

In our examination of methods of multilateral treaty-making we have been very conscious of the importance of multilateral treaties in the conduct of current international relations and the importance of the codification and the progressive development of international law. An improvement in the techniques and the methods that are employed in codification could increase the likelihood that multilateral treaties will receive broadly based support, which in turn will enhance the contribution that international law makes to the orderly conduct of affairs of the international community.

In supporting the proposal for a review of the process by which the international community makes multilateral treaties, we consider that we must take into account all stages of that process and the extent to which inadequate preparation at any stage may result in failure at the final stage, that is broadly-based adherence to the treaty. In the development of a treaty on any given subject, a number of factors must be taken into account. These factors include the existence of domestic legislation of states, decisions of national tribunals, international judicial decisions and existing bilateral or multilateral treaties related to the subject. To ignore these factors is to risk that the result of the treaty-making process will not be acceptable to a majority of states. If the factors taken into account during the initial stages represent an accurate reflection of the international community's policies and jurisprudence on a selected subject, the final text submitted to states will be well rooted in international experience and will constitute the kind of codification that can be described as a genuinely progressive development of international law.

This is not to say that the preparation of multilateral treaties can or should be limited to those areas of practice which already constitute, through their acceptance, international custom. It is also necessary to consider aspects of selected subjects for which there is no established precedent, and for which international experience does not point directly to principles of international law. These gaps in international law need to be included in the preparation of multilateral treaties if they are to cover the subject matter in a comprehensive fashion and have relevance to the world in which we live. This aspect of multilateral treaty-making is also part of the progressive development of international law and should not be rejected as being less than wholly legal in character. In our perception, an emerging multilateral treaty should take into account both existing policy and jurisprudence and the requirements of economic and political relations between states, if the treaty is to win the acceptance of states.

Turning to the scope of the review, we agree that it should in the first instance concentrate on the methods of multilateral treaty-making employed in the United Nations and under United Nations auspices. We also think that if the review is to meet requirements for an improvement in the process it will be necessary that the practices of specialized agencies and other institutions, both within and without the United Nations' family, be fully taken into account. In treaty-making, the role of the International Law Commission is predominant. In addition, there is valuable experience in the established practices of specialized agencies such as, for example, the International Labour Organization and the Intergovernmental Maritime Consultative Organization which provide standards against which other activities of this kind may be measured.