# United Nations Conference on Succession of States in respect of State Property, Archives and Debts

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**43rd meeting of the Committee of the Whole**

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question relating to the rights and obligations of individuals, whether natural or juridical persons. There was therefore a direct link between the objects of article 6 and the effects of State succession, whereas no such link existed in the case of the new article proposed by the Syrian Arab Republic.

95. Mr. PIRIS (France) said that the Syrian proposal presented problems of both a legal and a technical nature for his delegation. In the first place, there was no doubt whatsoever that, in the light of articles 1 and 2, the Syrian proposal fell outside the scope of the draft convention. Furthermore, while his delegation recognized the right of peoples to self-determination, it could not see what recognition of that right contributed to the convention.

96. The French delegation also supported the principle of permanent sovereignty of every people over its wealth and natural resources, provided that such sovereignty was exercised in accordance with international law. In that connection, he referred to the relevant provisions of the International Covenants on Human Rights adopted in 1966.[2]

97. A number of the expressions used in the proposed new article were vague and ambiguous. Examples were the word "request", and the "measures" that were to be taken, which had not been specified in any way. The text also provided that none of the provisions in the present convention should be considered as affecting the rights of certain people, but his delegation failed to see how they could do so.

98. For all those reasons, therefore, the French delegation could not accept the Syrian proposal.

99. In conclusion, he pointed out that, while reference had been made to extensive consultations on the proposed new article, the French delegation had not been invited to any such consultations and had heard nothing about them.

100. Mr. LAMAMRA (Algeria) said that his delegation had no doubt as to the scope and appropriateness of the ideas contained in the Syrian proposal. The intent of the provision was quite clear, namely, that national liberation movements, as representatives of their peoples and in their struggle to assert their rights to self-determination, had the right to request international organizations and States receptive to their aspirations to assist them in safeguarding the rights of their peoples, in accordance with the principles embodied in the Charter of the United Nations. The right of national liberation movements as described in the Syrian proposal were incontestable, as was the fact that such movements exercised such rights. The Syrian delegation sought only to affirm those rights, as was quite normal, in the context of a convention on the succession of States.

101. The requirement of recognition of the national liberation movements concerned by the United Nations and by any international regional organizations could not be interpreted as a precondition for the existence of such a movement or of its right to represent its peoples.

102. It had been suggested that the Syrian proposal was outside the scope of the convention, but, since the latter dealt with the effects of succession of States, it was precisely by including in it an article such as that proposed that such succession would have no negative effects with regard to the right to self-determination.

103. One delegation had stated that the Manila Declaration made no reference to national liberation movements. As he recalled, they had been referred to more than once, although not expressly by name.

*The meeting rose at 1 p.m.*

[2] See General Assembly resolution 2200 A (XXI).

# 43rd meeting

**Thursday, 31 March 1983, at 3.25 p.m.**

*Chairman:* Mr. ŠAHOVIĆ (Yugoslavia)

**Consideration of the question of succession of States in respect of State property, archives and debts, in accordance with General Assembly resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 (*continued*) (A/CONF.117/4, A/CONF.117/5 and Add.1)**

[Agenda item 11]

*New article* (A/CONF.117/C.1/L.60) (*continued*)

1. Mr. PHAM GIANG (Viet Nam) said that his delegation, with its long experience of wars of national liberation and of devastation left behind by predecessor States, considered the Syrian Arab Republic's proposal for a new article on the right of national liberation movements to request that safeguard measures be taken (A/CONF.117/C.1/L.60) to be legitimate and well-founded. National liberation movements were subjects of international law recognized by numerous States, by many regional and world-wide intergovernmental organizations including the non-aligned movement, and by the United Nations itself. If it meant to carry out its mandate in an equitable manner, the Conference could not remain indifferent to the rights of national liberation movements and had to find a judicious solution to the problem raised in the Syrian proposal, which enjoyed the support of many members of the Group of 77, including his own delegation.

