

13. FAO's general practice on the maintenance of records of its proceedings is that verbatim records are kept for all plenary meetings of the Conference and its main commissions (including Commission III, which normally deals with legal and constitutional matters). Copies of all verbatim records and a report embodying all resolutions, recommendations, conventions, agreements and other formal decisions adopted by the Conference are transmitted by the Director-General to all Member Nations of the Organization after each session of the Conference (Rule XVIII, 1 and 3, General Rules of the Organization).

14. Likewise verbatim records are kept for all plenary meetings of the Council. Such verbatim records are sent to all Member Nations of the Organization soon after the closure of the session concerned. In addition, the Director-General, after each session of the Council, transmits to all Member Nations of the Organization a report embodying the text of all resolutions, recommendations, conventions, agreements, supplementary conventions or agreements, and of other formal decisions adopted by the Council (Rule VI of the Rules of Procedure of the Council).

15. Thus, whenever the Conference or Council is involved in the multilateral treaty-making process, the discussions are recorded in these verbatim records and in the final reports. On the other hand, verbatim records are not kept of sessions of standing Committees of the Council (e.g. Programme, Finance, Constitutional and Legal Matters), which may also be involved in some stages of the treaty-making process. In the case of such Committees and technical meetings of Member Nations concerned with the drafting of conventions or agreements, their deliberations, recommendations and proposals are reflected in final reports for submission to the Council, the Conference or the Director-General, as the case may be.

16. To secure proper consultation with Governments and adequate technical preparation prior to consideration by the Conference or Council of proposed treaties, the Director-General notifies Member Nations of any proposed treaty, not later than the time when he dispatches the agenda of the Conference or Council session at which the matter is to be considered. Such notification is accompanied by: (i) any reports on the matter by the Director-General, including a report on the technical, administrative and financial implications of the treaty concerned; (ii) a request for comments and information on the matter and for such representation as Member Nations may wish to make (Rule XXI.1 of the General Rules).

17. As regards the practice followed recently at the Plenipotentiary Conference and the Government Consultation for the Establishment of Integrated Rural Development Centres for Asia and the Pacific and for Africa, the proceedings of plenary meetings were recorded only on tape. The proceedings were transcribed from the tapes after the Plenipotentiary Conference and Consultation and then edited. Provisional verbatim records were circulated to participants for their comments, after which the final verbatim records were prepared, circulated to the Governments which had been represented at the Conference or Consultation and sent to the Centres concerned for safekeeping. Apart from the Final Acts, no final reports were adopted for circulation.

18. The draft Agreements sent to interested Governments before the Plenipotentiary Conference and the Consultation were accompanied by an explanation concerning the financial provisions. No other commentary was provided.

4. *Voting majorities*

19. The voting majority required for the approval of multilateral treaties concluded within the framework of the Organization is governed by Articles XIV and XV of the FAO Constitution.

20. Under Article XIV.1, the Conference may, by a two-thirds majority of the votes cast and in conformity with rules adopted by it, approve conventions relating to food and agriculture.

21. In accordance with Article XIV.2, the Council, under rules adopted by the Conference, may, by at least two thirds of the membership of the Council (49 Member Nations elected by the Conference), approve agreements which are of particular interest to Member Nations of geographical areas specified in such agreements, and supplementary conventions and agreements designed to implement any of the above-mentioned conventions or agreements.

22. Finally, pursuant to Article XV, the Conference may, by a two-thirds majority of the votes cast, authorize the Director-General to enter into agreements with FAO Member Nations for the establishment of international institutions dealing with questions relating to food and agriculture. The signature of such agreements by the Director-General is subject to prior approval by the Conference by a two-thirds majority of the votes cast. The Conference may delegate the authority of approval to the Council, requiring a vote of at least two thirds of the Council's membership for the approval.

23. In the case of multilateral treaties concluded under the auspices of FAO but outside its framework, the required majorities for the adoption of decisions are usually spelt out in the Rules of Procedure of the Conference held for the purpose of adopting the treaty concerned.

24. The Rules of Procedure of the Conferences of Plenipotentiaries on the Conservation of Atlantic Tunas and on the Conservation of the Living Resources of the Southeast Atlantic (both convened by FAO) provided that decisions of these Conferences on all "matters of substance" shall be taken by a two-thirds majority of the representatives present and voting, whereas decisions on "matters of procedure" shall be taken by a simple majority of the representatives present and voting.

25. The Rules of Procedure of the Plenipotentiary Conference on the Establishment of a Centre on Integrated Rural Development for Asia and the Pacific and those of the Government Consultation on the establishment of a similar centre for Africa, although basically the same as the two previously mentioned Plenipotentiary Conferences, are somewhat more elaborate. These Rules specifically provide that the adoption of the Agreements for the establishment of these Centres and of any related resolutions shall require a two-thirds majority of the representatives present and voting "unless the Plenipotentiary Conference or the Consultation, by the same majority decides otherwise"; whereas other decisions shall be taken by a simple majority "unless the Plenipotentiary Conference or the Consultation decides otherwise".

5. Post-adoption concerns

26. In all treaties concluded under Article XIV of the Constitution, the method of participation is that of acceptance by the deposit of an instrument of acceptance, with the exception of two treaties, i.e. the International Plant Protection Convention (signature followed by ratification or adherence) and the Plant Protection Agreement for the Southeast Asia and Pacific Region (signature, signature followed by ratification, or adherence).

27. Regardless of the method of participation, during the first decade of FAO, six conventions and agreements concluded under the aforementioned constitutional provision had come into force in a relatively short period, an average of 6 months. Possibly, the reason for this was the rather low number of instruments required for the entry into force of such treaties, i.e. 3, 5 and 6, with the exception of one which required the deposit of at least 10 instruments of acceptance.

28. As from 1959, the acceptance process became slower in spite of the fact that FAO kept the number of instruments required at a low level, i.e. 3 and 5, with the exception of one which required 12 instruments of acceptance. In fact, out of five conventions and agreements concluded under Article XIV between 1959 and 1973, two came into force in a period of 9 to 12 months and three in a period of 20 to 30 months.

29. The entry into force of two multilateral treaties concluded outside the framework of FAO was a relatively long process. Thus the International Convention for the Conservation of Atlantic Tunas, which required 7 instruments of ratification, approval or adherence, came into force 34 months after it was opened for signature, and the Convention on the Conservation of the Living Resources of the Southeast Atlantic, which required 4 instruments of ratification, acceptance or approval, came into force 24 months after it was opened for signature. On the other hand, two agreements for the establishment of integrated rural development centres for Asia and the Pacific and for Africa, both requiring 6 instruments of ratification or accession, entered into force 10 and 6 months respectively after they were opened for signature.

30. The Organization has also experienced delays in the acceptance of amendments to some conventions and agreements. For instance, the Plant Protection Agreement for the Southeast Asia and Pacific Region was amended by the FAO Council in November 1967. The amendments came into force after 21 months, i.e. on the thirtieth day after acceptance by two thirds of the contracting parties as required by the Agreement. The Agreement was further amended by the Council in June 1979. So far the required number of acceptances has not been obtained and therefore the amended text of the Agreement has not yet come into force.

31. Likewise, in November 1979, the FAO Conference approved a revised text of the International Plant Protection Convention, but the said text, not having been accepted by a two-thirds majority of the parties as required by the Convention, is not yet in force. At present, 82 States are parties to the Convention and instruments of acceptance of the amendments have been received from only 19 contracting parties.

32. In an attempt to expedite the acceptance of the revised Convention, the Conference in its resolution approving the amendments stressed that it was in the interest of the international community that the revised text should enter into force without delay and urged the parties to accept it at the earliest possible time. In view of the slow response of Governments to this appeal, the Conference at its forthcoming session in November 1981 might take action in this respect.

33. Unfortunately, the Organization has no specific mechanism to improve the post-adoption situation, except the provision of paragraph 4 of

Rule XXI of the General Rules, under which, when speedy action is required, signature, accession or acceptance of treaties may be effected by the delegate of the Government concerned or the head of its diplomatic mission in the country where signature, accession or acceptance is to take place, subject to the deposit with the Director-General of a written statement issued by the head of the diplomatic mission certifying that such action is being taken in accordance with full powers conferred by the Government and that the necessary formal instrument will be forthcoming.

34. This device proved particularly useful on one occasion. The Conference in November 1959 approved, under Article XV of the Constitution, an Agreement for the Establishment of a Latin-American Forest Research and Training Institute. The Agreement was to come into force upon acceptance by Venezuela and four other Member Nations, provided that such acceptance took place within one year of the Conference approval. Since, a short time before the deadline, the number of acceptances required to bring the Agreement into force had not been reached, the FAO Council in October 1960 drew the attention of its Members to Rule XXI.4 and four Governments availed themselves of the procedure, thus becoming parties to the Agreement. Subsequently, all four Governments deposited the necessary formal instruments.

6. *Supplementing and updating treaties*

35. The Organization's procedures for amending treaties are rather rigid and uniform. These procedures are set forth in paragraph 8, Section A, of the "Principles and Procedures which should govern Conventions and Agreements concluded under Articles XIV and XV of the Constitution" (Section R of the Basic Texts) and read as follows:

"Amendments

"8. Conventions and agreements shall contain, when appropriate, provisions reflecting the following principles:

"(a) Amendments to all conventions and agreements concluded under Article XIV of the Constitution shall require Council approval, unless the Council considers it desirable to refer these amendments to the Conference for approval. In addition, such amendments shall be subject to prior approval by at least a two-thirds majority of all the parties to the convention or agreement. Amendments to conventions and agreements which do not provide for the establishment of a body shall be submitted to an advisory committee prior to consideration by the Council.

"(b) Amendments are not to become operative before approval by the Council or the Conference. The actual date on which they come into force shall be specified in the text.

"(c) Amendments involving new obligations for the contracting parties shall come into force in respect of each contracting party only on acceptance by it. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of the Organization who shall inform all the contracting parties of the receipt of acceptances and the entry into force of amendments.

"(d) Conventions and agreements shall contain a provision regarding the position of contracting parties that do not accept amendments."

36. All conventions and agreements concluded within the framework of FAO contain specific provisions reflecting the above principles. With respect to subparagraph (c) above, it should be noted that all of these conventions and agreements, with the exception of two, provide that the rights and obligations of contracting parties that have not accepted amendments involving additional obligations shall continue to be governed by the provisions of the treaty concerned as they stood prior to the amendment.

37. Three multilateral treaties contain annexes to them. The Annex to the International Plant Protection Convention, the "Model Phytosanitary Certificate", is part of the Convention and as such may be amended only following the same procedure as for the amendment of the Convention, namely by approval of the Conference and acceptance by a two-thirds majority of the contracting parties.

38. Any annexes to the Agreement for the Establishment of a Regional Animal Production and Health Commission for Asia, the Far East and the South-West Pacific, containing common regional standards and practices of animal production and health recommended by the Commission established under the Agreement, may be amended in accordance with detailed procedures adopted by that Commission itself.

39. Finally, under the Plant Protection Agreement for the Southeast Asia and Pacific Region, Appendix A, containing a List of Destructive Pests and Diseases, and Appendix B, relating to measures to exclude South American Leaf Blight of Hevea from the Region, may be modified by a decision of the Committee established under the Agreement. The relevant provisions do not specify the required majority for the amendment of Appendix A, but a unanimous decision is needed to amend Appendix B. In any event, no approval by the Governing Bodies of FAO is necessary.

40. The amendment procedure with regard to the four multilateral treaties concluded under the auspices of FAO but outside its constitutional framework tends to be stricter than that of the treaties concluded under Articles XIV and XV of the Constitution.

41. The International Convention for the Conservation of Atlantic Tunas and the Convention on the Conservation of the Living Resources of the Southeast Atlantic may be amended by three fourths of the contracting parties, instead of two thirds as required by FAO. The Agreements on the Establishment of Integrated Rural Developments for Asia and the Pacific and for Africa may be amended by three fourths of the contracting parties, provided, however, that such majority is more than one half of the States parties to these Agreements.

B. GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

1. In the multilateral treaty-making techniques and procedures in GATT, a distinction should be made between the preparatory stage and the actual negotiations.

2. The preparatory stage is initiated already when Governments recognize the existence of problems in certain areas and agree to begin discussions with a

view to exploring opportunities for making progress in the attainment of the objectives of the General Agreement in the particular area.

3. It is normally in the annual sessions of the Contracting Parties of GATT that discussions of such a nature are initiated and machinery is established, e.g. in the form of a committee, to proceed further with the work at the level of governmental experts. Occasionally, the discussions in the GATT Council of Representatives may also lead to the establishment of a working party, to examine the problems or the situation in a particular area.

4. The early stage of this type of preparatory work is of a fact-finding nature. The committees or working parties determine the type of information they would need for an examination of the factual situation and instruct the secretariat to compile the data or to invite, by means of a questionnaire, Governments to submit such statistics and other information as may be relevant.

5. It is the task of the secretariat to make the factual information available to the committee concerned in a way that can usefully serve as a basis for further discussions. Sometimes, the secretariat is instructed to make a factual descriptive study for this purpose.

6. In the course of their work, which may take several years, the committees or working parties regularly, i.e. at least once a year, report to the governing body concerned on progress made. The subsequent discussions in the Contracting Parties to GATT or the Council may result in certain guidelines or directives to be given to the committees concerned as to how to proceed with their further work.

7. Depending on the complexity of the matters under discussion, the committee concerned may decide to refer certain aspects or parts of the problems to a sub-group specifically created for that purpose. The sub-groups thereafter carry out their function under the guidance and supervision of the committee concerned.

8. It may be pointed out that the preparatory work, carried out initially on the basis of studies of a factual situation and subsequently on the basis of discussions as to the nature of the problems, may not at all lead to the conclusion that there may be prospects for a solution in initiating negotiations for a multilateral treaty. Sometimes, not infrequently, delegations draw from this preparatory work the conclusion that there are no real prospects for a mutually acceptable solution in the near future. In such cases the work in the committee or working party concerned may be interrupted and the committee or working party may be dissolved or simply become inoperative.

9. In other cases, however, the preparatory work may prove to be more fruitful. Thus, the Contracting Parties of GATT, in November 1971, agreed that it was their intention, as a principal objective, to pursue in GATT a new major initiative for dealing with the longer-term trade problems as soon as this was feasible. The Contracting Parties of GATT directed the Council to make arrangements to analyse and evaluate techniques and modalities for dealing in GATT with longer-term problems affecting world trade in the industrial and agricultural sectors.

10. The initiative for entering into multilateral negotiations is normally taken by one or a few contracting parties and presented at the session of the

Contracting Parties of GATT or to the GATT Council. If there is a favourable response to such initiative, the Contracting Parties of GATT (or the Council) set up machinery for the actual carrying out of the negotiations. For example, in preparing the current round of multilateral trade negotiations the Contracting Parties of GATT, in November 1972, agreed to establish a Preparatory Committee and agreed that arrangements be made for the convening of a meeting at ministerial level in September 1973 to consider the report of the Preparatory Committee, to establish a Trade Negotiations Committee and to provide the necessary guidelines for these negotiations.

11. The Tokyo Declaration, adopted in September 1973, determined the objectives and the scope and pattern of the multilateral trade negotiations and established a Trade Negotiations Committee to elaborate and put into effect detailed trade negotiating plans, to establish appropriate negotiating procedures and to supervise the progress of the negotiations.

12. The actual negotiating techniques are different depending on the subject matter. Thus, especially in earlier tariff negotiations carried out in GATT, the negotiations were conducted strictly on a bilateral basis. Each contracting party submitted to other participating contracting parties a list containing a request of the tariff concessions it was seeking to obtain from that contracting party. Likewise, each contracting party distributed to the other participating contracting parties a list of tariff concessions it was, in principle, prepared to grant, if agreement on the exchange of concessions could be reached. On the basis of these offers and request lists bilateral negotiations were conducted. The results of these bilateral negotiations, i.e. the comprehensive list of tariff concessions each contracting party had undertaken to grant, were incorporated in the Schedule of tariff concessions attributed to the contracting party concerned and annexed to the General Agreement. These concessions thereafter were applicable to all contracting parties under the general most-favoured-nation provisions of the General Agreement.

13. In the current multilateral trade negotiations, as well as under the Kennedy Round, the emphasis of the tariff negotiations, on the other hand, was rather on negotiating an overall tariff-cutting formula to be applied by all concerned on an across-the-board basis. The negotiations, therefore, were of a multilateral nature and were carried out in a multilateral group established for that purpose. Once an agreement in principle on the overall formula was achieved, negotiations basically of a bilateral nature proceeded with a view to ensuring that the exceptions from the general tariff-cutting formula were kept to the minimum and the overall balance of reciprocal benefits and concessions was not distorted.

14. For the various matters other than tariffs to be negotiated in the current multilateral trade negotiations, the Trade Negotiations Committee established groups, each of which was assigned with a particular sector of the negotiations. Some of these groups, such as the Group on Non-Tariff Measures, established a number of Sub-Groups, each of which was assigned a particular task, such as Quantitative Restrictions, Subsidies and Countervailing Duties, Technical Barriers to Trade, or Customs Matters.

15. The negotiations in the Groups and Sub-Groups are basically of a multilateral nature, which does not preclude delegations from entering into bilateral or plurilateral negotiations with each other in order to see whether a

solution to certain specific problems can be reached, which subsequently can be presented for consideration to other delegations.

16. On the other hand, while negotiations for a multilateral solution regarding certain types of non-tariff measures were proceeding, bilateral negotiations were also initiated, with a view to obtaining concessions of a specific nature from individual contracting parties for the removal or reduction of non-tariff measures relating to individual product items. These negotiations, in line with earlier tariff negotiations, are conducted on the basis of specific request lists addressed to individual contracting parties.

17. While there is, therefore, a clear difference in techniques and procedures depending on the subject matter, as described above, the duration of the negotiations would not appear to be related to the techniques and procedures actually used. The duration depends rather on the complexity of the subject matter itself and generally on the question as to whether the overall economic and political climate is propitious for the conclusion of trade negotiations. Similarly, the eventual participation in a multilateral agreement is not related to any of the techniques used, but depends fully on the number of countries interested in the subject matter. For example, the Arrangement Concerning Certain Dairy Products, of 12 January 1970, has 14 participants; the Agreement on Implementation of Article VI of the General Agreement, of 30 June 1967, has 26 parties; the Agreement Regarding International Trade in Textiles, of 23 December 1973, has 40 parties. While the techniques and procedures for negotiating these agreements were virtually the same, the great discrepancy in participation can be explained only by relating it to the subject matter of the agreement concerned.

C. INTERNATIONAL ATOMIC ENERGY AGENCY (IAEA)

1. The Statute of the International Atomic Energy Agency does not specifically mention the formulation of multilateral legal instruments as one of this Agency's functions, nor does it provide for any special mechanism to apply thereto. However, in the discharge of its statutory functions, IAEA has played a role and adopted some practices over the past twenty years in the multilateral treaty-making process in connection with several aspects of the peaceful uses of atomic energy.

2. The first multilateral convention adopted under the auspices of IAEA was the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, which entered into force on 12 November 1977. The process of its elaboration extended over five years, from 1958 to 1963.¹ In brief, it involved:

- Advance studies and initial work carried out by the IAEA secretariat;
- The holding of a series of meetings of a panel of experts to advise the secretariat on further steps in the proceedings;
- The participation of Member States in the convention-making process through extensive comments provided by them at various stages;
- The establishment of an intergovernmental committee by the Board of Governors to advise it on further developments; and

—Finally, the convening of an international conference under the auspices of IAEA for final consideration and adoption of the draft convention thus formulated.

3. Efforts were also made for the elaboration of other multilateral legal instruments in which IAEA has been involved but which did not produce concrete results.² It may be said that the techniques and procedures used in those cases followed broadly the procedural steps outlined above with respect to the Vienna Convention.

4. In recent years, IAEA activities in the area of physical protection of nuclear material and facilities have led to the convening, under IAEA auspices, of a Meeting of Governmental Representatives to Consider the Drafting of a Convention on the Physical Protection of Nuclear Material (CPNM).

5. In order to achieve the objective of considering ways and means of facilitating international co-operation in dealing further with problems of physical protection of nuclear facilities and materials, the Meeting was opened on 31 October 1977 and the governmental experts participating in the work constituted three working groups and a Drafting Committee. The meetings continued along these lines with a minimum of formality and dealt with all relevant questions within the same forum, from the initial draft to the Final Act. No Credentials Committee was established and the participants were not required to submit credentials. An initial divergence of views concerning the need for a Final Act was resolved and consensus was reached to adopt a Final Act.

6. The Meeting held several sessions and elaborated and adopted a text to apply to the physical protection of nuclear material during international transport. Information on IAEA activities in the area of physical protection of nuclear material and facilities was presented to the twenty-second regular session of the IAEA General Conference by the Director General in document GC (XXII)/INF/178. On 3 March 1980 the Convention was opened for signature at the Headquarters of the Agency and of the United Nations.

NOTES

¹ For details see P. C. Szasz, "The Law and Practices of the International Atomic Energy Agency", *IAEA Legal Series*, No. 7, 1970, pp. 704-710.

² *Ibid.*, pp. 710-721.

D. INTERNATIONAL LABOUR ORGANISATION (ILO)

1. *General considerations*

1. ILO procedures for the preparation of its standard-setting work in the form of Conventions were evolved over many years with a view to ensuring, as formally required by the Constitution of the Organisation since 1948, the most thorough technical preparation and fullest consideration of the texts adopted. They have stood the test of time and, not having been entirely free from criticism, they nonetheless continue to be considered adequate and satisfactory by the great majority of the members of the Organisation and have made possible the adoption of 156 international labour Conventions and 165 international labour recommendations in 1981.

2. The International Labour Conference is the only body within the Organisation empowered to adopt international labour Conventions.¹

3. The formal point of origin of an international labour Convention is the inclusion of its subject matter on the agenda of the session of the International Labour Conference; thus it may adopt Conventions on the basis of proposals with regard to an item on its agenda.

4. The agenda of the Conference is settled by the Governing Body, although the Conference has the power to include an item in the agenda of its following session. Normally an item is included in the agenda with a view to the so-called double-discussion procedure. The technical agenda of a session of the Conference is generally fixed 18 months before the opening of that session.

2. *Office reports and conference discussions*

5. After the inclusion of the item on the agenda, the International Labour Office is required to prepare a preliminary report "setting out the law and practice in the different countries and any other useful information, together with a questionnaire". This report reviews the legislation and the situation in various countries in order to indicate what problems exist, which of them might be appropriately dealt with in an international instrument and at what level. The questionnaire is designed to ascertain the scope and level of new standards which Member States would accept and any divergencies of views or practices which might constitute major obstacles to the adoption of a homogeneous or generally acceptable instrument.

6. Typically this questionnaire is drafted in the form "Do you consider that the instrument(s) should provide that/for . . .", and a suggested substantive formulation of a provision follows. This approach is designed to enable the Members consulted to come to grips with specific issues formulated in carefully drafted language and to permit, on the basis of the replies to the questionnaire, the preparation of what is, in effect, a first draft of an instrument.

7. The preliminary report and the questionnaire are sent to Governments,² and must reach them no later than twelve months before the opening of the Conference session at which the question is to be discussed for the first time. Government replies to the questionnaire are to reach the Office no later than eight months before the opening of that session.³ As a matter of constitutional practice, now given legal form in the Tripartite Consultations (International Labour Standards) Convention, 1976, Governments are invited to consult employers' and workers' organizations in preparing their replies.

8. On the basis of the replies to the questionnaire, the Office prepares a further report indicating the principal questions which require consideration by the Conference. This report is communicated by the Office to the Governments as soon as possible and every effort is made to secure that the report reaches them not less than four months before the opening of the session of

the Conference at which the question is to be discussed for the first time. In practice, this further report contains a summary of Government replies to the questionnaire and, in the light of these, proposed conclusions as to the form the instrument should take (Convention, Recommendation or a Convention supplemented by a Recommendation) and what its substantive provisions might be.

9. The preliminary report and the further report are then discussed at the session of the Conference. The Standing Orders of the International Labour Conference provide for the possibility of discussion of the reports in plenary sitting of the Conference, while constant practice is to refer them to a tripartite Committee especially constituted for the purpose. After some general discussion, that committee usually proceeds with a provision-by-provision analysis of the proposed conclusions contained in the further report. The amendments submitted are translated and distributed before the discussion to all members of the Committee present at the sitting.⁴ Draft provisions and amendments put to the vote are adopted by a simple majority of the votes cast by the members of the Committee present at the sitting, under a system of weighted voting to ensure equality of voting strength among employers, workers and Governments. No vote is valid if the number of votes cast for and against is less than two fifths of the total voting power.

10. Each technical committee is required to set up its drafting committee.⁵ The drafting committee checks the text of the "proposed conclusions" as agreed in the full Committee for internal consistency, ensures that it adequately reflects the technical committee's decisions and verifies that the two authentic versions (the English and French) of the final instrument say the same thing. The drafting committee also attempts to keep as near as possible to the standard drafting style and presentation used in other ILO instruments.

11. The draft text established by the drafting committee is sent back to the technical committee for approval and adoption. It is then presented, along with the technical committee's report, to the plenary sitting of the Conference for adoption.⁶ It is standard practice for the Conference, at the same time, to adopt a resolution formally including the subject matter of the draft instrument in the agenda of its next session for second, and final, discussion.

12. Immediately after the session of the Conference at which the first discussion took place, the Office prepares the text of a draft Convention based essentially on the conclusions adopted by the Conference. The draft text must reach Governments no later than two months after the closing of the session of the Conference at which the first discussion took place, with the request that Governments state within three months whether they have any amendments to propose. On the basis of replies from the Governments, the Office draws up a final report containing a revised draft text of the instrument; that report must reach Governments not less than three months before the opening of the session of the Conference at which the question is to be discussed for the second time. Procedure at the Conference during the second discussion is similar to that used during the first discussion until the draft instrument is submitted by the technical committee to plenary sitting of the Conference. Each clause is then placed separately before the Conference for adoption. Amendments can be proposed at this time.

13. Once all of the clauses have been adopted by the Conference in full sitting, the text is referred to the Conference Drafting Committee.⁷ The Conference Drafting Committee, apart from reviewing the technical provisions of the proposed Convention for the last time, adds thereto the final provisions—concerning such matters as ratification, entry into force, denunciation and revision—which are standard in form and substance for most ILO Conventions.

14. After the text has been approved by the Conference Drafting Committee, it is circulated to delegates and no further amendments are permitted unless the President of the Conference, after consultation with the Vice-Presidents, agrees to place them before the Conference at the same time as the draft text; this is very rare. The text is then put to the Conference for a final vote.

15. In order to be adopted the text must be approved by two thirds of the votes cast by the delegates present and voting.

16. The main alternative to the double-discussion procedure described above is the procedure under which there is only one discussion by the General Conference, the so-called single-discussion procedure. It is used primarily, though not exclusively, for the preparation of Conventions in the maritime field, which are normally adopted by special maritime sessions of the International Labour Conference.

17. There are two variants of the single-discussion procedure. Under one, the double-discussion procedure is telescoped, so that the preliminary report, with questionnaire, is followed by the final report which normally precedes the second discussion, and by consideration by the Conference in the manner appropriate to a second discussion. Under the other, the matter is first considered by a preparatory technical conference, and there may then be either a consultation of Governments or simply a final report as a basis for the Conference discussion. The procedure using a preparatory technical conference is more common.

3. *Procedures for the consideration and adoption of conventions revising existing conventions*

18. The Standing Orders of the Governing Body and of the Conference provide for special procedures for the consideration and adoption of Conventions revising existing Conventions. The essence of these provisions is the consultation of Governments by the Governing Body prior to the matter being placed on the agenda of the Conference, followed by a single discussion in the Conference.

19. In fact this procedure is very seldom used. In most cases it has been found preferable to use the normal double-discussion procedure. The legal process of revision is then the result of a provision in the new Convention to the effect that it revises such-and-such earlier Convention(s). The process is facilitated by the fact that virtually all international labour Conventions adopted since 1927 include a paragraph worded as follows:

“1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then unless the new Convention otherwise provides:⁸

“(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article . . . (article concerning denunciation) above, if and when the new revising Convention shall have come into force;

“(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

“2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.”

20. In certain cases, particularly with respect to instruments of a complex and wide-ranging character (e.g. the Minimum Standards of Social Security Convention, 1952 (No. 102)) there are, in addition to the usual provisions on revision described above, special provisions such as the following, which constitutes Article 75 of the Convention mentioned:

“If any Convention which may be adopted subsequently by the Conference concerning any subject or subjects dealt with in this Convention so provides, such provisions of this Convention as may be specified in the said Convention shall cease to apply to any Member having ratified the said Convention as from the date at which the said Convention comes into force for that Member.”

4. *Amendment procedures*

21. In certain cases, in particular where the subject matter of the Convention is highly technical and liable to be affected by technological or scientific discovery and development, the Conference has included a provision such as the following in the instrument:

“1. The International Labour Conference may, at any session at which the matter is included in its agenda, adopt by a two-thirds majority amendments to Schedule I (the list of occupational diseases) to this Convention.

“2. Such amendment shall take effect in respect of any Member already a party to the Convention when such Member notifies the Director-General of the International Labour Office of its acceptance thereof.

“3. Unless the Conference otherwise decides when adopting the amendment, an amendment shall be effective, by reason of its adoption by the Conference, in respect of any Member subsequently ratifying the Convention.” (Employment Injury Benefits Convention, 1964, Article 33.)

22. The procedure for the preparation of such amendments tends to be consideration by a meeting of experts, followed by a single Office report and a single Conference discussion.

5. *Other methods of relating new conventions to existing ones*

23. The revision procedures apply to cases in which a new Convention is designed to replace an existing one. At the same time, given the very substantial body of international labour Conventions already in existence, new Conventions which are not designed to replace existing ones may overlap, parallel or otherwise impinge on instruments already binding on some Members. Methods have had to be evolved, in the elaboration of new Conventions, to take account of this, and to avoid duplication, conflict and doubt as to legislative intent. This has been all the more important as, under the standard final provisions included in a substantial number of international labour Conventions, denunciation is possible only at ten-yearly intervals, whereas, in view of the fact that certain obligations relating to such Conventions arise directly from the Constitution of the Organisation, it has been considered impossible also to set them aside by *inter se* agreements amongst certain parties thereto.

24. As from the preliminary (questionnaire) report, the Office draws attention to existing Conventions which, in one manner or another, have relevance to the new subject being considered. Furthermore, often as from the questionnaire, but at latest from the first preparation of the text of a Convention, the Office prepares for inclusion in the preamble of the new Convention language which recalls these existing instruments and, as appropriate, explains briefly the gap which the new standards are designed to fill. Finally, the attention of the competent bodies in the Conference is systematically drawn to any provisions which, for any reason, parallel provisions in existing instruments so that variations in language are used only to reflect intended differences in meaning.

25. Whereas those procedures are applied frequently and systematically in relation to international labour Conventions, there are cases in which they become applicable also to instruments adopted elsewhere and, in particular, under the auspices of another organization of the United Nations system. This is in conformity with the principles on the co-ordination of legislative activities agreed in ACC (see Annual Report of the Administrative Committee on Co-ordination to the Economic and Social Council for 1973-74, paragraphs 200-209).

6. *Methods of ensuring flexibility necessary for universal application*

26. Under constant constitutional practice, the ratification of international labour Conventions cannot be made subject to reservations. The reasons for this, related in large part to the tripartite structure of the Organisation, and particularly of the Conference or the body adopting them, were set out in the Memorandum submitted by the Organisation to the International Court of Justice in connection with the case concerning reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. They do not need to be gone into further here.

27. At the same time, this constitutional practice places on the bodies participating in the elaboration of international labour Conventions a special

burden of ensuring that these instruments have, in their terms, the flexibility necessary to make them both acceptable and meaningful, universally.

28. The basis for relevant methods is contained in Article 19, paragraph 3 of the Constitution, as follows:

“In framing any Convention . . . of general application, the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries”.

29. As a first step towards compliance with that requirement, every questionnaire prepared by the Office, under the single- or double-discussion procedure, contains standard questions designed to elicit from Governments an indication of special difficulties faced by them in connection with an instrument on the lines envisaged in the questionnaire. There is also a standard question addressed to federal States, with a view to determining the distribution of power in relation to the subject matter at issue.

30. By reference to the information obtained in response to those standard questions, as well as in the replies to the substantive questions, a large range of so-called flexibility devices has been evolved. It is, of course, the International Labour Office which is most familiar with these devices, and it is usually the Office which assumes the responsibility—most frequently as from the report preceding the first discussion, but sometimes after and in the light of that first discussion—of suggesting recourse to one or other of them. There are however cases in which such a device is introduced at the Conference itself, sometimes to balance a tightening of substantive provisions.

31. This is not the place to consider the various devices in detail, but the following examples give an indication of the types of techniques used: (1) possibility of ratifying a Convention by parts; (2) possibility of excluding from the scope of the Convention a sector (e.g. agriculture) raising particular difficulties of application; (3) possibility for developing countries to ratify initially on the basis of a more limited scope, or a lower level of protection, than others, the scope and level of protection open to them being specified; (4) possibility for ratifying States to specify the level of obligation accepted by them, subject to a minimum (escalator clauses). Specific reporting obligations included in flexibility clauses are designed to ensure that these are used only to the extent necessary.

7. Authentication of conventions adopted by the Conference

32. Article 19, paragraph 4, of the Constitution provides that “two copies of the Convention or Recommendation shall be authenticated by the signatures of the President of the Conference and of the Director-General.” On taking up membership in the Organisation, the member States must communicate

their formal acceptance of the Constitution, and hence agree in advance to this procedure for authentication. This procedure thus falls within the rule set out in clause (a) of Article 10 of the Vienna Convention, being one "agreed upon by the States participating in the drawing up of the text".

33. There is no procedure of authentication of a text by signature or initialling in the ILO. In the words of an Office Note of 1931: "This, however, is only one among a number of other normal and logical consequences of the major innovation introduced by Part XIII (of the Treaty of Versailles) in giving up the rule of unanimity and the system of discussion by plenipotentiaries. It is a definite legal fact that the preparation of the International Labour Conventions is entrusted not to a meeting of the plenipotentiaries requiring unanimity for their decisions, but to a specially constituted assembly taking its decisions by a two-thirds majority".⁹

8. *Current review of procedures for adoption of multilateral treaties (conventions)*

34. During 1974-1979 the Governing Body undertook an in-depth review of all facets of international labour standard-setting, including a review of procedures for the adoption of Conventions and Recommendations.¹⁰ In the course of this review a number of suggestions for modifications on these procedures were put forward, but no final conclusions were reached. This question is, however, continuing to receive attention, and it may be useful to mention briefly the main ideas which have been put forward.

35. One suggestion has been that the time-limits for consultation with Governments should be extended. Certain federal Governments in particular have experienced great difficulty in holding adequate consultations with authorities in their constituent units within the time-limits existing at present. Any such prolongation has, however, met with strong opposition in several quarters of the Organisation's membership on the grounds that it would slow down the standard-setting activity to an unacceptable extent.

36. Another proposal is that it might be possible to replace the double-discussion procedure by greater recourse to a single discussion preceded by a technical meeting and subsequent consultation of Governments within time-limits corresponding to those at present covering the double-discussion period. This would give more leisure for government consultation, and would reduce the number of items before the Conference at any one time, without slowing down standard-setting. The principal objections to this innovation which have been voiced centre around the difficulty of ensuring adequate representation of all points of view at technical meetings whose composition is necessarily far more limited than that of the Conference.

37. Some Conference Committees have already experimented with procedures under which the full Committee discusses major issues and then refers amendments submitted to texts to working groups. This leaves drafting in the hands of a more manageable body, while reducing the number of meetings of the full Committee and hence the pressure on smaller delegations. This proposal has been generally well received.

APPENDIX I

Timetable of double-discussion procedure

If item placed on agenda less than 18 months before first discussion, Governing Body can approve a programme of reduced intervals (50, 39(5)).
 If less than 11 months, Governing Body can approve a programme of reduced intervals (50, 39(8)).

ADOPTION

18 months before first discussion, Conference agenda set
 Opening of first discussion Conference session
 Opening of second discussion Conference session

May June July Aug Sept Oct Nov Dec Jan Feb Mar Apr May June

First Discussion

Preliminary report setting out law and practice questionnaire communicated to Governments so as to reach them 12 months before opening of first discussion Conference session (50, 39(1))

Government replies should reach Office (50, 39(2))
 Extra month for federal systems and where report has to be translated into local language (50, 39(2))

Office report to Governments indicating principal questions for discussion (50, 39(3))

Draft texts sent out within two months after closing of Conference session (50, 39(6))

Final report to Governments latest three months before opening of session of draft and discussion (50, 39(6)) (50, 39(7))

Second Discussion

38. There is also general recognition that demands on and of the present system make it very difficult to find the time necessary to keep the corpus of ILO instruments, the International Labour Code, completely up to date by means of revision, re-editing or completion. This is a question of vital importance in respect of such a vast, long-standing and dynamic programme of treaty-making as the ILO's, but no generally accepted proposals as to how to deal with this problem as a whole have yet been forthcoming.

NOTES

¹The Conference is composed of four representatives of each Member State, of whom two represent the Government of that State and two represent respectively the employers and the workpeople of that State; it is required to meet at least once in every year.

²In certain cases they are sent also to the United Nations and other specialized agencies.

³A month's extension can be given, if requested, to Governments of federal countries and countries where it is necessary to translate the questionnaire into the national language.

⁴Amendments to the draft must be submitted in writing.

⁵It consists of one government delegate, one employers' delegate, one workers' delegate, the Reporter or Reporters of the Committee and the Legal Adviser of the Conference.

⁶Amendments are possible at this stage but relatively rare.

⁷Long-standing practice is that the Conference Drafting Committee be composed of the President of the Conference, the Secretary-General of the Conference (i.e., the Director-General of the International Labour Office), the Legal Adviser and one or two other members of the Secretariat having considerable drafting experience. Members of the Committee Drafting Committee are *ex officio* members of the Conference Drafting Committee in respect of the text coming from their Committee.

⁸In certain cases where it has been considered desirable to keep the earlier instrument(s) open for ratification, for instance, as an interim target of social policies, a specific provision has been included in the later Convention stating that it does not close the earlier instrument to subsequent ratifications.

⁹ILO, 15th session (Geneva, 1931), Record of Proceedings, p. 677.

¹⁰Of particular pertinence in this connection are the following Governing Body documents: GB.194/PFA/12/5, GB.198/PFA/11/22, GB.199/PFA/7/3, GB.199/PFA/7/12, GB.201/PFA/13/28, GB.209/PFA/6/3 and GB.209/PFA/7/24.

E. INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

1. The International Civil Aviation Organization has been actively involved in the preparation of international multilateral conventions. So far under the auspices of ICAO, thirteen international multilateral instruments have been adopted. The basis for this work of the Organization is the Constitution of the Legal Committee approved by ICAO Assembly resolution A7-5 and resolution A7-6, which is entitled "Procedure for Approval of Draft Conventions" (see annex below).

2. The usual technique for preparation of an international instrument is that a subject on the General Work Programme of the Legal Committee is studied by a rapporteur, then by a sub-committee of the Legal Committee or several sessions thereof and, finally, by the Legal Committee itself. A draft which the Legal Committee considers as ready for presentation to the States as a final draft is transmitted to the Council of ICAO, which may convene an International Conference of Plenipotentiaries. Such "Diplomatic Conferences", once convened by the Council of ICAO, sit as sovereign bodies independent of the constitutional structure of the Organization.

ANNEX

Procedure for Approval of Draft Conventions (Assembly resolution A7-6)

1. Any draft convention which the Legal Committee considers as ready for presentation to the States as a final draft shall be transmitted to the Council, together with a report thereon.
2. The Council may take such action as it deems fit, including the circulation of the draft to the Contracting States and to such other States and international organizations as it may determine.
3. In circulating the draft convention, the Council may add comments and afford States and organizations an opportunity to submit comments to the Organization within a period of not less than four months.
4. Such draft convention shall be considered, with a view to its approval, by a conference which may be convened in conjunction with a session of the Assembly. The opening date of the conference shall be not less than six months after the date of transmission of the draft as provided in paragraphs 2 and 3 above. The Council may invite to such a conference any non-Contracting States whose participation it considers desirable, and shall decide whether such participation carries the right to vote. The Council may also invite international organizations to be represented at the conference by observers.

F. INTERNATIONAL MARITIME ORGANIZATION (IMO)¹

1. Introduction

1. This paper contains an outline of the various methods which have been used by the International Maritime Organization (IMO) to bring about the adoption of international multilateral instruments in the period from the Organization's inception to the end of 1976.

2. The competence to arrange for the preparation and adoption of treaties is explicitly granted to the Organization in the Convention on the Inter-governmental Maritime Consultative Organization,² which states that the function of the Organization shall be, *inter alia*, "to provide for the drafting of conventions, agreements, or other suitable instruments, and to recommend these to Governments and to inter-governmental organizations, and to convene such conferences as may be necessary".³ In other words, the Convention differentiates between the preparatory work for the elaboration of an instru-

ment and its formal adoption. The first step is left entirely within the competence of the Organization; the second step, however, the adoption of a convention, must occur within the framework of a conference, participation in which is not restricted to the members of the Organization but open to a much wider circle of States.⁴

3. For each of the treaties covered by the paper, there is a brief outline of the various steps which led to their elaboration and adoption, beginning with the initial steps undertaken within the Organization on the subject matter and terminating with the adoption of the relevant instrument by a conference.

4. Covered are all those instruments with which IMO was associated in the stages prior to their adoption and which were eventually adopted under the auspices of IMO. As will be seen below, in a number of cases, the role of IMO in the adoption of instruments was not exclusive, but occurred under various forms of co-operation between IMO and other inter-governmental organizations. Not included are, of course, all those conventions in the adoption of which the Organization participated in the role of an observer.

