



WORLD HEALTH ORGANIZATION

EXECUTIVE BOARD
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Participation by WHO in the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations

Report by the Secretariat

BACKGROUND

1. By resolution 53/100 of 8 December 1998, the General Assembly of the United Nations, *inter alia*, encouraged States and international organizations that had not yet done so, to become Parties to the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (hereafter “1986 Convention”).¹ The resolution was adopted under the agenda item “United Nations Decade of International Law”. One of the purposes of the Decade, which ended in 1999, was to promote acceptance of and respect for the principles of international law. Specialized agencies had been invited by the General Assembly to support the Decade and its purposes.

THE 1986 CONVENTION

2. The 1986 Convention was drafted by the International Law Commission of the United Nations and adopted by a diplomatic conference convened by the General Assembly. It regulates most aspects of treaties concluded between States and international organizations or between international organizations.² The Convention is open to participation by States and international organizations which have the capacity to conclude international treaties, and will enter into force after 35 States have ratified it or acceded to it. The number of international organizations that become Parties to the Convention does not count towards that figure. As of 24 September 1999, 26 States were Parties to the Convention. The United Nations is the only international organization that has become Party to

¹ The text is reproduced in United Nations document A/CONF.129/15, and is available on request in all official languages.

² Subject matter includes conclusion of agreements, entry into force, interpretation, effects, reservations, amendments, causes of invalidity and termination, withdrawal, deposit, settlement of disputes.

the Convention.¹ Nine organizations have signed the Convention, including WHO which signed it on 30 April 1987.

3. The 1986 Convention complements the 1969 Vienna Convention on the Law of Treaties (which was drafted and adopted through the same process as the 1986 Convention), which regulates international treaties concluded between States. This Convention entered into force in 1980 and had 90 Parties as of 24 September 1999. The 1986 Convention follows almost verbatim the provisions of the 1969 Convention, with only a few substantial deviations, for example, regarding settlement of disputes in order to reflect the different status of international organizations under international law. The 1969 Convention largely codifies general international law (i.e. unwritten customary law automatically binding on all States) concerning treaties, and the same conclusion is generally accepted as regards the 1986 Convention. Consequently, the provisions and principles of the 1986 Convention are frequently referred to as a reference framework by States and international organizations in their treaty practice, even by non-Parties to it, and even though the Convention is not yet in force.

ATTITUDES OF STATES AND INTERNATIONAL ORGANIZATIONS

4. Through their statements during the drafting and adoption process, by becoming contracting Parties, and by referring to it in their practice, many States have supported and availed themselves of the 1986 Convention and its principles and provisions. The relative lack of success of the Convention stems partly from the fact that, precisely because it codifies general international law which in any event is applicable and binding, several States were reluctant to go through potentially cumbersome internal ratification procedures when they could simply refer to the Convention in their treaty practice. Moreover, at the time of adoption, eastern European and some other States were not in favour of the very concept that international organizations could participate in multilateral conventions on a similar footing as States. These philosophical obstacles had led to a loss of momentum, to which the General Assembly reacted through resolution 53/100. They have since been overcome, as evidenced by adoption of the resolution by consensus.

5. International organizations represented at the 1986 Vienna Conference expressed satisfaction that their interests would be safeguarded by the Convention, for example, by largely assimilating them to States for treaty purposes, thus ensuring a remarkable uniformity in legal treatment. However, the earlier attitude of States mentioned above apparently generated so far a degree of caution on the part of organizations. Nevertheless, among the specialized agencies from which information is available, the secretariats of ILO, ICAO and WIPO are in the process of submitting the issue of participation in the 1986 Convention to their governing bodies; the Secretariat of ITU has decided to await the entry into force of the Convention before doing so. The Council of FAO decided in 1998 to postpone consideration until the United Nations had become a Party and the Convention had entered into force. Among related agencies, the Executive Council of the Organization for the Prohibition of Chemical Weapons, at its sixteenth session held in September 1999, recommended to the Conference of the States Parties (to be held in May 2000) that its Director-General should be authorized to deposit an instrument of accession to the Convention.

¹ The United Nations deposited an act of formal confirmation (the equivalent of ratification for States) on 21 December 1998 pursuant to the authorization contained in General Assembly resolution 53/100.

ACTION BY THE EXECUTIVE BOARD

6. Since the 1986 Convention protects the legal position and interests of both international organizations and States concluding agreements, and its entry into force would promote clarity, predictability and stability of legal relations, the Executive Board may wish to recommend to the Health Assembly that the Director-General should be authorized to deposit an instrument of formal confirmation of the Convention. A draft resolution to that effect is set forth below.

The Executive Board

RECOMMENDS to the Fifty-third World Health Assembly the adoption of the following resolution:

The Fifty-third World Health Assembly,

Acknowledging that the United Nations General Assembly, by resolution 53/100 of 8 December 1998, encouraged international organizations that have signed the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, to deposit an act of formal confirmation of the Convention at an early date;

Having considered the report on the subject;¹

Bearing in mind that the entry into force of the Convention would safeguard the legal interests of both States and international organizations, including WHO;

Wishing to support, within its area of competence, promotion of the acceptance of and respect for the principles of international law, which was one of the purposes of the United Nations Decade of International Law,

AUTHORIZES the Director-General to deposit with the Secretary-General of the United Nations an act of formal confirmation of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, in conformity with Article 83 of the Convention.

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¹ Document EB105/30.