2. However, if the proposal for including such an article in the draft convention should present insuperable difficulties to certain delegations, his delegation thought that consideration might be given to the compromise solution suggested by the Netherlands at the previous meeting, namely, that the Syrian delegation's text should be adopted in the form of a resolution of the

Conference. A similar decision had been reached after long negotiations at the Conference on the Law of the Sea held recently in New York.

3. So far as the proposed text was concerned, he suggested that interested delegations might confer directly with the Syrian delegation with a view to arriving at a generally acceptable draft.

4. Mr. MUCHUI (Kenya) noted that the principal objection to the Syrian delegation's proposal raised at the preceding meeting had been that its subject matter lay outside the scope of the envisaged convention, which dealt with the devolution of State property, archives and debts from the predecessor to the successor State. Yet the convention, in its articles 12 and 23, went beyond the strict confines of that topic by referring to third States. National liberation movements were surely nothing other than States in the making; as such, they deserved a higher level of protection than that accorded under article 6 of the draft convention.

5. He could not accept the position of those delegations which, while insisting on extending protection to the rights of private creditors, refused to grant it to the rights of the thousands of people represented by national liberation movements, and even made their support of the convention as a whole contingent upon the rejection of the Syrian proposal.

6. His delegation felt strongly that the national liberation movements and the people they represented should be given a place in the draft convention and therefore gave its unqualified support to the Syrian proposal, subject to drafting improvements such as those proposed by Indonesia and Pakistan in the course of the debate.

7. Mr. TARCICI (Yemen) said that the draft convention contained a number of articles providing special safeguards for the rights of newly independent States. The adoption of those articles without significant opposition reflected most favourably upon the Committee's equitable and honourable spirit. By the same logic, it should also be prepared to provide safeguards for peoples which had not yet achieved independence and to the national liberation movements which were recognized as their lawful representatives, first, by those peoples themselves and, second, by the regional organizations best qualified to judge their representative character and then also by the United Nations and its specialized agencies. The peoples concerned were going through the period of struggle which was the inevitable prelude to their emergence as newly independent States. They were entitled to safeguards of their right to State property and State archives, and the Conference had a legal and moral duty to protect those rights. Failure to include a provision to that effect would leave a serious lacuna in the draft convention; the delegation of the Syrian Arab Republic was to be congratulated upon its effort to fill the gap with its proposal.

8. He wholeheartedly supported the proposal and suggested that, once it had been adopted, drafting changes might be introduced, as required, by agreement with its sponsor.

9. Mr. BRAVO (Angola) said that the importance of the proposal under discussion lay in the fact that national liberation movements had been the starting point of the formation of many newly independent States. The Syrian delegation's proposal was well-founded from the point of view of international law because it took into account the right of peoples to self-determination enshrined in a multitude of international instruments. The principle of permanent sovereignty of States over their wealth and natural resources formed part of the concept of the right to self-determination since, without decolonization, in other words without self-determination, peoples could not exercise effective control over their wealth and natural resources. The status of national liberation movements which, as other speakers had pointed out, were nothing less than States in the making, as subjects of international law was no longer open to serious challenge, as was shown by the fact that observers for national liberation movements were participating in the Conference.

10. His delegation had no doubts as to the appropriateness of the Syrian proposal and fully supported it on grounds of principle.

11. Mr. MARCHAHA (Syrian Arab Republic), replying to points made during the discussion, said that in submitting its proposal his delegation had not been motivated by political interests, as some delegations had implied, but had merely wished to draw attention to an important legal matter which deserved a place in the draft convention. The articles already adopted were based on equitable principles; some of them provided protection for third States and even for private individuals within the scope of the convention. The principle of permanent sovereignty of all peoples over their natural resources was not in doubt. The sole purpose of the proposal was to enrich the draft convention without causing detriment to anyone.

12. The criticisms addressed to the proposal fell into two categories: those of a purely negative kind, which aimed at the proposal's unconditional rejection, and constructive suggestions designed to improve its text. His delegation resolutely refuted the former group of objections and declared its willingness to take full account of the latter.