5. In a number of cases, the Organization, while not involved in the preparation and adoption of treaties, was requested to perform certain functions, particularly those of a depositary nature, in respect of such treaties. Among them are mainly those conventions which were elaborated and adopted before the entry into force of the IMO Convention. They are the International Convention for the Safety of Life at Sea, adopted in 1948,⁵ and the International Convention for the Prevention of Pollution of the Sea by Oil, adopted in 1954.⁶ The substance of these two conventions constituted the cornerstone of IMO's activities in its early stages. Much more recently, another convention in the preparation of which the Organization participated, but which was adopted by an inter-governmental Conference convened by the United Kingdom rather than under the auspices of IMO, was deposited with the Organization.⁷

6. With one exception this paper does not include a discussion of the various amendments adopted in respect of the instruments dealt with. The method of adopting amendments to a treaty is usually prescribed by the treaty itself and therefore largely pre-determined.

2. *International Convention on Safety of Life at Sea, 1960*

7. In August 1957 the United Kingdom, depositary of the 1948 Safety of Life at Sea Convention proposed to the Contracting Governments that a Conference be held in 1960 to revise the 1948 Convention.⁸ By 1959 one third of the Contracting Governments of the 1948 Convention had expressed the desire for a revision, and a revision conference became necessary under the provisions of that Convention.⁹ In the meantime, however, the Organization had been established and, at its first session, the Assembly had decided that the Organization should assume the depositary and other functions, in accordance with Article XV of the 1948 Convention.¹⁰ With the agreement of the United Kingdom, the Organization thereupon informed Governments of the planned conference and invited them to submit proposals for amending the 1948 Convention.¹¹

8. The Maritime Safety Committee did not consider any of the substantive proposals put forward by Governments in preparation of the Conference; in other words, IMO's organs were not involved in any preparatory work for the 1960 Conference as far as substance was concerned. The Maritime Safety Committee did, however, deal with a number of organizational and procedural matters. In particular, it approved proposals, put forward by the Secretariat, that the Conference establish eight substantive Committees. It also approved draft Rules of Procedure for the Conference prepared by the Secretariat.¹² The Secretariat circulated all comments, observations and proposals received¹³ as well as detailed proposals on the organization of work of the Conference and the terms of reference for each Committee,¹⁴ and the draft Rules of Procedure approved by the Maritime Safety Committee.¹⁵ More importantly, the Secretary-General submitted directly to the Conference a number of proposals of a substantive nature relating to several draft articles and regulations.¹⁶

9. The Conference met from 17 May to 17 June 1960. Thirty-four Governments and seven international organizations were represented. There was no general debate in plenary and all substantive work was carried out in the eight Committees. Upon receipt of reports of these Committees, the plenary did not adopt individual articles or regulations put forward in the reports. Rather, the reports themselves, containing the draft provisions, were regularly put to the Conference as a whole. Only rarely did the plenary conduct a vote. In a few cases there was a request for a roll-call vote.¹⁷ Summary records were prepared of the discussions in each of the substantive Committees as well as of the meetings of the Heads of Delegations Committee. The convention¹⁸ was adopted unanimously by the plenary.¹⁹

3. *1962 Amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954*

10. As indicated earlier, the 1954 Oil Pollution Convention was adopted five years before IMCO's establishment. Early in 1959, Bureau and secretariat functions were transferred to the Organization on the basis of an Assembly resolution and in accordance with Article XXI of the convention.²⁰ An "unofficial" International Conference on Oil Pollution of the Sea, held in Copenhagen in July 1959, invited IMCO to prepare for a new international conference on the subject matter.²¹ This resolution reinforced the view underlying the Assembly resolution that the Organization would be convening a further conference. On the basis of these two resolutions and proposals by the Secretariat, the Maritime Safety Committee agreed that a conference on oil pollution should be held as early as possible.²² At its subsequent session, held in November 1960, the Maritime Safety Committee had before it a suggestion by the Secretariat that the Conference be held in Spring 1962. The Secretariat also expressed the view that it would not "appear to be appropriate for the Organization to take the initiative in the formulation of definitive proposals for consideration at the Conference whether for amendment of the existing Convention or as a basis for the drafting of a revised convention".²³ In accordance with a suggestion by the Secretary-General, the Maritime Safety Committee therefore agreed to the setting-up of a small working group of experts to assist the Secretariat in the conference preparations.²⁴ The Working Group held two sessions and provided the Secretary-General with guidance and advice on

preparations for the Conference. On the basis of replies to two questionnaires received from Member States and Contracting Governments, the Secretariat prepared a number of background documents designed to facilitate a review of the operation of the 1954 Convention by the Conference and to provide reference material for the various Committees of the Conference.²⁵

11. Early in 1962 the United Kingdom delegation informed the Maritime Safety Committee of a proposal that a conference of Contracting Governments to the 1954 Convention be convened immediately after the diplomatic conference. This was considered necessary because it was going to be left to the diplomatic conference itself to decide whether a new convention should be adopted or whether the 1954 Convention should be amended. If the diplomatic Conference were to decide on the latter solution, the amendments could be adopted only in accordance with Article XVI of the 1954 Convention, which provided for a conference of Contracting Governments called at the request of one third of them.²⁶ In accordance with this proposal, two separate conferences were held.

12. The diplomatic Conference met from 26 March to 13 April 1962. Fifty-five Governments and eight international organizations were represented. The Conference approved the Secretariat's proposals that there be a General Committee and three substantive committees reporting to the General Committee.²⁷ The plenary held no general debate, and the question of the type of instrument to be elaborated was discussed by the General Committee, which proposed to the plenary that the Conference proceed to the amendment of the 1954 Convention.²⁸ This proposal was adopted by the plenary.²⁹

13. The basic proposals before the Conference were the proposals put forward by Governments which had been incorporated in a "consolidated proposal", setting out side by side the text of the 1954 Convention and the changes proposed thereto.³⁰ The plenary considered the draft amendments on the basis of the texts prepared by the General Committee after examination by the Drafting Committee and succeeded in adopting them in the course of two meetings.³¹ While holding a number of votes, neither the plenary nor any of the Committees resorted to a roll-call vote. The plenary authorized the President to transmit the results of the diplomatic Conference to the Conference of Contracting Governments.

14. That Conference was held in parallel with the diplomatic Conference. Only two brief meetings were held,³² and the Conference adopted the amendments³³ elaborated by the diplomatic Conference as a whole.

4. *Convention on Facilitation of International Maritime Traffic, 1965*

15. At the origin of the 1965 Facilitation Convention stands a resolution adopted by the Union of Official Travel Organizations in 1958 requesting the United Nations Economic and Social Council to convene a conference on international travel and the removal or reduction of travel barriers. Based on this, the Economic and Social Council adopted a resolution requesting the Secretary-General of the United Nations to pursue technical studies in this field, and to invite interested organizations to make recommendations on the subject, including the desirability of convening an international conference on the subject.³⁴ On the basis of submissions put by the Secretary-General to the

Council at its second, third and fourth sessions,³⁵ the Assembly, at its second session, held in 1961, authorized the Secretary-General to establish a group of experts to advise the Council on further work to be undertaken on the subject matter.³⁶ A draft Convention on Facilitation of International Waterborne Transportation in the Western Hemisphere, prepared by the Permanent Technical Committee on Ports, attached to the Inter-American Economic and Social Council of the Organization of American States, was submitted by the United States to the Council at its sixth session in 1962.³⁷ This draft convention, together with Governments' replies to a Secretariat questionnaire, served as a basis of work for the Expert Group set up by the Council. In 1963 the Group presented a report to the Council on its progress of work.³⁸ The Group suggested that the draft convention elaborated by it be circulated to Governments for their proposals and comments and that the draft together with such proposals thereon constitute the basic conference documents. The Council approved these proposals and the convening of a conference in 1965.³⁹ These decisions were confirmed by the Assembly by means of a resolution at its third session held in 1963.⁴⁰

16. The Conference met from 24 March to 9 April 1965. Sixty-eight States and 16 international organizations were represented. The Secretariat proposed to the Conference a committee structure according to which there would be a General Committee and three technical committees which would be reporting to the General Committee.⁴¹ Texts prepared by the Drafting Committee were not to go back to the General Committee, but were to be submitted directly to the plenary.⁴² These proposals were approved by the Conference.⁴³

17. In plenary, voting was resorted to a number of times, but the only roll-call vote conducted related to a draft resolution.⁴⁴ In the committees no request was made for a roll-call vote, and in the three technical committees the voting procedure was made use of very sparingly. In a final vote in the plenary, the convention⁴⁵ was adopted by the Conference unanimously.

5. *International Convention on Load Lines, 1966*

18. The Organization's involvement in the preparation of the 1966 Load Lines Convention dates from early 1961, at which time the United States tabled in the Council a draft resolution proposing that IMCO make preparations for the convening of a conference to adopt a convention on load lines.⁴⁶ It was suggested that the instrument should be, in form at least, an entirely new convention, rather than a revision of the International Convention respecting Load Lines, of 1930,⁴⁷ since the latter approach could create difficulties of a legal and political nature.⁴⁸ In October of the following year the Council adopted a resolution inviting the Maritime Safety Committee "to undertake a study of the problems raised by the existing load lines convention", and recommending the Assembly to authorize the convening of an international conference to adopt a new convention.⁴⁹ This decision was, however, not unanimous. In particular, it was noted by the representative of the depositary Government of the 1930 Convention, whose view was shared by another delegation, that it was for his Government as Bureau Power to convene a revision conference of that Convention rather than for IMCO to convene a new conference.⁵⁰ The following year the Maritime Safety Committee agreed, in the light of the Council's decision and on the basis of a brief paper prepared by

the Secretariat setting out the changes needed to the existing international load-line régime,⁵¹ to the establishment of a group of experts "to assist the Secretary-General in the preparatory work for a conference".⁵² In 1963, at its third session, the Assembly concluded that it was appropriate for IMCO to convene a conference and decided, by means of a roll-call vote,⁵³ to hold such a conference in 1966.⁵⁴

19. Thereupon, the Secretary-General invited Governments to submit any proposals they might have on the text of the Convention to be adopted.⁵⁵ In March 1964, the United States Government submitted its proposal for a text of a convention and expressed the view that it might be used as a basic document for the Conference. Within a year, over a dozen Governments submitted proposals and comments, mostly relating to the text submitted by the United States. The Secretariat submitted an outline to the Maritime Safety Committee at its tenth session.⁵⁶ This proposal was duly approved, but no clear decision was reached on whether the text proposed by the United States would serve as a basic text, because the USSR notified the Committee that it was preparing an alternative text.⁵⁷ Ultimately, all proposals relating to the United States draft were collated and issued in printed form, together with the United States draft itself, whereas the draft prepared by the USSR was printed separately. The Assembly approved the Maritime Safety Committee's decision and the steps undertaken by the Secretariat.⁵⁸ A final report by the Secretariat on the state of preparations for the Conference was noted by the Maritime Safety Committee at its twelfth session.⁵⁹

20. The Conference met from 3 March to 5 April 1966. Sixty States and three international organizations were represented. The Conference established, in accordance with the proposals put forward by the Secretariat, three substantive committees: a General Committee, a Technical Committee and a Committee on Zones. Apart from preparing the general provisions of the convention, the General Committee also considered all texts elaborated by the other two substantive committees before passing them on to the Drafting Committee; all texts once revised by that committee went back to the General Committee for further elaboration before being submitted to the plenary.⁶⁰

21. The Conference had before it the two draft conventions proposed, respectively, by the USSR and the United States, as well as a number of observations relating to the latter.⁶¹ The Rules of Procedure of the Conference did not specify whether one of these two drafts was to be considered as the "basic proposal" before the Conference, and the records of the various committees indicate that both proposals were considered side by side, together with any proposed amendments thereto. In the plenary, the final adoption of most texts took place without a vote. A roll-call vote was requested only on one occasion.⁶² In the committees, roll-call votes were rare,⁶³ but recourse to a simple voting procedure was taken much more often. The final adoption of the text of the convention⁶⁴ was not put to the vote.

6. *International Convention on Tonnage Measurement, 1969*

22. Work on the unification of the rules on tonnage measurement began right at the inception of the Organization's activities; thus, the initial work programme for the Organization submitted to the Assembly already envisaged

the "furthering of a conference on the tonnage measurement of ships".⁶⁵ To this effect, the Assembly decided to take over from the United Nations functions concerning the unification of maritime tonnage measurement,⁶⁶ in accordance with a resolution of the Economic and Social Council,⁶⁷ and to establish a Sub-Committee on Tonnage as the first subsidiary body of the Maritime Safety Committee.⁶⁸ In 1965, after its fifth session, the Sub-Committee reported to its parent body on the various systems it was considering and proposed that a universal tonnage measurement be adopted; it noted that this would have to be achieved by means of a convention.⁶⁹ The Maritime Safety Committee concurred in this view⁷⁰ and the Assembly, thereupon, adopted a resolution on the convening of an international conference on tonnage measurement in order to adopt a convention establishing a universal system.⁷¹ Two years later, in 1967, the Assembly decided to convene a four-week conference in 1969.⁷² The Sub-Committee prepared three alternative draft conventions. After considering them, the Maritime Safety Committee decided that three alternatives should be circulated to Governments for comments.⁷³

23. The Conference met from 27 May to 23 June 1969. Fifty-five States and four international organizations were represented, as well as the Suez Canal Authority and the Panama Canal Company. At the suggestion of the Secretariat, two substantive committees (a General Committee and a Technical Committee) were established.⁷⁴ In addition to preparing the general provisions of the convention, the General Committee was also to review the drafts prepared by the Technical Committee. The Drafting Committee was requested to submit all its drafts to the General Committee, which in turn forwarded them to the plenary for final adoption.

24. The Secretariat proposed that the Conference decide at an early stage which of the proposals before it should serve as a basic text. However, the plenary faced considerable difficulties on the question of choosing a measurement system among the three alternatives presented, and after a lengthy discussion⁷⁵ it reduced the number of alternatives to two and instructed the Technical Committee to examine these with a view to selecting the appropriate parameter(s) to be embodied in the convention.⁷⁶ In the course of five meetings, the Technical Committee took tentative decisions on a number of fundamental issues and reported to the plenary the results of the votes conducted.⁷⁷ The plenary in turn took votes on these issues and, on the basis of their outcome, the Technical Committee was then in a position to continue with its work.⁷⁸

25. Voting was often taken recourse to in the General and Technical Committees, in the latter several times in the form of a roll-call.⁷⁹ In the plenary, on the other hand, only two roll-call votes were conducted.⁸⁰ In the plenary the final adoption of the text of the convention⁸¹ as a whole was put to the vote.⁸²

7. *International Convention relating to Intervention on the High Sea in Cases of Oil Pollution Casualties, 1969, and International Convention on Civil Liability for Oil Pollution Damage, 1969*

26. Following the *Torrey Canyon* disaster of 1967, the Council convened in May 1967 an extraordinary session and adopted an eighteen-point pro-

gramme for measures and studies in relation to marine pollution arising from maritime casualties.⁸³

27. The newly established Legal Committee, at its first session, gave initial consideration to those points in the Council's programme which were primarily of a legal nature and decided to establish two working groups: one to deal with questions relating to the right of intervention on the sea in case of oil pollution, the other one with liability aspects for such pollution.⁸⁴ At its next session the Committee concluded on the basis of the report of the first working group that there was a need for a multilateral convention on intervention. No decision was taken at that stage on the solution to be adopted in respect of liability issues.⁸⁵ In the course of two subsequent sessions the working group dealing with the question of intervention elaborated a number of draft articles for inclusion in a convention,⁸⁶ which were further developed at the Legal Committee's third session and finalized for submission to a conference at the Committee's fourth session.⁸⁷ On a number of issues the Committee did not come to definite decisions, noting that these could be resolved conclusively only at a diplomatic conference.

28. The working group on liability matters took as a basis of its work at its second and third sessions a set of draft articles prepared by an international sub-committee of the *Comité maritime international*⁸⁸ and elaborated a set of draft articles which it submitted to the Legal Committee's fifth session in March 1969. At its sixth session, held two months later, the Committee finalized the text of the draft convention. On a number of issues the Committee could not come to a definite decision; in some of these cases it was agreed to submit two alternative texts to the conference; in other cases appropriate footnotes reflecting different views were added.⁸⁹

29. In the meantime the Council had been informed on progress of work in the Legal Committee⁹⁰ and agreed that a single conference of three weeks' duration be convened to deal with both draft instruments.⁹¹ The decisions of the Council were confirmed and amplified by the Assembly at an extraordinary session in November 1968.⁹² At the Council's twenty-second session the Secretary-General's preparations for the holding of the conference were approved,⁹³ and at the Assembly's sixth session, held just before the conference, the Secretariat proposals in respect of the organization of work of the conference and the structure of the committees were approved. These envisaged that there be, in addition to the plenary, two Committees of the Whole, one for each draft convention. On the other hand, one single committee was to consider the final clauses of both conventions.⁹⁴

30. The International Legal Conference on Marine Pollution Damage was held in Brussels from 10 to 29 November 1969, following an invitation to the Organization from the Government of Belgium. Fifty-four States and ten international organizations were represented. The Conference had before it as basic proposals the two sets of draft articles and a set of draft final clauses, together with comments and observations thereon by Governments.⁹⁵ It agreed to the proposals of the Secretariat in respect of the establishment of committees and organization of work, proposals which were based on the decisions taken by Council and Assembly.⁹⁶ In addition to the Drafting Committee established by the plenary,⁹⁷ each Committee of the Whole also established its own drafting group.⁹⁸ The draft articles were therefore twice subject to

verification on matters of drafting. The bulk of the work in this respect was carried out by the two Committees' drafting groups, and the Drafting Committee established by the plenary was, with very few exceptions, able to accept without alteration the texts prepared by the two drafting groups.⁹⁹

31. After the opening of the Conference, only one general statement was made before the plenary adjourned.¹⁰⁰ Both Committees of the Whole, however, first held a general debate or settled a number of fundamental questions before turning to a detailed examination of the proposals before them.¹⁰¹

32. A number of roll-call votes were held in plenary as well as in the two Committees of the Whole. Moreover, the Committee of the Whole dealing with the draft instrument on civil liability resorted several times to a voting technique combining an indicative vote—allowing for the expression of preferences among a number of possible options—together with a roll-call procedure.¹⁰² The plenary, when considering the final drafts before it, adopted them by means of a vote article by article. It thereafter voted on the text of each of the two conventions¹⁰³ as a whole.¹⁰⁴

8. *Special Trade Passenger Ships Agreement, 1971*

33. The substantive basis of the 1971 Special Trade Passenger Ships Agreement is to be found in the 1960 Safety of Life at Sea Convention, which provided that steps should be taken to formulate general rules relating to the carriage of large numbers of unberthed passengers in special trades such as a pilgrim trade.¹⁰⁵ In light of this, a conference to revise the 1931 Simla Rules¹⁰⁶ which dealt with this matter was suggested by a Member Government in 1964.¹⁰⁷ However, for a number of reasons those initial plans were abortive.

34. The direct origins of the 1971 Agreement go back therefore to a resolution of the Assembly adopted in 1967 requesting the Maritime Safety Committee to examine the existing provisions related to the special trades.¹⁰⁸

35. After considering the steps to be taken in response to the Assembly's request, the Maritime Safety Committee decided to appoint an *ad hoc* sub-committee to deal with all aspects of the revision of the 1931 Simla Rules.¹⁰⁹

36. The sub-committee adopted as its basic working paper a draft agreement prepared by India.¹¹⁰ In the course of two sessions held in 1968 and 1969 the sub-committee elaborated a draft agreement for submission to the Maritime Safety Committee¹¹¹ and recommended that the draft be presented to a Conference of Contracting Governments to the 1960 Safety of Life at Sea Convention. It also suggested that the Conference should be requested not to depart from the substantive principles embodied in the draft texts. In the same year the Assembly agreed, on the basis of information received from the Secretariat on the results of the work of the sub-committee, to the convening of a conference.¹¹²

37. Following the sixth session of the Assembly, the Maritime Safety Committee approved the draft agreement prepared by the sub-committee and reaffirmed the desirability of holding a conference. While recognizing the sovereign nature of a conference of States, it did concur with the view of the sub-committee that the Conference should not depart from the principles elaborated in the draft text.¹¹³

38. The Conference was held from 27 September to 6 October 1971, immediately prior to the seventh session of the Assembly.¹¹⁴ Twenty-two States and four international organizations were represented. The Conference had before it the draft text prepared by the sub-committee, a number of comments thereon submitted by Member Governments and an explanatory note on the draft agreement prepared by the Secretariat.¹¹⁵ No written proposals were put by the Secretariat to the Conference on the organization of the work, and the Conference agreed to the President's suggestion that the agreement be considered by the plenary.¹¹⁶ There was therefore no need for establishing any substantive committees.¹¹⁷ The only vote conducted during the whole Conference was a roll-call vote,¹¹⁸ and the final text of the agreement was adopted without a vote.¹¹⁹

9. *Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971*

39. At its fourth session in November 1968, the Legal Committee was informed of the outcome of a symposium on third-party liability and insurance in the field of maritime carriage of nuclear material convened by the European Nuclear Energy Agency and the International Atomic Energy Agency.¹²⁰ The symposium had recognized the possibility of conflicts between existing nuclear and maritime conventions and had made a number of suggestions. As a consequence, the Legal Committee included among the questions calling for possible consideration in the 1970-1971 biennium an item on the legal questions arising from the maritime transport of nuclear substances.¹²¹

40. A draft convention on the subject matter elaborated by a Sub-Committee of the *Comité maritime international*,¹²² together with an alternative proposal,¹²³ were considered by a working group of the Legal Committee at its eighth session.¹²⁴ A new draft was submitted by France and the United Kingdom at the Committee's ninth session; this was discussed at length at the tenth session and, after some amendment, approved by the majority of the Committee as suitable for submission to a diplomatic conference. The Committee also invited the Council to consider the possibility of holding the Conference simultaneously with the Fund Conference and to invite the International Atomic Energy Agency and the European Nuclear Energy Agency to contribute to the costs of the Conference.¹²⁵ These proposals were approved by the Council¹²⁶ and endorsed by the Assembly at its seventh session.¹²⁷

41. The Conference was convened in co-operation with the International Atomic Energy Agency and the European Nuclear Energy Agency, and was held in Brussels from 29 November to 2 December 1971 concurrently with the Fund Conference. Forty-three States and eight international organizations were represented. The Conference adopted as basic document the draft convention, which consisted of a single substantive article and a set of final clauses.¹²⁸ After consideration by the Committee of the Whole, the draft convention was passed on to the Drafting Committee, which prepared, in the light of comments made in the Committee of the Whole, a new text comprising three substantive articles. These drafts, as well as the draft final clauses, were then referred back for adoption to the Committee of the Whole, which in turn submitted them to the plenary for final approval. After adopting each article of

the convention by means of a vote, the convention¹²⁹ was put to the vote as a whole.¹³⁰

10. *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971*

42. The origins of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage are to be found in a Resolution adopted by the 1969 International Legal Conference on Marine Pollution Damage¹³¹ and the Report of a Working Group which had met during that Conference.¹³² In its operative paragraphs, the Resolution requested IMCO "to elaborate as soon as possible, through its Legal Committee and other appropriate legal bodies, a draft for a Compensation Scheme based upon the existence of an international fund" and "to convene, not later than the year 1971, an International Legal Conference for the consideration and adoption of . . . a compensation scheme."

43. In the Report on the 1969 Conference which it submitted to the session of the Legal Committee immediately following the Conference, the IMCO Secretariat drew the Committee's attention to this Resolution.¹³³ The Secretariat discussed two possible methods of work which the Committee might adopt on the subject-matter. One possibility was to have the Secretariat or, alternatively, an expert prepare a study and a set of draft articles for consideration by the Legal Committee. The Secretariat did not appear to favour this method of approach. It expressed some preference for a slightly different method of work. This was that the Legal Committee might invite the *Comité maritime international* (CMI) to undertake a preliminary study and prepare draft provisions for the Legal Committee.

44. The Legal Committee did not adopt any of the methods suggested by the Secretariat but decided instead to appoint a Working Group, open to all Member States of IMO, to undertake the task of preparing draft provisions for the Legal Committee's consideration. The Working Group was requested to "examine the question of the establishment of such a fund taking into account in particular the Report of the Working Group on the Fund appointed during the International Legal Conference on Marine Pollution Damage . . . and such comments and other proposals as may be made available to it by Governments and interested organizations".¹³⁴ The Working Group was to prepare a report, including, where necessary, draft preliminary convention articles for consideration by the Legal Committee. The Committee, furthermore, requested the Secretariat to invite States to submit their comments and suggestions relating to all aspects of the proposed compensation scheme as well as to seek the advice and views of all relevant organizations. The Council approved the recommendations and tentative decisions of the Legal Committee.¹³⁵

45. Less than three weeks later, the Working Group met for its first session and began with its substantive work on the issue.

46. More than 15 Governments and seven international organizations submitted written comments on the issue; the Government of Norway presented a preliminary draft for a convention on the establishment of a fund.¹³⁶ The Oil Companies International Marine Forum (OCIMF), a non-governmental inter-

national organization, submitted its proposals relating to the establishment of a fund.¹³⁷ During its session, the Working Group asked shipping and cargo interests to submit a paper on specific issues in connection with the compensation fund. In reply to this request, OCIMF submitted a document embodying a suggested scheme for establishing a fund. This document was circulated to the Working Group for its second session, held in September 1970.¹³⁸ At the same time, the Secretariat assembled, at the request of the Group, data relating to possible technical assistance activities which the projected Fund could engage in.¹³⁹

47. At its second session, the Group considered a suggestion to set up a small group to draw up a preliminary draft of a convention. The general view was that the appointment of such a group was premature. However, the Working Group expressed the wish that such a document might be prepared on an unofficial basis by one or more delegations.

48. The Legal Committee, at its ninth session (October 1970), considered and approved the reports on the first two sessions submitted by the Working Group. It put forward a number of decisions, recommendations and requests for further consideration by the Working Group.¹⁴⁰

49. In compliance with the desire expressed at the second session of the Working Group, a draft convention was submitted to the Working Group by the Swedish delegation.¹⁴¹ At the same time, OCIMF submitted, in accordance with a request made by the Working Group at its second session, further suggestions supplementing its earlier proposals.¹⁴² At its third session, held in December 1970, the Working Group, after a general discussion based primarily on these two documents, began an article-by-article examination of the draft convention submitted by Sweden.¹⁴³

50. At its fifth and final session, held in March 1971, the Working Group concluded its work on the draft instrument. It presented to the Legal Committee a report containing draft articles for the Fund Convention, together with a number of reservations, clarifications or suggestions for modifications to the draft articles.¹⁴⁴ A number of issues remained unsolved, either because the Working Group had not had time to complete discussion of them or because a significant minority had been unable to agree with the majority view. These were summarized by the Secretariat and presented to the Legal Committee for its tenth session, held in April 1971.¹⁴⁵

51. At this session, the Legal Committee reviewed the proposed drafts put forward by the Working Group, finalized the text of the draft convention and approved it. The Committee expressed the view that the draft articles it had approved, together with the notes and proposals on the various issues related to the draft articles, were sufficiently developed to be presented to a diplomatic conference in the same year. It requested, therefore, the Secretary-General to issue invitations for the diplomatic Conference, to circulate to all States and organizations invited the Report of the Committee's tenth session, including the draft convention, and to invite them to submit comments and observations thereon. The Secretary-General was further requested to collate all comments received and to circulate them to the diplomatic Conference as part of the Conference's basic documents. The Committee entrusted the Secretariat with the preparation of draft final clauses after having given it some guidelines. Finally, the Committee tentatively agreed on a structure for the Committees of the Conference.¹⁴⁶

52. These decisions of the Committee were taken on the strength of prior authorization given to it by the twenty-fifth session of the IMCO Council held in November 1970.¹⁴⁷ The Council had found it necessary to give this prior authorization in order to ensure that all measures required to be taken could be taken to make the holding of a conference possible before the end of 1971, as had been requested by the 1969 Conference.

53. The Council, at its twenty-sixth session, approved the decisions taken by the Legal Committee.¹⁴⁸ By approving the Report of the Council,¹⁴⁹ the Assembly in turn approved the convening of the diplomatic Conference.¹⁵⁰

54. The Conference on the Establishment of an International Fund for Compensation for Oil Pollution Damage met in Brussels from 29 November to 18 December 1971, following an invitation to the Organization from the Government of Belgium.¹⁵¹ Fifty-four States and ten international organizations were represented. The Conference established one substantive Committee, the Committee of the Whole, and left it to that Committee to judge the desirability of establishing a Committee on Final Clauses.¹⁵² The Committee of the Whole in due course established a Sub-Committee on Organization and Administration, which was to deal with all institutional and organizational aspects of the envisaged Fund.¹⁵³ It also established a Working Group on Final Clauses and Transitional Arrangements. No general debate was held in the Plenary in the opening stages of the Conference. Instead a general exchange of views was held in the Committee of the Whole.¹⁵⁴ In the Plenary as well as in the Committee of the Whole most decisions were taken by votes, some of which were in the form of an indication vote; on the other hand, there were only two requests for a roll-call during the entire conference proceedings.¹⁵⁵ In the closing stages of the Conference, the draft convention was first subjected to a vote article by article.¹⁵⁶ Thereafter a further vote was held on the draft convention¹⁵⁷ as a whole.¹⁵⁸

11. *Convention on International Regulations for Preventing Collisions at Sea, 1972*

55. As in the case of the 1969 Conference,¹⁵⁹ the revision of the 1960 International Regulations for Preventing Collisions at Sea¹⁶⁰ had its origins in the *Torrey Canyon* disaster. In the wake of that incident, the Sub-Committee on Safety of Navigation agreed at its third session in July 1967 to consider the possible need for amending the 1960 Regulations.¹⁶¹ In March of the following year, the Maritime Safety Committee therefore requested the Sub-Committee "to initiate a substantive study of the Rules with a view to preparing the ground for an eventual revision". It furthermore agreed to deal itself with the question of the ways and means of establishing machinery for amending the existing Rules and updating them as necessary.

56. At the Committee's following session, the idea of a conference to be held in 1972 was first mentioned. The Committee decided to instruct the Sub-Committee to develop an amendment procedure for the Regulations, as part of the overall study it had been asked to undertake and in the light of whatever changes to the substance of the 1960 Rules might be found desirable. As a corollary to this, the Secretariat was requested to collate all previous decisions by the Maritime Safety Committee on questions relating to those Rules.¹⁶² At its subsequent session in February 1969, when discussing its work programme, the

Committee gave the revision of the 1960 Collision Regulations top priority and proposed that a conference on the subject be held in 1972.¹⁶³ The Committee also decided that the Conference should be convened independently from any revision of the 1960 Safety of Life at Sea Convention.¹⁶⁴ The sixth session of the Assembly, held later in the same year, endorsed the Maritime Safety Committee's views, requested it to pursue study of the matter and to advance preparatory work as far as possible and furthermore requested the Secretary-General to make the appropriate financial and administrative proposals.¹⁶⁵

57. In the meantime, the Sub-Committee on Navigation had drawn up, in preparation of the planned revision, "a list of suggestions and basic ideas which appear(ed) to merit tentative examination" and had subsequently "formulated tentative views on the substance of the revision".¹⁶⁶ On the basis of this the Secretariat, in a note to the Maritime Safety Committee, set out two possible alternatives for the form of the revised rules: they could either be embodied in a proper convention which might have a dilatory effect on their implementation, or they could follow the precedent set by the 1960 Conference on Safety of Life at Sea.¹⁶⁷ The Secretariat, moreover, drew attention to the question of amendment procedures.¹⁶⁸ At that stage, the Maritime Safety Committee decided to follow the 1960 precedent rather than to propose the adoption of a proper convention, and instructed the Sub-Committee to give high priority to the preparations for the proposed conference, authorizing it, in particular, to set up any necessary *ad hoc* groups.¹⁶⁹ At its ninth session, the Sub-Committee availed itself of this opportunity and established an *Ad Hoc* Group on Revision of the Collision Regulations.¹⁷⁰

58. A proposal by the United Kingdom that preparatory work for the Conference be divided between the Sub-Committee and the *Ad Hoc* Group was adopted by the Maritime Safety Committee at its twenty-second session. The former was made responsible for deciding the form of the new regulations and for drafting a procedure for bringing them into force and amending them thereafter, whereas the latter was asked to prepare the text of the draft rules.¹⁷¹ The Committee also decided to hold the Conference in 1972.¹⁷²

59. The *Ad Hoc* Group held five sessions in the course of which it elaborated a set of draft articles.¹⁷³ Governments' comments on the *Ad Hoc* Group's reports were passed through the Sub-Committee back to the Group for further consideration.

60. At its tenth session the Sub-Committee agreed on a time-table for the revision work and assessed the time needed for the Conference itself: the majority felt that a period of three weeks was necessary, rather than the two and a half weeks envisaged by the Maritime Safety Committee. It also decided that the procedures for bringing into force and for amending the regulations and annexes thereto should not be included in the regulations "but should constitute an appropriate part of the Final Act of the Conference".¹⁷⁴ In March 1971, the Maritime Safety Committee agreed with those views.¹⁷⁵ As far as the duration of the Conference was concerned, the Council decided, however, to limit it to two and a half weeks.¹⁷⁶

61. On the basis of various alternatives put forward by the Sub-Committee for reducing the period between adoption of the regulations and their entry into force,¹⁷⁷ the Maritime Safety Committee decided to propose to the Conference to follow the pattern set by the 1960 Regulations.¹⁷⁸

62. This decision not to adopt a full-fledged convention but to follow the precedent of the 1960 Conference was put in question at the twelfth session of the Sub-Committee in November 1971; at that stage the Secretariat submitted a document containing a draft preamble and three draft provisions on acceptance, on entry into force and on amendment, each entitled "Article".¹⁷⁹ These were approved by the Sub-Committee and submitted, with the other draft texts prepared either by the Sub-Committee or by the *Ad Hoc* Group, to the Maritime Safety Committee.¹⁸⁰

63. The Maritime Safety Committee, at its twenty-fifth session in March 1972, accepted this draft of the revised regulations "in principle as the basic document for consideration by the conference".¹⁸¹ It also agreed on the proposal submitted by the Secretariat in respect of the organization of the work of the Conference, which was to divide substantive work between two committees, thereby approximately following the division adopted in the preparatory stages between the Sub-Committee and the *Ad Hoc* Group.¹⁸²

64. The International Conference on Revision of the International Regulations for Preventing Collisions at Sea met from 4 to 20 October 1972. Fifty-one States and nine international organizations were represented. In addition to the basic text and written observations thereon by Governments and international organizations, the Conference had before it a note by the Secretariat containing draft provisions on amendment procedures. These were based on models prepared by the Legal Committee in the context of a general discussion of means of accelerating the entry into force of technical conventions deposited with IMCO.¹⁸³ In a further note the Secretariat made proposals as to the committee structure of the Conference in accordance with the decisions of the Maritime Safety Committee. In addition to the two substantive committees, a Drafting Committee was to review all texts prepared by the Committee and thereafter submit them directly to the Plenary.¹⁸⁴

65. The question of the form of the instrument to be adopted was taken up in the First Committee. After a discussion which reflected some divergence of views on this issue, a working group was established and requested to prepare a set of draft articles for a convention.¹⁸⁵ The trend of the discussions following submission of that Group's draft articles¹⁸⁶ indicates that there was at that stage a general understanding that the Conference was elaborating a legally binding convention.

66. Voting in the First Committee was often resorted to, occasionally in the form of a mere "show of hands". In neither of the Committees was there a request for a roll-call vote, in contrast to the Plenary, where a number of them were conducted.¹⁸⁷ No final vote on the Convention¹⁸⁸ as a whole was held.

12. *International Convention for Safe Containers, 1972*

67. The safety aspects of containers were considered within the Organization mainly from 1967 onwards, when the Maritime Safety Committee agreed that the use of cargo containers was a matter related to safety of life and property at sea and decided that studies thereon should be initiated within the Organization.¹⁸⁹

68. In the following year, the Secretariat, in a paper submitted to the Maritime Safety Committee, gave consideration to the form in which the

results of the Organization's work should be introduced and suggested that "*prima facie* . . . an international convention would be the suitable multilateral instrument through which governments could agree to implement their decisions".¹⁹⁰ At its sixth session the Assembly was informed by the Secretariat of the progress of work within IMCO and of developments outside, particularly in the United Nations Economic Commission for Europe, in respect of a revision of the 1956 Customs Convention on Containers.¹⁹¹ The Assembly thereupon adopted a resolution authorizing the Secretary-General to co-operate with other international organizations with a view to convening, possibly jointly, a container traffic conference.¹⁹²

69. On the basis of a request by the Maritime Safety Committee at its nineteenth session,¹⁹³ the Secretariat prepared a consolidated outline of a framework for a convention, including in particular draft resolutions for the construction, testing and certification of containers.¹⁹⁴ In its submission the Secretariat emphasized that it "had no intention of prejudging any of the issues which may be involved nor to influence in any way the decision of the Sub-Committee (on Containers and Cargoes) relative to the provisions which may or may not be included in the final drafts of the consolidated document".¹⁹⁵ The draft provisions were therefore to be regarded purely as a basic framework to facilitate the work of the Sub-Committee. The Secretariat also suggested a number of topics which could be dealt with in the articles of the convention. It did not, however, submit concrete draft texts, because of the possible participation of other international organizations in any conference on the subject matter. A first complete draft convention was elaborated by the Sub-Committee on Containers and Cargoes and approved by the Maritime Safety Committee in March 1971.¹⁹⁶

70. In the meantime, the United Nations Economic and Social Council had decided that a conference on international container traffic should be convened jointly by IMCO and the United Nations,¹⁹⁷ which would deal not only with the safety of containers but also with the combined transport of goods and with a revision of the 1956 Customs Convention on Containers. On the basis of this decision and decisions of the Council, co-operation at the Secretariat level was intensified in preparation of a joint conference.¹⁹⁸ The Assembly, in turn, endorsed the convening of a joint UN/IMCO Conference on container traffic in 1972.¹⁹⁹

71. Three joint IMCO/ECE meetings were held to study the draft convention in 1971 and 1972. At its third meeting, the group elaborated a final draft convention,²⁰⁰ which was discussed and endorsed in general for circulation to and consideration by the container Conference by the Maritime Safety Committee in spring 1972.²⁰¹ In addition, an intergovernmental preparatory group also met in early 1972 to prepare a provisional agenda for the Conference for submission to the Economic and Social Council, in the light of Governments' views with regard to conference priorities.²⁰² The Group also made a number of suggestions in respect of the Committee structure of the Conference.²⁰³ The Economic and Social Council considered the Group's report in summer 1972 and agreed on a provisional agenda for the Conference, decided not to include the draft convention on the International Combined Transport of Goods (TCM) in this agenda²⁰⁴ and agreed that the Conference should be of three weeks' duration.²⁰⁵ The Council, at its twenty-ninth session, agreed

with the Secretariat's proposal that the Conference be invited to assign to IMCO the depository and administrative functions under the convention dealing with the safety of containers.²⁰⁶

72. The Conference, convened jointly by the United Nations and IMCO, was held in Geneva from 13 November to 2 December 1972.²⁰⁷

13. *International Convention for the Prevention of Pollution of the Sea from Ships, 1973*

73. On the basis of an Icelandic draft amended by Sweden,²⁰⁸ the Assembly adopted in 1969 a resolution deciding, *inter alia*, to convene in 1973 an international conference on marine pollution "for the purpose of preparing a suitable international agreement".²⁰⁹ In spring 1971, the Secretariat submitted to the Council and the Sub-Committee on Marine Pollution a tentative list of possible instruments which could conceivably be concluded by the Conference.²¹⁰ The Council, meeting a few months later, agreed on a detailed list of items to be included in the conference agenda, with a view to preparing a new or revised pollution convention.²¹¹

74. On the basis of the Council's decision, the Secretariat prepared a complete preliminary draft of a convention for the prevention of pollution of the sea from ships and submitted it to the Maritime Safety Committee and to four of its Sub-Committees.²¹² The Maritime Safety Committee was also presented with nine outlines of studies for the preparation of the 1973 Conference. Each study was to deal with one particular aspect and was to be handled by one lead country, assisted by one or more countries or organizations.²¹³

75. At its seventh session, the Assembly requested the Council and the Maritime Safety Committee to proceed as a matter of urgency with all necessary preparations for the Conference.²¹⁴

76. The Maritime Safety Committee, at its twenty-fifth session, was informed on progress of work on the draft convention and authorized the Sub-Committee on Marine Pollution to set up an *ad hoc* group for intersessional preparatory work for the Conference.²¹⁵ The *Ad Hoc* Group, established by the Sub-Committee at its thirtieth session,²¹⁶ had before it at its first meeting a revised second draft of the convention, compiled by the Secretariat on the basis of material prepared by the relevant sub-committees.²¹⁷ On the basis of decisions taken by the *Ad Hoc* Group and other bodies, including the Sub-Committee on the Carriage of Dangerous Goods, the Legal Committee and the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP), the Secretariat prepared a third draft and submitted it to the Maritime Safety Committee for information.²¹⁸ A fourth draft was elaborated by a Joint Meeting of the Sub-Committees on Marine Pollution and on Ship Design and Equipment in late 1972.²¹⁹ At that stage, the Meeting endeavoured to reach firm and, as far as possible, unanimous decisions on the format of the convention and on other substantial questions. This draft was submitted to the Maritime Safety Committee at its twenty-seventh session together with a report of the Preparatory Meeting for the International Conference on Marine Pollution.²²⁰

77. That Preparatory Meeting, held in early 1973, had prepared updated versions of the summaries of the nine studies originally submitted to the Sub-

Committee on Marine Pollution at its thirteenth session and a final draft text for the convention. In preparing this final draft, the Meeting had agreed that the document to be submitted to the Conference should, as far as possible, be complete in itself and reflect in the text the view of the majority and indicate in footnotes the principal points of difference.²²¹ In the course of discussions at that Meeting, an alternative approach was suggested which would have consisted in amending the 1954 Oil Pollution Convention in respect of oil and adopting a new convention in respect of other noxious substances. It was recognized that this approach would necessitate the convening of an additional conference of Contracting Governments to the 1954 Convention, in accordance with Article XVI of that Convention.²²² The Meeting decided against submitting this alternative to the Conference, but recognized that a proposal to this effect might be made at the Conference.²²³ Finally, the Meeting had also set out a proposed committee structure for the Conference.

