# United Nations Conference on Succession of States in Respect of Treaties

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## 51st Meeting of the Committee of the Whole

Extract from volume II of the *Official Records of the United Nations Conference on Succession of States in Respect of Treaties (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

ficient. Delegations with few members would have some difficulty in taking part in all the meetings, particularly night meetings, which might be scheduled in order to complete the work during the current week.

47. The CHAIRMAN said he believed that the Committee, which had the bulk of the work to perform, would be able to complete its task by Friday, 18 August.

*The meeting rose at 6.50 p.m.*

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## 51st MEETING

*Tuesday, 15 August 1978, at 5.05 p.m.*

*Chairman:* Mr. RIAD (Egypt)

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### Election of the Rapporteur

1. The CHAIRMAN announced that Mr. Tabibi (Afghanistan), who had been elected Rapporteur of the Committee of the Whole at the 1977 session of the Conference, had informed the President of the Conference that he was unable to attend the resumed session. He invited members of the Committee to submit nominations for the post of Rapporteur.

2. Mr. JOMARD (Iraq), on behalf of the Asian Group, nominated Mrs. Thakore (India) for the post of Rapporteur.

*Mrs. THAKORE (India) was elected Rapporteur of the Committee of the Whole by acclamation.*

### Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976

[Agenda item 11] (*continued*)

FIRST REPORT OF THE INFORMAL CONSULTATIONS GROUP (A/CONF.80/C.1/L.59)[1] (*concluded*)

3. The CHAIRMAN said that at its 50th meeting the Committee had closed the discussion on the first report of the Informal Consultations Group (A/CONF.80/C.1/L.59), on articles 6 and 7; it therefore remained only to take a decision on the recommendations of the Group concerning articles 6 and 7.

*Article 6 (Cases of succession of States covered by the present articles)[2] and Article 7[3] (concluded)*

4. Mr. PAPADOPOULOS (Cyprus) observed that article 6 naturally stated the presumption that the Convention would apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations. The delegation of Cyprus, however, would vote for article 6, as drafted by the International Law Commission, in the belief that it would serve as a reminder to those who might believe that they would enjoy the benefits of the future Convention in unlawful situations. Article 6 would thus serve a useful purpose, in so far as it reflected the unequivocal stand of the international community in such cases.

5. Although the delegation of Cyprus had supported the initial text of article 7, it would vote for the text proposed by the Informal Consultations Group and, in particular, for variant A of paragraph 1, as it believed that the new text was largely in the interests of many States which had doubts, among other things, as to whether a notification of succession made under the régime of continuity, after a long silence, could produce its effects.

6. The CHAIRMAN said that if there were no objections he would take it that the Committee provisionally adopted the text of article 6 proposed by the International Law Commission and referred it to the Drafting Committee for consideration.

*It was so agreed.*[4]

7. The CHAIRMAN observed that no delegation had asked that variant B of paragraph 1 be put to the vote. If there were no objections, he would take it that the Committee provisionally adopted the text of article 7 proposed by the Informal Consultations Group and referred it for consideration to the Drafting Committee, which would also be required to propose a title for that article.

*It was so agreed.*[5]

8. Mr. MUSEUX (France) said that the attention of the Drafting Committee should be drawn to the phrase "contained in a written notification to the Secretary-General of the United Nations", which appeared in paragraph 4; for as he had already pointed out, the Secretary-General of the United Nations was not there referred to in his capacity as such, but in his capacity as depositary of the Convention. In his opinion the words "Secretary-General of the United Nations" should be replaced by the word "depositary".

9. Mr. OSMAN (Somalia) said he had joined in the consensus on article 7 on the understanding that its

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[1] See 50th meeting, foot-note 1.

[2] For the list of amendments submitted, see 50th meeting, foot-note 2.

[3] For the list of amendments submitted, see 50th meeting, foot-note 3.

[4] For resumption of the discussion, see 53rd meeting, paras. 34-35.

[5] For resumption of the discussion, see 53rd meeting, paras. 36-51.

provisions could not be invoked by a contracting party against another contracting State which had reserved its position on certain provisions of the Convention.