13. The CHAIRMAN suggested that, in view of the readiness expressed by the representative of the Syrian Arab Republic to consider constructive suggestions aimed at improving the proposed text, a decision on the proposal should be deferred until a later stage.

14. Mr. MEYER LONG (Uruguay) said that, in view of the importance of the subject under discussion, it would be helpful to hear the views of the Expert Consultant.

15. Mr. NDIAYE (Senegal) said that his delegation would be happy to support the Syrian delegation's proposal. It was only just that national liberation movements should have the right to request that measures be taken to safeguard the rights of the peoples they represented. It would be hard to understand that a convention which protected the rights of private persons should fail to afford any protection to those of peoples struggling for their liberation. Since it was intended to confer a right and not to impose a legal obligation, the proposal avoided the delicate question of the capacity of liberation movements to assume obligations under an international convention.

16. He added that the sponsor of the proposal had taken the precaution of introducing the criterion of twofold recognition, first by the United Nations and secondly by a regional organization, thus guaranteeing that the liberation movements whose rights were to be recognized would be those which were truly representative and seriously committed to their task.

17. He suggested that the words "any international regional organization" in the Syrian text should be replaced by the phrase "the international organization most representative of the region concerned". That formula would tend to forestall disputes regarding recognition at the regional level.

18. Mr. IRA PLANA (Philippines) said that his delegation had always adhered to the formula used by the United Nations in relation to national liberation movements, namely, "national liberation movements recognized by the United Nations and/or the Organization of African Unity and the League of Arab States". As it gathered that the Syrian delegation was open to suggestions concerning its proposal, the delegation of the Philippines suggested that that formula should be incorporated in the text of the Syrian proposal.

19. Mr. A. BIN DAAR (United Arab Emirates) said that protection for the rights of peoples struggling for their independence was endorsed by most countries as a matter of principle.

20. The Syrian proposal was thus an important one. It did not directly affect the status of liberation movements as such but was principally concerned with the peoples whose rights and interests the draft convention sought to preserve. Even those who did not support national liberation movements recognized the need to safeguard the human and legal rights and interests of the peoples represented by such movements.

21. Since the Syrian delegation had stated that it was open to suggestions for improvements of the text, his delegation felt that the Committee should give the Syrian delegation time to consult with others which might like to make constructive suggestions.

22. Mr. BEDJAOUI (Expert Consultant) responding to the request of the delegation of Uruguay, said that his personal opinion on the subject of national liberation movements would be of no great value to the Committee in its deliberations.

23. The role of national liberation movements in history had often been to prompt future predecessor States and third contracting States to guard against an unjust and undue disposal of the property, rights and interests rightfully belonging to the people of a territory. The Syrian proposal, in giving pre-eminence to the principle of permanent sovereignty of every people, including a people under foreign or colonial domination, over its wealth and natural resources, might well be appropriate in the context of the draft convention. That was a matter entirely for the Committee to decide however and he was not in a position to offer guidance.

*New articles and annex* (Settlement of disputes)

24. The CHAIRMAN invited the Committee to consider proposals submitted jointly by Denmark and the Netherlands for a new article on settlement of disputes (A/CONF.117/C.1/L.25/Rev.1/Corr.1) and for an annex on arbitration (A/CONF.117/C.1/L.57), as well as proposed new articles on settlement of disputes (A/CONF.117/C.1/L.58), submitted by Mozambique and Kenya.

25. Mr. MAAS GEESTERANUS (Netherlands), introducing the proposed new article contained in document A/CONF.117/C.1/L.25/Rev.1/Corr.1 on behalf of the sponsors, said that it rested on their conviction that rules of law primarily served the interests of the smaller and weaker in society. In the face of the tendency on the part of the powerful, in the event of a dispute, to rely on imposing their will by force rather than on the process of law, it was first and foremost in the interests of the weaker to have a means of recourse to an impartial third party. By refusing to accept an optional procedure, however, the State, already in a position of strength, would once again be able to impose its will on the weaker party. For those reasons the proposal was designed, in the general interests of the peaceful development of international relations and the particular interests of less powerful States, to establish a compulsory judicial procedure for the settlement of disputes.