78. The Maritime Safety Committee took note of the contents of these reports, approved a conference agenda, adopted a committee structure and, after making some amendments, approved the draft convention for circulation to the Conference.²²⁴

79. At its final session before the Conference, the Council was informed of the preparations for the Conference. The Secretary-General proposed that a new cost-saving practice envisaged for the Organization's biennium 1974/75 in respect of summary records be already applied to the 1973 Conference: this practice would consist of making summary records available only in respect of plenary meetings; records of committee meetings would be made in the form of reports and tape recordings.²²⁵ After some discussion, the Council agreed with the Secretary-General's proposal, but decided that after the Conference the committee proceedings should be transcribed *in extenso* from tape recordings.

80. The Conference was held from 8 October to 2 November 1973. Seventy-eight States and 20 international organizations were represented. The Conference had before it not only the draft convention, but also a draft protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil. On the basis of proposals put forward by the Secretariat the Conference agreed to establish four substantive committees: three of these were to deal with the convention, the fourth with the draft protocol. The Drafting Committee was to receive texts from all four committees and after consideration submit its proposals directly to the Plenary.²²⁶ One meeting of the Plenary was devoted to general statements; thereafter, the Committees started their work.²²⁷ In the Plenary, formal votes were taken very frequently and roll-call votes were requested on a number of occasions.

14. *International Convention for the Safety of Life at Sea, 1974*

81. A comprehensive revision of the 1960 Safety of Life at Sea Convention,²²⁸ possibly including an amalgamation with the 1966 Load Lines Convention at a conference to be held in 1976, was considered for some time by the relevant bodies of the Organization.²²⁹ In October 1972, however, the United Kingdom proposed to the Maritime Safety Committee that a conference of a "purely formal type" might be held to incorporate all amendments to the 1960

Convention adopted since 1960, none of which had entered into force, and with the addition of only one new amendment on accelerated amendment procedures.²³⁰ An *ad hoc* group established by the Maritime Safety Committee to consider the matter submitted an outline of various possible options, but the Committee did not take a decision at that session.²³¹ The United Kingdom proposal was further amplified in a paper submitted to the Committee's following session,²³² at which the Committee agreed on a limited revision of the 1960 Convention and requested the Secretariat to provide it with a draft programme of preparatory work.²³³

82. The Secretariat suggested the creation of an *ad hoc* working group to prepare a draft text for the Conference.²³⁴ The Committee agreed to this but requested the Secretariat to prepare a first draft for the convention as a basis for the Group's work.²³⁵ On the basis of draft articles and an outline for the draft regulations prepared by the Secretariat,²³⁶ the *Ad Hoc* Working Group elaborated in the course of two sessions held in autumn 1973 and in spring 1974 a document outlining all proposed changes to the 1960 text.²³⁷ It also approved the Secretariat's proposals for the committee structure of the Conference.²³⁸ These in turn were approved by the Maritime Safety Committee and the Council.²³⁹

83. In the meantime, the Assembly had adopted a resolution on the convening in 1974 of a conference with the principal objective of replacing the existing convention by a new one, substantially in conformity with the technical provisions of the 1960 Convention, but incorporating accelerated amendment procedures and all amendments to the 1960 Convention already adopted.²⁴⁰

84. The Conference was held from 21 October to 1 November 1974. Sixty-eight States and 12 international organizations were represented. It adopted the proposed organization of work and committee structure (two substantive committees and a Drafting Committee). The Drafting Committee was to receive texts prepared by the two substantive committees and submit its proposals directly to the Plenary. No summary records were made of the committee meetings. No roll-call vote was held in the Plenary.

15. *Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974*

85. The Organization's involvement in the elaboration of a convention relating to the carriage of passengers and their luggage goes back to a decision taken by the Council in 1969 asking the Secretary-General to explore with the *Comité maritime international* the possibility of establishing a programme of legal work to be undertaken by the two Organizations.²⁴¹ As a result of these consultations the Secretary-General presented a number of subjects suitable for development in co-operation with the *Comité maritime international*, including the liability for passengers and their luggage.²⁴² The Council agreed that that subject was appropriate for study and, at the suggestion of the Secretariat, the Legal Committee included the subject in its work programme for the biennium 1972/73.²⁴³ In doing so, the Committee noted that a draft convention on the subject had already been prepared by the *Comité maritime international*, but concluded that it would have to review this draft before it was submitted to a

diplomatic conference. The Assembly, at its seventh session, confirmed the need to deal with this subject matter and included in the long-term work programme of the Organization a conference to adopt a convention on liability for passengers and baggage carried on board ships, to be held in 1974.²⁴⁴

86. The Legal Committee therefore considered the matter at its thirteenth session in June 1972 and agreed to base its work on the draft convention prepared by the *Comité maritime international*. This draft convention had been designed to replace and harmonize the two existing Brussels Conventions of 1961 and 1967 dealing respectively with passengers and with their luggage.²⁴⁵ The Committee drew up a short inventory of questions and observations for circulation to Governments, with a request for their comments, so as to assist the Committee's further deliberations on the subject.²⁴⁶

87. The replies were made available to the Committee's eighteenth session in May 1973. At that session the Committee, examining the *Comité maritime international* draft article by article, and taking into account the comments made by Governments, prepared a number of draft articles.²⁴⁷ The subsequent session of the Committee, held in September of the same year, was again devoted to this subject,²⁴⁸ and at its twenty-second session, held in May 1974, the Committee concluded its work and approved the text of a draft convention to be submitted to a conference.²⁴⁹

88. The convening of the Conference was authorized by the Council at its thirty-second session.²⁵⁰ It requested the Secretary-General and the Legal Committee to make proposals to the Conference concerning the organization of its work. The Secretary-General therefore proposed that there be, in addition to the plenary, a substantive committee on final clauses.²⁵¹ This proposal was duly approved by the Legal Committee and later by the Conference.²⁵² This meant in effect that the draft convention was to be examined exclusively in plenary with the exception of the final clauses, which, in a first reading, were to be examined in a committee.

89. The Conference was convened at Athens at the invitation of the Greek Government and held from 2 to 13 December 1974. Thirty-five States and six international organizations were represented. The Conference took as its basic document the draft convention elaborated by the Legal Committee.²⁵³ After a short general debate the Conference immediately started in plenary with a detailed consideration of the draft before it. After a first reading the Drafting Committee was asked to prepare a revised draft for adoption by the plenary in a second reading. While during the first reading each draft article was adopted by a formal vote, voting in the second reading was limited to contentious issues. The draft convention was put to the vote as a whole.²⁵⁴

16. *Convention on the International Maritime Satellite Organization (INMARSAT) and Operating Agreement, 1976*

90. A Special Joint Meeting of CCIR²⁵⁵ Study Groups held in March 1971 ahead of the 1971 International Telecommunication Union World Administration Conference for Space Telecommunications concluded that there existed a need to use satellite communication techniques for the improvement of safety of life and property at sea.²⁵⁶ As a consequence, the Maritime Safety Committee decided that the Organization should play an

active role in full co-operation with the ITU in the early organization and introduction of such a system.²⁵⁷ At the suggestion of the Secretariat the Committee decided at its subsequent session in September 1971 that the Organization should prepare an organizational plan for an international maritime system, with the ultimate aim of developing a formal agreement for the establishment of such a system.²⁵⁸ Accordingly, the Maritime Safety Committee instructed its Sub-Committee on Radiocommunications to examine the subject and the Secretariat to prepare a preliminary document.²⁵⁹ In the course of the Committee's discussions it was suggested that a panel of experts be established, and at its following session the Committee established, on the basis of a recommendation by the Sub-Committee, a panel of 18 experts, 13 of whom were nominated by Governments and five by international organizations. The Panel was given initial terms of reference and asked to prepare a report for a conference to be held in 1974.

91. The Panel held five regular sessions in the period 1972 to 1974. At an extraordinary session of the Panel, held after the Panel's first regular session, the United Kingdom submitted a paper on possible institutional arrangements for an international maritime satellite service, and the USSR a document containing "provisional principles" for establishing an international organization.²⁶⁰ The Panel took the latter paper as a basis for its discussions and invited Governments to submit written comments thereon as well as to reply to a questionnaire prepared by the Panel.²⁶¹ A revised version of the USSR document and the Governments' replies to the questionnaire formed the basis for the Panel's deliberations at its second session, which resulted in the preparation of a first set of articles.²⁶²

92. In the meantime the Maritime Safety Committee had decided to recommend that a conference be convened in early 1975 for a period of two and a half weeks. Also, the possible need for two conferences, first envisaged at the first session of the Panel, was again referred to at that session as well as at the subsequent session.²⁶³ On the basis of drafts prepared by the Maritime Safety Committee, the Assembly adopted in 1973 a resolution convening the Conference in early 1975, and requesting the Maritime Safety Committee to prepare a draft agenda for the Conference.²⁶⁴

93. In 1974, at its thirtieth and thirty-first sessions, the Maritime Safety Committee approved a draft provisional agenda and the final report to the Conference prepared by the Panel of Experts containing a draft convention. Notwithstanding this approval by the Maritime Safety Committee, the report did not in fact command unanimous support: the United States, noting, *inter alia*, that there were inadequacies and inconsistencies in the proposed draft convention, reserved its position with regard to the entire report.²⁶⁵ The organizational aspects of the Conference were finalized by the Council at its thirty-second session in May 1974 with a decision to hold the Conference from 23 April to 9 May 1975.²⁶⁶

94. As a follow-up to the reservation to the Report of the Panel of Experts, the United States submitted shortly before the opening of the Conference two documents in which it proposed that the Conference adopt, in place of the draft convention elaborated by the Panel of Experts, two conventions: an "Intergovernmental Agreement" and an "Operating Agreement". This proposal was supported by concrete texts for a number of articles to be inserted in

these agreements.²⁶⁷ These proposals reflected a fundamental divergence of views as to the approach to be taken and the method for dealing with the subject matter.

95. In light of the circumstances the Secretary-General proposed a committee structure which deviated considerably from the practice followed by other conferences dealing with "technical" matters. In essence, the proposal was to keep the plenary in session throughout the Conference to consider all institutional, legal and administrative matters.²⁶⁸ The Conference adopted this proposal and decided to postpone the establishment of any substantive committees until such time as they became necessary.²⁶⁹ The Conference was not able to conclude its work in the time allotted to it. It did, however, agree on a number of fundamental principles to be incorporated in the convention and decided to hold a second session of the Conference. In the meantime, an intersessional working group was to advance work and prepare that second session.²⁷⁰

96. In the course of three sessions the Intersessional Working Group elaborated a draft convention and draft operating agreement for the new Organization. These were submitted to the second session of the Conference, which was convened from 9 to 27 February 1976, with the approval of the Council.²⁷¹

97. The Conference decided to adopt for its second session the drafts prepared by the Intersessional Working Group as its basic working documents.²⁷² Two committees, established in the course of the first session, were reconvened and each of them was instructed to consider one draft instrument. The concept of an "Editorial Committee", envisaged at the first session,²⁷³ was abandoned. At the suggestion of the President and the Secretariat, the Conference instead established a Drafting Committee to consider the drafts prepared by the two substantive committees and to submit them thereafter directly to the plenary for final approval.²⁷⁴

98. At that session, the Conference was again not able to conclude its work. However, both committees succeeded in agreeing on most draft provisions to be included in the convention and the operating agreement and these were duly adopted in final form by the plenary at the close of the second session.²⁷⁵ Since agreement remained outstanding on only three articles, the Conference resolved to convene for a very short session of three days from 1 to 3 September 1976.²⁷⁶ It was felt that agreement on the three issues could best be reached by informal negotiations among the Governments concerned in the intervening period; no formal intersessional arrangements were therefore made.

99. The Council approved the convening of a third session of the Conference²⁷⁷ and, within the time allotted to it, the Conference succeeded in solving the three issues before it, thus concluding its work.²⁷⁸

17. *Convention on Limitation of Liability for Maritime Claims, 1976*

100. In April 1971, the Legal Committee recommended that the Committee's work programme should include consideration of a revision of the 1957 Brussels Convention on the Limitation of Liability of Owners of Sea-Going Vessels.²⁷⁹ In accordance with this recommendation, the Assembly adopted a resolution envisaging the holding of a conference on the subject in

1976.²⁸⁰ Thereupon the Legal Committee decided to evolve "a general plan of approach to this matter before beginning substantive work in the Committee or in a Working Group".²⁸¹ After further reflection, it concluded that the best plan of approach would be to acquire and consolidate opinions of Governments on the possible revision of the 1957 Brussels Convention by means of a questionnaire which it had prepared during its thirteenth session.²⁸² The replies to this questionnaire were made available to the Legal Committee at its nineteenth session held in June 1973. It was also informed that the *Comité maritime international* was examining the general principles underlying the subject matter and that it had set up a group to prepare a first draft. The Committee agreed to consultations with the *Comité maritime international* and held a first exchange of views on the subject, thus providing that Organization with some guidance for its preparatory work.²⁸³

101. One year later, the *Comité maritime international* presented two alternative drafts, one a set of draft articles for a new convention to replace the 1957 Brussels Convention, the other a draft protocol containing drafts of amended or new provisions to be incorporated into the existing convention.²⁸⁴ The two alternatives were accompanied by a detailed introductory report explaining the draft provisions.²⁸⁵ The Committee agreed to base its discussions on the *Comité maritime international* drafts, in particular on the first of them, and in the course of four sessions adopted a set of recommended draft articles for a convention on the limitation of liability for maritime claims, together with comments and alternative drafts.²⁸⁶

102. At the last of these sessions, held at the end of 1975, the Committee also recommended that a conference of three weeks' duration be held. The Committee was informed of the preparations for the Conference undertaken by the Secretariat, in particular on the proposed committee structure. This question was affected by the availability of summary records. A number of delegations considered it important that the Conference be given the opportunity "to hold a first reading of the draft articles of the convention in a Committee of the Whole rather than in plenary". However, the Committee, under the impression that summary records would be made only of discussions held in plenary, agreed that substantive consideration of the draft articles be undertaken in the plenary. It also suggested that "a first reading of the draft articles be held under the simpler procedural provisions normally applicable to committee proceedings", if necessary by the amendment of the Rules of Procedure in order to allow for such a procedure. This would have meant replacing the usual requirement of a two-thirds majority for adoption of any proposal by the requirement of an absolute majority.²⁸⁷ In light of this, the Council, a few weeks before the opening of the Conference, agreed to make provision for summary records not just for plenary meetings, but for the entire duration of the Conference, on the understanding that the summary records would be provided for only one meeting at any particular time.²⁸⁸

103. The Conference met from 1 to 19 November 1976. Fifty States and 16 international organizations were represented. The basic proposals before the Conference were the set of draft articles and a set of draft final clauses.²⁸⁹ In light of the Council's decision, the Secretariat put two alternative proposals to the Conference on the organization of its work: it could either consider the draft articles in plenary sessions and for the first session either suspend the

Rules of Procedure or specifically provide for this in the Rules; alternatively, the Conference could set up a Committee of the Whole in which substantive discussions of the draft articles would be held and which would then report the results of its discussion to the plenary for final adoption. On the recommendation of the meeting of the Heads of Delegations, the Conference adopted the second alternative.²⁹⁰

104. The plenary also decided that even the general debate should take place in the Committee of the Whole rather than in plenary.²⁹¹ The plenary was therefore able to consider and adopt in the course of two meetings the whole of the convention.²⁹² Texts prepared by the Committee of the Whole and by the Committee on Final Clauses were sent to the Drafting Committee, from where the draft articles went back to the Committee of the Whole for verification,²⁹³ whereas the draft final clauses were submitted directly to the plenary.

105. Where a vote was necessary in the Committee of the Whole it was usually carried out by "indicative votes", and occasionally by a "show of hands".²⁹⁴ No roll-call vote was conducted. The plenary, when voting, resorted twice to a roll-call vote. In a final vote, the convention as a whole was adopted by 34 votes in favour, none against and 6 abstentions.²⁹⁵

NOTES

¹ The Inter-Governmental Maritime Consultative Organization (IMCO) became the International Maritime Organization (IMO) on 22 May 1982.

² United Nations, *Treaty Series*, vol. 289, p. 48.

³ *Ibid.*, Article 3 (b).

⁴ A different situation occurs in those cases where the Secretary-General, as depositary of a convention, is invited to convene, in accordance with the terms of that convention, a conference to amend the convention. In those cases the conference will usually be composed of Parties to the convention, which, again, may or may not be members of the Organization (for example, see para. 11).

⁵ *Ibid.*, vol. 164, p. 113. This convention was adopted by a conference held upon the invitation of the United Kingdom. The IMCO Convention having been adopted a few weeks earlier, the Safety of Life at Sea Conference decided to entrust the Organization with a number of depositary functions. For the period until IMCO was established it was the Government which had hosted the Conference that was asked to carry out on an interim basis the duties assigned to IMCO (article XV).

⁶ *Ibid.*, vol. 327, p. 3. This convention was also adopted by a conference convened by the United Kingdom. Here, however, the depositary functions were assigned to a "Bureau", whose duties were to be carried out by the host Government until the Organization came into being (article XXI).

⁷ Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (IMCO Publication No. 76.14.E).

⁸ And to review the 1948 Regulations for Preventing Collisions at Sea.

⁹ Article XV of the 1948 Convention; IMCO/MSC II/7.

¹⁰ Resolution A.2(I).

¹¹ IMCO/SAFCON/Circular No. 1.

¹² IMCO/MSC II/7.

¹³ IMCO/SAFCON/1 to 7.

¹⁴ IMCO/SAFCON/15.

¹⁵ IMCO/SAFCON/17.

¹⁶ IMCO/SAFCON/11 and 12.

- ¹⁷ See e.g. IMCO/SAFCON/Plenary/SR.3.
¹⁸ United Nations, *Treaty Series*, vol. 536, p. 27.
¹⁹ IMCO/SAFCON/Plenary/SR.7.
²⁰ Resolution A.8(I).
²¹ First resolution of the Conference, reproduced in IMCO/MSC II/11, Annex A.
²² IMCO/MSC II/SR.4.
²³ IMCO/MSC III/3, para. 19.
²⁴ IMCO/MSC III/SR.1.
²⁵ OP/CONF/I and 2.
²⁶ MISC V/SR.1.
²⁷ OP/CONF/4 and 9; OP/CONF/SR.1.
²⁸ OP/CONF/C.1/SR.3.
²⁹ OP/CONF/SR.3.
³⁰ OP/CONF/3 and Addenda.
³¹ OP/CONF/SR.4 and 5.
³² 4 and 11 April 1962.
³³ United Nations, *Treaty Series*, vol. 600, p. 332.
³⁴ ECOSOC resolution 724(XXVII).
³⁵ IMCO/COUNCIL II/SR.4; IMCO/COUNCIL III/8; IMCO/COUNCIL IV/15.
³⁶ Resolution A.29(II).
³⁷ COUNCIL VI/18 and 25.
³⁸ COUNCIL VIII/11.
³⁹ COUNCIL VII/SR.5.
⁴⁰ Resolution A.63(III); see also Council resolution C.4(XI).
⁴¹ FAL/CONF/4/Rev.1.
⁴² FAL/CONF/18 and 22.
⁴³ FAL/CONF/SR.1, 3 and 4.
⁴⁴ FAL/CONF/SR.5.
⁴⁵ United Nations, *Treaty Series*, vol. 591, p. 265.
⁴⁶ IMCO/COUNCIL IV/34.
⁴⁷ United Nations, *Treaty Series*, vol. 135, p. 301.
⁴⁸ IMCO/COUNCIL IV/SR.8.
⁴⁹ C.2(VI) and COUNCIL VI/SR.4/Rev.1.
⁵⁰ See also MSC VI/SR.4; A III/C.2/SR.3 and A III/SR.7.
⁵¹ MSC VI/15/Rev.1.
⁵² MSC VI/SR.4; see also COUNCIL VIII/8, paras. 37 to 43.
⁵³ A III/SR.7.
⁵⁴ Resolution A.53(III); A III/C.2/SR.3; A III/SR.7.
⁵⁵ See MSC VIII/5 and MSC VIII/SR.1.
⁵⁶ MSC X/5.
⁵⁷ MSC X/SR.5.
⁵⁸ A IV/6; A IV/11/Rev.1; A IV/SR.2.
⁵⁹ MSC XII/SR.1.
⁶⁰ LL/CONF/4; LL/CONF/SR.1.
⁶¹ LL/CONF/1 and 2 and Addenda.
⁶² LL/CONF/SR.4.
⁶³ LL/CONF/C.1/SR.11.
⁶⁴ United Nations, *Treaty Series*, vol. 640, p. 133.
⁶⁵ IMCO/AI/11/Corr.1.
⁶⁶ Resolution A.4(I).
⁶⁷ ECOSOC resolution 687(XXVI).
⁶⁸ Studies on the unification of tonnage measurement systems had been initiated by the League of Nations back in 1925, and by 1939 a draft convention had been finalized.
⁶⁹ IMCO/A.I/12/Rev.1, Annex A; resolution A.18(I).
⁷⁰ TM V/5; MSC X/6.

- 71 MSC X/36; MSC VII/SR.1 and 2.
72 Resolution A.87(IV); resolution A.134(V).
73 MSC XVII/SR.1; see also MSC XIX/19.
74 TM/CONF/11.
75 TM/CONF/SR.1 to 5.
76 TM/CONF/SR.5; TM/CONF/WP.3.
77 TM/CONF/C.2/SR/1 to 5; TM/CONF/C.2/4.
78 TM/CONF/SR.6 and 7.
79 E.g. TM/CONF/C.2/SR.8, 12, 15 and 19.
80 TM/CONF/SR.7 and 11.
81 IMCO Publication No. 70.01 B.
82 The result of the vote was 37 in favour, none against and 3 abstentions.
83 C/ES.III/5.
84 LEG I/5.
85 LEG II/4.
86 LEG/WG(I)III/3.
87 LEG IV/6.
88 LEG/WG(II)II/2 and LEG/WG(II)III/3.
89 LEG VI/6.
90 C XX/5; C XXI/6.
91 C XXI/SR.1.
92 Resolution ES.IV(171).
93 C XXII/5 and C XXII/SR.3.
94 A VI/16; A VI/WP.6; A VI/SR.8.
95 Rules of Procedure, Rule 26, LEG/CONF/2.
96 LEG/CONF/7 and LEG/CONF/SR.2.
97 LEG/CONF/SR.4.
98 Cf. LEG/CONF/C.1/WP.18 and 20, and LEG/CONF/C.2/2.
99 Cf. LEG/CONF/C.4/1 and Addenda.
100 LEG/CONF/SR.2.
101 LEG/CONF/C.1/SR.1 to 3; LEG/CONF/C.2/SR.1 to 14.
102 LEG/CONF/C.2/SR.6 and 8.
103 IMCO Publications No. 77.15.E and 77.16.E.
104 The Intervention Convention was adopted by 38 votes to none, with 7 abstentions, the Civil Liability Convention by 34 votes to 1, with 10 abstentions (LEG/CONF/SR.5).
105 Chapter II, Regulation 1 (e) and Chapter III, Regulation 3.
106 N. Singh, *International Conventions on Merchant Shipping*, London, 1973, p. 113f.
107 COUNCIL XIII/17 and Add.1; resolution C.27(XIV).
108 Resolution A.144(V).
109 MSC XVIII/22.
110 SMR I/3.
111 SMR II/4.
112 A VI/8/Add.1; A VI/C.2/2; A VI/SR.8.
113 MSC XXI/23; MSC XXI/SR.5.
114 C XXV/8; C XXV/D.
115 SMR/CONF/4.
116 SMR/CONF/SR.1.
117 SMR/CONF/SR.7.
118 IMCO Publication No. 72.04 B.
119 SMR/CONF/SR.8.
120 LEG IV/5.
121 LEG VI/6.
122 LEG VIII/5.

¹²³ LEG VIII/WP.4.

¹²⁴ LEG VIII/WP.5/Rev.I.

¹²⁵ LEG X/7.

¹²⁶ C XXVI/D.

¹²⁷ A VII/15, A VII/C.I/2 and A VII/SR.6.

¹²⁸ Rule 26 of the Rules of Procedure, LEG/CONF.3/2.

¹²⁹ IMCO Publication No. 72.11.B.

¹³⁰ LEG/CONF.3/SR.3. There were 22 votes in favour, none against and 7 abstentions.

¹³¹ IMCO Publication 1970.3, p. 47. See also the *Official Records of the Conference*, IMCO Publication 1973.7, p. 185 (English only).

¹³² See Resolution on Report of the Working Group on the "Fund", IMCO Publication 1970.3, p. 48, and documents LEG/CONF/C.2/WP.45 of 25 November 1969, and LEG XII/3 of 3 December 1969, paras. 4 and 5.

¹³³ LEG XII/3.

¹³⁴ LEG XII/11, para. 6.

¹³⁵ C XXIX/5 and C XXIV/SR.2.

¹³⁶ LEG/WG(FUND)I/3 and Addenda.

¹³⁷ LEG/WG(FUND)I/3/1.

¹³⁸ LEG/WG(FUND)II/2/Rev.I, Annex and LEG/WG(FUND)II/4, Annex I.

¹³⁹ LEG/WG(FUND)II/2/1(a).

¹⁴⁰ LEG IX/7.

¹⁴¹ LEG/WG(FUND)III/2/Add.1.

¹⁴² LEG/WG(FUND)III/2/Add.3.

¹⁴³ LEG/WG(FUND)III/4.

¹⁴⁴ LEG/WG(FUND)V/3.

¹⁴⁵ LEG X/2(a).

¹⁴⁶ LEG X/7.

¹⁴⁷ C XXV/SR.3.

¹⁴⁸ C XXVI/SR.2.

¹⁴⁹ A VII/30.

¹⁵⁰ See Assembly, 7th session, *Resolutions and Other Decisions*, IMCO Publication, 1972.5, p. 187.

¹⁵¹ For a discussion of the Conference proceedings, see Reinhard Ganten, *Das internationale Uebereinkommen zur Errichtung eines Fonds zur Entschädigung für Oelverschmutzungsschäden*, Schriften des Deutschen Vereins für Internationales Seerecht, Reihe B, Heft 11, Hamburg, 1973.

¹⁵² LEG/CONF.2/SR.2.

¹⁵³ Cf. LEG/CONF.2/C.1/SR.10.

¹⁵⁴ LEG/CONF.2/C.1/SR.1 and 2.

¹⁵⁵ LEG/CONF.2/C.2/SR.17 and 24.

¹⁵⁶ LEG/CONF.2/SR.4 and 5.

¹⁵⁷ IMCO Publication No. 72.10.B.

¹⁵⁸ There were 36 votes in favour, none against and 5 abstentions (LEG/CONF.2/SR.5).

¹⁵⁹ See Section 7 above.

¹⁶⁰ IMCO Publication No. 70.06(E), p. 404ff.

¹⁶¹ NAV III/4, para. 22; see also NAV IV/14, para. 15f.

¹⁶² MSC XVII/22, para. 72; MSC VII/SR.6, p. 18f.

¹⁶³ MSC XVIII/24, para. 41; MSC XVIII/SR.3.

¹⁶⁴ MSC XIX/30, paras. 97 and 99; MSC XIX/SR.8, p. 16ff.

¹⁶⁵ Resolution A.192(VI).

¹⁶⁶ NAV VII/10.

¹⁶⁷ NAV VIII/8.

¹⁶⁸ That Conference had prepared and approved a set of Regulations but had decided not to annex them to the 1960 Safety of Life at Sea Convention. It had instead invited the Organization, once “substantial unanimity” had been reached as to acceptance of the 1960 Regulations, to fix a date on and after which they were to be applied by the Government which had agreed to accept them (Final Act of the International Conference on Safety of Life at Sea, 1960, IMCO Publication No. 70.06.B). See also MSC XI/6/1.

¹⁶⁹ MSC XXI/SR.3 and 4.

¹⁷⁰ NAV IX/9.

¹⁷¹ MSC XXII/19 (b)/1; MSC XXII/SR.8.

¹⁷² MSC XXII/SR.8.

¹⁷³ See COLREG I/6, II/5 and IV/8.

¹⁷⁴ NAV X/8.

¹⁷⁵ MSC XXXIII/19.

¹⁷⁶ C XXVI/SR.6.

¹⁷⁷ NAV XI/9.

¹⁷⁸ MSC XXIV/19.

¹⁷⁹ NAV XII/4.

¹⁸⁰ NAV XII/11; MSC XXV/3(b)1.

¹⁸¹ MSC XXV/17.

¹⁸² MSC XXV/3(b); MSC XXV/17.

¹⁸³ CR/CONF.3/Add.3.

¹⁸⁴ CR/CONF.4.

¹⁸⁵ CR/CONF/C.1/SR.1.

¹⁸⁶ CR/CONF/C.1/WP.5; cf. also CR/CONF/C.1/WP.7/Rev.1.

¹⁸⁷ CR/CONF/SR.5 and 8.

¹⁸⁸ IMCO Publication No. 73.01.B.

¹⁸⁹ MSC XV/SR.7; MSC XVII/22, para. 112.

¹⁹⁰ MSC XVIII/12, para. 17.

¹⁹¹ United Nations, *Treaty Series*, vol. 338, p. 103.

¹⁹² Resolution A.193(VI).

¹⁹³ MSC XIX/30, para. 50.

¹⁹⁴ BC IX/8.

¹⁹⁵ BC IX/8, para. 6.

¹⁹⁶ MSC XXII/5; MSC XXIII/19, para. 19.

¹⁹⁷ Later formalized in E/RES/1568(L).

¹⁹⁸ See MSC XXII/7(b).

¹⁹⁹ Resolution A.245(VII).

²⁰⁰ MSC XXV/4(b) = CSC/22 = W/TRANS/WP.24/225.

²⁰¹ MSC XXV/SR.2; E/CONF.59/23.

²⁰² C XXVIII/12(c).

²⁰³ MSC XXV/4(b)/Add.1 = E/5096; see also C XXVIII/12(c) and Add.1.

²⁰⁴ This had already been envisaged by the Assembly; see resolution A.245(VII).

²⁰⁵ E/1725(LIII).

²⁰⁶ C XXIX/SR.3.

²⁰⁷ For details of the Conference proceedings, see the contribution by the United Nations Secretariat.

²⁰⁸ A.VI/8/1; A.VI/WP.1.

²⁰⁹ Resolution A.176(VI).

²¹⁰ C XXVI/4/Add.1. The Sub-Committee, in drawing up the list, felt it was premature for it to make any recommendations as to the priorities to be given to the subjects because of ongoing preparatory work for the 1972 Stockholm Conference and the 1973 Law of the Sea Conference, OP IX/12, para. 32.

²¹¹ C XXVI/D.

²¹² MSC XXIV/3/1/Add.1.

- 213 MSC XXIV/3/Add.I; MSC XXV/5(a).
 214 Resolution A.241(VII).
 215 MSC XXV/SR.3.
 216 MP XIII/8.
 217 MP(WG)/5.
 218 MSC XXVI/7(c)/Add.1.
 219 MP XIV/8.
 220 MSC XXVII/5 and XXVII/5/1.
 221 PCMP/8 and PCMP/8/3.
 222 PCMP/8; cf. above, p. 7, for the situation at the 1962 Oil Pollution Conference.
 223 In the event, this possibility did not materialize.
 224 MSC XXVII/17, paras. 20ff.
 225 C XXX/11.
 226 MP/CONF/3; MP/CONF/SR.3.
 227 MP/CONF/SR.2.
 228 See Section 2 above.
 229 See e.g. MSC XXVI/5.
 230 MSC XXVI/SR.1.
 231 MSC XXVI/WP.2; MSC XXVI/19, para. 83.
 232 MSC XXVI/2/2.
 233 MSC XXVII/SR.1 and 2.
 234 MSC XXVII/WP.3.
 235 MSC XXVII/17, para. 111.
 236 SOLAS I/3(a) and (b) and Addenda.
 237 SOLAS II/6.
 238 SOLAS II/4.
 239 MSC XXX/17, para. 103; C XXXII/8(a) and XXXII/D.
 240 Resolution A.304(VIII).
 241 C XXIII/SR.1.
 242 C XXIV/5/Add.1.
 243 LEG X/5(b); LEG X/7.
 244 Resolution A.248(VII).
 245 International Conventions on Maritime Law, CMI Publication, pp. 79ff and 97ff.
 246 LEG XIII/7.
 247 LEG XVIII/5.
 248 LEG XX/6.
 249 LEG XXII/5.
 250 C XXXII/D.
 251 LEG XXIII/3; LEG/CONF.4/3.
 252 LEG XXIII/4; LEG/CONF.4/SR.2.
 253 Rules of Procedure, Rule 26, LEG/CONF.4/2.
 254 Twenty-two in favour, none against, with 6 abstentions; LEG/CONF.4/SR.17.
 255 Comité consultatif international des radiocommunications.
 256 MSC XXIII/15/2.
 257 MSC XXIII/19.
 258 MSC XXIV/9.
 259 MSC XXIV/SR.5; COM IX/12; MSC XXV/17, para. 66ff.
 260 MARSAT ES.I/33; MARSAT ES.I/36.
 261 MARSAT ES.I/39.
 262 MARSAT II/3/2; MARSAT II/8.
 263 MSC XXVII/17, para. 74f; MSC XVIII/SR.5.
 264 Resolution A.305(VIII).
 265 MARSAT V/6; MSC XXX/17 and MSC XXXI/11.
 266 C XXXII/D.
 267 MARSAT/CONF.5/3 and 5/4.

- 268 MARSAT/CONF/6.
 269 MARSAT/CONF/SR.2.
 270 MARSAT/CONF.10.
 271 MARSAT/CONF.12 and 13; C XXXIV/D.
 272 MARSAT/CONF/SR.17.
 273 MARSAT/CONF/SR.2
 274 MARSAT/CONF.14; MARSAT/CONF/WP.11; MARSAT/CONF/SR.17 and 18.
 275 MARSAT/CONF.28 and 29.
 276 MARSAT/CONF.27.
 277 C XXXVI/D.
 278 MARSAT/CONF.36, 38 and 39.
 279 LEG X/7, para. 80.
 280 Resolution A.248(VII). This decision was reaffirmed at the two following sessions of the Assembly, Resolutions A.303(VIII) and A/369(IX).
 281 LEG XI/12, para. 23.
 282 LEG XIII/7.
 283 LEG XIX/5.
 284 LEG XXIII/2.
 285 LEG XXIII/2/1.
 286 LEG XXIII/4; LEG XXV/4; LEG XXVII/4; and LEG XXVIII/7.
 287 LEG XXIX/4.
 288 C XXXVIII/D.
 289 Rules of Procedure, Rule 26, LEG/CONF.5/2.
 290 LEG/CONF.5/SR.1.
 291 LEG/CONF.5/SR.2
 292 LEG/CONF.5/SR.4 and 5.
 293 LEG/CONF.5/C.1/SR.26.
 294 LEG/CONF.5/C.1/SR.4 and 11.
 295 LEG/CONF.5/SR.5.

G. UNION INTERNATIONALE DES TÉLÉCOMMUNICATIONS (UIT)

1. *Considérations générales*

1. Les techniques et procédures utilisées à l'Union internationale des télécommunications pour élaborer des traités multilatéraux reposent sur une longue tradition, puisque le premier traité multilatéral élaboré sous les auspices de l'UIT (dénommée à l'époque Union télégraphique internationale) est la Convention télégraphique de Paris conclue en 1865. Toutefois, si l'on veut procéder à une analyse ou à une comparaison de ces procédures avec celles utilisées par d'autres organisations, il y a lieu de tenir compte, d'une part, de la grande technicité et spécificité des textes et, d'autre part, du fait que, dans le domaine législatif, le rôle de l'UIT – plutôt que d'élaborer de nouveaux traités – consiste principalement à réviser la réglementation en vigueur, en raison des progrès techniques constamment réalisés dans le domaine des télécommunications.

2. *Procédures utilisées*

2. La révision de la Convention internationale des télécommunications, des Règlements administratifs y annexés, ainsi que des autres accords

multilatéraux, est effectuée par des conférences auxquelles sont invités à participer tous les membres de l'Union.

3. Immédiatement après l'envoi des invitations qui, en règle générale, a lieu un an avant la date d'ouverture de la conférence, le Secrétaire général prie les membres de l'Union de lui faire parvenir dans un délai de quatre mois leurs propositions pour les travaux de la conférence.

4. Toute proposition dont l'adoption entraîne la révision du texte de la Convention ou des Règlements administratifs doit contenir des références aux numéros des parties du texte qui requièrent cette révision. Dans chaque cas, les motifs de la proposition doivent être indiqués aussi brièvement que possible. Le Secrétaire général communique les propositions à tous les membres de l'Union au fur et à mesure de leur réception.

5. Au début de la conférence, les propositions sont réparties entre les commissions compétentes instituées par la séance plénière. Toutefois, cette dernière peut traiter directement n'importe quelle proposition. En cas de nécessité, des sous-commissions et des groupes de travail peuvent également être constitués.

6. Les débats de commissions et sous-commissions, auxquels peut participer tout délégué qui en a fait la demande, sont résumés séance par séance dans des discussions, les diverses opinions qu'il convient de noter, ainsi que les propositions et conclusions qui se dégagent de l'ensemble.

7. Par ailleurs, les commissions et sous-commissions peuvent établir des rapports dans lesquels elles récapitulent sous une forme concise les propositions et les conclusions qui résultent des études qui leur ont été confiées.

8. Les textes des Actes finals, établis autant que possible dans leur forme définitive par les diverses commissions en tenant compte des avis exprimés, sont soumis à une commission de rédaction, laquelle est chargée d'en perfectionner la forme sans en altérer le sens. La commission de rédaction est formée de délégués des pays membres assistés par des fonctionnaires du Secrétariat. Les textes sont ensuite soumis par la commission de rédaction à la séance plénière, laquelle les approuve ou les renvoie, aux fins de nouvel examen, à la commission compétente.

9. Les textes des Actes finals sont considérés comme définitifs lorsqu'ils ont été approuvés en seconde lecture par la séance plénière.

10. Les textes définitifs sont soumis à la signature des délégués pour approbation, sous réserve de ratification ou d'approbation ultérieure, par les gouvernements ou administrations des pays membres.

3. *Réunions préparatoires*

11. Si cela a été jugé utile, la session principale d'une conférence administrative peut être précédée par une réunion préparatoire chargée d'établir des propositions concernant les bases techniques des travaux de la conférence. Tout membre de l'Union peut participer aux réunions préparatoires. En règle générale, les textes finalement approuvés par une réunion préparatoire sont rassemblés sous la forme d'un rapport qui est approuvé par ladite réunion et signé par son président.

H. UNION POSTALE UNIVERSELLE (UPU)

1. Généralités

1. Le Congrès, organe suprême de l'Union qui se réunit en principe tous les cinq ans, a pour tâche essentielle de réviser les Actes de l'Union et au besoin d'en adopter de nouveaux. Son activité est donc essentiellement législative. Généralement, il s'agit d'adapter la réglementation en vigueur à l'évolution des techniques postale, financière et administrative. Les modifications apportées aux Actes sont si nombreuses (un Congrès est généralement saisi de plus de 1000 propositions) que l'on procède au renouvellement de tous les Actes à l'exception de la Constitution, seul Acte véritablement permanent, dont les modifications sont apportées par voie de protocoles additionnels.

2. Auparavant, il convient de préciser qu'outre la Constitution et le Règlement général qui règlent la structure et le fonctionnement de l'Union il y a actuellement 19 traités et accords internationaux qui règlent le service postal international, à savoir :

- Convention postale universelle, son protocole final et son règlement d'exécution;
- Arrangement concernant les lettres avec valeur déclarée, son protocole final et son règlement d'exécution;
- Arrangement concernant les colis postaux, son protocole final et son règlement d'exécution;
- Arrangement concernant les mandats de poste et les bons postaux de voyage et son règlement d'exécution;
- Arrangement concernant le Service des chèques postaux et son règlement d'exécution;
- Arrangement concernant les recouvrements et son règlement d'exécution;
- Arrangement concernant le Service international de l'épargne et son règlement d'exécution;
- Arrangement concernant les abonnements aux journaux et écrits périodiques et son règlement d'exécution.

2. Procédure d'adoption de nouveaux actes

3. Il est plutôt rare que l'Union élabore de nouveaux traités ou accords. Avant la création de ce qui est actuellement le Conseil exécutif, le Congrès, après avoir discuté de l'opportunité d'adopter un nouvel accord pour une branche du service postal, sur proposition d'une ou de plusieurs administrations, chargeait une commission *ad hoc* de mettre au point pour le Congrès un projet d'arrangement qui était discuté et approuvé par ledit congrès, après avoir subi un certain nombre de modifications. Depuis la création du Conseil exécutif, on a procédé à l'élaboration de deux nouveaux Actes dans les circonstances différentes que voici : le Congrès de Bruxelles, en 1952, avait chargé la Commission exécutive et de liaison (actuellement Conseil exécutif) d'étudier l'adoption d'un arrangement concernant le Service international de l'épargne. Au sein de cette commission exécutive et de liaison, on créa une

sous-commission, composée de quatre pays membres, qui s'attacha uniquement à l'élaboration dudit arrangement. Le projet fut soumis au Congrès d'Ottawa en 1957, qui l'adopta après lui avoir apporté différentes modifications.

4. Lors de ce même congrès, l'UPU décida de confier à la Commission exécutive et de liaison l'examen de la structure générale de la Convention postale universelle dans le but de séparer distinctement les dispositions régissant la structure, l'organisation et le fonctionnement de l'UPU de celles réglant le Service de la poste aux lettres. Cette révision, qui aboutit notamment à la création de la Constitution de l'Union postale universelle, fut confiée à la Commission exécutive et de liaison, élargie pour l'occasion à tous les pays membres de l'Union qui voulaient participer à la révision de cet acte fondamental. En fait, beaucoup de pays non membres de la Commission exécutive et de liaison participèrent aux travaux de cette CEL élargie, dont le résultat fit l'objet d'une consultation préalable de l'ensemble des pays membres de l'Union avant d'être soumis à l'approbation du Congrès de Vienne, qui adopta les projets de constitution, de règlement général et de convention après y avoir apporté encore de nombreuses modifications. Ainsi donc, selon l'ampleur ou la complexité de l'acte à élaborer, l'UPU recourt à des procédures qui peuvent différer.