AGREED TEXT OF THE *AD HOC* GROUP ON PEACEFUL SETTLEMENT OF DISPUTES (A/CONF.80/C.1/L.60 and Corr.1)

10. The CHAIRMAN reminded the Committee that it had decided, at its 45th meeting, during the discussion of the proposed new article 39 *bis*, to set up an *Ad Hoc* Group on peaceful settlement of disputes,[6] and at its 46th meeting, to defer consideration of the question until the *Ad Hoc* Group had completed its work.[7]

11. Mr. NAKAGAWA (Japan) said that his delegation had always been in favour of a mandatory procedure for the settlement of disputes by the International Court of Justice or by arbitration the decision handed down being binding on the parties concerned. With regard to Article C proposed by the *Ad Hoc* Group, in the agreed text (A/CONF.80/C.1/L.60 and Corr.1), his delegation would have preferred the "opting-out" to the "opting-in" system. It was, however, prepared to support the solution proposed, in the hope that some day the international community would consider itself sufficiently advanced to be able to accept the ideal system of judicial settlement of disputes.

12. Mr. RANJEVA (Madagascar) said he wished to draw the Drafting Committee's attention to the last phrase of article A which, by providing for both consultation and negotiation, might result in a dilatory procedure. In his delegation's opinion, the notion of consultation was not very precise in meaning, and article A was intended to refer to diplomatic procedure. It would be better to delete the reference to consultation, which had a legal connotation, and replace it by a reference to diplomatic negotiations.

13. Mr. KASASA-MUTATI (Zaire) said he thought the text proposed by the *Ad Hoc* Group had many advantages over the initial proposals, and as the provisions of articles A to E met the concern of his delegation it would support them.

14. Mr. MARESCA (Italy), expressed his satisfaction with the text prepared by the *Ad Hoc* Group, which, although not perfect, was acceptable to his delegation from every point of view. He was particularly pleased to note the order in which the various procedures were presented, which his delegation had been the first to recommend. With regard to article B, however, he pointed out that while it was normal to submit a "request" to the Secretary-General of the United Nations, it would be preferable to speak of "notification" of the other State party or States parties to the dispute, in other words, to find some formula reflecting the idea of conciliation. For if the other State party or States parties to the dispute took the term "request" literally, they might reply in the negative, which would be absurd. He therefore recommended that the Drafting Committee should add, after the words "of the United Nations and" some words such as "a notification", so that the other State party or States parties to the dispute could not refuse to submit to the conciliation procedure.

15. Mr. PÉREZ CHIRIBOGA (Venezuela) said that, in the *Ad Hoc* Group, delegations had adopted a flexible attitude in order to arrive at a text acceptable to all, so that the Group's proposal was the result of bringing the positions of the various delegations closer together. His delegation was therefore willing to support the proposal; but it wished to stress, with regard to article B, that while it had accepted the idea of the compulsory nature of conciliation in a spirit of compromise, it had done so solely within the framework of the present Convention and without in any way committing the Venezuelan Government in regard to other modes of settlement of disputes under other international instruments, in particular those relating to the law of the sea. It was on that understanding that his delegation joined in the consensus on the text agreed by the *Ad Hoc* Group.

16. Mr. WETLAND (Norway) said that it was not from lack of interest that his delegation had not spoken earlier in the discussion, and that it strongly supported all the efforts by the international community to establish mandatory procedures for the peaceful settlement of disputes. Norway had three times been a party to disputes before the International Court of Justice and was among the States which had made a declaration recognizing the compulsory jurisdiction of the Court in accordance with Article 36 of its Statute. The text prepared by the *Ad Hoc* Group was a very carefully worded compromise which, even if not completely satisfactory to all delegations, should prove to be workable. He would not go into details, but he did not see the need for article D. His delegation had no difficulty in accepting the text as a whole, however, although it would have preferred the Committee to adopt one of the proposals first made by the Netherlands and the United States. In its view, those more ambitious proposals should remain the goal which the international community should some day be able to attain. But his delegation realized that the time was not yet ripe for such solutions, and that a common denominator acceptable to all delegations must be found.

17. To sum up, his delegation was ready to support the agreed text submitted by the *Ad Hoc* Group, which was a step in the right direction and an improvement on the régimes adopted at previous conferences, when the majority had favoured optional protocols.

18. Mr. FLEISCHHAUER (Federal Republic of Germany) welcomed the group of articles on the settlement of disputes prepared by the *Ad Hoc* Group, as a useful and necessary addition to the draft Convention. He regretted, however, that the proposed procedure did not enable the International Court of Justice to play its proper part. He

[6] See 45th meeting, para. 71.