26. Paragraph 1 of the proposed text had been included in the light of useful informal consultations with other delegations. It recognized the well-known fact that negotiations were as a general rule undertaken with greater seriousness when both parties were aware that, failing a mutually agreed solution, either might unilaterally invoke a judicial or arbitral procedure. Thus, paradoxically, a compulsory settlement procedure was incorporated in an instrument not for the purpose of being used but to inspire fruitful negotiations which would make recourse to it unnecessary.

27. Paragraph 2 referred to the International Court of Justice. The Court was the principal judicial organ of the United Nations. It also offered the least costly settlement procedure, since the parties to a dispute were not obliged to pay the judges, while in cases of arbitration or conciliation they were always required to pay the arbitrators' or conciliators' fees.

28. At the same time the final words of paragraph 2 left the parties at liberty to agree on other means of settlement and, under paragraph 3, any State which so desired was free to indicate a preference for the arbitration procedure provided for in paragraph 4, the details of which were set out in the proposed annex (A/CONF.117/C.1/L.57) to be added to the convention. That annex established nothing new; similar rules were to be found in other conventions, and the provisions proposed by the sponsors were modelled on those of the 1969 International Convention relating to intervention on the high seas in cases of oil pollution casualties,[1] an example which had proved acceptable to States of all regions of the world.

29. He proceeded to explain why the procedure adopted in the case of the 1978 Vienna Convention on Succession of States in Respect of Treaties[2] had not been considered by the Danish and Netherlands delega-

[1] United Nations, *Treaty Series*, vol. 970, p. 211.

[2] See *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), p. 185.

tions to be adequate for the purposes of the present convention. Although, as a conciliation procedure, it might resolve a particular conflict between States, it would not provide for a binding award nor generate jurisprudence on a number of important but vague notions embodied in the present convention.

30. The sponsors of the proposal were convinced that it was essential to recognize the obligation to submit to international jurisdiction disputes on certain points of law which could not be resolved in any other manner. They had the following five points particularly in mind: first, whether or not a succession of States had taken place in conformity with international law and thus whether or not it fell within the scope of the present convention in accordance with article 3 thereof; second, whether or not an agreement between a successor State and a predecessor State infringed the principle of permanent sovereignty of every people over its natural resources and, if so, what were the consequences; third, what exactly, in a given case, was to be understood as representing "equitable proportion" and "equitable compensation" in the context of the present convention; fourth, whether or not an agreement between a successor State and a predecessor State endangered the fundamental economic equilibria of the successor State and, if so, what the consequences must be; and, last, whether or not such an agreement infringed a people's right to development, to information about its history and to its cultural heritage, and, if so, what were the consequences.

31. Mr. KOLOMA (Mozambique), introducing the text of new articles concerning the settlement of disputes proposed by Mozambique and Kenya (A/CONF.117/C.1/L.58), said that, in proposing their text, the sponsors had been guided by the principle of free choice of means in the settlement of international disputes. That principle was implicit in paragraph 1 of Article 33 of the Charter of the United Nations and explicitly stated in paragraph 3 of the 1982 Manila Declaration on the Peaceful Settlement of International Disputes.[3] That principle also underlay the procedure established for the settlement of possible disputes arising from the interpretation or application of the 1978 Vienna Convention.

32. It was for that reason that the sponsors had decided to propose exactly the same articles, together with their annex, as those adopted in the 1978 Vienna Convention. Those articles had emerged from lengthy discussion in the *Ad Hoc* Group and in the Committee of the Whole of the Conference on Succession of States in Respect of Treaties, and had been adopted without a vote. That indicated that the provisions could be regarded as reliable and he hoped that the proposal co-sponsored by Kenya and Mozambique would be acceptable to the majority of delegations and that it might, once again, be adopted without a vote.