3. Procédure de "renouvellement" des actes de l'UPU

5. En principe, un an avant l'ouverture d'un Congrès, les administrations des pays membres, à l'exclusion de toute autre autorité nationale, sont invitées à présenter les propositions de modification des Actes qu'elles jugent nécessaire, cela conformément à l'article 117 du Règlement général de l'UPU qui se lit comme suit :

"Procédure de présentation des propositions au Congrès

"1. Sous réserve des exceptions prévues au paragraphe 3, la procédure suivante règle l'introduction des propositions de toute nature à soumettre au Congrès par les administrations postales des pays membres :

"a) Sont admises les propositions qui parviennent au Bureau international au moins six mois avant la date fixée pour le Congrès;

"b) Aucune proposition d'ordre rédactionnel n'est admise pendant la période de six mois qui précède la date fixée pour le Congrès;

"c) Les propositions de fond qui parviennent au Bureau international dans l'intervalle compris entre six et quatre mois avant la date fixée pour le Congrès ne sont admises que si elles sont appuyées par au moins deux administrations;

"d) Les propositions de fond qui parviennent au Bureau international pendant la période de quatre mois qui précède la date fixée pour le Congrès ne sont admises que si elles sont appuyées par au moins huit administrations;

"e) Les déclarations d'appui doivent parvenir au Bureau international dans le même délai que les propositions qu'elles concernent.

"2. Les propositions d'ordre rédactionnel sont munies, en tête, de la mention "Proposition d'ordre rédactionnel" par les administrations qui les présentent et publiées par le Bureau international sous un numéro suivi de

la lettre R. Les propositions non munies de cette mention, mais qui, de l'avis du Bureau international, ne touchent que la rédaction, sont publiées avec une annotation appropriée; le Bureau international établit une liste de ces propositions à l'intention du Congrès.

“3. La procédure prescrite aux paragraphes 1 et 2 ne s'applique ni aux propositions concernant le Règlement intérieur des Congrès ni aux amendements à des propositions déjà faites.”

6. Sont également habilités à présenter des propositions de modifications des Actes le Conseil exécutif et le Conseil consultatif des études postales. Ces deux organes, notamment le CE, font un très large usage de cette possibilité qui est souvent l'aboutissement des études entreprises par ces organes à la demande du dernier Congrès.

7. A toutes fins utiles, nous vous signalons également que les Actes de l'Union peuvent être modifiés dans l'intervalle des Congrès, mais que le recours à cette procédure est très rare, eu égard notamment aux majorités requises pour l'adoption des modifications dans l'intervalle des Congrès, à savoir l'unanimité des suffrages pour la plupart des dispositions concernant la Convention et le Règlement général.

4. *Approbaton des Actes de l'UPU*

8. Tous les Actes issus d'un Congrès sont, au terme de celui-ci, soumis à la signature des plénipotentiaires.

9. Conformément à l'article 22 de la Constitution, cet acte ainsi que le Règlement général et la Convention postale universelle sont obligatoires pour tous les pays membres. Les autres Actes, à savoir les arrangements et bien entendu leur règlement d'exécution ont un caractère facultatif. Ces derniers ne sont obligatoires que pour les pays membres qui les ratifient/approuvent ou y adhèrent.

10. Les signatures des plénipotentiaires peuvent avoir des parties différentes. Selon les règles constitutionnelles de chaque Etat, elles sont soumises à ratification ou à une autre procédure plus simple que l'on désigne du nom générique d'approbation; elles peuvent même être des signatures *ad referendum* ou des signatures définitives qui engagent, comme leur nom l'indique, définitivement l'Etat au nom duquel elles ont été données.

11. Malgré la souplesse introduite par le Congrès de Vienne dans la procédure d'approbation des Actes de l'Union, force est de reconnaître que peu d'administrations ratifient ou approuvent les Actes avant leur mise en vigueur et que, même au terme de leur période de validité, ces actes ne sont pas ratifiés ou approuvés par un nombre très important de pays membres. Cette situation a amené l'UPU à admettre le principe très contestable et contesté en doctrine de la “ratification tacite”. Selon ce principe, les pays membres qui n'ont pas ratifié ou approuvé les Actes d'un Congrès sont censés les avoir approuvés tacitement du moment qu'ils en appliquent les dispositions. L'évocation de ce principe a permis de résoudre plusieurs litiges dans lesquels un pays membre refusait de se sentir lié par une disposition en arguant du fait que les autorités nationales compétentes ne les avaient pas ratifiés ou approuvés selon la procédure en vigueur.

5. *Mise en vigueur des actes*

12. Indépendamment de la ratification ou de l'approbation des autorités gouvernementales compétentes, les Actes de l'Union entrent en vigueur à une date déterminée qui est la même pour l'ensemble des pays membres de l'Union, en général une année ou une année et demie après la clôture d'un Congrès.

6. *Réserves*

13. Pour être complets, nous croyons utile de préciser que les pays membres sont autorisés à faire des réserves quant à l'application de telle ou telle disposition à la condition que celle-ci soit entérinée par le Congrès et qu'elle figure dans le Protocole final de l'Acte qu'elle concerne. Ainsi donc, il n'est pas possible à l'UPU de faire des réserves après la signature des Actes, c'est-à-dire, par exemple, au moment de la ratification, de l'adhésion ou ultérieurement.

14. Les pays qui voudraient présenter une réserve après la signature des Actes devraient recourir à la procédure de modification de ceux-ci dans l'intervalle des Congrès pour obtenir l'inscription d'une nouvelle réserve dans le protocole final de l'Acte concerné.

I. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

1. UNESCO multilateral treaties can be divided into two categories—those which are adopted by the General Conference of UNESCO, and those which are adopted by international conferences of States convened by UNESCO (either solely or in co-operation with other international organizations).

1. *Multilateral treaties adopted by the General Conference of UNESCO*

2. Multilateral treaties which are adopted by the General Conference of UNESCO are generally designated "international conventions" and are governed by the provisions of the UNESCO Constitution and of special rules of procedure.

3. Under the terms of Article IV, paragraph 4, of UNESCO's Constitution, "The General Conference shall, in adopting proposals for submission to the Member States, distinguish between recommendations and international conventions submitted for their approval. In the former case a majority vote shall suffice; in the latter case a two-thirds majority shall be required. Each of the Member States shall submit recommendations or conventions to its competent authorities within a period of one year from the close of the session of the General Conference at which they were adopted."

4. At its fifth session, in 1950, the General Conference adopted "Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution" (hereinafter referred to as the "Rules of Procedure"), which set forth the procedures to be followed in the preparation, examination and adoption of both conventions and recommendations by the General Conference.

5. These Rules of Procedure, which are reproduced in the Annex to this document, comprise the following sections dealing with the various stages in the elaboration of international conventions: (i) Inclusion in the agenda of the General Conference of proposals for the regulation of any question on an international basis (Section II); (ii) Procedure for the first discussion by the General Conference (Section III); (iii) Preparation of drafts to be submitted to the General Conference for consideration and adoption (Section IV); (iv) Consideration and adoption of drafts by the General Conference (Section V).

(a) *Inclusion in the agenda of the General Conference*

6. Before 1979 it was usually the Approved Programme and Budget of the Organization which foresaw the preparation of a preliminary study relating to the legal and technical aspects of the possible regulation on an international basis of a specified question. Up to 1979, the request for such a study, which so far had always been prepared by the Secretariat, was made by the General Conference usually on the initiative of the Director-General; but on certain occasions such requests had been based on the proposals of certain Member States. However, at its 20th session (1978), the General Conference decided that any future proposals calling for the preparation of a preliminary study or the drafting of a normative instrument would have to take the specific form of a draft resolution submitted to the General Conference (Res. 20 C/32.1). Such a draft resolution must necessarily specify the appropriate time-limits, with respect to the session of the Executive Board during which the preliminary study is to be examined, or the session of the General Conference during which the question of the advisability of such regulation will, if appropriate, be discussed; it might also provide for consultation of Member States for the purpose of preparing the preliminary study.

7. When the study is ready it is submitted to the Executive Board for the purpose of enabling the Board to examine the possibility of including on the provisional agenda of the General Conference a suitable item.

8. It is the usual practice for the Executive Board to examine preliminary studies at the spring session of the year in which the General Conference is held, for it is at this session that it has to "prepare" the provisional agenda of the Conference session to be held later in the year. The General Conference as a rule meets in the fall of the second year of UNESCO's biennium.

9. Under the terms of Article 4 of the Rules of Procedure, the Board, after examining a proposal together with the preliminary study, communicates to the General Conference any comments it may deem necessary in this connection and may decide to instruct the secretariat, one or more experts, or a committee of experts to carry out a thorough study of the matters dealt with in the proposal and to prepare a report on the subject for communication to the General Conference.

10. When a proposal for the regulation of a question on an international basis has been included in the provisional agenda of the General Conference, the Director-General, in accordance with Article 5 of the Rules of Procedure, communicates to Member States, at least 70 days before the opening of the session of the Conference, a copy of the preliminary study, together with any comments which the Executive Board may have made, or any decisions it may

have taken, thereon. In practice, this communication is effected by means of a document for the General Conference.

(b) *Initial discussion by the General Conference*

11. By virtue of Article 6 of the Rules of Procedure, the General Conference has then to decide "whether the question dealt with in the proposal should be regulated at the international level and, if so, to determine to what extent the question can be regulated and whether the method adopted should be an international convention or, alternatively, a recommendation to Member States".

12. Under the terms of Article 7, however, the Conference may decide to defer its decisions on these two points to a future session, in which case it may instruct the Director-General to submit a report on the desirability of regulating the question dealt with in the proposal on an international basis, on the method which should be adopted for that purpose, and on the extent to which the question can be regulated.

13. The decisions provided for under Articles 6 and 7 of the Rules of Procedure must therefore of necessity bear on the General Conference's replies to the following questions: (i) Should the question be regulated on an international basis? If the answer is no, this decision puts an end to the procedure. (ii) If the answer is yes, what form should be taken by regulation on an international basis? (iii) Should the answer be deferred to a future session, thus postponing decisions on (i) and (ii)?

14. Finally, if the answers to (i) and (ii) above are in the affirmative, the General Conference must also decide at the same session, under the terms of Article 10, paragraph 4, of the Rules of Procedure, whether the Director-General's final report, comprising a draft text, shall be submitted directly to the General Conference or to a special committee consisting of technical and legal experts appointed by Member States. The special committee is convened at least four months before the opening of the following session of the General Conference.

(c) *Preparation of drafts to be submitted to the General Conference for consideration and adoption*

15. Under the terms of Article 10 of the Rules of Procedure, the preparation of such drafts devolves (i) on the Director-General, who may prepare a first draft of a convention or recommendation, according to the decision taken by the General Conference (paragraph 1), and subsequently has to prepare a draft, taking into consideration Member States' comments and observations (paragraph 2); (ii) on Member States taken individually, who comment and make observations on the preliminary study (paragraphs 1 and 2); and (iii) possibly, as indicated, on Member States taken collectively, through a special committee (paragraph 4).

(d) *Consideration and adoption of drafts by the General Conference*

16. At the final stage of the adoption procedure the General Conference considers and discusses draft texts submitted to it and any amendments to them which may be proposed.

17. Under the terms of Article 12 of the Rules of Procedure, a two-thirds majority is required for the adoption of a convention.

18. Once a convention has been adopted, two copies of that convention must be authenticated by the signatures of the President of the General Conference and of the Director-General (article 14). It is worth noting that, generally, conventions adopted by the General Conference are not open to signature by Member States or non-Member States. As a general rule, Member States of UNESCO become parties to the conventions through the process of ratification or acceptance, and non-Member States through the process of accession, with or without the prior authorization of the Executive Board or the General Conference, as the case may be.

(i) *Role of the Executive Board*

19. From the above analysis it will be noted that in the process leading to the adoption of a convention by the General Conference, a decision on the part of the Executive Board is provided for in the Rules of Procedure at one stage only: when the preliminary study is examined and the proposal for regulation of the question on an international basis is included in the provisional agenda of the General Conference. In some cases the Board may intervene at an earlier stage through the recommendations it makes.

(ii) *Role of the General Conference*

20. The General Conference, on the other hand, enters into this process at three different stages:

—at a *first* session it approves the programme and budget providing for the preparation of the preliminary study;

—at a *second* session, if the question has been included in its provisional agenda by the Executive Board, it decides as to the advisability of regulating the question on an international basis, as to the form such regulation should take and as to the convening of a special committee of experts appointed by Member States;

—at a *third* session it decides as to the adoption of the instrument.

21. As to the duration of the process elaborating an international convention, the period foreseen by the above-mentioned Rules of Procedure is a minimum of two biennia, or four years. This is the time period between the first action on a proposal by the General Conference and the adoption of an instrument (based on that proposal) by the General Conference two sessions later.

2. *Multilateral treaties adopted by international conferences of States convened by UNESCO*

22. From time to time the General Conference of UNESCO may decide that it is more appropriate that the competent organ for the adoption of a multilateral treaty be an international conference of States rather than the General Conference itself.

23. The Constitutional basis for such a procedure is to be found in Article IV, paragraph 3, of UNESCO's constitution: "The General Conference shall, when it deems desirable and in accordance with the regulations to be made by it, summon international conferences of States on education, the sciences or humanities or the dissemination of knowledge . . .".

24. A definition of the nature of such conferences is provided by Article 8 of the "Regulations for the general classification of the various categories of meetings convened by UNESCO": "International conferences of States, in the sense of Article IV, paragraph 3, of the Constitution, are conferences bringing together representatives of States, and reporting the results of their work to these same States, whether these results lead to the conclusion of international agreements or whether they provide a basis for action to be undertaken by the States."

25. Since each such conference of States adopts its own final rules of procedure, it is not possible to discuss in general terms one process which is used to finalize the texts of the multilateral treaties at all such conferences.

26. As far as the drafting stages preliminary to such conferences are concerned, these also vary. Usually, however, there is a pattern of General Conference resolutions calling for meetings of governmental experts to study, in the early stages, the desirability of regulating a question and then, at later stages, to prepare draft instruments. In most cases a final draft of an agreement is presented after a number of years to the international conference of States which has been convened by UNESCO to adopt such an instrument, and after discussion and modification the instrument is adopted and signed by the participating States.

27. The Rules of Procedure covering conventions to be adopted by the General Conference do not apply to agreements to be adopted by international conferences of States, hence there are no imposed requirements concerning time periods, deadlines, or reports to Member States.

3. *Recent development*

28. UNESCO's General Conference at its twentieth session decided to change the initial stage of the elaboration process for the normative instruments which it adopts, or for those which are adopted at diplomatic conferences convened under its auspices.

29. By its resolution 20 C/32.1, the General Conference decided that any future proposals calling for the preparation of a preliminary study for, or the drafting of, a normative instrument must take the specific form of a draft resolution. Furthermore, the draft resolution will have to specify at which of their sessions the Executive Board and the General Conference must take decisions on the proposed instrument.

30. Under the previous procedure, proposals for the elaboration of normative instruments were often merely paragraphs in the Organization's voluminous biennial programme and budget, and were most often adopted without specific debate or voting on that proposal. The new procedure provides the General Conference with a tighter screening of and control over the initial stage of normative instrument elaboration. (See paragraph 6 above.)

31. Two other recent developments concerning UNESCO conventions and other normative instruments, though they do not directly concern the elaboration process of UNESCO's treaties, may also be of interest in this context.

32. UNESCO has recently published, in English and French versions, a compilation entitled "The Standard-Setting Instruments of UNESCO". The publication contains the texts of all UNESCO's conventions, recommendations,

declarations, etc., as well as introductions thereto and ratification tables (for the treaties). It is published in a loose leaf binder to facilitate addition of future texts and is available through UNESCO's publication division.

33. Furthermore, at its most recent (21st) session, UNESCO's General Conference adopted the following resolution concerning UNESCO's normative instruments:

The General Conference,

Considering that by the terms of Article VIII of the constitution "Each Member State shall submit to the Organization, at such times and in such inanner as shall be determined by the General Conference, reports on the laws, regulations, and statistics relating to its educational, scientific and cultural institutions and activities, and on the action taken upon the recommendations and conventions referred to in Article IV, paragraph 4",

Considering that the procedures to monitor the implementation of these normative instruments by Member States involve organs as varied as the Legal Committee of the General Conference, the Committee on Conventions and Recommendations of the Executive Board, the Joint ILO/UNESCO Experts Committee and the General Conference itself, and that they are characterized by the participation of a very small number of Member States,

Considering that it seems useful to undertake a study of these diverse procedures, with the aim of better co-ordination and making the procedures more effective and efficient,

Invites the Director-General and the Executive Board to undertake such a study and to submit its results with appropriate proposals to the twenty-second session of the General Conference.

J. WORLD HEALTH ORGANIZATION (WHO)

1. The World Health Organization has never made use of its constitutional power under Article 19 of its Constitution. Therefore, the Organization has no special treaty-making techniques and procedures for the elaboration of multilateral treaties, be they universal or general. However, on one occasion, the World Health Organization has concluded a multilateral treaty for a restricted purpose, namely, the Onchocerciasis Control Programme with limited participation.¹ The following describes the procedure adopted in the conclusion of the treaty in question.

2. Following a number of preliminary steps, the World Health Organization decided in 1970, at the request of the Governments of Dahomey, Ghana, Ivory Coast, Mali, Niger, Togo and Upper Volta, to prepare a strategy for a programme destined to control onchocerciasis in the Volta River Basin area.

3. The World Health Organization set up, in association with the Food and Agriculture Organization, a Preparatory Assistance Mission during 1971-1973. The United Nations Development Programme financed the Preparatory Assistance Mission.

4. The seven Governments approved the strategy proposed in the report of the Preparatory Assistance Mission for a Programme of Onchocerciasis Control in the Volta River Basin area to combat the disease and thus remove a

major obstacle to economic development. These seven Governments concluded on 1 November 1973 an Agreement with the World Health Organization for the implementation of a twenty-year Programme, and the World Health Organization was appointed as the Executing Agency.

5. The Agreement is entitled "Agreement Governing the Operations of the Onchocerciasis Control Programme in the Volta River Basin Area". The following procedural stages were involved in the preparation of the Agreement:

(a) When the seven Governments concerned approved the strategy proposed in the Report of the Preparatory Assistance Mission, a draft agreement was prepared by the World Health Organization. The text was sent to the Governments concerned for comments.

(b) A meeting was held in Accra, Ghana, from 30 October to 1 November 1973 to consider the text of the draft agreement and the comments thereon from the Governments concerned.

(c) The text proposed by the World Health Organization was adopted at the said meeting in Accra, with some minor amendments.

(d) The Agreement provided that it would come into operation upon signature by the Parties.

(e) The Agreement was signed on 1 November 1973 by the Governments of Dahomey, Ghana, Ivory Coast, Mali, Niger, Togo, Upper Volta and the World Health Organization.

NOTE

¹ Attention should be drawn to two other international agreements, which are related to the same Programme, namely the Memorandum of Understanding and the Onchocerciasis Fund Agreement. WHO became a party to these agreements, but it had no role to play in their procedural elaboration and technique.

K. WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

The preparation, formulation and conclusion of a multilateral treaty within the framework of WIPO is not the subject of any formalized procedure. No constitutional provisions, regulations or rules governing the multilateral treaty-making process have been adopted by the Governing Bodies of WIPO or of the Unions administered by WIPO. Each of the twenty treaties which WIPO currently administers, or in respect of which it co-operates in the administration of with other specialized agencies of the United Nations, was developed on an *ad hoc* basis.

L. WORLD METEOROLOGICAL ORGANIZATION (WMO)

1. There is only one multilateral treaty concluded under the auspices of the World Meteorological Organization, namely, the Agreement for Joint Financing of North Atlantic Ocean Stations (NAOS). The purpose of the Agreement is to provide for the operation and financing of a network of four

ocean stations in the North Atlantic primarily for meteorological observations. Each of these four stations is permanently occupied by a ship specially equipped and staffed for carrying out the meteorological observations and other secondary functions.

2. The Agreement was adopted on 15 November 1974 at a Conference of Plenipotentiary Delegations convened by WMO and held in Geneva. The Agreement was open for signature until 31 May 1975 and thereafter it was open for accession. It came into force on 1 December 1976. A statement showing the names of the States which are Contracting Parties to the Agreement and the dates of their signature, ratification or of accession is appended.

3. The Agreement for the Joint Financing of North Atlantic Ocean Stations (NAOS) had been in force since 1954 under the auspices of the International Civil Aviation Organization (ICAO) to provide certain aeronautical services to civil aviation over the North Atlantic as well as to make meteorological observations. The seventh ICAO Conference on Joint Financing of the NAOS (Paris, March 1972) considered that the importance of these stations for aeronautical services had diminished and their principal function had been reduced to the provision of basic meteorological services which was the sole responsibility of WMO. The Conference accordingly decided that the Agreement should be terminated on 30 June 1975 and also recommended its replacement by a new Joint Financing Agreement, to be administered by WMO and effective from 1 July 1975.

4. The WMO Executive Committee at its twenty-fourth session (Geneva, May 1972) considered the matter and took a favourable attitude. The need for a continuation of the observations from stations in the North Atlantic was already foreseen in the Plan for World Weather Watch (WWW), the basic programme of WMO. In anticipation of the approval of the above recommendation by the ICAO Council, the Executive Committee accordingly gave directives to the Secretary-General to commence the preparatory work which included a study of the status of alternative observing techniques, their prospects for the future as well as the preparation of a draft Agreement.

5. At its next session, the twenty-fifth session (1973), the Executive Committee considered the matter again upon receipt of a formal communication from ICAO in which WMO was asked whether it would assume the coordinating and administering role with respect to a new NAOS Agreement effective from 1 July 1975, in replacement of the Agreement of 1954 concluded under the auspices of ICAO. At this session the Executive Committee had also a report, prepared in response to the directives given at its previous session, on the study carried out by WMO on the status of alternative observing techniques and their prospects for the future. This study showed that such alternative techniques could not be a substitute for the observational data provided by the NAOS network. In addition, the Committee was also presented with a first draft of an Agreement showing its main features, together with the draft procedures for the administration of the Agreement and the role of WMO in these procedures.

6. The Executive Committee thereupon decided (a) that upon the termination of the 1954 NAOS Agreement concluded under the auspices of ICAO, WMO would seek to continue the NAOS system in accordance with the objectives of the WWW Plan, and (b) to convene in Geneva early in 1974 a Confer-

ence of Plenipotentiary Delegations to which all Member States of WMO would be invited, for the purpose of concluding a new NAOS Agreement to take effect on 1 July 1975.

7. The preparatory work leading to the Agreement involved studies of complex technical as well as administrative, financial and legal questions. Moreover, certain developments had taken place at that time which showed that any network of ocean stations which it might be possible to establish under a new Agreement would comprise a much smaller number of stations than that which existed under the previous Agreement. It became therefore necessary, from the outset, to study a number of possible alternative networks with a different number of stations and ship positions in each case as well as their financial implications. The preparatory studies including the drafting of a new Agreement were carried out by a series of Informal Planning Meetings (IPM)¹ within the framework of the World Weather Watch Programme of WMO, referred to in paragraph 4 above, with the technical and administrative support provided by the WMO secretariat. Three such Meetings were held in 1973 prior to the Conference of Plenipotentiary Delegations: Geneva, 30 May-1 June 1973; De Bilt (Netherlands) 16-20 July 1973; Geneva, 10-24 December 1973.

8. In accordance with the decision of the WMO Executive Committee referred to in paragraph 6 above, the Secretary-General convened a Conference of Plenipotentiary Delegations to conclude a new joint financing agreement on North Atlantic Ocean Stations. All Members of WMO were invited to this Conference which took place in the WMO Headquarters in Geneva from 18 February to 1 March 1974. Altogether 26 countries and a number of international organizations were represented at the Conference. The documentation for the Conference included a draft of a new Agreement.

9. There was a unanimous view at the Plenipotentiary Conference that the continuation of a NAOS network was essential and many areas of general consensus were defined for inclusion in the proposed new Agreement. In the time available it was however not possible to reach decisions on such important items as the number of stations to be maintained and their locations, the scale of contributions of participating countries and certain other financial questions and denunciation of the Agreement. The Conference accordingly decided to adjourn and to reconvene later in 1974 in order that additional information could be gathered and national positions could be reviewed. A further WWW Informal Planning Meeting was subsequently held at the WMO Headquarters in Geneva from 5 to 10 August 1974 in order to provide a forum for discussion of the various possibilities for resolving the difficulties which led to the adjournment of the Plenipotentiary Conference. The discussions at this meeting resulted in greatly improved prospects of reaching an agreement on all the problems which had proved difficult during the first part of the Conference of Plenipotentiary Delegations. Indeed, this Meeting served a most useful purpose in helping to prepare the way for a resumption of the Conference of Plenipotentiary Delegations.

10. With the approval of the Executive Committee the Secretary-General reconvened the Plenipotentiary Conference which resumed its work in Geneva on 4 November 1974. The report of the Informal Planning Meeting referred to in paragraph 9, which included a revised draft of a joint Financing Agreement,

was submitted as a document to this second part of the Conference which was attended by delegations from 24 member countries as well as observers from various international organizations. At its final plenary meeting on 14 November 1974, the Conference approved a report, a Final Act and adopted the text of an Agreement for Joint Financing of North Atlantic Ocean Stations. The Agreement entered into force on 1 December 1976 (see paragraph 2) upon the ratification of or accession to the Agreement by a sufficient number of member countries as required under the provisions of the Agreement.

11. The major decisions taken by the Conference which have a corresponding effect on the draft of the Agreement as submitted to the Conference, related to: (a) the number and location of the ocean stations forming the NAOS network which were considered as the minimum for meteorological purposes and at the same time the maximum that could be financed and operated by those Member countries of WMO likely to participate in a new NAOS Agreement initially; (b) the cost-sharing arrangements among the countries participating in the joint financing Agreement; (c) duration of the Agreement including the circumstances and conditions under which a Contracting Party may denounce the Agreement; (d) reimbursement of costs to Contracting Parties operating the vessels; (e) responsibilities of WMO; (f) conditions for entry into force of the Agreement and (g) interim arrangements to ensure the continuity in the operation of a NAOS network in the period between the termination of the previous Agreement on 30 June 1975 and the entry into force of the new Agreement.

NOTE

¹An Informal Planning Meeting (IPM) is a meeting convened by the Secretary-General to assist him in planning some aspect of a WMO programme. Participants are usually nominated by members. The conclusions or proposals made by an IPM have no status within the organization. Any follow-up action rests with the Secretary-General.

III. OTHER INTERNATIONAL ORGANIZATIONS

A. COMMISSION OF THE EUROPEAN ECONOMIC COMMUNITY

1. The Commission of the European Economic Community (hereafter named the Community) welcomes the invitation contained in General Assembly resolution 36/112 to forward observations on the reports which the Secretary-General submitted to the 35th and the 36th General Assembly on the question "Review of the multilateral treaty-making process".

2. The reports from the Secretary-General contain observations from a number of international organizations which explain the role they have in the context of the multilateral treaty-making process. The Commission considers it necessary to draw attention to certain aspects of the Community's functions which represent an important development in the field of international law and international institutions, these developments which must be taken into account when considering the process of the elaboration of multilateral treaties

as an element of the progressive development of international law and its codification.

3. Member States of the Community are under the obligation to enter into negotiations with each other, as far as is necessary, with a view to securing certain benefits for their nationals on matters enumerated in Article 220 of the founding treaty. The Community, therefore, can, in a limited number of cases, serve as the forum for concluding a multilateral treaty, but this is an exception from its main functions and calls for no particular comments in this context.

4. It must be taken into consideration that the Community has international legal personality and is capable under international law of concluding treaties with States and other entities on matters for which its Member States have transferred their competence to the Community. The Community's ability to act as a contracting party to an international convention does not however represent a unique case. A number of intergovernmental organizations have been acquiring such capacities; this trend is reflected in the work which over a number of years has been carried out within the International Law Commission in its elaboration of a set of draft articles on the question of treaties concluded between States and international organizations or between two or more international organizations.¹

5. The Community has the exclusive competence, in particular, to negotiate and conclude agreements on its own behalf with third States in the field of commercial policy. Moreover, the exclusive competence of the Community covers areas where the Community has adopted uniform rules for the application of its common policies, such as the common agricultural policy.

6. In the absence of Community rules, external competence for the Community exists where the Community has internal powers to take action in the sphere in question and the Community's participation in an international agreement is necessary in order to achieve one of its objectives.

7. In the areas referred to above, the Community has concluded a number of multilateral treaties among which mention will be made only of the following, which are the most interesting in the present context:

(a) The EEC is a contracting party to the International Olive Oil Agreement and to the Convention on Multilateral Co-operation in the Northwest Atlantic Fisheries;

(b) The Community together with its member States has concluded several commodity agreements: The International Wheat Agreement, 1971; The International Cocoa Agreement, 1975; The International Tin Agreement, 1975; and The International Coffee Agreement, 1976. The EEC is a contracting party alongside some of its member States to the Barcelona Convention of 16 February 1976 for the protection of the Mediterranean Sea against pollution and the Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircraft which were elaborated under the auspices of the United Nations Environment Programme (UNEP). It is also a signatory alongside all its member States to the Convention on Long-Range Transboundary Air Pollution 1979, and it is intended to ratify this Convention on 15 July 1982;

(c) A particularly interesting series of Conventions, which have associated a series of developing countries (more than 50 States) in Africa, the

Caribbean and the Pacific with the Community has been concluded over the years (Yaoundé I and II, Lomé I). The Second Lomé Convention was concluded on 31 October 1979. These Conventions have set up a special relationship between the ACP States and the Community, which gives these countries privileges in the field of trade as well as aid to development.

8. Under the present practice, rules of procedure for UN conferences provide for Community participation as an observer even in cases where such conferences have been convened for the elaboration of a treaty on matters of Community competence. This was for example the case at the Third United Nations Conference on the Law of the Sea which covered a number of subject matters falling within the Community's competence. Experience has shown that the status of observer does not accommodate the interests of the Community in the case where an international conference has been convened for the purpose of concluding a multilateral treaty in respect of which competence rests either exclusively with the Community or is shared between the Community and its member States.

9. The capacity of an international organization to participate in the elaboration and adoption of a multilateral treaty is taken into consideration in the draft emanating from the International Law Commission on the subject of treaties concluded between States and international organizations or between two or more international organizations. Reference is in particular made to the text contained in:

—*draft article 7*: full powers and powers for representatives of organizations to negotiate and conclude a treaty;

—*draft article 9*: adoption of the text of a multilateral treaty;

—*draft article 77*: functions of a depositary for a multilateral treaty;

—*draft article 80*: registration of a treaty for which an international organization has the depositary functions.

10. The Community submits that the above reservations should be taken into consideration at the further work at the United Nations on the subject of reviewing the multilateral treaty-making process. In this context we should like to draw attention to the close relationship that exists between the review of the multilateral treaty-making process and the effort to elaborate standard rules of procedure for UN conferences. We welcome the ongoing work in these matters in view of the importance of achieving a coherent approach.

NOTE

¹ Report of the International Law Commission on its 32nd and 33rd sessions, *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10*, Chapter IV, Sect. B, and *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 10*, Chapter III, Sect. B.

B. CONSEIL DE L'EUROPE

1. *Introduction*

1. La présente note contient la contribution du Conseil de l'Europe à la préparation du rapport du Secrétaire général des Nations Unies demandé par

l'Assemblée générale dans sa résolution 32/48 du 8 décembre 1977, intitulée "Réexamen du processus d'établissement des traités multilatéraux".

2. En annexe ont été joints les trois documents suivants :

— Modèles de clauses finales d'accords ou de conventions. Ces modèles ont été adoptés par le Comité des ministres du Conseil de l'Europe en 1962. Ils font à l'heure actuelle l'objet d'un réexamen. Le Secrétariat du Conseil de l'Europe transmettra le nouveau texte dès qu'il aura été adopté (annexe 1).

— Méthodes et instruments de coopération au Conseil de l'Europe.

— Etat des signatures et des ratifications des conventions et accords du Conseil de l'Europe, au 11 avril 1979 (n'est pas reproduit ici).

3. A l'heure actuelle, une centaine de conventions et accords¹ ont été adoptés au sein du Conseil de l'Europe. La procédure régissant leur élaboration n'est pas prévue par des dispositions du Statut de l'Organisation (5 mai 1949). Elle a été établie et s'est développée peu à peu depuis la création du Conseil. Mais, sur la base de cette pratique, il est possible de dégager certaines règles concernant les différentes étapes de l'élaboration d'un traité européen.

2. *L'initiative*

4. L'initiative d'entreprendre l'élaboration d'une convention ou d'un accord peut provenir de sources très diverses : Assemblée consultative², comités d'experts, conférences de ministres spécialisés, gouvernements, comité des ministres³ ou secrétariat.

5. Les comités d'experts sont des organes subsidiaires institués par le Comité des ministres en vertu de l'article 17 du Statut⁴. Ce sont des comités auxiliaires du Comité des ministres, qui, en règle générale, leur donne un mandat très précis. Toutefois, à côté de comités spécialisés chargés d'une tâche assez restreinte et qui cessent de fonctionner lorsque cette tâche est accomplie, il existe des comités dont la compétence est beaucoup plus étendue puisqu'ils sont responsables d'une tranche importante du plan à moyen terme de l'Organisation. Parmi tous les comités, ce sont ces derniers qui font au Comité des ministres des propositions relatives à l'élaboration de traités européens.

6. Tous les Etats membres ont la possibilité de désigner des participants. Toutefois, malgré ce mode de désignation, les membres des comités ne sont pas considérés comme représentants des gouvernements mais comme des experts spécialisés dans la matière dont l'étude est assignée au comité; ils agissent sous leur propre responsabilité et n'engagent pas celle de leur gouvernement.

7. Des observateurs peuvent être invités à participer aux réunions des comités d'experts. Ils représentent des Etats non membres, des organisations intergouvernementales ou des organisations non gouvernementales.

8. A côté de ces comités d'experts institués en vertu de l'article 17 du Statut, il convient de signaler l'existence de comités prévus par certaines conventions et qui sont chargés en particulier de faire des propositions tendant à améliorer les conditions d'application de la convention concernée. Ces comités (dits "conventionnels") peuvent ainsi être amenés à proposer l'élaboration d'un protocole d'amendement ou d'une nouvelle convention. Leur composition est différente de celle des comités de l'article 17 car ils réunissent des représentants des parties contractantes.

9. Les conférences de ministres spécialisés réunissent, à intervalles plus ou moins réguliers, les membres des gouvernements qui sont chargés d'un secteur déterminé de l'action gouvernementale (éducation, justice, environnement, etc.). Le Statut du Conseil de l'Europe ne contient pas de dispositions concernant expressément ces conférences. Toutefois, elles ont établi des rapports particuliers de travail avec l'Organisation, en particulier pour ce qui concerne la préparation, l'ordre du jour ou le secrétariat (qui est assuré par le Secrétariat du Conseil de l'Europe). Le Secrétaire général du Conseil de l'Europe présente au Comité des ministres un rapport sur chacune de ces conférences et porte à sa connaissance toutes les résolutions, décisions et autres textes qui en émanent.

10. L'Assemblée consultative et les comités d'experts de l'article 17 sont à l'origine du plus grand nombre des traités européens.⁵ Mais, dans la pratique, il n'est pas toujours possible de savoir qui a vraiment pris l'initiative. Même si formellement cela n'apparaît pas, ce peut être, par exemple, un gouvernement ou une organisation non gouvernementale. En outre, plusieurs conventions ou accords s'inspirent d'une idée de l'Assemblée consultative qui a été reprise formellement plus tard par un autre organe.

3. *La décision d'élaborer une convention ou un accord*

11. Cette décision est toujours prise par le Comité des ministres, généralement après avoir reçu l'avis d'un comité d'experts sur l'opportunité et la faisabilité d'entreprendre une telle activité. La décision, qui est prise en principe dans le cadre de l'adoption du programme de travail de l'Organisation, requiert, conformément à l'article 20, *d*, du Statut, la majorité des deux tiers des voix exprimées et la majorité des représentants ayant le droit de siéger.

4. *La négociation proprement dite*

12. Le projet de traité est préparé par un comité d'experts, déjà existant ou créé à cet effet⁶. Comme il a déjà été indiqué, les membres des comités ne sont pas considérés comme des représentants des gouvernements⁷.

13. Généralement, un comité d'experts chargé d'élaborer une convention ou un accord reçoit un mandat de durée limitée (un an ou deux renouvelables par décision du Comité des ministres) et se réunit en moyenne deux fois par an. A l'issue de chaque réunion, il adresse un rapport au Comité des ministres pour l'informer en particulier de l'avancement des travaux et demander, le cas échéant, une prolongation de son mandat. Si un comité d'experts se heurte à des difficultés de caractère politique, il peut soumettre la question au Comité des ministres.

14. A l'occasion de l'examen des rapports des comités d'experts, des délégations, au sein du Comité des ministres, peuvent faire des observations écrites ou orales. Mais, avant l'établissement du projet définitif, il est rare que ces remarques portent sur le fond du texte en préparation.

15. Lorsque le Comité d'experts a rempli son mandat, le projet de traité est soumis au Comité des ministres, qui peut, avant de se prononcer définitivement, le transmettre pour avis à l'Assemblée consultative.

16. Généralement, surtout lorsque le contenu du projet est très technique, le texte est adopté par le Comité des ministres sans changement. Parfois, cependant, les négociations peuvent se poursuivre. Ainsi un projet de convention n'a été adopté qu'après plusieurs réunions du Comité des ministres, pour lesquelles les représentants des Etats pouvaient se faire accompagner d'experts.

5. *Adoption du texte*

17. La décision d'adopter le texte est prise par le Comité des ministres; l'adoption exige la majorité des deux tiers des voix exprimées et la majorité des représentants ayant le droit de siéger.

18. Cette majorité acquise, le traité est ouvert à la signature si on constate qu'il n'y a pas d'opposition explicite d'un représentant.

19. Depuis quelques années, les projets de convention ou d'accord sont accompagnés de rapports explicatifs, préparés par les comités d'experts ou par le Secrétariat. Le Comité des ministres doit décider s'ils peuvent être rendus publics, ce qui, jusqu'à présent, a toujours été le cas.

6. *Durée de l'élaboration*

20. La durée d'élaboration des traités européens est très variable. Elle peut aller de quelques mois à près de quinze ans. Toutefois, la grande majorité des accords ou conventions sont élaborés dans une période de trois à quatre ans.

ANNEX I

Model Final Clauses for Conventions and Agreements concluded within the Council of Europe⁸

INTRODUCTION

At the 113th meeting of the Deputies in September 1962, the Committee of Ministers of the Council of Europe approved two texts of final clauses to be used for international treaties concluded within the Council of Europe. One of these texts was designed for agreements that can be signed without reservation as to ratification and acceptance, and the other for conventions requiring ratification or acceptance. These texts were to serve as models for committees of experts charged with drawing up Council of Europe agreements or conventions. It was agreed that the texts could subsequently be amended in special cases or in the light of the results of the work of the International Law Commission of the United Nations.

Since 1962, these model final clauses have been used in a great many European conventions and agreements. This very use has, however, revealed the need for certain changes to the texts. Moreover, the work of the International Law Commission resulted in the adoption in 1969 of the Vienna Convention on the Law of Treaties, which takes account of the most recent developments in international practice.

So as to take these different factors into account, the Committee of Ministers has approved a single new set of model final clauses, at the 315th meeting of the Deputies in February 1980. This model applies to conventions or agreements concluded between States. The Committee of Ministers points out that when considering the draft European Convention for the Protection of International Watercourses against Pollution, and in

order to enable the European Economic Community as such to become a Party to that convention, it adopted final clauses providing for that possibility. Similar clauses are found in the European Convention of 10 March 1976 for the Protection of Animals kept for Farming Purposes, the European Convention of 10 May 1979 on the Protection of Animals for Slaughter and the Convention of 19 September 1979 on the Conservation of European Wildlife and Natural Habitats.

The model final clauses appearing hereafter apply to both conventions and agreements. With the exception of Article (a) for which two alternatives are proposed, the texts of all the articles are the same for conventions and agreements: it suffices to maintain or to delete, as appropriate, the words between brackets.

Finally, it should be noted that these model final clauses are intended only to facilitate the task of committees of experts and avoid textual divergencies which would not have any real justification. The model is in no way binding and different clauses may be adopted to fit particular cases.

Article (a)

Alternative 1 (agreements)

1. This Agreement shall be open for signature by the member States of the Council of Europe which may express their consent to be bound by:

(a) signature without reservation as to ratification, acceptance or approval, or

(b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Alternative 2 (conventions)

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article (b)

1. (This Agreement) (This Convention) shall enter into force on the first day of the month following the expiration of a period of . . . months after the date on which . . . member States of the Council of Europe have expressed their consent to be bound by (the Agreement) (the Convention) in accordance with the provisions of Article (a).

2. In respect of any member State which subsequently expresses its consent to be bound by it, (the Agreement) (the Convention) shall enter into force on the first day of the month following the expiration of a period of . . . months after the date (of signature or)⁹ of the deposit of the instrument of ratification, acceptance or approval.

Article (c)

1. After the entry into force of (this Agreement) (this Convention), the Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to (this Agreement) (this Convention), by a decision taken by the majority provided for in Article 20 (d) of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.¹⁰

2. In respect of any acceding State, (the Agreement) (the Convention) shall enter into force on the first day of the month following the expiration of a period of...

months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article (d)

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which (this Agreement) (this Convention) shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of (this Agreement) (this Convention) to any other territory specified in the declaration. In respect of such territory (the Agreement) (the Convention) shall enter into force on the first day of the month following the expiration of a period of...months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of...months after the date of receipt of such notification by the Secretary General.

*Article (e)*¹¹

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in the annex¹² to (this Agreement) (this Convention).¹³ No other reservation may be made.¹⁴

2. Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

3. A Party which has made a reservation in respect of a provision of (this Agreement) (this Convention) may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article (f)

1. Any Party may at any time denounce (this Agreement) (this Convention) by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of...months after the date of receipt of the notification by the Secretary General.

Article (g)

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to (this Agreement) (this Convention) of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of (this Agreement) (this Convention) in accordance with Articles (b), (c) and (d);
- d. any other act, notification or communication relating to (this Agreement) (this Convention).

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed (this Agreement) (this Convention).

DONE AT, the, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to (this Agreement) (this Convention).