[7] See 46th meeting, para. 26.

had hoped that the members of the *Ad Hoc* Group would be able to reach agreement on a procedure providing for compulsory recourse to the International Court of Justice, if necessary with a provision allowing States to declare that they were not bound by that procedure (opting-out solution). The proposed procedure, which provided, on the contrary, that a dispute could only be referred to the International Court of Justice if the States parties to the dispute had accepted the jurisdiction of the Court (opting-in solution), showed no progress as compared with the procedure adopted in the protocols to the Vienna Conventions on Diplomatic Relations (1961)[8] and on Consular Relations (1963).[9] Nevertheless, since it had not been possible to agree on more forceful means of settlement of disputes, his delegation was willing to accept the agreed text submitted by the *Ad Hoc* Group.

19. Mr. YANGO (Philippines) said he thought the very fact that the International Law Commission had not proposed an article on the settlement of disputes clearly showed that it preferred to leave it to the Conference to work out an appropriate procedure. He therefore welcomed the procedure proposed by the *Ad Hoc* Group in the agreed text. He would have preferred it to place more emphasis on the role of the International Court of Justice, because the Philippines had always been in favour of the compulsory jurisdiction of the Court. But he was prepared to support the proposed text, on the understanding that there was no hierarchy for the procedures proposed in the various articles and that the consent of the parties must prevail in the choice of the procedure to be followed.

20. Sir Ian SINCLAIR said he welcomed, but without enthusiasm, the text proposed by the *Ad Hoc* Group, in whose deliberations his delegation had taken part.

21. With regard to article B, he agreed with the representative of Italy that it was not a request, but simply a notification that should be sent to the other States parties to disputes.

22. He found article C more difficult to accept, because his delegation had always advocated a procedure for the settlement of disputes based on the compulsory jurisdiction of the International Court of Justice and had accordingly been prepared to support the United States proposal (A/CONF.80/C.1/L.38/Rev.1), which had left it open to States to declare that they would not be bound by the procedure in question. The procedure proposed in article C therefore seemed to his delegation to be inadequate, but it could accept the set of articles proposed by the *Ad Hoc* Group as a whole.

23. Mr. KAKOOZA (Uganda) said that, while he was grateful to the *Ad Hoc* Group for its efforts, he considered, like the Italian representative, that the procedure proposed in article B was defective. His delegation had always emphasized the importance of the process of consultation and negotiation, which it considered to be the best means of settling disputes; and while it recognized that that process should not continue indefinitely, it believed that before abandoning it and submitting the dispute to the proposed conciliation procedure, a State party should first notify the other States parties of that intention, so that they would not be taken by surprise, but be encouraged to renew their efforts to settle the dispute through diplomatic channels. If the dispute had not been settled within a period of three months from the date on which the notification had been made and the other States parties to the dispute persisted in their refusal to submit it to the conciliation procedure provided for, the State which had made the notification could submit its request to the Secretary-General of the United Nations. The importance of the process of consultation and negotiation would thus be preserved. Subject to that proposal, his delegation supported the text submitted by the *Ad Hoc* Group.

24. Mr. OSMAN (Somalia) said he wholeheartedly supported the new procedure for the settlement of disputes submitted by the *Ad Hoc* Group, which he found was well balanced and sufficiently flexible. He especially commended the *Ad Hoc* Group for having emphasized the importance of the consent of the parties to the dispute.

25. Mr. GODET (Switzerland) said that his country, which stood for the principle of the primacy of law over force in international relations, could not fail to support any compulsory procedure for the settlement of disputes. His delegation had therefore been in favour of the procedure suggested by the United Kingdom, which struck a balance between the ideal and the possible, and regretted that the *Ad Hoc* Group had not been able to accept it. At the same time, his delegation recognized that the international community was not yet ready to accept a system which was considered too coercive, and it supported the text proposed by the *Ad Hoc* Group as being the minimum that could be expected at the present stage of international relations.

26. Mr. EUSTATHIADES (Greece) said he agreed with the representative of Madagascar that the word "consultation" in article A should be deleted, since consultation and negotiation were two different things, and recourse to consultation might unduly protract the procedure for settlement of disputes. He also considered, like the Italian representative, that article B should refer to a "notification", rather than a "request", made to the other State party or States parties to the dispute.

27. With regard to drafting, he proposed that in the French text of articles A and D the words *"entre deux Etats parties ou plus"* should be replaced by the words *"entre deux ou plusieurs Etats parties"*. He also wondered whether it would not be better to place article D before article C; for in his view there was a gradation in the means to be employed, ranging from negotiation, provided for in article A, through conciliation, provided for in article B, and decision by common consent of the parties to a dispute to submit it to arbitration or to the International Court of Justice, as provided in article D, to an undertaking given in

[8] United Nations, *Treaty Series*, vol. 500, p. 95.

