Chapter 2

Law-Making Processes in the UN System: Some Impressions*

The Charter of the United Nations gave to the General Assembly the role of “… encouraging the progressive development of international law and its codification.”1 During the past half century, great strides have been made towards codifying and developing parts of customary international law in the form of Conventions. In the great majority of cases, Conventions on legal matters have been adopted by diplomatic conferences convened by the General Assembly, following work by the ILC, which is currently celebrating its 50th anniversary. An outstanding example of this process is provided by the Vienna Conference on the Law of Treaties which codified and developed the rules on that topic.2 Shortly thereafter, the law of the sea was revised by the Third United Nations Conference on the Law of the Sea (“LOS Conference”), an entirely different type of conference in many important respects.3

1 Article 13, para. 1 (a).
This chapter reviews many of the processes of codifying and developing the rules of international law which have been used during the past 50 years. It does so primarily by making comparisons between the processes used in regard to the law of treaties and those used for the law of the sea, processes in which the author participated as a delegate. The chapter gives the writer’s personal impressions of the two Conferences, without attempting to give complete accounts of them, and offers some conclusions on the different processes of law-making under the auspices of the United Nations.

I Impressions of the Two Conferences

A Subject Matter

Treaties range in scope and character from bilateral transactions of a purely contractual nature through regional arrangements to universal conventions forming part of the general international order. Included in this latter category are the Charter of the United Nations and major law-making conventions such as the Vienna Convention on Diplomatic Relations. The law of treaties has to take account of and provide for this extreme range of legal instruments. The law governing agreements is clearly one of the fundamental parts of international law and, as such, it may be described as “lawyers’ law”, that is to say, a subject of interest primarily to practitioners and professors of international law. Although political leaders or experts in a particular treaty, they are unlikely to have occasion to take positions or express opinions regarding treaty law as such. Indeed, the conference in Vienna in 1968 and 1969 was attended almost exclusively by practising lawyers, including several members of the ILC. Many delegates were diplomats serving in the legal sections of Foreign Ministries and several others were professors with established international reputations. Many delegates went on to enjoy prominent careers as international lawyers, includ-


5 Apart from Sir Humphrey Waldock, who served as Special Rapporteur in the ILC and as an Expert Consultant at the Conference, the President of the Conference, Mr Robert O. Ago, the Chairman of the Committee of the Whole, Mr T.O. Elias and the Chairman of the Drafting Committee, Mr M.K. Yasseen, were all members of the ILC.

6 Including Riphagen (Netherlands), Thierfelder (Germany), Kearney (United States), Devadder (Belgium), Krishna Rao (India), Khlestov (Soviet Union), and Vallat (United Kingdom).

7 Including Professors Verosta and Zemanek (Austria), Sørensen (Denmark), Reuter and Virally (France), Castren (Finland), Dupuy (Holy See), Briggs, Sweeney, and McDougall (United States), Stuyt (Netherlands), Zourek (Czechoslovakia), Jimenez de Arechaga (Uruguay), Rosenne and Meron (Israel), Matine-Daftary (Iran) and Arangio-Ruiz, Sperduiti, Barile, Capotorti and Malintoppi (Italy).