ANNEX II

Methods and instruments of co-operation in the Council of Europe

Decision of the Committee of Ministers of the Council of Europe

1. The Committee of Ministers, at the 249th meeting at Deputy level in October 1975, took note of a report prepared at its request by the Permanent Representative of Sweden in co-operation with the Secretariat, concerning the advisability of replacing, in certain cases, the elaboration of conventions by more efficient machinery and of the desirability of a selective policy regarding the detailed follow-up to resolutions. The report is reproduced in this publication.

2. In taking note of the report, the Committee of Ministers approved for its own future guidance the criteria set out in paragraph 26 of the report.

3. For its part, the Secretariat was instructed to take these criteria into account when formulating proposals in connection with the medium-term plan or annual programme of activities of the Committee of Ministers, as well as to distribute the report to the committees of experts set up under Article 17 of the Statute of the Council of Europe.

4. In addition, the Committee of Ministers drew the attention of these committees to the criteria set out in paragraph 26 of the report, asking them to take them into account when examining the form which might be envisaged for the results of work undertaken in the annual programme of activities.

5. Finally, the Committee of Ministers asked the Secretary General to make the report available to the President and Committees of the Consultative Assembly.

Report on the advisability of replacing in certain cases the elaboration of conventions by more efficient machinery and of the desirability of a selective policy regarding the detailed follow-up to resolutions

INTRODUCTION

1. In Resolution (74)4 (Section 1, paragraph (1)) on the future role of the Council of Europe, which was adopted on 24 January 1974 at its 53rd session, the Committee of Ministers instructed the Ministers' Deputies:

- to study the advisability of replacing in certain cases the elaboration of conventions by a more efficient machinery;
- to study the desirability of a selective policy regarding the detailed follow-up to resolutions.

2. Previously, in 1970, the Nordic delegations to the 6th Conference of European Ministers of Justice at The Hague had presented a memorandum on working methods for European inter-governmental co-operation in which it was suggested that the traditional approach to European co-operation through internationally binding instruments such as conventions should be replaced to some extent by a more flexible system of co-operation which would place more emphasis on the techniques of *ad hoc* meetings and exchanges of views.

3. The need to reconsider the methods used in the furtherance of co-operation has arisen from the ever-quicken pace of change in modern European society, which must be matched by correspondingly rapid legal developments. On the one hand, the sheer volume of legislative instruments must necessarily increase and, on the other hand, they must be produced more quickly and amended more easily to cope with changing circumstances.

4. It would not be surprising if the intensification of co-operation within the Council of Europe, which has occurred in recent years, has upset the balance which existed between the various methods of co-operation used and some adjustment may be necessary in the weight which is attached to each form of co-operation. In this context, it is important to recall the legal characteristics of the various methods available, their advantages and disadvantages in achieving progress in intergovernmental co-operation, and the role which each of them can usefully play in this respect. The principal methods which merit close consideration are:

- i. conventions;
- ii. recommendations to Governments; and the less formal process of
- iii. exchanges of views.

WORKING METHODS

Conventions

5. According to Article 15(a) of the Statute of the Council of Europe:

“On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters.”

The conclusion of conventions and agreements among member States is thus one of the principal working methods envisaged by the Statute of the Council of Europe, and in the practice of the Organization also these instruments have often been the foundation of common action designed to achieve a greater unity between the member States. At the same time, however, it must be pointed out that conventions concluded within the Council of Europe are not strictly speaking legal acts of the Organization itself but owe their existence to the independently expressed consent of member States. Thus, conventions are not automatically binding upon member States, nor are States under a legal obligation to express their consent to be bound by such an instrument.

6. The strength of the convention as an instrument of co-operation lies in its formality and its legally binding nature with regard to those States which have accepted the treaty. States which proceed to ratification of a convention incur obligations in international law which can be enforced *inter se*, and in the absence of international legislative machinery conventions are a particularly important source of legally binding obligations in the fullest sense. Where it is felt necessary that concrete legal obligations should be undertaken by States it is only through securing their acceptance of a convention that this can be done.

7. In view of their formal and binding nature it is possible to follow up the conclusion of conventions with some kind of specific control machinery to assist in the enforcement of the legal obligations undertaken. Practice shows that the control machinery may vary according to the substantive obligations which are involved.

The leading example of control machinery in a Council of Europe convention is that set up under the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 19 of which provides:

“To ensure the observance of the engagements undertaken by the High Contracting Parties in the present convention, there shall be set up:

“(a) A European Commission of Human Rights . . .

“(b) A European Court of Human Rights . . .”.

A detailed control machinery is also set up under Part IV of the European Social Charter, according to Article 21 of which:

“The Contracting Parties shall send to the Secretary General of the Council of Europe a report at two-yearly intervals, in a form to be determined by the Committee of Ministers, concerning the application of such provisions of Part II of the Charter as they have accepted.”

Reports shall also be submitted relating to provisions of Part II which have not been accepted. Both sets of reports are examined by a committee of experts and a sub-committee of the Governmental Social Committee, following which recommendations may be made by the Committee of Ministers.

A broadly similar system of control operates under Part XIII of the European Code on Social Security.

Article 24 (1) of the European Convention on Establishment provides:

“A standing committee shall be set up within a year of the entry into force of this convention. This committee may formulate proposals designed to improve the practical implementation of the convention and, if necessary, to amend or to supplement its provisions.”

Some other Council of Europe conventions contain a simple reporting provision. For example, the European Convention on the Equivalence of Diplomas leading to Admission to Universities provides in Article 2 that:

“Each Contracting Party shall, within a year of the coming into force of this convention, provide the Secretary General of the Council of Europe with a written statement of the measures taken to implement the previous Article.”

The European Convention on the Equivalence of Periods of University Study contains a similar provision in Article 7.

8. Conventions are an important means by which the scope of the Organization's work can be extended beyond its usual regional limits, for conventions concluded within the Council of Europe can provide for possible accession by non-member (including non-European) States and in practice this is often done. There are exceptions in the case of certain conventions which are intimately associated with the aims of the Council of Europe and are “closed” conventions in the sense that they are open to signature only by member States. To take but one example of an “open” convention, the European Convention relating to the Formalities required for Patent Applications provides in Article 9 that:

“After it has come into force, this convention shall be open to accession by all States which are members of the International Union for the Protection of Industrial Property”.

In accordance with this Article, South Africa, Israel, Spain and Finland have acceded to the convention. Greece remained a Party during the period of her withdrawal from the Council of Europe.

9. Because they are not legal acts of the Council of Europe as such, conventions are not subject to the statutory voting procedures applicable to the Committee of Ministers, but instead questions concerning conventions are governed by a more flexible procedure which has evolved through practice. The adoption of a text by the Committee of Ministers requires a two-thirds majority of the representatives entitled to sit on the Committee, in accordance with Article 20 (d) of the Statute. After that, however, there is presumed to be unanimous agreement to open the convention for signature failing any explicit statement of objection by a representative. Opening for signature is thus based on a “reversed” unanimity. This flexible procedure is important in encouraging the opening of conventions for signature, as at no time is unanimity in the usual sense required and there is strong pressure to open a convention for signature unless good reasons exist for not so doing and are put forward by a member State.

10. On the other hand, the binding and formal quality of conventions, which makes them such important international instruments, also gives rise to corresponding difficulties in their conclusion and implementation. The preparation of a convention is generally a lengthy task which may involve difficulties of substance and of drafting technique. While on no account must thoroughness and accuracy in preparation be sacrificed for speed, the preparation of conventions should be as efficient as possible, for otherwise the danger is that the solution found in a convention will be out of date before it has been introduced in practice.

11. Even after it has been prepared and after it has been opened for signature, a convention still lacks legal significance until it has entered into force, having received the requisite number of ratifications. This number varies from convention to convention. While some conventions have required only two ratifications for their entry into force, there are others which have laid down a more stringent requirement. What is important in this respect is to remember the usefulness of the Council of Europe in offering a framework for the conclusion of a convention even if only a limited number of member States are interested in the subject matter, provided that this is in accord with the political objectives of the Organization. Thus the drafting of a convention should not in principle be ruled out in these circumstances, as there are numerous examples of conventions which have generated little interest at first but have later been more widely supported. These include the European Convention on Establishment and the European Agreement for the Prevention of Broadcasts Transmitted from Stations outside National Territories.

12. Practice shows, however, that ratification of conventions by member States tends to be slow. There is no obligation to ratify, even after having voted in favour of the text of a convention, because such a vote does not involve any commitment to proceed to ratify. Ultimately the decision whether or not to ratify lies with the State itself and there is no way of guaranteeing that all member States will ratify a convention or even that enough States will ratify it for it to enter into force. It can only be hoped that a convention having been carefully prepared and the Committee of Ministers having agreed to open it for signature, it will prove acceptable to a majority of States. But this problem is not confined to Council of Europe conventions. It exists with regard to all international organizations and it could even be said that the record of ratifications of Council of Europe treaties is more favourable than that of many other international organizations on a European or world scale.

13. The slowness of the process of ratification is often due to the fact that Governments do not find the subject-matter involved or the solutions envisaged sufficiently interesting from the political point of view. That is why it is undesirable to engage in work on a new convention while the subject is not considered by at least some Governments to be a matter of interest or concern to them. There may of course also be delays in ratification which result from reasons of a practical character. The need for translation into the language or languages of a country may in some cases account for a certain slowness. A more important cause of delay is the need to secure formal approval by national parliaments. In this respect it might be helpful to seek the opinion of the Consultative Assembly in selected cases before opening the convention for signature, thus assuring the support of parliamentarians. Furthermore, explanatory reports are often useful in assisting national authorities in the ratification process. In fact, such reports have been prepared within the Council of Europe in respect of many conventions concluded since 1965, but a number of conventions are still elaborated without an appropriate explanatory report. These reports do not constitute instruments providing an authoritative interpretation of the text of conventions, but they might be prepared in future in respect of each convention in order to facilitate the application of the provisions therein contained. In addition, it would be useful to hold regular exchanges of views on the state of ratification of conventions such as take place regularly within the European Committee on Legal Co-operation (CCJ). This practice might be developed and might even take place on a political level.

14. Experience within the Council of Europe suggests that no general conclusion can be drawn as to the speed of preparation and entry into force of conventions and agreements. The periods involved depend on the nature and degree of the problems to be solved. In some cases experience has shown that conventions concerning subjects of great political interest may be elaborated and enter into force relatively quickly while in other cases it may be that legal and political problems are so interwoven that even a fairly rapid drafting of legal provisions may be impeded by changing political problems which may arise. Such circumstances make it impossible to proceed to a meaningful comparison which might lead to reasonable conclusions as to whether the probable duration of work involved is an argument for or against the retention of the form of a convention. The main criteria in the making of this decision are, in fact, those set out above, namely their formality and legally binding nature, possibilities of follow-up, extension to non-member States etc.

15. Once a convention has entered into force, the subject-matter which it covers is less susceptible to dynamic development unless provision is made in the treaty itself for its continual adaptation. The question may thus arise with regard to many conventions as to whether the treaty should be amended, for example, to meet changed circumstances or to facilitate its implementation by Contracting Parties. Unfortunately, just as with the preparation of the convention itself, this may be a slow and difficult process and once effected amendments in any case are often cumbersome. Few Council of Europe conventions contain any express provision regarding amendment. These include, however, the following:

—Article 36 of the *European Social Charter*, under which any Member of the Council of Europe may propose amendments to the Charter;

—Article 24 (1) of the *Establishment Convention*, which sets up a Standing Committee which may formulate proposals for the amendment of the convention;

—Article 3 of the *War-Disabled (Repair of Appliances) Agreement*.

In many other cases it is provided that a subsequent bilateral or multilateral agreement may prevail over the convention in question, thus allowing variations in the obligations undertaken while not providing for an actual amendment of the text itself.

16. The possibility should be considered of making more frequent use in relation to appropriate subjects of the framework or outline treaty approach. According to this approach, which seems to be acceptable in the technical field only, the content of such a convention would be limited to general undertakings and/or principles to be followed by the Contracting Parties. Questions of detail concerning the implementation of the convention would be dealt with in either of the following ways:

(a) The drafting of more detailed provisions would be the task of a treaty body, as in the case of the European Convention on the International Classification of Patents for Invention, the Convention on the Elaboration of a European Pharmacopoeia and the draft European Convention for the Protection of Animals kept for Farming Purposes. Such a system could be accompanied by “contracting-out” procedures on the lines of those followed within the International Civil Aviation Organization and the World Health Organization;

(b) Detailed provisions would be appended to the convention by which a particular treaty body would have responsibility for amending or developing these provisions whenever this proved to be necessary. This is at present the case with the European Agreement on the Exchange of Therapeutic Substances of Human Origin, the European Agreement on the Exchange of Blood-Grouping Reagents and the European Agreement on the Exchange of Tissue-Typing Reagents.

The purpose of adopting either of these approaches for a framework treaty would be to attempt to overcome the problems already mentioned regarding the difficulty of amending a convention once it has entered into force.

Recommendations

17. Recommendations to Governments may be made by the Committee of Ministers in accordance with Article 15(b) of the Statute of the Council of Europe:

“In appropriate cases, the conclusions of the committee may take the form of recommendations to the governments of Members, and the committee may request the governments of Members to inform it of the action taken by them with regard to such recommendations.”

In practice, recommendations to Governments have frequently been embodied in resolutions of the Committee of Ministers and have been of great importance in implementing decisions of the Committee in pursuance of the Council of Europe Work Programme.

18. Recommendations to Governments have certain advantages over conventions in that, while great care must be taken in their preparation, in general they are easier to draw up than conventions and thus are more quickly made ready for adoption. Also, through being adopted in the form of a decision of the Committee of Ministers, they take effect immediately and directly and are not dependent for their operation on any further act of agreement by member States. Furthermore, they are more readily susceptible to amendment, should the need arise, by the passing of a further resolution on the same subject varying the recommendations originally made.

19. On the other hand, while recommendations take effect automatically with regard to all Council of Europe member States, the legal force they possess on being adopted is not the same as that which is attributable to conventions. While conventions are legally binding and enforceable in international law, recommendations, by definition, “recommend” a course of action to Governments which they may or may not subsequently choose to follow. While Governments may be under moral and political pressure to ensure its implementation, the legal duty to act upon the recommendation goes no further than to consider in good faith whether it should be implemented. Thus, while a recommendation has the advantage of being directly applicable to Governments, it lacks the legally binding force of a convention and is therefore normally less effective as a means of influencing the action of Governments.

20. According to Article 20(a) of the Statute of the Council of Europe, resolutions of the Committee of Ministers which embody recommendations under Article 15(b) require the unanimous vote of the representatives casting a vote, and of a majority of the representatives entitled to sit on the Committee. The need for unanimity among the votes cast may lead to the result that the text of a recommendation which is finally adopted may be only a minimum solution which is possibly less far-reaching than a majority of representatives had originally envisaged and would have been willing to accept. In addition, it should be noted that, in accordance with Article 10 (2)(c) of the Rules of Procedure for the meetings of the Ministers’ Deputies, a Deputy may express a reservation in relation to a text even though he does not vote against it.

21. In an attempt to encourage the implementation of its recommendations, the Committee of Ministers in 1959 decided to require the transmission of annual reports to the Secretary General of the Council of Europe on action taken to implement each recommendation. The general rule as to the presentation of annual reports, however, is qualified by the inclusion of express provisions, in particular recommendations, designating some other period for report, such as two, three, four or five years. Thus at present there is a twofold “control system” in operation with reports being presented annually under the general rule or at other periods in accordance with specific provisions. This system is not entirely satisfactory, as it necessitates the preparation by Governments of a steadily increasing number of reports each year, thus placing a heavy burden on the Governments concerned, as well as the Council of Europe, and at the same time diluting the effect of the report on each individual recommendation. In addition, it must be admitted that only in a few cases are these reports effectively followed up within the Council of Europe. In future, so as to ease the burden on Governments and to ensure

more efficient use of information received, this system will have to be revised so as to operate more selectively. Any solution to the problem of following up recommendations to Governments would probably have to involve:

(a) The abolition of the general rule as to annual reports, as well as the amendment of existing specific provisions;

(b) Their replacement by a systematic study of reports on a collection of recommendations on the same subject, with a limited number of subjects being selected for reporting each year. This would remove the patchwork appearance of the present system and would allow new recommendations to be allocated, wherever possible, to existing categories and thus to be fitted into the revised scheme.

In addition it should be considered whether it is necessary to request reports from member Governments in every case, but where a follow-up procedure is thought to be desirable this might usefully involve two elements:

(a) A follow-up within the Council of Europe in which reports submitted by member Governments are examined by the Secretariat with a view to assisting the Governments in their implementation of recommendations of the Committee of Ministers;

(b) Examination of the reports by the competent intergovernmental committee which could then make recommendations to the Committee of Ministers or to member Governments through the Committee of Ministers.

Exchanges of views

22. Exchanges of views are not expressly mentioned in the Statute of the Council of Europe but, although they are an informal means of achieving co-operation, they are nevertheless a means which can produce important practical results. Being of a less formal nature, an exchange of views involves a less arduous process of preparation than the production of a convention or recommendation and can be arranged relatively quickly. Discussion can be limited to States interested in the particular topic in question and so lead to progress in an area which is restricted but in which progress can more rapidly be achieved. Discussion can proceed more rapidly in a smaller group meeting in a less formal context than, for example, the Committee of Ministers and may more easily result in a compromise. Even if an exchange of views produces no definite outcome, it can achieve the useful purpose of providing an opportunity to compare experience in a particular field, which may stimulate action on a national level or lead to further discussion on an international basis.

23. While the exchange of views is undeniably a useful tool, it must be admitted that it is subject to certain limitations. Most importantly, perhaps, it is generally suitable only in certain restricted areas and only in relation to relatively new and unexplored topics or to new problems arising in familiar fields where it is still necessary to compare opinions and share experiences (for example, the question of the transplant of human organs). In the quickly changing conditions of the present, however, such problems arise with reasonable regularity.

24. In principle, an exchange of views should lead eventually to some further action on a national or international level, including the adoption of a convention or a recommendation to Governments, though in some cases the exchange of views might be seen as an end in itself. Where further action is envisaged, an exchange of views should be organized with the aim of assessing the advisability of preparing a formal instrument, choosing between the two possibilities and defining the broad lines of the content of the instrument. Where an exchange of views is used as an end in itself, it should lead to something more than only a short report on the discussions. For example, the parties might agree on a set of significant texts (such as reports, acts and proposed legislation) which could form a file to be sent by the Secretariat to each Government in order to bring this material to the notice of competent government departments. Exchanges of views themselves must not be too informal, as some degree of organization is clearly

necessary. The Secretariat of the Council could play an important role in ensuring a thorough and adequate preparation for an exchange of views in order to ensure that a maximum amount could be achieved by such a meeting. Such preparation could be undertaken alternatively or in addition by one or more Governments.

CONCLUSIONS

25. In the light of the above discussion the following conclusions might be drawn:

Conventions must still be regarded as a basic method of achieving progress in inter-governmental co-operation, especially in relation to subjects which need long-lasting changes in national law or require some special system of collective follow-up or supervision. Their conclusion within the framework of the Council of Europe is governed by a flexible procedure not requiring the express unanimous consent of the member States. Conventions embody legally binding obligations which may eventually be extended beyond the circle of member States of the Organization. Even if few States are interested at the outset, the conclusion of a convention designed to solve a long-term problem may still be justified, as it is quite possible that participation will gradually widen in the course of time. On the other hand, subjects which may suitably be dealt with in a convention should be carefully selected in view of the lengthy preparation involved, possible delays in ratification and the difficulty of subsequent amendment.

Recommendations are the most frequently used instruments for asking Governments to take certain action. They are directly applicable to member States and take immediate effect, but that effect is limited, especially due to their lack of strict legally binding force. Moreover, in view of the need for unanimity a recommendation tends to limit itself to proposing a minimum solution. In general, recommendations are less far-reaching than conventions, but apply immediately to all member States, though it must not be forgotten that they have no binding legal effect upon member States. If they are to be used, it would be desirable to improve the follow-up procedure by instituting a more systematic and effective reporting system. This in turn would warrant the more selective use of recommendations, as Governments must not be swamped with recommendations upon which they are unable to act.

Exchanges of views are a useful informal method of co-operation which may be used when speedy action is required on the national level and a common approach is desirable. They may achieve limited results in themselves or form the basis of future international action. In order to yield positive results such exchanges of views should be based on carefully circumscribed questions, in particular if the subject-matter to be discussed is of a complex nature. They may also be expected to produce their most useful results only in relation to particular topics, such as those which are relatively new and unexplored.

All three methods of co-operation still have a part to play, though under present conditions it may be necessary to revise the balance somewhat. With changes occurring more rapidly, it may be necessary to use conventions and recommendations more selectively. Exchanges of views should be encouraged as one way of dealing with an ever-increasing volume of work and as a way of getting new topics off the ground more quickly, while at the same time recognizing that a more formal step, including the preparation of a convention or the making of a recommendation, may subsequently be needed to achieve definite and lasting results.

26. In order to ensure a greater awareness of the considerations involved in the preparation of draft conventions and agreements and of recommendations to member Governments, it is suggested that this report should be distributed to all competent committees within the Council of Europe structure which are entrusted with the preparation of such instruments.

These committees should be invited to take into consideration the following *criteria* when examining the form which might eventually be given to an item of the Work Programme. In particular, the following points might be emphasized:

(a) A topic should be considered as being suitable for the drafting of a *convention* if there is a need for compulsory State undertakings, taking into account the need to assure the security of international relations. In this respect, it should be noted that a convention may be drafted not only so as to contain itself compulsory provisions but also to act as a framework for further enactments or the elaboration of compulsory regulations.

(b) A *recommendation* should be regarded as the appropriate instrument if its purpose is mainly to establish principles of conduct for member States in the particular area under examination and to organize an exchange of information on how those principles are to be implemented in member States, possibly with a view to further examination within the Council of Europe as to the follow-up which might be required as a result of the experience gained in implementing these principles.

(c) Greater recourse than in the past should be made to a simple *exchange of views* within the Council of Europe on those questions where very immediate problems are involved or where it is necessary to decide upon the scope and content of the problems involved before a solution can be sought. Attention has to be drawn to the fact that recourse to an exchange of views might very well lead at a later stage to the preparation of a convention or recommendation but that this should not be necessary in every case. An exchange of views under some circumstances might be sufficient in itself provided that its results are clearly and extensively recorded, unless there are special reasons why they should remain confidential, and by appropriate means are brought to the attention of all those responsible in member States for dealing with the problem concerned.

NOTES

¹ Dans la terminologie du Conseil de l'Europe, la différence entre une convention et un accord réside dans la manière selon laquelle un Etat membre peut exprimer son consentement à être lié par le traité; pour une convention, c'est nécessairement la ratification, l'acceptation ou l'approbation, consécutive à une signature; pour un accord, ce peut être une simple signature.

² L'Assemblée consultative compte à l'heure actuelle 170 membres. Ils sont nommés ou élus par les parlements nationaux parmi leurs membres. Le nombre des sièges attribués aux délégations va de deux à dix-huit, en fonction de la population.

³ Le Comité des ministres est composé des vingt et un ministres des affaires étrangères des Etats membres. Les ministres se réunissent en principe deux fois par an. Entre-temps, leurs délégués, qui sont les représentants permanents de leurs gouvernements auprès du Conseil de l'Europe, ou les adjoints des délégués, se réunissent une quinzaine de fois dans l'année.

⁴ Article 17 : "Le Comité des ministres peut constituer à toutes fins qu'il jugera désirables des comités ou commissions de caractère consultatif ou technique." Ces comités sont appelés ci-après "comités de l'article 17".

⁵ Environ 35 p. 100 pour l'Assemblée consultative et 40 p. 100 pour les comités d'experts.

⁶ Dans certains cas, toutefois, lorsque c'est l'Assemblée consultative qui a pris l'initiative, elle peut proposer un projet.

⁷ Il n'y a à l'heure actuelle qu'un seul exemple d'un instrument conventionnel proposé et préparé par un Comité conventionnel. Il s'agit d'un protocole d'amendement, qui n'a pas encore été adopté.

⁸ Original in both English and French; only the English version is reproduced here.

⁹ The words "of signature or" apply only in the case of an agreement.

¹⁰ The particulars concerning the rules according to which the decision is taken are intended for guidance. Obviously, there are other alternatives, such as: making no stipulation at all, in which case the decision has to be taken by the majority provided for in Article 20(d) of the Statute; requiring a unanimous decision by the Committee of Ministers; providing, in addition to the decision by the Committee of Ministers, for the agree-

ment of the States parties which are not members of the Council of Europe. In the text proposed above, "unanimous vote of the representatives of the Contracting States entitled to sit on the Committee" means that all of those States must approve the decision. The decision cannot be taken if some of those States are absent or abstain.

¹¹ Where a treaty contains no reservation clause, any reservation compatible with the object and purpose of the treaty may be formulated. If such is not the intention of the bodies responsible for drawing up the treaty, who might on the contrary wish that no reservations be made, an article such as the following should be adopted:

"No reservation may be made in respect of the provisions (of this Agreement) (of this Convention)."

Article (e) above is only one example of the different arrangements possible for the formulation of reservations, certain of which are already provided for in several Council of Europe agreements or conventions.

¹² The annex might be worded as follows:

"Annex

"(Article e)

"Any State may declare that it reserves the right:

"1. to . . .

"2. to . . ."

¹³ If formulated when signing the treaty, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

¹⁴ The sentence "No other reservation may be made" is intended to make it clear that the list of authorized reservations is exclusive. This sentence might, however, be deleted in appropriate cases.

C. COUNCIL FOR MUTUAL ECONOMIC ASSISTANCE (CMEA)

1. The elaboration and preparation for signing of multilateral international treaties between the member countries of CMEA on matters of economic, scientific and technical co-operation is normally effected within the Council for Mutual Economic Assistance.

2. International treaties (including multilateral treaties, agreements, conventions and other such instruments relating to matters of economic, scientific and technical co-operation) are prepared within the CMEA on the basis of a recommendation or decision of the appropriate CMEA body. The initiative for raising the question of preparing and concluding a treaty may emanate from one or several member countries of CMEA or from the Secretariat of CMEA.

3. The recommendation to conclude a treaty may be adopted by a CMEA organ with universal competence (the Session of the Council or the Executive Committee of the Council) or by an organ with special competence in the particular field (CMEA committees, the Standing Commissions of CMEA, the Conferences of the representatives of the appropriate organs of CMEA member countries. For example, the session of CMEA, at its thirty-second meeting, approved the long-term specific programmes of co-operation among CMEA member countries in the field of energy, fuel, raw materials, agriculture, the food industry and machine-building for the period up to 1990, and recommended that CMEA member countries take the necessary steps to implement the measures of co-operation included in these specific programmes by concluding the appropriate multilateral and bilateral agreements on

economic, scientific and technical co-operation. The matters on which there is a need to prepare the appropriate multilateral agreements designed to implement the relevant provisions of the specific programmes, as well as the CMEA organs in which these agreements are to be drafted, have already been determined in the specific programmes.

4. The preparation of international treaties is one of the functions of the specialized Standing Commissions of CMEA. For example, the regulations of the Standing Commission on Electric Power provide that the Commission (among its other functions) on the basis of the recommendations or decisions of organs of the Council, "prepares, or organizes the preparation of drafts of multilateral agreements among the member countries of the Council on matters of economic, scientific and technical co-operation in the field of electric power".

5. A draft treaty is normally prepared by an auxiliary working organ (a working group, a conference of experts, etc.) or by the secretariat of the Council, which is responsible under its regulations for preparing, or assisting in the preparation of, drafts of multilateral agreements. The deadline for preparing a draft treaty is set by the CMEA organ, with due regard for the novelty of the subject of the treaty, the complexity of the matters to be regulated, and so forth.

6. All of the basic work involved in reaching agreement on the wording of a draft treaty is usually done in the appropriate working organ. The finished draft is submitted for approval by the CMEA organ which commissioned it. If necessary, additional concordance of all matters which were not fully agreed upon during the preparation of the draft treaty takes place at a meeting of this organ.

7. If the meeting of this CMEA organ does not succeed in reaching full agreement, the draft is either referred to the working organ for completion or submitted for consideration by a higher organ of CMEA.

The fully agreed text of a treaty is approved by the appropriate CMEA organ, which usually recommends that the countries concerned sign the treaty and take measures to approve (ratify) it if that is required by its provisions.

8. Once the treaty is signed, it acquires the force of an independent international legal instrument to which, depending upon its provisions, the relevant rules of treaty law apply, including those relating to possible accessions to the treaty, to ratification, to registration with the United Nations Secretariat, and so forth.

9. The depositary functions of treaties the drafts of which are prepared within CMEA are normally entrusted to the secretariat of CMEA.

10. The following are examples of such treaties registered with the United Nations Secretariat: Convention on the settlement by arbitration of civil law disputes arising out of economic, scientific and technical co-operation relationships, of 26 May 1972; Agreement on the legal protection of inventions, industrial and generally useful designs and trademarks in the context of economic, scientific and technical co-operation, of 12 April 1973; Convention on the application of standards of the Council for Mutual Economic Assistance, of 21 June 1974; Agreement on the unification of requirements with regard to the formulation and filing of patent applications, of 5 July 1975;

Agreement on mutual recognition of inventors' certificates and other titles of protection of 18 December 1976.

D. CUSTOMS CO-OPERATION COUNCIL

1. Under Article III of the Convention signed in Brussels on 15 December 1950, the Customs Co-operation Council is required:

—to study all questions relating to co-operation in Customs matters which the Contracting Parties agree to promote in conformity with the general purposes of the present Convention;

—to examine the technical aspects, as well as the economic factors related thereto, of Customs systems with a view to proposing to its members practical means of attaining the highest possible degree of harmony and uniformity;

—to prepare draft Conventions and amendments to Conventions and to recommend their adoption by interested Governments.

2. In addition to preparing and administering, the Convention on Nomenclature for the classification of goods in Customs tariffs and the Convention on the valuation of goods for Customs purposes, which were signed in Brussels on 15 December 1950, since 1956 the Customs Co-operation Council has prepared ten multilateral Conventions concerning questions of Customs technique.

3. In practice, in elaborating these various multilateral treaties the Council has followed the general pattern of techniques and procedures outlined below.

4. In the initial stage, the initiative in proposing the elaboration of a treaty has been taken by member States of the Customs Co-operation Council. Examples are the Customs Convention Governing Facilities for the Importation of Goods for Display or Use at Exhibitions, Fairs, Meetings or Similar Events (Brussels, 8 June 1961) and the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto, 10 May 1973). This initiative may also be taken in response to the wishes of other intergovernmental organizations. Examples are the Customs Convention Concerning Welfare Material for Seafarers (Brussels, 1 December 1964) which was elaborated in response to a Resolution by the Tripartite Sub-Committee of the Joint Maritime Commission of the International Labour Organisation; the Customs Convention on the Temporary Importation of Scientific Equipment (Brussels, 11 June 1968) and the Customs Convention on the Temporary Importation of Pedagogic Material (Brussels, 8 June 1970) which were elaborated in close consultation with UNESCO. Such initiative may also be taken in response to the needs of the International Chamber of Commerce, as in the case of the Customs Convention on the Temporary Importation of Packings (Brussels, 6 October 1960), the Customs Convention on the Temporary Importation of Professional Equipment (Brussels, 8 June 1961) and the Customs Convention on the ATA Carnet for the Temporary Admission of Goods (Brussels, 6 December 1961).

5. The formal proposal to elaborate a new multilateral treaty has usually been made at a meeting of the Permanent Technical Committee which, under the Convention establishing a Customs Co-operation Council, is required to

assist the Council and is composed of representatives of Council member States; these representatives are officials specialized in technical customs matters, who may be assisted by experts.

6. The decision to elaborate a new multilateral instrument is taken, on a proposal by the Permanent Technical Committee, at a Council meeting attended by delegates representing the Member States of the Customs Co-operation Council.

7. Once the decision has been taken, the General Secretariat of the Council prepares a preliminary draft treaty.

8. The preliminary draft is submitted for comment to all Council members and to interested international, intergovernmental or non-governmental organizations.

9. The preliminary draft, together with the observations and suggestions made by member States and international organizations, is then examined by a Working Party whose meetings are open to representatives of all Council member States and to the observers of the representatives of non-member States and international organizations. This Working Party in fact consists of governmental experts who finalize the text of the draft treaty and refer to the Permanent Technical Committee or the Council any question of principle that they consider to lie outside their competence.

10. If the Permanent Technical Committee so decides, the text drafted by the Working Party is again submitted to member States and interested international organizations for comment.

11. The text is then examined by the Permanent Technical Committee to establish the final version of the draft. The Committee may assign it, if necessary, to a drafting group for the improvement of certain provisions.

12. The Permanent Technical Committee then reports to the Council and submits to it the text of the draft treaty. The Council adopts the text and submits it to Member States for signature or accession.

13. As a rule, the Council adopts the draft as it stands, having already been informed through the reports of the Permanent Technical Committee of the various difficulties that may have arisen during the elaboration of the text.

14. Sometimes, the Council itself may make certain amendments to the draft Convention submitted to it (for example, in the case of the Customs Convention on the ATA carnet for the temporary admission of goods and the International Convention on the simplification and harmonization of Customs procedures).

15. In as much as the decision to elaborate a treaty is taken by general agreement, following a broad exchange of views, and as the questions involved are purely technical, the elaboration process is usually relatively short. For example, the preparatory work on the Customs Convention Governing Facilities for the Importation of Goods for Display or Use at Exhibitions, Fairs, Meetings or Similar Events was begun by the Permanent Technical Committee in September 1959 and the Draft Convention was adopted by the Council on 8 June 1961. On the same date, the Council adopted the text of the Customs Convention on the Temporary Importation of Professional Equipment, which had been elaborated over the same period. Preparatory work on the elaboration of the Customs Convention on the ATA Carnet for the Temporary

Admission of Goods was begun in October 1960 and the final text of the Convention was adopted by the Council on 6 December 1961. The resolution by the International Labour Organisation which led to the Customs Convention Concerning Welfare Material for Seafarers was communicated to the Customs Co-operation Council in 1962 and the text of the Convention was approved by the Council on 1 December 1964. Preparatory work on the elaboration of the Customs Convention Concerning the Temporary Importation of Scientific Equipment was begun by the Permanent Technical Committee in October 1966 and the draft Convention was adopted by the Council on 11 June 1968.

16. In this connexion, it is worth noting that the Council's Permanent Technical Committee meets twice yearly. In October 1972 the length of its sessions was reduced from two to one week; however, at the same time, the Working Party, which had previously met only during the week preceding each Committee session, had extended its meetings from one to two weeks.

17. At present, when the elaboration of an international treaty appears as an item on the Permanent Technical Committee's agenda, the discussions usually take up about two days of the session.

18. On the other hand, some meetings of the Working Party have been entirely devoted to the finalization of the texts of draft Conventions. In addition, of course, there is the preparatory work done by the secretariat.

19. The International Convention on the Simplification and Harmonization of Customs Procedures is a special case, inasmuch as it includes Annexes that can be accepted independently of each other by the Contracting Parties.

20. The body of the Convention and three Annexes were adopted by the Customs Co-operation Council at Kyoto on 18 May 1973. Six further Annexes were adopted by the Council on 10 June 1974, three more on 22 May 1975, five more in June 1976 and a further three in June 1977. At the Council's most recent meeting, which took place in June 1978, three more Annexes were adopted.

21. This method was chosen because each Annex concerns a specific Customs procedure and, together with the body of the Convention, constitutes a separate instrument. As it was planned to elaborate some 30 Annexes and as the work was expected to take several years, the Council decided, with a view to obtaining certain immediate results, that the body of the Convention and the first few Annexes should come into force without delay, with the other Annexes necessary to the completion of the work being progressively inserted.

22. The finalization of an Annex to the Kyoto Convention normally takes one year. The Working Party of the Permanent Technical Committee usually devotes about three or four days to the task and the Permanent Technical Committee itself one or two days, depending on the circumstances.

E. EUROPEAN FREE TRADE ASSOCIATION (EFTA)

1. The activities of EFTA are partly the result of the provisions of the Stockholm Convention and partly the result of the desire to take complementary action.

2. The first type of activities deals essentially with the operation and administration of the already established free trade area. They consist in

actions and decisions taken by the organs mentioned in the Convention; sometimes they take the form of agreements between the member States reached within the competent organs of the Association.

3. The second type of activities deals with subjects not directly related to the provisions of the Stockholm Convention. They mainly consist in measures aimed at eliminating non-tariff barriers to trade. In this context the following Conventions and Agreements have been concluded:

The Pharmaceutical Inspection Convention;

The Convention on the Control and Marking of Articles of Precious Metals; and

The Schemes for the Reciprocal Recognition of Tests and Inspections.

Details of these instruments are set out in the Annex.

4. The general pattern followed in their elaboration was that subjects for possible agreements were first discussed at experts level; a matter was then only pursued if it was not already or could not be dealt with satisfactorily in a wider forum than EFTA. In the course of the elaboration of an instrument, also interested circles were consulted. The final draft was adopted in the Councils and/or submitted for signature. The two Conventions mentioned entered into force after a certain period following the deposit of the fourth or fifth instrument of ratification respectively.

ANNEX

1. *Pharmaceutical Inspection Convention*

Signed in Geneva on 8 October 1970.

Entered into force on 26 May 1971.

Purpose: to facilitate trade in pharmaceutical products, by providing for the recognition of inspections in respect of the manufacture of pharmaceutical products.

Parties: the EFTA countries Austria, Finland, Iceland, Norway, Portugal, Sweden and Switzerland, and Denmark, Hungary, Ireland, Liechtenstein and the United Kingdom.

2. *Convention on the Control and Marking of Articles of Precious Metals*

Signed in Vienna on 15 November 1972.

Entered into force on 27 June 1975.

Purpose: to facilitate trade in articles of precious metals (gold, silver and platinum) by providing a Common Control Hallmark.

Parties: Austria, Finland, Sweden, Switzerland and the United Kingdom.

3. *Scheme for the Reciprocal Recognition of Tests and Inspections carried out on Ships' Equipment*

Entered into force on 1 January 1971.

Purpose: to facilitate trade in ships' equipment by providing for the recognition of tests and inspections thereof.

Participating are authorities responsible for approving any kind of ships' equipment in Denmark, Finland, the Federal Republic of Germany, Iceland, the Netherlands, Norway, Portugal, Sweden, the United Kingdom and Yugoslavia.

4. *Scheme for the Reciprocal Recognition of Tests carried out on Agricultural Machines and Tractors for Operational Safety and Ergonomics and for Road Traffic Safety*

Entered into force on 1 September 1972.

Purpose: to facilitate trade in agricultural machines and tractors by providing for the recognition of tests and inspections thereof.

Participating are authorities responsible for approving any kind of agricultural machines and tractors in Austria, Denmark, Finland, Norway, Portugal, Sweden, Switzerland and the United Kingdom.

5. *Scheme for the Reciprocal Recognition of Tests and Inspections carried out on Lifting Appliances*

Entered into force on 1 January 1978.

Purpose: to facilitate trade in lifting appliances by providing for the recognition of tests and inspections thereof.

Participating are authorities responsible for approving lifting appliances in Austria, Finland, Iceland, Norway and Switzerland.

6. *Scheme for the Reciprocal Recognition of Heating Equipment using Liquid Fuel*

Entered into force on 1 January 1978.

Purpose: to facilitate trade in heating equipment using liquid fuel by providing for the recognition of tests and inspections thereof.

Participating are the competent approval bodies in Austria, Finland, Iceland, Norway, Portugal, Sweden and Switzerland.

7. *Scheme for the Mutual Recognition of Evaluation Reports on Pharmaceutical Products*

Entered into force on 13 June 1979.

Purpose: to facilitate trade in pharmaceutical products by providing for the recognition of evaluations of pharmaceutical products with a view to their registration.

Participating are authorities responsible for the registration of pharmaceutical products in Austria, Finland, Norway, Sweden and Switzerland.

8. *Agreement (under Article XXIV of the GATT)*

Signed in Geneva on 26 June 1979.

Entered into force on 1 May 1980.

Objective: free trade in industrial products.

Parties: The seven *EFTA* countries (Austria, Finland, Iceland, Norway, Portugal, Sweden and Switzerland on the one hand, and Spain on the other hand).

The negotiations took place in plenary meetings which were prepared by expert groups. The positions of the *EFTA* countries were, after consultations between them, presented by a spokesman. The *EFTA* Secretariat provided legal and technical assistance during the negotiations.

A Joint Committee established under the Agreement has the task to administer the Agreement and supervise its application. The Committee, which is served by the *EFTA* Secretariat, is authorized to amend certain provisions of the Agreement.

F. EUROPEAN SPACE AGENCY (ESA)

1. Introduction

1. The European Space Agency (ESA) is an international governmental organization composed of 11 West European States. Its main purpose is to promote and provide for co-operation for exclusively peaceful purposes between its members in space research, technology and applications thereof and to carry out scientific and applications programmes in space.

2. The European Space Agency, as a technical international organization, needs a flexible legal framework in order to be able to adjust itself to the difficulties which appear constantly during the execution of technical programmes. It means that most legal instruments used by ESA in respect of its contacts with other bodies are not in the range of the classical form of treaties. Therefore, it could be more suitable to use the word agreement for the instruments used by ESA.

2. *The legal framework*

3. Due to the recent re-organization of European space co-operation a rather complex situation has arisen. The ESA Convention was signed in 1975 by the 10 former ELDO/ESRO member States and Ireland. Since only 6 of the 10 ELDO/ESRO members have deposited their instruments of ratification the ESA Convention is not yet in force. The member States have decided to pursue their activities under the former ESRO Convention while attention is paid in the greatest possible extent to the ESA Convention. This implies that the agreements signed by the Agency before 1975 are governed by the ESRO Convention and those after 1975 have been concluded *de facto* under the ESA Conventions. It is therefore imperative to treat both kinds of agreements separately.

3. *The treaty-making power*

4. Under both the ESRO and ESA Conventions, treaty-making power is attributed to the Council. Voting procedures are laid down in the Conventions. The conclusion of the agreement lies within the competence of the Agency, represented by the Director General, after final approval by the Council and recommendation by subordinate bodies such as the Administration and Finance Committee or technical boards.