[9] *Ibid.*, vol. 596, p. 261.

advance by States parties to the Convention to submit their disputes regarding interpretation and application of the convention to the International Court of Justice or to arbitration, which was provided for in article C. He believed that a general undertaking, given in advance by a State party to a convention to all the other States parties to that convention, was more important than a simple *ad hoc* agreement between two or more States relating to a particular dispute.

28. He would support the text proposed by the *Ad Hoc* Group but, like the representative of Japan, he regretted that it constituted no more than a bare minimum. In particular, he was surprised to find no mention of the rules that would be applied by the conciliation commission.

29. Moreover, since the conclusions of the conciliation commission would not be binding and, in addition, since arbitration and judicial settlement were contingent on the prior or *ad hoc* agreement of the parties to the dispute, the only compulsory procedure remaining was negotiation. Would that not mean that the convention would leave it to the stronger to force a solution to the dispute, and that the weaker would have to give way?

30. Mr. PAPADOPOULOS (Cyprus) said he was glad that the *Ad Hoc* Group had succeeded in drafting a text that took due account of all the trends which had appeared in the Committee of the Whole. He regretted, however, that automatic recourse to the International Court of Justice had not been provided for, since that would have strengthened the role of the Court. Nevertheless, his delegation would support the compromise text of the *Ad Hoc* Group.

31. Mr. HAMZA (United Arab Emirates) said he had two reasons for welcoming the agreed text of the *Ad Hoc* Group. In the first place, his delegation had always wished the Convention to contain a clause on the settlement of disputes. Secondly, as a small State, the United Arab Emirates wished international relations to be stabilized, which would only be possible if there was a mechanism for the settlement of disputes between States. The text under consideration was an improvement on the previous text, but his delegation would have been prepared to go a step further. It would nevertheless support the proposed text, since it reflected the various trends which had emerged during the discussion. At the most, a reference might be made in article A to the diplomatic channel, as well as to the process of consultation and negotiation.

32. Mr. LANG (Austria) said he was glad the *Ad Hoc* Group had been able to reach agreement on a text which showed that definite progress had been made. Admittedly, it would have been better to give a more important role to compulsory arbitration and the compulsory jurisdiction of the International Court of Justice; but the international community was not ready to accept, internationally, the same machinery for the settlement of disputes as was accepted nationally. It must not be forgotten, however, that significant progress had been made at the regional level where there would probably soon be a further advance.

33. In accordance with that realistic approach, the Austrian delegation could agree to give priority to such non-judicial means of settlement as consultation, negotiation and conciliation. Even though many delegations were unable to accept compulsory judicial settlement of disputes as a provision of the future convention, it was to be hoped that when States became involved in a dispute they would consider it in their interests to submit to that procedure.

34. Mr. KOROMA (Sierra Leone) said that his country was in favour of the text before the Committee, for it had always believed that international disputes should be settled by peaceful means. The process of consultation and negotiation had been referred to in article A because it was the classical means of settling disputes. To meet the concern of those who feared that consultation and negotiation would delay the settlement of disputes, it could be expressly stated that they must be conducted in good faith. Admittedly, good faith was an underlying principle of international law, but if that principle was expressly stated in the case in point, the parties to a dispute would be under an obligation to act in good faith.

35. Mr. MAHUNDA (United Republic of Tanzania) said that his delegation welcomed the agreed text of the *Ad Hoc* Group, because it was not in favour of the compulsory judicial settlement of disputes. Other delegations took a different view, and it was only thanks to the spirit of conciliation which had prevailed in the Group that it had been possible to draft that text.

36. Mr. ROVINE (United States of America) said it was with reluctance that his delegation would give its support to the agreed text of the *Ad Hoc* Group. That text showed some progress as compared with those of conventions concluded in recent years, but it was still not adequate: it did not suffice to protect the rights established in the future Convention. Compared with article 66 of the Vienna Convention of the Law of Treaties[10] which provided for compulsory recourse to the International Court of Justice for the settlement of disputes relating to a peremptory norm of general international law, it was even a significant retreat. For questions of secondary importance, it had not been possible to reach agreement on a provision equivalent to article 66 of the Vienna Convention.

37. During the debate, none of the arguments advanced for not going further in the procedure for settlement of disputes had been convincing. Some speakers had said that the international community was not yet ready to go a step further, but they had not given the reasons for that state of affairs. He believed that the international community should be guided in the right direction. Other representatives feared that States would not abide by the judgments of the International Court of Justice, but in his opinion that was no reason for not going ahead.