33. His delegation would not be able to accept the proposal submitted by Denmark and the Netherlands for the simple reason that it did not respect the principle of free choice of means for settlement of possible disputes; paragraph 2 of the proposed new article invoked the compulsory jurisdiction of the International Court of Justice, a judicial body recognized by only about 45 countries of the more than 150 which constituted the international community. He emphasized that the proposal of Mozambique and Kenya itself did not exclude the possibility of recourse to the International Court of Justice as an alternative means of settling a dispute arising from the present draft convention. That means, however, like all the others referred to, remained only an option.

34. Mrs. THAKORE (India) said that the future convention, if it was to be a complete and self-contained legal instrument, should unquestionably provide for machinery for the settlement of disputes. In order to ensure the widest possible application of the convention, such machinery should be flexible and take into account realities and the principle that States should have a free choice as to the means to be used for settling disputes.

35. The proposal by Denmark and the Netherlands was an improvement on the original text in that in its new paragraph 1, it recognized the need to provide for consultation and negotiation as the very first step in the process of settlement. Direct consultations between the parties were of fundamental importance; no one could deny that negotiation was the basic means of settling disputes, as could be seen from the pre-eminent position accorded to it in Article 33 of the Charter of the United Nations. Her delegation could thus fully support paragraph 1 of the proposal.

36. However, although in paragraph 3 the proposal gave every State the option of declaring, at the time of signature or ratification of the convention, that it did not consider itself bound by paragraph 2, which provided for compulsory adjudication by the International Court of Justice, or to agree upon other means of settlement, paragraph 4 reintroduced the element of compulsion by requiring the dispute, if it remained unsolved, to be submitted to compulsory arbitration. While her delegation fully recognized the importance of adjudication and arbitration as means of settlement, the fact remained that the international community was not yet ready for the imposition of compulsory and binding legal procedures. Such procedures could, of course, be employed with the consent of both parties, a decision being taken in each individual case on its merits.

37. For that reason, the proposal of Denmark and the Netherlands, although it had the merit of brevity and precision, was too radical and inflexible to gain general acceptance. The principle of free choice of means would be fully safeguarded only by the proposal submitted by Mozambique and Kenya, which had the added advantage of flexibility. At the 1978 Conference on Succession of States in Respect of Treaties, strong opposition had been voiced by an overwhelming majority of States to proposals providing for compulsory recourse to the International Court of Justice and to arbitration. Articles 41 to 44 of the 1978 Vienna Convention reflected the text ultimately adopted, without a vote, after study by a working group. It was that text which had been reproduced in the proposal submitted by Mozambique and Kenya. That proposal was therefore the more likely of the two before the Committee to win general approval, and her delegation recommended its adoption by the Committee as submitted.

[3] General Assembly resolution 37/10, annex.

38. Mr. PASTOR RIDRUEJO (Spain) said that, in the interests of both legal security and justice, it was essential that a convention codifying and developing international law should contain a provision relating to settlement of disputes. Owing to the special characteristics of the convention to be prepared by the Conference, his delegation considered that the convention should make provision for compulsory settlement through judicial or arbitral procedure.

39. The articles so far adopted contained many ambiguous phrases, such as "relevant circumstances", "equitable proportion" and "fundamental economic equilibria", which would give rise to difficulties of interpretation. It was therefore essential to make provision for an impartial body which would give binding rulings consistent with international law in cases of disputes concerning succession to State property, archives and debts that might arise between parties to the future convention.

40. In the light of those considerations his delegation supported the new article proposed by Denmark and the Netherlands and their proposal for an annex to the convention as they were based on the concept of compulsory settlement of disputes as the final residuary mode of settlement. However, he suggested that the first sentence of paragraph 3 of the proposed new article should provide that a State might declare that it did not consider itself bound by paragraph 2, not only at the time of signature or ratification of the convention or accession thereto, but also, as a further alternative, at any subsequent stage.

41. His delegation, while appreciating the initiative of Mozambique and Kenya, would not be able to support their proposed new article, which was largely based on premises unacceptable to his delegation.