4. *The ESRO agreements*

5. Under the ESRO Convention a special project outside the agreed (scientific) programme but within the scope of the Agency could be subject to an agreement between member States and the Organization. Due to the fact that the Convention provided no clauses about the conclusion of such agreements, the member States resorted to the formal conclusion of agreements with the possibility of the reservation that the agreement was subject to ratification. In practice programmes could be started (and had to be) before the participating member States had formally approved the agreement. So under the ESRO Convention the classical procedure such as negotiations, signature and ratification were used for the adoption of legal instruments.

5. *The ESA agreements*

6. The ESA Convention distinguishes two fundamental groups of activities carried out by the Agency:

(a) Mandatory activities in which all member States participate on a GNP basis: studies on future projects and technological research, scientific programme;

(b) Optional programmes in which all member States participate except if they formally declare that they are not interested in participation: development and operation of launching systems, pre-operational applications satellites.

The "arrangements" between the Agency and the participating members to carry out optional programmes can be classified as multilateral agreements.

(a) *Legal framework*

7. Annex III to the ESA Convention provides for 5 steps in the adoption of an optional programme:

- (i) Any proposal brought up before the Council is submitted for study to the member States;
- (ii) The Council agrees to carry out the programme in the framework provided by the Agency;
- (iii) Declaration of the member States who will carry out the programme, define the content of the programme and the budgetary assignments;
- (iv) Adoption by the Council of the rules of implementation.

The system provided by the ESA Convention is a great innovation in the field of multilateral agreements. The formal treaty procedures are replaced by a system similar to the form of concurring wills, which results in a considerable gain of time and a simplification of legal procedures. The Declaration is not signed and not submitted to ratification procedure because it is made within the legal framework already established by the Convention.

(b) *The practice*

8. The proposal for an optional programme can be forwarded by both the Agency and the members. Mostly the project will be referred to the Director General for study and preparation. The latter will report to the Council and its subordinate bodies about the feasibility of the programme, an item which will have been discussed at length with the delegations of the member States. This implies that when the matter and the legal texts appear before the Council consensus will have been reached already in most of the cases and most of the difficulties will have been solved during the elaboration of the report. Very few amendments are in fact introduced at this final stage.

6. *The Memorandum of Understanding of AEROSAT*

9. While most of the agreements signed by the Agency are bilateral, the most notable exception is the Memorandum of Understanding of AEROSAT concluded in 1974. Its full name is Memorandum of Understanding on a joint programme of experimentation and evaluation using aeronautical satellite capability. It was signed by ESRO, F.A.A. and the Government of Canada. The negotiations were conducted by a mixed delegation of the Agency and the member States and back-up talks were held with the Administrative and Financial Committee and with the Aerosat Programme Board. The Council approved the MOU and it was signed by the Director General.

7. Conclusion

10. The European Space Agency, as a technical international organization, needs a very flexible legal framework to function correctly. This implies that most agreements are "working agreements" that do not amount in form to the juridical value of multilateral treaties. The innovation of the system of optional programmes has made a formal approach to agreements superfluous, as for the relations between member States and the Agency. Multilateral treaties are not excluded under the ESA Convention but co-operation with entities other than member States is mostly conducted on a bilateral basis.

G. INTER-AMERICAN DEVELOPMENT BANK

1. Since the Inter-American Development Bank is an operational institution in the sense that it uses its resources for the purpose of contributing to the acceleration of the process of economic and social development of the regional developing member countries by means of providing loans and technical assistance and other related activities, rather than a legislating entity engaged in the preparation of treaties, recommendations or other legal instruments, we think that the questions listed in Annex 1 of Document A/36/553 should be answered by the latter type of institutions.

2. We should mention, though, that the task being undertaken by the General Assembly in order to improve the multilateral treaty-making process is an important one and very useful for the international organizations.

3. During the 1972-1977 period the Inter-American Development Bank expanded and almost doubled the number of its member countries, incorporating for the first time a number of non-regional member countries. In early 1972 membership in the Bank consisted of 23 regional countries; by the end of 1977 this membership had increased to 41 countries—26 regional and 15 non-regional. We think that the procedures and techniques utilized to carry out this expansion in membership may be both of interest and relevant to the report requested by the General Assembly.

4. This expansion started with Canada (May 1972) and was followed by the incorporation of Belgium, Denmark, Germany, Israel, Japan, Spain, Switzerland, the United Kingdom and Yugoslavia (July 1976); Guyana (November 1976); Austria, France and the Netherlands (January 1977); Italy (May 1977); Finland (June 1977); Sweden (September 1977) and the Bahamas (December 1977). It should be emphasized that this process should not be regarded as completed and that, under appropriate circumstances, additional countries—regional or non-regional—may still join the Bank in the future.

5. Apart from the obvious political and financial complexities entailed in the execution of the aforementioned non-regional membership exercise, significant changes were made to the international agreement which established the Bank. These amendments to the Agreement Establishing the Bank were first approved by our Board of Governors in accordance with the relevant amendment provisions of the Agreement (Article XII) and were subsequently ratified in compliance with the internal legislative requirements of each existing regional member country. During this same period within which the

amendments became effective the Bank and the prospective non-regional member countries concluded an ad-referendum agreement (the General Rules) on the terms and conditions of entry which, thereafter, was only duly ratified by these same countries as well as the existing regional member countries.

6. Both the uniqueness of this non-regional membership exercise and the relatively short time within which it was accomplished are evidenced by the documentation which we are presently attaching for your perusal. Among those procedural techniques which were utilized by the Bank in the course of this exercise and which would be highlighted as being relevant to the request of the General Assembly, we could mention the following: first, the establishment by our Board of Governors of a Committee with consultation authority as provided by Resolution AG-5/70 attached herewith; secondly, Section 5 of the Bank's by-laws which permits the Board of Governors, on given matters and under qualified circumstances, to take a vote without a formal meeting; and finally the procedures adopted during the 1975-1976 period to permit simultaneous action by the existing regional members to approve the necessary amendments to the Bank's Agreement and by the prospective non-regional members to accept or ratify the Agreement in its amended form.

H. INTERNATIONAL COMMISSION FOR THE SOUTHEAST ATLANTIC FISHERIES¹

1. Multilateral treaties have been concluded in 1976 and 1977 under the Convention for the Conservation of the Living Resources of the Southeast Atlantic, signed at Rome on 23 October 1969, which came into force on 24 October 1971, and which, to date, has been ratified, accepted, or approved by 16 countries. The purpose of these treaties, called "Agreements", is the allocation of the total allowable catch of certain species among the countries concerned.

2. The basis for these agreements is Article VIII, paragraph 3, of the Convention, which reads as follows:

"3. (a) If the Commission makes a recommendation under paragraph 2 (g) of this Article,² it may invite the Contracting Parties concerned, as determined by the Commission, to elaborate agreements on the allocation of a total catch quota taking into account the fishing interests of all the countries concerned and ensuring, as far as possible, that all the countries concerned abide by the Commission's recommendation for a total catch quota and by any agreed allocation.

"(b) The terms of any such agreement shall be reported by the Contracting Parties concerned to the Commission as soon as possible. Without prejudice to the binding force of such agreements on the parties thereto, the Commission may thereupon make recommendations, pursuant to paragraph 1 of this Article on the subject matter of said agreements."

3. In practice, the Agreements were concluded in 1976 and 1977 in the following manner:

(i) The Recommendation regarding the limitation of the total catch of a species, in one or more areas of the Commission, is normally adopted by the Commission as such; a two-thirds majority of the Contracting Parties present and voting is required. These Recommendations are based on proposals put

forward by the Scientific Advisory Council, a subsidiary body of the Commission.

(ii) The heads of delegation of the countries interested in fishing the species in question in the said area then meet to draft an Agreement to allocate among the countries they represent the global quota set in the Recommendation.

The draft Agreement for the quota allocation is reached by consensus among the heads of delegation of the countries concerned and is based primarily on their catches in previous years and their respective economic interests.

A model text for an Agreement of this nature was adopted in December 1976. In 1977 the text was amended in order to: make provision for the extension of fishing zones by certain coastal States (Article 1); and to give the Contracting Parties to the Agreement the option of transferring quotas (Article 2). These amendments were adopted at the same time as the new Agreement, and were not voted on separately. The principal negotiations among the parties to the Agreement have concerned the size of the allocations.

Once the Agreement has been concluded, the Commission is notified to this effect by an *ad hoc* committee, which also submits a draft of a complementary Resolution, the purpose of which is to provide for putting the Agreement into force as soon as possible.

(iii) The Resolution is adopted unanimously at a plenary session of the Commission, in order to avoid the inconvenience and delay that may arise, on the one hand, from the power to object to Commission Recommendations established in Article IX of the Convention,³ and, on the other, from the fact that the Agreement must be submitted to the Governments of the countries concerned for ratification or acceptance. This Resolution is, in effect, subject to a simplified objection procedure, which involves a sole delay of 90 days following notification thereof, that is, practically to the end of April of the following year.

(iv) From a chronological point of view, the entire procedure takes place during the two-week annual Commission meeting held in the month of December.

The Agreement, signed by the Chairman in office at the time, is normally published in the Proceedings of the annual Commission meeting. Furthermore, the text of the Recommendation, Resolution, and Agreement is notified without delay by the Executive Secretary of the Commission, who is the Depository thereof, to the Ministers of Foreign Affairs of the member countries.

In accordance with the resolution, the Recommendation and Agreement adopted in December are applicable from 1 January of the following year, although quota closure for the species in question, the basis for possible penalties through the Scheme of Joint International Enforcement, does not affect each country party to the Agreement until that country's catches have reached the figure allocated to it, which as a general rule takes several months.

The official entry into force of the Agreement, according to the terms of Article 3, paragraph 1 comes about belatedly, due to the delays inherent in the acceptance or ratification process.

NOTES

¹The original text is in French; this translation was provided by the Commission.

²Article VIII, paragraph 1:

“The Commission may make, on its own initiative or on the proposal of a Regional or Stock Committee and on the basis of the results of scientific investigations, recommendations relating to the objectives of the Convention. These recommendations shall become binding on the Contracting Parties under the conditions laid down in Article IX.”

Article VIII, paragraph 2:

“The matters with respect to which the Commission may make recommendations shall be:

“2. (g) the regulation of the total catch by species, group of species, or, if appropriate, by regions.”

³Article IX:

“1. Subject to the provisions of this Article, the Contracting Parties undertake to give effect to any recommendation adopted by the Commission in accordance with Article VIII.

“2. Any Contracting Party may, within ninety days of notification of a recommendation, present an objection to it to the Commission and in that event shall not be under an obligation to give effect to the recommendation.

“3. If an objection is presented within the ninety-day period referred to in the preceding paragraph any other Contracting Party may present an objection at any time within a further period of sixty days or within thirty days after notification of an objection presented by another Contracting Party made within the further sixty-day period.

“4. If objections to a recommendation are presented by at least three Contracting Parties, all the other Contracting Parties shall be relieved forthwith of any obligation to give effect to that recommendation; nevertheless, any or all of them may agree among themselves to give effect to it.

“5. Any Contracting Party which has presented an objection to a recommendation may at any time withdraw that objection and shall then, subject to the provisions of the preceding paragraph, give effect to the recommendation within ninety days.

“6. The Commission shall notify all Contracting Parties of each objection or withdrawal immediately upon receipt thereof.”

I. INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
(UNIDROIT)

1. The first and indispensable step in the conclusion of a multilateral treaty within the framework of UNIDROIT lies in the inscription of an item in the triennial Work Programme of the Institute. Topics may be proposed by member Governments, interested international organizations or professional circles, members of the Governing Council¹ of UNIDROIT or the Secretariat. The draft Work Programme is adopted by the Governing Council and approved by the General Assembly.²

2. Once a subject has been included in the Work Programme, a preliminary comparative law study is prepared either by a consultant expert (as was the case for example with the work on the warehousing contract and on the quality control of goods) or by the staff of the Secretariat itself. The latter will be based partly on direct research, which is greatly facilitated by the Institute's extensive library facilities, and partly on information provided by Governments

and by the interested international organizations and professional circles (for example, UNIDROIT's work in connection with the legal status of air-cushion vehicles, the hotel-keeper's contract, the leasing contract and the factoring contract).

3. At this stage, a number of alternative solutions are available. In the first place, if the degree of governmental interest has been particularly high, the Governing Council may immediately decide to convene a Committee of Governmental Experts with a view to the preparation of uniform rules on the subject in hand. As a rule, the Committee so created will be a restricted one composed of members designated by those States which have shown the greatest interest in the subject (e.g., the restricted Committees of Governmental Experts on the legal status of air-cushion vehicles and on pleasure navigation), and on the basis of certain guidelines laid down by it the Secretariat will then prepare a preliminary draft set of uniform rules together with an explanatory report for consideration by an enlarged Committee of Governmental Experts.

4. The Governing Council may not, however, be satisfied that the time is ripe for the convening of a Committee of Governmental Experts. In these circumstances it may decide on the basis of the preliminary comparative law report to set up directly a Study Group (e.g., the hotel-keeper's contract), composed of particularly well qualified experts, assisted when necessary by representatives of the interested organizations and professional circles and usually chaired by a member of the Governing Council, with the mandate to prepare uniform rules.

5. Alternatively, the Council may decide to circulate the preliminary report to the Governments of member States and/or the interested organizations and professional circles so as to satisfy itself that there is a reasonable degree of support for the initiative in question. This procedure was followed, for example, in connection with the reports on the warehousing contract and on the quality control of goods. If the replies are positive, the Council will either set up a restricted exploratory Committee drawn from its own membership, assisted when appropriate by outside experts, to report back to it on the desirability or otherwise of continuing work on the subject (e.g., the factoring and leasing contracts) or proceed directly to the constitution of a Study Group (e.g., the warehousing contract).

6. Assuming that a decision has been taken to set up a Study Group, then, as a rule, the first meeting will follow the lines of that of the restricted meetings of Governmental Experts and more or less precise indications will be given to the Secretariat to prepare a set of uniform rules. These will be discussed at subsequent meetings of the Group and the final draft is then submitted to the Governing Council, which may make amendments to the text.

7. In the past, the Council has followed three different approaches in connection with the next stage of the work. In the first place, it may consider that the text is already in a state in which it may be laid before a Diplomatic Conference for adoption by States. This was the case with the 1970 International Convention on Travel Contracts (CCV), but the precedent has not since been followed, as it is extremely hazardous to submit to a Diplomatic Conference, the length of which has been determined in advance, a text which has been elaborated by independent experts and which has at no time been considered by a Committee of Governmental Experts, as in such cases the

chances are greatly increased of substantial changes being made to the text without the necessary time being available for compromises to be reached.

8. Another solution adopted in the past by the Governing Council has been to transmit the text worked out by the Study Group to another international organization with a view to its adoption within the framework of the latter. A notable instance of this procedure being pursued is that whereby UNIDROIT transmitted to UNCITRAL its draft of a law for the Unification of Certain Rules Relating to the Validity of Contracts of International Sale of Goods.

9. The third avenue open to the Governing Council is that which has been most frequently followed in recent years, namely to transmit the draft together with its accompanying explanatory report to a Committee of Governmental Experts. All member States of UNIDROIT are invited to such meetings, together with those non-member States, international organizations and professional associations which it is considered might be particularly interested in the subject. The increasing use of this method within UNIDROIT (viz. the work which led to the opening to signature of the Washington Convention on the Form of the International Will of 1973 and the present work on the hotel-keeper's contract) is due to a recognition that attention should be paid in the first stages of the preparation of an international instrument dealing with a private law subject to ensuring the highest possible scientific quality of the draft while leaving full scope for States to modify it in the light of political considerations at a subsequent date but prior to the convening of the Diplomatic Conference of adoption.

10. While the tendency has latterly therefore been to communicate drafts to Committees of Governmental Experts, the Governing Council has, in the exercise of the powers conferred on it by Article 14 of the Statute of the Institute,³ continued to follow the procedures already noted above in connection with drafts elaborated by Study Groups, namely either to communicate them to other organizations with a view to their opening to signature under the auspices of such organizations (as has been the case with the drafts on carriage of persons and goods by road and inland navigation transmitted to the Economic Commission for Europe and on air-cushion vehicles to the Intergovernmental Maritime Consultative Organization⁴) or alternatively to submit them to Diplomatic Conferences of adoption convened by one of the member States of the Institute (e.g., the above-mentioned Washington Convention on the Form of the International Will).

11. The crisis which has characterized the world economy over the last five years or so has however made States more reluctant than formerly to assume the cost of hosting expensive Diplomatic Conferences for the adoption of private law conventions, and in consequence the Secretariat of UNIDROIT has been increasingly attracted by a solution which would consist of the replacing of the traditional Diplomatic Conferences by a simplified procedure according to which the General Assembly of the member States of the Institute could, at an extraordinary session, decide upon the opening to signature by Governments of conventions containing uniform laws. There are precedents for such a procedure in a certain number of international organizations. The Council of Europe submits its drafts to the Committee of Ministers which, in its turn, opens them for signature by the member States, while the draft Con-

ventions of the United Nations Economic Commission for Europe concerning transport law are opened to signature by the member States at sessions of the Inland Transport Committee. Similarly, the International Commission on Civil Status approves its drafts at a special session of the Assembly and submits them to Governments for signature.

12. This proposal is at present under study by the competent organs of the Institute and it is therefore premature to enter into detailed discussion of the questions which would have to be settled, such as the conditions on which non-member States of the Institute might accede to such conventions and the choice of the depositary State or organization, although these difficulties do not seem to be particularly acute. What is on the other hand certain, however, is that such a procedure would necessitate the careful preparation of the texts by highly representative Committees of Governmental Experts so as to ensure that dispensing with the Diplomatic Conference would not prejudice the subsequent acceptance of the instruments by a wide circle of States.

13. On the question of the time taken in completing international conventions within the framework of the Institute, it is at present customary for the preliminary comparative law report to be prepared within two years of the subject being placed on the Work Programme of the Institute if the topic has been accorded priority, and three years if such priority has not been accorded. Allowing for a year to eighteen months to elapse for the consultation procedure with Governments and interested organizations to be conducted and its results analysed, it is reasonable to assume that a Study Group or Committee of Governmental Experts will be seized of a draft within three to five years of an item having been included in the Work Programme. On average, it would seem that a Study Group requires two or at most three meetings to prepare its final draft (allowing for examination of such a draft by the Governing Council, this usually means a total period of some two to two and a half years). Evidently the decision not to set up a Study Group and the direct convocation of a Committee of Governmental Experts involves an acceleration of the work, and since on the basis of most recent experience it would appear that a Committee of Governmental Experts needs some three or four sessions spread over a period of two to three years to complete its final draft, then it would seem that the total time elapsing between the inclusion of a subject in the Work Programme and the completion of work on a draft by a Committee of Governmental Experts would on average be some five to seven years (seven to nine if a Study Group has also been involved). Thereafter, the Institute has little control over the time at which the international instrument based on the draft is opened to signature, especially so when it has been communicated to another international organization. If the draft is to be adopted at a Diplomatic Conference, then all depends on the speed with which one of the member States of the Institute indicates its willingness to host the Conference. Once such an undertaking has been given, the normal time-limits in such cases are observed, sufficient time being given to States to submit their observations on the draft and for these observations themselves to be communicated to the States and organizations invited to attend the Conference.

14. In conclusion, it should be noted that in the Annex hereto which lists the state of ratifications of UNIDROIT conventions, only those which have been submitted to Diplomatic Conferences convened by member States of the

Institute are included. In other words, the list does not include the large number of international instruments, which now runs into double figures, prepared by UNIDROIT but concluded within the framework of other organizations, as it is assumed that these conventions will figure in the lists supplied by those organizations.

NOTES

¹ Composed of 21 members elected by the General Assembly.

² Representing all the member States of the Institute.

³ Article 14 provides that:

“1. When the study of questions that have been taken up has been completed, the Governing Council shall, if it thinks fit, approve any drafts to be submitted to Governments.

“2. It shall send such drafts to the participating Governments or to the institutes, organizations or associations which made the relevant proposals or suggestions to it, asking them for their opinion on the expediency and the substance of the provisions.

“3. In the light of the answers received, the Governing Council shall, if it thinks fit, approve final drafts.

“4. It shall send these to the Governments or to the institutes or associations which made the relevant proposals or suggestions to it.

“5. The Governing Council shall then consider the best way of convening a Diplomatic Conference to examine the drafts.”

⁴ A procedure which may involve a certain duplication of effort when the draft is examined by governmental experts both at UNIDROIT and within the organization to which the draft is communicated.

J. INTERNATIONAL WHALING COMMISSION

1. At the 26th Annual Meeting of the International Whaling Commission held in June 1974, the Government of the United States of America submitted a draft protocol to amend the International Convention for the Regulation of Whaling, 1946. As a result the Commission adopted the following resolution:

“*Taking into account* the changes which have occurred in whaling and stocks of cetaceans since the International Convention for the Regulation of Whaling 1946 was signed and bearing in mind the necessity to strengthen the mechanism for the international conservation of whales and their rational management both at present and in the future; and

“*Recognizing* that the discussions in the Law of the Sea Conference may affect the activities of IWC,

“The Commission decides to establish a working group of interested member nations under the Chairman of the Commission. Such working group will commence its work prior to the 27th meeting of the Commission and will discuss problems posed to the present Convention in the light of the situations mentioned in the preambular paragraphs above, including the question of convening a conference of plenipotentiaries.”

2. The Commissioners for the following countries indicated their wish to participate in the working group: Argentina, Australia, Canada, France, Iceland, Japan, Norway, South Africa, United Kingdom, USA, USSR.

3. At the 27th Annual Meeting, held in June 1975, the Commission received a document setting out suggestions for amending the convention prepared by a working group of representatives of member nations which had been asked to review the convention in the light of the changes in whaling and the stocks, and the possible impact of the conclusions of the Law of the Sea Conference on the activities of the Commission. The Commission decided that the document should be sent to Contracting Governments for comments. A meeting of the working group will be held to consider the comments received before the 28th Meeting of the Commission.

4. At the 28th Annual Meeting, June 1976, the Working Group set up to review the convention reported that six Governments had replied to the document setting out the changes to the Convention proposed by the Group. Many of the amendments were of a minor nature, and Governments were clearly not in a position to form final views until the outcome of the Law of the Sea Conference was known. The Commission accepted the recommendation that those member Governments that had not replied already should be sent the comments so far received and asked to submit their comments within four months. The Secretariat would then prepare and circulate to Commissioners a new document incorporating all the substantial comments received. The Secretary should also circulate a draft of a covering letter intended for non-member Governments who conduct significant whaling operations or who have stocks of commercial interest off their coasts, suggesting the convening of a meeting of plenipotentiaries to elaborate a new International Whaling Convention. This document would be circulated by the Chairman of the Commission if no objections were received within a further four months, or he would convene another meeting of the Working Group. The timing of the meeting of plenipotentiaries will be decided if possible at the next annual meeting.

5. At the 29th Annual Meeting, June 1977, the Chairman reported on a meeting of the Working Group, attended by Commissioners from Australia, Canada, Japan, the USSR and the USA, held on 16 June 1977. At this meeting, the revised text and amendments proposed by the different countries during the preceding year by postal communication through the Secretariat were collated into a single document.

6. The Commission accepted this document for distribution to countries which have stocks of cetaceans off their coasts, and as a basis for convening a meeting of plenipotentiaries to elaborate a new convention. Canada proposed that there should be a preparatory conference on the boreal spring of 1978 to lay the groundwork for the revision of the convention, and the Commissioner for Denmark indicated that his Government might be prepared to host this preparatory conference.

7. After some discussion about the new convention in relation to the Law of the Sea Conference, the Commission agreed to proceed with this time-table, and noted that the USA would be prepared to consider hosting the meeting of plenipotentiaries in late 1978 or early 1979. Subsequently, at a Special Meeting of the Commission held in December 1977, the Commissioner for Denmark extended on behalf of his Government an invitation to hold a preparatory meeting in Copenhagen the next year. The Commission accepted this offer with gratitude and considered that a four-day meeting, 4-7 July 1978,

would be adequate. The Secretary was instructed to circulate the agreed negotiating text to IWC member nations and ten other whaling nations.

8. Following the preliminary work carried out by a Working Group within the IWC between 1974 and 1978, the Government of Denmark hosted a Preparatory Meeting in Copenhagen in July 1978 "to undertake the preparation of a draft Convention to be considered at a subsequent meeting of plenipotentiaries and to determine arrangements for such a meeting". Invitations to attend were extended to IWC member States and non-member Governments and inter-governmental organizations which had expressed an interest in the matter. A total of 26 delegations took part.

9. Discussion within the meeting quickly highlighted a number of areas where there was a significant divergence of opinion on matters of substance:

Whether, for example, the convention should cover just the great whales or all cetaceans;

Whether there was in fact a need for a whole new convention or simply revision by protocol of the 1946 Convention;

Whether the title and emphasis should be retained as "regulation of whaling" or be replaced by "conservation of cetaceans".

10. These issues could not be resolved, and in reviewing the draft revision of the text as prepared and accepted by the IWC in 1977, the meeting noted that a Drafting Group would need to be set up at some time to deal with general points of wording, style and order of presentation and agreed that, for the time being, in all places in the text (1) where the words "conservation" or "exploitation" appear the style [exploitation] [conservation] [utilization] should be used; (2) a style [whale] [cetacean] would be used in all appropriate places; (3) "Contracting Governments" should be changed to "Parties". Both the existing and the proposed new titles would be retained for consideration, namely International Convention for the Regulation of Whaling and International Convention for the Conservation of Cetaceans.

11. The meeting agreed that final clauses would need to be developed covering ratification, depositary Government, later adherence and withdrawal procedures, and also noted that "there is need for transitional arrangements to smooth the transfer from the 1946 Convention to the new Convention".

12. The meeting agreed that the preparatory work was not yet finished. Insufficient progress had been made to justify a plenipotentiary conference and a further meeting of a preparatory nature was suggested. An intermediate step would be to convene a small Working Group to tidy up the text, eliminate alternatives and consider proposals submitted to the present meeting but not considered through lack of time. These included a draft proposal submitted by Canada which involved an entirely new structure for management and scientific study of the cetacean resources.

13. Portugal offered to convene a Working Group in Lisbon early in 1979. An invitation would be sent to all participants in the Copenhagen meeting, but it was hoped that there would be a core group of seven delegations. The following mandate for the Working Group was developed by the Chairman of the Preparatory Meeting:

1. Retain all texts and proposals made at the Copenhagen meeting and add the Canadian proposal in text form;

2. Review bracketed language and consolidate alternatives where possible without substantive alterations;
3. Carry out editorial and drafting work including revised order of articles, final clauses etc.
4. Present its results as an additional alternative to those drafted in Copenhagen.

14. A further Preparatory Meeting would be held after circulation of the results of the Working Group meeting. Two different views were expressed on the participation in that second Preparatory Meeting:

(a) That it should be limited to those invited by Denmark to the Copenhagen meeting;

(b) That it should be extended to include all coastal States.

It was pointed out that who was invited might prejudice the questions both of whether the 1946 Convention was being revised or a new convention drafted and whether the scope of the convention included all cetaceans. Because of the fundamental disagreement on the main points of substance as well as the uncertainties arising from recent developments within the Law of the Sea, all participants recorded a general reservation of their positions.

15. A meeting of the Drafting Group was hosted by the Government of Portugal in November 1979 and was attended by seventeen delegations. The meeting agreed to proceed by constructing a new draft document which would show in column format the 1946 Convention text, the Copenhagen meeting text, the agreed Lisbon text and the Canadian proposal. In fact, following extensive discussion, the meeting was able to agree on a text for only the preamble and the first and part of the second articles, and there was a wide divergence of views on how the work should proceed in future, if indeed there was any value in proceeding at all. Finally, it was agreed that the Portuguese Government would communicate with the Governments participating in the meeting to seek their views on future work, especially on the question of whether or not the drafting exercise should be completed.

16. In July 1980, the Chairman of the International Whaling Commission convened an informal meeting to consider whether or not a revision of the Convention could be usefully pursued. Invitations were extended to all member Governments of the IWC and other parties that had attended earlier meetings on this subject. Most participants made statements of their position which served only to emphasize the lack of agreement that existed on the points of major substance already identified. The discussion also underlined the lack of clear distinction between revision of the existing convention and the development of a new convention. There was no formal report of the meeting, but the views expressed and the general consensus which was reached were considered and endorsed at the 32nd Annual Meeting of the Commission in July 1980, which instructed the Secretary "to urge a Government to convene another Preparatory Meeting to improve and update the present Convention".

17. The Government of Iceland hosted such a meeting in Reykjavik, 6-9 May 1981, invitations being extended to all previous participants and new members of the IWC. A thorough and wide-ranging discussion took place on many of the contentious issues and participants had the opportunity to explain opposing points of view. No firm conclusions were reached, however, and the

report of the meeting merely reflects the range of positions which exists. The meeting agreed that the Government of Iceland as the host Government should transmit the report to all the invited parties and to the IWC for consideration and possible future action. It was also agreed that the report might become a meeting document for the 33rd Annual Meeting of the IWC in July 1981.

18. At its 33rd Annual Meeting, held 20-25 July 1981, the Commission received the report of the Preparatory Meeting to Improve and Update the International Convention for the Regulation of Whaling, 1946, hosted by the Government of Iceland in Reykjavik, May 1981.

19. Denmark commented that this had been a more successful session than the earlier meeting in Copenhagen because the discussion had been concerned not with wording but with the principles involved. It proposed that a contracting Government should be urged to continue the initiative, and this was seconded by Japan.

20. Norway commented on the tensions experienced in the Commission, which are also reflected in the report, and Australia wondered if there was need for a spell without meetings. Argentina shared this view, because of the delicate stage of the Law of the Sea Conference. Jamaica spoke on the two major interest groups represented, those concerned with whaling and others concerned with the survival of whales, although these are not necessarily in conflict. The UK had reservations about the usefulness of holding another meeting, but Spain believed the difficulties experienced in the present meeting proved the urgent need to proceed with the revision and updating process. It identified four essential points—the object and purposes of the Convention; the jurisdictional problem; decision taking; and membership of the organization.

21. The USA remarked on the fact that any member is free to offer to host a meeting, and to develop terms of reference, so that discussions of the kind which took place in Reykjavik could be pursued. The Commission agreed to leave the matter as it is for member Governments to take note of what had been said.

22. This matter will be raised again at the 34th Annual Meeting, to be held in July 1982.

K. LATIN AMERICAN FREE TRADE ASSOCIATION

1. Within the framework of the Montevideo Treaty, which established a free trade area and instituted the Latin American Free Trade Association, six protocols and two basic resolutions have been adopted. They have distinctive characteristics, as will be seen below.

2. Two of the protocols are specifically related to the Montevideo Treaty in that they modify some of its provisions. One of the remaining protocols supplements institutional provisions; the others deal with matters of concern to the Association. The process of elaboration has not been the same for all these protocols. The sections below give a brief examination of each protocol, with an indication of the route towards signature.

1. *Protocols amending the Montevideo Treaty*

(a) *Protocol institutionalizing the Council of Ministers of the Association (12 December 1966)*

3. This Protocol was prepared by the Standing Executive Committee— one of the organs of the Association. With the assistance of the secretariat, the Committee formulated a draft, which was submitted to the Ministers for Foreign Affairs for their consideration and signature.

4. The process of preparation was clearly political, and the Protocol was adopted by a political organ.

(b) *Caracas Protocol amending the Montevideo Treaty (12 December 1969)*

5. Inasmuch as the period within which the free trade area was to be brought into full operation under the Montevideo Treaty was considered too short, the Contracting Parties decided to extend it to 1980. That called for an amendment to the Treaty. The draft was prepared by the Committee and submitted to the Conference, which endorsed the text. It was not submitted to the Ministers for Foreign Affairs for consideration, as in the previous case. The decision was a political one that followed a political process.

2. *Protocol supplementary to the Montevideo Treaty: Protocol for the Settlement of Disputes (2 September 1967)*

6. This Protocol is the only one that was adopted within the framework of the Association after being worked on by jurists. The Committee decided to establish a working group, composed of jurists appointed by the Contracting Parties, to prepare a text. When this was done, the preliminary draft was submitted to the Committee, which examined it, made some amendments and referred it to the Ministers for Foreign Affairs for consideration. The text was signed by the Ministers.

7. Concurrently, there was a discussion by the jurists and later by the Committee concerning the establishment of provisional machinery pending the entry into force of the Protocol.

3. *Other protocols and treaties*

(a) *Protocol on the Transit of Persons (12 December 1966)*

8. Since it was felt that enabling the Area's businessmen and industrialists to travel freely within the territories of the Contracting Parties would promote the process of integration, a meeting of the Parties' experts was convened. This was not a meeting of jurists, but of public officials with experience of such matters. Once the draft had been prepared by these experts, on the basis of instructions, it was submitted to the Committee, which referred it to the Ministers for Foreign Affairs for consideration. It was adopted at the same time as the Protocol institutionalizing the Council of Ministers.

(b) *Water Transport Agreement of the Association (30 September 1966)*

9. Of all the agreements adopted within the framework of the Association, this one took the longest to prepare. The initial studies began in 1962

after several meetings of the Advisory Committee on Transportation, composed of experts from the Contracting Parties.

10. When work was well under way, the Conference recommended that a water transport agreement should be concluded. In 1966, a committee met to prepare for the session of the Transport and Communications Council and formulated a preliminary draft agreement. Participants in this meeting were not only jurists, but also marine experts and other experts in this field. Also in 1966, the Council met and adopted a draft agreement. Subsequently, on the initiative of the Executive Committee, a meeting of plenipotentiaries was convened for the sole purpose of signing the treaty.

11. Effective implementation of this instrument has not been possible since it entered into force four years ago, because the Contracting Parties have so far failed to agree on the regulative machinery. In 1966, an attempt was made to hold a meeting with a view to reaching agreement, but the meeting was cancelled at the last minute. The issue has not come up again.

(c) *Privileges and immunities of the Association and its organs*

12. Regulations governing the privileges and immunities of the Association and its officials, embodied in the Montevideo Treaty, followed a rather distinctive procedure.

13. At its first session in 1961, the Conference adopted two resolutions: 6 (I), concerning privileges and immunities in the territories of member States; and 7 (I), concerning the territory of the headquarters country: Uruguay. These two resolutions were adopted by what was then the supreme organ of the Association, namely, the Conference.

14. However, it was felt that, in the case of Uruguay, it was necessary to draft a text reproducing word for word the provisions of resolution 7 (I) and submit it to Parliament for its approval. That was done, and Uruguay deposited the instrument with the secretariat in due course.

15. With respect to the other resolution, 6 (I), it was felt that ratification by each of the Contracting Parties was necessary, even though, in my opinion, that resolution was legally binding at the international level. The resolution was thus ratified, and some Contracting Parties have deposited their respective instruments with the secretariat.

4. *General considerations*

16. There is no one technique for the elaboration of instruments; the technique depends on the nature of the instrument. Only one of the protocols was examined beforehand by legal experts. The political factor is clearly predominant.

17. All the protocols, including the two aforementioned Conference resolutions, followed the traditional ratification procedure. The chronic disease—delay in the ratification of treaties—is acute in LAFTA; only the political instruments, which absolutely had to be ratified if a crisis was to be avoided, have been ratified by all Parties. It should be noted that the Caracas Protocol was ratified by Uruguay virtually on the deadline set by the Montevideo Treaty (1973), a deadline extended to 1980 by the Protocol.

L. LE COMITÉ INTERNATIONAL DE LA CROIX-ROUGE (CICR)

1. *Introduction*

1. Une étape décisive a été franchie dans les limitations opposées à la guerre lorsque a été signée à Genève, en 1864, la première "Convention pour l'amélioration du sort des militaires blessés dans les armées en campagne". Ses 10 articles ont assis le droit international humanitaire sur des principes généraux que n'ont jamais démentis les instruments juridiques postérieurs. Plutôt qu'une remise en cause de ses bases, l'histoire du droit de Genève reflète une extension constante de la notion de protection à des catégories plus larges de victimes et à des situations nouvelles provoquées par le développement des techniques de communication et d'armement et par l'évolution de la conception de la nature des conflits. C'est souligner à quel point les Conventions de Genève sont marquées par la continuité des efforts entrepris par le Comité international de la Croix-Rouge, continuité dont est directement fonction la technique d'élaboration des traités touchant au droit humanitaire.

2. Dès l'origine, en effet, et durant toute son œuvre, le CICR a désiré atteindre ses buts fondamentaux, la protection des victimes des conflits armés au sens le plus large, non seulement par des mesures pratiques ou d'organisation — telle la création de sociétés de secours dans chaque pays ou l'envoi de délégués sur place — mais aussi et tout autant par la consécration de ses efforts dans le droit international public. Ce dernier devait "sanctionner", comme l'écrit Henry-Dunant dans son ouvrage "Un souvenir de Solférino", la protection recherchée pour les victimes; il devait aussi — aspect souvent laissé de côté — faciliter l'aide que leur apportent les agents de l'Etat ou les organisations de secours, notamment la Croix-Rouge.

3. Cet effort a conduit le CICR à prendre l'initiative de préparer dix Conventions internationales, qui sont entrées en vigueur et qui sont les suivantes :

1. La Convention de Genève pour l'amélioration du sort des militaires blessés dans les armées en campagne, du 22 août 1864. (Elle sera désignée désormais par l'abréviation "la Convention de Genève".)

2. La Convention de Genève du 6 juillet 1906 (révision de la Convention précédente).

3. La Convention de Genève du 27 juillet 1929 (révision de la Convention précédente).

4. La Convention de Genève du 12 août 1949 (révision de la Convention précédente) dont le titre, "militaires blessés", se transforme en "blessés et malades" et "armées" devient "forces armées".

5. La Convention de Genève pour l'amélioration du sort des blessés, des malades et des naufragés des forces armées sur mer du 12 août 1949 (révision de la X^e Convention de la Haye du 18 octobre 1907, pour l'adaptation à la guerre maritime des principes de la Convention de Genève de 1906).

6. La Convention de Genève relative au traitement des prisonniers de guerre, du 27 juillet 1929.

7. La Convention de Genève relative au traitement des prisonniers de guerre, du 12 août 1949 (révision de la Convention précédente).

8. La Convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949.

9. Le Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés internationaux, du 10 juin 1977. (Il s'intitulera par la suite "Protocole additionnel n° 1".)

10. Le Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés non internationaux, du 10 juin 1977. (En abrégé, "le Protocole additionnel n° II".)

4. En outre, le CICR a préparé quelques réglementations de droit humanitaire qui ne sont pas entrées en vigueur, mais qui ont été utiles, ultérieurement, dans l'élaboration des Conventions précitées. Il s'agit notamment :

– Des articles additionnels à la Convention de Genève de 1864, du 20 octobre 1868, véritable convention, mais non ratifiée;

– Du projet de convention concernant la condition et la protection des civils de nationalité ennemie qui se trouvent sur le territoire d'un belligérant ou sur un territoire occupé par lui, présenté par le CICR à la XV^e Conférence internationale de la Croix-Rouge (Tokyo, octobre 1934) [dit projet de Tokyo];

– Du projet de règles limitant les risques courus par la population civile en temps de guerre, présenté par le CICR à la XIX^e Conférence internationale de la Croix-Rouge (New Delhi, novembre 1957).

Sans pouvoir prendre déjà en considération les Protocoles additionnels de 1977, qui entreront en vigueur le 7 décembre 1978, il faut relever que les huit autres Conventions internationales qui sont énumérées ci-dessus ont été sanctionnées très tôt d'une acceptation universelle. En 1867, toutes les grandes puissances d'alors avaient ratifié la Convention de 1864, à l'exception des Etats-Unis, qui s'y sont ralliés en 1882. Les Conventions suivantes ont reçu une consécration diplomatique comparable.

5. Le nombre étendu des conventions entrant en ligne de compte, leur consécration quasi universelle et surtout les services qu'elles ont rendus à l'humanité, même quand leur application ou leur contenu est apparu insuffisant, portent témoignage de la pratique et de l'expérience acquises par le CICR en matière d'élaboration du droit international humanitaire applicable dans les conflits armés. De cette pratique et de cette expérience, le CICR a-t-il dégagé une méthode d'élaboration des traités qui lui soit propre? Le mémorandum adressé par le CICR en février 1945 aux gouvernements des Etats parties à la Convention de Genève et aux Sociétés nationales de la Croix-Rouge apporte un premier élément de réponse :

"Le CICR se propose d'adopter à cette fin une méthode analogue à celle qu'il a suivie après la première guerre mondiale, à savoir :

– De réunir tout d'abord une *documentation préliminaire* aussi complète qu'il se pourra;

— Puis d'établir, si possible avec le concours *d'experts des gouvernements et des Sociétés de la Croix-Rouge*, des projets de conventions révisées et de conventions nouvelles;

— Pour les soumettre ensuite aux *conférences internationales de la Croix-Rouge*;

— *Il espère que les Etats voudront bien alors, comme par le passé, prendre ces projets en considération et prévoir les mesures propres à leur donner une consécration diplomatique*¹.

6. Une étude plus poussée — et ce sera l'objet des pages qui suivent — permettra de nuancer et de compléter cette réponse du CICR, sans en infirmer les éléments essentiels.

7. Il faut souligner d'emblée que cette étude ne portera, dans le processus d'élaboration des conventions précitées, que sur la phase des travaux préparatoires, dont le CICR a assumé l'initiative et la direction, et non pas sur la phase finale de l'élaboration des instruments au sein de la Conférence diplomatique. Quel que soit le rôle important que le CICR ait continué à jouer à ce stade final, en sa qualité d'expert et à titre de rapporteur de fait, ce stade de l'élaboration a incombé principalement au gouvernement chargé de convoquer la Conférence diplomatique, c'est-à-dire au Gouvernement suisse. Par conséquent, il appartiendra à ce gouvernement, dans sa réponse relative à la résolution de l'ONU, A/RES.32/48, du 8 décembre 1977, de faire part de son expérience quant aux méthodes suivies dans l'élaboration finale des Conventions de Genève. Il y a certes des liens très étroits entre les travaux préparatoires assumés par le CICR et la phase finale de la Conférence diplomatique.

