

The Process of Multilateral Diplomacy¹

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Preparatory Process

PREPARATORY ACTIVITIES AT NATIONAL LEVEL

As is the case for bilateral interaction, the starting point of multilateral diplomacy at national level is the drawing up of a brief. The organ concerned with the subject matter of a given intervention or negotiation will consult with other governmental and, if necessary, non-governmental organisations (NGOs) to determine the national position. This usually includes consultations with diplomatic missions in other countries to ascertain the positions of those countries. Permanent missions accredited to international organisations likewise concerned with the intervention or negotiation, particularly those with a secretariat in charge of a proposed negotiation, are also consulted. Based on this first round of consultations, a first draft of a brief can be prepared. The process often requires internal negotiations to overcome divergent approaches.

The draft brief will then require adjustment to conform to the outcome of preparatory activities at international level, including bilateral consultations with individual countries and organisations, and multilateral discussion with other formal and informal groups. Thus, especially in the case of negotiations, the final national brief can be adopted only shortly before the onset of the substantive discussions. This brief will have to take into account the various interests and intentions expressed by the participants with regard to the oncoming negotiation and the foreseeable results of their interaction. It will also rely on information gathered from the secretariat in charge of preparing the negotiation. Obviously, in view of the great number of



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interacting variables, a brief for a multilateral negotiation will always have to be much more open-ended than a brief for a bilateral negotiation. Once the brief is ready, or even earlier, the delegation to attend the negotiation will be appointed. Depending on the subject matter, the presidency of that delegation may fall to a diplomat from the foreign ministry or to a representative of another administration more directly concerned. It may be advisable to have two levels of head of delegation, a lower one for earlier, more technical discussions, and a higher one to handle issues that are more delicate.

PREPARATORY ACTIVITIES AT INTERNATIONAL LEVEL

Nearly all contemporary multilateral negotiations take place within the framework of international institutions, mostly intergovernmental international organisations. Hence, even if an initiative comes from a single country, all the preparatory activities – the decision to hold negotiations and the determination of subject matter, framework, timing, and agenda – originate from the competent organ of such an organisation.

Even the initial decision may be the result of considerable preparatory activity. The convening of the United Nations (UN) Conference on the Law of the Sea in 1982 resulted from a process that started with the establishment of the UN Seabed Committee in 1967 to consider the Maltese proposal to declare the seabed beyond national jurisdiction, a common heritage of mankind.

In the UN, the normal process of codification of rules of international law requires considerable preparation, beginning with an invitation from the UN General Assembly to the International Law Commission to put a given issue on its agenda. This Commission then appoints a special *rapporteur* and, based on their report, begins its deliberations. Deliberations may last for many years as preliminary drafts circulate for comment among member states before reconsideration in Commission meetings. Once the Commission feels that it has a draft that could be validly discussed by the member states, it invites the General Assembly to decide whether to convene a conference for this purpose or to entrust the discussion to one of its permanent committees. Following the decision of the Assembly, the final negotiation can then begin.

As can be seen, when dealing with an issue of codification, a cascade of multilateral negotiations occurs, many of them preliminary. Even when the purpose of a negotiation is the handling of a conflict situation, considerable preliminary negotiation may take place until the competent organ formally tackles the issues. A good illustration of this is the flurry of proposals and counter-proposals to convene a conference to discuss the situation in Palestine.

Where a negotiating forum contains a great number of participants, they usually form a number of regional and/or issue-oriented groups. These groups will meet both before the formal negotiation starts and during the actual sessions of the negotiating body. Some of them are regional or functional organisations; others emerge spontaneously among countries with similar interests.

PREPARATORY ACTIVITIES AT INSTITUTIONAL LEVEL

Most multilateral activities take place within or under the aegis of an international institution. Therefore, the secretariat of the institution concerned becomes active from the very outset in preparing files for the countries concerned and for their representatives, and in arranging for meetings. Most multilateral activity is of an ongoing nature and involves a negotiating forum, requiring a secretariat permanently at its disposal. In recent years, such secretariats have been used by the chair of a forum for various preparatory activities, including consultations and the preparation of agendas and negotiating texts.

In the past, the chair of a negotiating body was likely inactive between sessions. In recent years, however, financial considerations have made it necessary to limit the number and duration of meetings of such bodies, while the amount of business they were supposed to handle has increased. Consequently, the chair, in close co-operation with the secretariat, tends to become active long before the scheduled meetings. It undertakes consultations with the countries involved and seeks to eliminate minor controversies and even to prepare possible alternatives in order to minimise major differences. During actual sessions, in order to reduce the number and duration of meetings, the chair tends to continue to 'smooth the way'.

NEGOTIATING TEXTS

Another essential process of multilateral diplomacy is the actual negotiation of texts. A meeting convened to negotiate a text normally has in hand a preliminary draft resulting from the deliberations of a preparatory body or submitted by the chair after consultations. Delegations can then submit proposals for additions to or elimination of parts of the text, or for amendments. Traditionally, rules required submission of such proposals in writing and in advance, to allow the secretariat time to distribute them, perhaps in several language versions. At committee levels, smaller amendments or proposals could be presented verbally. Today, information and communication technologies provide facilities that may make it possible to dispense, at least in part, with preliminary versions in writing.

FINALISING DOCUMENTS

Deliberations of a text may not produce a version suitable for adoption. To complete the process, texts are always submitted to a drafting committee, which will put them, as far as possible, into a cogent and clear form, without departing from decisions made during the negotiating process. Moreover, the drafting committee must ensure that the versions of a text in different languages correspond as closely as possible to one another. More recently, drafting committees have even been entrusted with further refining texts that have already been adopted.

ADOPTING DOCUMENTS

The final act in the process of multilateral negotiation is the adoption of a document. For many years, documents, like all decisions, have had to be adopted by voting. Rules of procedure provided precise instructions about the sequence of votes, the required majorities, and the manner of counting votes to determine such majorities. In recent years, however, voting has often been abandoned in favour of consensus building. A negotiating body may have decided in advance that no votes would be taken and that a consensus would be recognised by the chair after delegations have expressed their views. This poses no problem in the case of general agreement. When differences exist, the chair must find out whether delegations are ready to accept a consensus version from which they differ. If so, the chair announces the consensus and asks delegations whether they have any fundamental objections. If no delegation wishes its objections to upset the consensus, the agreement stands. At the deliberation stage, documents are adopted in bits and pieces. The rules of procedure or agreed procedures at the outset of deliberations indicate how this is to be achieved. Once all parts have been adopted and reviewed by the drafting committee, the text must then be adopted as a whole.

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