42. In conclusion, he said that his delegation's position was flexible and that it would remain open to other suggestions regarding suitable procedures for settlement of disputes.

43. Mr. HAFNER (Austria) said that the question of settlement of disputes was a very sensitive one and the way in which the Conference dealt with that question might well determine the standing of the future convention not only as part of international law but also as an instrument governing inter-State relations in the matter of succession to State property, archives and debts. He referred to paragraph 9 of the Manila Declaration annexed to General Assembly resolution 37/10 which called on States to include in bilateral and multilateral instruments effective provisions for the peaceful settlement of disputes arising from the interpretation or application thereof.

44. What was needed in the convention being prepared by the Conference was an effective provision which would enable the States to ascertain, invoke and defend the rights resulting from that convention. The new article proposed by Denmark and the Netherlands met those requirements fully and would, if adopted, constitute an ideal solution to a difficult problem. It also reflected the revival of interest in arbitration as a means for settling disputes.

45. The proposed new article was all the more necessary in that the convention referred in several articles to the concept of equity. That concept, in the context of the convention, implied an instrument which would determine the distribution of goods and wealth in accordance with the interests of all the parties involved in a succession of States.

46. In conclusion, he said that his delegation appreciated the effort made by the delegations of Mozambique and Kenya in proposing provisions concerning the settlement of disputes but felt that their proposal was too closely modelled on the 1978 Vienna Convention. Considering that a solution representing progress from the 1978 Convention was called for in the present context, his delegation accordingly preferred the article submitted by Denmark and the Netherlands.

47. Mr. ROSENSTOCK (United States of America) said that the question of settlement of disputes seemed to generate more hypocrisy and cant than any other issue before the Conference. In particular, he considered that it was not a tenable position for a delegation to maintain that the international community in general was not ready to accept the jurisdiction of the International Court of Justice: all countries which were Members of the United Nations were parties to the Statute of the International Court. Similarly, it was disingenuous for delegations to pretend to favour free choice of means of settlement of disputes when what they were really aiming at was the avoidance of binding third party settlement.

48. There was nothing radical about accepting the principle of binding third party settlement. The effect of upholding that principle would be to strengthen the international order and to promote the sovereign equality of States. Both the proposed new articles were based on precedents, but that of Denmark and the Netherlands represented a much more significant step on the path to an international judicial order. While rejection of that proposal would not be a catastrophe for countries like his own which were economically and militarily strong, there was no doubt that it would constitute a disappointing failure on the part of the Conference. On the other hand, he considered that it would be most regrettable if the text proposed by Mozambique and Kenya was adopted.,

49. Mr. SKIBSTED (Denmark) said that his country, which upheld the rule of law in international relations, had always strongly favoured the inclusion of effective provisions for the settlement of disputes in bilateral and multilateral agreements and conventions. To be effective, both the system of recourse to settlement procedures and the resulting decision of the court or arbitral tribunal must be binding upon the parties to a dispute.

50. In his delegation's view the proposed new article, which it had sponsored, established the kind of effective system needed in the convention.

51. The existing text of the convention made reference to a number of vague concepts whose legal meaning was not universally accepted or uniformly interpreted. The principle of equity, for example, played an important role as a criterion in a number of provisions, but the draft to some extent failed to provide guidance to the parties to the convention in the event of conflicts of interest which might arise in connection with a suc-

cession of States. In his delegation's opinion, the settlement of disputes procedures provided under the 1978 Vienna Convention, the relevant provisions of which were reproduced in the text proposed by Mozambique and Kenya would not constitute a sufficiently effective system in that regard.

52. Mr. GÜNEY (Turkey) said that the question of settlement of disputes was always a controversial issue at conferences concerned with the codification and progressive development of international law. In any endeavour to establish effective procedures for the settlement of disputes concerning the interpretation or application of a convention it was essential to bear in mind the reluctance and misgivings felt by the international community with regard to compulsory jurisdiction. In particular, the fact must be taken into account that only one third of the States which were parties to the Statute of the International Court of Justice recognized the Court's jurisdiction. Furthermore, with the exception of the 1969 Vienna Convention on the Law of Treaties, in respect of two clauses considered to be *jus cogens*, none of the conventions adopted at diplomatic conferences in recent decades had made provision for compulsory jurisdiction.