[10] *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 298.

38. As the United States delegation had emphasized during the discussion on article 39 *bis*,[11] it was important to include adequate provisions on the settlement of disputes in the future Convention, in order to give effect to the rights deriving from the "clean slate" principle and leave no room for doubt. In that respect, the work of the Committee of the Whole was not what it should, or could, have been. It was to be hoped that, in the future, the international community would make greater efforts in situations of that kind.

*The meeting rose at 6.25 p.m.*

[11] See 44th meeting, paras. 4-7.

## 52nd MEETING

*Tuesday, 15 August 1978, at 9.30 p.m.*

*Chairman:* Mr. RIAD (Egypt)

**Consideration of the question of succession of States in respect of treaties in accordance with resolutions 3496 (XXX) and 31/18 adopted by the General Assembly on 15 December 1975 and 24 November 1976**

[Agenda item 11] (*continued*)

AGREED TEXT OF THE *AD HOC* GROUP ON PEACEFUL SETTLEMENT OF DISPUTES (A/CONF.80/C.1/L.60 and Corr.1) (*concluded*)

1. Mr. MUDHO (Kenya) said that the agreed text of the *Ad Hoc* Group on Peaceful Settlement of Disputes (A/CONF.80/C.1/L.60 and Corr.1) was a realistic compromise which his delegation had little difficulty in accepting, although it had some reservations about article B.

2. He wondered, however, what purpose would be served by the retention of paragraph 4 of the annex on conciliation procedure, if read in conjunction with the second sentence of paragraph 6, which expressly stated that the report of the Commission would not be binding upon the parties.

3. At an earlier stage, he had been disposed to support the proposal of the Ugandan representative[1] that due notice should be given to other parties before a party to a dispute had recourse to the conciliation procedure laid down in article B. On reflection, however, he had become convinced that such an arrangement would merely add to the delay, which might already amount to some three years, before the Conciliation Commission made its recommendations. He would therefore urge the Ugandan representative not to press his proposal.

[1] See 51st meeting, para. 23.

4. Mr. STUTTERHEIM (Netherlands) said that, in view of the Netherlands proposal of a new article 39 *bis* on the settlement of disputes (A/CONF.80/C.1/L.56), it would be readily understood that his delegation was not entirely satisfied with the agreed text of the *Ad Hoc* Group. It would appear that the international community was a long way from accepting true international justice and indeed had even taken a step back from the position it had adopted in the Vienna Convention on the Law of Treaties. Nevertheless, in order to advance the work of the Conference, his delegation was prepared to accept the view of the majority and therefore withdrew its proposal.

5. He endorsed the comments of the Italian representative[2] on article B of the agreed text.

6. Mr. MAIGA (Mali) said that a number of speakers had considered that, in article A of the *Ad Hoc* Group's report, the words "consultation" and "negotiation" had been incongruously yoked together, and had suggested the deletion of the former. However, in codification conventions, reference had to be made both to legal norms and to State practice. It was a matter of experience that many States had settled disputes by way of consultation; African States had provided an edifying example of that practice. Some texts of agreements between States mentioned consultation, whereas others referred only to negotiation. The two words had virtually the same meaning, except that "negotiation" had diplomatic implications. A reference to negotiation was desirable for the progressive development of international law.

7. He endorsed the comment of the Italian representative on article B.

8. In his view, article C struck a false note. It was superfluous since the parties to a dispute could always submit it to the International Court of Justice or to arbitration by common consent. Article C had been accepted by delegations on the understanding that it would provide for opting in to the procedure it laid down, but he had considerable reservations about the present text which appeared to differ from the original version which had been read out to the Committee.

9. Some delegations had asked why third world countries were reluctant to accept the jurisdiction of the International Court of Justice. In troubled times like the present, when dominant ideologies were endeavouring to stamp out all elements of civilization that did not square with their own dogmas, countries were right to have serious misgivings about the submission of disputes to the compulsory jurisdiction of the Court. They had seen how the decisions of its judges were coloured by the national policies of their respective countries—the most flagrant example being the Court's 1966 judgment in the South West Africa case.[3] On other occasions, the Court had even reached the conclusion that both sides in a dispute were right. The fact was that international law was changing, but

[2] *Ibid.*, para. 14.

[3] South West Africa, Second Phase, Judgment, *I.C.J. Reports 1966*, p. 6.