8. La présente étude sur les méthodes suivies par le CICR dans les travaux préparatoires des Conventions de Genève portera sur quatre aspects :

— Les organes entrant en ligne de compte. Comme le laisse entendre la réponse précitée du CICR, le mouvement de la Croix-Rouge dans son ensemble, prend une grande importance dans cette élaboration, et il s'agit d'en préciser les différents organes;

— Les initiatives qui sont à la base même de l'élaboration de ces différents traités, les modalités de ces initiatives, ainsi que la délimitation des compétences (droit de La Haye et droit de Genève);

— L'organisation des travaux. Cette section s'étendra notamment sur les différents types de consultation d'experts, trait marquant des méthodes employées par le CICR; et enfin

— L'établissement et la présentation des projets de convention.

2. *Les principaux organes entrant en ligne de compte dans les processus d'élaboration (travaux préparatoires) des Conventions de Genève*

a) *Le CICR*

9. Institution relevant du droit privé suisse et ayant un caractère uniactional (le terme "international" s'appliquant à son activité et non à sa composition), le CICR n'a été investi pour la première fois qu'en 1929, par les Conventions de Genève de cette date, de certaines tâches humanitaires précises en cas de conflit armé, tâches qui, confirmées par les Conventions de 1949 et les

Protocoles additionnels de 1977, entraînent certains à considérer qu'il a également en droit international public une personnalité juridique de nature limitée. Cependant, dès l'origine, le CICR s'est considéré habilité à prendre des initiatives pour la création de la Convention de Genève de 1864 et ultérieurement pour le développement et l'expansion du "droit de Genève".

10. Ce n'est pas par ce droit que son rôle, quasi organique dans ce domaine, a été consacré expressément², mais il l'a été dans les statuts de la Croix-Rouge internationale de 1928, dont l'article VI, chiffre 7, prévoit que le CICR "travaille au perfectionnement et à la diffusion des Conventions de Genève". C'est sur cette base que se fondent principalement ses compétences dans le domaine des travaux préparatoires, compétence très large comme le montreront les pages qui suivent.

b) *Le mouvement de la Croix-Rouge internationale*

11. Le processus d'élaboration des Conventions de Genève fait intervenir dans une large mesure le mouvement de la Croix-Rouge et la structure à la fois complexe et étendue de ce mouvement. Ce sont, en premier lieu, les Sociétés nationales de la Croix-Rouge, du Croissant-Rouge et du Lion et Soleil-Rouges, dont le CICR a favorisé la création dans chaque pays et dont il est chargé de reconnaître officiellement l'existence comme membres de la Croix-Rouge internationale, une fois qu'elles remplissent un certain nombre de conditions bien précises. Ces sociétés nationales, actuellement au nombre de 125, ont joué et jouent un rôle important en secondant le CICR dans ses efforts pour la préparation du droit international humanitaire, et cela à différents stades et sous différentes formes, notamment dans les réunions d'experts examinées plus loin, mais aussi comme organe de pression, soit auprès de leur gouvernement, soit parmi l'opinion publique, pour faire admettre plus facilement l'opportunité d'un développement du droit international humanitaire.

12. Ces sociétés nationales ont elles-mêmes, en 1919, constitué une fédération, la Ligue des Sociétés de la Croix-Rouge, tournée principalement vers les activités du temps de paix, mais qui elle-même a pris une part active à l'élaboration des protocoles additionnels de 1977.

13. A côté du CICR et des Sociétés nationales, c'est sans doute la Conférence internationale de la Croix-Rouge qui représente l'organe le plus important dans ce processus d'élaboration du "droit de Genève". Autorité délibérante suprême et se réunissant en principe tous les quatre ans, cet organe a une nature particulière, *sui generis* : elle comprend non seulement toutes les Sociétés nationales ainsi que la Ligue et le CICR, mais aussi les représentants des gouvernements parties aux Conventions de Genève. En acceptant ainsi, dès les premières Conférences internationales de la Croix-Rouge de 1867 (Paris) et de 1869 (Berlin), d'être représentés à ces forums, les gouvernements ont tenu à montrer l'intérêt qu'ils portaient à l'oeuvre de la Croix-Rouge et le fait qu'ils étaient directement concernés par elle. En vertu des statuts de 1928, la Conférence, par ses résolutions, n'engage pas juridiquement ceux qui y participent, et en particulier les gouvernements. Mais ces résolutions ont du moins pour tous, y compris pour ces derniers, une certaine valeur, disons morale. Le chapitre II de cette étude fera ressortir la portée de la Conférence internationale dans l'élaboration des Conventions de Genève, à la fois comme

élément moteur déterminant du point de vue formel et comme “caisse de résonance” des projets de convention élaborés par le CICR.

c) *Le Gouvernement suisse*

14. Il a été indiqué plus haut, dans l'introduction, que cette étude ne porterait pas sur la phase finale de l'élaboration des Conventions de Genève, c'est-à-dire sur celle de la Conférence diplomatique, parce qu'il appartiendra à la Suisse, pays traditionnellement hôte de cette conférence, de se prononcer sur cette phase dans sa réponse à la résolution A/Res. 32/48 de l'ONU du 8 décembre 1977. Ce qu'il y a lieu de relever ici, c'est que déjà au stade des travaux préparatoires une certaine activité incombe au Conseil fédéral, indépendamment de la participation de ses représentants aux réunions d'experts. Il s'agit, en effet, déjà à ce stade, de s'enquérir des chances de réunir une future conférence diplomatique destinée à aboutir à de véritables instruments de droit international.

15. Les compétences respectives du Gouvernement suisse et du CICR dans ce domaine n'ont été fixées qu'après les deux premières Conférences diplomatiques de 1863 et de 1868 (articles additionnels). Pour ces deux réunions, c'est le CICR qui a pris certaines initiatives directement auprès des délégués gouvernementaux, mais à la fin du XIX^e siècle est intervenue entre lui et le Conseil fédéral une entente mettant au point le système qui a prévalu jusqu'à maintenant.

16. Selon ce système, alors que le CICR se charge des travaux préparatoires quant à la matière, il appartient au Conseil fédéral de sonder les Etats sur l'opportunité d'une conférence diplomatique, par l'entremise de ses représentants à l'étranger.

17. Ces activités parallèles et superposées se rejoignent parfois, quand les conférences d'experts convoquées par le CICR émettent elles-mêmes une série d'avis judicieux sur l'opportunité de réunir la future conférence diplomatique. C'est d'ailleurs à la Conférence d'experts gouvernementaux de 1972 qu'un expert suisse a annoncé l'intention du Conseil fédéral de convoquer la conférence ayant abouti aux Protocoles additionnels³.

d) *L'organisation internationale*

18. La Société des Nations, principalement tournée vers une œuvre de paix, n'a pas pu et n'a pas eu l'occasion de jouer un rôle important dans le processus d'élaboration des Conventions de droit humanitaire, si ce n'est, indirectement, pour le Protocole de Genève de 1925. Au contraire, l'Organisation des Nations Unies a pris, elle, une part marquante, non pas dans l'élaboration des Conventions de Genève de 1949, mais dans celle qui a conduit aux Protocoles additionnels de 1977, en particulier par son intérêt pour la protection des droits de l'homme en période de conflits armés. Dans son rapport présenté à la XXI^e Conférence internationale de la Croix-Rouge (Istanbul, 1969) sur la réaffirmation et le développement des lois et coutumes applicables dans les conflits armés, le CICR s'est longuement étendu sur ses relations avec les Nations Unies et sur la coordination des travaux entre eux⁴.

19. Le CICR souligne en particulier, dans ce rapport, qu'il a été considéré comme un organe qualifié pour entreprendre des études

préparatoires non seulement en raison de sa longue tradition dans ce domaine, mais aussi du fait qu'il est un organisme d'action pratique, appelé à exercer son activité humanitaire dans les conflits armés à travers le monde entier et qu'il peut ainsi tirer directement des expériences et constatations faites sur le terrain des enseignements d'une grande importance pour le développement du droit humanitaire.

20. Le CICR a associé étroitement le Directeur de la Division des droits de l'homme à ses travaux, notamment aux réunions d'experts convoquées par lui, et il lui a même réservé la primeur d'un rapport spécial consacré en 1970 à la guérilla et aux conflits internes⁵. Certains experts du CICR ont pris part de leur côté à des réunions d'experts convoquées par l'ONU (en 1970 et 1971).

21. Il est certain, en outre, que les résolutions adoptées par l'Assemblée générale dès 1968, et qui ont pris acte avec satisfaction et encouragé le CICR dans ses efforts, ont constitué également pour lui un appui d'un grand poids dans les travaux préparatoires des Protocoles additionnels de 1977⁶.

3. *L'initiative des travaux préparatoires dans l'élaboration du droit international humanitaire et les modalités de cette initiative*

a) *Les fondements réels*

22. Toute l'oeuvre du CICR pour le développement du droit international humanitaire a été fondée principalement sur la constatation qu'il a été amené à faire, à la suite de conflits armés et de l'action secourable qu'il a pu y mener, soit de l'insuffisance de certaines normes protégeant des catégories déterminées de personnes et, par conséquent, de la nécessité de les réviser et de les renforcer, soit de l'inexistence de dispositions de protection pour d'autres catégories de personnes et de la nécessité de compléter pour ces dernières le droit international existant.

23. Cette constatation lui paraît, par exemple, si évidente à la fin de la seconde guerre mondiale que, dans son mémorandum précité du 15 février 1945 adressé aux gouvernements, après avoir souligné qu'il sera nécessaire d'envisager pour l'avenir la révision des Conventions de Genève de 1929 à la lumière des expériences faites et la conclusion éventuelle de nouveaux accords, le CICR ajoute qu' "il ne doute pas que les Gouvernements et les Sociétés nationales de la Croix-Rouge ne professent à cet égard une opinion semblable".

24. Les idées qui sont à la base de la codification à entreprendre vont trouver une expression encore plus large dans les travaux du CICR qui aboutiront aux Protocoles additionnels de 1977. Dans son rapport présenté à la XXI^e Conférence internationale de la Croix-Rouge (Istanbul, 1969), le CICR ajoute à la constatation de l'insuffisance des règles de protection deux autres raisons fondamentales qui militent en faveur d'une nouvelle codification. D'une part, le déséquilibre qui existe "entre le droit de Genève largement développé et le domaine des règles touchant à la conduite des hostilités. . . Or le CICR a été amené à se rendre compte. . . qu'il n'est pas possible de maintenir — ainsi qu'on le pensait parfois — une distinction nette entre ces deux domaines du droit applicable aux conflits armés : les belligérants considèrent forcément ce droit comme un tout et l'insuffisance des règles relatives à la conduite des hostilités se répercute défavorablement sur l'observation des Conven-

tions de Genève⁷. D'autre part, l'élargissement de la communauté internationale : "Vu l'ancienneté des règles de La Haye encore valables et le caractère imprécis des règles coutumières, les nombreux Etats qui ont nouvellement accédé à l'indépendance peuvent avoir quelques difficultés à savoir exactement quelles sont les règles à observer—surtout si leurs dirigeants ont à la mémoire les pratiques contraires des nations plus anciennes. D'où la nécessité de réaffirmer et de préciser ces règles par des instruments et procédures auxquels seront associés ces nouveaux Etats".

25. Mais encore faut-il que le sentiment du CICR quant à la nécessité de réviser les conventions existantes ou de les compléter soit partagé par l'ensemble de la communauté internationale et que ses initiatives en vue des travaux préliminaires puissent se fonder sur une base plus formelle et plus officielle. C'est en général le cas, comme le montrent les pages qui suivent, et le mémorandum du 15 février 1945 que le CICR avait adressé directement aux gouvernements, présumant en quelque sorte leur acceptation de principe, représente plutôt une exception dans les modalités des travaux préparatoires.

b) *Les sources formelles des travaux préparatoires*

i) *Résolutions de Conférences internationales de la Croix-Rouge*

26. C'est le plus souvent les résolutions des Conférences internationales de la Croix-Rouge qui ont apporté un appui formel et officiel aux initiatives prises par le CICR pour développer le droit international humanitaire. Un vœu de la Conférence de 1863 qui fonde la Croix-Rouge est à l'origine de la première Convention de Genève de 1864. La X^e Conférence internationale de la Croix-Rouge (Genève, 1921) adopta deux résolutions, n° XIX et n° XV, qui sont respectivement à l'origine de la Convention de 1929 révisant celle de 1905 ayant trait aux blessés et aux malades, et de la Convention de 1929 sur le traitement des prisonniers de guerre. Pour les Conventions de 1949, comme nous l'avons vu, le CICR s'est contenté des réponses, le plus souvent positives, qu'il a reçues des gouvernements à son appel du 17 février 1945. Enfin ce sont les résolutions n° XXVIII de la XX^e Conférence internationale de la Croix-Rouge (Vienne, 1965), relative notamment à la protection des populations civiles contre les dangers de la guerre indiscriminée, et n° XIII de la XXI^e Conférence internationale (Istanbul, 1969) qui ont fondé les travaux préparatoires des Protocoles additionnels de 1977.

27. Cette dernière résolution portant sur la réaffirmation et le développement des lois et coutumes applicables dans les conflits armés est intéressante à plus d'un titre : elle ne se borne pas à souligner la nécessité de renforcer le droit international humanitaire; elle précise également les étapes des travaux préparatoires, en demandant au CICR "de poursuivre activement ses efforts dans ce domaine, sur la base de son rapport, en vue :

“— D'élaborer, le plus rapidement possible, des propositions concrètes de règles qui viendraient compléter le droit humanitaire en vigueur;

“— D'inviter des experts gouvernementaux de la Croix-Rouge et d'autres experts, représentant les principaux systèmes juridiques et sociaux du monde, à se réunir avec lui afin d'être consultés sur ces propositions;

“— De soumettre ces propositions aux gouvernements, en les invitant à lui faire part de leurs commentaires; et

— De recommander, si la chose est jugée souhaitable, aux autorités compétentes de réunir une ou plusieurs conférences diplomatiques, réunissant les Etats parties aux Conventions de Genève et autres Etats intéressés, pour mettre au point des instruments juridiques internationaux tenant compte de ces propositions.”

28. En dépit de la nature particulière des Conférences internationales de la Croix-Rouge, le CICR a toujours considéré — attitude toujours acceptée par les Etats — que leurs résolutions constituaient une base juridique suffisante pour l'habiliter à mener à bien les travaux préparatoires, à s'adresser à cet effet aux gouvernements en vue d'obtenir leur concours, notamment lors des consultations d'experts gouvernementaux examinées plus loin, et pour soumettre, par l'entremise du Conseil fédéral, des projets de conventions révisées ou nouvelles aux Etats appelés à participer à la Conférence diplomatique.

29. Ces résolutions, sources formelles des travaux préparatoires du CICR, ont des contenus très divers. Parfois elles se bornent à manifester le vœu que soient entreprises les recherches nécessaires à l'établissement d'une convention. Parfois, comme la résolution d'Istanbul précitée, elles sont plus précises sur les étapes de l'élaboration de la convention. Parfois également, elles contiennent déjà les principes sur lesquels devra reposer la convention à établir. C'est le cas notamment de la résolution n° XV de la X^e Conférence internationale de 1921, qui énumérait 13 principes devant être à la base de l'établissement d'un “code des prisonniers de guerre, déportés, évacués et réfugiés”. De même, la résolution n° XXVIII de la Conférence de Vienne (1965) formulait quatre principes fondamentaux, dont les trois premiers, outre le rôle qu'ils ont joué dans l'élaboration des Protocoles additionnels de 1977, ont été repris et sanctionnés par une résolution de l'Assemblée générale des Nations Unies en 1966 (2444/XXIII).

ii) *Résolutions des conférences intergouvernementales*

30. Parfois la source formelle a résidé dans un vœu encore plus officiel et d'une qualité juridique encore plus incontestable : les résolutions et vœux adoptés lors de conférences diplomatiques elles-mêmes et qui donnaient l'impulsion pour des travaux futurs parfois étendus. Il en est ainsi :

— Du vœu n° X formulé par la première Conférence de La Haye de 1899 en vue de la révision de la Convention de Genève de 1864 (ainsi que des articles additionnels de 1868) — vœu qui a amené le CICR à préparer les projets de la Convention de Genève de 1906;

— Du vœu n° VI formulé par la Conférence diplomatique de 1929 sur la “nécessité de l'élaboration d'une Convention internationale concernant la condition et la protection des civils de nationalité ennemie qui se trouvent sur le territoire d'un belligérant ou sur un territoire occupé par lui” — vœu à l'origine des travaux du CICR ayant abouti au “Projet de Tokyo” de 1934.

31. En réalité, de telles résolutions répondent souvent à une solution de compromis entre ceux qui auraient désiré voir la matière traitée par la Conférence en question et ceux qui ne le souhaitaient pas. Ainsi, en 1899, c'est le CICR lui-même qui désirait que la révision de la Convention de Genève de 1864 se fît dans le même cadre que celui qui avait présidé à l'élaboration de ce premier instrument. Quant au vœu n° VI de 1929, alors que les milieux humanitaires avaient souhaité ardemment l'établissement d'une Convention

pour la protection des civils, dans le sens de la résolution rappelée plus haut de la Conférence internationale de la Croix-Rouge de 1921, certains milieux politiques, et notamment ceux de la SDN, étaient réservés à cet égard, estimant qu'un tel instrument évoquait trop l'idée de la guerre, à une époque où la recherche de la paix était encore prédominante.

32. Souvent aussi, la Conférence diplomatique a formulé un vœu que soit poursuivie dans un domaine *plus limité*, parfois *plus technique*, l'élaboration commencée et qu'elle n'avait pas eu le temps de parachever dans le domaine considéré. Tel est le cas :

— Du vœu n° III de la Conférence diplomatique de 1929, recommandant d'étudier plus à fond la réglementation de l'emploi de l'aviation sanitaire en temps de paix;

— Des résolutions n°s 3 et 6 de la Conférence diplomatique ayant établi les Conventions de Genève de 1949. La première priait le CICR d'établir un accord type concernant le pourcentage du personnel sanitaire à retenir en fonction du nombre des prisonniers de guerre; la seconde portait sur l'établissement d'un code international réglementant l'usage des moyens modernes de transmission entre les navires-hôpitaux, d'une part, et les navires de guerre et aéronefs militaires, d'autre part.

33. Les résolutions de ce type ont constitué également la base de travaux entrepris par le CICR et dont les résultats ont été communiqués aux gouvernements. Mais, il est intéressant de le relever, en général, ces travaux ont trouvé leur véritable aboutissement non pas dans une réunion diplomatique consacrée spécialement à la question, mais lors d'une Conférence diplomatique générale, ayant porté sur l'ensemble des Conventions de Genève. Ainsi la matière des résolutions n°s III de 1929 et VI de 1949 a été reprise et consacrée par le Protocole additionnel n° I.

c) *La délimitation des compétences*

34. Comme le montre le développement des Conventions de Genève, le CICR a été amené à étendre ses travaux préparatoires à des matières qui, jusque-là, relevaient de la compétence d'autres États ou d'autres organisations. Il en est ainsi, par exemple, du traitement des prisonniers de guerre, de la protection des civils, de la conduite des hostilités, qui dépendaient du droit de La Haye, ou de la question des armes traitée par les Nations Unies. Comment le CICR a-t-il franchi ce pas ?

35. Il faut bien distinguer deux aspects. En ce qui concerne les travaux préparatoires, le CICR a considéré que les résolutions des conférences internationales de la Croix-Rouge qui prévoyaient elles-mêmes cette extension — telles les résolutions des Conférences de 1921 ou de 1969 — du fait qu'elles avaient été approuvées par les gouvernements représentés, y compris par celui des Pays-Bas, lui donnaient un "feu vert" pour poursuivre ses travaux. Il a tenu d'ailleurs, notamment pour les Protocoles additionnels, à se rendre spécialement à La Haye, en 1970, pour tenir les autorités néerlandaises parfaitement informées de ses études.

36. En revanche, il a toujours considéré qu'il appartenait aux gouvernements intéressés de s'entendre sur la question de savoir qui serait compétent pour présider la phase finale de l'élaboration, c'est-à-dire convoquer la

conférence diplomatique. C'est ainsi, par exemple, que le Gouvernement suisse a convoqué la Conférence diplomatique de 1949 en précisant qu'il le faisait "avec l'assentiment du Gouvernement néerlandais".

37. En ce qui concerne les armes, le CICR, à la demande d'un certain nombre de délégations lors de la Conférence d'experts gouvernementaux, a accepté de prêter son concours⁸ pour faciliter la poursuite des travaux portant sur l'interdiction ou la limitation de certaines armes "conventionnelles", mais il n'a pas estimé que cette question relevait nécessairement de sa compétence. Aussi la résolution n° 22⁹ de la Conférence diplomatique de 1974-1977 a-t-elle normalement attribué aux Nations Unies la suite des efforts dans ce domaine. Des experts du CICR y sont d'ailleurs associés.

4. Organisation des travaux

38. L'action législative du CICR traduit le souci constant d'édifier des instruments qui correspondent suffisamment aux exigences des Etats et de la communauté internationale pour avoir des chances d'être appliqués. C'est pourquoi la phase des travaux préparatoires est marquée non seulement par la constitution au sein du CICR d'une structure appropriée, mais aussi et surtout par de multiples consultations d'experts. Par la variété des personnes ou des entités interrogées, par l'étendue des avis recueillis et par la souplesse des formes qu'elles prennent, ces consultations suivies constituent un des traits les plus marquants du processus suivi par le CICR dans l'élaboration des Conventions humanitaires.

a) *Le processus de consultation*

i) *Les consultations menées par le CICR*

39. Les personnes ou entités consultées par le CICR peuvent, en général, se répartir en trois catégories : les experts interrogés à titre privé et individuel, séparément ou en groupe, les experts de Sociétés nationales de la Croix-Rouge (Croissant-Rouge, Lion et Soleil-Rouges) et les experts gouvernementaux. L'ordre dans lequel sont mentionnées ces trois catégories correspond, le plus souvent, à l'évolution du processus de consultation.

Les experts consultés à titre privé

40. La première catégorie présente une grande diversité. Il s'agit aussi bien de personnes privées, spécialisées dans tel ou tel domaine, que d'organisations, telles que l'International Law Association ou l'Institut de droit international, ou enfin d'institutions caritatives. Ce type de consultation se distingue de ceux qui sont décrits plus loin en ce sens qu'il s'agit toujours de personnalités invitées *directement* par le CICR, le plus souvent à ses frais, et ne représentant qu'elles-mêmes. Il va sans dire que, pour le choix de ces personnalités, le CICR a reçu fréquemment une aide précieuse des Sociétés nationales de la Croix-Rouge.

41. Si, tout au long de sa pratique d'élaboration des traités humanitaires, le CICR a recouru à ce premier type de consultation, celui-ci a pris cependant une importance particulière dans les réglementations qu'il a préparées après la seconde guerre mondiale, et notamment pour les Protocoles additionnels de 1977. Pour ces derniers, ce ne sont pas moins de cinq séries de consul-

tations d'experts privés qu'il a menées de 1966 à 1971. Il n'est pas inutile de les préciser pour faire ressortir les modalités de ce type de consultation.

— En 1966, afin de mieux déterminer les suites à donner à l'importante résolution n° XXVIII adoptée à la XX^e Conférence internationale de la Croix-Rouge (Vienne, 1965), des représentants spécialisés du CICR auront, à Genève ou sur place et sur la base d'un questionnaire envoyé à l'avance, des entretiens approfondis avec une quinzaine de personnalités représentant les principaux courants de l'opinion mondiale¹⁰.

— En 1969, afin de mettre au point le rapport qu'il entend présenter à la XXI^e Conférence internationale de la Croix-Rouge (Istanbul, 1969) sur la "Réaffirmation et le développement des lois et coutumes applicables dans les conflits armés", le CICR réunit en janvier une vingtaine de personnalités particulièrement qualifiées par leurs connaissances du droit international ou des réalités politiques et militaires du monde actuel. La liste de ces personnalités, qui figure en note, donne une vue de l'éventail des opinions représentées¹¹.

— Enfin, en 1971, pour établir les propositions concrètes de règles demandées par la résolution n° XIII de la Conférence d'Istanbul, le CICR mène *trois* séries de consultations auprès d'une cinquantaine de personnalités au total, appartenant aux principales régions du globe. La plupart sont consultées par écrit ou lors d'entretiens dans leur pays; quelques consultations ont lieu au siège du CICR. Elles porteront sur trois points : conflits non internationaux et guérillas, protection de la population civile contre les dangers des hostilités et protection des blessés et des malades¹².

Experts de la Croix-Rouge

42. La deuxième catégorie des entités consultées est celle des Sociétés nationales de la Croix-Rouge ou, plus exactement, des experts désignés par ces sociétés nationales. Ce sont elles qui reçoivent l'invitation du CICR et ce sont elles qui choisissent le ou les experts à déléguer à la conférence convoquée soit par le CICR, à Genève, soit dans un autre pays sur l'invitation de la Société nationale de ce pays (qui prend alors à sa charge les frais d'organisation et d'interprétation). Dans la longue pratique du CICR, le recours à ces experts a été l'un des plus constants et l'un des plus réguliers.

43. En principe, l'expert de la Société nationale n'est pas le porte-parole officiel de cette dernière et ne l'engage pas par ses déclarations. Néanmoins, la réunion a d'autant plus de valeur que l'on peut partir de la présomption que les experts délégués ont eu l'occasion de se préparer dans leur pays, sur la base d'avis recueillis non seulement au sein de leur société nationale, mais aussi auprès d'autres personnalités privées ou gouvernementales.

44. Ainsi, les travaux préparatoires des Protocoles additionnels de 1977 ont été marqués par deux Conférences d'experts de Sociétés nationales de la Croix-Rouge : l'une à La Haye en 1971 (1-6 mars), qui a groupé 70 experts provenant de 34 Sociétés nationales, et l'autre à Vienne en 1972 (20-24 mars), qui a groupé une centaine de délégués provenant de 36 Sociétés nationales.

45. Si les consultations de cette catégorie d'experts portent, en principe, sur l'ensemble de la matière qui fait l'objet de travaux préparatoires, il n'en reste pas moins — et cela aussi en raison de la durée relativement brève de ces

réunions — que le CICR en attend surtout des avis autorisés sur les matières intéressantes plus spécialement les Sociétés de la Croix-Rouge¹³.

Les consultations d'experts gouvernementaux

46. Enfin, la troisième catégorie comprend les consultations d'experts gouvernementaux. Elles aussi ont été constantes dans la pratique du CICR, mais ont pris un développement particulier dans les travaux préparatoires ayant mené aux Protocoles additionnels de 1977. Ce ne sont en effet pas moins de neuf réunions d'experts gouvernementaux que le CICR a convoquées et organisées au cours de ces travaux.

47. Deux ont un caractère étendu ou même tout à fait général, portant sur l'ensemble de la matière à traiter : celle de 1971 (Genève, 24 mai-12 juin) qui a groupé 200 experts provenant de 41 Etats¹⁴, et celle de 1972 (Genève, 3 mai-3 juin) à laquelle ont participé 400 experts provenant de 77 Etats. Alors que la Conférence de 1971 avait été limitée à une quarantaine de gouvernements en tenant compte de l'intérêt actif qu'ils avaient porté jusqu'alors aux efforts de la Croix-Rouge dans le domaine considéré, ainsi qu'à la nécessité d'une représentation des principaux systèmes juridiques et sociaux du monde, l'invitation pour la Conférence de 1972 fut étendue à tous les Etats parties aux Conventions de Genève, conformément à un vœu exprimé par les experts réunis en 1971. Bien qu'on ait officiellement parlé en 1972 de la "deuxième session" de la Conférence d'experts gouvernementaux, il est permis de considérer, du point de vue de la préparation matérielle et intellectuelle demandée au CICR, qu'il s'agissait là de deux conférences distinctes.

48. Quant aux 7 autres réunions d'experts gouvernementaux, elles ont été de caractère beaucoup plus limité dans leur composition et dans les objets examinés. Elles ont permis notamment d'approfondir certains problèmes qui n'avaient pas été traités de façon suffisante ou qui n'avaient pas réuni l'unanimité souhaitable lors des conférences plus générales de 1971 et 1972. Cinq de ces réunions ont eu lieu en 1973 et quatre ont porté sur des objets limités et parfois techniques. Il s'agit des réunions d'experts :

- Sur le signe distinctif international de la protection civile (Genève, 22-26 janvier 1973);
- En droit pénal (Genève, 29 janvier et 1^{er} février 1973);
- En matière de signalisation et d'identification des moyens de transport sanitaires, maritimes et terrestres (Genève, 5-8 février);
- Sur les armes de nature à causer des maux superflus ou à frapper sans discrimination (Genève, 26 février-2 mars et 12-15- juin¹⁵).

49. C'est le plus souvent l'intérêt particulier que certains Etats avaient porté à la matière traitée ou la compétence spéciale de leurs experts en ces matières qui ont facilité au CICR le choix des quelques gouvernements, chaque fois différents, invités à déléguer des experts à ces réunions. Ces dernières, à l'exception de celle sur les armes, n'ont pas fait l'objet de rapports particuliers et leurs résultats se sont traduits dans les projets de disposition suggérés par les experts et qui ont été incorporés dans les projets que le CICR a présentés à la Conférence diplomatique.

50. Plus importante a été la cinquième consultation, à savoir le groupe consultatif d'experts gouvernementaux que le CICR a réuni à deux reprises (15-19 janvier et 5-9 mars 1973); il a passé en revue, pour l'essentiel,

l'ensemble de la matière que le CICR allait soumettre l'année suivante à la Conférence diplomatique. Pour déterminer la composition de ce groupe, question assez délicate, le CICR a suivi un critère assez original et ingénieux en s'adressant :

a) Aux gouvernements dont les experts avaient occupé des postes officiels à la Conférence d'experts de 1972;

b) Aux cinq membres permanents du Conseil de sécurité des Nations Unies (pour autant que leurs experts ne figuraient pas déjà dans la première catégorie); et

c) A la Suisse, Etat dépositaire des Conventions de Genève.

51. Enfin, dans l'intervalle des sessions de la Conférence diplomatique, le CICR a réuni en 1974 (Lucerne, 24 septembre-17 octobre) et en 1976 (Lugano, 28 janvier-26 février) deux réunions d'experts gouvernementaux sur l'emploi de certaines armes conventionnelles (là aussi, bien qu'on ait parlé d'une seconde session pour celle de 1976, il s'agissait, quant à l'organisation et à la préparation, de deux réunions distinctes). Quoique ces deux réunions se soient déroulées après le début de la Conférence diplomatique, elles peuvent être rangées dans les travaux préparatoires confiés au CICR, ayant été demandées par la Conférence d'experts gouvernementaux de 1972 (cf. p. 16, note 1).

52. Ainsi, alors que les travaux préparatoires menés par le CICR avant la seconde guerre mondiale entraînaient en moyenne de deux à cinq consultations d'experts et que la Conférence diplomatique de 1949 a été précédée de six consultations de ce genre (trois d'experts privés, deux d'experts de la Croix-Rouge en 1946 et 1948 et une d'experts gouvernementaux en 1947), l'élaboration des Protocoles additionnels de 1977 a amené le CICR à organiser *plus d'une quinzaine* de consultations d'experts des différentes catégories mentionnées ci-dessus. Cette augmentation du nombre des consultations est révélatrice de la complexité et de la difficulté de la matière traitée, compte tenu également de l'élargissement de la communauté internationale, par rapport à l'élaboration des conventions antérieures.

ii) *Procédures des consultations d'experts notamment gouvernementaux*

53. Toutes les réunions d'experts gouvernementaux que nous avons décrites plus haut se caractérisent par leur grande souplesse, par la nature privée de leurs débats, par leur caractère purement consultatif qui n'engage pas les gouvernements comme tels ni n'oblige le CICR à suivre nécessairement les avis recueillis en vue des projets qu'il élabore. Tout est prévu pour permettre une discussion aussi libre que possible, exempte de toute propagande politique, de toute manifestation tournée vers l'opinion publique. Il suffit à cet égard de citer quelques dispositions du règlement intérieur de la Conférence d'experts gouvernementaux de 1971 dont les dispositions se retrouvent semblables ou identiques pour toutes les autres conférences d'experts gouvernementaux.

54. Ainsi, selon l'article 6 "Les experts s'expriment à titre personnel; ils n'engagent pas le gouvernement qui les a désignés. La Conférence ne prend aucune décision, résolution ou recommandation. Elle ne procède pas à des votes. Cependant, lorsque des avis divergent sur un point, un vote pourra être pris à titre purement indicatif."

Selon l'article 3 "Les séances et travaux de la Conférence ne sont pas publics et aucun observateur n'est admis. Des renseignements sur la progression des travaux seront régulièrement donnés à la presse."

Selon l'article 10 "Le CICR se propose d'établir, à la suite de la Conférence, un rapport analytique complet." Ces rapports sont non seulement analytiques mais ils ont aussi un caractère impersonnel. Seuls sont personnalisées les propositions présentées par les délégations d'experts gouvernementaux.

Enfin, selon l'article 11 "Tous les cas non visés par le présent Règlement seront réglés en s'inspirant des Statuts de la Croix-Rouge internationale et du Règlement de la Conférence internationale de la Croix-Rouge, ainsi que des usages parlementaires généralement admis." Cette disposition a une importance particulière, puisque les Statuts de la Croix-Rouge internationale prévoient expressément (article II, chiffre 5) qu'elle ne *peut s'occuper de questions d'ordre politique ni servir de tribune pour les débats à caractère politique.*

iii) *Préparation et rapports des consultations d'experts*

55. Les consultations et réunions d'experts organisées par le CICR, quelle que soit la catégorie dont elles relèvent, ont été régulièrement précédées de l'envoi aux personnes consultées d'une documentation idoine, parfois très étendue et contenant le plus souvent des questions précises, qui constituaient, en quelque sorte, l'ordre du jour détaillé de la consultation.

56. Quant aux résultats et conclusions des consultations d'experts, ils ont pris trois formes. Le plus souvent, ces consultations ont fait l'objet de rapports, parfois très étendus, établis par les services du CICR, sous une forme impersonnelle, analytique ou synthétique. Le CICR a envoyé ces rapports non seulement aux personnes ou organes ayant pris part à la consultation, mais aussi généralement à toutes les Sociétés nationales de la Croix-Rouge ou même à tous les gouvernements des Etats liés par les Conventions de Genève, quand le document était destiné à une Conférence internationale de la Croix-Rouge.

Ainsi, par l'entremise du mouvement de la Croix-Rouge, les résultats de ces consultations d'experts ont-ils connu, dans la règle, une très large diffusion. En effet, les Sociétés nationales ont l'habitude de communiquer les documents de ce genre aux ministères intéressés de leur pays.

57. Dans quelques rares cas, cependant, et s'agissant de réunions de la première catégorie (experts privés), le CICR n'a rien publié des avis recueillis auprès des experts, estimant qu'ils lui étaient surtout utiles pour déterminer à titre interne certaines options fondamentales¹⁶.

58. Enfin, dans quelques cas, les conclusions des experts n'ont pas fait l'objet d'un rapport distinct, mais le CICR les a utilisées dans la préparation d'un projet de convention, en y faisant parfois expressément référence dans le commentaire accompagnant le projet.

b) *L'organisation des travaux au sein du CICR*

59. Une nette distinction peut être faite entre l'élaboration des Conventions de Genève antérieures à la seconde guerre mondiale et celle des conventions qui a suivi 1945.

i) *Jusqu'en 1945*

60. Jusqu'alors, le CICR a régulièrement constitué, en son sein, des Commissions comprenant un nombre restreint de membres (en général jusqu'à cinq), la plupart appartenant au Comité lui-même, et chargé chacune d'elles de l'élaboration d'un projet de convention distinct, quand deux ou trois conventions étaient simultanément en préparation. Le plus souvent, la préparation même de l'ensemble du projet incombait finalement à un membre de la Commission. Tout en restant sous l'autorité de la Commission et, en dernier ressort, du CICR, l'élaboration avait donc un caractère en partie individuel et personnel, au niveau du Comité lui-même.

ii) *Après 1945*

61. En raison de l'ampleur de la tâche à accomplir, l'élaboration a pris un caractère à la fois plus diversifié et plus collectif. Le CICR a créé, au sein de son secrétariat, une *Division juridique* qui a compris jusqu'à une dizaine de personnes. Cette division s'est chargée non seulement de la préparation intellectuelle et parfois administrative des nombreuses consultations d'experts, mais aussi et surtout de l'étude des questions de fond, du rassemblement des matières s'y rapportant et de l'élaboration des avant-projets de texte — chaque membre de la Division s'attachant plus spécialement à un domaine particulier de la matière à régler.

62. En outre, le CICR a créé, en son sein, une *Commission juridique* chargée d'animer et de superviser l'ensemble des travaux. Composée à la fois de membres du CICR et de collaborateurs supérieurs de son secrétariat (notamment de la Division juridique), la Commission (10 à 15 personnes) s'est réunie aussi souvent que nécessaire, en général trois à cinq fois par an¹⁷.

63. Bien entendu, il a toujours incombé au CICR lui-même de se prononcer en dernier ressort sur les textes et propositions qu'il a destinés à des réunions officielles (réunion d'experts gouvernementaux, conférence diplomatique). Mais, dans la pratique, le CICR a dû, forcément en raison de ses nombreuses tâches (dont l'action humanitaire sur le terrain), se prononcer principalement sur les options fondamentales de ces projets et propositions.

5. *La préparation des projets de convention*

64. Indépendamment des cas qui ont vu les Conférences internationales de la Croix-Rouge prendre elles-mêmes l'initiative d'établir des projets de convention, l'élaboration même de ces derniers par le CICR s'est déroulée en trois phases.

65. Dans la *première phase*, sur la base de ses études préliminaires, le CICR va soumettre aux experts consultés des idées et des propositions non encore rédigées sous forme de dispositions conventionnelles (par exemple, pour la réunion d'experts de la Croix-Rouge de 1946 ou celle d'experts privés de 1969).

66. La *seconde phase* est marquée par la présentation aux experts gouvernementaux, dans une documentation appropriée, des différents problèmes à traiter, la description de chacun d'eux étant suivie de propositions rédigées sous forme de dispositions conventionnelles. Parfois, une partie seulement des problèmes présentés sont suivis de telles dispositions, les autres paraissant trop

difficiles pour permettre au CICR d'avancer déjà des propositions sous cette forme. (Citons à titre d'exemple la documentation présentée aux experts gouvernementaux réunis en 1947 en vue des Conventions de Genève de 1949, ou en 1971 en vue des Protocoles additionnels de 1977.)

67. Cette deuxième phase prendra une tournure encore plus poussée pour la Conférence d'experts gouvernementaux de 1972, à laquelle le CICR a soumis, accompagnés de commentaires, deux projets complets de Protocoles additionnels aux Conventions de Genève, seules certaines dispositions restant en blanc.

68. Les experts gouvernementaux vont eux-mêmes, dans *certaines domaines*, transformer les propositions du CICR en un projet de réglementations complet quant aux règles de fond. (Il en est ainsi de la protection des personnes civiles, en 1947, ou de celle des blessés et malades, en 1971.)

69. Enfin, dans la *troisième phase*, le CICR va établir, à l'intention de la Conférence internationale de la Croix-Rouge, des projets de convention entièrement rédigés, en y incluant les dispositions finales (entrée en vigueur, ratification, etc.). Ces projets sont toujours accompagnés de commentaires, parfois développés, qui se réfèrent aux travaux antérieurs.

70. Quels qu'aient été l'autorité et le poids des projets partiels issus des réunions d'experts, gouvernementaux notamment, et tout en leur accordant l'importance qu'ils méritaient, le CICR a toujours considéré qu'il restait libre dans le choix des solutions définitives à retenir en établissant les projets de convention destinés à la Conférence internationale de la Croix-Rouge.

71. Une *quatrième phase*, ne dépendant plus alors du CICR et intervenant avant la Conférence diplomatique, est marquée par les modifications que la Conférence internationale de la Croix-Rouge apporte *éventuellement* aux projets du CICR. Ainsi, celle de 1948 (XVII^e Conférence, Stockholm) a, en créant plusieurs sous-commissions, examiné de façon approfondie les projets du Comité et y a apporté une série d'amendements. Ce sont les projets de convention *issus de cette Conférence internationale* de la Croix-Rouge qui ont servi de texte officiel de base à la *Conférence diplomatique de 1949*¹⁸.

72. Si l'on considère enfin *les délais* écoulés entre l'initiative des travaux préparatoires, dans sa source formelle, et l'adoption du projet définitif, ayant servi de texte de base à la Conférence diplomatique, ils sont de trois ans et demi pour les Conventions de Genève de 1949 (mémoire du CICR de février 1945 – Conférence de Stockholm de 1948) et de quatre ans pour les Protocoles additionnels de 1977 [résolution de la XXI^e Conférence internationale de la Croix-Rouge (septembre 1969) – adoption du projet par la XXII^e Conférence internationale (Téhéran, octobre 1973)].

NOTES

¹ Documentation préliminaire pour la révision et l'établissement des conventions ayant trait à la Croix-Rouge, mémorandum adressé par le CICR aux gouvernements des Etats parties à la Convention de Genève et aux Sociétés nationales de la Croix-Rouge, *Revue internationale de la Croix-Rouge*, n° 314, février 1945.

² Il l'est maintenant indirectement et partiellement, en vertu de l'article 97 du Protocole additionnel n° I, qui prévoit en substance que l'Etat dépositaire se prononcera sur l'opportunité d'une conférence chargée d'examiner les amendements au Protocole soumis par des Etats, après avoir consulté les hautes parties contractantes *et le CICR*.

³ Compte rendu des séances plénières initiales, seconde session de la Conférence d'experts gouvernementaux sur la réaffirmation et le développement du droit international humanitaire applicable dans les conflits armés, Rapport sur les travaux de la Conférence, volume 1, Genève, juillet 1972, p. 27.

⁴ Rapport précité, p. 29 à 34.

⁵ Rapport préliminaire sur les Consultations d'experts concernant les conflits non internationaux et la guérilla. Genève, juillet 1970.

⁶ Citons à titre d'exemple :

— La résolution 2852 (XXVI) adoptée par l'Assemblée générale au cours de sa vingt-sixième session (21 septembre-22 décembre 1971) et intitulée "Respect des droits de l'homme en période de conflit armé, p. 95 et 96, chiffre 3, alinéa a

ou

— La résolution 3102 (XXVIII) adoptée par l'Assemblée générale au cours de sa vingt-huitième session (18 septembre-18 décembre 1973) et portant le même titre que la résolution précitée, p. 151 et 152, chiffre 1.