53. The Conference should be realistic: it had no choice but to establish and adopt procedures for the settlement of disputes which would allow a State party to the convention freedom to choose the appropriate means for resolving a dispute in each particular case. From that standpoint his delegation had difficulty with the new article proposed by Denmark and the Netherlands. On the other hand, it found the text submitted by Mozambique and Kenya acceptable in that it was based on the principle of free choice and emphasized that direct negotiations were the most effective means for resolving disputes.

54. Mr. CONSTANTIN (Romania) said that his delegation fully supported the new text proposed by Mozambique and Kenya which corresponded to the relevant clauses of the 1978 Vienna Convention and offered undeniable advantages. The proposed text took into account differing views of States with regard to the modes of settlement of disputes. The proposal provided for a number of procedures which were both feasible and desirable in that it provided for negotiation, conciliation, judicial settlement and arbitration. Recourse to the one or other of those procedures presupposed that all the parties to a dispute accepted the procedure concerned. In keeping with its approach to the issue under discussion, his delegation was unable to accept the new article submitted by Denmark and the Netherlands.

55. Romania had consistently defended respect for and the integral application of the principles of international law, in particular the principles of independence, sovereignty, non-interference in internal affairs, non-use of force or the threat of force, and equality of rights. Those principles were fully upheld in the text proposed by Mozambique and Kenya, which would, he hoped, be generally acceptable as a compromise.

56. The proposal of Denmark and the Netherlands diverged considerably from the solution adopted in the 1978 Vienna Convention in that it established a compulsory procedure which was unacceptable to many countries, including his own.

57. Mr. POEGGEL (German Democratic Republic) said that in principle his delegation supported the idea that there should be an obligation upon States to settle, by peaceful means, any dispute regarding the application or interpretation of the convention under consideration. It shared the view of other delegations that, in the light of fundamental principles of international law such as the sovereign equality of States and the obligations of States to co-operate with each other in peace and to settle disputes by peaceful means, it would be helpful to include in the convention an obligation to enter into consultations and a mandatory conciliation procedure. Similar questions had arisen in the case of past conventions such as the 1978 Vienna Convention. The so-called Manila Declaration of 1982 underlined the idea of a free choice of States to settle their disputes by peaceful means in conformity with the Charter of the United Nations.

58. His delegation fully supported the procedure for the peaceful settlement of disputes proposed by Mozambique and Kenya which reproduced textually the corresponding clauses of the 1978 Vienna Convention. During the 1978 Conference, although some delegations had not been fully satisfied, all had supported the articles on settlement of disputes. From a legal standpoint, misunderstandings could arise if there were differences between the procedures for the settlement of disputes provided for in the two Conventions on Succession of States.

59. His delegation had difficulties in principle with the proposal of Denmark and the Netherlands which provided for the compulsory jurisdiction of the International Court of Justice and for an optional procedure. His delegation was in principle opposed to such an approach but not because it did not like an obligatory procedure for the peaceful settlement of disputes; on the contrary, such a procedure was the only justifiable way in which to solve legal and political problems between States. It was not, however, possible to overlook the fact that less than 30 per cent of the membership of the United Nations recognized the compulsory jurisdiction of the International Court of Justice. In the view of his delegation it was an illusion to expect that, in a world of nearly 160 States, with widely differing social, political and legal characteristics, the compulsory jurisdiction of the International Court of Justice could prove generally acceptable.

60. Mr. YÉPEZ (Venezuela) said that his delegation strongly supported the concept of the peaceful settlement of disputes which was reflected in his country's Constitution so far as the operation and interpretation of treaties were concerned. Accordingly, his delegation considered that the convention should make provision for machinery for the settlement of disputes. The jurisdiction of the International Court of justice and arbitration offered means for the peaceful settlement of disputes; his delegation did not, however, agree with the concept that parties to a dispute should be obliged to have recourse to either judicial or arbitral settlement. In its opinion, those procedures should only be employed in cases where there was a previous agreement between

the parties to a dispute to resort to judicial or arbitral settlement, and not by virtue of a mandatory provision in an international agreement. His delegation could not, therefore, support the proposal of the Netherlands and Denmark because it provided for an obligatory procedure with the binding consequences set out in paragraph 4.

61. His delegation was not happy with the proposal of Mozambique and Kenya but felt that, as a compromise, it would satisfy his delegation. Article B of the proposed text, on the conciliation procedure, contained an obligatory element; what the conciliators would be required to do would be to make recommendations which would not, however, be binding on the parties. Choice was therefore permitted in the proposal of Mozambique and Kenya; because of the need for a text which would satisfy the aspirations of the international community as a whole, his delegation felt that the proposal of Mozambique and Kenya was best suited to meet the needs of the countries represented at the Conference. His delegation would therefore vote in favour of that proposal.

62. Mr. HAWAS (Egypt) said that, like others, his delegation had difficulty in accepting the proposal of Denmark and the Netherlands which would bind governments in advance to follow a certain procedure for the settlement of disputes. On the other hand, the proposal of Mozambique and Kenya had the merit of following several precedents and represented a compromise although some delegations were clearly not happy with the proposed article C which provided for the obligatory submission of disputes to the International Court of Justice or to arbitration in cases where both parties had accepted the provisions of that article for the future.

63. The formula proposed by Mozambique and Kenya had been accepted by all parties to the 1978 Vienna Convention, when it had been adopted without a vote. That formula contained a minimum which would be acceptable to all. More time would be required to go beyond such a compromise and such time was not available. Moreover the formula did not close the door to the future acceptance of article C by the parties. His delegation therefore supported the proposal of Mozambique and Kenya.

64. Ms. LUHULIMA (Indonesia) said that her delegation favoured the concept of conciliation and negotiation for the settlement of disputes. As a matter of principle, it could not accept the compulsory jurisdiction of the International Court of Justice. Her delegation therefore would not vote for the proposal of the Netherlands and Denmark. It was, however, sympathetic to the proposal of Mozambique and Kenya because it would make the submission of a dispute to the International Court of Justice conditional on the agreement of the parties concerned.

65. Mr. MONCEF BENOUNICHE (Algeria) said that his delegation considered that a procedure for the settlement of disputes should be provided for in the convention but found it difficult to imagine that the element of compulsion could be accepted by States. He agreed with the representative of Egypt regarding the need for a compromise formula. His delegation could not support the proposal of the Netherlands and Denmark because it would involve a modification of the current universally accepted system which was based on the free choice of the mode of settlement and on consensus. His delegation could not envisage the adoption of any procedure which would depart from the principle of consensus.

66. Mr. NDIAYE (Senegal) said that it was the hope of his delegation that the international community was about to become a society which respected law. It was therefore ready to accept any proposal for the peaceful settlement of disputes, including their compulsory reference to the International Court of Justice, on which two citizens of Senegal had served as judges.

67. During the course of the discussion many concepts had been introduced, although the legal character of some had been challenged. The concept of fundamental equilibrium was widely accepted in domestic law but could give rise to disputes at the international level if a third party was not prepared to accept such a concept. His delegation was ready and willing to consider any suggestions for the improvement of the proposals before the Committee.

68. Mr. MURAKAMI (Japan) said that, as his delegation had pointed out before, a number of provisions or terms in the draft convention were legally imprecise. Because of the potential risk of conflicting interpretations of those provisions, his delegation considered that provision should be made for an effective method for the settlement of disputes through a third party procedure.

69. His delegation therefore supported the proposal submitted by Denmark and the Netherlands. The text proposed by Mozambique and Kenya was too weak and the modes of settlement envisaged in that text would not suffice for dealing with the complex problems to which the future convention would give rise.

*The meeting rose at 5.55 p.m.*