⁷ Rapport présenté par le CICR à la XXI^e Conférence internationale de la Croix-Rouge (Istanbul, 1969) et intitulé "Réaffirmation et développement des lois et coutumes applicables dans les conflits armés", p. 8, chiffre 1.

⁸ Conférence d'experts gouvernementaux sur la réaffirmation et le développement du droit international humanitaire applicable dans les conflits armés. Rapport sur les travaux de la Conférence, vol. 1, Genève, juillet 1972, p. 206, proposition CE/SPF/2, paragraphe 5.11.

⁹ Suite à donner aux travaux sur l'interdiction ou la limitation de l'emploi de certaines armes conventionnelles, Protocoles additionnels aux Conventions de Genève de 1949, p. 120 à 122.

¹⁰ Rapport présenté par le CICR à la XXI^e Conférence internationale de la Croix-Rouge (Istanbul, 1969) et intitulé "Réaffirmation et développement des lois et coutumes applicables dans les conflits armés", p. 17 et 18.

¹¹ Ont participé : général A. Beaufre (Paris), Dr M. Belaouane, président du Croissant-Rouge algérien (Alger), A. Buchan, directeur de l'Institute for Strategic Studies (Londres), général E. L. M. Burns (Ottawa-Genève), Pr B. Graefrath [Berlin (DDR)], ambassadeur E. Hambro (Oslo-New York), Pr R. Hingorani (Patna), juge Keba M'Baye (Dakar), ambassadeur L. E. Makonnen (Addis-Abeba - New York), général A. E. Martola (Helsinki-Nicosie), sénateur A. Matine-Daftari (Téhéran), S. McBride, secrétaire général de la Commission internationale de juristes (Dublin-Genève), Pr S. Meray (Ankara), Pr J. Patrnogic (Belgrade), Pr B. Roeling (Groningue), Marc Schreiber, directeur de la Division des droits de l'homme (ONU, New York), Pr R. Taoka (Kyoto), baron C. F. von Weizsaecker (Hambourg).

En outre, trois personnalités ont fait part de leurs avis au CICR, soit par écrit, soit au cours d'entretiens ultérieurs : juge Ch. Cole (Freetown, Sierra Leone), E. Garcia-Sayan, président de la Croix-Rouge péruvienne (Lima), Pr N. Singh (New Delhi).

Rapport présenté par le CICR à la XXI^e Conférence internationale (voir note précédente), p. 26 et 27.

¹² Rapport d'activité du CICR de 1970, p. 100 à 103.

¹³ Ainsi, à propos de la Conférence préliminaire des Sociétés de la Croix-Rouge réunies en 1946, le CICR disait, dans les projets de convention préparés en vue de la Conférence diplomatique de 1949 : "Ayant recueilli les suggestions nombreuses et importantes des Sociétés nationales sur les matières qui sont particulièrement de leur compétence, le CICR approfondit ses études..." [Projets de conventions révisées ou

nouvelles protégeant les victimes de la guerre, présentés à la XVII^e Conférence internationale de la Croix-Rouge (Stockholm, août 1948), Genève, mai 1948, p. 2, paragraphe 4.]

¹⁴ "Conférence d'experts gouvernementaux sur la réaffirmation et le développement du droit international humanitaire applicable dans les conflits armés". Rapports de la Conférence de 1971 publié en août 1971 et de celle de 1972 publié en juillet 1972.

¹⁵ Rapport d'activité du CICR en 1973, p. 70, 71 et 75.

¹⁶ Il en a été ainsi de la réunion de personnalités organisée au CICR en 1961. Après le peu d'écho rencontré auprès des gouvernements par son projet de règles de 1956 relatif à la protection des populations civiles, le CICR a été incité par cette réunion à se limiter au rappel de quelques principes fondamentaux qu'il a proposés avec succès à l'approbation de la XX^e Conférence internationale de la Croix-Rouge (Vienne, 1965).

¹⁷ Depuis 1945, elle a été présidée successivement par MM. Léopold Boissier, président du CICR de 1955 à 1964, décédé, Frédéric Siordet, ancien vice-président, et Jean Pictet, vice-président du CICR.

¹⁸ En revanche, c'est le projet établi par le CICR pour la XXII^e Conférence internationale de la Croix-Rouge (Téhéran, 1973) qui a servi de base à la Conférence diplomatique de 1974-1977, les remarques faites à Téhéran ayant été communiquées *séparément* par le Gouvernement suisse aux participants à la Conférence diplomatique de 1974 à 1977.

M. OFFICE CENTRAL DES TRANSPORTS INTERNATIONAUX PAR CHEMINS DE FER (OCTI)

1. L'Office central des transports internationaux par chemins de fer (OCTI) est l'organe permanent de l'union des Etats membres de la Convention CIM (Convention internationale concernant le transport des marchandises par chemins de fer, du 7 février 1970) et de la Convention CIV (Convention internationale concernant le transport des voyageurs et des bagages par chemins de fer, du 7 février 1970), ainsi que de la Convention additionnelle à la CIV du 7 février 1970 relative à la responsabilité du chemin de fer pour la mort et les blessures des voyageurs (signée le 26 février 1966 et amendée par les Protocoles du 22 octobre 1971 et du 9 novembre 1973).

2. La première "Convention internationale sur le transport de marchandises par chemins de fer" du 14 octobre 1890, devancière de la CIM, a été conclue par 10 Etats européens; le texte de cette Convention a été élaboré par trois conférences internationales, convoquées par la Suisse sur l'initiative de deux avocats suisses. Le projet mis au point par ces trois conférences a été entériné par une conférence diplomatique; le texte adopté lors de cette conférence a été soumis à la ratification des Etats signataires. Cette Convention a été révisée à deux reprises avant la première guerre mondiale. Après cette guerre, la troisième Conférence de révision (1923) a élaboré, sur l'initiative de certains Etats contractants, une nouvelle Convention, dont le texte a été signé lors d'une conférence diplomatique (1924) convoquée à cet effet par la Suisse. Lors des Conférences de révision successives (1933, 1952, 1961 et 1970), une nouvelle Convention CIM a été chaque fois élaborée et signée; elle a été toujours soumise à la ratification. Le fondement de cette procédure se trouve dans les dispositions de la Convention elle-même; il s'agissait par conséquent du renouvellement de la Convention originale plutôt que de la création d'une nouvelle convention. Ajoutons que les quatre

dernières révisions ont été préparées par des commissions préliminaires, prévues dans la Convention elle-même et convoquées par l'OCTI.

3. La Convention CIV a été élaborée par la troisième Conférence de révision, sur la base d'un projet préparé par la Suisse; l'initiative d'une telle Convention a été prise par un autre Etat contractant lors d'une conférence de révision de la CIM, tenue avant la première guerre mondiale. Lors des révisions ultérieures, la CIV a été renouvelée de la même manière que la CIM.

4. L'idée de la création d'une Convention additionnelle à la CIV a été lancée lors de la cinquième Conférence de révision (1952); celle-ci a donné mandat à l'OCTI d'examiner de plus près la question de la réglementation uniforme de la responsabilité du chemin de fer pour la mort et les blessures de voyageurs, question qui n'avait pas été réglée dans le cadre de la CIV. Les travaux préparatoires ont été exécutés par l'OCTI et par une série de sessions d'une commission d'experts convoquée par l'OCTI. Une commission préliminaire de la sixième Conférence de révision s'est également occupée de cette question. Le projet de la Convention additionnelle à la CIV relative à la responsabilité du chemin de fer pour la mort et les blessures de voyageurs a été entériné par une conférence diplomatique en 1966; le texte signé a été soumis à la ratification.

5. En résumé, on peut dire que l'initiative de créer de nouvelles conventions a été toujours prise au sein de l'organe compétent pour la révision de la première Convention (CIM) [Conférence de révision]; les projets élaborés par un Etat membre ou par l'OCTI ont été mis au point par une conférence de révision ou par des commissions préliminaires.

Le projet définitif d'une nouvelle Convention a été entériné par une conférence de révision ou par une conférence diplomatique spéciale. Les nouvelles conventions ont été toujours soumises à la ratification.

6. La 8^e Conférence de révision des Conventions CIM et CIV a adopté, le 9 mai 1980, une nouvelle Convention intitulée "Convention relative aux transports internationaux ferroviaires (COTIF)"; elle a été signée par tous les Etats contractants des Conventions CIM et CIV de 1970. La COTIF remplacera, après ratification et mise en vigueur, les Conventions CIM et CIV ainsi que la Convention additionnelle à la CIV de 1966. Selon les termes de la Convention COTIF, l'Union des Etats membres des Conventions CIM et CIV sera remplacée par une nouvelle organisation formelle qui s'appellera "Organisation intergouvernementale pour les transports internationaux ferroviaires (OTIF)", l'OCTI fonctionnera également comme secrétariat de cette organisation. Conformément à la COTIF, le rôle de la Conférence de révision et d'autres conférences diplomatiques convoquées sur la base des Conventions CIM et CIV sera transféré à l'Assemblée générale de l'OTIF, convoquée périodiquement par l'OCTI. En cas de besoin, l'initiative de créer une nouvelle convention pourra donc être prise au sein de cet organe. Les travaux préparatoires devront alors être effectués par la Commission de révision prévue également par la COTIF.

7. Eu égard à nos expériences acquises à l'occasion des conférences diplomatiques tenues après la seconde guerre mondiale au sein de notre organisation et notamment à la 8^e Conférence de révision des Conventions CIM et CIV, nous nous permettons de vous présenter les observations ci-après :

a) Il nous semble opportun d'arriver, dans la phase préparatoire, à des textes aussi avancés que possible. Il nous paraît plus utile de prolonger la phase des travaux préparatoires, plutôt que de soumettre un projet de texte fort contesté à une conférence diplomatique. C'est ainsi que la Conférence de révision de 1980 a pu accomplir sa tâche en 8 jours ouvrables et qu'à la séance de clôture de cette conférence la nouvelle convention COTIF a pu être signée par la plus grande majorité des Etats ayant participé à la conférence.

b) Au cours de toute la procédure d'élaboration, de la nouvelle convention, les Etats ont apprécié les contributions actives du secrétariat. En effet, au cours de la 8^e révision des Conventions CIM et CIV, l'OCTI a préparé, à l'intention de différents organes de révision, de nombreux rapports circonstanciés contenant également des suggestions de textes. Ajoutons à ce propos que la participation des organisations internationales (gouvernementales et non-gouvernementales) aux délibérations avec voix consultative s'est également avérée très utile au sein de nos réunions.

c) A notre avis, il est désirable d'établir un règlement de délibérations modèle. En élaborant un projet de règlement de délibération à l'intention de la 8^e Conférence de révision des Conventions CIM et CIV, l'OCTI a été heureux de pouvoir s'inspirer des règlements de délibérations appliqués dans les récentes conférences diplomatiques convoquées par l'ONU.

d) En ce qui concerne la documentation relative aux travaux d'élaboration d'une convention, la publication d'une telle documentation nous paraît très utile. D'une part, elle peut contribuer à résoudre les questions d'interprétation, d'autre part, elle peut fournir des précieuses informations pour des travaux ultérieurs ayant pour but de développer les textes déjà en vigueur. Cette documentation devrait également contenir, dans la mesure du possible, les procès-verbaux ou les comptes rendus établis sur les travaux préparatoires.

e) Selon la pratique moderne, une convention multilatérale entre en général automatiquement en vigueur dès qu'un nombre déterminé de ratifications est atteint. Dans le domaine de nos Conventions qui ont pour but de créer et de développer un régime de droit uniforme, la procédure d'une mise en vigueur par une conférence diplomatique, qui est convoquée dès qu'un certain nombre d'Etats ont ratifié la convention, s'est avérée utile même de nos jours.

On peut s'imaginer que, dans certains cas spécifiques, une telle procédure favorise la ratification ou acceptation et ultérieurement l'application d'une convention internationale.

f) La 3^e Conférence de révision des Conventions CIM et CIV (1923/1924) avait déjà établi une procédure de révision simplifiée qui permettait d'adapter une annexe technique de la CIM, le Règlement international concernant le transport des marchandises dangereuses par chemins de fer (RID). Cette procédure a fait et fait encore ses preuves; elle a servi de modèle à une procédure semblable permettant de modifier de manière simplifiée deux autres annexes de la CIM: le Règlement international concernant le transport de wagons de particuliers (RIP) et le Règlement international concernant le transport de conteneurs (RiCo), ainsi que plusieurs dispositions dans le corps même des Conventions CIM et CIV. Les décisions de modifications entrent en

vigueur pour *tous* les Etats membres, sauf opposition de cinq Etats dans un délai fixé par les Conventions. La 8^e Conférence de révision, dont est issue la Convention relative aux transports internationaux ferroviaires du 9 mai 1980, a adapté la procédure de révision aux dispositions institutionnelles modifiées, et elle a élargi les possibilités de la procédure de révision simplifiée.

Forts de nos expériences, nous sommes persuadés que, dans certains domaines appropriés, des procédures de révision simplifiées seront à même de favoriser considérablement le développement des traités multilatéraux.

N. ORGANIZATION FOR THE PROHIBITION OF THE USE OF NUCLEAR WEAPONS
IN LATIN AMERICA (OPANAL)¹

1. In regard to the special characteristics of the process of elaborating the Treaty, reference is made to the following:²

“The Treaty of Tlatelolco is a multilateral treaty which evolved from a process of elaboration completed during the period 1964 to 1967 through a series of international meetings of Latin American States, in accordance with the purpose set forth in the Joint Declaration of the Presidents of Bolivia, Brazil, Chile, Ecuador and Mexico on 29 April 1963.³

“The first was the preliminary meeting of the denuclearization of Latin America (23-27 November 1964), convened at the invitation of Mexico, while the second and subsequent meetings of the Preparatory Commission for the Denuclearization of Latin America were convened in accordance with a decision of the Preliminary Meeting. This process was completed by a group of Latin American States, varying in number at the different stages as the establishment of the Preparatory Commission by the Preliminary Meeting was based on the participation of the 17 American Republics which attended the Meeting and those which acceded later (resolution 2). At the beginning of the process, this group of Latin American States did not constitute an international organization. On the contrary, it was as the result of its action in elaborating a treaty that the Agency—OPANAL—was created. Accordingly, the Treaty of Tlatelolco is not a multilateral treaty prepared in accordance with a process established within a pre-existing international organization. Nevertheless, it should be pointed out that the United Nations was fundamentally linked to this process. General Assembly resolution 1911 (XVIII) of 27 November 1963, paragraph 2, by expressing ‘the hope that the States of Latin America will initiate studies, as they deem appropriate, in the light of the principles of the Charter of the United Nations and of regional agreements and by the means and through the channels which they deem suitable, concerning the measures that should be agreed upon with a view to achieving the aims of the said declaration’ (the reference was to the declaration of Heads of State of five Latin American Republics, dated 29 April 1963), provided the international impetus which set off the process and established the general framework within which it was to be accomplished. General Assembly resolution 2286 (XXII) of 5 December 1967 welcomed with special satisfaction the Treaty for the Prohibition of Nuclear Weapons in Latin America (paragraph 1) and, in paragraphs 3 and 4, recommended

that States should ratify the Treaty and its Additional Protocols I and II as soon as possible.

"This tangential and atypical manner of creating, or rather, of promoting the creation of international law by the United Nations, falls outside the areas of study generally covered by doctrine in the analysis of the work of the United Nations in that field⁴ and it should therefore be stressed that the process followed in drafting the Treaty of Tlatelolco is a very interesting supplement to the traditional methods of elaborating multilateral treaties."⁵

2. The Treaty of Tlatelolco was elaborated between 1964 and 1967. Together with its two additional Protocols, it was opened for signature on 14 February 1967. It entered into force on 25 April 1969.

3. The Agency elaborated the Convention on Privileges and Immunities of OPANAL. The draft was prepared by the secretariat in accordance with the relevant provisions of the Treaty.⁶ It was adopted by the General Conference in resolution 9 (I) of 8 August 1969 and was opened for signature and ratification by States parties to the Treaty, members of OPANAL.

4. Article 9, paragraph 2(g) of the Treaty of Tlatelolco regarding the competence of the General Conference, provides that it "shall be the organ competent to authorize the conclusion of agreements with Governments and other international organizations and bodies". Pursuant to this provision, the General Conference authorized the conclusion and adoption of the Convention on privileges and immunities which is a multilateral treaty.

5. As the matter is not within our competence, no reference has been made to bilateral agreements, Headquarters Agreement with the Government of Mexico and Co-operation Agreement with IAEA.

NOTES

¹ Original in Spanish; this is an unofficial translation.

² From H. G. Espiell, "*El Derecho de los Tratados y el Tratado de Tlatelolco*", OPANAL, Mexico, 1974, pp. 11-12.

³ The history of this process is described in the following works of Alfonso García Robles: "*La Desnuclearización de la América Latina*", Carnegie Endowment for International Peace, New York 1967; "*El Tratado de Tlatelolco*", Mexico 1967; "*México en las Naciones Unidas*", 2 volumes, Mexico, 1970; "*Mesures de Désarmement dans des zones particulières: Le traité visant l'interdiction des armes nucléaires en Amérique Latine*", Académie de Droit International, Recueil des Cours, Vol. 1, 1971. The official documentation was published in nine volumes by the Ministry of External Relations 1964-1967; "*La Proscripción de las Armas Nucleares en la América Latina*", El Colegio Nacional, Mexico, 1975.

⁴ From H. G. Espiell, "*El Derecho de los Tratados y el Tratado de Tlatelolco*", OPANAL, Mexico, 1974, pp. 11-12.

⁵ Jorge Castañeda, "*La Creación de Derecho Internacional por las Naciones Unidas, Foro Internacional*", Vol. IX, No. 2, Mexico, 1970; Manfred Lachs, "*La Contribución de las Naciones Unidas al desarrollo del Derecho Internacional*", 1945-1970, Foro Internacional, Vol. XI, No. 2, Mexico, 1970.

⁶ Manfred Lachs, "*Le développement et les fonctions des traités multilatéraux*", chapters I, II and VIII, 3 *Recueil des Cours, Académie de Droit International*, 1957, II, t. 92.

O. PERMANENT COMMISSION FOR THE SOUTH PACIFIC (CPPS)

1. *History*

1. CPPS is an intergovernmental organization with juridical personality under international law, and was established by an Agreement dated 18 August 1952, signed and approved by the Governments of Chile, Ecuador and Peru. Recently, on 24 March 1982, Colombia became a member of CPPS.

2. The aim of this Organization is to ensure compliance with the purposes of the so-called Santiago Declaration or Maritime Zone Declaration of 18 August 1952, in which the Governments of Chile, Ecuador and Peru proclaimed, "as a principle of their international maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast", and that "their sole jurisdiction and sovereignty over the zone thus described includes sole sovereignty and jurisdiction over the seafloor and subsoil thereof . . .".

2. *Structure of the Commission*

3. CPPS has a General Secretariat which is the organ responsible for carrying out the work and function entrusted to it.

4. Its headquarters changes in rotation and is situated for four consecutive years in each of the capitals of the contracting States.

5. The headquarters is currently in Lima, Peru.

6. The General Secretariat is composed of the Secretary-General, the Deputy Secretaries-General for Legal Affairs, for Scientific Affairs and for Programming and Administration, and administrative personnel. It also has three advisory bodies: a Legal Commission, a Scientific Research Co-ordinating Commission (COCIC) and a Programming Commission.

7. The Secretary-General is the legal representative of CPPS and he directs the office of the General Secretariat.

8. The Deputy Secretaries-General are his immediate collaborators in their own fields of specialization.

9. The Legal Commission is composed of the Deputy Secretary-General for Legal Affairs and of representatives of each of the member States which also designate alternates.

10. COCIC is composed of the Deputy Secretary-General for Scientific Affairs, and the Technical Directors of the Fishery Research Institutes, the Directors of Fisheries, the Directors of the technical bodies conducting naval oceanographic research and the national representatives of university institutions of each signatory State conducting research in marine sciences, all of whom may avail themselves of the advisory services of any experts they may wish to appoint.

11. To co-ordinate the work of CPPS and its General Secretariat there is a regional body in each contracting State, called the National Section of CPPS. Its function is to act as a link, for the purposes of CPPS, between the General Secretariat and the respective Governments, or between the secretariat and

the organizations engaged in marine science studies in each of the contracting States.

3. *Operation*

12. CPPS holds regular and special meetings in order to achieve the purposes set forth in the Maritime Zone Declaration and ensure that the principles and objectives in the agreements, resolutions and pacts on the South Pacific are duly complied with and furthered.

13. Regular meetings are held every two years and the special meetings whenever special circumstances so require.

14. States members of CPPS are represented at these meetings by an appropriate number of delegates and they may also designate any alternates and advisers they deem necessary.

15. Representatives of other Governments and international bodies and institutions may also attend these meetings as observers.

16. The procedure to be followed in concluding international agreements does not differ from the traditional system of formal ratification of treaties, since such international agreements are subject to ratification in accordance with the internal constitutional requirements of each contracting State.

17. Texts of agreements are adopted at so-called special conferences or meetings for the conservation and exploitation of the maritime resources of the South Pacific, which are attended by the respective plenipotentiaries of the Governments of Chile, Colombia, Ecuador and Peru.

18. Five such special conferences have been held to date, the first of them being the one which established, on 18 August 1952, the Permanent Commission for the South Pacific.

4. *Procedure for adopting resolutions*

19. CPPS is authorized to adopt at its meetings resolutions which are valid and binding on each of the signatory States from the date of their adoption, except for such resolutions as are repudiated by any of those States within 90 days, in which case the repudiated resolution or resolutions shall not take effect in the country which objects to it so long as it maintains its objection. For the purposes of the time-limit mentioned, Governments are deemed to have been notified as from the date of adoption of the agreement by the very fact that their respective delegates were present. Should the representatives of a State be absent, that State shall be notified of the agreements in writing in the person of its accredited diplomatic representative in the country which is the headquarters of the Commission.

20. Resolutions are instruments dealing with all questions which, because of their content, are not subject to the internal constitutional adoption and ratification procedures of each State.

21. As early as 1952, the States members of CPPS, desiring to make it a dynamic organization, agreed that its resolutions would enter into force within a very short period—90 days—the time allowed to each Party to register any objection. Thus they avoided any complicated formal procedure that might stand in the way of the effective operation of the Commission.

22. Similarly, notification of the Agreement, for purposes of the time-limit, was simplified and the presence of their delegates is alone sufficient for the Governments concerned to be deemed to be notified and for the above-mentioned time-limit of 90 days to begin.

23. The foregoing explains the success of CPPS, which has adopted countless resolutions enabling it to accomplish satisfactorily the purposes of the Maritime Zone Declaration signed by the Governments of Chile, Colombia, Ecuador and Peru.

P. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

1. *General remarks on the scope and history of the multilateral treaty-making process within the Hague Conference on Private International Law*

1. The Conference has been engaged in the preparation of multilateral treaties in the field of private international law since its formation in 1893. The Conference may also, following a decision taken at its Fourteenth Session (1980), draw up recommendations or even prepare model laws.

2. The treaties prepared include those which are universal and those which are more restricted in purpose, nature or participation.

3. The techniques and procedures which are used for elaboration of multilateral treaties are essentially the same, whether the treaty in question is universal or more restricted.

4. Since 1951 the preparation of individual treaties has been organized in principle on a four-year cycle. Some variance is occasionally necessary in this cycle, but usually this is not more than one year for a particular treaty. There also exists the possibility of an extraordinary session for preparation of a treaty, falling out of the normal four-year cycle; such an extraordinary session has only been employed one time to date.

5. The normal four-year cycle between plenary sessions of the Conference includes the entire process from the point where the possible preparation of a treaty on a given subject is taken under consideration to the point where a definitive text is adopted. However, in recent cycles the practice has developed to undertake the preparation of feasibility studies on a possible topic as much as a year or more before commencement of the cycle in which the treaty on that topic is expected to be prepared.

2. *The normal system for elaboration of a multilateral treaty within the Hague Conference*

(a) *The stages of work*

(i) *The selection stage*

6. This stage includes all activities undertaken within the Conference prior to the point of making a definitive decision to prepare a treaty on the given topic. Approximately nine months prior to the Plenary Session of the Conference, a Special Commission meeting is held to consider the future work to be carried on by the Conference following the upcoming plenary session. Most suggestions for topics to be undertaken are presented by delegates of the

member States at such meetings. Topics may also be suggested by members of the secretariat of the Hague Conference and at times suggestions are made by other international organizations, within the framework of the Conference's co-operation agreements with them. These are then discussed and considered in the Special Commission meeting and a certain number of topics are retained for further study of their feasibility. Members of the secretariat then prepare short feasibility studies on the topics retained which are sent out to the Member Governments in advance of the Plenary Session meeting. At the Plenary Session, in addition to the commissions charged with the preparation of treaty texts, one commission meets to deal with questions of future work, having before it for consideration the feasibility studies prepared by the secretariat. On the basis of such studies and the discussions held within that commission, decisions are made and a list of topics for future work is drawn up. Qualifications concerning the timing of work or other conditions for pursuit of the work may be added. These decisions, when adopted by the Plenary Session of the Conference in question, are implemented by the Permanent Bureau of the Conference, in consultation with the Netherlands Standing Government Committee on Private International Law, which under the Statute of the Conference directs the work of the Permanent Bureau. Final decisions as to the timing of work on particular topics are then made by a Committee of representatives of the member States, acting on proposals presented by the Permanent Bureau, usually within a year following the Plenary Session in question. Because of the limited number of topics which may be carried to the conclusive point of preparation of a treaty text under this system, some topics are carried on the list from one session to the next until ultimately they are definitively undertaken or dropped from the list.

(ii) *The research stage*

7. Once a topic has been definitively undertaken with a view to the preparation of a treaty, an individual member of the secretariat is assigned to prepare a research study on the subject in question and to draft a questionnaire directed to member Governments in connection with the subject. The nature of the research study and the questionnaire will vary depending on the stage of development of the subject matter at the international level. By "stage of development at the international level" we are generally referring to the amount of basic underlying work and study which has been given to the particular sorts of problems involved, in connection with earlier work done by the Hague Conference, by other international organizations or by independent scholars or research institutions.

8. Determination of the form and content of a report and questionnaire to be directed to the Governments of member States on a particular topic is in the first place to be made by the responsible member of the secretariat who has prepared drafts of these documents, following extended research which may be pursued for as much as a year's time. The drafts in question are subject to review and consultation between that member and the Secretary-General of the Conference. Further review may then be undertaken by the Netherlands Standing Government Committee on Private International Law, which may make suggestions for certain changes. The questionnaire in particular is likely to be modified in some respects during this process, since it is designed to elicit precise responses from the Governments of member States.

The report on the other hand is normally sent out over the name of the member of the secretariat who has prepared it and may therefore reflect opinions which are personal to the author.

9. The nature of the reports and questionnaires varies considerably according to the nature and stage of development of the subject matter. A few general remarks may be made however about the techniques employed in the preparation of the questionnaires. Most questions are directed either to obtain information or to elicit opinions from the member Governments. Where the subject matter is not very highly developed at the international level, the questionnaire may be directed primarily to eliciting opinions from the Governments, since the report may have to identify a wide variety of options, the questionnaire then presenting these to the Governments and seeking their opinions for the purpose of reducing the number of options. On the other hand, where the subject has been extensively studied at the international level, the number of options will often have been reduced as a result of such study, by elimination of those which are not feasible. Therefore, the questionnaire on such a highly developed topic may be very carefully directed to obtain factual information on specific remaining critical points and occasionally the separate report will be dispensed with, being replaced instead with a question-by-question commentary throughout the questionnaire. This process is also affected by the breadth of the topic as originally defined, which may in itself determine the range of the options available. Sometimes, also, a topic by its very nature will call for a fairly even balance of information-seeking and opinion-eliciting questions. Attention is in any case directed to limiting the length of the questionnaire as much as possible, in order to reduce the burden on the administrations of the member Governments and to improve the quality of the responses, which will be more valuable if the questions are precise and to the point.

(iii) *The discussion stage*

10. The first meeting of Governmental representatives on each topic is normally a meeting of legal experts, who will have studied the questionnaire and report on the replies of the Governments and sometimes a synthesis of the replies prepared by the secretariat. Experts attending the first meeting are asked to express their opinions on the various questions broadly and personally without binding their Governments at this stage. A chairman, a vice-chairman and a rapporteur are selected from among the experts attending. The chairman, and in his absence the vice-chairman, generally conducts the discussions with technical assistance from members of the secretariat, who also participate in the discussions. The rapporteur will take notes on the important points of the discussions and will participate *ex officio* in any drafting committee which may be set up to draw tentative conclusions from the meeting. The continuing discussion process is facilitated by the practice of the secretariat to prepare on a daily basis summary reports of each meeting which take the place of a full set of minutes; since the report of the latest meeting is normally available at the commencement of the next session, these reports improve both the continuity of the discussions and the work of the drafting committee.

11. This first meeting usually lasts one week and normally results in a set of written conclusions, drawn up by a small drafting committee or sometimes by a member of the secretariat, following the meeting. The responsible

member of the secretariat may also prepare and distribute a written document identifying the options which will be presented to the next Special Commission meeting and the decisions which will have to be taken by that Commission.

(iv) *The drafting stage*

12. The work of drafting a treaty text normally begins with the second Special Commission meeting. This meeting will have before it certain written conclusions drawn from the first meeting, and it may have the benefit of a text drawn up, as a basis for discussion, by a small working group during the interim. It should be particularly noted that the general practice of the Hague Conference has been to avoid preparation of draft articles of a treaty in advance of the experts' meeting and rather to leave the form and structure of the draft produced to the Commission of experts themselves and their drafting committee or small working group following the first round of general discussions. On a few occasions drafts which had been prepared at previous meetings of the Conference were taken as the basis for discussions on a new treaty; in only one instance (*Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions*) did the secretariat of the Conference itself draw up a draft of treaty articles in advance of the first meeting of the experts. The preparation of an advance text by the secretariat is not favoured because of its tendency to fix the attention of the delegates from the participating States on particular language directed to particular solutions, before there has been a general discussion. A general round of remarks by the experts in attendance seems to be a useful preliminary to the first draft, since some problems anticipated by the secretariat may not arise, or at least they may not be so acute as to require the radical treatment of an express provision in the treaty.

13. The drafting committee usually consists of five or six experts headed by a chairman, the rapporteur of the Special Commission being an *ex officio* member of the Committee. Since the official languages of the Conference are French and English, the Committee will normally include at least one native speaker of each of these languages. The drafting committee also normally includes experts who are native speakers neither of French nor of English, both for the broader range of legal experience which this brings and because potential difficulties of translation into non-official languages may thus be raised already at the drafting stage. Texts are drafted in French and English simultaneously by the Committee, with the assistance of members of the permanent secretariat, and the effort to obtain full correspondence between the texts thus begins at this stage. The bilingual discussions held by the drafting committee are also important with regard to the substance of the treaty, since the effort to develop texts in two languages at the same time often brings out points of misunderstanding which had not come out in the general discussions of the Commission.

14. Formal and technical clauses are normally not dealt with by the Special Commission but referred to the Plenary Session. These are co-ordinated to the extent possible for the several conventions under study by a general committee of each Session which attempts to maintain uniformity of language and technique for the formal and protocol clauses. This is not always possible, since the nature of the subject matter and the type of convention dictate some

deviations from the model, but in recent years the effort to rationalise and standardise the clauses which provide the operating mechanisms of the treaties has made great progress.

15. The Commission which deals with a subject at the Plenary Session of the Conference is organised along much the same lines as the Special Commission which preceded it, though it will usually have broader representation.¹ At the Plenary Session, full summaries of the remarks of the speakers are prepared following each sitting of the Commission and distributed the next morning, providing a basis for continuity in the discussions.

16. The process which has been described generally provides some guarantees against wholesale or radical revision of the text in the late stages. The fact that the text arises directly from the discussions of the experts tends to create a fairly stable base, even though there will be States represented at the Plenary Session by experts who did not participate in the Special Commission's work.

17. Occasionally, for one reason or another, the text of a convention cannot be completed at the Plenary Session for which it is scheduled. In these cases, the Conference has scheduled a further Special Commission to meet, continuing the work of the Plenary Session for the limited purposes of establishing that treaty text. This procedure was used following the Twelfth (1972) and the Thirteenth (1976) Sessions.

18. At times the Conference drafts recommendations concerning the application or the operation of a convention.

(v) *The consolidation stage*

19. After the definitive text of the convention has been established, consolidation of the result achieved begins. The same Plenary Session of the Conference that prepared the treaty also usually sets an approximate date upon which it will be opened for signature; this is usually about one year after the end of the session at which the text has been prepared, which allows time for the Report on the convention to be prepared and distributed.

20. When the rapporteur submits his draft to the Permanent Bureau of the Conference, members of the Permanent Bureau, in particular, the responsible member who worked with the Commission that prepared the convention and the secretary-general, review the draft and may propose suggested changes, deletions or additions.

21. The definitive edition of the report is the last document in the bound volume concerning the convention, and the secretariat prepares tables for inclusion at the end of the report which show not only the contents of the volume but also the historical development of the different provisions in the convention, from the preliminary draft prepared by the Special Commission through the principal drafts worked upon by the Commission at the Plenary Session, and including references to the minutes of the particular sessions of the Commission at which the individual provisions were discussed. Any recommendations adopted concerning the application or the operation of the convention will also be included.

22. The final publication of the materials on a particular convention, which will take the form of a bound volume in the series of the *Actes et documents de la Conférence de la Haye de droit international privé*, will also include

the names and capacities of the persons who attended the Special Commissions and the relevant Commission of the Plenary Session and a full set of summary minutes of the remarks made orally by delegates at the Plenary Session, as well as the working documents submitted by delegates, drafting committees or the secretariat at that Session.

23. Publication of these materials in a definitive version is the final step in this very important consolidation stage, where the work of the four-year cycle is pulled together and preserved in bound form for future users of the convention and for researchers.

(b) *Personnel*

24. No description of techniques and procedures used by the Conference in the elaboration of multilateral treaties would be complete without some description of the people who employ the techniques and carry out the procedures. The organizational structure and the general cycle of activity of the organisation are determined along broad lines by the Statute of the Hague Conference on Private International Law (United Nations, *Treaty Series*, 1955, p. 123, No. 2997, hereafter referred to as the "Statute") which entered into force on 15 July 1955 and now has 28 States Parties to it. Those States and the treaties which they have signed or ratified are indicated on the attached table of signatures and ratifications, while accession by States non-members of the Conference are shown on the reverse side of the table. It should be mentioned that the admission of the Kingdom of Morocco to membership in the Conference has been proposed by the Netherlands Government and that this proposal has been approved, pursuant to the procedures set out in the Statute of the Conference mentioned above.

(i) *The permanent secretariat*

25. The Permanent Bureau of the Conference was organized in 1955 under the terms in particular of articles 3, 4 and 5 of the Statute. It presently consists of a secretary-general, a deputy secretary-general and two secretaries, belonging to different nationalities, all of whom must have legal knowledge and practical experience appropriate to their positions. It carries out its activities under the supervision of the Netherlands Standing Government Committee on Private International Law.

26. The Permanent Bureau is primarily a "scientific" secretariat. Its role in the "research stage" of the preparation of a treaty as mentioned above is preponderant. Once the first Special Commission meets, that role becomes less obtrusive for, as mentioned above, the texts are developed directly from the discussions of the experts attending the meetings.

(ii) *The National Organs*

27. Under article 6 of the Statute, the Government of each member State is to designate a National Organ for the purpose of facilitating communications between the members of the Conference and the Permanent Bureau. The Permanent Bureau is authorized to correspond with all of the National Organs so designated and with concerned international organizations.

28. The National Organ of a member State is usually a designated office within its Ministry of Justice or its Ministry of Foreign Affairs; however, a few States have designated their Embassies at The Hague as their National Organs.

29. The National Organs serve a very important purpose since they provide the normal channel of communication between the Permanent Bureau and the body within each member State which prepares replies to the questionnaires on technical subjects and which is usually consulted in connection with the naming of experts and delegates for meetings organized by the Conference. The designation of National Organs by the member States therefore greatly facilitates the preparation of multilateral treaties.

(iii) *The expert delegates*

30. The designation of experts to attend Special Commission meetings on behalf of a member State is normally confirmed to the Permanent Bureau by the National Organ of the particular country. The experts should have a fine appreciation of the problems of private international law. The technical expertise which the delegates need to have helps to assure the essentially non-political nature of the Conference's work. No geographic or regional sub-groups are formed or represented either among the Commission's members or on the drafting Committees.

31. The delegation of each country at the Plenary Session of the Conference is headed by a fully accredited diplomatic representative who is authorised to represent his country and to sign the Final Act of that Plenary Session on behalf of his Government. The Final Act of each Session of the Conference therefore reflects the considered judgement of the experts and diplomatic representatives of the member States of the Conference as to the definitive treaty texts there established, any provisions for continuation or consolidation of the work there undertaken and recommendations as to future work to be pursued.

(iv) *Observers of international organizations*

32. *Representatives of other inter-governmental organizations*—A number of other international organizations have overlapping interests with the Hague Conference to a greater or lesser degree. Depending on the nature of the subject-matter, then, some of these organizations will be invited to send representatives as observers to participate in the preparatory meetings and the Plenary Sessions in the preparation of treaties on particular topics. The attendance and participation of such observers is of importance, as well for the contribution of relevant experience which they bring as for the continuing exchange of current information on work going on among various international organizations which results. The tradition of the Conference is that observers may take the floor freely and make suggestions, even in writing.

33. In the United Nations Organization, the Legal Counsel's Office and the United Nations Commission on International Trade Law (UNCITRAL) have made continuing and helpful contributions to the Conference's work and there is excellent liaison and continuing exchange of information between the Permanent Bureau and their staffs. The Council of Europe has partially overlapping interests with the Conference in a number of fields and the liaison through the exchange of observers is continuous and fruitful. Also, some of the work of the European Economic Communities touches upon or parallels the work of the Conference, calling for exchanges of observers; this overlap has recently been expanded from the field of obligations to include also certain specific aspects of family law and procedure. There is a continuous exchange

of documentation and observers between the Conference and the Organization of American States, the Asian-African Legal Consultative Committee and the Commonwealth Secretariat. In some areas of the law of family status, exchange of documentation and liaison through the sending of observers occurs with the International Commission on Civil Status (CIEC). On a specific subject, recognition and validity of trusts, the Conference received an observer from the Bank of International Settlements.

34. *Non-governmental organizations*—Among the non-governmental organizations, International Social Service, based at Geneva, has provided substantial input on the sociological aspects of several major problems of international family law taken on by the Conference—in particular, protection of minors, adoption and currently international abduction of children by one parent (“legal kidnapping”). The *Union internationale du Notariat latin* has made substantial contributions from its expertise in regard to a broad range of subjects where the preparation of authenticated contracts or other documents is either customary or required by law in certain States. The *Union internationale des huissiers de justice et officiers judiciaires* has on several occasions brought the benefit of its experience, in connection particularly with problems of service of documents internationally. The *Comité européen des assurances* has sent observers on questions involving insurance law and practice.

(v) *Non-member States*

35. A number of States non-members of the Conference have sent invited observers to Special Commission meetings and Plenary Sessions. This can be a prelude to a formal application for membership by the State represented.

36. When non-member States are Parties to a Convention which is being revised by the Conference, pursuant to Article 40 of the Vienna Convention on the Law of Treaties, those States are invited to participate in the work of revision with full voting status.

(vi) *Temporary assistants*

37. It is necessary to obtain competent jurists to serve as *secrétaires rédacteurs* for the larger meetings, both to reduce the work of the permanent staff in preparation of necessary summaries of discussions and to free the members of the Permanent Bureau for participation in the discussions and in the work of the drafting committees. Attendance by temporary *secrétaires rédacteurs*—usually professors, practising lawyers or advanced students of private international law—helps to ensure the availability of minutes of high quality on a daily basis.

3. *Extraordinary Sessions of the Conference*

38. Article 3 of the Statute provides that, in addition to the ordinary Sessions of the Conference which take place in principle every four years, the Netherlands Standing Government Committee may, in case of need, if the members of the Conference are in favour, ask the Netherlands Government to call an Extraordinary Session of the Conference. This has been done only once. The Extraordinary Session in question was held in 1966 for the purpose of preparing the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

39. The provision for Extraordinary Sessions is primarily designed to deal with those subjects which are so large that their inclusion in the agenda of an ordinary Session would overburden and thereby distort the work on the other subjects being dealt with at that Session. This was felt to be the case with the subject of the recognition and enforcement of foreign judgements in civil and commercial matters.

40. The Conference decided at its Fourteenth Session in 1980 to hold an Extraordinary Session for the purpose of revising the Convention of 15 July 1955 on the Law Applicable to International Sales of Goods. At the same time the Conference decided that such subjects of broad interest in the field of international trade law called for a wider opening of the Conference, which would assure the participation of States which are not members of the Hague Conference on Private International Law—in particular that this would provide a broader range of input from developing countries and from countries with fully-planned economies.

41. Since the revised Convention, when prepared, will be a counterpart and to a large extent a complement to the United Nations Convention on Contracts for the International Sale of Goods, drawn up at Vienna in 1980 on the basis of a draft prepared within the United Nations Commission on International Trade Law (UNCITRAL), it was felt that it would be appropriate to invite all member States of UNCITRAL to participate in the preparatory work. The preparatory phase therefore will be carried out by meetings of a Special Commission which will consist of Hague Conference member States and UNCITRAL member States, each with full rights of participation, including the right to vote. The final stage of adoption of the revised Convention will be carried out at a diplomatic conference to be held at The Hague in 1985 or 1986, to which all States will be invited.

42. The procedure for holding an Extraordinary Session to deal with a single topic of international trade law, in which non-member States of the Hague Conference are invited to participate with the full right of vote, may be followed in the future for subjects other than the international sale of goods. In particular, the revision of the Geneva Conventions of 1930 and 1931 on the conflict of laws for negotiable instruments and cheques may be undertaken through the use of a similar procedure.

NOTE

¹ Formal rules of procedure are adopted for each Plenary Session.

